

(1998) 12 GUJ CK 0016

In the Gujarat High Court

Case No : Letters Patent Appeal No. 236 and 237 of 1997 in Special Civil
Application No. 2224 and 5483 of 1996

Securities and Exchange Board of India

APPELLANT

Vs

Alka Synthetics Ltd. and Others

RESPONDENT

Date of Decision : 29-12-1998

Acts Referred:

Constitution of India, 1950 — Article 300A

Securities and Exchange Board of India Act, 1992 — Section 11, 11B

Citation : AIR 1999 Guj 221 : (1999) 95 CompCas 772 : (1999) 1 GLR 275

Hon'ble Judges : M.R. Calla, J;J.R. Vora, J

Bench : Division Bench

Advocate : P. Chidambaram, for the Appellant; S.B. Vakil, for the Respondent

Judgement

M.R. Calla, J.—In these appeals we are directly concerned with the limits of powers of enforcement of the Securities and Exchange Board of India (for short "the SEBI") which regulates the capital market of the country. The capital market has acquired a status of the system as a part and parcel of the national economy where companies seek to raise funds for different types of transactions in the course of their business and individuals invest their savings. Earlier we had an Act known as the Securities Contracts (Regulation) Act, 1956 (Act No. 42 of 1956), to prevent undesirable transactions in securities by regulating business or dealings therein, by providing for certain other matters connected therewith. This Act provided for recognized stock ex-changes and the control of the Central Government on such recognised stock exchanges. With the passage of time, the Government felt more concerned with the healthy growth of the securities market and taking into consideration the relevant factors influencing the growth of the capital market it realised the necessity to pass a comprehensive legislation for setting up a statutory apex board to promote orderly and healthy growth of the securities market and pending the enactment of the so-conceived comprehensive legislation, the Ministry of Finance, Department of Economic Affairs (Investment Division) passed a resolution dated April 12, 1988,

constituting the SEBI under the overall administrative control of the Ministry of Finance. While the SEBI was functioning under the aforesaid resolution dated April 12, 1988, under the new economic policy, certain reform measures were initiated in 1991, including the capital market reforms and stock exchange reforms, and the statutory powers to regulate the securities markets were sought to be conferred on the SEBI. Keeping in view the tremendous growth of the capital markets through increasing participation of the public, investors' confidence in the capital markets and with the object of ensuring investors' protection, the SEBI Ordinance, 1992, was promulgated by the President on January 30, 1992, and ultimately the Securities and Exchange Board of India Act, 1992 (Act No. 5 of 1992), was enacted and notified on April 4, 1992, and it was deemed to have come into force from January 30, 1992, in terms of section 1(3) of the Act. After narration of the factual aspects hereinafter in brief, it will be our endeavour to adjudicate the questions raised in these appeals while assailing the judgment of the learned single judge in the light of the object of the Securities and Exchange Board of India Act. The Act provides for the protection of the interests of investors in securities and to promote the development and to regulate the securities markets and for matters connected therewith or incidental thereto, the relevant provisions of the Act, and the set of concerned regulations and as to what should be the real impact of such provisions so as to make the SEBI's control over the capital markets effective and meaningful further to ensure orderly and healthy growth of the securities markets and for investors' protection.

2. In the case of Letters Patent Appeal No. 236 of 1997 arising out of Special Civil Application No. 2224 of 1996, the brief resume of the facts is as under :

(a) Alka Synthetics Ltd. (original petitioner) is a public limited company registered under the Indian Companies Act, 1956, having its register office at Ahmedabad.

(b) Prior to 1993, Magan Industries Ltd. (for short "MIL") was a public limited company with 14,44,000 allotted shares and in February, 1993, it had come out with a public issue of 36,56,000 shares of Rs. 10 each. 56,000 shares were reserved for directors, 9,200 for employees and 12,50,000 for NRIs. The total number of shares offered to the public was 35,41,700 and total shares allotted to promoters were 15,00,000 subject to lock-in.

(c) On January 25, 1995, the Securities and Exchange Board of India Act, was amended by the Securities Laws (Amendment) Act, 1995.

(d) On June 1, 1995, MIL was listed with the Bombay Stock Exchange (BSE).

(e) On October 25, 1995, the Securities and Exchange Board of (Prohibition of Fraudulent And Unfair Trade Practices Relating to Securities Markets) Regulations, 1995, were notified.

(f) In December, 1995, the SEBI began to observe price and volume movements

in Magan scrips.

(g) The price and volume movement between December 5, 1995, and January 25, 1996, indicated that unreasonably high shares had been transacted; considering the available floating stock, the volume was high; the price had shot up from Rs. 16.50 on December 5, 1995, to Rs. 180 on January 25, 1996, leading to an appreciation of approximately 600 per cent. in 18 trading days. The Bombay Stock Exchange had, therefore, suspended trading in MIL on five occasions for one day each time without the SEBI's intervention on December 14, 1995, January 4, 1996, January 12, 1996, January 17, 1996, and January 23, 1996.

(h) On January 25, 1996, the Bombay Stock Exchange also noticed the abnormal price in Magan shares and brought it to the SEBI's notice by letter dated January 25, 1996.

(i) On January 29, 1996, the Bombay Stock Exchange again suspended trading for three days and, thereafter, sought to extend the suspension indefinitely with the SEBI's permission, indicating that it had set in motion the investigation into the dealings of members, who dealt in the scrip.

(j) On January 31, 1996, the SEBI responded to the Bombay Stock Exchange and approved its request for suspension, advising the Bombay Stock Exchange to initiate immediate investigation and complete the same in fifteen days, time being the essence of action of investors' protection as a large number of short sales to the extent of 4,41,800 had been noticed. In the background that the price and volume in Magan scrips had been made artificially high, short sellers failed to fulfil their commitment of delivering shares sold out by them and this resulted in the auction and the Bombay Stock Exchange invited offers to purchase shares of Magan. The auction notice expressly invited offers only from members of the exchange, i.e., brokers. The shortfall required to be auctioned at this auction of February 7, 1996, was 4,41,800 shares.

