REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2030 of 2019

IFB AGRO INDUSTRIES LIMITED ….APPELLANT(S)

VERSUS

SICGIL INDIA LIMITED AND OTHERS ….RESPONDENT(S)

J U D G M E N T

PAMIDIGHANTAM SRI NARASIMHA, J.

1. The short question for our consideration in this appeal relates to the scope of the rectificatory jurisdiction of the National Company Law Tribunal under Section 59 of the Companies Act, 2013[1]. In this context, we are called upon to determine the appropriate forum for adjudication and determination of violations of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997[2], and Securities and Exchange Board of India (Prohibition of Insider

[1] hereinafter referred to as the '2013 Act'.
[2] hereinafter referred to as the 'SEBI (SAST) Regulations'

Trading) Regulations, 1992[3], framed under the Securities and Exchange Board of India Act, 1992[4]. We have answered both the questions. On the first issue, following the decision of this Court in *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. & Ors.*[5], we have held that the rectificatory jurisdiction under Section 59 of the 2013 Act is summary in nature and not intended to be exercised where there are contested facts and disputed questions. On the second issue, we have held that transactions falling within the jurisdiction of Regulatory bodies created under a statute must necessarily be subjected to their *ex-ante* scrutiny, enquiry and adjudication. We have, therefore, rejected the contention that the National Company Law Tribunal under Section 59 exercises a parallel jurisdiction with Securities and Exchange Board of India[6] for addressing violations of the Regulations framed under the SEBI Act.

2. This is an appeal against the judgment of the National Company Law Appellate Tribunal[7] (hereinafter referred to as 'Appellate Tribunal') whereby the Appellate Tribunal set aside the

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[3] hereinafter referred to as the 'SEBI (PIT) Regulations'
[4] hereinafter referred to as 'the SEBI Act'.
[5] (1998) 7 SCC 105
[6] hereinafter referred to as 'the SEBI' or 'the Board'.
[7] Companies Appeal (AT) 240 of 2017 of the National Company Law Appellate Tribunal dated 06.12.2018

judgment of the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), allowing the company petition filed by the Appellant under Section 111A of the Companies Act, 1956[8], (which is Section 59 of the 2013 Act), for rectification of Members Register. The Tribunal while allowing the petition, directed the Appellant to buy-back its shares which were held by the Respondents. In appeal, the Appellate Tribunal set aside this direction on the ground that the Tribunal exceeded its jurisdiction. It is this order of the Appellate Tribunal which is impugned before us.

Relevant Facts:

3. The Appellant herein is a listed company engaged in the manufacture and sale of rectified spirit, country liquor, marine products, carbon dioxide gas etc. Respondent No. 1 is also a listed company which is engaged in the business of producing carbon dioxide gas and dry ice. Respondent No. 2 is the managing director of Respondent No. 1, Respondent No. 3 is the wife of Respondent No. 2, and Respondent Nos. 4-6 are close relatives of Respondent Nos. 2-3.

[8] hereinafter referred to as the '1956 Act'.

4. It is the contention of the Appellant that sometime in August 2003, Respondent No. 2 came up with a proposal for a business tie-up between the Appellant and Respondent No. 1. The Appellant is said to have rejected the proposal. It is alleged by the Appellant that after this rejection, the Respondents started acquiring shares of the Appellant from the open market with a view to eliminate competition and strengthen its own dominant position in the relevant market. As of 18.01.2004, the Respondents collectively held just under 5% of the Appellant's total paid-up share capital.

5. On 19.01.2004, Respondent No. 1 acquired 600 equity shares of the Appellant and this resulted in the aggregate shareholding of the Respondents crossing 5% of the total paid-up share capital of the Appellant, thereby triggering Regulation 7(1)[9] of the SEBI (SAST) Regulations. Regulation 7(1) mandates that when an acquirer, either by himself or with any person acting in concert

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[9] Regulation 7(1) –
Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.
Regulation 2(b) —
acquirer means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer.

with the acquirer, acquires 5% or more of the total paid-up share capital of a company, then a disclosure has to be made to the acquiree company and the stock exchange. In compliance with this Regulation, the Respondents are said to have sent an intimation to the Appellant on the very next day i.e., on 20.01.2004. This intimation was received by the Appellant on 22.01.2004. The Appellant contends that the disclosure under Regulation 7(1) was not in the prescribed format.

