BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 8 of 2011

Date of decision: 01.06.2011

Price Waterhouse
a partnership firm registered with the
Institute of Chartered Accountants of
India bearing Registration No. 007568S
having address at 5th Floor, Tower D,
The Millennia, 1 & 2 Murphy Road,
Ulsoor, Bangalore – 560 008. ……Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. ……Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Navroz Seervai, Senior Advocate, Mr. Somasekhar Sundaresan, Mr. Farhad Sorabjee, Mr. Zerick Dastur, Ms. Sneha Sheth and Ms. Prerna Arora, Advocates for the Appellant.

Mr. Ravi Kadam, Advocate General with Mr. Shiraz Rustomjee and Mr. Mihir Mody, Advocates for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : P.K. Malhotra (for self and S.S.N. Moorthy)

The short question that arises in these two connected Appeals no. 8 and 9 of 2011 arising out of the same order is whether the appellants are entitled to the copies of the statements / documents referred to / relied upon in the show cause notice issued by the Securities and Exchange Board of India (hereinafter referred to as 'the Board') to the appellants and whether they are also entitled to cross-examine the persons whose statements are either relied upon or referred to in the show cause notice. Before we deal

with this issue, it is necessary to refer to the background in which these appeals have been filed.

2. The Board, among others, received on January 7, 2009 an email from one B. Ramalinga Raju, the then Chairman of Satyam Computer Services Limited (for short 'Satyam') revealing that statements of accounts of Satyam furnished to the stock exchanges were not true and fair. The email, *inter alia*, stated that balance-sheet of Satyam as on September 30, 2008 had inflated (non-existent) cash and bank balances of ₹ 5040 crores as against ₹ 5361 crores reflected in the books, accrued interest of ₹ 376 crores which was non-existent, understated liability of ₹ 1230 crores on account of funds arranged by him and overstated debtor position of ₹ 490 crores as against ₹ 2651 crores reflected in the books. The email also mentioned about the artificial cash and bank balances for the quarter ending September 30, 2008 and that the gap in the balance-sheet had arisen on account of inflated profits over a period of last several years. On receipt of this email, the Board ordered investigations into the affairs of Satyam in order to ascertain whether the provisions of the Securities and Exchange Board of India Act, 1992 (for short the Act) and the rules and regulations made thereunder had been violated. The Board also ordered inspection of the books of accounts of Satyam. Since Price Waterhouse, the appellant in Appeal no. 8 of 2011, was the auditor of Satyam, the Board ordered inspection of the documents that were available with the appellant also. Investigations revealed that Satyam had more than 125 bank accounts with different banks including the Bank of Baroda, New York Branch. Since the email had stated that the balances as reflected in the books of accounts were not correct, the Board sought confirmation of the balances from the banks including the Bank of Baroda, New York Branch. It transpired that there was substantial difference in the balance as per the books and the balance as per the confirmation sent by the bank. Investigations further revealed that Satyam received two sets of bank statements – daily bank statement and monthly bank statement and that the daily bank statement received through email was printed and filed in the accounts wing and the monthly bank statement was being received through internal courier from the office of Ramalinga Raju (the then Chairman of Satyam). The Board found that the debit and credit entries in the two sets of statements were

substantially different and that the books of account of Satyam were being prepared on the basis of monthly statements which were incorrect. Investigations also revealed that sales/revenue were inflated through insertion of large number of fictitious invoices raised in respect of fake customers and/or transactions and that the appellants had obtained direct bank confirmations on 13 occasions from various banks during six quarters. The bank confirmations received by the auditors from Satyam and which had been relied upon by them showed balances which were at variance with those given in the confirmations directly received from the banks. Price Waterhouse, the appellant in Appeal no.8 of 2011 is a partnership firm registered with the Institute of Chartered Accountants of India (ICAI) with its office in Bangalore and it was the auditor of Satyam from April 1, 2000 to September, 2008. S. Gopalakrishnan, a partner of the firm had certified the audit reports for the period from April, 2000 to March, 2007 and Srinivas Talluri, another partner of the firm had certified the audit report(s) for the period from April, 2007 to September, 2008. Since the inaccurate financial results of Satyam were being published quarter after quarter, this, according to the Board, distorted the decision of millions of investors and induced them to trade in the securities of Satyam. It is, therefore, alleged that the appellant had not properly audited the financial statements of Satyam and there was no reasonable basis for the opinion expressed by it in its report in view of the serious irregularities. The financial statements presented, did not present fairly and accurately the financial position of Satyam which was manipulated and false. It is further alleged that the appellant did not maintain control over the process of sending and receiving confirmations, ignored the differences between the two sets of confirmations and the discrepancies in the indirect confirmation, did not make any examination or enquiry in this regard in violation of stipulated norms and practices which indicates its complicity or acquiescence in misreporting and manipulating the books of accounts of Satyam. It is further alleged that the appellant is liable to be treated as having participated in the fraud perpetrated by Ramalinga Raju, Chairman of Satyam and others or as having aided and abetted the same. Accordingly, the appellants were asked to show cause as to why appropriate action should not be taken against them under Section 11 and 11B of the Act and Regulation 11 of the Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short the FUTP Regulations).

3. The appellants replied to the show cause notices and *inter alia* raised the point of jurisdiction of the Board to proceed against the appellants who are members of the Institute of Chartered Accountants of India and are regulated by the provisions of the Chartered Accountants Act, 1949. According to the appellants, the Board lacked inherent jurisdiction to enquire into the conduct of the appellants who are professional chartered accountants. The appellants filed writ petitions no.5249 and 5256 of 2010 before the High Court of Judicature at Bombay challenging the show cause notices issued by the Board. The said writ petitions were rejected by the High Court by its judgment dated August 13, 2010 holding *inter alia* that the Board has power under the Act to take regulatory measures in the matter of safeguarding the interest of investors and securities market and in order to achieve the same, it can take appropriate remedial steps which may include keeping a person including a chartered accountant at a safe distance from the securities market. The relevant portions of the said judgment are reproduced for facility of reference:-

> "It cannot be said that in a given case if there is material against any Chartered Accountant to the effect that he was instrumental in preparing false and fabricated accounts, the SEBI has absolutely no power to take any remedial or preventive measures in such a case. It cannot be said that the SEBI cannot give appropriate directions in safeguarding the interest of the investors of a listed Company. Whether such directions and orders are required to be issued or not is a matter of inquiry. In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market. So far as the role of Auditors is concerned, it is a very important role under the Companies Act. As posited in Section 227 of the Companies Act, every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the Company, whether kept at the head office of the company or elsewhere, and shall be entitled to require from the officers of the Company such information and explanations as the auditor may think necessary for the performance of his duties. The auditors in the Company are functioning as statutory auditors. They have been appointed by the shareholders by majority. They owe a duty to the shareholders and are required to give a correct picture of the financial affairs of the Company. It is not uncommon nowadays that for financial gains even small investors

