



W.P.Nos.21096, 21100, 21102, 21105 & 21359 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.11.2023

Pronounced on : 30.11.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.21096, 21100, 21102, 21105 & 21359 of 2023
and WMP.Nos.20491, 20493, 20496, 20498, 20499,
20500, 20502, 20504, 20764 & 20767 of 2023

- 1.S.Jagathrakshakan ... Petitioner in W.P.No.21096 of 2023
- 2.J.Sundeeep Aanand
S/o.S.Jagathrakshakan ... Petitioner in W.P.No.21100 of 2023 &
... Petitioner in W.P.No.21359 of 2023
- 3.M/s.Accord Distilleries & Breweries Pvt. Ltd.,
Represented by its Director
Shri.J.Sundeeep Aanand
No.29, Tilak Street, T.Nagar
Chennai - 600 017. ... Petitioner in W.P.No.21102 of 2023
- 4.J.Sri Nisha ... Petitioner in W.P.No.21105 of 2023

Vs.

- 1.The Special Director
Adjudicating Authority
Directorate of Enforcement
Southern Region
Shastri Bhavan, III Floor, III Block
No.26, Haddows Road
Chennai - 600 006.



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2. The Assistant Director

Authorised Officer

Directorate of Enforcement

Government of India

Ministry of Finance

Department of Revenue

3rd, 4th & 5th Floor, Shastri Bhavan - C Block

No.26, Haddows Road

Chennai - 600 006.

... Respondents in all WPs

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records on the file of first respondent and quash the impugned order in F.No.T-4/SRO/SDE/CEZO-II/14/2021 dated 22.12.2021 issued under the provisions of the Foreign Exchange Management Act, 1999 and the consequential impugned corrigendum in F.No.T-4/SRO/SDE/CEZO-II/14/2021 dated 13.03.2023 issued by the first respondent as illegal.

For Petitioner : Mr.V.Raghavachari, Senior Counsel
(in all WPs) Assisted by Mr.R.Sivaraman

For Respondents : Mr.AR.L.Sundaresan
(in all WPs) Additional Solicitor General
Assisted by Mr.Rajnish Pathiyil
Special Public Prosecutor for R1 & R2



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COMMON ORDER

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The petitioners herein are a company, its directors and individuals, who among themselves are relations. They all face a single allegation that the petitioner in W.P. No.21096 of 2023 had subscribed to 70.0 lakhs shares in certain M/s.Silver Park, a Singapore based company, registered as per the laws of Singapore, and that he had later transferred those shares to his wife and two children outside India.

2. These transactions have set in motion the consequences spelt out in Foreign Exchange Management Act,1999 (in short FEMA) against them. The allegation is that the petitioner in W.P. No.21096 of 2023, inasmuch as he is an Indian citizen had held shares or to state it differently foreign securities in a Singapore based company, has contravened Sec. 4 of the Act, and inasmuch as his wife and children are transferees of those shares, who being citizens of India, and are holders of those shares also have contravened Section 4.

3.Pursuant to this, the Authorised Officer (Adjudicating Authority of Directorate of Enforcement) has moved the Competent Authority (the Commissioner of Customs) under Sec. 37A of the Act, for seizure of certain



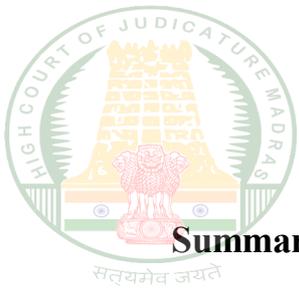
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assets of these petitioners. The Competent Authority held an enquiry under

Section 37A(3) of the Act, and came to a conclusion, vide its order dated

03.02.2021, that there is no proof that any of the petitioners have ever paid for any shares floated by M/s.Silver Park, since the company is not found to have made a call for the same. This order of the Competent Authority is now under challenge by the Enforcement Directorate, before the Appellate Authority (ATFE) constituted under Section 19 of the Act.

4. Along side the proceedings for attachment, on the same set of allegations, the Authorised Officer (this time, it is the Assistant Director of Enforcement Directorate) moved the Adjudicating Authority (the Special Director of Enforcement Directorate) under Section 16(3) of FEMA, pursuant to which a show-cause notice dated 22.12.2021 was issued to all the petitioners herein for an alleged violation of Sec.3, Sec.4 and Sec.8 and few allied Regulations. The petitioners have responded to the same. Midway through the proceedings, a corrigendum dated 13.03.2023 was issued to the show cause notice against the petitioners, and the corrigendum issued are now under challenge in all petitions.



