REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.9037 of 2019

INDIAN COMMODITY EXCHANGE LIMITED …Appellant

Versus

NEPTUNE OVERSEAS LIMITED & ORS. …Respondents

With

Civil Appeal No.629/2020

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. A lot of noise but no music! The present case is a classic one where multiple proceedings have been initiated but have resulted in no culmination over a period just short of a decade. And this is not so because of any interdicts from the courts in preventing these legal

proceedings, yet the proceedings have hardly moved. The result is that the culpability of the first two respondents herein has not been determined – thus, a cloud hangs over their conduct and that is all.

2. We now turn to The Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the 'said Act'; since repealed by the Finance Act, 2015),as the proceedings against the first two respondents herein emanated from the powers exercised under the said Act. The said Act aimed to regulate certain matters relating to forward contracts, prohibition of options in goods and for other connected matters. A reading of the statement of objects and reasons shows that the said Act was a sequitur to the initial prohibition of forward trading in certain commodities as a result of the Central Government issuing orders under Rule 81 of the Defence of India Rules during the war period.

3. Chapter II of the said Act provides for the Forward Markets Commission (for short 'FMC'), an authority to regulate commodities futures market, which was established under Section 3, with its functions being provided under Section 4 of the said Act. The functions, *inter alia*,

were to advise the Central Government in respect of the recognition of, or the withdrawal of recognition from, any association or in respect of any other matter arising out of the administration of this Act; and to keep forward markets under observation. Chapter III deals with the recognition of associations concerned with the regulations and control of forward contracts. An application for such recognition of associations had to be made under Section 5 of the said Act for grant of recognition under Section 6. Section 7 of the said Act dealt with withdrawal of recognition. The Central Government had the power under Section 8 to call for periodical returns or direct inquiries to be made. Suffice to say that it is in exercise of these powers under Section 8(2) of the said Act that the proceedings against Respondent Nos.1 & 2 herein commenced.

4. In the aforesaid play of the said Act, we now turn to National Multi Commodity Exchange of India Limited (for short 'NMCE'), which is an association registered under the provisions of the said Act. NMCE is registered with the FMC, under Section 14B of the said Act. The subsequent development has been that in pursuance of a scheme of amalgamation, concluded in 2018, the Indian Commodity Exchange

Limited (for short 'ICEL'), who is the Appellant before us, emerged as the successor of NMCE.

5. Respondent No. 1 herein, Neptune Overseas Limited (for short 'NOL') is a company registered under the Companies Act, 1956 dealing with export/import and trading in various commodities including rubber. This company is the core promoter of NMCE, being its largest shareholder with 30.18% shareholding. The role of Mr. Kailash Ramkishan Gupta, Respondent No.2 herein, was dual in character – he was the founder and CEO of NMCE as well as the Managing Director of NOL. The other related development is that the FMC, in view of the said Act being repealed, itself merged with the Securities and Exchange Board of India (for short 'SEBI') with effect from 28.9.2015.

6. The genesis of the dispute is a communication dated 28.11.2010, made by a stated independent journalist to the FMC alleging, *inter alia*, trading irregularities within the NMCE along with an allegation of abuse of position by Respondent Nos.1 & 2 herein. The proceedings that transpired thereafter, and the related compliance with principles of

natural justice form the subject matter of the present litigation.

7. The FMC, on the basis of the abovementioned complaint, initiated an inquiry into the affairs of NMCE on 14.12.2010, exercising powers under Sections 8(2) and 8(4) of the said Act as set out hereinabove, read with the Government of India Notification S.O. No.1162 dated 4.5.1960. A detailed show cause notice dated 21.6.2011 was served under Section 4(b) of the said Act. Section 4 (b) of the said Act reads as under:

> "**4. Functions of the Commission.—The functions of the Commission shall be—**
>
> (a)xxxx xxxx xxxx xxxx xxxx
>
> (b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;]
>
> xxxx xxxx xxxx xxxx xxxx"

