BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 08.11.2023
Date of Decision : 22.11.2023

Misc. Application No. 132 of 2023
And
Misc. Application No. 156 of 2023
And
Misc. Application No. 594 of 2023
And
Misc. Application No. 609 of 2023
And
Appeal No. 93 of 2023

1. Urban Infrastructure Trustees Limited
2. Urban Infrastructure Venture Capital Limited

46/47, Maker Chambers VI,
Nariman Point, Mumbai – 400 021. ….. Appellants

Versus

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

Mr. Ravi Kadam, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellants.

Mr. Rafique Dada, Senior Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No. 94 of 2023

1. Parag Parekh
   2003, 19th Floor, Pearl Residency,
   Sayani Road, Prabhadevi,
   Mumbai – 400 025.

2. Anand Jain
   B-37, Sterling Apartments, 9th Floor,
   38, Peddar Road, Cumbala Hill,
   Mumbai – 400 026.

3. Rajeev Bhandari
   B-602, Falcon Castle, Senapati Bapat Marg,
   Opp. One Indian Bulls Centre, Lower Parel,
   Delisle Road, Mumbai - 400 013. ….. Appellants

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellants.

Mr. Rafique Dada, Senior Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No. 95 of 2023

P. K. Bansal
2A/93, Kalpatru Estate,
Jogeshwari Vikhroli Link Road,
Near Majas Bus Depot, Andheri (East),
Chakala, MIDC, Mumbai – 400 093. ….. Appellant

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellant.

Mr. Suraj Choudhary, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No. 96 of 2023

Sandeep Kedia
18, Sagar Jyoti, Road No. 6,
Opp. Bank of Maharashtra, JVPD Scheme,

Vile Parle (West), Mumbai – 400 056. ….. Appellant

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellant.

Mr. Suraj Choudhary, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No. 97 of 2023

Jesal Sanghvi
B-402, Chaitanya Towers,
Appasaheb Marathe Marg,
Near Ravidra Natya Mandir, Prabhadevi,
Mumbai - 400 025. ….. Appellant

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellant.

Mr. Suraj Choudhary, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With
Appeal No. 98 of 2023

Dharmesh Trivedi
13/22, Navjivan CHS,
Lamington Road,
Mumbai – 400008. ….. Appellant

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellant.

Mr. Suraj Choudhary, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

With

Misc. Application No. 600 of 2023
And
Appeal No. 99 of 2023

P. Krishnamurthy
1401/1402, Vinayak Aangan,
Old Prabhadevi Road, Mumbai – 400 025. ….. Appellant

Versus

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

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, Advocates i/b AZB & Partners for the Appellant.

Mr. Suraj Choudhary, Advocate with Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, Advocates i/b. MDP & Partners for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. Seven appeals have been filed against a common order dated October 31, 2022 passed by the Whole Time Member (hereinafter

referred to as ‘WTM’) of Securities and Exchange Board of India (hereinafter referred to as ‘SEBI’) wherein a slew of directions have been issued under Section 11(1), 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘SEBI Act’) and Regulation 29 of the Securities And Exchange Board of India (Venture Capital Fund) Regulations, 1996 (hereinafter referred to as ‘VCF Regulations’). By the impugned order, the appellants were directed to wind up the scheme of the Fund and provide an exit to the investors / unit holders. Further, some of the appellants were restrained from accessing the securities market and from associating themselves directly or indirectly with any registered intermediaries, etc. for a period of one year.

2. The facts leading to the filing of the present appeals is, that Urban Infrastructure Opportunities Fund (hereinafter referred to as ‘the Fund’) was launched on March 21, 2006 as a close-ended scheme of Urban Infrastructure Venture Capital Fund and was registered with SEBI as a Venture Capital Fund. Appellant nos. 1 is the trustee of the Fund and appellant nos. 2 is the investment manager of the Fund.

3. The Fund issued an Information Memorandum in May 2006. Clause 2.2 of the Information Memorandum provided as under :-

*"**Clause 2.2. of the Information Memorandum***

"Term

The Fund shall be close-ended Fund and shall terminate on the expiry of a period of seven (7) years from the date of initial Closing; provided however that the Trustee, upon the recommendation of the Investment Manager, may elect to extend the term of the Fund for two further period of one (1) year, each."

4. Thus, the life of the Fund was for a period of seven years extendable for two terms of one year each. Based on the aforesaid provisions, the tenure of the Fund was up to June 8, 2015.

5. On May 13, 2015, a letter was issued to the investors by the investment manager seeking consent from the investors for extending the tenure of the Fund until May 31, 2006. However, while consent was being obtained, the appellants returned a sum of Rs. 615 crore to the investors in June 2015 which worked out to 25.5% of the Fund corpus. In June 2015, appellant nos. 1 informed SEBI about its proposal to extend the duration of the Fund till December 31, 2016 and in August 2015, appellant nos. 1 informed SEBI that positive consent has been obtained from more than 75% investors of the Fund for extension of the tenure of the Fund till December 31, 2016. In the meanwhile, between June 2015 to December 2016, the Fund returned a

further sum of Rs. 632 crore to the investors which worked out to 60.12% of the corpus Fund.

