

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WEDNESDAY, THE TWENTY SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

:PRESENT:

THE HONOURABLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION NO: 27055 OF 2023

Between:

1. M/s. Brightcom Group Ltd, A company incorporated under Companies Act, 1956, Having its Registered Office at 5th Floor, Fairfield by Marriott Road No. 2, Nanakramguda, Gachibowli, Hyderabad, Telangana – 500032, Represented by its Authorised Representative.
2. Mr. Suresh Kumar Reddy, S/o. M Gangi Reddy, Occ. Business, Resident of Plot No. 592, Road No. 31, Near MCR HRD, Shaikpet, Jubilee Hills, Hyderabad, Telangana-500033.

Petitioners

AND

Directorate of Enforcement, Ministry of Finance, Government of India, Hyderabad Zonal Office, 3rd Floor, Shakar Bhawan, Fateh Maidan Road, Hyderabad – 500004, Represented by its Deputy Director.

Respondent

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass an order or orders, direction or writ more particularly one in the nature of Writ of Mandamus declaring that the inquiry and investigation (through F. No. T-3/HYZO/25/2023) initiated by the Respondent against the Petitioners is arbitrary, illegal, in violation of the provisions of the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Adjudicating Proceedings and Appeal) Rules, 2000 by consequently, declare that the summons (Summon No. FEMA/SUMMON/HYZO/2023/762) dated 30.08.2023 and search and seizure operations dated 23.08.2023 are arbitrary, illegal and in violation of the provisions of the Foreign Exchange Management Act, 1999 and the Foreign Exchange Management (Adjudicating Proceedings and Appeal) Rules, 2000.

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the inquiry and investigation (through F. No. T-3/HYZO/25/2023) initiated by the Respondent against the Petitioners under the Foreign Exchange Management Act, 1999, Pending disposal of WP 27055 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Mr. Vikram Pooserla, the learned Senior Counsel appearing on behalf of Sri M. Abhinay Reddy, Advocate for the Petitioners and Assistant Government Pleader appearing on behalf of Sri Gadi Praveen Kumar (Dy. Solicitor General of India) for the Respondent, the Court made the following

ORDER:

Heard Mr. Vikram Pooserla, the learned Senior Counsel appearing on behalf of petitioners and also heard the learned Assistant Government Pleader appearing on behalf of Dy. Solicitor General of India, appearing on behalf of respondent.

The specific case of the petitioners is that there is no complaint as on date against the petitioners and further relevant provisions of law had not been followed by the respondents and they proceeded and issued press release dated 26.08.2023 and that a bare perusal of the directions of the SEBI in the order dated 22.08.2023 passed as per Sections 11(1), 11(4) and 11B(1) of the Securities and Exchange Board of India Act, 1992, also does not indicate anything as against the petitioners and therefore, the petitioners is entitled for the interim relief as sought for in the present writ petition.

PERUSED THE RECORD

RELEVANT PROVISIONS OF LAW:

Rule 2, 4 of FEMA (Adjudication Proceedings and Appeal) Rules, 2000, reads as under:

R.2. In these rules, unless the context otherwise requires— (a) "Act" means the Foreign Exchange Management Act, 1999 (42 of 1999); (b) "Adjudicating Authority" means an officer appointed by the Central Government under subsection (1) of section 16 of the Act; (c) "applicant" means an aggrieved person who makes an appeal before Special Director (Appeals) or Appellate Tribunal, as the case may be; (d) "Appellate Tribunal" means the Appellate Tribunal for Foreign Exchange established under section 18 of the Act; (e) "Form" means form appended to these rules; (f) "Section" means a section of the Act; (g) "Special" Director (Appeals) means Special Director (Appeals) appointed by the Central Government under sub-section (1) of section 17 of the Act; (h) all other words and expressions used in these rules and not defined but defined in the Act, shall have the meaning respectively assigned to them in the act.

