

IN THE SUPREME COURT OF INDIA
THE HON'BLE MR. JUSTICE **JOG SINGH** , THE HON'BLE MR. JUSTICE **J.P. DEVADHAR** , AND THE HON'BLE MR. JUSTICE **A.S. LAMBA**

**APL NO. 254 OF 2014 & MA NO. 104 OF 2014 & APL
NO. 255 OF 2014 & MA NO. 105 OF 2014**

17.09.2014

Pancard Clubs Limited, 111/113, Kalyandas Udyog Bhawan, Near Century Bhavan,
Prabhadevi, Mumbai - 400 025 & Ors.

... Petitioners

v.

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

... Respondent

Customs House Agents Licensing Regulations, 2004 — Suspension of CHA license — Necessity of Prompt Action — Regulations 20 and 22 invoked only when urgent action is warranted — Delay of even a month in issuing suspension is fatal — Ex parte interim orders require pressing need — Arbitrary or belated suspensions consistently quashed.

Securities and Exchange Board of India Act, 1992 — Collective Investment Scheme — Time-sharing membership program — Ex parte interim order under §§. 11(1), 11B, 11(4) questioned — Urgency for issuing order without hearing or whether it violated natural justice — SEBI may alter earlier position but must follow due process — Whether scheme falls under §. 11AA not concluded — Ex parte order set aside; matter remanded for inquiry.

Companies Act, 1956 — Time-sharing membership scheme — Whether it amounts to Collective Investment Scheme — Ex parte orders set aside for lack of urgency — Full inquiry directed — Appellants to maintain separate accounts, refrain from new schemes, and cooperate with SEBI until final decision.

CIS Regulations, 1999 — Collective Investment Scheme — Time-share membership scheme uncertain under §. 11AA(1), 11AA(2) read with Regulation 65 — Ex parte interim orders passed without pre-decisional hearing — Allegations triggered by MP's complaint — Earlier no CIS violation, changed after PGF Ltd. — Interim orders set aside for lack of urgency — Matter remanded for full inquiry — Appellant to maintain separate accounts and refrain from new schemes or asset transfers.

Article 311(2) of the Constitution of India — Dismissal or removal without inquiry — Normally hearing is mandatory — Clause (VI) of Standing Orders and second proviso to Article 311(2) permit immediate dismissal in exceptional circumstances — Ajit Kumar Nag upheld dismissal in extraordinary conditions — Tulsi Ram Patel reaffirmed the exception to audi alteram partem only in grave and urgent situations.

SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 — Ex parte interim order — Necessity of proven urgency — Time-sharing arrangement suspected as CIS — Courts repeatedly set aside ex parte orders lacking urgency — Tribunal directed thorough inquiry under Rule 4 read with §. 15I of SEBI Act — Appellants to maintain separate accounts, refrain from new schemes or asset transfers — Final classification pending further examination — Interim orders undervalued procedural fairness, set aside.

FACTS. Pancard Clubs Limited and its Directors operated a time-sharing or holiday membership scheme, prompting concerns from the Securities and Exchange Board of India (SEBI) that this arrangement might be a collective investment scheme requiring registration. A complaint lodged by a Member of Parliament initiated renewed scrutiny, leading to show cause notices and an ex parte interim order restricting the company's operations. The Appellants filed writ petitions and appeals, contending that earlier communications from SEBI indicated the business was not a collective investment scheme. Various courts and tribunals examined the dispute, sometimes granting interim relief while directing the Appellants to maintain separate accounts, refrain from launching new schemes, and submit required documents. SEBI, citing investor protection, defended its power to issue interim measures, but was repeatedly questioned on whether genuine urgency existed. The appeals were eventually disposed of by setting aside the ex parte orders in several instances and remanding the matter for a full inquiry to determine conclusively whether the business model truly falls under collective investment regulations.

PRAYER.

ISSUES OF LAW.

Whether the time-sharing or membership offerings constituted a collective investment scheme requiring registration with SEBI; Whether SEBI was justified in issuing ex parte interim orders without a pre-decisional hearing; Whether SEBI could revisit its earlier stance on the scheme's regulatory status absent new factual developments; Whether the principles of natural justice and procedural fairness were upheld.

SUMMARY. These proceedings address whether a time-sharing membership program, operated by the Appellants, falls under the collective investment scheme framework regulated by SEBI. SEBI issued ex parte interim orders restricting operations, citing potential investor risks and allegations raised by a Member of Parliament. The Appellants dispute the scheme's classification as an investment arrangement, pointing to earlier correspondence in which SEBI had not classified it as a collective investment scheme. Multiple courts and tribunals considered the matter, often setting aside ex parte restrictions for lack of demonstrated urgency. Final classification of the scheme remains pending after directions for thorough inquiry, with the Appellants required to maintain separate accounts, refrain from launching new projects, and cooperate with SEBI's ongoing investigation.