6. Four months later, on 27.05.2004, Respondent No. 1 acquired additional shares of the Appellant, as a result whereof, its individual shareholding exceeded 5% of the total paid-up share capital of the Appellant. This individual crossing of 5% by Respondent No. 1 triggered the SEBI (PIT) Regulations. Regulation 13[10] thereof provides that if any *person* acquires more than 5% shares of a company, then it shall make a disclosure to the acquiree Company. Respondent No. 1 admits to having failed to make this disclosure within the prescribed time. It is the stand of Respondent No. 1 that the failure to issue a notice was not an

[10] Regulation 13 –
(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of: (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.

intentional mistake. The Appellant claims that it got to know about the said acquisition on 04.06.2004 when it carried out an internal investigation into the total number of shares held by the Respondents in the Appellant company.

Company Petition under Section 111A of the 1956 Act:

7. It is in the above referred factual background that on 19.07.2004, the Appellant filed a petition before the Company Law Board[11] under Section 111A of the 1956 Act praying for rectification of its register by deleting the name of the Respondents as the owner of shares which are over and above the 5% threshold. As of the date of filing of the Section 111A petition, the Respondents collectively held around 8.22% of the Appellant's paid-up share capital.

8. Upon receiving notice of the aforesaid petition, Respondent No. 1, on 16.08.2004, issued an intimation to the Appellant as mandated under Regulation 13 of the SEBI (PIT) Regulations. Two days later, on 18.08.2004, Respondent No. 1 allegedly sold a few shares of the Appellant and brought down its individual shareholding to 4.91%. This fact is contested, as the Appellant claims that Respondent No. 1 never reduced its shareholding. On

[11] hereinafter referred to as 'the CLB'.

24.08.2004, Respondent No. 1 also wrote to the SEBI that its individual shareholding in the Appellant had crossed 5% on 27.05.2004 and that there was a delay in disclosing this to the Appellant. SEBI was informed that the individual shareholding of Respondent No. 1 in the Appellant now stands below 5%. It has been submitted before us that SEBI has not taken any regulatory action.

9. During the pendency of the petition under Section 111A, the 2013 Act came into force, and the matter stood transferred to the Tribunal. The Tribunal framed just one question - *Whether the acquisition of shares by the Respondents without complying with the statutory provisions of disclosure norms under SEBI Regulations is valid?*

Judgment of the Tribunal:

10. By its judgment dated 05.07.2017, the Tribunal held that the intimation dated 16.08.2004 is in violation of the SEBI (PIT) Regulations since the said declaration had to be filed within four working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be. The Tribunal also held that the term '*person*' in the SEBI (PIT) Regulations can be construed to include all other Respondents,

besides Respondent No. 1, as *persons acting in concert*. The reason for this was that the exercise of control in the management of the Appellant would be done jointly by all the Respondents. Further, the Tribunal also held that there has been a violation of the SEBI (SAST) Regulations as the Respondents did not make the disclosure in the proper format.

11. In so far as the exercise of power under Section 111A of the 1956 Act is concerned, the Tribunal held that in case of violation of SEBI regulations, Section 111A empowers a company to apply for rectification, and in such cases, the Tribunal is entitled to pass an order to undo the mischief. The Tribunal opined that the regulatory jurisdiction of SEBI would not bar the Tribunal from exercising its power under Section 111A of the 1956 Act. However, the Tribunal held that the powers exercised by the CLB and SEBI fall in different and distinct jurisdictional fields and therefore, the present order will not preclude SEBI from deciding any violation of its regulations. Allowing the company petition, the Tribunal held that the acquisition of shares in excess of 5% was in violation of the SEBI (PIT) Regulations and the SEBI (SAST) Regulations. The final order passed by the Tribunal is as follows:

> *"The present Company Petition is allowed. The Respondents having furnished the declaration at a later*

point of time are hereby barred from exercising their rights as to the shares acquired by them in the Petitioner Company in excess of 5% the company is hereby authorised to buy back the shares that the Respondents hold in excess of 5% of the shareholding in the Company at the rate which was prevailing on the date of presentation of the Petition or market value, whichever is higher. The Respondents are directed to hand over the share certificates and share transfer forms within 30 days of the order to the Company and in response to that the Petitioner will be liable to pay the buyback price which shall be the value of shares which was prevailing on the date of presentation of the petition or market value whichever is higher.

It is clear that the power exercised by the Company Law Board and the powers exercised by the SEBI fall in different and distinct jurisdictional fields. Therefore, the present order shall not preclude the jurisdiction of SEBI as an adjudicating authority for deciding on the violation of SEBI Regulations as have been laid down in the present petition."

