REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1742 OF 2009

DKG Buildcon Private Ltd. ... APPELLANT(S)

Vs.

The Adjudicating & Enquiry Officer,
S.E.B.I. ... RESPONDENT(S)

WITH

CIVIL APPEAL NO.5833 OF 2009

R.C. Gupta & Co. Pvt. Ltd. ... APPELLANT(S)

Vs.

Securities & Exchange Board of India
... RESPONDENT(S)

J U D G M E N T

NAGARATHNA, J.

1. These Civil Appeals arise out of common impugned Order dated 07.01.2009 passed by the Securities Appellate Tribunal, Mumbai (for short, "SAT").

2. Since the questions of law and issues which arise to be dealt with in both the above captioned Civil Appeals are similar, and the matters are distinct only in their respective facts and events, these appeals are being disposed of by this common judgment.

3. The appellant in Civil Appeal No. 1742 of 2009 is a Private Limited Company which was incorporated under the Companies Act, 1956 on 15.04.1997. The appellant in Civil Appeal No. 5833 of 2009 was incorporated under the Companies Act, 1956 on 02.06.1997.

4. An investigation was carried out by Securities and Exchange Board of India ('SEBI', for short) in the matter of purchase and sale of scrip and manipulation of share prices of M/s Shonkh Technology International Ltd. ('STIL' for the sake of convenience), a Company in which both the appellants had previously held shares. On noticing unusual price movement in the shares of STIL, SEBI conducted an investigation into the buying, selling and dealings in the shares of the Companies under the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'Regulations'). Investigations revealed that one M/s Shreejee Yatayat India Limited (for short, 'SYIL'), a listed company had acquired the entire Undertaking of STIL and in turn SYIL had allotted its shares to the shareholders of STIL. The appellant in

Civil Appeal No. 1742 of 2009 was allotted 10,00,000 shares of SYIL while the appellant in Civil Appeal No. 5833 of 2009 was allotted 1,43,000 shares. Having taken over the business activities of STIL, SYIL changed its name to STIL with effect from 27.07.2000.

5. Investigations further revealed that the appellants had transferred the shares of STIL to a Company under the name and style of Sai Mangal Investrade Pvt. Ltd. (for short, 'SMIPL'). Similarly, entities like Classic Credit Limited, Goldfish Computers Ltd. and Luminant Investment Private Ltd. had also received shares of STIL from various entities which had been allotted shares by SYIL. SMIPL and the other entities referred to above were all controlled and managed by a person named, Ketan Parekh, who had rigged the securities market in the years 2000 and 2001.

6. By an Order dated 12.12.2003 passed by SEBI, Ketan Parekh and the companies controlled by him had been prohibited from buying, selling or dealing in securities in any manner directly or indirectly for a period of fourteen years. That Order was upheld by SAT on 14.07.2006 and the appeal filed before this Court was also dismissed.

7. In view of the aforesaid investigations, SEBI initiated proceedings against several entities including the appellants herein. By a separate Order dated 16.10.2007, SEBI found that large quantities of shares of

STIL were made available to entities associated with Ketan Parekh during the period between October, 2000 and April, 2001 and that facilitated them to create artificial volumes in the said scrip in the securities market. SEBI also found that the entities associated with Ketan Parekh had sold a large number of shares of STIL in the securities market in a synchronized manner with a view to create an artificial market in the said shares. SEBI came to the conclusion that the appellants and other entities had facilitated Ketan Parekh and his companies in manipulating the securities market and had thereby violated Regulation 4 of the Regulations. SEBI restrained them from accessing the securities market for a period of five years and also prohibited them from buying, selling or dealing in securities either directly or indirectly for the same period. SEBI found that a series of unauthorized activities starting from the allotment of shares of STIL to various people including Ketan Parekh entities through a web of transfers virtually wrecked the integrity of the securities market with a view to make unfair gains.

Re: Civil Appeal No. 1742/2009

8. A letter dated 02.07.2001 was issued by the respondent – SEBI whereby this appellant (DKG Buildcon Pvt. Ltd.) was asked to furnish

certain details and documents to SEBI. The details are as mentioned below:

"Annexure

a) The names of the directors and shareholders of your company since 1998.

b) Whether you were the original allottee of shares of Shonkh Technologies Ltd. If yes, please give complete details in this regard, such as name and percentage of shares allotted etc.

c) No. and percentage of shares of Shonkh Technologies Ltd. Held by you alongwith the manner, price(s) and date(s) of acquisition(s) of such shares prior to the allotment to you of shares of Shreejee Yatayat India Ltd. In July, 2000.

d) Whether the shares acquired by you of Shreejee Yatayat India Ltd. on a preferential allotment basis were held beneficially for someone else. If yes, give details of the person concerned.

e) Whether the shares of Shonkh Technologies Ltd. were purchased from you own funds or after obtaining loan/ICDs from someone. If yes, give details of the person concerned, amount borrowed, interest paid, terms and conditions of repayment.

f) Whether you are still holding share of Shonkh Technologies International Ltd. or they have been disposed off. If the shares have been transferred, by way of pledge, sale, gift, exchange etc., please furnish the details thereof. These details should include amount borrowed/consideration received, cheque number/draft number, name of the pledge/buyer/donee, etc.

g) Any other purchase/acquisition of Shonkh Technology International Ltd. shares by the company/its subsidiaries/directors. If yes, give details of the shares of Shonkh Technologies International Ltd. acquired alongwith the details of consideration paid, date of transaction, cheque number/draft number, mode of acquisition, etc."