HELD. Tribunals and courts repeatedly concluded that the ex parte orders lacked

a demonstrated urgency, setting them aside and directing a full inquiry. They refrained from conclusively classifying the time-sharing business as a collective investment scheme until further factual examination. The Appellants were instructed to maintain separate accounts, submit required documents, and refrain from new schemes or asset transfers until a final decision is rendered.

FINAL STATUS. Appeals disposed, ex parte interim orders set aside, final determination pending.

CASES REFERRED

Ajit Kumar Nag vs. General Manager (PJ) Indian Oil Corporation Ltd., Haldia and Others (2005) 7 SCC 764
Babaji Shivram Clearing & Carriers Pvt. Ltd. vs. Union of India 2011 (269) E.L.T. 222 (Bom)
Babaji Shivram, WP (LOD) No. 694 of 2011 (Bombay HC)
Commissioner of Customs (General) vs. Burigih International 2008 (226) E.L.T. (Bom)
Commissioner of Customs (General) vs. S.D. Dalal & Co. 2008 (221) E.L.T. 488 (Bom)
Commissioner of Customs vs. National Shipping Agency 2008(226) E.L.T. (Bom)
Commissioner of Customs, Mumbai vs. Toyo Engineering India Limited 2006 (201) E.L.T. 513 (S.C.)
Cosmic Radio vs. Union of India & Another 1983 (12) E.L.T. 84 (Bom)
Institute of Chartered Accountant of India vs. L.K. Ratna & Others (1986) 4 Supreme Court Cases 537
Interim order dated August 1, 2013 and November 6, 2013 passed by Hon'ble Gauhati High Court in Writ Petition (C) No. 4298 of 2013 in the case of M/s. Rose Valley
Karnataka Public Service Commission and Others (KPSC) vs. B.M. Vijaya Shankar and Others (1992) SCC 206
Krishna Shipping Agency vs. Commissioner of Cus (Airport & Admn) 2014 (306) E.L.T. 352
M.I. Builders P. Ltd. vs. Radhey Shyam Sahu and Others (1999) 6 SCC 464
Maharshi Dayanand University vs. Surjeet Kaur (2010) 11 SCC PG.159
Mohindhr Singh Gill & Another vs. Chief Election Commissioner of New Delhi and Others (1978) 1 SCC 405
Order of SEBI in the case of M/s. Rose Valley dated July 10, 2013
Oryx Fishers Private Ltd. vs. Union of India 2011 (266) E.L.T. 422 (S.C.)
PGF Ltd. (12th March, 2013)
SACI Allied Products Ltd. vs. Commissioner of C. Ex Meerut 2005 (183) E.L.T. 225 (S.C.)
SBQ Steels Ltd vs. Commissioner of Cus. C. Ex and S.T. Guntur 2014 (300) E.L.T. 185 (A.P.)
SEBI vs. Rose Valley (SLP (C) No. 3725 of 2014)
SEBI vs. Rose Valley in SLP (C) No. 3725 of 2014, Supreme Court order dated April 15, 2014
Securities and Exchange Board of India vs. Zenith Infotech Ltd. & Ors (19.8.2014, Supreme Court of India)
Siemens Ltd. vs. State of Maharashtra 2007(207) E.L.T. 168 (S.C.)
Union Of India vs. Tulsi Ram Patel (1985) 3 SCC 398
Zenith Infotech (Appeal No. 59 of 2013 decided on July 23, 2013)
Zenith Infotech Limited vs. Securities and Exchange Board of India (23.7.2013, Securities Appellate Tribunal, Mumbai)

COUNSELS

Mr. Pradeep Sancheti, Senior Advocate (for Appellants in Appeal Nos. 254 and 255 of 2014)

Mr. Prakash Shah, Advocate (for Appellants in Appeal Nos. 254 and 255 of 2014)

Mr. Sanjay Agarwal, Advocate (for Appellants in Appeal Nos. 254 and 255 of 2014)

Mr. Shyam Mehta, Senior Advocate (for Respondent in Appeal Nos. 254 and 255 of 2014)

Mr. Mihir Mody, Advocate (for Respondent in Appeal Nos. 254 and 255 of 2014)

Judgment Reserved on 04.09.2014 and Pronounced on 17.09.2014