Summary of Petitioner's Case:

WEB 5.0 The contention of the petitioners is that, when once the Competent Authority has recorded its finding in his order made under Sec. 37A that it has no material to conclude that the petitioners have violated Sec. 4 of the Act, there is no foundation for the proceedings under Sec.16 of the Act to take cognizance of the complaint which are founded on the same set of facts.

6.1 Introducing the legal framework, Mr. V. Raghavachari, the learned senior counsel appearing for the petitioners, submitted that :

- (a) The Authorised Officer has moved the Competent Authority under Sec. 37A of the Act, alleging certain contravention of Sec. 4 of the Act. To be more specific, it is all about purchase of foreign securities and transfer of money for their purchase by Indian citizens. The Competent Authority is now required to give its opinion, and under Section 37A, the Authority is required to record its reason of its satisfaction over the suspicion that Sec. 4 has been contravened, and may proceed to order seizure of the property situated within India. Now while forming this opinion, or to concretize the suspicion on the basis of the materials placed before it by the Authorised Officer, the Competent Authority did not find anything even to *prima facie*



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believe that there has been contravention to Sec.4. In particular, the Competent Authority has held that there is no movement or transfer of funds outside India.

(b) It is in this setting, after the Competent Authority has passed its order, the same Authorised Officer with the same set of allegations moved the Adjudicating Officer under Sec. 16 of the Act. So far as the procedure contemplated vis-a-vis an enquiry contemplated under Sec. 16 is concerned, it is governed by the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000. Rule 4 in particular delineates the specific procedure which the Adjudicating Authority is required to adopt. In first the stage, a show cause notice under Rule 4(1) requiring the noticee as to why an enquiry under Sec. 16 should not be commenced against him, under Rule 4(2), the noticee is expected to show cause. Now under Rule 4(3), the Adjudicating Authority is required to form an opinion after considering the cause shown by the noticee, as to whether it needs to proceed with the enquiry or to drop the same. If the Adjudicating Authority forms an opinion to proceed with the enquiry and issues a notice under Rule 4(3), then on the date so fixed, it is required to



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explain the noticee or such of his agents before him, the specific contravention enumerated under Sec. 13 with regard to which it proposes to hold an enquiry.

- (c) So far as the present case is concerned, on 03.02.2021, the Competent Authority has entered a categorical finding that there is no material to even arrive at a *prima facie* finding to hold that the petitioners have contravened Sec. 4 of the Act. Some ten months later, to be specific, on 01.12.2021, the same Authorised Officer moves the Adjudicating Authority with a complaint, making the same set of allegations, ignoring the fact that these facts were already found to have been baseless by the Competent Authority under Section 37A. Notwithstanding the same, the Adjudicating Authority issues a show cause notice dated 22.12.2021. The petitioners instead of showing cause, opted to file an application for compounding the perceived contravention of Sec. 13 before the RBI. However, during the pendency of this application for compounding, the Adjudicating Authority issued a notice dated 19.07.2022, fixing the date of hearing on 01.08.2022. There was an appearance. This is now well into stage II of Rule 4. And because at that point of



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time, the petitioners have not filed their reply to the show cause notice, the Adjudicating Authority was allowed to form opinion vis-a-vis the contravention of Section 4 of the Act, for it to invoke Sec. 13. Indeed, it may have to be highlighted that the Adjudicating Authority has formed an opinion even when it issued the show cause notice, and when it chose to invoke Section 13(2) of the Act. It is in this backdrop, the Adjudicating Authority has adjourned the hearing to 20.10.2022. On 20.10.2022, the petitioners have filed their reply to the show cause notice. It may be stated that the application for compounding is still pending with the RBI. On 20.10.2022, the petitioners' advocate was heard, and subsequently, the petitioners filed another set of arguments and the matter was then stood posted to 02.11.2022 and on that day, the Adjudicating Authority concluded the personal hearing. It is in this setting, the Adjudicating Authority would allow another four months to lapse, and came out with its Corrigendum dated 13.03.2023, wherein it required the petitioners to read the provision of FEMA referred to in the show cause notice as 'Section 13(1A) of FEMA, 1999' in the place of Sec.13(2).