9. SEBI issued summons on 27.08.2001 requiring the following detailed information and documents to be submitted by this appellant:

"Annexure

(i) The list of the directorships of other companies held by the directors of M/s DKG Buildcon Private Limited.

(ii) The details of holdings in the scrip of M/s Shreejee Yatayat Limited as on March 31, 2000.

(iii) The details of the acquisition of the shares of M/s Shonkh Technologies Limited. The details shall contain.

- The date of the acquisition.
- The quantity and rate of the acquisition.
- The name and address of the trading member through whom the acquisition was made.
- In case the acquisition was made off-market, the name and address of the transferors.

(iv) The details of the acquisition of the shares of M/s Shonkh Technologies International Limited. The details shall contain.

- The date of the acquisition.
- The quantity and rate of the acquisition.

- The name and address of the trading member through whom the acquisition was made.
- In case the acquisition was made off-market, the name and address of the transferors.

(v) The details of the trading in the scrip of M/s Shonkh Technologies International Limited during the period from August 1, 2000 to June 30, 2001. The details shall include.

a. The date of the transaction.
b. The name and address of the trading member through whom the acquisition is entered into.
c. In case of off-market transaction, please provide the name and address of the counter party.
d. The quantity, rate and value of the transaction.

(vi) The details of the shares given in fiduciary capacity or pledged (sic) with entity. The details shall contain:

- The name and address of the party to whom shares are given at fiduciary capacity or with whom shares were pledged.
- The quantity of the shares given in fiduciary capacity or pledged."

However, according to this appellant the same was never received by it.

10. The following are the communications exchanged between appellant and respondent in Civil Appeal No. 1742 of 2009. Several

summons were also issued to this appellant, the details of which are as under:

(i) "Appellant vide letter dated 06.09.2001 provided detailed information as requested in the letter of date 02.07.2001.

(ii) Another letter dated 10.06.2002 was issued by SEBI to the appellant along with a copy of the summons, whereby the appellant was again asked to furnish certain information and documents by 19.06.2002.

(iii) On 18.06.2002 summons was issued by SEBI directing the appellant to produce the details and documents as mentioned therein on 21.06.2002 at SEBI's office, Delhi.

(iv) Another summons dated 19.06.2002 was issued by the Investigating Officer to the appellant whereby the appellant was directed to produce the said documents on 19.06.2002 at the Mumbai office of SEBI.

(v) Another Investigating Officer of SEBI issued summons dated 04.03.2003 requiring the appellant's personal appearance on 20.03.2003 at SEBI's office, New Delhi. It was stated therein that the person who was to appear on behalf of the appellant should be able to answer all questions relating to the investigation. The appellant was also directed to produce documents.

(vi) Appellant vide letter dated 20.03.2003 in reply to the above summons asked for postponement of the attendance as the concerned Director, Mr. Navneet Kumar was out of station and would return only by 30.03.2003 where after he would be available to appear.

(vii) The Investigating Officer issued another summons on 24.03.2003 to the appellant

requiring attendance on 01.04.2003 at SEBI's office, Mumbai.

(viii) This was followed by another summons issued on 01.04.2003 requiring appellant's attendance on 08.04.2003. It was mentioned that in default of appearance, SEBI will initiate adjudication proceedings against the appellant, under which the appellant could be levied a penalty of One Lakh rupees for each day during which such failure occurs or continues or one crore rupees, whichever is less."

Subsequently, a Show Cause Notice dated 11.09.2003 was issued under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (for short, '1995 Rules') by the respondent to this appellant informing it that SEBI, *vide* its Order dated 26.06.2003 had appointed the respondent as the Adjudicating Officer (for short, 'AO') to inquire into and adjudicate alleged violation by this appellant under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 (for short, '1992 Act') for non-compliance of summons issued by SEBI. This appellant was asked to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the 1995 Rules, and why penalty should not be imposed under Section 15A(a) of the 1992 Act.

11. An *ex*-parte Order dated 28.11.2003 was passed by the respondent whereby this appellant was held to have not complied with the requirements of SEBI's summons dated 27.08.2001, 10.06.2002,

18.06.2002 and 01.04.2003. Consequently, the AO imposed a penalty of rupees one crore on this appellant under Section 15A(a) of the 1992 Act on the ground that it had adopted dilatory tactics of stonewalling investigations launched in the larger public interest which calls for a deterrent penalty.

12. This appellant preferred an Appeal No. 106 of 2006 on 06.11.2004 before the SAT against the aforesaid Order of the AO along with an application for condonation of delay. SAT on 01.09.2006 dismissed the application for condonation of delay as well as the appeal preferred on the ground that the appeal was time barred and no satisfactory explanation for the delay was given.

13. Pursuant to this dismissal of the appeal by SAT, this appellant preferred Civil Appeal No. 4975 of 2006 before this Court whereby *vide* an Order dated 04.08.2008 this Court gave a direction that the delay in filing the appeal before SAT is condoned subject to the appellant depositing a sum of Rs.1,25,000/- as cost to SEBI within a period of six weeks from the date of supply of a copy of the said Order to SAT. On depositing the cost of Rs.1,25,000/-, SAT heard the Appeal No. 106 of 2006 and *vide* the impugned Order upheld SEBI - respondent's Order dated 28.11.2003 and dismissed the appeal.

Re: Civil Appeal No. 5833 of 2009

14. On 26.07.2001, the respondent herein issued the first summons giving details of the information sought from this appellant (R. C. Gupta & Co. Pvt. Ltd.). The appellant furnished the required information on 29.07.2001.