> are investing money in the share market. Mr. Ravi Kadam has rightly pointed out that there are cases where even retired persons are investing their retirel dues in the purchase of shares and ultimately if such a person is defrauded, he will be totally ruined and may be put in a situation where his life savings are wiped out. With a view to safeguard the interests of such investors, in our view, it is the duty of the SEBI to see that maximum care is required to be taken to protect the interest of such investors so that they may not be subjected to any fraud or cheating in the matter of their investments in the securities market. Normally, an investor invests his money by considering the financial health of the Company and in order to find out the same, one will naturally would bank upon the accounts and balance-sheets of the Company. If it is unearthed during inquiry before SEBI that a particular Chartered Accountant in connivance and in collusion with the Officers/Directors of the Company has concocted false accounts, in our view, there is no reason as to why to protect the interests of investors and regulate the securities market, such a person cannot be prevented from dealing with the auditing of such a public listed Company. In our view, the SEBI has got inherent powers to take all ancillary steps to safeguard the interest of investors and securities market. The powers conferred under various provisions of the Act are wide enough to cover such an eventuality and it cannot be given any restrictive meaning as suggested by the learned counsel for the petitioners. It is the statutory duty of the SEBI to see that the interests of the investors are protected and remedial and preventive measures are required to be taken in this behalf."
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> ……..
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> "In a given case, if there is prima facie evidence in connection with the conduct of a Chartered Accountant such as fabricating the books of accounts, etc., the SEBI can certainly give appropriate direction not to utilize the services of such a Chartered Accountant in the matter of audit of a listed Company. At this stage we would like to put a word of caution that these observations have been made by us only with a view to find out whether SEBI lacks inherent jurisdiction and it should not mean that this Court has expressed any opinion regarding the conduct of a particular Chartered Accountant involved in the case. However, in order to find out whether there is total lack of jurisdiction or whether SEBI has jurisdiction to adjudicate the matter and in order to examine this question that these observations have been made by us. Since the inquiry has not commenced, we have merely confined ourselves to the allegations made in the show cause notices to find out as to whether SEBI has jurisdiction to proceed further with the inquiry and nothing more. However, on conclusion of inquiry, if no evidence is available regarding fabrication and falsification of accounts, etc., then naturally SEBI cannot give any direction in any manner and ultimately its jurisdiction will depend upon the evidence which may be available in the inquiry and SEBI has to decide as to whether any directions can be given on the basis of available evidence on record. In our view, such a question is required to be considered only after the evidence is available during the enquiry but surely it cannot be said that SEBI has no power even to inquire about the same and that on the face of it the jurisdiction is barred, as submitted by the learned counsel for the petitioners."

It is seen from the records that before approaching the Hon'ble High Court challenging the jurisdiction of the Board to initiate action against the appellants under the Act, the appellants had made certain requests for copies of documents and statements of witnesses relied upon by the Board in the show cause notice and the Board had responded thereto.

After the High Court order was passed, another application dated November 22, 2010 was filed on behalf of the appellants to the Board requesting for statements of certain persons recorded by the Board during investigations and also requesting for cross-examination of certain witnesses whose statements have been relied upon. The said application is reproduced hereunder for easy reference:-

> "1. The Applicant refers to the Show Cause Notice dated February14, 2009 and Supplementary Show Cause Notice dated February 19, 2010 (collectively, "the Show Cause Notices") issued by Securities and Exchange Board of India ("SEBI").
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> 2. As already mentioned in the replies dated August 10, 2009 and April 26, 2010, the conclusions arrived by SEBI in the Show Cause Notices are largely based on and rely upon statements of certain persons. The Applicant has sought to examine/cross-examine the persons whose statements are basis of the allegations against the Applicant. In order to enable the Applicant to meet the charges leveled against the Applicant, cross-examination of the following persons is requested:
>
> (a) Shri Ramalinga Raju, former Chairman, Satyam;
> (b) Shri Rama Raju, former Managing Directing, Satyam;
> (c) Mr. Vadlamani Srinivas, former Senior Vice President and Chief Financial Officer; and
> (d) Mr. G. Rama Krishna, former Vice President (Finance), Satyam
> (e) Please also note that the Show Cause Notice dated February 14, 2010 refers to and relied upon statements made by various undisclosed persons in paragraphs 3.1.3.1, 3.1.3.2, 3.1.4.9, 3.1.4.10, 3.2.2 and 3.3.1. We now call upon you to disclose the identity of the persons whose statements are so referred to and relied upon against the Applicant and also keep these persons present and available for cross-examination.
>
> 3. The above list is a preliminary list of persons that the Applicant believes it needs to cross-examine. The Applicant reserves the right to add, supplement or modify the above list as may be required.
>
> 4. Statements of the following persons have been recorded by SEBI and have been sought to be interpreted and relied upon in the Show Cause Notices and the Applicant seeks the right to examine/cross-examine the said persons:
>
> (a) Mr. Srinivas Talluri, PW partner
> (b) Mr. C. H. Ravindranath, PW engagement team
> (c) Mr. P. Siva Prasad, PW engagement team
> (d) Mr. Prekki Srinivasa Sudhakar, PW engagement team
> (e) Ms. Madduri Negi Venkata Gayatri, PW engagement team
> (f) Mr. Samvit Durga, PW engagement team
> (g) Mr. Girish Bala Kishore Tallam, PW engagement team
> (h) Mr. N. Ramu, PW engagement team
> (i) Shri V.V. K. Raju, Senior Vice President (Finance), Satyam;
> (j) Shri Srinivas Kishan Anapu, head of Internal Information Systems, Satyam;
>
> 5. You will appreciate that the refusal to grant examination / cross examination of all these persons would result not only in a denial of natural justice but to a denial of a fair trial now interpreted by

the Supreme Court as being a facet of the right to life under Article 21 of the Constitution. Needless to say, this would severely impair and prejudice the ability of the Applicant to defend itself in the proceedings before SEBI.

6. It is therefore prayed that the persons referred to in paragraphs 2 and 4 above be made available for examination / cross-examination with sufficient prior intimation to us of all the individuals you intend to produce. We may state that we do not expect you to produce/make available all the persons referred to in paragraphs 2 & 4 above at one and the same time for examination / cross-examination. Equally this request must not be understood to mean that we insist on examination / cross-examination of the aforesaid persons in any particular order of priority."

The whole time member of the Board disposed of the said application by his order dated December 15, 2010 wherein he accepted the request of the appellants for cross-examination of some of the witnesses and making available some of the documents but rejected the requests in respect of others. It is against this order of the whole time member that the appellants have come up in appeal before us. Learned counsel for the appellants has placed on record a note indicating the status with regard to each of the requests which is not disputed by learned counsel for the respondents and is reproduced hereunder:-

"The infirmities in the Impugned Order can be classified into the following categories:-

a) statements of persons denied; cross-examination too denied:

Mr. Ramalinga Raju	Paragraph 14(a) – Page 31, Appeal Paperbook
Mr. Rama Raju	Paragraph 14(b) – Page 32, Appeal Paperbook
Mr. Vadlamani Srinivas	Paragraph 14(b) – Page 32, Appeal Paperbook

b) statements not given; cross examination allowed but curtailed – restricted to such portions of the statement which in the opinion of SEBI are prejudicial:

Mr. G. Ramakrishna	Paragraph 14(c) – Page 32, read with Paragraph 18(b) – Page, 38, Appeal Paperbook
Mr. Venkatapathi Dhantuluri	Paragraph 14(d)(iii) – Page 33, read with Paragraph 18(b) – Page, 38, Appeal Paperbook

c) statements relied upon in the SCN and provided; cross-examination refused:

Mr. Srinivas Talluri	Paragraph 14(e)(i) – Page 34
Mr. C.H. Ravindranath	Paragraph 14(e)(ii) – Page 34
Mr. P. Siva Prasad	Paragraph 14(f) – Page 36
Mr. N. Ramu	Paragraph 14(g) – Page 36

d) statements relied upon in the SCN and provided; cross examination curtailed – restricted to such portions of the statement which in the opinion of SEBI are prejudicial:

Mr. P.S. Sudhakar	Paragraph 14(e)(iii) – Page 34
Ms. M. Gayatri	Paragraph 14(e)(iv) – Page 35
Mr. Samvit Durga	Paragraph 14(e)(v) – Page 35
Mr. Girish Tallam	Paragraph 14(e)(vi) – Page 35
Mr. V.V.K. Raju	Paragraph 14(h) – Page 36
Mr. Anapu	Paragraph 14(i) – Page 36

e) statements of undisclosed persons relied upon in the SCN; cross examination denied – Impugned Order does not disclose the identities.

