

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5249 OF 2010

1. Price Waterhouse & Co.)
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.)

2. Ms. Sharmila Karve, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 007568S)
having address at 5th floor, Tower D,)
The Millennia, 1 & 2 Murphy Road,)
Ulsoor, Bangalore-560 008.)..Petitioners

versus

1. Securities and Exchange Board of India,)
SEBI Bhavan, Plot No. C4-A, G Block,)
Bandra Kurla Complex, Bandra (East),)
Mumbai-400 051)

2. Whole Time Member Mr. M.S. Sahoo,)
Securities and Exchange Board of India,)
SEBI Bhavan, Plot No. C4-A, G Block,)
Bandra Kurla Complex, Bandra (East),)
Mumbai-400 051)..Respondents

Mr. Janak Dwarkadas, Senior Advocate, along with Mr. Shyam Mehta, Mr. Somasekhar Sundaresan, Mr. Zerick Dastur, Ms. Khursheed Vazifdar and Ms. Prerna Arora, instructed by M/s. J. Sagar Associates, for the petitioners.

Mr. Ravi Kadam, Advocate General, along with Mr. Shiraz Rustomjee, Mr. Jayesh Ashar, Mr. Mihir Mody and Mr. Rajesh Talekar, instructed by M/s. K. Ashar & Company, for the respondents.

WITH
WRIT PETITION NO. 5256 OF 2010

1. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 007567S)
having address at 5th floor, Tower D,)
The Millennia, 1 & 2 Murphy Road,)
Ulsoor, Bangalore-560 008.)

2. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 304026E)
having address at Plot No. Y-14, Block EP, Sector V)
Salt Lake Electronics Complex,)
Bidhan Nagar, Kolkata-700 091)

3. M/s. Lovelock & Lewes)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 301056E)
having address at Plot No. Y-14, Block EP, Sector V)
Salt Lake Electronics Complex,)
Bidhan Nagar, Kolkata-600 091)

4. M/s. Lovelock & Lewes)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 116150W)
having address at 252, Veer Savarkar Marg,)
Shivaji Park, Dadar,)
Mumbai-400 028)

5. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 301112E)
having address at Plot No. Y -14, Block EP, Sector V)
Salt Lake Electronics Complex,)

- Bidhan Nagar, Kolkata-700 091)
6. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 12754 N)
having address at P1, Aditya Vihar,)
30, Saidulajab, Mehrauli, Badarpur Road,)
New Delhi-110 030)
7. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 50032S)
having address at 32, Khadar Nawaz Khan Road,)
Nugambakkam, Chennai-600 006)
8. Price Waterhouse & Co.)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 16844N)
having address at Sucheta Bhavan,)
1st floor, II-A, Vishnu Digamber Marg,)
New Delhi-110 002)
9. M/s. Dalal & Shah)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 102020W)
having address at President Plaza, 1st floor,)
Plot No. 36, Opp. Muktidham Derasar,)
Thatlej Cross Road, S.G. Highway,)
Ahmedabad-380 054)
10. M/s. Dalal & Shah)
a partnership firm registered with the)
Institute of Chartered Accountants of)
India bearing Registration No. 102021 W)
having address at 252, Veer Savarkar Marg,)
Shivaji Park, Dadar, Mumbai-400 028)
11. Mr.Vivek Prasad, Partner)
Price Waterhouse & Co.)
bearing Registration No. 007567S)

- having address at 5th floor, Tower D,)
The Millennia, 1 & 2 Murphy Road,)
Ulsoor, Bangalore-560 008.)
12. Mr. Partha Ghosh, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 304026E)
having address at Plot No. Y-14, Block EP, Sector V)
Salt Lake Electronics Complex,)
Bidhan Nagar, Kolkata-700 091)
13. Mr. Lalit Punjabi, Partner,)
M/s. Lovelock & Lewes)
bearing Registration No. 301056E)
having address at Plot No. Y-14, Block EP, Sector V)
Salt Lake Electronics Complex,)
Bidhan Nagar, Kolkata-600 091)
14. Mr. Thomas Mathew, Partner,)
M/s. Lovelock & Lewes)
bearing Registration No. 116150W)
having address at 252, Veer Savarkar Marg,)
Shivaji Park, Dadar,)
Mumbai-400 028)
15. Mr. Kersi Vachha, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 301112E)
having address at Plot No. Y -14, Block EP, Sector V)
Salt Lake Electronics Complex,)
Bidhan Nagar, Kolkata-700 091)
16. Mr. Kumar Dasgupta, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 12754 N)
having address at P1, Aditya Vihar,)
30, Saidulajab, Mehrauli, Badarpur Road,)
New Delhi-110 030)
17. Mr. Venkat Raman Srinivasan, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 50032S)
having address at 32, Khadar Nawaz Khan Road,)
Nugambakkam, Chennai-600 006)

18. Mr. Bipin Pawar, Partner,)
Price Waterhouse & Co.)
bearing Registration No. 16844N)
having address at Sucheta Bhavan,)
1st floor, II-A, Vishnu Digamber Marg,)
New Delhi-110 002)
19. Ms. Anuradha Tuli, Partner,)
M/s. Dalal & Shah)
bearing Registration No. 102020W)
having address at President Plaza, 1st floor,)
Plot No. 36, Opp. Muktidham Derasar,)
Thatleji Cross Road, S.G. Highway,)
Ahmedabad-380 054)
20. Mr. S. Venkatesh, Partner)
M/s. Dalal & Shah)
bearing Registration No. 102021 W)
having address at 252, Veer Savarkar Marg,)
Shivaji Park, Dadar, Mumbai-400 028)..Petitioners

versus

1. Securities and Exchange Board of India,)
SEBI Bhavan, Plot No. C4-A, G Block,)
Bandra Kurla Complex, Bandra (East),)
Mumbai-400 051)
2. Whole Time Member Mr. M.S. Sahoo,)
Securities and Exchange Board of India,)
SEBI Bhavan, Plot No. C4-A, G Block,)
Bandra Kurla Complex, Bandra (East),)
Mumbai-400 051)..Respondents

Mr. N.H. Seervai, Senior Advocate, along with Mr. Shyam Mehta, Mr. Somasekhar Sundaresan, Mr. Zerick Dastur, Ms. Khursheed Vazifdar and Ms. Prerna Arora, instructed by M/s. J. Sagar Associates, for the petitioners.

Mr. Ravi Kadam, Advocate General, along with Mr. Shiraz Rustomjee, Mr. Jayesh Ashar, Mr. Mihir Mody and Mr. Rajesh Talekar, instructed by M/s. K. Ashar & Company, for the respondents.

**CORAM: P.B. MAJMUDAR &
R.M. SAVANT, JJ.**

DATE: AUGUST 13, 2010.

ORAL JUDGMENT: (Per P.B. Majmudar, J.)

1. The question raised in these petitions is as to whether the Securities and Exchange Board of India (for short "the SEBI") has power to issue show cause notices to the Chartered Accountants in connection with the work which they have undertaken for a listed Company in the matter of maintaining accounts and balance-sheets?