Judgment of the Appellate Tribunal:

12. The Respondents herein carried the matter to the Appellate Tribunal in appeal. The limited question before the Appellate Tribunal was whether the Tribunal was empowered to pass an order of buyback while entertaining a petition under Section 111A of the 1956 Act. The Appellate Tribunal, by its order dated 06.12.2018, allowed the appeal and set aside the order of the Tribunal. Unfortunately, there is neither analysis nor any reasoning in the order of the Appellate Tribunal. In the normal course, we would have set aside the judgment of the Appellate Tribunal and remanded the matter for reconsideration. However, as a period of four years has already lapsed since the passing of

the impugned order, we considered it appropriate to dispose of the present appeal finally. It is in this context that the matter was heard in detail. We will now refer to the submissions made by the learned counsel appearing on behalf of the parties.

Submissions of the Parties:

13. Mr. P. Chidambaram, learned Senior Advocate on behalf of the Appellant, contended that – (i) no timely intimation in the prescribed format was given by the Respondents when Regulation 7(1) of the SEBI (SAST) Regulations got triggered; (ii) Respondent Nos. 1 – 6, as *"connected persons"* (as per 2(c) of the SEBI (PIT) Regulations) were *"acting in concert"* (as per 2(e) of the SEBI (SAST) Regulations) thereby violating Regulations 13 and 14 of the SEBI (PIT) Regulations. He emphasized that the Respondents have admitted to the non-disclosure, and (iii) as Securities and Exchange Board of India Act, 1992[12], must be read in addition to, and not in derogation of the Companies Act. The Appellant is entitled to approach the Tribunal under Section 111A of the 1956 Act for rectification of the register. In support of these submissions, reliance was placed on the decisions of this Court in

[12] hereinafter referred to as 'the SEBI Act'.

Mannalal Khetan & Ors. v. Kedar Nath Khetan & Ors.[13], *Chairman, SEBI v. Shriram Mutual Fund & Another*[14].

14. Mr. Shyam Divan, learned Senior Advocate appearing for the Respondents, contended that – (i) filing of a petition under Section 111A is an abuse of process; (ii) there is no violation of the SEBI (SAST) Regulations as the Respondents had given a timely intimation in the prescribed format; (iii) the Section 111A Petition did not allege any violation of the SEBI (SAST) Regulations, and no attempt was made to make any amendment to the same; (iv) the SEBI (PIT) Regulations are not applicable to Respondent Nos. 2-6 as their individual shareholding never crossed 5%. It was only Respondent No. 1 whose shareholding crossed 5%, which it inadvertently failed to disclose; (v) the SEBI (PIT) Regulations are not applicable to Respondent Nos. 2-6 as there is no concept of 'persons acting in concert' under the said Regulations; (vi) under section 111A (3), the Tribunal has no power to annul the transfer or to direct the buy-back of the shares.

15. Having heard both sides, we formulate the following questions for our consideration.

[13] (1977) 2 SCC 424
[14] (2006) 5 SCC 361

What is the scope and ambit of Section 111A of the 1956 Act, as amended by Section 59 of the 2013 Act, to rectify the register of members? Which is the appropriate forum for adjudication and determination of violations and consequent actions under the SEBI (SAST) Regulations 1997 and the SEBI (PIT) Regulations 1992?

Re: Interpretation and scope of Section 111A of the 1956 Act as replaced by Section 59 of the 2013 Act:

16. The reliefs claimed by the Appellant in its Company Petition under Section 111A of the 1956 Act is as under: -

> *"(a) Declaration that the acquisition of shares of and in the company by the Respondent Nos.1 to 6 are illegal, null and void and of no effect;*
>
> *(b) Necessary directions be given for rectifying the records by deleting the names of the Respondents as owners of all shares of and in the company acquired by the Respondents;*
>
> *(c) Permanent injunction restraining the Respondents whether by themselves or their servants or agents or assigns or otherwise howsoever from exercising any rights or receiving any benefit in respect of the shares held by the Respondents in the company in any manner whatsoever;*
>
> *(d) .....*
>
> *(e) ....."*

17. The declaration to hold the acquisition of shares by the Respondents as null and void in a petition under Section 111A has to be examined in the context of the scope and ambit of the

rectificatory jurisdiction of the Tribunal and, in particular, the specific wordings of the said provision.