(k) The petitioner had offered for sale of 50,000 shares of Magan at this auction through its broker, the third respondent, namely, Mr. Agarwal. The offerers who desired to sell the shares at the auction are required to indicate the number of shares they propose to offer for sale and the price at which they propose to make the offer. In the first cycle the offerers are permitted to offer a price which is not more than 20 per cent. higher than the last trading price. The petitioner's alleged offer was at the rate of Rs. 115.80 excluding brokerage charges and Rs. 118 inclusive of brokerage charges.

(l) The Bombay Stock Exchange issued a notice on February 7, 1996, inviting from the members of the exchange offers for sale of shares of Magan Industries Ltd. (for short "MIL") because the transaction for purchase of shares of MIL remained outstanding for want of availability of adequate number of shares with the sellers to fulfil their corresponding selling obligation.

(m) In response to the said notice dated February 7, 1996, Alka Synthetics Ltd., which was holding shares in MIL, offered 50,000 shares for sale at auction to the stock exchange through its member - Shri S. I. Agarwal, (a member of the stock exchange) respondent No. 3 in the special civil application.

(n) The transaction for the sale of Alka Synthetics Ltd.'s shares at auction was at Rs. 118 per share inclusive of chargeable expenses and after deducting charges, it was to receive the consideration of their shares from the stock exchange through the said broker at Rs. 116.80 per share. The price of the shares so offered by Alka Synthetics Ltd., at auction for sale was recovered by the stock exchange respectively from the purchasers and short sellers as per its bye-laws and the practice of auctioning and the exchanges were to recover part of the consideration for such shares from the purchasers at the rate at which the transaction of purchase had been entered into and the difference between the auction price and the purchase price payable by the purchasers was to be recovered from the respective short sellers. The amount so recovered by the stock exchange became payable to the offerers by crediting the same to his account after deducting chargeable expenses.

(o) The consideration for the transaction at auction was received by the stock exchange but before the amount could be paid to the offerers, the stock exchange issued notice dated February 15, 1996, stating that as per the directives received from the SEBI the payment due to the members on account of acceptance of their MIL shares offered in pursuance of auction notice dated February 7, 1996, is to be retained by the clearing house until the completion of investigation and further decision in this regard.

(p) Whereas the Bombay Stock Exchange investigation report did not come within fifteen days as called for by the SEBI, on February 15, 1996, the SEBI issued directives to the Bombay Stock Exchange as under :

(i) retain the money payable to the parties offering shares in the auction for settlement No. 20 till the completion of investigation and further decision

(ii) not to conduct any further auction in Magan scrips;

(iii) not to allow cancellation of outstanding quantity during this period.

(q) On February 15, 1996, itself the Bombay Stock Exchange issued a notice informing its members about the SEBI's directives and stating inter alia that payments due to the members on account of acceptance of MIL auction offers in pursuance of auction notice will be retained by the clearing house until completion of investigation and further decision.

(r) On February 19, 1996, the SEBI ordered investigation as the Bombay Stock Exchange failed to respond within fifteen days. It initiated inquiry into the affairs relating to buying and selling and dealing in shares of Magan and also interrogation of several brokers and their clients with the purpose to ascertain :

(i) Whether there are any circumstances which would render any person or party guilty of having contravened any of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995;

(ii) Whether any provisions of the Securities and Exchange Board of India (Insider Trading) Regulations, 1992, have been violated; and

(iii) Whether any stock broker is guilty of contravening the provisions of the Securities and Exchange Board of India Act, 1992, or the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

(s) So far as the SEBI is concerned it had prima facie indications that there was artificial manipulation of the price of the scrip of MIL and the preliminary investigations indicate that the petitioner Alka Synthetics had been heavily buying and selling in these scrips in concert with its other group of companies. The SEBI was, therefore, actually pursuing the investigation which was likely to take some time and, therefore, the auction proceeds may not be disbursed to any person till the investigation report was made available and such direction issued by the SEBI was only an interim measure. Preliminary investigation prima facie revealed that shares had been less than 1/3rd than offered by the brokers who were heavily involved in Magan scrip and which had been heavy possession with the petitioner Alka Synthetics Ltd., along with its group companies Alka Spinners Ltd., and Karnavati Fincap Ltd., had been heavily buying and selling Magan shares and purely acting in concert through more than one brokers.

(t) On February 20, 1996, the third respondent - Shri Agarwal, (being broker of the petitioner through whom the petitioner offered shares at the auction) wrote to the petitioner that the alleged payment of 50,000 Magan shares offered by the petitioner at the auction for settlement B/20 is retained by the clearing house as per Notice No. 1125 of 1996, issued by the stock exchange.

(u) In March, 1996, the special civil application was filed. The petition was thus originally filed challenging the directives of the Securities Exchange and Board of India and notice dated February 15, 1996, for retaining the amount held by the stock exchange from being paid to the members through whom the petitioner had offered shares for sale, thus affecting its claim to that money.

(v) On April 11, 1996, the Bombay Stock Exchange came out with its report on the price rise in Magan scrip bringing out that the petitioner Alka Synthetics Ltd., along with its group companies had been purchasing and taking delivery of Magan shares at the prices ranging from Rs. 25 to Rs. 69 and offering them at the auction for Rs. 118 by taking undue advantage of the auction rules.

(w) On May 6, 1996, the learned single judge directed by way of interim relief that the SEBI shall complete the investigation in respect of the transactions of MIL latest by June 3, 1996, which was later on extended. Respondent No. 1 to the petition, i.e., the SEBI, was also directed to consider whether the petitioner,

Alka Syntheties Ltd., had any role to play in the alleged irregularities in the transaction under investigation and it was stated in the order that if the petitioner, Alka Syntheties Ltd.," was not involved in the alleged malpractices and irregularities, the respondent shall modify its order pertaining to the retention of the amount in question by the stock exchange and permit the stock exchange to release the proceeds of transaction of shares in question in full or part in favour of the petitioner - Alka Syntheties Ltd., as it deems fit, proper and equitable.

