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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 25-26 OF 2024

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

VERSUS

VEDANTA LIMITED & ORS. ...**RESPONDENTS**

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:-

INDEX

1. The two captioned statutory appeals arise from the common judgment and order dated 05.10.2023 passed by the Securities Appellate Tribunal, Mumbai ("**SAT**") in Appeal Nos. 420 of 2021 and 486 of 2021 respectively preferred by the respondents herein by which the SAT allowed the appeals and consequently set aside the order dated 19.05.2021 passed by the Adjudicating Officer ("**AO**") of Securities and Exchange Board of India ("**Appellant No. 1 / SEBI**") wherein the AO had imposed a penalty of Rs. 5.25 Crore on respondent no.1 and of Rs. 15 Lakh each on respondent nos. 2, 3, and 4 respectively under Sections 15HA and 15HB of the SEBI Act, 1992 respectively on account of making misleading announcement of the buyback of shares without any intent to fulfil it, thereby violating Regulations 3(a), (b), (c), (d), and 4(1), 4(2)(k), and 4(2)(r) of (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 respectively (hereinafter referred to as "**PFUTP Regulations**") and Regulation 19(1)(a) of the SEBI (Buyback of Securities) Regulations, 1998 (hereinafter referred to as the "**Buyback Regulations**").

A. <u>FACTUAL MATRIX</u>

2. The respondent no. 1, Vedanta Limited (Formerly, Cairn India Limited, decided *vide* a special resolution dated 26.11.2013 to buy back 17.09 Crore equity shares at a maximum price of Rs. 335/- per share ("**Price Cap**") with a total investment of Rs. 5725 Crore *via* open market in accordance with the Buyback Regulations.

3. Thereafter, the respondent no. 1 made a public announcement for the buyback of equity shares on 14.01.2014. By virtue of Regulation 15(k) of the Buyback Regulations, the buyback offer was

scheduled to open on 23.01.2014 and close on 22.07.2014, i.e., upon completion of 6 months period from the opening of the buyback offer ("**Buyback Period**"). On 21.01.2014, the respondent no. 1 deposited an amount of Rs. 143.124 Crore, being 2.5% of the maximum buyback size, in the Escrow Account maintained with the Axis Bank, in compliance with Regulation15B(5) of the Buyback Regulations.

4. By the time five months of the stipulated six-month period had elapsed, the respondent no. 1, *vide* letter dated 30.06.2014, approached the appellant/SEBI seeking an extension of the buyback period on the ground that, as on 27.06.2014, it was significantly falling short of achieving the targeted buyback. The respondent no. 1 informed SEBI that it had been able to buy back only 3.6 Crore shares, constituting 21.48% of the targeted number of shares, by deploying a total sum of Rs. 1,225 Crore (i.e. 28.59% of the maximum buyback size). SEBI, however, rejected the request for extension of the buyback period on the ground that the SEBI Buyback Regulations contained no provision permitting such an extension.

5. Subsequently, *vide* letter dated 30.07.2014, the respondent no. 1 informed the appellant that it could not achieve the minimum amount of 50% buyback size as required under Regulation 14(3) of the Buyback Regulations. By the said letter, the respondent no. 1 further made an application to the appellant under Regulation 15B(8) of the Buyback Regulations, to release the Cash Escrow, containing 2.5% of the buyback size amounting to Rs. 143.125 Crore.

6. Pursuant to the above, the investigation department ("**IVD**") of SEBI conducted a preliminary investigation for the purposes of ascertaining whether the conditions laid down in Regulation 15B(8) of the Buyback Regulations for release of escrow amount had been met. Based on this preliminary investigation, the IVD, in its investigation report dated 11.06.2015, concluded that the respondent no. 1 had complied with the provisions of Regulation 15B (8) (a) & (b) of the Buyback Regulations and recommended that the matter may not be pursued any further. This investigation report dated 11.06.2015 was put up before the Committee of Inter-Divisional Chiefs-II ("**CIDC**") for its consideration.

7. The CIDC deliberated upon the draft Investigation Report in detail in its meeting held on 26.11.2015 wherein it opined that in the background of Regulation 14(3) of the Buyback Regulations, the applicability of Regulation 15B(8) of the Buyback Regulations and the PFUTP Regulations in the matter may be examined. Since this required interpretation of the aforementioned Regulations in terms of applicability of the same, the matter was referred to the LAD on 03.12.2015.

8. The LAD, *vide* its internal noting dated 29.12.2015, opined that Regulation 15B(8)(a) of the Buyback Regulations appears to be attracted in the present case and that accordingly, the escrow forfeiture may not be applicable. Moreover, the LAD was also of the opinion that since the law itself provided the consequence of a failure to achieve the 50% mark, it would be doubtful and legally difficult to sustain a case under PFUTP Regulations on the same set of facts and circumstances. However, the LAD was of the view that it would be appropriate for the CIDC to take a view in the matter once again and make recommendations as it deemed fit.

Thus, the matter was once again sent back to the CIDC for deliberation.

9. Meanwhile, on 03.02.2016, the IVD placed a fresh investigation report before the CIDC and concluded:

   (a) That the escrow amount is exempted from forfeiture under Regulation 15B(8)(a) of the Buyback Regulations;
   (b) That with respect to suspected violation of PFUTP Regulations during the buyback period, the same is being investigated separately.

   Pursuant to the above, the escrow amount came to be released in favour of the respondents. However, the investigation into a possible violation of PFUTP Regulations was undertaken separately.

10. On 17.03.2017, the IVD prepared the investigation report with respect to a suspected violation of the PFUTP Regulations. The focus of the investigation was to ascertain whether the respondents had violated any provisions of the PFUTP Regulations. In this report, the IVD noted that the respondent did not show intent towards completion of the buyback as it failed to place sufficient buy orders. Therefore, the IVD concluded that the announcement of buyback of shares was a false announcement by the respondents without any intent to fulfil it. In this manner, the respondents were alleged to have violated Regulations 3 (a), (b), (c), (d), 4(1), 4(2)(k), (r) of the PFUTP Regulations and Regulation 19(1)(a) of the Buyback Regulations, respectively.

11. Thereafter, the appellant issued a Show Cause Notice dated 19.01.2018 ("**SCN**") to the respondents alleging violation of Regulations 3 and 4 of the PFUTP Regulations and Regulation 19(1)(a) of the Buyback Regulations, respectively. The respondents filed their reply to the said SCN on 19.01.2018. The AO, after affording an opportunity of personal hearing, passed an Order dated 19.05.2021 ("**AO Order**") holding that the respondent did not place enough buy orders towards completion of the buyback and had acted fraudulently. Penalties were imposed upon the respondent and the individual directors for alleged violations of the PFUTP Regulations and Buyback Regulations. The AO held *inter alia* the following:

(a) the respondents failed to place sufficient buy orders towards completion of the buyback despite favourable market conditions existing on several days;

(b) out of 123 trading days, no buy orders were placed on NSE on 24 favourable days, and only negligible orders were placed on several other favourable days;

(c) NSE historically had greater liquidity and therefore genuine execution required aggressive participation on NSE;

(d) The respondents instead placed buy orders on BSE where the sale side was significantly lower;

(e) the respondent's conduct demonstrated lack of genuine intention to complete the buyback;

(f) the public announcement created a misleading impression that the Company seriously intended to execute the buyback;

(g) such misleading announcement influenced investor decision-making and therefore constituted fraud under PFUTP Regulations; and

(h) the directors/signatories who signed the Public Announcement facilitated the misleading representation and were therefore personally liable for penalties.

