BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On : 11.10.2023
Date of Decision : 04.12.2023

Appeal No. 87 of 2021

Reliance Industries Limited
3rd Floor, Maker Chambers IV,
222, Nariman Point,
Mumbai -400 021 …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. Somasekhar Sundaresan, Advocate with Mr. Ashwath Rau, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Mr. Harshit Jaiswal, Advocates i/b AZB & Partners for the Appellant.

Mr. Arvind Datar, Senior Advocate with and Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary, Ms. Shreya Parikh, Mr. Mihir Mody, Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent.

WITH
Appeal No. 88 of 2021

Mr. Mukesh D. Ambani
3rd Floor, Maker Chambers IV,
Nariman Point,
Mumbai- 400 021 …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. Somasekhar Sundaresan, Advocate with Mr. Ashwath Rau, Mr. Vivek Shetty, Ms. Cheryl Fernandes, Mr. Harshit Jaiswal, Advocates i/b AZB & Partners for the Appellant.

Mr. Arvind Datar, Senior Advocate with and Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary, Ms. Shreya Parikh, Mr. Mihir Mody, Mr. Arnav Misra, Advocates i/b. K. Ashar & Co. for the Respondent.

WITH
Appeal No. 89 of 2021

Navi Mumbai SEZ Pvt. Ltd.
NMSEZ House, Sector 10-B,
Kopar Nhava Road, At Shivaji Nagar,
Post- Gavhan, Ulwe (W),
Taluka-Panvel,
Dist.: Raigad, Navi Mumbai-410 206 …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. Raghav Shankar, Advocate with Mr. Ayush Agarwala, Mr. Suvaaankoor Das, Mr. Shantam Mandhyan, Ms. Megharanjani Chandu, Advocates i/b Krishnamurthy and Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary, Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shreya Parikh, Advocates i/b. K. Ashar & Co. for the Respondent.

AND
Appeal No. 90 of 2021

Mumbai SEZ Ltd.
D-414, NMSEZ Commercial Complex,
Seventh Floor, Plot No. 6,
Sector- 11D, Dronagiri,
Navi Mumbai- 400 702 …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. Raghav Shankar, Advocate with Mr. Ayush Agarwala, Mr. Suvaaankoor Das, Mr. Shantam Mandhyan, Ms. Megharanjani Chandu, Advocates i/b Krishnamurthy and Co. for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary, Mr. Mihir Mody, Mr. Arnav Misra, Ms. Shreya Parikh, 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. Four appeals have been filed against a common order dated January 01, 2021 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing penalties under Section 15HA of the SEBI Act, 1992. A sum of Rs. 25 crores has been imposed upon Reliance Industries Limited noticee no. 1, Rs. 15 crores have been imposed upon noticee no. 2 Mukesh Ambani, Rs. 20 crores has been imposed upon noticee no. 3 Navi Mumbai SEZ Private Limited and Rs. 10 crores have been

imposed upon noticee no. 4 Mumbai SEZ Limited. All the four noticees have filed the appeals before this Tribunal.

2. The facts leading to the filing of the present appeals is, that SEBI conducted an investigation in the trading of the scrip of Reliance Petroleum Limited ("RPL" for convenience) for the period November 01, 2007 to November 29, 2007 to ascertain as to whether there was any violation of the SEBI Act and its Rules and Regulations.

3. It was observed that a resolution was passed by the Board of Directors on March 29, 2007 approving an operating plan for the year 2007-2008 and resource requirements for the subsequent two years i.e. approximately Rs. 87,000 crores. Thereafter, RIL decided to sell approximately 5% of its shareholding in November 2007.

4. It was also observed that the Company RIL appointed 12 agents to undertake transactions in the November 2007 RPL Futures. The settlement period was November 01, 2007 to November 29, 2007. These 12 agents took short positions in the Futures and Options ("F&O") segment on behalf of the Company while the Company undertook transactions in RPL

shares in the Cash Segment. It was observed, that between November 01, 2007 to November 29, 2007 various transactions were undertaken by the Company in the cash segment and by the agents in the F&O segment. It was found that the trading in the cash segment in the last 10 minutes of trading on November 29, 2007 resulted in the fall in the prices of RPL shares, which also lowered the settlement price in the RPL November Futures in the F&O segment.

5. Based on the above, a show cause notice dated December 16, 2010 was issued by the Whole Time Member ("WTM" for convenience) and after due process an order dated March 24, 2017 was passed holding that the Company had made unlawful gains by fraudulent and manipulative strategy thereby violating Section 12A of the SEBI Act read with Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience). The WTM also issued directions to disgorge the unlawful gains of Rs. 447.27 crores along with interest @12% per annum and further prohibited the Company and the 12 entities from dealing in equity derivatives in the F&O segment of the stock exchanges directly or indirectly for a period of 1 year.

6. The Company filed an Appeal No. 120 2017 against the order of the WTM which was dismissed by this Tribunal by a majority decision of 2:1 by judgement dated November 05, 2020. Against the order of this Tribunal, the Company has filed Civil Appeal No. 4015 of 2020 before the Supreme Court of India where it is pending consideration. After the passing of the order by the WTM on March 24, 2017, the AO initiated proceedings on the same charges by issuing a show cause notice dated November 21, 2017 against the appellants to show cause as to why an inquiry should not be initiated and why penalty should not be imposed under Section 15HA of the SEBI Act for the violations alleged against the appellants.

7. The show cause notice issued by the AO against the Company was based on the same allegations as per the show cause notice issued by the WTM dated December 16, 2010 against the Company.

8. In so far as the appellant Mukesh Ambani is concerned the show cause notice alleged that he is the principal officer responsible for the day to day and overall operations of the Company and is deemed to be guilty of the offence committed

by the Company and would be liable to the proceeded against and punished accordingly under Section 27 of the SEBI Act. The Show cause notice also alleged that Navi Mumbai SEZ Private Limited and Mumbai SEZ Limited, noticees no. 3 and 4 financed the whole manipulation scheme by funding the 12 named entities thereby were complicit in the scheme of manipulation to make undue gains and have consequently violated Regulations 3 and 4 of the PFUTP Regulations.

9. The AO after considering the material evidence on record and after considering the replies of the appellants and the submissions made by them upheld the allegations made in the show cause notice and imposed penalties for violations committed by the appellants under the SEBI Act.

10. We have heard Shri Somasekhar Sundaresan, the learned counsel, Shri Raghav Shankar, the learned counsel for the appellants and Shri Arvind Datar, the learned senior counsel and Shri Shiraz Rustomjee, the learned senior counsel for the respondent.

11. Before we proceed, we may observe that noticees no. 2, 3 and 4 were not parties to the proceedings before the WTM.

12. The AO in the impugned order held that the Company had violated the SEBI Act and the PFUTP Regulations by entering into a well-planned operation with its appointed agents to earn undue profits from the sale of RPL shares in both the cash and the F&O segment and by manipulating the settlement price of November 2007 RPL Futures contract by dumping large number of RPL shares in the cash segment during the last 10 minutes of trading on November 29, 2007.

13. Having heard the learned counsel for the parties in Appeal No. 87 of 2021 filed by the Company, we are of the opinion, that the matter is squarely covered by a decision of this Tribunal ***dated November 05, 2020 passed in Appeal No. 120 of 2017 Reliance Industries Limited & Ors. vs. SEBI***. This view of ours was fairly conceded by the learned counsel for the appellant. In view of the aforesaid, we do not find any reason to interfere with the impugned order in so far as it relates to the Company RIL.

14. In Appeal No. 88 of 2021 filed by Mukesh Ambani, Managing Director of RIL, we may observe, that the said appellant was not a party in Section 11B proceedings before the

WTM and the issue of vicarious liability was not adjudicated by the WTM and, therefore, this issue is not subjudice before the Supreme Court of India in the appeal filed by the Company against the order of this Tribunal dated November 05, 2020. The respondent has no objection on this aspect and accordingly the learned counsel for the respondent contended that the matter can be heard on merits.

15. The AO framed the following issue, namely, whether noticee-2, being the CMD of Noticee-1 and responsible for its day-to-day affairs, was liable for manipulative trading done by Noticee-1, resulting in violation of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(d), (e) of the PFUTP Regulations, 2003 and SEBI Circular No. SMDRP/DC/CLR-10/01 dated November 02, 2001?

16. Shri Somasekhar Sundaresan, the learned counsel for the appellants contended that the impugned order was based on surmises and conjectures which is evident from various paragraphs in the impugned order. Shri Somasekhar Sundaresan, contended that in paragraph 67 of the impugned order it was observed that being a Managing Director implies a high level of accountability and knowledge of the overall

functioning of the Company and that there was no agreement between noticee no. 2 (Mukesh Ambani) and the Board of RIL that limits the power of noticee no. 2's to implement the decision of the Board of RIL. The AO further observed that even if such an agreement existed it would go against the interest of RIL whereby the Managing Director does not have any oversight over the decisions relevant to the Company. In paragraph 71, the AO observed that he finds it difficult to believe that the entire asset sale as decided in the Board meeting dated March 29, 2007 was left at the discretion of the two officers without the supervision of the Managing Director. The AO in paragraph 72, 73 and 74 came to the conclusion that the two officers were not competent to take the decisions independently. In paragraph 72, the AO held that authorising two officials to independently carry out the trading activities was not desirable in any corporate structure and, therefore, came to the conclusion that the intention of the Board of RIL was never to put the entire responsibility of the activities on the said officials without an oversight of the Managing Director who is also a Member of the Board of RIL. In paragraph 72 the AO came to the conclusion that it is highly unlikely that noticee no. 2 was not aware of the transactions in the cash and F&O segment executed by the two officials of the Company. In

paragraph 77 the AO further came to the conclusion that the two officials did not have any locus in the entire scheme of transactions and therefore could not have independently taken a decision for such multi-level implementation plan and, therefore, concluded that noticee no. 2, being the Managing Director of RIL must have given approval or had knowledge about the entire manipulative scheme including manipulative trades undertaken by RIL.

17. On the aforesaid reasoning the AO held that noticee no. 2 was guilty of the charges levelled against him and closed his eyes to the stark evidence which was existing in the form of minutes of the two Board meetings of RIL staring at him. It was contended that the AO has rewritten the Board Resolutions to a non-existent fact that the Board of RIL only authorised the two executives to only identify and explore the funding avenues but to implement to same they were expected to come back to the Board which is in complete contradiction to the wordings of the resolutions “explore, identify and implement”. It was urged that the reasoning given by the AO is based on a figment or imagination and misappreciation of the Boards’ Resolution.

