

(2012) 11 DEL CK 0207

In the Delhi High Court

Case No : LPA 100 of 2012 and CM No's. 2380-2382 of 2012

DLF Ltd.

APPELLANT

Vs

Securities and Exchange Board of India and Others

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Companies Act, 1956 — Section 147(a), 235, 236, 237, 237(b)
Competition Act, 2002 — Section 19, 26, 26(1), 26(2)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 34
Penal Code, 1860 (IPC) — Section 420
Securities and Exchange Board of India Act, 1992 — Section 11, 11(4), 11A, 11B, 11C

Citation : (2013) 112 CLA 55 : (2013) 118 SCL 22

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, with Ms. Ritu Bhalla, Mr. Dhruv Dewan, Ms. Ananya Ghosh, Mr. Anand Misra and Mr. Mehznaz Mehta, for the Appellant; Parag P. Tripathi with Mr. Neeraj Malhotra, Ms. Mahima Gupta, Shaurijyo Mukherjee, Advocates for Resp-1/SEBI, Mr. Amit Sibal with Ms. Priyanka Kalra, Gaurav Mitra, Vinay Tripathi, A. Mitra, Advocates for Resp-2. Mr. Arvind Kr. Nigam with Ms. Ranjana Roy Gawai, Krishna Keshav and Mr. Shailesh Suman, Advocate for Resp-3., for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice S. Ravindra Bhat

1. The present appellant (hereafter "DLF") challenges an order of the learned Single Judge, dated 03.01.2012 dismissing W.P.(C) 8128/2011, a proceeding under Article 226 of the Constitution. DLF was aggrieved by an order dated 20.10.2011 made by a whole time member of the Securities and Exchange Board of India (SEBI). The order of SEBI held that investigations would be made by it (i.e. SEBI) into the complaints dated 04.06.2007 and 19.07.2007 made by the second respondent, Kimsuk Krishna Singha, (hereafter called "complainant")

against DLF, and Sudipti Estates Private Limited, the third respondent (hereafter "Sudipti"). SEBI's order indicated that investigations would be made into transactions and the alleged violations of the erstwhile SEBI (Disclosure and Investor Protection) Guidelines 2000 ("the Guidelines") read with the relevant provisions of the Companies Act, 1956. SEBI also indicated that an investigating authority would look into the matter, without being prejudiced by any observations made in the SEBI's order, and would complete investigations expeditiously, and if any violations were found, they are to be proceeded with in accordance with law.

BRIEF OVERVIEW

The brief facts are that the second Respondent claimed having entered into business transactions with Sudipti, in 2006; that concern was controlled by DLF Home Developers Ltd.(DHDL) and DLF Real Estate Developers Ltd.(DREDL). The latter, in turn were wholly owned subsidiaries of DLF-the petitioner. Sudipti was incorporated on 24.03.2006. Its promoter companies, according to the second respondent were part of the DLF group. DLF, proposing a public issue, had filed a Draft Red Herring Prospectus ("DRHP") with SEBI on 12.05.2006. In that document, DLF claimed that Sudipti was its joint venture. However, the prospectus was later withdrawn by the DLF's bankers and a fresh prospectus was submitted on 02.01.2007, which omitted mention of Sudipti as an associate entity of DLF. In this background, the complainant alleged that DLF and Sudipti had ensnared and cheated him of Rs. 31,09,50,000/- towards sale proceeds of certain lands. A First Information Report (FIR) u/s 420 IPC was registered on 26th April, 2007 (at PS Connaught Place, New Delhi) at the instance of the complainant; it contained allegations against Sudipti and others. The final draft prospectus of DLF, issued on 25-5-2007 omitted mention of Sudipti as a joint venture/associate of DLF. Later, DLF'S public issue opened (and also closed) and its shares were subscribed.

2. The complainant wrote a letter on 04.06.2007 to SEBI; the latter forwarded this communication on 25.06.2007 to Sudipti and DLF, seeking response. DLF, by letter dated 11.07.2007 denied the allegations; it claimed that it had no connection with Sudipti on that date. Apparently, DLF's bankers explained to SEBI that Sudipti's shares, held by DHDL and DREDL, (the wholly owned subsidiaries of DLF), had been sold in 2006. It was, therefore, stated that Sudipti ceased to be an associated company of DLF by the time the revised prospectus was filed in January 2007. In the meanwhile, the FIR lodged by the complainant was investigated and a final report (which the complainant says was challenged by him, in proceedings u/s 482, Cr. PC) was filed by the police. Subsequent to this, the complainant filed a private criminal complaint. Apparently that complaint is pending before a court.

3. Alleging deliberate inaction by SEBI in the matter, the complainant approached this Court, under Article 226 of the Constitution, (by filing W.P.(C) 7976/2007 titled Kimsuk Krishna Sinha V. Securities Exchange Board of India & Ors). In

those proceedings, SEBI filed a reply, defending its position; the complainant filed additional affidavits. The learned Single judge after considering the materials, and hearing the parties, by judgment dated 09.04.2010, allowed the writ petition and directed SEBI to investigate into the complaints (of the second respondent). While doing so, the single judge also took into consideration averments in the affidavits and additional affidavits filed by the petitioner in the writ petition (i.e. the complainant). DLF, Sudipti and SEBI challenged the judgment of the Single Judge and filed Letters Patent Appeals (LPAs, being Nos. 436/2010, 441/2010 and 488/2010). All these appeals were heard and disposed of by a common order of the Division Bench, dated 21.07.2011. The order of the Division Bench contained the following observations and directions:

4. In course of hearing of the appeals, it is accepted that two complaints were made to the SEBI on 4th June, 2007 and 19th July, 2007, but no decision or outcome was communicated to the respondent. Thus, in the obtaining factual matrix the only mandamus that could have been issued to the SEBI is to take a decision on the basis of the complaints filed and communicate the decision to the complainant respondent. Needless to say, an appeal would lie from such a decision.

5. In view of the aforesaid, the order passed by the learned single Judge is set aside in entirety. SEBI shall examine the complaints and take a decision and communicate it to the parties. Needless to emphasize, SEBI, if so advised in law, can always call for documents. We hope and trust, the SEBI shall act with utmost objectivity regard being had to the law in the field and without being influenced by the counter affidavit filed by it in the writ petition. The decision shall be taken after hearing the parties within a period of three months from the date of receipt of the order passed today. It needs no special emphasis to mention that we have not expressed any opinion, even remotely, on the merits of the case. The appeals are accordingly disposed of without any order as to costs.

