In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Madam Justice Kashefa Hussain

And

Madam Justice Kazi Zinat Hoque

Writ Petition No. 12038 of 2021

In the matter of:

An application under Article 102 read with 44 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

K.M. Khaled

……. Petitioner.

Vs.

Bangladesh Securities and Exchage Commission and others

……Respondents.

Mr. Mustafizur Rahman, Advocate with

Mr. Shihab Uddin Khan, Advocate

…..for the petitioner

Mr. Abul Kalam Azad, Advocate

.... for the respondent No. 2

Mr. Md. Emdadul Haque Kazi, Advocate

.. for the respondent Nos. 3 and 4.

With

Writ Petition No. 11915 of 2021

An application under Article 102 read with 44 of the Constitution of the People's Republic of Bangladesh.

-And-

In the matter of:

K.M. Rakib Hasan

……. Petitioner.

Vs.

Bangladesh Securities and Exchage Commission and others

... respndents
Mr. Mustafizur Rahman, Advocate with
Mr. Shihab Uddin Khan, Advocate
.....for the petitioner
Mr. Abul Kalam Azad, Advocate
.... for the respondent No. 2
Mr. Md. Emdadul Haque Kazi, Advocate
.. for the respondent Nos. 3 and 4.

Heard on: 06.06.2022, 15.06.2022, 16.06.2022, 07.08.2022, 17.08.2022, 21.08.2022 and judgment on: 22.08.2022.

Kashefa Hussain, J:

Supplementary affidavit do form part of the main petition.

These 2(two) writ petitions arising out of same matters of fact and law therefore these are being disposed of by a single judgment.

Rule nisi was issued in Writ Petition No. 12038 of 2021 on 07.12.2021in the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the action of suspending the BO account of the petitioner bearing BO ID No. 1201740000542561 maintained with PFI Securities Ltd vide letter dated 15.09.2021 containing Memo No. CDBL/COMPLIANCE/ 2021. 1541 issued by the respondent No. 4 with reference to the directive No. BSEC/CFD/ 4:22/ 2005 Partiii/ 78 dated 14.09.2021 of respondent No. 1 should not be declared to have been done without lawful authority and is of no legal effect and as to why direction should not be given upon respondent No. 1 to withdraw suspension from the BO account to the petitioner bearing BO ID No. 1201740000542561 and/or such other or further order or orders passed as to this Court may seem fit and proper.

Subsequently on 10.04.2022 a supplementary Rule Nisi was issued in Writ Petition No. 12038 of 2021 in the following terms:

Let a supplementary Rule Nisi in be issued calling upon the respondents to show cause as to why the impugned letter bearing Memo No. BSEC/LSD/W.P-2021/972/274/ dated 23.12.2021 issued by the office of the respondent No. 1 in disposing of the application of the petitioner (Annexure G of the writ petition) dated 16.11.2021 (Annexure-"I") should not be declared to be without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

And subsequently further on 11.08.2022 a supplementary Rule Nisi was issued in Writ Petition No. 12038 of 2021 in following terms:

Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the Memo being No. BSEC/CFD/4:22/2005/part-iii/728 dated 14.09.2021 (Annexure-"J") issued by the respondent No. 1 to the respondent No. 3 directing to freeze the shareholding of, among others, the petitioner against his BO Account No. 1201740000542561 in purported exercise of powers under Section 14 of the Depositories Act, 1999 and Regulations 48 and 51(2) of the Depositories (User) Regulations 2000 should not be declared to be without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Rule Nisi was issued in Writ Petition No. 11915 of 2021 on 06.12.2021in following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the action of suspending the BO account of the petitioner bearing BO ID No. 12017400080013967 maintained with PFI Securities Ltd vide letter dated 15.09.2021 containing Memo No. CDBL/COMPLIANCE/ 2021/1541 issued by the respondent No. 4 with reference to the directive No. BSEC/CFD/ 4:22/ 2005 Part-iii/ 78 dated 14.09.2021 of respondent No. 1 shall not be declared to have been done without lawful authority and is of no legal effect and as to why direction should not be given upon respondent No. 1 to withdraw suspension from the BO account to the petitioner bearing BO ID No. 12017400080013967 and/or such other or further order or orders passed as to this Court may seem fit and proper.

Subsequently on 10.04.2022 a supplementary Rule Nisi was issued in Writ Petition No. 11915 of 2021 in the following terms:

Let a supplementary Rule Nisi in be issued calling upon the respondents to show cause as to why the impugned letter bearing Memo No. BSEC/LSD/W.P-2021/969-269 dated 22.12.2021 issued by the office of the respondent No. 1 is disposing of the application of the petitioner (Annexure G of the writ petition) dated 16.11.2021 (Annexure-"J") should not be declared to be without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

And subsequently further on 11.08.2022 a supplementary Rule Nisi was issued in Writ Petition No. 11915 of 2021 in the following terms:

Let a supplementary Rule Nisi be issued calling upon the respondents to show cause as to why the Memo being No. BSEC/CFD/4:22/2005/part-iii/728 dated 14.09.2021 (Annexure-"K") issued by the respondent No. 1 to the respondent No. 3 directing to freeze the shareholding of, among others, the petitioner against his BO Account No. 1201740000542561 in purported exercise of powers under Section 14 of the Depositories Act, 1999 and Regulations 48 and 51(2) of the Depositories (User) Regulations 2000 should not be declared to be without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

In Writ Petition No. 12038 of 2021 the petitioner is K.M Khaled , son of late Delwar Ali Khandker, of House No. 5, Road No. 13, Baridhara, Gulshan-1212, Dhaka and he is a citizen of Bangladesh.

The respondent No. 1 is the Chairman, Bangladesh Securities and Exchange Commission, Securities Commission Bhaban, E-6/C, Agargaon Sher-e-Bangla Nagar Administrative Area, Dhaka-1207, the respondent No. 2 is the Deputy Director (Enforcement Dept.), Bangladesh Securities and Exchange Commission, Securities Commission Bhaban, E-6/C, Agargaon Sher-e-Bangla Nagar Administrative Area, Dhaka-1207, the respondent No. 3 is the Managing Director & CEO, Central Depository Bangladesh Limited (hereafter referred to as CDBL), DSE Tower (Level-5), House-46, Road-21, Nujunja-2, Dhaka-1229, the respondent No. 4 is the General Manager, Inspection, Compliance & legal Affairs, Central Depository

Bangladesh Limited, DSE Tower (Level-5), House-46, Road-21, Nujunja-2, Dhaka-1229.