2. These petitions have been filed challenging the action of the SEBI to issue show cause notices to the firm of Chartered Accountants as well as to the individual Chartered Accountants in connection with the audit performed by them. So far as Writ Petition No. 5249 of 2010 is concerned, the same is filed by a partnership firm, which is registered with the Institute of Chartered Accountants of India. The petitioner No.2 of the said petition is the partner of the said firm. So far as Writ Petition No. 5256 of 2010 is concerned, the same is filed by the partnership firms of the Chartered Accountants registered with the Institute of Chartered Accountants of India as well as by the individual partners of certain firms, whose names are mentioned in the cause title of the petition. These petitions are principally directed against the initiation of proceedings by

the SEBI against the Chartered Accountants under the provisions of Section 11, 11B, 11(4) of the Securities & Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act") on the ground that the SEBI had received information by virtue of an e-mail sent by one B. Ramalinga Raju of Satyam Computer Services Limited (hereinafter referred to as "the Company") on January 07, 2009 to certain Stock Exchanges and others disclosing that the statement of accounts of the Company provided to Stock Exchanges were not true and fair. The contents of the e-mail referred to in the show cause notices are to the effect that the balance-sheet of the Company as on September 30, 2008 carries inflated (non-existent) cash and bank balances of Rs. 5040 crores (as against Rs. 5361 crores reflected in the books). It is also alleged that the accrued interest of 376 crores is shown which is non-existent. The liability of Rs. 1230/- was shown on account of funds arranged by the said Mr. Raju and overstated debtor position of Rs. 490 crores as against Rs. 2651 crores reflected in the books. It is also alleged that for the quarter ending on September 30, 2008, the Company had reported a revenue of Rs. 2700 crores and had an operating margin of Rs. 649 crores (24 per cent of the revenue) as against actual revenue of Rs. 2112 crores and an actual operating margin of Rs.61 crores (3 per cent revenues) resulting in the artificial cash and bank balances going up by Rs. 588 crores in this quarter. It is alleged that the gap in the balance-sheet has arisen purely on account of inflated profits over a period of last several years. On the basis of receiving such information, the SEBI ordered an investigation into

the affairs of the Company to ascertain particularly whether the provisions of the SEBI Act and Rules and Regulations made thereunder have been violated. To facilitate such investigation, SEBI also ordered inspection of the books and accounts of the Company.

3. As per the show cause notice, the findings of the investigation and inspection conducted so far which are found relevant in connection with the relations of the concerned petitioners as Auditors of the Company and abstract of the cash and balance balance of the Company is also incorporated in the said show cause notice. Various accounting figures have been given in the said show cause notice. The summary of findings has been given in the said show cause notice and in paragraph 3.4.1, following prima facie conclusions are reached by SEBI.

- a. It is unambiguous from the above analysis that the current account balance of BoB New York branch has been overstated by Rs. 1,731.88 crore as on September 30, 2008.
- b. Fixed Deposits accounts have been overstated by Rs. 3308.41 crore as on September 30, 2008.
- c. these overstatements can be traced back to the year 2001 to 2008, cash and bank balances have been overstated by Rs. 5,040.29 crore.
- d. Since there were negligible or NIL amounts in deposit accounts in respective banks, in contrast to the balances stated in the books, the accrued interest presented in the books is also overstated and misleading.

- e. Based on the confirmation received from the Banks the monthly statements are not true and correct. The additional transactions in the form of receipts shown in the monthly bank statement are fictitious.
- f. Since fictitious receipts are recorded in the books as sales, to that extent revenues are also overstated and fictitious by Rs. 410.24 crore. Consequently, this has led to creation of artificial bank or debtor balances through manipulation of books.”

4. It is alleged in the show cause notice that acceptance of monthly bank statements as final statements by the Chartered Accountant Firm viz. Price Waterhouse & Company for the purpose of auditing even though these were at significant variance with the daily bank statements and that reversal of entries were noted during the closing of monthly accounts. Certain other omissions have also been attributed to the said Chartered Accountant firm. Non-compliance with the auditing standards prescribed by the Institute of Chartered Accountants (hereinafter referred to as “the Institute”) has also been finding place in the said show cause notice. After referring to the provision of Section 12A of the SEBI Act and the Regulations framed thereunder, the show cause notices were issued to the petitioners as to why action under Sections 11, 11B and 11 (4) of the SEBI Act and Regulation 11 of the (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as “the SEBI Regulation”) should not be taken against all the petitioners which may include prohibiting the petitioners firm, directly or indirectly, from in any manner issuing any certificate with respect to compliance

of obligations of listed companies and intermediaries registered with SEBI and requirements of those made under the SEBI Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under Section 55A of the SEBI Act, the Rules, Regulations, guidelines made under these Acts (which are administered by SEBI) and the listing agreement permanently or for a specific period and that the petitioners should be restrained from assessing the securities market and prohibited from buying, selling or dealing in the securities of the Company and its associate listed Companies in any manner whatsoever, permanently or for a specific period. It has also been mentioned in the said show cause notices that this is without prejudice to SEBI's right to initiate prosecution under Section 24 of the SEBI Act and other action as it may deem fit in terms of the provisions of the Act and Rules and Regulations framed thereunder. The petitioners were asked to show cause within 21 days as to why such action should not be taken.

5. A supplemental show cause notice was also issued in pursuance of the further material which became available to the SEBI during the course of investigations. Particulars in this connection have also been given in the said show cause notice.

6. The petitioners gave replies to the said show cause notices and inter alia raised the point of jurisdiction of SEBI to proceed against the petitioners who are members of the Institute as, according to the petitioners, SEBI lacks inherent jurisdiction to inquire into the conduct of the petitioners who are professionals and the point of jurisdiction is accordingly taken by the petitioners in their replies. Without prejudice to the said jurisdictional aspect, they have also submitted their replies regarding the allegations leveled in the show cause notice.

7. During the pendency of the adjudication of the said show cause notices before the SEBI, a request was made on behalf of the petitioners to decide the question about jurisdiction as a preliminary point. It is the say of the petitioners that unless the point of jurisdiction is determined first, SEBI cannot adjudicate the matter on merits as to whether the allegations leveled against the petitioners are established or not.

8. Mr. Janak Dwarkadas, learned senior Counsel appearing for the petitioners in Writ Petition No. 5249 of 2010, vehemently submitted that the petitioners are not required to submit to the jurisdiction of SEBI unless SEBI is vested with such jurisdiction. It is submitted by Mr. Dwarkadas that before the concerned Member of SEBI before whom the adjudication is to proceed, the preliminary point of jurisdiction was argued at length on behalf of the petitioners

but he failed to pass any order in this behalf and is now going to decide the matter on merits by asking the petitioners to submit their say on merits of the allegations alleged against the petitioners in the show cause notice. He submitted that the petitioners have filed the above petition with a prayer that the proceedings initiated by SEBI may be quashed and set aside as the SEBI lacks inherent jurisdiction to adjudicate upon the show cause notice. So far as Writ Petition No. 5256 of 2010 is concerned, the same is filed by partnership firms of Chartered Accountants comprising of several partners. Mr. Seervai, learned senior counsel appearing for these petitioners, submitted that the petitioners had not taken part in any manner in the matter of audit of the books of account of the Company and, therefore, the show cause notices could not be issued against the said petitioners. It is submitted that simply because the petitioners are associated with Price Waterhouse & Company is no ground for issuing show cause notices against them.

9. Both these petitions are accordingly filed for quashing the proceedings pending before the SEBI on the ground that there is inherent lack of jurisdiction on the part of the SEBI to initiate any proceedings or call for any information from the petitioners who are discharging their duty as professionals and if there is any omission or neglect on the part of any of the petitioners or for that purpose by any Chartered Accountants in the matter of discharging their professional duties, it is only the Institute who has the power to regulate this

profession of the Chartered Accountants under the Chartered Accountants Act, 1949 (hereinafter referred to as the “CA Act”) and SEBI has no jurisdiction to issue the show cause notices and inquire into or adjudicate the alleged violations against the petitioners. Though during the course of this petition, it is argued by Mr. Dwarkadas and Mr. Seervai that the SEBI should have decided the question of jurisdiction first and should have at least passed an order on the applications of the petitioners one way or the other. The concerned Member of SEBI has failed to discharge his duties as a quasi judicial authority by not passing any order on such applications of the petitioners regarding the preliminary issue of jurisdiction. It is submitted that it in any case at least some order was required to be passed by the concerned Member of the SEBI on the preliminary issue raised by the petitioners.