4. Acting in compliance with the directions of the Division Bench, SEBI granted hearing to the parties before its whole time member, Sh. Prashant Saran; this culminated in the SEBI's order of 26-11-2012. SEBI's impugned order inter alia, stated that it decided to act on the complainant's letters dated June 4, 2007 and July 19, 2007, and investigate into the allegations leveled by the complainant, in respect of DLF Limited and Sudipti. SEBI indicated that the investigation would focus on the violations, if any, of the provisions of the erstwhile Guidelines, read with the relevant provisions of the Companies Act. SEBI also stated that it had decided to issue a formal order appointing the investigating authority to investigate the matter without prejudice to observations made in its order.

5. DLF challenged the SEBI's aforesaid order, contending that it was made in flagrant violation of principles of natural justice and in violation of the previous order of the Division Bench, because the hearing given in the case was flawed, inasmuch as the complainant was first granted opportunity to make submissions in its (DLF's) absence, and it (DLF) was asked to make its submissions on a

separate hearing date, without the benefit of knowing what had transpired in the first hearing. DLF had also contended that an order directing investigation (as done by SEBI) seriously affected its business and reputation, and having regard to the facts and circumstances, could not have been made on the basis of allegations leveled by the complainant. It had been argued that SEBI could legitimately direct such investigations only if it had, u/s 11 (of the Securities and Exchange Board of India Act, 1992, hereafter called "the SEBI Act") "reasonable grounds" to believe that such a step was essential. To arrive at such a prima facie determination, it is necessary that there is some tangible basis for the allegations which can in turn lead to a reasonable opinion regarding the grounds which may exist, calling for investigation. SEBI's stand was that writ proceedings were not an appropriate remedy, and that DLF ought to have availed its statutory right of appeal against the order u/s 15-T. SEBI and the complainant had contended that DLF could not have claimed a right to hearing as a prelude to the issuance of an investigation order, as such a step was not mandated under the SEBI Act. The argument, in the writ petition, that DLF was not heard, was resisted.

6. In the impugned judgment, the learned single judge held that judicial review power under Article 226 of the Constitution of India, enabled exercise of restricted jurisdiction in such cases and did not enable the Court to examine the adequacy or sufficiency of the reasons which have weighed with the authority concerned in coming to the belief (of the need to investigate); yet at the same time, the court could examine if the reasons are relevant, and germane to the issues or matters that the authority has to exercise its mind while forming its opinion in that regard. If there is no nexus between the reasons, and that no reasonable man would entertain the belief that such action (i.e. investigation) is warranted, then the Court would intervene. Conversely, if there are reasonable grounds for the authority concerned to believe that there exist facts, which could have a material bearing on the question of breach of the relevant rules/regulations, that would be sufficient to give jurisdiction to it to an investigation. A person aggrieved by the investigation can challenge the opinion formation on these grounds, primarily dealing with existence, but not sufficiency of the reasons.

7. It is argued by DLF in its appeal, and urged on its behalf by Mr. Soli Sorabjee, learned senior counsel that the learned single judge proceeded on a misappreciation of the correct state of law as regards the nature of the hearing, and the unfair procedure adopted in this case, whereby SEBI first heard the complainant, in the absence of DLF, and asked the latter to address its contentions. It was submitted that though the decision of the Supreme Court, in *Payyavula Vengamma v. Payyavula Kesanna & Ors.* AIR 1953 SC 21, was referred in the impugned judgment, the learned Single Judge did not follow the ruling. In that judgment, the Supreme Court dealt with regularity of an arbitration proceeding and had commented as follows:

8. There is thus no doubt that the arbitrator heard defendant 1 in the absence of the plaintiff. No notice of this hearing was given by the arbitrator to the plaintiff nor had she an opportunity of having the evidence of the defendant 1 taken in her presence so that she could suggest cross-examination or herself cross-examine defendant 1 and also be able to find evidence, if she could, that would meet and answer the evidence given by the defendant 1. As was observed by Lord Langdale M.R. in *Harvey v. Shelton* (1844) 7 Beav. 455 at p. 462,

It is so ordinary a principle in the administration of justice, that no party to a cause can be allowed to use any means whatsoever to influence the mind of the Judge, which means are not known to and capable of being met and resisted by the other party, that it is impossible, for a moment, not to see, that this W.P.(C) 8128/2011 Page 8 of 61 was an extremely indiscreet mode of proceeding, to say the very least of it. It is contrary to every principle to allow of such a thing, and I wholly deny the difference which is alleged to exist between mercantile arbitrations and legal arbitrations. The first principles of justice must be equally applied in every case. Except in the few cases where exceptions are unavoidable, both sides must be heard, and each in the presence of the other. In every case in which matters are litigated, you must attend to the representations made on both sides, and you must not, in the administration of justice, in whatever form, whether in the regularly constituted Courts or in arbitrations, whether before lawyers or merchants, permit one side to use means of influencing the conduct and the decisions of the Judge, which means are not known to the other side."

9. This case of *Harvey v. Shelton* (1844) 7 Beav. 455 at p. 462, is the leading case on this point and it has been followed not only in England but in India. (See *Ganesh Narayan Singh v. Malida Koer* (1911) 13 C.L.J. 399 at pages 401, 402.) She had also no opportunity to have her say in the matter of the settlement of the 1st May, 1927. The course of proceeding adopted by the arbitrator was obviously contrary to the principles of natural justice.

8. Learned senior counsel also emphasized that the previous Division Bench had specifically directed in the order dated 21.07.2011 that SEBI should arrive at its decision "after hearing the parties" within three months. Yet, SEBI did not grant a hearing to the petitioner, as the complainant was heard first in the absence of DLF, which was later called for a hearing, when the complainant was not present, thus depriving it of the advantage of knowing what had been submitted by the complainant. This was a breach of the principles of natural justice. It was also argued that the written submissions of the complainant were not provided to DLF, a contention raised specifically before SEBI. Mr. Sorabjee contended that the act of ordering an investigation u/s 11C seriously impacts on the reputation and good name of DLF. Reliance was placed on the judgments of the Supreme Court reported as *Rohtas Industries Vs. S.D. Agarwal and Others*, . In that case, the Court had held that the action of the Central Government in ordering an investigation into affairs of company, under Sections 235 and 236 of the Companies Act, is a very serious matter and it should not be ordered except on

good grounds which will have a likely impact on the reputation and goodwill of the company, as there is possibility of adverse press publicity. It is argued that an investigation by SEBI u/s 11C would have serious consequences for DLF as its reputation would be marred, and the confidence of the investors in the petitioner company would be shaken.