Rule 4. Holding of inquiry (1). For the purpose of adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him. (2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed

by him. (3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorized by him. (4) On the date fixed, the Adjudicating Authority shall explain to the person proceeded against or his legal practitioner or the chartered accountant, as the case may be, the contravention, alleged to have been committed by such person indicating the provisions of the Act or of rules, regulations, notifications, directions or orders or any condition subject to which an authorization is issued by the Reserve Bank of India in respect of which contravention is alleged to have taken place. (5) The Adjudicating Authority shall, then, give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary, the hearing may be adjourned to a future date and in taking such evidence the Adjudicating Authority shall not be bound to observe the provisions of the Indian Evidence Act, 1872 (1 of 1872). (6) While holding an inquiry under this rule the Adjudicating Authority shall have the power to summon and enforce attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Authority may be useful for or relevant to the subject matter of the inquiry. (7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Authority, the Adjudicating Authority may proceed with the adjudication proceedings in the absence of such person after recording the reasons for doing so. (8) If, upon consideration of the evidence produced before the Adjudicating Authority, the Adjudicating Authority is satisfied that the person has committed the contravention, he may, by order in writing, impose such penalty as he thinks fit, in accordance with the provisions of section 13 of the Act. (9) Every order made under sub-rule (8) of the rule 4 shall specify the provisions of the Act or of the rules, regulations, notifications, directions or orders or any condition subject to which an authorization is issued by the Reserve Bank of India in respect of which contravention has taken place and shall contain reasons for such decisions. (10) Every order made under sub-rule (8) shall be dated and signed by the Adjudicating Authority. (11) A copy of the order made under sub-rule (8) of rule 4 shall be supplied free of charge to the person against whom the order is made and all other copies of proceedings shall be supplied to him on payment of

copying fee @ Rs.2 per page. (12) The copying fee referred to in sub-rule (11) shall be paid in cash or in the form of demand draft in favour of the Adjudicating Authority.”

The Judgment of the Hon’ble Supreme Court reported in (2010) 13 Supreme Court Cases 255 : 2010 SCC Online SC 1128, IN particular paragraph Nos. 22 and 23 of the said Judgment reads as under:

22. That a bare reading of the relevant provisions of the Act and the Rules makes it abundantly clear that the manner, method and procedure of adjudication are completely structured by the statute and the Rules. The authority is bound to follow the prescribed procedure under the statute and the Rules and is not free and entitled to devise its own procedure for making inquiry while adjudicating under Section 13 of the Act since it is under legislative mandate to undertake adjudication and hold inquiry in the prescribed manner after giving the person alleged to have committed contravention against whom a complaint has been made, a reasonable opportunity of being heard for the purpose of imposing any penalty. The discretion of the authority is so well structured by the statute and the Rules.

23. The Rules do not provide and empower the adjudicating authority to straightaway make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show-cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the adjudicating authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins.

Taking into consideration the above referred facts and circumstances of the case and the law laid down by the Apex Court reported in (2010) 13 Supreme Court Cases 255 : 2010 SCC Online Sc 1128 (referred to and extracted above) and the fact as borne

on record that Rule 4 of FEMA(Adjudication Proceedings and Appeal) Rules,2000, pertaining to holding of enquiry (referred to and extracted above) had not been followed by the respondent Authority since as per the Foreign Exchange Management (Adjudicating proceedings and Appeal) Rules, 2000, prior to initiating an inquiry, the Adjudicating Authority (i.e. the appointed officers of the respondent) ought to have issued a show cause notice to the petitioners, which admittedly as borne on record has not been done in the present case. It is also evident on perusal of the record that enquiry initiated by the respondents is in contravention of Section 16 of the Act which clearly mandates that the Adjudicating Authority must initiate inquiry to adjudicate a contravention of the Act or rules or regulations thereunder upon receiving a complaint in writing. In the present case, it is evident that the basis for initiation of enquiry by the respondent is the investigation by SEBI as indicated in the press release dated 26.08.2023 and no complaint is registered against the petitioners,

Taking into consideration the above referred fact and circumstances of the case and also the observations of the Apex Court in judgment dated 05.10.2010 in Natwar Singh v Director of Enforcement and another reported in 2010 (13) SCC page 255, there shall be stay of enquiry and investigation (through F.No.T-3/HYZO/25/2023) initiated by the respondent against the petitioners. under the Foreign Exchange Management Act, 1999 for a period of four(04) weeks from the date of receipt of the copy of the orders.

The learned Standing Counsel for Central Government, appearing on behalf of respondent is directed to file detailed Counter affidavit in the matter by next date of adjournment.

Post on 17.10.2023.

SD/- K. SREERAMA MURTHY
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Deputy Director, Directorate of Enforcement, Ministry of Finance, Government of India, Hyderabad Zonal Office, 3rd Floor, Shakar Bhawan, Fateh Maidan Road, Hyderabad - 500004. (by RPAD)
2. One CC to Sri M. ABHINAY REDDY, Advocate [OPUC]
3. One spare copy

HIGH COURT

SN,J

DATED:27/09/2023

POST ON 17.10.2023

ORDER

WP.No.27055 of 2023

DIRECTION