12. Aggrieved by the said AO Order, the respondents preferred Appeal Nos. 420 of 2021 and 486 of 2021 respectively before the SAT. On 05.10.2023, the SAT allowed both the appeals and set aside the AO's Order dated 19.05.2021. In the impugned order, SAT held that violations of the PFUTP Regulations and Buyback Regulations were not proved against the respondents herein. Further, the SAT made the following observations as well:

(i) the respondents could not have foreseen the substantial bullish market trend when the buyback was approved and announced;
(ii) the market price remained above the Price Cap for a substantial part of the buyback period, thereby materially constraining execution of the buyback;
(iii) the Buyback Regulations did not prescribe any mandatory methodology, frequency or aggressiveness for placing buy orders;
(iv) the respondent's appointment of professional intermediaries and deposit of Rs. 143.125 Crore in escrow demonstrated bona fide intention;
(v) Rs. 1,225.45 Crore spent on the buyback was not a paltry sum indicative of a sham transaction;
(vi) cautious placement of orders could not itself be termed fraudulent because aggressive buying at the initial stage could have artificially increased the market price further;

(vii) there was no material showing that the respondents instructed intermediaries to favour one stock exchange over another;

(viii) SEBI's own investigation had earlier found no major impact on market price or volume due to the buyback announcement;

(ix) it could not be conclusively proved that the respondents lacked intent to complete the buyback or acted fraudulently; and consequently; and

(x) the public announcement was not misleading, and therefore no liability survived against the directors/signatories who had signed the announcement.

13. In such circumstances referred to above, the appellant is here before us with the present appeal.

B. SUBMISSIONS OF THE APPELLANT

14. Mr. Navin Pahwa, the learned senior counsel appearing for the appellant, submitted that the AO passed a reasoned and speaking order and thus did not warrant any interference by SAT. Pertinently, it was submitted that the AO recorded that the respondent company made a public announcement to buyback 17.09 Crore shares at a maximum buyback price of Rs. 335/- per share during a period of 6 months spread over 123 trading days, and the public announcement for buyback by a listed company of such a huge number of shares had a direct impact on the securities market, which is sensitive to such information. The respondents had 54 favourable days out of the 123 days, favourable days being those days when the price of shares on the Exchange was less than or equal to the buyback price of Rs. 335/- per share.

15. Pertinently, the respondent did not place a single buy order even though the respondents had the option to place 'Limit Orders' on 24 days out of the 54 favourable days. Further, even during the remaining 30 favourable days on the NSE, the respondents only placed buy orders for 5000 shares or less on 14 days, when in fact, on an average, the respondents ought to have placed buy orders for 13,89,390 shares. During the favourable 54 days on the NSE, 67 Crore shares were available for purchase, and the respondent was required to buy only 17.09 Crore shares as per the public announcement. The respondent, however, bought only 3,67,03,839 shares, which is merely about 5% of the total shares available for sale. Similar was the case on the BSE, where the respondent bought only 6.44% of the traded quantity on the favourable closing price days.

16. It was further submitted that SAT only considered the opening price on 23.01.2014, being the first day of the buyback period, and the closing price on 22.07.2014, being the last day of the buyback period, and recorded a finding that there was a bull period on the NSE/BSE. In doing so, SAT completely ignored the analysis of AO in his order, showing 54 favourable days on the NSE during which 67 Crore shares were available, as against the buyback requirement of only 17.09 Crore shares. The respondents bought only 5% of the total number of shares available for sale on the NSE, and only 6.44% of the total number of shares available on the BSE, which finding has not been dealt with by SAT at all.

17. It was submitted that SAT completely ignored the fact that the merchant bankers and the brokers were appointed by the respondent company, that the price of shares of every listed

company is available in the public domain during trading hours at all times, and that a purchaser can also place "Limit Orders". As such, the respondent company had complete data available in the public domain, which aspect has been discussed in detail by the AO in his order. The learned senior counsel submitted that SAT completely ignored the fact that the respondent company had 54 days of favourable price on the NSE and 55 days of favourable price on the BSE, on which more than 67 Crore shares were available for sale at a price less than or equal to Rs. 335/-, and that the AO had accordingly held that there was no intent on the part of the respondent to complete the buyback. It was further submitted that the finding of SAT based on the investigation report made for the purpose of release of the escrow account under Regulation 15B, is misconceived, inasmuch as the inquiry for the purpose of Regulation 15B(8) is entirely different from an investigation under the PFUTP Regulations. It was further submitted that the AO reached to a conclusion that the misleading announcement had induced the investors, which is reflected in the increased trading volume after the buyback announcement, the price of the scrip having registered an increase of 6.88% on the BSE and 6.67% on the NSE during this period.

C. <u>SUBMISSIONS OF THE RESPONDENTS</u>

18. Mr. Rajiv Shakdher, the learned senior counsel appearing for the respondents, at the outset submitted that the present appeal is not maintainable as it does not raise any question of law and, thus, liable to be dismissed. Further, it was submitted that the respondents always had the intent to execute the buyback offer. For this, the learned senior counsel pointed out that despite the

bullish trend, they placed buy orders on NSE for 82 days and on BSE for 123 days. Further, during the buyback period, they bought back 3,67,03,839 equity shares for a total consideration of Rs. 1,225.45 Crore, which was equivalent to 21.48 % of the of the maximum amount set apart for this purpose.

19. It was submitted that the respondents had engaged two registered merchant bankers, i.e., Morgan Stanley India Company Private Limited and Standard Chartered Securities (India) Limited, through which Respondent's scrip could be bought. Unless the sell orders would meet the price criteria at the given point in time, no trade could have been concluded by the merchant bankers. In other words, if the sell order on NSE/BSE was made before or after the mandate was issued to the merchant banker, or did not align with the price or the price band, no trade could go through. Thus, the number of sell orders by itself cannot give the entire picture. The demand has to be seen in light of viable sell orders which would have met the price cap. It was further submitted that as per the investigation reports of the appellants, Volume Weighted Average Market Price ("**VWAMP**") during the buyback period was Rs. 342.83/-per equity share on NSE and Rs. 348.48/- per equity share on BSE. Thus, out of a maximum of 123 trading days, the price of Respondent's scrip was above the price cap of Rs. 335 on 65 days.