8. This notice, running into about 150 pages,was addressed to Respondent No.2 herein, in his capacity as Vice Chairman of NMCE and Chairman and Managing Director of Respondent No.1, NOL giving him a period of 10 days from the date of receipt of notice to respond. A

personal hearing was fixed for 4.7.2011. Liberty was granted to Respondent No.2 herein to peruse any documents within a period of 7 days from the date of receipt of notice, if he so desired. This resulted in a series of communications from 22.6.2011 to 20.7.2011, including the request of Respondent No.2 herein for copies of documents relied upon in the show cause notice, a questioning of the jurisdiction of the FMC, and repeated requests for adjournments. Most of these letters were by Respondent No.2 herein but on record is also a letter dated 2.7.2011 addressed by Respondent No.1 herein and signed by Respondent No.2 herein. The stand of FMC was that most of the documents were already under the control of Respondent No.2 herein or were either irrelevant or not relied upon. However, possibly to put the matter at rest, some documents were supplied on 5.7.2011 and the hearing was consequently adjourned to 13.7.2011.

9. In the course of these developments, parallel proceedings were initiated by Respondent No.1 herein by filing Special Civil Application No.8377 of 2011 before the Gujarat High Court. These proceedings sought to challenge the show cause notice and, *inter alia*, raised the issue that FMC had no jurisdiction, power or authority to commence or

continue any enquiry or issue any directions.. The learned Single Judge who considered the matter, construed the issuance of the show cause notice to Respondent No.1 to be through Respondent No.2 herein.

Thus, in terms of order dated 8.7.2011, it was opined that opportunity of hearing had been and was being provided to Respondent No.1 herein, who could furnish a reply to the show cause notice as well as appear personally with material in its support. The principles of natural justice were observed to have been complied with and Respondent No.1 herein was given liberty to appear before the FMC in pursuance to the show cause notice and produce the material in support thereof. The conclusion was that the final view was yet to be taken by the FMC, and only a show cause notice had been issued. As such, in the absence of any adjudication on merits, it was a premature effort on the part of Respondent No.1 herein to approach the High Court.

10. On the day of the aforesaid order being passed, once again, a grievance of entire documentation not being supplied was raised by Respondent No.2 herein. This request was rejected by the FMC with the reasoning that all documents were either available in the public domain

or not relevant. The subsequent endeavour of Respondent No.2 herein, to seek adjournment on 20.7.2011 in a bid to raise issues of jurisdiction was not accepted. The order of the FMC dated 20.7.2011 recorded that three adjournments had already been granted. Thus, the endeavour of Respondent No.2 herein, either in his own name or on behalf of Respondent No.1 herein, was only to seek postponement of the proceedings. As a last opportunity, Respondent Nos.1 and 2 herein were given time in the post-lunch recess session to address the FMC on the issue of jurisdiction, if they so desired, but the counsel for the said respondents only expressed the request for adjournment, which was apparently the only instructions to her. The proceedings were, thus, closed for orders and that order was pronounced on 23.7.2011.

11. The aforesaid order dated 23.7.2011 of the FMC opined against Respondent Nos.1 and 2 herein. The endeavour of Respondent No.2 herein to repeatedly seek adjournments was highlighted, especially as the proceedings in the High Court were filed only by Respondent No.1 herein, albeit through Respondent No.2 herein. On jurisdiction, the FMC clarified that Section 8(2)(b) of the said Act empowers the Central

Government to make an inquiry in relation to the affairs of a registered association. The relevant provisions read as under:

> "**8. Power of Central Government to call for periodical returns or direct inquiries to be made.—**
>
> [(1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs, or the affairs of its members, or his affairs, as the case may be, as may be prescribed.]
>
> (2) Without prejudice to the provisions contained in sub-section (1) where the Central Government considers it expedient so to do, it may, by order in writing,—
>
> (a) xxxx xxxx xxxx xxxx xxxx
>
> (b) appoint one or more persons to make an inquiry in relation to the affairs of such association or the affairs of any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representatives of the Central Government; and"

12. This power of the Central Government had been delegated to the officers of the FMC by Government Notification S.O. Nos.1162 and 928 dated 4.4.1960 and 12.3.1964 respectively. On examination of merits, the attitude and the approach of Respondent No.2 herein was found to be

non-cooperative. On the basis of the documents gathered and statements recorded during the course of inquiry, Respondent No.2 herein was held to be in complete breach of his fiduciary responsibility to the NMCE by systematically defrauding, misusing and misappropriating its property and committing a series of crimes under various laws for benefiting himself. Directions were issued to the NMCE to take appropriate legal action against Respondent No.2 herein and his family members who benefitted from his acts.

