BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 20.02.2023
Date of Decision: 28.07.2023

Appeal No.748 of 2021

1. Reliance Industries Holding Private Limited
   84-A, Mittal Court,
   8th Floor, 224, Nariman Point,
   Mumbai – 400 021.

2. Mr. Mukesh D. Ambani
   39, Altamount Road,
   Mumbai – 400026.

3. Mr. Anil Ambani
   Sea Wind, Cuffe Parade,
   Mumbai – 400021.

4. Mrs. Kokilaben D. Ambani
   39, Altamount Road,
   Mumbai – 400026.

5. Ms. Dipti D. Salgaocar
   304, Maker Chambers IV,
   Nariman Point, Mumbai – 400 021.

6. Ms. Nina B. Kothari
   Kothari Bagh, No.18,
   Mahatma Gandhi Road,
   Nungambakkam, Chennai 600 034.

7. Mr. Dattaraj Salgaocar
   304, Maker Chambers IV,
   Nariman Point, Mumbai – 400 021.

8. Mrs. Nita Ambani
   39, Altamount Road,
   Mumbai – 400026.

9. Mrs. Tina Ambani
   Sea Wind, Cuffe Parade,
   Mumbai – 400021.

10. Kankhal Trading LLP
    84-A, Mittal Court,
    8th Floor, 224, Nariman Point,
    Mumbai – 400 021.

11. Reliance Realty Ltd.
    H Block, 1st Floor,
    Dhirubhai Ambani Knowledge City,
    Navi Mumbai – 400 710. ...Appellants

Versus

The Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051. …Respondent

Mr. Harish Salve, Senior Advocate with Mr. Somasekhar Sundaresan, Mr. Raghav Shankar, Mr. Ashwath Rau, Mr. Vivek Shetty, Ms. Ramya Suresh, Ms. Cheryl Fernandes, Ms. Praneeta Ragji and Mr. Dhaval Vora, Advocates i/b. AZB & Partners and Mr. Amey Nabar, Advocate for the Appellants.

Mr. Arvind Datar, Senior Advocate with Mr. Shiraz Rustomjee, Senior Advocate, Mr. Suraj Chaudhary, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K Ashar & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. By means of this appeal the appellants have challenged the order dated 7th April, 2021 passed by the Adjudicating Officer imposing a penalty of Rs.25 crores to be paid jointly and severally by the appellants under Section 15H of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') for violation of Regulation 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations).

2. The facts leading to the filing of the present appeal is, that on 10th December, 1992 the shareholders of Reliance Industries Ltd. (hereinafter referred to as 'RIL') a listed public Company approved the issuance of Non-Convertible Secured Redeemable Debentures ('NCDs' for short) with warrants. On 12th January, 1994, Reliance allotted 6 crore NCDs of Rs.50 each to 34 entities for Rs.300 crores alongwith 3 crore detachable warrants. These allottees/34 entities/warrant holders were entitled to receive two equity shares of Reliance against each warrant upon payment of Rs.150 per equity shares within a period of six years. These warrants were tradeable on the stock exchange platform and were disclosed to the Stock Exchange in 1994.

3. On 7th January, 2000, the Board of Directors allotted 12 crore equity shares of Rs.10 each to 38 warrant holders as in the meanwhile Reliance had declared a bonus of 1:1 in the year 1997 and, in accordance with

the terms of the issue of warrants, each warrant holder was entitled to receive four equity shares of Reliance upon payment of Rs.75 per equity share. Based on the aforesaid, Reliance filed a disclosure on 28th April, 2000 under Regulation 8(3) of the SAST Regulations intimating that the shareholding of the persons acting in concert with the promoters had increased by 6.83% as on 31st March, 2000 on account of allotment of equity shares upon exercise of warrants held by them since 1994.

4. Apparently, SEBI was satisfied with the disclosure made by Reliance on 20th April, 2000 indicating the increase in the shareholding by 6.83% since no action was taken by them. After almost two years, a complaint was received by Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on 28th January, 2002 alleging violation of the SAST Regulations by the promoters of RIL. Based on this

complaint, an investigation was conducted into the alleged irregularities and thereafter, a show cause notice dated 24th February, 2011 was issued alleging contravention of Regulation 11(1) of the SAST Regulations.

5. On 5th August, 2011, the appellant filed a consent application for settlement of the alleged contravention which remained pending and was eventually rejected by SEBI on 18th May, 2020. Thereafter, the matter was taken up and the impugned order was passed on 7th April, 2021.

6. The show cause notice alleged:

> *"4.1 The Show Cause Notice alleges that the promoters of Reliance Industries Limited ("RIL") along with the noticees, as persons acting in concert, on January 7, 2000, had collectively acquired a 6.83% stake in RIL pursuant to the exercise of options on warrants attached to non-convertible debentures issued by RIL to the Noticees in January 1994 ("Warrants").*
>
> *4.2 Based on the disclosures made by RIL to the stock exchanges under the 1997 SAST Regulations, the Show Cause Notice alleges*

that the shareholding of the promoters of RIL together with the Noticees, as persons acting in concert, increased from 22.17% as on March 31, 1999 to 38.33% as on March 31, 2000. The Show Cause Notice further alleges that out of these shares, acquisition of 7.76% shares was exempt as it was acquired pursuant to a merger which was exempted under the 1997 SAST Regulations.

4.3 Notwithstanding the fact that the 1997 SAST Regulations were not in force when the Warrants were issued to the Noticees in January 1994, the Show Cause Notice alleges that the acquisition of 6.83% shares in RIL pursuant to exercise of Warrants ("Warrant Shares"), was in excess of the prescribed thresholds under Regulation 11(1) of the 1997 SAST Regulations, triggering a requirement for making a public announcement for the shares of RIL under the 1997 SAST Regulations. As the Noticees failed to make a public announcement, the Show Cause Notice alleges that the Noticees have contravened Regulation 11(1) of the 1997 SAST Regulations."

7. The Adjudicating Officer after considering the replies and the oral and written submissions and after considering the evidence that was brought on record passed the impugned order imposing a penalty of Rs.25

crores upon the appellants for violation of Regulation 11(1) of the SAST Regulations.

8. The AO held that the promoters of Reliance and persons acting in concert acquired the shares and voting rights on 7th January, 2000 which is the date of acquisition and on which date the obligation to make a public announcement for an open offer under Regulation 11(1) was triggered. The AO held that the acquisition of 6.83% of the shares was in excess of the ceiling of 5% prescribed under Regulation 11(1) of the SAST Regulations and, therefore, it triggered the obligation to make an open offer.

9. The AO noted that the warrants were issued in the year 1994 much before the SAST Regulations came into existence but went on to hold that the scheme of the SAST Regulations rest on the pedestal of ‘control’. The AO found that voting rights depends on shareholding i.e. on the principle of ‘one share one

vote'. The AO came to the conclusion that warrants by their very nature did not entitle the warrant holder to exercise voting rights in a Company nor conferred any power or authority of control over the target Company. The AO also came to the conclusion that the warrants only contained an option in favour of the holder to get the shares and that such option by itself does not entitle voting rights or control in favour of the holder of warrants. The AO came to the conclusion that it is only when the warrant holders exercised its option to convert its warrants into equity shares that he agreed to acquire the shares that entitled him voting rights in the target Company. The AO consequently concluded that since the warrants were converted into shares on 7th January, 2000, it triggered the obligation to make an open offer under the SAST Regulations and, therefore, the provisions of the SAST Regulations are applicable.

10. The AO further went on to hold that since the obligation to make an open offer was not made the appellants have violated Regulation 11(1) and became liable for penalty under Section 15H of the SEBI Act. The AO accordingly imposed a penalty of Rs.25 crores to be paid jointly and severally by the appellants.

11. The AO held that there was no delay in the initiation of the proceedings. The AO held that investigations generally is a detailed process involving analysis of various data and gathering of evidence etc., which consumes considerable time and effort depending upon the number of entities involved and the complexity of the transactions. Further, the AO found that violation is in the nature of an economic offence and such economic offences are not subject to delay and, therefore, delay if any on the part of SEBI was of no consequence where public interest outweighs the requirement of adjudication. On this basis, the AO

rejected the plea of delay and laches raised by the appellants.

12. The AO further found that the appellants are not entitled for the exemption under Regulation 3(1)(c) from making a public announcement for an open offer since the procedure specified in Regulation 3(1)(c) was not followed nor complied by the appellants and, therefore, they are not entitled to avail the exemption for making a public announcement or an open offer under Regulation 11(1) of the SAST Regulations.

13. We have heard Mr. Harish Salve, Senior Advocate assisted by Mr. Somasekhar Sundaresan, Mr. Raghav Shankar, Mr. Ashwath Rau, Mr. Vivek Shetty, Ms. Ramya Suresh, Ms. Cheryl Fernandes, Ms. Praneeta Ragji and Mr. Dhaval Vora, Advocates and Mr. Amey Nabar, Advocate for the appellants and Mr. Arvind Datar, Senior Advocate assisted by Mr. Shiraz Rustomjee, Senior Advocate, Mr. Suraj Chaudhary, Mr.

Prateek Pai, Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the respondent.

14. Shri Harish Salve, learned senior counsel contended that the impugned order holds that:

(i) The entire scheme of the SAST Regulations rest on the pedestal of ‘control’.

(ii) A Company limited by shares is controlled by shareholding on the basis of ‘one share one vote’.

(iii) A warrant holder has no voting rights.

(iv) All rights pertaining to a member as defined under the Companies Act starts accruing only when his name is entered in the register of members maintained by the Company under Section 150 of the Companies Act 1956.

(v) By subscribing to warrants, the warrant holder agrees in writing to become shareholder/ member; and

(vi) Persons acting in concert (hereinafter referred to as 'PAC') acquired all rights vested in a member on and from 7th January, 2000 when they were allotted equity shares thereby triggering the obligation to make an open offer in terms of Regulation 11(1) of the SAST Regulations.

15. Shri Salve contended that reliance on the definition of various terms in the Companies Act are irrelevant when SEBI has itself made the Regulations which defines the terms 'acquirer and shares'. It was contended that the term 'shares' includes 'warrants' and that the SAST Regulations prescribes that the obligation to make an open offer is triggered at the time of acquisition of shares/warrants and, consequently, it was submitted that the AO has committed an error in ignoring the definition clause which is contained in the

SAST Regulations instead of relying upon the definition under the Companies Act.

16. The learned senior counsel contended that the AO committed a manifest error in coming to a conclusion that the acquisition of voting rights triggered the obligation to make a public announcement for an open offer and that voting rights are acquired only upon conversion of the warrants into equity shares. The learned senior counsel contended that the impugned order holds the appellants are liable to make a public announcement for an open offer in January, 2000 when voting rights were acquired by the appellants upon conversion of warrants.