9. DLF argued that the precondition for directing investigation u/s 11-C is the existence of circumstances which suggest that either the transaction in securities are being dealt with in a manner detrimental to the investors, or the securities market, or that any intermediary or person associated with the securities market has violated any of the provisions of the SEBI Act or the rules or the regulations made or directions issued by the Board thereunder. In the absence of a proper opinion formation about existence of objective circumstances relating those facts, invoking the power u/s 11-C would be without jurisdiction and unjustified. Counsel relied on *S. Ganga Saran and Sons (Pvt.) Ltd., Calcutta Vs. Income Tax Officer and Others*, where the Supreme Court observed that:

6. The important words u/s 147(a) are "has reason to believe" and these words are stronger than the words "is satisfied". The belief entertained by the Income Tax Officer must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Court, of course, cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the Income Tax Officer in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonably entertain the belief, the conclusion would be inescapable that the Income Tax Officer could not have reason to believe that any part of the income of the assessee had escaped assessment and such escapement was by reason of the omission or failure on the part of the assessee to disclose fully and truly all material facts and the notice issued by him would be liable to be struck down as invalid.

10. Reliance was also placed on *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, , where the Supreme Court had underlined the same proposition as follows:

the existence of the belief can be challenged by the assessee but not the sufficiency of the reasons for the belief Again the expression "reason to believe" in section 34 of the income tax Act does not mean a purely subjective satisfaction on the part of the income tax Officer. The belief must be held in good faith: it cannot be merely a pretence. To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. "

11. It was argued that the learned single judge fell into error in not appreciating that while issuing the impugned order, SEBI looked into several documents and materials furnished by the complainant which were not part of the original complaints made by him. Counsel highlighted the fact that the previous Division Bench direction only required consideration of the two complaints; consideration of the complainants' additional affidavits filed by the complainant—consideration of which was directed by the earlier single judge decision, had been set aside by the Division Bench. SEBI's order based itself on irrelevant materials, which were part of the additional documents which had to be kept out of its consideration. Lastly, counsel submitted that the existence of an alternative remedy, in the form of an appeal cannot preclude the court, under Article 226 of the Constitution of India, from entertaining a proceeding. Reliance was placed on the Supreme Court ruling in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, .

12. SEBI opposed the appeal, arguing that the impugned judgment does not disclose any error, or much less a serious error, warranting interference by the Division Bench. It was argued that the writ petition itself was not maintainable, by reason of an alternative remedy to the SEBI's u/s 15-T, which allows any person aggrieved by an order of the Board (SEBI) to appeal to the Securities Appellate Tribunal (SAT). SEBI's counsel, Mr. Parag Tripathi, submitted that the single judge was aware of the fact that it performed multifarious activities, including those which were investigative and quasi-judicial. SEBI issued the order impugned under Article 226 in exercise of its investigative power to look into complaints made to it. That order did not determine or adjudicate upon any dispute, or its resulting in any adverse order against any party. The impugned order discussed the existence of facts which gave reasonable ground to (SEBI) to believe the existence of circumstances in Clauses (a) and/or (b) of Section 11C of the SEBI Act, necessitating an investigation u/s 11C of the Act. That order was a step-in aid of the proceedings, and not the final decision. Reliance is placed upon the decision of the Supreme Court in *Competition Commission of India Vs. Steel Authority of India Ltd. and Another*, . He submits that in this case, while dealing with the provisions of the Competition Act, the Court drew a distinction between the administrative/inquisitorial functions of the commission, and its adjudicatory function. The Supreme Court held that:

(2) Neither any statutory duty is cast on the Commission to issue notice or grant hearing, nor can any party claim, as a matter of right, notice and/or hearing at the stage of formation of opinion by the Commission, in terms of Section 26(1) of the Act that a prima facie case exists for issuance of a direction to the Director General to cause an investigation to be made into the matter. However, the Commission, being a statutory body exercising, inter alia, regulatory jurisdiction, even at that stage, in its discretion and in appropriate cases may call upon the concerned party(s) to render required assistance or produce requisite information, as per its directive. The Commission is expected to form such prima facie view without entering upon any adjudicatory or determinative process. The

Commission is entitled to form its opinion without any assistance from any quarter or even with assistance of experts or others. The Commission has the power in terms of Regulation 17(2) of the Regulations to invite not only the information provider but even "such other person" which would include all persons, even the affected parties, as it may deem necessary. In that event it shall be "preliminary conference", for whose conduct of business the Commission is entitled to evolve its own procedure.

The Court also discussed the scope of Section 26 of the Competition Act, in the following terms:

"63. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that non-compliance thereof, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the Courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance to the principles of natural justice in light of the above noticed principles.

86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the function to be performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. "Natural justice" is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in view, the provisions of the law applicable. It is not a codified concept, but are well defined principles enunciated by the Courts. Every quasi-judicial order would require the concerned authority to act in conformity with these principles as well as ensure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness.

91. The jurisdiction of the Commission, to act under this provision, does not contemplate any adjudicatory function. The Commission is not expected to give notice to the parties, i.e. the informant or the affected parties and hear them at length, before forming its opinion. The function is of a very preliminary nature and in fact, in common parlance, it is a departmental function. At that stage, it does not condemn any person and therefore, application of audi alteram partem

is not called for. Formation of a prima facie opinion departmentally (the Director General, being appointed by the Central Government to assist the Commission, is one of the wings of the Commission itself does not amount to an adjudicatory function but is merely of administrative nature. At best, it can direct the investigation to be conducted and report to be submitted to the Commission itself or close the case in terms of Section 26(2) of the Act, which order itself is appealable before the Tribunal and only after this stage, there is a specific right of notice and hearing available to the aggrieved/affected party. Thus, keeping in mind the nature of the functions required to be performed by the Commission in terms of Section 26(1), we are of the considered view that the right of notice of hearing is not contemplated under the provisions of Section 26(1) of the Act.

13. It is argued that SEBI's procedure, in this case, is the same as in other cases when considering whether to direct investigation or not. It is argued that there is no statutory compulsion for SEBI to grant personal hearing. Reliance is placed on *Bhoruka Financial Services Ltd. v. Securities and Exchange Board of India*, in (Appeal No. 18/2006 decided on 10.05.2006). It is argued that in that case, investigation was triggered by a telephone call. The Securities Appellate Tribunal, in that case had held that

Investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order.

The SAT also held that

It is not the requirement of Section 11C that opportunity of hearing is to be afforded to any intermediary of the market before ordering such investigation. The reason is obvious. Investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order.