13. In the meantime, the parallel proceedings in the High Court before the learned Single Judge discussed aforesaid, resulted in an intra court appeal filed by Respondent No.1 herein, once again, through Respondent No.2 herein, in LPA No.1039/2011 filed on 15.7.2011. Interestingly, now Respondent No.2 herein filed an impleadment application to implead himself in his personal capacity, which was allowed. The appeal was also amended to raise a challenge to the order dated 23.7.2011 which had been passed by the FMC.

14. The Division Bench of the Gujarat High Court in terms of its order dated 9.2.2012 allowed the appeal on the short ground that the FMC had

not served the show cause notice on Respondent No.1 herein and the NMCE, effectively depriving them of the opportunity to present their case before the FMC. Consequently, the order of the FMC dated 23.7.2011 was quashed. The violation of the principles of natural justice is all that weighed with the Division Bench, without getting into the merits of the case. It also opined that if any documents were in possession of FMC and had not been supplied to Respondent No.1 herein, the same should be supplied subject to payment of usual charges.

15. The successor entity of the FMC, the SEBI, challenged this order by way of a Special Leave Petition before this Court, being SLP No.10225-10227 of 2012 and in terms of an interim order dated 22.3.2012, the operation of the order of the Division Bench dated 9.2.2012 was stayed. The consequence of this was that the order of the FMC dated 23.7.2011 stood revived. That it had consequences was not in doubt as various proceedings were initiated thereafter both civil and criminal. The matter, however, remained at this stage before the Supreme Court right till the passing of the order on 7.3.2018, 6 years later, in terms whereof the order of the High Court was set aside, which, had re-started

the proceedings against Respondent Nos.1 and 2 herein. An opportunity was given to the respondents herein to approach the Securities Appellate Tribunal, Mumbai (for short 'SAT') by way of a statutory appeal against the order dated 23.7.2011. A 30 day time period was granted for the same. On the appeal being filed, it was held, that the SAT "will hear the appeal on merits." Not only that, the interim order passed on 22.3.2012 by this Court was directed to continue to have effect, and any proceedings initiated in pursuance of the order dated 23.7.2011 passed by the FMC (now SEBI) was to abide by the final result of the appeal. The judgment of the Division Bench was specifically set aside.

16. We may note that one of the main issues before us is the consequence of the aforesaid order in view of what has transpired before the SAT and the High Court thereafter.

17. Respondent Nos.1 and 2 herein, in pursuance of the aforesaid liberty, filed Appeal No.96 of 2018 before the SAT, which passed the order dated 18.10.2019. It appears that the substratum of the pleas raised by Respondent Nos.1 and 2 herein was the lack of adequate and proper opportunity of hearing given to them, before passing of the order dated

23.7.2011.The requests for provision of further documents which had been denied earlier and the lack of jurisdiction of the FMC to issue the show cause notice under the said Act were re-agitated. The order dated 18.10.2019 of the SAT, impugned before this Court is predicated on the absence of any show cause notice to Respondent No.1 herein. This aspect was noted to have been conceded by the FMC before the Division Bench of the High Court along with an assurance to carry out the same. The relevant extract in this behalf is as under:

> "9. The aforesaid contentions raised by the learned counsel for the appellants is vehemently contested by Mr. P.S. Champaneri, learned Assistant Solicitor General of India and learned Advocate Mr. Navin Pahwa, appearing for respondent No.3 and 7, however, they have agreed that no show cause notice has been issued either to the appellant No.1 and/or respondent No.3-NMC by respondent No.1-Commission. At this stage, learned counsel for the respondent No.1 Commission Mr. Champaneri states that they will be issuing a show cause notice to the appellants as well as respondent No.3 as contemplated under the Forward Contracts (Regulation) Act, 1952 and Forward Contracts (Regulation) Rules, 1954."

