
(2014) 04 DEL CK 0236

In the Delhi High Court

Case No : Co. A(SB) 7/2014 & CA No. 275/2014

DCM Shriram Industries Ltd.

APPELLANT

Vs

HB Stockholdings Ltd. and Others

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Arbitration Act, 1940 — Section 33
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11
Companies Act, 1956 — Section 10F, 173, 192A, 209, 210
Securities and Exchange Board of India Act, 1992 — Section 15T, 15Y
Securities Contracts (Regulation) Act, 1956 — Section 21

Citation : (2014) 184 CompCas 275 : (2014) 3 CoMPLJ 319

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Ramesh Singh and Mr. A.T. Patra, Advocate for the Appellant; H.S. Chandhoke and Mr. Anant Garg, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The present appeal has been filed by the appellant company u/s 10F of the Companies Act, 1956 challenging the order dated 10.12.2013 passed by the Company Law Board in CP No. 192/2007 (hereinafter referred to as the "impugned order"). By the impugned order, the Company Law Board has dismissed an application being CA No. 12/C. No. 1/2013, filed by the appellant company, inter alia, seeking dismissal of the petition filed by the respondent no. 1 u/s 397 and 398 of the Companies Act, 1956 being CP No. 192/2007. The Companies Act, 1956 is hereinafter referred to as the "Act".

2. The controversy that needs to be addressed in the present appeal is whether the proceedings initiated by respondent no. 1 before the Company Law Board (hereinafter referred to as "CLB") is maintainable in view of the complaint filed by respondent no. 1 before the Securities and Exchange Board of India (hereinafter referred to as "SEBI").

3. The relevant facts in brief are as follows:-

3.1 The appellant company is engaged in the business of manufacturing sugar and also in the manufacture and production of alcohol, chemicals and rayon. The appellant company is a public company, listed on the Bombay Stock Exchange Limited with an authorized share capital of Rs. 65,00,00,000/- divided into 6,500,000 equity shares of Rs. 10/- each. On 16.10.2007, the Board of Directors of the appellant company passed a resolution proposing, subject to the approval of the shareholders, an issue of 7,00,000 warrants on a preferential basis with intent to augment the long term working capital of the company. Each warrant was carrying a right to apply for 3 equity shares of Rs. 10/- each within 18 months from the date of the allotment of the said warrant. The said warrants were proposed to be issued to six entities, namely, Divine Investments Private Limited, Gentech Chemicals Private Limited, Super Wares Private Limited, Quick Lithographers Private Limited, Versa Trading Limited and Shri Tilak Dhar (Karta of Lala Bansi Dhar & Sons-HUF), forming part of the promoters/promoter group/ persons acting in concert (PAC). A notice dated 18.10.2007 was also issued u/s 192A of the Act for passing of the said resolution by way of postal ballot. On 30.11.2007, the appellant company issued and allotted 7,00,000 warrants to the aforesaid six entities. Pursuant thereto, the appellant company allotted 7,00,000 equity shares on 18.12.2007, 4,55,000 equity shares on 29.03.2008 and 9,45,000 equity shares on 01.04.2008.

3.2 Respondent no. 1, which held 12.77% of the paid up share capital of the appellant company as on 16.11.2007, filed various complaints, dated 01.02.2007, 13.12.2007 and 20.12.2007, before SEBI in relation to the allotment of warrants being made to the promoters of the company in violation of the provisions of the statutory guidelines and regulations framed by virtue of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act"). The said complaints were dismissed by SEBI, on 20.06.2008. Aggrieved by the order dated 20.06.2008, respondent no. 1 challenged the same before the Securities Appellate Tribunal (hereinafter referred to as the "SAT") in Appeal No. 96/2008. By an order dated 01.07.2009, SAT remanded the matter back to SEBI for reconsideration and for passing a reasoned order.

3.3 Thereafter, SEBI considered the matter afresh and passed a reasoned order dated 31.03.2011 whereby the complaint filed by respondent no. 1, was dismissed. Being aggrieved by the order dated 31.03.2011, respondent no. 1 filed an appeal before SAT (Appeal No. 86/2011) impugning the order dated 31.03.2011 passed by SEBI. SAT dismissed the said appeal, by an order dated 25.04.2012. Respondent no. 1 filed an appeal (Civil Appeal No. 5891/2012) before the Supreme Court against the order dated 25.04.2012 passed by SAT. The said appeal was admitted by the Supreme Court on 26.09.2012.

3.4 Respondent no. 1 also filed a Civil Suit (CS (OS) No. 2011/2008) before this Court challenging final accounts of the appellant company, alleging failure on part of the management and the statutory auditors to reflect a true and fair view

of the company's accounts and thereby failing to comply with the requirements of Sections 209, 210, 211, 215, 217, 219 and 227 of the Act. The Appellant filed an application under Order VII Rule 11 of the CPC (being I.A. No. 12820/2008) for rejection of plaint on the ground that the suit was in the nature of a petition for oppression and mismanagement of the affairs of the appellant company and therefore, the jurisdiction of the civil court was impliedly barred under the provisions of the Act. By an order dated 25.08.2009, this Court allowed the said application and rejected the plaint. The appeal preferred by respondent no. 1 before a Division Bench of this Court was also dismissed.

3.5 On 21.11.2007, respondent no. 1 filed a petition (CP No. 192/2007) u/s 397 & 398 of the Act before the CLB inter alia seeking that the notice dated 18.10.2007 calling for the postal ballot and the issuance of 7,00,000 preferential warrants be declared as null and void. The respondent no. 1 also prayed for the interim relief, however, the same was declined by the CLB on 27.11.2007. An appeal (Co. A (SB) No. 44/2007) preferred against the said order was also dismissed by this Court on 01.02.2008. Subsequently, after the dismissal of the above said civil suit (CS (OS) No. 2011/2008), respondent no. 1 filed applications before the CLB in the CP No. 192/2007 (being CA No. 448/2009 for the amendment of the company petition and CA No. 449/2009 for impleadment of parties). Subsequent thereto, the appellant filed an application seeking dismissal of the company petition as well as the application for the amendment of the petition. The said application was dismissed by the CLB by the impugned order. Aggrieved by the dismissal of the said application, the appellant has filed the present appeal.