18. The learned counsel for the appellants contended that Section 27 of the SEBI Act as prevailing in 2007 applied only to ***"offences"*** i.e. where SEBI has launched criminal proceedings under Section 24, punishment for which could be imposed by Special Court established under Section 26A read with Section 26B and 26E of the SEBI Act and that Section 27 did not apply for adjudication proceedings involving civil monetary penalties.

19. It was urged, that the Parliament while enacting the SEBI Act had clearly distinguished between the word ***"contravention"*** and the word ***"offence".*** It was urged that the use of the word ***"offence"*** existing at the time of the alleged violation was an offence which only led to criminal action and could not lead to adjudication of a civil liability.

20. The learned counsel further contended that the Parliament made an amendment to Section 27 of the SEBI Act w.e.f. March 08, 2019. The Notes on clauses to Finance Bill, 2018 indicates that the amendment to Section 27 was brought in to ***"enlarge the scope of section to cover enforcement proceedings"*** and accordingly, by the amending act, the word ***"offence"*** in Section 27 was replaced by the word ***"contravention".*** It was urged that the Parliament was of the

view that Section 27 of the SEBI Act as it stood prior to the amendment imposed vicarious liability only for ***"offences"*** giving rise to criminal punishment and, consequently, amended Section 27 to bring in vicarious liability for ***'contravention'*** of the SEBI Act and the Regulations giving rise to civil penalties. It was urged, that if ***"offence"*** is the same as ***"contravention"*** then there was no need for the Parliament to replace the term ***"offence"*** with ***"contravention"*** and the Notes on Clauses to the Finance Bill reinforces this interpretation.

21. It was contended, that reliance by the respondents of the judgment in ***Standard Chartered Bank vs. Directorate of Enforcement, (2006) 4 SCC 278*** was misplaced and not applicable to the facts of the present case. It was further urged, that SEBI had been consistently accepting the legal position and the WTMs and the AO have consistently passed various orders holding that Section 27 prior to amendment w.e.f. March 08, 2019 did not provide for vicarious liability in respect of civil liability of a Company. In this regard, the learned counsel drew the attention to paragraph 43 of the WTM's order dated ***February 24, 2022 in the matter of Pentamedia Graphics Limited and Ors.*** where the WTM held:

'43…regarding applicability of the Section 27 of the SEBI Act, 1992, for violation of Regulation 5(1) of PFUTP Regulations, 1995, I note that during the relevant period (i.e. 2002-03), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word 'offence' with the word 'contravention' in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these Noticees for the violations committed by PGL, with reference to Regulation 5(1) of PFUTP Regulations, 1995 for which proceedings under Section 11, 11(4) and 11B has been proposed, which are civil in nature. In view of the above, violations as alleged in the SCN are not made out against Noticee nos. 7 to 10.'

22. It was contended that the stand of the respondent that the amendment was merely clarificatory is patently erroneous and is

against the consistent legal position taken by SEBI holding that prior to amendment Section 27 did not provide vicarious liability in respect of civil liability of a Company.

23. In the alternative, the learned counsel contended that even assuming that Section 27 of the SEBI Act was applicable for civil proceedings the requirements to impute a vicarious liability was not satisfied. It was urged, that the law is well settled that the mere fact that the person is holding the post as the Managing Director does not suffice for imputing vicarious liability to such person. It was urged that the proof of active role in the alleged contravention must be demonstrated by clear and concrete evidence of his active role coupled with criminal intent as a necessary precondition for affixing vicarious liability. In support of his contention the learned counsel placed reliance in the decision of the Supreme Court in ***Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609 and Shiv Kumar Jatia vs. State of NCT, (2019) 17 SCC 193.***

24. It was also urged, that in the instant case SEBI did not proceed against the two individuals who had an active role in the alleged contravention but SEBI chose only to proceed against the Managing Director, noticee no. 2 only on the basis

of his designation. It was submitted that it is an established law that charges should be framed against a person who had an active role and, therefore, the procedure adopted by SEBI in targeting noticee no. 2 for reasons best known to them was wholly erroneous and malafide.

25. It was contended that the proviso to Section 27 requires ***"such person"*** to prove that the offence was committed ***"without his knowledge".*** It was contended that if knowledge is relevant then state of mind cannot be irrelevant and it cannot be argued by the respondent that such person has to bring more proof then what had been shown. The learned counsel contended that Section 27 does not introduce a regime of strict liability of the Managing Director for any and all violations of law by the Company. It was urged, that a conglomerate such as RIL which operates in a wide spectrum of businesses and has tens of thousands of employees spread across the length and breadth of the country and abroad cannot suggest that the Managing Director is *ipso facto* responsible for every alleged contravention of law by the corporate entities.

26. It was also urged, that the show cause notice and the impugned order was passed in the teeth of the internal noting of the respondent in 2010 wherein the Chairman had posed a question as to what was the nature of evidence against Mr. Mukesh Ambani. Inspite of this query being raised by the Chairman of SEBI no proof of Mukesh Ambani's involvement was brought to the notice of the Chairman inspite of which proceedings were initiated which according to the learned counsel was purely malafide. It was thus urged, that the initiation of proceedings against noticee no. 2 was wholly erroneous and the proceedings should be quashed and the penalty amount should be set aside.

27. Shri Arvind Datar, the learned senior counsel for the respondent at the outset, conceded that a large Company like that of the appellant is not expected that the Managing Director or the Senior Whole Time Director are in the know of every little things that happens and that it would be absurd to conclude that they should be made liable for these small things. The learned senior counsel further said that at the same time, considering the facts of the present case, it is clear that the transaction could not have happened without the implicit knowledge of the Managing Director, noticee no. 2.

28. The learned senior counsel contended that Section 27 of the SEBI Act is a departure from the traditional criminal law and the provision has its roots to the 1971 Wanchoo Committee Report. Section 27 of the SEBI Act and identical Sections in other legislation like the Income Tax Act, Customs Act specifically introduced this provision wherein the burden of proof was shifted upon the person in-charge since it was difficult for the agencies to prove beyond a doubt in criminal prosecution that the person in-charge was involved or complicit. Thus, under Section 27 of the SEBI Act, the onus lay on the person in-charge to prove his innocence.

29. Shri Arvind Datar, the learned senior counsel contended that a perusal of the minutes of Board of RIL dated March 29, 2007 and November 19, 2007 indicates that only a general resolution was passed to raise funds and that the said resolutions does not in any way indicate that it allowed the two officers of the Company to trade and generate funds for the Company. The learned senior counsel further contended that it is unbelievable that the two officers could have carried out the manipulative trades by themselves without the oversight and involvement of the Managing Director or the Board. The learned counsel contended that the well-planned transaction could not have

happened without the approval of the Managing Director and that Alok Agarwal, L V Merchant and Sandeep Agarwal could not have done the transactions all by themselves as it was not an ordinary sale of 5% of the RPL shares.

30. The learned senior counsel contended that the language of Section 27 makes it clear that it applies to civil adjudication. The learned senior counsel contended that the word ***"offence"*** has not been defined under the SEBI Act and therefore the meaning must be understood as defined in the General Clauses Act which defines ***"offence"*** as an act or omission made punishable by law for the time being in force. It was urged, that Section 27 only enunciate the general principle, namely, that the directors are responsible for acts of employees and that the burden of proof is on them to show that the contravention had taken place without their knowledge. It was urged, that no evidence was filed by noticee no. 2 to show that he did not have any knowledge.

31. The learned senior counsel stressed on the word ***"proceeded against"*** and ***"punished"*** as depicted in Section 27 of the Act and contended that these words are not ***"prosecuted"*** and "***punished"*** as depicted in Article 20 of the

Constitution of India. Further the word ***"punished"*** cannot be interpreted to mean that Section 27 was only applicable to criminal proceedings. It was urged, that something which is prohibited by law and a penalty is imposed is a punishment.

32. The learned senior counsel for the respondent further contended that the amendment to Section 27 of the Act w.e.f March 08, 2019 read with the Notes on clauses to the Finance Bill, 2018 only enlarges the scope of the section and, therefore, the amendment was only clarificatory in nature. In this regard, the learned senior counsel relied upon a decision of the Supreme Court in ***Standard Chartered Bank vs. Directorate of Enforcement 2006 (4) SCC 278*** wherein the Supreme Court after extensively dealing with the meaning of the word ***"offence"*** concluded that ***"offence"*** and ***"contravention"*** are the same. The learned senior counsel contended that the said decision is squarely applicable in the instant case and accordingly Section 27 has to be held that it applies to civil adjudication. In this regard, the learned senior counsel also relied upon a decision of the ***Constitution Bench of the Supreme Court in Thomas Dana vs. State of Punjab (1959) Supp (1) SCR 274*** wherein it was observed that all criminal offences are offences, but all offences in the sense of

infringement of law are not criminal offences meaning thereby that the word ***"offence"*** need not always be read as criminal offence. Reliance was also made on the decision in ***Apex Laboratories Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Large Tax Payer Unit-II (2022) 7 SCC 98.***

33. It was urged, that the Managing Director stands on a different position and since the Managing Director has wide powers and overall responsibilities, it cannot be said that noticee no. 2 had no knowledge. In support of his proposition the learned senior counsel placed reliance upon a decision of ***RNRL vs. RIL, (2010) 7 SCC 1, SMS Pharmaceuticals Ltd. vs. Neeta Bhalla, (2005) 8 SCC 89, K.K. Ahuja vs. V.K Vora and Anr. (2009) 10 SCC 48.***

34. The learned senior counsel further stated that there are various decisions of this Tribunal where it has held that Section 27 applies to a Managing Director. In support of his submission the learned counsel placed reliance in the decision in ***Rahul H Shah vs. SEBI (2004) SCC OnLine SAT 77, Almondz Global Securities vs. SEBI in Appeal No. 275 of 2014 decided on 13.05.2016, Mohan Lall Chauhan vs. SEBI in Appeal No. 516 of 2021 decided on August 24, 2022, N. Narayanan vs. SEBI***

in Appeal No. 29 of 2012 decided on 05.10.2012, NSE vs. SEBI (dark-fibre) in Appeal No. 334 of 2019 decided on August 09, 2023, NSE vs. SEBI (Colocation) in Appeal No. 333 of 2019 decided 23.01.2023 and in the case of Secretary of State for Trade and Industry vs. Baker and Ors. (2000) 1 BCLC 523 (UK-Court of Appeal). It was thus urged, that the contention of noticee no. 2 that he was unaware in the matter of sales of RPL shares cannot be believed.