15. Another summons was issued on 10.06.2002 and then on 18.06.2002 by the respondent, directing this appellant to supply the required information and documents which was attached to the summons by 21.06.2002. Some of the information sought were similar to that sought in the summons dated 26.07.2001. However, additional information was also sought but this appellant failed to respond to any of the above summons.

16. SEBI chose to issue another summons on 09.04.2003 giving the appellant another opportunity to comply with the directions mentioned herein below and to appear on 12.04.2003, making it clear that the person who had to appear on its behalf should be such who could answer all the questions in relation to the investigations. The information and documents sought from the appellant were crucial to the conduct of the investigation by SEBI. Despite the repeated directions issued through the aforesaid summons, this appellant failed to respond. The information sought from this appellant was as follows:

"**Annexure**

1. The details of holdings in the scrip of M/s Shreejee Yatayat Limited as on March 31, 2000.

2. The details of the acquisition of the shares of M/s Shonkh Technologies Limited. The details shall contain:

   - The date of the acquisition.

   - The quantity and rate of the acquisition.

   - The name and address of the trading member through whom the acquisition was made.

   - In case the acquisition was made off-market, the name and address of the transferors.

3. The details of the acquisition of the shares of M/s Shonkh Technologies International Limited. The details shall contain:

   - The date of the acquisition.

   - The quantity and rate of the acquisition.

   - The name and address of the trading member through whom the acquisition was made.

   - In case the acquisition was made off-market, the name and address of the transferors.

4. The details of the trading in the scrip of M/s Shonkh Technologies International Limited during the period from August 1, 2000 to June 30, 2001. The details shall include:

   - The date of the transaction.

   - The name and address of the trading member through whom the transaction is entered into.

- In the case of off-market transaction, please provide the name and address of the counterparty.

- Quantity, rate and value of the transaction."

17. Due to the failure of this appellant to comply with the abovementioned summons, SEBI initiated adjudication proceedings against this appellant. The Adjudicating Officer (AO) issued a Show Cause Notice dated 15.09.2003 wherein this appellant was informed that it had become liable for the imposition of penalty under Section 15A(a) of the 1992 Act. The Show Cause Notice also made a mention of some of the information sought earlier through the summons, and this appellant filed its reply dated 18.12.2003 wherein the appellant furnished the information on the points referred to in the Show Cause Notice.

18. Thereafter, the AO, after considering the material on record, passed an order on 31.12.2003 wherein it was found that this appellant also did not comply with the summons. The AO imposed a penalty of rupees one crore on this appellant under Section 15A(a) of the 1992 Act.

19. This appellant also preferred an Appeal No. 133 of 2006 on 05.10.2004 before the SAT against the Order dated 31.12.2003 along with an application for condonation of delay. The SAT on 10.11.2006

dismissed the application for condonation of delay as well as the appeal preferred on the ground that the appeal was time barred and no satisfactory explanation for the delay was given.

20. Pursuant to this dismissal of the appeal by SAT, the appellant preferred Civil Appeal No. 2289 of 2007 before this Court whereby this Court gave a direction that the delay in filing the appeal before SAT is condoned subject to the appellant depositing a sum of Rs.1,25,000/- as cost to SEBI. On depositing the cost of Rs.1,25,000/-, the SAT heard Appeal No. 133 of 2006 and by the impugned Order dated 07.01.2009 upheld the respondent's Order dated 31.12.2003 and dismissed the appeal.

21. The pertinent observations and decision of the SAT are encapsulated as under:

(i) That while the investigations were going on, the appellants and other entities involved in the manipulation tried to block the investigation by not responding to the summons issued to them.

(ii) It is evident that apart from the fact that the statement of the representative of the appellants could not be recorded, it also failed to furnish the information as per the annexure of documents. That the appellants were bent upon not appearing before the Investigating Officer and was also determined not to

furnish the information and produce the documents sought from it. SEBI initiated Adjudication Proceedings for not complying with the summons. The AO found that the appellants had willfully failed to respond to the summons and imposed a monetary penalty of rupees one crore on each of them under Section l5A(a) of the Act.

(iii) SAT did not agree with the contention that the penalty could not exceed Rs. 1,50,000/-. Section 15A(a) of the Act, as it originally stood, provided for "a penalty not exceeding Rs.1,50,000/- for each such failure." This provision was however amended by the amending Act of 2002 which was meant to make the penalty more deterrent and provided for a “penalty of rupees one lakh for each day during which, such failure continues or rupees one crore, whichever is less."

The appellant in Civil Appeal No. 1742 of 2009 violated the summons for the first time in August, 2001 and it was open to SEBI to proceed against it for that non-compliance. The appellant again violated the summons in June, 2002. SEBI could have proceeded against it for that non-compliance as well. Had the SEBI proceeded against the appellant for those non-compliances which constituted two separate wrongs, the penalty leviable would have been under the unamended provisions.

(iv) That SEBI not having proceeded against the appellant in Civil Appeal No. 1742 of 2009 for those non-compliances and having chosen to issue fresh summons in April 2003, implied that it condoned the earlier lapses and gave the appellants a fresh opportunity to furnish the information and appear in person to make a statement. Had the appellants complied with the summons, it would not have been open to SEBI to proceed against them for the earlier non-compliances.

(v) Non-compliance of the summons issued on 01.04.2003 was a fresh offence committed by the appellant in Civil Appeal No. 1742 of 2009 for which SEBI proceeded, which proceedings culminated in the passing of the impugned order. Since this wrong was committed in April 2003 by which time the amended provisions were in place, penalty had to be levied in accordance with those provisions. SAT observed that no fault can, thus, be found with the action of the AO in levying the penalty under the amended provisions.

