

(2025) 07 BOM CK 0230

In the Bombay High Court

Case No : Writ Petition Nos. 19221 Of 2024, 378 Of 2025

Crosseas Capital Services Pvt Ltd

APPELLANT

Vs

Securities And Exchange Board Of India And Ors

RESPONDENT

Date of Decision : 14-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Code of Civil Procedure, 1908 — Order 14 Rule 1, Order 14 Rule 2, Order 14 Rule 2(2)

Securities and Exchange Board of India Act, 1992 — Section 11(b), 12A(a), 12A(b), 12A(c), 15HA, 15HB

Citation : (2025) 07 BOM CK 0230

Hon'ble Judges : M.S. Sonak, J;Jitendra Jain, J

Bench : Division Bench

Advocate : Janak Dwarkadas, Ashim Sood, Siddharth Satija, Sowjhanya Shankaran, Anuka Baehawat, Deepak Sanchety, Tamannam Tavadia, Dr Birendra Saraf, Ashim Sood, Siddharth Satija, Sowjhanya Shankaran, Anuka Baehawat, Deepak Sanchety, Tamannam Tavadia, Mustafa Doctor, Nidhi Singh, Hubab Sayyed, Nishin Shrikhande, Komal Shah, Nidhi Faganiya, Mustafa Doctor, Manish Chhanagani, Abhay Chauhan, Atul Agrawal

Final Decision : Disposed Of

Judgement

M. S. Sonak, J

1. Heard Mr Janak Dwarkadas, learned Senior Counsel, appearing for the Petitioner in Writ Petition No. 19221 of 2024, Dr Birendra Saraf, learned Advocate General, appearing for the Petitioner in Writ Petition No. 378 of 2025, and Mr Mustafa Doctor, learned Senior Counsel, appearing for Respondent-SEBI in both Petitions.

2. Rule in both these Petitions. The rule is made returnable immediately, at the request and with the consent of the learned counsel for the parties. The learned counsel for the parties agree that both these Petitions can be disposed of by a common Judgment and Order, since the issues involved are substantially similar, though not identical.

THE CHALLENGE

3. In both these Petitions, the challenges are to the impugned Show Cause Notice ("SCN") dated 05 September 2023 and 29 August 2023, issued under the provisions of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"). The Petitioners argue that since the jurisdictional facts regarding the breach of PUFTP regulations, or the making of any disproportionate gains, or securing unfair advantage, are absent, the impugned SCNs could not have been issued. Secondly, they contend that the earlier issued SCNs concerning the same allegations were disposed of by imposing penalties of Rs 3 to 6 lakhs on the Petitioners, which were paid. Therefore, the impugned SCNs, based on the same allegations, are barred by the principles of res judicata or issue estoppel.

PETITIONERS CONTENTIONS

4. On behalf of the Petitioners, three primary contentions were raised to challenge the impugned SCN. However, in the alternative, the learned Senior Counsel for the Petitioners submitted that the Petitioners would be satisfied if they were permitted to raise their challenges before the Quasi-Judicial Authority [QJA] seized of the hearing of the impugned SCN and such authority is directed to treat the three challenges/issues as preliminary issues and decide the same before proceedings with any further hearings in the impugned SCN dated 05 September 2023.

5. The learned Senior Counsel for the Petitioners, basically urged the following three issues: -

(i) that the impugned SCN is lacking in jurisdiction.

(ii) that the impugned SCN suffers from the vice of res judicata or issue estoppel principle.

(iii) The fact that the Petitioners may have participated in the hearings on the impugned SCN, thus far, does not estop the Petitioners from challenging the validity of the impugned SCN or raising the above issues as preliminary issues on the principle that there can be no waiver of fundamental rights.

6. Learned Senior Counsel for the Petitioners submitted that the SEBI, based upon identical allegations now referred to in the impugned SCN, appointed an investigating authority in May 2017. After that, the SEBI also initiated an independent investigation into the very same allegations. In particular, the investigating authority was appointed to investigate into violations of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("the PFUTP Regulations"). The investigating authority, in the case of Crosseas Capital Services Pvt. Ltd., i.e. the Petitioner in Writ Petition No. 19221 of 2024, [CCSP] did not recommend any action under Section 15HA of the SEBI Act or the PFUTP Regulations. Only a recommendation was made under Section 15HB of the SEBI Act, for alleged violation of certain provisions of the Securities and Exchange

Board of India (Stockbrokers and the Sub-Brokers) Regulations, 1992 ("the SBSB Regulations, 1992").

