REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2104 of 2009

SECURITIES AND EXCHANGE BOARD OF INDIA ....APPELLANT(S)

VERSUS

MEGA CORPORATION LIMITED ….RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. This is a statutory appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992[1] against the final order of the Securities Appellate Tribunal[2], by which the Tribunal has set aside the order passed by the Securities and Exchange Board of India[3] restricting the respondent-company from accessing the capital market for one year and further restraining the promoter directors from buying, selling or otherwise dealing with securities for India. While dismissing the appeal, we have explained that the jurisdiction of the Supreme Court under Section 15Z is confined to question of law.

[1] hereinafter referred to as the 'Act'.
[2] hereinafter referred to as the 'Tribunal'.
[3] hereinafter referred to as 'SEBI' or 'the Board'.

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2. M/s Mega Corporation Limited, listed in the Bombay Stock Exchange in 1996, is engaged in the business of radio taxi service, coupled with trading of shares in a small measure till 2004. The attention of the share market regulator, SEBI, was drawn to the unusual price movement of the scrip of the Company between January 2005 to September 2005. The Company's shares traded between Rs. 4.25/- to Rs. 43.85/-. This upward spurt resulted in an increase in the average monthly volume of shares to 1,56,22,583 shares. Having observed this activity, the SEBI directed investigation while passing an *ex parte ad interim* order under Section 11B, 11(4) (b) and 11(D) of the Act against 56 entities, being the Company, its promoter-directors, some of its clients, stockbrokers and depositors. After hearing the objections, the interim orders were confirmed, and a show-cause notice for violation of Regulations 3(a), (b), (c)&(d) and 4(1), 4(2)(k) & 4(2)(r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003[4] was issued on 10.10.2007.

3. The show cause notice was premised on the information obtained after investigation on the following:

3.1 The Company made huge profits from undeclared business and sale of scrips and there is uncertainty about the source of income. It is not known whether the Company had amended its

[4] hereinafter referred to as 'PFUTP Regulations'.

Memorandum and Articles for undertaking the activity of trading. The surge in the profits is unusual, and there is no reasonable explanation for the same. This is violative of Regulation 3 of the PFUTP Regulations.

3.2 Between April 2005 to September 2005, the Company and other noticees issued public statements in the form of advertisements and other notifications to lure the public in investing in the Company. This activity was undertaken to create an artificial demand knowing fully well that this is not the truth of the matter. This is in violation of Regulation 4(2)(k) and 4(2)(r) of the PFUTP Regulations.

3.3 The Company manipulated its profits by selling shares through orchestrated deals which were detected in the investigation. The manipulations led to an artificial increase of the scrip to a phenomenal extent sub-serving the fraudulent intention of the Company, and this is again violative of Regulation 3 of the PFUTP Regulations.

4. The Company and other noticees filed their responses. After hearing all parties, the SEBI passed the final order dated 28.02.2008 holding that the Company has violated the provisions of the Act and the PFUTP Regulations. In the exercise of its powers under Sections 11 and 11B read with Section 19

of the Act and the PFUTP Regulations, SEBI restrained the Company from accessing the capital market in any manner and its directors from dealing in securities for one year. The operative portion of the order is as follows:

> "*4.1 Now, therefore, I in exercise of powers conferred upon me under Section 11 and 11B read with Section 19 of the SEBI Act, 1992 further read with PFUTP Regulations 2003, hereby restrain Mega Corporation Limited (PAN-AAC-CM-9506-E) from accessing the capital market in any manner whatsoever for a of period of one year (1 year) and Shri Kunal Lalani (PAN-AAG-OPL-0992-C), Shri Himanshu Mehta (PAN-AAL-PM-5750-F) and Shri Surendra Chhalani (PAN-ACI-PC2863-K) Directors of the company are hereby restrained from buying, selling or otherwise dealing in securities, in any manner, for a period of one year (1 year).*"

5. The Company filed an appeal under Section 15T of the Act being Appeal No. 60 of 2008 before the Tribunal. The Tribunal re-examined the three circumstances which became the basis of SEBI decision and finally allowed the appeal, by its judgment dated 15.10.2008. The Tribunal held:

5.1 The unusual profits, if any, made during the year 2004-05 by itself cannot constitute any transgression of law. The powers vested in the Board are only to ensure that investors are not misled in making investments based on fraud and allurement and that there is nothing unusual about investors being attracted when the Company comes with positive annual reports. The Tribunal held that extraordinary profits in itself cannot be the basis for

concluding that the Company's accounts are manipulated with a specific objective to mislead the investors.

