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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4015 OF 2020

RELIANCE INDUSTRIES LIMITED & ORS. ...APPELLANT(S)

Versus

THE SECURITIES AND EXCHANGE BOARD OF INDIA ...RESPONDENT

WITH

CIVIL APPEAL DIARY NO. 4723 OF 2024

J U D G M E N T

J.B. PARDIWALA, J.

For the convenience of exposition, this judgment is divided into the following parts:

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1. Since the issues raised in both the captioned appeals are the same, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

2. The two statutory appeals arise from the judgment and order dated 05.11.2020 and 04.12.2023 respectively passed by the Securities Appellate Tribunal, Mumbai ("**SAT**"). For the purposes of this exposition, we shall consider the facts in the Civil Appeal No. 4015 of 2020, which arises from the order of the SAT dated 05.11.2020, wherein by a 2:1 majority, the Tribunal dismissed the appeal filed by the appellant no. 1 herein against the order of the Whole Time Member ("**WTM**") of the Securities and Exchange Board of India ("**SEBI**"), essentially on the ground that the appellant no. 1 made an illegal and undue gain of Rs. 447.27 crore while trading in the shares of Reliance Petroleum Ltd. ("**RPL**") by manipulating the prices thereof to profit in the futures segment, in violation of the Securities Contracts (Regulation) Act, 1956 (the "**SCRA**") and the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market), 2003 (the "**PFUTP Regulations**") respectively.

A. FACTUAL MATRIX

3. It is an undisputed fact that the RPL was a 75% subsidiary of the appellant no. 1 herein in 2007. The initial public offering of the shares of RPL in May 2006 was at Rs. 60 per share.

4. The appellant no. 1 in a board meeting held on 29.03.2007 passed a resolution authorizing two of its officials to take steps to raise Rs. 87,000 crore for its projects through various means, including divestment/sale of investments. This meant that the RPL shares in which the appellant no. 1 held a 75% stake could also be divested in furtherance of the said board resolution.

5. Accordingly, it was decided that 5% of the appellant no. 1's holdings in the RPL would be divested, i.e., a quantum of 22.50 crore shares was sought to be sold in the market. This decision was taken in context of the history of the price of the RPL shares which has been described thus:

Month and Year	**Price of RPL shares (per share)**
May 2006 (Initial Public Offer Price)	Rs. 60
March 2007	Rs. 66-74
September 2007	Rs. 150
October 2007 29.10.2007 30.10.2007 31.10.2007	 Rs. 223 Rs. 238 Rs. 247.90

Therefore, within a span of seventeen months since its issue, the price of the RPL shares had quadrupled.

6. This exceedingly bullish trend was studied by several analysts including Goldman Sachs, Morgan Stanley and Kotak Institutional Equities, who reported that the RPL stock was amongst the costliest refining stocks in the world. The price of the shares was overpriced and difficult to justify. Such reports caused an impression that there may be a price correction in the stock of RPL and it would consequently decrease in value.

7. It is in these circumstances as referred to above that the decision to divest 5% of the appellant's holding in RPL was taken i.e, 22.50 crore shares held by the appellant no. 1. However, notably, the board resolution dated 29.03.2007 was not passed specifically in respect of the intended sale of the RPL shares in the cash segment or for hedging in the derivatives market. The board resolution accorded broad powers to two officials of the appellant no. 1 to take steps as necessary to raise Rs. 87,000 crore.

8. It was noted by the appellant no. 1 that the liquidity in the November 2007 futures segment of the RPL stock during 24.10.2007 and 31.10.2007 respectively was very high. The traded quantity in the said segment was 109.90 crore shares as against only 29.46 crore shares in the cash segment,

i.e., nearly four times higher. Therefore, it was decided that RIL would take up sale positions in the futures segment ("**short futures positions**") while placing sell orders of the RPL shares in the cash segment.

9. In doing so, the appellant no. 1 entered into agreements with twelve (12) independent entities so as to take up sale positions of 9.92 crore RPL shares in the November 2007 futures segment for the said stock between 01.11.2007 and 06.11.2007, on a one-month basis. The settlement period for the November 2007 futures was till 29.11.2007. As per the terms of these agreements, all the profits were to be transferred to the appellant no. 1 while these entities only earned commission. The agreements *inter alia* provided the following:

a) Clause 1.2 provided that the sale of investments was supposed to be undertaken by the agents only in accordance with the instructions of the principal, that is the appellant no. 1 herein.

b) Clause 3.2 provided that all profits and losses arising out of the transactions of the agent in terms of the agreement shall be to the account of the appellant no. 1.

10. Out of the 9.92 crore short futures positions, the appellant no. 1 squared off 1.95 crore positions before the settlement date (29.11.2007) by taking 'buy' positions ("**long future positions**") for an equal number of shares.

Therefore, there remained only 7.97 crore outstanding short futures positions as on the settlement date and the same were automatically closed by the National Stock Exchange ("**NSE**") at the 'settlement price'. The settlement price is the last half an hour weighted average price of the RPL share in the cash segment on the settlement date, i.e, 29.11.2007.

11. Meanwhile, a total of 20.29 crore shares of RPL were sold in the cash segment at the prevailing market price in a phased manner over the course of the month of November 2007. These sales were followed by physical delivery of the RPL shares to the purchasers. Out of the total shares sold in the cash segment, 1.95 crore shares were sold in the last 8 minutes 20 seconds on 29.11.2007 on the NSE.

12. Therefore, the appellant no. 1 realized an aggregate of Rs. 5,013 crore from the sale of the RPL shares in the cash segment as well as the settlement of the short positions in the futures segment. The appellant no. 1 realized Rs. 4,500 crore from sales in the cash segment and Rs. 513 crore from the trades made by the twelve independent entities in the November 2007 futures segment. Rs. 513 crore was the gain between the price at which the 9.92 crore short futures positions were taken and the price at which these positions were squared off (1.95 crore shares) and closed out by the NSE (7.97 crore shares) respectively.

13. A show cause notice came to be issued to the appellant no. 1 by the respondent on 29.04.2009, which was modified by the corrigendum dated 08.10.2009. Both these notices were later superseded by the fresh show cause notice issued by the respondent on 16.12.2010 ("**SCN**"). The allegations under the said SCN are recorded and summarized by the minority judgment of the SAT and reads thus:

> *"14. The allegations in the Show Cause Notice are summarized as under:-*
>
> *(a) RIL took massive short positions through the 12 named entities in November 2007 RPL Futures, in breach of the position limits prescribed in circulars issued by SEBI, NSE and National Securities Clearing Corporation Limited (NSCCL) with the knowledge of the impending sales in the cash market. This was a well-planned, fraudulent, manipulative trading scheme and unfair trade practice violating PFUTP Regulations .*
>
> *(b) RIL' s trades in the F&O segments are illegal and invalid under Section 18A of the Securities Contracts (Regulations) Act, 1956 (SCRA), which provides conditions for contracts in derivative to be legal and valid.*
>
> *(c) RIL depressed the settlement price of futures by dumping large number of shares in the last 10 minutes of trading in the cash segment on November 29, 2007 and thereby earned an unjust profit of Rs 513.12 Cr.*
>
> *(d) The futures transactions carried out by the 12 Named Entities are benami transactions and thus illegal and void."*

14. Subsequently, after perusing the materials submitted by the appellant no. 1 in compliance of the SCN, the Whole Time Member ("**WTM**") held that action under the PFUTP regulations was made out against the appellant no. 1 due to the following reasons:

a) The appellant no. 1 by employing twelve agents to take separate position limits of open interest on its behalf by executing separate agreements with the said entities, cornered 93.63% of the open interest in November Futures of the RPL stock. It was held that by entering into principal-agent relationship with the 12 entities to violate position limits, the appellant no. 1 had acted in a fraudulent manner.

b) The appellant no. 1 manipulated the Futures & Options segment through 12 of its agents by allowing them to hold the futures contracts till the settlement date. It was held that the appellant no. 1, by letting the futures positions settle on 29.11.2007 at the weighted average price, engaged in a pre-planned fraudulent practice and the same cannot be held to be mere breach of position limits by the appellants herein.

c) An analysis of the trading strategy adopted by the appellant no. 1 in the cash segment during the month of November 2007 and specifically on 29.11.2007 which was the settlement date for the contracts in question, showed that there had been manipulation of the settlement price that was

decided on the basis of the weighted average price of the trades done in the last half an hour on the said day.

d) It was held that the actions of the appellants herein constituted a violation of the provisions under Section 12A of the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") read with Regulations 3, 4(1) and 4(2)(e) of the PFUTP Regulations. It was held that the appellants had also violated the provisions of the SEBI circular No. SMDRP/DC/CIR-10/01 dated 02.11.2001 ("**2001 SEBI Circular**") and the NSE circular No. NSE/CMPT/2982 dated 07.11.2001 ("**2001 NSE Circular dated**").

e) On the basis of the aforesaid reasoning, it was held that the appellant had made unlawful gains of Rs. 513 crore in the futures segment, by fraudulent and manipulative means. Therefore, the trade of 7.97 short futures of the RPL stock was held to be invalid under Section 18A of the Securities Contracts (Regulations) Act, 1956 ("**SCRA**").

15. Aggrieved with the order of the WTM, the appellant filed an appeal before the SAT challenging the observations therein. The decision of the SAT came to be delivered on 05.11.2020 with a majority of 2:1. The majority opinion therein is impugned before us, hence, the present two statutory appeals.

B. DECISION OF THE SAT

16. The perusal of the order delivered by the SAT indicates that the members addressed themselves on the following broad questions:

- Whether the twelve entities were independent traders or agents/front entities of the appellant no. 1 in which case the client-wise position limits under the SEBI Circular dated 02.11.2001 would be attracted?
- Whether the agency agreements between the appellant no. 1 and the twelve entities constituted a fraudulent and manipulative device to circumvent the regulatory framework governing the derivatives segment?
- Whether the transactions of the appellants in the futures segment constituted valid hedge transactions?
- Whether the appellant no. 1 had attempted to amass illegal profits in the futures segment by depressing the price of the underlying RPL stock through the dump of 1.95 shares in the cash segment in the last 10 minutes of the futures settlement date – 29.11.2007?
- Whether there was any element of fraud and manipulation in the transactions in question such that penalties under Regulation 3 (b) of the PFUTP Regulations would attracted?

- Whether the SAT, in exercise of its appellate jurisdiction, had the power to modify, substitute, supplement, or provide additional reasons in place of those recorded by the WTM?

17. As regards the issue whether the twelve entities were independent entities or agents of the appellant no. 1, the following was observed:

Majority opinion:	**Minority opinion**
a) The majority observed that the appellant no. 1's argument that the SEBI Circular dated 02.11.2001 did not prohibit positions taken in 'aggregation' or by 'acting in concert' unlike the 1999 Circular of the SEBI for Index futures, was a simplistic and patently erroneous submission. It was held that position limits could not be circumvented by splitting trades amongst multiple entities acting for a single beneficiary as that would have the effect of grossly undermining the regulatory tool of position limits and defeating	a) The minority, after having perused the agreements entered into between the appellant no. 1 and the other appellants, observed that the twelve entities were acting on behalf of the appellant no. 1 as all transactions needed the prior approval of the principal and the twelve companies had no independent discretion. Further, the profits and losses accruing on account of the transactions in the futures segment were supposed to be transferred to the appellant no. 1 and the twelve entities would get a fixed commission.

the objective of the SEBI circulars in this regard.

b) It was further held that reliance placed upon the 1999 SEBI Circular was misplaced after the 2001 SEBI Circular came into operation with a well-defined client-level position limit for single-stock futures. Since the disputed transactions were executed in 2007, they were governed by the SEBI Circular 2001 and NSE Circular 2001, therefore the appellants could not invoke provisions relating to the 1999 SEBI Circular.

c) Therefore, it was held that the trades done by the twelve entities were on behalf of the appellant no. 1 and accordingly, the appellant no. 1 was liable for any illegality committed in the said transactions.

b) It was held that Section 226 of the Indian Contract Act, 1872, squarely applied to the set of facts in question meaning thereby that the acts of the twelve entities had such legal effect as if done by the principal (appellant no. 1) itself.

c) It was observed that the 12 entities individually, had taken valid positions within the restricted position limits as provided in the 2001 SEBI Circular. Further, the said Circular placed no onus on the clients/customers to disclose whether they were acting in concert with other clients/customers. However, the principal-agent relationship between the appellant no. 1 and the twelve entities allowed the appellant no. 1 to exploit a loophole in the 2001 SEBI Circular. It was held that since the appellant no. 1 could not have crossed the position limits

	in its individual capacity, it could not cross the same through its agents as well. In holding so, the minority opinion emphasized the principle that "what could not be done directly, could not be done indirectly". Therefore, the aggregation of the position limits taken by all twelve entities on behalf of the appellant no. 1 violated the 2001 SEBI Circular.

18. As regards the issue whether the agency agreements between the appellant no. 1 and the twelve entities, to take aggregate positions in excess of the position limits was a fraudulent and manipulative device, the following was observed:

Majority opinion:	**Minority opinion**
a) The majority opinion held that the agency agreements between the appellant no. 1 and the twelve entities were a pre-planned strategy to evade the position limits stipulated for a client/customer in the 2001 SEBI Circular. It was found that the	a) Though the minority opinion held that employing twelve agents to circumvent individual position limits was a violation of the 2001 SEBI Circular, yet the same could not be said to be a

twelve entities acted solely as agents of the appellant no. 1.

b) It was held that with the help of the twelve entities, the appellant no. 1 managed to capture a significant share in the futures segment with a view to evade the detection by the stock exchange surveillance system.

c) It was held that the appellant no. 1 by employing twelve agents, had attempted to corner the market by gaining a large share of the open interests in the November 2007 futures. Such a cornering of the market is a fraud on the system and the market as a whole thereby impacting all the participants in the RPL counters and would spill on to the rest of the markets.

d) In such view of the matter, it was held that the agency agreements amounted to a fictitious and fraudulent scheme to manipulate the market as per the provisions fraudulent or manipulative device.

b) It was opined that the breach of the position limits could, at best, attract penalties under Section 9(3) of the SCRA.

c) It was observed that there was no onus on the appellant no. 1 to disclose the agreements with the twelve agents in the 2001 SEBI Circular. Once the disclosure was required by way of the SCN, the appellant no. 1 promptly did so and the discovery of the agency agreements was not a result of SEBI's independent investigation.

d) Though the object of position limits was to prevent concentration of positions that would enable the holder thereof to manipulate the market yet, it could not be said that concentration by itself would automatically amount to fraud. It was held that a separate act of

under Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.	manipulation was required to be cogently proved. e) Therefore, even if the open positions of all twelve entities aggregated breached the position limits as provided in the 2001 SEBI circular, the same would not by itself could not attract the PFUTP Regulations.

19. As regards the issue whether the transactions in the futures segment constituted genuine hedge transactions, the following was observed:

Majority opinion:	**Minority opinion**
a) While addressing the submission of the appellant no. 1 that the open positions held in the futures segment were to hedge the risk exposure of the appellant no. 1 in the cash segment, the majority opinion observed that manipulation cannot be disguised under the cover of hedging. Though hedging was a valid instrument for mitigating risk, yet it was susceptible to abuse	a) The minority opinion rejected the respondent's reliance on the Gujarat High Court's decision in ***Pankaj Oil Mills v. CIT***, reported in **1976 SCC OnLine Guj 33**. It was held therein that in a genuine and valid hedging contracts of sales, the total of such transactions should not exceed the total stocks of the underlying commodity exposed to risk. In the present case, the

and was therefore, supposed to be done within regulatory parameters.

b) It was observed that the appellant no. 1 had cornered 61% to 93% of the market-wide open interest in the November 2007 RPL futures which was too high to reasonable justify a genuine hedging strategy for the proposed sale of the 22.5 crore RPL shares in cash segment.

c) It was held that once the appellant no. 1 had already sold almost 18 crore shares in the cash segment by 23.11.2007, there was no requirement to leave all the remaining future positions open. Therefore, the appellant intentionally kept its futures positions much larger than the number of shares left to be sold in the cash segment thereby, deliberately creating a "naked hedge".

minority opined that reliance upon the aforesaid decision was misplaced because the hedge positions of 9.92 crore shares was taken to mitigate the risk exposure of 22.5 crore shares in the cash segment, which meets the requirement set out in ***Pankaj Oil Mills*** *(supra)*.

b) It was observed that the appellant no. 1 was going to be placing sell orders for 22.5 crore RPL shares in the cash segment which may cause a substantial price decline even in a phased manner. Hence, mitigating this risk by entering into 9.92 futures positions qualifies as a valid hedge transaction.

c) Further, if physical delivery of shares was allowed at the time when the appellant no. 1 took positions in the futures segment i.e, November 2007, there would be no question of an invalid hedge. The argument that there

d) The appellant no. 1, by retaining the 'naked hedge' of 7.97 crore positions in RPL futures till their expiry on 29.11.2007, sought to benefit from the difference between the locked-in price and the final settlement price. This clearly showed the intention of the appellant no. 1 to manipulate the market.

e) Therefore, it was held that the transactions done in the futures segment did not amount to a valid hedge but rather constituted fraudulent and manipulative practices under Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

f) The majority opinion accordingly directed for the disgorgement of the profits earned by the appellant no. 1 in the futures segment.

was an imperfect hedge which caused suspicions of fraud arose because of the cash settlement system prevailing at the time by way of which the appellant no. 1 could have booked profits without parting with the underlying stocks.

d) The appellants' positions in the futures segment were imperfect hedges but that would not mean that such transactions would be invalidated on the said count. This is because a perfect hedge is possible in the system where physical delivery of shares is allowed. Therefore, there was no requirement to match the closing of open interest with the sale of shares in the cash segment.

e) It was further held that the lack of hedging policy, specific board resolutions in respect of hedging or accounting standards, would not have the effect of nullifying the transactions because no such

	legal requirement existed in 2007. Such policies came into existence only in 2016.