Relying on that order, it is argued that Section 11 (4) was introduced by the Amending Act 59 of 2002; by the same Act the Parliament inserted Section 11C, empowering SEBI, for the first time, to investigate the affairs of any intermediary or persons associated with the securities market and seek a report. The term "investigation" in Section 11(4) is also similar in terms to Section 11C; both provisions were inserted simultaneously. Such being the case, the only statutory requirement is that the order directing investigation should be in writing; no further condition can be read into the statute. SEBI submits that its responsibility to examine irregularities and violation of its regulations, guidelines, etc. in regard to various matters prescribed by it would be severely curtailed if pre-conditions as to the materials, evidence and facts are set by Courts. It is submitted that in any case, the impugned order did not take into consideration the additional documents and information given by the complainant. They are not adverted to in SEBI's order. If they are relevant, at the stage of investigation, the power under Article 226 cannot preclude their consideration.

14. The appeal was opposed on behalf of the complainant; its counsel, Mr. Sibal argued that DLF should have availed its alternative remedy u/s 15-T of the SEBI

Act; he relied on the judgment of the Calcutta High Court in Rose Valley Real Estates and Constructions Ltd. and Another Vs. Securities and Exchange Board of India and Others, . To the same end, he relied on the judgment of the Madras High Court in N. Narayanan Vs. Securities and Exchange Board of India, . It was submitted that the argument that investigation report made u/s 11C by the investigating authority may adversely affect DLF'S reputation and business of is unfounded.

15. Mr. Sibal submitted that the Chapter VIA of the Act deals with penalties and adjudication. He argues that the right to hearing arises only at the stage of action under that Chapter. Section 15-I, is relied on, for this argument; it provides that:

15-I. Power to adjudicate-(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15HA and 15HB, the Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

Therefore it is submitted that there is no right to be heard at the stage of examination by SEBI about existence of "reasonable ground to believe" that a case is made out u/s 11C (1) (a) and (b). It was argued that the previous order of the Division Bench created no special rights in DLF, which are not warranted by law. That order was carefully phrased, and stated that:

SEBI shall act with utmost objectivity regard being had to the law in the field and without being influenced by the counter affidavit filed by it in the writ petition.

16. Mr. Sibal submitted that SEBI possesses exclusive jurisdiction to deal with, inter alia, public companies which intend to have their securities listed in any recognized Stock exchange in India. For this, he places reliance on Section 55A and 63 of the Companies Act. The same, to the extent they are relevant, are as follows:

55A. Powers of Securities and Exchange Board of India.--

The provisions contained in sections 55 to 58, 59 to 84.....

(a) in case of listed public companies;

(b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India, be administered by the Securities and Exchange Board of India; and

(c) In any other case, be administered by the Central Government.

x x x x x x x x x

63. Criminal liability for mis-statements in prospectus.-

(1) Where a prospectus issued after the commencement of this Act includes any

untrue statement, every person who authorised the issue of the prospectus shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to 1 [fifty thousand rupees], or with both, unless he proves either that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

Findings of the Learned single judge

17. The impugned judgment held that the argument on behalf of SEBI that the writ petition was precluded by an alternative remedy was substantial and persuasive. However, the learned single judge exercised his discretion and considered the merits of the submissions made on behalf of the parties about the legality of the SEBI's order. It was held, in connection with the nature of SEBI's power, and the opportunity to be heard, that:

The limited enquiry conducted by SEBI at this stage was merely to examine whether or not the facts disclosed the entertainment of a reasonable belief to cause an investigation u/s 11C of the SEBI Act, which is an inquisitorial exercise, and not an adjudicatory exercise conducted by SEBI

53. I now turn to the primary submission of Mr. Sorabjee that the impugned order has been passed in violation of principles of natural justice and also that the respondent No. 1/SEBI did not have the jurisdiction to pass the said order, as the jurisdictional facts did not exist in the present case to reasonably conclude that SEBI had reasonable ground to believe that the conduct in question, namely the non-disclosure of the existence of a pending First Information Report against Sudipti in the revised DRHP, was detrimental to the investors or the securities market or that the petitioner had violated any of the provisions of the SEBI Act or rules made or directions issued by the respondent Board thereunder.

54. It is not in dispute that SEBI, before passing the impugned order dated 20.10.2011, did not provide an opportunity to the petitioner to hear the submissions of respondent No. 2, or to deal with or respond to the written submissions of respondent No. 2. Similarly, respondent No. 2 was not granted an opportunity to hear and deal with or respond to either the oral submissions of the petitioner or to their written submissions.

55. Reliance placed by Mr. Sorabjee on Rohtas Industries (supra), in my view, does not advance the petitioner's case. All that the Supreme Court has held in Rohtas Industries (supra) is that action u/s 235 of the Companies Act can be taken by the Central Government upon fulfillment of the statutory requirements and it being a serious matter, it should not be ordered except on good grounds. Pertinently, the Supreme Court notes that the investigation report u/s 237 (b) is of a fact finding nature and does not bind anybody. The Government is not required to act on the basis of that report, and the company has the right to have its say in the matter. As the launching of an investigation may impact the reputation and prospects of the company adversely, the investigation should not

be ordered except on satisfactory grounds.

56. However, this decision does not say, and it cannot be taken to mean that even before launching an investigation u/s 235 of the Companies Act, the Central Government is required to hold a full-fledged hearing, by hearing all the persons concerned in the presence of each other; granting each concerned person the right to meet the case of the other; deciding issues of fact or law, or; returning a finding of fact. If the Central Government were to be expected to itself function in a quasi judicial capacity while considering whether, or not, to order an investigation u/s 235 of the Companies Act, the purpose of directing an investigation into the affairs of the company itself would get diluted, if not totally defeated, and the same would also impact the rights of the parties in the course of investigation, as any such investigation would be influenced by the decision of the Central Government. The petitioner has had its say in the matter, as it was made aware of the complaint against it and heard by SEBI on the said complaints. The submissions/case of the petitioner has been taken note of in the impugned order.

58. Similarly, SEBI has also been invested with powers & responsibilities to function in a dual capacity. It functions in an inquisitorial capacity while examining the issue, whether reasonable grounds exist to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or, whether any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules & regulations made thereunder, or directions issued by the Board. If it finds that reasonable grounds exist to believe the existence of the aforesaid state of affairs, it can direct an investigation by an investigating authority u/s 11C of the Act. Once the investigation has been ordered u/s 11C and an investigation report made, the SEBI while examining the said report and acting upon it, functions in its quasi judicial capacity. This is evident from Section 11(4) of the SEBI Act, which, inter alia, reads:

.....

.....