(x) On July 4, 1996, the SEBI passed the order directing the Bombay Stock Exchange for release of the monies to the offerers to the extent of transaction price/standard price of the securities offered and impound the differences between the transaction price/standard price and the auction price and to credit the impounded money to the investor protection fund. It also approved the show-cause notices to the brokers, non-intermediaries and intermediaries under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, the Securities and Exchange Board of India (Prevention of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations 1995, and for criminal prosecution u/s 24 of the Securities and Exchange Board of India Act respectively. The Bombay Stock Exchange was thus directed to credit the monies impounded to its investors protection fund and to intimate the aggrieved persons to make written representation to Securities and Exchange Board of India so that it may be considered by an independent committee.

(y) Thereafter, the special civil application was amended and para. 9A was introduced and the prayers D and E were added praying for the quashing of the order dated July 4, 1996, and seeking the declaration that the order directing the stock exchange to transfer the money to the Investors" Protection Fund was violative of article 300A of the Constitution of India, etc.

(z) During the pendency of the special civil application and after the amendment in the petition, to which reference has been made, the Bombay Stock Exchange issued notices on July 8, 1996, in the context of the SEBI's order dated July 4, 1996, and the aggrieved persons were called upon to make written representation to the SEBI. The notices were confined to the members, i.e., members of the Bombay Stock Exchange only. On July 19, 1996, the petitioner Alka Syntheties made a representation to the SEBI in response to the Bombay Stock Exchange notice dated July 8, 1996. On October 17, 1996, notice was given by the SEBI to the petitioner-Alka Syntheties for appearing before the committee on the question of impounding and it was directed to appear on October 31, 1996, on which date the petitioner did not turn up. The special civil application was decided by the learned single judge on February 19, 1997. On March 14, 1997, the present Letters Patent Appeal was filed wherein the interim order was granted in terms of para. 28A by the Division Bench on March 17, 1997, in Civil Application No. 3068 of 1997 staying the order dated February 19, 1997, passed by the learned single judge.

4. In Letters Patent Appeal No. 237 of 1997, arising out of Special Civil

Application No. 5483 of 1996, the original petitioner D.M. Investments is a registered partnership firm having its place of business at Revdi Bazar, Ahmedabad, and so far as this petition is concerned, the factual allegations are as under :

(a) On November 7, 1994, a company called Rupangi Impex Ltd. (for short "RIL") came out with a public issue of 15,37,500 equity shares of Rs. 10 each at a premium of Rs. 5 per share.

(b) The issue was over subscribed by 60 times on the closing date of subscription, i.e., November 10, 1994.

(c) December 3, 1994, RIL started allotment of shares.

(d) On December 12, 1994, the prevailing market price of the shares of RIL at Ahmedabad Stock Exchange was Rs. 90, on December 19, 1994, at the Bombay Stock Exchange, it was Rs. 101.25 and on October 11, 1995, at the National Stock Exchange it was Rs. 345.

(e) Between October 18, 1994, and October 24, 1995, the petitioner with the help of Lloyds Finance Limited and with the help of others purchased in all 94,800 equity shares of RIL and during the same period it sold out 32,900 shares of RIL through Lloyds Brokerage Ltd. As a net result of these transactions, the petitioner was to receive delivery of 61,900 shares in all from RIL through Lloyds Brokerage Ltd., at an average price of Rs. 471.06.

(f) Because of the failure of sellers in honouring their commitment about the delivery of shares the petitioner received only 5,200 shares resulting into transactions for purchase of remaining 56,700 shares, for which the petitioner was to pay a consideration of Rs. 2,67,09,102.

(g) On October 25, 1995, i.e., to say after the date when the petitioner had already entered into transactions of purchase and sale, the Securities and Exchange Board of India (Prevention of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995, were promulgated and brought into force.

(h) During October 26, 1995, to October 27, 1995, the price of the shares of RIL was recorded at Rs. 692 per share at BSE and at Rs. 669 at NSE.

(i) On October 30, 1995, the chairman of the SEBI directed that an investigation about the buying and selling of RIL shares is to take place and it is directed that no notices are to be given to the persons to be investigated. On the same day, i.e., October 30, 1995, the trading in the shares of RIL were suspended until further orders. This order dated October 30, 1995, also permitted the completion of the outstanding transaction as per stock exchange bye-laws.

(j) On November 3, 1995, in pursuance of the directives, as aforesaid, auction was conducted by the National Stock Exchange and it appears that only a meagre number of about 800 shares were offered at auction. In view of this the

NSE froze the price of the shares and decided to close the outstanding transactions at the price of Rs. 565 per share, recorded as on October 24, 1995.

(k) As a direct consequence of this action, undelivered transactions were squared up by the NSE at the price of Rs. 565 per share - the highest recorded price during the trading period from October 18, 1995 to October 24, 1995, instead of taking into consideration the highest price recorded up to the date of squaring up, i.e., from October 18, 1995, to November 3, 1995, which was Rs. 669 per share, which was the highest recorded price as on October 27, 1995, at the NSE and, therefore, the outstanding transactions ought to have been squared up at the said price of Rs. 669 per share.

(l) According to the petitioner, as a result of this exercise an amount of about Rs. 3,20,35,500 was collected in respect of remainder shares i.e., 56,700 shares. Subsequently, out of the aforesaid amount, a sum of Rs. 2,67,09,102 was returned to the petitioner by way of its investment towards remainder shares whereas the differential amount between the transaction price, i.e., Rs. 471.06 per share and the alleged highest price, i.e., Rs. 565 per share, came to be held by the stock exchange in a separate account.

(m) If the correct highest price to the tune of Rs. 669 per share of RIL at the NSE as on October 27, 1995, had been taken into consideration, the difference between transaction price, i.e., Rs. 471.06 per share and the highest recorded price, i.e., Rs. 669 per share would have come to the tune of Rs. 1,12,23,198 which the petitioner could get as a profit on investment.