5.2 On the issue of public statements in the form of advertisements and notifications dated 07.04.2005 and 20.04.2005, the Tribunal concluded that there is nothing wrong in the advertisements issued for entering into the business of foreign exchange with the launch of 'Mega Forex Brand' and also the announcement relating to tour services based on the agreement with Gems Tours and Travels Private Limited. The Tribunal found that these announcements were in the ordinary course of business, and there was sufficient evidence to that effect. Having considered facts in detail, the Tribunal reversed the findings of the SEBI.

5.3 Finally, the Tribunal also examined the allegation relating to manipulation. It considered the findings of the SEBI that the transactions were orchestrated through entities that had links with the Company. On reappreciation the Tribunal found that the alleged links were not established and that the Board had unnecessarily read into certain activities, a meaning which could not be inferred in the ordinary course of events.

It is in this context that the Tribunal proceeded to accept the submission made on behalf of the Company that the Board could

not have relied on the letter of the stockbroker contradicting the stand taken by it without giving an opportunity of cross-examination. Because such an opportunity was not granted, the Tribunal held that the principles of natural justice stood violated.

6. The present appeal under Section 15Z of the Act is against this judgment of the Tribunal. We heard Shri C.U. Singh, Senior Advocate, assisted by Shri Pratap Venugopal for SEBI and Shri Vaibhav Gaggar, appearing on behalf of the Company.

7. On behalf of the Board, Shri C.U. Singh, Senior Advocate, submitted that:

7.1 The Tribunal examined the order passed by SEBI in a disjointed manner by taking each incident as a standalone event and gave its finding as if they were separate events. In its approach to examine the events as independent episodes, the Tribunal misled itself in coming to the wrong conclusions. Shri Singh took us through the orders passed by SEBI and the final judgment of the Tribunal and submitted that the findings of SEBI are correct and that the Tribunal is wrong in each of its conclusions. He also submitted that the events depicting manipulation are correctly identified, and they are based on the evidence available on record and, therefore,

the Tribunal was not justified in interfering with findings of manipulation.

7.2 Disapproving the principle adopted by the Tribunal about the right of cross-examination, he submitted that such an approach would virtually disable SEBI from performing its functions. Reliance was placed on the judgments of this Court in *K.L Tripathi*[5], *Tara Chand Vyas*[6] and *Jah Developers*[7].

8. Shri Vaibhav Gaggar, in his reply, submitted that:

8.1 The appeal has to be dismissed as there is no question of law involved in the case.

8.2 The approach adopted by SEBI in focusing on the sudden spurt in profit of the Company, is itself, is wrong approach. He sought to demonstrate that there is no unusual income in the profit of the Company.

8.3 On the issuance of advertisements, Shri Gaggar showed us the factual background leading to the advertisements and stated that there is no indication of any intention to mislead the public or lure the investors on the statements made therein. He submitted that the findings of the Tribunal that the advertisements were not in

[5] *K.L. Tripathi v. State Bank of India and Ors.* (1984) 1 SCC 43.
[6] *Tara Chand Vyas v. Chairman & Disciplinary Authority and Ors.* (1997) 4 SCC 565.
[7] *State Bank of India v. Jah Developers Private Limited* and Ors. (2019) 6 SCC 787.

violation of the Regulations are based on the correct facts as evidenced by the material placed before the Board. Reliance was placed on the judgment of the Tribunal in *M/s Vijay Textile.*[8]

8.4 Shri Gaggar submitted that the conclusions drawn by the Board on the assumption that the sales were orchestrated through artificial purchase and sale are incorrect. He endeavoured to establish that the assumed link between the parties is non-existent and only imaginary. Reliance was placed on the decision of this Court in *Rakhi Trading*[9] and *Kishore Ajmera*[10].