17. Shri Harish Salve, the learned senior counsel contended that the definition of the words ‘acquirer’ and ‘shares’ in the SAST Regulations includes any security which would entitle the holder to receive shares with voting rights. The definition of ‘shares’

under the SAST Regulations includes any security which would entitle the holder to receive shares with voting rights as defined under Regulation 2(1)(k). The learned senior counsel urged that there cannot be any dispute that warrant is a security which entitles the holder to receive shares with voting rights. According to Shri Salve, the 'warrant' is a share for the purpose of Regulation 11(1) of the SAST Regulations. The learned senior counsel further urged that under Regulation 11(1) of the SAST Regulations, an obligation to make an open offer is triggered at the time of acquisition of warrants since warrants is a security which entitles the holder to receive shares with voting rights entitling him to exercise voting rights on such shares. According to Shri Salve, the obligation would have triggered on 12th January, 1994 if the SAST Regulations as they existed on 7th January, 2000 were existing on 12th January, 1994.

18. The learned senior counsel thus contended that the plain language of Regulation 11 of the SAST Regulations makes it clear that it is not the acquisition of voting rights which triggers the obligation to make an open offer under Regulation 11(1) of the SAST Regulations and that the obligation to make an open offer is triggered under Regulation 11(1) only if the warrants had been acquired after the SAST Regulations came into force. It was urged that, in the instant case, the warrants were acquired on 12th January, 1994 when the SAST Regulations was not in existence.

19. The learned senior counsel further contended that imposing an obligation to make an open offer to acquire further shares on persons who have acquired warrants was nothing but a retrospective application of the SAST Regulations. It was contended that the plain language of the SAST Regulations makes it clear that the Regulation do not apply retrospectively.

20. The learned senior counsel submitted that the concept of ‘acquirer’ either buying or agreeing to buy shares which includes securities and which entitles the holder to receive shares with voting rights came into being in the SAST Regulations, 1994 and later in the SAST Regulations. It was contended that persons who acquired warrants in January, 1994 cannot be an ‘acquirer’ under the SAST Regulations in as much as the SEBI Act states that SEBI can make Regulations in the interest of investors in securities and for the development of the securities market. These Regulations, thus, can only be prospective in nature. It was, thus, contended that the obligation under Regulation 11(1) to make an open offer can only be for such acquisition made by an acquirer on or after the SAST Regulations came into force i.e. on or after 20th February, 1997 and, therefore, the question of applying the SAST Regulations retrospectively does not arise.

21. The learned senior counsel pointed out that Regulation 3(1)(c) of the SAST Regulations exempts preferential issue of shares including warrants provided the conditions set out therein are fulfilled and full disclosures of the identity of the proposed allottees etc., are made. It was contended that the appellants could not have known of seeking such exemption in the year 1994 when the warrants were issued as there was no such conditions prescribed nor could the appellants have predicted that such exemptions could be made available in future only if certain conditions prescribed therein are fulfilled. The learned senior counsel, thus, contended that this provision, namely, Regulation 3(1)(c) is an indicator that the SAST Regulations are prospective in nature and applies for acquisition of such shares including warrants post 20th February, 1997.

22. Shri Salve contended that the AO has committed an error in not analyzing the term ‘shares’ as defined

under Regulation 2(1)(k) of the SAST Regulations nor has considered the issue as to whether the SAST Regulations were applicable to the warrants acquired by the acquirers in January, 1994. It was urged that the right to receive the shares with voting rights with the conversion of warrants was crystallized on 12th January, 1994 at which point there was no SAST Regulations in force. These aspects has not been considered by the AO in the impugned order.

23. In support of his contention, the learned senior counsel relied upon a decision in ***Mr. M. Srinivasalu Reddy v. Kishore R. Chabbariya (1999) SCC Online Bom. 902*** and contended that the said decision is squarely applicable on the facts and circumstances which arises in the present appeal. The Bombay High Court held that the obligation to make an open offer was not triggered at the time of conversion of the security. Relying upon the said decision the learned

senior counsel contended that the SAST Regulations has no retrospective application and that the trigger to make an open offer arises only at the time of acquisition of securities which entitles the holder to receive the shares with voting rights and not at the time when such securities are actually converted into the shares carrying voting rights. On this basis, the learned senior counsel contended that the AO has committed an error in relying in ***Sohail Malik vs. SEBI (2000) SCC Online 174 and Eight Capital Master Fund Ltd. vs. SEBI decided on 22nd July, 2009*** which is distinguishable and is also not applicable.

24. The learned senior counsel contended that even assuming without admitting that the appellants have violated Regulation 11(1) of the SAST Regulations the directions of the AO levying a penalty of Rs.25 crores on the basis of the amended Section 15H of the SEBI which came into force on 29th October, 2002 was

patently erroneous. The provision which was existing at the time of the trigger of the open offer can only be made the basis for imposition of penalty which at that time was only Rs.5 lakhs.

25. Shri Salve also contended that there was an inordinate delay in the initiation of the proceedings. The NCDs were allotted on 12th January, 1994 and were listed on the Stock Exchange on 22nd February, 1995. Shares were received on 7th January, 2000 upon conversion of warrants. Disclosure under Regulation 8(3) were made by the Company on 28th April, 2000 to the Stock Exchanges, namely, that the shareholding of the persons acting in concert with the promoters had increased by 6.83% as on 31st March, 2000. This disclosure came in the public domain. However, the show cause notice was issued on 24th February, 2011 after 17 years from the date of issuance of the NCD in

1994 and 11 years after the shares were received in 2000.

26. It was contended that even though there is no period of limitation prescribed under the SEBI Act, the proceedings must be initiated and concluded within a reasonable time. It was urged that in the instant case there is an inordinate delay of 17 years, and therefore, on this short ground, the proceedings and the impugned order should be quashed. Further, the settlement application remained pending for almost 10 years thereby causing a further delay in the disposal of the case. This inexplicable and inordinate delay was wholly attributable to SEBI and the appellants were not responsible for the delay in the matter.

27. In support of his submissions, the learned senior counsel placed reliance on the following judgments:

1. *Ashok Shivlal Rupani v. SEBI, 2019 SCC OnLine SAT 169.*
2. *Sanjay Jethalal Soni v. SEBI, 2019 SCC OnLine SAT 247.*

3. *Rakesh Kathotia v. SEBI, 2019 SCC OnLine SAT 74.*
4. *Shriram Insight Share Brokers Ltd. v. SEBI, SAT order dated 04.01.2020 in Appeal No.559 of 2020.*
5. *Ashlesh Gunwantbhai Shah v. SEBI, Appeal No.169 of 2019 decided on 31.1.2020.*
6. *Anil Kumar Harchandani v. SEBI, Appeal No.75 of 2019 decided on 5.12.2019.*
7. *ICICI Bank v. SEBI, Appeal No.583 of 2019 decided on 8.7.2020.*
8. *Rajiv Banot v. SEBI, Appeal No.369 of 2018 decided on 9.7.2021.*

28. The learned senior counsel thus contended that the impugned order is manifestly erroneous in law and was liable to be set aside.

29. Shri Dattar, the learned senior counsel for the respondent submitted that the following issues arise for consideration, namely,

(i) Whether the SAST Regulations are retrospective in their application?

(ii) Whether the acquisition prior to the coming into force of the 1994 and SAST Regulations of warrants entitling the holder to acquire shares

would attract the provisions of Regulations 11(1) of the SAST Regulations only on the ground that the equity shares in respect of the warrants were formally received after the coming into force of the said Regulations?

(iii) Whether the investigation by SEBI, 11 years after the alleged violation is barred by limitation, delay and laches?

(iv) Whether the application of the amended Section 15H of the SEBI Act (as amended on 29.10.2002) prescribing a higher penalty of Rs.25 crores in respect of alleged offences committed prior thereto on 07.01.2000 is impermissible, contrary to law and Article 20(1) of the Constitution?

30. The learned senior counsel contended that equity shares, warrants and debentures are all in different buckets. The warrants allotted to the appellants in 1994

were in the nature of 'Options in Securities' which gave the appellant an option to convert them into shares. Shri Dattar submitted that the NCD and the warrants were issued and allotted in January, 1994 to 34 connected Reliance Companies. The connected Reliance Companies exercised the warrants in January, 2000 and the equity shares of Reliance were allotted to these persons acting in concert.

31. It was contended that in the instant case, the warrants could be converted at any time from 1994 to 2000 into equity shares at a fixed price of Rs.150 per share irrespective of the market price of the shares. It was further contended that the terms and conditions of the warrants clearly indicated that the warrant holder did not have any voting rights.

32. According to the learned counsel, the SAST Regulations are not retrospective in their application and that the Regulation apply only to cases where the

additional shares or voting rights are acquired by the acquirer which triggers the requirement of Regulation 11 of the SAST Regulations to make an open offer. It was urged that the application of the SAST Regulations and, consequently, the obligation to make an open offer is triggered either on the acquisition of additional shares or acquisition of voting rights.

33. In this regard, the learned counsel contended that under Regulation 11(1) of the SAST Regulations, no acquirer who holds more than 15% but less than 55% of the shares or voting rights in a Company shall acquire either himself or through the PACs additional shares or voting rights entitling him to exercise more than 5% of the voting rights in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. It was urged that there is no dispute that the appellants, namely the promoters and the PACs

were holding more than 15% and less than 55% in the Company in January, 2000 and that upon the conversion of the warrants into shares in January, 2000 the appellants acquired 6.83% voting rights.

34. It was contended that the issuance of detachable warrants in January, 1994 with an option to acquire shares within six years did not amount to acquisition of additional shares or acquisition of voting rights in 1994 and that the triggering event took place only in 2000 when the SAST Regulations was already in force. Consequently, when warrants were converted into shares in January, 2000, it triggered the obligation to make an open offer under Regulation 11(1) under the SAST Regulations. It was, thus, contended that the SAST Regulations was not being applied retrospectively.

35. Shri Dattar, learned senior counsel submitted that the SAST Regulations of 1994 applied to acquisition of

shares with voting rights exceeding the prescribed threshold. The SAST Regulations brought in the term of 'shares or voting rights'. It was urged that there was a possibility that in some cases voting rights alone could be acquired through an agreement without acquisition of shares.

36. It was, thus, contended that if such acquisition entitled the acquirer to exercise more than 5% of the voting rights then Regulation 11(1) would apply whether it is an acquisition of shares or voting rights. It was contended that the Regulation nowhere states that the acquisition of shares or voting rights would apply from 1st January, 1995, i.e. with retrospective effect and, consequently, there is no retrospective application of the SAST Regulations.

37. In support of his submission, the learned senior counsel placed reliance on the following case laws:

(i) "State Bank's Staff Union v. Union of India (2005) 7 SCC 584

(ii) Jay Mahakali Rolling Mils v. Union of India (2007) 12 SCC 198

(iii) Cabot International Capital Corporation vs. AO, SEBI 2001 SCC Online SAT 34

(iv) SEBI vs. Rajkumar Nagpal 2022 SCC Online 1119

(v) Kingfisher Airlines Limited vs. Competition Commission of India 2010 SCC Online Bom 2186."