59. The submission of Mr. Sorabjee that the petitioner ought to have been granted a full-fledged hearing by the Board i.e., the Board should have heard the respondent No. 2 complainant in the presence of the petitioner, and the petitioner should have been provided with the written submissions of respondent No. 2 and should also have been provided opportunity to meet the case of respondent no. 2 at the stage of consideration of the issue whether an investigation should be ordered by appointing an investigating authority, therefore, cannot be accepted. If accepted, it would lead to a piquant situation

where the Board shall, only on the basis of a prima facie assessment return its findings which would, in turn, impinge upon the functions to be discharged by the investigating authority to be appointed to investigate into the matter. Pertinently, an investigating authority is extensively empowered to unearth facts (see Section 11C(2) to 11C(9) of the SEBI Act), and cause a detailed investigation into the matter. That exercise would get defeated if the Board were to, on the basis of a prima facie view, return findings of fact by itself holding a full fledged hearing. As in the case of Competition Commission of India, in the present case as well, the functions to be performed by SEBI cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated by the plain language of Section 11C

18. The decision of the Supreme Court in Payyavula Vengamma was distinguished. The learned single judge also kept in mind the decision in Ganga Saran, and other cases, in regard to relevant considerations as to what constitute "reasonable ground to believe" u/s 11C. He noticed that DLF's position was that DHDL and DREDL were its wholly owned subsidiaries. They had sold their entire share-holding to Sudipti in the year 2006 and, consequently, ceased to be an associated company of the petitioner-DLF at the time of filing of the revised DRHP in January, 2007. He also noticed that SEBI had noted submissions of the complainant as well as DLF and Sudipti (even though Sudipti did not appear at the stage of hearing). The impugned judgment noted the following observations of SEBI, in its order:

?In the FIR (submitted alongwith the complaint dated June 4, 2007), it was stated that Mr. Praveen Kumar represented himself to be a authorized signatory/director of Sudipti and related to the promoters of DLF Group and was also in the board of many DLF Group companies including DLF Estate Developers Limited, which according to the complainant is one of the two shareholders of Sudipti during the relevant period. During the course of hearing, it is submitted that Mr. Praveen Kumar is the nephew of Mr. K.P. Singh, the promoter/Chairman of the Company. In terms of the DRHP of the Company filed in 2007, Mr. Praveen Kumar is also mentioned as one of the key managerial persons in Company and reports to the board. The complainant further stated that Sudipti was incorporated on March 24, 2004 as a wholly owned subsidiary of the Company and that during the period of his transaction, Sudipti was controlled by the promoters through their key management personnel, namely, Mr. Praveen Kumar, Mr. Jaiprakash Gaur and Mr. Pradeep Singh. It was further stated by the complainant that Mr. Praveen Kumar and Mr. Jaiprakash Gaur were the signatories to the bank account of Sudipti and that the entire transaction (from price negotiation, payment of consideration for purchase of additional land till execution of sale deeds for and on behalf of the Sudipti) was done by Mr. Praveen Kumar and Mr. Pradeep Singh. The complainant has also stated that as on the date of complained transaction, 100% shareholding of Sudipti was owned by the two group companies of the Company. He further submitted that the two signatories to the bank account of Sudipti, i.e. Mr. Praveen Kumar and Mr.

Jaiprakash Gaur hold a position of authority and power in many other subsidiaries/associate companies of the Company and therefore stated that it was apparent that the directors of Sudipti as well as the signatories to the bank account of the said entity were the senior executives in the employment with the Company. Besides, the complainant also submitted during the course of hearing that the control over Sudipti was transferred (in the year 2006) ultimately to the spouses of three employees of the company who were mentioned in the DRHP of the Company, under the caption--Key Managerial Persons//. The aforesaid facts could lead to an inference that the company was aware of the FIR, prior to the receipt of the copy of the complaint from SEBI.//

19. The impugned judgment also noticed observations of the Board when it dealt with the question whether it was the petitioner's duty to disclose the same in the prospectus, to the following effect:-

"--I note that, in terms of Clause VII(c) of Schedule II of Companies Act, 1956, a duty is cast upon the issuer company to disclose any material development which could impact performance and prospects. For the said purpose, it would be necessary, in the interest of justice, to determine as to how Sudipti was related to the company at the relevant period. It is an admitted fact that Sudipti was once an associate of the Company and ceased to be so since November 2006. Sudipti was originally promoted by two of the DLF group companies namely, DLF Home Developers Limited and DLF Estate Developers Limited. The said two companies were holding 50% each of the equity of Sudipti. Further, Mr. Praveen Kumar, who was disclosed as the key managerial person of the Company, was one of the directors of Sudipti and was one of persons against whom the FIR was registered.

Mr. Praveen Kumar, who was closely associated with the Company through Sudipti and the DLF group companies before the Company's dissociation with Sudipti, is also mentioned as a key managerial person of the Company in its DRHP (filed in 2007). Thus, Mr. Praveen Kumar continues to be closely associated with the Company even after the alleged dissociation of Sudipti from the Company. As stated above, the Complainant has alleged that Sudipti is now being indirectly controlled by the spouses of certain key managerial persons of the company whose names were mentioned in the DRHP of the Company filed during January 2007. The company has in its written submission stated that three of its subsidiaries who were holding shares in Felicite Builders and Constructions Private Limited had transferred their holding to several persons who were unconnected to the promoters of the Company. However, there is no dispute to the fact that the spouses of the key managerial persons of the Company are the shareholders in Felicite Builders and Constructions Private Limited which in turn holds shares of Shalika Estate Developers Private Limited. The entire shareholding of Sudipti is being held by Shalika Estate Developers Private Limited. It is an admitted fact that the erstwhile shareholders of Felicite Builders and Constructions Private Limited, Shalika Estate Developers Private

Limited and Sudipti were the wholly owned subsidiaries of the Company and were shown as entities under the control of the key management personnel of the Company and their relatives in the DRHP filed by the Company during May 2006, which DRHP was subsequently withdrawn. In the DRHP filed in the year 2007, the aforesaid companies were not shown as the entities under the control of the key management personnel of the Company and their relatives. The submission is that between the filing of the aforesaid DRHPs, the Company had dissociated itself from the said companies due to internal restructuring. It is also stated that in the DRHP filed during 2006, 357 companies were mentioned as the associate companies of the Company and that out of such companies, 336 companies (including Sudipti) ceased to be the associates of the Company by time the Company filed its fresh DRHP dated January 2, 2007 with SEBI. Though, during the course of hearing, the Company was specifically advised to submit the details of its dissociation with the companies, no such details were submitted by the company in the written submissions or thereafter.