8.5 A final submission was made on the ground that principles of natural justice would be violated if an opportunity to cross-examine is not granted in a case where a material adverse to the party is taken cognisance by SEBI. In support of this, decisions of this Court in the judgments in *Meenglas*[11], *Bareilly Electricity*[12]and *Swadeshi Cotton Mills*[13] were relied on.

9. In his rejoinder, Shri Singh has distinguished the cases cited by Shri Gaggar and referred to precedents to establish that there is no right to

[8] *M/s Vijay Textile v. Securities and Exchange Board of India* (2011) SCC Online SAT 50.
[9] *Securities and Exchange Board of India v. Rakhi Trading Private Limited* (2018) 13 SCC 753.
[10] *Securities and Exchange Board of India v. Kishore R. Ajmera* (2016) 6 SCC 368.
[11] *Meenglas Tea Estate v. Workmen* (1964) 2 SCR 165.
[12] *Bareilly Electricity Supply Co. Ltd v. Workmen and Ors.* (1971) 2 SCC 617.
[13] *Swadeshi Cotton Mills v. Union of India* (1981) 1 SCC 664.

cross-examination of a witness and the principles of natural justice would not require granting a right of cross-examination. He reiterated that the functioning of the SEBI will be hampered if this formality is to be followed in every case.

10. The following issues arise for consideration:

10.1 What is the scope and ambit of statutory appeal to the Supreme Court under Section 15Z of the Act against an order passed by the Securities Appellate Tribunal?

10.2 Whether the advertisements dated 07.04.2005 and 20.04.2005, are in violation of Regulations 3 (a), (b), (c), (d) read with Regulation 4 (1), (2) (k) and (r) as amounting to misleading and defrauding the investors?

10.3 Whether the Company has violated Regulations 3(a), (b), (c) and (d) and Regulation 4(1), 4(2)(k) and 4(2) (r) of the SEBI (PFUTP) Regulations, 2003 by manipulating the share prices and accounts?

10.4 Whether there is a right to cross-examine the author of a document if SEBI seeks to rely on that document which is against the interest of the company?

11. Before we consider the rival contentions based on the issues, as formulated above, it is necessary to take note of certain statutory provisions.

Section 11 of the Act enumerates the functions of the SEBI and empowers it to take measures for protecting the interests of investors in securities. Section 11B empowers SEBI to issue necessary directions. In exercise of its powers under Section 30 the SEBI made the PFUTP Regulations, of which, we are concerned with Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(k) and 4(2)(r).

ISSUE 1: What is the scope and ambit of statutory appeal to the Supreme Court under Section 15Z of the Act against an order passed by the Securities Appellate Tribunal?

12. The power and jurisdiction of the Supreme Court to consider the decisions of the Tribunal is provided in Section 15Z of the Act. The said provision is as under:

> ***15Z. Appeal to Supreme Court****. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order;*
> *Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.*

In *Videocon International*[14] this Court had an occasion to deal with Section 15Z. Having considered the amendment to the Section, the Court observed as under:

[14] *Videocon International Ltd. v. Securities Exchange Board of India* (2015) 4 SCC 33.

> *"**38**. .....A right of appeal may be absolute, i.e., without any limitations. Or, it may be a limited right. The above position is understandable, from a perusal of the unamended and amended Section 15-Z of the SEBI Act. Under the unamended Section 15-Z, the appellate remedy to the High Court, against an order passed by the Securities Appellate Tribunal, was circumscribed by the words "...on any question of fact or law arising out of such order". The amended Section 15-Z, while altering the appellate forum from the High Court to the Supreme Court, curtailed and restricted the scope of the appeal, against an order passed by the Securities Appellate Tribunal, by expressing that the remedy could be availed of "...on any question of law arising out of such order.". It is, therefore apparent, that the right to appeal, is available in different packages, and that, the amendment to Section 15-Z, varied the scope of the second appeal provided under the SEBI Act."*

13. Though the Court observed that the appellate jurisdiction is curtailed to determining only a question of law, the question still remains as to which issues qualify as *questions of law* and which issue do not. We will examine this.

