

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.10354 OF 2021

Shree Jai Bhagwan Goel & Anr.] Petitioners.

Vs.

Securities & Exchange Board of India] Respondents.

.....

Mr.Vaibhav Tyagi i/b Mr. Uttam Rane for petitioner.

Mr. Pradeep Sancheti, Sr.Advocate a/w Mr. Mihir Mody, Mr. Arnab
Misra i/b M/s K. Ashar & Co. for respondent.

.....

CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.

DATE : 20th AUGUST, 2021.
[THROUGH VIDEO CONFERENCING]

P.C.

1. Heard learned Counsel for parties.
2. By this petition, under Article 226 of the Constitution of India, petitioner is seeking direction against respondent to produce all documents relied upon by them while issuing SCN including investigation report.

3. During the course of argument, it is submitted by the learned Counsel for the respondents that, the petitioner through their letter dated 21.08.2020 called upon respondent to provide copies of a) a copy of the complaint filed by Company with SEBI, b) a copy of application version of the Code of Conduct for regulation monitoring prevention of insider trading approved and followed by the Company and c) a copy of the investigation report of SEBI relating to the investigation carried out by the Operations Department of SEBI. In the present proceedings, respondent-SEBI filed their affidavit-in-reply dated 15.07.2021 stating that they already provided all these documents. They also made a statement that they are not seeking to rely upon investigation report. Para 6 and 7 (4) of the said reply reads thus;

6. It is further respectfully submitted that, the petitioners had vide their Advocates letter dated 21.08.2020 (Exhibit-B-1) to the Memo of Appeal) sought copies of these documents (reproduced in paragraph 3(iii) supra).

a) Admittedly copy of the complaints filed by the Company have been provided to them.

b) As regards the Code of Conduct of the Company, as sought by the petitioners, the contents therein are known to the petitioners as the same has been commented upon and also in view of the fact that the petitioner no.1 was the Promoter of the Company and the petitioners were also its Designated persons. However, to put to rest any controversy, copy of the Code of Conduct of the Company shall be provided to the petitioners.

(c) *As regards copy of the investigation report referred to in the SCN, it is submitted that the respondent has provided inspection of all the underlying documents referred to in the SCN therein which is being relied upon against the petitioners to substantiate the charges mentioned therein. The respondent is not seeking to rely upon the investigation report to prove the charges.*

7. *Without prejudice to para 6(c) above, it is respectfully submitted that, it is not necessary for the respondent to provide copy of the investigation report itself for the following reasons:*

I.

II.

III.

IV. There is no provision in the SEBI Act or the Regulations or AO Rules which directs the respondent to provide investigation report to the Noticee. The proceedings before SEBI are quasi-judicial in nature, which are governed by the principles of natural justice. As per the principles of natural justice, it is necessary to provide all the replied upon documents based on which charges are levelled against the Noticee. If the respondent relies upon only the documentary evidences to substantiate the allegations and does not reply on the investigation report, it is not necessary to provide copy of the investigation report to the Noticee. The investigation report itself is a culmination of documents which the investigating authority relies on/come across while conducting the investigation and is not an evidence in a strict sense. It is a report which is necessary for an authority, who orders an investigation, to decide as to whether there are prima facie grounds to initiate enforcement proceedings or not. Therefore, before the authority makes up its mind, he/she shall either investigate the same itself or direct any subordinates to investigate in

the matter. It is only after the authority receives the result of the investigation that it would decide as to whether action is called for or not. Therefore, the investigation report is in the nature of inter-departmental communications between officers investigating the matter and the authority who can decide any enforcement action against the entity.

4. On the basis of the reply filed by the respondent when this Court declined to entertain the petition, the petitioner submitted that the petitioner may be permitted to withdraw the petition with liberty to put all these issues before the authority i.e. the person who is going to hear the show cause notice. Hence, the following order is passed.

- a) Writ petition stands dismissed as withdrawn.
- b) All contentions of both parties are kept open.
- c) No order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]