20. After analyzing the various facets of the transactions, the impugned judgment held that:

67. The Board notes the case of the respondent-complainant that DLF used Sudipti along with a maze of intermediary companies to purchase land which forms part of the land disclosed in the DRHP. The case of the complainant is that the DLF purchases land through a maze of intermediary companies controlled by it, through a series of back to back purchases of debentures through which the purchase money flows to an entity that purchases the land and that the company enters into a series of back to back development rights agreements whereby it acquires the development rights in the land so purchased, by paying the same amount of money to the entity purchasing the land in lieu of the development rights, which money is then used to redeem the back to back debentures.

68. The case of the complainant/Respondent No. 2 is that the DLF did not, in its DRHP, disclose its modus operandi for the purchase of lands and selectively avoided disclosure of information about the intermediary companies it uses to purchase lands, so as to avoid disclosure of any potential liability, civil or criminal proceedings that have arisen or may arise in connection with land purchases.

69. The Board also takes note of the fact that DLF in its DRHP filed in the year 2007 disclosed that out of the total land holdings of approximately 10,000 acres, only 0.5% holding was held by the company and the balance holding was held in the name of the company's subsidiaries/associate/group company/companies under the control and management of key management personnel of the company.

70. The complainant produced before the Board additional submission to support the allegation against the petitioner. The Board observes that it does not deem it proper to disregard the same without testing the veracity of such submissions in the interest of justice and in the interest of the securities market and the

investors. The Board further observes that :

?Having considered the submissions and the fact that the first DRHP (filed in May 2006) was withdrawn and a fresh DRHP was filed in January, 2007 after the sale of state in Sudipti, an examination is required as to whether Sudipti was dissociated for the purpose of avoiding any relevant disclosures that could arise if the entity continued to be part of the DLF group.//

71. While observing that the original complaints dated 4th June, 2007, 19th July, 2007 did not contain allegations of the petitioner funding Sudipti indirectly through a series of transactions involving its subsidiaries/associates and the manner of purchasing lands and creating development rights on the land acquired by the company's subsidiaries by indirect funding of such purchases, the Board observes that in the interest of the securities market, the investors, as also the interest of justice, it would not be proper on the part of SEBI to dispose of the complaint by holding that those additional submissions are extraneous to the original complaint filed by the complainant/respondent no. 2.

72. The aforesaid observations of the Board leave no manner of doubt that the Board has not per se relied upon the additional documents filed by Respondent No. 2 before it. This is clear from a bare perusal of the impugned order. All that the Board has said is that "the said material cannot be relied upon to find out whether there was any contravention of the provisions of the securities law. The same need to be examined and if the allegations are made out, the company should be the petitioner company should be afforded an opportunity to make its submission in respect of such allegations and material. While passing the impugned order, the Board has made it clear that no observation is made.// Pertinently, the Division Bench has also observed in its order ?Needless to emphasize, SEBI, if so advised in law, can always call for documents.

73. There is no bar or impediment cast on the Board by the SEBI Act, to say that it would not entertain or look into evidence that the complainant may rely upon in support of his complaint earlier made, while considering whether, or not, to direct an investigation. There is no reason to put any such fetters on the powers of the Board or to read such restrictions into the statute, which are clearly not there. The Board is the Sole authority created by law to deal with complex issues which arise in the management and supervision of the securities markets. Any such restrictions, artificially introduced would denude the Board of its powers and hamper its functioning. It appears, the Division Bench was conscious of this position when it made its aforesaid observations.

74. I do not agree with the petitioner's submission that the Division Bench in its judgment had precluded the Board from looking into any additional information/documents that Respondent No. 2/Complainant may produce in support of his complaints. Reading and understanding of the petitioner of the judgment of the Division Bench in the three LPAs does not appear to be correct. A perusal of the order of the Division Bench in the three LPAs shows that the Division Bench set

aside the judgment of the learned Single Judge because the learned Single Judge had himself directed investigation into the complaints of respondent No. 2, rather than requiring SEBI to examine the two complaints of respondent No. 2, and discharge its statutory duty u/s 11C of the SEBI Act. This is clear from reading of para 4 of the order of the Division Bench. I, therefore, reject the submission of the petitioner that the Board has taken into consideration the extraneous or irrelevant material while passing the impugned order.

75. A perusal of the impugned order shows that it certainly cannot be said that it has been passed arbitrarily or irrational. The impugned order is clearly based on reasons which are relevant and material. The adequacy or sufficiency of the reasons which weighed with the Board in entertaining the reasonable belief with regard to the possible existence of circumstances mentioned in Clauses (a) and (b) of Section 11C (1) cannot be gone into. However, it cannot be said that the reasons are not relevant, or have no bearing on the matters in regard to which the Board had formed its belief. It also cannot be said that there is no rational or intelligible nexus between the reasons contained in the impugned order, and the reasonable belief entertained by it because, if, the allegations leveled by respondent no. 2, and the materials relied upon by him are established, and, on the other hand, the defence of the petitioner is not substantiated, it may tantamount to violation of the provisions of the SEBI Act; of the Rules, and; of the Regulations made or the direction issued by the Board under the Act, which have been taken note of in the impugned order itself.

Analysis and Findings

21. The previous discussion would show that DLF's IPO was opened for public subscription on 11-14.06.2007. After the closure of the subscription, on 15.06.2007, the second respondent sent a complaint to SEBI, seeking cancellation of DLF'S listing on account of alleged irregularities in the Draft Red Herring Prospectus. He addressed another complaint dated 19.07.2007, levelling similar allegations and requesting investigation u/s 11 of the SEBI Act. Alleging inaction by SEBI, as regards investigation of the complaints made, the complainant preferred WP (C) No. 7976 of 2007 (under Article 226) seeking issuance of an appropriate writ directing SEBI to investigate into DLF's affairs. The Learned Single Judge granted the relief. That judgment, however, was set aside "in its entirety"- (by the Division Bench, in LPA Nos. 436, 441, 488/2010). The reason for doing so was that the learned Single Judge had issued a direction to the SEBI to investigate not only into the two original complaints, but also into the, materials further placed on record during the course of the writ proceedings. Accordingly, the Division Bench noted that a mandamus could only be granted as regards the two complaints which were not acted upon, as the other material had never been placed before the SEBI, negating any cause of action (failure to act) for the issuance of a writ in respect of that information. The reasons which resulted in setting aside the judgment of the Learned Single Judge are relevant to determining the context of the earlier Division Bench order, on which DLF,

places heavy reliance in this appeal. After the order of the previous Division Bench, SEBI appointed Mr. Saran, WTO, to investigate into the complaints. Based on the investigation, Mr. Saran decided that (under Section 11C of the SEBI Act) an investigation was required and called for. Accordingly, he decided to issue a formal order to appoint an investigation officer. DLF was aggrieved by this order and questioned it in WP(C) No. 8128 of 2011. The Learned Single dismissed the petition, by the impugned order. DLF has therefore preferred this appeal.

