

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved: 27.7.2021

Date of Decision: 13.9.2021

**Misc. Application No.822 of 2021
And
Appeal No.487 of 2021**

Pooja Wadhawan
16th Floor, DB Breeze
Opp. Khar Gymkhana Ground,
Khar (West), Mumbai - 400 052. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai 400 051. ...Respondent

Mr. Somasekhar Sundaresan, Advocate with Ms. Yugandhara Khanwilkar, Mr. Joby Mathew, Mr. Anshuman Sugla, Mr. Arihant Agarwal and Ms. Tanya Gupta, Advocates i/b. Joby Mathew and Associates for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for the Respondent.

**With
Misc. Application No.823 of 2021
And
Appeal No.488 of 2021**

1. Wadhawan Consolidated Holding P. Ltd.
 2. Infill Retail Ventures Pvt. Ltd.
 HDIL Towers, 4th floor,
 Anant Kanekar Marg,
 Bandra (East), Mumbai- 400051. ...Appellants

Versus

Securities and Exchange Board of India
 SEBI Bhavan BKC, Plot No.C-4A,
 G Block, Bandra Kurla Complex,
 Bandra (East), Mumbai 400 051. ...Respondent

Mr. Kunal Katariya, Advocate with Ms. Ashmita Goradia,
 Advocate i/b. Mr. Aagam Doshi, Advocate for the Appellant.

Mr. Chander Uday Singh, Senior Advocate with Mr. Mihir
 Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates
 i/b. K. Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
 Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal challenging the order dated 15th June, 2021 whereby the application of the appellant for supply of certain documents has been partially rejected. The appellant is also aggrieved by the communication dated 2nd July, 2021 whereby the date for hearing of the matter before the WTM was fixed.

2. The facts leading to the filing of the present appeal is, that the appellant contends that she is a house wife as well as a promoter of Dewan Housing Finance Ltd ('DHFL' for short) and is not involved in the day to day affairs of the DHFL. It is contended that the Whole Time Member ('WTM' for short) passed an ex-parte ad-interim order cum show cause notice dated 22nd September, 2020 restraining the appellant from accessing the securities market and further directed the appellant to show cause as to why appropriate orders should not be passed under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').
3. The ex-parte ad-interim order dated 22nd September, 2020 relies upon the initial transaction report dated 27th August, 2020 prepared by Grant Thornton India LLP (hereinafter referred to as the 'GT Report') as well as the application filed by Administrator of DHFL under Section 60(5) and Section 66 of the Insolvency and Bankruptcy Code, 2016, before the Hon'ble National Company Law Tribunal, Mumbai.

4. By an application dated 17th October, 2020 the appellant prayed for inspection of documents and further prayed to provide a copy of the GT Report and other documents referred therein. Based on the aforesaid letter, the respondent supplied a compact disc with regard to the documents sought for on 28th October, 2020.
5. It is alleged that all the documents sought for was not supplied and accordingly the appellant vide letter dated 18th November, 2020 requested again to provide the requisite documents as sought in the letter. The respondent by letter dated 9th December, 2020 contented that relevant documents has already been supplied. The appellant vide letter dated 21st December, 2020 again requested for a final complete copy of the GT report alongwith its exhibits as per the letter dated 18th November, 2020 to be supplied. Vide letter dated 17th February, 2021, the respondent provided a compact disc with seven final reports and further informed the appellant that they were not in possession of the documents sought for. Vide letter dated 9th March, 2021, the appellant submitted that they cannot

file a reply unless documents sought for was supplied. Vide letter dated 12th March, 2021, the WTM informed the appellant that the documents sought for was being called for from the Administrator of DHFL and subsequently on 27th April, 2021 the documents were supplied by the respondent through a CD.

6. Since only a few documents were provided the appellant vide 3rd March, 2021 again requested for supply of the remaining documents. The respondent again provided a scanned copy of additional documents on 5th May, 2021 but the entire documents were not provided and, consequently, the appellant on 18th May, 2021 again requested the respondent to supply the remaining documents. The WTM again considered the request and informed the appellant vide letter dated 24th May, 2021 that further efforts would be made to procure the documents from the Administrator. Thereafter, vide the impugned order dated 15th June, 2021 certain further documents were provided and the balance documents sought for was rejected on the ground that they are vague. By email dated 2nd July, 2021 the appellant was

informed that hearing in the matter was fixed for 9th July, 2021. The appellant being aggrieved by the aforesaid process has filed the present appeal.