7. Learned Senior Counsel submitted that based upon such recommendation, by order dated 11 November 2020, the adjudicating officer merely imposed a penalty of Rs. 3 lakhs for violation of the SBSB Regulations. CCSP paid this penalty, after which the proceedings stood concluded. Learned Senior Counsel submitted that, although the investigating authority was asked to determine whether the Petitioners gained any quantifiable benefit or unfair advantage, it did not make any such finding.

8. The learned Senior Counsel for the Petitioners argued that in the case of PRB Securities Pvt. Ltd., the Petitioner in Writ Petition No. 378 of 2025 [PRBS], the investigating authority concluded there was no breach of regulations 3(b), 3(c), and 3(d) of the PFUTP Regulations in conjunction with Sections 12A(a), 12A(b), and 12A(c) of the SEBI Act. However, the investigation only identified a violation of Regulation 4(1) of the PFUTP Regulations.

9. Dr Saraf, learned Advocate General, pointed out that there was no finding about any unfair gain or advantage by PRB Securities. He pointed out that the SEBI's adjudication officer made an order dated 16 April 2021, imposing a penalty of Rs. 6 lakhs, considering that no disproportionate gains were made by PRB Securities Pvt. Ltd. This amount was paid, and the matter stood closed.

10. Learned Senior Counsel submitted that since the previous show cause notice or investigation into the same allegations had resulted in findings of minor breaches and penalties of Rs. 3 lakhs and Rs. 6 lakhs respectively, there was no question of once again issuing the impugned SCN into the same allegations. They submitted that the impugned SCN suffers from the vice of res judicata or issue estoppel principle. They relied on Securities and Exchange Board of India V/s. Ram Kishori Gupta and Anr. 2025 SCC OnLine SC 748 for the proposition that the principle of res judicata equally applies to SEBI and the issuance of the impugned SCN was without jurisdiction. They also relied on Aman Kokrady V/s. Securities and Exchange Board of India Writ Petition No. 2461 of 2024, in which the Co-ordinate Bench of this Court directed the issue of res judicata to be framed as a preliminary issue and depending upon the decision on the same, proceed further for adjudication. They pointed out that in Aman Kokrady (supra), the Petitioner was already exonerated in the first show cause notice. Still, a second show cause notice was issued based on the same allegations.

11. Learned Senior Counsel for the Petitioners contended that violation of PFUTP Regulations and the finding that parties had made unlawful gain or derived unlawful advantage were jurisdictional facts in the absence of which the impugned SCN could not be issued. They submitted that regarding CCSP in the context of the earlier show cause notice, there were categorical findings about the absence of violations of the PUFTP Regulations and that the Petitioners had made no disproportionate gain or derived unfair advantage. They pointed out

that even in the case of PRBS, there was a minor violation of Regulation 4(1) of the PUFTP Regulations. Still, there was no finding about disproportionate gain or unfair advantage. They submitted that in the absence of such jurisdictional facts, the very issuance of the impugned SCN was questionable. They relied on Arun Kumar And Ors. V/s. Union of India And Ors. (2007) 1 SCC 732 to support this contention.

12. Learned Senior Counsel for the Petitioners submitted that if, for any reason, this Court would not deem it appropriate to decide the jurisdictional challenges raised by the Petitioners, the Petitioners were agreeable to raise such challenges before the adjudication authorities, provided such issues were decided as preliminary issues. Learned Senior Counsel submitted that there was no point in subjecting the Petitioners to lengthy proceedings and unnecessary harassment when they had an excellent case regarding their preliminary objections.

13. Learned Senior Counsel for the Petitioners submitted that the circumstance of having participated in the show cause notice proceedings thus far can never operate as a bar or any estoppel. They submitted that the fundamental rights of the Petitioners were at stake and therefore, there was no question of any waiver of such fundamental rights. They relied on Basheshar Nath V/s. CIT 1958 SCC OnLine SC 7 to support this contention.

14. Based upon the above submissions, which were substantially transcribed in the written submissions handed over by the learned Counsel for the Petitioners, the learned Counsel for the Petitioners submitted that the impugned SCN may either be quashed or liberty be granted to the Petitioners to urge all the issues raised in this Petition as preliminary issues before the adjudicating officer. They further submitted that directions be issued to the QJA to decide all such issues as preliminary issues before proceeding with any further hearings in the impugned SCN.