20. As regards the issue whether the appellant no. 1 had attempted to depress the price of the RPL share by dumping 1.95 crore shares in the cash segment in the last 10 minutes of futures settlement date, the following was observed:

Majority opinion:	**Minority opinion**
a) The majority rejected the submission canvassed by the appellants that they entered the market in the last 10 minutes only to mobilize more funds and sought to sell the RPL shares at a reasonably high price in the cash segment. b) It was observed that the appellant no. 1 had not sold any shares in the cash segment after 23.11.2007 till the last 10 minutes on 29.11.2007 which was the settlement date of the 7.97 crore open positions in the futures segment. It was noted that	a) The minority opinion observed that the respondent's assertion that huge amount of shares were dumped in the last 10 minutes of the settlement date with the motive of amassing illegal profits in the futures segment, was not supported by cogent evidence and was based on surmises and conjectures. b) It was held that intentions, motives and suspicions could not be the basis to attribute fraudulent character to a transaction. It was necessary to establish the manipulation of the

such offloading was done so as to depress the price of the underlying RPL stock so as to ensure greater profits in the futures market where the appellant no. 1 had significant holdings.

c) The majority reasoned that the appellant no. 1 sought to depress the price of the RPL shares in the last 10 minutes as twelve out of seventeen sell orders were placed below the Last Traded Price ("**LTP**") and that no rational investor would be willing to sell crore of shares much below the LTP in the absence of an intention to decrease the share price of the stock in question.

share price and the burden to prove so lies on the respondent, which failed to discharge the same.

c) It was further held that there was no law, regulation or circular that barred a trader from dealing in securities in the last 10 minutes of a trading day, including the settlement date of such trader's futures holdings.

21. As regards the issue whether there was any element of fraud and manipulation in the transactions in question which would attract Section 12A of the SEBI Act and the PFUTP Regulations, the following was observed:

Majority opinion:	**Minority opinion**
a) The majority opined that Section 18A of the SCRA was introduced to confer validity on such derivatives transactions that would otherwise be considered to be wagering contracts. However, such validity was provided only when the rules of exchange trading and clearing house settlement were followed. It was inferred from this that any trades that did not follow the stipulations of the stock exchanges or the provisions of the SCRA, SEBI Act and the rules and regulations thereunder, would be vitiated by illegality and fraud. b) It was observed that treating the conduct of the appellant no. 1 as merely a violation of the 2001 NSE Circular or 2001 SEBI Circular would result in adverse impact on the derivatives market	a) On the other hand, the minority judgment opined that the respondent authority had failed to establish an element of fraud and a higher degree of proof is required than the one relied upon by the WTM. b) Reference to this Court's decision in ***SEBI v. Kanhaiya Lal Baldevbhai Patel,*** reported in **(2017) 15 SCC 1** was made to hold that fraud under the PFUTP Regulations can be established only when the impugned conduct induces others to deal in the securities market. It was noted that neither manipulation nor inducement was cogently established in the WTM's order, hence, the allegation of fraud could not be sustained merely on the basis of motive. c) It was observed that in the absence of the essential element of inducement in terms of

and the securities market in general.

c) It was observed that the intentional principal-agent agreements entered into by the appellant no. 1 was a pre-planned scheme to control a substantial portion of the market to distort trading conditions which induced other participants to deal with a vitiated market.

d) Accordingly, it was held that the conduct of the appellant no. 1 attracted penalties under Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations. Therefore, the order of disgorgement of the profits gained in the futures segment was sustained and upheld.

Regulation 4(2)(d) of the PFUTP Regulations, the allegations of fraud would fail to stand even if there were large sell orders at prices below the LTP in the last 10 minutes of the settlement date.

d) With inducement being the *sine qua non* of any allegation of fraud under the PFUTP Regulations, any absence of the same means that the transactions in question were valid hedges.

e) It was further reiterated that even though there was a breach of position limits by the appellant no. 1 through the use of indirect means, such breach by itself could not constitute fraudulent misrepresentation under Regulation 3(b) of the PFUTP Regulations.

f) Therefore, the order of disgorgement of the profits

gained in the futures segment was liable to be set aside.

C. SUBMISSIONS BY THE PARTIES

a. Submissions on behalf of the appellant no. 1

22. Mr. Harish Salve, the learned senior counsel appearing on behalf of the appellants, submitted that the trades by the 12 entities in the November 2007 RPL Futures were *bona fide* hedges and not some pre-planned fraudulent scheme to make unlawful and illegal gains.

23. He submitted that although the appellant no. 1 was aware of its proposal to sell 22.50 crore shares in the cash segment, such knowledge could at best create an expectation that the price of RPL shares might decline; it did not establish with certainty that the prices would fall when large quantities of shares are sold. This, he submitted, was demonstrated by the fact that although analysts consistently reported for over two months that the RPL shares were overpriced, their price continued to rise against expectations.

24. He further submitted that a charge of fraud could be leveled only if the respondent could prove that the appellant no. 1 had a deliberate and pre-arranged strategy to depress the price of RPL shares by activities such as engaging in circular trades in connivance with one or more parties with the

intention of creating a false market by undertaking artificial trades, and inducing investors to buy or sell RPL shares in order to make unlawful gains. According to the learned senior counsel, none of the ingredients set out in the definition of 'fraud' as per Regulation 2(1)(c) of the PFUTP Regulations were present in the appellant no. 1's trades in the cash segment or in the trades of the 12 entities in the November 2007 RPL Futures, for those to be called 'fraud' ab-initio.

25. He further contended that there was not even a whisper of an allegation that the appellant no. 1 was responsible for the fall in the price of RPL shares in either the cash segment or the November 2007 RPL Futures between 06.11.2007 and 29.11.2007, except the allegation relating to the last 8 minutes and 20 seconds of trading on 29.11.2007 involving the sale of 1.95 crore shares, which was stated to have been demonstrated by the appellant no. 1 to be baseless.

26. Accordingly, on the strength of the abovementioned arguments, the learned senior counsel submitted that the allegations of fraud and manipulation cannot stand and that SEBI's case is devoid of any factual or legal basis and fails at the threshold.

27. As regards the issue of hedging, Mr. Salve further submitted that the trades by the 12 entities in the November 2007 RPL Futures were bona fide hedges and that such hedge positions are valid in law.

28. Mr. Salve submitted that the appellant no. 1 had proposed to sell and deliver 22.50 crore RPL shares in the cash segment. While the appellant no. 1 expected that such sale might lead to a fall in the price of RPL shares, it was aware that this was only a possibility and not a certainty. In this background, the appellant no. 1 decided to hedge the underlying exposure arising from the proposed sale of 22.50 crore RPL shares and the attendant risk of adverse price movement. This decision was taken considering reports of analysts which indicated that the RPL share was overvalued. According to the learned senior counsel, a hedge is intended to mitigate the risk of price movement, whether upward or downward, and is not undertaken with a view to gain profit.

29. To demonstrate what is a hedge and why the futures market is introduced, the attention of this Court was drawn to the L. C. Gupta Committee Report, the relevant parts of which are reproduced hereinbelow:

> *"The test of whether a futures transaction is for hedging or for speculation hinges on whether there already exists a related commercial position which is exposed to risk of loss due to price movement.*

[***]

The Committee strongly favours the introduction of financial derivatives in order to provide the facility for hedging in the most cost efficient way against market risk. This is an important economic purpose. At the same time, it recognizes that in order to make hedging possible, the market should also have speculators who are prepared to be counter parties to the hedgers. A derivative market only or mostly consisting of speculators is unlikely to be a sound economic institution. A soundly based derivatives market requires the presence of both hedgers and speculators.

[***]

Hedging will not be possible if there are no speculators."

30. In this abovementioned context, the learned senior counsel submitted that the futures market was introduced to create a mechanism for hedging, and that speculation is an inherent and necessary part of the derivatives market.

31. He further argued that the fact that the 12 entities took sale positions in respect of only 9.92 crore RPL shares as against the proposed sale of 22.50 crore shares, i.e., approximately 50 per cent of the underlying exposure, demonstrates that the positions were bona fide hedges and not speculative trades undertaken to profiteer. These positions were taken through 12 entities since the position limits as per the 2001 SEBI Circular did not apply cumulatively to 'persons acting in concert' ("**PAC**").

32. Mr. Salve argued that the 12 entities took sale positions in respect of 9.92 crore RPL shares at an average price of Rs. 265.67 per share, representing approximately 50 per cent of the proposed sale of 22.50 crore shares. Since the appellant no. 1 was uncertain about the future movement in the price of RPL shares and apprehended the risk of a decline, these positions were taken as bona fide hedges. If the price rose, losses in the futures segment would be offset by higher realisation in the cash segment; if the price fell, gains in the futures segment would compensate for lower realisation in the cash segment. It was therefore submitted that the cash and futures transactions were integrated trades, and that SEBI erred in examining the futures trades in isolation.

33. It is submitted that the following facts were raised before the SAT but were entirely ignored by the majority.

I. the appellant no. 1 never sold RPL shares below ₹208 in the cash segment.

II. After 26.11.2007, the RPL share price consistently remained below ₹208, except for occasional spurts.

III. the appellant no. 1's last sale was on 23.11.2007 at ₹209.62 per share (since 24.11.2007 & 25.11.2007 was a weekend).

IV. Between 26.11.2007 and 28.11.2007, the price remained below ₹208.

V. On 29.11.2007, the price stayed below ₹200 throughout the day, before suddenly rising at 3:00 p.m., reaching ₹224.70 at 3:21:40.

34. It was submitted that there was no allegation of any price manipulation by the appellant no. 1 in the cash market between 06.11.2007 and 29.11.2007, except in relation to the sale of 1.95 crore shares during the last 8 minutes and 20 seconds of trading on 29.11.2007.

35. It was further submitted that, at the relevant time, physical delivery was not permitted in the F&O segment and all trades had to be compulsorily cash-settled. According to the learned senior counsel, had physical delivery been permitted in November 2007, the 12 entities would have delivered the shares against the sale positions and realised the average price of Rs. 265.67 per share on the 9.92 core sale positions, leaving no question of any undue or illegal gains.

36. The bona fides of the hedge, it was submitted, are further evident from the fact that the sale positions (except for the subject 1.95 crores) were taken at the beginning of the settlement period on 01.11.2007 and 06.11.2007, were substantially held throughout the period despite opportunities for larger profits. Ultimately, the positions were closed at the end of the settlement period, through cash settlement, which was the only permissible mode of settlement at the relevant time.

37. Mr. Salve submitted that the Majority Judgment erroneously rejected the hedge transactions on the grounds that analysts' reports could not justify the hedge, the arrangement with the 12 entities amounted to circumvention of the position limits under the SEBI circulars, the appellant no. 1 had no hedging policy or compliance with accounting and regulatory requirements, and the futures positions were not closed simultaneously with the sale of shares in the cash segment. Mr. Salve submitted that the aforesaid findings are unsustainable since:

a) There is no legal basis to hold that promoters cannot act upon analysts' reports;

b) There is no legal protocol to be followed for a transaction to be a 'hedge' under law. Hedging is a commercial tool for de-risking and not a legal instrument for trading. There is no law prescribed for hedging. A breach of position limit can happen while hedging or while speculating. For breach of position limits, penalties have been prescribed under the SCRA and the circulars. In this conspectus, to hold that if position limits are exceeded (while the appellant no. 1 does not admit that position limits have been exceeded), a hedge ceases to be a valid hedge and is illegal and fraudulent cannot stand.

c) The finding that there needs to be a pre-existing policy (backed by a board resolution) to hedge, erroneously conflates a legal structure with a commercial motive underlying a set of transactions. To hedge, there is no requirement of any policy, unless it is mandated by statute. The statutory mandate, which is in place now, has come at a much later point in time, and not in the time frame which this present matter deals with.

d) SEBI erroneously proceeded on the expectation that every hedge must be a "perfect" hedge, despite physical delivery not being permissible in the F&O segment and simultaneous closure of positions in the cash and futures segments being commercially impracticable. According to the learned senior counsel, the concept of a "perfect hedge" is unknown to law or policy. Moreover, in the present case, the excess open positions of 3.51 crore RPL shares (i.e. 7.97 crore - 4.46 crore) cannot even be called as 'speculation' since the appellant no. 1 is also entitled to hedge against its inventory of balance RPL shares. The concept of a 'perfect hedge' is a new construct of WTM/SAT- a search of any such concept in law or policy would be in vain.

38. Mr. Salve submitted that the appellant no. 1's explanation that it could have earned substantially higher profits by closing the futures positions earlier,

had its intention been speculative profiteering, was rejected by the SAT Majority without discussion. It was contended that the SAT Majority failed to examine whether the futures transactions constituted a genuine commercial hedge against the likely fall in the price of RPL shares and summarily rejected all submissions demonstrating that the appellant no. 1's conduct was consistent with a bona fide hedge and not with any intent to profiteer or manipulate prices, merely observing that "simulation exercises" cannot alter facts, though such exercises only reflected the actual market conditions against which the allegations of fraud and manipulation were required to be tested.

39. Regarding the issue of alleged cornering of position limites and consequent fraud, it was submitted that there was no "cornering" of the November 2007 RPL Futures market and, in any event, such alleged cornering could not amount to "fraud" under the PFUTP Regulations.

40. Mr. Salve submitted that the appellant no. 1 observed exceptionally high liquidity in the November 2007 RPL Futures segment between 24.10.2007 and 31.10.2007, with traded quantities being nearly four times that of the cash segment, even before the appellant no. 1 commenced sale of RPL shares. It was in this background that the 12 entities took sale positions in the November 2007 RPL Futures, which constituted only a small percentage

of the total trades in the F&O segment on the relevant trading days. According to the learned senior counsel, the allegation that such small percentage of trades by 12 entities induced other market participants to purchase RPL shares or resulted in cornering of position limits is wholly baseless.

41. It was submitted that the high demand for RPL Futures existed independently of the trades of the 12 entities and that market participants would have purchased irrespective of the identity of the sellers. Moreover, the trades of the 12 entities constituted only about 8 per cent of the total trades, their open positions increased to 61.2 per cent merely because other participants had closed their positions.

42. The learned senior counsel assailed the findings of SEBI regarding alleged 'cornering' and 'manipulation' as baseless on the following grounds:

a) SEBI incorrectly calculated the position limits only with reference to the November 2007 RPL Futures, whereas the applicable market-wide and client-level position limits extended across all futures and options categories in RPL shares.

b) It was further submitted that the 9.92 crore positions of the 12 entities constituted only 44.08 per cent of the total market-wide position limit, leaving substantial positions available to other market participants.

The very fact that positions were still available but there were no takers, demonstrates that there was no "cornering" of the market by the 12 entities.

c) The 12 entities did not take any further positions from 07.11.2007 onwards. In fact, 1.95 crore shares were purchased by the 12 entities between 07.11.2007 and 26.11.2007 and the open positions were reduced to 9.97 crore shares on the morning of 29.11.2007.

d) Subsequent increase in the percentage of open positions held by the 12 entities was solely due to other market participants squaring off their positions and not due to any positive act on the part of the 12 entities.

e) SEBI misrepresented the scenario by calculating position limits only with reference to the November 2007 RPL Futures instead of the market-wide limits across all categories.

f) Merely retaining open sale positions while other participants were closing their positions could not amount to "cornering the market" in the absence of any overt manipulative act.

g) Position limits are prescribed merely to deter concentration of positions and possible market manipulation, and that concentration by itself does not amount to manipulation unless accompanied by manipulative conduct affecting market prices. Even breach of

prescribed limits attracts only the penalties contemplated under the SEBI and NSE circulars and cannot, by itself, constitute fraud or manipulation. "Cornering" *per se* is not illegal unless undertaken as part of a manipulative scheme intended to disrupt market in an impermissible manner.

h) Even assuming there was a breach of the prescribed caps, the same would at best constitute a regulatory infraction and not fraud or manipulation, particularly in the absence of any evidence that the alleged concentration resulted in manipulation of prices or market demand.

i) Furthermore, there is no evidence whatsoever that the alleged concentration resulted in manipulation of prices or demand. Absent such evidence, the allegation that concentration of position (while denying the appellant no. 1 cornered the positions) amounts to manipulation and fraud has no basis.

43. Regarding breach of positions limits and PAC, Mr. Salve submitted that SEBI and the SAT Majority proceeded on the basis that the appellant no. 1, through 12 alleged agents, breached position limits, effectively cornered the market in November 2007 RPL Futures, and created concentration of positions. This, according to SEBI, constituted a non-disclosed principal–

agent arrangement amounting to a pre-planned fraudulent scheme, rendering the concept of "persons acting in concert" irrelevant.

44. Mr. Salve submitted that by taking this position, SEBI has lost sight of the evolution of the derivatives regime through circulars issued since 1999, which reflects distinct pattern:

a) The 1999 Circular introducing index futures neither prescribed position limits nor prevented taking positions through persons acting in concert. Rather, the 1999 Circular only required self-disclosure where persons acting in concert together owned 15% or more of the open interest.

b) The 2001 SEBI and NSE Circulars introducing single stock futures (single scrip futures) prescribed client-level and market-wide position limits but did not prohibit trading through persons acting in concert or require any such disclosure, and made no reference to the concept of PAC. Concept of PAC is a well-recognised principle in securities law, based on common intent and objective rather than the nature of inter se legal relationships, and where such concert exists, the actions are treated as that of a single coordinating mind. SEBI has long recognised this concept, including under the 1994 Takeover Regulations where it triggers

open offer obligations, and even in the 1999 Index Futures Circular which required disclosure of persons acting in concert.

c) Omission of any disclosure requirement or prohibition relating to persons acting in concert in the 2001 SEBI Circular with respect to single stock futures was an intentional regulatory decision, demonstrating SEBI's position that mere concentration does not amount to manipulation. Therefore, at the relevant time under the said Circular, there was no prohibition on the appellant no. 1 from appointing 12 entities as PACs, each qualifying as a separate client entitled to prescribed position limits. In fact, at the very first inquiry by SEBI, the appellant no. 1 had disclosed about its appointment of the 12 entities along with the contracts entered into by it.

d) Therefore, merely because the positions were taken through 12 independent entities instead of subsidiaries could not, by itself, justify aggregation of limits or lead to allegations of fraud or manipulation, particularly when the positions and ultimate gains would have remained the same even if captured through subsidiaries under the control of the appellant no. 1.