10. On the point of jurisdiction, it is submitted by the learned counsel for the petitioners that it is only the Institute of Chartered Accountants (hereinafter referred to as “the Institute”) which is specially authorized to take proposed action against the Chartered Accountants and it is not open to SEBI to regulate the profession of Chartered Accountants. It is submitted on behalf of the petitioners that SEBI has no power under the Act to give any such direction prohibiting the Chartered Accountants from carrying their profession as Auditors in a particular listed Company, as this prohibition can be imposed only by the Institute when it is found that such Chartered Accountants have violated

the professional norms or committed an act of professional misconduct and surely the SEBI cannot have any jurisdiction to restrain the Chartered Accountants from carrying their work as Auditors of any Company, either listed or otherwise. It is further submitted that since there is lack of inherent jurisdiction to adjudicate this aspect, this is a fit case in which this Court may set aside the show cause notices issued by the SEBI on the ground that the said notices have been issued without jurisdiction. It is submitted by Mr. Dwarkadas and Mr. Seervai that in any case the concerned petitioners can never be said to be directly associated with the securities market and SEBI's jurisdiction is limited only to regulate the securities market and not beyond that and that it can never be said that the petitioners are connected with the securities market in any manner and SEBI has no jurisdiction to initiate any inquiry in connection with the affairs of the petitioners who are discharging their duties as professional Chartered Accountants while auditing the accounts of a listed Company. It is submitted that the SEBI can regulate the securities market but cannot regulate the profession of Chartered Accountants. It is further submitted that under Section 24 of the CA Act, if any person tries to regulate the profession of Chartered Accountants, the same would amount to an offence and under these circumstances the show cause notices issued to the petitioners are required to be quashed and set aside by holding that the SEBI has no power to issue such show cause notices in connection with the alleged act or omissions attributed to the petitioners while discharging their professional duty with a Company. It is

further submitted on behalf of the petitioners that in any case, whether the petitioners have violated the audit norms prescribed by the Institute is not a matter which falls within the purview of the SEBI. Even otherwise, it cannot be said that the members of the SEBI can have any technical knowledge in this behalf and this aspect is therefore required to be left only with the body of professionals i.e. the Institute. It is also submitted on behalf of the petitioners that in any case by holding an inquiry under the SEBI Act, the SEBI cannot rely on the norms prescribed by the Institute and by lifting those norms from the said Act, SEBI cannot proceed against the Chartered Accountants on the ground that such audit norms have been violated by a particular Chartered Accountant. It is submitted that whether any audit norms have been violated by the petitioners is a question which can be decided only by the Institute and not by the SEBI. It is submitted that the SEBI, therefore, lacks jurisdiction to proceed further with the matter and to adjudicate the show cause notices. It is submitted on behalf of the petitioners that in a given case if there is lack of inherent jurisdiction, the Court may issue appropriate writ, order or directions quashing the proceedings and it is not necessary that the petitioners should be asked to submit to the jurisdiction and to have their say on merits or that it is not a mandate of law that in no case point of jurisdiction can ever be decided first. In order to substantiate his say, reference has been made to the decisions of the Supreme Court to which we would refer to later in this judgment.

11. Mr. Seervai has urged an additional ground to the effect that so far as the petitioners of Writ Petition No. 5256 of 2010 are concerned, the show cause notices have been issued to them in connection with the abetment. According to him, except Section 24 of the SEBI Act, there is no other provision referable to the abetment of a particular act. It is submitted by Mr. Seervai that even otherwise, the petitioners of that petition have not played any role and, therefore, there was no question of issuing any show cause notices to them by SEBI. It is submitted by Mr. Seervai that the petitioners cannot be compelled to submit their say on merits by the SEBI and SEBI should not be allowed to proceed on merits unless the question of jurisdiction is decided first. It is submitted that jurisdictional facts and adjudicatory facts are different and unless it is established that the SEBI has jurisdiction to go into the question which arises in the present proceedings, SEBI should not be permitted to proceed on merits for adjudicating the facts of the case in connection with the alleged allegation leveled against the petitioners in the show cause notice.

12. The learned counsel for the petitioners have also submitted that it was not open to SEBI to encroach upon the rights and powers of the Institute prescribed under the Act. It is further submitted that under the provisions of the SEBI Act and the Regulations framed thereunder, directions can be issued by SEBI for regulating the securities market and beyond that it has no power to issue any such directions. It is submitted that the powers of the SEBI cannot be

construed as such a wide power that it can cover anybody under its umbrella on the ground that it can give any direction to anybody on the ground of regulating the securities market. It is submitted by Mr. Dwarkadas that in a given case if it is found that the Chartered Accountants were negligent or have committed any particular misdeed, the remedy available is to file an appropriate complaint to the Institute and the Institute is the competent authority who can take care of such a situation. On the basis of aforesaid submissions, it is submitted that the show cause notices issued to the petitioners are required to be quashed and set aside as SEBI lacks inherent jurisdiction to proceed further with the inquiry.

13. Mr. Ravi Kadam, the learned Advocate General appearing for the respondents, in his turn submitted that the matter relates to a big scam relating to the shares of the Company which ultimately had a cascading effect on the securities market. It is submitted by him that it is not possible to believe that such a scam must have gone unnoticed and without the knowledge of the Auditors of the Company. It is submitted by him that the SEBI ultimately decided to take proceedings against the present petitioners with a view to see that such type of incidents may not happen in future in connection with the public listed companies. It is submitted by him that by issuing such show cause notices, it can never be said that SEBI has tried to regulate the profession of Chartered Accountants but surely SEBI has power to safeguard the interest of investors and also to regulate the interest of securities market. There is nothing

wrong if any remedial and preventive measures are taken by keeping such persons at a distance, whose acts and misdeeds are likely to affect the interest of the investors and securities market. It is submitted by Mr. Ravi Kadam that the particulars as to how the books of accounts and balance-sheets have been manipulated has clearly been reflected in the show cause notices. It is submitted that the show cause notices had been issued on the basis of the material available with the SEBI and ultimately if it is found that the books of account of the Company were manipulated with a knowledge and intention, naturally it will have a direct bearing on the securities market and, therefore, it cannot be said that on the face of it the SEBI has no power to issue show cause notices. It is submitted by Mr. Ravi Kadam that in any case the inquiry contemplated by the SEBI is only a fact finding inquiry and during the inquiry if it is ultimately found that the petitioners have not played any role, then naturally the SEBI cannot pass any order as suggested in the show cause notices. It is further submitted that this is not a case in which *ex facie*, it can be said that SEBI has absolutely no jurisdiction to proceed with the inquiry. It is further submitted by Mr. Kadam, that books of accounts of the Company were not properly maintained, the Auditors report was misleading and contrary to the actual financial position of the Company. It is further submitted that the balance-sheet of the Company had been fraudulently inflated to the tune of crores of rupees which had a direct bearing on the stock market. He has submitted that on the basis of evidence available in preliminary inquiry that the show cause notices have been issued. It

is further submitted that during inquiry if any evidence is brought to the effect that the Auditors with the connivance and in collusion with Mr. Ramalinga Raju had fabricated the accounts, then naturally SEBI can proceed against the petitioners . It is submitted that SEBI is required to regulate the securities market and, therefore, can take preventive steps to safeguard the interest of investors which is within the domain of SEBI and the Institute cannot have any jurisdiction in connection with the same. Mr. Ravi Kadam has relied upon the provisions of Section 227 of the Companies Act regarding powers and duties of Auditors and submits that a Chartered Accountant is having an important duty and is required to take great care in the matter of certifying the books of account and balance-sheet of the Company as people who are dealing in securities market are likely to be guided by the financial health of the Company after going through the balance-sheet of the Company. It is submitted that the financial statements are also placed on the website as well as in the newspapers and the investors are therefore guided by the same. It is submitted that a shareholder is also an investor. In a given case if the Chartered Accountant has violated the norms and standard of accounting prescribed by the CA Act, the SEBI has jurisdiction to take regulatory measures for protecting the investors interest by taking appropriate steps against the Chartered Accountants. It is submitted that the powers of the Institute and the SEBI are altogether different and both the authorities are operating in separate fields. If any misconduct on the part of the Chartered Accountant is found in connection with the auditing of a listed

Company, SEBI can take an appropriate decision for safeguarding the interest of investors and prevent such Chartered Accountant from auditing the books of account of such listed Companies. In the instant case there is prima facie evidence regarding the bogus invoices and fudging of accounts. It is submitted that it cannot be said that there is no link between the Auditors and investors in any manner when the Chartered Accountants are in fact trustees for the shareholders.