In writ petition No. 11915 of 2021 the petitioner is K.M. Rakib Hasan, son of K.M. Khaled, of House No. 5, Road No. 13, Baridhara, Gulshan-1212, Dhaka and he is a citizen of Bangladesh.

The respondent No. 1 is the Chairman, Bangladesh Securities and Exchange Commission, Securities Commission Bhaban, E-6/C, Agargaon Sher-e-Bangla Nagar Administrative Area, Dhaka-1207, the respondent No. 2 is the Deputy Director (Enforcement Dept.), Bangladesh Securities and Exchange Commission, Securities Commission Bhaban, E-6/C, Agargaon Sher-e-Bangla Nagar Administrative Area, Dhaka-1207, the respondent No. 3 is the Managing Director & CEO, Central Depository Bangladesh Limited, DSE Tower (Level-5), House-46, Road-21, Nujunja-2, Dhaka-1229, the respondent No. 4 is the General Manager, Inspection, Compliance & legal Affairs, Central Depository Bangladesh Limited, DSE Tower (Level-5), House-46, Road-21, Nujunja-2, Dhaka-1229.

The petitioner's case in Writ Petition No. 12038 of 2021 in alia is that the petitioner is a peace loving and permanent citizen of Bangladesh. He is a reputed businessman and doing business complying with all the rules and regulations of the country. That the petitioner opened a Beneficiary Owners (BO) account on 29.09.2004 with PFI Broker Ltd. having BO ID No. 1201740000542561 with an intention to invest and trade in the Bangladesh Stock Exchanges (DSE & CSE). He owned 602,051 shares of FarEast Islami Life Insurance and 5539794 shares of FarEast Finance & Investment Ltd. Photocopy

of the BO account opening form is annexed hereto and marked as Annexure-“B”. That the petitioner thereafter pledged 121281 shares with Fareast Finance and Investment Ltd. on 30.12.2012, 480770 shares with Fareast Finance and Investment Ltd. on 30.12.2012 and 5539794 shares with Bank Asia Ltd on 05.03.2017. That recently the petitioner has come across a letter dated 15.09.2021 bearing Memo No. CDBL/COMPLIANCE/2021/154 issued by respondent No. 4 to the Managing Director of PFI Securitas Ltd. of 56-57 Dilkusha C/A, 7th and 8th Floor, Motijheel, Dhaka. The letter has been issued in reference to a directive of Bangladesh Securities and Exchange Commission. The petitioner learnt from that letter that , pursuant to that directive bearing Memo No. BSEC/CFD/4:22/2005/Part-iii/728, dated 14.09.2021, his BO account bearing BO ID-1201740000542561 maintained with PFI Securities Ltd. has been suspended from selling or otherwise debiting of securities. That the petitioner had not been informed regarding any issues related to BO accounts from either the commission or from CDBL earlier. The suspension has been imposed without providing any reason or notification to the petitioner. The petitioner tried to find the reason of such arbitrary suspension but to no avail. That the petitioner has pledged his entire shares to Prime Finance & Investment Ltd. and Fareast Finance and Investment Ltd. Due to the suspension the pledge holder is unable to exercise their right to sell the shares against loan liabilities for which the shares were pledged. Currently the BO ID 1201740000542561 maintained with PFI Securities Ltd. is showing blocked. That the petitioner has been making continuous query but

could not find any clue regarding any authentic reason of suspending his BO Account. However, it has come to the knowledge of the petitioner that the suspension has been imposed due to a court order. That the personal record of the petitioner shows that recently in Company Matter No. 243 of 2020, the Company court of the High Court Division of the Supreme Court of Bangladesh on 17.01.2021 directed Bangladesh Bank to issue necessary directions/orders to the banks and other financial institutions to freeze all his accounts. That this might be a reason, the commission probably issued directive bearing Memo No. BSEC/CFD/4:22/2005/Part-iii/728, dated 14.09.2021 to suspend the petitioner's BO Account bearing BO ID-1201740000542561 maintained with PFI Securities Ltd. However, on 14.06.2021 the company court of the High Court Division of the Supreme Court of Bangladesh was pleased to recall and vacate the order dated 11.02.2021 so far it relates to the petitioner. That the petitioner submitted a representation before the respondent No. 1 on 16.11.2021 praying for withdrawal of suspension of his BO Account bearing BO ID- 1201740000542561 maintained with PFI Securities Ltd. That the petitioner addressed to the fact that, had the commission issued the directive bearing Memo No. BSEC/CFD/4:22/2005/Part-iii/728, dated 14.09.2021 pursuant to the order dated 11.02.2021 passed in Company Matter No. 243 of 2020, the same must be withdrawn immediately. That hence the petitioner obtained vacating order of the same on 14.06.2021 from the Company court. The petitioner also requested to inform him if the commission has any other reason for suspending his BO account other than the orders

passed in the above mentioned company matters. However, the commission has not yet made any reply to the representation. That the petitioner after opening BO account with PFI securities Limited operated lawful business and subsequently pledged his shares to Fareast Finance & Investment Limited and Bank Asia Limited. The shares of the petitioner kept with BO ID No. 1201740000542561 are now pledged shares and interest of those shares are now involved with the pledged holders also. However, without serving any show cause notice or giving any opportunity to be heard the BO account was and is suspended for some unknown reason. Despite having made repeated communication, the respondents did not cooperate regarding the reason of such suspension. Hence the writ petition.

The petitioner's case in Writ Petition No. 11915 of 2021more or less relates to the same facts and law as the petitioner in writ petition No. 12038 of 2021. However the petitioner's additional facts as stated in Writ Petition No. 11915 of 2021 is that the personal record of the petitioner shows that recently in Company Matter No. 109 of 2020, Company Matter No. 164 of 2020 and in Company Matter No. 243 of 2020, the Company Court of the High Court Division of the Supreme Court of Bangladesh on 15.02.2021 and 11.02.2021 directed the Bangladesh Bank to issue necessary directions/orders to the banks and other financial institutions to freeze all accounts of the petitioner. The commission probably issued directive bearing Memo No. BSEC/CFD/4:22/2005/Part-iii/728, dated 14.09.2021 in compliance of the order dated 25.02.2021 and 11.02.2021 and suspended the petitioner's BO account bearing BO ID-1201740008013967

maintained with PFI Securities Ltd. However, on 13.04.2021 and 28.04.2021 the Company court of the High Court Division of the Supreme Court of Bangladesh by an order recalled and vacated the order dated 15.02.2021 and 11.02.2021 so far it relates to the petitioner. The petitioner submitted a representation before the respondent No. 1 on 16.11.2021 praying for withdrawal of suspension of his BO Account bearing BO ID 12011740008013967 maintained with PFI Securities Ltd. The petitioner addressed to the fact that, had the commission issued the directive bearing Memo No. BSEC/CFD/4:22/2005/Part-iii/728, dated 14.09.2021 pursuant to the order dated 15.02.2021 and 11.02.2021 passed in Company Matter No. 109 of 2020, Company Matter No. 164 of 2020 and in Company Matter No. 243 of 2020, the same must be withdrawn immediately hence the petitioner obtained vacating order of the same on 13.04.2021 and 28.04.2021 from the company court. That the petitioner also requested to inform if the commission had any other reason for suspending his BO account other than the orders passed in the above mentioned Company Matters. However the commission has not yet made any reply of the representation. That the petitioner also served a copy of the representation before the respondent No. 3 and 4 on 24.11.2021 but to no avail. Hence the petitioner being aggrieved by the action of the respondents filed the writ petition.