18. The rectificatory powers of a Board/Company Court under Section 38 of the Companies Act, 1913, then under Section 155 of the 1956 Act, followed by Section 111A introduced by the 1996 Amendment to the 1956 Act, and finally, Section 59 of the 2013 Act, demonstrate that its essential ingredients have remained the same. It is a summary power to carry out corrections or rectifications in the register of members. The rectification must relate to and be confined to the facts that are evident and need no serious enquiry. The following is a comparative table indicating the legislative changes. For the purpose of the present proceeding, we can confine the examination between the 1956 Act with its 1996 amendment and the 2013 Act.

Companies Act, 1956 (Section 155).	**Companies Act, 1956 (Section 111A)**	**Companies Act, 2013 (Section 59)**
155. Power of court to rectify Register of Members (1) If— (a) the name of any person— (*i*) is without sufficient cause, entered in the Register of	**111A. Rectification of register on transfer.** (1) In this section, unless the context otherwise requires, "company" means a company other than a company referred to in sub- section (14) of section 111 of this Act.	**Section 59: Rectification of register of members** 59. (1) If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause,

Members of a company, or (*ii*) after having been entered in the Register, is, without sufficient cause, omitted therefrom; or (b) default is made, or unnecessary delay takes place, in entering on the Register the fact of any person having become, or ceased to be, a member:" the person aggrieved, or any member of the company, or the company, may apply to the court for rectification of the Register.	(2) Subject to the provisions of this section, the shares or debentures and any interest therein of a company shall be freely transferable: [Provided that if a company without sufficient cause refuses to register transfer of shares within two months from the date on which the instrument of transfer or the intimation of transfer, as the case may be, is delivered to the company, the transferee may appeal to the [Tribunal] and it shall direct such company to register the transfer of share]. (3) The [Tribunal] may, on an application made by a depository, company, participant or investor or the Securities and Exchange Board of India, if the transfer of shares or debentures is in contravention of any of the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) or any other law for the time being in force, within two months from the date of transfer of any shares or	omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register. (2) The Tribunal may, after hearing the parties to the appeal under sub-section (1) by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

	debentures held by a depository or from the date on which the instrument of transfer or intimation of the transmission was delivered to the company, as the case may be, after such inquiry as it thinks fit, direct any depository or company to rectify its register or records.] (4) The [Tribunal] while acting under sub-section (3), may at its discretion make such interim order as to suspend the voting rights before making or completing such enquiry. (5) The provisions of this section shall not restrict the right of a holder of shares or debentures, to transfer such shares or debentures and any person acquiring such shares or debentures shall be entitled to voting rights unless the voting rights have been suspended by an order of the [Tribunal]. (6) Notwithstanding anything contained in this section, any further transfer, during the pendency of the application with the [Tribunal], of shares or debentures shall entitle the transferee to voting rights unless the voting rights in	(3) The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal. (4) Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956, (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) or this Act or any other law for the time being in force, the Tribunal may, on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned. (5) [***] 1. Omitted by the Companies (Amendment) Act, 2020,

	respect of such transferee have been suspended. (7) The provisions of sub-sections (5), (7), (9), (10) and (12) of section 111 shall, so far as may be, apply to the proceedings before the [Tribunal] under this section as they apply to the proceedings under this section.]	w.e.f. 21.12.2020[S.O. 4646(E) dated 21.12.2020], the sub-section: "(5) If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both."

19. The scope and ambit of Section 155 of the 1956 Act, as it then existed, fell for consideration in a decision of this Court in *Ammonia Supplies* (supra). The application for rectification in *Ammonia's* case was filed under Section 155, and it was submitted that the scope for rectification under Section 155 is enlarged in comparison with the position as it were under Section 38 of the 1913 Act. Rejecting the argument, this Court in *Ammonia* held that the jurisdiction exercised by the court for rectification of the

register of members is essentially limited. The comparative analysis in *Ammonia* assumes importance as a similar submission is made before us by Mr. Chidambaram that the scope and jurisdiction of the Tribunal under Section 59 of the 2013 Act is wide when compared with Section 111A of the 1956 Act as amended in 1996. The relevant portion of the judgment in *Ammonia* is as under: -