SEBI'S CONTENTIONS

15. Mr Doctor, learned Senior Counsel for SEBI, submitted that the Petitioners' only wish to stall the hearings in the impugned SCN and therefore, these Petitions, which are only challenging show cause notices, may not be entertained. He submitted that none of the contentions raised by the Petitioners go to the root of jurisdiction, and the same have been raised almost two years after the issuance of the impugned SCN. He pointed out that, in the meantime, the Petitioners participated in the hearings, including, by way of seeking several documents and cross-examining witnesses. He submitted that the jurisdiction under Article 226 of the Constitution is equitable and discretionary. He submitted that, looking at the conduct of the Petitioners and their manifest intention to simply stall the proceedings for one reason or another, this Court should not entertain the present Petitions. He relied on Nalwa Sons Investments Limited And Ors. V/s. Securities and Exchange Board of India 2024 SCC OnLine Bom 3747.

16. Mr Doctor submitted that since the learned Senior Counsel appearing for the

Petitioners, after arguing the matter at some length, conceded to urge the objections raised in these Petitions before the QJA, the only issue to be determined in these Petitions was whether such issues should be heard as preliminary issues before proceeding with the adjudication in the impugned SCN any further. In other words, he submitted that the only issue involved in these Petitions was whether the directions in Aman Kokrady (supra), which were the mainstay of the Petitioners' case, were to be followed in the present matters in the context of hearing the objections now raised in these Petitions as preliminary objections.

17. Mr Doctor submitted that the decision in Aman Kokrady (supra) was restricted to the peculiar facts of that case, as was specified in paragraph 13 of the said Judgment and Order. He submitted that the factual position in Aman Kokrady (supra) was entirely different from the facts in the present Petitions. There, the Petitioner, Aman, was expressly exonerated in respect of the very same charges for which the second show cause notice was issued. He submitted that in the present Petitions, the scope of the earlier show cause notices was entirely different from the impugned SCN and in any event, there was no exoneration as is sought to be portrayed by the Petitioners.

18. Mr Doctor made submissions on the proceedings in the CCSB and PRBS case to point out the distinction between the two. He also submitted that the scope of the previous proceedings and the proceedings commenced under the impugned SCN were different. He submitted that even the adjudicating officer's jurisdiction in the earlier round was distinct and separate from the Whole Time Member's ("WTM") jurisdiction. He submitted that WTM exercise has broad powers to pass such orders as may be necessary for protecting the investors and the markets. This includes the power to direct disgorgement of illegal gains made by parties. He submitted that the scope of the earlier proceedings was not to determine illegal gains or unfair advantage in the context of the action of disgorgement. He submitted that the earlier proceedings referred to the material then produced before the adjudicating authority and since the scope of the adjudicating authority was quite different from the scope of proceedings before the WTM, any observations in the previous proceedings can neither be regarded as findings nor, in any event, conclusive findings on the aspect of illegal gains or unfair advantage. Mr Doctor also distinguished the decisions relied upon by Dr Saraf in the context of res judicata. He submitted that, in any event, a res judicata plea, in these matters, involves mixed questions of law and fact. He submitted that such a plea does not go to the root of jurisdiction, and therefore, there is no case made out to treat such an issue as a preliminary issue.

19. Mr Doctor finally took us through the list of dates. He submitted that the Petitioners have been consistently delaying the proceedings to stall their progress for one reason or another. He submitted that the institution of these Petitions is nothing but an attempt in that direction. He submitted that any direction for framing a preliminary issue will also lead to unnecessary and

avoidable delays. He submitted that the Petitioners have already cross-examined several witnesses. After the proceedings in the impugned SCN had reached an advanced stage, this Petition was instituted to challenge the impugned SCN, only to stall the further proceedings. He therefore submitted that no directions for framing the issues urged in this Petition as preliminary objections should be issued. He submitted that all issues could be disposed of together, and in case the outcome aggrieved the Petitioners, the law had provided them with the remedy of a substantive Appeal, where the decision on all such issues, if adverse to the interests of the Petitioners, could be very well agitated.

20. For all the above reasons, Mr Doctor submitted that these Petitions may be dismissed.

REJOINDER

21. In rejoinder, the learned Senior Counsel for the Petitioners placed on record the order dated 20 January 2025 made by the Hon'ble Supreme Court in the Petition for Special Leave to Appeal No. 1571 of 2025 challenging this Court's order in *Nalwa Sons Investments Ltd (supra)*. They pointed out that though the impugned order was not interfered with, still, liberty was granted to the Petitioners therein to apply for some of their contentions to be treated as preliminary issues.