Submissions of the Appellant

4. It is contended by the learned counsel for the appellant that the proceedings before the CLB are not maintainable in view of the fact that the grievances raised by respondent no. 1 before the CLB are similar to the grievances raised by respondent no. 1 in the proceedings initiated before SEBI. It is contended that respondent no. 1 had challenged before SEBI the decision of the appellant company to allot preferential warrants on grounds that were similar to those raised before the CLB. The grievance of respondent no. 1 had been addressed and adjudicated by SEBI. The appeal filed before SAT had also been disposed of. Respondent no. 1 then pursued an appeal before the Supreme Court against the order passed by SAT. It was, therefore, submitted that the respondents were pursuing parallel proceedings which was not permissible. The appellant contends that the petition before the CLB and the proceedings before SEBI (and now the appeal pending before the Supreme Court) were parallel proceedings and, therefore, the petition before the CLB was not maintainable.

5. The learned counsel for the appellant has contended that the complaints filed by the respondent before SEBI were not only with respect to the allegations that the appellant had contravened provisions of various statutory guidelines, regulations and provisions of the SEBI Act but also included averments which, in

effect, were in the nature of alleging mismanagement and oppression in the conduct of affairs of the company as contemplated under Sections 397 & 398 of the Act. It is urged that since the respondent had pursued those averments before SEBI, the respondents were disentitled from urging similar contentions before CLB. The learned counsel further contended that although, the averments made by the respondent before SEBI had been contested on the ground that SEBI did not have any jurisdiction to entertain such pleas and the appropriate forum to agitate the matter would be CLB, the same would not disentitle the appellant from contending that the petition before the CLB was not maintainable. It is submitted that the respondent was aware that SEBI lacked the jurisdiction to adjudicate whether the affairs of the appellant company were mismanaged or were carried on in a manner oppressive to the minority shareholders, yet the respondent had taken its chance and contested the matter before SEBI. Thus, the respondent could not re-agitate similar issues before the CLB.

6. It is contended by the learned counsel for the appellant that the proceedings before the CLB are an abuse of process of law as respondent no. 1 had agitated its grievance before SEBI and was now inviting findings and seeking adjudication in respect of the very same transaction/instances before the CLB. It was contended that since the proceedings before the CLB amounted to re-litigation, the same were an abuse of process of law. In support of the above contentions, the appellant has relied upon the judgment of the Supreme Court in the case of K.K. Modi Vs. K.N. Modi and Others, .

7. It is submitted by the learned counsel for the appellant that the respondent no. 1 filed various complaints before SEBI against the allotment of the preferential warrants and SEBI has also adjudicated the complaint thereby rejecting any allegation against the said allotment. It is contended that the principle of estoppel is also applicable in the facts of the present case and respondent no. 1 is estopped from challenging the said allotment before the CLB on similar grounds. It is submitted that the legality of the allotment of warrants is subject matter of the appeal pending before the Supreme Court and cannot be pursued before the CLB.

Submissions on behalf of the respondents

8. It is contended by the learned counsel for the answering respondent that the proceedings before the CLB and before SEBI are independent of each other. It was submitted that although the facts stated in both the proceedings are common, however, the grounds raised and the relief claimed before both the fora are independent, separate and distinct. The parties before both the fora are also different. It is contended that the jurisdiction of the CLB is confined to adjudicate whether the affairs of a company are being mismanaged or being conducted in a manner oppressive to any shareholder(s) of the company. While SEBI has the exclusive jurisdiction to adjudicate any complaint with regard to the violations of the statutory guidelines, regulations and provisions of the SEBI Act, the jurisdiction of the CLB extends to the manner in which affairs of a company are

conducted. The respondent has relied upon the decision of the Bombay High Court in the case of Kesha Appliances P. Ltd. and Others Vs. Royal Holdings Services Ltd. and Others, in support of its contention that SEBI would have the exclusive jurisdiction in relation to violation of the provisions of the SEBI Act and other statutory guidelines and regulations framed thereunder.

9. It is contended that although the proceedings before SEBI were initiated on similar set of facts, however, the nature and scope of those proceedings were not similar and identical to the proceedings before the CLB, and therefore, both the proceedings before SEBI as well as CLB could be pursued concurrently. In support of this contention, the counsel for the respondent has relied upon the judgment of the Calcutta High Court in the case of Dharam Godha Vs. Universal Paper Mills Ltd., .

10. It is contended that the proceedings before the CLB are different in nature and even if the complaint filed before SEBI has been dismissed, the same has no bearing on the adjudication of the proceedings before the CLB. The outcome of the proceedings before the CLB is different and is not dependent on the outcome of the proceedings before SEBI. It is submitted that some acts of the company may amount to violation of statutory rules and regulations and SEBI Act, however, the same may not necessarily amount to the acts of oppression and mismanagement. Conversely, a series of acts may amount to oppression and mismanagement, even though the same are legal. In support of this contention, the respondent placed reliance on the judgment of the Supreme Court passed in the case of Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others, .

11. It is submitted that several remedies may be available to a party under different statutes from the same set of facts and if the remedies are neither repugnant nor inconsistent with each other nor mutually exclusive, then in such circumstances, recourse to any one of them, in whichever sequence, would not bar taking recourse to the other remedy(ies). In support of this submission, the counsel for the respondent has placed reliance on Shonkh Technologies Limited Vs. Union of India (UOI) and Others, , (2009) 151 CompCas 337 , Bharat Overseas Bank Ltd. Vs. Saritha Synthetic and Industries Ltd., , Aar Kay Concast Ltd. Vs. Reliance Capital Limited, , Golden Menthol Export Pvt. Limited Vs. Sheba Wheels (P) Ltd., .

Reasoning and Conclusion

12. I have heard the learned counsel for the parties. The principal controversy that arises in the present case is whether the respondent is disentitled to pursue the petition before the CLB on account of the respondent having preferred complaints before SEBI in relation to the allotment of preferential warrants by the appellant company. In order to address the controversy raised in the present appeal, it is necessary to examine the scope of inquiry before SEBI and the scope of proceedings before the CLB. It is also necessary to examine the complaints

made by respondent no. 1 before SEBI and the appellate proceedings emanating from the decision rendered by SEBI.