18. The concession made on behalf of FMC was relied upon by the SAT to reach a conclusion that once a concession has been made by the concerned authorities themselves and undisputedly no notice was issued

to Respondent No. 1 herein and NMCE, the proceedings must emanate from the show cause stage. The SAT did take cognizance of the developments that had taken place subsequent to the issuance of show cause notice, focusing on the allegedly arbitrary denial of documents, to the requests made by Respondent No.2 herein. On the issue of request for adjournment on 20.7.2011, the SAT noted that only two weeks had elapsed from the date when the documents were supplied and, thus, further request for adjournment could not be said to be unreasonable especially as the documents were voluminous, running into thousands of pages. Thus, the time period for filing the reply was found to be inadequate. Consequently, the order dated 23.7.2011 passed on a Saturday, a non-working day of the FMC, was set aside and a reasonable opportunity was directed to be given to Respondent No.2 herein and the NMCE for the purposes of filing objections/reply to the show cause notice.

19. The successor to the FMC, SEBI was directed to grant adequate time to Respondent Nos.1 and 2 herein to file their reply and if an application requesting the supply of documents was filed, the same was to be dealt with in accordance with law. The issue of jurisdiction was

also to be considered and decided by the SEBI in accordance with law.

20. The appeals before this Court have emanated under Section 15Z of the Securities and Exchange Board of India Act, 1992 – Civil Appeal No.9037 of 2019 having been filed by the Indian Commodity Exchange Limited (the successor of NMCE) while Civil Appeal No.629 of 2020 is by the SEBI, the successor of the FMC with NOL and Mr. Kailash being common respondents. Notice was issued on 2.12.2019 in Civil Appeal No. 9037/2019 and interim order was passed directing status quo with regard to operation of the impugned order to the extent it operated against the appellant. The SEBI's appeal was tagged with this matter. There are other appeals also but it was agreed that these two appeals should be taken up first as they may have ramifications on the result of those appeals. This was recorded in order dated 11.9.2020. Thus, these two appeals were heard and judgment reserved on 5.11.2020 after hearing learned counsels for the parties.

21. We have gone through the record before us and perused the synopses placed before us apart from the submissions made in Court.

22. The stand of the ICEL becomes relevant to the extent that the order of the SAT is predicated on ICEL not being served the show cause notice. This really does not withstand scrutiny, for the reason they had not sought so and, in fact, are themselves in appeal before us. Thus, the denial of opportunity to be heard is really being claimed only by Respondent Nos.1 and 2 herein. In fact, what has been urged before us by the ICEL is that, while the challenge before the Gujarat High Court was laid only by Respondent No.1 herein, it is Respondent No.2 herein who was simultaneously seeking adjournments before the FMC on one pretext or the other. This is despite the fact that Respondent Nos.1 and 2 herein were addressing communications to the FMC interchangeably on the same subject matter. As such, Respondent No.1 herein was fully aware of the show cause notice and acknowledged the same as one, which had been addressed to the said respondent. Not only that, there was no grievance ever made at the stage of final hearing before the learned Single Judge about the absence of show cause notice. This aspect was sought to be brought in only at the stage of appeal, for the first time, that too by amending it after the order dated 23.7.2011 was passed wherein

the acts of Respondent No.2 herein of siphoning off money and interlinked issues was stated to require investigation and an adverse finding resulted. However, to our mind, that is not very relevant at this stage because that would amount to going into the merits of the controversy, which is not to be examined by us.

23. Mr. Dushyant Dave, learned senior counsel appearing for the ICEL, sought to emphasise that the two respondents are only playing games, when they are really one and the same entity. In a sense, it was argued, that the corporate veil must be pierced to see what is really the endeavour of the said two respondents. Principles of natural justice, it was urged, have to be seen in a holistic frame and cannot have a straitjacket formula. It was urged that adequate opportunities had been granted to both the respondents and the third entity for whose benefit the order was passed by the SAT, i.e., the NMCE is predecessor entity of the ICEL who itself has come up in appeal against the said order. The communications as well as the proceedings in the High Court all give rise only to one conclusion that the two entities are treated as one and the same by the said entities themselves.

24. In order to substantiate the contention learned counsel referred to the following judgments and related principles:

1. ***Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee***[1]: Compliance of principles of natural justice requires only a substantial compliance and not every miniscule violation would spell illegality.

2. ***Titaghur Paper Mills Co. Ltd. and Anr. v. State of Orissa and Ors.***[2] and ***Cement Workers Karamchari Sangh v. Jaipur Udyog Limited and Ors.***[3]: Mere denial of adjournment would not always be violative of principles of natural justice, i.e., adjournment is not a birthright.