6. Three complaints were received on the SEBI Complaint Redressal System (hereinafter referred to as 'SCROES') platform against the scheme alleging that the scheme has not been able to wind up and that a direction should be issued to refund the contribution. SEBI carried out an inspection based on which a show cause notice dated June 7, 2021 was issued calling up the appellants to show cause as to why suitable direction under Section 11B of the SEBI Act read with Regulation 29(c) and 29(d) of the VCF Regulations should not be passed against the trustee, investment manager and their respective directors for violation of Regulation 23(1)(a) of the VCF Regulations and SEBI circular dated December 18, 2014.

7. In response to the show cause notice, the appellants replied that the Fund was in liquidation stage and was not in violation of the VCF Regulations and that total sum of Rs. 2011 crore which is 83% of the Fund corpus has already been returned to the investors. During the pendency of the proceedings, the appellants also brought to the notice of SEBI that the Fund has returned a sum of Rs. 2092 crore which is 87.5% of the Fund corpus and the balance amount could not be

refunded as the Fund was facing problem with exits from various investments due to various external factors beyond their control and, consequently, the tenure of the Fund was extended in the interest of investors to secure orderly exit.

8. The WTM after considering the material evidence of record passed the impugned order dated October 31, 2022 directing the appellants to wind up the scheme by providing an exit to the investors within a period of three months and further restrained the appellants from associating themselves directly or indirectly with any SEBI registered intermediaries including SEBI registered Fund such as mutual Funds, alternative investment Funds, portfolio management services, etc. which deal with investors' money, in any manner, for a period of one year from the date of the impugned order. For facility, the directions issued by WTM in paragraph no. 37 are extracted hereinbelow :-

> "*37. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 11(1), 11(4) and 11B(1) read with Section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 29 of the VCF Regulations, pass the following directions :-*
>
> *37.1. Noticees (except for Noticee Nos. 5) shall ensure that the Scheme of the Fund is wound up by providing exit to its investors / unit holders within a maximum period of 3*

months form the date of this Order in the following manner :

37.1.1. Two separate valuations of all the remaining assets of the Scheme of the Fund (as on October 31, 2022) shall be obtained from two independent reputed valuers;

37.1.2. The NAV of the Scheme of the Fund as on October 31, 2022 shall be determined based on the aforesaid valuation reports by adopting higher of the valuation arrived at in the aforesaid two valuation reports;

37.1.3. Exit to the investors shall be provided first, by offering an option to the existing investors / unit holders to take exit by way of in specie distribution of interest / rights / stakes / shares, etc. in the investee companies / projects;

37.1.4. The investors / unit holders who do not exercise their option for in specie distribution, shall be given exit on the basis of the NAV determined as per directions stated in paragraph 37.1.2 above.

37.1.5. It is clarified and directed that the entire process of winding up of the Scheme of the Fund and providing exit to the investors / unit holders as per the above stated directions, shall be completed within a maximum period of 3 months from the date of this Order i.e. latest by January 31, 2023.

37.2. The Noticees (except for Noticee No. 5) shall file a report certified by a CA declaring that all the investors of the Scheme have been provided an exit and the Scheme of Fund stands wound up. The said report shall be filed within a period of

three weeks after completion of the exit and repayment to the investors / unit holders of the Scheme i.e. by February 21, 2023.

37.3. Noticees Nos. 2 to 4, 6 and 8 to 12 are hereby restrained from accessing the securities market by issuing prospectus, offer document or advertisement soliciting money from the public in any manner, either directly or indirectly, for a period of 1 year from the date of this Order.

37.4. Noticees No. 1 to 4 and 6 to 12 are hereby restrained from associating themselves, directly or indirectly with any SEBI registered intermediaries including SEBI registered Fund such as Mutual Funds, Alternative Investment Funds, Portfolio Management Services etc. which deal with investor's money in any manner for a period of 1 year from the date of this Order."

9. We have heard Mr. Ravi Kadam, the learned senior counsel and Mr. Sharan Jagtiani, the learned senior counsel with Mr. Rohan Kadam, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Ms. Mrudula Dixit, Mr. Mehul Bachhawat, the learned counsel for the appellants and Mr. Rafique Dada, the learned senior counsel with Mr. Suraj Choudhary, Mr. Ravishekhar Pandey, Ms. Rasika Ghate, Mr. Amarpal Singh Dua, Ms. Shefali Shankar, the learned counsel for the respondent.

10. At the time when the appeals were entertained, an interim order dated January 23, 2023 was passed staying the effect of the debarment

order as provided in paragraph nos. 37.3 and 37.4 of the impugned order. Shri Ravi Kadam, the learned senior counsel for the appellants Urban Infrastructure Trustees Ltd. and Urban Infrastructure Venture Capital Ltd. submitted that the directions issued by the WTM directing the scheme of the Fund to be wound up had been complied with and, therefore, the present appeal is now confined to the directions issued by the WTM in paragraph nos. 37.3 and 37.4 wherein the appellants have been restrained from accessing the securities market and further restrained them from associating directly or indirectly with any intermediaries, etc.

11. The learned senior counsel contended that the WTM has travelled beyond the show cause notice and whereas the show cause notice was issued under Section 11B of the SEBI Act and Regulation 29(c) and 29(d) of the VCF Regulations, the impugned order debarring the appellants in paragraph nos. 37.3 and 37.4 has been passed taking into consideration the provisions of Section 11(1) and 11(4) of the SEBI Act which is not permissible. It was urged that it is not a case where a wrong provision has been made in the impugned order but it is a case where a direction has been issued intentionally by exercising the powers under Section 11(1) and 11(4) of the SEBI Act which is not

permissible as the necessary ingredients were not existing in the show cause notice. It was, thus, urged that the impugned order travelled beyond the show cause notice.