20. It was further submitted that three weeks before the expiry of the buyback period, the respondents had sought extension of time from the appellant for continuing with the buyback exercise. However, the same was declined by the appellant on the ground that there was no provision available for granting such extension although

under Section 68(4) of the Companies Act, 2013, time could have been extended till November 2014. Moreover, there was admittedly no impact of the public announcement of buyback on the volume or price of the respondent shares on the basis of the public announcement made by the respondents during the investigation period. Furthermore, the financial results would reveal that there was no substantial variation either in profit or sales, both before and after the buyback period. The shareholding of the promoters also ranged between 58.76% to 59.9% inter se quarter ending December 2013 and quarter ending June 2014, while for the same period, the non-promoter holding dipped from 41.24% to 40.10%. The conclusion that could be drawn quite clearly is that neither the company nor its promoters attempted to make any wrongful gains from its buyback offer.

21. The learned senior counsel contended that the AO allegedly relied on inaccurate data while comparing the NSE and BSE's sell orders and buy orders volume. It was submitted that the AO relied on inflated sell order data on the NSE to come to the conclusion that more than 67 Crore shares were available for sale on the NSE and the respondents did not place sufficient buy orders. Since the data contained discrepancies, CIL had made a request for being permitted to cross-examine the officials of BSE and NSE respectively, which was admittedly turned down by the AO. It is relevant to mention that the price was favourable only in the initial period of the buyback period. In the beginning, the respondents were not aware and could not have foreseen that the price would remain unfavourable for the entire period post 31.03.2014. It was also submitted that post 09.05.2014 till 22.07.2014, the price of the shares of CIL never came below Rs. 335/-.

D. ISSUE FOR DETERMINATION

22. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the sole question that falls for our consideration is whether the release of the escrow amount pursuant to the exceptions listed under Regulation 15B(8) of the Buyback Regulations precludes or otherwise bars an independent allegation, inquiry or finding of fraud under the PFUTP Regulations?

E. ANALYSIS

23. In the present case, the respondents have sought to place considerable reliance upon the fact that the release of the escrow amount under Regulation 15B(8)(a) is inconsistent with the allegation of fraud under the PFUTP Regulations. It has been vehemently argued by the respondents that once SEBI, in the course of its investigation, had accepted that the conditions for release of the escrow amount had been met, a subsequent allegation of fraud based on the same incident cannot be sustained. The respondents argued that if they had indeed violated the PFUTP Regulations, then SEBI would not have released the cash escrow. The submission proceeds on the premise that the conditions governing forfeiture or release of the escrow under Regulation 15B(8) constitute a test for determining whether the conduct of the company was fraudulent under the PFUTP Regulations.

24. The respondent no.1 submitted that *vide* Investigation Report dated 03.02.2016, SEBI had given a categorical finding that the respondent no. 1 had not violated the Buyback Regulations,

whereas the Investigation Report dated 17.03.2017 had alleged that it had violated the PFUTP Regulations. It submitted that once SEBI came to the conclusion that in the present case the condition for exemption from forfeiture of the escrow deposit under Regulation 15B (8) of the Buyback Regulations was satisfied, the charge of fraud could never be made out because in that case, the non-completion of the buyback cannot be attributed to any fraudulent intent of the respondents.

25. The respondent's submission, therefore, raises a question as to the legal effect of the release of the escrow. The question is whether the conditions under Regulation 15B(8), once fulfilled, operate as a threshold for determining the existence of fraud, or whether fulfilment of those conditions merely triggers release of the escrow and is legally distinct from an inquiry into fraud under the PFUTP Regulations. More particularly, the question is whether the provision is limited to the question of forfeiture of the escrow without foreclosing an independent enquiry into fraudulent conduct under the PFUTP Regulations.

26. Before proceeding to answer the legal question in detail, at this stage, it is also apposite to clarify the effect of certain contemporaneous notings made by SEBI's ED (LAD), which have been relied upon by the respondents to amplify their submission. We are aware that the respondents have placed reliance upon the office note dated 03.12.2015 of the ED (LAD) which observes that it would be doubtful and legally difficult to sustain a case under the PFUTP Regulations against the company on the same set of facts and circumstances which have been found to attract the

condition for release of escrow under Regulation 15B(8)(a). The ED (LAD)'s observation in its office note dated 03.12.2015 reads thus:

> "*(i) It appears that clause (a) of Regulation 15B(8) of Buyback Regulations is attracted in this case. If this is so, escrow forfeiture may not be applicable.*
>
> *(ii) Further, since law itself provided the consequence of a failure to achieve 50% level, it would be doubtful and legally difficult to sustain a case under PFUTP Regulations on the same set of facts and circumstances.*"

27. However, in our considered opinion, the aforesaid observations of the ED (LAD) cannot be treated as a binding determination of the legal effect of Regulation 15B(8) or as creating immunity from the operation of the PFUTP Regulations. It is settled law that notings in the departmental file do not have the sanction of law to be an effective order and that a noting by an officer is essentially an expression of his viewpoint for internal consideration. This Court in ***M/s Sethi Auto Service Station & Anr. v. Delhi Development Authority & Ors.*** **(Civil Appeal No. 6143 of 2008)** had succinctly put the law in this regard, as follows:

> *"12. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned."*

28. Thus, the opinion of ED (LAD) cannot be relied upon by the respondents as an established finding of fact communicated to them by SEBI. Moreover, the principle is attracted with greater force as the noting by the ED (LAD) in question does not even purport to be a final adjudication of the rights or liabilities of the person concerned, but expressly leaves the matter for consideration by the CIDC-II. The noting, therefore, was neither a final decision nor an adjudication by the competent statutory authority and hence cannot be relied upon by the respondents as a binding determination of any factual finding. In fact, the conclusion and recommendations stated in the investigation report dated 03.02.2016 categorically note in its conclusion and recommendations that the escrow amount is exempted from forfeiture under clause 15B(8)(a) of the Buyback Regulations and that as regards the suspected violations of the PFUTP Regulations, the same was being investigated separately. Moreover, in its letter dated 12.06.2016, SEBI informed the merchant bankers, i.e., Standard Chartered Securities (India) Ltd. and Morgan Stanley India Company Pvt. Ltd., that "*Upon examination of the submissions made by the Company, it has been decided to accede to the request of the Company for release of the Cash Escrow.*" This clearly indicates that even in SEBI's communication to the respondents or the third parties, there is no finding of fact regarding the factum of fraud under the PFUTP Regulations, which has been established.

29. The question whether the release of the escrow amount operates as a bar to proceedings under the PFUTP Regulation, must, therefore, be answered on the basis of the statute and the legal consequences expressly contemplated by it, and not by reference to an internal administrative opinion.