35. The learned senior counsel also placed reliance upon Section 106 and 114 (f) and (g) of the Evidence Act to stress that if the Managing Director wants to espouse the proposition that all events happened without his knowledge, then he has to produce the best evidence in his possession and if he does not produce in terms of examples (f) and (g) in Section 114 of the Evidence Act then the Court is entitled to draw an adverse inference. In support to his submission the learned counsel placed reliance upon a decision of the Supreme Court in ***Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & Ors. (1968) 3 SCR 862.***

36. Shri Rustomjee, the learned senior counsel for the respondent also submitted that the resolutions passed by the

Company were couched in widest possible and general terms and can only be characterised as a broad statement of intent. The learned senior counsel contended that the two resolutions are vague and not specific and it could never be contemplated that the two persons could execute the transactions unsupervised, unchecked, unmonitored to raise an amount of Rs. 87,000 crores without any further recourse to the Board. The learned senior counsel contended that the Managing Director is responsible for the management of the affairs of the Company and that *mens rea* is not required nor the conscious state of mind is required under Section 27 of the SEBI Act. The learned senior counsel contended that intention is irrelevant in a civil fraud and relied upon a decision of the Supreme Court in ***SEBI vs. Shri Kanaiyalal Baldevbhai Patel (2017) 14 S.C.R. 268.***

37. Having considered the submissions made at the bar by the learned counsel for the parties, in our opinion, the following issues arises for consideration:-

(i) Whether Section 27 of the SEBI Act prior to its amendment w.e.f. March 08, 2019 provided for vicarious

liability only in respect of criminal proceedings initiated against a Company for contravention of the SEBI Act?

(ii) Whether Section 27 of the SEBI Act after its amendment w.e.f. March 08, 2019 provided for vicarious liability for civil liability of a Company for contravention of the SEBI Act, Rules, Regulations, directions or orders made thereunder?

(iii) Whether in the facts and circumstances of the present case the Managing Director of the Company can be held vicariously liable for penalties under Section 27 of the SEBI Act for contravention of Section 12A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations?

(iv) Whether there has been undue delay in the initiation of the proceedings by the AO.

38. Before dealing with the submissions, it would be appropriate to consider the relevant provisions of the SEBI Act, namely, Section 15HA, 24, 26 and 27 of the SEBI Act. For facility, the same are extracted below:-

> ***Penalty for fraudulent and unfair trade practices.***
> ***15HA***. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall*

be liable to a penalty [which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Offences.

24. (1) *Without prejudice to any award of penalty by the adjudicating officer [or the Board] under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].*

(2) *If any person fails to pay the penalty imposed by the adjudicating officer [or the Board] or fails to comply with any [***] directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to [ten years, or with fine, which may extend to twenty-five crore rupees or with both].*

Cognizance of offences by courts.

26. (1) *No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board [* * *]. [(2) *****]"*

Pre and post amendment of Section 27 of the SEBI Act are as under:

Offences by companies.	***Contravention by companies.***
27.*(1) Where* ***an offence under this Act*** *has been committed by a company, every person who at the time the* ***offence*** *was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the* ***offence*** *and shall be liable to be proceeded against and punished accordingly:*	***27.*** *(1) Where* ***[a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder]*** *has been committed by a company, every person who at the time the* ***[contravention]*** *was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the* ***[contravention]*** *and shall be liable to be proceeded against and punished accordingly:*
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the ***offence*** *was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such* ***offence****.*	*Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the* ***[contravention]*** *was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such* ***[contravention].***
(2) Notwithstanding anything contained in sub-section (1), where an ***offence*** *under this Act has been committed by a company and it is proved that the* ***offence*** *has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other* ***officer*** *shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.*	*(2) Notwithstanding anything contained in sub-section (1), where an* ***[contravention]*** *under this Act has been committed by a company and it is proved that the* ***[contravention]*** *has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the* ***[contravention]*** *and shall be liable to be proceeded against and punished accordingly.*
Explanation.-	*Explanation:*
For the purposes of this section, -	*For the purposes of this section,-*
(a) "company" means any body corporate and includes a firm or other association of individuals; and	*(a) "company" means any body corporate and includes a firm or other association of individuals; and*
(b) "director" in relation to a firm, means a partner in the firm.	*(b) "director", in relation to a firm, means a partner in the firm.*

39. Section 15HA provides that if any persons indulges in a fraudulent and unfair trade practice relating to securities then he shall be liable to a penalty which shall not be less than five lakh rupees and which may extend to twenty-five crore rupees or three times of profit made out of such practices. The aforesaid

penalty is provided under Chapter VI-A of the SEBI Act where various kind of penalties have been provided for violations of the various provisions of the Act. The Act also provides for issuance of various directions under Section 11 and 11B under Chapter IV to regulate the securities market by such measures as it deems fit. Section 24, 26 and 27 comes under the miscellaneous category under Chapter VII of the SEBI Act. Section 24 provides that without prejudice to an award or penalty awarded by the AO or by the Board, if any, person contravenes the provisions of the Act or the Rules or Regulations made thereunder, he shall be punishable with imprisonment or with fine. Section 26 of the Act provides that no Court shall take cognizance of any offence punishable under this Act or any Rules or Regulations made thereunder, save on a complaint made by the Board. Section 27 provides that prior to the amendment dated March 08, 2019 any offence made by the company under the Act or under the Rules or Regulations, then the person who was in charge of or was responsible shall be liable to be proceeded with and punished accordingly.

40. From a perusal of various provisions of the Act, the intention of the Parliament was very clear, namely, that certain directions could be issued under Section 11 and 11B of the Act

in order to protect the interest of the investors in securities and to regulate the securities market by such measures as it deemed fit. In addition to the directions issued under Section 11 and 11B of the SEBI Act, penalties could be imposed by the authorities of SEBI under Chapter VIA from Section 15A to 15B wherein monetary penalties can be imposed for violation of various provisions of the Act, Rules and Regulations. Under Chapter VII, if a person contravenes any provisions of the Act then he shall be punishable with imprisonment. Under Section 26 upon a complaint made by the Board, an offence against the company can be tried by a Court of law and, under Section 27, where an offence is committed by the company then any person responsible to the company or was in charge of the company shall be liable to be proceeded with and punished accordingly.

41. Thus, a harmonious reading of Section 24, 26 and 27 of the SEBI Act makes it clear that the intention of the legislature was that upon a failure to do something prescribed by the statute would be an offence tried in a Court of law and the person in charge of or who was responsible for the conduct of the business of the company would be proceeded with and punished accordingly.

42. The term ***"offence"*** and ***"contravention"*** has not been defined under the Act. Under Section 3(38) of the General Clauses Act ***"offence"*** means any act or omission made punishable by any law for the time being in force. Black's Law Dictionary, 7th Edition defines ***"offence"*** as a violation of the law. Stroud's Judicial Dictionary, 7th Edition defines ***"offence"*** as equivalent to a crime and the intention of the legislature is that failure to do something prescribed by statute may be described as an offence.

43. On the other hand, Black's Law Dictionary 7th Edition defines ***"contravention"*** as an act violating a legal condition or obligation; a minor violation of the law. Stroud's Judicial Dictionary, 7th Edition defines ***"contravention"*** to mean to include a failure to comply with the provision in question.

44. Thus, ***"offence"*** is a wider term than ***"contravention"***. The terms ***"offence"*** and ***"contravention"*** are similar but not synonymous. One may contravene a norm which may not be punishable by law but a contravention which if it contravenes an Act becomes an offence punishable by law. An offence and contravention are both terms related to violation of laws, but there are some subtle differences. An offence is generally

referred to a more serious violation of law. Offences can result in imposition of heavy fines or imprisonment. On the other hand, contravention refers to a less serious violation of law. Contraventions are often associated with minor infractions leading to imposition of minor penalties. In effect, the main difference between an offence and contravention is in the severity of the violation. Offences are typically more serious and involves prosecution by a court of law whereas, contraventions are minor infractions attracting simpler penalties. Thus, there is a distinction between ***"offence"*** and ***"contravention".*** Consequently, one has to see the intention of the Parliament when it uses the word ***"offence"*** or where it uses the word ***"contravention".***

45. From the aforesaid, the intention of the Parliament from a reading of Chapter IV, VIA and VIII of the SEBI Act makes it clear that in addition to the powers given to SEBI under Chapter IV and VA of the SEBI Act, SEBI was also provided the power to punish a person or the company by imprisonment or fine by initiating a proceedings in an appropriate Court of law. This was in addition to issuance of a direction under Chapter IV or imposing of penalty under Chapter IVA.

46. Thus, the term ***"offence"*** prior to the amendment in Section 27 related to criminal proceedings. Until March 07, 2019 Section 27 operated in cases of commission of an ***"offence"*** within the meaning of the SEBI Act which is dealt with under Section 24 of the SEBI Act and is tried before a Special Court established for this purpose. On a plain reading of Section 27, as it stood on the date of the transaction in question, makes it clear that Section 27 of the SEBI Act did not include within its scope the levy of civil penalties for the alleged violation of the provisions of the SEBI Act and the PFUTP Regulations. The pre-amendment Section 27 specifically restricted the imposition of vicarious liability for commission of offences by companies to cases involving offences by companies. Section 24 of the SEBI Act clearly sets out the scope of the term ***"offences"*** to be exclusively tried by the Special Courts established under Section 26 of the SEBI Act.

47. The Notes on Clauses appended to the Finance Bill, 2018 by which Section 27 was amended indicates that the legislature felt that there was a need to ***"enlarge the scope of the Section to cover enforcement proceedings"*** by expanding the legislative

provision for vicarious liability to cover not only offences within the meaning of the SEBI Act but also any contravention.

48. We are thus of the view, that Section 27 prior to the amendment i.e. prior to March 08, 2019 had no application to civil liability and only after the amendment w.e.f. March 08, 2019 that Section 27 provided for vicarious liability on both criminal and civil liability for contravention of the SEBI Act, Rules and Regulations.

49. The contention that the 2018 amendment was clarificatory in nature is patently misconceived and is irreconcilable with the Notes to clauses appended to Finance Bill, 2018 which expressly notes that the amendment was with the view to expand the scope of the provision rather than noting that the amendment was only for the purpose of removable of doubt or to clarify the scope of the provision. The Notes on Clauses makes it abundantly clear that the amendment to Section 27 was a substantive modification to the scope of the provision wherein for the first time the officers of the company were made vicariously liable for contravention of the SEBI Act.

50. We are also of the view that the Finance Act, 2018 did not give retrospective effect to this amendment nor can such effect be inferred by necessary implication from the language of the amendment. The amendment, being substantive in nature can only be prospective and cannot have any retrospective application. The impugned order holding the amendment to be clarificatory in nature is thus patently erroneous.