45. The learned senior counsel further argued that SEBI's contention that the concept of "persons acting in concert" becomes meritless once alleged

principal-agent relationship is established, cannot stand. According to him, SEBI's contention baseless particularly when neither the 2001 SEBI Circular required disclosure of PAC arrangements nor the NSE (F&O) Trading Regulations permitted disclosure of client identity. There was no regulatory mandate obligating the appellant no. 1 to disclose its intention to sell shares before taking positions in the F&O segment, and therefore the allegation of concealment is wholly misconceived. Hence, Mr. Salve submitted that the PAC acquiring positions in the F&O segment under a single directing mind was neither prohibited nor subject to any disclosure requirement under the SEBI framework. Consequently, such conduct could neither be treated as a violation of the SEBI Act or the PFUTP Regulations nor be characterised as "fraud" or "manipulation" under the PFUTP Regulations.

46. On the strength of the above submissions, it was contended that SEBI and the SAT Majority failed to appreciate that, at the relevant time, the regulatory framework did not provide for aggregation of positions held by persons acting in concert in single stock futures. At best, such conduct could have warranted subsequent regulatory changes, which SEBI in fact introduced only in December 2016 by mandating disclosures regarding concerted action. Therefore, the alleged conduct could not be termed as fraud or manipulation.

47. Mr. Salve further submitted that the appellant no. 1, by taking sale positions in the November 2007 RPL Futures through 12 entities, did not breach the position limit of 1.09 crore position limit per client/customer prescribed under the 2001 SEBI and NSE Circulars issued under the SCRA.

48. It was submitted that, at the relevant time, the 2001 SEBI Circular applied position limits individually to each client/customer and neither prohibited nor required disclosure of persons acting in concert. The arrangements with the 12 entities were duly disclosed to SEBI at the first instance and therefore there was nothing covert about the transactions.

49. *In arguendo*, Mr. Salve contended that even assuming aggregation of positions, at best it would amount to a breach of position limits warranting monetary penalty under 2001 circular and could not by itself constitute fraud or manipulation under the PFUTP Regulations. Mr. Salve argued that SEBI's act of imposing penalty on one of the 12 entities for breach of position limits, in turn indicates that SEBI had itself conceded that such violations attract only the penalties contemplated under the SCRA, byelaws and circulars for breach of position limits.

50. Furthermore, he submitted that breach of position limits under the 2001 SEBI Circular was punishable only under Section 23H of the SCRA and not under the PFUTP Regulations. The learned senior counsel emphasized on

the phrase "this Act" in Section 23H to contend that the provision refers specifically to the SCRA only and does not extend to the SEBI Act. However, he further contended that even Section 23H of the SCRA was inapplicable in the present case since the 2004 Circular itself prescribed a self-contained penalty of a maximum of Rs. 1 lakh per person for such breaches.

51. It was submitted that even the SAT Minority held that any breach of the position limits under the 2001 SEBI Circular could attract only the monetary penalty prescribed therein. However, the WTM instead prohibited the Appellants from dealing in equity derivatives in the F&O segment for one year, which penalty has already been undergone. Therefore, no further penalty could be imposed.

52. Mr. Salve submitted that futures and options transactions are inherently speculative in nature and, therefore, even a breach of position limits would at best amount to speculation beyond the limits prescribed under the SCRA, attracting only the penalties contemplated therein. Such breach, even if through PAC, could not by itself metamorphose into fraud or manipulation under the PFUTP Regulations.

53. It was further contended that the 2001 SEBI Circular having been issued under the SCRA, any alleged breach thereof could be dealt with only under

the SCRA and the penalties prescribed thereunder. Merely because SEBI administers both the SCRA and the SEBI Act, violations under one statute cannot automatically attract the provisions of the other. To support this contention, reliance was placed on the Minority Judgment of SAT, which held that violation of position limits cannot attract Regulation 3(b) of the PFUTP Regulations which has been framed under the SEBI Act. Therefore, since the SCRA prescribes penalty separately for violation of the position limits, Regulation 3(b) of the PFUTP is not applicable for violation of position limits.

54. Regarding the issue of sale of 1.95 crore RPL shares during the last 8 minutes 20 seconds of trading on 29.11.2007, sale of shares below the Last Traded Price, and the consequent allegation of deliberate depression of the settlement price amounting to fraud and manipulation, the learned senior counsel contended that there was no price manipulation by the appellant no. 1 on 29.11.2007. It was submitted that the theory of price manipulation was wholly baseless, and in support thereof the following grounds were urged before this Court:

a) the appellant no. 1 never sold RPL shares below Rs. 208 in the cash segment, including on the last trading day.

b) The ten tranches of sale in the NSE cash segment, aggregating to 18.04 crore shares, were all prior to 26.11.2007, the last sale having

taken place on 23.11.2007, with 24.11.2007 & 25.11.2007 falling on a weekend.

c) Between 26.11.2007 and 28.11.2007, the price of RPL shares consistently remained below Rs. 207, except for occasional spurts.

d) On 29.11.2007 the share opened at Rs. 193.80 and rose to Rs. 208.20 by 3:00 p.m., and thereafter to Rs. 224.70 by 3:21 p.m., though SEBI failed to examine the reason for such sudden surge in prices. At that stage, the appellant no. 1 still had approximately 4.46 crore shares left to sell and therefore sold 1.95 crore shares in the cash segment. The price of Rs. 224 was merely a temporary bubble which crashed immediately thereafter, and since attempts to sell at the Last Traded Price were unsuccessful, the shares were offered below the LTP to effect the sale.

e) The finding that the appellant no. 1 attempted to lower prices by offering shares at below LTP suffers from a basic lack of understanding of how online trading functions, since transactions are ultimately executed at the best available market price. It was pointed out that several trades offered below the LTP were in fact executed at higher prices, while in many instances shares offered below the LTP did not sell at all. Accordingly, the theory that

offering shares below the LTP by itself amounted to market manipulation was stated to be misconceived.

f) Even when the appellant no. 1 offered shares at its lowest price of Rs. 210, no sale initially took place until the LTP itself rose to Rs. 210, after which 4.5 lakh out of 5 lakh shares were sold. This demonstrated that market prices were influenced by trades of other participants as well, which SEBI failed to investigate, and selectively attributed price movement solely to the appellant no. 1's conduct. SEBI also failed to enquire into the 1.06 crore shares sold by other market participants at similar prices during the same time segment.

g) The SAT Minority Judgment had rightly accepted that since other market participants had sold 1.06 crore shares during the same 8 minutes and 20 seconds before closing, attributing the fall in prices solely to the appellant no. 1's sale of 1.95 crore shares was unsustainable. Whereas, the SAT Majority Judgment had erroneously ignored the fact that the appellant no. 1 started selling only at 3:21:40 p.m., after 21 minutes of the last half hour of trading had already passed, and if the intention was to depress the weighted average settlement price, the appellant no. 1 would have started

selling at 3:00 p.m. itself when the price stood at Rs. 208.20, a price at which the appellant no. 1 had earlier sold shares.

h) SEBI's theory that the appellant no. 1 sold shares at 3:21 p.m. solely to depress the weighted average settlement price was commercially impractical, as the appellant no. 1 would be risking losses in the cash segment for only a marginal and uncertain gain in the futures segment. The finding regarding manipulation was based merely on four instances of orders being placed below the LTP, though in an online trading system transactions are executed at the best available purchase price, and therefore placing orders below the LTP by itself could not constitute conclusive proof of manipulation.

i) Therefore, the impugned sales were bona fide cash transactions involving actual delivery of shares, with no allegation of circular trading or creation of a false market. Mere sale at a lower price could not amount to manipulation, particularly when the appellant no. 1 itself continued to hold nearly 70% of RPL shares and would also run the risk of suffering from any fall in price.

55. When dealing with the issue of inducement, the learned senior counsel submitted that despite inducement being an essential ingredient of fraud, it was neither pleaded nor established in the present case.

56. The attention of this Court was drawn to the definition of "fraud" under the PFUTP Regulations and its essential ingredients, namely: (a) any act, expression, omission or concealment, whether in a deceitful or not; (b) by a person, or by any other person with his connivance, or by his agent; (c) while dealing in securities; (d) with the object of inducing another person to deal in securities.

57. It was alleged that SEBI's reliance on judgment of this court in ***SEBI v. Rakhi Trading (P) Ltd***., reported in **(2018) 13 SCC 753** to contend that there is no need to establish inducement under Regulation 2(c) of the PFUTP Regulations was misplaced. It was submitted that in ***Rakhi Trading*** *(supra)*, non-genuine transactions creating an illusion of trading and manipulation were clearly established, whereas in the present case the SAT Majority ignored the factual details, trading data and tables produced by the appellant no. 1 by dismissing them as "simulation exercises", while simultaneously alleging manipulation and dispensing with the requirement of proving inducement. Reliance was also placed on ***SEBI v. Kanaiyalal Baldevbhai Patel.***, reported in **(2017) 15 SCC 1** wherein this Court held that inducement is a sine qua non for establishing fraud under the PFUTP Regulations.

58. It was submitted that SEBI failed to establish that any of the transactions undertaken by the appellant no. 1 and the 12 entities were non-genuine or

fraudulent trades, since all transactions were genuine and executed on the stock exchange at prevailing market prices between unrelated counterparties. There was no finding regarding inducement by way of engagement of 12 entities and merely engaging them could not amount to inducement to deal in securities. There is no violation of position limits and even assuming a breach, the same could not by itself constitute inducement to deal in securities.

59. Mr. Slave submitted that none of the ingredients of "fraud" under Regulation 2(c) of the PFUTP Regulations, including misrepresentation, false suggestion, or active concealment of material facts, could be established in the trades undertaken by the appellant no. 1 and the 12 entities, and that other ingredients set out in (4) to (9) of Regulation 2(1)(c) of the PFUTP Regulations were wholly irrelevant to the present case.

60. The attention of this Court was drawn to Regulations 3 and 4 of the PFUTP Regulations to contend that mere violation of a statutory provision does not ipso jure constitute fraud unless it induces another person to deal in securities. It was submitted that the reference to "*provisions of the Act or the rules or the regulations made thereunder*" in Regulations 3 is a clear reference to the SEBI Act, as defined in Section 2(a) of the PFUTP Regulations, and not the SCRA or circulars issued thereunder. Therefore,

any alleged breach of position limits under the SCRA framework could not automatically amount to a violation of the PFUTP Regulations. It was further contended that Regulation 4(2) of the PFUTP Regulations itself provides that dealing in securities shall be deemed to be a "fraudulent" or an "unfair trade practice" only when it involves "fraud", which by definition requires inducement, and none of the acts enumerated therein were applicable to the present case.

61. Mr. Salve argued that SEBI's allegation that the appellant no. 1 and the 12 entities executed a pre-planned fraudulent scheme for cornering positions and manipulating the November 2007 RPL Futures was perverse and unsustainable, as SEBI failed to establish inducement, any ingredient of fraud, or that PACs taking positions in the F&O segment violated the SEBI Act or PFUTP Regulations. He contended that even any alleged breach of position limits could at best attract penalties under the SCRA and could not, by itself, amount to manipulation or fraud under the PFUTP Regulations.

62. Mr. Salve further assailed the Majority Judgment of the SAT as being unreasoned and failing to consider the submissions on facts and law. It was submitted that the Majority proceeded on a preconceived premise that the appellant no. 1 had committed fraud and consequently rejected the defence and explanations offered by the appellant no. 1 without proper reasoning.

63. He submitted that the SAT Majority Judgment rejected the appellant no. 1's contention regarding absence of any provision for aggregation of positions held by persons acting in concert under the 2001 SEBI Circular by merely terming it as being "too simplistic, patently erroneous and gravely mischievous", without providing any clear legal basis. The SAT Majority failed to identify any legal requirement obligating the appellant no. 1 to disclose its arrangement with the 12 entities and nevertheless characterised the arrangement as manipulative without any factual or legal basis. Majority's finding of fraud and manipulation was ultimately based on hypothetical reasoning rather than substantive analysis.

64. Majority Judgment erroneously concluded that the appellant no. 1's futures transactions were not hedges but fraudulent and manipulative, ignoring the appellant no. 1's trading data, statistics, and detailed submissions. It was contended that the findings rested on vague notions of "regulatory principles" and assumed that hedging required a prescribed policy or documentation, though no such legal requirement existed. The observations characterizing hedging as a "wild dream" and treating absence of a hedging policy as indicative of fraud were stated to be unsupported in law or facts and reflected a substitution of conjecture for evidence while disregarding the actual market conduct and execution of trades by the appellant no. 1.

65. It was submitted that despite Tables 1 to 15 being placed to demonstrate absence of manipulation in the last 10 minutes of trading on 29.11.2007, the SAT Majority Judgment rejected the entire analysis without examining the tables and relied solely on two observations- (i) that "simulation exercises" had no merit , and (ii) that 12 out of 17 orders were placed below LTP, including significant deviations, leading to an inference of non-rational trading intent.

66. To bolster his submission, the learned senior counsel placed reliance on the SAT Minority Judgment, which on a detailed factual analysis held that no manipulation was made out against the appellant no. 1 in the last 10 minutes of trading. It had observed that both the appellant no. 1 (1.95 crore shares) and other market participants (1.06 crore shares) traded during the same period, and therefore the appellant no. 1 could not be solely blamed for the price fall. The SAT Minority further held that SEBI failed to discharge the burden of proving manipulation and noted that even sell orders placed below LTP did not establish price depression, especially when not all such orders were executed and similar patterns by others were not examined. It was also found that the appellant no. 1's trades were genuine and constituted a conscious business decision to sell at higher prevailing prices, not to depress settlement price.

67. It was pointed out that the WTM's finding treating all 9.92 crore trades as fraudulent, along with disgorgement of only Rs. 447 crores out of Rs. 513 crore alleged gains, itself showed that profits on 1.09 crore shares were treated as lawful, thereby indicating that at best the case involved breach of position limits and not fraud warranting disgorgement. The SAT Minority accepted this and held disgorgement for excess positions was impermissible under Section 11B of the SEBI Act. In contrast, the SAT Majority Judgment rejected this submission by merely stating that the concession regarding the 1.09 crore position limit was erroneous and based on a wrong notion, without engaging with the underlying legal implication.

68. On the issue of inducement as an essential ingredient of fraud, the SAT Minority Judgment held that in the absence of any finding that the appellant no. 1 induced other market participants, the burden of establishing fraud was not discharged, and further held that the decision in *Price Waterhouse & Co. vs SEBI* reported in **(2019 SCC OnLine SAT 165)** was squarely applicable. In contrast, the SAT Majority treated ***Price Waterhouse*** *(supra)* as distinguishable, holding that inducement need not be separately proved once manipulation is inferred, thereby dispensing with independent proof of inducement. The SAT Minority, however, in a clear and reasoned analysis of facts and law, set aside the WTM's order holding that no fraud or

manipulation was made out and that the PFUTP Regulations were not attracted.

69. It was submitted that SEBI is, in effect, "barking up the wrong tree", as it pursued an allegation of fraudulent trading by the appellant no. 1 contrary to the facts and evidence, without examining the reasons for (i) unusually high activity in the November 2007 RPL Futures from 24.10.2007 to 06.11.2007; (ii) the sharp rise in RPL futures price from Rs. 172.50 on 22.10.2007 to Rs. 280.50 on 06.11.2007 despite analyst reports indicating overvaluation; and (iii) the sudden price spurt in the cash segment on 29.11.2007 from Rs. 208.10 at 3:00 p.m. to Rs. 224.70 at 3:21:40 p.m.

70. The findings of SEBI and the SAT Majority were further assailed on the ground that the order of disgorgement under Section 11B of the SEBI Act was premised on alleged violations of the PFUTP Regulations, whereas the statutory explanation is confined to gains arising from contravention of the SEBI Act or regulations made thereunder and cannot be extended to alleged breaches of SCRA circulars. It was further contended that even assuming a breach of position limits, Section 11B could not be invoked.

71. The essence of "fraud" under the PFUTP Regulations is inducement to deal in securities, which must be strictly construed given its penal consequences. Even if position limits are breached, there is no legal fiction treating such

breach as per se market manipulation. Excess acquisition at market price may at best be a regulatory violation, not fraud. Conversely, conduct within limits can still amount to fraud if the ingredients of the definition of fraud under the PFUTP Regulations are met. Conflating the position-limit breach with fraud or manipulation is a clear misdirection in law.

72. The learned senior counsel contended that SEBI's argument that Sections 9 and 18A of the SCRA do not limit SEBI's power to initiate action for fraud and manipulation under the PFUTP Regulations is incorrect. He submitted that even if derivative trades must comply with exchange rules and bye-laws, breach of position limits does not render such contracts illegal or void. Section 9(3)(a) and (b) empowers exchanges to treat certain violations as void or impose penalties, and position-limit breaches are, in fact, only subject to penalties under bye-laws/circulars. If the legislature intended such breaches to constitute manipulation or attract harsher consequences, it would have expressly provided so. Section 18A must be read harmoniously with Sections 9(2) and 9(3), as held by the SAT Minority, whereas the SAT Majority rejected the argument without reasoning, terming it "spurious and devious."

73. He further submitted that the SAT Majority's finding, that futures transactions in excess of position limits are void, is untenable in law. A

bilateral contract is not rendered void merely because one party breaches a regulatory cap unknown to the opposite party. SEBI's view leads to absurd consequences, allowing parties to evade losses by later alleging illegality. It would also unsettle all market transactions involving inadvertent breaches of caps, requiring their wholesale unwinding. Moreover, the stock exchanges' own practice contradicts the "void transaction" theory, as only squaring-off of excess positions and nominal penalties are imposed, treating contracts as valid. Even profits from such square-offs are treated as lawful, showing that the transactions are not void.

74. On the crucial issue of whether the facts and figures in the data available to the WTM, it was submitted that Tables 1 to 15 placed before SAT contained actual trading data on positions, prices, and sales, which demonstrated that SEBI's inferences were not borne out by facts. Yet the SAT Majority Judgment failed to engage with the material and dismissed the entire data as "simulation exercises". This, despite the figures being factual and not hypothetical, amounts to an egregious error of law for not addressing a material submission.