In both the Writ Petitions, Learned Advocate Mr. Mustafizur Rahman along with Mr. Shihab Uddin Khan appeared on behalf of the petitioner. Learned Advocate Mr. Abul Kalam Azad appeared for the

respondent No. 1 while learned Advocate Mr. Md. Emdadul Haque Kazi appeared for the respondent Nos. 3 and 4.

In both the Writ Petitions, Learned Advocate for the petitioners in both the writ petitions submits that the respondents' arbitrary action in suspending and freezing the BO account of the petitioner is completely without lawful authority and cannot be sustained. He agitated that the respondents violated the principle of due process and natural justice by not issuing the order to the petitioner directly. He submits that it is the petitioner's fundamental right guaranteed under the provisions of Article 31, 40 and 42 of the Constitution to be afforded due process and issued a show cause. He agitated that however in the petitioner's case the respondents did not issue any prior notice before freezing and suspending the petitioner's BO accounts.

Drawing attention to the supplementary Rule which was allowed by this bench's vide order dated 10.04.2022 he draws attention upon it. He points out to Annexure-I and agitates that it was only after filing of both the writ petitions being Writ Petition No. 12038 of 2021 and Writ Petition No. 11915 of 2021 as late as 23 December 2021 pursuant to the application of the petitioner and in compliance with the direction during Rule issuance by this Division that the respondents informed the petitioners of the alleged reason behind freezing and suspending the BO accounts of the petitioner. From Annexure-I the learned Advocate for the petitioner also agitates that the allegations as stated in Annexure- I of the first supplementary Rule dated 10.04.2022 in Writ Petition No. 12038 of 2021 are not

sustainable and cannot be a subject matter of freezing and suspending the BO account of the petitioner. He submits that the allegation as stated in Annexure-I are subject matters of money laundering and criminal case etc. He agitates that however in the instant case the respondents did not file any such money laundering case nor any criminal case was filed under the relevant provisions of the penal code against the petitioner. He argues that without informing the petitioner suspending his BO account in the absence of any prior show cause notice are totally unlawful. He submits that it is a principle of natural justice that before seizing a person of his interest by way of property whatsoever it is the fundamental right of any person to be informed and to be given an opportunity to be heard. He persists that however it is clear from the instant case that the petitioners were informed of the allegation by way of Annexure-I only after issuance of the Rule.

He next takes us to the application for issuing supplementary Rule which was filed on 11.08.2022 and Rule was issued by this Bench accordingly. From the 2nd supplementary Rule in both the writ petitions he draws attention to Annexure J and submits that it is clear that the respondent No. 1 Bangladesh Securities and Exchanges Commission issued the order to the respondent No. 3 and 4 (CDBL) under the provisions Section 14 of the Depositories Act, 1999 read with Regulations 48 and 51(2) of the Depositories (User) Regulations 2003. In this context he argued that however in the instant writ petition the scheme of the law under Section 14 of the Depository Act, 1999 was not followed.

There was a query from this bench regarding the audit report which is annexure-2of the affidavit opposition filed by the respondent No. 1. On this issue he submits that although the respondents had the audit report conducted by an audit committee, but however the said audit report was not relied upon in the memo date 14.09.2021 which is the original document by which the BO account of the petitioner was suspended and freezed.

He next agitated that the said audit report does not allege that the BO Account of the petitioner was used for committing any irregularity or unlawful purpose. In the context of Section 14 of the Depositories Act, 1999 he points out that Section 14 of the Depositories Act, 1999 clearly contemplates satisfaction of the respondents as to allegation against any BO account holder whatsoever any investor or any other person. In this context he continues that however the application for issuing a supplementary Rule annexure-J nor any other order reflect any such ‘satisfaction’ prior to holding or suspending both the petitioners’ BO account holder.

Upon a query from this bench on the Depositories Act, 1999 being a special law, he argues that even though a special law may be enacted to serve a particular purpose, but however no law can contemplate the absence of due process and fair hearing to any person. He contends that absence of fair hearing and due process tantamounts to being ultra vires of the constitution and consequently unconstitutional. He further contends that however stringent a law may be, nevertheless it is a fundamental right under the principles of

natural justice to be afforded due process and fair hearing before seizing any person of any privileges, rights, whatsoever the seizing of which may be detrimental to his material interests.

He next draws attention to Section 14 of the Depositories Act, 1999 and submits that Section 14 of the Depositories Act, 1999 does not contemplate any action to be taken against any BO account holder, nor investor nor share holder whatsoever. He agitated that section 14 rather contemplates action arising out of a wrong committed by a depositor. He submits that therefore Section 14 of the Depositories Act, 1999 is not at all applicable in suspending the BO account of the petitioner and consequently such suspension is unlawful. In this context he continued that therefore the suspension of BO account of the petitioner under section 14 of the Depositories Act-1999 is ultra vires of Section 14 of the Depositories Act, 1999 inasmuch as that the petitioners are otherwise not a depository. He contends that since the instant petitioners do not fall within the definition of depository, hence there cannot arise any question of prevention of any of his activities which may be detrimental to the interest of investors for smooth development of the security market.

Regarding the audit report annexed and relied upon by BSEC, he argues that the Audit report does not allege nor does it contain any particulars to show that the BO account of the petitioners were used for any irregular or unlawful purpose or objective. He pursuades that nor does the audit report allege that the BO account was used to violate any particular law or relevant rules.

The petitioner in Writ Petition No. 11915 of 2021 on this contention against holding/ suspending his BO account attempts to pursuade that there is nothing in the audit report to indicate or reflect that the writ petitioner in writ petition No. 11915 of 2021 K.M Rakib Hasan has any involvement with the activities alleged hereto.

While summing up his contentions, he submits that it is clear from all the documents which have been annexed hereto by way of the original impugned order followed by the two supplementary affidavits filed by the petitioner, that the two petitioners in the 2 writ petitions were priorly informed at any stage of the action taken by the respondents by way of freezing the BO accounts against any allegation against them.