13. The respondent made various complaints to SEBI alleging that 7,00,000 warrants issued by the appellant company to its promoters were in violation of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, (hereinafter referred to as the "Takeover Regulations"), Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as the "DIP Guidelines"), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003, (hereinafter referred to as the "PFUTP Regulations"), The Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"), SEBI Act and Listing Agreement with BSE.

14. The relevant portion of the complaint dated 03.11.2007 made by the respondent no. 1 to the SEBI is extracted hereinbelow:-

The entire exercise is being carried out with the sole intention of benefiting only one class of shareholders The Promoters of The Company who are in control of the management of the company. This benefit needless to mention is not only at the cost and detriment of other public shareholders but also the company as a whole.

In view of the above we seek your immediate intervention in the matter and restrain DSIL from proceeding further with the aforesaid preferential issue in the interest of investor protection as it is a clear abuse of the regulatory provisions and above all not a healthy governance practice by a corporate to be allowed.

15. The relevant portion of the complaint dated 01.12.2007 made by the respondent no. 1 to the SEBI is extracted hereinbelow:-

3. It is stated that the process of issuance of seven lakh warrants representing 21 lakh shares is violative of Regulation 11 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations 1997 (Takeover Code"). The company has on 30.11.2007 allotted 7 lakh share warrants on a preferential basis which results in an increase of 8.14% in the voting rights of the Promoters/Promoter Group/PAC, i.e. from 32.54% (pre-issue) to 40.68% (post issue). If the unexpanded capital were to be taken into account, the increase would be 13.73% of the unexpanded capital. The Promoters/Promoter Group/PAC have already paid the entire money receivable for the said warrants and thus have, for all practical purposes, exercised their option to convert the warrants into equity shares.

4. This is in clear violation of Regulation 11 of the SEBI Takeover Code which prohibits any acquirer who, together with persons acting in concert with him, acquires additional shares or voting rights entitling him to exercise more than 5% of the voting rights in any financial year, from making such acquisition

without making a public announcement in terms of the SEBI Takeover Code. The Promoters/Promoter Group/PAC have in the instant case not made the public announcement. It is pertinent to note that under the definition of "shares" in the SEBI Takeover Code, the same would include warrants which have underlying shares.

5. Moreover, it is brought to your notice that the issuance of warrants on 30.11.2007 is also in violation of Regulation 23 of the Takeover Code. On 19.11.2007 Our Client had made a Public Announcement in terms of Regulations 10 and 14(1) of the SEBI Takeover Code. The Offer Price as it stands today is Rs. 120/- per share as notified on 29.11.2007. Regulation 23(1)(b) clearly states that the board of directors of the target company shall not, during the offer period issue or allot any authorized but un-missed securities carrying voting rights. The date of closure of the Offer made by Our Client is 24.01.2007. However, as stated above, the Company has proceed to allot 7 lakh share warrants, the warrant holders have paid for and exercised their option to receive the underlying equity shares, the Company has further approached the Bombay Stock Exchange for approval to issue and list the first batch of underlying shares. The issuance of warrants as well as the proposal to issue the underlying equity shares is a dear violation on the part of the Company of Regulation 23.

6. It is also pertinent to note that the Directors of the Company have failed to provide the shareholders with all the relevant material information as required by S. 173 and the SEBI Disclosure and Investor Protection Guidelines 2000. This includes:

- a) not specifying the price at which the underlying shares would be valued. Giving of the formula under the DIP Guidelines is not sufficient compliance.
- b) not intimating the price of Rs. 57/- and thereafter the upward revision to Rs. 90/- to the shareholders.
- c) the real reason for the issuance, being to increase the shareholding in the Company, rather than to augment long term working capital in the Company.
- d) not indicating about the Open Offer by Our Client The Promoters/Promoter Group/PAC, and the Company have accordingly committed several acts in violation of the Takeover Code for which they are liable in terms of Regulation 45 of the Code.

7. We therefore call upon you to investigate into the matter and restrain the Company from listing the securities underlying the warrants (which are fully paid up) on the Stock Exchange, direct the Company and/or the NSDL and CDSL, to cancel the shares, direct the Company and/or the NSDL and CDSL, not to give effect to the issue/allotment and not to permit the Promoters/Promoter Group/PAC to exercise any voting or other rights attached to such shares.

16. In addition, SEBI also considered the Memorandum of Appeal No. 96/2008 filed by respondent no. 1 before the SAT, whereby respondent no. 1 had also

alleged that the allotment of the warrants is a sham transaction to increase the promoters holding in the appellant company. It was alleged that the appellant company offloaded 50.02% of the shareholding in Versa Trading Limited, a wholly owned subsidiary company, (hereinafter referred to as "VTL") to three entities namely, AKS International, RPG Securities and Indus Net link at 10 paise per share in the year 2002. In 2007, appellant company offloaded remaining 49.98% of the shareholding in VTL to DCM Hyundai Ltd. It was further alleged that the appellant company converted the debt amounting to Rs. 7 crores payable by VTL to the appellant company into redeemable non-cumulative preference shares. The appellant company had written off debt amounting to more than Rs. 100 crores due and payable by both the companies to the appellant company. In the year 2007, the appellant company allotted 6.9 lakh warrants amounting to Rs. 18.63 crores to VTL. It was pointed out that in this manner, the appellant company had transferred funds to VTL and DCM Hyundai Ltd. and subsequently those companies were used by the promoters to subscribe warrants issued by the appellant company. Therefore, it was alleged that the allotment of warrants was a sham transaction and was in violation to various regulations, guidelines and the SEBI Act.

17. SEBI examined the complaints of the respondent no. 1 with regard to the allegations of the violations of the guidelines, regulations and SEBI Act. The same is evident from Para 6 of the order dated 31.03.2011 and the same is extracted hereinbelow:-

6.While the company replied and made its submissions, the complainant informed that it had no further documents to submit. I have perused the allegations in the appeal memorandum, the responses received from the company and other entities, the findings of the aforesaid investigation and other material available on record. According to the complainant in its memorandum of appeal, the following were the violations alleged to have been committed by the company, its directors, promoters and promoter group companies:

- i. Violation of Regulation 11(1) of the Takeover Regulations;
- ii. Violation of Regulation 23(1) of the Takeover Regulations;
- iii. Violation of the DIP Guidelines;
- iv. Violation of the Listing Agreement with the BSE and the provisions of SCRA; and
- v. Violation of the PFUTP Regulations.