For the same reason as stated above, the action of the AO in levying the penalty against the appellant in Civil Appeal No. 5833 of 2009 was held to be justified and no fault could be found.

(vi) Section 11C of the Act was introduced with effect from 29.10.2002 and sub-Section (3) provides that the Investigating authority may require any person associated with the securities market "to furnish such information, or produce such books, or registers, or other documents, or record before him...". The power to direct a person to furnish any information or record or documents includes the power to direct such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power, the purpose of the legislature in introducing Section 11C would be frustrated and SEBI will not be able to investigate properly the market irregularities and offences. Therefore, Section 11C (3) gives the power to the Investigating Authority to call upon any person to make a statement while furnishing any information, document or record.

(vii) That the Orders of AO dated 28.11.2003 and 31.12.2003 did not record findings which were beyond the show cause notice.

(viii) That the penalty imposed was not excessive and that the same need not be reduced. That penalty cannot be reduced on the ground that it could be levied only under the unamended provisions of Section 15A(a) of the 1992 Act as the most vital part

of the information that was being sought from the appellants was withheld knowingly.

(ix) That the appellants were aiding and abetting Ketan Parekh and his companies in manipulating the price of the scrip of STIL and it is for this reason that they were trying to obstruct and delay the investigations.

22. We have heard Ms. Deeksha Mishra, learned counsel for the appellants and Sri. C.U. Singh, learned senior counsel for the respondents duly assisted by their instructing counsel and perused the material on record.

23. The submissions of learned counsel for the appellants herein are summarised as follows:

(i) That the penalty of rupees one crore has been imposed for alleged non-compliance of summons dated 27.08.2001, 10.06.2002, 18.06.2002 and 01.04.2003 by the appellant in Civil Appeal No. 1742 of 2009 and for the alleged non-compliance of summons dated 10.06.2002, 18.06.2002 and 09.04.2003 by the appellant in Civil Appeal No. 5833 of 2009. The maximum penalty of Rs. 1,50,000/- ought to have been imposed, if at all, as per the unamended Section 15A(a) of the 1992 Act as it stood on the date when the summons were issued.

As regards the issue of summons dated 01.04.2003 in Civil Appeal No. 1742 of 2009 and summons dated 09.04.2003 in Civil Appeal No. 5833 of 2009 is concerned, it was submitted that it is in continuation of the earlier summons issued and cannot be treated in a separate and disjunct manner. That both the appellants herein had already replied to summons and were thus, under a *bona fide* belief that the requirements of summons had been complied with.

(ii) That the record in Civil Appeal No. 1742 of 2009 clearly shows that the summons dated 10.06.2002 and 18.06.2002 had been complied with inasmuch as all the documents and information requested to be furnished therein had been supplied vide letter dated 30.07.2002 which was received by SEBI on 31.07.2002. Similarly, in Civil Appeal No. 5833 of 2009, the first response and detailed reply dated 29.07.2001 of the appellant therein to the first summons dated 26.07.2001 almost satisfied the queries raised by the Investigating Officer of SEBI. However, the same remained unnoticed by the AO while passing the Order dated 31.12.2003. Since the AO had proceeded on a wrong assumption, presuming that the appellant never complied with any summon and never furnished any information to the Investigating Officer, he reached a wrong conclusion.

(iii) That there was no violation of Section 15A(a) of the 1992 Act since Section 15A(a) applies only with respect to documents statutorily required to be furnished to SEBI, and does not apply to documents required to be furnished to an Investigating Authority, pursuant to summons issued by it. The term "Board", as defined in the 1992 Act, is the Securities and Exchange Board of India established under Section 3 of the 1992 Act while the term "Investigating Authority" is defined under Section 11C of the 1992 Act as an officer directed by the SEBI to conduct an investigation and report to it. It cannot be said that the powers and functions of the Investigating Authority are co-extensive with that of the SEBI.

(iv) That the penalty imposed by the AO under Section l5A(a) of the 1992 Act is excessive, abusive and untenable, and in complete disregard of the principle of proportionality. Section l5A(a) of the 1992 Act merely provides that if any person who is required under the Act or any rules or regulations made thereunder fails to furnish any document, return or report to the SEBI, he shall be liable to a penalty of rupees one lakh for each day during which such failure continues or rupees one crore, whichever is less. The maximum penalty was augmented from rupees one lakh fifty thousand to rupees one crore with effect from

29.10.2002. Prior to 29.10.2002, the penalty leviable under this Section was restricted only to a sum not exceeding one lakh and fifty thousand rupees. Assuming, that the appellants had violated the provisions of Section l5A(a) of the 1992 Act, the maximum penalty that could have been levied must be calculated as per the unamended provisions, as was in force at the time when the offence was alleged to have been committed and summons were issued, and not the enhanced penalty as provided by a subsequent amendment which came into effect only from 29.10.2002.

(v) Furthermore, the AO has, in imposing the aforesaid penalty, disregarded the provisions of Section 15J of the 1992 Act which reads as follows:

> "**15J. Factors to be taken into account while adjudging quantum of penalty.** — While adjudging the quantum of penalty under 15-I or Section 11 or Section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—
>
> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
>
> (b) the amount of loss caused to an investor or group of investors as a result of the default;
>
> (c) the repetitive nature of the default."

Thus, the provisions of Section 15J make it mandatory for the AO to consider the factors stated in the relevant Section and reproduced hereinabove while computing the quantum of penalty, as is provided for by the use of the word 'shall' in the said Section. The Order dated 28.11.2003 of the AO in Civil Appeal No. 1742 of 2009 and Order dated 31.12.2003 in Civil Appeal No. 5833 of 2009 fails to attribute a motive to the appellants or any gains accruing to the appellants vis-à-vis the loss, if any, incurred by unsuspecting common investors in quantified terms on account of alleged violations by the appellants. Thus, it is clear that the AO has failed to take into consideration the said factors while deciding the quantum of penalty, particularly so, when the appellants had already furnished the information called for by the Investigating Officer.