30. Therefore, in order to test the veracity of this argument, we must refer to the statutory scheme governing the escrow mechanism under the Buyback Regulations. Regulation 15B (8) of the Buyback Regulations, as applicable to the present matter, reads thus:

> ***"15B. Escrow account***
>
> *xxx xxx xxx*
>
> *(8) In the event of non-compliance with sub-regulation (3) of regulation 14, except in cases where,-*
>
> *a. volume weighted average market price (VWAMP) of the shares or other specified securities of the company during the buy-back period was higher than the buy-back price as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.*
>
> *b. inadequate sell orders despite the buy orders placed by the company as certified by the Merchant banker based on the inputs provided by the Stock Exchanges.*
>
> *c. such circumstances which were beyond the control of the company and in the opinion of the Board merit consideration,*
>
> *the Board may direct the merchant banker to forfeit the escrow account, subject to a maximum of 2.5 per cent of the amount earmarked for buy-back as specified in the resolutions referred to in regulations 5 or 5A."*

31. In order to appreciate the full scope and import of Regulation 15B(8), let us advert to Regulation 14(3) of the Buyback Regulations, since the former is expressly attracted in the event of non-compliance with the latter. Regulation 14 of the Buyback Regulations, as applicable to the present case, reads thus:

> "***Buy-back from open market***

14. (1) A company intending to buy-back its shares or other specified securities from the open market shall do so in accordance with the provisions of this Chapter.

(2) The buy-back of shares or other specified securities from the open market may be in any one of the following methods:

(a) through stock exchange,

(b) book-building process.

(3) The company shall ensure that at least fifty per cent of the amount earmarked for buy-back, as specified in resolutions referred to in regulation 5 or regulation 5A, is utilized for buying-back shares or other specified securities."

(Emphasis Supplied)

32. A plain reading of the aforesaid provisions makes one aspect of the statutory scheme clear. Regulation 14(3) of the Buyback Regulations casts an obligation upon the company to utilise at least fifty percent of the amount earmarked for the buyback, for purchasing its shares or other specified securities. Regulation 15B(8) in turn, provides for the consequences of non-compliance with Regulation 14(3), namely, the possibility of forfeiture of the escrow subject to the exceptions expressly carved out therein. The language used in Regulations 15B(8) makes it abundantly clear that the provision neither defines nor determines the existence of fraud.

33. This, in our considered opinion, clearly indicates that the scope of the enquiry contemplated by Regulation 15B (8) is confined to determining whether the escrow is liable to be forfeited in the circumstances contemplated by the provision. The fact that the conditions governing the forfeiture or release of an escrow have been satisfied, by itself, cannot be treated as a finding on whether the PFUTP Regulations have been violated or not.

34. In other words, where any of the circumstances contemplated under clauses (a), (b) or (c) of Regulation 15B(8) are found to exist, the consequence is simply that the escrow cannot be forfeited. But it does not, by itself, answer the distinct question of whether the conduct of the respondents, viewed in its entirety and in the light of the material collected during investigation, involved any fraudulent or manipulative conduct within the meaning of the PFUTP Regulations. If the respondent's erroneous manner of interpretation was to be adopted, it would mean that the release of the escrow would operate as an immunity from an altogether distinct prohibition contained in the PFUTP Regulations. There is, however, no warrant in the statutory scheme for such an interpretation.

35. Thus, the mere release of the escrow does not create an automatic statutory bar to proceedings under the PFUTP Regulations because the release of the escrow is not necessarily equivalent to absence of fraud. One must bear in mind that the fulfilment of the requirements for release of an escrow cannot, by itself, determine whether the ingredients of fraud under the PFUTP Regulations are made out. The fact that the escrow amount was released cannot be treated as creating a statutory bar against the initiation or continuation of proceedings under the PFUTP Regulations. In other words, the release of escrow, by itself, cannot preclude a finding of fraud if the material on record otherwise establishes the ingredients of such fraud under the applicable provisions of the PFUTP Regulations since the operation of the escrow mechanism is not an adjudication upon allegations levelled under the PFUTP Regulations.

36. Therefore, we are unable to accept the respondents' submission that the satisfaction of the conditions contemplated under Regulation 15B(8) necessarily negatives allegations of fraud under the PFUTP Regulations.

37. Having said so, we shall now proceed to deal with the aspect of fraud as alleged against the respondents. We may indicate, at the very outset, that our final conclusion on this fraud aspect is to remand the matter to SAT, for reasons that we shall set out towards the end of this discussion. However, before doing so, we consider it necessary to first examine the law dealing with fraud under the PFUTP Regulations, so as to lend context to the manner in which SAT ought to approach the question on remand.

38. In the case of ***KSL Industries v. The Chairman, SEBI***, reported in **2003 SCC OnLine SAT 32**, the appellant therein was alleged to have financed certain persons for subscribing to shares in a public issue, which shares came to be irregularly allotted and were subsequently used by such persons to manipulate the market. The SAT, on the facts, found no material connecting the appellant/financier with the actual act of market manipulation and held that a charge of fraud could not be sustained merely on the ground that the appellant had financed an irregular subscription, in the absence of evidence establishing a real nexus between the financier and the manipulation. It was also observed that fraud cannot be established merely on conjectures and surmises. The relevant observations are as under:

> *"41. I have carefully considered the Respondent's submissions on the charge that the Appellant had violated*

> *the provisions of regulation 4 and 6 in the light of the provisions of FUTP Regulations. But I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained. I fully agree with Shri Khambatta's submission in this regard that allegation of 'fraud' cannot survive on mere conjectures and surmises. "Financing irregular subscriptions resulting in irregular allotment" by itself cannot be considered as fraud and in violation of regulation 4 or 6 of the FUTP Regulations. If somebody unconnected with the financier, who had only borrowed money from the financier to subscribe for the shares in a public issue, subsequently makes use of the shares received in an irregular allotment, to manipulate the market, on that ground alone in the absence of any positive evidence against the financier that he had intentionally made available finances so as to enable the other person to manipulate the market, the financier cannot be held guilty of market manipulation. Real nexus of the financier - directly or indirectly - with the market manipulation has to be established to hold the financier guilty. In my view the Respondent has failed to establish violation of the provisions of FUTP Regulations as stated in the show cause notice against the Appellant."*
>
> (Emphasis Supplied)

39. The above principle can be illustrated through the SEBI-Mumbai Order dated 18.05.2007, ***In the matter of irregularities in the trading of the shares of MOH Ltd.***,wherein the SEBI considered the entire chain of events, commencing with (i) the preferential allotment of 15 crore shares to a related party, followed by (ii) the advertisement proposing a buyback at Rs. 3 per share against the prevailing market price of Re.0.25, (iii) the absence of the financial resources required to undertake the buyback, (iv) the subsequent withdrawal of the proposal without publication of an advertisement, (v) the unusual increase in the price and trading volume of the scrip during the intervening period, and (vi) particularly the subsequent offloading of shares by the preferential

allottees and promoters. On a cumulative assessment of these circumstances SEBI had concluded that the sequence disclosed an orchestrated ploy to create artificial demand for the shares and to induce unsuspecting investors to purchase them, thereby facilitating the absorption of shares offloaded by the promoters and related entities. MOH Ltd. had acquired 100% of Saturn Technologies Ltd. and, as consideration therefor, made a preferential allotment of 15 Crore shares in favour of Saturn's 20 shareholders despite Saturn possessing a paid up capital of merely Rs. 1 Crore and a turnover of Rs. 16 lakh.Shortly thereafter, MOH issued advertisements announcing a proposed buyback of its shares at Rs. 3 per share at a time when the shares were trading at approximately Rs. 0.25 and the company admittedly lacked the free reserves or other eligible funds necessary to undertake such a buyback. The announcement was followed by a substantial and disproportionate increase in both the price and trading volume of MOH's shares, thereby creating an impression amongst investors that Rs. 3 represented the true value of the company's shares. Within days, the Board withdrew the buyback proposal without publicly advertising such withdrawal, and it was in this very interregnum that the shares held by the promoters and the preferential allottees came to be transferred through off-market transactions and were thereafter offloaded in the secondary market to unsuspecting investors. The Board also rejected the contention of one of the promoters, Manubhai Shah, that he had ceased to be a promoter, having regard to the fact that he continued to hold substantial shares and continued to be shown as a promoter in the shareholding pattern filed with the BSE.