18. SEBI also did not consider certain contentions urged by the respondent, as it was persuaded by the appellant to refrain from doing so for the reason that the matter was under consideration before the CLB. The relevant observation of the SEBI in this regard is extracted hereinbelow:-

17. The complainant has also stated (in paragraph IV(xiv) at page 38 of the

appeal memorandum) that on November 29, 2007, it again wrote to the company urging it to go for a rights issue and even offered to have the same underwritten. The complainant further stated that it made an offer to subscribe to the warrants proposed to be issued at a price of Rs. 120/- per share as against the price of Rs. 90/- that had been proposed. It is the grievance of the complainant that its letter was ignored completely and the warrants were allotted to the promoters. In reply, the company has stated that the complainant had pursued the remedy provided under Sections 397/398 of the Companies Act, 1956, alleging oppression and mismanagement by opting for Preferential Issue and not Rights Issue and the matter was pending before the Hon''ble CLB. The company has also informed that the complainant had also filed a Civil Suit before the Hon''ble Delhi High Court for the same allegations, which was dismissed with costs by an Order dated August 25, 2009. The Hon''ble High Court while dismissing had observed "Here the Plaintiff first approached the CLB and failed to obtain any interim relief It cannot be permitted to approach the civil court seeking the same relief as that would encourage forum shopping and constitute an abuse of the process of law... Having carefully, examined the plaint as well as the averments made in the petition before the CLB, as further sought to be amended by the subsequent application, it appears to this Court that the grounds on which the relief is being sought for are more or less similar to what has been sought in the CLB... ". It was also informed that the petition filed by HB before the CLB is pending. On appeal, the Division Bench of the Delhi High Court had declined to interfere in the matter. As it has been informed that the matter is pending before the Hon''ble CLB, the issue is sub-judice. SEBI would as a regulator, intervene only when the interests of the shareholders are in any manner adversely affected because of the acts of the company. As in the present matter, the shareholders have voted in majority for the allotment of warrants to the promoter group on preferential basis, SEBI would have no adverse remarks on the mode adopted by the company for mobilising capital for its working needs. As regards the offer of the complainant to subscribe to the warrants at a price of Rs. 120/- per share as against the price of Rs. 90/-, I would refrain from recording my observations here, as according to the company, the same is pending adjudication by the Hon''ble CLB.

19. SEBI examined and adjudicated the allegations with regard to the violations of the DIP Guidelines, Takeover Regulations, PFUTP Regulations and the provisions of the SEBI Act and dismissed the complaints filed by respondent no. 1. SEBI also held that in absence of any material to support the allegations of fraud, it was not possible to arrive at an adverse inference on the conduct of the company in offloading the shares of VTL. The conclusions arrived at by SEBI reads as under:-

42. The allegations made by the complainant in its memorandum of appeal have been examined in the light of replies/documents furnished by the parties, the findings of investigation and other material available on record, and findings/observations in respect of the same have been recorded in the earlier

paragraphs. A summary of such findings/observations are given below:

i. The allegation of the complainant that the company, its promoters and directors along with companies, Versa Trading Limited and DCM Hyundai Limited have executed a fraud on the shareholders of the company by way of issuing preferential warrants and underlying shares thereby contravening Regulation 3 of the PFUTP Regulations, has not been substantiated by the findings of the SEBI investigation and from the averments/documents of the complainants. Further, the business activities/decisions of unlisted entities like Versa Trading Limited and DCM Hyundai Limited would be outside the regulatory purview of SEBI unless the same becomes prejudicial to the interest of the investors and the securities market. However, the SEBI investigation and the documents furnished by the complainant could not substantiate that the acts of the said entities had affected the securities market in general and the shareholders of the company in particular.

ii. The allegation of violation of Regulation 11(1) of the Takeover Regulations is not proved as the acquisition by the promoter group was well within the threshold limits under the said provision during the financial years-2007-2008 and 2008-2009.

iii. Pearey Lall & Sons Private Limited and M/s. A Cee Enterprises cannot be held to be the PACs of the promoter group for want of material in that regard and also since they have been classified as shareholders of the company under the category "Public and holding more than 1% of the total number of shares".

iv. The company cannot be faulted for raising capital through preferential allotment of warrants overlooking a rights issue. The said mode was a decision of the company and the shareholders had voted in majority.

v. The alleged violation of Regulation 23 of the Takeover Regulations is not found as the company has issued equity shares underlying the warrants which are in line with the terms of the explanation to the said provision. As regards the allegation that the company has entered into material contracts and encumbered its assets, the same is rejected on the basis of the submissions of the company, as mentioned above and also for want of material to support such a charge.

vi. There is no contravention of clause 13.3.1(f) of the DIP Guidelines as the allottees of warrants were holding shares of the company in dematerialised form. Further, the violation of other provisions of the DIP Guidelines as alleged by the complainant is also not substantiated for the reasons stated in this Order.

vii. BSE has granted in-principle approval for the issue of equity shares (underlying the impugned warrants). The shareholders of the company have approved the preferential allotment to six of the persons/entities of the promoter group. No violation of the provisions of the Listing Agreement as alleged in the appeal memorandum and also Section 21 of the SCRA could be inferred.

43. In view of the foregoing, I am of the considered view that the findings and

observations made in this Order with respect to the allegations made by the complainant in its memorandum of appeal do not call for any regulatory intervention by the Securities and Exchange Board of India in the matter.

20. It is clear from the above that SEBI exercised its statutory jurisdiction. It is also clear from the above that respondent no. 1 took a stand before SEBI that the action of the appellant company in issuing warrants to its/promoters, to the exclusion of other shareholders, was in violation of the Takeover Regulations, DIP Guidelines, Listing Agreements and PFUTP Regulations.