(vi) That the summons issued by the respondent to the appellants under Section 11(3) of the 1992 Act are non-est in law as this Section does not empower SEBI to summon and compel the appearance of companies such as the appellants. Hence, no consequence can follow from the non-compliance of such summons. SEBI's powers, prior to the amendment in 2002, was limited to jurisdiction over stock exchanges, mutual funds, other persons associated with the securities market,

intermediaries and self-regulatory organizations. After the 2002 amendment, SEBI's jurisdiction extended to listed companies or companies which propose to get their securities listed. However, in no event does Section 11(3) empower SEBI to compel the appearance or production of documents by companies such as the appellants herein since the appellants are not registered with SEBI as a regulated intermediary. Furthermore, even under Section 11(3) of the 1992 Act, the power of SEBI to compel appearance and production of documents is limited to the powers vested in a Civil Court under the Code of Civil Procedure, 1908, (CPC) more specifically contained in Section 32 CPC which provides that the Court may compel the attendance of any person to whom summons has been issued under Section 30 CPC and for that purpose, may issue a warrant for his arrest, attach and sell his property, impose a fine upon him not exceeding five hundred rupees, or order him to furnish security for his appearance and in default, commit him to the civil prison.

(vii) That the Orders dated 28.11.2003 and 31.12.2003 have been passed in violation of and in grave breach of the principles of natural justice and statutory procedure and a conscious disregard of the duties cast on the AO under the provisions of the 1992 Act. This is evidenced by the fact that the AO, in the

absence of a report by an Investigating Officer, took upon himself the task of fact finding, investigating, conducting, hearing, researching, preparing a report and then adjudicating thereon by himself. Thus, the investigating and adjudicating roles have been played by the same person.

(viii) The respective Orders are bad in law and have been passed in violation of and in grave breach of the principles of natural justice, statutory procedure and conscious disregard of the duties cast upon the respondent under the provisions of the 1992 Act.

24. The submissions of learned counsel for the respondent in both the appeals are summarised as under:

(i) It has been clearly established that there has been no compliance whatsoever by the appellants of the summons dated 27.08.2001, 10.06.2002, 18.06.2002 and 01.04.2003 in Civil Appeal No. 1742 of 2009 and the summons dated 10.06.2002, 18.06.2002 and 09.04.2003 in Civil Appeal No. 5833 of 2009 issued by the respondent for production of certain documents and submission of information to the Investigating Authority with reference to its dealings in the scrip of STIL.

(ii) The appellants did not co-operate with the Investigating Officer and did not comply with the summons issued in a matter

involving a larger public interest as the information sought in terms of the summons was necessary in order to effectively investigate the price manipulation in the scrip of STIL and the role of the appellants against the backdrop of its acquisition of 10,00,000 shares of STIL at Rs.10/- per share, when others were allotted at Rs.150/- per share; the circumstances leading to the delivery of 3,00,000 shares of STIL on 03.11.2000, details regarding the sale of 2,00,000 shares to Goldfish Computers at Rs.160/- per shares, debit in the DEMAT Account on 2,00,000 shares in favour of Goldfish Computers on 02.11.2000 etc. have not been furnished in the response to the said summons.

(iii) In view of the finding that the appellants were aiding and abetting Ketan Parekh and his companies in manipulating the price of the scrip of STIL and that the appellants herein were trying to stonewall the investigations initiated by the respondent, the quantum of penalty levied on the appellants are in conformity with the offence and warrants no interference with by this Court.

(iv) The provisions of Section 11C (3) of the 1992 Act empowers the respondent to call upon any person to make a statement while furnishing any information, document and record.

(v) Section 15A(a) of the 1992 Act finds mention in Chapter VI A of the 1992 Act, introduced in January, 1995. This provision was amended by the amending Act of 2002, which was intended to make the penalty more deterrent. This provision, amended with effect from 29.12.2002, provides for a penalty of Rs.1,00,000/- for each day during which such failure continues or rupees one crore, whichever is less. The penalty of rupees one crore has rightly been imposed on the appellants herein.

(vi) The summons which were not complied with by the appellants had been issued in 01.04.2003 and 09.04.2003 respectively. Hence, the penalty levied in the Orders dated 28.11.2003 and 31.12.2003 respectively were in accordance with the amended provisions of Section 15A(a) of the 1992 Act at the enhanced rate.

(vii) That no question of law as contemplated by Section 15Z of the 1992 Act arises for the consideration by this Court.

25. Having heard the learned counsel for the respective parties, it is noted that the appellants herein are challenging the Orders dated 07.01.2009 of the SAT, Mumbai in Appeal No. 106 of 2006 and Appeal No. 133 of 2006 respectively upholding the Orders dated 28.11.2003 and 31.12.2003 passed by the AO respectively in each case, imposing a monetary penalty of rupees one crore on each appellant under

Section 15A(a) of the 1992 Act for failing to comply with the summons issued to the appellants for the production of documents and furnishing of information during the course of certain investigations being carried out by SEBI during the period of 2000-2007 in relation to suspicious purchase and sale of scrip and manipulation of share prices of STIL. For immediate reference Section 15A(a) of the 1992 Act at the relevant point of time is extracted as under:

> "**15A. Penalty for failure to furnish information, return, etc.** - If any person, who is required under this Act or any rules or regulations made thereunder,—
>
> (a) to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less."