He next submits that although it has been nearly a year since the BO accounts have been suspended on 15.09.2021 but till date no formal proceedings have been initiated against the two petitioners. He contends that neither has any formal proceedings been initiated nor have the Respondents released their BO Accounts. He continues that under such uncertain circumstances the petitioner have been kept in a limbo amidst serious uncertainity which is detrimental to their interests. He submits that suspending and freezing the BO account against any person for such a long period of time without releasing the BO account nor initiating any formal proceedings such conduct of the respondents tantamounting to inertia is absolutely unlawful and against the principles of natural justice. He submits that the respondents cannot upon their whims arbitrarily withhold the BO accounts of the 2 petitioners nor of any other person for such a long

period in the absence of any further proceeding or releasing of the BO account whichever.

In the context of the principle of natural justice not being followed in the instant case he cites from para Nos. 5.52, 5.53, 5.55, 5.56 and also para No. 5.56 of the Constitutional Law of Bangladesh, 3rd Edition by Mahmudul Islam. He submits that the General Principles of Natural Justice and due process and fair procedure are reflected in these paras in Constitutional Law of Bangladesh in which the author relied upon several common law decisions from different jurisdictions including the Indian Jurisdiction and the English Jurisdiction. He submits that it is a universal concept of natural justice and fair play that before depriving a person of any right which deprivation might be detrimental by way of property or any other right a person must be afforded a chance of an opportunity of fair hearing. He assails that however it is clearly manifest from the conduct of the Respondents that in the instant case such provision was not followed. He concludes his submission upon assertion that both writ petitions being Writ Petition No. 12038 of 2021 and Writ Petition No. 11915 of 2021 bears merit and ought to be made absolute for ends of justice.

On the other hand Learned Advocate for the respondent No. 1 by way of filling an affidavit in opposition vehemently opposes the Rules. At the onset of his submissions he contends that the orders were given to the CDBL following the provisions of section 14 read along with section 13 of the Depositories Act-1999. He agitated that the Depositories Act, 1999 is a special enactment of law and

consequently provisions of the Act specially enacted must be strictly construed.

There was a query from this bench regarding the petitioners contention of the principle of natural justice and due process not being followed in this particular case given that it is admitted that no show cause notice was served upon the petitioner before suspending his BO account. In reply to the query the learned Advocate for the respondent No.1 argues and points out that section 14 of the Securities Act, 1999 does not contemplate the provision for serving any notice prior to cancelling BO account or any other interest that may be adversely affected. He contend that the Depositories Act, 1999 was enacted for a special purpose with a special objective. He continues that when the Depositories Act, 1999 was enacted the legislators evidently did not contemplate any prior show cause notice before taking any such action or measures. He further continues that the provision of prior notice was consciously excluded since it might frustrate the whole purpose since the issuance of show cause may involving an allegation of irregularity and/or illegality large sums of money. He contends that such issuance of show cause notice may be seriously detrimental to the interests of the investors and the public and may be a serious impediment for smooth development of the security market. He continues that issuance of show cause in these cases as in the instant case might frustrate the whole purpose of preventing corrupt persons form siphoning and/or otherwise misappropriating funds unlawfully. Upon elaborating his contention he points out that the Section 14 of the Depositories Act-1999 essentially relates to financial

crimes/offences. Pursuant to the fact that the objective of the Act of 1999 relates to regulating the financial market particular the share market and prevention of irregularities therein. He pursuades that therefore the Act of 1999 must be distinguished from other special laws and Rules where there are particular provisions for issuing show cause notice to any person before taking any action which might detrimentally affects any of his material interests. Example of such laws consisting of prior show cause notice can be found in ---------- e.g .Customs Act-1969, Vat Act 1991 etc.

He persists that the order issued upon the CDBL were strictly in compliance with the provisions of Section 14 of the Depositories Act, 1999. There was a query from this bench upon the learned Advocate for the respondent No. 1 arising out of the petitioner's contention that in the instant case the respondents could not show the 'satisfaction' that irregularity and/or illegality has been actually committed in the market by the petitioners and such satisfaction is contemplated under the provisions of section 14 of the Depositories Act, 1999.

The learned Advocate for the respondent controverts such contention of the petitioner. By way of reply, he draws attention to the affidavit in opposition and particularly annexure-2 of the first affidavit in opposition which was filed on 06.04.2022 before this Bench Annexure-2 manifest the final report of the audit enquiry committee which committee was formed by the respondents following allegations against the petitioners. He submits that an examination of the audit report makes it clear that the respondent No. 1 only upon being satisfied that there have been gross irregularities followed by

allegations of financial offence, only once upon achieving their satisfaction issued the order upon the CDBL. He continues that it was upon and after such satisfaction that the respondents took the next step and issued an order to the Depositories Body which is the CDBL. He points that from the audit report it is clear that there is prima facie proof of allegations of fraudulent misappropriation/financial offence committed by the petitioners.

He continues that the petitioner in Writ Petition No. 12038 of 2021 was a sponsor director of Fareast Islami Life Insurance Co. Ltd. from 2013 to 2018 and also director of PFI Properties Ltd. He submits that the audit report makes it clear from the company's books of accounts that they committed serious illegally and irregular transfer of funds from one company to another company took place in the garb of co-operative companies. He submits that the company's books of accounts shows that Tk. 191 Crore 76 Lacs 36 Thousand 637 was transferred to FILIC Employee Co-operation Society but after investigation, it transpires that only Tk. 1 Crore 14 Lac 55 Thousand was deposited. He points out that Tk. 190 Crore 62 Lacs 31 Thousand 458 remains unaccounted for since the so called "co operative society" was ultimately dissolved on 06.09.2016. He asserts that it is evident that there are huge amount of money unaccounted for and nowhere is there any explanation as to the original such of the huge amount of money.

He next draws attention to the audit report and submits that it is also clear from the audit report that FILICL illegally transferred Tk. 71 Crore 14 Lac 72 Thousand 332 to PILICL Employees Co-operative

Society which has no nexus whatsoever with Fareast because Prime Islami Life Insurance Co. Ltd. is a separate and distinct company in which the son of the petitioner in writ petition NO. 12038 of 2021, Rakib Hasan was the Chairman at the relevant time. He contends that the said Rakib Hasan , who is the petitioner in writ petition No. 11915/2021 was the chairman at the relevant time and which is admitted in Writ Petition No. 11915 of 2021.