51. In 2007, Section 27 applied only to ***"offences"*** by companies under the SEBI Act (which includes Rules and Regulations). After the amendment, it applies to ***"contraventions"*** not only under the SEBI Act, but also directions and orders made thereunder. The Notes on Clauses tabled in Parliament for the amendment makes it clear that the intent was to "***enlarge the scope***" of Section 27 to cover ***"enforcement proceedings"***. The term ***"enforce"*** has been held to mean "compel obedience." Therefore in the context of the SEBI Act, it can only mean the civil proceedings that may be taken for issuance of directions and to penalise as a weapon of compelling compliance with the law.

52. Had Parliament been of the view that the word ***"offences"*** takes within its fold both civil and criminal proceedings as canvassed by the respondent relying on ***Standard Chartered*** (supra), then Parliament would not have replaced the word ***"offence"*** with ***"contravention"*** in the SEBI Act. The law is very clear, namely, that the intent and scope must be discerned from the legislation in question, and Parliament consciously replaced the word ***"offence"*** (which takes its colour from the provisions of Chapter VII of the Act) with the wider term ***"contravention"*** making it clear that the Parliamentary intention was to **"*enlarge the scope*"** to include civil proceedings as well.

53. The findings in paragraphs 62-63 of the impugned order that Section 27 always covered civil proceedings in its purview and that the amendment was **"*clarificatory in nature*"** is irreconcilable with the scheme and legislative history of the SEBI Act.

54. This view of ours is fortified by the fact that SEBI since inception has accepted the fact that Section 27 does not provide for vicarious liability in respect of civil liability of a company arising out the violations committed by the company. As recent

as on 24.02.2022 in re: ***Pentamedia Graphics Ltd. And Ors***., a WTM of SEBI held:-

> *"...regarding applicability of the Section 27 of the SEBI Act, 1992 for violation of Regulation 5(1) of PFUTP Regulations, 1995, I note that during the relevant period (i.e. 2002-03), Section 27 provided for the vicarious liability of certain persons who were in charge of and was responsible to the company where an offence is committed by a company. Section 27 at that time did not provide for the vicarious liability in respect of the civil liability of the company arising out of the violations committed by such company. However, after amendments made to Section 27 with effect from March 08, 2019, by the Finance Act, 2018, vicarious liability for civil liability of the company has been introduced by replacing the word "offence" with the word "contravention" in Section 27 of the SEBI Act, 1992. Therefore, Section 27 of the SEBI Act, 1992, at the relevant time, did not create any vicarious liability of these noticees for the violations committed by PGL with reference to Regulation 5(1) of PFUTP Regulations, 1995 for which proceedings under Section 11, 11(4) and 11B has been proposed, which are civil in nature. In view of the above, violations as alleged in the show cause notice are not made out against noticees nos. 7 to 10."*

55. We also find that SEBI has consistently held that Section 27 prior to its amendment w.e.f. March 08, 2019 did not provide for vicarious liability in respect of civil liability of the company arising out of such violations committed by such company. A compilation of the 23 orders passed by the WTM as well as by the AO as recently as on March 24, 2023 was produced before the Tribunal which fact has not been disputed by the respondents. The list of these 23 orders are reproduced below:-

*"(1) SEBI Final order dated 28.05.2021 in the matter of **Tatia Global Vennture Limited** WTM/AB/IVD-ID 19/10/2021-22*

*(2) SEBI Final Order dated 15.06.2021 in the matter of **Inter Globe Finance Limited** WTM/AB/IVD/ID19/12261/2021-22*

*(3) SEBI Final Order dated 08.07.2021 in the matter of **V.B. Industries Limited** WTM/AB/IVD/ID19/12493/2021-22*

*(4) SEBI Final Order dated 14.07.2021 in the matter of **Venmax Drugs and Pharmaceuticals Limited** WTM/AB/IVD/ID19/12587/2021-22*

*(5) SEBI Final Order dated 06.08.2021 in the matter of **Jaisukh Dealers Limited** WTM/AB/IVD-ID19/12937/2021-22*

*(6) SEBI Final Order dated 11.08.2021 in the matter of **Eskay K 'n' it India Limited** WTM/AB/IVD/ID19/12999/2021-22*

*(7) SEBI Final Order dated 14.09.2021 in the matter of **JMD Ventures Limited** WTM/AB/IVD/ID19/13326/2021-22*

(8) *SEBI Final Order dated 07.10.2021 in the matter of **Svam Software Limited** WTM/AB/IVD/ID19/13689/2021-22*

(9) *SEBI Final Order dated 23.11.2021 in the matter of **Jai Mata Glass Limited** WTM/AB/IVD/ID19/14250/2021-22*

(10) *SEBI Final Order dated 25.11.2021 in the matter of **ARSS Infrastructure Projects Limited** WTM/AB/IVD/ID19/14342/2021-22*

(11) *SEBI Final Order dated 21.12.2021 in the matter of **K Lifestyle & Industries Limited** WTM/AB/IVD/ID19/14495/2021-22*

(12) *SEBI Adjudication Order dated 21.12.2021 in the matter of **Edynamics Solutions Limited** SM/AD/2022-23/22324-22327*

(13) *SEBI Final Order dated 21.12.2021 in the matter of **Nu Tek India Limited** WTM/AB/IVD/ID19/14527/2021-22*

(14) *SEBI Adjudication Order dated 12.01.2022 in the matter of **Blue Circle Services Limited** MC/RM/2021-22/14712-14715*

(15) *SEBI Final Order dated 20.01.2022 in the matter of **Landmarc Leisure Corporation Limited** WTM/AB//IVD/ID19/14750/2021-22*

(16) *SEBI Final Order dated 28.02.2022 in the matter of **Hit Kit Global Solutions Ltd.** WTM/AB/IVD/ID19/15232/2021-22*

(17) *SEBI Final Order dated 21.03.2022 in the matter of **Quest Financial Services Limited** WTM/AB/IVD/ID19/15432/2021-22*

(18) *SEBI Final Order dated 24.03.2022 in the matter of **GDR Issue by Pentamedia Graphics Limited** WTM/AB/IVD/ID4/15397/2021-22*

(19) *SEBI Final Order dated 21.04.2022 in the matter of **Dalmia Industrial Development Limited** WTM/AB/IVD/ID19/16060/2022-23*

(20) *SEBI Final Order dated 29.06.2022 in the matter of **Parsvnath Developers Limited** WTM/AB/IVD/ID19/17508/2022-23*

(21) *SEBI Adjudication Order dated 29.08.2022 in the matter of **Triveni Enterprises Limited** JS/N/2022-23/18728-18730*

(22) *SEBI Final Order dated 14.10.2022 in the matter of **Pentasoft Technologies Limited** WTM/AB/IVD/ID4/20306/2022-23*

(23) *SEBI Final Order dated 24.04.2023 in the matter of **Vistaar Capital Advisors Limited and Others** WTM/AB/AFD-1/AFD-1-SEC/25881/2023-24"*

56. In ***SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643,*** the Supreme Court emphasised that it is important for SEBI to be consistent and predictable while interpreting the provisions of its parent legislation. The relevant extract is reproduced hereunder:-

> *"59. It is important for the regulator to be consistent and predictable. Further regulations must be clear as ambiguous regulations cause confusion and uncertainty. Regularity and predictability, along with certainty, are hallmarks of good regulation and governance. These principles underpin the "rule of law:, check arbitrariness and are read as the intent of the*

legislation, which the Courts, if need be, will enforce as a principle of interpretation. The Board is entrusted to preform legislative, executive, investigative and adjudicatory functions. A regulator when it executes statutory functions interprets the enactment and gives meaning and, in that sense, lays down what it believes is the rule. As a legislator who constructs and states at the first instance what is the rule, the Board tacitly promises and prophesies the interpretation that appeals to them. Any good regulatory system must promote and adhere to principle of certainty and consistency, providing assurance to the individual as to the consequence of transactions forming part of his daily affairs."

57. Thus reliance by the AO on the decision in ***Standard Chartered*** is erroneous. The judgement was not rendered in the context of a *pari materia* provision. Section 68 of the FERA used the word ***"contravention"*** in the body of the section and the term ***"offences"*** was only used in the side heading. In that light, the Supreme Court after considering other provisions of the FERA Act, held that the intention of the legislature was that ***"offence"*** and ***"contravention"*** meant the same in so far as Section 68 of the FERA Act was concerned. We may note at this stage that Section 68 of the FERA Act is more or less *pari*

materia with the amended provisions of Section 27 of the SEBI Act w.e.f. March 08, 2019. However, Section 27 of the SEBI Act prior to amendment was totally different and distinct from the provision of Section 68 of the FERA Act. Thus, reliance on the decision of the Standard Chartered was misplaced. In ***Standard Chartered*** (supra) the Supreme Court held that the phrase ***"contravention"*** takes within its fold both civil as well as criminal violations in the context of Section 68 of FERA. In sharp contrast, at all times relevant to this appeal, Section 27 of the SEBI Act, did not use the word ***"contravention"*** at all, and when Parliament amended it in 2018, explicitly, Parliament stated that the intention was to enlarge the scope to include enforcement proceedings.

58. The meaning of the term ***"offence"*** is required to be understood in the context in which it is used in the legislation. A suggestion that the term ***"offence"*** as occurring in the SEBI Act also covers civil proceedings is at odds with the range of provisions in Chapter VII of the SEBI Act which is a facet that was not even examined by the AO, much less ruled upon. We find that parliament was conscious of the usage of the two words ***"contravention"*** and ***"offence"*** in the SEBI Act and

consciously chose to replace ***"offence"*** with ***"contravention"*** explicitly, in order to enlarge the scope of Section 27.

59. Thus, we hold that Section 27 of the SEBI Act as it stood prior to the amendment did not apply to civil liability and, therefore, the Managing Director could not be penalised by SEBI under Section 27 of the Act.

60. In view of the aforesaid, it is not necessary for us to deal with the issue as to whether the Managing Director could be made vicariously liable under Section 27 of the SEBI Act for contravention of the Section 12A and Regulations 3 and 4 of the PFUTP Regulations.