26. Before this Court deals with the issues at hand, it is pertinent to mention that SEBI had, in due course of its investigation, concluded that the appellants herein, along with several other entities, had facilitated Ketan Parekh and his companies in manipulating the securities market and had thereby violated Regulation 4 of the Regulations. SEBI had observed in the relevant order that "*the case history establishes all the ingredients of how a series of unauthorized activities starting from the allotment of shares of STIL to various people including Ketan Parekh entities till the culmination of alluring and entrapping of the genuine investors by the entities through a web of*

transfers could virtually wreck the integrity of the securities market, undermine the system and provide for a fertile ground to wangle unfair gains."

27. While it has been noted that the appellants herein did not file any appeal against the aforesaid Order of SEBI which has now become final *qua* the appellants, it must be borne in mind that the present dispute arises in the background of the aforesaid investigation, wherein the Investigating Authority of SEBI had, in exercise of its powers under Section 11C (3) of the 1992 Act, called upon the appellants to furnish such information and produce such documents and records as were considered necessary for the purposes of the aforesaid investigation.

28. The Investigating Authority had issued summons to the appellants herein on various dates as has been discussed hereinabove requiring the appellants to appear and produce certain documents and furnish information specifically listed in the Annexure to the summons. The appellants failed to respond to any of the summons issued, and failed to appear before the Investigating Authority with the required documents and information sought from it. Owing to the said non-compliance, SEBI initiated separate adjudication proceedings against the appellants. The AO passed Orders dated 28.11.2003 and 31.12.2003 with the finding that the appellants herein had

intentionally failed to respond to the summons, and thus imposed a penalty of rupees one crore on each appellant under Section 15A(a) of the 1992 Act.

29. Challenging the said Orders, the appellants filed Appeal No. 106 of 2006 and Appeal No. 133 of 2006 with respective applications for condonation of delay before the SAT. Initially, SAT dismissed the aforesaid applications and the appeals on the ground that the appeals were belated and time-barred and the appellants had failed to provide a satisfactory explanation to justify the delay in filing the appeals. Thereafter, this Court passed Orders dated 04.08.2008 in Civil Appeal No. 4975 of 2006 and Civil Appeal No. 2289 of 2007 directing SAT to condone the delay in filing the appeals, subject to the appellants herein depositing a sum of Rs. 1,25,000/- as cost to SEBI within a period of six weeks.

30. Thus, Appeal No. 106 of 2006 and Appeal No. 133 of 2006 were heard by the SAT which, hearing the matter, passed a reasoned common Order dated 07.01.2009 upholding the Orders of the AO dated 28.11.2003 and 31.12.2003 respectively, and dismissing the appeals. Challenging the aforesaid decision of the SAT dated 07.01.2009, the appellants have filed the present Civil Appeals.

31. The primary contention of the appellants is that the non-compliance of summons is not a continuing wrong and that the summons dated 01.04.2003 and summons dated 09.04.2003 respectively were issued in continuation of the earlier summons, and cannot be treated in a separate and disjunctive manner. Further, the appellants have contended that the penalty of rupees one crore levied by the AO for non-compliance of summons is excessive, unsustainable and untenable, and is in complete disregard of the principle of proportionality and of the confines of law. The appellants have argued that a maximum penalty of Rs. 1,50,000/- may be imposed, if at all, as per the unamended Section 15A(a) of the 1992 Act as it stood on the date when the summons were first issued. The appellants have submitted that the maximum amount of penalty under Section 15A(a) was amplified from Rupees One Lakh Fifty Thousand to rupees one crore with effect from 29.10.2002 vide an amendment to the 1992 Act and assuming that the appellants have violated the provisions of Section l5A(a), the maximum penalty that could be levied must be calculated as per the unamended provision and not the enhanced penalty.

32. On a perusal of the facts and circumstances of the case, it is evident that the appellants had first violated the summons in August, 2001 and in June, 2002 respectively. Thereafter, SEBI issued

numerous summons, giving the appellants opportunities to appear and produce the documents and furnish the information as required. But, the appellants failed to respond to any of the summons issued during the period of 2001-2002, during the course of the investigation. Thereafter, SEBI issued fresh summons on 1.04.2003 in respect of the appellant in Civil Appeal No. 1742 of 2009 and on 09.04.2003 in respect to the appellant in Civil Appeal No. 5833 of 2009 for the appellants to cooperate with the investigation. The non-compliance of the fresh summons dated 01.04.2003 and 09.04.2003 respectively, in our view, constituted a fresh offence committed by the appellants. Thus, the amended provisions of Section 15A(a) of the 1992 Act as amended w.e.f. 29.10.2002 would apply when levying the penalty on the appellants in respect of the summons issued subsequent to the aforesaid amendment.

33. Section l5A(a) of the 1992 Act provides that if any person who is required under the Act or any Rules or Regulations made thereunder fails to furnish any document, return or report to the SEBI, he shall be liable to a penalty of rupees one lakh for each day of failure, and, if such failure continues it would be rupees one lakh per day of failure or rupees one crore, whichever is less. Thus, rupees one crore is the maximum penalty that can be levied if the failure as contemplated

under the aforesaid provision crosses one hundred days; otherwise, it is as per the number of days of failure upto one hundred days.