He next submits that that it is also clear from Annexure-2 of the Audit Report that there was land transfer in 2013, comprising of 381 decimals of land which was purchased by PILICL ECS for an amount of Tk. 5 crore 14 lacs and then transferred to Prime Islami Life Insurance Co. Ltd, Prime Islami Life Insurance which most illegally sold the same to Fareast for Tk. 71 Crore and 15 Lacs. He asserts that the prices shown are fictitiously inflated prices by resorting to fraud. He reasserts that the fact that the son of the petitioner, Rakib Hasan was the Chairman of Prime Islami Insurance Co. Ltd at the relevant time is admitted in Annexure-F of Writ Petition No. 11915 of 2021. He submits that it is further clear from the audit report that after investigation into the land it was discovered that the land actually is swamp land and not high land. He persuades that it is also clear from the audit report that Tk. 63 crore of FDR of Fareast was kept as lien against the loan availed by PFI Securities and that out of this transaction when they failed to pay, the said security of FarEast was encashed.

The petitioner in his submission contended and argued that the petitioner Writ petition No. 11915 of 2021 Mr. K.M Rakib Hasan is

not a share holder and that it is not reflected' anywhere that he is involved in any of the allegations. To controvert such claim of the petitioner, he takes us to Writ Petition No. 11915 of 2021. He submits that it is admitted by the petitioner in writ petition No. 11915 of 2021 by way of Annexure-F that he was also a director of the said PFI securities Ltd. He draws attention to Annexure F in Writ Petition No. 11915 of 2021 which is a judgment in Company Matter No. 109 of 2020 with Company Matter No. 164 of 2020 which judgment was delivered on 13.04.2021. He also draws attention to Annexure- F1 in writ petition No. 11915 of 2021 which is a judgment in Company Matter No. 243 of 2020 which judgment was also delivered on 28.04.2021 by this Division. He submits that it is admitted by the petitioner in writ petition No. 11915 of 2021 who was a respondent in Company Matter No. 243 of 2020 that K.M Rakib Hasan son of K.M. Khaled in Writ Petition No. 12038 of 2021 is a share holder director of Fareast Islamic Life Insurance Co. Ltd. He asserts that therefore it is clear and evident and admitted by the petitioner in Writ Petition No. 11915 of 2021 that he is a shareholder director of the PFI Properties Limited. He submits that it also clear that the petitioner in writ petition No. 11915 of 2021 is also the son of K.M Khaled who is the writ petitioner in writ petition No. 12038 of 2021. He further agitates that from the audit report which is annexure 2 of the affidavit in opposition it is quite clear that Fareast Islamic Life Insurance Co. Ltd. and PFI Properties Limited, is involved and by way of creating co-operative society has been unlawfully transferring the money between themselves and also later on dissolved the so called co-operative

society to purchase swamp lands and not high land inter alia other gross irregularities. He takes us back to Annexure-2 and points specifically to the findings of the audit committee regarding irregularity and unlawful transaction committed by the shareholders of the companies. He submits that the observation and the recommendation made by the audit committee in annexure-2 of the affidavit in opposition clearly shows that the respondents issued the order to the CDBL only after being satisfied of irregularity and fraud committed by the petitioner. The learned Advocate for the respondents in his reply to the petitioners contention that the impugned order is the ultra vires of Section 14 of the Act of 1999 controverted that Section 14 of the Depositories Act, 1999 clearly contemplated that any order may be given to the depositories body who is the custodian of the shares which may be purchased in the market by any person, be they company or individuals whatsoever. He also submits that it is clear from the law that the central depository body are the custodian of the shares that are purchased from the security stock exchange. He submits that the CDBL is a licensed company of the respondent No. 1 Bangladesh Securities Exchange company and which license has been granted basically to allow them to be the custodian of shares that are purchased in the market by any member of the company or any other person. He argues that the petitioners' contention that the respondents acted in contravention of section 14 of the Depositories Act, 1999 is absurd and not sustainable given that the provisions of section 14 contemplates that after issuance of appropriate order to the Depositories Body who are the

custodians of the share, the depository body shall act likewise as per the order issued by the authorities. He submits that under the provisions of section 14(2) of the Depositories Act, 1999, CDBL being the depository body is bound to comply with the orders of the respondent No. 1 and cannot and does not have any scope to derogate therefrom. He further submits that Section 14 contemplates that an order may be issued by the respondent No. 1 to the CDBL or any other depository company which may be established inter alia in the interest of investors and for purpose of smooth development of the security market. He continues that Section 14 of the Depositories Act, 1999 authorise the respondents to issue order/orders to the depository body for smooth development of security market and in the interest of investors for preventing inter alia irregularities, unlawful transactions, unlawful dealings in the share market. He reiterates that in the instant case the respondent No. 1 only after being satisfied that it is in the interests of the public at large who are all stake holders issued the order lawfully following the procedures of section 14 of the Depositories Act, 1999.

To substantiate his submissions on the propriety of the impugned order he takes us to section 13 of the Depositories Act, 1999 and submits that it is clear from section 13 of the Depositories Act, 1999 that the commission has the power and authority to suo-moto issue order in writing to cause an enquiry to be conducted under certain facts and circumstances. He contended that Section 13(1)(b) of the Depositories Act, 1999 is particularly applicable in the instant case given that Section 13(1)(b) contemplates that the commission is

empowered with the power and authority to suo-moto or on receipt of any complaint, at any time, by order in writing to cause an enquiry into any matter relating to an issuer, account holder, beneficiary owner or any other person concerned. He submits that section 13(1) clearly envisage that the commission under certain circumstances may suo moto issue any order with the objective to conduct an enquiry against any account holder. He reiterates that therefore in the instant case the respondents acted within the parameters of law and issued the order suo-moto, as section 13(1) of the Act of 1999 gave the order to constitute an enquiry committee and which led to the audit report submitted by the enquiry commission.

Next he submits that it is a principle of Rules of interpretation that a statute must be read as a whole and not in part. Such being the principle, he continues that section 13 and section 14 of the Depositories Act, 1999 must be read together and not in an isolated manner. He also contended that in this particular case the respondents only upon exhausting the provisions of section 13 which suo-moto empower then to conduct to enquiry upon being satisfied by the audit report only then proceeded to the next stage under section 14 of the Depository Act, 1999. He asserts that it is clear that the respondents following the provisions of section 13 conducted enquiry followed by audit report and thereafter issued the order to the depository body following section 14 of the Depositories Act, 1999 and which order CDBL which is the depository body is bound to follow. On this strain, he asserts that therefore no violation of any law took place nor the principles of natural justice has been infringed in the instant cases .