38. Shri Dattar, learned senior counsel submitted that Regulation 2(1)(k) of the SAST Regulations defines the term 'shares' which includes securities which would entitle the holder to receive shares with voting rights. The learned senior counsel admitted that a convertible debenture or a warrant is a security. The learned senior counsel, however, contended that Regulation 11(1) uses

the words ‘shares’ and does not use the word ‘securities’ and, therefore, the word ‘shares’ has to be understood in its ordinary meaning. It was contended that even though the word ‘shares’ as defined under Regulation 2(1)(k) of the SAST Regulations includes security such as a warrant but the said definition would not apply to the word ‘shares’ as provided in Regulation 11(1). It was urged that the word ‘shares’ has to be understood ‘*unless the context otherwise requires*’ as specified in Regulation 2. Shri Dattar, learned senior counsel contended that “warrant” only gives an option to acquire shares on payment of a price which may or may not be exercised. The warrant holder does not have an obligation to acquire the shares and, therefore, the warrants is not an agreement to acquire shares. According to the learned counsel, an agreement to acquire shares is one when both the seller and the buyer have the obligation to deliver and

purchase the shares respectively and, in the event of non-performance by either of them, the other parties can enforce a specific performance.

39. In view of the aforesaid, it was urged that Regulation 11(1) is not applicable to an option to acquire shares at a later date. Regulation 11(1) applies only when the acquirer has actually acquired the additional shares or voting rights which entitles him to exercise more than the prescribed percentage of votes.

40. It was, thus, urged that the exercise of option and the allotment of shares in January, 2000, was not a ministerial act. In support of his submission, the learned counsel placed reliance upon a decision in ***Jamal uddin Ahmad vs. Abu Saleh Najamuddin (2003) 4 SCC 257*** which illustrated the essential features of a ministerial act as under:

> *"A 'ministerial act', on the other hand, may be defined to be one, which a person performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority,*

without regard to, or the exercise of, his own judgment upon the propriety of the act done. In ministerial duty, nothing is left to discretion; it is a simple, definite duty." (emphasis supplied)

41. Shri Dattar, learned senior counsel also referred to Black's Law Dictionary, 11th edition wherein ministerial act is defined as under:

"ministerial, adj. Of. relating to, or involving an act that involves obedience of instructions or laws instead of discretion, judgment, or skill; of relating to, or involving a duty that is so plain in point of law and so clear in matter of fact that no element of discretion is left to the precise mode of its performance <the court clerk's ministerial duties include recording judgment on the docket>" (emphasis supplied)."

42. The learned counsel stressed that the essence of a ministerial act is the absence of any discretion whereas in a warrant there is a discretion given to the warrant holder to acquire or not to acquire shares. The learned senior counsel pointed out that the warrant holder may or may not exercise the option depending on the

prevailing price i.e. the market price prevailing at the time of exercise of option.

43. The learned counsel submitted that the decisions cited by the appellants were not applicable.

44. The learned senior counsel for the respondent contended that the conditions specified in the proviso to Regulation 3(1)(c) have not been fulfilled even after the SAST Regulations came into force and, therefore, the appellants cannot claim exemption under Regulation 3(1)(c). Further, Regulation 3(1)(c) applies to a preferential allotment of shares where the acquirer gets shares which entitles the acquirer to exercise voting rights. In the instant case, only warrants were issued and, therefore, the exemption under Regulation 3(1)(c) does not apply to a preferential issue of warrants. In support of his submission, the learned counsel placed reliance upon various case laws as well as the Bhagwati report which are as under:

(i)"Ch. Kiron Margadarsi Financiers v. Adjudicating Officer, SEBI (2001) 33 SCL 349 (sat):

(ii) P.B. Jain Investment Pvt. Ltd. v. SEBI, order dated 13.11.2013

(iii) Eight Capital Master Fund Ltd. v. SEBI decided on 22nd July, 2009

(iv) Surya Pharmaceutical Ltd. v. SEBI decided on 22.12.2009

(v) Victor Fernandes v. SEBI decided on 28.09.2021

(vi) Vishvapradhan Commercial Pvt. Ltd. v. SEBI, decided on 20.07.2022

(vii) Bhagwati Committee Report (1997)

(viii) SEBI v Rahkumar Nagpal, 2022 SCC Online 1119

(ix) Kingfisher Airlines Limited v. Competition Commission, 2010 SCC Online Bom 2186 (para 10 and 12). "

45. Shri Dattar, learned senior counsel also argued that the conversion of warrants into shares in January, 2020 triggered the obligation to make an open offer. Since

the open offer was not made the appellants violated Regulation 11(1) which will continue '*de die in diem*'.

46. It was urged that since it was a continuing offence the penalty was rightly levied under the amended 15H of SEBI Act. In support of his submission, the learned counsel has placed reliance upon the following decisions.

(i) "Bhagirath Kanoria v. State of M.P. (1984) 4 SCC 222,

(ii) Adjudicating Officer, SEBI v. Bhavesh Pabari (2019) 5 SCC 90

(iii) Maya Rani Punj v. CIT (1986) 1 SCC 445

(iv) CWT v. Trustees of Sahebzadas of Saraf-E-Khas Trust (1997) 3 SCC 481

(v) Mohan Lal v. State of Rajasthan, (2015) 6 SCC 222

(vi) RIL v. SEBI, decided on 05.08.22 para 40"

47. Shri Dattar contended that there is no inordinate delay in the issuance of the show cause notice or in the disposal of the proceedings. It was contended that

SEBI received a complaint on 20th January, 2002 and further information on 16th May, 2002 based on which an investigation was initiated on 21st October, 2002. The investigating authority undertook a detailed and comprehensive scrutiny of the financial transaction against 103 entities which was complex involving seeking documents from various parties, examination of various persons, and thereafter analyzing the data which took time. Even though the investigation report was submitted on 4th February, 2005, it was contended that SEBI examined the matter legally as to whether the provisions of the Companies Act would apply and, consequently, sought a legal opinion which was given on 13th October, 2006. Not being satisfied, the respondent sought another legal opinion which was given on 11th June, 2009 and, thereafter, respondent approved initiation of adjudication proceedings on 15th

September, 2010 and, thereafter, a show cause notice was issued on 24th February, 2011.

48. It was, thus, contended that there was no delay in the matter. Upon receipt of the complaint the respondent took necessary steps and action in the matter. It was urged that given the involved nature of the financial transactions and the complexity of the matter, the respondent deemed it prudent to seek a legal opinion before taking action. It was, thus, urged that there was no delay in the initiation of the proceedings. The learned counsel urged that time taken in seeking legal opinion has to be excluded and is condonable. In support of his submission, the learned counsel has relied upon a decision in ***Reliance Industries ltd. vs. CBI, (2010) SCC Online Delhi 3576.*** The learned counsel has also placed reliance on ***Hindustan Times Ltd.vs. UOI (1998) 2 SCC 242, Pooja Vinay Jain vs.***

SEBI, in SAT Appeal No.159 of 2019 decided on 17th March, 2020.

49. It was urged in the alternative, that failure to make an open offer is a continuing violation and, therefore, there is no question of any delay.

50. Having heard the learned counsel for the parties, we find that the following issues arise for consideration, namely:-

(a) Whether an obligation to make an open offer is triggered under Regulation 11(1) of the SAST Regulations at the time of acquisition of such convertible securities or at the time of conversion of such convertible securities into shares carrying voting rights.

(b) Whether the SAST Regulations will apply to warrants which have been acquired on January 12, 1994 and such warrants were converted into equity shares carrying voting rights on January 7, 2000.

(c) Whether the acquisition of warrants by person acting in concert constitutes an agreement to acquire shares carrying voting rights.

(d) Whether the obligation to make a public announcement for an open offer under Regulation 11(1) of the SAST Regulations is at the time of conversion of warrants into equity shares which warrants were acquired in January 1994 and is, therefore, a retrospective application or a retroactive application of the SAST Regulations.

(e) Whether the impugned proceedings are barred by limitation, delay or laches.

(f) Whether the violation of Regulation 11(1) is continuing violation and, therefore, monetary penalty under the amended Section 15H of the SEBI Act could be imposed.

51. Before we deal with the rival submissions, it would be appropriate to consider certain provisions of the SAST Regulations which are extracted hereunder :-

Regulation 2(1)(b) of the SAST Regulations

"2(1)(b). "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer."

Regulation 2(1)(k) of the SAST Regulations

"2(1)(k). "shares" means shares in the share capital of a company carrying voting rights and includes any security which would entitle the holder to receive shares with voting rights"

Regulation 3(3) of the SAST Regulations

"(3) In respect of acquisitions under clauses (c), (e), (h) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 5% of the voting share capital of the company."

Regulation 10 of the SAST Regulations

"Acquisition of fifteen per cent or more of the shares or voting rights of any company

"10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

Regulation 11(1) of the SAST Regulations

"11. ***Consolidation of holdings****- (1). No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than 75%] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations."*

Regulation 14 of the SAST Regulations

Timing of the Public announcement of offer

"14. (1) The public announcement referred to in Regulation 10 or Regulation 11 shall be made by the merchant banker not later than four working days of entering into an

agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:

(2) In case of an acquirer acquiring securities, including Global Depositories Receipts or American Depository Receipts which, when taken together with the voting rights, if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in Regulation 10 or Regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.

(3) The public announcement referred to in Regulation 12 shall be made by the merchant banker not later than four working days after any such change or changes are decided to be made as would result in the acquisition of control over the target company by the acquirer."

Section 2(h) of the SCRA

"(h) "securities" include—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and (iii) rights or interest in securities;"

52. Having heard the learned senior counsel for the parties, we find that the basic issue which arises for consideration is, whether an acquirer of convertible securities such as warrants which entitles the holder to receive shares with voting rights triggers an obligation to make a public announcement for an open offer at the time of acquisition of such convertible securities or at

the time of conversion of such convertible securities into shares carrying voting rights in terms of Regulation 11(1) read with Regulation 2(1)(b), Regulation 2(1)(k) and Regulation 14(1) and (2) of the SAST Regulations.

53. In the instant case, the convertible warrants were acquired on 12th January, 1994 before the SAST Regulations, 1994 or SAST Regulations came into force. The warrants were converted into shares on 7th January, 2000 and, therefore, a side issue arises as to whether the SAST Regulations is applicable on the acquisition of warrants in 1994 or whether the SAST Regulations has a "retrospective application" or "retroactive application" in view of the obligation upon the appellants to make an open offer under Regulation 11(1) at the time of conversion of warrants into equity shares on 7th January, 2000 of warrants which were acquired on 12th January, 1994.

54. According to the appellants, the SAST Regulations, 1997 is prospective in nature. The respondent also does not dispute this proposition. Therefore, to cut the matter short we hold that the SAST Regulations is prospective in nature i.e. w.e.f. 20th February, 1997 when the Regulations came into force.

55. Before we embark on the question as to whether the SAST Regulations has retrospective application to an acquisition of warrants on 12th January, 1994 and whether such requisition of warrant made in 1994 when converted on 7th January, 2000 triggers the requirement to make an open offer under Regulation 11(1), it is necessary to understand the purpose, objective, intent and scope of the SAST Regulations.