61. However, on this issue, we find that from the minutes of the Board meeting of RIL held on 29.03.2007, that Alok Agarwal, Chief Financial Officer (CFO) made a presentation detailing the Company's Operating Plan and Capital Budget for the year 2007-08 and the prospective plan for succeeding 3 to 5 years. The presentation set out the resource requirements for the next two years and the funding avenues for the same, namely:

Sr. No.	Resource requirement over next 2 years	Rs. Crore	Sr. No.	Funding Avenues	Rs. Crore
1	Upstream	39,400	9	Internal Accruals	30,500
2	Retail	25,000	10	Equity	17,000
3	Jamnagar SEZ Infrastructure	5,000	11	Debt including through ECB / **Monetization including through Sales /divestments of assets & investments**	39,500
4	Convention Centre	6,000			
5	Off gas cracker	6,600			
6	Haryana SEZ	2,000			
7	Normal	3,000			
8	**Total Capex**	**87,000**	**12**	**Total Funding**	**87,000**

62. The minutes of the Board also authorized Alok Agarwal, the CFO and LV Merchant (Controller Accounts), senior executives of the Company to ***'explore, identify and implement optimal avenues of funding'.***

63. On 19.11.2007, RIL's Board noted an update from Alok Agarwal and the minutes recorded as follows:

> *"The Board was informed of the progress made towards raising of resources for the Company's ongoing projects in line with the fund raising program as earlier authorised by the Board of Directors at the budget meeting held in March 2007. The Board was also informed that after exploring various means of finance, the company is disposing RPL shares of up to 5% through trades in RPL securities. Board noted the same."*

64. It is a matter of record that:

(a) One of the funding avenues identified by Alok Agarwal and L V Merchant for meeting the fund requirements was to sell RPL shares held by RIL representing 5% of the outstanding equity shares of RPL; and

(b) Only these two senior executives assisted by one Sandeep Agarwal (employee of an RIL subsidiary), carried out the trades in RPL shares in both, Cash & F&O segments and raised Rs. 5,013 crore i.e. Rs. 4,500 crore in the Cash segment and Rs. 513 crore in F&O segment.

(c) The impugned order records that Rs. 447.27 crore was the alleged unlawful profit.

65. The evidence contained in the minutes of these two Board meetings held on 29.03.2007 and 19.11.2007 makes it clear that:

(a) The RIL Board approved the funding avenues and specifically and directly authorised Alok Agarwal and LV Merchant to the exclusion of the Managing

Director to "explore, identify and implement" the means of raising of the funds.

(b) The authorisation given to the two authorised persons, namely, Alok Agarwal and LV Merchant was not with any caveat for coming back to the Board for further instructions or directions. They were the persons made responsible to the Company for the divestment of the 5% RPL shares, without having to check back with the Board. It is not the case of SEBI that this authorisation was illegal.

(c) The quantum and the manner of executing the sale and the means to realise the best price were left to the discretion of these two authorised persons. The two authorised persons simply updated the Board on 19.11.2007 that the process of sale of 5% RPL shares was ongoing.

(d) There is no documentary evidence or investigative finding whether from statements recorded in the investigation or otherwise, that notice No.2 had knowledge of the trades or that the appellant was involved in the execution of the trades carried out by the two authorised persons. The appellant's knowledge was restricted only to the limited update

given by the two authorised persons at the Board meeting held on 19.11.2007 like other Board members.

(e) Noticee No.2 did not authorise Alok Agarwal, L V Merchant and Sandeep Agarwal to execute the trades.

66. The aforesaid, two minutes of the Board meetings dated 29.03.2007 and 19.11.2007 are not disputed by the respondent. From the aforesaid, it is clear that the Board of Directors had specifically directed the two officers to explore, identify and implement optional avenues of funding and thereafter on 19.11.2007 the Board of Directors were informed by these two persons that the funds are being raised by disposing 5% of RPL shares through trades in RPL securities. In view of this impeccable evidence, notice No.2 had discharged the burden under Section 27 of the Act and the onus shifted upon SEBI to prove that notice No.2 was complicit. The finding that the appellant was complicit to the violations committed by the company and, therefore, liable under Section 27 of the Act is patently erroneous and is based on surmises and conjectures.

67. We find that a specific denial was made by noticee no. 2 of his involvement in the trades executed by the two officers of the company. We also find that the AO in paragraph 64 holds that it is relevant to examine the role of the Managing Director in terms of direct involvement or knowledge with regard to the manipulative scheme or trades undertaken by the company. We find that the AO failed to establish either direct involvement or knowledge of the Managing Director with regard to the trades undertaken by the company and, therefore, the finding that the Managing Director was 'complicit' to the violations committed by the company through its two officers is based on surmises and conjectures and on the basis of the figment of his imagination.

68. The burden under the proviso to Section 27(1) of the SEBI Act was completely discharged by the appellant when evidence was placed that two officers of high rank of the company were authorised to sell the shares of the Company. These two officers reported to the Board of Directors which approved the action of the two officers to sell the shares of the Company. The burden that the Managing Director of the Board of Directors exercised all due diligence was discharged and, therefore, the onus shifted back to SEBI to show that the

Managing Director was responsible for the execution of the trades in question. In the absence of any finding being given by the AO establishing direct involvement or knowledge of the Managing Director in the execution of the trades the finding that the Managing Director was complicit in the execution of the trades with the two officers is purely based on surmises and conjectures. Thus, on this score noticee no. 2 i.e. the Managing Director cannot be held responsible for the execution of the shares in the facts and circumstances of the present case.

69. We may also note that on the same transactions, the WTM had also passed an order and arrived at a conclusion holding that the transactions were decided by the authorised senior executives. The WTM further accepted that the Board of Directors of the company had delegated the requisite powers to the authorised senior executives to conceive and implement the subject transactions and left the details to be decided by the two individuals. The said delegation of authority by the Board to the two senior executive, one being the CFO and the other being the Controller Accounts of the Company was an exercise of due diligence on the part of the Board regard being had to the seniority, expertise, experience and functional role of the two individuals who were named to act on behalf to the Board. The

limited role played by the Board was only to take note of the transactions after they had been executed by the two senior executives. Without considering the findings of the WTM the AO in the impugned order has misdirected itself in holding that the Managing Director was responsible under Section 27 of the SEBI Act merely on the ground that he was the Managing Director.

70. We may also point out that in terms of Section 194 of the Companies Act, 1956, the minutes of the meeting of the Board are conclusive evidence of the proceedings recorded therein. When the Board by a resolution explicitly authorised two senior officers of the company to implement funding avenues, the effect of such resolution is to empower these two executives for execution of the transactions in question. On this basis, the AO cannot brush aside this evidence while holding that the Managing Director was responsible for the execution of the trades.

71. Assuming that Section 27 of the SEBI Act is applicable for civil proceedings, we find that the requirement to impute a vicarious liability is not satisfied. The law is well settled that the mere fact that a person holds a designation of Managing

Director does not suffice for imputing a vicarious liability to such person. It has been repeatedly held that the proof of "active role" in the alleged contravention in issue must be demonstrated by clear and concrete evidence of his active role coupled with criminal intent as a necessary pre-condition for affixing vicarious liability. This view of ours is fortified by a decision of the Supreme Court in ***Sunil Bharati Mittal vs. CBI, (2015) 4 SCC 609*** wherein the Supreme Court held:-

> *"**42.** No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.*
>
> ***43.** Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of*

vicarious liability, by specifically incorporating such a provision.

44. *When the company is the offendor, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada (supra), the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company.*

45.1. Jethsur Surangbhai v. State of Gujarat

"9. ...With due respect what the High Court seems to have missed is that in a case like this where there was serious defalcation of the properties of the Sangh, unless the prosecution proved that there was

a close cohesion and collusion between all the accused which formed the subject matter of a conspiracy, it would be difficult to prove the dual charges particularly against the appellant (A-1). The charge of conspiracy having failed, the most material and integral part of the prosecution story against the appellant disappears. The only ground on the basis of which the High Court has convicted him is that as he was the Chairman of the Managing Committee, he must be held to be vicariously liable for any order given or misappropriation committed by the other accused. The High Court, however, has not referred to the concept of vicarious liability but the findings of the High Court seem to indicate that this was the central idea in the mind of the High Court for convicting the appellant. In a criminal case of such a serious nature mens rea cannot be excluded and once the charge of conspiracy failed the onus lay on the prosecution to prove affirmatively that the appellant was directly and personally connected with acts or omissions pertaining to Items 2, 3 and 4. It is conceded by Mr Phadke that no such direct evidence is forthcoming and he tried to argue that as the appellant was Chairman of the Sangh and used to sign papers and approve various tenders, even as a matter of routine he should have acted with care and caution and his negligence would be a positive proof of his intention to commit the offence. We are however unable to agree with this somewhat broad statement of the

law. In the absence of a charge of conspiracy the mere fact that [pic]the appellant happened to be the Chairman of the Committee would not make him criminally liable in a vicarious sense for items 2 to 4. There is no evidence either direct or circumstantial to show that apart from approving the purchase of fertilisers he knew that the firms from which the fertilisers were purchased did not exist. Similar is the case with the other two items. Indeed, if the Chairman was to be made liable then all members of the Committee viz. Tehsildar and other nominated members, would be equally liable because all of them participated in the deliberations of the meetings of the Committee, a conclusion which has not even been suggested by the prosecution. As Chairman of the Sangh the appellant had to deal with a large variety of matters and it would not be humanly possible for him to analyse and go into the details of every small matter in order to find out whether there has been any criminal breach of trust. In fact, the hero of the entire show seems to be A-3 who had so stage-managed the drama as to shield his guilt and bring the appellant in the forefront. But that by itself would not be conclusive evidence against the appellant. There is nothing to show that A-3 had either directly or indirectly informed the appellant regarding the illegal purchase of fertilisers or the missing of the five oil engines which came to light much later during the course of the audit. Far from

proving the intention the prosecution has failed to prove that the appellant had any knowledge of defalcation of Items 2 to 4. In fact, so far as item 3 is concerned, even Mr Phadke conceded that there is no direct evidence to connect the appellant."

72. Again in ***Shiv Kumar Jatia vs. State of NCT. (2019) 17 SCC 193,*** the Supreme Court held:-

*"**19.** The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with*

the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

21. *By applying the ratio laid down by this Court in the case of Sunil Bharti Mittal it is clear that an individual either as a Director or a Managing Director or Chairman of the company can be made an accused, along with the company, only if there is sufficient material to prove his active role coupled with the criminal intent. Further the criminal intent alleged must have direct nexus with the accused. Further in the case of* ***Maksud Saiyed vs. State of Gujarat & Ors.*** *this Court has examined the vicarious liability of Directors for the charges levelled against the Company. In the aforesaid judgment this Court has held that, the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. It is held that vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the Statute. It is further held that Statutes indisputably must provide fixing such vicarious liability. It is also held that, even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which*

would attract the provisions constituting vicarious liability.