For example, Mr. Venkatapathi Dhantuluri referred to in (b) above is one such undisclosed person, whose identity came to light in the Impugned Order, for the first time."

4. Mr. Janak Dwarkadas, senior counsel in Appeal no. 8 of 2011 and Mr. Navroz Seervai, senior counsel in Appeal no. 9 of 2011 vehemently argued that the impugned order is in breach of principles of natural justice in as much as there is absolute denial of opportunity to cross-examine the witnesses. Reference has been made to the statement made by Ramalinga Raju Chairman, Rama Raju, Managing Director and Vadlamani Srinivas CFO of Satyam but cross-examination of these witnesses has been denied. It is further alleged that in respect of G. Ramakrishna and Venkatapathi Dhantuluri, although the statements have been provided, the whole time member has allowed only restricted cross-examination which is against the principles of natural justice and fair play in action. The show cause notice also refers to the statements of Srinivas Talluri, C.H. Ravindranath, P. Siva Prasad and N. Ramu but their cross-examination has been denied by the whole time member. It is further alleged that there is reference in the show cause notice to the statements of undisclosed persons but, in spite of request made to the whole time member, neither the identity of these persons has been disclosed nor their statements have been made available. It was further argued that in terms of the High Court judgment, referred to above, the jurisdiction of the Board to investigate the matter is restricted only to find out whether the appellants had connived with Ramalinga Raju and its associates in manipulating the accounts/audit report. It will be impossible for the appellants to defend themselves if they are denied access to the statements or are not allowed cross-examination of the witnesses on whose statements the case of the Board is based. It was argued that the whole time member of the Board, while conducting an enquiry, is discharging quasi judicial functions and, therefore, he is bound to follow the

procedure prescribed for trial of action in Courts although he is not bound by the strict rules of evidence. The persons against whom a charge is made should know the evidence which is given against them so that they might be in a position to give their explanation. Mr. Seervai learned senior counsel for the appellants in Appeal no. 9 of 2011 further argued that so far as his clients are concerned they are not involved in the case at all. Each office of the Price Water House is an independent partnership firm registered under the relevant laws of the State in which their office is situated. It was the Banglore office of the Price Water House, an independent partnership, which was assigned the work of auditing by the Satyam. The whole time member, while passing the order, has not dealt with this aspect of the matter and has rejected the argument without recording any reasons. He, therefore, argued that the whole time member has grossly erred in issuing show cause notice to other offices of the Price Water House which are independent entities vis-a-vis Price Water House, Bangalore. On the issue of right to cross-examination, learned counsel for the appellants have relied on the following judgments:-

I. Necessity and importance of cross-examination:-

1) State of Mysore v. Shivabasappa AIR 1963 SC 375 (paras 3, 6 and 9)
2) Meenglas Tea Estate v. Workmen AIR 1963 SC 1719 (para 4)
3) Bareilly Electric Supply Co. v. Workmen AIR 1972 SC 330 (para 14)
4) New India Assurance Co. Ltd. v. Nusli Neville Wadia & Anr. AIR 2008 SC 876 (paras 44-46)
5) Bharat Jayantilal Patel v. Securities and Exchange Board of India Appeal no. 126 of 2010 (para 7)
6) B. Surinder Singh Kanda v. Government of the Federation of Malaya 1962 PC 322 (page 337)
7) K. L. Tripathi v. State Bank of India AIR 1984 SC 273 (paras 30-34, 39 and 41)
8) A. K. Roy v. Union of India AIR 1982 SC 710 (para 99)
9) Noor Aga v. State of Punjab and Another, (2008) 16 SCC 417 (para 113)
10) A. K. Dutta v. Union of India (1978) II LLJ Cal 337 (para 5)
11) Middolla Harijana Thimmaiah v. State of A. P. 2005 (1) ALD (Cri) 286 (paras 27-28)
12) S. J. Chaudhary v. CBI (2009) DLT 673 (DB) (para 103)

II. Inspection of relevant documents and statements :-

1) State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623 (paras 6, 8 and 10)
2) Kashinath Dikshita v. Union of India & Ors. 1986 3 SCC 229 (para 12)
3) State of Uttar Pradesh v. Mohd. Sharif 1982 2 SCC 376 (para 3)
4) State of Punjab v. Bhagat Ram 1975 1 SCC 155 (paras 3, 4 and 7)
5) State of Uttar Pradesh v. Shatrughan Lal 1998 6 SCC 651 (paras 9 and 10)
6) Tirlok Nath v. Union of India 1967 SLR 759 (SC) (page 764)
7) M. L. Sethi v. Shri R. P. Kapur AIR 1972 SC 2379 (para 5)
8) M. S. Naina v. Collector of Customs, West Bengal 1975 TAX LR 1351 (para 11)

9) M/s. Kishandchand Chellaram v. IT Commissioner, Bombay AIR 1980 SC 2117 (paras 6 and 7)
10) Dhakeswari Cotton Mills Ltd. v. CIT AIR 1955 SC 65 (paras 9 and 10)
11) State of Uttar Pradesh v. Saroj Kumar Sinha 2010 2 SCC 771 (paras 31-39)

III. Manner of recording evidence :-

1) Bipin Shantilal Panchal v. State of Gujarat & Ors. (2001) 3 SCC 1 (paras 12-15)

IV. Meaning of evidence:-

1) Smt. Shivrani v. Suryanarain 1994 CriLJ 2026 (para 4, 6-7 and 11)
2) Rakesh v. State of Haryana 2001 6 SCC 248 (paras 4, 10, 13)

V. An unfair trial cannot be cured by a fair appeal:-

1) Institute of Chartered Accountants of India v. L. K. Ratna & Ors. (1986) 4 SCC 537 (paras 17 and 18)
2) Leary v. National Union of Vehicle Builders 1970 2 AII ER (page 720)
3) Swadeshi Cotton Mills v. Union of India AIR 1981 SC 818 (para 92)

VI. A judge must be unbiased:-

1) Jones v. National Coal Board 1957 2 QB 55 (page 4)
2) Union of India v. R. Gandhi (2010) 11 SCC 1 (para 46, 49, 101-102 and 108-110)

5. Mr. Ravi Kadam learned Advocate General, who appeared on behalf of the respondent Board supported the order passed by the whole time member and argued that a selected cross-examination with only some witnesses whose statements have been recorded and relied upon is permissible in law and does not constitute violation of principles of natural justice. It was further argued by him that unless the appellants can point out the prejudice caused to them, the permission/refusal to supply documents specifically obtained in the course of the investigation though relevant to the enquiry, but not specifically relied upon by the Board in the show cause notice or the supplementary show cause notice to make their case against the appellants does not vitiate the enquiry. It was further submitted by him that deliberately withholding the documents which have not been relied upon by the Board in the show cause notice would not constitute a breach of natural justice and would not vitiate the proceedings. He forcefully argued that the Board is entitled to refuse cross-examination of the witnesses if no prejudice is caused to the appellant. He also made a reference to the judgment of the Bombay High Court in the case referred to above, and submitted that jurisdiction of the Board in the present case would depend on the evidence available on record and relied upon in the show cause

notice. In support of his contentions, learned Advocate General has relied on the following judgments:-