40. From the above, it appears to us that when the entire sequence of events is viewed in its totality, several proved facts corroborated the finding that the company MOH had indeed engaged in fraud. The misleading buyback announcement, made without free reserves and at a price far removed from the prevailing market price, was followed by a consequent and disproportionate rise in both the price and the trading volume of MOH's shares, an artificial movement which bore no relation to the underlying fundamentals or performance of the company. This was compounded by the subsequent offloading of shares by the promoters and the preferential allottees in the secondary market, an act which, occurring as it did in such close proximity to the announcement and its unpublicised withdrawal, could not be viewed as a matter of mere coincidence. It was in these circumstances that the Board came to hold that the sequence, taken as a whole, amounted to a calculated scheme designed to create an artificial demand for MOH's shares, so as to induce innocent investors into purchasing the same and thereby facilitate a smooth exit for the promoters. The relevant observations are as under:

> *"6.15 The entire chain of events from making the preferential allotment of shares to the shareholders of the related entity - Saturn, the advertisement for buyback of shares, reasons stated for the rejection of the buyback proposal, impact on the price/volume of MOH shares <u>established an orchestrated ploy on part of the promoters to create an artificial demand for the shares of the company and induce innocent investors for purchasing shares so as to absorb shares by the promoters and related entities.</u>*
>
> *xxx xxx xxx*
>
> *6.17 Having considered all aspects of the matter, I find that the Noticees had committed fraud on shareholders of MOH Ltd by issuing misleading advertisement after the*

preferential allotment and subsequently withdrawing the promise given in the said advertisement. Further, they had offloaded the shares in the secondary market to deceive the innocent investors. The word "fraud" is defined under Regulation 2(c) of PFUTP Regulations. Further, such fraudulent dealings in securities are prohibited under Regulation 3 of PFUTP Regulations. In this case, the actions of the Noticee would come under the said definition of fraud especially when they made statements/advertisements after the said preferential allotment with a view to offload the shares of their company at a price which was created artificially by employing schemes/device/and/or act/practice with an intent to defraud and to influence the investment decision of the investors. In this matter they violated the provisions of Regulations 4(a) to (c), 5(1)(a) & (b) and 6(a) of PFUTP Regulations."

(Emphasis Supplied)

41. In ***SEBI v. Kishore R. Ajmera***, reported in **(2016) 6 SCC 368**, this Court was confronted with connected appeals arising out of alleged manipulative trading in illiquid scrips through synchronised and matched trades. In one set of facts, two related clients, trading through a common sub-broker, were found to have engaged in mutual buy and sell transactions in an illiquid scrip in significant volume, notwithstanding a note of caution issued by the stock exchange requiring brokers to be alert to any unnatural or voluminous trading in such scrips, and this Court found that, beyond the fact of the relationship between the two clients and the volume of their trades, there was no other material on record to establish either lack of vigilance or absence of bona fides on the part of the broker, and the charge accordingly came to be answered in the negative. In the connected set of facts, however, the position was found to be materially different, inasmuch as the trading in question was characterised by buy and sell orders being placed within an extremely narrow window of time, in several instances within mere seconds of each other, for identical quantities and at

identical rates. This pattern continued over a sustained period, and the volume so traded constituted a substantial proportion of the total traded volume in the scrip. An overwhelming majority of these trades were found to be synchronised, apart from instances of self-trades and reversed trades. Hence, this Court held that the confluence of such circumstances, namely the illiquidity of the scrip, the sheer volume and persistence of the trading, and the precise timing and matching of the buy and sell orders, was sufficient in itself to sustain an inference of manipulation, even in the absence of any direct evidence of a meeting of minds between the parties concerned. The relevant observations are as under:

> *"26. <u>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</u>. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*
>
> *27. Let us apply the aforesaid test to the facts of the present cases before us wherein admittedly there in no direct evidence forthcoming. <u>The first relevant fact that has to be taken note of is that the scrips in which trading had been done were of illiquid scrips meaning thereby that such scrips though listed in the Bombay Stock Exchange were not a matter of everyday buy and sell transactions. While it is correct that trading in such illiquid scrips is per se not</u>*

impermissible, yet, voluminous trading over a period of time in such scrips is a fact that should attract the attention of a vigilant trader engaged/engaging in such trades. The above would stand fortified by the note of caution issued by the Bombay Stock Exchange in the form of a notice/memorandum alerting its members with regard to the necessity of exercising care and caution in case of high volume of trading in illiquid scrips, as already noted.

28. Insofar as first case is concerned the proved facts are as follows:

(i) Both the clients are known to each other and were related entities.

(ii) This fact was also known to the sub-broker and the respondent – broker.

(iii) The clients through the sub-broker had engaged in mutual buy and sell trades in the scrip in question, volume of which trade was significant, keeping in mind that the scrip was an illiquid scrip.

Apart from the above there is no other material to hold either lack of vigilance or bona fides on the part of the sub-broker so as to make respondent-broker liable. An irresistible or irreversible inference of negligence/lack of due care etc., in our considered view, is not established even on proof of the primary facts alleged so as to make respondent-broker liable under the Conduct Regulations, 1992 as has been held in the order of the Whole Time Member, SEBI which, according to us, was rightly reversed in appeal by the Securities Appellate Tribunal.

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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)

42. Thereafter, in ***SEBI v. Kanaiyalal Baldevbhai Patel***, reported in **(2017) 15 SCC 1**, one Dipak Patel, who held a position of trust and confidence with M/s Passport India Investment, was privy to confidential information that Passport India would be making

substantial investments in particular scrips through the stock exchanges. Dipak Patel was alleged to have parted with the said information to his cousin, Kanaiyalal Baldevbhai Patel, who on various dates had placed orders for the purchase of scrips a few minutes before the bulk orders in respect of the same scrips were placed on behalf of Passport India by Dipak Patel. The bulk orders, on account of their sheer volume, naturally had the effect of pushing up the prices of the particular scrips, and no sooner had the prices increased than Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel traded the said scrips, thereby earning substantial profits. The large volume of shares traded in this manner, the number of days over which such trading had taken place, and the close proximity in time between the sale and purchase of shares before and after the bulk purchases, were alleged by SEBI to amount to fraudulent or unfair trade practice.