On the issue of the petitioner's repeated assertion that principle of natural justice has not been followed in the instant cases, he contended that under special circumstances the general principle of natural justice do not apply. He submits that the instant case is an example of such exceptional set of facts and circumstances where the general principle of natural justice does not apply. In support of his submissions he draws attention to the principle of our Apex court in the case of Shinepukur Holdings Ltd. Vs. Securities and Exchange reported in 50 DLR(AD)(1998) 189. He draws attention to the principle held in that case by our Apex court and submits that our Apex court in that matter wherein the Securities Exchange Commission was a party made observation which is reproduced here:

> *"when the SEC was making a complaint of fraudulent acts against certain companies and their directors on the basis of an enquiry undertaken by an expert committee, a court would be well-advised not to try to be more expert at the complaint stage because otherwise it will be an example of nipping the prosecution in the bud."*

He draws analogy from the principle in this decision and submits that in the instant case also if the court interferes at this stage since proceeding has not yet started , the whole purpose is likely to be frustrated and there is every possibility that the case of the respondents might be nipped off in the bud. He submits that in the instant case also an issuance of show cause might have proved to be disastrous given that the amount of money involved and which is clearly unaccounted for and might not ever see the light of day. He

asserted that such a situation would be detrimental to the interests of the public at large and also to the interests of the state. He concludes his submission upon assertion that therefore there is no irregularity or illegality committed on the part of the respondents and the orders were issued lawfully and these two Rules bears no merit ought to be discharged for ends of justice.

The learned Advocate for the respondent Nos. 3 and 4 by way of an affidavit in opposition substantively support the submissions of the learned Advocate for the respondent No. 1. The learned Advocate for the respondent Nos. 3 and 4 additionally submits that under the provisions of depository body to comply with any order that may be passed by the respondent No. 1. He submits that it is evident that in the instant cases the respondent Nos. 3 and 4 duly complied with the orders of the respondent No. 1 and concludes his submission upon assertion that the all these Rules bears no merit ought to be discharged for ends of justice.

We have heard the learned Advocates for both sides, perused the application and materials on record before us. We have also perused all the supplementary orders and the audit report annexed as annexure -2 of the affidavit in opposition filed by the respondent No. 1. Although many factual issues have been contended with both pertaining to by the learned counsels the writ petitions, but however for proper adjudication and disposal of the Rules, the crux of the matter which needs particular examination by us is whether the provisions of Depositories Act, 1999 have been complied with or not by the Respondents. With this in mind, we have further examined the

relevant laws. Apparently prior to the enactment of the Depositories Act, 1999 we do not find anything much in the law by which an action may be taken against inter alia any irregularity or unlawful transaction whatsoever in the financial market. Evidently the cases before us involve allegation of irregularity and illegality allegedly committed by way of alleged unlawful financial transactions which may be detrimental to the interests of the policy holders at large and/or to any other person whose interests may be adversely affected.

Upon examining Section 14 of the Depositories Act, 1999 we have parallelly however also examined Section 20A of the Securities and Exchange Ordinance, 1969. It is our considered opinion that in order to understand and appreciate the scheme of a particular law an exercise of examination of the history of such law by way of a previous related laws ought to be done. With such objective, for our better understanding of the scheme of the law we have perused Section 20A of the Securities and Exchange Ordinance, 1969 which is reproduced hereunder:

> *"20A. Power of Commission to issue directions in certain cases. [Notwithstanding anything contained in any other law for the time being in force, where] the Commission is satisfied that in the interest of investors or securities market or for the development of securities market it is necessary so to do, it may, by order in writing, issue such directions as it deems fit to any Stock Exchange, stock broker, stock dealer, issuer or investor or any other person associated with the capital market."*

Pursuant to perusal it may be pertinent to note that Section 20A of the ordinance of 1969 however does not contemplate any order to any depositor. It must be borne in mind that at that time when the Ordinance of 1969 was enacted there was no provision for 'depository company' to be formed in the interests of investors, shareholder or policy holders, whatsoever the case may be. There was no provision of any depository body being the custodian of shares on behalf of the stock exchange commission. But however an analogy may be drawn with Section 20A of the Securities and Exchange Ordinance, 1969 which Section 20A precedes Section 14 of the Depositories Act,1999 is reproduced hereunder:

> "১৪. কতিপয় আদেশ বা নির্দেশ প্রদানে কমিশনের ক্ষমতা। - (১) যদি কমিশন এই মর্মে সন্তুষ্ট হয় যে, বিনিয়োগকারী বা সিকিউরিটি বাজারের সুষ্ঠ উন্নয়নের স্বার্থে অথবা বিনিয়োগকারী বা সিকিউরিটি বাজারের স্বার্থের পরিপন্থীভাবে কোন ডিপজিটরির কাজকর্ম পরিচালনা রোধকল্পে ইহা প্রয়োজনীয়, তাহা হইলে কমিশন নিনিয়োগকারী বা সিকিউরিটি মার্কেট এর স্বার্থে ডিপজিটরি, ইস্যুয়ার বা উহাদের সহিত সংশ্লিষ্ট অন্য কোন ব্যক্তিকে যথোপযুক্ত আদেশ বা নির্দেশ প্রদান করিতে পারিবে।"

After an examination it appears that Section 20A of the Securities and Exchange Ordinance, 1969 and Section 14 of the Depositories Act, 1999 may be distinguished from each other so far as its relates to whom the commission may issue the orders to. Section 20A of the Securities and Exchange Ordinance, 1969 contemplate that the commission by order in writing may issue such directions as it deems fit to any Stock Exchange, stock broker, stock dealer, issuer or investor or any other person associated with the capital market.

Whereas section 14 of the Depositories Act, 1999 contemplates order/order that may be issued to the depository company.

It may be pertained to remind that in 1969 there was no provision for a depository company which came into existence only in 1999 by way of enactment of the Act of 1999. The CDBL was formed as late as 2003 after enactment of the Depositories Act, 1999. But however we of the considered view that the primary authority to issue order/orders empowering the commission upon their satisfaction was also contemplated in the previous law by way of Section 20A of the Securities and Exchange Ordinance, 1969. It may be further pertinent to note that the Securities and Exchange Ordinance, 1969 also does not contemplate any show cause notice before issuing any order under section 20A of the Securities and Exchange Ordinance, 1969. That being said we have also examined the provisions of section 14 of the Depositories Act, 1999.