3. ***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati and Ors.***[4]: Principles of natural justice cannot be applied in a straitjacket formula and at times the futility of giving relief is a matter of consideration. It all depends upon the extent to which a person is likely to be affected. Not every case where there is a violation of principles of natural justice, would the

1(1977) 2 SCC 256
2(1983) 2 SCC 433
3(2008) 4 SCC 701
4(2015) 8 SCC 519

action be struck down and the matter referred back to the authorities to take a fresh decision after complying with the procedural requirement. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of prejudice. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

25. Mr. C.U. Singh, learned senior counsel canvassing the case of the SEBI supported the plea raised by ICEL. He laid emphasis on the fact that the judgment of this Court in the earlier proceedings being SLP No.10225-10227 of 2012 dated 7.3.2018, had put a quietus to the issue of any plea of violation of the principles of natural justice. This submission was based on the fact that the order of the Division Bench of the Gujarat High Court was predicated solely on denial of opportunity of fair hearing and that order had been set aside by the Supreme Court. The relegation of the proceedings to the SAT did not imply, in his view, that the whole chapter would be reopened, because this Court specifically opined that the appeal would be heard "on merits." It was his submission, that any other reading would negate the very words and spirit of the order of this

Court. This, he sought to support by the fact that in those proceedings, this Court in its wisdom considered it appropriate to continue the interim order, which in turn meant that all proceedings initiated in pursuance of the order passed on 23.7.2011 would continue, subject to the final outcome of the proceedings before the SAT. He also emphasised on the fact that enough opportunity was granted and no prejudice had been caused to Respondent Nos. 1 and 2 herein. No answer had been provided to the act of omission or commission of Respondent Nos.1 and 2 herein as specified in the show cause notice and the *inter se* relationship of Respondent Nos.1 and 2 herein required a piercing of the corporate veil in view of the gross mismanagement.

26. On the other hand, the defence of the impugned order was vehemently led by Mr. Rishabh Parikh, who did full justice to the task at hand despite two senior counsels on the opposing side. It was his submission that the present proceedings being in the nature of an appeal under Section 15Z of the SEBI Act, it must answer the parameters of the provisions. The said provision reads as under:

> "**15Z. Appeal to Supreme Court.—**Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an

> appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order: Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

27. It was his submission that there was no question of law and, thus, the appeal was not maintainable. On the appeal of the ICEL, it was stated that it had no locus to file the appeal as the issue related only to Respondent Nos.1 and 2 herein. But we negate this contention at the threshold itself. ICEL had to approach this Court, as failure to serve show cause notice to it was one of the grounds which weighed with the SAT, even though ICEL was not making any such claim.

28. Learned counsel strongly relied on the fact that the counsel for FMC had conceded before the Division Bench that no show cause notice was ever served upon Respondent No.1 herein and NMCE (which fact, as aforesaid, is no longer relevant). Insofar as the direction of this Court in terms of the order dated 7.3.2018 is concerned, it was submitted that the direction to the SAT to decide the matter on merits would encompass

every aspect, including the one about the plea of violation of principles of natural justice.

29. Learned counsel contended that the common thread of the arguments of both Respondent Nos.1 and 2 herein was that there has been a violation of the principles of natural justice qua both of them. In case of Respondent No.1 herein, the show cause notice was never issued but the shares it held in NMCE numbering 29,32,280 shares were cancelled by the FMC in its 23.7.2011 order. The order in question had also prohibited Respondent No.1 from holding any shares in any association or exchange recognised by the Government in excess of 2% of the issued capital. Thus, the rights of Respondent No.1 herein had been clearly affected without even the courtesy of a show cause notice. Insofar as Respondent No.2 herein is concerned, there was stated to be a violation to the extent that no reasonable opportunity of hearing had been granted as a 150 page long show cause notice was handed over without any documents. The documents running into more than 4,000 pages were made available only on 5.7.2011 and the matter was closed in a period of 14 days denying Respondent No.2 herein the adjournment sought.

30. The task before us is all the more difficult because both set of arguments in a sense would have their appeal at the first blush. We have, thus, endeavoured to charter a course based on the pleas and the documents before us, as also the manner of conduct of the proceedings by the FMC and the nature of defences, technical or on merits sought to be raised by the first two respondents.