12. The learned senior contended that the show cause notice did not indicate that the respondent were proposing to issue any direction under Section 11(1) and 11(4) of the SEBI Act and, therefore, without putting the respondent to notice of such action, passing an order debarring the appellants was, therefore, violative of the principles of the natural justice. It was contended that the purpose of serving a show cause notice is, to make the noticees understand the process of the case set up against him which he has to meet so that he gets an opportunity to rebut the same. Another requirement in the show cause notice is to indicate the nature of the action which is proposed to be taken for such a breach. In support of his contention, the learned senior counsel placed reliance upon a decision of the Hon'ble Supreme Court in ***Gorkha Security Services vs. Government (NCT of Delhi) and Ors. [(2014) 9 SCC 105],*** wherein the Hon'ble Supreme Court held as under :-

> *"21. The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show*

Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action."

"22. The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

> *i) The material / grounds to be stated on which according to the Department necessitates an action;*
>
> *ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement."

13. The learned senior counsel also placed reliance on this issue on a decision of the Hon'ble Allahabad High Court in ***Abdul Latif Nomani vs. Commissioner, Gorakhpur & Ors. [(1966) SCC Online All. 303],*** wherein it was held :-

> *"11. In our judgment, the orders removing Sanaullah Sardar and Mohammad Yusuf did not satisfy the provisions of Section 40(1)(a) and we hold that those orders are invalid."*

> *"12. We are of opinion that the orders of removal are invalid also because the notices requiring the two members to submit their explanation did not specify the action which the Commissioner proposed to take against them in rase it was found that they had absented themselves from the meetings of the Board. The two notices merely point out that they had absented themselves from certain meetings specified in the notice without obtaining sanction from the Board, and call upon them to enter their defence in reply to that charge. There is nothing in the notices to indicate what is the action proposed to be taken against them."*

14. The learned senior counsel further submitted that Section 11B of the SEBI Act starts with the words ***"save as otherwise provided in sub-section (2)"*** meaning thereby that the powers under Section 11 is excluded while exercising the power under Section 11B. In support of his submission, the learned senior counsel placed reliance on ***Lalu***

Prasad Yadav & Anr. vs. State of Bihar & Anr. (2010 5 SCC 1),

wherein the Hon'ble Supreme Court held :-

> *"25. As noticed above, Section 378, sub-section (1), opens with the words - "save as otherwise provided in sub-section (2)". These words are not without significance. The immediate question is as to what meaning should be ascribed to these words."*
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> *"26. In Concise Oxford English Dictionary (Tenth Edition, Revised), the word "save" is defined thus:*
>
> > *"save.- formal or poetic/literary except; other than...."*
>
> *"27. In Webster Comprehensive Dictionary (International Edition), the word "save" is defined as follows:-*
>
> > *"save.- Except; but - 1. Except; but 2. Archaic Unless".*
>
> *"28. A Dictionary of Modern Legal Usage by Bryan A. Garner (1987) states that "save" is an ARCHAISM when used for "except". It should be eschewed, although, as the examples following illustrate, it is still common in legal prose. e.g., `The law-of-the-circuit rule forbids one panel to overrule another save [read except] when a later statute or Supreme Court decision has changed the applicable law'."*
>
> *"29. In Williams v. Milotin8, the High Court of Australia, while construing the words "save as otherwise provided in this Act" stated:-*
>
> > *"....In fact the words "save as otherwise provided in this Act" are a reflexion of the words "except" - or "save" - "as hereinafter excepted".*

> *"35. We have surveyed Section 378 in its entirety to have a complete conspectus of the provision. The opening words – "save as otherwise provided in sub-section (2)" – are in the nature of exception intended to exclude the classes of cases mentioned in sub-section (2) out of operation of the body of sub-section (1). These words have no other meaning in the context but to qualify the operator of sub-section (1) and take out of its purview two types of cases referred to in sub-section (2), namely, (i) the cases in which offence has been investigated by the Delhi Special Police Establishment constituted under the 1946 Act, and (ii) the cases in which the offence has been investigated by any other agency empowered to make investigation into an offence under any Central Act other than the 1973 Code. By construing Section 378 in a manner that permits appeal from an order of acquittal by the State Government in every case, except two classes of cases mentioned in sub-section (2), full effect would be given to the exception (clause) articulated in the opening words."*

15. On the other hand, Shri Rafique Dada, the learned senior counsel for the respondent contended that when a show cause notice invokes Section 11B of the SEBI Act then any noticee who has worked in the capital market is bound to know that the provisions of the Section 11B are comprehensive as the orders which can be passed are those which can be appropriate in the interest of the investors and the securities market. It was contended that the provisions of Section 11B is an enabling provision enacted to empower SEBI to protect the interest of the investors and to promote the development of and to regulate the

securities market and to prevent the malpractices and manipulation. It was contended that the powers conferred by Section 11B to issue directions are of the widest possible amplitude and are exercisable in the interests of the investors. In support of his submission, the learned senior counsel placed reliance upon a decision of the Bombay High Court in ***Ramrakh R. Bohra & Ors. vs. SEBI (1998 SCC Online Bom. 684).*** Relevant extracts are as under :-