6.2 Arguing further, the learned senior counsel submitted that :

WEB COPY (a) Section 13(1-A) and Section 13(2) operate in entirely two different spheres. Under Sec. 13(1-A), if the alleged violator of FEMA is found guilty in the process of adjudication, the Adjudicating Authority may impose a fine and also confiscate so much property of the one who is found guilty, and it may go upto thrice the value of the contravention made outside the country, which has been seized pursuant to Section 37A. But under Section 13(2), the Adjudicating Authority may order confiscation such of the assets of the contravener, and direct that they are either brought back to India, or order that they may remain outside India.

(b) But for both 13(1-A) and 13(2) to operate, still there must be material to suggest that there is a case for enquiry for contravention under Sec. 4. Here, when once the Competent Authority had held that there is not even *prima facie* material to hold that the petitioners have violated Sec. 4, the Adjudicating Authority should not have even formed an opinion while fixing a date for hearing under Rule 4(3), for enquiring into a non-existent violation of Section 4, which it may enquire. Inasmuch as the Authorised Officer is the one who had moved the Competent Authority under Section 37(A), he should



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not have to initiate a proceeding under Sec.16. Now, when the complaint discloses the proceedings of the Competent Authority dated 03.02.2021, the Adjudicating Authority should have allowed himself to be weighed by the reasoning of the Competent Authority. Therefore, it is plain non-application of mind on the part of the Adjudicating Authority to the materials before it.

(c) It may be that at that relevant point of time when the Adjudicating Authority issued the notice under Rule 4(3), the response of the petitioners might not have been before him, but the very fact that the proceedings of the Competent Authority was disclosed in the very complaint itself should have alerted the Adjudicating Authority in forming its opinion to hold an enquiry. And its decision to issue a corrigendum is a jewel in the crown of his fallacy.

(d) As earlier said, Sections 13(2) and 13(1-A) operate in two different areas, and when once he has already closed the personal hearing, he cannot and should not bring about the correction through the corrigendum. Indeed this itself makes it explicit that the Adjudicating Authority has not applied its mind as its belated



realisation in bringing the corrigendum indicates.

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(e) This apart, the show cause notice proceeds on the footing that both the movable and immovable properties of the petitioners were seized under Section 37A, which itself is wrong and this is yet another aspect that highlights that the Adjudicating Authority has issued the show cause notice with utter non-application of mind. Now even if the corrigendum is considered to be permissible, inasmuch as no property is seized, the Adjudicating Authority cannot confiscate it under Section 13(1-A) because under Section 13(1-A) it can confiscate only the properties seized under Section 37(A).

Reliance was placed on the authorities in *Shashank Vyankatesh Manohar Vs Union of India* [(2014) 1 MLJ 838]; *JP Morgan India (P) Ltd., Vs Special Director, Directorate of Enforcement* [(2021) 280 DLT 539]; *Siddhi Vinayak Enterprises Vs Union of India* [(2017) 354 E.L.T. 501 (Bom.)]; *Amit Sirohi Vs Directorate of Revenue Intelligence, New Delhi* [2016 (336) E.L.T.201 (Del.)]; *Pranit Hem Desai Vs Additional Director General, DGGI* [2019 (30) G.S.T.L.396 (Guj.)]; *Cauvery Iron & Steel (India) Ltd., Vs*



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Commr. of C. EX., Hyderabad [2013 (289) E.L.T.502 (Tri. - Bang.)];

WEB COPY *Commissioner of Customs, Bangalore Vs Kesar Marble & Granites* [2012

(278) E.L.T. 42 (Kar.)]; *Metal Forgings Vs Union of India* [(2003) 2 SCC

36]; *Infineon Technologies AG Vs Deputy Commissioner of Income-tax*

(International Taxation) [(2022) 141 taxxman.com 288 (Karnataka : (2022)

449 ITR 513 (Karnataka)].

Arguments for the Respondents:

7. Appearing for the Enforcement Directorate, Mr.AR.L.Sundaresan, the learned Additional Solicitor General made the following submissions:

- a) The show cause notice dated 22.12.2021 issued under Section 16 of the Foreign Exchange Management Act, in essence, alleges that the petitioner in W.P. No.21096 of 2022, on 05.06.2017 has subscribed to 70 lakhs shares in M/s.Silver Park International Pvt. Ltd, Singapore, without necessary RBI approval, towards which he is appeared to have paid SGD 70,00,000 equivalent to Rs.32,69,00,000, and thus he has contravened Sec. 3,4, 8,15 of FEMA r/w relevant Regulation of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.