EVALUATION OF RIVAL CONTENTIONS

22. The rival contentions now fall for our determination.

23. The Petitioners are brokers registered with the National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE), respectively. In their capacity as brokers, the Petitioners were given access to the Colocation Facility (COLO Facility) comprising two kinds of servers, primary & secondary. Through these servers, the trading data was relayed to brokers who had access to a similar COLO Facility. Under the NSE Colocation Guidelines, a broker is only allowed to connect to the secondary server when the primary server is unavailable. Furthermore, before establishing a connection to the secondary server, the broker must notify NSE.

24. Between January 2015 and October 2015, complaints were received by SEBI regarding preferential access provided to certain Trading Members by NSE for Tick-By-Tick (TBT) Data Feed. These were essentially complaints, inter alia, against the Petitioners connecting to the secondary server contrary to the NSE Colocation Guidelines. Upon receiving the complaints, SEBI instructed its Cross Functional Team (CFT) to conduct a preliminary inquiry and submit a report. Subsequently, a Technical Advisory Committee (TAC) was also formed to investigate the matter and produce its report. On 09 September 2016, SEBI directed NSE to undertake an independent examination or forensic audit. The investigation covered the period from 2009 to 2016, as SEBI received another complaint on 14 February 2017.

25. The NSE involved Deloitte LLP, Indian School of Business (ISB), Ernst & Young (E&Y) in the investigations and to advise NSE and SEBI on the allegations in the complaint by submitting their respective reports. These agencies submitted their reports to NSE and SEBI.

26. On 10 December 2018, the SEBI issued a show cause notice to CCSP calling upon it to show cause as to why a penalty should not be imposed under Section 15HB, SEBI Act. This was disposed of by the Adjudicating Officer (AO) by order dated 11 November 2020. In this order, the AO recorded that CCSP had violated SBSB Regulations, but there was no finding about a violation of the PUFTP Regulations. This order also noted that there was no material on record to conclude any quantifiable gain or unfair advantage. Accordingly, a penalty of Rs . 3 lakhs was imposed on CCSP, which penalty was paid on 01 December 2020.

27. A show cause notice dated 18 November 2020 was also issued to PRBS by SEBI under Section 15HA and 15HB of the SEBI Act. This show cause notice culminated in an Adjudication Order dated 16 April 2021 in which the Adjudicating Officer (AO) recorded a violation of Regulation 4(1) of PUFTP Regulations. However, this order noted that it could not be said that PRBS had violated the provisions of Regulations 3(b), 3(c) and 3(d) of the PFUTP Regulations. There was also a remark that the material on record does not establish any unfair gain or advantage that may have accrued to PRBS. Accordingly, a penalty of Rs. 6 lakhs was imposed, which was duly paid on 25 May 2021.

28. Neither the Petitioners nor the SEBI appealed against the orders dated 11 November 2020 and 16 April 2021. The Petitioners have pleaded that they believed that the matters were given a quietus, particularly since the Petitioners paid the penalties imposed upon them without any demur.

29. On 07 June 2021, SEBI appointed ISB to calculate the gains made by approximately 28 stockbrokers, including the Petitioners herein, during the period 2009-2016. This covered the Futures & Options (F&O) segment, Cash Market (CM) segment, and Currency Derivatives (CD) segment. The ISB submitted its report on 10 April 2023, indicating that CCPS had connected to the secondary server of NSE, in violation of the NSE Colocation Guidelines, and had made an abnormal/unlawful profit of INR 1346 lakhs. A similar report was made by the ISB concerning PRBS, indicating that they had made abnormal/unlawful profit of INR 11997 lakhs. Based inter alia on the ISB reports, the impugned show cause notices dated 05 September 2023 and 29 August 2023 were issued to the Petitioners, essentially requiring them to show cause why these amounts should not be ordered to be disgorged.

30. CCPS was granted 21 days to respond to the show cause notice. On 22 September 2023, CCPS sought the inspection of documents, which consumed a significant amount of time and concluded on 5 February 2024. On 12 February 2024, SEBI invited CCPS for a hearing on 26 February 2024. On 26 February

2024, CCPS sought an adjournment and requested cross-examination of persons involved in the preparation of the reports submitted by ISB, Deloitte and E&Y. The hearing was deferred, and CCPS was informed that they could cross-examine the E&Y officials and the ISB professor on 04 March 2024 and 12 April 2024, respectively.