(n) On November 9, 1995, NSE revised its stand by following the guidelines of the SEBI as also its own guidelines by squaring up the price of shares of RIL at Rs. 669.

(o) On November 28, 1995, the NSE again revised the highest recorded price of RIL from Rs. 669 per share to Rs. 565 per share as on November 28, 1995.

(p) By order dated January 25, 1996, issued by the Executive Director of the SEBI, the monies collected in adherence of circular dated October 30, 1995, were to be transferred to the investors protection fund of the concerned stock exchange. It was recorded that the investigation had been completed and necessary action was being taken against the persons involved in the price manipulation under sections 11B and 24 of the Act for violation of the Regulations of 1995, and the trading in RIL was allowed to continue from January 29, 1996.

(q) The order, as aforesaid, was made without affording any opportunity of hearing and it is alleged that the same has resulted in the forfeiture of its claim to get the difference in price collected by the stock exchange as a result of closing up of the transaction at Rs. 565.

(r) According to the original petitioner in the result of the investigation, which was carried out in pursuance of the direction issued by the Chairman of the SEBI,

vide his order dated October 30, 1995, into the entire affairs of buying and selling or dealing in shares of RIL, the petitioner was not named as a party responsible for alleged manipulated market conditions and nothing objectionable was found against the petitioner nor any statement was made at any stage that necessary actions are contemplated against the petitioner.

(s) On February 24, 1996, the petitioner-company appealed before the Central Government u/s 20 of the Securities and Exchange Board of India Act, but the appellate authority rejected the appeal by its order dated May 22, 1996. However, the appellate authority did not decide the question raised by the petitioner-company that since the Regulations of 1995 were promulgated and came into force after the closing of the trading period, during which the transactions aforesaid were conducted, the same had no application to these transactions, on the ground that the impugned order of transferring the difference price in the investors protection fund was not punitive in character. For the same reason, the appellate authority held that the fact that the petitioners were not granted an opportunity of hearing cannot negate the order passed by the SEBI because the appellants had not suffered any substantial injury.

(t) These two orders, namely, order dated January 25, 1996, passed by the Executive Director of the SEBI and the appellate order dated May 22, 1996, were challenged through Special Civil Application No. 5483 of 1996 in July, 1996.

(u) The special civil application was allowed by the common judgment and order dated February 19, 1997, passed by the learned single judge in the two Special Civil Applications Nos. 2224 of 1996 and 5483 of 1996.

(v) Against this judgment and order dated February 19, 1997, the present Letters Patent Appeal No. 237 of 1997 was filed on March 14, 1997.

(w) On August 14, 1998, i.e., the date on which the arguments were concluded, a note was submitted under the signatures of Mr. Chhatrapati, advocate, placing on record the statement of S. N. Shelat, on behalf of the appellant in the case that the order dated May 22, 1996, passed in appeal by the appellate authority be set aside and the original petitioner be relegated for hearing before the Committee to be appointed by the SEBI to consider as to whether there was any market manipulation on the part of the original petitioner in the case of RIL and as to whether the original petitioner is entitled to any relief.

(x) In this note it was also held out that the committee shall examine the representations of the persons affected by the impounding of the auction proceeds to the extent of the difference between the auction price and the standard rate and the close up proceeds representing the difference between the close out price and the standard rate and further that this committee shall submit a report to the chairman.

(y) That the chairman shall then decide as to whether the original petitioner was guilty of market rigging or market manipulation so as to take undue advantage

of higher prices at the auction and if it is found that the original petitioner was a party to the market rigging or manipulation, the order passed by the chairman, shall stand confirmed and in case it is found that the original petitioner was not in any way associated with the market rigging or market manipulation so as to take undue advantage of the higher prices at the auction, the chairman would pass necessary orders releasing the consequential benefits.

(z) After the order was reserved, a note was submitted on August 18, 1998, on behalf of the original petitioner in response to the statement dated August 14, 1998, made on behalf of the appellant contesting the same, inter alia, on the ground that the learned single judge has already recorded a finding of fact to the effect that the original petitioner was not a party to market rigging or market manipulation.

5. The controversy was triggered between the parties with the issue of the Notice No. 1125 of 1996 dated February 15, 1996, by the BSE, as per the directives of SEBI, which is available at page 284 as annexure "D" in the paper book of L.P.A. No. 236 of 1997 and the order dated July 4, 1996, issued by the SEBI under the signature of its chairman, which is available at pages 285-290 of the same paper book. By the notice dated February 15, 1996, the members of the exchanges were informed that as per the directions issued from the SEBI, the payments due to the members on account of acceptance of their Magan Industries auction offers in auction Notice No. B-20 of 1996, will be retained by the clearing house until the completion of investigation and further decisions in this regard and further that auction in this scrip will not be conducted until further orders, during which period no cancellation in the outstanding auction quantities would be permitted. The order dated July 4, 1996, issued by the SEBI and the contents of para. 3 thereof show that on receiving complaints and other information from the stock exchanges regarding unusual price movement of the scrip, the SEBI had directed the stock exchanges to freeze the proceeds which were received by the exchanges from auctions/closing out the transactions. This was done by the SEBI in order to ensure that if there was any market manipulation, the manipulators should not be in a position to receive ill gotten profits arising out of such market manipulation. Therefore, pending investigations these monies may remain frozen with the exchanges. With regard to the release or impounding of such monies received from auction or close out of transactions by invoking section 11B of the SEBI Act, it was decided and directed, that in respect of the auction proceeds, which have been withheld by the exchange, the difference between the auction price and the standard rate and in respect of the close out proceeds, the difference between the close out price and the standard rate, should not be given to the offerers in the case of auctions and to the buyers in the case of close out proceedings, instead these amounts should be impounded. It was held out that this is a remedial and regulatory measure in the interest of investors and securities market and further that this was also in public interest as it shores up the confidence of the investors and maintains the integrity of the capital market. It was further considered while invoking section 11B of the SEBI Act that for

investors protection, it would be appropriate if the impounded money is transferred to the Investors Protection Fund of the concerned stock exchange. The stock exchange was accordingly directed that on receipt of this order, it may credit the monies impounded to its investor protection fund. The operative part of this order is reproduced as under :