> *"24. Section 11B of the SEBI Act is an enabling provision enacted to empower the SEBI to protect the interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations, inter alia, by brokers, Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it. In the case of Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd., the Supreme Court has observed, as under :*
>
> > *"It would thus appear that Section 45K(3) is an enabling provision enacted to empower the bank to regulate the conditions on which deposits may be accepted by non-banking companies or institutions and to prevent malpractices in the matter of acceptance of such deposits. Such an enabling provision must be so construed as to subserve the purpose for which it has been enacted. It is a well accepted canon of statutory construction that 'it is the duty of the court to further Parliament's aim of*

> *providing a remedy for the mischief against which the enactment is directed and the court should prefer a construction which advances this object rather than one which attempts to find some way of circumventing it..."*
>
> *"Section 45K is in the nature of an enabling provision. In the matter of construction of enabling statutes the principle applicable is that if the legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view. (See Craies on Statutes Law, 7th edition, p. 258). It has been held that the power to make a law with respect to any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion. (See Sodhi Transport Co. vs. State of U.P., (1986) 2 SCC 486 : AIR 1986 SC 1099).”*

“26. In the case of ITO v. M. K. Mohammed Kunhi [1969] 71 ITR 815 ; AIR 1969 SC 430, it has been observed, as under (headnote of ITR) :

> *"It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effectivee . . ."*

“28. If one has regard to the aforesaid principles, it would follow that the power which has been conferred by Section 11B to issue directions are of the widest possible amplitude and are exercisable in the interests of investors and in order to prevent, inter alia, a broker from conducting his business in a manner detrimental to the interests of the investors or the securities market. The said power to issue directions under Section 11B must carry with it, by necessary implication, all powers and duties incidental and

necessary to make the exercise of these powers fully effective including the power to pass interim orders in aid of the final orders. The provision of Section 11B, it is to be noted, has been introduced by an amendment brought about in 1995 and the same seeks to confer additional power on the Board, by way of interim measures, pending inquiry. The same is intended for the protection of the interests of the investors and the securities markets."

16. The learned senior counsel also placed reliance upon a decision of the Gujarat High Court in ***SEBI vs. Alka Synthetics & Ors. [(1998) SCC OnLine Guj. 365]*** wherein it was observed :

"the SEBI Act is an act of remedial nature and, therefore, the present cases could not be compared with cases relating to the physical or taxing statute or other penal statutes for the purposes of collection of levy, taxes etc. As and when new problems arise, they call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which impugned orders were passed, cannot be said to be without authority of law in face of provisions contained in S. 11 and S. 11B of the Act."

17. Similar view was taken by this Tribunal in ***Karvy Stockbroking Ltd. vs. SEBI in Appeal No. 92 of 2006 decided on January 8, 2007.***

"17. The primary function and duty of the Board is to protect the interests of the investors in securities and to regulate the securities market. The preamble to the Act which declares the dominant purpose also makes it clear

that the Board has been established for this purpose. This duty is performed under Sections 11 and 11B of the Act which are the very soul and heart of it. These two sections are the very reason for the existence of the Board …….”

“18. ….Section 11 is the very heart and soul of the Act. This provision has been periodically amended and today it is substantially different from what it was at its inception in the year 1992. The scope of the power has been considerably widened. The introduction of Sub section (4) in Section 11 and various other provisions like Section 11B is indicative of the legislative intent. These provisions are meant to arm the Board with authority so as to be able to effectively exercise power and achieve the declared objectives of the Act. It is clear that a common thread runs through the various provisions of the Act and that is to empower the Board to take preventive as well as punitive measures so as to protect the investor and to promote the securities market. We cannot lose sight of the fact that the Board has to regulate a speculative market and in such a market varied situations may arise all of which cannot be envisaged and there may be an urgent need to pass an order even when an inquiry or investigation is pending. We cannot even entertain a thought that the Board has no power to restrain an intermediary from accessing the market who is alleged to have committed grave irregularities which may adversely affect the interests of investors or the market.”

18. Reliance was also made on a decision of the Hon’ble Supreme Court in ***Franklin Templeton Trustee Services Pvt. Ltd. & Anr. vs. Amruta Garg & Ors. [(2021) 9 SCC 606)],*** wherein it was held :-

“70. The Securities Appellate Tribunal in Sterlite Industries (India) Ltd. vs. SEBI has given an expansive

interpretation to Section 11 and Section 11-B of the SEBI Act, observing that they give enormous authority to SEBI. As long as the power exercised under Section 11B is subject to the provisions of the SEBI Act and well within the legal and constitutional framework, intended to achieve the purposes of the SEBI Act and subjecting the persons specified in the section, the power will sustain. The Appellate Tribunal called it a wholesome provision designed to achieve the objectives of the SEBI Act.

71. The Regulations, in our opinion, rightly draw the distinction between creditors and the unitholders. The unitholders are investors who take the risk and, therefore, entitled to profits and gains. Having taken the calculated risk, they must also bear the lossess, if any. Unitholders are not entitled to fixed return or even protection of the principal amount. Creditors on other hand, are entitled to fixed return as per mutually agreed contracts. Their rate of return is in the nature of interest and not profit or loss. Creditors are not risk takers as is the case with the unitholders. In this sense, unitholders are somewhat at par with the shareholders of a company. The waterfall mechanism under the Companies Act, or the Indian Bankruptcy Code, gives primacy of the dues of the creditors over the shareholders ….”