The learned Advocate for the petitioner relentlessly contended that due process was not followed in the instant case since no show cause notice was afforded to the petitioner. On this issue he also relied on some principles of due process and natural justice quoted and derived from common law and several jurisdictions including the Indian jurisdiction and English jurisdiction from the Constitutional Law of Bangladesh by Mahmudul Islam. Upon drawing analogy the learned Advocate for the petitioner contended that principle of natural justice has been blatantly violated in the instant cases given that no opportunity of being heard nor due process was given to the petitioners prior to freezing their BO accounts. The learned Advocate

for the petitioner also contended that the provisions of section 14 of the Depositories Act, 1999 was not also duly followed by the respondent No. 1. The learned Advocate for the petitioner further contended that although Section 14 of the Depositories Act, 1999 contemplates সন্তুষ্ট (satisfaction) on the part of the respondents prior to issuance of any order, but in the instant case the respondents could not prove satisfaction (সন্তুষ্ট). He contended that the Respondents could not show where the satisfaction arose from as to the source of their satisfaction. The learned Advocate for the petitioner also contended that Section 13 of the Depositories Act, 1999 has also not been complied with.

To address these issues we have examined Section 13 and 14 of the Depositories Act, 1999. Section 13 of the Depositories Act, 1999 is reproduced hereunder:

"১৩. তদন্ত। - (১) কমিশন, স্বতই অথবা কোন অভিযোগ প্রাপ্তির ভিত্তিতে, যে কোন সময় লিখিত আদেশ দ্বারা এতদুদ্দেশ্যে নিযুক্ত কোন ব্যক্তির মাধ্যমে নিম্নবর্ণিত বিষয়ে তদন্ত করাইতে পারিবে, যথা:-

(ক) কোন ডিপজিটরির বিষয়;

(খ) কোন ইস্যুয়ার, হিসাব ধারক, সুবিধাভোগী মালিক বা সংশ্লিষ্ট অন্য কোন ব্যক্তির বিষয়;

(গ) ডিপজিটরিতে রক্ষিত কোন সিকিউরিটির ব্যবসা বা লেনদেনের বিষয়।

(২) উপ-ধারা (১) এর অধীন কোন তদন্ত শুরু হইলে, ডিপজিটরি, ইস্যুয়ার, হিসাব ধারক, সুবিধাভোগী মালিক বা সংশ্লিষ্ট অন্যান্য ব্যক্তি তদন্তকারীর প্রয়োজন অনুযায়ী সকল তথ্য সরবরাহ করিবে।

(৩) উপ-ধারা (১) এর অধীন তদন্তকারী কোন ব্যক্তি তদন্তের প্রয়োজনে ডিপজিটরি, ইস্যুয়ার অথবা তদন্তাধীন ব্যক্তির মালিকানাধীন বা দখলকৃত কোন অংগনে প্রবেশ করিতে পারিবে।"

From a plain reading of Section 13 of the Depositories Act, 1999 it appears that the commission also apart from receiving complaint holds and is clothed with the authority to issue suo-moto order at any time for purpose of enquiry to be conducted regarding any person which/who including BO account holders. The learned Advocate for the respondent No. 1 by way of reply took us to the audit report in the affidavit in opposition filed by the respondent No. 1 which has been marked as annexure 2 . The learned Advocate for the respondent No. 1 throughly step by step took us through the several findings and observations and recommendations made by the audit committee.

He also shows us from the affidavit in opposition that the audit report was submitted on 17.09.2020. We have examined Page No. 232 of the affidavit in opposition which is also part of annexure-2. We have perused order dated 17.09.2020 which was issued by the Securities and Exchange Commission respondent No. 1 and was addressed to the appointed chartered accountants. It appears from the letter dated 17.09.2020 that the Bangladesh Securities and Exchange Commission (BSEC), in terms of the powers vested under the Securities and Exchange Rules, 1987, rule 12, sub rule (3) as amended and framed under the Securities and Exchange Ordinance, 1969 appointed one A. Wahab and Co. company chartered accountants in the public interest to conduct special audit on the matter for audit of

financial statement of the petitioner company for the years ended on December 31, 2016, December 31, 2017 and December 31, 2018 of Fareast Islami Life Insurance Co. Ltd. It also refers to a guide line under sub-rule (3) and 3(A) of rule 12 of the Securities and Exchange Rules, 1987. It is clear that on 17.09.2020 the respondents suo-moto following the provisions of section 13 of the Depositories Act,1999 constituted an enquiry committee which was followed by the audit report. Next we have examined the audit report to which the learned Advocate for the respondent No. 1 draws our attention to. The learned Advocate for the respondents took us through the report wherefrom it transpires that there are several prima facie allegations of irregularities/unlawful transactions against the director of PFI Securities Ltd. including some other companies. We have examined the findings thereof by the audit committee. Therefore we are of the considered finding that following the provisions of Section 13 an enquiry committee was formed constituting a group of chartered accountants and an enquiry was conducted subsequently leading to the audit report. Upon examination of the recommendation and the finding of the audit report, we are also of the considered opinion that the respondents exhausted the provisions of section 13 of the Depositories Act, 1999 before embarking upon issuance of the order under section 14 of the Depositories Act, 1999.

We have examined the scheme of the section 14 of the Depositories Act, 1999 and we have also compared it with Section 20A of the Securities and Exchange Commission Ordinance 1969 which has been mentioned elsewhere in this judgment.

It is a principle of law and principle of interpretation of statute that a statute to be comprehended fully must be read as a whole and not in part. To this effect we have also examined section 14 of the Depositories Act, 1999. It is clear from Section 14 of the Depositories Act, 1999 that section 14 does not contemplate any issuance of show cause notice before issuance of any order. Absence of provision for show cause in Section 14 is similar to the original law in the Securities and Exchange Commission, 1969. For a better understanding of the present law upon comparison with the previous law of 1969 we may for purposes of statutory interpretation apply the principles of pari materia.

The learned Advocate for the petitioner contended that even in the absence of specific mention of show cause in any law, but however following the principles of natural justice it is the fundamental right of every citizen to receive a show cause notice.

Against this argument, our considered view is that the Depositories Act, 1999 was enacted for a special purpose to serve a special objective. The Depositories Act, 1999 also contemplated establishment of some depository companies whose main objective is to monitor against any irregularities/ illegality which may be committed in the share market and to regulate financial transactions to ensure harmony and fairness in the share market.

It must be borne in mind that the Depositories Act, 1999 is a special statutory enactment .Therefore it is part of the scheme of special law by way of its “enactment”. We have other instances of special laws for example Vat Act, Customs Act 1969 including

several other laws. In most of these special statutory enactments we find a provision of show cause notice to be issued upon a person before seizing him of anything which might adversely affect his interests.

However significantly enough we do not find any such provision of show cause notice in the Depository Act 1999. Nor do we find anything in that regard in Section 20A of the previous Ordinance of 1969.