WEB COPY b) Subsequently on 15.09.2018, he (the petitioner in W.P.No.21096 of 2023), had transferred 45.0 lakhs shares to his wife Anusuya, 22.5 lakhs shares to his daughter Sri Nisha, and another 2.50 lakh shares to his son Sundeep Anand. Inasmuch as both the petitioner in W.P. No.21096 of 2023 and his transferees (the petitioners in the other writ-petitions) of the aforesaid shares are citizens of India, they were served with a notice to show cause under Sec.16 read with Rule 4(1) of FEM (Adjudication Proceedings & Appeal) Rules. These allegations are mere allegations in the show cause notice, and the petitioners have responded to it. Therefore, no right of the petitioners is affected at this stage, and hence this court may not entertain these writ petitions.

c) Turning to the corrigendum dated 13.03.2022, this is based on the same set of allegations as was made in the respective show cause notices and not on any new facts. On service of the notice regarding the corrigendum on 10.04.2023, they sought a personal hearing, and it was also given to them on 12.04.2023. Thereafter, a notice/enquiry on the corrigendum was issued to the petitioners and on 01.05.2023, they did appear through their counsel. On the same day, they also presented their reply. It is in this reply, they challenged both the show-cause notices and



also the corrigendum.

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- d) The fulcrum of petitioner's argument is that inasmuch as the Competent Authority has found that no money of the petitioners had left Indian shores or passed hands vis-a-vis the acquisition of the foreign security by the petitioner in W.P. No.21096 of 2023, there is no material for initiating an adjudication-proceedings under Sec. 16. This contention is fallacious, since under the scheme of the Act, seizure of the property of any person, who is suspected to have contravened Sec. 4 of FEMA is only seized as an interim measure, and the fact that the Competent Authority constituted under Sec.37A does not find any material to *prima facie* satisfy himself that a case for seizure of the properties of a suspected person, does not *ipso facto* imply that the same can be telescoped for the purpose of adjudication under Sec. 16. Indeed as per the scheme of the Act, under Sec. 13(1A), it is the seized property that will be confiscated. In other words, any order under Section 13A is only a step in aid of final adjudication, but not an exclusion thereof. Indeed, the Enforcement Directorate has challenged this order of the Competent Authority under Section 37A(5) before the Appellate Tribunal for Foreign Exchange, and the matter is now pending.



WEB COE) So far as the inter-relation between Secs. 13(1A) and 13(2) of the Act is concerned, 13(1A) essentially enables confiscation of any property which has been seized under Sec.37-A, in the eventuality of an adjudication by the Adjudicating Authority that there has been a contravention of any of the provisions of the FEMA. Viewed thus, Section 13(1A) is merely an ancillary provision to Sec. 13(1), for other than confiscation, it literally reiterates the consequences spelt out under Section 13(1). Section 13(2) is an optional provision. In that, an Adjudicating Authority even at the point when he chooses to impose any penalty on a person facing enquiry before him under Section 13(1), can also proceed to deal with any of the assets of such person which are situated outside India. Here, the Adjudicating Authority has two choices: either he can direct such asset be brought to India, or he can pass such appropriate orders vis-a-vis retaining the property outside India on such conditions.

- f) Therefore, if the facts of the case are spread on the plane of the statutory scheme, it would become evident that what Sec. 13 spells out is the consequence, and it does not deal with the process. The sequence of the



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process that leads to Sec.13 does not alter the character of the enquiry under Sec.16, more so, when the allegation both under the show-cause notice and also for supporting the intended corrigendum are the same. Having invoked Section 37-A, implies ipso facto application of Section 13 (1A).

g) FEMA, is a complete code and the remedial fora, the Act as created should not be by-passed and that this court, may not interfere when a remedial fora are created under a fiscal statute. If the scheme of FEMA is scrutinized, any person aggrieved by the decision of an Adjudicating Authority under Sec.16 has a right of appeal to the Appellate Tribunal for Foreign Exchange under Sec. 19 and further second appeal to this court under Section 35 of the Act. When this hierarchy of forums are created by the statute which are more competent as they are equipped to hear both on facts and on law, this court may not interfere at a preliminary stage will have pernicious effect on the functionality of the statute. Reliance was made to *Rajkumar Shivhare Vs Assistant Director, Directorate of Enforcement and Another* [(2010) 4 SCC 772] and *D.Venugopal vs. Assistant Director, Directorate of Enforcement and another* [2017 SCC OnLine Kar 7001]



WEB COPY Reliance was also placed on the ratio in *United Bank of India Vs Satyawati Tondon and Others* [(2010) 8 SCC 110], *Kakinada and others Vs Glaxo Smith Kline Consumer Health Care Limited* [2020 SCC Online SC 440], and (iii) *South Indian Bank Ltd. and Others Vs Naveen Mathew Philip and Another* [2023 SCC Online SC 435].