"In view of the above discussion, formal prior hearing has been dispensed with at this stage. It may, however, be mentioned that many of these affected persons had the opportunity of placing their cases to the investigating team which had taken those into account while arriving at its conclusion. It may also be mentioned that some of them had not even availed of this opportunity. In view of this, perhaps no further hearing was needed specially when the decision is of a regulatory and remedial nature. Still to give them further opportunity, I decide that any person who is affected by impounding of auction proceeds to the extent of difference between the auction price and standard rate and the close out proceeds representing the difference between the close out price and the standard rate, may be given an opportunity to be heard. Regarding the opportunity of hearing by SEBI, the intimation will be given by the stock exchange, Mumbai, in the manner usually followed by the exchange. The aggrieved persons may submit a written representation within 15 days to the SEBI on receipt of such intimation by the exchange. It may also be mentioned that the representations received in the SEBI will be dealt with by a committee to be set up by the SEBI. None of the members of the investigation team would be a member on this committee. The committee will submit its report to me for final decision on such representations. To the extent of the acceptance of the representations, the impounded monies would be returned by the stock exchange on receipt of the SEBI's orders."

6. The learned single judge has passed an elaborate order after considering various grounds on which the aforesaid action and the order dated July 4, 1996, was challenged and has come to the conclusion that the SEBI has no authority of law under the existing statute to impound or forfeit the monies received by the stock exchange as concluded transactions for squaring up the outstanding transactions under its procedure and to use for any other purposes, and that the orders also suffer from breach of principles of natural justice which results in making them void ab initio. The learned single judge has found that the orders cannot be sustained and the reliefs could not be denied to the petitioners even on the principles of unjust enrichment. Accordingly, the impugned order dated July 4, 1996, in Special Civil Application No. 2224 of 1996, and the order dated January 25, 1996, in Special Civil Application No. 5483 of 1996, made by the Board as affirmed by the Central Government by its order dated May 22, 1996, have been quashed to the extent they direct impounding of the monies recovered by the respective stock exchanges on the closing transactions.

7. The view taken by the learned single judge and the order passed by him on February 19, 1997, in both these matters has been assailed on grounds more

than one by the appellants including the ground of want of territorial jurisdiction of this court by saying that these special civil applications could not be filed in the High Court of Gujarat. It was urged that no part of the cause of action has arisen within the State of Gujarat. Therefore, before we deal with the other submissions, it may be pointed out that the preliminary objection of the lack of territorial jurisdiction of this court has been considered in great detail in paragraphs 9 to 37 of the impugned order dated February 19, 1997, passed by the learned single judge and the same has been rejected after considering a number of decisions on the point. It is trite law that in determining the objection of lack of territorial jurisdiction the bundle of facts constituting the cause of action as pleaded in the petition have to be considered without embarking upon an inquiry as to the correctness or otherwise of such facts. Besides this both the petitioner-companies are Ahmedabad-based companies, i.e., based in the State of Gujarat and there is no dispute that the investigation as ordered by the SEBI into the affairs of buying and selling and dealing with shares is an integral part of the whole cause of action giving rise to the claim of the writ petitioners and that certainly gives rise at least to a part of cause of action. Such investigation was held in Ahmedabad and the same being the bedrock of the action and the order from which the petitioners are aggrieved, we do not find it necessary to dilate further in view of the provisions contained in article 226(2) of the Constitution of India. We agree with the reasons given by the learned single judge and the view taken by him on the objection about the lack of territorial jurisdiction and find that the same has been rightly rejected as all the aspects including the question of the service of the notice on the petitioner-company at Ahmedabad as also other ancillary questions have been fully dealt with and we fully agree with the view taken by the learned single judge on this question.

8. On the merits of the case, Mr. P. Chidambaram, learned senior counsel appearing on behalf of the appellant SEBI in L.P.A. No. 236 of 1997, has submitted that the order dated July 4, 1996, passed by the SEBI is not at all a final order, it is only an interim order and the proceedings are incomplete. It has been submitted that this order has been passed to preserve the subject-matter till the final decision is taken, that it is only an order in aid of the final order, it is a regulatory order in the course of the decision making process. The SEBI certainly has the power to regulate the stock market and regulating the market includes regulation through prohibitory as well as mandatory orders and it has the incidental powers for the protection of the investors. While making reference to section 11 of the Act, Mr. Chidambaram has submitted that it is the duty of the Board to protect the interests of investors in securities, to promote the development and regulate the securities market by such measures as it thinks fit. It was further submitted that section 11B empowers the SEBI to issue directions. While making a pointed reference to section 11(1) and section 11(2) (e), (g), (h), (i), (j) it was submitted that in due discharge of its functions envisaged under the aforesaid clauses the directions were issued u/s 11B and the order dated July 4, 1996, itself is self-explanatory as to why the issue of this

order had become necessary and whereas the SEBI thought it fit to take such measures for protection of the interests of investors in securities and to regulate the securities market, investigation had to be ordered and the order dated July 4, 1996, had to be passed. Section 11 and section 11B of the Act are reproduced as under for ready reference :

"11. Functions of Board. - (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for -

(a) regulating the business in stock exchanges and any other securities markets; . . .

(e) prohibiting fraudulent and unfair trade practices relating to securities markets; ...

(g) prohibiting insider trading in securities; ...

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

11B. Power to issue directions. - Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary -

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other person referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions, -

(a) to any person or class of person referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market."

9. It was submitted that life and force has to be given to the language of the statute in order to achieve the real object. The view taken by the learned single judge has thus been assailed on grounds more than one. He has also submitted that there was no question of following the principles of natural justice in this case inasmuch as the order passed by the SEBI is neither a penal order nor a final order and according to him it is not at all a case in which it can be said that

the petitioner-company had been unlawfully deprived of any part of its profit. He has also submitted that the measures need not necessarily be the measures prescribed in advance as section 11 only says all measures as the SEBI thinks fit.