19. The learned senior counsel further relied upon a decision in ***P. K. Palinasamy vs. Arumugham [(2009) 9 SCC 173],*** wherein it was held :-

“It is well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and / or statutory authority had requisite jurisdiction therefor”.

> *"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source in law."*

20. It was, thus, submitted that the direction contained in paragraph nos. 37.3 and 37.4 was valid and that order in question could be passed under Section 11B of the SEBI Act.

21. Before we proceed, we must know as to what the show cause notice alleges against the appellants. The subject of the show cause notice on page 1 indicates that the show cause notice was being issued under Section 11B of the SEBI Act read with Regulation 29(c) and (d) of the VCF Regulations. Paragraph nos. 1 of the show cause notice indicated that SEBI ordered an inspection vide order dated September 17, 2022. Paragraph nos. 2 indicated that Urban Infrastructure Venture Capital Fund was set up in the nature of Trust by way of a trust deed and registered with SEBI as a Venture Capital Fund and that the settler of the Fund is Urban Infrastructure Venture Capital Ltd. Paragraph nos. 3 and 4 indicated the registered office of the Fund and the investment manager. Paragraph nos. 5 of the show cause notice

indicated the investment made by the Fund as on March 31, 2020. Paragraph nos. 6 of the show cause notice contended that pursuant to the inspection, it was observed that the term of the scheme was 7 years and the trustees had recommended the extension of the term for the two further period of one years each and even after the expiry of the period, the Fund was not wound up as per the VCF Regulations and, therefore, observed that the Fund failed to wind up upon the expiry of the term. It was also observed that there were three complaints which remained unaddressed on the SCORES platform which was in non-compliance of SEBI circular dated December 18, 2014. Paragraph Nos. 7 of the show cause notice contended that the scheme of the Fund was required to be wound up under Regulation 23(1) of the VCF Regulations. Paragraph nos. 8 referred to the circular dated December 18, 2014 with regard to non-redressal of the complaints on the SCORES platform and in paragraph nos. 9, the noticees names were mentioned alleging that they have violated the provision of the Regulation 23(1)(a) and the provisions of SEBI circular dated December 18, 2014. In paragraph nos. 10, it was alleged that the noticees were called upon to show cause as to why suitable directions should not be passed under Section 11B of the SEBI Act read with

Regulation 29(c) and (d) of the VCF Regulations for violation of the provisions of Regulation 23(1)(a) of the VCF Regulations.

22. A perusal of the aforesaid show cause notice indicates clearly that the appellants had committed violation of Regulation 23(1) of the VCF Regulations for not winding up the scheme and for not redressing the complaints on the SCORES platform. Further, the appellants were put to notice to show cause as to why direction should not be passed under Section 11B read with Regulation 29(c) and (d) of the VCF Regulations. Nothing has been mentioned with regard to the issuance of any direction under Section 11(4) of the SEBI Act nor the contents of the show cause notice could be discerned from a reading thereof that the ingredients of issuing any direction under Section 11 and 11(4) of the SEBI Act were present.

23. Section 11(4) and 11B of the SEBI Act are extracted hereunder :-

> *"11(4). Without prejudice to the provisions contained in sub-sections (1), (2), (2-A), (3) and (4), section 11-B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-EA, 15-EB, 15-F, 15-G, 15-H, 15-HA and 15-HB after holding in inquiry in the prescribed manner."*

"11-B. Power to issue directions [and levy penalty].-

(1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary,—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.]

[Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.]

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4-A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-EA, 15-EB, 15-F, 15-G, 15-H, 15-HA and 15-HB after holding an inquiry in the prescribed manner."

24. The provision of the Section 11 and 11B has been interpreted by this Tribunal as well as by the Hon'ble Supreme Court in a large number of cases. In ***Karvy Stock Broking (supra),*** this Tribunal held that Section 11 is the very heart and soul of the Act. The primary function and duty of the Board is to protect the interests of the investors in securities and to regulate the securities market. Initially, the scope of power was confined under Section 11(1) and 11(2) of the Act. SEBI Act has been amended from time to time and, as on date, it is substantially different from what it was at its inception in the year 1992. Under Section 11 as it then stood, the Board could regulate the securities market by taking such measures as it thought fit but felt that it was handicapped when it came to issuance of any directions to market intermediary or persons associated with the securities market. Accordingly, Section 11B was introduced in the SEBI Act with effect from January 25, 1995 which enabled the Board to issue directions to any intermediary of the securities market or to any other person

referred to it in Section 12. In 2002, Section 11 was amended by introducing sub-section (4) which gave a specific power to pass interim as well as final orders in the interests of the investors of the securities market. This sub-section provided that the Board may, by order, for reasons to be recorded in writing, in the interests of the investors or the securities market, take any of the measures referred to therein. One such measures that could be taken under Section 11(4)(b) is to restrain a person from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities.