34. Thus, the penalty of rupees one crore as levied by the AO and upheld by the SAT is justified and within the precincts of the relevant provision. Applying the said provision to the facts for the present cases, it is clear that the appellants had failed to comply with the summons dated 01.04.2003 and 09.04.2003 respectively. Thereafter, the AO had passed its order levying penalty on the appellants on 28.11.2003 and on 31.12.2003 respectively. Since, the duration of the default of non-compliance committed by both the appellants was over a period of 100 days from the date of issue of the summons in each case, the AO had rightly applied Section 15A(a) of the 1992 Act, more specifically in regard to the maximum limit of penalty that could be imposed under the provision, i.e. rupees one crore.

35. Further, learned counsel for the appellants has placed reliance on certain judgments of this Court, in ***Commissioner of Income Tax, Ahmedabad vs. Gold Coin Health Food Pvt. Ltd. (2008) 9 SCC 622; CJ Paul & Ors. vs. District Collector & Ors. (2009) 14 SCC 564***; ***Ritesh Agarwal & Ors. vs. Securities and Exchange Board of India & Ors. (2008) 8 SCC 205;*** and ***Commissioner of Income Tax, Lucknow vs. M/s Onkar Saran and Son (1992) 2 SCC 514*** and

decisions of the SAT namely, ***Mr. Sandeep Kumar Gupta vs. SEBI (Appeal No. 102 of 2013)***; and ***Iris Infrastructural Pvt. Ltd. vs. SEBI (Appeal No. 2 of 2006)*** to submit that the penalty levied under the amended Section 15A(a) cannot apply to the said case since the offence had been committed prior to coming of effect of the amended provision, and thus, the penalty of Rs. 1,50,000/- as provided in the unamended provision must be imposed. In other words, the amended provision cannot be given a retrospective effect.

36. The said contention of the appellant has already been rejected on the ground that the non-compliance of summons dated 01.04.2003 issued by the Investigating Authority constituted a fresh offence and would attract the provisions of the amended Section 15A(a) of the 1992 Act. In light of the facts of this case, no question of retrospective application of a statute/provision of law arises and thus, the proposition and legal principles raised in the aforesaid judgements would not apply to the present case.

37. Next, learned counsel for the appellants placed reliance on several orders of the SAT wherein SAT reduced the penalty levied under Section 15A(a) of the 1992 Act on the ground that the AO had failed to consider the specific factors as provided in Section 15J of the 1992 Act in determining the quantum of punishment levied under the Act. These

cases are ***Rose Valley Real Estates and Construction Ltd. vs. Securities and Exchange Board of India (Appeal No. 106/2013); Padmini Technologies Ltd. vs. SEBI (Appeal No. 36 of 2004); Vivek Nagpal vs. SEBI (Appeal No. 37 of 2004); Mukesh Malhotra vs. SEBI (Appeal No. 101/2004); Advance Hovercrafts & Composites India Ltd., Delhi vs. The Adjudicating and Enquiry Officer, SEBI (Appeal No. 61/05); Spectrum.com Pvt. Ltd. vs. SEBI (Appeal No. 119 of 2006);*** and ***Zodiac.com Solutions Pvt. Ltd. vs. The Adjudicating and Enquiry Officer, SEBI (Appeal No. 105 of 2006).***

38. It has been noted hereinabove that the investigation by SEBI which had concluded that the appellants and other entities were involved in aiding and abetting Ketan Parekh and his companies in rigging the securities market in the years 2000 and 2001 had not been challenged, at any point, by the appellants. Thus, the relevant order of SEBI had attained finality. The said investigation had found that the appellants were involved in certain unauthorized transfer of shares starting from the allotment of shares of STIL to various people including Ketan Parekh's entities through a web of transfers which could virtually wreck the integrity of the securities market, undermine the system and provide for a fertile ground to wangle unfair gains. The investigation had also concluded that the appellants had played a role in facilitating such activities by manipulating the market, and this

finding of guilt remains unchallenged by the appellants and is thus admitted.

39. As has been rightly observed by the SAT in its Order dated 07.01.2009, non-furnishing of information by the appellants in compliance of summons cannot be viewed lightly, particularly, when the appellants were involved in offences of such a grave nature being detrimental to the interest of genuine investors and to the smooth and secure functioning of the securities market. While the appellants have submitted that they had responded to the summons dated 02.07.2001 and 26.07.2001 respectively and had furnished the information and documents as required therein, it has already been held that the summons dated 01.04.2003 and 09.04.2003 respectively were issued as separate fresh directions to the appellants. By not responding to the said fresh summons and by not appearing before the Investigating Authority when directed to appear, the appellants' statements could not be recorded and this has hampered with the investigation. The appellants had failed to produce the documents and information as required vide summons dated 01.04.2003 and 09.04.2003 respectively and had, thus, affected the conduct of the investigation. The appellants' compliance, if any, to one summons dated 02.07.2001 and 26.07.2001 respectively, in no way, absolves the appellants of their responsibility to comply with the summons issued thereafter on

multiple dates. The appellants were bound to fully co-operate with the Investigating Authority and promptly produce all documents, records, and information as were required for the investigation from time-to-time. In failing to do so, the appellants clearly obstructed and hindered the investigation.

40. Taking into consideration the severity of offences found to have been committed by the appellants and other entities, and the non-cooperative attitude of the appellants during the course of the investigation in attempting to obstruct the same, the quantum of penalty imposed under Section 15A(a) of the 1992 Act is justified and with effective consideration of the factors listed in Section 15J of the 1992 Act.

41. In this context, the Explanation to Section 15J of the 1992 Act must also be referred to in order to reject the contention of the appellants regarding the consideration of factors under Section 15J of the 1992 Act in adjudging the quantum of penalty under Section 15A(a) of the 1992 Act. The Explanation to Section 15J of the 1992 Act reads as under:

> "For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under Sections 15A to 15E, clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this Section."