22. The appeal is primarily on the following three grounds:

1. Violation of principles of natural justice
2. Exceeding the jurisdictional limits set by the Division Bench in its previous order
3. Non-application of mind/non-fulfilment of Section 11C on facts The Respondents objected to the maintainability of writ proceedings, under Article 226 when an alternate remedy before the SAT is available. The objection was not accepted by the Learned Single Judge.

Point No. 1

23. It is not disputed that DLF and the complainant were heard separately, and that the written submissions of the latter were not provided to the former. The question is whether this amounted to violation of principles of natural justice (the right to hearing/audi alteram partem). For this, the nature of the proceedings must be examined in order to determine whether a right of hearing existed in the first place. SEBI has provided the Court with the mode of inquiring into complaints-first, investigations conducted prior to ordering investigation u/s 11C. Second, is the investigation u/s 11C by the Investigating Authority, exercising powers enumerated under that Section. Finally, adjudication conducted u/s 15I, if such course is thought prudent. SEBI's argues that the present impugned order falls within the first step, and at this stage, no right to hearing is required. Contrary to this, DLF urged that a hearing is required at this stage as well, especially in light of the judgment of the Division Bench which notes that "the decision shall be taken after hearing the parties".

23. There is nothing in the provisions of the Act suggesting that any right to hearing inheres in any party at the first stage of investigation, when SEBI considers whether to act on a complaint. Concededly, a right to hearing exists in quasi-judicial and even administrative proceedings (Swadeshi Cotton Mills Vs. Union of India (UOI),). However, this is so only when the decision is based on the adjudication of the rights of parties. In fact, it is instructive to notice that while Section 237 of the Companies Act, was construed in Barium Chemicals Ltd., and Rohtas Industries Ltd., it was neither argued before nor hinted by the Court that any question of an opportunity being given to the company before taking action arises in construing Section 237.

24. The Supreme Court, in State of Gujarat Vs. Jamnadas G. Pabri and Others, ,

noted that a right to hearing "is given before the penalty or final action is taken." Similarly, Lord Denning's words in *Selvarajan v. Race Relations Board*, (1976) 1 All ER 12 are instructive: "It [the investigating body] need not hold a hearing. It can do everything in writing. It need not allow lawyers." It is also settled that the right to a hearing is contextual-(See *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, and *Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja*, (the right takes colour from the individual legislation). Therefore, while the importance of the right to hearing or principles of natural justice cannot be underestimated, one must determine if such a hearing is required as regards all administrative decisions. In this case, however, the exercise of power in question is only the exercise of inquisitorial power to determine whether an investigation is to be conducted in fact, the Supreme Court in *Competition Commission of India (supra)* noted a difference between adjudicatory and quasi-adjudicatory functions and inquisitorial functions. Consequently, at that point, when the order of the investigating authority may lead to a prejudicial outcome, a right to hearing is mandated. Alternatively, a direction issued u/s 11B, which may lead to prejudice to those it affects, a right to hearing is required as in that case a "direction means guidance of command" (*V.P.S. Gill v. Air India*, AIR 1988 Bom. 416, 421) or "is in the nature of an order requiring positive compliance" (*Rajinder Nath and Others Vs. Commissioner of Income Tax , Delhi*,). In the present case, an order to constitute an investigating authority does not, by itself, lead to any finding adverse to the Appellant. In fact, in *Bhoruka Financial Services Ltd. (SAT's order considered and approved by the learned Single Judge)* while examining Section 11C, reaffirmed this conclusion:

It is not the requirement of Section 11C that opportunity of hearing is to be afforded to any intermediary of the marked before ordering such investigation. The reason is obvious. Investigation by itself does not adversely affect any person or intermediary and no civil consequences flow from such an order.

25. Arguably, if the SEBI were making an order u/s 11B, a right to hearing may perhaps be mandated-if the functions are of a quasi-judicial character. (Refer to *Nand Kishore Prasad Vs. State of Bihar and Others*,). This Court is mindful of the ruling of the Supreme Court in *Khem Chand Vs. The Union of India (UOI)and Others*, that

the notice must not only be given an opportunity but such opportunity must be a reasonable one... If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence.

26. In this case, no charges were made against DLF by SEBI. Quite to the contrary; the impugned order of the Whole Time Member notes that:

"A formal order would be issued appointing the Investigating Authority. The said

Officer shall investigate the matter without being prejudiced by any observations made hereinabove ... If [at the time when the investigation u/s 11C is carried out] violations are brought out in the investigation, the Securities and Exchange board shall proceed in accordance with law".

27. The Supreme Court, in the Competition Commission of India case when considering Section 19 of the Competition Act, 2002, noted that

[t]he provisions of Section 19 do not suggest that any notice is required to be given to the informant, affected party or any other person at that stage. Such parties cannot claim the right to notice or hearing but it is always open to the Commission to call any "such person", for rendering assistance or produce such records, as the Commission may consider appropriate.

The wide amplitude of SEBI's power, to invoke its authority, and enforce regulatory standards, was emphasized recently, by the Supreme Court in its judgment, reported as Sahara India Real Estate Corporation Ltd v. Securities Exchange Board of India (Civil Appeal Nos. 9813 & 9833/2011, decided on 31-8-2012) as follows:

From a collective perusal of sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand-alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified.

The first stage of investigation-i.e. initiation (of investigation) after formation of opinion, u/s 11C, as is the case here, may be exercised on mere receipt of a phone call, or anonymous complaint. The preconditions for exercise of investigative power are that SEBI should have "reasonable ground to believe that" (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or (b) any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules or the regulations made or directions issued by the SEBI thereunder. It can then, "at any time by order in writing", direct any person (i.e. the "Investigating Authority") specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report to it (i.e. SEBI). The report can then lead to further action, if warranted. If, in such cases, speed in taking a decision is warranted, to track an errant stock exchange manipulator, or discipline behaviour which is outlawed by regulations, such as insider trading, there would be complete paralysis, and Parliamentary intention of exercising effective regulative supervision would be defeated, if a pre-opinion formation hearing is to be read into, by the Courts. Accordingly, it is held that as a matter of law, no right to hearing was required in the present case.

