REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No 527 of 2023

SECURITIES AND EXCHANGE BOARD OF INDIA **... Appellant**

VERSUS

V SHANKAR **... Respondent**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

1 Admit.

2 The appeal by the Securities and Exchange Board of India[1] under Section 15Z of the Securities and Exchange Board of India Act 1992[2] arises from a judgment dated 1 November 2022 of the Securities Appellate Tribunal[3].

3 The Tribunal, while allowing the appeal by the respondent, set aside an order dated 22 March 2022 of the Whole Time Member[4] under Section 15HA of the SEBI Act by which a penalty of Rs Ten lakhs was imposed on the respondent for violating of Sections 68 and 77A of the Companies Act 1956 and Regulations 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations 2003[5] read with Sections 12A (a), (b) and (c) of the SEBI Act.

1 "SEBI"
2 "SEBI Act"
3 "Tribunal"
4 "WTM"
5 "PFUTP Regulations"

4 The respondent was a Company Secretary of Deccan Chronicle Holdings Limited[6] for two years, 2009-10 and 2010-11.

5 On 3 August 2017, a notice to show cause was issued by the WTM of SEBI to DCHL, its Chairperson, Vice-chairperson and the respondent to show cause as to why an enquiry should not be held against them, followed by the imposition of a penalty. The respondent participated in the enquiry. The WTM proceeded to hold the respondent liable on the ground that he was a Company Secretary during the Financial Year 2010-11 when a buyback offer worth Rupees 270 crores was made by the company in violation of regulatory provisions.

6 The WTM found that the respondent had ascribed his signatures on the public announcement for buyback in his capacity as a Company Secretary. The finding against the respondent was that as a 'statutory official' of the company, he should have exercised due diligence and checked the veracity of the buyback offer documents and legal compliance before authenticating them and signing the public announcement which was found to have violated the provisions of the Companies Act 1956. The WTM held the respondent liable for the conduct of the company in connection with the buyback of its equity shares without adequate free reserves which was found to have misled the investors/shareholders. The respondent was held liable for violating the provisions of Sections 68 and 77A of the Companies Act 1956 and of the provisions of the PFUTP Regulations together with cognate provisions of the SEBI Act.

7 In appeal, the order of the WTM has been set aside by the Tribunal on 1 November 2022. The findings which have been arrived at by the Tribunal are

6 "DCHL"

encapsulated in paragraphs 14 and 15 of the impugned order. The Tribunal has, during the course of its decision held that once the offer and the balance sheet were approved by the Board of Directors, the duty of the Company Secretary was "only to authenticate the contents indicated in the balance sheet and in the offer document". In other words, according to the Tribunal, the respondent was not required to enquire into the veracity of the buyback offer documents. In coming to the conclusion that the obligation to comply was essentially placed on the Board of Directors and not on the respondent as Company Secretary, the Tribunal has relied on the provisions of Regulation 19(3) of the SEBI (Buyback of Securities) Regulations 1998 which is in the following terms :

> "19(3) The company shall nominate a compliance officer and investors service centre for compliance with the buy-back regulations and to redress the grievances of the investors."

8 The manner in which the Tribunal has construed the above regulation is indicated in paragraph 18 of the impugned order which reads as follows :

> "18. The aforesaid provision indicates that the company will nominate a Compliance Officer to redress the grievances of the investors. The appellant being a Company Secretary was also a Compliance Officer and thus the role of the Compliance Officer was only limited to redress the grievance to the investors."

9 Mr Arvind Datar, senior counsel appearing on behalf of the appellant urges that :

(i) *Ex facie*, the interpretation which has been placed on Regulation 19(3) is erroneous;

(ii) Section 77A of the Companies Act 1956 which deals with the power of the company to purchase its own securities lays down various requirements;

(iii) In terms of Section 215 of the Companies Act 1956, the balance sheet and

profit and loss account have to be approved by the Board of Directors before they are signed on behalf of the Board and before they are submitted to the auditors for their report;

(iv) The duty of authentication cannot be confined to merely a signature on the relevant statutory documents;

(v) There was a patent failure on the part of the respondent since as a Company Secretary, it was his duty to duly certify statutory compliances;

(vi) The Tribunal was not justified in absolving him on the ground that it was for the Board of Directors to ensure compliance; and

(vii) The observation in paragraph 18 of the impugned order to the effect that the role of the Company Secretary is only confined to redressing the grievance of investors is plainly contrary to Regulation 19(3).