14. On a 'textual' interpretation, the expression 'question of law*'* is defined in the Black's Law Dictionary as follows:

> *"1. An issue to be decided by the judge, concerning the application or interpretation of the law;*
> *2. A question that the law itself has authoritatively answered, so that the Court may not answer it as a matter of discretion;*
> *3. An issue about what the law is on a particular point; an issue in which parties argue about, and the court must decide what the true rule of law is;*
> *4. An issue that, although it may turn on a factual point, is reserved for the court and excluded from the jury; an issue that is exclusively within the province of the judge and not the jury"*[15]

[15] Black's Law Dictionary, 10th Edition p. 1442.

15. Reference to Law Dictionary for the meaning of the expression 'question of law' is not to overlook the difficulty in drawing boundaries between questions of law and fact. Under the subject, *the malleable boundaries between law and fact*, H.W.R Wade has commented:

> *"Much of the discussions of this chapter proceeds on the basis that the distinction between a question of law and a question of fact is self-evident. But this is not so; the boundary is often elusive*."[16]

16. Phrases such as, 'question of law', are open textual expressions, used in statutes to convey a certain meaning which the legislature would not have intended to be read in a pedantic manner. When words of the Sections allow narrow as well as wide interpretations, courts of law have developed the art and technique of finding the correct meaning by looking at the words in their context. In *Reserve Bank of India v. Peerless General Finance Investment Company Ltd. & Ors*.[17], Justice O. Chinnappa Reddy, observed:

> *"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-*

[16] H.R.W. Wade & C.F Forsyth, Administrative Law, Chapter 8 (Oxford University Publication, United Kingdom, 11th Edn, 2014).
[17] *Reserve Bank of India vs. Peerless General Finance Investment Company Ltd. & Ors.* (1987) 1 SCC 424

> *maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the stature is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place……"*

17. The jurisdiction of the Supreme Court under Section 15Z to consider *any question of law arising from the orders of the Tribunal* should therefore be seen in the 'context' of the powers and jurisdiction of the Tribunal under Sections 15K, 15L, 15M, 15T, 15U and 15Y of the Act. It is in the functioning of the Tribunal to re-examine all questions of fact at the appellate stage while exercising jurisdiction under Section 15T of the Act. In *Clariant*[18] and *National Securities Depository*[19], this Court had an occasion to examine the jurisdiction of the Tribunal and explain that the Tribunal has wide powers. Being a permanent body, apart from acting as an appellate Tribunal on fact, the Tribunal routinely interprets the Act, Rules and Regulations made thereunder and evolves a legal regime, systematically developed over a period of time. The advantage and benefit of this process is consistency and structural evolution of the sectorial laws.

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[18] *Clariant International Ltd. and Anr. v. Securities and Exchange Board of India* (2004) 8 SCC 524, para 73, 74

[19] *National Securities Depository Ltd. v. Securities Exchange Board of India* (2017) 5 SCC 517, para 9.

18. It is in the above-referred context that the Supreme Court while exercising appellate jurisdiction under Section 15Z of the Act would be measured in its approach while entertaining any appeal from the decision of the Tribunal. This freedom to evolve and interpret laws must belong to the Tribunals to subserve the regulatory regime for clarity and consistency and it is with this perspective that the Supreme Court will consider appeals against judgment of the Tribunals on questions of law arising from its orders.

19. It is in this very context that the UK Supreme Court in the case of *Jones v. First Tier Tribunal*,[20] formulated certain principles for appellate courts to interfere against the orders of Tribunals on the ground of existence of *questions of law*. The Court held as under:

> *"16 ... It is primarily for the tribunals, not the appellate courts, to develop a consistent approach to these issues [of law and fact], bearing in mind that they are peculiarly well fitted to determine them. A pragmatic approach should be taken to the dividing line between law and fact, so that the expertise of tribunals at the first tier and that of the Upper Tribunal can be used to best effect. An appeal court should not venture too readily into this area by classifying issues as issues of law which are really best left for determination by the specialist appellate tribunals*."