56. One of the functions of SEBI under Section 11(2)(h) is regulating substantial acquisition of shares and takeover of companies. For this purpose, SEBI has notified the SAST Regulations. These Regulations

provide certain ground rules to be followed by the parties in matters relating to substantial acquisition of shares and takeovers of the companies. The objective of the Regulations is to provide an orderly framework within which the process of substantial acquisition of shares could be conducted. The Bhagwati Commission report clearly stated that the Regulations for substantial acquisition of shares and takeover should operate principally to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeover and that the Regulations should ensure that such process do not have place in a clandestine manner without protecting the interest of the shareholders. The SAST Regulations attempts to strive at that.

57. Regulations 10, 11 and 12 are core provisions. Regulations 10 and 11 require the acquirer acquiring shares beyond the prescribed limit to make a public

announcement to acquire shares of the target Company from the shareholders in accordance with the Regulations. While Regulations 10 and 11 deal with the substantial acquisition of shares, Regulation 12 deals with the acquisition of control over a Company.

58. The term 'acquirer' as defined in Regulation 2(1)(b) applies to the term 'acquirer' used in Regulations 10 and 11 to mean any person who directly or indirectly acquires or agrees to acquire shares or voting rights of the target Company, either by himself or with any person acting in concert with the acquirer.

59. Open offer is required to be processed within a time frame as provided under the Regulation 14. Under Regulation 16, the contents of the public announcement of offers referred to in Regulations 10, 11 and 12 are to be stated and one of them, is the minimum offer price. Under Regulation 18(1) and 18(2), the acquirer is required to file the draft letter of offer containing

disclosures as specified before SEBI within 14 days from the date of public announcement.

60. A perusal of Regulations 10 and 11 of the SAST Regulations indicates that SEBI, as a regulator thought fit that public investors should be given an exit opportunity whenever a person agrees to acquire 'substantial' shares or voting rights in a listed Company under Regulation 10 and where a shareholder agrees to acquire more than 5% shares or voting rights in a listed Company in a financial year under Regulation 11(1).

61. "Acquirer" has been defined under Regulation 2(1)(b) to mean where a person acquires or agrees to acquire shares or voting rights in the target Company. The words "*agrees to acquire*" is of some significance, namely, that it is not necessary that there is actual consideration of the acquisition. Even if there is an intention to acquire which intention is in the public domain, there it triggers the obligation to make a public

announcement for an open offer under the SAST Regulations. Thus, if an acquirer agrees to acquire or decides to acquire the percentage specified in Regulation 10 or 11, then it triggers the obligation for an acquirer to make a public announcement for an open offer.

62. Regulation 2(1)(k) defines ‘shares’ which includes any security which would entitle the holder to receive shares with voting rights. Section 2(h) of SCRA Act defines “securities” which amongst others includes debenture warrants. Thus, shares includes warrants.

63. Regulation 11(1) contemplates acquisition of shares or voting rights. It does not contemplate shares and voting rights. Therefore there can be a situation where an acquirer acquires shares or agrees to acquire shares which includes bonds, warrants, etc., and which may or may not carry voting rights. Thus, if the acquirer acquires shares which includes warrants beyond a

percentage specified in Regulation 11, then it triggers an obligation to make an open offer. The contention that acquisition of warrants does not trigger the obligation to make an open offer under Regulation 11 as the warrants does not carry any voting rights is misconceived. Further, the contention that such obligation is triggered only when the warrants are converted into equity shares carrying voting rights is also erroneous. A plain reading of Regulation 2(1)(k) makes it clear that shares includes warrants and, therefore, the contention that warrants is not a share for the purpose of Regulation 11(1) is erroneous.

64. It is a cardinal principle of interpretation that when a term/word is defined in a statute in a particular manner, then the said term/word must be understood as defined therein. It would be absurd to interpret the said term/word in any other manner.

65. Under the SAST Regulation, the word "shares" has been defined to mean shares carrying voting rights and also includes "*any security which would entitle the holder to receive shares with voting rights*". Therefore, shares are shares with voting rights and shares that would entitle the holder to receive shares with voting rights. To put in differently, the definition brings out the fact that a security which does not entitle the holder to exercise the voting rights immediately upon acquisition of that particular security is also covered by the definition of 'shares'. Thus, the acquirer who agrees to acquire or acquires security/warrants which in future would entitle the acquirer to exercise voting rights, is under an obligation to make an announcement to make an open offer. In our opinion the acquisition and the obligation to make a public announcement is not contingent upon the acquisition of shares which would entitle the acquirer to exercise voting rights.

66. In view of the aforesaid, we are of the view that the specific definition of 'shares' can only mean that the obligation to make the public announcement for an open offer covers a situation even where a security does not carry voting rights but could be converted into shares carrying voting rights.

67. The words "*security which could entitle the holder to receive shares with voting rights*" as defined in the term 'shares' cannot be ignored. The heart and fulcrum of the SAST Regulations is substantial acquisition of shares. The inclusive definition of "shares" cannot be dismissed as irrelevant or being repugnant to the words "*unless the context otherwise requires*" as provided in Regulation 2(1). Any other interpretation, in our opinion would result in complete absurdity.

68. In this regard the Supreme Court in a plethora of cases has held that when legislature attributes a particular meaning to each word in a statute and avoids

unnecessary words, then the statutory words ought to be interpreted on that premise. The maxim "*ut res magis valeat quam pereat*" is wholly applicable, namely, that it is a cardinal principle rule of construction that normally no word or provision should be considered redundant or superfluous while interpreting the provisions of the statute. Thus, the contention of the respondent that the words "*includes any security which would entitle the holder to receive shares with voting rights*" as provided in the definition of the word "shares" cannot be accepted.

69. For the same reasons, the contention of the respondent that the words "*entitling him to exercise more than 5% of the voting rights*" means security which is acquired should carry voting rights which upon acquiring should immediately entitle the acquirer to exercise voting rights is erroneous. The contention that mere acquisition of securities which would confer

voting rights at a later date cannot trigger the requirement to make a public announcement at the point of acquisition is erroneous and is against a bare reading of Regulation 2(1)(k) read with Regulation 2(1)(b) and Regulation 11(1). The contention that the SAST Regulations would be attracted only at the point when voting rights are acquired would lead to an absurd result making the second part of the definition of shares superfluous or redundant which was not the intention of the framers of the Regulations.

70. According to us the words "*entitling him to exercise more than 5% of the voting rights*" as provided in Regulation 11(1) means the ability of the acquirer to exercise the voting rights which may either be *in praesenti* or at a later point of time, namely, when the security entitling him to receive shares with voting rights is converted into shares carrying voting rights in future. In our opinion, the entitlement to exercise

voting rights is not with reference to the security acquired but is with reference to the acquirer who acquires the security. This, in our opinion can only be the plausible interpretation since the term 'shares' has been consciously and specifically defined to include security entitling the holder to receive shares with voting rights.

71. The contention of the respondent that the word 'shares' should not be read as per the definition but should only be read as equity shares carrying voting rights thus cannot be accepted.

72. Reliance of Regulation 14(2) by the respondent to stress that the obligation to make an open offer in the case of convertible securities is triggered only at the time of conversion since the Regulations specifically *use the words "in the case of an acquirer acquiring securities ……. public announcement referred to in Sub-regulation (1) shall be made not later than four*

working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be" is misconceived. The contention that the words '*shall be made*' is in consonance with Regulation 11(1) and that Regulation 14(1) and Regulation 14(2) operate in different spheres and cannot be conflated is patently erroneous.

73. On a plain reading of Regulation 2(1)(b) which defines the term 'acquirer' read with Regulation 2(1)(k) which defines the term 'shares' read with Regulation 11(1) and Regulation 14(1) we are of the opinion that the term 'shares' and the term 'acquirer' have to be read and understood as defined in the Regulations. There cannot be two provisions which triggers the obligation to make an open offer, i.e. one under Regulation 14(1) and the other under Regulation 14(2). Regulation 11(1) triggers the obligation to make an open offer upon the acquisition or agreement to acquire

shares carrying voting rights or securities which entitles the holder to receive shares with voting rights such as warrants and other convertible debentures or voting rights. Regulation 14 prescribes the timing of the open offer so triggered by Regulation 11(1). Regulation 14(1) prescribes that the open offer should be made within four working days of the agreement to acquire shares or decision to acquire shares carrying voting rights or securities which would entitle the holder to receive shares with voting rights such as warrants etc. or voting rights alone.

74. On the other hand, Regulation 14(2) starts with the words '*in the case of an acquirer acquiring securities…….".* Regulation 14(2), thus, carves out an exception to Regulation 14(1). Regulation 14(2) contains the words "*the public announcement referred to in sub-regulation (1)".* Regulation 14(1) refers to the public announcement referred to in Regulation 11.

Accordingly, the public announcement referred to in Regulation 14(2) is the one triggered under Regulation 11(1) and, therefore, there can be no other meaning attached to it. Regulation 14(2) provides that such public announcement shall be made not later than four working days before he acquires voting rights on such securities upon the conversion. We are of the opinion that in case of warrants, the public announcement for open offer is triggered under Regulation 11(1) at the time of acquisition to acquire such warrants which can be made at any time from the date of agreement to acquire such warrants up to four working days prior to the acquisition of voting rights upon conversion. In our opinion, the acquirer can make the open offer even immediately after agreement to acquire warrants since it is not later than four working days before he acquires and such decision to make an open offer immediately cannot be termed illegal.

75. The language of the SAST Regulation is unambiguous and, from a plain reading of the term 'shares' in Regulation 11(1) as defined in Regulations 2(1)(k) the words '*entitling him to exercise more than 5% of the voting rights'* only attaches the entitlement to the acquirer and not to the security acquired. It cannot be interpreted that the entitlement for the voting rights should arise from the security acquired and should be exercised immediately upon acquiring such securities. Any other interpretation would make it unworkable. Hence, reading the term 'shares' along with the words '*entitling him to exercise more than 5% of the voting rights*' does not make Regulation 11(1) otiose or unworkable.

76. Thus, the contention of the respondent that irrespective of the definition of the term 'shares', the trigger under Regulation 11(1) is only when the voting rights are acquired cannot be accepted. We have

already held that the words '*entitling him to exercise*' cannot be understood only as an ability to exercise voting rights *in praesenti* and that such voting rights should be attached to the security acquired.

77. Thus, we do not agree with the contention of Mr. Dattar that the term 'shares' read with the words '*entitling him to exercise*' in the context of Regulation 11(1) has to be understood in the normal meaning, namely, shares carrying voting rights and not as defined under Regulation 2(1)(k). The interpretation embarked by the respondent makes the inclusive definition of the term 'shares' redundant and entire Regulation 14(2) as a surplusage and otiose which cannot be done.

78. Reliance on paragraph 2.27 of the Bhagwati Committee report is misplaced. In our opinion, the recommendation of the Bhagwati Committee report was not incorporated in the SAST Regulations. In fact, the Bhagwati Committee report was implemented only

in the 2011 SAST Regulations. The term 'shares' as defined under Regulation 2(v) of 2011 SAST Regulations is as under:

> *"2(v) 'shares' means shares in the equity share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights;*
>
> *Explanation.—For the purpose of this clause shares will include all depository receipts carrying an entitlement to exercise voting rights in the target company;"*

79. Regulations 3(2) of the 2011 SAST Regulations is also extracted hereunder:

> ***Substantial acquisition of shares or voting rights***.
>
> *"3(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a*

public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.—For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition."