7. We have heard Mr. Somasekhar Sundaresan, Advocate assisted by Ms. Yugandhara Khanwilkar, Mr. Joby Mathew, Mr. Anshuman Sugla, Mr. Arihant Agarwal and Ms. Tanya Gupta, Advocates for the appellant in appeal no.487 of 2021 and Mr. Kunal Katariya, Advocate assisted by Ms. Ashmita Goradia, Advocate for the appellant in appeal no.488 of 2021 and Mr. Chander Uday Singh, Senior Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the Respondent.

8. The contention of the appellant is, that the documents as per letter dated 18th November, 2020 has not been supplied completely to the appellant and the documents which have been mentioned in para 5.33 of the memo of appeal are still awaited. It was contended that until and unless these documents are supplied an efficacious reply cannot be filed to the show cause notice. The learned counsel contended

that these documents are essential for the purpose of filing an efficacious reply and for the purpose of proper adjudication in the matter. It was urged that the ex-parte order cum show cause notice has relied upon the GT report and that the findings in the GT report is based on certain documents. It was contended that the underlying documents that formed the basis of the findings in the GT report are required without which an efficacious reply cannot be given nor can the appellant defend itself. In support of his submission the learned counsel placed reliance in *Natwar Singh vs. Director of Enforcement (2010) 13 SCC 255* and in the matter of *Institute of Chartered Accountants of India vs. L.K. Ratna and Ors. (1986) 4 SCC 537*.

9. On the other hand, the contention of the learned counsel for the respondent is, that the appeal is not maintainable. The impugned orders were only a ministerial act against which no appeal lies. Alternatively, it was contended that such kinds of appeals should not be entertained otherwise there would be no end to such kind of litigations which will

clog up the court. It was contended that dilatory tactics was adopted by the appellant who was prolonging the disposal of the case for vested reasons. It was further contended that the respondent is under no obligation to furnish those documents which are not relied upon by them and whatever documents were made available was duly furnished to the appellant. It was, thus, contended that the principles of natural justice was duly followed and all opportunity was given to the appellant to file an appropriate reply which for reasons best known to the appellant have not been done. In support of his submission the learned counsel relied upon a decision in *Dr. Prannoy Roy and Anr. vs. SEBI & Anr. decided on 6th January, 202 in Writ Petition no.3581 of 2019* as well as decision of this Tribunal in *Shruti Vora vs. SEBI in appeal lodging no.28 of 2020 decided on 12th February, 2020 and Anant R. Sathe vs. SEBI in appeal no.150 of 2020 dated 17th July, 2020.*

10. Having heard the learned counsel for the parties we find that under the Securities and Exchange Board of India

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, the proceedings starts upon the issuance of a show cause notice. All applications filed by a noticee are required to be dealt with properly in accordance with law by the authority concerned. These applications and order passed thereunder are part of the quasi-judicial process and are passed upon an application of mind. Such disposal of the application are not done through a ministerial act but are done through a quasi-judicial process. Thus, the impugned order rejecting the application of the appellant for supply of certain documents in part is a quasi-judicial process and is appealable before this Tribunal under Section 15T in the event the person is aggrieved by that order. Thus, the contention that no appeal lies against the order of the respondent dated 15th June, 2021 is patently erroneous. We are of the opinion that the appeal is maintainable and has rightly been entertained by us.

11. In so far as the contention of the respondent is concerned that the appellant is adopting dilatory tactics we

are of the opinion that the appellant has a right to question the veracity of an order before the appellate authority. Such right cannot be curtailed on the ground that the dilatory tactics are being adopted. In the instant case, there is a restraint order against the appellant which is still operating. Therefore adopting dilatory tactics by the appellant does not in any way help the appellant in as much as the ex-parte ad-interim order continues to operate against her. Thus, in the instant case we do not find any sufficient material to hold that the appellant was adopting dilatory tactics.

12. On the issue with regard to the supply of documents a series of judgment has been passed by this Tribunal and recently by the Bombay high Court. In Dr. Prannoy Roy and Anr. vs. SEBI dated 6th January, 2020 one of the issue raised was with regard to inspection and supply of documents. The writ court dismissed the writ petition of Dr. Prannoy Roy and Anr. holding:

“10. The Writ Petition before this Court with virtually the same complaint should not be entertained as that would mean that this Court

can be approached challenging such a show-cause notice, when the petitioners were aware that they first approached through their promoter group, the High Court of Delhi. The grievance being more or less the same, we do not think that this Petition should be entertained only on the ground of alleged lack of inspection. We do not think that the petitioners cannot properly defend themselves. The petitioners can participate in the adjudication or the hearing and in the event any adverse order is passed, while challenging the same, the petitioners can highlight all the grievances and grounds projected in the petition before the High Court of Delhi and this High Court. They can very well complain that no inspection of the records or documents, which have been relied upon to render an adverse finding, was provided and, therefore, there is a gross violation of the principles of natural justice and the adjudication is unfair, arbitrary and discriminatory. Once all such courses are open and can be taken recourse to, all the more, we are disinclined to entertain this Writ Petition.”