31. On 26 February 2024, CCPS requested the QJA for additional information, which they claimed was not provided during the inspection that concluded on 05 February 2024. Just two days before the scheduled cross-examination of the E&Y partner, on 02 March 2024, CCPS sought an adjournment, primarily because Mr. Rajesh Baheti, responsible for handling the matter, was unwell. Seizing the opportunity of the adjournment, CCPS, on 03 March 2024, appealed to the Securities Appellate Tribunal (SAT) to set aside the "Proceedings of Inspection" dated 05 February 2024.

32. On 04 March 2024, on behalf of CCPS, adjournment was pressed and secured, though the matter was scheduled for cross-examination of Mr. Amit Rahane, Partner of E&Y. By letters dated 01 July 2024, 11 July 2024, 18 July 2024, and 23 August 2024, CCPS renewed its allegations that the inspection was incomplete and requested cross-examination of "all auditors of TAC, experts, and ISB personnel whose statements or reports were considered when issuing the impugned show cause notice." On 05 August 2024, CCPS withdrew the SAT Appeal, submitting that correspondence with SEBI indicated that the Appeal might not be necessary at this stage.

33. On 07 October 2024, CCPS conducted cross-examination of Mr. Jayant Saran, Partner, Deloitte, concerning the Deloitte report. On 08 October 2024, the cross-examination of Prof. Ramabhadran was conducted. On 15 October 2024, cross-examination of Mr. Amit Rahane, Partner, E&Y, was conducted and concluded. On 07 November 2024, further cross-examination of Prof. Ramabhadran was conducted, but not concluded, since time was sought on medical grounds by the representative of CCPS.

34. On 07 November 2024, the SEBI shared the Trading Data with CCPS and on 12 November 2024, the cross-examination of Mr. Jayant Saran, Partner, Deloitte, was continued and concluded.

35. After the proceedings in the impugned show cause notice had reached such an advanced stage, on 18 December 2024, CCPS filed the present Petition and sought inter alia a stay on further proceedings pursuant to the impugned SCN. On 18 January 2025, CCPS sought an adjournment to further cross-examine Professor Ramabhadran, which the QJA granted. On 17 June 2025 and 20 June 2026, SEBI addressed emails to CCPS informing them that the cross-examination of ISB witnesses was scheduled on 10 July 2025 and advised them to confirm their presence, latest by 27 June 2025. Though there was no interim relief granted in these Petitions, on 27 June 2025, on the grounds of pendency of the present Petition, CCPS sought a deferment of the cross-examination of Professor

Ramabhadran.

36. The position concerning PRBS is not significantly different. After the hearings in the impugned SCN had substantially advanced, PRBS instituted this Petition and sought a stay on further proceedings in the impugned SCN. Even though no stay was granted, based merely on the pendency of the Petition, deferments were applied for and secured.

37. Mr. Dwarkadas and Dr. Saraf submitted that though the Petitioners had challenged the impugned SCN, they would be satisfied if all such challenges were permitted to be raised before the QJA and the QJA was directed to decide such challenges to the impugned SCN as preliminary issues before proceeding with any further hearings in the impugned SCN.

38. Therefore, we propose to allow the Petitioners to raise all their objections, including those to the impugned SCN, before the QJA. However, for reasons discussed hereafter, we do not believe that, given the facts and circumstances of this case, the Petitioners should be permitted to delay the proceedings on the impugned SCN by insisting that their challenges be treated as preliminary issues. We are convinced that the interests of justice would be best served if all issues, including those related to the bar of res judicata or the alleged lack of jurisdictional facts, are considered and resolved by the QJA either in one comprehensive hearing or simultaneously without resorting to any piecemeal adjudication being insisted by the Petitioners.

39. The reason why we have referred to the progress of proceedings in the impugned show cause notices in paragraphs 30 to 36 above, is to indicate how the Petitioners have succeeded in delaying the proceedings in the impugned SCN or if possible, stalling the proceedings so that the allegations in the impugned show cause notices are not adjudicated upon. To begin with, an inspection of documents was sought. Following the provision of such inspections, the inspection proceedings were belatedly challenged before the SAT. Perhaps realising that there was not much merit in such a challenge, the proceedings were withdrawn by citing some flimsy reason.

40. Adjournments were sought, among other reasons, by citing medical grounds on some occasions. The Petitioners were aware that the witnesses are experts and senior partners at Deloitte, ISB, or E&Y; therefore, scheduling their dates for cross-examination was not straightforward. Nevertheless, adjournments were requested and granted. It almost seemed as though some foundations were being laid to ultimately argue the failure of natural justice.