25. Thus, the inquiry under Section 11 of the Act as amended from time to time is to find out what measures it needs to take to protect the interests of the investors and what steps it needs to take to promote the development of and to regulate the securities market. Similarly, the inquiry under Section 11B is to find out what directions could be issued to an intermediary or any person associated with the securities market or to the company in respect of matters referred to in Section 12 of the SEBI Act. Thus, during the pendency of the inquiry or on the completion of the inquiry, the Board may pass appropriate orders

either interim or final as is clear from the language of the Section 11(4) and 11B of the Act.

26. Thus, from a conjoint reading of the provision of the Section 11 and 11B, it is clear that the power of the Board is very wide and it could take every measure that a situation would demand and issue such direction that it could consider necessary. Section 11 authorised the Board to issue various kinds of orders. In view of the aforesaid, this Tribunal in ***Karvy Stock Broking Ltd. (supra)*** held that Section 11 is the very heart and soul of the Act and that these provisions are meant to arm the Board with authority so as to enable SEBI to effectively exercise power and achieve the declared objectives of the Act.

27. Considering the aforesaid, we are of the view that powers given under Section 11 is very wide and takes into every measure that a situation would demand and issue such directions as it considered necessary. Section 11B is an enabling provision as held by the Hon'ble Bombay High Court in ***Ramrakh Bohra (supra)*** which empowers SEBI to protect the interests of the investors and to promote the development and to regulate the securities market. We are of the opinion that Section 11B cannot prevail over Section 11 and that it would only remain as an enabling provision to Section 11.

28. We may also note that none of the decisions cited by the respondent deals with the words ***"without prejudice to the provisions contained in sub-section (1), (2), (2-A) and (3) and Section 11B"*** in Section 11(4) nor does it deal with the meaning of the words ***"save as otherwise provided in Section 11"*** as given under Section 11B. In our opinion, the words ***"save as otherwise provided in Section 11"*** as provided under Section 11B clearly indicates that the power under Section 11 is excluded while exercising power under Section 11B. The decision cited by the appellants in ***Lalu Prasad Yadav (supra)*** is squarely applicable wherein the Hon'ble Supreme Court holds that ***"save"*** is an archaism when used for ***"except".***

29. On the other hand, the words ***"without prejudice to the provisions contained in sub-section (1), (2), (2-A) and (3) and Section 11B"*** as provided under Section 11(4) clearly demonstrates that the Parliament did not intend to continue the Board to take recourse to a particular remedy. It gave a choice to the Board to act in the first instance under Section 11(1), (2), (2-A) and (3) or under 11B and save its rights under 11(4) to be availed at a later stage.

30. A non-obstante clause must also be distinguished from the phrase ***'without prejudice'***. A provision enacted ***'without prejudice'*** to another provision has not the effect of affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision. Notwithstanding clause must also be distinguished from the phrase ***'save as otherwise provided***' which is reflection of the words ***'except'*** or ***'save'*** as hereinafter excepted.

31. In ***A. P. State Financial Corpn. Vs. Gar Re-Rolling Mills [(1994) 2 SCC 647],*** the Hon'ble Supreme Court held as under :-

> "12. Section 31 in terms provides that action under the said provision may be taken "without prejudice to the provisions of Section 29 of this Act and of Section 69 of the Transfer of Property Act, 1882". What is the import of the term "without prejudice to the provisions of Section 29 of this Act"?
>
> *"13. On a conjoint reading of Sections 29 and 31 of the Act, it appears to us that in case of default in repayment of loan or any instalment or any advance or breach of an agreement, the Corporation has two remedies available to it against the defaulting industrial concern, one under Section 29 and another under Section 31 of the Act. The choice for availing the remedy under Section 29 or Section 31 of the Act is that of the Financial Corporation alone and the defaulting concern has no say whatsoever in the matter, as to which remedy should be taken*

recourse to by the Corporation against it for effecting the recovery. The expression "without prejudice to the provisions of Section 29 of this Ace' as appearing in Section 31 of the Act clearly demonstrates that the Legislature did not intend to confine the Corporation to take recourse to only a particular remedy against the defaulting industrial concern for recovery of the amount due to it. It left the choice to the Corporation to act in the first instance under Section 31 of the Act and save its rights and remedies under Section 29 of the Act to be availed at a later stage, with the sole object of enabling the Corporation to recover its dues. It is not, however, obligatory on the part of the Financial Corporation to invoke the special provisions of Section 31 of the Act, it can even without taking recourse to the provisions of the said section invoke the procedure prescribed under Section 29 of the Act for realisation of its dues. Where the Corporation takes recourse to the provisions of Section 31 of the Act and obtains an order from the court, it shall ordinarily and invariably seek its enforcement in the manner provided by Section 32 of the Act, which provisions are aimed to act in aid of the orders obtained under Section 31 of the Act and it cannot simultaneously initiate and take recourse to the remedy available to it under Section 29 of the Act unless it gives up, abandons or withdraws the proceedings under Section 31 of the Act, at whatever stage those proceedings may be. The Corporation cannot simultaneously pursue two remedies at the same time. The reach and scope of the two remedies is essentially different even if somewhat similar result flows by taking recourse to either of the two provisions in certain respects."