14. Mr. Ravi Kadam has further submitted that in any case the question of jurisdiction should be allowed to be decided along with the main issue instead of deciding the matter in a piecemeal manner so that proceedings are not further delayed. It is further submitted that since an Appeal is provided against the order of the SEBI, it is necessary that the original proceedings should be decided on all points so that the appellate authority may not require to remand the matter in case such appeal is allowed. It is submitted that it is desirable that the authority should decide on all the points together instead of deciding the matter only on preliminary point. It is further submitted that though it is true that in a given case writ of certiorari or prohibition can be issued if there is total lack of jurisdiction but this is not one of such cases and ultimately everything depends upon what evidence is available before the SEBI at the time of adjudicating the matter. Mr. Ravi Kadam has also cited various judgments in order to substantiate his case that the issue in question falls within the domain of SEBI

as well as on the ground that all the points or issues are required to be decided together instead of deciding the issue of jurisdiction as a preliminary issue. He has submitted that the aforesaid submissions have been advanced without prejudice to its rights and contentions that at this stage this Court should not interfere with and intercept the proceedings and the SEBI should be permitted to proceed with the inquiry/investigation and SEBI also may be directed to consider the point of jurisdiction at the time of passing the final order.

15. We have heard the learned counsel appearing in the matter at great length. We have also gone through the documents forming part of the petition including the show cause notices issued to the petitioners.

16. The principal question which requires consideration is as to whether the show cause notices issued by the SEBI to the petitioners can be said to be on the face of it without jurisdiction so as to quash the further proceedings initiated on the said notices by SEBI and as to whether by initiating such proceedings, the SEBI can be said to have encroached upon the powers of the Institute under the CA Act?

17. Before we proceed further, it is necessary to have a glimpse of the relevant provisions of the SEBI Act. The SEBI Act has been enacted to provide for the establishment of a Board to protect the interests of investors in securities

and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto. Section 11 deals with the powers and functions of the Board which reads as under:

“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 stockbrokers, 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 purposes;
- (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.”

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(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and Section 11 B, the Board may, by an order, for reasons to be recorded in writing, in the interest 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 recognized stock exchange;
- (b) Restrain 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 organization 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 the 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 recognized 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”.

Section 11B refers to power to issue directions which reads as under:

“**11B.** Save as otherwise provided in section 11, if after making or causing to be made an inquiry, 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 matters specified in Section

11A, as may be appropriate in the interests of investors in securities and the securities market. “

Section 11C deals with investigation and the same reads thus:-

“11C. (1) Where the Board has reasonable ground to believe that –

- (a) The transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
- (b) Any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder,

it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

xxxx	xxxx	xxx
xxxx	xxxx	xxx”

Section 12A deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control and the same reads as under:

- “12A. No person shall directly or indirectly
- (a) Use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
 - (b) Employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;
 - (c) Engage in any act, practice course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of

the provisions of this Act or the rules or the regulations made thereunder;

- (d) engage in insider trading;
- (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.”

Section 15 HA deals with penalty for fraudulent and unfair trade practices. The said Section reads thus:

“15 HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

Section 2 (c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 deals with fraud which reads thus:-

“(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;

- (3) an active concealment of a fact by a person having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it;
- (5) a representation made in a reckless and careless manner whether it be true or false;
- (6) any such act or omission as any other law specifically declares to be fraudulent;
- (7) deceptive behavior by a person depriving another of informed consent or full participation; a false statement made without reasonable ground for believing it to be true;
- (8) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price;

xxx

xxxx

xxxxx”

A reading of the said provisions discloses the scope and width of the powers vested with the SEBI to be exercised in the interest of investors and for regulating the securities market. The SEBI in its capacity as a Market Regulator can take any of the measures mentioned in sub-section (2) of Section 11 towards the said end. The said measures are only illustrative and not exhaustive and in a given case the SEBI considering the duty it is enjoined with may take such measures as it deems appropriate. In our view, the words employed in the aforesaid provisions are of wide amplitude and would therefore take within its sweep a Chartered Accountant if his activities are detrimental to the interest of the investors or the securities market.

18. So far as the Chartered Accountants Act, 1949 is concerned, it deals with regulatory powers of the Institute in connection with the Chartered

Accountant, who is a member of the Institute. Section 8 deals with disabilities and as per sub-clause (vi), a person shall not be entitled to have his name entered in or borne on the Register if he has been removed from membership of the Institute on being found on inquiry to have been guilty of professional or other misconduct. It also provides that a person who has been removed from membership for a specified period, shall not be entitled to have his name entered in the Register until the expiry of such period. Section 20 of the said Act provides that the Council may remove from the Register the name of any member of the Institute who is found to have been subjected to at the time when his name was entered in the Register, or who at any time thereafter has become subject to any one of the disabilities mentioned in Section 8, or who for any other reason has ceased to be entitled to have his name borne on the Register. Section 21A prescribes that the Council shall constitute a Board of Discipline consisting of persons enumerated in the said Section. There is a provision for removing a member or impose any penalty on the member as prescribed in the said Section. Section 24A provides for penalty for using name of the Council, awarding degree of Chartered Accountancy, etc. Section 24 A (iii) provides that save as otherwise provided in the Act, no person shall seek to regulate in any manner whatsoever the profession of Chartered Accountants. If any person contravenes the said provision shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may

extend to five thousand rupees, or with both.

19. Placing reliance on the provisions prescribed under the SEBI Act as well as under the CA Act, it is argued on behalf of the petitioners that the SEBI has no power to regulate the profession of Chartered Accountants and if SEBI has no jurisdiction to enquire into the matter, this Court can issue appropriate directions under Article 226 of the Constitution of India in the nature of certiorari or prohibition to quash the show cause notices issued to the petitioners. In order to appreciate the submissions of the learned counsel for the petitioners, reference is required to be made to various judgments. In the case of *Calcutta Discount Co. Ltd. Vs. Income-tax Officer, Companies District I, Calcutta and another*¹, it has been observed by the Supreme Court as under:

“29. In the present case the company contends that the conditions precedent for assumption of jurisdiction under S. 34 were not satisfied and came to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Art. 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the Courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case, we can find no reason for which relief should be refused.

30. We have, therefore, come to the conclusion that the company was entitled to an order directing the Income-tax Officer not to take any action on the basis of the three impugned notices.”

1 AIR 1961 SC 372

20. Learned counsel for the petitioners has relied upon the decision of the Supreme Court in the case of *Management of Express Newspapers (Private) Limited, Madras vs. The Workers and others*¹ wherein the Apex Court has observed in paragraphs 10 and 12 as under:

“10. The true legal position in regard to the jurisdiction of the High Court to entertain the appellant’s petition even at the initial stage of the proceedings proposed to be taken before the Industrial Tribunal is not in dispute. If the action taken by the appellant is not a lockout but is a closure, bona fide and genuine, the dispute which the respondents may raise in respect of such a closure is not an industrial dispute at all. On the other hand, if, in fact and in substance, it is a lockout, but the said action has adopted the disguise of a closure, and a dispute is raised in respect of such an action, it would be an industrial dispute which industrial adjudication is competent to deal with. The appellant contends that what it has done is a closure and so, the dispute in respect of it cannot be validly referred for adjudication by an Industrial Tribunal. There is no doubt that in law, the appellant is entitled to move the High Court even at the initial stage and seek to satisfy it that the dispute is not an industrial dispute and so, the industrial Tribunal has no jurisdiction to embark upon the proposed inquiry.

