

(2018) 10 DEL CK 0371

In the Delhi High Court

Case No : Civil Writ Petition No.9114 Of 2018, Civil Miscellaneous. 35180-35181, 44300 Of 2018

Rrpr Holding Private Limited

APPELLANT

Vs

Securities And Exchange Board Of India & Anr

RESPONDENT

Date of Decision : 26-10-2018

Acts Referred:

Securities and Exchange Board of India Act, 1992 — Section 11, 11(B)

Citation : (2018) 10 DEL CK 0371

Hon'ble Judges : Rajendra Menon, Cj;V. Kameswar Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V. KAMESWAR RAO, J

CM No. 44300/2018 (for interim relief)

1. This application has been filed by the petitioner with the following prayers:

â??In the premises, it is most respectfully prayed that this Hon?ble Court may be pleased to:

(i) Direct that the proceedings relating to the Impugned SCN dated 14.03.2018 be kept in abeyance during the pendency of the present writ petition.

(ii) Pass any other and / or further order(s) which tis Hon?ble Court may deem fit and proper in the facts and circumstances of the present case.â??

2. As seen from the above, in substance the petitioner is seeking stay of show cause noted dated March 14, 2018 which has been impugned in this writ petition.

3. It is the submission of Mr. Balbir Singh, learned Senior Counsel appearing for the petitioner that when the matter was listed before this Court on

August 29, 2018 this Court had passed the following order:

Issue notice. Mr. Sandhya Kohilar, Advocate for respondent No.1 and Mr. Anurag Ahluwalia, Advocate for respondent No.2 accept notice.

We have heard learned counsel for the parties.

It is apparent that no notice of inquiry has been issued by the respondent-Securities and Exchange Board of India (hereinafter "SEBI"), which

can result in an adverse finding. In these circumstances, the investigation-which is alleged to be carried out by SEBI would not be presently interfered with.

The SEBI shall ensure the inspection of all materials that have been investigated pertaining to the show cause notice, which is the subject matter of

the investigation, is provided. However, if there is any confidential material concerning a third party, which too might be under investigation or other

confidential material, which the SEBI feels would be prejudicial, it is open to it to segregate or de-tag such material while complying with the order.

List on 27th November, 2018.

A copy of the order be given dasti under the signature of the Master.

4. Pursuant thereto, the petitioner vide e-mail dated September 03, 2018, requested the respondent No.1 to provide inspection of all file notings /

internal orders / communications relating to the proceedings pending before the respondent No.1 whether relied / referred in the impugned show cause

notice or not.

5. Vide e-mail dated September 05, 2018 the respondent No.1 permitted the petitioner to conduct inspection on September 12, 2018 of all materials

that have been investigated pertaining to the impugned show cause notice. He states that the respondent No.1 did not provide inspection of all the

materials as directed by this Court. According to him, the respondent No.1 with mala fide intent as the petitioner had approached this Court issued

another show cause notice dated September 05, 2018 for adjudication proceedings for imposing financial penalties against the petitioner. He states

from the observation of this Court which has been reproduced above, this Court has at this stage permitted for continuing the investigation because of

proceedings were not at a stage which can result in any adverse finding against the petitioner. He also states that the respondent No.1 has fixed the

date of hearing in the impugned show cause notice as October 30, 2018 i.e. even before the next date of hearing of the writ petition. The intention

appears to make the writ petition infructuous. In the end, he states as the matter is listed before this Court on November 27, 2018, it would be

appropriate the respondent No.1 be restrained from taking further action till the next date of hearing.

6. On the other hand, Mr. Tushar Mehta, learned Solicitor General appearing for the respondent No.1 submits that the writ petition has been filed

challenging the provisions of Section 11 and 11(B) of the Securities and Exchange Board of India Act, 1992 as being ultra vires. He justifies the said

provisions. That apart, prayer has been made challenging the show cause notice dated March 14, 2018. The petitioner is within its right to reply to the

show cause notice to enable the respondent No.1 to pass a final order, if aggrieved against the same the petitioner can avail the remedy of appeal

before the SAT. That apart, he states that a particular transaction may result in separate violation of the provisions of the SEBI Act and as such the

respondent No.1 is within its right to issue a show cause notice(s) to those violations. It is appropriate for the petitioner to reply to the said notices and

thereafter, seek such remedy as available in law. He has taken us through show cause notices issued by the respondent No.1 to the petitioner on

March 14, 2018 and dated September 05, 2018, to contend both the show cause notices are at variance.

7. Having heard the learned counsel for the parties, it is noted a similar prayer as prayed for in the present application has been made in CM

35180/2018 which was also considered by this Court on August 29, 2018. The Court had not interdicted the proceedings arising from the show cause

notice dated March 14, 2018.

8. Mr. Mehta is correct that the petitioner is required to reply to the show cause notice to enable the respondent No.1 pass a final order against which

the petitioner has a remedy of appeal before the SAT. We have been informed one of the noticee has already approached the SAT.

9. That insofar as the subsequent notices are concerned, we agree with the submission of Mr. Mehta, appropriate for the petitioner is to give reply to

the said notices. In any case, if any order is passed to the prejudice of the petitioner, remedy is for the petitioner to approach the SAT. The Court is

not inclined to entertain this application, the same is dismissed.