[20] *Jones v. First Tier Tribunal* [2013] UKSC 19. Para 16; followed in *Regina (Privacy International) v. Investigatory Powers Tribunal* [2019] UKSC 22, para 134; See also, Administrative Law by Paul Craig (8th Ed. 2016 at p.492 and H.R.W. Wade & C.F Forsyth, Administrative Law, Chapter 8 (Oxford University Publication, United Kingdom, 11th Edn, 2014).

20. The scope of appeal under Section 15Z may be formulated as under:

20.1 The Supreme Court will exercise jurisdiction only when there is a question of law arising for consideration from the decision of the Tribunal. A question of law may arise when there is an erroneous construction of the legal provisions of the statute or the general principles of law. In such cases, the Supreme Court in exercise of its jurisdiction of Section 15Z may substitute its decision on any question of law that it considers appropriate.

20.2 However, not every interpretation of the law would amount to a question of law warranting exercise of jurisdiction under Section 15Z. The Tribunal while exercising jurisdiction under Section 15T, apart from acting as an appellate authority on fact, also interprets the Act, Rules and Regulations made thereunder and systematically evolves a legal regime. These very principles are applied consistently for structural evolution of the sectorial laws. This freedom to evolve and interpret laws must belong to the Tribunal to subserve the Regulatory regime for clarity and consistency. These are policy and functional considerations which the Supreme Court will keep in mind while exercising its jurisdiction under Section 15Z.

21. We will now examine the other issues in the context of the scope and ambit of the appellate jurisdiction of the Supreme Court under Section 15Z as discussed herein above.

ISSUE 2: Whether the advertisements dated 07.04.2005, 20.04.2005, are in violation of Regulations 3 (a), (b), (c), (d) read with Regulation 4 (1), (2) (k) and (r) as amounting to misleading and defrauding the investors?

22. This issue should not detain us for long, as the facts involved in this issue are relating to the merits of the case and, as such, do not qualify as a question of law. We will however refer to the two instances as Shri C.U. Singh has made detailed submissions before us.

23. As per the first advertisement dated 07.04.2005, it was alleged by SEBI that in violation of Regulation 4 (2) (k) and 4 (r) of the PFUTP Regulations, the Company proceeded to announce on 07.04.2005 the launch of the worldwide outbound package tour services. These services were intended to operate across 25 cities in India and were expected to achieve a revenue of Rs. 1000 million with a net profit of Rs.200 million in its first year. SEBI alleges that this announcement was made for the sole purpose of misleading the investors. This finding is reversed by the Tribunal based on an agreement between the Company and M/s Gem Tours and Travels Private Limited to establish a subsidiary company called ‘Mega Holidays Ltd.’ to handle the tour services. The Tribunal also noted the bank statement supporting the Company's transaction with M/s Gem Tours and Travels Private Limited.

24. We are mentioning these facts only to indicate that the Tribunal has reversed the findings of SEBI on the basis of its own inferences drawn from the documents on record. The decision of the Tribunal is fact-based and does not give rise to any question of law for invoking the jurisdiction of the Supreme Court under Section 15Z. For this reason, we are not inclined to interfere with the finding of fact, which must rest with the conclusions drawn by the Tribunal.

25. So far as the second announcement dated 20.04.2005 is concerned, it relates to the allegation of announcing the commencement of business in foreign exchange with the launch of 'Mega Forex Brand'. It was alleged that the Company made false statements such as that it is expected to grab 5-10% of the market share in the forex market, "which is at 5-6 billion dollars" in a span of one or two years. Here again, the Tribunal concluded that the application for a license to deal with foreign exchange which is alleged to have been made in September 2005 was only a revised application. The revised application is said to have been made in as a reply to the queries of the Reserve Bank of India on their original application, which was in fact made on 14.04.2005, that is even before the announcement. The Tribunal, therefore, was of the opinion that the announcement is not imaginary but is based on specific steps taken before the date of announcement, lending credence to the said activity.