12. It is also true that even if the dispute is tried by the Industrial Tribunal, at the very commencement the Industrial Tribunal will have to examine as a preliminary issue the question as to whether the dispute referred to it is an industrial dispute or not, and the decision of this question would inevitably depend upon the view which the Industrial Tribunal may take as to whether the action taken by the appellant is a closure or a lock out. The finding which the Industrial Tribunal may record on this preliminary issue will decide whether it has jurisdiction to deal with the merits of the dispute or not. If the finding is that the action of the appellant amounts to a closure there would be an end to the proceedings before the Tribunal so far as the main dispute is concerned, If, on the other hand the finding is that the action of the appellant amounts to a lock out which has been disguised as a closure, then the Tribunal will be entitled to deal with the reference. The finding which the Tribunal may make on

1 AIR 1963 SC 569

this preliminary issue is a finding on a jurisdictional fact and it is only when the jurisdictional fact is found against the appellant that the Industrial Tribunal would have jurisdiction to deal with the merits of the dispute. This position is also not in dispute.”

21. As regards the submission that the concerned Member of the SEBI who is conducting the investigation should not have deferred the pronouncement of his decision regarding the preliminary point and should have pronounced the same, reference has been placed on the decision of the Supreme Court in the case of *State of Punjab vs. Jagdev Singh Talwandi*¹. It has been held by the Supreme Court that it is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Reference is also made to the decision of the Supreme Court in the case of *National Council for Cement and Building materials vs. State of Haryana and others*² wherein it has been held by the Supreme Court in paragraphs 11, 12 and 16 as under:

“11. Usually, whenever a reference comes up before the Industrial Tribunal, the establishment, in order to delay the proceedings, raises the dispute whether it is an ‘industry’ as defined in Section 2 (j); or whether the dispute referred to it for adjudication is an “industrial dispute” within the scope of Section 2 (k) and also whether the employees are ‘workmen’ within the meaning of Section 2 (s). A request is made with that these questions may be determined as preliminary issues so that if the decision on these questions are in the affirmative, the Tribunal may proceed to deal with the real dispute on merits.

12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long

1 AIR 1984 SC 444

2 (1996) 3 SCC 206

years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.

16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits. It raised the question whether its activities constituted an 'industry' within the meaning of the Industrial Disputes Act and succeeded in getting a preliminary issue framed on that question. The Tribunal was wiser. It first passed an order that it would be heard as a preliminary issue, but subsequently by change of mind, and we think rightly, it decided to hear the issue along with other issues on merits at a later stage of the proceedings. It was at this stage that the Court was approached by the appellant with the grievance that the Industrial Tribunal, having once decided to hear that issue along with other issues on merits. The High Court rightly refused to intervene in the proceedings pending before the Industrial Tribunal at an interlocutory stage and dismissed the petition filed under Article 226 of the Constitution. The decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above and we do not see any occasion to interfere with the order passed by the High Court. The appeal is dismissed, but without any order as to costs."

Mr. Dwarkadas has submitted that so far as the aforesaid judgment is concerned, since it is in connection with Industrial Law, it has no bearing to the facts of the instant case.

22. Reference is also made on the judgment of the Supreme Court in the case of *Arun Kumar and others vs. Union of India and others*¹ wherein the Supreme Court has considered the question about jurisdictional facts and adjudicatory facts. It may be relevant to quote hereunder the apt observations of the

1 (2007) 1 SCC 732

Supreme Court in paragraphs 73, 74, 75 and 85 and the same read thus:

“73. It is, therefore, clear that before Section 17 (2) (ii) can be invoked or pressed into service and before calculation of concession as per Rule 3 is made, the authority exercising power must come to a positive conclusion that it is a concession. “Concession” in our judgment is, thus a foundational, fundamental or jurisdictional fact.

74. A “jurisdictional fact” is a fact which must exist before a Court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency’s power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional act no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury’s Laws of England, it has been *stated*:

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue, but that ruling is not conclusive.”

84. From the above decisions, it is clear that existence of “jurisdictional fact” is *sine qua non* for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of “jurisdictional fact”, it can decide the “fact in issue” or “adjudicatory fact”. A wrong decision on “fact in issue” or on “adjudicatory fact” would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present.”

23. Mr. Dwarkadas, relying on the aforesaid judgment, submitted that the Labour Court's order by analogy cannot be made applicable so far as the facts of the present case are concerned as in the instant case the Court is required to consider the show cause notices and to find out as to whether the petitioners can be covered under the jurisdiction of the SEBI and whether the SEBI can have jurisdiction in this behalf.

24. Mr. Ravi Kadam, on the other hand, has relied upon the decision of the Supreme Court in the case of (i) *D.P. Maheshwari vs. Delhi Administration and others*¹ and submitted that normally all issues or points are required to be decided together. Relying on the said judgment, Mr. Ravi Kadam submitted that it is desirable that the finding should be given on all issues including the issue of jurisdiction and therefore this Court may not interfere with the matter at this stage. So far as the question about the maintainability of the petitions are concerned, it cannot be said that the petition under Article 226 is not maintainable. It is true that normally the Court may not decide the preliminary point asking the party to challenge the decisions after the adjudication process is over but such bar is not absolute and in a given case if the petitions are filed on the ground that the authority who has initiated the proceedings lacks inherent jurisdiction, the Court may entertain such writ petition and may issue appropriate writ, order or direction under Article 226 of the Constitution of India. During the course of hearing, Mr. Ravi Kadam has also submitted that it is

1 (1983) 4 SCC 293

not his contention that the petitions are not maintainable at all. In a given case if it is found that the authority which initiated the proceedings has absolutely no jurisdiction on the face of it, such authority can be prevented from proceeding further by issuing suitable writ, order or direction in the nature of certiorari or prohibition. In our view, therefore, it cannot be said that this petition is not maintainable or that it is not required to be entertained at all. In any case since considerable arguments at length have been advanced before us on the question whether the Chartered Accountants can be subjected to the jurisdiction of the SEBI or not and in view of the submission of the petitioners that the SEBI has absolutely no power to give any direction which it wants to give as per the show cause notices that we have examined this point from the aforesaid angle.

25. So far as the question as to whether the SEBI has jurisdiction to issue such show cause notices to the petitioners are concerned, we have already pointed out various provisions contained in the SEBI Act and the Regulations. Section 11 (1) of the SEBI Act, which we have incorporated earlier, provides that it is the duty of the Board to protect the interests of investors in securities and to promote the development and to regulate the securities market by such measures as it thinks fit. It is true, as argued by the learned counsel for the petitioners, that while exercising powers under the Act, it is not open to the SEBI to encroach upon the powers vested with the Institute under the CA Act. However, it is required to be examined as to whether in substance by initiating the proceedings

under the SEBI Act, the SEBI is trying to overreach or encroach upon the powers conferred under the CA Act. In this connection, it is required to be noted that the the SEBI has powers under the Act and the Regulation to take remedial measures in connection with safeguarding the interest of investors and regulate the securities market. Under Section 11 of the SEBI Act, the SEBI has power to prohibit fraudulent and unfair trade practices relating to securities market. Under Section 11 (4) of the SEBI Act, the SEBI is entitled to pass appropriate orders in the interest of investors or securities market and is entitled to take measures as prescribed in the said Section. Under Section 11 B, powers have been conferred on the SEBI 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 SEBI under the Act are to be exercised in the interest of investors and interest of securities market. In order to safeguard the interest of investors or interest of securities market, SEBI is entitled to take all ancillary steps and measures to see that the interest of the investors is protected. Looking to the provisions of the SEBI Act and the Regulations framed thereunder, in our view, 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 retiral 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. It is required to be noted that in the instant case the

inquiry is still pending and ultimately the decision is required to be taken by SEBI on the basis of available evidence on record. However, in order to determine the jurisdiction of SEBI, the contents of the show cause notice which is the first step of initiating proceedings are required to be seen. Reading the contents of the show cause notices and the relevant statutory provisions, it cannot be said that the SEBI has no jurisdiction at all to enquire into the affairs of the petitioners in so far as it relate to Satyam. In the case of Government contracts, the Government is entitled to blacklist a particular tenderer with a view to see that such a tenderer is not allowed to participate in the future tenders the same is done by following appropriate procedure in that behalf. In our view, it cannot be said that the show cause notices issued by SEBI are, on the face of it, not sustainable on the ground that the SEBI has no jurisdiction to enter into the affairs of the petitioners or that it lacks jurisdiction to go into such questions.