10. Mr. S. B. Vakil appearing on behalf of the respondent-company in L.P.A. No. 236 of 1997, has submitted that the SEBI had no jurisdiction to pass the order dated July 4, 1996, so as to impound the money and deprive the company of its property and it is clear violation of article 300A of the Constitution of India, that the order passed by the SEBI is clearly a penal order depriving the company of its earned benefits when it seeks to impound the differential amount u/s 11B read with section 11 and directs the stock exchange to credit the amount to a non-existing investors protection fund, the principles of natural justice ought to have been followed. He has submitted that it is virtually a case of confiscation of the company's money. According to him, the contents of the notice issued by the BSE, i.e., notice dated February 15, 1996, show that it was admitted that the payments had been due to the members and that in any case the SEBI had no authority to pass the impugned orders. He has submitted that even a temporary deprivation of property is covered by article 300A and the word, "law" as used in article 300A means a law made by authority with legislative competence and not by way of administrative action. He has submitted that for the purpose of imposing any penalty or tax, regardless of the fact whether the question arises under a beneficial legislation or remedial enactment, there must be an express authority of law, that there is no rule for intended or implied authority as necessary adjunct of main power by way of ancillary or incidental powers and the existence of law for depriving the property must be of a date prior to deprivation, that there must be specifications for nature of penalty and enabling law/statute does not confer a power or authority to impose a penalty unless such authority is derived by some sort of legislation. He has submitted that impounding of the money is not contemplated as a measure and measure is not a final act as per the meaning of the word, "measure" given in Webster's Dictionary. He has also submitted that when the pre-decisional hearing is required, there is no question of post-decisional hearing.

11. Mr. S. N. Shelat appearing on behalf of respondent No. 2 and Mr. A. H. Mehta appearing for respondent No. 3 have supported the case of the appellant - SEBI in L.P.A. No. 236 of 1997.

12. Mr. S. N. Shelat appearing on behalf of the appellant in L.P.A. No. 237 of 1997 has also argued the case with reference to section 11 and section 11B of the Act and has submitted that the situation in the market cannot be visualised as the stock market is essentially a speculative market. It is, therefore, neither necessary nor possible to lay down any measures in advance. The measures have to be taken by the SEBI as it thinks fit and framing of any regulations is not a condition precedent and even if the power is exercised without framing the Regulations, the action taken in exercise of such powers does not stand vitiated.

13. Mr. M. R. Anand for respondent No. 1 in L.P.A. No. 237 of 1997, has

submitted that while the SEBI had no authority whatsoever to take the impugned action against the company, and pass the impugned order dated January 25, 1996, the minimum requirement of the principles of natural justice have not been followed. He has also submitted that the order dated May 22, 1996, passed by the appellate authority is absolutely illegal and the whole grievance of the company had been examined with a perverse approach. He has submitted that the measure has to precede the action and the measure by itself cannot be an action. The measure has to be approved through legislation and only then the action can be taken. It has been further argued that even if the action and the order passed by the SEBI is not punitive, the question is that it has no power to pass the order and the order passed by the SEBI is wholly without jurisdiction. He has submitted that speculation is a way of life in the stock market and the regulatory power can be exercised only in the manner prescribed. He has submitted that every right is subject to certain restrictions. There was no question of taking the impugned action in the absence of pre-published measures. He has also submitted that the Securities Contracts (Regulation) Act, 1956, is an Act to prevent undesirable transactions in securities by regulating the business of dealing therein by providing for certain other matters connected therewith. Section 16 of the Securities Contracts (Regulation) Act, 1956, empowers the Central Government to prohibit contracts in certain cases when in its opinion, it is necessary to prohibit undesirable speculation in specified securities in any State or area and the same is reproduced as under :

"Power to prohibit contracts in certain cases. - (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal."

14. He also invited the attention of the court to section 33 of the SEBI Act, 1992, with regard to the manner of amendment of certain enactments, which is reproduced as under :

"Amendment of certain enactments. - The enactments specified in Parts I and II of the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board."

15. He made reference to the Schedule u/s 33 and submitted that while making amendment in the Securities Contracts (Regulation) Act, 1956, many sections of it have been amended, but section 16 has not been amended. On the premises, as aforesaid, the argument has been raised that the power to prohibit the contract in certain cases, as has been exercised by the SEBI, could not be

exercised by it as such power rests with the Central Government u/s 16 of the Securities Contracts (Regulation) Act, 1956. This point was not taken in the petition and, therefore, naturally it does not find place in the judgment of the learned single judge. However, this argument is not even available because, vide notification dated July 30, 1992, issued by the Ministry of Finance, Department of Economic Affairs, Government of India, the Central Government in exercise of the powers conferred by section 29A i.e. power to delegate, has directed that the powers exercisable by it under sub-section (5) of section 4, section 7, section 8, section 11, section 12 and section 16 of the said Act shall also be exercisable by the SEBI. This notification dated July 30, 1992, is reproduced as under (see [1992] 75 Comp Cas (St.) 216) :

"S.O. No. 573(E). In exercise of the powers conferred by section 29A of the Securities Contracts (Regulation) Act, 1956, (42 of 1956), the Central Government hereby directs that the powers exercisable by it under sub-section (5) of section 4, section 7, section 8, section 11, section 12 and section 16 of the said Act shall also be exercisable by the SEBI."