75. Mr. Salve also addressed SEBI's contention that no substantial question of law arises under Section 15Z of the SEBI Act and relied on the judgment of this court in ***Securities and Exchange Board of India v. Mega Corporation***

Limited, reported in **2022 SCC OnLine SC 361**. In this regard, he submitted that the expression "question of law" under Section 15Z is not confined to abstract legal issues divorced from facts, but rather a substantial question arises where there is erroneous application of law to admitted facts or violation of settled legal principles, as held by this court in ***Chandrabhan v. Saraswati***, reported in **2022 SCC OnLine SC 1273** and ***Angadi Chandranna v. Shankar***, reported in **2025 INSC 532**. Accordingly, Mr. Salve submitted that the reliance placed by the SAT Majority on ***Mega Corporation*** *(supra)* was misplaced, as that decision turned on its own facts where no substantial legal issue or statutory misinterpretation was involved.

76. Thus, Mr. Salve reiterated that the SAT Majority findings were deeply flawed in law on the following grounds:

a) It misconstrued SEBI Regulations and SCRA by conflating position limits with fraud and manipulation

b) It erred in holding that fraud could be made out without establishing inducement, relying on generalised allegations of cornering and presumed motives.

c) It misdirected itself in rejecting hedging as a motive merely due to absence of a written hedging policy.

d) It failed to consider the mandatory requirement of inducement under PFUTP, with no finding that the appellant no. 1 induced any market participant.

e) It ignored material factual issues by dismissing trading data as "simulations".

f) It wrongly treated non-existent requirements like board resolutions as necessary to prove hedging intent.

g) It failed to address the core question of law regarding persons acting in concert in F&O markets and whether such conduct constitutes fraud under PFUTP and violation under SCRA.

77. Mr. Salve continued to submit that the WTM and SAT have failed to address the fundamental fact that the 12 entities were alleged to be PACs. SEBI's stand that once a principal–agent relationship is found, the doctrine of persons acting in concert becomes irrelevant is contradictory and legally untenable. SEBI cannot simultaneously aggregate positions of independent entities to allege concentration and cornering while disowning the very doctrine that alone permits such aggregation. This amounts to an impermissible approbation and reprobation and introduces a post-hoc, non-existent principal-centric aggregation standard not present in the 2007 regulatory framework, which was in fact introduced only in December 2016.

78. It was submitted by Mr. Salve that dealing in futures through agents does not amount to fraud. A breach of SCRA position limits cannot, by itself, constitute "fraud" under the PFUTP Regulations. SEBI itself accepts that if the appellant no. 1 had taken excess positions in its own name, it would only attract a monetary penalty under the SCRA framework and not allegations of fraud.

79. The appellant no. 1 engaged 12 entities as its agents, and the agreements were disclosed to SEBI upon inquiry, not discovered through investigation. The concept PAC was not applied to single stock futures at the relevant time, though it was recognised in other contexts like index futures and takeover regulations, with mandatory disclosures. PAC transactions were not prohibited and cannot be treated as fraudulent or dishonest. At worst, even if PAC aggregation is assumed, it would only amount to a violation of SCRA, not fraud under PFUTP Regulations.

80. He vehemently submitted that all the subject transactions were on the stock exchange at market-determined prices, were genuine arm's length trades, and not between connected counterparties, and were ultimately squared off at prevailing prices in cash.

81. He submitted that Regulation 3 of PFUTP Regulations prohibits fraudulent dealing in securities, and "fraudulent" must be read in line with the defined

meaning requiring inducement. Regulation 3(b) bars manipulative or deceptive devices, and Regulation 3(c) prohibits schemes to defraud; neither applies absent inducement or deception. Regulation 3(d) also does not apply, as a mere regulatory violation does not ipso jure amount to fraud unless it induces another to trade. The reference to "*Act or Regulations*" is confined to the SEBI Act and rules, not SCRA circulars, making SEBI's attempt to treat breach of position limits as violation of PFUTP regulations legally untenable. Regulation 4(2) deems dealing in securities fraudulent or an unfair trade practice only if it involves "fraud", which necessarily requires inducement. It also lists illustrative acts, none of which are applicable to the present case.

82. Regarding the issue of person acting in concert, it was submitted that, the 12 entities were agents of the appellant no. 1 and acted on its direction, satisfying the "common mind" test for persons acting in concert. SEBI circulars did not impose any reporting or aggregation requirement for PACs in single stock futures, unlike takeover regulations which expressly aggregate holdings. The 1999 index futures circular only required reporting where PACs together exceeded threshold of 25%, showing PACs were recognized but not prohibited.

83. He submitted that the 2001 single stock futures circular contains no reference to PACs, and SEBI introduced a specific undertaking on non-concert action only in 2016, indicating the absence of such a requirement earlier. The SEBI circular aims to deter concentration of positions and potential manipulation, but concentration itself is not manipulation. If SEBI intended to treat breach of limits as fraud or manipulation per se, it would have expressly provided so. Markets cannot be governed by hindsight-based interpretations.

84. Mr. Salve submitted that SEBI's contention that persons dealing with the 12 entities were induced by lack of knowledge of common control is untenable. Futures trades are driven by market forces, and fraud requires causation—i.e., but for the alleged act, the trade would not have occurred—which is not established. Regulation 4.5.3(j) of NSE (F&O) rules also prohibited disclosure of client identity beyond the exchange, proving that no such inducement can be inferred.

85. Mr. Salve went on to submit that SEBI's contention that the appellant no. 1, through 12 entities, "cornered" the market and that such concentration itself constitutes manipulation is baseless. Mere concentration, without use for price or demand manipulation, does not amount to fraud. SEBI itself permits

PAC structures, undermining its claim that market participants were unaware of common control.

86. Mr. Salve submitted that a related basis on which SEBI relies under the PFUTP Regulations is the allegation that (a) the appellant no. 1 cornered 9.92 crore futures positions in RPL November 2007, rising from 63% to 93% of the market, and (b) the proposed sale of 22.5 crore RPL shares in the cash segment was not disclosed and would have impacted prices, amounting to concealment. However, he argues that such allegations levelled by SEBI are fundamentally erroneous on the following grounds.

a) the appellant no. 1, through the entities, initially held 63% of open interest; the remaining 37% was available but not taken by others.
b) the appellant no. 1 did not further acquire positions; the increase to 93.63% resulted from exit of other market participants.
c) Sale of shares in the cash segment and taking futures positions are independent transactions unless linked by intent to depress prices.
d) the appellant no. 1's sale decision was part of a capital-raising strategy in an overvalued RPL market; futures positions were taken at prevailing prices during 01.11.2007–06.11.2007.
e) SEBI regulations do not require disclosure of intent to sell shares at the time of taking futures positions.

87. Mr. Salve submitted that the allegations ignore the core market reality that RPL was widely considered overvalued by independent analysts, making the SAT Majority's dismissal of such material incomprehensible. The appellant no. 1 took futures sale positions at the prevailing average price of Rs. 265.67, at which other market participants willingly took corresponding buy positions anticipating price movement. SEBI failed to investigate possible manipulation on the buy side that may have driven prices upward. Further, the appellant no. 1 did not exit positions when prices fell, but held them till maturity, which is inconsistent with any profit-driven manipulation strategy focused solely on futures.

88. While addressing the issue of hedging he submitted that, the law does not prohibit trading in futures for profit; such transactions are inherently profit-driven. In the absence of fraud or deception, the motive behind entering futures trades is irrelevant.

89. The appellant no. 1 explained that it acted pursuant to a board-approved plan to raise Rs. 80,000 crore, with RPL shares, being overvalued, identified for sale in tranches. Two senior employees, tasked with execution, hedged this exposure by taking corresponding futures sale positions to protect against expected price correction. There is no rule that requires a board resolution for sale of shares in the market. Between 01.11.2007 and 23.11.2007, 18.04

crore shares were sold in the cash segment at no price below an average of Rs. 208. The appellant no. 1 did not close positions at the lowest price of Rs. 192.55 despite higher profit opportunity, showing absence of speculative intent. A portion of shares remained unsold as prices stayed below Rs. 208 and only sold when prices spiked sharply on the last day amid volatility, which SEBI failed to investigate. Futures positions were held throughout and settled at the exchange-determined average price since delivery was not permitted. The positions were taken at one time at the outset, retained despite favourable price movement, and closed only at expiry in cash, consistent with the regulatory structure of hedging and inconsistent with any speculative or manipulative intent. Thus, the acquisition of positions and doing so by engaging 12 agents was in no way fraudulent or manipulative.

90. Mr. Salve submitted that hedging was not a legal defence but an explanation of the appellant no. 1's commercial motive for entering futures transactions. The SAT Majority wrongly rejected it by assuming that a legal framework or prior board-approved policy is required, conflating commercial intent with legal form. It also failed to examine whether the futures positions functioned as an imperfect hedge against expected price correction in an overvalued scrip. The notion of a "perfect hedge" is not recognised in law or policy and is a new construct of SEBI/SAT.

91. Regarding the issue of alleged price manipulation on 29.11.2007, Mr. Salve argued that SEBI did not examine the actual transaction data and instead relied on broad, inferential allegations. The SAT Majority, when confronted with detailed trading tables inconsistent with its theory, dismissed them as "simulation exercises" without addressing their evidentiary value.

92. Mr. Salve address SEBI's argument that during the last 8 minutes 20 seconds on 29.11.2007, the appellant no. 1 sold 1.95 crore shares below LTP in several instances to depress the settlement price and profit on 7.97 crore futures positions. Mr. Salve argued that this narrative posed by SEBI ignores material facts that (i) the appellant no. 1 had already sold 18.26 crore shares between 07.11.2007 and 23.11.2007 at or above Rs. 208; (ii) trading paused during the 24.11.2007-25.11.2007 weekend; (iii) no sales were made on 26 November due to price volatility; and (iv) on 27.11.007-28.11.2007 prices remained below Rs. 208. In fact, on 29 November, sales were made only after prices recovered, with the last tranche realising an average of Rs. 213.09, above the Rs. 208 threshold, while the market closed at Rs. 209 and the 30-minute settlement average remained Rs. 215.60, rendering the allegation of short-window manipulation untenable.

93. Mr. Salve points out that SEBI does not allege that the disgorgement amount of Rs. 447 crore was actually earned during the last 8 minutes 20 seconds.

To establish any such gain, SEBI would have had to analyse contemporaneous market-wide trading, including sales by others during the same period, quantify any actual price impact attributable to the appellant no. 1's trades despite sales above its own cut-off of Rs. 208, assess the consequent effect on the 30-minute settlement average used for futures pricing, and then compute net gains after adjusting for cash segment outcomes from share sales. However, all these facts were ignored by the SAT Majority.

94. The learned senior counsel submitted that SEBI's allegation that the appellant no. 1 sold below last traded price is misleading and ignores the mechanics of live trading. Orders are matched based on buyer and seller price priority, and in the absence of buyers at the last traded price, sellers are compelled to revise orders downward. The record shows instances where even below-LTP orders had no takers, and other market participants also placed below-LTP orders without any allegation or investigation of manipulation.

95. In light of the aforesaid submissions, the appellant no. 1 prayed this court that Appeal Nos. 4015 of 2020 and 4723 of 2024 be allowed and SEBI be directed to refund :

A. Rs. 250 crore deposited by the appellant under the interim order dated 17.12.2023 of this Court;

B. Rs. 25 crore deposited by the appellant under the SAT order dated 04.12.2023.

96. The appellant annexed the following details in the tabular form:

Annexure 1 - A snapshot of the trades by the 12 entities in RPL shares in the November 2007 RPL Futures and by RIL in the cash segment (along with relevant statistics)

Trading in November 2007 RPL Futures segment of NSE through 12 entities

Date	Net Purchases - No. of shares (in crore)	Purchase price (average for the day) (Rs. / share)	Purchase value (Rs. crore)	Net Sales - No. of shares (in crore)	Sale price (average for the day) (Rs. / share)	Sales value (Rs. crore)	Total trades in the F&O Segment (Futures + Options)	% of RIL trades to total trades in the F&O Segment (Futures + Options)	Open positions of 12 entities	% of total open positions in Futures + Options together	% of total open positions in November 2007 Futures
01-11-2007				2.22	277.08	615.12	54.59	4.1%	2.22	19.2%	24.2%
02-11-2007				2.10	263.88	554.16	31.68	10.0%	4.32	32.9%	41.4%
05-11-2007				3.54	270.54	957.72	30.15	14.2%	7.86	45.6%	56.9%
06-11-2007				2.06	246.80	508.41	40.26	8.2%	9.92	48.6%	61.2%
Net Position as on 06-11-2007				**9.92**	**265.67**	**2,635.41**					
07-11-2007	0.15	209.72	31.46				15.02	1.0%	9.77	53.6%	67.7%
08-11-2007							7.53	0.0%		56.0%	70.7%
09-11-2007	0.01	218.53	2.19				1.25	0.5%	9.76	56.3%	71.1%
12-11-2007							3.73	0.0%		57.9%	73.3%
13-11-2007							2.32	0.0%		58.5%	73.9%
14-11-2007							4.35	0.0%		59.3%	75.3%
15-11-2007	0.01	209.10	2.09				2.09	0.5%	9.75	59.7%	75.8%
16-11-2007	0.01	207.02	2.07				2.21	0.3%	9.74	60.3%	76.6%
19-11-2007	0.32	209.93	67.18				1.51	22.5%	9.42	59.7%	76.7%
20-11-2007	0.13	208.40	27.09				1.58	8.4%	9.29	59.5%	77.0%
21-11-2007	0.26	205.51	53.43				3.00	8.7%	9.03	59.5%	78.1%
22-11-2007	0.76	203.94	154.99				4.84	15.7%	8.27	57.0%	76.0%
23-11-2007			-				3.2	0.0%		58.1%	79.2%
26-11-2007	0.31	203.61	63.12				16.17	1.9%	7.97	45.0%	77.9%
27-11-2007			-				4.91	0.4%		46.9%	88.0%
28-11-2007			-				5.82	0.0%		47.2%	94.7%
29-11-2007 (Settlement by NSE)	7.97	215.60	1,718.33				37.89	29.4%	0	40.1%	93.6%
Total	**9.92**		**2,121.95**	**9.92**	**265.67**	**2,635.41**					
Gain in F&O segment						**513.46**					

RIL's sales of RPL shares in cash segment of NSE + BSE in Nov 2007

Date	Sale on NSE - No. of shares	Sale on BSE - No. of shares	Sale - No. of shares	Sale price per share (average for the day) (Rs.)	Sale value (Rs. crore)
01-11-2007					
02-11-2007					
05-11-2007					
06-11-2007	4.67	2.52	7.19	235.32	1691.48
07-11-2007					
08-11-2007					
09-11-2007					
12-11-2007					
13-11-2007	0.98	0.35	1.33	217.77	289.39
14-11-2007	1.95	0.97	2.91	220.27	641.47
15-11-2007	1.10	0.63	1.73	214.85	371.19
16-11-2007	0.39	0.19	0.58	214.53	124.25
19-11-2007	1.00	0.55	1.55	211.21	327.37
20-11-2007	0.66	0.34	1.00	209.14	209.14
21-11-2007	0.22	0.13	0.36	208.94	74.62
22-11-2007	0.58	0.30	0.88	209.75	185.18
23-11-2007	0.33	0.19	0.52	209.62	108.92
26-11-2007					
27-11-2007					
28-11-2007					
29-11-2007	1.95	0.30	2.25	212.50	477.85
Total	**13.83**	**6.47**	**20.29**	**221.78**	**4,500.86**

b. Submissions on behalf of the respondent

97. Mr. Arvid P. Datar, the learned senior counsel appearing on behalf of the respondent, submitted that position limits aim to prevent concentration and risk, including through aggregation or persons acting in concert. As all the 12 agents acted for the appellant no. 1, aggregation applies and rejecting it

would defeat the purpose of position limits in derivatives markets since what cannot be done directly, cannot also be done indirectly. He submitted that in the present case, both the SAT Majority and the Minority have held that the creation of 12 entities was improper and violates the position limits imposed by the 2001 SEBI Circular. Since the appellant no. 1 could not cross the position limit itself, it was also not permissible for it have employed 12 entities to do so for its benefit, as indicated by Clause 1.2 and Clause 3 of the agency agreements.

98. He argued that the 1999 SEBI Circular on index futures cannot be relied upon for single stock futures introduced under the 2001 framework. The coordinated use of agents by the appellant no. 1 to corner 62%–93% of market-wide position limits in November futures reflects a pre-planned manipulative scheme by a single directing mind and squarely attracts the PFUTP Regulations. Such conduct cannot be reduced to a mere position limit violation but constitutes market manipulation by a single entity.

99. As regards the issue of hedging, Mr. Datar argued that although hedging is a permitted risk-mitigation tool, it cannot be used through devices that corner position limits and distort market integrity. The appellant no. 1 being the promoter of RPL, offloaded shares worth more than Rs.5,000 crores, and the derivative market cannot absorb such huge exposure. Position limits

exist to preserve fairness, and such large-scale promoter offloading cannot be hedged through a single futures contract. Any such attempt, if structured to corner positions, amounts to serious PFUTP violations rather than legitimate hedging.

100. It was submitted by the learned senior counsel that even if the hedging theory is accepted, the exposure in the cash segment and positions held by the appellant no. 1 in the futures segment crossed on 15.11.2007, however, the latter were not reduced proportionately thereafter. Instead, the appellant no. 1 retained 7.97 crore shares as a "naked hedge" from 16.11.2007 till expiry on 29.11.2007 to benefit in the derivatives segment. This was done to reap benefits in the derivatives segment; therefore, the scheme hatched by the appellants together was clearly a fraudulent and manipulative scheme as defined under Section 12 of the SEBI Act, 1992 and Regulations 3 and 4 of the PFUTP Regulations respectively. Once manipulation is established, no separate proof of inducement is required, as its consequences are inherent in the violation. Similarly, once fraud is made out through an artificial device, the question of position limit breach becomes irrelevant.