80. From a perusal of the aforesaid, the term 'shares' under the 2011 SAST Regulations means equity shares

carrying voting rights and securities carrying voting rights. The 2011 SAST Regulations have done away with the concept of securities entitling the holder to receive shares with voting rights. Accordingly, acquiring or agreeing to acquire securities carrying voting rights alone triggers the obligations to make an open offer under the 2011 SAST Regulations. Further, the words in Regulation 3(2) of the 2011 SAST Regulations, namely '*additional shares or voting rights in such target company entitling him to exercise more than 5% of the voting rights*' can only mean that acquiring or agreeing to acquire warrants or other convertible securities which do not carry any voting rights does not trigger an obligation to make an open offer. This is the crucial change in the definition of the terms 'shares' in the 2011 SAST Regulations.

81. Thus, under the SAST Regulations warrants even though it did not carry voting rights were 'shares' for

the purpose of the Regulation and, consequently, there was an obligation to make a public announcement. On the other hand, the 2011 SAST Regulations defines 'shares' to mean only securities carrying voting rights and, therefore, the obligation to make a public announcement is triggered only when voting rights are acquired or agreed to be acquired. The comparison between the SAST Regulations and the 2011 SAST Regulations is only to drive home the point that what was contemplated in the Bhagwati Committee report, namely, that in the case of convertible debentures, open offer should only be triggered at the time of conversion was only implemented in the 2011 SAST Regulations. The triggering of the public announcement to make an open offer is distinct and different under the SAST Regulations and in the 2011 Regulations. The contention of the respondent that under the SAST Regulations and the 2011 Regulations the obligation to

make the open offer is triggered only at the time of acquisition of securities carrying voting rights is incorrect and cannot be accepted.

82. Words in a statute as defined should be used to interpret the Act unless such interpretation results in an absurdity. The Supreme Court in ***SEBI vs. Sunil Krishna Khaitan & Ors., (2022) SCC Online SC 862*** dealt with the interpretation of the word 'acquirer' in the SAST Regulations and held:

> *"When a word/term has been defined in a statute in a particular manner then the interpreter can assume the word/term must be understood in the stipulated sense. The principle applies with greater vigour when the definition of the word/term is given a legal and substantive meaning, different from the common meaning, as then the writer demands that the reader should understand the term/word in the sense defined. When the content and meaning given is technical, the interpreter is entitled to infer that the intention of the draftsmen is to deviate and depart from the ordinary, literal or customary meaning. Therefore, when a statutory enactment consciously defines a word or expression by enlarging or restricting the ordinary meaning, in the absence of clear indication to the contrary, the term as defined shall cover what is proposed, authorised, done or referred to in the enactment.*

This principle can be also discarded when the definition read and applied would not agree with the subject and context thereby making the provision unworkable or otiose."

83. The question before the Supreme Court was where an acquisition resulted in an increase in individual acquirer's holding from 10.52% to 17.16% and the individual along with persons acting in concert holding increased from 25.83% to 34.21%, then whether an open offer was triggered under Regulation 10 or Regulation 11. According to SEBI, the term 'acquirer' in Regulation 10 was required to be read as individual and not as defined under Regulation 2(1)(b), namely, '*either by himself or with persons acting in concert with the acquirers*'. This Tribunal as well as the Supreme Court held that the term 'acquirer' was required to be given the meaning under Regulation 2(1)(b) otherwise the term '*persons acting in concert*' would become nugatory. The Supreme Court further held that the term 'acquirer' as defined under

Regulation 2(1)(b) does not result in any absurdity and hence no open offer could be made under Regulation 10.

84. The Supreme Court took into consideration the 2011 SAST Regulations contending that Regulation 3(3) was enacted specifically to provide that even if individual shareholding exceeded the threshold prescribed in Regulation 3(1) and 3(3), nonetheless, the open offer was triggered. Before the Supreme Court, SEBI sought to apply the principle of individual shareholding breaching the threshold as a trigger for the open offer in a case under Regulation 10 under the SAST Regulations though this provision, namely, Regulation 3(3) of the 2011 SAST Regulations was absent in the SAST Regulations. SEBI nonetheless attempted to do this by contending that the term 'acquirer' used in Regulation 10 should be read not as defined under Regulation 2(1)(b) but to mean only an

'individual'. This contention of SEBI, namely, that what was implemented in the SAST Regulations was made explicit in 2011 SAST Regulations was squarely rejected by the Supreme Court.

85. Similarly SEBI is contending in the instant appeal that the term 'shares' in Regulation 11(1) should be considered in the ordinary sense and not as per the term 'shares' defined under Regulation 2(1)(k). The contention of SEBI that the obligation to make an open offer is triggered at the time of acquisition of voting rights under SAST Regulations as well as under the 2011 SAST Regulations is patently erroneous. It is only the 2011 SAST Regulations which has shifted the trigger to make an open offer from the point of time of acquisition of securities which entitle the holder to receive shares with voting rights to a latter point of time, namely, at the time of acquisition of securities which entitle the holder to exercise voting rights. Thus,

under the 2011 SAST Regulations in the case of acquisition of non-voting security, the trigger to make an open offer is at the time when such non-voting security is converted into a security carrying voting rights. The contention raised by the learned counsel for the respondent is identical to the contention raised by them in Supreme Court in the case of ***Sunil Krishna Khaitan*** and is in the teeth of the decision of the Supreme Court in the case of ***Sunil Krishna Khaitan***. The contention, thus, raised cannot be accepted and is rejected.

86. In our view Regulation 3(2) of the 2011 SAST Regulations indicates that the open offer is triggered only if an acquirer acquires shares or securities carrying voting rights. This is on account of the fact that the definition of the word 'shares' in the 2011 SAST Regulations has been amended to exclude securities which would entitle the holder to receive shares with

voting rights and include any security which entitles the holder thereto to exercise voting rights. The respondent's contention that 2011 SAST Regulations cannot be looked into to interpret the SAST Regulations is erroneous. In this regard, the Supreme Court in ***Sunil Krishna Khaitan*** held:

> *"Certainly, Regulation 3(3) in the Takeover Regulations 2011 clarified and possibly removed the shortcoming of the 1997 Regulations. However, the language of Regulation 3(3) as reproduced above is apparently not of clarificatory or declaratory nature."*

87. We are, thus, of the opinion that the interpretation given by the respondent to Regulation 11(1) of the SAST Regulations, namely, that the open offer is triggered only upon acquisition of shares in excess of 5% has been given effect to only in the 2011 SAST Regulations by amending the definition of the term 'shares'.

88. In ***B.P. Amoco Plc. and Anr. v. SEBI, Appeal no.11 of 2001 decided on 27th April, 2001, 2001 SCC***

Online SAT 13, the facts in this appeal was that the Board of BP Amoco Plc. approved the making of an offer to the shareholders of Burmah Castrol Plc. (UK) to acquire 100% of the shares of Burmah Castrol Plc. and a press release was issued on 14th March, 2000 to this effect. This offer was subject to various conditions. Castrol India Ltd., was a subsidiary of Burmah Castrol Plc. The acquisition of Burmah Castrol Plc. by BP Amoco Plc would result in BP Amoco Plc. acquiring control over Castrol India Ltd. in terms of Regulation 12 of the SAST Regulations. BP Amoco Plc. completed the acquisition of Burmah Castrol Plc. on 7th July, 2000. The question which arose for consideration was whether 14th March, 2000 or 7th July, 2000 triggered the date for the public announcement to the shareholders of Castrol India Ltd.

89. The contention of BP Amoco Plc., was that there was no agreement to acquire the shares of Castrol India

Ltd. on 14th March, 2000 and that only an offer to the shareholders were made on that date and that there was no express decision to acquire Burmah Castrol Plc. The said contention was rejected by this Tribunal holding that the announcement made by BP Amoco Plc. on 14th March, 2000 was a decision to acquire Burmah Castrol Plc. and hence the trigger for public announcement arose on 14th March, 2000. This Tribunal held:

> *"On a perusal of regulation 14 it is clear that a public announcement is required to be made not later than four working days after any change or changes decided to be made, as would result in any acquisition of control over the target company. On a plain reading of regulation 14(3) it is difficult to agree with the view that regulation 14(3) applies only when a change or changes in the Board of Directors or control is decided upon. I fully agree with the Respondent's view that the term " change or changes decided to be made" must be read in the light of regulation 12 and be construed so as to mean decision taken for such changes, as would result in the acquisition of control of the target company. The word "would" used in regulation 14(3) conveys that what the said regulation is concerned with is the likely acquisition of control and not the*

actually effected acquisition of control. The word 'would' in the context need be understood in its literary sense as "expressing probability". Thus when Appellant No. 1 announced its mention to acquire the shares of Burmah Castrol on 14.3.2000, the announcement constituted an intention to acquire, albeit, indirectly the control over all its subsidiary companies including the Indian subsidiary viz. Castrol (India) Ltd on the same day itself i.e.14.3.2000."

90. The Tribunal held that the intention to acquire the shares of Burmah Castrol Plc by BP Amoco Plc was a decision to acquire shares and, accordingly, control over Castrol India Ltd and, therefore, the unilateral intension to acquire the shares triggered an open offer to be made under the SAST Regulations.

91. The aforesaid decision of this Tribunal was challenged in an appeal before the Bombay High Court which was affirmed by judgment dated 8th August, 2001. In ***BP Amoco Plc. and Foseco Plc v. SEBI reported in Manu/MH/1527/2001*** wherein the Bombay High Court held:

> "*In light of the above, we do not agree with the submission of Mr. Setalvad that 'agrees to acquire' would mean that there must be an agreement between the acquirer and the shareholders. If the above interpretation is accepted, the salutary checks contemplated by the regulations and the necessity of public announcement would be rendered useless*."

The aforesaid decision on facts as well as on law is squarely applicable in the instant case.

92. We may also point out that the decision of this Tribunal in ***B.P. Amoco (supra)*** was relied upon by SEBI in the case of ***B.P. Jhunjhunwala and Ors., (2019) SCC Online SEBI 338***, in the matter of requisition of shares of *First Financial Services Ltd.*, holding that the agreement/decision/intention to acquire shares and control of the target company by the acquirers triggers the open offer requirement under Regulations 10 and 12 of the SAST Regulations respectively. We are of the view that it is no longer open for the respondent to take inconsistent stand.

93. We are further of the view that the whole idea under the SAST Regulations is to provide an exit opportunity at the earliest point of time to the shareholders which is what is in the interest of the shareholders. If two views are possible on the interpretation of Regulation 11, then the regulator should take a view which is in the interest of the shareholders. Take an example, that if an acquirer acquires 15% of the warrants and converts 5% of the warrants into shares with voting rights in each financial year, then the acquirer would be escaping from making an open offer under Regulation 11 since the conversion of warrants into shares with voting rights would be less than the prescribed limit as prescribed under Regulation 11. Such position would definitely will not be in the interest of the public shareholders. In our view, the SAST Regulations have to be interpreted as triggering the open offer even at the time of acquisition of

warrants. Any other interpretation would, definitely, will not be in the interest of the shareholders.