32. In ***Standard Chartered Bank vs. Directorate of Enforcement [(2006) 4 SCC 278],*** the Hon'ble Supreme Court held as under :-

> *"21. Learned Additional Solicitor General contended that under FERA, adjudication and prosecution are two separate and distinct procedures with distinct purposes. There was no bar either in FERA or in any other law, to an adjudication and prosecution being launched in respect of an alleged contravention of FERA. Counsel submitted that the law has permitted it by providing two separate modes for dealing with the person who contravenes the law in relation to foreign exchange. While the primary purpose of imposing of the penalty is the interests of revenue and the preservation of foreign exchange, the primary purpose of prosecution is to serve as a strong deterrent to persons or companies contravening the provisions of the Act and to send a message to the society at large. Counsel pointed out that Section 56 of FERA which deals with offences and prosecutions, commences with the words "without prejudice to any award of penalty by the adjudicating officer under this Act". A person contravening any of the provisions shall upon conviction by a court will be punished, even if a penalty has been imposed on him. There was no warrant for reading the words "without prejudice to" as restricting the right of the authorities under the Act to proceed with the adjudication first and to commence the prosecution only at its conclusion. Counsel also emphasized that the two proceedings are independently dealt with. Counsel pointed out that even in respect of the FERA Act of 1947, in Shanti Prasad Jain vs. Director of Enforcement (1963 (2) SCR 297), this Court had upheld a special procedure under the statute holding that it was not violative of Article 14 of the Constitution. It is submitted that the purpose of the Act is to bring the accused to book, more so in case of a serious offence and it could not have been the intention of the legislature to await a long time for an adjudication to be completed by way of an appeal and a*

second appeal and then only to commence the prosecution."

"22. The Act was enacted, as indicated by its preamble, for the conservation of foreign exchange resources of the country and the proper utilization thereof in the economic development of the country. When interpreting such a law, in the absence of any provision in that regard in the Act itself, we see no reason to restrict the scope of any of the provisions of the Act, especially in the context of the presence of the "without prejudice" clause in Section 56 of the Act dealing with offences and prosecutions. We find substance in the contention of the learned Additional Solicitor General that the Act subserves a twin purpose. One, to ensure that no economic loss is caused by the alleged contravention by the imposition of an appropriate penalty after an adjudication under Section 51 of the Act and two, to ensure that the tendency to violate is curbed by imposing an appropriate punishment after a due prosecution in terms of Section 56 of the Act. The contention that as a matter of construction -- since the provisions could not be attacked as violative of the rights under Part III of the Constitution ---- we should interpret the provisions of the Act and hold that an adjudication has to precede a prosecution cannot be accepted as we see nothing in the provisions of the Act justifying such a construction. On the scheme of the Act, the two proceedings are seen to be independent and the launching of the one or the other or both is seen to be controlled by the respective provisions themselves. In the context of the inclusion of this Act in the Ninth Schedule, the reliance placed on the decision in Rayala Corporation (P) Ltd. & Ors. Vs. Director of Enforcement, New Delhi (1969 (2) SCC 412) cannot enable this Court to deem the provisions as arbitrary and to read them down or understood them in the manner suggested by the learned senior counsel. The very purpose of the Act and the very object of inclusion of the Act in the Ninth Schedule

> *justifies an interpretation of the provisions as they stand on the basis that there is nothing arbitrary or unreasonable in the provisions and in the scheme as enacted. We may also notice that Section 23D of the Foreign Exchange Regulation Act, 1947, which was considered in Rayala Corporation (P) Ltd. & Ors. had a proviso, which indicated that the adjudication for the imposition of penalty should precede the making of a complaint in writing to the concerned court for prosecuting the offender. The absence of a similar proviso to Section 56 or to Section 51 of the present Act, is also a clear indication that the legislature intended to treat the two proceedings as independent of each other. Obviously, the legislature must be taken to have been conscious of the interpretation placed on the corresponding provisions by this Court in the decisions above referred to when the 1973 Act was enacted and it was also included in the Ninth Schedule to ward off any challenge on the ground that it would be violative of Article 14 of the Constitution, unless understood or read in a particular fashion."*

33. The aforesaid decisions, thus, fortifies our view that the power under Section 11 is much wider and expansive than the powers given under Section 11B and normally Section 11B is only an enabling provision to Section 11.

34. The show cause notice alleged that the appellants had violated the circular dated December 18, 2014 as it did not redress the complaints on the SCORES platform within the stipulated period. The

circular stipulated that complaints on the SCORES platform should be redressed within 30 days.

35. In this regard, we find from a perusal of the impugned order that an anonymous complaint was received by the Fund on January 15, 2021 which was disposed of by the Fund on February 3, 2021. Therefore, we find that the Fund promptly disposed of the complaint and there was no violation of the circular. In addition to the aforesaid, two complaints were filed by one Mr. S. K. Maheshwari. First complaint was received on August 2, 2019 which the Fund had responded to the complainant on August 9, 2019 and provided him with an updated status of the Fund. Thus, the Fund promptly addressed the complaint and there was no violation of the circular. We also find that SEBI accepted the response given by the appellant and treated the complaint as closed on August 21, 2019

36. The second complaint made by Mr. S. K. Maheshwari was received by the Fund on October 2, 2019 and was responded by the Fund on November 25, 2019. There was a delay of four days in the disposal of the complaint based on which, the WTM has found the appellants guilty of violating the circular. The finding, in this regard, cannot be accepted as we find that SEBI accepted the response given

by the Fund and treated the compliant as closed on Decemebr 3, 2019. Once the compliant has been treated as closed by SEBI itself, it is no longer open to the WTM to take a different view. In any case, we are satisfied that there is no willful default on the part of the Fund regarding the non-compliance of the circular dated December 18, 2014. Consequently, the appellants cannot be penalized for violation of the circular dated December 18, 2014.