> *"**26.** …. There could be no doubt any question raised within the peripheral field of rectification, it is the court under Section 155 alone which would have exclusive jurisdiction. However, the question raised does not rest here. In case any claim is based on some seriously disputed civil rights or title, denial of any transaction or any other basic facts which may be the foundation to claim a right to be a member and if the court feels such claim does not constitute to be a rectification but instead seeking adjudication of basic pillar some such facts falling outside the rectification, its discretion to send a party to seek his relief before the civil court first for the adjudication of such facts, it cannot be said such right of the court to have been taken away merely on account of the deletion of the aforesaid proviso. Otherwise under the garb of rectification one may lay claim of many such contentious issues for adjudication not falling under it. Thus in other words, the court under it has discretion to find whether the dispute raised is really for rectification or is of such a nature that unless decided first it would not come within the purview of rectification. The word "rectification" itself connotes some error which has crept in requiring correction. Error would only mean everything as required under the law has been done yet by some mistake the name is either omitted or wrongly recorded in the Register of the company.*
>
> ***27.** In other words, in order to qualify for rectification, every procedure as prescribed under the Companies Act before recording the name in the register of the company has to be stated to have been complied with by the applicant…. The Court has to examine on the facts of each case whether an application is for rectification or*

something else. So field or peripheral jurisdiction of the court under it would be what comes under rectification, not projected claims under the garb of rectification. So far exercising of power for rectification within its field there could be no doubt the Court as referred under Section 155 read with Section 2 (11) and Section 10, it is the Company Court alone has exclusive jurisdiction…But this does not mean by interpreting such "court having exclusive jurisdiction to include within it what is not covered under it, merely because it is clocked under the nomenclature rectification does not mean the court cannot see the substance after removing the cloak.

28. *Question for scrutiny before us is the peripheral field within which the Court could exercise its jurisdiction for rectification. As aforesaid, the very word "rectification" connotes something what ought to have been done but by error not done and what ought not to have been done was done requiring correction. Rectification in other words is the failure on the part of the company to comply with the directions under the Act.*

…

31. *Sub-section (1)(a) of Section 155 refers to a case where the name of any person is without sufficient cause entered or omitted in the Register of Members of a company. The word "sufficient cause" is to be tested in relation to the Act and the Rules. Without sufficient cause entered or omitted to be entered means done or omitted to do in contradiction of the Act and the Rules or what ought to have been done under the Act and the Rules but not done. Reading of this sub-clause spells out the limitation under which the court has to exercise its jurisdiction. It cannot be doubted that in spite of exclusiveness to decide all matters pertaining to the rectification it has to act within the said four corners and adjudication of such matters cannot be doubted to be summary in nature. So, whenever a question is raised the court has to adjudicate on the facts and circumstances of each case. If it truly is rectification, all matters raised in that connection should be decided by the court under Section 155 and if it finds adjudication of any matter not falling under it, it may direct a party to get his right adjudicated by a civil court….."*

20. It is evident from the above that while interpreting Section 155, this Court has held that the power of CLB is narrow and can only consider questions of rectification. If a petition seeks an adjudication under the garb of rectification, then the CLB would not have jurisdiction, and it would be duty-bound to re-direct the parties to approach the relevant forum. The Court also held that the words 'sufficient cause' cannot be interpreted in a manner which would enlarge the scope of the provision.

21. The decision in *Ammonia* was followed by this Court even after the deletion of Section 155 and insertion of Section 111A. This Court, in *Standard Chartered Bank v. Andhra Bank Financial Services Ltd. & Ors.*[15] and *Jai Mahal Hotels (P) Ltd. v. Devraj Singh & Ors.*[16], held that even though Section 111(7) of the 1956 Act[17] seemingly enlarges the power of the CLB, the power of rectification continues to remain summary in nature and if any seriously disputed questions arise, the Company Court should relegate the

[15] (2006) 6 SCC 94
[16] (2016) 1 SCC 423
[17] Section 111(7) - On any application under this section, the Tribunal - (a) may decide any question relating to the title of any person who is a party to the application to have his name entered in, or omitted from, the register; (b) generally, may decide any question which it is necessary or expedient to decide in connection with the application for rectification.

parties to a forum which is more appropriate for investigation and adjudication of such disputed questions.