41. After the Petitioners participated in the hearing pursuant to the impugned show cause notices and after the hearings had reached a substantially advanced stage, this Petition was instituted to challenge the impugned show cause notices. Such a challenge was raised almost two years after the issuance of the impugned show cause notices and following several hearings before the QJA, during which multiple witnesses had been cross-examined or partly cross-examined by and on

behalf of the Petitioners. Although there was no interim relief sought in these Petitions, adjournments were requested and granted at the hearings before the QJA on the grounds of pendency of these Petitions.

42. Upon consideration of the above facts and circumstances, it is reasonable to believe that the very institution of these Petitions and now, the insistence that the objections to the impugned SCN be decided as preliminary issues, is merely an attempt to unduly delay the proceedings pursuant to the impugned SCN. The aim is to stall or postpone adjudication in the impugned SCN by employing various stratagems. The pressure on the Court's docket is fully exploited. Often, there is an insistence on interim relief to stay further proceedings or to bring the matter up earlier, fully aware that the arguments may be lengthy and that the courts genuinely cannot allocate early dates and ample times for such matters, given more pressing matters. Even if interim relief is not granted, postponement is sought by citing pending issues. The equitable and discretionary jurisdiction under Article 226 of the Constitution cannot support such strategies or attempts simply because the Petitioners may have the means and the wherewithal to sustain the same.

43. There is a necessity that the show cause notices issued by SEBI are expeditiously disposed of because if the Noticees are innocent, then the earlier they are cleared, the better for them and better for the investors and clients who trade through them. At the same time, if the Noticees are not as innocent as they assert to be, they should be brought to book at the earliest to boost investor confidence and curb nefarious activities and subterfuges that unfortunately affect the share market. Therefore, unless a very strong case is made out, there is no point in splitting the issues as preliminary and final. Even otherwise, the normal rule is that all issues must be decided simultaneously and in one go.

44. An issue, in the discretion of the Court or a quasi-judicial authority, can be framed as a preliminary issue where the disputed factual content is minimal and the matter can be disposed of expeditiously on a point of law. The plea of *res judicata*, which is the main ground of challenge to the impugned SCN, at least in the present matters, involves a mixed question of law and fact. Therefore, while it is not as if the plea of *res judicata* can never be decided as a preliminary issue, in cases when a mixed question of law or fact is raised, the issue is best decided alongwith the remaining issues that arise in the matter. (See *Jamia Masjid Vs. Shri. K. V. Rudrappa* (2022) 9 SCC 225.)

45. The challenges to the impugned show cause notice are twofold. Firstly, on behalf of CCPS, it is urged that the violation of PUFTP Regulations is a jurisdictional fact. Since there was no such violation found when disposing of the earlier show cause notices, there was no jurisdiction to issue the impugned SCN. An additional argument raised by both the Petitioners is that a finding regarding undue gain or unfair advantage was also a jurisdictional fact. Since the same was absent in the orders disposing of the earlier show cause notices, the issuance of

the impugned show cause notices was without jurisdiction. Secondly, the argument is that the orders disposing of the earlier show cause notices were based on the same allegations. Therefore, they operate as *res judicata* qua the impugned SCN.

46. Without going into the question of whether what the Petitioners claim are indeed jurisdictional facts or that they do not exist, admittedly, insofar as PRBS is concerned, there was a finding about a violation of Regulation 4(1) of PUFTP. Besides, the basis of the assertion that a violation of the PUFTP Regulation was a jurisdictional fact was never made good. The same applies to the finding of undue gains or unfair advantage.

47. In any event, at least *prima facie*, there was a difference between the scope of the proceedings initiated by the earlier show-cause notices and the impugned show-cause notices. There were no conclusive findings on the issue of undue gains or unfair advantage. The orders disposing of the show cause notices merely pointed out that they could not detect these factors based upon the material then placed before them. Mr Doctor's contention that the earlier proceedings had nothing to do with disgorgement or that the issues of disproportionate gain or unfair advantage were not directly or substantially involved in the earlier proceedings cannot simply be brushed aside and would warrant examination in the SCN proceedings.

48. Admittedly, the ISB reports, or the further Deloitte or E&Y reports were not available when the earlier show cause notices were disposed of. Since, we wish to leave the challenges to the impugned SCN open to be decided by the QJA, we refrain from making any observations on the contentions raised on behalf of the Petitioners or for that matter, the SEBI. However, the limited and *prima facie* reference is only to support our reasoning that in the facts of the present case, there is no warrant for even treating the issue of *res judicata* or the alleged absence of the jurisdictional facts, as preliminary issues, thereby, delaying the adjudication in the impugned SCN, when such delay is not in public interest.