21. Aggrieved by the decision of SEBI, the respondent preferred an appeal (Appeal no. 86/2011) before SAT on the ground that SEBI has failed to investigate and examine the violations of the DIP Guidelines, Takeover Regulations, PFUTP Regulations and the provisions of the SEBI Act. A preliminary objection was raised by the appellant with regard to the maintainability of the said appeal. SAT decided the preliminary objection in favour of the appellant and by an order dated 25.04.2012, dismissed the said appeal on the ground that the order dated 31.03.2011 does not adversely affect the rights of the respondent and is not an appealable order within the meaning of Section 15T of the SEBI Act. SAT also observed that the respondent was not remediless as respondent was pursuing its remedies before the CLB.

22. Aggrieved by the findings arrived at by SAT, the respondent preferred an appeal before the Supreme Court, inter alia, on the ground that SAT erred in ignoring that SEBI "s function under the SEBI Act are for investor protection and regulation of the securities market and dealing with allegations with regard to the violation of the SEBI Act and the Regulations framed thereunder and public interest issues. Respondent no. 1 has also challenged the order passed by SAT on the ground that the "scope and ambit of the proceedings and findings of SEBI and that of the Company Law Board u/s 397 and 398 of the Companies Act are distinct". And, that the statutory violations of the SEBI Act and various regulations framed by SEBI falls squarely within the domain of SEBI and SAT and cannot be adjudicated by the CLB. The appeal preferred before the Supreme Court is still pending for consideration.

23. The petition filed by respondent no. 1 before the CLB (CP No. 192/2007) is u/s 397/398 of the Act inter alia seeking that the notice dated 18.10.2007 calling for the postal ballot and the issuance of 7,00,000 preferential warrants be declared as null and void. It has been alleged by respondent no. 1 that the issuance of 7,00,000 preferential warrants was not with intent to augment the long term working capital of the company but to increase the holding of the promoters in the appellant company. It was contended that the company could have issued shares/warrants on rights basis which would allow the participation of all the shareholders in the increase of the capital of the company, however, the warrants were allotted to the promoters to the exclusion of other shareholders and at a price below the price offered by respondent no. 1. It was further contended that the affairs of the company were being conducted in a manner

oppressive to the minority shareholders and prejudicial to the interest of the company. The relevant extracts of the said company petition which indicate the nature of allegations made by respondent no. 1 are quoted hereinbelow:-

28. The conduct of the Respondents is clearly prejudicial to the interests of the Company and of the rights of its shareholders. The conduct in not allowing an inspection even shows their dishonest intentions in not allowing any sort of discussion amongst the shareholders regarding the proposed Issue of warrants on a preferential basis.

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34. It is humbly submitted that in the instant case the act of the Promoter Directors/Promoter Group of the Respondent No. 1 Company directed towards entitling them to acquire equity shares of the Respondent No. 1 Company on a preferential basis, to the exclusion of the rest of the shareholders, and on a favourable price, which is prejudicial to the interests of the Respondent No. 1 Company, clearly reveals the mala fide and dishonest intentions of the Respondent Nos. 2 to 9 and 11 to 15 and their efforts to unjustly enrich themselves by causing grave and irreparable harm and injury to the interests of the Respondent No. 1 Company and its shareholders, including the Petitioner herein. The above mentioned acts of the Respondents are patently illegal and in violation of the rights of the Petitioner and amount to a serious breach of their fiduciary duties towards the Respondent No. 1 Company.

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38. It is therefore clear that the acts of Respondents 2 to 9 are inspired by and are in furtherance of their ulterior motives to increase their shareholding in the Respondent No. 1 Company as well as to enrich themselves at the cost of the Respondent No. 1 Company and its shareholders including the Petitioner herein. Factors such as the proposal to issue Warrants on a preferential basis only to the Promoters/Promoters" Group/Persons acting in concert with them to the exclusion of the rest of the shareholders, making the said proposal within a month of approval of the proposal to mortgage the Company"s undertakings for huge capital term loans by the shareholders in the AGM, timing the proposal so as to avoid placing it before the shareholders in the AGM where it could have been properly debated and discussed, fixing of the relevant date in a manner that the pricing of the proposed equity shares is most beneficial to the proposed allottees and far removed from the actual market value that might be prevailing at the time of the actual allotment, calling for a postal ballot without allowing the shareholders an opportunity to discuss and deliberate upon the proposed issue and deliberate failure to provide the Petitioner with a complete inspection of the members" Register, are sufficient to establish that in the instant case the Respondents 2 to 9 are driven with ulterior motives directed at furthering their own interests to the prejudice of the interests of the Respondent No. 1 company and its shareholders.

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40. As will be shown below, the Promoters/Promoter Group of the Respondent No. 1 Company had conceived and executed a scheme whereby they would subvert the provisions of law while increasing their shareholding in the Company amounting to a fraud on the members of the Company. They have perversely mismanaged the affairs of the Respondent No. 1 Company and oppressed the minority shareholders.....

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86. The extent of the oppressive acts and the mismanagement of affairs can be seen from the reply filed by the Respondents and the facts before this Hon'ble CLB, which are again summarized hereinbelow:

(i) The Respondents propose to issue warrants on a preferential basis to promoters to raise approximately Rs. 9-10 crores (that too over a period of 18 months) soon after raising Rs. 51.392 crores between April August 2007 from banks/financial institutions.

(ii) There is no bona fide purpose to issue the warrants. Time and again the Respondents have changed their stance as to the exact purpose for which the Company required "urgent" funds, which is a change in the objects of the issue. If there was a genuine requirement of funds by the Respondent No. 1 Company and Versa and DCM Hyundai were in a position to repay the outstanding dues that the two companies admittedly owe the Respondent No. 1 Company, it was incumbent on the Respondent No. 1 Company to collect the amounts as repayment of dues and thereby satisfy the Respondent No. 1 Company's requirement for funds rather than opt for a preferential allotment of warrants which in turn involved additional time and expenditure.

(iii) The Explanatory Statement to the Notice dated 18.10.2007 to shareholders did not contain material particulars as required by S. 173 of the Companies Act. The above facts were never disclosed to the shareholders and therefore the Notice was defective and the allotment merits to be set aside on this ground alone.

(iv) The Respondents have undertaken this exercise solely for their own benefit and have stated a false and misleading purpose in the Notice to shareholders dated 18.10.2007.

(v) The Respondents have gone against the requirement of S. 81 of the Companies Act which provides that the Company must ordinarily raise money only by way of a Rights Issue.