22. In *Kesha Appliances (P) Ltd. & Ors.* v. *Royal Holdings Services Ltd.& Ors.*[18], the High Court of Bombay has held that:

> *"**41.** .....The contention of the learned counsel for the plaintiff that there was a pre-existing common law right under section 9 of the CPC and that pre-existing common law right is not taken away by the provisions of Section 15Y and 20A also cannot be accepted. It is because the common law right of rectification which is sought to be enforced and exercised by the plaintiff in the present case arises out of the right conferred on the basis of Take Over Regulations and once the provisions of the Take Over Regulations are invoked then the entire jurisdiction by virtue of the provisions of Section 15Y and 20A is exclusively conferred on the SEBI authorities. Learned counsel's argument that under Section 15Y the only jurisdiction conferred on an adjudicating officer is to penalise the party and not for rectification also cannot be accepted because the provisions of Section 15Y are to be read together with Section 20A of the SEBI Act which inter-alia confers a power on the board to pass any order which includes direction as contemplated under Regulation 44 of the Takeover Regulations.....*
>
> *...*
>
> ***43.** I am of the opinion that on plain and simple reading of section 15Y read with section 20A of the Act all the cases arising out of the breach and Take Over Regulation must fall within the exclusive domain of SEBI and cannot be complained in the court of Law by virtue of express bar contained under section 15Y and section 20A of the SEBI Act. I am also of the further opinion that there is no doubt that there is a common law right in a shareholder to apply for rectification of the share register even though it is not his own share in respect of which he is seeking rectification but still the said right if it flows from the provisions of Take Over Regulations then undoubtedly it would fall within the exclusive Jurisdiction of SEBI and not within the Jurisdiction of this court in view of the*

[18] (2006) 1 Bom CR 545

> *express bar contained under the aforesaid statue. I am of the further opinion that the enactment of the amendment of Take Over Regulation of Amending provisions of SEBI (Substantial Acquisition of Shares and Take Over) Second Amendment (Regulation 2002) w.e.f. 9.9.2002 by providing for the remedy under sub clause (c) and (d) of the Regulation 44 the board has been empowered to give effective relief of Rectification of Share Register by declaring cancellation of the Allotment and/or by directing the company not to give an effect to the transfer if they are found to be in contrary to the Take Over Regulation."*

23. *Zandu Pharmaceutical Works Ltd. v. Devkumarvaidya & Ors.*[19], is another instance where it has been held that in a case of violation of the SEBI Regulations, the CLB cannot exercise rectificatory jurisdiction unless and until the SEBI, in the very first instance, decides if there has been a violation or not. The CLB held that:

> *"**11.** Most of the allegations made by the petitioner are yet to be investigated and to be crystallised/confirmed as violations of the law. The allegations of violation of Takeover Code and Insider Trading is to be decided by the SEBI and similarly the allegations of investment beyond the limit under section 372A of the Act and acquisition of shares creating thereby a dominant undertaking under section 108A of the Act are to be investigated and crystallised/confirmed as violations by the Central Government. Unless it is confirmed as a violation of law, the CLB has no power to issue orders for rectification of register of members and further this Bench has no power to declare these allegations as violations of law."*

[19] (2009) 89 CLA 65

24. The principle enunciated in *Ammonia's* case relating to the jurisdiction of a Tribunal with respect to the rectification of the register is well-recognized and consistently followed. Sub-section (3) of Section 59 recognizes the overarching right to hold and transfer securities with the concomitant entitlement of voting. This is a precious right, and that is the reason why the Parliament found it necessary to caution that the provision of this Section shall not restrict the right of a holder of securities, to transfer such securities. This is another feature which is indicative of the limited scope and extent of the power of rectification of the register.

25. For the reason stated above, we are of the opinion that the company petition under Section 111A of the 1956 Act for a declaration that the acquisition of shares by the Respondents as null and void is misconceived. The Tribunal should have directed the Appellant to seek such a declaration before the appropriate forum. The Appellate Tribunal is, therefore, justified in allowing the appeal and setting aside the order of the Tribunal.

Re: appropriate forum for enquiry and adjudication of violations of the SEBI Regulations:

26. There is another perspective in which the legality and propriety of the company petition under Section 111A for declaring

the acquisition of shares as null and void for violation of SEBI Regulations could be judged - Which is the appropriate forum for adjudication and determination of violations and consequent actions under the SEBI (SAST) Regulations and the SEBI (PIT) Regulations?

27. Public administration is dynamic and ever-evolving. It is now established that governance of certain sectors through independent regulatory bodies will be far more effective than being under the direct control and supervision of Ministries or Departments of the Government. Regulatory control by an independent body composed of domain experts enables a consistent, transparent, independent, proportionate, and accountable administration and development of the sector. All this is achieved by way of legislative enactments which establish independent regulatory bodies with specified powers and functions. They exercise powers and functions, which have a combination of legislative, executive, and judicial features.