22. *In the judgment of this Court in the case of* ***Sharad Kumar Sanghi vs. Sangita Rane*** *while examining the allegations made against the Managing Director of a Company, in which, company was not made a party, this Court has held that when the allegations made against the Managing Director are vague in nature, same can be the ground for quashing the proceedings under Section 482 of Cr.P.C. In the case on hand principally the allegations are made against the first accused company which runs Hotel Hyatt Regency. At the same time, the Managing Director of such company who is accused no.2 is a party by making vague allegations that he was attending all the meetings of the company and various decisions were being taken under his signatures. Applying the ratio laid down in the aforesaid cases, it is clear that principally the allegations are made only against the company and other staff members who are incharge of day to day affairs of the company. In absence of specific allegations against the Managing Director of the company and having regard to nature of allegations made which are vague in nature, we are of the view that it is a fit case for quashing the proceedings, so far as the Managing Director is concerned."*

73. We may point out that the Board of Directors in a company is supreme. The Managing Director reports to the Board. The Board has the full authority to delegate any function to any officers of the Company to the exclusion of the Managing Director. The contention of the respondent that the Managing Director is responsible for the day to day affairs of the Company and the officials report to him and, therefore, the Managing Director is responsible is deemed to be in the knowledge of the transactions is not applicable in the case in hand, especially when the Board had specifically authorised the two senior most officials to execute the trades in question. We also find that in the instant case the two officials have reported to the Board and not to the Managing Director.

74. In view of the aforesaid, the decisions cited by the learned counsel for the respondents are not applicable to the facts of the present case and are distinguishable. Reliance on the decision of the Supreme Court in ***Apex Laboratories Private Limited vs Deputy Commissioner of Income Tax, Large Tax Payer Unit-II (2022) 7 SCC 98*** is misplaced and is of no assistance to the respondent. The said decision dealt with Section 37 of the Income Tax Act, 1961 wherein the Explanation 1 to Section 37 used the word “offence” and, on

that basis, the Supreme Court disallowed the expenditure incurred by pharmaceutical companies to provide freebies to doctors which the medical council said was prohibited and liable for action on the basis that providing freebies was illegal/ prohibited by law and/ or punishable. The question before the Supreme Court was whether giving of freebies to doctors was prohibited by law which was answered in the affirmative by the Supreme Court and in that contest it was held that the word "punishable" includes in its fold "civil wrongs" for which punishment can be given. Thus, the said decision does not advance SEBI's case of stating that for the purpose of SEBI Act the amendment was not a substantive amendment to enlarge the scope to cover civil wrongs. Similarly, the decision of this Tribunal ***in Janak Chimanlal Dave vs SEBI in Appeal No. 446 of 2020 decided on 20.09.2021*** which follows Apex Laboratories Private Limited (supra) is also not relevant to the facts of this case. Reliance on the decision of the Supreme Court in ***S.M.S. Pharmaceuticals Ltd vs Neeta Bhalla (2005) 8 SCC 89*** and the decision in ***K.K. Ahuja vs. V.K Vora and Anr. (2009) 10 SCC 48*** is misplaced**.** In SMS Pharmaceuticals Ltd. (Supra) the Supreme Court held:-

> "*9. The position of a managing director or a joint managing director in a company may be different.*

> *These persons, as the designation of their office suggests, are in charge of a company and are responsible for the conduct of the business of the company. In order to escape liability such persons may have to bring their case within the proviso to Section 141(1), that is, they will have to prove that when the offence was committed they had no knowledge of the offence or that they exercised all due diligence to prevent the commission of the offence."*

The said decision has no application to the facts of the present case.

75. Similarly, the decision of this Tribunal in ***Rahul H. Shah v. SEBI, 2004 SCC OnLine SAT 77, Almondz Global Securities v. SEBI decided by this Tribunal on 13.05.2016 in Appeal No. 275 of 2014*** are not applicable to the facts and circumstances of the case. It was not a case of vicarious liability but involvement of an independent allegation that the Managing Director had failed to act in accordance with the stipulated obligations under the ICDR. Similarly, the decision of this Tribunal in ***NSE v. SEBI decided on 09.08.2023 in Appeal No. 334 of 2019*** is also distinguishable. This Tribunal held that the Managing Director of NSE was liable under

Section 27(1) for not verifying the license of Sampark at the time of due diligence. The Managing Director was held liable and accountable for failure to verify the license as there was no positive evidence of any officer being made responsible for execution of the activity, namely, checking of the licence. In contrast with the present case, we find that in the instant appeal there is clear evidence that the Board specifically and directly authorised two senior executives to explore, identify and implement the divestment of investment. Similarly, the decision of this Tribunal in ***Sayanti Sen vs SEBI 2019 SCC OnLine SAT 132*** is also not applicable as we find that the issue whether Section 27 applies to civil proceedings under SEBI Act was never raised by the parties nor considered by the Tribunal. It was a case as to whether an individual fell within the definition of the term "officer in default" under Section 5(g) of the Companies Act, 1956. Similarly, in NSE vs. SEBI (Colocation matter) in Appeal No. 333 of 2019 decided on 23.01.2023 this Tribunal observed that the Managing Director and CEO cannot abdicate their responsibility for the lapse by the professionals to whom the functions were delegated. In that case, the Managing Director and the CEO acknowledged that specific functions were delegated and this Tribunal observed that the CEO and the Managing Director cannot pass on the

responsibility to the delegates. The said decision is distinguishable as in the instant case we find that the Board of RIL had specifically authorised two persons to decide the disinvestment. The Managing Director, noticee no. 2 had not delegated its powers to the two authorised persons. It was the Board who had delegated the matter to the two officers. We may also point out that the show cause notice against noticee no. 2 specifically alleged that he was complicit to and responsible for the acts of noticee no. 1. For facility, paragraph 44 of the show cause notice is extracted below.

> *"**44.** The Noticee No. 2 being the Managing Director of the Company in the principal officer responsible for the day-to-day and overall operations of the company. Further, Section 27 of the SEBI Act, 1992 mentions that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The acts of Noticee No. 1 and Noticee No. 2 (being the CMD and Principal officer of Noticee No. 1 and therefore complicit to and responsible for the acts of Noticee 1) are in violation."*

76. Based on the aforesaid, issue 3 was framed in the impugned order. We find that the AO in paragraph 61 of the impugned order raised the issue as to whether noticee no. 2 was

complicit to the violation of the Company. In paragraph 64 the AO states that it is necessary to examine the role of noticee no. 2 in terms of either direct involvement or knowledge/ awareness of the trades undertaken by RIL. Inspite of contending that the AO is required to examine the complicit involvement of noticee no. 2 with regard to execution of the trades, we find that the AO in the impugned order does not arrive at any conclusion that the appellant was involved in the actual conceptualisation and execution of the alleged trades by RIL. We are of the opinion, that whereas the AO recognises that knowledge by the appellant was a pre-requisite for a finding that noticee no. 2 was liable for RIL's alleged violation yet without giving a conclusive finding has travelled beyond the show cause notice to conclude in paragraph 72 of the impugned order that noticee no. 2 had implicit knowledge of the alleged trades and authorised the implementation plan. The AO further went on to hold that it is highly unlikely that noitcee no. 2 was not aware of the execution of the trades. The findings given by the AO in our opinion is purely based on surmises and conjectures.

77. In this regard, the word "complicit" means involvement with others in an activity which is unlawful. On the other hand, the word "implicit" is suggestive though not directly expressed.

78. Thus, in the absence of any specific finding by the AO on noticee no. 2 complicit involvement in the execution of the implementation plan or in the execution of the trades, the AO cannot dwell into surmises and conjectures and base its findings on presumption to hold that the noticee no. 2 was implicitly involved in the transactions on the ground of being a Managing Director and which implies a high level of accountability of knowledge of overall functioning of the Company.

79. Reliance by the respondent on a reference to a Board Resolution dated 27.07.2004 which is extracted from a judgement of the Hon'ble Supreme Court ***in Reliance Natural Resources Limited vs Reliance Industries Limited (2010) 7 SCC 1*** to contend that the appellant had substantial powers of management is a desperate attempt on their part to sustain the impugned order. We find that the said decision was not made the basis of passing the impugned order. Further, it is not even SEBI's case that the resolution of 2004 which gave express powers to the Managing Director continued to subsist in 2007 when the subject transactions took place. In our opinion, the said decision has no bearing with the present case in as much as in the instant case the Board by a specific resolution dated March 29, 2007 exclusively vested relevant powers and

functions in relation to the subject transaction to the two senior executives of the Company. The fact that noticee no. 2 may have otherwise enjoyed substantial powers of management is of no avail, when specific power were exclusively vested in the two senior executives through a resolution passed by the Board of Directors of the Company.

80. Considering the aforesaid, we are of the opinion that Section 27 does not introduce a regime of strict liability of the Managing Director for any violation of law by the Company. This proposition was also accepted by the learned senior counsel for the respondent and accepted that such an approach would have absurd consequences. We find that in a conglomerate such as the Company in question is concerned which operates a wide spectrum of businesses and has tens of thousands of employees spread across the length and breadth of the country and abroad, it cannot be suggested that the Managing Director is *ipso facto* responsible for every alleged contravention of law by the corporate entities. Thus, we are of the opinion, that in view of the stark evidence in the form of minutes of the two Board meetings of RIL which conclusively proves that the impugned trades were carried out by two senior officials without the knowledge of the appellant no liability can

be fastened upon noticee no. 2 in the facts of the given case. The burden under Section 27 was discharged by noticee no. 2 and the AO has miserably failed to prove that noticee no. 2 was involved in the execution of the trades carried out by two senior executives.

81. Noticee no. 3 was incorporated on 15.06.2004 and noticee no. 4 was incorporated on 05.04.2000. Both noticee nos. 3 and 4 are involved *inter alia* in the business of construction of building, infrastructure, setting up of a Special Economic Zone (SEZ) and acquisition of properties.

82. Noticee nos. 3 and 4 invested their idle funds by lending the same by way of short term inter corporate deposits to other companies in order to earn interest and, if necessary, also avail inter corporate deposits from other companies by paying interest.

83. On 04.08.2007, noticee no. 4 entered into a 'Facility Agreement with Vinamra Universal Traders Pvt. Ltd. ("Vinamra") in terms of which the parties agreed to place short-term Inter-Corporate Deposits ("ICDs") with each other from time to time on agreed terms and conditions. Vinamra was also

a company involved in the business of investments. The key terms of the Facility Agreement were as follows:

(i) Article 1.1. provided that the aggregate overall limit of the facility under the agreement was Rs. 600 crore.