1) Transmission Corpn. Of A. P. Ltd. 7 Ors. Vs. Sri Ramakrishna Rice Mills 2006 3 SCC 74.
2) Krishna Chandra Tandon v. The Union of India 1974 4 SCC 374.
3) Dr. Mahachandra Prasad Singh v. Hon. Chairman, Bihar Legislative Counsil & Ors. 2004 8 SCC 747.
4) Kishanlal Agarwalla v. Collector of Land Customs AIR 1967 Cal 80
5) State of Tamil Nadu v. Thiru KV Perumal AIR 1996 SC 2474, 1996 5 SCC 474
6) State of Uttar Pradesh & Ors. v. Ramesh Chandra Mangalik 2002 3 SCC 433, AIR 2002 SC 1241.
7) State of Andhra Pradesh & Ors. v. Nagam Chandrasekhara Lingam & Ors. AIR 1998 SC 1309, 1988 3 SCC 534
8) Kanungo & Co. v. Collector of Customs & Ors. AIR 1972 SC 2136, 1973 2 SCC 438
9) Haryana Financial Corporation & Anr. V. Kailash Chandra Ahuja 2008 9 SCC 31.
10) Chandrama Tewari v. Union of India AIR 1988 SC 117, 1997 Supp (1) SCC 518
11) K. L. Tripathi v. State Bank of India, AIR 1984 SC 273

6. We have gone through the judgments cited by both the parties and will be dealing with them as and when it becomes necessary while dealing with their arguments. At the outset, let us make it clear that we do not normally interfere at the stage of enquiry for two reasons, namely; (i) it delays the enquiry process and (ii) any observations made by us for or against either party may prejudice the proceedings. But in the instant case, it has become necessary to intervene because the violation of principles of natural justice is writ large on the face of the impugned order. We may also make it clear that we are not intending to make any observations on the merits of the enquiry proceedings in this appeal which will be looked into by the whole time member at the time of inquiry. Therefore, our observations in this order are confined only to the legality of the procedure adopted by the whole time member while holding the inquiry.

7. After hearing learned counsel on both sides and having perused the record, we are of the considered view that there has been violation of principles of natural justice in not allowing cross-examination of the witnesses whose statements are being relied upon in the show cause notice and also in not making available copies of the statements which have been relied upon by the Board in issuing the show cause notice. The Board issued show cause notice in exercise of powers under sections 11 and 11B of the Act to the appellants to show cause as to why directions should not be issued prohibiting them from

issuing certificate regarding compliance of obligations of listed companies and/or restraining them from accessing the securities market. Before the rival contentions of the parties are examined, it is necessary to refer to the provisions of Section 11 and 11B of the Act.

> "11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
> (2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for-
>
> (a) regulating the business in stock exchanges and any other securities markets;
> (b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
> [(ba) registering and regulating the working of the depositories [, participants], custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;]
> (c) registering and regulating the working of [venture capital funds and collective investment schemes], including mutual funds;
> (d) promoting and regulating self-regulatory organizations;
> (e) prohibiting fraudulent and unfair trade practices relating to securities markets;
> (f) promoting investors' education and training of intermediaries of securities markets;
> (g) prohibiting insider trading in securities;
> (h) regulating substantial acquisition of shares and take over of companies;
> (i) calling for information from, undertaking inspection, conducting inquiries and audits of the [stock exchanges, mutual funds, other persons associated with the securities market], intermediaries and self-regulatory organizations in the securities market;
> [(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;]
> (j) performing such functions and exercising such powers under the provisions of [***] the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;
> (k) levying fees or other charges for carrying out the purposes of this section;
> (l) conducting research for the above purpose;
> [(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]
> (m) performing such other functions as may be prescribed.

(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under [clause (i) or clause, (ia) of sub-section (2) or sub-section (2A)], the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
(ii) summoning and enforcing the attendance of persons and examining them on oath;
(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;]
[(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);
(v) issuing commissions for the examination of witnesses or documents.

(4) Without prejudice to the provisions contained in sub-section (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry., namely:-

(a) suspend the trading of any security in a recognised stock exchange;
(b) retrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;
(d) impound and retain the proceeds or securities in respect of any transactions which is under investigation;
(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of eth first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder :
Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;
(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation :

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :
Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.
……..
Board to regulate or prohibit issue or prospects, offer document or advertisement soliciting money for issue of securities.

11B. Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,-

(i) in the interest of investors, or orderly development of securities market; or
(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or
(iii) to secure the proper management of any such intermediary or person, it may issue such directions,-
  (a) to any person or class of persons referred to in section 12, or associated with the securities market; or
  (b) to any company in respect of matter specified in section 11A, as may be appropriate in the interests of investors in securities market."

A perusal of the aforesaid provisions shows that the Board is enjoined with the duty of protecting the interest of investors in the securities market and to promote the development of and regulate the securities market by such measures as it thinks fit. Sub-section (2) of Section 11 provides that Board may undertake various measures as provided under clause (a) to (m). Sub-section (3) of Section 11 provides the enabling power of the Board like that of a civil court under the Code of Civil Procedure for trial of the suit is respect to discovery or production of books of account etc. summoning and enforcing the attendance of person and examining them on oath and inspection of any books or register or other documents etc. Section 11B of the Act provides that when the Board is satisfied that it is necessary in the interest of investors or orderly development of securities market or to prevent the affairs of any intermediary or other persons or to secure the proper management of any such intermediary or person, the Board may issue such directions to any person or class of persons or to any company in respect of the matters specified in Section 11A of the Act. A dispute was raised by the appellant

challenging the powers of the Board to initiate proceedings against them under sections 11 and 11B of the Act which has been negatived by the High Court by its order dated 31.08.2010 making it clear that under section 11B, powers have been conferred on the Board to give appropriate directions even to any person or class of persons referred to in Section 12 or associated with the securities market. The powers available to the Board under that Act are to be exercised in the interest of investors and in the interest of securities market. In order to safeguard the interest of investor or interest of securities market, the Board is entitled to take all ancillary steps and measures to see that the interest of investors is protected. Any inquiry that is to be conducted before issuing a direction in terms of Section 11 and 11B of the Act must comply with the bare minimum principles of natural justice. When a fact is sought to be established on the basis of the statement of a person which is refused by the delinquent, the latter has a right to cross examine the person whose statement is sought to be relied upon. This is the bare minimum requirement of the principles of natural justice which needs to be complied with in all quasi-judicial proceedings that are conducted by the Board.

8. The Rules of natural justice have been stated and restated a number of times by the academics, jurists, courts and by the quasi judicial authorities. These rules, *inter alia*, provide:-

a) An authority should decide, only, if it hears;
b) It cannot be a judge in its own cause;
c) A party should have an opportunity of adducing evidence on which it relies; the evidence of his opponent should not be taken on his back and he should be given a right of cross-examination; and
d) The authority itself should not produce evidence on the basis of which the matter is decided.