28. Another feature of these regulators is that they are impressed with a statutory duty to safeguard the interest of the consumers and the real stakeholders of the sector. Telecom Regulatory

Authority of India[20], Insurance Regulatory and Development Authority[21], Insolvency and Bankruptcy Board of India[22], Central[23] and State[24] Electricity Regulatory Commissions and Airport Economic Regulatory Authority[25], are some of the regulators established under their respective statutes. The SEBI[26] is one such regulator.

29. SEBI was established in 1988 *to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market.* This Court had the occasion to consider the regulatory role of the SEBI in maintaining an orderly and stable securities' market so as to protect the interests of investors[27].

30. The statutory provisions contained in Chapters-IV, VI-A, read with Section 30, delineate the legislative[28], administrative[29] and

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[20] Section 3, The Telecom Regulatory Authority of India Act, 1997.
[21] Section 3, The Insurance Regulatory and Development Authority of India Act, 1999.
[22] Section 188, The Insolvency and Bankruptcy Code, 2016.
[23] Section 76, The Electricity Act, 2003.
[24] Section 82, The Electricity Act, 2003.
[25] Section 3, The Airports Economic Regulatory Authority of India Act, 2008.
[26] Section 3, Securities and Exchange Board of India Act, 1992.
[27] *B.S.E Brokers' Forum, Bombay & Ors. v. Securities and Exchange Board of India & Ors.*, (2001) 3 SCC 482 (Para 17); *Sahara India Real Estate Corporation Ltd. & Ors. v. SEBI & Anr.*, (2013) 1 SCC 1 (Para 298); *Securities and Exchange Board of India v. Kishore R Ajmera,* (2016) 6 SCC 368 (Para 25); *Securities and Exchange Board of India v. Ajay Agarwal,* (2010) 3 SCC 765 (Para 33-34); *Prakash Gupta v. Securities and Exchange Board of India,* (2021) SCC OnLine SC 485 (para 102).
[28] Section 30, Securities and Exchange Board of India Act, 1992.
[29] Chapter IV, Securities and Exchange Board of India Act, 1992.

adjudicatory[30] functions of the Board. In its *normative or legislative functions*, the SEBI can formulate regulations encompassing various aspects having a bearing on the securities market. It should be noted that the SEBI Act, Rules, Regulations and Circulars made or issued under the legislation, are constantly evolving with a concerted aim to enforce order in the securities market and promote its healthy growth while protecting investor wealth. In so far as its *administrative/ executive power* goes, it has the power to regulate the business of stock exchanges and securities market. The Board provides for the registration and regulation of stock brokers, share transfer agents, depositories, venture capital funds, collective investment schemes etc. It also has the power to prohibit various transactions which interfere with the health of the securities market.

31. In the exercise of its *adjudicatory powers* under Section 15-I, the SEBI has the power to appoint officers for holding an inquiry, give a reasonable opportunity to the person concerned and determine if there is any transgression of the rules prescribed. The Board has the power to impose penalties for violations and also restitute the parties. The adjudicatory power also includes the

[30] Chapter VI-A, Securities and Exchange Board of India Act, 1992.

power to settle administrative and civil proceedings under Section 15JB of the SEBI Act.

32. The regulatory jurisdiction of the Board also includes *ex-ante powers* to predict a possible violation and take preventive measures. The exercise of *ex-ante* jurisdiction necessitates the calling of information as provided in Sections 11(2)(i), 11(2)(ia) and 11(2)(ib) of the SEBI Act. Where the Board has a reasonable ground to believe that a transaction in the securities market is going to take place in a manner detrimental to the interests of the stakeholders or that any intermediary has violated the provisions of the Act, it may investigate into the matter under Section 11(C) of the SEBI Act. In other words, being the real-time security market regulator, the Board is entitled to keep a watch, predict and even act before a violation occurs. It is in this context, that the SEBI (SAST) Regulations and the SEBI (PIT) Regulations, with which we are concerned in this case, are to be understood.