43. This Court held that front running on the basis of information received, with knowledge that such information was privileged, constituted fraud within the meaning of the PFUTP Regulations, and Kanaiyalal Patel was accordingly held guilty of violating Regulation 3 thereof. It was observed that Regulation 3 prohibited a person from committing fraud while dealing in securities, and that the words employed therein were of wide amplitude, sufficient to take within their sweep an inducement bringing about an inequitable result, such as had occurred in that case. It was further observed that unequal possession of information was not, by itself, objectionable, and became fraudulent only when such information had been acquired in bad faith and was used to induce an inequitable result for others. This Court, having regard to the fiduciary relationship between Dipak Patel and Passport India, the

parting of confidential information to a relative, the placement of orders in near-immediate proximity to the bulk orders, and the consequent profits earned, found the same to constitute corroborative facts sufficient to establish fraud. This Court further reiterated that charges under the PFUTP Regulations needed to be established as per the applicable standards rather than on mere conjectures and surmises. The relevant observation is as under:

> *"32. Regulation 3 prohibits a person from committing fraud while dealing in securities. A reading of the aforesaid provision describes the width of the power vested with the SEBI to regulate the security market. <u>In our view, the words employed in the aforesaid provisions are of wide amplitude and would therefore take within its sweep the inducement to bring about an inequitable result which has happened in this case instant</u>.*
>
> *xxx xxx xxx*
>
> *38. A crucial aspect which needs to be observed at this point is the element of causation which is embedded under regulation 2(1)(c) read with regulations 3 and 4. <u>In order to establish the aforesaid charges in this case, it is required by the SEBI to establish that the harm was induced by the materialization of a risk that was not disclosed because of the tippee's fraudulent practice. Further the charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises</u>.*
>
> *xxx xxx xxx*
>
> *45. Now we come back to the regulations 3 and 4 (1) which bars persons from dealing in securities in a fraudulent manner or indulging in unfair trade practice. Fairness in financial markets is often expressed in terms of level playing field. A playing field may be uneven because of varied reasons such as inequalities in information etc. Possession of different information, which is a pervasive feature of markets, may not always be objectionable.*

Indeed, investors who invest resources in acquiring superior information are entitled to exploit this advantage, thereby making markets more efficient. The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result for others.

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47. Accordingly, non-intermediary front running may be brought under the prohibition prescribed under regulations 3 and 4 (1), for being fraudulent or unfair trade practice, provided that the ingredients under those heads are satisfied as discussed above. From the above analysis, it is clear that in order to establish charges against tippee, under regulations 3 (a), (b), (c) and (d) and 4 (1) of FUTP 2003, one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence, further such breach of duty was known to the tippee and he still trades thereby defrauding the person, whose orders were front-runned, by inducing him to deal at the price he did.

48. Taking into consideration the facts and circumstances of the case before us and the law laid down herein above and SEBI v. Kishore R. Ajmera (Supra) can only lead to one conclusion that concerned parties to the transaction were involved in an apparent fraudulent practice violating market integrity. The parting of information with regard to an imminent bulk purchase and the subsequent transaction thereto are so intrinsically connected that no other conclusion but one of joint liability of both the initiator of the fraudulent practice and the other party who had knowingly aided in the same is possible."

(Emphasis Supplied)

44. In ***Deccan Chronicle Holdings Ltd. v. SEBI***, reported in **2023 SCC OnLine SAT 939**, the proceedings arose from allegations that DCHL had materially misrepresented its financial position and

violated disclosure and buy-back requirements under law. The show cause notice had alleged that DCHL had understated its outstanding loans across successive financial years and had failed to account for the interest liability incurred and paid during those years in its profit and loss accounts. It was further alleged that a related entity, owned and controlled by DCHL's promoters, owed the company a substantial sum, and that DCHL had falsely represented that it had acquired certain brands despite already owning them. The appellants therein were also alleged to have failed to disclose various encumbrances created over their shares in favour of certain financial institutions, as well as the subsequent invocation of such encumbrances, and to have undertaken a buy-back of shares beyond the prescribed statutory limit without disclosing the resultant change in shareholding. The appellants were further alleged to have been signatories to the public announcement proposing the buy-back, despite the company not having adequate free reserves to undertake the same. On these facts, SAT held that the announcement of the buy-back without adequate free reserves, coupled with the manipulation of the company's books of accounts, constituted fraud on the part of the company so as to manipulate the price of its securities. The relevant observation is as under:

> *"34. In this regard, we find that the buy-back announcement was made by the company on May 6, 2011. As per the accounts, maximum available limit available for buy-back of shares is of Rs. 116.02 Crore whereas the announcement for an amount aggregating up to Rs. 270 Crore from the open market at the price not exceeding Rs. 180/- per share was made. <u>Thus, the company had carried out buy-back of shares which were more than 25% of its total paid up capital during the financial year 2011-12. We, therefore, hold that without having adequate free reserves, the company carried out buy back of its shares which</u>*

> *<u>misled the uninformed investors and shareholders about the perceived valuation and adequate free reserves of the company and which may have influenced the decision of the investors especially when the price of shares was declining since May 2010. We, therefore, find that the company had manipulated its financials and that the announcement over the buy- back of its securities was made in the absence of adequate reserves and that the company carried out the buy back of shares beyond the prescribed limit</u>.*
>
> *35. […] <u>We are further of the opinion that the wrongful buy back by the company as the result of the manipulation in the books of accounts of the listed company which resulted in misleading and mis-investing the investors at large and the securities market was in contravention not only of the provisions of the Companies Act but also the provisions of the SEBI Act and PFUTP Regulations</u>."*
>
> (Emphasis Supplied)

45. Further, in ***SEBI v. Terrascope Ventures Ltd.***, reported in **2026 SCC OnLine SC 403**, this Court was seized with facts wherein the respondent no. 1-company, then known as Moryo Industries Limited, had issued a notice for an Extraordinary General Meeting and had disclosed to its shareholders and the public the purpose and object of a proposed preferential allotment of equity shares to certain non-promoter allottees. In the explanatory statement appended pursuant to Section 173(2) of the Companies Act, 1956, and as further required under Regulation 73(1) of the SEBI (ICDR) Regulations, 2009, the object of the issue had been stated to be the fulfilment of additional fund requirements towards capital expenditure, including acquisition of companies or business, funding of long-term working capital requirements, marketing, setting up of offices abroad, and other approved corporate purposes. SEBI contended that soon after the proceeds began to be received, the funds were, instead, diverted towards the purchase of shares of other companies and towards the grant of loans and

advances, and that such diversion was indicative of an intention, present from the very inception, not to apply the proceeds of the preferential issue for the purpose for which it had been raised. This Court held that the diversion of funds immediately upon their receipt, in violation of the object for which they had been raised, disclosed an intent to act fraudulently within the meaning of the PFUTP Regulations, and that such diversion for the purpose of purchasing shares of other companies constituted fraud thereunder. What weighed with this Court was the sheer proximity in time between the receipt of the funds and their diversion, coupled with the fact that ratification of such diversion, when sought, came only after the funds already stood fully diverted and after an *ex-parte* order had been passed against the respondents, as also the unconvincing nature of the explanation offered by the respondents attributing the diversion to prevailing market conditions. The relevant observation is as under:

> *"38. <u>Applying this principle, we have no semblance of doubt in our mind that the diversion of the funds raised for an object not set out in the notice of EoGM was clearly in breach of Regulation 3 as well as Regulations 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations</u>. Further, the very purpose of notice of EoGM and the notice informing the objects of preferential issue is also traceable to Regulation 73 of the ICDR Regulations, 2009 which mandate that the objects for the preferential issue have to be set out.*
>
> *xxx xxx xxx*
>
> *50. <u>There is another significant aspect in the present case. The EoGM was on 03.09.2012 for the stated objects therein and the funds started coming in from 16.10.2012. From the very next day, the funds were diverted towards advances to companies and for investment in shares. The ratification came after the WTM had passed an ex-parte order on 04.12.2014 only on 29.09.2017, at a point when the entire funds already stood diverted. The explanation that the market conditions prevailing prevented them from utilizing</u>*

> *was rightly not accepted. It is very clear from the facts that the respondents had from the very inception had no intention to use the funds for the stated objects and their only object was to somehow raise the funds and divert it for the purpose they ultimately did.*
>
> *51. In Kishore R. Ajmera (supra), this Court held that proof of violation of Regulations may have to be inferred by a logical process of reasoning from the totality of attending facts and circumstances. In this case, though there is admission that there is diversion of purpose, the claim that it was due to market conditions is false, is established from the speed with which the amounts were diverted. The reliance on newspaper articles about GDP rate hitting a new low is to say the least not convincing at all and is too general."*
>
> (Emphasis Supplied)

46. Moreover, recently in ***Reliance Industries Ltd. v. SEBI***, reported in **2026 SCC OnLine SC 1005**, wherein one of us, J.B Pardiwala, J. was the author, this Court was confronted with an allegation that the appellant company, by trading through several entities acting as its agents, had exceeded permissible position limits in the futures segment so as to manipulate the settlement price of the underlying scrip and thereby earn unlawful gains. This Court, upon a detailed consideration of the record, found that although a breach of position limits and non-disclosure of the identity of persons acting in concert had indeed been established, the respondent authority had failed to demonstrate that any third party had been induced to deal in securities as a consequence thereof, nor had it been shown that the device or arrangement resorted to by the appellant admitted of no explanation other than that of fraud. It was in this context that this Court held 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 becomes 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, thereby elevating the standard of preponderance of probabilities to a correspondingly higher degree in such cases.

> *"174. <u>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</u> […]*
>
> *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. <u>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</u>.*
>
> *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, <u>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</u>."*
>
> (Emphasis Supplied)

47. We further reiterate this Court's observation in ***Alupro Building Systems (P) Ltd. v. CCE***, reported in **(2026) SCC OnLine SC 986**, wherein one of us, J.B Pardiwala, J. was the author, 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, act upon the supposition that it exists. The relevant observation is as under:

> *"94. All that we are trying to convey is that <u>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, to act [sic] upon the supposition that it exists</u>."*
>
> (Emphasis Supplied)

48. From the aforesaid decisions, it is clear that fraud cannot be said to be established on the basis of mere allegation, conjectures and surmises. Fraud must be established on the touchstone of the principle of balance of probabilities, which requires an objective perusal of the evidence on record, whereupon the court must either believe such evidence to exist, or consider its existence to be so probable that a reasonable man ought, under the given circumstances, to act upon the supposition that it exists. In ***Reliance Industries Ltd.*** *(supra)*, this Court, applying the aforesaid principle to the peculiar facts of that case, further held 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 becomes 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*".

49. Further, it is imperative to note that in ***Kishore Ajmera*** *(supra)*, this Court held that the confluence of circumstances such as the

illiquidity of the scrip, the sheer volume and persistence of the trading, and the precise timing and matching of the buy and sell orders, was sufficient in itself to sustain an inference of manipulation. Similarly, in ***Kanaiyalal*** *(supra)*, it appears to us that this Court, having regard to the cumulative effect of the facts established, namely the fiduciary relationship between Dipak Patel and Passport India, the parting of confidential information to a relative, the placement of orders in near-immediate proximity to the bulk orders, and the consequent profits earned, found the same to constitute corroborative facts sufficient to establish fraud. Additionally, what weighed with SAT in ***Deccan Chronicle*** *(supra)* was that these were not matters resting on conjecture or surmise, but were facts apparent on the record itself, i.e., the maximum permissible limit for buy-back available to the company as per its own accounts fell well short of the amount proposed in the public announcement, and the company had in fact carried out a buy-back exceeding the prescribed statutory limit. It was on this basis that SAT concluded that the buy-back, undertaken without adequate free reserves, had misled uninformed investors and shareholders as to the true valuation and financial health of the company, particularly at a time when the price of its shares was declining, and had accordingly influenced investment decisions to their detriment.

50. In our view, in ***Terrascope Ventures*** *(supra)*, fraud could be established because there was an apparent violation of the very object for which the preferential issue had been made, along with other surrounding corroborative circumstances. Fraudulent disregard of the object with which the preferential shares were issued was apparent from the diversion of the funds raised,

commencing from the very first day of their receipt, and further from the fact that ratification of such diversion was sought only after the interim orders of the WTM had already been passed against the respondents. It may thus be said that it is this level of clarity emerging from the surrounding circumstances, taken cumulatively, which pointed towards proving the intent to manipulate.

51. As our discussion in the previous paragraphs indicates, it is not sufficient to merely identify the existence of a trading pattern which might give rise to a suspicion of fraud under the PFUTP Regulations. Where the allegation is that the respondent company had no intention of completing the buyback and had deliberately structured its trading activity towards that end, the surrounding circumstances must be examined to determine whether the inference of such fraud is reasonably supported. The trading data must, therefore, be considered alongside any contemporaneous instructions, communications, internal records, or other conduct attributable to the company or persons in control which may corroborate the inference sought to be drawn from the pattern of trades.

52. Adverting to the facts of the present case, we consider it necessary to deal with one aspect of the impugned order that we find ourselves unable to sustain. SAT, at paragraph 13 of the impugned order, appears to have placed reliance upon the investigation conducted for the purpose of release of the escrow account under Regulation 15B of the Buyback Regulations, so as to arrive at its conclusion on the question of fraud. In our considered view, this approach is misconceived, inasmuch as the inquiry undertaken for the purpose of Regulation 15B(8) of the Buyback Regulations is entirely distinct

in scope and object from an investigation into an alleged violation of the PFUTP Regulations, the former being confined to ascertaining entitlement to release or forfeiture of the escrow amount, and the latter being directed towards ascertaining whether fraud, within the meaning of Regulation 2(1)(c) of the PFUTP Regulations, has been committed. We have already held hereinabove that the satisfaction of the conditions governing forfeiture or release of an escrow under Regulation 15B(8) cannot, by itself, be treated as a finding on whether the PFUTP Regulations have been violated or not, the two inquiries operating in entirely different fields.