(vi) The Respondents have kept the shareholders in the dark with respect to the revisions in the price at which the shares are to be allotted.

(vii) The Respondent changed the terms of the allotment, the full amount became payable upfront.

(viii) The Respondents went ahead with the issue and allotment of warrants at Rs. 90/- on 30.11.2007 when an offer of Rs. 120/- was made to the Directors of the Respondent No. 1 Company by the Petitioner on 9.11.2007.

(ix) Rs. 18.9 crores was raised by the preferential issue despite the fact as per the Board Resolution dated 16.10.2007 approving the preferential issue, the Company only required Rs. 9-10 crores. The Respondent No. 1 Company ought to have reduced the number of warrants issued.

(x) The Company wholly deviated from the period of conversion/allotment of shares for the second and third trenches of equity shares.

(xi) The Company deviated in terms of the number of shares to be allotted in each financial year, viz. from 7 lakh shares each per financial year over three years, to 11.55 lakh and 9.45 lakh shares over two financial years only.

(xii) No individual notices were sent to the shareholders regarding these changes.

(xiii) The Respondents accepted a Letter of Intent from Versa Trading Ltd. on 16.10.2007 when the necessary statutory approval of shareholders of Versa Trading Ltd. was not obtained under S. 372A until 15.11.2007.

(xiv) The Respondents issued and allotted warrants to Versa Trading Ltd. despite being aware that Versa was not authorized by its MOA to do so. Similarly, DCM Hyundai Ltd. is also not authorized by its MOA to make the investments and thus could not have made the alleged investment of Rs. 20 crores in Versa Trading Ltd. Further, DCM Hyundai has not obtained the shareholders approval under S. 372A as required by the Companies Act for investing in versa.

(xv) The Respondents issued and allotted warrants to Versa Trading Ltd. despite being aware that Versa was barred from doing so due to a direction issued by the RBI which prohibited it from making such an investment.

(xvi) The Respondents issued and allotted warrants to Versa Trading Ltd. for Rs. 18.63 crores despite having outstanding dues of Rs. 7.8 crores. Instead the Company has written off investments and loans of over Rs. 12 crores in Versa and have allegedly converted Rs. 7 cores of the Rs. 7.8 crore outstanding loan into preference capital. Respondent No. 1's Balance Sheet for the FY 2007-2008 shows that this "investment" of Rs. 7 crores has also been entirely written off.

(xvii) The facts placed on record show that in fact Versa Trading Ltd. is a subsidiary of the Respondent No. 1 Company. The Boards of Directors of the two companies are working in tandem. Versa Trading Ltd. was in the knowledge of information held by the Board of Directors of the Respondent no. 1 prior to the time when it was made public.

(xviii) The facts also show that the Respondent No. 1 Company has waived off dues of Rs. 75 crores owed from DCM Hyundai Ltd. in addition to (a) reducing its equity shareholding by Rs. 10.01 crores, (b) converting loans of an amount of Rs. 13.71 crores into equity and convertible preference shares, and (c) having

outstanding loan amount of Rs. 800 lakh, and at the same time allowed it to invest Rs. 20 crores in Versa Trading Ltd. In fact, during the FY ending 31.03.2008, the Respondent No. 1 loaned further sums to DCM Hyundai and in total was to receive outstanding sums of Rs. 1391.94 lakhs (increased from Rs. 800 lakhs as at 31.03.2007). The facts show that DCM Hyundai is also a subsidiary of the Respondent No. 1 Company.

(xix) The facts show that over Rs. 100 crores has been written off waived by the Respondent No. 1 Company in DCM Hyundai Ltd. and Versa Trading Ltd. In addition, the Respondent No. 1 Company borrows huge sums of money from Banks thereby burdening the Company and its shareholders. Over the past ten years the Respondent No. 1 Company has only once declared a dividend and that of 10%. This is gross financial mismanagement and prejudicial to the interests of the Company and its shareholders.

(xx) The haste of declaring approving and allotting the warrants shares between 9 a.m. and 10 a.m. on 30.11.2007 despite the hearing before the Hon''ble high Court being scheduled for the same day, shows the mala fide intentions of the Respondents. Moreover, the facts show that moneys had not been received by the Company at the time of allotment whereas the Company filed false affidavits before the Hon''ble High Court as well as this Hon''ble CLB.

(xxi) The Respondent No. 1 Company has violated statutory norms of S. 192A and the Postal Ballot Rules 2001 in the conduct of the ballot.

(xxii) The Directors have grossly violated their fiduciary duties towards the Company and the shareholders.

24. It is clear from above that the allegations made by respondent no. 1 in the company petition filed before the CLB not only alleged violation of statutory guidelines and regulations framed under the SEBI Act but also alleged lack of probity in the conduct of the affairs of the company.

25. SEBI exercises its statutory jurisdiction to protect the interests of investors in securities and to deal with the violations of the Takeover Regulations, DIP Guidelines, Listing Agreements, PFUTP Regulations and other statutory guidelines and regulations. The SEBI Act provides complete mechanism for redressal of grievances to protect the interests of investors in securities. It is indisputable that any complaint with regard to the aforesaid violations can only be made before SEBI and no suit or other proceedings in that regard can be initiated. Section 15Y of the SEBI Act bars the jurisdiction of the civil court to entertain any suit or proceeding in respect of any matter which an Adjudicating Officer, appointed under the SEBI Act or SAT constituted under the said Act, is empowered by or under the SEBI Act to determine and adjudicate. The powers exercised by the CLB and the powers exercised by SEBI fall in different and distinct jurisdictional fields.

26. Chapter VI of the Act contains provisions for prevention of Oppression and

Mismanagement. Whilst Section 397 of the Act relates to Oppression, Section 398 relates to Mismanagement. The provisions of said Sections are relevant and are quoted below:-

397. Application to Tribunal for relief in cases of oppression.-

(1) Any member of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Tribunal is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

398. Application to Tribunal for relief in cases of mismanagement.-

(1) Any members of a company who complain-

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or

(b) that a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company, may apply to the Tribunal for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the Tribunal is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid the Tribunal may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

27. The powers conferred upon the CLB under the aforesaid Sections are very wide. In matters where the CLB is of the opinion that the affairs of the company

are being conducted in a manner prejudicial to public interest or in a manner oppressive to its members, the CLB has the power to make such orders as it thinks fit with a view to bring to an end the matters complained of. For a conduct of affairs to be oppressive to any member or members of a company, it must be shown that the conduct is burdensome, harsh and wrongful. It has been held that oppression must involve at least an element of lack of probity or fair dealing with a member in the matter of his proprietary rights as a shareholder. In the case of Shanti Prasad Jain Vs. Kalinga Tubes Ltd., , the Supreme Court has held as under:-

18..... As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397.