26. In this connection, reference is required to be made to the contents of the show cause notice which read as under.

“7.1. The Company Satyam is listed in India as well as abroad. In 2005, the Company issued a second tranche of ADRs listed on the New York Stock Exchange. The company is required to announce its results on both quarterly and annual basis or as in accordance with the provisions of listing requirements of respective stock exchanges. The company is required to publish such results in the newspapers. These are also made available on the web sites of the company and stock exchanges. Any

financial analysis of the performance of the company and its future projections are primarily based on the quarterly and annual results of the company which are audited and certified by the Auditors.

7.2 It goes without saying that as professional auditors, PW and its partners are fully cognizant of the importance of the audited financial results certified by them. More specifically, they clearly knew very well that millions of investors would take investment decisions based on periodical financial results of the company. By certifying these false and overstated financial results over the years as true and fair, PW and its partners have misled the investors. These misleading publications have created artificial demand in the scrip of Satyam in the stock markets and also led to false and misleading price discovery.

7.3 Advertisements carrying the quarterly financial results of Satyam were prima facie misleading and contained spurious information. This clearly has distorted the decisions of millions of investors and induced them to trade in the securities of the Company. The financial results of Satyam were clearly overstated. The main promoter Shri Raju admittedly and other promoters/insiders presumably knew about it. PW and its two partners are responsible for certifying the financial statements of Satyam as true and fair. It is evident that the two partners of PW would also have had prior knowledge and complicity as brought out above. PW and its two partners as auditors of Satyam have aided and abetted the promoters of the company in its process, directly and indirectly.”

Considering the provisions of law as well as considering the contents of the show cause notices, it is not possible for us to accept the submission of the learned counsel for the petitioners that SEBI lacks jurisdiction to adjudicate the said issue or to proceed further on the basis of such show cause notices. Though we agree with the learned counsel for the petitioners that when the petitioners gave applications that this issue should be decided as a preliminary issue, the

concerned Member of the SEBI should have disposed of the said applications, by passing some order instead of keeping the said applications pending. Whenever any application is preferred, order is required to be passed in accordance with law. However, since the matter has been considered by us at length to find out whether SEBI lacks the inherent jurisdiction to deal with the subject matter, the question as to whether the SEBI has committed error in not passing any order on the application has become academic.

27. In so far as the submission of Mr. Dwarkadas that the petitioners are not directly associated by the securities market is concerned, it is true that the petitioners may not have any direct association with the securities market since they were performing their duties as Auditors of the Company and were associated with the preparation of the balance-sheets of the Company. It is however required to be noted that normally an investor would like to invest his money in the shares of a Company on the basis of reflection of Company's financial health as disclosed in the balance-sheet of the Company and he may consider that it is safe to invest money in a particular company, if the balance-sheets have been certified by reputed Chartered Accountants and it reflects that the financial position of the Company is sound. An investor is likely to be guided by the audited balance-sheet of the Company and would presume that the facts incorporated in the balance-sheet are true and correct. Considering the said aspect, even though the petitioners may not have direct association in the share

market activities, yet the statutory duty regarding auditing the accounts of the Company and preparation of balance-sheets may have a direct bearing in connection with the interest of the investors and the stability of the securities market. In our view, the petitioners in their capacity as auditors of the Company Satyam, which was at one point of time considered to be a blue chip company who had a defining influence on the securities market, can be said to be persons associated with the securities market within the meaning of the provisions of the said Act.

28. As regards the contention of Mr. Dwarkadas that except the Institute, no other body has any power to regulate the profession, it is required to be noted that SEBI's powers are restricted only in connection with taking care of the interest of the investors and safeguarding the interest of the investors and also to regulate the share market. SEBI has, therefore, all the powers to give appropriate directions in the aforesaid field. By initiating the proceedings, it cannot be said that the SEBI is encroaching upon the rights of the Institute or prohibiting a Chartered Accountant from practicing as a Chartered Accountant. It is natural that SEBI has no power to pass an order prohibiting a particular Chartered Accountant from practicing as a Chartered Accountant or cannot debar a Chartered Accountant from practicing as Chartered Accountant but SEBI can definitely take regulatory measures under the SEBI Act in the matter of safeguarding the interest of the 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. SEBI can always take preventive as well as remedial measures in this behalf. Exercising such powers, therefore, cannot be said to be in any way in conflict with the powers of the Institute under the CA Act. If ultimately any decision is taken by debarring any particular person from auditing the books of a listed company, such direction can always be said to be within the powers of SEBI and that is in the aid of regulating the affairs in connection with the investors interests and the interest of the securities market. By exercising such powers, it cannot be said that the SEBI is trying to regulate the profession of Chartered Accountants in any manner and in that view of the matter, in our view, it can never be said that it is in conflict with Section 24 of the CA Act.

29. In so far as the submission of Mr. Dwarkadas that an Auditor can be removed only as per Section 227 of the Companies Act is concerned, it is true that Section 227 of the Companies Act provides for removing of an Auditor. However that is an independent and separate power altogether. So far as Section 55A of the Companies Act is concerned, SEBI can exercise certain powers as provided under the Companies Act. Sections 55A and 227 read as under:

'55A. Powers of Securities and Exchange Board of India.-
The provisions contained in sections 55 to 58, 59 to 84, 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of

securities and non-payment of dividend shall.-

- (a) in case of listed public companies;
- (b) in case of those public companies which intend to get their securities listed on any recognized stock exchange in India,
be administered by the Securities and Exchange Board of India; and
- (c) in any other case, be administered by the Central Government. “

“227. Powers and duties of auditors.- (1) 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 as auditor.

1A. Without prejudice to the provisions of sub-section (1), the auditor shall inquire -

- (a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interest of the company or its members;
- (b) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;
- (c) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the Company;
- (d) whether loans and advances made by the company have been shown as deposits;
- (e) whether personal expenses have been charged to

revenue account;

- (f) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance-sheet is correct, regular and not misleading.

2. The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance-sheet and profit and loss account and on every other document declared by this Act to be part of or annexed to the balance-sheet or profit and loss account which are laid before the company in general meeting during his tenure of office, and the report shall state whether, in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view-

- (i) in the case of the balance-sheet, of the state of the company's affairs as at the end of its financial years; and
- (ii) in the case of the profit and loss account, of the profit or loss for its financial year.

(3) The Auditor's report shall also state -

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;
- (b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- (bb) whether the report on the accounts of any branch office audited under Section 228 by a person other than the company's auditor has been awarded to him as required by clause (c) of sub-section (3) of that section and how he has dealt with the same in preparing the auditor's report;

- (c) whether the company's balance-sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;
- (d) whether, in his opinion, the profit and loss account and balance-sheet comply with the accounting standards referred to in sub-section (3C) of Section 211;
- (e) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company;
- (f) whether any director is disqualified from being appointed as director under clause (g) of sub-section (11) of Section 274;
- (g) whether the cess payable under section 441A has been paid and if not, the details of amount of cess not so paid.

4. Where any of the matters referred to in clauses (i) and (ii) of sub-section (2) or in clauses (a), (b), (bb), (c) and (d) of sub-section (3) is answered in the negative or with a qualification, the auditor's report shall state the reason for the answer.

4A. The Central Government may, by general or special order, direct that, in the case of such class or description of companies as may be specified in the order, the auditor's report shall also include a statement on such matters as may be specified therein:

Provided that before making any such order the Central Government may consult the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), in regard to the class or description of companies and other ancillary matters proposed to be specified therein unless the Government decides that such consultation is not necessary or expedient in the circumstances of the case.