These rules are required to be followed not only by the Tribunals but also by the administrative authorities and bodies conducting enquiries. The charges against the delinquent should be made known to him, the authority should listen to him, give him a fair chance to contradict any statement prejudicial to him and offer a fair opportunity to adduce evidence in his favour. The witnesses appearing against him should be examined in his presence and he should be permitted to cross-examine them. The question whether in any particular case, these rules have been violated can be answered in the context of that case, the statutory provisions and the material circumstances brought to the notice of

the competent authority. The principles of natural justice know no exclusionary rule dependent on whether it would have made any difference if these had been observed.

9. Learned counsel on both sides have not disputed the legal position that certain principles had remained relatively immutable in our jurisprudence. One of these is that where action by an authority seriously injures an individual and the reasonableness of the action depends on fact findings, the evidence used to prove the case must be disclosed to the individual so that he has an opportunity to show that it is untrue. In this background the question that arises for consideration in this case is whether the right of cross examination is an integral part of the principles of natural justice. This has been answered by the Apex Court in a number of decisions cited by both parties and we would like to refer to one such decision in the case of **A.K. Roy vs. Union of India AIR 1982 SC 710**. This is a case which relates to preventive detention. Although, in the facts of the case, the accused was not allowed to cross examine the witnesses who made statements against him in the case, the Apex Court discussed the law relating to the right of cross examination and observed as under:-

> "The principle that witnesses must be confronted and offered for cross-examination applies generally to proceedings in which witnesses are examined or documents are adduced in evidence in order to prove a point. Corss-examination then becomes a powerful weapon for showing the untruthfulness of that evidence."

It will thus be seen that when an enquiry is conducted by an authority against an individual visiting civil consequences, it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The rules of natural justice are required to be observed to ensure that not only justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that the delinquent is treated fairly in proceedings which may culminate in imposition of a civil liability. In a case reported as **Kashinath Dikshita vs. Union of India (1986) 3 SCC 229**, the Apex Court was considering the importance of access to documents and statement of witnesses to meet the charges in an effective manner in disciplinary proceedings against a government servant. The court observed as under:-

> "10. …. When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to

> him. In the absence of such copies, how can the employee concerned prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: 'What is the harm in making available the material?' and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

The said observations have been quoted with approval in a later decision of the Supreme Court in the case of State of **Uttar Pradesh vs. Saroj Kumar Sinha (2010) 2 SCC 772**. The Apex Court has further dealt with the argument that no prejudice has been caused to the appellant in the following words:-

> "12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

The above observations of Hon'ble Supreme Court squarely apply to the facts and circumstances of the case under consideration. Non-disclosure of documents and refusing cross-examination of the witnesses whose statements are being relied upon causes prejudice to the case of the appellants and is a clear denial of reasonable opportunity to submit plausible and effective rebuttal to the charges being enquired into.

10. We would also like to refer to the judgment of the Hon'ble Supreme Court in the case of **K.L. Tripathi vs. State Bank of India AIR 1984 SC 273** where the Apex court has quoted with approval extract from Wade on Administrative law (Fifth Edition on page 472-475) stating that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to their scope and extent. Everything

depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory provisions, must always be in conformity with the scheme of the Act and with the subject-matter of the case. It is further observed that in the application of the concept of the fair play there must have been real flexibility. The requirement of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the authority is acting and the subject-matter to be dealt with. In **Bareilly Electric Supply Co. vs. Workmen AIR 1972 SC 330**, this is what the learned Judges have held:-

> "the application of the principles of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no material can be relied upon and to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used."

The scope of the rules of natural justice has also been summarized by M P Jain in his book on Administrative Law (1994 Edition) in the following words:-

> "The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause *(Nemo debet esse judex propria causa)*, and (2) no decision shall be given against a party without affording him a reasonable hearing *(audi alteram partem)*. Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala*, the rules of natural justice are not embodied rules. **What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some**

> **principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case**…" (emphasis supplied)

In the case of **Ravi S. Naik vs. Union of India AIR 1994 SC 1558**, the Apex Court had observed that the principles of natural justice have an important place in administrative law. They have been defined to mean "fair play in action". An order of an authority exercising judicial or quasi-judicial functions passed in violation of principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error. That is the reason why, in spite of finality imparted to the decision of the Speaker / Chairman by paragraph 6(1) of the Tenth Schedule of the Constitution, such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. **The Apex Court has observed that while applying the principles of natural justice it must be borne in mind that they are not immutable but flexible and they are not cast in a rigid mould and they cannot be put in legal straight jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case** (emphasis supplied). There are catena of decisions on the aforesaid subject and the law settled on the point. The ingredient of principles of natural justice vary from facts of each case and there cannot be any straight jacket formula.

11. Let us now examine the show cause notice issued to the appellant in the background of the aforesaid legal proposition. Admittedly, there is reference to the statements of Rama Raju and Vadlamani Srinivas in the show cause notice. In the impugned order, cross-examination of these persons has been denied. It is interesting to note that cross-examination of G. Ramakrishna and Venkatapathi Dhantuluri has been allowed by the impugned order but copies of their statements had been denied. We fail to understand how can there be an effective cross-examination without the statement being made available to the appellant which have been recorded behind their back. Admittedly, the allegations in the show cause notice are supported by the statements of Srinivas Talluri, C.H. Ravindranath, P. Siva Prasad and N. Ramu but their cross-examination has been refused. In respect of P.S. Sudhakar, M. Gayatri, Samvit Durga, Girish Tallam, V.V.K. Raju and Anapu, a restricted cross-examination has been allowed. We fail to

understand how the whole time member of the Board can restrict the cross-examination even before examination-in-chief of these persons. Such a right is available only after the examination-in-chief is over and that too under limited circumstances as laid down by the Apex Court in the case of **Bipin Shantilal Panchal vs. State of Gujarat (2001) 3 SCC 1**. A three Judges Bench, which heard the case, observed that whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence, the trial Court can make a note of such objections and mark the objected document tentatively as an exhibit in the case subject to such objections to be decided at the last stage in the final judgment. If the Courts find at the final stage that the objection so raised is sustainable, the Judge or Magistrate can keep such evidence excluded from considerations. This judgment has been followed by the Court in **State vs. Navjot Sandhu (2003) 6 SCC 641. Again in Boman P. Irani vs. Manilal P. Gala AIR 2004 Bombay 123**, it has been held by the Bombay High Court that these observations of the Supreme Court do not restrict the ratio to proceedings in criminal cases but it equally apply to civil cases also. By allowing restricted examinations in the impugned order even before the examination-in-chief, the whole time member has not only violated the principles of natural justice, but also acted contrary to law laid down by the Apex Court.

12. Learned Advocate General appearing on behalf of the Board has tried to justify the limited cross examination and non supply of certain statements to the appellants and relied on certain judgments referred to above. We do not find ourselves in agreement with the submissions made by him in this regard. The judgments relied upon by him were given on different facts and justified the stand taken in the facts and circumstances of those cases and not in the facts and circumstances of the present case. Let us look at some of the judgments cited on behalf of the respondents. In the case of **Transmission Corporation (2006) 3 SCC 74**, the inquiry was into alleged pilferage of electricity which was based on the report of disinterested officers of the department. Hence the Court held that it could not be laid down as a rule of universal applications that whenever the statements of departmental officers were pressed into service for the purpose of adjudications a right of cross examination is inbuilt. In **K.C. Tandon's case (1974) 4 SCC 374**, the Court rejected the plea of denial of natural justice as the inspection of records and copies of documents were denied to the appellant and the Inquiry Officer has

not relied upon those documents. In the case of **Dr. Mahochandra Prasad Singh (2004) 8 SCC 747**, the Court rejected the plea of denial of natural justice as order was passed on the basis of admitted facts. None of the judgments cited on behalf of the respondents deal with a case where the Court might have upheld limited cross-examination or denial of documents or refusal to cross examine the witnesses where the accusation is based on statements of witnesses or documents referred to or relied upon in the show cause notice.