101. It was submitted that the appellant no. 1's intention must be assessed holistically. its alleged cornering of the derivatives segment shows that the position limits were breached and cannot be treated as a mere technical

violation of the 2001 SEBI Circular. The appellant no. 1 deliberately maintained excessive open positions even after substantial cash market sales, rendering the so-called hedge "naked." This was not due to unavoidable circumstances under the RBI Circular relied upon by the appellant no. 1 and therefore, cannot be justified as a permissible hedge.

102. Mr. Datar further submitted that the appellant no. 1's claim, that it entered the market in the last 10 minutes on 29.11.2007 solely to mobilise funds through planned cash sales at high prices is devoid of merit for the following reasons.

a) The respondent alleged that the appellant no. 1 used a scheme/device to corner the market, noting no cash market sales from 23–29 November until the final minutes of 29.11.2007, when positions were allowed to expire at market settlement.

b) In the last 10 minutes, the appellant no. 1 offloaded 1.95 to 2.24 crore shares worth about Rs. 480 crores—disproportionately high compared to earlier daily averages of under Rs. 400 crores over the preceding 11 days.

c) It is further alleged that 12 out of 17 trades were placed below the LTP, including instances significantly below the prevailing prices,

which SEBI treats as indicative of intent to depress price and settlement value.

d) The respondent argued that no rational seller would repeatedly place below-LTP orders; instead, a calibrated, longer-term sale strategy aligned with hedge positions would have been expected.

e) On this basis, the WTM's finding that there was a frantic effort to influence the last-minute price is defended and not shown to be erroneous.

103. The appellant no. 1's simulation exercise was found to be without merit as hypothetical profit scenarios based on alternative trading days cannot displace actual market conduct or findings of manipulation. The respondent submitted that even if such assumptions were considered, they do not negate the alleged scheme of building a net short position of 9.92 crore shares through 12 front entities. Further, the appellant no. 1 failed to explain why it maintained an open short position of 7.97 crore shares until expiry on 29.11.2007, despite its stated hedging requirement being only 4.45 crore shares from 16.11.2007, which according to SEBI indicates a devious and manipulative scheme.

104. The appellant no. 1 also failed to explain the urgency in selling RPL shares in November 2007, despite a decision taken in March 2007, especially when

such a sale could have been spread over several months. The respondent noted that the first valuation report came only in September 2007, yet the appellant no. 1 did not act earlier despite funds being intended to be raised over two years. Instead, it suddenly sold 22.5 crore shares (about 5%) and simultaneously took short positions under the guise of hedging. It was submitted that these facts and circumstances indicate that the hedge argument provided by the appellant no. 1 is an afterthought. The respondent further submitted that since the position limit breach was achieved through a manipulative scheme or device, it attracts the SEBI Act and PFUTP Regulations, and cannot be treated as a mere technical violation.

105. Mr. Datar submitted that, this appeal being under Section 15Z of the SEBI Act, 1992 is confined to questions of law, and the concurrent findings of fact by the WTM and SAT are not ordinarily open to interference. Both the Majority and Minority have held that the use of 12 entities to bypass position limits under the 2001 SEBI Circular was improper, affirming the principle that what cannot be done directly cannot be done indirectly. Since the appellant no. 1 could not have breached position limits itself, it could not do so through intermediaries, and on this factual finding alone, the respondent's case of fraudulent and unfair trade practice stands established.

106. The 12 entities were allegedly created solely to circumvent position limits and were admittedly controlled by the appellant no. 1, acting on its instructions under Clause 1.2 of the agency agreements. Clause 3.2 further provided that all profits would be passed on to the appellant no. 1, indicating that the arrangement was structured from the outset to enable illegal gains through an artificial trading mechanism.

107. As regards the issue of hedging, it was submitted that, the defence of hedging is an afterthought, as there was no Board Resolution that authorized such hedging transactions. It was implausible that 12 newly created entities with no prior experience in futures trading, acting on the appellant no.1's instructions and substantially breaching position limits, were engaged merely to mitigate risk.

108. Under the 2001 SEBI Circular, open positions in derivatives cannot exceed the higher of 1% of free-float market capitalisation or 5% of open interest in the relevant contract. In RPL's case, the permissible limit was 1.01 crore shares, whereas the 12 entities together built positions of 9.92 crore shares, with concentration ranging from 62% to 93% of open interest. This substantial breach shows that the defence of hedging is untenable and liable to be rejected.

109. If the appellant no. 1's submissions are accepted, the position limits under the 2001 SEBI Circular can be easily circumvented by creating multiple entities under the guise of hedging. The agreement itself provides for transfer of profits to the appellant no. 1 (Clause 3.2), which is inconsistent with any genuine risk-mitigation purpose. The respondent therefore submitted that the arrangement was aimed at earning illegal profits rather than hedging risk.

110. The appellant no. 1's position in RPL November 2007 futures on the date of settlement, was twice its cash segment exposure, which according to the respondent was inconsistent with any genuine hedging structure. No *bona fide* hedge would be structured to generate disproportionate gains in derivatives rather than through actual cash market sales. The appellant no. 1 retained a short position of 7.97 crore shares until expiry, despite a stated hedging requirement of only 4.45 crore shares from 16.11.2007, which indicated a devious scheme rather than a valid hedge.

111. Mr. Datar relied on the Judgment of the Supreme Court of Canada in ***Ontario (Minister of Finance) v. Placer Dome Canada Ltd.,*** reported in **2006 SCC OnLine Can SC 20** and Gujarat High Court in ***Pankaj Oil Mills v. CIT*** reported in **1976 SCC OnLine Guj 33**, to submit that hedging must have a clear correlation with the underlying risk. On settled legal principles,

the use of 12 entities to breach prescribed limits cannot qualify as hedging and instead constitutes a fraudulent device to maximise profits. In any event, even a genuine hedging strategy cannot justify crossing regulatory position limits.

112. As regards the issue of breach of position limits, it was submitted that the appellant no.1's reliance on the absence of an express reference to 'persons acting in concert' ("**PAC**") in the 2001 SEBI Circular, unlike the 1999 SEBI Circular, is misplaced. The 1999 Circular relates to index futures, and its PAC framework cannot be extended to single stock futures governed by the 2001 SEBI Circular.

113. On the other hand, the 2001 SEBI Circular introduced position limits for single stock futures in respect of individual customers/clients, and its objective was to deter the concentration of positions and prevent market manipulation. Therefore, its scope is distinct from the 1999 SEBI Circular, and the ambit of both circulars cannot be treated as identical.

114. The 12 entities were created solely to bypass position limits. It was submitted that the said entities had no prior derivatives activity and existed only to circumvent regulation. The respondent submitted that such indirect violation was impermissible, and lack of PAC disclosure cannot justify such

structuring. The arrangement created information asymmetry and constituted fraudulent market manipulation intended to earn undue gains.

115. The respondent submitted that the WTM and SAT correctly proceeded on the basis of a principal–agency relationship, wherein all 12 entities were acting as agents of the appellant no. 1 and that their actions were attributable to the appellant no. 1 through the contractual terms and the common link of Mr. Sandeep Agarwal. On this basis, the violation of position limits was attributable to the appellant no. 1 itself. The appellant no. 1 was found to have made unlawful gains of Rs. 513 crore, with disgorgement computed at Rs. 447.27 crore after adjusting for permissible open interest limits under the 2001 SEBI Circular.

116. As regards the issue of the amount of penalty, the appellant no. 1's submission that any breach of position limits would attract only penalty of Rs. 1 lakh under the SCRA circulars and that PFUTP Regulations were inapplicable on the instant facts, is liable to be rejected. The creation of 12 entities, coupled with the agency arrangements and systematic breach of position limits, indicated a coordinated scheme to earn substantial profits in the derivatives segment alongside cash market sales.

117. The learned senior counsel drew the attention of this Court to the definition of "fraud" under Regulation 2(1)(c) of the PFUTP Regulations, which is

inclusive and covers deceitful acts committed by a person or through agents. The creation of 12 entities solely to breach position limits, without disclosure, amounted to concealment and misrepresentation of material facts, leaving the market unaware of the concentration of nearly 90% open interest with the appellant no. 1-linked entities. This created a false impression of market position and price expectations. Further, the sale of 1.95 to 2.24 crore shares in the last minutes of trading with the intent to influence the settlement price forms part of the fraudulent scheme under the PFUTP Regulations.

118. It was submitted that the appellant no. 1 violated Regulation 3 of the PFUTP Regulations, as the creation of 12 entities was part of a fraudulent arrangement and the sale of 1.95 crore RPL shares in the last 10 minutes, to secure disproportionate gains fall within Regulations 3(b) and 3(c), and Regulations 4(1) and 4(2)(d) and (e). Once PFUTP violations are crystalized, the enforcement action is supposed to be taken under the SEBI Act and PFUTP Regulations, and not under the SCRA.

119. The WTM's order as affirmed by SAT directed for disgorgement under Sections 11 and 11B of the SEBI Act, with the further direction that the amount be credited to the Investor Protection and Education Fund (IPEF). Further, the Adjudicating Officer found the appellant no. 1 guilty of

violating the PFUTP Regulations and imposed a penalty of Rs. 25 crores under Section 15HA of the SEBI Act, which was upheld by SAT, noting that the matter was already covered by its order dated 05.11.2020.

120. As regards the issue of inducement, the appellant no. 1 submitted that numerous independent participants traded in the RPL shares and derivatives in the cash and derivatives segments, with no evidence that any of these trades were induced by the appellant no. 1. This submission is liable to be rejected in light of ***Rakhi Trading*** *(supra)* wherein this Court held that in screen-based trading, inducement may be inferred once market manipulation is established and no separate proof is required. Accordingly, once manipulation is found, inducement is presumed and the plea of the appellant no. 1 is liable to be rejected.

121. The appellant no. 1 cannot plead lack of inducement when it created 12 entities that cornered up to 93% of open interest and allegedly dumped around 1.95 to 2.24 crore RPL shares in the cash segment to depress the settlement price. Non-disclosure of these connected entities and their contractual arrangements with the appellant no. 1 created information asymmetry, undermining market integrity and giving a false impression of genuine market positioning. This concealment led the market to believe in a legitimate short position and likely price decline, enabling the appellant no.

1 to secure disproportionate gains through an artificial and fraudulent arrangement.

122. As regards trading in the last 10 minutes and alleged manipulation, Mr. Datar submitted that the appellant no. 1 sold 2.24 crore shares in the last 10 minutes of trading on the expiry day. The settlement price was based on the last 30 minutes volume-weighted average price in the cash segment. The appellant no. 1 had taken disproportionately large short positions in the November RPL futures, with exposure on settlement day being double its cash market position, thereby creating a situation where it would benefit from any suppression in the settlement price.

123. The appellant no. 1 held short positions at Rs. 265/- per share and, due to its large exposure in the November 2007 Futures, it stood to benefit from a lower settlement price. Th respondent alleged that heavy selling in the last 30 minutes, especially 10 minutes, depressed volume-weighted average price, with multiple trades below LTP indicating intent to influence price. The scheme resulted in suppressed settlement price and unlawful gains of Rs. 513 crores, with the respondent computing disgorgement after applying open interest limits and adjusting it to Rs. 447.27 crore.

124. In the last, it was submitted that the appellant no. 1's net gain of Rs. 513 crores arose from the alleged market manipulation through the scheme of

employing 12 entities for circumventing position limits. Therefore, the said amount of money constitutes unlawful profit. The respondent, while computing disgorgement, applied the open interest limit of 1.01 crore shares and determined the disgorgement amount at Rs. 447.27 crore, along with 12% interest from 29.11.2007 till payment, liable to be recovered under Sections 11 and 11B of the SEBI Act.

D. ISSUES FOR DETERMINATION

125. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

i. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were fraudulent and manipulative device under the PFUTP Regulations?

ii. Whether the 9.92 crore open positions in the November 2007 futures segment of the RPL stock, were valid hedges?

iii. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were used by the appellant no. 1 to corner open positions in the November 2007 futures segment of the RPL stock for the purpose of manipulating the futures market?

iv. Whether the sale of 1.95 crore RPL shares in the cash segment during the last 10 minutes of the trading day on 29.11.2007 was an attempt to depress RPL share prices to make unlawful profits in the November 2007 futures segment?

E. ANALYSIS

126. Before adverting to the rival submissions canvassed on either side, we must look into few relevant provisions of law.

i. Relevant provisions of law

127. Derivatives trading i.e., futures and options in both the index and single-stock market was introduced in the stock exchanges of the country on the basis of the recommendations made by the L.C. Gupta Committee, 1998 which reads thus:

> "*The Committee strongly favors the introduction of financial derivatives in order to provide the facility for hedging in the most cost efficient way against market risk. This is an important economic purpose. At the same time, it recognizes that in order to make hedging possible, the market should also have speculators who are prepared to be counter parties to hedgers. A derivative market wholly or mostly consisting of speculators is unlikely to be a sound economic institution. A soundly based derivatives market requires the presence of both hedgers and speculators' and went further to hold, Hedging will not be possible if there are no speculators.*"

128. As a result of the aforesaid recommendation, Section 18A was introduced in the SCRA to permit trading in derivatives. Section 18A reads thus:

> "*18A. Contracts in derivatives.–*
>
> *Notwithstanding anything contained in any other law for the lime being in force, contracts in derivative shall be legal and valid if such contracts are–*
>
> *(a) traded on a recognised stock exchange;*
>
> *(b) settled on the clearing house of the recognised stock exchange; or in accordance with the rules and bye-laws of such stock exchange.*
>
> *(c) between such parties and on such terms as the Central Government may, by notification in the Official Gazette, specify."*

129. The SEBI introduced position limits for trading in such derivatives in the index market. The relevant portions of the SEBI Circular No. IES/DC/CIR-4/99 dated 28.07.1999 on "Risk Containment Measures for the Index Futures Market" ("**1999 SEBI Circular**") read thus:

> "*5. Position Limits :*
>
> 1. *Customer Level : Instead of prescribing position limits at the client level, a self-disclosure requirement similar to that in the take-over regulations is prescribed :*
>
> 1. *Any person or persons acting in concert who together own 15% or more of the open interest shall be required to report this fact to the exchange and failure to do so shall attract a penalty as laid down by the exchange / clearing corporation / SEBI.*

2. *This requirement may not be monitored by the exchange on a real time basis, but if during any investigation or otherwise, any violation is proved, penalties can be levied.*

3. *This would not mean a ban on large open positions but only a disclosure requirement.*"

(Emphasis supplied)

130. Similar to the 1999 SEBI Circular, the SEBI introduced position limits for trading in futures of single-stocks by way of the SEBI Circular No. SMDRP/DC/CIR-10/01 dated 02.11.2001 on "Scheme for introduction of Single Stock Futures and the Risk Containment Measures." ("**2001 SEBI Circular**"). The relevant portions of the said Circular are reproduced below:

"*6. Position Limits*

On the introduction of index futures contracts, index options contracts and stock options contracts the trading member level and the market wide position limits were prescribed. However, with the introduction of Single Stock Futures contracts, a customer level position limit is also prescribed to deter and detect concentration of positions and market manipulation. The market wide position in the case of stock specific derivative contract (both stock options and Single Stock Future) shall be applicable on the cumulative open positions in derivative contracts on that that stock at an Exchange. The volumes in the derivative markets are growing steadily and therefore, position limits shall be reviewed by the Advisory Committee on Derivatives from time to time and also the Advisory Committee shall be empowered to weed out any operational issue in implementation of the position limits.

Client / Customer level position limits:
The gross open position across all derivative contracts on a particular underlying of a customer/client should not exceed the higher of

- *1% of the free float market capitalisation (in terms of number of shares).*
  or
- *5% of the open interest in the derivative contracts on a particular underlying stock (in terms of number of contracts).*

This position limits would be applicable on the combine position in all derivative contracts on an underlying stock at an exchange."

(Emphasis supplied)

131. "Fraud" under the PFUTP is defined in Regulation 2(1)(c) thereof and reads thus:

"*2. Definitions.–*
(1) In these regulations, unless the context otherwise requires,–
(…)
(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true; A

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to-
(a) the economic policy of the government
(b) the economic situation of the country
(c) trends in the securities market or
(d) any other matter of a like nature
whether such comments are made in public or in private;"

132. Chapter II of the PFUTP Regulations prohibit fraudulent and unfair trade practices in the securities market. Regulations 3 and 4 thereof are reproduced below:

"***3. Prohibition of certain dealings in securities No person shall directly or indirectly***—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices—

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(...)

(b) <u>dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a</u>

device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(…)

(d) inducing any person for dealing in any securities for artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means including by paying, offering or agreeing to pay or offer any money or money's worth, directly or indirectly, to any person;

(e) any act or omission amounting to manipulation of the price of a security including, influencing or manipulating the reference price or bench mark price of any securities; (…)"

(Emphasis supplied)

ii. Agency agreements between the appellant no. 1 and 12 entities

133. It is undisputed by either of the parties in the present matter that the agreements entered into by and between the appellant no. 1 and the twelve entities create a principal-agent relationship. This is clear from the perusal of the said agreements. The relevant clauses of the agreements that are identical in language and scope, read thus:

"*1.2 All investment will be made by the Agent based on prior instructions of the Principal. In case the Agent recommends any proposals, the Agent shall execute the transactions only after the proposal has been evaluated and approved by the Principal and investment instructions are thereafter communicated to the Agent. Sale of all investments will also be done by the Agent. only based on prior instructions of the Principal.*

3. AGENCY

3.1 In executing all transactions of investment and sale act as agent of the principal.

3.2 During the Course of executing transactions, the Agent is permitted to execute transactions in its own name. It is, however, understood that all such transactions will be done by the Agent for and on behalf of the Principal and all profits and losses arising out of such transactions shall be to the account of the Principal."