37. As we have seen earlier, the show cause notice is limited to the alleged violation of Regulation 23(1)(a) and circular dated SEBI December 18, 2014. The proposed direction for the said violation was under Section 11B read with Regulation 29(c) and (d) of the VCF Regulations. For the aforesaid purpose, Regulation 23(1)(a) and Regulation 29 of the VCF Regulations are extracted hereunder :-

> *"23. (1) A scheme of a venture capital Fund set up as a trust shall be wound up,*
>
> *(a) when the period of the scheme, if any, mentioned in the placement memorandum is over;"*

> *"29. The Board may after consideration of the investigation or inspection report and after giving reasonable opportunity of hearing to the venture capital Fund or its trustees, directors issue such direction as it*

deems fit in the interest of securities market or the investors including directions in the nature of :-

(a) requiring a venture capital Fund not to launch new schemes or raise money from investors for a particular period;

(b) prohibiting the person concerned from disposing of any of the properties of the Fund or scheme acquired in violation of these regulations;

(c) requiring the person connected to dispose of the assets of the Fund or scheme in a manner as may be specified in the directions;

(d) requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme;

(e) prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specific period."

38. A perusal of the Regulation 23(1)(a) of the VCF Regulations indicates that a scheme of Fund set up by a Trust shall be wound up when the period of the scheme comes to an end. If the scheme is not wound up, then the Board can pass an order under Regulation 29 of the VCF Regulations, namely, that the Fund will not launch any new schemes under Regulation 29(a) or under Regulation 29(b), the Board can prohibit person from disposing of any of the properties or under Regulation 29(c), the Board can require the person connected to

dispose of the assets. Under Regulation 29(d), the Board can require the person to refund the money to the investors and under Regulation 29(e), the Board can also prohibit a person from operating in the capital market or from accessing the securities market for a specified period. The show cause notice directed the appellants to show cause as to why suitable directions should not be issued under Regulation 29(c) and 29(d) of the VFC Regulations, namely, requiring the noticees to dispose of the assets of the Fund and requiring the noticees to refund the money to the investors. No direction was proposed under Regulation 29(e) of the VFC Regulations prohibiting the appellants from accessing the securities market.

39. In the light of the aforesaid, it is apparently clear that the show cause notice did not put the appellants to notice that failure to wind up the scheme within the time frame, a penalty under Regulation 29(e) of the VCF Regulations or under Section 11(4)(b) of the SEBI Act could be issued. The ingredients for issuance of this direction was lacking in the show cause notice.

40. In ***Gorkha Securities (supra),*** the Hon'ble Supreme Court in paragraphs nos. 21 and 22 have categorically asserted that the fundamental purpose behind serving a show cause notice is to make

the noticee understand the precise case set up against him which he has to meet. The Hon'ble Supreme Court held that the show cause notice should meet the following two requirements, namely :-

a) material / grounds to be stated

b) particular penalty / action which is proposed to be taken

41. In the instant case, the particular penalty / action that was proposed in the show cause notice was under Section 11B of the SEBI Act and Regulation 29(c) and (d) of the VCF Regulations. No penalty was proposed under Section 11(1), 11(4) of the SEBI Act or Regulation 29(e) of the VCF Regulations. Further, the contents of the show cause notice also did not meet the requirement for imposition of penalty under Section 11(1), 11(4) of the SEBI Act and Regulation 29(e) of the VFC Regulations.

42. In ***Biecco Lawrie Ltd. & Anr. vs. State of West Bengal and Anr. [(2009) 10 SCC 32],*** the Hon'ble Supreme Court held that :-

> *"24. One of the essential ingredients of fair hearing is that a person should be served with a proper notice i.e. a person has a right to notice. Notice should be clear and precise so as to give the other party adequate information of the case he has to meet and make an effective defence. Denial of*

notice and opportunity to respond result in making the administrative decision as vitiated."

"25. The adequacy of notice is a relative term and must be decided with reference to each case. But generally a notice to be adequate must contain the following :

(a) time, place and nature of hearing;

(b) legal authority under which the hearing is to be held;

(c) statement of specific charges which a person has to meet."

43. In view of the aforesaid, we are of the view that the directions issued by the WTM as contained in paragraph nos. 37.3 and 37.4 of the impugned order was without jurisdiction and beyond the show cause notice. Such directions could not be issued since the show cause notice did not spell out such allegations.

44. Shri Sharan Jagtiani, the learned senior counsel for the remaining appellants submitted that they are non-executive directors and were not involved in the day to day management of the affairs of the Trust or of the Fund and, therefore, the direction prohibiting them from accessing the securities market, etc. was wholly erroneous. The

learned senior counsel also adopted the submissions made by Shri Ravi Kadam, the learned senior counsel.

45. Since we have already held that the WTM has travelled beyond the show cause notice, it is not necessary for us to deal with this question as to whether the appellants were or were not the non-executive directors and could or could not be imposed a penalty.

46. In view of the aforesaid, the directions of the WTM contained in paragraph nos. 37.3 and 37.4 cannot be sustained and are quashed. All the appeals are partly allowed. In the circumstances of the case, parties shall bear their own costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

22.11.2023
PTM