13. The foundation of the show cause notice in the case under consideration is the statements of witnesses which have been referred to and relied upon in the show cause notice and in case the appellants are not allowed copies of the statement and cross-examination of the witnesses relied upon in the show cause notice, it will lead to gross violation of the principles of natural justice. It is an elementary principle of law that a person who is required to answer the charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. He must also be given a chance to rebut the evidence led against him. For the reasons stated above, we answer the question formulated in the opening part of the order in the affirmative.

14. Let us now deal with the argument of Mr. Seervai, learned senior counsel for the appellant in appeal no. 9 of 2011 that his clients are not involved in the case at all and that the audit of Satyam was conducted by the Bangalore office of the Price Waterhouse, an independent partnership firm and has nothing to do with appellants in appeal no. 8 of 2011. We find that similar arguments was advanced before the Bombay High Court also in the case referred to above. The Court has not given any decision on the issue. The reason seems to be that the Court was dealing with the preliminary objections with regard to the jurisdiction of the Board to conduct an inquiry against the chartered accountants who conducted audit of accounts of Satyam which were found to be deficient in accordance with laid down norms. Here, we are concerned with the basic issue of principles of natural justice to be followed by the whole time member of the Board while conducting an inquiry. We are not going into the merits of the case at all. It will, therefore, be appropriate for the appellants to put up their defence before the whole time

member of the Board and let him decide the issue on the basis of material / evidence that may be placed before him. If the appellants find themselves aggrieved by the order that may be passed by the Board they are free to avail the legal remedies available to them.

15. We may now deal with another argument of learned counsel for the appellants that they should be allowed to inspect all the material / documents that might have been collected by the Board during the course of investigation. Mr. Dwarkadas, learned senior counsel for the appellants in Appeal no. 8 of 2011, contended that this case is *sui generis*. The ratio of the judgment of the Bombay High Court in this case has to be followed. The nature of inquiry will decide the scope of principles of natural justice. This case has no parallel. The Board carried out investigations and collected evidence, documentary and by recording statement of witnesses. To enable the appellants to defend themselves, they are entitled to inspection of all the material and documents that might have been collected by the Board during the course of inquiry, whether the same has been relied upon in the show cause notice or not. According to learned counsel, in the inquiry proceedings under consideration, the Board is not acting as a prosecutor but as an adjudicator. Any material / evidence collected by it must be made available to the appellants to defend their case. According to him evidence is not confined to proof only but it includes all material collected by the Board. In support of his argument, he referred to the definition of 'evidence' as discussed in the book 'Sarkar on Evidence' and also relied upon decisions reported as **Smt. Shivani vs. Suryanarain 1994 Crl. L.J. 2026 and Rakesh vs. Haryana (2001) 6 SCC 248**. Learned Advocate General and Mr. Shiraz Rustomjee appearing for the respondent Board seriously disputed the claim of the appellant contending that inspection of all the records collected by the Board during the course of examination is not an issue before the Tribunal. In fact such a request was never made to the Board. The appellants have filed appeal before this Tribunal against the impugned order in which ruling is given by the Board on the application dated November 22, 2010 requesting for cross-examination of certain persons. There are no pleadings in the appeal and no prayer has been made for allowing inspection of all the material that might have been collected by the Board during the course of investigations. The Board issued the first show cause notice on February 14, 2009. By a letter dated March 13, 2009, the appellant requested inspection and copies of documents and records referred to and relied

upon in the show cause notice. As per appellant's own admission by its letter dated March 19, 2009 the Board granted appellant an opportunity to conduct inspection of the documents on April 9, 2009. In their further letter dated May 12, 2009 again it is admitted that the Board provided them with certain documents as requested at the time of inspection. In the letter dated May 12, 2009 the appellants requested for further documents relied upon in the show cause notice. There is no request at all asking for inspection of all the material that Board might have collected during the course of investigation. This letter too was replied by the Board on June 24, 2009. There is some further correspondence on record which indicate that as and when request was made by the appellant asking for certain information relating to the show cause notice, the Board had responded to the same. It is for the first time before this Tribunal and that too during the course of argument that the learned counsels have made a prayer that inspection of all the documents should be allowed. Be that as it may, there is no rule of law which permit appellants to have access to all the material available with the Board which has not been relied upon or referred to in the show cause notice issued to the appellants.

16. We have given our thoughtful consideration to the prayer made by the appellants. After hearing both the parties and perusing the record, we are inclined to agree with learned Advocate General that in the facts and circumstances of this case, it is not appropriate nor it is the requirement of principles of natural justice that appellant should be allowed inspection of all the material that might have been collected during the course of investigation but has not been relied upon in the show cause notice. In the case law discussed above, it has been abundantly made clear that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of the case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for the purpose. There is no provision in the Act that all material collected during the course of investigation should be made available to the appellant. Mr. Janak Dwarkadas is right when he argues that this case is sui generis. As per promoter's own admission, the accounts were manipulated / forged for a number of years. A fraud of worst kind was perpetrated in the affairs of a listed company which had international ramifications. The shares of Satyam are listed in the stock exchanges outside the country also. It is a matter of record that even the

Government had to intervene and handover the affairs of Satyam to a Board constituted by the Central Government to ensure that country's international reputation is not adversely affected. It is also a matter of record that many government agencies including the Central Bureau of Investigation, Enforcement Directorate and the Income Tax Department are investigating into the affairs of Satyam to see what kind of violation of law has been committed so that appropriate action can be taken against persons involved in the fraud. The present show cause notice has been issued by the Board on the basis of evidence collected by it which prima-facie shows that there might have been complicity of the auditors in manipulation of accounts and they might have aided and abetted the company in making such a large scale manipulation and that too for a number of years. If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to produce its defence before the Board to show that it was not a party to the fraud. In our this view, we are supported by the judgment of the Supreme Court in the case of Natwar Singh vs Director of Enforcement (2010) 13 SCC 255 where the Apex Court has observed that even the principles of natural justice do not require supply of documents upon which no reliance has been placed by the authority to set the law into motion. Supply of relied on documents based on which the law has been set into motion would meet the requirements of the principles of natural justice. The situation may be different in a criminal case where the investigation report is placed before the court and the accused person asks for copy of the material collected during the course of investigation. This is not so here. In the facts and circumstances of the present case, we are of the considered view that the appellants are not entitled to the material collected during the course of investigation by the Board which has not been relied upon in the show cause notice. This prayer of the appellants is, therefore, rejected.