28. The language of Section 398 is also in wide terms. In the event that the CLB finds that the affairs of the company have been conducted in a manner prejudicial to public interest or in a manner prejudicial to the interest of the company, the CLB has the power to pass such orders to bring to an end the matters complained of. The CLB also has powers to prevent matters that are apprehended.

29. The powers of the CLB, u/s 397-398 of the Act, are not only curative but also preventive.

30. Sections 397 & 398 have been drafted on the basis of Section 210 of the English Companies Act, 1948. Sections 397-398 of the Act are intended to provide a remedy to the shareholders of the company in cases where the affairs of the company are being conducted in a manner which is burdensome or harsh to the shareholders or where the affairs of the company are conducted in a manner which is prejudicial to public interest, interest of the company or interest of certain shareholders. It is settled law that mere illegal or invalid acts would not constitute "Oppression". Any act which is in violation of any provisions of law by itself will not necessarily be oppressive or prejudicial to the interest of any member of members of the company. It is well settled that an act may be illegal

or unlawful and yet may not be construed as oppressive. On the other hand, the affairs of the company may be conducted strictly in accordance with law, yet the same may still be oppressive. This has been explained by the Supreme Court in the case of Needle Industries (India) Ltd. (supra). There are several cases where majority shareholders of a company have used their voting power to carry through decisions which may be prejudicial to the minority shareholders and in some cases prejudicial to the majority shareholders of the company. The provisions of Section 397-398 are also intended to readdress such situations.

31. It is clear from the above that the scope of Sections 397-398 of the Act is different from the scope of provisions of the SEBI Act and the guidelines and regulations made in exercise of the powers conferred under the said Act. This distinction must be borne in mind while examining the controversy raised in the present appeal.

32. The contentions urged by the appellant must be examined in view of the above. First of all, the contention that respondent no. 1 is pursuing "parallel proceedings" must be considered. The expression "Parallel Proceedings" has not been defined. However, the expression has been used in a sense to describe a set of proceedings that a litigant is proscribed to pursue simultaneously. Such set of proceedings either includes proceedings that are identical in effect or a set of proceedings that are inherently inconsistent so as a pursuit of one, negates the other. In the former case, the proceedings must be similar at least in three respects: 1) the parties, 2) the issues involved and 3) the relief claimed. In cases where proceedings are similar in these material aspects, it is obvious that the result of one would render the others meaningless. In such circumstances permitting parallel proceedings would amount to permitting meaningless litigation. The expression "Parallel proceedings" must mean a set of proceedings which are pursued for identical reliefs, are based on the same cause of action and the subject matter of the disputes is similar. However, if the issues involved and the relief available in the proceedings are not substantially identical, the proceedings cannot be considered as parallel proceedings. The Calcutta High Court in *Dharam Godha Vs. Universal Paper Mills Ltd.*, , has explained the meaning of parallel proceedings as under:-

..parallel proceedings in the true sense of the expression would imply that the matters directly and substantially in issue in the two sets of proceedings are identical or so nearly resembling each other as are incapable of any distinction. To undertake an exercise to ascertain whether two sets of proceedings are parallel or not, the pleadings in the two sets of proceedings are required to be referred to, the issues that arise in the two sets of proceedings are required to be looked into and, thereafter, a conclusion drawn as to whether a decision on the one would render meaningless the continuation of the other

33. I wholly concur with the above view of the Calcutta High Court. There is another set of circumstances where parallel proceedings are not permissible and those are cases where the remedies sought under a set of proceedings are

inconsistent. In such circumstances, the party pursuing the remedies must elect a remedy that it seeks to pursue to the exclusion of the other. Parallel proceedings in separate fora for the same relief would not be permissible if the same are inconsistent with each other. However, in cases where the nature of challenge is materially different, there would be no bar for a litigant to pursue concurrent remedies. The doctrine of election presupposes that there is choice of remedies which are inconsistent in character and therefore, a party has to elect one to the exclusion of the other. The Supreme Court in the case of *Transcore Vs. Union of India (UOI) and Another*, has explained the Doctrine of Election as under:-

64. In the light of the above discussion, we now examine the doctrine of election. There are three elements of election, namely, existence of two or more remedies; inconsistencies between such remedies and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply.

34. The rationale underlying the doctrine of election of remedies is that in cases of inconsistent remedies pursuing one would be inherently destructive of the other. The above principle has been explained in *American Jurisprudence Second Edition*, (Vol 25 page 653) as under:-

The doctrine of election of remedies is applicable only where there are two or more coexistent remedies available to the litigant at the time of the election which are repugnant and inconsistent. This rule is upon the theory that, of several inconsistent remedies, the pursuit of one necessarily involves or implies the negation of the others. The rule of irrevocable election does not apply where the remedies are concurrent or cumulative merely, or where they are for the enforcement of different and distinct rights or the redress of different and distinct wrongs.

35. The litigant must elect its position in law and is permitted to only pursue those proceedings, which are available to him in conformity with the position elected by him. In that sense inconsistency of remedies is essentially repugnancy in the set of facts and averments required for seeking the different remedies. If a set of facts, which are relied upon in aid of one remedy is repugnant to the set of facts necessary to seek the other remedy, then pursuing the two proceedings would be impermissible. As a matter of illustration, a landlord may take a position that the premises leased by him are covered under rent control legislation and he would thus be entitled to proceed against the tenant before a specialized tribunal. If he so elects, he would not be entitled to maintain a suit against the tenant, which is premised on the basis that the leased premises in question is outside the rent control legislation. The principle that a litigant must not be allowed to pursue parallel proceedings, pre-supposes that the existence of one is repugnant to the existence of other. However, this principle would have no application in cases where the nature of proceedings is entirely different. The doctrine of election of remedies will not apply where the remedies are concurrent or cumulative. Pursuing remedies for enforcement of distinct rights and

redressing different wrongs, concurrently or in whichever sequence, are not impermissible. Remedies will not be inconsistent merely because the same set of facts and averments are relied upon. The doctrine of election of remedies will have no application in such cases.