53. It is pertinent to mention that the very foundation of the AO's finding of fraud rests upon historical NSE/BSE trading data. The counsel for the respondents has questioned the accuracy of this trading data relied upon by the AO. The respondents also raised this ground before the AO (at Para 34 of the Reply to SCN) as well as before the SAT (at Ground G of the appeal before SAT), however, both the AO and the SAT failed to adjudicate on this aspect at all. The counsel for the respondents raised the same ground before us as well and has put forth this submission with reference to at least 3 instances whereby the trading data relied upon by the AO appears to be inconsistent. These instances are as follows:

(i) In respect of the NSE entry dated 17.02.2014, the investigation report records the quantity available for sale at or below Rs. 335 as being in excess of 1.31 Crore shares, whereas the corresponding data furnished by the NSE for the very same date reflects the sell quantity below Rs. 335 as being only slightly in excess of 30 lakh shares, a difference of over four times the actual figure.

(ii) In respect of the NSE entry dated 14.02.2014, the investigation report records the quantity available for sale at or below Rs. 335 as being 1,24,82,361 shares, whereas the NSE's own data for the same date reflects the corresponding sell-side order book as containing only 36,83,335 shares.

(iii) In respect of the BSE entries for the period 20.05.2014 to 22.07.2014, the Investigation Report dated 17.03.2017 (at page 780 of the Additional Diary) show that the lowest price of the company's shares was much above Rs. 335, which means that on those dates the price of the shares were never Rs. 335 or below Rs. 335 at BSE. However, in the corresponding entry in the Investigation Report dated 17.03.2017 (at pages 766-767 of the Additional Diary) and in the SCN (at pages 94-95 of the Additional Diary), it is mentioned that during the said period there were sell orders available at or below Rs. 335.

54. This, in our view, is a disputed question of fact that goes to the very root of the finding of fraud. This Court, exercising jurisdiction under Section 15Z of the SEBI Act, is not the appropriate forum for such resolution. The scrutiny of such conflicting trading data, and the determination of which of the two versions is to be accepted, or whether the discrepancy admits of some explanation not presently apparent to us, is an exercise that properly belongs to SAT. Having perused the impugned order, we find that SAT does not appear to have engaged with the discrepancy between the investigation report and the NSE's letter at all. Since this is a material infirmity going to the evidentiary root of the AO's order, one which SAT itself never examined or adjudicated upon, we are of the view that the matter

ought to be remanded to SAT so as to enable it to render a considered finding on this specific aspect, upon a proper examination of the record.

55. Further, the appellant's own investigation report dated 03.02.2016 had recorded a finding of no material impact on price or volume attributable to the corporate announcements made by the respondent company, whereas the subsequent investigation report dated 17.03.2017 proceeded to record a finding of fraud on materially the same set of facts. Neither the AO nor SAT has addressed this internal contradiction within SEBI's own investigative record. We are of the view that SAT, rather than this Court, is better placed to call upon the appellant to explain this contradiction, and to examine whether the same detracts from the reliability of the case sought to be built against the respondents.

56. We may note that SAT, under Section 15U of the SEBI Act, is vested with the same powers as are vested in a civil court while trying a suit, including, *inter alia*, the power to summon and enforce the attendance of any person and examine him on oath, to require the discovery and production of documents, to receive evidence on affidavits, and to issue commissions for the examination of witnesses or documents. In this sense, SAT is considerably better equipped than this Court, exercising a statutory appellate jurisdiction under Section 15Z confined ordinarily to questions of law, to address the contradiction between the two investigation reports, and rendering findings on facts which have a direct bearing on the question of fraud. Accordingly, we are of the opinion that the present matter shall be remanded to SAT for proper adjudication of the question of fraud alone.

F. CONCLUSION

57. In view of the foregoing and considering the totality of the circumstances, we are of the view that the scope of the enquiry contemplated by Regulation 15B(8) of Buyback Regulation is confined to determining whether the escrow is liable to be forfeited in the circumstances contemplated by the provision. The fact that the conditions governing the forfeiture or release of an escrow have been satisfied, by itself, cannot be treated as a finding on whether the PFUTP Regulations have been violated or not. In other words, where any of the circumstances contemplated under clauses (a), (b) or (c) of Regulation 15B(8) are found to exist, the consequence is simply that the escrow cannot be forfeited. But it does not, by itself, answer the distinct question of whether the conduct of the respondents, viewed in its entirety and in the light of the material collected during investigation, involved any fraudulent or manipulative conduct within the meaning of the PFUTP Regulation. Thus, the mere release of the escrow does not create an automatic statutory bar to proceedings under the PFUTP Regulations because the release of the escrow is not necessarily equivalent to absence of fraud. Therefore, we are unable to accept the respondents' submission that the satisfaction of the conditions contemplated under Regulation 15B(8) necessarily negatives allegations of fraud under the PFUTP Regulations.

58. Moreover, for the reasons stated hereinabove, we remand the matter to SAT for fresh adjudication on the question of fraud alone. SAT shall adjudicate the matter while adhering to the following instructions:

(i) SAT shall first determine, upon a proper scrutiny of the trading data placed before it by both parties, including the data furnished by the NSE *vide* letter dated 10.12.2014, as to which version of the historical trading data is free from discrepancy and accurately reflects the true position regarding the availability of sell orders and prevailing prices during the buy-back period. Upon doing so, SAT shall record specific findings on each of the instances of discrepancy noted hereinabove, as also any other such discrepancy that may be brought to its notice;

(ii) In exercise of its powers under Section 15U(2) of the SEBI Act, SAT may summon and examine on oath the officers of the respondent company, the merchant bankers engaged by it and/or any other person acquainted with the facts of the matter, and require the discovery and production of relevant documents, so as to enable it to ascertain the true and complete facts concerning the placement of buy orders during the buyback period;

(iii) SAT may examine whether, and to what extent, corroborating circumstances beyond the historical trading data exist, or are shown to exist, on the record, that may have a bearing on the question of fraud; and

(iv) SAT may thereafter render fresh findings on the question of fraud under the PFUTP Regulations, uninfluenced by any observations made by this Court in the course of the present judgment on the merits of the controversy, save and except the principles of law discussed herein, and shall dispose of the matter expeditiously within a period of six months from this judgment.

59. Accordingly, the appeals are partly allowed, and the matter is remanded to SAT for fresh adjudication on the question of fraud, in terms of the directions contained hereinabove.

60. Pending applications, if any, shall stand disposed of.

.... J.
(J.B. Pardiwala)

.... J.
(K.V. Viswanathan)

New Delhi;
9th September, 2026.