94. The contention of the respondent that in case of convertible securities the obligation to make a public announcement is triggered under Regulation 11(1) only when voting rights are acquired and not at the time of acquisition. The respondent submits that this interpretation is strengthened or reinforced by Regulation 14(2) which provides that in case of convertible securities like warrants, GDRs, ADRs, the obligation to make an open offer is triggered only at the time of conversion into equity shares carrying voting rights. Such interpretation cannot be accepted. In this regard, Regulation 3(2) of the SAST Regulations as it existed at the relevant time is extracted hereunder:

> *"Nothing contained in Chapter III of the Regulations shall apply to the acquisition of Global Depository Receipts ('GDR') or American Depository Receipt ('ADR') so long as they are not converted into shares carrying voting rights."*

In this regard, GDR/ADRs are of two types, one that entities the holder to exercise voting rights and the other where the holder is not entitled to exercise voting rights till it is converted into shares with voting rights. The above exemption applies to GDR/ADRs without voting rights also. The contention of the respondent that only acquisition of instruments with voting rights or voting rights will alone trigger a public announcement in which case we are at a loss to understand as to why Regulation 3(2) was made applicable to non-voting GDR/ADR. Regulation 3(2) was amended in 2009 as under:

> *"3(2) Nothing contained in regulation 10, regulation 11 and regulation 12 of these regulations shall apply to the acquisition of Global Depository Receipts or American Depository Receipts unless the holders thereof,-*
>
> *(a) become entitled to exercise voting rights, in any manner whatsoever, on the underlying shares; or*
>
> *(b) exchange such Depository Receipts with the underlying shares carrying voting rights*."

95. A perusal of the aforesaid Regulation makes it clear that it applies only to ADR/GDR carrying no voting rights. If according to the respondent the open offer is triggered in the case of ADR/GDR under Regulation 11(1) read with Regulation 14(2) only at the time of acquisition of voting rights then where was the need for the amendment to be made in the year 2009. Thus, we are of the view that in the case of convertible securities like warrants, the obligation to make an open offer under Regulation 11(1) is triggered at the time of acquisition.

96. The respondent has relied upon the decision in ***Sohel Malik vs. SEBI & Anr., (2008) SCC Online SAT 174.*** The facts are that on 16th December, 2006, the Board of the target Company authorized the issuance of 35,30,000 warrants on a preferential basis to the appellant who was the promoter of the target Company. On 15th January, 2007, the shareholders

approved the preferential issue of warrants to the appellant under Section 81(1A) of the Companies Act, 1956. The preferential allotment of warrants was made to the appellant on 27th January, 2007. The said appellant converted 5,75,000 warrants into equity shares on 30th March, 2007 and the remaining 29,55,000 warrants were converted in June, 2008 and the shares against these warrants were allotted on 28th June, 2008. Thus, upon conversion, the voting rights of the promoter group increased from 50.38% to 60.48%. The public announcement for open offer was made by the said appellant on 21st June, 2008. The appellant arrived at the open offer price of Rs.19 in terms of Regulation 20 of the SAST Regulations and applied the formula price as per Regulation 20(4)(c) as existing on 16th December, 2006, namely, the said date when the board of directors authorized the preferential issue of warrants. This Tribunal held that the open offer price

as per Regulation 20(4)(c) should be determined by applying the formula price with reference to the date of the board meeting in which the equity shares were allotted, namely, 28th June, 2008. The Tribunal held when the board meeting on 16th December, 2006 only authorized preferential allotment of warrants whereas the board meetings held on 28th June, 2008 authorized preferential allotment of shares upon conversion of warrants and, therefore, the offer price should be based with reference to the price existing on 28th June, 2008. This Tribunal decided that the reference date would be 28th June, 2008 by observing that it was the acquisition of voting rights that triggered the provision regarding public announcement and public offer contained in the SAST Regulations.

97. In our view, this ruling is entirely distinguishable on facts as well as on law. In ***Sohel Malik's case (supra)*** the warrants were issued after coming into

force the SAST Regulations. The issue before this Tribunal was whether the reference date for calculating the open offer price should be 16th December, 2006 or 28th June, 2008 in terms of Regulation 20(4)(c) read with explanation (ii) to Regulation 20(11) of the SAST Regulations and, in that context, Regulation 11(1) and 14(2) were interpreted. We further find that the definition of the term 'shares' was neither argued nor considered in this decision.

98. On the other hand, in the instant appeal the warrants were issued prior to coming into force the SAST Regulations. The question raised in the present appeal was not considered in the case of ***Sohel Malik*** as such questions never arose.

99. Similarly, the decision in ***Eight Capital Master Fund Ltd. & Ors. vs. SEBI decided on 7th July, 2009*** cannot be relied upon and is distinguishable as it only followed the decision in ***Sohel Malik's*** case.

100. Reliance by the respondent of the decision in ***Ch. Kiron Margadarsi Financiers vs. AO, SEBI (2001) SCC Online SAT 25,*** is erroneous. In this case, the said appellant pledged 7,67,580 shares constituting 16.24% of Aurobindo Pharma Ltd. against the loan given by the appellant to the directors of Aurobindo Pharma Ltd. 3,32,540 shares constituting 7.037% were transferred in the name of the appellant but continued as security with the pledgee to be returned to the pledgor as and when the loan was repaid. The remaining 4,35,040 shares constituting 9.207% through share certificates were handed over along with blank transfer deeds which continued to remain in the name of the pledgor in the register of members of Aurobindo Pharma Ltd. The loan was repaid on 25th September, 1998 and the shares received as security were returned to the pledgor. The question which arose for consideration was whether the pledgee had acquired

16.24% of the shares of Aurobindo Pharma Ltd., thereby triggering the requirement to make a public announcement under Regulation 10. This Tribunal rejected the contention of SEBI that the pledge agreement amounted to an *"agreement to acquire"* by the pledgee. The Tribunal held that though 3,32,540 shares of Aurobindo Pharma Ltd. were held only as security, however, since these shares were transferred in the name of the pledgee with the pledgee becoming entitled to exercise the voting rights thereon, the pledgee was deemed to have acquired 7.037% voting rights of Aurobindo Pharma Ltd. With respect to the balance 4,35,040 shares, the Tribunal held that there was no acquisition by the pledgee.

101. From the above, it is clear that the case was whether the pledge of 16.24% shares of Aurobindo Pharma Ltd. by the pledgor amounted to an acquisition by the pledgee triggering an obligation to make an open

offer under Regulation 10. The decision makes it apparently clear that a pledge in which the shares are not transferred in the name of the pledgee is not an acquisition and when the pledged shares are transferred in the name of pledgee, to that extent, the pledgee has *"acquired voting rights"* on those shares. Further, acquisition of such voting rights if it exceeds the threshold even if it is temporary attracts Regulation 10. In our view, by no stretch of imagination the said decision can be made the basis to decide the issue which arises in the present appeal, namely, whether an open offer is triggered at the time of acquisition of warrants or at the time of conversion of such warrants into equity shares with voting rights.

102. In ***P.B. Jain Investments vs. SEBI, Appeal No.169 of 2013 decided on 13th November, 2013,*** the facts enumerated is, that the promoter group was holding 50.23% shares and voting rights of the target

company on 23rd June, 2010. On the same date 23rd June, 2010, 2,70,00,000 warrants convertible into 5,40,00,000 equity shares were allotted to the promoters. GDR without voting rights with 6 crores underlying equity shares were allotted to non-promoters on 26th November, 2010. Upon allotment of the underlying equity shares against GDR, the shareholding of the promoter group reduced from 50.23% to 26.38% but the voting rights remained the same at 50.23% since GDRs did not carry voting rights. In the meanwhile, the SAST Regulations were repealed and the 2011 SAST Regulations came into force with effect from 27th February, 2011. The promoters thereafter converted the warrants and were allotted 5,40,00,000 equity shares on 19th December, 2011 and upon such conversion, the shareholding of the promoter group increased from 26.38% to 44.03% and the voting rights increased from 50.23% to 62.92%.

103. In view of the aforesaid, a question arose whether the promoters were liable to make a public announcement under Regulation 3(2) of the 2011 SAST Regulations. This Tribunal held that the appellants were required to make an open offer in terms of Regulation 3(2) of the SAST Regulations relying upon the decisions in ***Sohel Malik and Eight Capital Master Fund Ltd***.

104. We are of the opinion that the Tribunal failed to consider the definition of the term 'shares' as contemplated in the SAST Regulations as well as in the 2011 SAST Regulations. The Tribunal only followed the decision in ***Sohel Malik*** and ***Eight Master Capital Fund*** which as we have pointed out is distinguishable on facts as well as on law. In any case, it was not a case involving warrants. Further, in our view, the obligation cast on the appellants to make an open offer which was triggered under the SAST Regulations had

to be made under the 2011 SAST Regulations since the SAST Regulations had been repealed. Consequently, for the same reasons the decision in M/s. ***Surya Pharmaceuticals Ltd. vs. SEBI, Appeal No.174 of 2009 decided on 22nd December, 2009*** and in the case of ***Mr. Naagraj Ganeshmal Jain & Ors. vs. Mr. P. Sri Sai Ram, AO, SEBI, (2001) SCC Online SAT 24*** are distinguishable and does not support the case of the respondent.

105. Similarly, the decision in the matter of M/s. ***Vishvapradha Commercial P. Ltd. vs. SEBI, Appeal No.293 of 2018 and other connected appeals decided on 20th July, 2022*** and in the case of Mr. ***Victor Fernandes & Anr. vs. SEBI decided on 28th September, 2021,*** are distinguishable on facts and is not applicable to the present facts and circumstances of the case. The question involved in the aforesaid two matters was whether on the basis of an agreement

conferring certain veto rights entered into with promoter and the target companies, the persons who entered into the agreement acquired control of the target companies or not. These cases were not on the issue of acquisition of shares.

106. We also find that the decision of the Bombay High Court in ***M. Sreenivasalu Reddy and Ors. vs. Kishore R. Chabbaria & Ors. (1999) SCC Online Bom. 902,*** is squarely applicable in the instant appeal. The facts in the matter of Sreenivasulu Reddy is, that some of the defendants had acquired 75,000 fully convertible debentures convertible 3,75,000 shares carrying voting rights of Herberston Ltd. on 14th December, 1993 prior to which the defendants were holding 26% voting rights in Herbertson Ltd. The 1994 SAST Regulations came into force on 1st November, 1994. The convertible debentures were issued on 14th December, 1993 prior to the coming into force of the 1994 SAST Regulations.

These full convertible debentures were converted into 3,75,000 equity shares carrying voting rights on 11th August, 1995.