42. A bare reading of the Explanation in the context of the present case creates a presumption in favor of the AO that he has passed the Orders dated 28.11.2003 and 31.12.2003 against the appellants herein after due consideration of the factors mentioned in Section 15J of the 1992 Act.

43. In the case of ***Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) 5 SCC 90,*** a three Judge Bench of this Court held that –

> "5. ...Sections 15A (a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head-on-clash and construe the said provisions harmoniously. Provision of one Section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The Explanation to Section 15-J of the SEBI Act added by Act 7 of 2017, quoted above, has clarified and vested in the adjudicating officer a discretion under Section 15-J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15-A to 15-HA...
>
> 9. ... the circumstances enumerated in clauses (a), (b) and (c) of Section 15-J of the SEBI Act may have no relevance and may never arise in case of contraventions contemplated by certain provisions of the SEBI Act, for instance Sections 15-A, 15-B or 15-C of the SEBI Act. Failure to furnish information, return, etc.; failure to enter into agreement with clients; and failure to redress investors' grievances cannot give rise to the

> circumstances set out in clauses (a), (b) and (c) of Section 15-J.
>
> 10. … We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15-J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15-J which can be taken note of by the adjudicating officer while determining the quantum of penalty.
>
> 11. At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15-J are mandatory conditions which must be read into Sections 15-A to 15-HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the adjudicating officer under the substantive provisions of Sections 15-A to 15-HA of the SEBI Act. The argument is too far-fetched to be accepted. Section 15-J of the SEBI Act enumerates by way of illustration(s) the factors which the adjudicating officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Section 15-A to Section 15-HA of the SEBI Act."

44. The learned counsel for the respondent has also rightly placed reliance on the decision of this Court in ***MBL and Company Limited vs. Securities and Exchange Board of India (2022) SCC OnLine SC 754*** to submit that the quantum of penalty of rupees one crore levied by the AO under Section 15A(a) of the 1992 Act was justified,

proportionate and in conformity with the omissions on the part of the appellants inasmuch as the appellants had repeatedly adopted escapist tactics to effectively frustrate the investigations of SEBI, and thus requires no interference by this Court in exercise of its powers under Section 15Z of the 1992 Act.

In the ***MBL and Company Limited case*** (supra), a Bench of this Court held that:

> "11. In a judgment of a three-Judge Bench of this Court in ***Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabar***, it has been observed that:
>
> > 34. This Court, in the exercise of its jurisdiction under Section 15-Z of the SEBI Act, cannot go into the proportionality and quantum of the penalty imposed, unless the same is distinctly disproportionate to the nature of the violation which makes it offensive, tyrannous or intolerable. Penalty by the very nature of the provision is penal. We can interfere only where the quantum is wholly arbitrary and harsh which no reasonable man would award. In the instant case, the factual findings are not denied and, thus, we are not inclined to intermeddle with the quantum of penalty. The penalty imposed is just, fair and reasonable and, thus, upheld.
>
> 12. The above observations make it clear that the imposition of a penalty is subject to interference under Section 15Z of the SEBI Act only where the quantum is found to be wholly arbitrary and

> harsh or distinctly disproportionate to the nature of the violation.
>
> 13. In the present case, the WTM, while imposing an order of debarment, has specifically applied her mind to the issue as regards the impact of such a manipulation. While dealing with this aspect, the WTM has observed that the manipulation of the price of scrips seriously impinges upon other counter parties in the securities market. In other words, the impact of a manipulation which is carried out by a participant in the securities market cannot be assessed only in terms of the gain which has been caused to the participants themselves, but in terms of the wider consequences of the action on the securities market.
>
> 15. The securities market deals with the wealth of investors. Any such manipulation is liable to cause serious detriment to investors' wealth. In this backdrop, the order which has been passed by the WTM cannot be regarded as disproportionate so as to result in the interference of this Court in the exercise of its jurisdiction under Section 15Z of the SEBI Act."

Thus, based on the aforesaid judgements relied on by the learned counsel for the respondent, it is clear that the quantum of penalty imposed by the AO is proportionate and within the confines of the provisions of Section 15A(a) read with Section 15J of the 1992 Act, and requires no interference by this Court.

45. Furthermore, a bare reading of Section 11C (3) of the 1992 Act makes it clear that an Investigating Authority appointed by SEBI to investigate the affairs of any persons may require such person

"associated with the securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it, in this behalf as it may consider necessary, if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation". In the present case, the appellants were under investigation by SEBI for its alleged involvement in aiding and abetting Ketan Parekh and his companies in manipulating the securities market. In view of the same, the appellants would squarely fall under the scope of "persons associated with the securities market in any manner" under Section 11C(3) of the 1992 Act. The authority of the Investigating Authority to direct such persons to appear before him and furnish information or produce documents as is required for an investigation is provided in Section 11C (3) of the 1992 Act.

46. It is also pertinent to mention that Section 19 of the 1992 Act provides that the SEBI may delegate to any member, officer of the SEBI or any other person, such of its powers and functions under this Act (except the powers under Section 29) as it may deem necessary. Thus, when the appellants failed to comply with the directions issued under Section 11C (3) of the 1992 Act and failed to produce the required documents and information, the Investigating Authority, being a

delegated Authority of SEBI, was empowered to levy the penalty as provided in Section 15A(a) of the 1992 Act. Hence, we find no merit in these appeals. The appeals are dismissed.

47. Parties to bear their respective costs.

.....J.
(AJAY RASTOGI)

.....J.
(B.V. NAGARATHNA)

NEW DELHI;
14th SEPTEMBER, 2022.