16. Besides this, Mr. M. R. Anand has laid great emphasis that so far as the respondent-company in L.P.A. No. 237 of 1997, i.e., D.M. Investments is concerned, as a question of fact, as a result of investigation, as ordered by the SEBI, nothing has been found against it. He has made pointed reference to page 206 of the judgment of the learned single judge wherein the learned single judge has noted that in this case there is no suggestion that the petitioner was at all concerned with the manipulation of the market price even otherwise. Mr. Anand has stressed that on the facts when it is found that D.M. Investments Company was not all concerned with the manipulation of the market price, there was no question of proceeding against it and there was no basis whatsoever to pass the impugned orders against it and yet even the appellate authority has not decided this question and the appeal has been rejected. Mr. M. R. Anand has also submitted that the price of Rs. 692, quoted by the BSE was not objected to by the SEBI but in the case of the respondent D.M. Investments Company the price of Rs. 669, at the NSE in the same city has been objected to and this clearly shows the wholly arbitrary action. He has submitted that in fact an honest investor's money is being given to a dishonest short seller, who is the beneficiary.

17. Learned counsel for the respondents in both the matters have also submitted that there is no question of unjust enrichment or ill gotten gains and the view taken by the learned single judge on this aspect of the matter is unsustainable. In cases where speculation is the way of the stock market, as we have, the rights of the parties cannot be determined on the anvil of moral diktats in the name of windfall gains by saying that it is a case of manipulation of market. One who can speculate the market better in such transactions, may certainly earn and such earned benefits cannot be said to be an unjust enrichment or ill gotten gains and such practice of the market, which is prevailing for years together, cannot be said to be a manipulation or rigging of the market.

18. Both the sides have cited a large number of decisions in support of their respective cases for the purpose of assailing and defending the impugned order rendered by the learned single judge.

19. On the basis of the submissions, which have been made at the Bar in these appeals and after going through the impugned order passed by the learned single judge, we find that the points, which are required to be considered, as common points in both the appeals are as under :

(1) Whether the SEBI has no authority of law under the existing statute to impound or forfeit the monies received by the stock exchanges as the concluded transactions for squaring up the outstanding transactions under its procedure and to use for any other purposes ?

(2) In case it is found that the SEBI has such authority, whether it was required to follow the principles of natural justice before passing the orders dated July 4, 1996, (subject-matter of challenge in Special Civil Application No. 2224 of 1996) and the order dated January 25, 1996 (subject-matter of challenge in Special Civil Application No. 5483 of 1996) ?

(3) Whether the orders passed by the SEBI can be said to be violative of article 300A of the Constitution of India ?

(4) Whether the relief could not be granted to the respondent-companies on the principles of unjust enrichment ?

20. While considering the question as to whether the SEBI has the authority of law under the existing statute to impound or forfeit the monies, we may observe in the very beginning that the learned single judge has approached and decided this question on the basis of the principles of law, which have been laid down by the courts in matters relating to fiscal and taxing statutes and the inhibition against the imposition of levy and collection of any tax and the consequential deprivation of property. In our considered opinion, the very approach and the principles on which this question has been decided by the learned single judge were not at all germane because here is a case in which the court is concerned with the provisions of a comprehensive legislation, which was enacted to give effect to the reformed economic policy investing the SEBI with statutory powers to regulate the securities market with the object of ensuring investors' protection, the orderly and healthy growth of the securities market so as to make the SEBI's control over the capital market to be effective and meaningful. The SEBI Act is an Act of remedial nature and, therefore, the present cases could not be compared with the cases relating to the fiscal or taxing statutes or other penal statutes for the purposes of collection and levy of taxes, etc. As and when new problems arise, they call for new solutions and the whole context in which the SEBI had to take a decision, on the basis of which the impugned orders were passed cannot be said to be without authority of law in face of the provisions contained in section 11 and section 11B of the Act. As the language of section 11(1) itself shows and as the matters for which the measures can be taken are

provided in sub-section (2) of section 11. It is clearly made out by a plain reading of the language of the section itself that the SEBI has to protect the interests of the investors in securities and has to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section (2) of section 11 and in due discharge of this duty cast upon the SEBI as a part of its statutory function, it has been invested with the powers to issue directions u/s 11B. In the instant case, the SEBI did order an inquiry as is manifest from the contents of the order dated July 4, 1996, and it found that it was necessary to issue the directions contained therein. The order dated July 4, 1996, is self-explanatory with regard to the reasons for which such direction had to be issued and this also cannot be said that these directions were issued without any application of mind. Thus, so far as the authority of law in the SEBI to issue such directions is concerned, such authority to take measures as it thinks fit is clearly discernible on the basis of the provisions contained in section 11 read with section 11B of the SEBI Act. Merely because in section 11(2) it is provided that, "the measures referred to therein may provide for" cannot be taken to mean that such measures have to be laid down in advance. It is a matter of common knowledge that the SEBI has to regulate a speculative market and in the case of a speculative market varied situations may arise and all such exigencies and situations cannot be contemplated in advance and, therefore, looking to the exigencies and the requirement, it has been entrusted with the duty and function to take such measures as it thinks fit. Thus, the measures cannot be laid down as a one time exercise to be followed in defined cases. The SEBI has to rise to the occasion for taking appropriate measures to combat even such situations in the speculative market, which may or may not be conceived in advance. We have to, therefore, consider and interpret the power of the SEBI under the provisions so as to see that the objects sought to be achieved by the Act is fully served, rather than being defeated on the basis of any technicality. Instead of general principles of law in such cases we have to consider the matter on first principles. The first principle is that the provisions of an Act have to be given a meaning so as to advance the object sought to be achieved by that Act. The duty and function had been entrusted to take such measures as it thinks fit and in order to discharge this duty, the power is vested u/s 11B. In such a situation it cannot be said that there was no authority of law with the SEBI to take appropriate measures. Now the question arises as to whether such measures should essentially be provided and published in advance. No one can be expected to do any task which is impossible and whereas we have already observed that the measures have to be taken to meet a particular eventuality, which may or may not be conceived earlier, there is no question of laying down such measures in advance and publishing the same. Thus, there is an authority under law to take the measures and merely because the measures have not been laid down in advance and published, it cannot be said that SEBI had no authority under law to issue the directions, as contained in the impugned orders. The authority has been given under the law to take appropriate measures as it thinks fit and that by itself is sufficient to clothe the

SEBI with the authority of law. In *Corpus Juris Secundum* at page 477 the word, "measure" has been given the following meaning :

"Anything devised or done with a view to the accomplishment of a purpose; a plan or course of action intended to obtain some object; any course of action proposed or adopted by a Government."