107. It was alleged that the acquisition of 3,75,000 shares carrying voting rights pursuant to the conversions of the fully convertible debentures was in violation of Regulation 9(3) of the 1994 SAST Regulations since no public announcement was made and, therefore, the plaintiff prayed for an injunction on the exercise of voting right by the defendant on such 3,75,000 shares. The Bombay High Court held that Regulation 9(3) did not apply to 3,75,000 shares carrying voting rights allotted to the defendant on 11th August, 1995 on which date the 1994 SAST Regulations were in force upon conversion of 75,000 fully convertible debentures acquired by it on 14th December, 1993 when there was no 1994 SAST Regulations in force. The Bombay High Court held

that the plaintiff was making a grievance with respect to a breach of 1994 SAST Regulation and that the grievance of the plaintiff cannot be stretched to a point prior to the 1994 SAST Regulations coming into force and, therefore, the Bombay High Court declined to grant an injunction on the exercise of voting rights by the defendants on such 3,75,000 shares. The Bombay High Court held that no public announcement was required to be made under Regulation 9(3) of the 1994 SAST Regulations when fully convertible debentures were converted into equity shares.

108. We are of the view that the aforesaid decision of the Bombay High Court is squarely applicable in the instant case. The ratio of this judgment is that a person who has acquired securities convertible into equity shares carrying voting rights prior to the coming into force of the 1994 SAST Regulations is not an ‘acquirer’ under the 1994 SAST Regulations and that the

conversion of such securities into shares carrying voting rights is not an acquisition triggering a public announcement under the 1994 SAST Regulations.

109. In the matter of acquisition by ***Ramco Industries Ltd., (2004) SCC Online SEBI 246,*** we find from a perusal of the order of SEBI which states that the inclusive definition of the term 'shares' in Regulation 2(1)(k) covers any security which would entitle the holder to receive shares with voting rights and that warrants issued to the promoters entitled the holder to apply for and get allotted the equity shares with voting rights and that the provisions of Regulation 11 will not apply to the acquisition of warrants which were allotted on 18th May, 2002 and 24th May, 2002 since exemption under Regulation 3(1)(c) was operative.

110. In view of the aforesaid the decisions cited by the respondent in ***Sohel Malik and Eight Capital Master Fund etc.,*** are distinguishable on facts and cannot be

applied in the facts and issues in the present appeal. On the other hand, the decisions in ***M. Sreenivasalu Reddy, B.P. Amoco Plc., and in B.P. Jhunjhunwala & Co.,*** are applicable as the issues involved are identical to the issues raised in the present appeal. Further, the decision of the Supreme Court in the case of ***Sunil Krishna Khaitan*** seals the issue on the ratio that when a term/word is defined in a particular manner then it must be understood in the stipulated sense.

111. In view of the aforesaid, in case of acquisition of convertible securities such as warrants which entitles the holder to receive shares with voting rights, we hold that

(i) in terms of Regulation 11(1) read with Regulations 2(1)(b) and 2(1)(k) and 14(1) and (2) of the SAST Regulations an obligation to make a public announcement for an open offer is

triggered at the time of acquisition of such convertible securities.

(ii) The contention of the respondent that under Regulation 11(1) read with Regulation 14(2) an obligation to make an public announcement for an open offer is triggered under the SAST Regulations at the time of conversion of warrants into equity shares carrying voting rights is rejected.

(iii) Only a person who acquires such convertible securities after coming into effect the SAST Regulations will be an '*acquirer*' within the meaning of Regulation 2(1)(b) of the SAST Regulations and only such acquisition will be '*an acquisition*' governed by the SAST Regulations. Further, a

person who has acquired convertible securities before SAST Regulations coming into force will not be an '*acquirer*' for the purpose of the SAST Regulations in as much as there is no acquisition under the SAST Regulations. The right to obtain shares was vested in the appellants in 1994 when detachable warrants were issued. Such vested rights cannot be rendered nugatory on the enactment of the SAST Regulations.

(iv) We further hold that the appellants who acquired the warrants on 12th January, 1994 were not "*acquirer*" within the meaning of Regulation 2(1)(b) of the SAST Regulations and that there is no acquisition by them

under the SAST Regulations and, consequently, the provision of the SAST Regulations cannot be applied to the warrants allotted to them on 12th January, 1994. The detachable warrants that was acquired prior to the coming into force of the SAST Regulations were not governed by any of the provisions of the SAST Regulations.

112. In view of the aforesaid findings given by us it is not necessary for us to dwell on the other issues raised by the parties. However, since long drawn arguments were made we find it fit to dwell on these issues in brief.

113. We are of the opinion that the warrants that were acquired by the appellants in January, 1994 amounts to '*agreeing to acquire shares carrying voting rights'*. In

our opinion, the Company had a binding obligation to allot 12 crore equity shares upon payment of Rs.900 crores in exchange for the 3 crore warrants held by the appellants. This obligation was not conditional and the appellants had the right to enforce a specific performance against the Company in the event of failure by the Company to allot equity shares upon payment. Accordingly, in our opinion, the warrants is an agreement to acquire shares carrying voting rights. The words '*agrees to acquire*' is part of the definition of the word '*acquire*'. The words used in Regulation 14(1) '*entering into an agreement*' only suggests that it is a decision to acquire. The words '*agreement to acquire*' is, thus, equated with the intention to acquire. In our opinion, the words '*agreement to acquire*' have to be understood as the decision or intent by the acquirer to acquire shares or voting rights. Regulation 11(1) of the SAST Regulations deals with a person who

already holds substantial shares in the target Company. When such a substantial shareholder acquires warrants exceeding 5% it has to be understood only as a decision to acquire the 5% voting shares. We are of the opinion that substantial shareholders like promoters or person acting in concert with such promoters do not subscribe to the warrants for commercial gains but they acquire the warrants only with the intent to subscribe to the shares.

114. Thus, taking into account the scope, purpose and objective of the SAST Regulations, we are of the opinion that since the acquisition took place on 12th January, 1994 much before the enforcement of the SAST Regulations, we are of the opinion that the appellants are not acquirers under the SAST Regulations.

115. Much stress was laid as to whether the SAST Regulations had a retrospective application or a

retroactive application with regard to the warrants that was acquired in January, 1994. We have already held that the obligation to make a public announcement under Regulation 11(1) is triggered at the time of acquisition of the warrants and not at the time of conversion of such warrants into equity shares with voting rights. If the appellants are directed to make a public announcement in respect of the equity shares of the Company allotted to the persons acting in concert in January, 2000 by conversion of warrants held by them then it will be a retrospective application of the SAST Regulations. Admittedly, the SAST Regulations is not retrospective in their application and there is nothing in the Regulations suggesting its application prior to its enforcement i.e. prior to 20th February, 1997. In our view, "retrospective application" or "retroactive application" of the SAST Regulations is not relevant.

116. In exercise of the statutory powers vested under Section 81(1A) of the Companies Act, 1956, the issue of warrants was approved with the right to convert them into equity shares. The warrant holders was given the right to receive the shares carrying voting rights upon conversion of warrants without the burden of making an open offer which is a right vested on the appellant in terms of the Companies Act, 1956 which was governing statute prevailing at that point of time. The Companies Act gave the warrant holders the right to receive shares carrying voting rights upon conversion of warrants without any obligation attached to such warrants. The obligation to make an open offer is a substantive obligation under the SAST Regulations and if the legislature decided to impose an obligation on warrants and other convertible instruments outstanding at the time of enactment of the SAST Regulations it could have done so by inserting a

specific provision for the same. Admittedly, there is no such provision under the SAST Regulations dealing with warrants and other convertible instruments outstanding at the time to enactment of these Regulations.

117. In the light of the aforesaid, reliance by the respondent in the case of ***SEBI vs. Rajkumar Nagpal (2022) SCC Online SC 1119,*** is not applicable to the facts and circumstances of the present appeal for the following reasons.

(i) The warrants in question were issued and allotted to persons acting in concert and right to convert the warrants into equity shares carrying voting rights have been conferred on the persons acting in concert after the shareholders of the Company approved the issue of warrants with the right to convert them into equity shares in exercise of the statutory powers vested on

them under Section 81(1A) of the Companies Act, 1956. Further, the Board of Directors in exercise of the statutory powers vested in them under the Companies Act allotted such warrants with a right to convert them into equity shares carrying voting rights and, further, the Board of Directors in exercise of the powers under the Companies Act had undertaken to allot equity shares carrying voting rights to the warrant holders upon the exercise of rights vested in them.

(ii) The right to get allotted 6.83% of the equity shares of the Company carrying voting rights without the burden of making an open offer was a right vested on the appellant in terms of the Companies Act, 1956 which was the governing statute prevailing at that point of time when the warrants were issued in 1994. There was

nothing in the Companies Act indicating that upon conversion of warrants into equity shares the warrant holders were required to make an open offer. Thus, in the absence of any provision of making an open offer under the Companies Act such right could not be taken away by SEBI through the SAST Regulations which came much later. Applying the provisions of Regulation 11(1) of the SAST Regulations would be clearly a retrospective application of the Regulations which is not warranted. We are of the opinion that no power has been accorded to SEBI by the Parliament while enacting the SEBI Act to notify Regulations which are retrospective in their application. The Supreme Court in ***Sunil Krishna Khaitan (supra)*** has categorically held that in the absence of express statutory

authorization, delegated legislation in the form of rules or regulations cannot operate retrospectively.

(iii) In ***Cabot International Capital Corporation Ltd. vs. AO, SEBI, (2001) SCC Online SAT 34***, we find that the case is not relevant to the issue at hand since the case was only concerning filing of post-acquisition report with respect to acquisition of shares carrying voting rights in April, 1997 under Regulation 3(4) of the SAST Regulations. Reliance by the respondent on certain portions of the judgment of this Tribunal to underscore the point that the obligation to make an open offer is triggered under Regulation 11(1) at the time of allotment of the shares is erroneous, in as much as the correct position is that the open offer is triggered and public announcement is required

to be made within four working days on an ‘agreement to acquire’ or ‘decision to acquire’ the shares. The Cabot case did not consider as to whether the obligation to make an open offer was triggered at the time of agreeing to acquire in January, 1994, when the 1994 SAST Regulations was in force. In the absence of such questions being decided the said decision does not concern Regulation 11(1) and, consequently, the said decision cannot be relied upon. Similarly, the decision in ***State Bank’s Staff Union vs. Union of India & Ors. (2005) 7 SCC 584; Jay Mahakali Rolling Mills vs. Union of India & Ors., (2007) 12 SCC 198 and Kingfisher Airlines Ltd. vs. Competition Commission of India (2010) SCC Online Bom. 2186,*** does not advance the cause of the respondent, in any manner, nor the principles

enunciated in these cases have a bearing to the issue involved and, therefore, we do not find it necessary to dwell on these judgments. In view of the aforesaid, we are of the view that a law cannot be presumed to have retrospective application unless there is an explicit mention in the statute. In ***Commissioner of Income Tax (Central)-1, New Delhi vs. Vatika Township P. Ltd. (2015) 1 SCC 1,*** a Constitution Bench of the Supreme Court held:

> *"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and*

should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips vs. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

118. We are also of the view that proceedings in the instant case were initiated belatedly. There was undue delay not only in the initiation of the proceedings but also in the disposal of the proceedings. To recapitulate the warrants were issued in 1994. 6.83% of the equity shares were allotted on 7th January, 2000 and the disclosures under Regulation 8(3) of the SAST Regulations was made before the appropriate stock exchange on 28th April, 2000. The disclosures indicated that 6.83% of the equity shares were allotted to the persons acting in concert. This fact came into the public domain and SEBI cannot say that they were unaware of the aforesaid disclosure made by the Company. Inspite of being aware, SEBI did nothing in the matter and only started investigation when a complaint was received in respect of the allotment on 20th January, 2002. According to SEBI, the investigation started in February, 2002 and continued

till February, 2005. Assuming that SEBI took three years to complete the proceedings there is no justification for the respondent to issue a show cause notice in 2011 after six years from the submission of the investigation report. The contention that SEBI took legal opinion twice which took another three years is unacceptable. Delay in obtaining legal opinion can be condoned in exceptional cases but not where the only documents relied upon by the respondent in the show cause notice is based on two documents, namely, the list of 38 allottees and the disclosure made by the Company under Regulation 8(3) on 28th April, 2000.