5. The accounts of a company shall not be deemed as not having been, and the auditors report shall not state that those accounts have not been properly drawn up on the ground merely that the company had not disclosed certain matters if -

- (a) those matters are such as the company is not required

- to disclose by virtue of any provisions contained in this or any other Act, and
- (b) those provisions are specified in the balance-sheet and profit and loss account of the company.”

30. As pointed out earlier, the aforesaid provisions are independent, over and above the powers available to the SEBI under the SEBI Act. It cannot be said that the SEBI has no power to take remedial measures as provided under Section 11 of the SEBI Act. It is required to be noted that so far as the powers of the Institute are concerned, the same are in connection with prohibiting the Chartered Accountant from practicing and removing his name from the roll which cannot be said to be similar to the powers prescribed under Section 11 and 12 of the SEBI Act as well as the Regulations framed thereunder. For example, under Section 24 of the SEBI Act, SEBI is even entitled to take penal action which powers are not available with the Institute in any manner. At this stage even the provisions of the Consumer Act may also be taken into account whereunder in the matter of deficiency in service, an appropriate order can be passed even against a professional but that would not mean that while exercising such powers the forum under the Consumer Protection Act is encroaching upon the powers of either the Institute of Chartered Accountants or for that reason powers prescribed under any other Act. It is true, as argued by Mr. Dwarkadas, that powers conferred on the SEBI must flow from the statutory provisions. But reading the provisions as indicated above, in our view, it cannot be said that there is lack of such power or that such power is not available with the SEBI.

31. In so far as the submission of violation of fundamental rights under Article 19 (1) (g) and 19 (6) are concerned, a citizen is entitled to practice any profession, or to carry on any occupation, trade or business. Such rights are always subject to reasonable restrictions. In a given case if a person carrying on his trade or profession is found to have committed any illegalities, such person can be prevented from carrying on such profession in the area covered by a particular statute for a particular period and, therefore, there is no absolute right available to a citizen to carry on profession irrespective of any act, omission or commission alleged against such person and in such eventuality he can be subjected to proceedings prohibiting such person from carrying on such profession or trade.

32. In the instant case, as pointed out earlier, if according to the SEBI, it is not advisable and safe to have any particular person to be an Auditor of a listed Company, if he is found that he has committed any misdeeds or fraud qua the interest of investors or the securities market, it can always regulate its affairs by preventing such person from carrying on such work for a particular period and exercising of such powers can be said to be in any way infringement of Article 19 (1) (g) of the Constitution of India. At this stage it is required to be noted that the jurisdiction of SEBI is restricted only to the listed companies. We are not in a position to agree with the submission of Mr. Dwarkadas that it is not

open to SEBI to take shelter of accounting standards prescribed under the CA Act. However, if it is found in a given case that the Chartered Accountant has violated the audit norms prescribed by the Institute under the CA Act, the SEBI can certainly consider the said aspect in order to find out as to whether such a professional person should be allowed to continue to function as an Auditor of a listed Company if by continuing such person as an Auditor of a listed Company, it may hamper the interest of the investors of such a listed Company. Considering the matter from the aforesaid angle and considering the provisions of the SEBI Act, Companies Act and CA Act, in our view, it can never be said that the SEBI has absolutely no jurisdiction and that professionals like Chartered Accountants cannot be subjected to any inquiry or proceedings by the SEBI on the ground that it is only the Institute which can take care of such a situation. So far as the Regulations are concerned, they have been framed under Section 30 of the SEBI Act. Reading the said Section discloses that the SEBI is vested with the necessary powers for safeguarding the interest of investors by framing appropriate regulations. The SEBI Regulations are wide enough to be attracted to cover the nature of allegations made in the show cause notices. Whether the allegations stand proved would be a matter of inquiry on the basis of evidence.

33. At this stage reference is required to be made to a decision of the Supreme Court in the case of *Supreme Court Bar Association vs. Union of India and another*¹ wherein the Supreme Court has observed in paragraph 21 as under:

1 (1998) 4 SCC 409

“It is, thus, seen that the power of this Court in respect of investigation or punishment of any contempt including contempt of itself, is expressly made “subject to the provisions of any law made in this behalf by Parliament” by Article 142 (2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that inherent jurisdiction of the court of record to punish for contempt and Parliament’s power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142 (2) of the Constitution of India.”

34. Relying on the said judgment, Mr. Dwarkadas has submitted that if any professional is to be debarred from any provision, it is only the body which is looking after the affairs of such profession, for example, in the case of Advocates, proceedings can be taken only as per the Advocates Act and, therefore, even a Court cannot pass any order prohibiting an Advocate from practicing, as such powers are available only with the body which is specially constituted for the same. As per the show cause notices, the petitioners have been asked to show cause as to why the petitioners should not be debarred from carrying out the auditing work of a listed company for a particular period. As stated above, the jurisdiction and powers of the SEBI in this behalf are only restricted to the field of listed companies only. It is like a preventive action by

which the SEBI wants to safeguard the interest of the investors. In the instant case, there is prima facie material available with the SEBI for holding such an inquiry. In view of the same, the decision of the Supreme Court cited above has no relevance to the facts of the present case.

35. As regards the professional norms are concerned, it is true, as submitted by Mr. Dwarkadas, that it is only the Institute which is the regulating body to deal with the same. 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 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 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, as submitted by the learned counsel for the petitioners.

36. As regards duties of the Chartered Accountant towards the shareholders, Mr. Ravi Kadam has relied upon the decision of the Supreme Court in the case of *Institute of Chartered Accountants of India vs. P.K. Mukherjee and another*¹ wherein the Supreme Court has observed in para 6 as under.

“6. On behalf of respondent No.1 Mr. Chagla put forward the argument that since the cheques had already been given by the company the loans stood cleared and, in any event, respondent No. 1 had already informed the company of the irregularity in his letter dated May 25, 1955. It was therefore contended that there was no professional misconduct on the part of respondent No.1 we are unable to accept the argument as correct. It is true that the cheques had been given by the company before the close of the year 1954 but respondent No.1 knew that the cheques were not really intended to be encashed by the trustees. Respondent No.1 also knew of the resolution of the trustees dated May 27, 1955 that the cheques were to be returned to the company and the amount was ordered by the trustees to be entered and carried over to the loan account. It was also maintained by Mr. Chagla that respondent No.1 owed a duty only to the company which appointed him to audit the accounts of the

1 AIR 1968 SC 1104

Provident Fund and there was no duty owed by respondent No.1 to the beneficiaries of the Fund. It is not possible for us to accept this argument. Respondent No.1 owed a duty to all the subscribers of the Provident Fund who were in the position of beneficiaries. It is not correct to say that respondent No.1 owed a duty only to the company which had appointed him to perform the auditing. The contributors to the provident fund had a beneficial interest in the fund and the primary object of auditing the Fund was to appraise them of the true financial position of the accounts and investments made from time to time. Respondent No.1 therefore owed a duty to the contributors to the Provident Fund for making a true report to them of the financial position. In order words, the auditing was intended for protection of the beneficiaries and the auditor was expected to examine the accounts maintained by the trustees with a view to inform the beneficiaries of the true financial position. The auditor is, in such a case, under a clear duty towards the beneficiaries “to probe into the transactions” and to report on their true character. In our opinion, the legal position of the audit in the present case is similar to that of the auditor under the Indian Companies Act, 1956. In such a case the audit is intended for the protection of the shareholders and the auditor is expected to examine the accounts maintained by the Directors with a view to inform the shareholders of the true financial position of the Company. The Directors occupy a fiduciary position in relation to the shareholders and in auditing the accounts maintained by the Directors the auditor acts in the interest of the shareholders who are in the position of beneficiaries.....”