31. We have no doubt that a proper show cause notice was served on Respondent No.2 herein. The moot point, however, remains as to what is the effect of not serving him with the documents he sought for and within the compass of time, which was given to him to respond.

32. Once again, it may be stated that a large part of the documents would have been within the custody of the Respondent No. 2 herein or for that matter with Respondent No.1 herein. However, this would not encompass all the documents. Not only that, when reliance is placed on as many as 4,000 pages of documents, it would not be fair to expect that the party in question ferrets through its own record trying to locate the

documents, when on basis of formation of an opinion for issuance of the show cause notice, logic and requirement of law both would dictate that the show cause notice should be comprehensive enough with full supporting documents being handed over. The answer cannot be that they are free to inspect 4,000 pages on their own! In fact, in so many terms, ultimately most of those documents were made available and it would not be appropriate to go back into the issue of whether the documents should have been supplied or not. In a sense, that chapter closed with the supply of documents on 5.7.2011 even though some more documents were sought thereafter.

33. We fail to appreciate why there should have been a cussedness in handing over mere copies of documents when serious allegations and serious consequences which would flow to the respondents herein. Not only that, the endeavour to conclude the proceedings within a span of two weeks thereafter cannot, in our view, be said to be an adequate opportunity as has been found by the SAT. An opportunity of hearing is not a mere nicety but a valuable right. That it does not fall in a straitjacket formula is no doubt the accepted legal position [***Dharampal***

Satyapal Ltd.[5]].The question is whether there was substantial compliance of the principles of natural justice [***Chairman, Board of Mining Examination***[6]] and whether there were unnecessary adjournments being sought, which were declined [***Titaghur Paper Mills Co. Ltd. and Anr.***[7] and ***Cement Workers Karamchari Sangh***[8]]

34. We do feel that there was an endeavour to some extent by Respondent No.2 herein to prolong the proceedings but then looking into the enormity of the contents of the show cause notice running into 150 pages with documents spanning 4,000 pages supporting it, a reasonable time had to be given to respond to the same. We may note that the whole enquiry was at the behest of "independent enterprising journalist." The manner in which the proceedings were sought to be closed raises serious doubts in our mind that a fair process and opportunity has been extended to Respondent No.2 herein.

35. Insofar as Respondent No.1 herein is concerned, not even a formal show cause notice has been issued. However, the fact remains that the

5(supra)
6(supra)
7(supra)
8(supra)

communications addressed by Respondent Nos.1 and 2 herein do give rise to a clear and unequivocal view that it was understood as a notice both to Respondent Nos.1 and 2 herein. That is how the parties understood it. There is no doubt about the fact that Respondent No.1 herein made an endeavour to approach the High Court challenging the show cause notice at that time without being joined by Respondent No.2 herein -though it was through Respondent No.2 but that endeavour failed as the proceedings before the FMC had not culminated into any order. It is only in the Letters Patent Appeal filed against that the order of the FMC dated 23.7.2011 was sought to be assailed and Respondent No.2 herein joined the proceedings as a party in his personal capacity. There is, thus, to some extent truth in what has been alleged by the appellants before us, i.e., that Respondent Nos.1 and 2 herein are conveniently playing this game of coming up separately even though they are joined in all purposes. We are conscious of the fact that Respondent No.1 herein is a separate legal entity being a registered company, but the concept of piercing the veil is not unknown to law. By this process, the law either goes behind the corporate personality to the individual members or ignores the separate personality of the company. This course is adopted

when it is found that the principle of corporate personality is flagrantly opposed to justice, convenience or the interest of the Revenue.[9] We are, thus, not able to hold that there was a failure to serve show cause notice to Respondent No.1 herein merely because no such notice was specifically addressed to it. We are conscious of the fact that there was some concession made before the Division Bench of the Gujarat High Court by the counsel for the FMC. Be that as it may, we are of the view that it would be a hyper technicality now to say that Respondent No.1 herein should be served a fresh show cause notice, more so in view of the directions which we are proceeding to pass in the present judgment.