119. Thus, the contention of the respondent that owning to the nature of the allegation, the complexity involved, the number of companies involved, the investigation took time and that they took three years to get a legal opinion is not a plausible explanation which would condone this inordinate delay. No satisfactory

reasoning has been given by the respondent as to why they could not act immediately when the disclosures were made by the Company on 28th April, 2000 and why they waited for two long years and only acted when a complaint was received.

120. We have also perused the investigation report and we find that the investigation report does not deal with the alleged violation under Regulation 11(1) of the SAST Regulations. There is no whisper that the acquisition by the persons acting in concert was beyond the threshold of 5% and hence in violation of Regulation 11(1) of the SAST Regulations. The investigation report relies on some other alleged violations.

121. We further find that reliance by the respondents on the decision in ***Hindustan Times Ltd. vs. Union of India, (1998) 2 SCC 242*** and the decision of this Tribunal in ***Pooja Vinay Jain vs. SEBI, Appeal No.159***

of 2019 decided on 17th March, 2020 is misplaced. All those decisions are on the peculiar facts and circumstance of those cases and was based on the fact that prejudice caused to the parties had not be pleaded. These cases do not apply as the appellants have specifically pleaded prejudice caused due to delay.

122. The learned counsel for the respondent contended that failure to make the public announcement and the open offer was a continuing violation till it was discharged. The appellant by not making a public announcement has continued to violate the provisions of Regulation 11(1) of the SAST Regulations. It was urged that so long as the acquirer holds such acquired shares without making a public announcement and keeps on holding such shares, it is a continuing violation. Hence there is no delay in the initiation of the proceedings. In support of his submissions, the respondent has relied upon various decisions, namely:

(a) Adjudicating Officer, SEBI vs. Bhavesh Pabari, (2019) 5 SCC 90

(b) Bhagirath Kanoria vs. State of M.P., (1984) 4 SCC 222

(c) Maya Rani Punj vs. CIT, (1986) 1 SCC 445

(d) CWT vs. Trustees of Sahebzadas of Sarad-E-Khas-Trust

(e) Mohan Lal vs. State of Rajasthan, (2015) 6 SCC 222

(f) Gokak Patel Volkart Ltd. vs. Dundayya G. Hiremak and others, (1991) 2 SCC 141, and

(g) Samarpan Agro and Livestock Ltd. vs. SEBI, (2010) SCC Online Del. 3688

123. On the other hand, Shri Salve urged that the violation, if any, is committed once and for all and is not a continuing violation. In support of his submission, the learned senior counsel, has placed reliance on the following decisions, namely:

(a) State of Bihar vs. Deokaran Nenshi and Ors., (1972) 2 SCC 890

(b)Rupali Devi vs. State of Uttar Pradesh, (2019) 5 SCC 384

(c) M. Siddiq vs. Mahant Suresh Das, (2020) 1 SCC 1, and

(d) Udai Shankar Awasthi vs. State of Uttar Pradesh, (2013) 2 SCC 435

124. The concept of "continuing offence" has evolved through various decisions of the Supreme Court. The decision of the Supreme Court in ***Deokaran Nenshi (supra)*** sets out the basic principles of a 'continuing offence'. This decision still holds the field. The Supreme Court held that a continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all.

125. In our opinion, hairsplitting argument as to whether the offence alleged against the appellant is of a continuing or non-continuing nature is not required to be considered in the facts of this case as we have already held that no violation of SAST Regulations has been committed. We however do not agree that the decision of the Supreme Court in ***Bhagirath Kanoria (supra)*** rules the roost as in our opinion the decision of the Supreme Court in ***Deokaran Nenshi (supra)*** still holds the field and the same has been relied upon by a Constitution Bench of the Supreme Court in ***M. Siddiq vs. Mahant Suresh Das, (2020) 1 SCC 1***, holding that the mere fact that the effect of the injury caused has continued, is not sufficient to constitute it as a continuing wrong. The Supreme Court held that when the wrong is complete as a result of the act or omission which is complained of, no continuing wrong arises

even though the effect or damage that is sustained may enure in the future.

126. In view of the aforesaid, we are of the view that the act of acquisition without making a public announcement is complete and over once and for all with the acquisition. The act of acquisition without making a public announcement does not continue. There is no such thing under the SAST Regulations that acquisition and holding of shares without making a public announcement is a violation. Consequently, there is no '*de die in diem*' as urged by Shri Dattar. The contention that violation of Regulation 11(1) is a continuing violation cannot be accepted and is also untenable. If the shares are acquired without making a public announcement, there is injury to the public shareholders, but the injury is once and for all. Only if there is a continuous acquisition of shares, the injury continues.

127. Thus, the contention that the proceedings are not barred by limitation because it is a continuing violation cannot be accepted and is rejected.

128. It is a settled principle of law that when no limitation period is prescribed, in that event, proceedings should be initiated within a reasonable time. What would be the reasonable time could depend on the facts and circumstance of each case, nature of default, prejudice caused etc. The Supreme Court in ***Sunil Krishna Khatian (supra)*** have held and reconfirmed the settled law that in the absence of limitation prescribed by an enactment the authority has to exercise the power within a reasonable time and that this would depend upon the facts of each case and whether the violation was hidden and camouflaged or whether the authority had or had not the knowledge of the alleged violation.

129. This Tribunal in a plethora of cased have quashed the proceedings and the impugned order on the ground of inordinate delay.

130. In ***Mr. Rakesh Kathotia vs. SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019*** this Tribunal held:-

> *"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in* ***Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771]*** *held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in* ***Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695****. The Supreme Court recently in the case of* ***Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held****:*

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."*

131. Similar view was held in ***Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018 along with other connected appeals decided on August 22, 2019)***. Against the order of this Tribunal in the matter of ***Ashok Shivlal Rupani***, SEBI filed ***Civil Appeal No. 8444-8445 of 2019*** before the Supreme Court of India which was dismissed and the order of this Tribunal affirmed by the Supreme Court.

132. Similar view was again reiterated in the matter of ***Ashlesh Gunvantbhai Shah vs SEBI (Appeal No. 169 of 2019) and other connected appeals decided on January 31, 2020 (2020 SCC OnLine SAT 30)*** where on account of inordinate delay in the initiation of the

proceedings by issuance of the show cause notice, the penalty order was quashed.

133. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. Even though there is no period of limitation prescribed in the Act and the Regulations for issuance of a show cause notice and for completion of the adjudication proceedings, nonetheless, the authorities are required to exercise its powers within a reasonable period. In ***AO, SEBI vs Bhavesh Pabari, 2019 SCC OnLine SC 294*** the Supreme Court held that an authority is required to exercise its powers within a reasonable period.

134. Admittedly, it took 11 years from the date of the commission of the alleged violation in January, 2000 to issue a show cause notice.

135. Further, it took SEBI 9 long years to decide the consent application. The impugned order has come

after 21 years of the alleged violation. We find that the delay has caused serious prejudice to the appellant. There is an inordinate delay in the initiation of the proceedings but also in the disposal of the proceedings. The impugned order, thus, is liable to be set aside also on this ground.

136. A penalty of Rs.25 crores has been imposed under Section 15H of the SEBI Act which came into existence with effect from 8th September, 2015. It was contended by the appellants that the violation, if any, came into existence in January, 2000 and, therefore, the provision imposing a penalty existing on that date would apply.

137. On the other hand, the contention of the respondent is, that the violation committed by the appellant is a continuing violation and even though the appellants may have acquired the shares in January, 2000 without making an open offer and continue to

hold the shares and exercise voting rights thereon even as on date hence the amended provision in the Section 15H prevailing on the date of the passing of the impugned order would apply. In support of their contention parties have relied upon various decisions which we need not refer as in our opinion the issue of continuing violation is only for the purpose of deciding the period of limitation to be computed with reference to every point of time during which the said violation continues. The purpose of introducing continuing violation/offence is to find out as to whether the complaint so filed was barred by limitation or not. In our view, continuing violation does not mean that the provision existing on the date of passing the impugned order relating to penalty would apply. We have already held that the alleged violation is not a continuing offence. Thus, in our opinion, the provision relating to

the alleged violation would apply on the date when the violation was committed.

138. In January, 2000, Section 15H read as under:

> ***"Penalty for non-disclosure of acquisition of shares and takeovers.***
>
> *15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
>
> *(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
>
> *(ii) make a public announcement to acquire shares at a minimum price.*
>
> *he shall be liable to a penalty not exceeding five lakh rupees."*

139. This provision was amended on 29th October, 2002. The amended Section 15H reads as under:

> ***"15.H. Penalty for non-disclosure of acquisition of shares and takeovers***
>
> *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty not exceeding twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

140. In our view, the provision 15H existing as on January, 2000, would apply which at that point was a maximum penalty of Rs.5 lakh, Thus, in our opinion, a penalty of Rs.25 crores could not have been imposed and even assuming that the violation had occurred, a maximum penalty of Rs.5 lakhs could be imposed.

141. Let us take a situation where Section 15H was omitted by an amendment on or before the passing of

the impugned order. If the contention of the respondent is accepted then the violation committed in the year 2000 could not be penalized at the time of passing of the impugned order since the provision was omitted. If such contention of the respondent is accepted it would lead to an absurd result. In view of the aforesaid, it is not necessary for us to go into the question as to whether the alleged violation was a continuing violation.

142. In view of the aforesaid, we find that the appellant has not violated Regulation 11(1) of the SAST Regulations. The imposition of penalty upon the appellant is without any authority of law. Consequently, the impugned order cannot be sustained and is quashed. The appeal is allowed. All the misc. applications are accordingly disposed of.

143. We have been informed that the penalty amount pursuant to the impugned order was deposited by the

appellants under protest. Since we have set aside the impugned order, the respondent is directed to refund the amount of Rs.25 crore within four weeks from today. In the circumstances of the case, parties shall bear their own costs.

144. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

28.7.2023
RHN