36. In the present case, the respondent has approached SEBI in relation to a set of facts which is contended to indicate violation of the SEBI Act, Take Over Regulations, PFUTP and DIP Guidelines. It is also contended by the respondent that the affairs of the company are conducted in a manner which are oppressive to its shareholders and prejudicial to the interest of the company. The fact that some of the acts complained of may also violate the SEBI Act or Regulations made thereunder would not prevent the respondent from pursuing the remedies under Sections 397 and 398 of the Act. To hold otherwise would mean that the respondent has to elect whether he can complain against statutory violations under the SEBI Act or initiate proceedings under Sections 397-398 of the Act. The two proceedings as discussed are completely different in their nature and occupy a different and distinct jurisdictional field. I am unable to accept that the two proceedings are mutually exclusive.

37. The second contention that requires to be considered is whether the proceedings filed by respondent no. 1 are an abuse of process of law. The appellant has contended that the fact that respondent no. 1 had urged certain contentions before SEBI and the SAT, which were in the nature of complaints alleging mismanagement and oppression in the conduct of affairs of the appellant company, would amount to re-litigation and render the proceedings before the CLB an abuse of process of law. I am unable to appreciate this contention. Apparently, respondent no. 1 is aggrieved on account of the manner in which the affairs of the appellant company are conducted, whether his grievance is legitimate or not is a separate question. However, indisputably, respondent no. 1 has the right to agitate his grievances with regard to the alleged mismanagement and oppression in the conduct of the affairs of the company, before the CLB. The fact that he has filed a complaint before SEBI would not in any manner render the proceedings before the CLB as an abuse of process of law. At this stage, it is also relevant to note that the appellant had contended before SEBI and the SAT that the appropriate forum for respondent no. 1 to ventilate its grievance was the CLB. The appellant had also persuaded SEBI and the SAT to refrain from considering certain contentions on the ground that the subject disputes were pending before the CLB. The appellant had also persuaded the High Court to reject the plaint filed by respondent no. 1 inter alia on the ground that the CLB would have the jurisdiction to consider the disputes. By an order dated 25.05.2010 passed in RFA(OS) 109/2009, a division bench of this Court had clarified that the issues sought to be raised by respondent no. 1 in the suit were permitted to be raised by the respondent before the CLB. The appellant is now attempting to prevent the disputes from being considered before the CLB on the ground that similar disputes had been agitated before SEBI. In my view, this conduct of the appellant is clearly questionable. The appellant cannot be

allowed to approbate and reprobate. The application filed before the CLB as well as the present appeal are clearly an attempt on the part of the appellant to delay and avoid adjudication of the disputes raised by respondent no. 1. As discussed above, the remedy before SEBI and the CLB are not mutually exclusive but are cumulative. Thus, no fault can be found with respondent no. 1 in pursuing the said proceedings.

38. The reliance placed by the appellant on the decision in the case of K.K. Modi v. KN. Modi (supra) is also misplaced. In the said case, the plaintiffs therein had filed an arbitration petition u/s 33 of the Arbitration Act, 1940 challenging the decision of the Chairman and Managing Director of IFCI on the basis that the said decision was an arbitration award. The plaintiffs simultaneously also filed a suit challenging the very same decision which was impugned in the arbitration petition. The suit was filed on the basis that impugned decision was not an arbitration award. This was a clear case of inconsistent remedies. If the decision of the Chairman and Managing Director of IFCI Ltd. was considered as an arbitration award, the suit filed by the plaintiff was barred. However, if the said decision was not considered as an award, then the arbitration petition was not maintainable. The plaintiffs had attempted to thus pursue parallel proceedings. Furthermore, the plaintiffs had obtained an interim injunction in the arbitration proceedings and on vacation of the same had obtained an injunction in the suit. It is in these facts that the learned Single Judge of this High Court came to a conclusion that the proceedings were an abuse of process of law and struck down the plaint under Order 6 Rule XVI of the CPC and dismissed the suit. The learned Single Judge also dismissed the application for interim relief in the arbitration petition. The Supreme Court considered the facts and held that the perception of the learned Single Judge was substantially correct though not entirely so. The appeal from the decision of the learned Single Judge to strike down the plaint was partly allowed and the Supreme Court clarified that to the extent that the suit raised an alternative independent plea, it would not be considered as re-litigation of the same issue or an abuse of process of law. The said decision of the Supreme Court also clearly indicates that the endeavour of the Courts have always been to ensure that litigants are not deprived from availing remedies that are available for the wrong alleged by them.

39. It was contended by the appellant that the respondent no. 1 was also barred from pursuing the petition before the CLB on the principle of "issue estoppel". It, prima facie, appears that apart from the conclusion that the SEBI Act and the statutory regulations and guidelines framed thereunder have not been violated, it is doubtful whether any other observations made by SEBI would preclude respondent no. 1 from ventilating his grievance before the CLB. The order dated 25.04.2012 passed by SAT seems to imply that respondent no. 1 is at liberty to agitate all his grievances before the CLB. Even if it is assumed that any question raised before the CLB is concluded between the parties in proceedings before SEBI, the same would not prevent respondent no. 1 from pursuing its petition before the CLB. It is not necessary for this Court to decide whether any

grievance raised by respondent no. 1 before the CLB is barred by the principles of issue estoppel and it will be open for the parties to place their contentions with respect to this aspect before the CLB. And, the CLB shall consider the same in accordance with law.

40. Before concluding, I must add that the proceedings before the CLB have been considerably delayed and have not progressed. In the circumstances, I consider it appropriate to direct that the said proceedings be concluded expeditiously and in any event not later than six months from date. The parties will also not seek any adjournment and shall endeavour to assist the CLB in the expeditious adjudication of the matter.

41. In view of the above, the present appeal is dismissed as being devoid of any merit. The appellant shall also pay cost of Rs. 5,000/- to the respondent no. 1.