(Emphasis supplied)

134. The appellant no. 1 has contended before us that the aforesaid agency agreement makes the appellant no. 1 and the 12 entities "persons acting in concert" for the purposes of entering 9.92 crore positions in the November 2007 RPL futures segment. The appellant no. 1 relied upon a comparative reading of the 1999 SEBI Circular and the 2001 SEBI Circular to contend that the position limits were applicable on persons acting in concert in the former only. However, the 2001 SEBI Circular provided for no such restriction which was understood by the appellant no. 1 to mean that for persons acting in concert in respect of the single-stock futures, there were no prescriptions as regards position limits.

135. In our considered view, this is a hyper-literal interpretation of the 2001 SEBI Circular without any reference to the objective sought to be achieved by the said Circular. Position limits in the futures market help in preventing or

minimizing market manipulation and preserving the integrity of price discovery. They also reduce systemic risks that accompany large concentrated positions thereby preventing market crashes. To say that these objectives apply to individual clients/customers but not to persons acting in concert is erroneous.

136. We say so because even though individual clients/customers, who are acting together, may be well within the client/customer level position limits, yet the effect of their coordinated transactions may have adverse impact on the market and participants.

137. We note that the 1999 SEBI Circular places only disclosure requirements and advises the clients/customers that such position limits do not constitute a ban on taking positions that may cross the stipulated limits. Similarly, the language of the 2001 SEBI Circular indicates that at the time the transactions in question were made, there were only disclosure requirements placed on a client/customer who wanted to enter positions higher than the prescribed limit. The relevant portion of the 2001 Circular reads thus:

> "*At present the trading system of the exchange requires that client ID should be provided for each trade. However, this client ID is assigned by the trading member is not unique to a client across the market. At present the exchange monitors the trading member level position limits however, the client wise limit is not monitored by the*

> *exchange and is a requirement of disclosure by the client to the trading member and to the Exchange. (...)"*
>
> (Emphasis supplied)

138. A holistic reading of the stipulations as regards position limits in the 2001 SEBI Circular indicates that there was no ban on taking positions greater than the mandated limits, rather the client/customer was only supposed to disclose the fact that its positions would be in excess of the prescribed limits. Therefore, the provision of penalty in the 2001 SEBI Circular was for not complying with disclosure requirements rather than breach of position limits.

139. The materials placed on record by the parties show that the appellant no. 1 withheld information in respect of its agreements with the twelve entities so as to take positions in RPL futures significantly higher than the limits stipulated in the 2001 Circular. In our considered view, the present matter is squarely covered by the legal principle that *what cannot be done directly, cannot be done indirectly* [See: ***Firm of Pratapchand Nopaji v. Firm of Kotrike Venkatta Shetty***, reported in **(1975) 2 SCC 208** and ***Jagir Singh v. Rambir Singh*****,** reported in **AIR 1979 SC 381**].

140. The appellant no. 1 attempted to capitalize on the absence of position limits for 'persons acting in concert' in the 2001 SEBI Circular by establishing agency relationships with 12 entities. The same may have been permissible

had the appellant no. 1 disclosed the said fact. However, it failed to do so. In such view of the matter, we are of the considered view that the appellant no. 1 cannot shield its actions behind the argument that the 2001 SEBI Circular did not provide any position limits for 'persons acting in concert'. We say so because the very stipulation of position limits in the Circular creates an implicit duty to disclose such trades that may be in breach of such limits.

141. Therefore, there is no gainsaying that the appellant no. 1 violated the disclosure requirement stated in the 2001 Circular and hence, is liable to be penalized for the same under the said Circular. This, we say so, irrespective of whether the act of the appellant amounts to fraud or manipulation as contemplated under the provisions.

142. We may address a small submission of the respondent that the futures positions taken by the appellants cannot be considered to be valid transactions as Section 18A of the SCRA mandates that a contract in derivatives shall be legal and valid only if such contracts are traded on a recognized stock exchange and settled on the clearing house of such exchange, in accordance with the rules and by-laws of such stock exchange. Since the 2001 NSE Circular also stipulated position limits, it is the contention of the respondent that the breach of position limits by the

appellant no. 1 would render its trades in the November 2007 RPL futures segment as invalid for violation of rules and by-laws of the NSE.

143. In our considered opinion, Section 18A of the SCRA is required to be read with Sections 9(1) and 9(2) respectively of the same. Section 9(1) and (2) read thus:

> "*9. Power of recognised stock exchanges to make bye-laws*
>
> *(1) Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make bye-laws for the regulation and control of contracts.*
>
> *(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for (...)*"

144. What can be discerned from the aforesaid is that the 2001 NSE Circular must be within the four corners of the provisions present in the 2001 SEBI Circular. As discussed in the earlier parts of this judgment, the 2001 SEBI Circular mandates the disclosure of such positions as may have been taken in excess of the limits set out therein. The logical inference that may be derived from this, upon a simultaneous reading of the 1999 SEBI Circular, is that there was no ban on exceeding the position limits. The only requirement was to disclose.

145. The 2001 SEBI Circular nowhere provides that the transgression of the position limits would have the effect of voiding the contract in derivatives taken above and beyond such limits. The only consequence provided for is that there would be a penalty in the form of fine, expulsion of membership, suspension from membership for a particular period or any other penalty not in the nature of payment of money. Nowhere in the Circular has it been stated that the effect of breach of the position limits would void the infringing trades. What is not expressly stated to be a consequence of a violation, cannot be read into the Circular by implication. In other words, if the intention of the Circular was to nullify the effect of the futures contracts for violation of position limits, the respondent authority would have expressly said so, more particularly, when penalties had already been prescribed.

146. Therefore, in our considered view, the submission of the respondent that the excess position limits would be invalidated in terms of Section 18A of the SCRA is liable to be rejected.

147. However, we find it apposite to clarify at the outset that the agency agreements entered into between the appellant no. 1 and the 12 entities may or may not be considered to be a fraudulent or manipulative device depending on the circumstances surrounding the said agreements.

iii. Cornering of the positions in RPL November 2007 futures segment by the appellant no. 1

148. The respondent herein has submitted that the appellant no. 1, by way of agency agreements with the 12 entities, had pre-planned the cornering of open positions in the November 2007 futures segment of the RPL stock to gain unlawful profits therein. Therefore, the breach of position limits through the use of such principal-agent relationship attracted the application of the PFUTP Regulations.

149. We find it apposite to note that the respondent's claim that the appellant no. 1 cornered 61.15% of the open positions on 06.11.2007 and increased the same to 93.60% on the settlement date i.e., 29.11.2007, is in respect of the one-month settlement of futures position i.e., only in November 2007 futures segment.

150. In our considered view, the aforesaid assertion is not valid in terms of the 2001 SEBI Circular which specifically states that the positions limits as stated therein, are applicable on the combined positions in all derivative contracts on an underlying stock at a particular stock exchange. The relevant portion reads thus– "*This position limits would be applicable on the combine position in all derivative contracts on an underlying stock at an exchange*."

151. What is discernible from the aforesaid is that position limits are applicable on all derivatives be it futures or options. Further, there is no distinction between one-month, two-months or three-months futures series insofar as the position limits under the 2001 SEBI Circular are concerned. Therefore, calculating client/customer specific positions merely on the basis of the total open positions in the November 2007 futures of RPL is erroneous. Rather, the open position of that stock, in that exchange, across all derivatives ought to have been considered.

152. We say so because calculating open positions per a singular series would create a loophole by way of which a trader could accumulate a dominant position by spreading its holdings across several series while staying within the 5% open positions limit under the 2001 SEBI Circular. We may illustrate this apprehension in the following manner:

If position limit are per series only	**The problem created**
A client/customer holds 4.9% open interest in the May 2026 futures of a particular underlying stock–	Then this would be considered to be just within the limit prescribed under the 2001 SEBI Circular.
A client/customer holds 4.9% open interest in the June 2026 futures of a particular underlying stock–	Then this would be considered to be just within the limit prescribed under the 2001 SEBI Circular.

A client/customer holds 4.9% open interest in the July 2026 futures of a particular underlying stock–	Then this would be considered to be just within the limit prescribed under the 2001 SEBI Circular.
Combined position across all series– 1-month (May 2026), 2-months (June 2026) and 3-months (July 2026) series–	This would lead to enormous share in the combined derivatives market and may end up effectively cornering across all series.

153. Therefore, it makes regulatory sense to calculate open interests of a client/customer on the basis of its positions across all derivatives and not on the basis of a particular series. It is this very regulatory intention that has been underscored in the 2001 SEBI Circular.

154. We say without any manner of doubt in our minds that the respondent ought to have calculated the percentage of open positions of the appellant no. 1 (through the 12 entities) on the basis of the total open positions across (i) November 2007 RPL futures, (ii) December 2007 RPL futures, (iii) January 2008 RPL futures, and (iv) options position in the underlying RPL stock.

155. The appellant no. 1 submitted that even though its total open interest in the futures segment, was in the one-month series to be settled at the end of trading in November 2007, yet such total open interest was supposed to be calculated on the aggregate of total open positions across all derivatives of the underlying RPL stock. In furtherance of this submission, the appellant

no. 1 provided calculations of its futures positions across all derivatives that has not been refuted by the respondent.

Date	**Respondent's calculations** (basis of open positions in the November 2007 RPL futures)	**Appellant no. 1's calculations** (basis of open positions across all derivatives)
06.11.2007	**61.15%**	**48.60%**
07.11.2007	63.82%	53.60%
08.11.2007	No calculation provided	56%
09.11.2007	No calculation provided	56.30%
12.11.2007	No calculation provided	57.90%
13.11.2007	No calculation provided	58.50%
14.11.2007	No calculation provided	59.30%
15.11.2007	No calculation provided	59.70%
16.11.2007	No calculation provided	60.30%
19.11.2007	No calculation provided	59.70%
20.11.2007	No calculation provided	59.50%
21.11.2007	No calculation provided	59.50%
22.11.2007	No calculation provided	57%
23.11.2007	78.95%	58.10%
26.11.2007	No calculation provided	45%
27.11.2007	No calculation provided	46.90%
28.11.2007	No calculation provided	47.20%
29.11.2007	**93.60%**	**40.10%**

156. The aforesaid makes it clear that the difference in calculation basis has a significant impact on the percentage result. Though the appellant no. 1's calculation of its open positions as on 29.11.2007 i.e., 40.10% is still considerably higher than the position limits prescribed in the 2001 SEBI

Circular, yet it is not as grave as shown by the respondent's calculations that have been based on a singular series' open interest.

157. There is no gainsaying that the appellant no. 1 had a dominant position in the futures market even when calculated for all derivatives, however such dominant position must be viewed in the context of its avowed purpose of sale of 5% RPL shares in the cash segment.

158. The appellant no. 1 sought to raise monies for its projects by way of selling 5% RPL shares in the cash segment, i.e., 22.50 crore shares. The exceedingly bullish price trend of the RPL share is an undisputed fact. The appellant no. 1 had apprehensions on the basis of analyst reports that the RPL share may face price correction and would start following a bearish trend. In our considered opinion, such apprehension was not misplaced. This is especially so considering that the appellant no. 1 sought to sell 22.5 crore shares in the cash segment which may also bring down the prices *albeit* in a phased manner. The appellant no. 1, after taking all of these factors into account, found it fit to hedge its risk by locking in prices as on 01.11.2007 to 06.11.2007 for 9.92 crore positions in the November 2007 futures segment.

159. We find it apposite to note that though 9.92 crore futures positions were significantly above the position limits prescribed under the 2001 SEBI Circular, yet they counted for less than half of the underlying 22.5 crore

shares that were exposed to the risk of price movements in the cash segment. To say that the 2001 SEBI Circular prohibits the breach of position limits and allows hedging only up to such a limit would be an erroneous reading of the same. As discussed above, a client/customer was only supposed to disclose their positions over and above the position limits and there was no ban *per se* on the crossing of such limits. We find that such reading is necessary in scenarios such as in the present matter where hedging only to the extent of position limits, would have been equivalent to no hedging at all.

160. In the same breath, we recognize that 40.10% of open interest is a significant share in the futures market and there is no gainsaying that a decrease in prices would greatly benefit the appellant no. 1. However, whether the factum of cornering by itself would constitute a fraudulent act under the PFUTP Regulations remains to be seen.

iv. "Fraud" under the PFUTP Regulations

161. "Fraud" under the PFUTP Regulations has been defined under Regulation 2(1)(c) thereof. For the purposes of this exposition, we may only refer to the limited portion of the said definition as reproduced below:

> "*(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance*

> *or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss*"
>
> (Emphasis supplied)

162. A bare textual reading of the aforesaid definition indicates that–

- *First,* a *mala fide* intention is not necessary for an act, expression, omission or concealment to fall under the definition,
- *Secondly,* inducing another person to deal in securities is a necessary ingredient to constitute fraud,
- *Lastly,* there is no requirement to prove injury to the persons who would have been adversely impacted by the fraud played upon them. This means that an act, expression, omission or concealment would amount to fraud irrespective of whether the person attempting to manipulate the market, achieved their end result.

163. We may refer to few rulings of the SAT as well as of this Court to understand the ambit of the aforesaid definition. In ***Pyramid Saimira Theatre Ltd. v. Securities and Exchange Board of India*****,** reported in **2010 SCC OnLine SAT 146**, it was observed that under the PFUTP Regulations, any manipulative or deceptive device or contrivance put into play by a person does not require further proof of *mala fide* state of mind or intention, as long

as the device is manipulative in itself. The relevant portion of the judgment reads thus:

> *"9. (...) A bare reading of Regulation 3(b) would make it clear that it does not import any concept of fraud at all and the words "any manipulative or deceptive device or contrivance" do not require any state of mind. As long as the device or contrivance is manipulative in itself, no further state of mind or intention is required. Regulation 3(c), on the other hand, imports the concept of fraud but fraud as defined in Regulation 2(1)(c) of the Regulations (...)*
>
> *It is clear from this definition that any act, omission or concealment to be a fraud within the meaning of the Regulations need not be committed in a deceitful manner. The words "whether in a deceitful manner or not" are significant and clearly indicate that intention to deceive is not an essential requirement of the definition of fraud as given in the Regulations. In other words, mens rea or criminal intent is not an essential ingredient to establish fraud. Even making a false statement without believing it to be true is by itself an act of fraud. (...)"*
>
> (Emphasis supplied)

164. On the other hand, in ***Ketan Parekh v. Securities & Exchange Board of India*****,** reported in **2006 SCC OnLine SAT 221**, the SAT observed that intention of the parties involved in manipulation of the market is key to establishing whether a particular 'synchronised' or negotiated deal is illegal or not. Further, a list of factors, *albeit* not exhaustive, was provided that may

enable the respondent authority and the courts to gauge the intention of the party who is allegedly involved in the fraudulent activity. These include:

a) Nature of the transaction executed,

b) the frequency with which such transactions are undertaken,

c) the value of the transactions,

d) whether they involve circular trading and whether there is real change of beneficial ownership, and

e) the conditions then prevailing in the market.

The relevant portion of the judgment in ***Ketan Parekh*** *(supra)* reads thus:

> "*20. (...) As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then*

> *prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.*"
>
> (Emphasis supplied)

165. In ***SEBI v. Kanhaiyalal Baldevbhai Patel*****,** reported in **(2017) 15 SCC 1**, this Court observed that the definition of fraud under Regulation 2(1)(c) of the PFUTP Regulations is inclusive and must be given a broad and expansive understanding. The following was observed:

i) *First*, an expansive definition would mean that acts, expressions, omissions or concealments that were not done deceitfully are also covered by the definition. In this sense, the first part of the definition of fraud may be termed as a catch all provision while the second part delineates certain situations in which fraud would be made out. However, this does not change the fact that the definition is not exhaustive and may include situations which are not covered by the second part.

ii) *Secondly,* it was held that emphasis must be placed on whether another person(s) was induced to deal in securities as a result of the fraudulent or manipulative device or misrepresentation of the person

allegedly committing the fraud. This was held to be the necessary condition for PFUTP Regulations to be applicable.

iii) The relevant portions of the judgment in ***Kanhaiyalal Baldevbhai Patel*** *(supra)* read thus:

> "*30. The definition of "fraud" under clause (c) of Regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term "fraud". The ingredients of the first part of the definition are:*
> *1. includes an act, expression, omission or concealment whether in a deceitful manner or not;*
> *2. by a person or by any other person with his connivance or his agent while dealing in securities;*
> *3. so that the same induces another person or his agent to deal in securities;*
> *4. whether or not there is any wrongful gain or avoidance of any loss.*
>
> **---xxx---**
>
> *54. The definition of "fraud", which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a "fraudulent act" or a conduct amounting to "fraud". The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*
>
> **---xxx---**
>
> *56. A person can be said to have induced another person to act in a particular way or not to act in a particular way*

if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word "inducement" is understood in Criminal law. The difference between inducement in Criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.

---xxx---

62. To attract the rigour of Regulations 3 and 4 of the 2003 Regulations, mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in SEBI v. Kishore R. Ajmera is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified."

(Emphasis supplied)

166. What is discernible from the aforesaid is that this Court provided a liberal interpretation to the definition of fraud under Regulation 2(1)(c) of the PFUTP Regulations as regards the requirement of deceitful intention. In other words, the respondent authority is not required to prove that it was the intention of the person to commit fraud.

167. On the other hand, in ***SEBI v. Kishore R. Ajmera*****,** reported in **(2016) 6 SCC 368**, another two-Judge Bench of this Court observed that in the dearth of direct evidence to the effect, the intention of a person to manipulate or defraud the markets may be gauged from immediate and proximate facts and circumstances surrounding the events on the basis of which allegations are founded to reach a reasonable conclusion. Such inference has to be drawn using the standard of preponderance of probabilities in cases of civil liability. Like in ***Ketan Parekh*** *(supra)*, this Court provided a list of factors that may be utilised to determine whether fraudulent intention is reasonably made out or not. The list includes the following:

a) volume of the trade effected;

b) the period of persistence in trading in the particular scrip;

c) the particulars of the buy and sell orders, namely, the volume thereof;

d) the proximity of time between the two, and

e) such other relevant factors.

