SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES [1][***]) RULES, 2005

In exercise of the powers conferred by [2]**[***clause (*hd*) and clause (*i*) of sub-section (2) of section 30***]** *of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Central Government hereby makes the following rules for holding inquiry for the purpose of imposing penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G*[3]**[***, 23GA***]** *and 23H of the Act, namely :—*

Short title and commencement

1. (1) These rules may be called the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties [4]**[***]**) Rules, 2005.

(2) They shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*b*) "adjudicating officer" means the officer appointed by the Securities and Exchange Board of India as adjudicating officer under section 23-I of the Act;

(*c*) "inquiry" means the inquiry referred in [5]**[***sub-section (2) of section 12A or section 23-I of the Act***]**.

(2) Words and expressions used herein and not defined in these rules but defined in the Securities Contracts (Regulation) Act, 1956 shall have the same meanings respectively assigned to them under that Act.

Appointment of adjudicating officer for holding inquiry

3. Whenever the Securities and Exchange Board of India is of the opinion that there are grounds for adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H of the Act, it may appoint any of its officer not below the rank of Division Chief to be an adjudicating officer for holding an inquiry for the said purpose.

Holding of inquiry

4. (1) In holding an inquiry for the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G [6]**[***, 23GA***]** and 23H whether any person has committed contraventions as specified in any of sections

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[1] Words "by Adjudicating Officer" omitted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[2] Substituted for "clause (hd) of sub-section (2) of section 30" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[3] Inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[4] Words "by Adjudicating Officer" omitted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[5] Words "Section 23-I" Substituted by Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[6] Inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

23A, 23B, 23C, 23D, 23E, 23F, 23G [7][, *23GA*] and 23H, the [8][*Board or the adjudicating officer*] shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) If after considering the cause, if any, shown by such person, the [9][*Board or the adjudicating officer*] is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) On the date fixed, the [10][*Board or the adjudicating officer*] shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) The [11][*Board or the adjudicating officer*] shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the [12][*Board or the adjudicating officer*] shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

Provided that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.

(6) While holding an inquiry under this rule the [13][*Board or the adjudicating officer*] shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the [14][*Board or the adjudicating officer*] may be useful for or relevant to the subject matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the [15][*Board or the adjudicating officer*], the [16][*Board or the adjudicating officer*] may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

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[7] Inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[8] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[9] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[10] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[11] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[12] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[13] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[14] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[15] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[16] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

Order of the [17][*Board or the adjudicating officer*]

5. (1) If, upon consideration of the evidence produced before the [18][*Board or the adjudicating officer*], the [19][*Board or the adjudicating officer*] is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1) or [20][*sub-section (2) of section 12A or section 23-I*] of the Act, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant section or sections specified in [21][*sub-section (2) of section 12A or section 23-I*] of the Act.

(2) While adjudging the quantum of penalty under [22][*sub-section (2) of section 12A or section 23-I*] of the Act, the [23][*Board or the adjudicating officer*] shall have due regard to the following factors, namely:—

(*a*) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(*b*) the amount of loss caused to an investor or group of investors as a result of the default;

(*c*) the repetitive nature of the default.

(3) Every order made under sub-rule (1) shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) Every such order shall be dated and signed by the [24][*Board or the adjudicating officer*].

[25] [*(5) The Board or the adjudicating officer who has passed an order, may rectify any error apparent on the face of record on such order, either on its own motion or where such error is brought to his notice by the affected person within a period of fifteen days from the date of such order.*

Explanation.—*For the purpose of this rule, "error apparent on the face of record" shall mean any typographical errors that creep in inadvertently into the order and includes such other errors that do not require a long drawn out reasoning process to ascertain such a mistake.*]

Copy of the order

6. The [26][*Board or the adjudicating officer*] shall send a copy of every order made under rules by it to the person concerned and to the Securities and Exchange Board of India.

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[17] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[18] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[19] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[20] Substituted for "section 23-I" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[21] Substituted for "section 23-I" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[22] Substituted for "section 23-I" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[23] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[24] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[25] Inserted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

[26] Substituted for "adjudicating officer" by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) (Amendment) Rules, 2019, w.e.f. 8-3-2019.

Service of notices and orders

7. [27]**[**(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:–

(a) by delivering or tendering it to that person or his duly authorised agent; or

(b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.**]**

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[27] Substituted by the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021, w.e.f. 31-12-2021. Prior to substitution, the provision read as under:

"*A notice or an order issued under these rules shall be served on the person in the following manner, that is to say,—*

(a) by delivering or tendering it to that person or his duly authorised agent;

(b) by sending it to the person by fax or electronic mail or by courier or speed post with acknowledgement due or registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or:

Provided that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided further that a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(c) if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons;

(d) if it cannot be affixed on the outer door as per clause (c), by publishing the notice in atleast two newspapers, one in a English daily newspaper having nationwide circulation, and another in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain."

Note : *The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3 vide notification number G.S.R. 227(E), dated the 11th April, 2005 and subsequently amended vide notification numbers as under:*

(1) G.S.R. 645(E), dated the 19th August, 2015;

(2) G.S.R. 212(E), dated the 8th March, 2019;

(3) G.S.R. 931(E), dated the 31st December, 2021.

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