Regarding powers of SEBI, Mr. Ravi Kadam has invited our attention to a decision of the learned Judge of the Gujarat High Court in the case of *Karnavati Fincap Ltd. Vs. Securities and Exchange Board of India*¹ wherein the learned single Judge has observed as under:

1 1996 Vol. 87 Company Cases 186

“Firstly, as I have discussed hereinbefore, the inquiry cannot be said to be beyond the scope of section 11 (2) (i). Even assuming for the present purpose, that section 11 (2) (i) does not contemplate any inquiry against a buyer or purchaser, the list of measures enumerated in sub-section (2) of section 11 is merely illustrative of the nature of measures that may be taken by the Board in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). It cannot be said that sub-section (2) provides an exhaustive list of measures which the Board can take and it cannot take other measures which are in consonance with the main purpose of the statute and consistent with the duty cast on it. It cannot be said that for protecting the interests of investors, the Board has no power to take appropriate measures to prevent and deal with fraudulent and manipulative transactions. The Board has such powers, nay duty, to take measures to prohibit unearth and deal with fraudulent and manipulative transactions to effectively protect the interests of investors. This is also necessary in order to promote healthy, fraud free and manipulation free development of securities market in the country that effective measures are taken to check and prevent transactions which tend to artificially affect and manipulate market conditions to the advantage of a few and to the detriment of general genuine investors. Therefore, no prohibition can be read in the provisions of section 11 (2) for giving effect to the Regulations of 1995.

The Regulations of 1995 in no uncertain terms provide for an investigation in respect of the conduct and affairs of any person buying, selling or otherwise dealing in securities.

Thus, necessary power to hold inquiry against the buyer or seller and power to call for information from him exists. The fact that in the summons reference has not been made to these regulations is immaterial. Such omission by itself does not invalidate the exercise of authority. Law in this regard is well settled that if the source of power exists, non-mentioning of it or wrong labelling of it would not invalidate exercise of such power.

I am unable to sustain the contention of the petitioners that the Board has no power to conduct an inquiry into the transaction of transfer of shares by the

petitioners and the inquiry of the Board must stop at the stock brokers or intermediaries who have been instructed to carry out the transactions of the petitioners.

The contention that information cannot be called for from the petitioners because clause 11 (2) restricts calling for information from undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market and self-regulatory organisations in the securities market only and the petitioners do not fall in any of them must also fail.”

37. Mr. Ravi Kadam has also placed reliance on the judgment of the Delhi High Court in the case of *M.Z. Khan vs. Securities and exchange Board of India and others*¹ on the aspect of scope and width of Section 11 of the SEBI Act.

In para 18 the Delhi High Court has held as under:

“18. Thus, it is clear that the Board has the power to carry out investigations and to take action in accordance with the Regulations against the one who violates the Takeover Regulations, namely, acquirer, the seller, the target company, the merchant banker, as the case may be. In this context a question also arises for consideration as to whether the Board has the power to pass interim orders. It seems to me that the SEBI has power to pass interim orders before and during the inquiry or investigation to effectuate the purpose of the SEBI Act and the Regulations. Under Section 11 of the SEBI Act, the SEBI has the power to protect the interests of the investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. The power is of a very wide nature and is not hedged in by any restrictions. This power will embrace the power to issue interim orders. The SEBI in a fit case can pass interim orders in the interests of investors and to promote the development of and to regulate the securities market. Under the same provision, it can frame regulations as well for the same purpose. The final orders after the inquiry are contemplated under Section 11-B of the

1 AIR 1999 Delhi 164

Act and at that stage it can issue such directions to any person referred to in the section as may be appropriate in the interests of investors and securities market. Both under Sections 11 and 11-B the duty is cast on the Board to protect the interests of the investors in securities and to promote and regulate the securities market. If at the initial stage it becomes necessary to pass an interim order, the SEBI has been endowed with such a power under Section 11 of the Act. In case the provisions of section 11 are construed in a restrictive manner, the interests of the investors in securities and development and regulation of securities market will suffer. Mr. Raval, the learned Additional Solicitor General has also taken the same position on behalf of the Board. Though the SEBI is possessed of the power to pass an interim order, in the instant case it did not exercise that power on the ground that it was in the interest of the shareholders to allow them to receive the value of their shares at the rate of Rs. 100/- per share which is the same rate at which the shares of SVCL held by the financial institutions were purchased by the nine companies. It cannot be said that the reason for not suspending the process set in motion by the public announcement was not adequate or was arbitrary or the reason suffered from illegality or irrationality. The grant of interim order was in the discretion of the SEBI. Such direction cannot be interfered with even when serious and substantial questions have been raised by the petitioner and the third respondent. I have no doubt that the SEBI will bestow its consideration on the issues which arise in the case. The determination of these questions will not be made by this Court sitting in writ jurisdiction when such determination lies in the domain of the authorities mentioned in the Regulations..... ..”

38. Considering the judgments and the scheme of the Act which we have adverted to earlier, the SEBI in the instant case, on the basis of show cause notices, has jurisdiction to inquire into and investigate the matter in connection with manipulating and fabricating the books of accounts and balance-sheets of the Company. The powers of the SEBI are, therefore, independent and it cannot

be said that it can encroach upon the powers of the Institute under the CA Act.

39. Section 11 (1) of the SEBI Act empowers SEBI to inquire into as well as to initiate the proceedings like the one in question. As pointed out earlier, the proceedings started against the petitioners on the basis of some statements made by one Ramalinga Raju on the basis of e-mail to which a reference is made in the show cause notices. 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. We must at this stage take note of the argument of Mr. Seervai that so far as his clients are concerned, they were not in any way connected with the audit of the Company in any manner. Simply because they are Partners of Price Waterhouse Network, no notice could have been issued against his clients. However, so far as this submission is concerned, these petitioners can very well point out these facts before the concerned Member of SEBI. SEBI being a quasi-judicial authority, while adjudicating the matter, will look into this aspect and will consider as to whether any particular firm of Chartered Accountants has any role to play or for that reason any of the petitioners had played any role in any manner they may bring the matter to the notice of the SEBI. In a given case, if ultimately it is found that there was only some omission without any mens rea or connivance

with anyone 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 the inquiry.

40. It is needless to say and also as pointed out by Mr. Ravi Kadam that SEBI is not going to transgress its jurisdiction and will confine itself to the object of protecting the interests of investors and regulating the securities market. It is in the said context that the above matter will have to be considered. The SEBI shall now proceed with the matter as indicated above in accordance with law and pass appropriate orders after conclusion of the inquiry. At the time of passing the ultimate order, the SEBI shall consider the aspect as to whether any directions can be issued by SEBI on the basis of evidence available on record as per the provisions of Section 11 and 12 of the SEBI Act. The ultimate jurisdiction

of SEBI for giving any such direction will depend upon the evidence which may be available during the course of inquiry. By this judgment, we have only indicated that on the face of it, it cannot be said that SEBI has absolutely no jurisdiction to issue show cause notices against the petitioners simply because they are professionals and whether the facts stated in the show cause notice are correct or not may be adjudicated as per the evidence available, after affording reasonable opportunity of hearing to the petitioners. The SEBI shall now proceed with the matter in accordance with law and adjudicate the matter which is initiated on the basis of show cause notices in accordance with law. Subject to what is stated above, both the petitions are rejected. Rule discharged.

41. At this stage, Mr. Seervai, learned counsel for the petitioners, prayed for grant of certificate on the ground that the question involved is of general public importance under Article 133 of the Constitution and since there are no other judgments of any Courts as to whether any Chartered Accountants can be covered under the jurisdiction of SEBI that certificate as prayed for be granted. Since we have only interpreted the provisions of the SEBI Act and the CA Act, in our view, no substantial question of law of general importance is involved and hence the prayer for leave to appeal to Supreme Court is rejected.

42. During the pendency of these petitions, an oral statement was made by the learned counsel appearing for the respondents that the SEBI will not

proceed with the inquiry till the petitions are pending. Since Mr. Seervai, learned Senior Counsel submits that the petitioners would like to file Special Leave Petition in the Hon'ble Supreme Court, we direct that the SEBI may not proceed with the inquiry proceedings against the petitioners for a period of four weeks from today so as to enable the Petitioners to approach the Supreme Court against this order.

P. B. MAJMUDAR, J.

R.M. SAVANT, J.