(ii) Article 3.1 of the agreement specified a fixed rate of interest of 6.5% p.a.

(iii) Article 4.1 stipulated that the borrower shall repay the amount of the loan within 1 day of being served a notice in writing calling for repayment.

84. On 22.09.2007 noticee no. 3 entered into a 'Facility Agreement' with Vinamra. The terms of the Facility Agreement between noticee no. 3 and Vinamra were similar to those of the agreement between noticee no. 4 and Vinamra, namely,

(i) Article 1.1 provided that the aggregate overall limit of the facility under the agreement was Rs. 3500 crore.

(ii) Article 3.1 specified a fixed rate of interest of 8% per annum.

(iii) Article 4.1 stipulated that the borrower shall repay the amount of the loan within 15 days of being served a notice in writing calling for repayment.

85. Noticee nos. 3 and 4 placed ICDs with Vinamra in several tranches from time to time and earned interest thereon. In the case of noticee no. 4, funds in the cumulative amount of Rs. 500 crore were lent by it to Vinamra on various dates between 27.09.2007 and 31.03.2008, while noticee no. 3 lent funds in the cumulative amount of Rs. 2,775 crores to Vinamra on various dates between 03.10.2007 till 26.03.2008. It is not in dispute that the funds lent were repaid in full along with interest at the rates stipulated in the respective Facility Agreements.

86. Noticee nos. 3 and 4 received letters dated 27.02.2009 from the respondent SEBI, referring to an ongoing investigation in the matter of Reliance Petroleum Limited ("RPL") asking for details in respect of the inter-corporate deposits placed by Noticee nos. 3 and 4 with Vinamra.

87. By letter dated 23.03.2009, Noticee nos. 3 and 4 provided the required information and a copy of Facility Agreement to the respondent. By letter dated 13.04.2010, the noticee nos. 3 and 4 sent further details to the respondent in respect of ICDs placed with Vinamra. Noticee nos. 3 and 4 also sent a statement of outstanding ICDs with Vinamra as on

31.03.2008 and repayment thereof during the Financial Year 2008-2009.

88. In February and March 2010, SEBI addressed letters to noticee no. 3 seeking further information in connection with the transactions with Vinamra. By its letter dated 13.04.2010. Noticee no. 3: (i) provided details of the Directors of the Company since 01.01.2007; (ii) stated that it had no relationship with Reliance Industries Ltd. ('RIL') and (iii) confirmed that there were no fund transfers executed by it with RIL during the period 01.04.2007 to 31.03.2008. Since then, there was no further communication between Noticee nos. 3 and 4 and SEBI in this connection after the aforementioned letter of April 2010.

89. On 21.11.2017, i.e. after ten years the noticee nos. 3 and 4 received a show cause notice from the respondent. The show cause notice was issued to RIL (being notice no. 1), Chairman and Managing Director of RIL (being noticee no. 2), Navi Mumbai SEZ (being noticee no. 3) and Mumbai SEZ (being noticee no. 4).

90. The show cause notice substantially referred to the transactions stated to have been carried out by RIL and its

agents during the month of November 2007, wherein, it was *inter alia* alleged that:

(i) RIL took short positions through 12 entities acting as its agents in November 2007 RPL Futures by breaching the client-wise position limit prescribed under certain circulars issued by SEBI.

(ii) RIL depressed the settlement price of November 2007 RPL Futures by dumping large number of shares in the cash market during the last ten minutes of hearing on 29.11.2007 and, thereby gained on its short positions in the derivatives market;

(iii) This fraudulent and manipulative strategy was a well thought out and deliberate attempt to make extraordinary gains.

(iv) The above acts of RIL are in violation of Regulation 3 (a), (b), (c), (d) and Regulation 4(1),4(2) (d) &(e) of the PFUTP Regulations and SEBI Circular No. SMDRP/DC/CIR-10/01 dated 02.11.2001.

91. As regards noticee nos. 3 and 4, the show cause notice alleged that:

(i) Noticee nos. 3 and 4 were promoted by the "Reliance Group"

(ii) Anand Jain, Chairman of Noticee nos. 3 and 4 are closely associated with the Reliance Group as a strategic advisor to the Company.

(iii) Noticee nos. 3 and 4 are located at the same address as Vinamra and Dharti (both of which acted as

agents of RIL in taking positions in the futures market)

(iv) Noticee nos. 3 and 4 and Vinamra have a common Director- Sanjay Punkhia.

(v) Noticee nos. 3 and 4 financed the whole manipulation scheme by funding the front entries of RIL at the behest of RIL and its MD and was thereby complicit in the scheme of manipulation to make undue gains, and have also violated Regulations 3(b),(c),(d) and Regulations 4(2),(d) and (e) of PFUTP Regulations.

92. Noticee no. 3 and 4 contended that there was an undue delay in the initiation of proceedings and that they were not parties to the proceedings raised by the WTM nor have dealt in any securities and, therefore, have not violated Regulations 3 and 4 of the PFUTP Regulations or Section 12A of the SEBI Act. The noticees further submitted that necessary copies of the documents were not provided which was in violation of the principles of natural justice.

93. The AO after considering the material evidence on record held that noticee nos. 3 and 4 have actively aided and abetted RIL by providing funds to Vinamra which was ultimately used in providing margin money to the stock brokers

for taking short positions by the agents of RIL in RPL futures for earning illegitimate profits from the said positions and therefore noticee nos. 3 and 4 have violated the provisions of the Regulations 3 and 4 of the PFUTP Regulations. The AO found it fit to impose a penalty under Section 15HA imposing Rs. 20,00,00,000 (Rupees Twenty Crore Only) upon noticee no. 3 and Rs. 10,00,00,000 (Rupees Ten Crore Only) on noticee no. 4 on the basis of the quantum of loans advanced by them to Vinamra.

94. We have heard Shri Raghav Shankar, the learned counsel for the appellants and Shri Shiraz Rustomjee, the learned senior counsel for the respondent.

95. The issue framed by the AO against noticee nos. 3 and 4 was whether noticee no. 3 and 4 have aided and abetted noticee no. 1 by providing funds to one of the agents appointed by noticee no. 1 who in turn provided funds to the other agents appointed by noticee no. 1 resulting in violation of Regulations 3 and 4 of the PFUTP Regulations.

96. From a perusal of the show cause notice it indicates that it is not SEBI's case that noticee nos. 3 and 4 were involved in

undertaking the transactions in connection with RPL shares and futures in the month of November 2007, rather it is SEBI's case that these transactions were allegedly financed by monies traceable to the noticee nos. 3 and 4 and therefore noticee nos. 3 and 4 were complicit in the contravention allegedly committed by RIL.

97. The learned counsel for noticee nos. 3 and 4 contended that there is an unexplained delay in the initiation of the proceedings and denial of natural justice. It was urged, that the transaction in question was of November 2007 whereas the show cause notice was issued after 10 years on November 21, 2017. It was contended that the AO has committed a manifest error in holding that there is no delay in the initiation of the proceedings in as much as SEBI had taken an internal decision to await the decision in Section 11B proceedings against RIL and its agents before taking further action in the matter and that such proceedings eventually culminated in an order dated March 24, 2017 passed by the WTM and, thereafter, the show cause notice was issued in November 2017. Thus, there is no delay in the initiation of the proceedings.

98. The learned counsel urged, that the aforesaid reasoning is patently erroneous and against the provisions of the Limitation Act. It was contended that limitation runs from the date of the passing of the order and that the decision of SEBI to await the decision of the WTM's proceedings was patently erroneous. In support of his contention, the learned counsel placed reliance upon a decision of this Tribunal ***in Rakesh Kathotia vs. SEBI 2019 SCC OnLine SAT 74*** and in ***Reliance Industries Holding Private Limited and Ors. vs. SEBI in Appeal No. 748 of 2021 decided on July 20, 2023.*** It was also urged, that on account of the delay in the initiation of proceedings the noticees were seriously prejudiced by the delay in the issuance of the show cause notice since no record of the commercial transaction which concluded 10 years ago could be made available. The learned counsel relied upon a decision in ***HB Stockholdings Ltd. vs SEBI 2013 SCC OnLine SAT 56*** and ***Libord Finance Ltd. vs WTM, SEBI 2008 SCC OnLine SAT 46*** wherein this Tribunal held that long delay itself causes grave injustice to the delinquent and results into violation of the principles of natural justice.

99. It was also contended that necessary documents which were specifically mentioned in the show cause notice were not

supplied and the appellants provided a list of documents before the AO and one such document was the investigation report. It was urged that the documents so mentioned in the show cause notice were withheld and SEBI refused to provide a copy of the investigation report which was contrary to the law laid down in ***T. Takano v. SEBI 2022 SCC OnLine SC 210.***

100. It was also urged, that the finding of the AO that the appellant had violated the PFUTP Regulations is purely based on surmises and conjectures. The finding that there was a nexus between the Facility Agreements executed by the noticees with Vinamra and the impugned trades carried out by RIL and its agents is patently erroneous. It was urged, that the Facility Agreement was executed prior in point of time before the alleged trades were executed by RIL and, therefore, it cannot lead to any presumption that the loan given by noticee nos. 3 and 4 to Vinamra was for the purposes for the 12 agents to trade by taking open positions. It was urged that the impugned order is based on pure conjectures and on the assumption that the Facility Agreements were entered into solely for the purpose of funding RIL transactions in the November 2007 futures market. Further, the impugned order proceeds on an erroneous basis that the inter corporate deposit (ICDs) of Rs. 2775 crores in case of

noticee no. 3 and Rs. 550 crores in the case of noticee no. 4 were in fact meant for the purpose of funding manipulative trade of RIL.

101. Having heard the learned counsel for the parties, we are of the opinion that there is an inordinate delay in the issuance of the show cause notice. Admittedly, the trades were executed by RIL in November 2007. The noticee nos. 3 and 4 received letters dated 27.02.2009 from SEBI referring to the ongoing investigation in the matter of Reliance Petroleum Limited and asked for details in respect of ICDs placed by noticee nos. 3 and 4 with Vinamra. The said information was provided by the noticee on March 29, 2009. In February and March 2010 SEBI again addressed letters to noticee nos. 3 and 4 seeking further information which were duly supplied vide letter dated April 13, 2010.

102. After 10 years the show cause notice dated 21.11.2017 was issued alleging that noticee nos. 3 and 4 were promoted by the Reliance Group and that noticee nos. 3 and 4 by financing the monies to Vinamra were complicit and aided and abetted the manipulation of the trade executed by RIL through its 11 agents.