Therefore we are also of the considered view that the legislators while enacting this particular law by way of Depositories Act 1999 deliberately and consciously excluded the provision of issuing show cause notice. It must be also be borne in mind that the Depositories Act, 1999 was enacted to prevent serious financial crimes /offences which is not unusual or unheard of our country. It is our considered view that the Depositories Act, 1999 including Section 14 consciously and with a specific objective refrained from providing provision for show cause because a provision of show cause notice before issuing any other order by way of freezing BO account whatsoever might frustrate the whole purpose of enacting the law. Therefore in the absence of any direct provision of show cause notice and upon comparison with previous laws within similar scheme by way of Section 20A of the ordinance of 1969, we are not in a position to interpret otherwise nor can we presume that the legislature intended issuance of a show cause notice while enacting the Depositories Act of 1999 ডিপজিটরি (ব্যবহারিক) প্রবিধানমালা.

We have also examined the related Rules corresponding to the Depositories Act 1999 including the Depositories (user) Regulation 2003. Upon perusal and comparison with the course of action taken by the Respondents nothing inconsistent in their actions is revealed.

Regarding the principle of natural justice also not being followed which was tenaciously contended by the learned Advocate for the petitioner, our considered view is that in exceptional cases at times the general principle of natural justice has to be departed from to serve the interest of a larger purpose. In this particular case we are of the view that the larger purpose inter alia include the interests of other stakeholders including policyholders who are members of the public at large.

From the audit report in this particular case there is a prima facie allegation of insurmountable sum of money transaction not accounted for. We are of the considered view that there is a prima facie apprehension that if a show cause was issued the whole purpose of the law and the objective for which it was enacted might be frustrated. Therefore in the instant case the general principle of natural justice falls within the exception, where under certain circumstances there must be a departure from the general principle of natural justice. Also relying upon the principle of our Appellate Division in the case of Shinepukur Holding Ltd. and Others Vs. Securities and exchange Commission reported in 50 DLR(AD)(1998) 189 our attention was drawn to the relevant para-16 wherein our Apex Court in that case held that:

> *"When the SEC was making a complaint of fraudulent acts against certain companies and their directors on the basis of an enquiry undertaken by an expert committee, a Court would be well advised not to try to be more expert at the complaint stage because otherwise, it will be an example of nipping the prosecution in the bud."*

We are in respectful agreement with this observation held by the Appellate Division which is of course binding upon us. Our attention was drawn particularly to that case in relation to some financial crimes that apparently involve irregularities and illegal transactions in the share market.

The learned Advocate for the petitioner at one stage of his submissions argued that Section 14 of the Depositories Act-1999 is not applicable to the petitioner since Section 14 of the Depositories Act, 1999 does not contemplate any direct order to the petitioners who are not depositors.

We have examined the relevant laws regarding this contention of the learned Advocate for the petitioner. We have as mentioned elsewhere compared previous related laws being the Securities and Exchange Commission Ordinance, 1969.We have drawn analogy of section 14 of the Depositories Act, 1999 with section 20A of the Act of 1969. Section 20A of Ordinance of 1969directly contemplate a direction and order to be issued against a class of persons which also include investors etc. or any other person associated with the share market. Therefore section 20A directly contemplates an order in

writing to be issued under the circumstances to a class of persons associated with the capital market. The petitioners here also apparently are directors of the broker company particularly PFI securities company ltd. Both the petitioners are directors. It goes without saying that therefore these persons are associates of the capital market. As mentioned elsewhere in the judgment Section 14 of the Depositories Act,1999 was enacted to achieve inter alia a special objective primarily to prevent financial irregularity and unlawful transaction etc or in any other form whatsoever in the capital market. The Depositories Act, 1999 also contemplates the establishment of a company or companies which shall act as a via media between the shareholder and the Securities and Exchange Commission and such company shall be the custodians of the BO account in favour of the shareholder in all listed companies. Therefore it is evident that the Depositories Act, 1999 was enacted with a new objective in this country. In our considered view it was enacted with a view to creating a via/media between the BO account holders and the Securities and Exchange Commission.

The law envisages that the depositories companies shall be custodian of the shares subject to any order or direction that may be passed by the commission under Section 14 of the Depositories Act, 1999. Therefore in our understanding Section 14 of the Depositories Act, 1999 does not contemplate giving direct order to the class of persons the instant petitioner belongs to. But however it is evident that Section 14 of the Depositories Act, 1999 overtly empower the Securities and Exchange Commission to issue orders to the

Depositories Companies and act upon such orders to prevent any irregularities or unlawful transaction in the financial market.

It is evident that persons who may be affected by such orders may be other persons including the class of persons the instant petitioners by way of being share holders of a company whatsoever belong to. Therefore we are of the considered view that Section 14 of the Depositories Act, 1999 provides the provision to issue orders to Depositories Company and the Depositories to act upon the orders and which may affect any person or class of persons including the petitioners.

The learned Advocate for the petitioner also contended that although the BO accounts were suspended on 15.09.2021 but however following suspension of the BO account no other steps has been taken whatsoever by the respondents yet. He also contended that such inertia of the respondent no. 1 is also adversely affecting the fundamental rights of the petitioner by suspending his BO account indefinitely. On this issue upon a query from this bench the learned Advocate for the respondent No. 1 submitted that an enquiry committee constituted of Bangladesh Financial Intelligence Unit (BFIU), ACC and BSEC has been formed to conduct investigation into the allegations of corruptions and fraudulent misappropriations committed by the management and board directors and that the investigation is on-going. He submitted that since this particular matter involves huge amount of unaccounted fund , consequently the enquiry procedure has become lengthy.

Our considered view on this issue however is that it is true that the prima facie allegation involve huge amount of funds and it is apparently alleged in annexure-2 that a huge amount remains accounted for. However since the two BO accounts of the two petitioners have been suspended for over a year, therefore we are of the view that the respondent No. 4 owe a duty to dispose of the matter within a reasonable time upon following the proper procedures and law.

In our considered view the contention of the petitioner that Section 14 of the Depositories Act, 1999 does not contemplate any freezing of BO account or any other adverse order which may adversely affect that the petitioner or any other person belonging to same class such contention is not incorrect and fallacious.

Under the facts and circumstances and upon perusal all the materials on record before us including the supplementary affidavits we are of the considered view that` respondents did not commit any illegality in issuing the impugned orders. We do not find any merit in these Rules along with the supplementary Rules.

In the result, the 2(two) Rules along with all the supplementary Rules in Writ Petition No. 12038 of 2021 and Writ Petition No. 11915 of 2021 are hereby all discharged without any order as to costs.

Communicate this judgment at once.

I agree.

Kazi Zinat Hoque, J:

Arif(B.O)