33. The *SEBI (PIT) Regulation* prohibits dealing, communicating etc., on matters relating to insider trading. Even if there is a suspicion about the transgression of the prohibition, the Board has the power to inquire (Regulation 4A) and come to a *prime facie* conclusion about the need to *investigate* (Regulation 5). Chapter III

of the said Regulations provides for the entire procedure to be followed in the inquiry process. This includes – procedural safeguards to be afforded to the insider (Regulation 6), submission of the report by the investigating authority (Regulation 8), communication of findings to the insider (Regulation 9), and the final orders/directions to be passed by the Board (Regulation 11). For an effective exercise of its *ex-ante* powers, the Board has provided the policy on disclosures in Chapter IV of the said Regulations. Under Regulation 13, any person holding more than 5% shares or voting rights in a company, shall disclose to the company within four working days, the number of shares or the extent of voting rights held by such person. Regulation 13 places a continual obligation of disclosure. Regulation 14 provides that any person violating the said Regulations shall be liable for action under Sections 11, 11B, 11D, 24 and Chapter VI-A of the SEBI Act.

34. The above-referred regulatory regime is all-encompassing. It prescribes the prohibition, which is normative. The Regulation also provides for the method of detecting the violation, the methods of investigation, the manner of appointment of the investigating authority, the timeline within which the report is to be submitted,

the opportunity for an insider to respond to the report as well as the final decision to be taken by the SEBI, and lastly, the consequential orders and restitutionary directions which the Board is entitled to pass. It is also important to note that the SEBI has the power under Regulation 11 to pass necessary directions to remedy an act of insider trading in order to have a complete and comprehensive control over the securities market.

35. Having considered the comprehensive role of the SEBI in regulating the securities market with respect to insider trading, we are of the opinion that the important role of the Regulator cannot be circumvented by simply asking for rectification under Section 111A of the 1956 Act. Such an approach is impermissible. The scrutiny and examination of a transaction allegedly in violation of the SEBI (PIT) Regulations will have to be processed through the regulations and remedies provided therein.

36. When Constitutional Courts are called upon to interpret provisions affecting the exercise of powers and jurisdictions of these regulatory bodies, it is the duty of such Courts to ensure that transactions falling within the province of the regulators are necessarily subjected to their scrutiny and regulation. This will ensure that the regulatory body, charged with the duty to protect

the consumers has real time control over the sector, thus, realizing the purpose of their constitution.

37. The position with respect to the SEBI (SAST) Regulations is similar to that of the SEBI (PIT) Regulations. Regulation 7 of Chapter III obligates the acquirer of more than 5% shares in a company to disclose the same to the company and the stock exchange. This is the prohibition, and non-disclosure is punitive. Chapter V deals with investigation and action by the Board, which includes the power of the Board to appoint an investigating officer (Regulation 38), the issuance of show-cause notice to the acquirer (Regulation 39), the obligation of the investigating authority to submit a report at the earliest (Regulation 41), the duty to supply the report to the acquirer and give him an opportunity of hearing before passing penal orders (Regulation 42) and lastly, the powers of the Board to take action/pass directions under Chapter VI-A and Section 24 of the SEBI Act (Regulation 44). It is significant to note that Regulation 45 provides for penalties for non-compliance with the said Regulations. The liability will be in terms of the Regulations and the SEBI Act. Here again, the SEBI (SAST) Regulation is a comprehensive scheme providing for inquiry, investigation, submission of report by the investigating officer,

procedural safeguards in favor of the acquirer, and finally, the restitutionary order/directions to be passed by the Board. This whole procedure cannot be short-circuited by making an application under Section 111A of the 1956 Act on the ground that there exists parallel jurisdiction with the SEBI and CLB/Tribunal. The transaction complained of must suffer scrutiny by the regulator, and it is only for the regulator to determine a violation of the provisions of the SEBI Act and the Regulations.

38. Having considered the matter from a different perspective, we are of the opinion that the Appellant is not justified in invoking the jurisdiction of the CLB under Section 111A of the Act for violation of SEBI regulations. We are also of the opinion that the Tribunal committed an error in entertaining and allowing the company petition filed under Section 111A of the 1956 Act. Though we are not in agreement with the reasoning adopted by the Appellate Tribunal in the impugned order, we are in agreement with its conclusion that the Tribunal exceeded its jurisdiction and therefore, the Appellate Tribunal was correct in setting aside the judgment dated 05.07.2017.

39. For the reasons stated above, Civil Appeal No. 2030 of 2019 arising out of the judgment dated 06.12.2018 in Company Appeal

(AT) No. 240 of 2017 of the National Company Law Appellate Tribunal, New Delhi stands dismissed. There shall be no order as to costs.

.....J.
[A.S. BOPANNA]

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

NEW DELHI;
JANUARY 04, 2023