103. The AO has rejected the contention of the appellants holding that there is no delay on the ground that SEBI had taken an internal decision to await the Section 11B proceedings against RIL and its agents before taking further action in the matter. In our opinion, such finding is patently perverse and against the basic principles of the Limitation Act. The Limitation starts running from the day the impugned order is passed. Limitation order does not stop on the whims and fancies of a regulator. The regulator cannot stop the clock on the ground that they would await the decision in proceedings initiated under Section 11B before taking further action in the matter. In our opinion, there is no legal bar of initiation of adjudication proceedings during pendency of Section 11B proceedings. In our opinion, adjudication proceedings and Section 11B proceedings can be held in parallel.

104. In our opinion, the appropriate procedure would have been for SEBI to initiate adjudication proceedings simultaneously with the 11B proceedings and, thereafter, could have kept the adjudication proceedings in abeyance. By not doing so the limitation starts running against the regulator.

105. Consequently, in our view there is an inordinate delay in the initiation of the proceedings against the noticees. 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.

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

107. ***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 [(1989)3 SCC 483: AIR 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) 12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) 11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) 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."*

108. 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.

109. 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.

110. 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.

111. Similar view was again reiterated by this Tribunal in ***Reliance Industries Holding Pvt. Ltd. Vs SEBI (2023) SCC OnLine SAT 402.***

112. In view of the aforesaid, we are of the view that time starts to run from the date of commission of the alleged violation. The respondents being aware of this fact and having knowledge of the alleged transactions chose deliberately not to initiate proceedings and, consequently, the action of the respondents cannot be justified by initiating a belated show cause notice.

113. On account of the delay serious prejudice has been caused to the noticees. In ***HB Stockholdings Ltd. Vs. SEBI 2013 SCC OnLine SAT 56*** this Tribunal while dealing with the delay of 11 years in the issuance of a show cause notice held:

> *"...human memory has a short shelf life. Allowing matters to go on and on for years together serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust...in this backgrounds, the Appellants were compelled to make a feeble attempt to defend their case on the basis of scanty*

> *and incomplete materials supplied by the Respondent."*

114. Similarly, in ***Libord Finance Ltd. Vs WTM, SEBI 2008 SCC OnLine SAT 46*** this Tribunal observed:

> *"...how could anyone file a proper reply after a lapse of more than eight years. This long delay itself causes grave injustice to the delinquent and results into violation of the principles of natural justice. Such delays defeat the very purpose of the proceedings."*

115. The decisions cited by the respondent in the matter of ***Kunal Pradeep Savla & Ors. vs. SEBI, Appeal No. 231 of 2007 decided on 13.04.2018, Dr. V.K. Sukumaran & Anr. vs SEBI, Appeal No. 473 of 2020 decided on 24.08.2021 and Hindustan Times Ltd. vs Union of India & Ors. (1998) 2 SCC 242*** has no application to the facts of the case and are irrelevant.

116. We also find that there is a violation of principles of natural justice in not supplying the documents to noticee nos. 3 and 4 which documents were relied upon in the show cause notice. We find that noticee nos. 3 and 4 had repeatedly addressed letters to SEBI on 11.06.2018 and 25.06.2018 requesting certain documents which were specifically

mentioned in the show cause notice. Some of these documents were provided by SEBI vide letter dated 17.06.2019 and 08.03.2019. The documents which were not provided were specifically again asked for which also included a copy of the investigation report. Inspite of the specific request for supply of the documents which has not been disputed by the respondents, we find that the said documents were not supplied, especially the copy of the investigation report. The Supreme Court in ***T. Takano vs. SEBI (Supra)*** has clearly held that investigation report is an intrinsic component of the Board's satisfaction for determining whether there has been any violation of the regulations and that the investigation report forms the material on the basis of which a show cause notice is issued. Since the show cause notice is on the basis of the investigation report there was an obligation imposed upon the respondent to provide the documents asked for by the appellants which they failed to supply. Non supply of the documents was violative of the principles of natural justice. We are also of the opinion that prejudice caused because of non-disclosure of the relevant material was writ large.

117. Even otherwise on merits, we are of the opinion that the finding that the appellants by providing funds to Vinamra were

complicit in the manipulative scheme adopted by RIL and its agents and had aided and abetted in the manipulative scheme is purely based on surmises and conjectures and cannot be sustained. The finding that the appellants consequently contravened PFUTP Regulations cannot be sustained.

118. In this regard, we may note that noticee nos. 3 and 4 had executed Facility Agreement with Vinamra on August 04, 2007 and September 22, 2007 much before RIL took a decision in an around October 30, 2007 to sell 5% stake in RPL. Between October 30, 2007 and November 03, 2007 RIL appointed 12 agents to undertake transactions in November 2007 future segment for RPL shares. Agency Agreement was executed during this period between RIL and the 12 agents. Short positions were taken by the 12 agents between November 01, 2007 and November 06, 2007.

119. Based on the aforesaid facts, a finding has been given by the AO that on a combined reading of the Facility Agreement and Agency Agreement it can be inferred that noticee nos. 3 and 4 had prior knowledge of the scheme of alleged manipulative trades by RIL and that noticee nos. 3 and 4 were fully aware that the funds given by them to Vinamra was meant for

financing the alleged trades in question and, therefore, noticee nos. 3 and 4 aided and abetted in the manipulative scheme. This finding in our opinion cannot be sustained for the following reasons:-

120. The Facility Agreement was signed on August 04, 2007 and September 22, 2007. The execution of these documents is not disputed nor there is any allegation that these agreements were manufactured for the purpose of this case. The starting point for the alleged manipulative scheme by RIL was the decision taken in an around October 30, 2007 to sell RPL shares. These facts are noted in paragraph 26 of the impugned order. On or before October 30, 2007 noticee no. 3 had already advanced funds to the tune of Rs. 625 crores and noticee no. 4 had loaned an amount of Rs. 45 crores on or before October 30, 2007. We are of the opinion, that as on the date of the execution of the Facility Agreement it was not possible for noticee nos. 3 and 4 to have knowledge that RIL would sell shares in the cash segment in November 2007 and that RIL would take positions in the futures segment through its agents. There is no evidence to show that prior to October 30, 2007 the decision of RIL to sell shares of RPL and appoint 12 agents was known to noticee nos. 3 and 4.

121. We are thus of the opinion, that the execution of the Facility Agreement had nothing to do with the Agency Agreement which came two months later and, therefore, the Facility Agreement and the Agency Agreement cannot be read together. The two agreements are wholly unconnected and cannot raise any kind of an inference as held by the AO in the impugned order.

122. The evidence that has been brought on record does not indicate that noticee nos. 3 and 4 could have known in August / September 2007, namely, at the time of execution of the Facility Agreement that RIL would decide in end of October to sell the RPL shares or that RIL would take position in the November futures through its agents or that RIL would enter into agency agreements with the 12 agents or that RIL would trade in the last 10 minutes on November 29, 2007 in such a manner so as to suppress the price of the RPL shares. Thus, in our opinion, when the Facility Agreement was executed, noticee nos. 3 and 4 could not have known that RIL would enter into the cash segment or would take positions in the November 2007 futures.

123. We are also of the opinion, that the assumption / presumption drawn by the AO that the Facility Agreement was

entered into solely for the purpose of funding RIL transactions in the November 2007 futures market is wholly erroneous. Pursuant to the Facility Agreements ICDs were placed as early as on September 2007 much before the subject transactions took place and continued to be placed from time to time till March 2008. The finding given by the AO that Rs. 2,775 crores advanced by noticee nos. 3 and Rs. 550 crores advanced by noticee no. 4, to Vinamra were utilised by the 12 agents for the purpose of funding the manipulative trades of RIL is patently erroneous and cannot be sustained. The ICDs given by noticee nos. 3 and 4 were from September to March whereas the funds required by the 12 agents were from November 01, 2007 to November 06, 2007 when they took short positions in the futures segment.

124. Assuming without admitting that the noticee nos. 3 and 4 had knowledge and provided funds for the alleged manipulative trades only those funds that flowed between November 01, 2007 and November 06, 2007 could at best have a nexus with the taking of the short positions in the November 2007 futures. The AO however has considered the entire loans of Rs. 2775 crores given by noticee no. 3 and Rs. 550 crores given by noticee no. 4 from the period September 2007 to March 2008. We may note

that noticee no. 4 did not lend any money to Vinamra between November 01, 2007 to November 06, 2007 and that noticee no. 3 had given a loan of Rs. 350 crores in two transactions of November 05, 2007 and November 06, 2007 to Vinamra. Thus, the finding of the AO that Rs. 2775 crores and Rs. 550 crores totalling Rs. 3325 crores were given by noticee nos. 3 and 4 that funded the 12 agents for the alleged trades is patently erroneous.

125. We also find that one of the basic charge against noticee nos. 3 and 4 was that noticee nos. 3 and 4 were promoted by Reliance Group. This allegation was found to be false. The AO found that Anand Jain was the Chairman of noticee nos. 3 and 4 and that noticee nos. 3 and 4 were not promoted by the Reliance Group. Once this fact became clear that noticee nos. 3 and 4 were not promoted by the Reliance Group, the AO should have dropped the matter instead of going into a tirade that Anand Jain was closely associated with Reliance Group as a strategic advisor or that Sanjay Punkhia was a common director of noticee nos. 3 and 4 and Vinamra and, therefore, there is a connection between noticee nos. 3 and 4 with Reliance Group. In our view, the reasoning adopted by the AO in coming to a conclusion that noticee nos. 3 and 4 are connected to RIL is baseless and cannot be accepted. Such indirect connection

without any further evidence of their involvement cannot be a ground to hold that noticee nos. 3 and 4 were aware of the manipulative trades allegedly conducted by RIL and its agents. It is thus not necessary for us to go into the question of their connection in detail.

126. In view of the aforesaid, it is not necessary for us to go into the question as to whether noticee no. 3 and 4 by giving loans to Vinamra could be held to be dealing in securities violating the PFUTP Regulations as in our view no case is made out of any violation by noticee nos. 3 and 4.

127. In view of the aforesaid, Appeal No. 87 of 2021 is dismissed. The impugned order in so far as it relates to Appeal Nos. 88 of 2021, 89 of 2021 and 90 of 2021 are quashed. The said appeals are allowed. In the event noticee nos. 2, 3, and 4 have deposited the penalty amount under protest, if any, then the respondent is directed to refund the amount forthwith. In the circumstances of the case, parties shall bear their own costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

04.12.2023
PK