17. In the result, the appeals are allowed and the impugned order set aside. The question formulated in paragraph one is answered in the affirmative. The prayers made in paragraph 7(b) and (c) of the memorandum of appeal are allowed. In addition the Board is directed to allow the appellants to cross-examine the persons whose names are mentioned in paragraph 4 of the application dated November 22, 2010 and also furnish copies of their statements to the appellants, if not already furnished. We further direct the

Board to complete the enquiry as expeditiously as possible preferably within four months from the date of this order. The appellants should also cooperate with the Board in conducting enquiry in a time bound manner. No costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

Per : Justice N. K. Sodhi, Presiding Officer

18. I have gone through the order prepared by the learned Members and I agree that both the appeals deserve to be allowed and that the wholetime member has grossly violated the principles of natural justice. I also agree with the directions which the Members propose to issue. However, I have not been able to persuade myself to agree with the observations and findings recorded in paragraphs 15 and 16 of their order particularly when they observe "Be that as it may, there is no rule of law which permit appellants to have access to all the material available with the Board which has not been relied upon or referred to in the show cause notice issued to the appellants." Again, I cannot agree with their finding that "If any material collected during the course of investigation has not been relied upon in the show cause notice, it will not deprive the appellant to produce its defence before the Board to show that it was not a party to the fraud." Facts giving rise to the appeals as stated in paragraph 2 of their order have been taken from the draft prepared earlier and it is not necessary to state those again. The appellants were served with a show cause notice dated February 14, 2009 and shorn of all other details, the gravamen of the charge levelled against them is that it is "logically presumed that there has been implicitly a complicity of the Partners in the admitted fabrication of the books raised in the confession made through the email by one of the promoters". The show cause notice goes on to allege that "By totally abnegating its duties as the audit firm which took up the work of auditing entrusted to it through a legal mandate from the company under a shareholder resolution, PW shares the responsibility of PW as much as any other body or individual or the audit team or its individual partners

in perpetrating the fraud on investors. The noticees, singly and jointly are responsible for manipulation of the financial statements as they certified the financial statements of Satyam in clear violation of well established auditing standards and practices, which in turn has led to misleading investors in the company." On the basis of their alleged acts of omission and commission as referred to in the show cause notice, the appellants are said to have violated Section 12A of the Act and Regulations 3 and 4 of the FUTP Regulations. These provisions prohibit persons from indulging in manipulative, fraudulent and unfair trade practices. The appellants filed an application dated March 13, 2009 seeking inspection of a number of documents and records referred to and relied upon in the show cause notice that did not form part of the annexures to that notice. Only partial inspection of the documents and records sought for by the appellants was given to them and some of the material was supplied to them in a compact disc as it was quite voluminous. On receipt of the show cause notice and the supplementary show cause notices, the appellants challenged the initiation of proceedings against them by filing writ petitions no.5249 and 5256 of 2010 in the High Court of Bombay questioning the jurisdiction of the Board to proceed against them on the ground that they were chartered accountants by profession which is regulated by the Institute of Chartered Accountants of India. The writ petitions were rejected by the High Court observing that even though it is the Institute of Chartered Accountants that regulates the professional norms to be observed by a Chartered Accountant, "However, in a given case if there is prima facie evidence in connection with the conduct of a Chartered Accountant such as fabricating the books of accounts, etc., the SEBI can certainly give appropriate directions not to utilize services of such a Chartered Accountant in the matter of audit of a listed company." The learned Judges of the High Court further observed:

> "Since the inquiry has not commenced, we have merely confined ourselves to the allegations made in the show cause notices to find out as to whether SEBI has jurisdiction to proceed further with the inquiry and nothing more. However, on conclusion of inquiry, if no evidence is available regarding fabrication and falsification of accounts etc, then naturally SEBI cannot give any direction in any manner and ultimately its jurisdiction will depend upon the evidence which may be available in the inquiry and SEBI has to decide as to whether any directions can be given on the basis of available evidence on record. In our view such a question is required to be considered only after the evidence is available during the inquiry but surely it cannot be said that SEBI has no power even to inquire about the same and that on the face of it the jurisdiction is barred……"

And finally the learned Judges of the High Court recorded their findings in para 39 of their order the relevant part of which reads as under:-

> "**Whether any of the petitioners with an intention and knowledge tried to fabricate and fudge the books of accounts is a matter of investigation and inquiry by the SEBI.** Ultimately if any evidence in this behalf is brought on record before the SEBI during the inquiry, appropriate steps can be taken in this behalf as provided for by the SEBI Act……..…….
> ……
> ……....
>
> **In a given case, if ultimately it is found that there was only some omission without any mens rea or connivance with any one in any manner, naturally on the basis of such evidence the SEBI cannot give any further directions. If there is available evidence, SEBI can proceed further in the matter of giving direction against a particular Chartered Accountant as envisaged by Sections 11 and 12 of the SEBI Act and Regulations in this behalf.** On the basis of detailed evidence on record, this aspect is required to be considered by SEBI. **The question of jurisdictional fact depends upon the facts which may be available at the time of evidence before the SEBI. SEBI will have to answer the question as to whether on the basis of evidence on record, it has any power to give directions as provided under the SEBI Act.** This aspect will depend upon the evidence which may be available at the time of Inquiry. All these aspects are therefore left to the consideration of SEBI at the time of passing final order in enquiry." (emphasis supplied)

It is thus clear from the aforesaid observations and findings recorded by the High Court that the Board has first to determine the jurisdictional fact as to whether the appellants had connived with the then management of Satyam to fabricate and fudge its books of accounts. Only if the finding on this issue is recorded in the affirmative that the Board will get jurisdiction to proceed against the appellants. It is pertinent to mention that the appellant in Appeal no. 8 of 2011 has taken the stand that B. Ramalinga Raju and Satyam's top management orchestrated and conducted a fraud to deceive all including not only the investors but also the auditor, viz., the appellant. The other appellants claim that they are independent partnership firms and that they did not audit the accounts of Satyam and that they have no concern with that company and have been roped in without any justification.

19. After the dismissal of the writ petitions, the whole time member of the Board commenced the enquiry proceedings. The appellants filed an application dated November 22, 2010 seeking cross examination of the persons mentioned therein. Admittedly, they had been allowed partial inspection of the documents referred to in the show cause notice and copies of only some of those documents had been furnished to

them while others had been denied. The appellants have made a grievance before us that copies of the statements of some of the persons referred to and relied upon in the show cause notice had not been furnished to them and even the identity of some of the persons whose statements were recorded during the course of the investigations and relied upon in the show cause notice had been withheld. It is also their grievance that the Board has allowed some of the persons to be cross examined but their statements recorded earlier during the investigations have been denied to them. I wonder how those persons could be cross examined without their statements being furnished to the appellants. Again, the Board has curtailed the cross examination of some of the persons and the appellants have been told that the same would be restricted to such portions of the statements which, in the opinion of the Board, are prejudicial to the appellants. One can understand that irrelevant questions would not be allowed to be asked in cross examination but how could it be restricted in the manner even before the witness comes in the witness box. All this is unheard of and I agree with the learned Members that it has resulted in the violation of the principles of natural justice thereby depriving the appellants from defending themselves properly against the charges levelled against them.