Of Discussion & Decision:

8. The petitioners herein face an enquiry before the Adjudicatory Authority for an alleged violation of Sec.4 of FEMA. The Adjudicatory Authority in his show cause notice has indicated that they would be proceeded against under Sec.13(2) of the Act. The enquiry into this is underway. While so, the Adjudicating Authority had issued a corrigendum dated 13.03.2023, altering the provision from Sec.13(2) to Sec.13(1A) of the Act. This is under challenge, on the ground that the Competent Authority constituted under the Act had vide his proceedings dated 03.02.2021, had decided not to seize the assets of the petitioners on a finding that these petitioners did not violate Sec.4 of the Act.



9. The arguments advanced requires to be appreciated as two levels: (a)

Whether the corrigendum has affected any of the substantial rights of the petitioners; and (b) the permissibility of relying on the proceedings of the Competent Authority under Sec.37-A of the Act as affecting the authority of the Adjudicating Authority to issue corrigendum.

10. Sec. 13 of the Act merely spells out the consequence of the violation of any of the provision of the Act, which includes Sec.4 embargo on a resident Indian, which mandates that no one who is resident in India shall hold foreign exchange or foreign securities outside India. The accusation which the petitioners herein now face is that they, as citizens and residents of India, are holding shares of a foreign company, and thus they have over stepped the line of prohibition under Sec.4. If the scheme of the statute is observed, Sec.13 comes into play only in the eventuality of the Adjudicating Authority entering a finding that the petitioners are guilty of the accusation which is now under enquiry. Set in the context, the corrigendum does not introduce any new set of allegations midway through an enquiry, but only put the petitioners on notice, that in the eventuality of they being found guilty of violating Sec.4, that the Adjudicating Authority might proceed against them under Sec.13(1A) consequence. Therefore, any alteration of provision regarding the consequence



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that may visit the petitioners will not, and cannot, prejudice the petitioners vis-

WEB COPY a-vis the nature of accusation that they are now facing. Secondly, a close analysis of Sec.13 shows, it only provides a buffet of options to the Adjudicating Authority to choose from, on the course of action that the Authority may adopt when the stage is set for deciding the penal consequence of entering a finding of guilt. This situation is more akin to a Criminal Court altering a charge under Sec.216 Cr.P.C, without altering the facts constituting the accusation.

11. The petitioners have cited a list of authorities to fortify their contentions, but on a closer reading, this Court finds that their relevance is far distanced from the purpose for which they were relied on. In *Shashank Vyankatesh Manohar v. Union of India* [(2014) 1 Mah LJ 838], *J.P. Morgan India Private Limited v. Directorate of Enforcement* [(2021) 280 DLT 539], and *Pranit Hem Desai v. Additional Director General, DGGI* [(2019) 30 GSTL 396] the ratio was on the mandate of recording reasons by the Adjudicating Authority before commencing the enquiry, and this is not a point here. Indeed, the Adjudicating Authority has commenced the enquiry and the same has reached an advanced stage. As far as *Siddhi Vinayak Enterprises case*



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[(2017) 354 ELT 501] and *Amrit Sirohi case* [(2016) 336 ELT 201] are

concerned, they deal with those instances wherein the corrigendum to the show cause notice was issued by a party to the Adjudication proceedings, which in essence had the potential to interfere with the very proceedings that was commenced based on the original notice. In other words, the factual foundation itself was sought to be changed through the corrigendum in those cases, which again is not the case here.

12. In *Cauvery Iron and Steel (India) Ltd. v. CCE, Hyderabad* [(2013) 289 ELT 502] where the Court has made a distinction between mistake of law and mistake of fact, and proceeded to hold that the former could be rectified at any point of time before the final adjudication of the proceedings, and not the latter. Here since through the corrigendum only the provision of law was altered without altering the foundational facts, the petitioners cannot cry foul.