13. The writ court held that the petitioner should participate in the adjudication of the hearing and if any adverse order is passed then the same can be challenged and highlighted before the appropriate court and can complain that the documents which has been relied upon was not provided and, therefore, was in violation of principles of natural justice.

14. The Supreme Court in *Natwar Singh vs. Director of Enforcement* (supra) held that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law in motion and further held that the concept of fairness is not a one way street and that the principles of natural justice are not intended to operate as a roadblock to obstruct statutory inquiries. The Supreme Court held that the principles of natural justice do not supplant the law of land but supplements it and, therefore, duty of adequate disclosure was only an additional procedural safeguard in order to ensure attainment of fairness which has its own limitations. In this regard, the Supreme Court held:

“31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. A notice is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not

make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the notice enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same. Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute.”

15. The aforesaid principles was considered by this Tribunal in Shruti Vora (supra) wherein this Tribunal after analyzing the (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 Rules of 1995 held as under:

“16. However, we find that Rule 4 of the Rules does not provide any specific provision requiring the AO to supply copies of any documents along with the show cause notice nor requires the AO to furnish any list of documents upon which reliance has been placed by it. However, the principles of natural justice and doctrine of fair play requires the AO to supply the documents upon which reliance has been placed at the stage of show cause notice. In Natwar Singh vs Director of Enforcement and Another (2010) 13 SCC 255 the Supreme Court held that the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. If relevant material is not disclosed to a party, there is prima-facie unfairness irrespective of whether the material

in question arose before, during or after the hearing. The Supreme Court further held that the law is fairly well settled, namely that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he could prepare his defence.”

16. And further held:

“18. In the light of the aforesaid, we are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence.”

17. Similarly in Anand Sathe (supra) this Tribunal held:

“10. In the light of the aforesaid, the request of the Appellant for supply of documents which are in possession of the authority is misconceived and cannot be accepted. We are further of the opinion that the Appellant should take all grounds which are available to him while filing his reply, including the ground of non-supply of essential documents. Such grounds taken and raised at the time of hearing will be duly considered by the authority. We are further of the opinion that if the authority while passing the final order relies on any document which was not supplied, in which case, it would be open to the Appellant to challenge that finding by filing an appeal and taking it as a ground with regard to non-supply of an essential document. Such ground taken would be in consonance with the principles laid down in Section 105 of the Civil Procedure Code which provides that where a decree is appealed from, any

error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal.”

18. In the light of the aforesaid decisions, we find that a large number of documents have been supplied by the respondent and, therefore, the contention that till such time all the documents are not supplied an efficacious reply cannot be filed is patently erroneous. The respondent have categorically stated that the documents relied upon by them have been duly supplied. We are of the opinion that if the GT report contains any annexures or appendices which are part of the report, the same is required to be supplied but such contention, namely, that the findings or analysis made in the G.T. report is based on certain documents and, therefore such underlying documents that form the basis of such finding are required to be supplied is farfetched and cannot be accepted otherwise there would be no end to stretching the principles of natural justice embodied under Article 14 of the Constitution. The Supreme Court in Natwar Singh (supra) clearly underlines that the principles of natural justice does not require supply of documents

upon which no reliance has been placed by the authority and that the principles of natural justice are not intended to act as a roadblock to obstruct statutory requirements. We are of the opinion that adequate disclosure has been made which ensures enforcement within the ambit of Article 14 of the Constitution.

19. The contention that the underlying documents that formed the basis of the findings given in the GT report are required to be supplied is patently erroneous. At best those findings could be cross questioned/ cross examined at the appropriate stage but issuance of those documents are outside the purview of supply of documents.

20. We are further of the opinion that the documents rejected by the impugned order are also vague and are not specific and, therefore were rightly rejected by the respondent. Further, the documents that were sought for in para 5.33 cannot be granted for the aforesaid reasons. In view of the aforesaid, the appeal fails and is dismissed without any order as to costs. Misc. application nos.822 and 823 are also disposed of accordingly.

21. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M.T. Joshi
Judicial Member

13.9.2021
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