49. In *SEBI Vs. Ram Kishori Gupta* (Supra), the Hon'ble Supreme Court has held that the principle of *res judicata* or issue estoppel applies to proceedings before SEBI. The question in these petitions is not whether this principle applies, but whether, in the facts and circumstances here, the same should be treated as a preliminary issue.

50. In *Smt. V. Rajeshwari vs T.C. Saravanabava* (2004) 1 SCC 551, the Hon'ble Supreme Court has held that the rule of *res judicata* does not strike at the root of the jurisdiction of the Court trying the subsequent suit. It is a rule of estoppel by judgment based on public policy that there should be finality to litigation and no one should be vexed twice for the same cause. The plea of *res judicata* is founded on proof of certain facts and then by applying the law to the facts so far. The plea is basically founded on the identity of the cause of action in the two proceedings. Such pleas cannot be left to be determined by mere speculation or

inferring by a process of deduction what the facts stated in the previous pleadings.

51. In *V. Rajeshwari* (supra), the Hon'ble Supreme Court also held that the plea of *res judicata*, depending on the facts of a given case, is capable of being waived, if not properly raised at an appropriate stage and in an appropriate manner.

The party adversely affected by a plea of *res judicata* may proceed on the assumption that his opponent had waived the plea by his failure to raise the same.

52. One of the issues raised by SEBI relates to the waiver of the plea of *res judicata*. In answer, the learned Counsel for the Petitioners have contended that fundamental rights can never be waived and in support, they relied upon *Basheshar Nath* (supra). The Petitioners have not demonstrated which of their fundamental rights are at stake in these proceedings. Be that as it may, we do not propose to go into the issue of whether the plea of *res judicata* could be said to have been waived in these proceedings by the Petitioners because we believe that even this is a matter which can be considered by the QJA along with all other issues simultaneously. The only reason why we have referred to the decision in *V. Rajeshwari* (supra) is to support our reasoning and conclusion that this is not at all a fit case to direct the QJA to treat the issue of *res judicata* as a preliminary issue in these proceedings.

53. Order XIV of Rule 1 of Code of Civil Procedure, 1908, [though it may not be applicable to proceedings under the SEBI with all its rigour], provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of Sub Rule-(2), pronounce judgment on all issues. Order XIV Rule 2(2) provides that where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if the issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose, may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

54. Thus, even Order XIV Rule 2(2) mainly applies to treating an issue as a preliminary issue where such issue is of law only. There are several decisions which take the view that a mixed question of law or fact should normally not be decided as a preliminary issue (see *Nusli Neville Wadia V/s. Ivory Properties* AIR 2019 SC 5125, *Mongia Realty And Buildwell Pvt. Ltd. V/s. Manik Sethi* AIR OnLine 2022 SC 481 and *Prem Kishor And Ors. V/s. Brahm Prakash And Ors.* (2023) 19 SCC 244). These decisions hold that where the plea of *res judicata* involves

mixed questions of law and fact, there is no obligation to decide such issue as a preliminary issue.

55. The scheme of Order XIV, Rules 1& 2 of the CPC is that ordinarily, the Court must pronounce on all issues instead of any piecemeal adjudication. However, the Court has also been conferred a discretion to frame an issue of law as a preliminary issue if such issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being enforced. The discretion must be exercised judicially, and at least in the present facts, no case is made out to direct the QJA to treat the Petitioners' objections as preliminary issues.

56. The Petitioners' entire emphasis was on the decision of the Co-ordinate Bench in *Aman Kokrady* (supra), where the directions were issued to treat the issue of res judicata as a preliminary issue before any other issues were decided. In *Aman Kokrady* (supra), the Whole Time Director ("WTD") had originally issued show cause notices to several Noticees, including Aman, under Section 11(b) of the SEBI Act, for disgorgement. The WTD, after adjudication of the show cause notices, passed an order dated 30 April 2019, expressly exonerating Aman but holding that the charges were proved against the other Noticees. One of the parties that was indicted appealed against the order dated 30 April 2019 to the SAT. The order dated 30 April 2019, to the extent that it had indicated the said noticee was set aside and the matter was remanded to SEBI to commence proceedings afresh. This time, the SEBI issued a fresh show cause notice to the parties to whom the original show cause notice had been issued, including Aman, ignoring the crucial fact that Aman had already been exonerated and the order to the extent of exoneration had neither been appealed by SEBI nor been set aside by the SAT. It is in these circumstances that the Co-ordinate Bench directed the framing of the issue of res judicata and its trial as a preliminary issue. The facts and circumstances in the present cases are, therefore, not at all comparable to the gross and clear facts and circumstances in *Aman Kokrady* (supra).