13. The basic elements of principles of natural justice requires that the petitioners are put on notice on the possible course of action in the contemplation of the Adjudicatory Authority, if the petitioners are found guilty of the violation of Sec.4 On facts, the petitioners have entered appearance for a hearing on the notice of corrigendum, and that they have began participating



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in the proceedings. They are now given an opportunity to raise their objection

before the Adjudicatory Authority. In a circumstance such as this what is the

prejudice that has visited the petitioners which warrants an interference by this court? None.

14. Here it is significant to note that the Hon'ble Supreme Court in ***Raj Kumar Shivhare Vs Assisant Director, Directorate of Enforcement*** [(2010) 4 SCC 772], has held that FEMA is a self-contained code and remedial fora, the Act as created should not be bye-passed.

15. Its now time to consider the merit of the arguments of the petitioners' counsel on the effect of the order of the Competent Authority passed under Sec.37-A of Act, releasing the properties of the petitioners from seizure. The reason which has formed the ground for the decision of the Competent Authority is that there are no materials to suggest that any money or foreign exchange has flown out of India to support the purchase of the shares in the Singapore based company. The untenability of this contention can be met in two ways:

- a) The scheme of the Act strongly suggests that any interim seizure of assets of those who may face an enquiry before an Adjudicatory



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Authority, by the Authorised Officer at the first instance followed by any order confirming it by the Competent Authority at the next level, is only intended to aid the Adjudicating Authority in fashioning Sec.13 consequences on proof of violation of any of the provisions of FEMA. It may loosely be equated to an order of interim attachment made under Order XXXVIII Rule 6 CPC. What is required to be noted is that the jurisdiction of the Competent Authority is limited to holding an enquiry as to whether the assets of those who are suspected to have violated the provision of FEMA should be seized, and it does not extend to the extent of adjudicating on the accusation of violation of any of the provisions of FEMA. The fact that the Statute has created two independent authorities, one for adjudicating on the accusation under Sec.16 read with Sec.13, and the other for deciding on the seizure of assets of those who face the accusation, does not enable telescoping the effect of the what latter may do into the power vested in the former. What if the statute had vested both the powers in the same authority? Then the power of seizure will be construed as an interim arrangement in aid of final adjudication. And, the law is settled that the reasoning of an interim order will have zero potency to impact the reasoning for a final decision. The fact, that both these powers are vested in different



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Authorities, does not make the order passed by the Competent Authority

vis-a-vis the seizure of assets any superior as to interfere with the power of adjudication of the Adjudicatory Authority. It is plainly a question on jurisdiction, and it cannot be expanded interpretatively.

- b) Secondly, if the reasoning of the Competent Authority in refusing to seize the property is considered, it focuses essentially on whether payment has been made by the petitioners for the purchase of shares in the Singapore based company, which is forbidden under Sec.3(b) of the Act. Sec.3 of the Act prohibits, (a) dealing in or transfer of any foreign exchange or foreign security to any person not being an authorised person under Sec.2(c) of the Act, or making payment to or for the credit of any person resident outside India. Sec.4, on the other hand, prohibits acquiring, holding, owning, possessing or transferring *inter alia* any foreign securities (which by definition in terms of Sec.2(o) includes shares in a company) by a resident Indian. The way statute has presented Sec.3 and Sec.4, it appears to create independent class of prohibitions. Now, if the reasoning of the Competent Authority is required to be transmitted into the adjudicatory process contemplated under Sec.16, as was canvassed by the petitioners, then it may involve a



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need to read Sec.3 into Sec.4. The permissibility of reading Sec.3 into

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Sec.4 requires to be considered independently, and the present stage is too premature for considering it. At any rate it cannot be considered in this proceedings, for, it was held in ***Raj Kumar Shivhare case*** [(2010) 4 SCC 772], FEMA is a complete Code, and it must be allowed its free space to work itself.

16. The foregoing discussion leads this Court to the only conclusion: That these petitions are not entertainable. Now it is time to resume the enquiry by the Adjudicating Authority. The petitioners will be entitled to take all such defences which they are entitled to take under law.

17. In conclusion, subject to the observations made in paragraph 16, all the writ petitions are dismissed. However, there is no order as to costs. Consequently, the connected writ miscellaneous petitions are closed.

30.11.2023.

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Index : Yes/No
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Adjudicating Authority
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N.SESHASAYEE.J.,

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