Point No. 2

28. It is no doubt true that if a right to hearing is required, then both parties must be heard in each other's presence (Payyavula Vengamma). However, as the learned Single Judge held, the ratio of that case does not apply here as in that case the proceedings were quasi-judicial in character, and thus, determining rights and obligations of parties. However, as discussed above, in this case, no decision is taken so as to prejudice either party, or any direction given. The mandate of the law, at the stage of SEBI's deciding whether to direct investigation or not, was to decide in writing, that reasonable grounds existed, calling for investigation.

29. DLF's argument was that the Division Bench's direction that "SEBI shall examine the complaints and take a decision and communicate it to the parties. Needless to emphasize, SEBI, if so advised in law, can always call for documents ... The decision shall be taken after hearing the parties within a period of three months from the date of receipt of the order passed today "

and its further direction setting aside the judgment of the Learned Single Judge in its entirety, conferred a right to hearing, whereby fair procedure had to be necessarily followed.

30. As noted previously, the reason for setting aside the judgment of the learned Single Judge was very specific, and did not mean to grant an independent right of hearing to either party for all stages of the investigation. The reason was that the Learned Single Judge had issued a direction, mandating the SEBI to investigate not only into the two original complaints, but also, materials further placed on record during the course of those judicial proceedings. Accordingly, the Division Bench noted that a writ of mandamus could only be granted as regards the two complaints which were not acted upon, as the other material had never been placed before the SEBI, negating any cause of action (failure to act) for the issuance of a writ in respect of that information. The Division Bench nevertheless carefully directed the SEBI only to take action "with utmost objectivity regard being had to the law in the field", as the SEBI has earlier not investigated these complaints at all but forwarded them to DLF. Indeed, the Division Bench only required SEBI to exercise its discretionary powers u/s 11C and "take a decision" as the law required. Thus, Section 11C, which has a step-by-step decision making process, was required to be considered by the SEBI, without vesting any right to hearing for the first stage in the parties when such hearing is not required by the Act. In fact, the Division Bench noted that SEBI "shall act with utmost objectivity regard being had to the law in the field and without being influenced by the counter affidavit [where it had denied any reason to investigate]". These facts clarify as apparent that the judgment of the Division Bench only required SEBI to act as mandated by its governing statute, which in turn required no hearing at this stage. Therefore, the contention that the judgment of the Division Bench vested any additional right of hearing, on the party cannot be accepted.

31. DLF had argued that the Division Bench previously ordered the SEBI to

investigate only the two original complaints, and thus, the additional material considered by the WTO, SEBI exceeded the "jurisdictional limits set by the Learned Division Bench" (Writ Petition). This is incorrect. Firstly, the Division Bench did not set any jurisdictional limits. Again, as stated above, the Division Bench mandated the SEBI to investigate into the two complaints, and not as regards other material, because it noted that a mandamus was granted only as regards material that was earlier placed before the SEBI but was not acted upon. Therefore, while the writ of mandamus was limited to the two original complaints, the SEBI was free to investigate and take into account any additional material in keeping with its plenary powers under the SEBI Act (Securities Exchange Board of India v. Ajay Agarwal, decided by Supreme Court on 25-2-2010). In fact, the Division Bench noted that "Needless to emphasize, SEBI, if so advised by law, can always call for documents". Thus, the Division Bench did not seek to restrict the statutory powers under the SEBI Act, but rather, required it to exercise its discretionary powers wholly and with utmost objectivity. It would be unjustified therefore to claim that the SEBI was restricted while conducting appropriate investigation, by disallowing a consideration of material relevant to the original complaints. Such a restrictive interpretation would mock the statute, and restrict the powers of SEBI, which are otherwise plainly wide. Moreover, as long as the material is relevant, and germane to the question, i.e. whether to hold an inquiry or not, it would have to be taken into account. The findings of the learned Single judge on this aspect are sound, and call for no interference. Point No. 3

32. DLF had argued that the jurisdictional pre-requisite u/s 11C, that the Board should have "reasonable ground to believe", has not been met in this case. Reliance on the decisions of the Supreme Court in Ganga Saran and Sons (Pvt.) Ltd., and S. Narayanappa, which are decisions in the context of the Income Tax Act have been placed. The Supreme Court, in those cases, noted that these indeed are jurisdictional pre-requisites and the belief "must be held in good faith: it cannot be merely a pretence". "To put it differently it is open to the Court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the Section". (S. Narayanappa, supra).

33. There is no question that SEBI must also base its decisions on relevant considerations and proceed in good faith. However, the standard of judicial review in such cases is deferential, i.e. the Court will not review on merits, but rather, see if the decision was based on relevant considerations. As noted in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, ,

Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of income of the assesses from assessment in the particular year. It is not any and every material, how so ever vague and indefinite or distant, remote and farfetched, which would warrant

the formation of the belief...

The question in this case is whether impugned order of SEBI considered relevant material and whether there was a direct nexus between the material considered and the conclusion reached. As noted in *Sunil Kumar Jain Vs. The Income Tax Officer, The Commissioner of Income Tax and The Commissioner of Income Tax*, ,

"The sufficiency of the material cannot be gone into but relevancy certainly be gone into."

34. Here, the material considered by the SEBI (even material outside the original complaints) was relevant and germane to the issue in hand, i.e. possible violations of the disclosure norms and the Companies Act. Indeed, the record clearly shows that the decision was based on certain relevant factors, inter alia: 1) Relations between Appellant and Sudipti, as regards the two DHRP that were filed (para 7 of the Order);

2) Failure to make disclosures of the FIR registered against Sudipti (para 11 Of the Order);

3) Reasoned inferences regarding DLF's knowledge of the FIR (para 11 of the Order);

4) Duty on the DLF to disclose facts in the DHRP, under specific guidelines (Guideline 6.11.11.(a)) (para 12 of the Order);

5) Indirect purchase of lands through intermediaries (para 13 of the Order).

35. A reading of the Order clearly displays that submissions of both parties were considered, relevant material was placed on record, and a decision reached consequent thereto. The fact that no specific violations of a particular Section of the Companies Act or the DIP Guidelines are mentioned does not vitiate the order; as the first stage of investigation is only preliminary and based on reasoning provided by the SEBI, it was advised to appoint an Investigating Authority to further determine the veracity of these claims. Indeed, it is not for the High Court to second-guess the reasoning of the SEBI, as long as a deferential review does not reveal any extraneous circumstances. On this aspect too, this Court is of opinion that the findings of the learned single judge do not call for interference. The result of the above discussion is that all the three points are held against the Appellant, DLF. The appeal has to therefore fail; it is dismissed without any order on costs.