26. The conclusion is drawn by the Tribunal, being factual, not giving rise to any question of law, the jurisdiction of this Court under Section 15Z cannot be invoked. For this reason, we affirm the finding of the Tribunal and there is no occasion for this court to interfere with the decision of the Tribunal. The issue is answered against the appellant.

ISSUE 3: Whether the company has violated Regulations 3(a), (b), (c) and (d) and Regulation 4(1), 4(2)(k) and 4(2) (r) of the SEBI (PFUTP) Regulations, 2003 by manipulating the share prices and accounts?

27. The next submission relates to the allegation that the accounts are manipulated for the year 2004-05 to show inflated profits to lure investors into buying shares of the company. SEBI has referred to the efforts made by it to trace the devise by which the shares of the Company were bought and sold in the market. It was alleged that more than 2 crores shares were purchased by certain entities in the physical form in '*off-market'* deals and then transferred those shares in subsequent '*off-market'* deals to certain other outside entities connected to the company. These allegations necessitated proof of such 'off-market' transactions and the connectivity of the *'outside entitles'* with the Company.

28. The Tribunal in its appellate jurisdiction came to the conclusion that the connectivity could not be established and that the conclusions drawn by the

Board were insufficient. On the basis of the inferences drawn from the facts, the Tribunal rendered the following findings:

> *"There is no evidence in support of any definite sustainable link between the appellant company and any of the traders who allegedly traded in the appellant company's scrip with the purpose of generating volumes and thereby raising its price. The charge of manipulative trading in its own shares by the appellant company, therefore, fails.*
>
> *….*
>
> *But it is another matter to say that a company has manipulated its accounts with that specific object in view because there can be a multitude of reasons why an unscrupulous management may want to show inflated financial results in its accounts. In the present case, no material has been produced by the Respondent to establish that the manipulation is the annual accounts of the appellant for the year 2004-05, if any, had been resorted to with the objective of luring investors to buy the scrip of the company. Given the lack of any definite evidence, this charge against the appellant also fails."*

29. It is evident from the above that the findings are based on the Tribunal's inferences drawn from the material available on record. The conclusions drawn by the Tribunal do not give rise to any question of law warranting interference of this court under Section 15Z of the Act. This issue is answered against the appellant.

ISSUE 4: Whether there is a right to cross-examine the author of a letter if the SEBI seeks to rely on that letter, adverse to the company?

30. The Board has, in its investigation, secured a letter from one of the directors of M/S DPS Shares and Stock Brokers Pvt. Ltd., the stockbrokers of the company. This letter contradicts the stand taken by the company in its

defence. This happened in the following factual background. When asked to explain the transaction relating to purchase and sale of scrip in somewhat suspicious circumstances, the Company took refuge by stating that the transactions were in the exclusive knowledge of the stockbroker company. The Board, in its investigation, secured a letter from a stockbroker stating that their two directors, one Shri Pratik Shah and one Shri Sujal Shah, had handled the transactions in the alleged scrip by opening a current account by using dummy resolutions without the knowledge of Shri Dinesh Masalia, the third director of the stockbroker company. On this basis, it was concluded that the transaction was fictitious. In defence, the Company sought permission to cross-examine the said Shri Dinesh Masalia, but no permission was granted. SEBI proceeded and gave its final orders on 07.01.2008. It is in this context that the Company made its submission before the Tribunal that principles of natural justice were violated because an opportunity to cross-examine is not presented.

31. There is no dispute that the Company and the directors were informed about the letter elicited from Shri Dinesh Masalia. The show-cause notice explicitly mentions it. The Company's reply to the show-cause notice evidences objections raised by the Company with respect to the stand taken by Shri Dinesh Masalia. To this extent, opportunity was given to the Company, in the sense that SEBI was relying on a document which was disclosed to the Company. The only question is whether there is a right to cross-examine the

author of a letter while SEBI is performing its regulatory role and deciding upon the allegation of manipulation under Regulations 3 and 4 of the PFUTP Regulations.