57. In *Nalwa Sons* (supra), this Court rejected the challenge to the show cause notices by discussing the principles for interference with show cause notices. One of the arguments raised was that the principles of res judicata and double jeopardy barred the show cause notices. This plea was rejected by observing that the consideration of such a plea would involve an investigation into factual aspects. In this case, the Court was constrained to observe that the extraordinary jurisdiction of this Court was being invoked to stall or delay the proceedings in the show cause notice to the extent possible. This Court observed that fairness in such matters was never a one-way street but two-way traffic. Even the Petitioners must co-operate with the expeditious disposal of the show cause notice so that if they are clean, they do not suffer on account of prolonged adjudication. The earlier the air is cleared, the better it is for all concerned, including the system that SEBI must regulate.

58. *Nalwa Sons* (supra) was appealed to the Hon'ble Supreme Court. The Hon'ble Supreme Court noted that a number of contentions and issues have been raised,

including the plea that the earlier decision would operate as *res judicata* and there is no power of review. However, the Court observed that it was not inclined to issue notice in the Special Leave Petition but to leave it open to the Petitioners to raise all pleas and contentions before the SEBI. The Court also held that the Petitioners may pray that some pleas and contentions may be treated as preliminary issues. The SLP was accordingly dismissed.

59. The Petitioners have relied upon *Whirlpool Corporation V/s. Registrar of Trademark* (1998) 8 SCC 1 and *Union of India And Anr. V/s. Vicco Laboratories* 2007 13 SCC 270, primarily in the context of a challenge to the impugned SCN. Although the Petitioners have now opted for alternative relief of raising the challenges before the SEBI, we note that *Whirlpool Corporation* (*supra*) reiterates that ordinarily, challenges to a show cause notice must not be entertained in Petitions under Article 226 of the Constitution. The Petitions may be entertained where there has been a violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of the act is challenged. Considering the rival contentions on the issue of alleged absence of jurisdictional facts or the plea of *res judicata*, in these matters, no case is made out to hold that the impugned SCN was wholly without jurisdiction. At the highest, these issues are contentious and may be gone into by the authority adjudicating the show cause notices.

60. In *Vicco Laboratories* (*supra*), the Hon'ble Supreme Court has held that non-interference at the stage of a show cause notice is the normal rule. However, if a show cause notice is issued without jurisdiction or in abuse of the process of law, it could be interfered with. Such interference should be rare and not in a routine manner. Moreover, in order to invoke such interference, it should *prima facie* be established that the notice was without jurisdiction or was an abuse of process of law. Mere such assertion is not sufficient.

61. From the chronology of the events, it does seem that the Petitioners are aiming to delay and stall the proceedings, citing various reasons. These reasons are presented successively rather than simultaneously, leading to delays. The plea to treat the issues now raised as preliminary issues appears to be a plea to establish a scope for further delay if the preliminary issues are decided against them. It is noteworthy that these petitions were filed nearly two years after the impugned SCNs were issued and after the proceedings on the impugned SCNs had substantially progressed.

CONCLUSION

62. For all the above reasons, we dispose of these Petitions, leaving it open to the Petitioners to raise all their challenges to the impugned SCN, including challenges like the absence of jurisdictional facts or the plea of *res judicata*. However, we decline to order the QJA to treat such issues as preliminary issues. We are satisfied that this is a fit case where all the issues must be tried together instead of any piecemeal adjudication. Any direction to treat the issues now

raised in these Petitions as preliminary issues would not be in the public interest and would unduly delay the disposal of the impugned SCN.

63. However, we clarify that the observations in this Judgment and Order on merits or demerits of the challenges are prima facie and for the limited purpose of addressing the Petitioners' contention that their objections to the impugned SCN must be decided as preliminary issues. Without such observations, it was not possible to address the Petitioners' insistence that the issues which they have now raised must be treated as preliminary issues. Therefore, we clarify that none of the observations in this Judgment and Order need to influence the QJA in deciding all the issues that arise in the impugned SCN, including the issues now raised by the Petitioners in these Petitions. All such issues must be decided simultaneously, expeditiously and without being influenced by the observations in this Judgment and Order. In fact, the observations are not intended to reflect on the merits of the matter.

64. The rule in both these Petitions is disposed of in the above terms. No costs.