20. During the course of the hearing of these appeals, the learned senior counsel appearing for the appellants very strenuously argued that the appellants were entitled to inspect the entire material that has been collected by the Board during the course of the investigations irrespective of the fact whether the same has been referred to or not and whether relied upon or not in the show cause notices issued to the appellants. It is urged that the appellants do not know what material the Board has collected during the course of the investigations some of which may even support their case and unless they are allowed to inspect the whole of that material, the principles of natural justice would be grossly violated. The learned senior counsel for the appellants vehemently argued that the Board in the show cause notices would rely only on the material that goes against the appellants and withholding the material, if any, that may support the appellants would be most unfair and unjust. The learned Advocate General appearing on behalf of the Board has been equally vehement in opposing the prayer made on behalf of the appellants. He argued that the rules of natural justice do not require that the appellants be allowed an examination of the entire material collected by the Board and that they are entitled to

only such material upon which the Board relies and they cannot be allowed to make a fishing inquiry and, in any case, they had not made a prayer in this regard at any stage of the proceedings. Having heard the learned senior counsel on both sides, I find merit in the arguments raised on behalf of the appellants. It is not in dispute that the investigations in the present case started on receipt of an email from B. Ramalinga Raju, the then chairman of Satyam which has been referred to earlier. On receipt of the email, the Board exercised its statutory powers under Section 11C of the Act and ordered investigations into the affairs of Satyam with a view to find out whether the provisions of the Act or any of the Regulations framed thereunder had been violated. To facilitate such investigations, it also ordered inspection of the books of accounts of Satyam. During the course of these investigations the Board has collected a plethora of documents/material and recorded statements of very large number of persons and basing itself on a part of that material and relying on some of the statements recorded, it has issued the show cause notices levelling very serious charges against the appellants. The appellants have a lurking fear that the Board has selectively picked up that material and relied upon those statements which go against the former and left out the rest which could support the appellants. During the course of hearing, we directed the Board by our order dated 16.3.2011 to produce for our perusal in a sealed cover copies of the statements of B. Ramalinga Raju, Rama Raju and Vadlamani Srinivas who then constituted the top management of Satyam. Reference to the statements of these persons has been extensively made in the show cause notice but copies thereof have not been furnished to the appellants nor have they been allowed to cross examine them on the ground that the Board is not relying upon their statements. I have perused these statements and find no reason why copies thereof should not be given to the appellants. They should also be allowed to cross examine these persons as, in my opinion, their cross examination is crucial. I am also of the view that fairness demands that the entire material collected during the course of investigations should be made available for inspection to the person whose conduct is in question. Whether it helps him or not is irrelevant. Equally immaterial is the fact that the authority is or is not relying upon the same. The authority may not rely upon it but the delinquent could in support of his case. The reason is that every enquiry has to conform to the basic rules of natural justice and one of the

elementary principles is that every action must be fair, just and reasonable. Withholding evidence whether exculpatory or incriminatory is neither fair nor just. In **Kashinath Dikshita v. Union of India** AIR 1986 S.C. 2118 the Supreme Court in similar circumstances very aptly observed in para 9 of their order as under:

> "If only the disciplinary authority had asked itself the question : "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the Courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it. It is not even the case of the respondent that there was involved any consideration of security of State or privilege."

The aforesaid observations apply with full force to the case in hand. I wonder what prejudice would be caused to the Board if the entire material collected by it is shown to the appellants. It could only advance the cause of justice. The purpose of the enquiry which the Board is conducting, like any other enquiry, is to reach at the truth and in pursuit of this purpose evidence which is oral and documentary has been collected. It is possible that the whole evidence is against the appellants. Equally, it may be that the evidence is partly in their favour and the rest of it is overwhelmingly against them. Some of it may even seem irrelevant to the Board. Yet, the issue is whether the Board can sift and select the material to be provided to the appellants and base the show cause notice on that and withhold the rest on the plea that it is not relying on the same. I am of the firm view that the Board is not entitled to select and supply as that would be most unfair and unjust. In the very nature of things, the Board would rely upon only the material that supports its case against the appellants and not on the one that supports them and if this position is accepted as correct, the Board might succeed but the truth shall be sacrificed and justice shall be the casualty. Such a course shall be unjust and unfair and I cannot persuade myself to uphold it. As already observed, the Board is under a duty to find the truth and if it is permitted to keep back any material, the truth may not be found resulting in injustice. In **Regina v. Leyland Justices, Ex parte Hawthorn (1979) Q.B. 283**, the applicant was the driver of a car which collided with another car being driven in the opposite direction. Two witnesses gave statements to the police, but those statements

were not disclosed to the applicant, who did not know of the existence of the witnesses. He was charged with driving without due care and attention, contrary to section 3 of the Road Traffic Act 1972. The prosecution did not call the witnesses to give evidence and the applicant was convicted. His insurers then received the police report on the accident which referred to the statements of those witnesses. On an application for an order of certiorari to quash the conviction, Lord Widgery C.J. of the Divisional Court with whom May and Tudor Evans JJ concurred, held that there was a clear denial of natural justice to a defendant which had deprived him of a fair trial and certiorari was the appropriate remedy even when it was the prosecution and not the tribunal which had erred by failing to observe the rules of natural justice. The learned Judges held that when a defendant was deprived of the elementary right to be notified of material witnesses known to the police, certiorari should issue to quash the conviction. This view was followed in **R v. Blundeston Prison Board of Visitors, ex parte Fox-Taylor (1982) 1 All ER 646** where, as a result of a fight with a fellow prisoner, the applicant was charged with an offence against discipline and brought before the board of visitors of the prison. He denied that he was guilty of the charge. He gave evidence in his defence but called no witnesses to support his account of what had happened because he was unaware that there were any. After hearing evidence from the other prisoner involved in the fight and the prison officer in charge of the case, the board found the applicant guilty and, in consequence, he lost 90 days' remission. The applicant subsequently discovered that another prisoner had witnessed the fight and that, prior to the hearing before the board of visitors, that prisoner had reported the fact to the prison officer in charge of the case. The prison authorities never brought the existence of the other prisoner as a potential witness to the attention of the applicant or the board of visitors. The applicant applied to the court for an order of certiorari to quash the board's decision contending that because he had been denied the opportunity of having a witness who could have given evidence in support of his defence, there had been a breach of the rules of natural justice. Upholding the plea of the applicant, Phillips J of the Queen's Bench Division held that where there was an inquiry by a board of visitors, the prison authorities were under a duty to take such steps as were reasonably practicable in the circumstances to see that the names of potential witnesses were brought to the attention of the board so that the board could

make a full and fair investigation. Since there was no reason why the board should not have been informed of the witness's existence and since the inaction of the prison authorities had substantially prejudiced the applicant by depriving him of an opportunity of calling the witness and thereby caused him to lose 90 days' remission, there had been a breach of the rules of natural justice. The view taken in the aforesaid cases including that of the Supreme Court in Kashinath Dikshita's case (supra) supports the submissions made on behalf of the appellants. Moreover, Board is a statutory authority and it is 'State' as defined in Article 12 of the Constitution and its actions must conform to Part III thereof which can be tested on the touchstone of Article 14. It cannot act arbitrarily and its actions must be just and fair. I cannot agree with the learned Advocate General that since no request had been made on behalf of the appellants, they are not entitled to have access to the entire material. How could they make such a request when they were not aware of the material that was collected by the Board behind their back during the course of the investigations. The rules of natural justice would have been met if the Board had allowed them full access to the material collected by it during the course of the investigations while giving them inspection leaving it to them to use that material in whatever manner they wanted to. In this view of the matter, I hold that the Board was not justified in allowing partial inspection of the material to the appellants and that they should have been given access to the entire material collected during the investigations. Not having done this, the principles of natural justice have been violated. While allowing the appeals and in addition to the directions proposed by the learned Members, I direct the Board to allow to the appellants full inspection of the material collected by it during the course of the investigations.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Order of the Tribunal:

The appeals are allowed and the impugned order set aside. The prayers made in paragraphs 7(b) and 7(c) of the memorandum of appeals are allowed. The Board is directed to allow the appellants to cross examine the persons whose names are mentioned in paragraph 4 of the application dated November 22, 2010 and also furnish copies of

their statements to the appellants, if not already furnished. The Board is further directed to complete the enquiry expeditiously preferably within four months from the date of the order. The appellants should cooperate in concluding the enquiry in a time bound manner. There is no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

01.06.2011
ptm/rhn/msb/ddg