36. We now come to the plea based on the directions passed by this Court on 7.3.2018 in the earlier appeal. No doubt the findings of the Division Bench of the High Court based on the violation of the principles of natural justice were set aside. But this setting aside will have to be read in the context of the fact that it was felt that Respondent Nos.1 and 2 had an adequate alternative remedy of appeal before the SAT. Not too much can be read into the use of the expression that the appeal had to be decided "on merits." The merits of a case include of factual and legal

9New Horizons Limited and Another v. Union of India and Others. (1995) 1 SCC 478

pleas. A plea of lack of opportunity to defend its case is also a legal plea. The order read as a whole only gives rise to the conclusion that the hearing was shifted to the SAT instead of before the High Court, in view of it being the competent body.

37. Similarly, the continuation of the interim order passed ealier in those proceedings on 22.3.2012, has to be read in the context of other consequential proceedings having been initiated. The objective was that those proceedings should not be brought to a naught at this stage; but even those were to abide by the result of the appeal before the SAT. We may also note with regret that on the one hand it has been contended by the appellant that so many different proceedings have emanated and, thus, giving a fresh opportunity by issuing a fresh show cause notice having fresh proceedings before the SEBI would serve no effective purpose and yet the summary of those proceedings given to us show hardly any progress. It is not as if those proceedings are anywhere near an advanced stage.

38. The impugned order of the SAT dated 18.10.2019 is predicated on

a plea of lack of adequate opportunity and there is no examination on merits. The questions, thus, arises what would be the appropriate directions to be passed since Respondent Nos.1 and 2 have to succeed in view of our aforesaid observations and what will be the nature of relegated proceedings.

39. We have already taken a view that directions passed by the SAT for the case to begin with the service of fresh show cause notices would not be an appropriate direction. In the conspectus of the factual position from the proceedings which have taken place and the legal principles discussed, we are of the view that the following directions would subserve the interest of justice and perfect the rights of the parties:

i. No fresh show cause notice is required to be served on Respondent No.1 herein and the show cause notice dated 21.6.2011 would be treated as a show cause notice to both Respondent Nos.1 and 2 herein.

ii. The documents already asked for by Respondent No.1 and 2 herein and not supplied should be supplied. In order to obtain clarity on this issue, we direct that a list of documents sought for

by either respondents be supplied to the SEBI within two weeks from the date of this order and those documents are to be supplied by SEBI within two weeks thereafter.

iii. Respondent Nos.1 and 2 herein are granted opportunity to file their reply to the show cause notice without any further delay within a period of four weeks after receiving aforementioned documents.

iv. The SEBI would thereafter proceed to give an opportunity for personal hearing both to Respondent Nos.1 and 2 herein and these proceedings are to go on, on a day-to-day basis and no request for adjournment will be entertained in this behalf from either respondents..

v. The SEBI would take a final view on the subject matter thereafter.

vi. Needless to say, if Respondent Nos.1 and 2 herein are aggrieved by the same, the remedy against the same lies before the SAT.

vii. We make it clear that all pleas as raised by Respondent Nos.1 and 2 herein would be considered by the SEBI, legal or factual including but not confined to aspects of jurisdiction. In fact, this is the very purpose of relegating the proceedings before the SEBI and not to SAT as the right of appeal is a valuable right to be exercised after adequate opportunity at the first adjudication stage level.

40. The effect of the aforesaid direction is that the order of the FMC dated 23.7.2011 has been set aside and a fresh order has to be passed. The different proceedings initiated, still pending almost at a nascent stage, are in pursuance of that order. The natural consequence, thus, would be that those proceedings would have to be kept in abeyance for the time being, till a view is taken by SEBI in pursuance of the directions passed by this order and would have to abide by the decision taken by the SEBI or in appeal arising therefrom. We clarify that were Respondent Nos.1 and 2 herein to fail in their endeavours, it will not mean that those other proceedings have to start *de novo* and can continue from the stage where they are, subject, of course, to the nature of directions passed

afresh by SEBI. Really speaking, this would not result in much of a delay considering that nothing has happened till now.

41. We, thus, dispose of the appeals with the modification of the impugned order to the aforesaid extent leaving the parties to bear their own costs and with the hope that the proceedings initiated against Respondent Nos.1 and 2 herein, at least, now see the light of the day in not too far a time ahead.

...……J.
[Sanjay Kishan Kaul]

...……J.
[Hrishikesh Roy]

New Delhi.
November 27, 2020.