The relevant portions of the judgment in ***Kishore R. Ajmera*** *(supra)* read thus:

> "*26. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*
>
> **---xxx---**
>
> *30. It has been vehemently argued before us that on a screen-based trading the identity of the 2nd party be it the client or the broker is not known to the first party/client or broker. According to us, knowledge of who the 2nd party/client or the broker is, is not relevant at all. While the screen-based trading system keeps the identity of the parties anonymous it will be too naive to rest the final conclusions on said basis which overlooks a meeting of minds elsewhere. Direct proof of such meeting of minds elsewhere would rarely be forthcoming. The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any*

of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt.

31. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The fact that the broker himself has initiated the sale of a particular quantity of the scrip on any particular day and at the end of the day approximately equal number of the same scrip has come back to him; that trading has gone on without settlement of accounts i.e. without any payment and the volume of trading in the illiquid scrips, all, should raise a serious doubt in a reasonable man as to whether the trades are genuine. The failure of the brokers/sub-brokers to alert themselves to this minimum requirement and their persistence in trading in the particular scrip either over a long period of time or in respect of huge volumes thereof, in our considered view, would not only disclose negligence and lack of due care and caution but would also demonstrate a deliberate intention to indulge in trading beyond the forbidden limits thereby attracting the provisions of the FUTP Regulations."

(Emphasis supplied)

168. The aforesaid expositions of law indicate that there is no consensus on whether or not intention plays a role in the determination of a fraudulent act. However, if we are to read these observations with the plain language of Regulation 2(1)(c) of the PFUTP Regulations, we may be tempted to observe that the meaning fraud in the securities market is unfettered by the

requirement of intention. This observation may as well make the definition "omnipotent".

169. However, what is noteworthy is that the first part of the definition of 'fraud' under Regulation 2(1)(c) requires no proof of intent. On the other hand, the second part of the same definition that uses the word 'inducement' which expression partakes an intentional act directed towards inducement, quietly brings in the requirement of 'intention'. This creates an internal contradiction in the definition, causing confusion.

170. In our considered opinion, the plain language of the Regulation 2(1)(c) ought not to be read in a strict sense. We say so because the requirement of 'deceitful intention' being non-essential to the definition runs counter to the third element of the first part of the definition of fraud. As discussed hereinabove, the language of the Regulation 2(1)(c) places no requirement to prove wrongful gain or avoidance of loss. Rather, it only requires the proof of inducement by which a third party is misled to deal in securities, which is evident from the circumstances included in the extended part of the definition. This means that an act, expression, omission or concealment would amount to fraud irrespective of whether the person attempting to manipulate the market achieved their end result.

171. Reading these two 'non-essentials' together shows that minimal weightage has been given to both 'deceitful *mens rea*' as well as 'injurious *actus reus*'. Before we proceed further, we find it apposite to clarify that the terms *mens rea* and *actus reus*, though used ordinarily in criminal sense, make explanation simpler for the purposes of this exposition. We only refer to them as concepts and nothing more.

172. Regulation 2(1)(c) in our opinion, is an illustration of inelegant legislative drafting. We say so because any imputation of wrong doing is founded either on unlawful mindset or unlawful action or both. Unfortunately, Regulation 2(1)(c) deprives us of both by making them irrelevant for the purposes of establishing fraudulent conduct. We have no choice but to ask ourselves the question– what exactly is the basis for someone to fall under the definition of fraud because at the moment, anything and everything in the stock market that may induce someone to deal in securities, could very well be termed as fraud by the respondent.

173. At this juncture, we find it apt to quote Sandeep Parekh's "Fraud, Manipulation and Insider Trading in the Indian Securities Market" that in light of the broad definition of fraud under Regulation 2(1)(c), it is mathematically possible to prove that even walking, jogging and cycling are securities frauds.

174. There is no gainsaying that the definition is so broad and vague that there is a high possibility of false positives i.e., an activity may be incorrectly classified as fraudulent when it is actually legitimate. The consequences of such errors include reputational damage for the person alleged to have committed fraud, increased operational costs for such a person and potential loss of customers and business partners. It would also be relevant to take note of Regulations 3 and 4 of the PFUTP Regulations respectively, wherein, prohibitions are prescribed. A reading of both the Regulations would reveal that the prohibited act should be directed towards manipulating the market and indulge in the act of fraud for many purposes including to make a gain or to avoid a loss. Though, it appears that there is a contradiction between the definition and Regulations 3 and 4, yet a closer scrutiny and harmonious reading would throw clarity. We find that, in enactments having drastic effect on the economy, there should be no room for doubts and misinterpretation.

175. We agree with the observation in ***Kanhaiyalal Baldevbhai Patel*** *(supra)* that fraud is jurisprudentially very difficult to define. However, such difficulty should not result in such a legislation that would cover every act, expression, omission or concealment under the sky. In our opinion, it cannot be the intention of the PFUTP Regulations to give unfettered powers to the respondent authority to decide the question of fraud. We find it apposite to

purposively interpret Regulation 2(1)(c). In our considered view, both *mens rea* and *actus reus* cannot be made into irrelevant factors for deciding fraud. Therefore, we may outline the following scenarios for a more purposive approach to Regulation 2(1)(c):

i) In situations where injury due to wrongful act is established, i.e, inducement to deal in securities has caused the other person to be adversely affected and allowed the party accused of fraud to gain unlawful profits or avert ordinary losses at the former's expense, there would be no requirement on the respondent authority to prove deceitful intention. In other words, where injury is impossible to be proved, the requirement of wrongful intention becomes mandatory.

ii) *Secondly*, similarly, in situations where deceitful or *mala fide* intention to defraud and manipulate the securities market is clear from the blatant misconduct or attending circumstances that cogently establish wrongful intention, then proving the injury would not be required.

176. We may, with a view to obviate any confusion, clarify that *inducing another person or their agent to deal in securities*, remains a strict requirement for establishing fraud except in such circumstances as may be covered by this Court's dictum in ***SEBI v. Rakhi Trading (P) Ltd.***, reported in **(2018) 13 SCC 753**. This Court held therein that once the factum of manipulation was

established, there is no requirement to establish whether other persons were induced to deal in securities. The relevant portions of the judgment are reproduced below:

> "*78. Respondent Rakhi Trading and Kasam Holding on facts are found to have been engaged in non-genuine transactions creating appearance of trading. If the factum of manipulation is established, it will necessarily follow that the investors in the market have been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and the Board cannot be imposed with a burden which is impossible to be discharged.*
>
> *79. In the context of the 1995 Regulations, old Regulation 4(2)(a), SAT, observing that if the factum of manipulation is established, it will necessarily follow that the investors in the market had been induced to buy and sell and no further proof is required in this regard, in Ketan Parekh case [Ketan Parekh v. SEBI, 2006 SCC OnLine SAT 221] , held as under: (SCC OnLine SAT para 12)*
>
> > *"12. ... The stock exchange is also a platform for the fair price discovery of a scrip based on the market forces of demand and supply. Securities market is so widespread and in a system of screen based trading various potential investors who track the scrips through the screens of the exchanges only see whether a particular scrip is active or not, whether it is trading in large volumes and whether the price is going up or down. Having regard to these factors he makes up his mind to invest or disinvest in the securities. When a person takes part in or enters into transactions in*

> *securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy/sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer/seller thereby inducing him to buy or sell depending upon how the market has been manipulated. ... In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so widespread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations."*"
>
> (Emphasis supplied)

177. A perusal of the aforesaid exposition indicates that the requirement to prove inducement when the factum of manipulation is established, is similar to the second requirement placed by us in paragraph 175 of this judgment. We say so because the logical conclusion of giving the requirement of inducement a go bye, is that injury also need not be proved once manipulation is sufficiently and cogently established. It is such determination of manipulation that provides a conclusive insight into the intention of the party seeking to defraud the market.

178. As has been discussed in ***Kanaiyalal Baldevbhai Patel*** *(supra)* and ***Kishore R. Ajmera*** *(supra)*, the test for establishing such manipulation is normally considered to be the test of preponderance of probabilities. However, in situations envisaged under ***Rakhi Trading*** *(supra)* where the mandatory ingredient of inducement itself is done away with, it is imperative to ensure that the factum of manipulation is established cogently with all attending circumstances pointing towards the direction that the person so alleged, must have committed fraud.

179. In the recent judgment in ***M/s Alupro Building Systems Pvt. Ltd. v. Commissioner of Central Excise Bangalore-II***, **Civil Appeal No. 8030 of 2010**, this Court, while relying on ***Bater v. Bater*****,** reported in **[1951] P. 35**, observed that the test of preponderance of probabilities is not exercisable as a straitjacket formula, rather, it includes within itself varying degrees of probability depending on the mind of the reasonable man who is considering the particular subject matter. The relevant portions of the judgment are reproduced below:

> "*91. In circumstances referred to above, there is no doubt that the standard of proof to be met is that of preponderance of probabilities. In this regard, it would be apposite to refer to observations of Lord Denning in Bater v. Bater, [1951] P. 35, wherein he succinctly expressed the degrees of probabilities within preponderance of probabilities. The relevant observations read thus:-*

"I do not think that the matter can be better put than it was by Lord Stowell in Loveden v. Loveden (1810) 2 Hagg. Con. 1, 3. "The only general rule that can be laid down upon the subject is, that the circumstances must be such as would lead the guarded discretion of a reasonable and just man to the conclusion". The degree of probability which a reasonable and just man would require to come to a conclusion — and likewise the degree of doubt which would prevent him coming to it — depends on the conclusion to which he is required to come. It would depend on whether it was a criminal case or a civil case, what the charge was, and what the consequences might be; and if he were left in real and substantial doubt on the particular matter, he would hold the charge not to be established: he would not be satisfied about it.

But what is a real and substantial doubt? It is only another way of saying a reasonable doubt; and a reasonable doubt is simply that degree of doubt which would prevent a reasonable and just man from coming to the conclusion. So the phrase "reasonable doubt" takes the matter no further. It does not say that the degree of probability must be as high as 99 per cent. Or as low as 51 per cent. The degree required must depend on the mind of the reasonable and just man who is considering the particular subject-matter. In some cases 51 per cent. Would be enough, but not in others. When this is realized, the phrase "reasonable doubt" can he used just as aptly in a civil case or a divorce case ns in a criminal case; and indeed it was so used by my Lord in Davis v. Davis [1950] P. 125 and Gower v. Gower 66 T. L. R. (Pt. I) 717 to which we have been referred. The only difference is that, because of our high regard for the liberty of the individual, a doubt may be regarded as reasonable in the criminal courts, which would not be so in the civil courts. I agree

> *therefore with my brothers that the use of the phrase "reasonable doubt" by the commissioner in this case was not a misdirection any more than it was in Briginshaw v. Briginshaw (1938) 60 C. L. R. 336."*
>
> *92. In terms of varying degree of probability that would be required to establish marketability of respective goods, to lay down a general rule or rather attempt to define what circumstances would be sufficient or insufficient to infer the fact of marketability would be impossible.*
>
> *93. In the aforesaid context, when we say "degree of probability", we mean it vis-à-vis the goods in consideration. That a commodity may be so rare that even one instance of it being marketable would be sufficient. On the other hand, where the commodities are common goods, the degree of probability would be correspondingly higher. Thus, the degree of probability is a flexible and calibrated to the nature, rarity, or character of the goods in question.*
>
> *94. All that we are trying to convey is that the degree of probability should be proportionate to the subject matter. In other words, on an objective perusal of the evidence so produced, the courts must either believe it to exist or consider its existence so probable that a reasonable man ought, under the given circumstances, acts upon the supposition that it exists."*
>
> (Emphasis supplied)

180. The aforesaid exposition of law is significant as regards the test of preponderance of probabilities that is to be employed by the respondent authority and the courts to prove the factum of manipulation. In our considered view, where the circumstances indicate that no inducement is

present yet fraudulent conduct may have been at play, the standard of proof to be discharged is a higher degree of the preponderance of probabilities.

v. Whether valid hedges in the futures segment constitute manipulative cornering in the present case?

181. Having discussed the definition of fraud under the PFUTP Regulations and ingredients thereof, we may now address ourselves on the issue whether 40.10% open interest of the appellant no. 1 in the derivatives market could amount to a fraudulent practice. In order to answer the same, we must look at the attending circumstances surrounding the appellant no. 1's transactions.

182. The appellant no. 1 gathered 40.10% open interest in the derivatives market on the settlement date, i.e., 29.11.2007 during a legal regime wherein futures were permitted to be settled only by way of the cash settlement system. This means that there was no onus on the appellant no. 1 to physically transfer the underlying RPL stock to the person with whom the futures contract was entered into. Once the position was closed voluntarily, or automatically settled on the settlement date, the parties to the short futures contract were required to calculate profits or losses in case the price decreased from the locked-in price or increased from the locked-in price respectively. Thereafter, only such profits or losses were required to be transferred to the other party without actually transferring the underlying shares.

183. In such a legal regime, the mere factum of cornering positions could be considered to be indicative of price manipulation with no separation between the two acts. However, this is only so when there are no circumstances that may justify the open positions in excess of the position limits. In the present case, we find that the appellant no. 1 was interested in safeguarding itself from the risk exposure that it faced in the cash segment due to the sale of a massive portion of its RPL shareholding amounting to 22.5 crore shares. In our opinion, the position limits prescribed in the 2001 SEBI Circular could in no way properly hedge the appellant no. 1's interests. Therefore, it was necessary for the appellant no. 1 to enter into 9.92 crore futures positions. This number on the settlement date reduced to 7.97 crore positions.

184. The respondent has contended that the justification of hedging is an afterthought by the appellant no. 1 and the 7.97 crore positions being retained till the automatic settlement by the exchange showed that the appellant no. 1 had a pre-planned scheme for increasing its profits in the futures market. The respondent submitted that if the appellant no. 1's intention was to truly hedge its risk in the cash segment, it should have closed its futures positions as and when the sell orders in the cash segment were being fulfilled. The respondent submitted that as on 23.11.2007, the appellant no. 1 had already sold almost 18 crore shares in the cash segment, therefore there was no requirement to leave all the remaining future

positions open. The respondent considered the retaining of such positions that did not correspond to the underlying shares that were exposed to risk, as 'naked hedge' at par with speculation. To buttress its submission, the respondent has relied on ***Pankaj Oil Mills*** *(supra)*.

185. The Gujarat High Court, in ***Pankaj Oil Mills*** *(supra)* held that for a contract to be considered as a valid hedge, it is necessary that the total of such transactions should not exceed the total underlying stocks. The relevant portion of the judgment reads thus:

> "*Our conclusions are, therefore, as under:*
> *(1) Hedging contracts, in order to be out of speculative transactions, must be in respect of only raw materials so far as the manufacturer is concerned though these contracts may be both with regard to sales and purchases.*
> *(2). Hedging contracts need not succeed the contracts for sale and actual delivery of goods manufactured, but the latter may be subsequently entered into, provided they are within the reasonable time not exceeding generally the assessment year.*
> *(3) In order to be genuine and valid hedging contracts of sales, the total of such transactions should not exceed the total stocks of the raw materials or the merchandise on hand which would include existing stocks as well as the stocks acquired under the firm contracts of purchases.*"
>
> (Emphasis supplied)

186. In our considered opinion, the reliance placed upon the aforesaid judgment by the respondent is misplaced. Rather, the decision of the Gujarat High

Court supports the submission of the appellant no. 1 in its submission that its transactions in the futures segment were to hedge its risk. We say so because when the appellant no. 1 through the 12 entities took 9.92 crore positions in the RPL futures segment, it intended to hedge the risk of underlying 22.5 crore shares that were yet to be sold in the cash segment. As on 23.11.2007, the appellant no. 1 had already sold about 18 crore shares in the cash segment, therefore, 4.5 crore shares remained to sold out of the 22.5 crore. It is the contention of the respondent that because the appellant no. 1 retained all 7.97 crore positions in the futures market instead of closing 3.47 crore positions, it indulged in speculation rather than hedging.

187. We are of the view that the aforesaid argument of the respondent is liable to be rejected. We say so because hedging includes anticipatory hedging as well. We find it likely that the appellant no. 1 must have believed that the prices of the RPL shares may face downward pressure after the prices touched Rs. 190 per share between 26.11.2007 to 29.11.2007 and hence, found it prudent to hold on to its existing positions as an anticipatory hedge against drastic decreases in RPL share prices. The very purpose of hedging, as recognized in law, will otherwise get defeated.

188. Further, there is no legal requirement to ensure a 1:1 ratio of hedges to stock quantity. While a perfect hedge may be desirable from the point of view of

monitoring whether parties are conducting themselves in a lawful manner, yet the economics of perfect hedging may not always be sound. This is the reason for there being no legal mandate regarding the same. Since, the appellants were not required to perfectly hedge their risks, we find that the argument of the respondent is liable to be rejected.

189. We may also address the submission of the respondent that there was no specific board resolution passed by the appellant no. 1 to hedge its risk exposure in the cash segment as regards the sale of the 22.5 crore shares. We are inclined towards the minority opinion of the SAT in this regard. Hedging policies of the SEBI as well as the NSE were introduced in 2016, that is well after nine years of the inception of this matter. It is worth noting that even the 2016 policies are in respect of commodity derivatives instead of equity derivatives.

190. In 2007, no such policies existed, therefore, it was not essential for the appellant no. 1 to pass a specific board resolution in this regard. As long as a board resolution that empowered officials of the appellant no. 1 to make trades in the cash segment and the derivatives segment was in place, there was no need for the appellant no. 1 to pass another board resolution specific to the sale of RPL shares.

191. The aforesaid discussion leaves no doubt in our minds that the 9.92 crore positions in the futures market (out of which 1.95 crore positions were squared off), were valid hedges.

192. In such view of the matter, could it be said that because the appellant no. 1 had a share of 40.10% of the total open interest in the RPL derivatives segment, it would amount to cornering with a view to manipulate prices for unlawful gains? In our considered opinion, the answer to this must be a firm 'No'.

193. We say so because cornering of positions with the intent to manipulate the market ought to be patently clear from the conduct and transactions of the accused person. In a case such as the present matter where the 40.10% share of the appellant no. 1 in open interests was validly justified by the consideration of hedging, we may look at the concentration in positions as only giving the ability to manipulate. It bears no clarification that concentration by itself cannot be considered to be manipulation.