10 On the other hand, Mr. Somasekhar Sundaresan, counsel appearing on behalf of the respondent submitted that :

(i) The primary finding that has been arrived at is in regard to the failure of the Board of Directors to ensure statutory compliance;

(ii) The respondent was acting as a Company Secretary and cannot be held liable for the default on the part of the Board of Directors;

(iii) Moreover, the finding is that the accounts of the companies were found to be erroneous and the default lies with the Board of Directors and not with the Company Secretary.

11 Regulation 19(3) of the SEBI (Buyback of Securities) Regulations 1998 requires the

company to nominate a compliance officer and an investors' service centre. The purpose of the nomination is twofold, namely (i) to ensure compliance with the buyback Regulations; and (ii) to redress the grievances of investors. There is a patent error on the part of the Tribunal in interpreting the Regulations. The Tribunal held that the role of the respondent, who was a Company Secretary, compliance officer, was limited to redressing the grievances of investors. In arriving at the finding, the Tribunal has relied upon the latter part of Regulation 19(3) which deals with redressal of the grievances of investors. The crucial point which has been missed by the Tribunal is that the compliance officer is also required to ensure compliance with the buyback regulations. Regulation 19(3) of the Regulations expressly so stipulates. Since the interpretation which has been placed by the Tribunal on the interpretation of 19(3) is contrary to the plain terms of Regulation 19(3), we set aside the impugned decision and remit the proceedings back to the Tribunal for consideration of the facts afresh in the light of the interpretation which has been placed above on the provisions of Regulation 19(3).

12 Mr Arvind Datar, senior counsel, has placed reliance on the prior decisions of the Tribunal in ***Mr Bhuwaneshwar Mishra Vs SEBI*** (decided on 31 July 2014 in Appeal No 7 of 2014) and ***Brooks Laboratories Limited & Ors Vs SEBI*** (decided on 21 March 2018 in Appeal No 266 of 2016). Mr Somasekhar Sundaresan, counsel appearing on behalf of the respondent has urged that these decisions are distinguishable. Since we are remitting the proceedings back for a fresh consideration, we keep the rights and contentions of the parties including on the prior decisions which have been relied upon in the present appeal open to be urged before the Tribunal on remand.

13 For the above reasons, the appeal is allowed and the impugned order of the Tribunal dated 1 November 2022 is set aside. Appeal No 283 of 2022 shall stand restored to the file of the Tribunal for a decision afresh.

14 The Tribunal shall endeavour to decide the case within a period of six months from the date on which a certified copy of this order is placed on its record.

15 Pending applications, if any, stand disposed of.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

.....J.
[J B Pardiwala]

New Delhi;
February 8, 2023.
-GKA-

ITEM NO.8 COURT NO.1 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 527/2023

SECURITIES AND EXCHANGE BOARD OF INDIA Appellant(s)

VERSUS

V. SHANKAR Respondent(s)

(IA No.18892/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.18888/2023-STAY APPLICATION)

Date : 08-02-2023 This appeal was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s) **Mr. Arvind P. Datar, Sr. Adv.**
Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Mr. Akhil Abraham Roy, Adv.
Mr. Abhishek Anand, Adv.
Ms. Unnimaya S., Adv.
M/S. K J John And Co, AOR

For Respondent(s) **Mr. Somasekhar Sundaresan, Adv.**
Mr. Lakshmeesh S. Kamath, AOR
Ms. Samriti Ahuja, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1 Admit.

2 The appeal is allowed in terms of the signed reportable judgment and the impugned order of the Tribunal dated 1 November 2022 is set aside. Appeal No 283 of 2022 shall stand restored to the file of the Tribunal for a decision afresh.

3 The Tribunal shall endeavour to decide the case within a period of six months from the date on which a certified copy of this order is placed on its record.

15 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR

(Signed reportable judgment is placed on the file)