32. Shri C.U Singh arguing for the Board has denied any right to cross-examine while SEBI exercises its jurisdiction. In support of his submissions, he has referred to the cases as indicated earlier. He has also argued that there is no prejudice caused to the Company as an opportunity was given by handing over the material relied on by the Board against which the Company gave its reply. He also referred to judgments of this Court in *Aligarh Muslim University*[21] and *A.S Motors*[22] to press the point that the Court will not insist on examination of witnesses merely as an empty formality.

33. On the other hand, Shri Gaggar submitted that the ground that principles of natural justice would clearly be violated if opportunity to cross-examine is not granted.

34. Immediately after the parties were heard, and the judgment was reserved on 17.02.2022, on the very next day, another Bench of this Court delivered its judgment in *T. Takano*[23]. The case relates to proceedings that arose under this very same Act and in fact concerning allegations of fraudulent and unfair trade

[21] *Aligarh Muslim University v. Mansoon Ali Khan* **(**2000) 7 SCC 529.
[22] *A.S Motors Private Limited v. Union of India* (2013) 10 SCC 114.
[23] *T. Takano v. Securities and Exchange Board of India* (2022) SCC OnLine SC 210

practices adopted by the appellants therein under the PFUTP regulations. This Court considered the issue as to the statutory obligation of SEBI to follow the principles of natural justice. Having reviewed the entire case law on the subject, this Court formulated the following principles:

> *"**62.** The conclusions are summarised below:*
> *(i) The appellant has a right to disclosure of the material relevant to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in Natwar Singh (supra) based on the stage of the proceedings. It is sufficient to disclose the materials relied on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;*
> *(ii) The Board under Regulation 10 considers the investigation report submitted by the Investigating Authority under Regulation 9, and if it is satisfied with the allegations, it could issue punitive measures under Regulations 11 and 12. Therefore, the investigation report is not merely an internal document. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9;*
> *(iii) The disclosure of material serves a three-fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions;*
> *(iv) A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in Karunakar (supra) that the non-disclosure of relevant information would render the order of punishment void only if the aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the outcome and the process;*
> *(v) The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The*

> *respondent should prima facie establish that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is necessary to defend his case appropriately; and*
> *(vi) Where some portions of the enquiry report involve information on third-parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market."*

35. As per the principles laid down in the above referred case, there is a right of disclosure of the relevant material. However, such a right is not absolute and is subject to other considerations as indicated under paragraph 62(v) of the judgment above referred. In this judgment, there is no specific discussion on the issue of a right to cross-examination but the broad principles laid down therein are sufficient guidance for the Tribunal to follow. There is no need for us to elaborate on this point any further.

36. Coming back to the facts of the present case, we have noticed that the Tribunal has arrived at its conclusions based on independent facts concerning (a) the allegations under Regulation 4 relating to the issuance of misleading advertisements dated 07.04.2005 and 20.04.2005 as well as (b) allegations relating to manipulation of scrip prices and profits to lure investors. As indicated earlier, the Tribunal concluded that the allegations could be proved.

As we are not interfering in the findings of fact arrived at by the Tribunal the Company's claim for cross-examining would pale into insignificance. This question presents itself merely as an academic issue.

37. We are also of the opinion that, there was no necessity for the Tribunal to lay down as an inviolable principle that there is a right of cross-examination in all cases. In fact, the conclusion of the Tribunal based on evidence on record did not require such a finding. We, therefore, set aside the findings of the Tribunal to this extent while upholding its decision on all other grounds. We would also leave the question of law relating to the right of cross-examination open and to be decided in an appropriate case by this Court.

38. For the reasons stated above, while we dismiss Civil Appeal No. 2104 of 2009 against the judgment of the Securities Appellate Tribunal in Appeal No. 60 of 2008 dated 15.10.2008, the general observations of the Tribunal that there is a right of cross-examination is hereby set aside.

39. Parties to bear their own costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

NEW DELHI.
MARCH 25, 2022