194. Further, the settlement system for derivatives in 2007 was the cash settlement system in which no physical delivery of shares was mandatory after the futures positions were closed. This means that cornering by itself cannot be considered a fraudulent device to manipulate the market because the element of inducement is not involved. In the present matter as well, the

appellant no. 1 booked profits that accrued from the futures contracts which had already been entered into between 01.11.2007 and 06.11.2007. The fall or rise in price of the RPL share (be it genuine or artificial), did not induce other traders to deal in securities after the positions had been closed because no physical delivery of shares was required.

195. In ***Rakhi Trading*** *(supra)*, this Court held in paragraph 78 thereof that in cases where the factum of inducement is not separately established, if the respondent authority proves the factum of manipulation then it will necessarily follow that the investors in the market have been induced to buy or sell in such a manipulated market. Therefore, further proof of inducement would not be required. However, the factum of manipulation still needs to be established, which can be garnered only from the effects of the actions by the person alleged to have defrauded or manipulated the market price or induced the other party.

196. The aforesaid is as clear as a noon day in its implication that where the respondent authority is unable to show and prove inducement of third parties to deal in securities as a result of the alleged fraud played on the market, it is necessary that the device or tactic which the respondent authority deems to be manipulative must be such that there could be no other explanation but that of fraud. To our mind, the observations in ***Rakhi Trading*** *(supra)* place

a higher burden of proof on the respondent authority to establish manipulation in cases where inducement is not being proved.

197. Therefore, in the present matter, it was incumbent upon the respondent to cogently and sufficiently establish a separate act of price manipulation besides cornering. This is because cornering by itself did not lead to further inducement of other people to deal in the futures segment. To take forward its submission that the appellant no. 1 violated Regulations 3 and 4 of the PFUTP Regulations, the respondent must prove whether price manipulation was at play in terms of Regulation 4(2)(e).

vi. Sale of 1.95 crore RPL shares in the cash segment during the last 10 minutes on 29.11.2007

198. The respondent in order to discharge its burden to prove price manipulation, submitted before us that the appellant no. 1 coerced price discovery by placing sell orders for 1.95 crore RPL shares in the cash segment during the last 10 minutes of the settlement date, 29.11.2007. The respondent has contended that the appellant no. 1 made the aforesaid trades because it was apprehensive that the price of the RPL shares would increase which might cause it to suffer low profits in the futures segment. It was submitted that the sale of 1.95 crore shares in the cash segment was a pre-planned strategy to depress the share price and hence, was found to be fraudulent. Accordingly,

the respondent has prayed for the disgorgement of the profits gained by the appellant no. 1 in the futures segment.

199. In our considered opinion, the aforesaid submission presents an unlikely situation. We say so because the appellant no. 1 was the promoter of RPL with 75% shareholding in the same. Even when the appellant no. 1 decided to sell 5%, it continued to retain 70% shares. A decrease in the prices of RPL would naturally lead to a depreciation in the valuation of the 70% that the appellant continued to hold. Therefore, for a promoter, especially one with 70% holding, it is quite unlikely that it would even allow such decrease in valuation, let alone actively causing the artificial decrease in prices.

200. Be that as it may, even if we restrict ourselves to narrower considerations presented to us by the facts in the instant matter, the submission of the respondent still remains unlikely. We find this to be so because the appellant no. 1 had sold only around 18 crore shares out of the total 22.5 crore shares that were planned to be sold initially. A perusal of the pattern of the trades made by the appellant no. 1 shows that during the period between 13.11.2007 and 23.11.2007, the least price acceptable to the appellant no. 1 to sell the RPL shares was about Rs. 208-209/- per share. The perusal of the materials placed on record indicates that the prices stayed below Rs. 208/- per share till 29.11.2007, even decreasing as much as Rs. 190/- per share.

201. If we look at the trades of 1.95 crore shares sold during the last 10 minutes on 29.11.2007, we find that the lowest price at which the appellant no. 1 had placed its sell orders was Rs. 210/- per share. The respondent has submitted that because this figure was less than the LTP, the intention of the appellant no. 1 could only have been to cause downward pressure on the RPL share price to gain unlawful profits in the futures market.

202. On the other hand, the appellant no. 1 has submitted that it never sold shares below the price of Rs. 208 including on the last day, i.e., 29.11.2007. Though the price of the RPL shares were expected to continue following the bearish trend, the same unexpectedly rose to Rs. 224.70/- per share at 3:21 PM. However, when the appellant no. 1 began placing its sell orders for 1.95 crore shares in tranches, it realised that its asked prices were not being met. Therefore, the appellant no. 1 thought it fit to discount its sell price to ensure that its order gets fulfilled during the short phase of price hike caused by unknown factors.

203. It was also submitted by the appellant no. 1 that the respondent has not inquired into simultaneous 1.06 crore shares sold in the cash segment during the same time and only pinned the blame of market manipulation on the appellant no. 1.

204. The aforesaid submissions show that the factum of price manipulation is not limpid from the facts and circumstances, in the slightest. It bears no further clarification that the respondent's case in the present matter hinges entirely on whether the appellant no. 1 fraudulently manipulated the share price of RPL to depress the same and such stand is not meted out by material evidences but rather are founded upon mere suspicion.

205. There is no gainsaying that the facts in the present matter are not starkly clear like in ***Rakhi Trading*** *(supra)* or ***Sandeep Paul v. SEBI,*** reported in **2019 SCC OnLine SAT 82**, both of which have been referred to by the respondent to contend that the appellant no. 1 can be said to have manipulated the market even if no inducement or injury to others is proved. We find that reliance on these judgments by the respondent indicates that there are no circumstances which prove inducement or injury unless and until the core factum of price manipulation is proved.

206. However, in light of our observations in paragraphs 175, 176 and 179 respectively of this exposition, we find that there is a higher burden of proof on the respondent to show that price manipulation took place. In the present case, the totality of facts and circumstances surrounding the appellant no. 1's transactions in the cash segment during the last 10 minutes on 29.11.2007, show that the appellant no. 1 sold the 1.95 crore shares with a

genuine intent to raise money therefrom and not to depress prices for profits in the futures segment.

207. We say so because of the following points:

- *First*, that the appellant no.1's preferred price was either above or equivalent to Rs. 210/- per share is evident from its trades on 23.11.2007 when the RPL shares were last sold in the cash segment. We find it more likely that the appellant no. 1 was trying to sell the 1.95 crore shares at Rs. 210/- at the very least. This is because its priority was to execute successful sale orders more than waiting for prices to increase to a more favourable amount. Since the entirety of the 22.5 crore shares were yet not sold, any price rise was viewed as an opportunity to place sell orders.

- *Secondly*, if the intention of the appellant no. 1 was to depress the prices, it would have placed sell orders at prices lower than Rs. 210/- per share which would also have been lower than the LTP. In our considered view, selling huge blocks of shares during the last 10 minutes, though not illegal, is definitely not an ideal circumstance. However, in the present matter, the attending circumstances show that price hike was available during the small window of 10 minutes,

therefore, we cannot fault the appellant no. 1 that it took advantage of the same.

- *Thirdly*, motives and suspicions can in no way be the only basis for holding that there was fraudulent intent. The attending circumstances ought to be very clear in establishing wrongful conduct. For instance, in the recent judgment delivered in ***SEBI v. Terrascope Ventures Ltd.***, reported in **2026 SCC OnLine SC 403** (wherein one of us, J.B. Pardiwala, J., was a part), the intention to fraudulently disregard the object with which preferential shares were sold, was apparent from the diversion of funds raised from the very first day and the ratification of the said diversion after the interim orders of the WTM. It may be said that this is the level of clarity from the surrounding circumstances that is required to prove the intent to manipulate, which is not present in the instant case.

- *Fourthly*, if it had been the intention of the appellant no. 1 to manipulate prices, then it could have dumped a far larger quantity of shares to depress the RPL share price as much as possible in order to make better profit in the futures segment.

- *Lastly*, stock market is a place with several participants. The respondent, without checking the trades of other participants who

were dealing in substantial blocks of RPL shares, put the blame of the downward pressure on the price of RPL scrip on the appellant no. 1. The respondent cannot find fault with the appellant no. 1's conduct without proper due diligence.

208. In our considered view, the respondent has failed to discharge the burden of proof to establish price manipulation by the appellant no. 1. Therefore, we do not find any liability of fraud and manipulation being made out against the appellant no. 1.

F. DETERMINATION OF THE ISSUES

a. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were fraudulent and manipulative device under the PFUTP Regulations?

209. In our considered opinion, the agreements entered into by and between the appellant no. 1 and the twelve entities were not a device used for fraud and manipulation. The 2001 SEBI Circular did not place a ban on the breach of position limits, rather it only required disclosure when positions were taken in excess, and penalized only the non-disclosure of the same. We have held in the aforesaid parts of this judgment that the appellant no. 1 is liable only to be penalized in terms of the 2001 SEBI Circular and the 2001 NSE Circular.

210. However, to make out a case for fraud, it was incumbent upon the respondent to show how the usage of agency relationships could be said to be manipulative when the 2001 SEBI Circular itself left a loophole in respect of prescribing position limits for persons acting in concert. A literal interpretation of the Circular would not even allow us to penalize their conduct. The only reason for upholding of penalty levied by the SAT and the WTM is that the respondent attempted to do something indirectly, what it could not do directly.

211. In our view, the PFUTP Regulations cannot be attracted on the sole circumstance of the appellant no. 1 using 12 agency agreements to take excess position limits and it was necessary for the respondent to prove whether the manner in which these agency agreements were utilised was fraudulent or not.

b. Whether the 9.92 crore open positions in the November 2007 futures segment of the RPL stock, were valid hedges?

212. In the context of the facts and circumstances presented to us by the parties and the materials placed on record, we find that the 9.92 crore positions taken by the appellant no. 1 in the RPL futures segment were valid hedges. We have said so because the underlying 22.5 crore RPL shares that were

supposed to be sold in the cash segment were more than half of the futures positions taken in the November 2007 series.

213. We have found the reliance placed by the respondent on ***Pankaj Oil Mills*** *(supra)* to be misplaced, since the underlying risk exposure in the cash segment far exceeded the derivatives positions by way of which the appellant no. 1 sought to hedge the risk of price decrease.

214. Further, we have found that there is no legal requirement to ensure a perfect hedge with 1:1 ratio of underlying risk to number of hedge positions. Therefore, we find no force in the argument of the respondent that the appellant no. 1's futures positions from 23.11.2007 onwards were 'naked hedges'.

215. Our aforesaid observation is founded on the fact that there were no hedging policies in place during 2007. The NSE's hedge policy and SEBI's position limits for hedges were introduced 9 years after the facts in the present case transpired, i.e., in 2016. Furthermore, the 2016 hedging policies were provided in context of commodity derivatives and till date, there is no such policy in place for equity derivatives.

c. Whether the agreements entered into by and between the appellant no. 1 and the twelve entities were used by the appellant no. 1 to corner

open positions in the November 2007 futures segment of the RPL stock for the purpose of manipulating the futures market?

216. On the basis of the discussion in the aforesaid, the answer to this question must be a firm 'No'. We say so because the basis to calculate the percentage of the appellants' positions out of all the open positions in the derivatives market, was flawed. The respondent should have calculated the open interest of the appellants out of the total open positions across all derivatives and not just one series. Therefore, the open interest of the appellants would be calculated on the basis of open positions in (i) November 2007 RPL futures, (ii) December 2007 RPL futures, (iii) January 2008 RPL futures, and (iv) options in the RPL stock. On this basis, the percentage of share of the appellants in the futures market was 40.10% on 29.11.2007 and not 93.60%. This is a significant difference. However, 40.10% open interest is also in excess of the position limits stipulated in the 2001 SEBI Circular.

217. Therefore, we have discussed whether in such cases, the open interest of 40.10% would be indicative of the intent to manipulate prices. The facts and circumstances of the present case compel us to say otherwise. We have already stated in the aforesaid that the appellant no. 1 faced huge risks in the cash segment owing to the imminent sale of a large block of RPL shares. Therefore, the hedging requirements of the appellant no. 1 were

proportionate to the risk even though in absolute terms, it exceeded the position limits specified in the 2001 SEBI Circular.

218. In our opinion, cornering that includes within itself the intent to manipulate prices must be patently clear from the conduct and transactions of the allegedly fraudulent party, which in the present matter, is not the case. This is because the 40.10% of open interest constituted genuine and valid hedges. In situations like the one in the instant matter, one may be able to say that cornering provides the ability to manipulate, however, it cannot be said with absolute surety that cornering by itself is manipulation.

219. This is more so because in the cash settlement system of settling futures transactions, no inducement to deal in securities follows the settlement. The only time a person deals in the security is to enter the derivatives contract. Even though inducement has been held to be the necessary ingredient for establishing fraud in ***Kanhaiyalal Baldevbhai Patel*** *(supra)*, yet in ***Rakhi Trading*** *(supra)*, this Court has held that inducement need not be proved if the factum of manipulation is sufficiently and cogently established. This makes it all the more necessary for the respondent authority to prove deceitful intention from the beginning that would lead to a pre-planned act or omission.

220. We have taken this forward by discussing the definition of fraud under Regulation 2(1)(c) of the PFUTP Regulations and making the following courses of action necessary in certain situations. The definition of fraud under the PFUTP Regulations uses the word 'act' and not 'entry'. Though the definition is wide, it does not mean every expression, omission or concealment under the sky. This is because the expression 'inducement' as used in the provision is *sine qua non* to bring a transaction within the ambit of a fraudulent activity. In our opinion, it cannot be the intention of the PFUTP Regulations to give unfettered powers to decide the question of fraud. We find it apposite to purposively interpret Regulation 2(1)(c). In our considered view, both *intention* and *act* cannot be made into irrelevant factors for deciding fraud. Therefore, we may outline the following scenarios:

i. in situations where injury due to wrongful act is established, i.e, inducement to deal in securities has caused the other person to be adversely affected and allowed the party accused of fraud to gain unlawful profits or avert ordinary losses at the former's expense, there would be no requirement on the respondent authority to prove deceitful intention. In other words, where injury is impossible to be proved, the requirement of wrongful intention becomes mandatory.

ii. *Secondly*, similarly, in situations where deceitful or *mala fide* intention to defraud and manipulate the securities market is clear from the blatant misconduct or attending circumstances that cogently establish wrongful intention, then injury would not be required.

221. In the present case, since no inducement pursuant to cornering has been proved, there was a higher burden of proof to establish a separate act of price manipulation. Therefore, it cannot be said that the 40.10% of the open interest was cornering such that the large share of the appellant no. 1 in the futures market itself indicated towards its fraudulent intent.

d. Whether the sale of 1.95 crore RPL shares in the cash segment during the last 10 minutes of the trading day on 29.11.2007 was an attempt to depress RPL share prices to make unlawful profits in the November 2007 futures segment?

222. The facts and circumstances indicate that there was an unexpected increase in the price of the RPL scrip in the last 10 minutes of the settlement date. Therefore, the appellant no. 1 thought it fit to put sell orders for 1.95 crore shares in the cash segment to capitalize on this price hike. However, the said factum is being considered by the respondent as an attempt on part of the

appellant no. 1 to coerce price discovery by causing downward pressure on the price of RPL shares.

223. Upon using the standard of test of preponderance of probabilities, we are of the considered opinion that the respondent's submission does not inspire confidence. We say so because the trends of sales already performed by the appellant no. 1 in the cash segment till 23.11.2007 show that it did not sell below Rs. 208-209/- per share and made sales on 23.11.2007 while the prices were hovering around Rs. 210/- per share. Thereafter, the price of the RPL scrip decreased further and reached even Rs. 190/- per share. The appellant no. 1 made no sales at this time, neither did it close any of its futures positions.

224. It was only in the last 10 minutes of the settlement date, 29.11.2007 that there was a significant increase in prices due to unknown circumstances and the appellant no. 1 sought to take advantage of the same. Had it been the intention of the appellant no. 1 to depress the price, it would have sold far more shares than 1.95 crore and with prices below Rs. 210/- per share. Merely because the appellant no. 1 did not place sell orders on the LTP cannot prove that the appellant no. 1's intention was to manipulate the price of the RPL stock.

225. Another reason for us to conclude that it is not likely that the appellant no. 1 would intentionally manipulate prices is because of its majority shareholding in RPL. Even though 5% out of the shareholding was being offered for sale in the cash segment, the appellant no. 1 continued to retain 70% of the stake in the company. Any decrease in price would depreciate the entire 70% holding and adversely impact the valuation of RPL. The trade-off that the appellant no. 1 would make as regards its 70% shareholding to gain profits in the futures segment for 7.97 positions, seems highly unlikely to us.

226. In such view of the matter, there is no manner of doubt in our minds that the respondent was unable to discharge the higher burden of proof to establish manipulation. Hence, fraud under the PFUTP Regulations is not made out against the appellant no. 1 in the present matter.

G. CONCLUSION

227. For all the foregoing reasons, we have reached the conclusion that the SAT in its majority judgment, committed an egregious error in passing the impugned judgment insofar as the question of fraud under Regulations 3 and 4 of the PFUTP Regulations respectively, is concerned. However, we concur with the observations of the SAT in its majority judgment as regards the

penalty to be levied on the appellant no. 1 for violating the disclosure requirements under 2001 SEBI Circular in respect of position limits.

228. We are left with no other option but to set aside the impugned judgment and order dated 05.11.2020 passed by the SAT respectively, insofar as the finding on fraud under the PFUTP Regulations is concerned. In the result, the appeal partly succeeds and is hereby partly allowed.

229. Accordingly, the order of disgorgement is also set aside. We direct that the appellant no. 1 be refunded Rs. 250 crore deposited in Investor's Protection Fund pursuant to the order of this Court dated 17.12.2020.

230. We uphold the penalty levied by the WTM and SAT in its majority judgment as regards the violation of the 2001 SEBI Circular.

231. Pending application(s), if any, are disposed of.

……J.
(J.B. PARDIWALA)

……J.
(R. MAHADEVAN)

New Delhi.
29th May, 2026.