21. This court finds that the decision taken by the SEBI as contained in the impugned order dated July 4, 1996, is certainly a measure for accomplishment of the requisite purpose and the order manifests the course of action intended to achieve the required object and the said course of action has been adopted by the SEBI. Even the Regulations of 1995 of the SEBI provide for ancillary measures. Reference may be made to regulation 11 with regard to the powers of the Board to issue directions and regulation 12 specifying the purpose of directions. These regulations 11 and 12 are reproduced as under :

"11. Power of the Board to issue directions. - The Board may, after consideration of the report referred to in regulation 10, and after giving a reasonable opportunity of hearing to the person concerned, issue directions for ensuring due compliance with the provisions of the Act, Rules and Regulations made thereunder, for the purposes specified in regulation 12.

12. Purpose of directions. - The purposes for which directions under regulation 11 may be issued are the following, namely :-

(a) directing the person concerned not to deal in securities in any particular manner;

(b) requiring the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;

(c) prohibiting the person concerned from disposing of any of the securities acquired in contravention of these regulations;

(d) directing the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the status quo ante."

22. The learned single judge has examined the scope of these regulations in paragraphs 213 to 223 and has concluded that these provisions have nothing to do with the authority of the Board in issuing directions to impound the sale proceeds on a completed transaction. The learned single judge has examined the scope of this regulation in the context of the power to impose penalty or punishment for breach of Regulations and according to the view taken by him, it cannot be considered to be a part of the power to the Board to take measures as it thinks fit for achieving its objects and that even the power for framing Regulations and taking legislative measures are also subject to the provisions of the Act and Rules and, therefore, according to the learned single judge in the

occupied field of legislation by the statute itself or the Rules, the Board's authority to frame Regulations are also restricted. In our considered opinion, there is no question of any punishment or penalty involved in the measures as has been decided to be taken by the SEBI, for the simple reason that the tenor of the order clearly shows that it is only an interim measure to preserve the main subject-matter. In the absence of such measures, if the sale proceeds are allowed to be taken away by the concerned parties despite the manipulation and rigging found as a result of investigation, the SEBI will simply be rendered to be a helpless spectator later on. In our opinion, the measures taken by the SEBI neither entail any penal consequence as such or a punishment nor can it be said to be a forfeiture of the money. It is only a case of withholding money for a certain period till the final decision is taken. Withholding of such money temporarily for a certain period or to transfer any amount in the investors protection fund as proposed and decided by the SEBI, cannot be said to be penalty as such. May be that, earning a windfall profit is not prohibited under any law and as observed by the learned single judge, even a treasure finder is entitled to retain the same or share with the occupier of site from where it is recovered for himself and further that even if the State wants to acquire the same, it has to acquire the same as per the provisions of the Treasure Trove Act, but that does not mean that any profit, which is earned by the manipulators of the market, should be allowed to be taken away during the pendency of an inquiry as to whether it was a case of manipulation or rigging of the market or not. On the contrary, we find that it is only to prevent and put a check over the manipulation and rigging of the market when it has been noticed that in the course of trading activity of the share fraudulent or manipulative practices have been adopted.

23. We do not find it necessary to overburden the judgment with the consideration of series of authorities relied upon in this regard by the parties and the decisions, which have been taken note of by the learned single judge because in our opinion the decisions relating to fiscal and taxing statutes and the principles, which have been decided in such cases are not applicable for the purpose of tracing the powers of the SEBI to take such measures as it thinks fit in the matters relating to controlling the capital market. We find that the SEBI had ample authority of law under the existing statutes to take action as has been taken by it. The impounding or forfeiture of the money received by stock exchanges as per the concluded transactions for squaring up the outstanding transactions etc. are all steps in aid. On the basis of the settled principles of interpretation of statutes right from Heydon's case [1584] 3 Co. Rep 7a the construction has to be given so as to suppress the mischief and advance the remedy and to suppress the subtle inventions and evasions for continuance of the mischief, and "pro privato commodo" and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, "pro bono publico". The SEBI has only taken a remedial measure to ascertain the evils and the directions have been issued to preserve the subject-matter of dispute till the

final decision is taken. The first point formulated by us is, therefore, answered in favour of the appellants and it is held that the SEBI had the authority of law to take measures under the provisions to which reference has been made hereinabove.

24. The second question is whether the SEBI was required to follow the principles of natural justice before passing the orders, which were the subject-matter of challenge in the special civil applications. Once we have held that the SEBI had the authority of law to take appropriate measures, the question arises whether it was obligatory to follow the principles of natural justice before passing the orders dated July 4, 1996, and January 25, 1996. In this regard, serious controversy has been raised with regard to the question of pre-decisional and post-decisional hearing. The learned single judge has dealt with this question in paragraphs 238 to 264 of the judgment and has held that the impugned orders suffer from the vice of procedural unfairness inasmuch as they have been made in breach of principles of natural justice. Even after taking notice of the principles decided in several cases, which have been relied upon by the learned single judge, we have not been able to persuade ourselves to agree with the view taken by the learned single judge for the simple reason that following of the principles of natural justice is necessary only when an order is passed so as to take away an earned benefit or when an order is passed entailing penal consequences to the prejudice of a person or party. For this purpose, we may straightaway point out that when prompt action is required to be taken to check the mischief, the necessary orders may be passed and the parties may be heard at a subsequent stage before passing the final order. The orders, which have been passed in the instant case by the SEBI, cannot be said to be orders of final nature so as to impose any penalty. It may also be noted that the parties had an opportunity in the facts of this case during the course of investigation as ordered by the SEBI and the orders impounding the auction proceeds to the extent of difference between the auction price and the standard rate and the close out proceeds representing the difference between the close out price and the standard rate were only of provisional nature so that the final action is saved from being futile or infructuous. Orders are of ad interim nature and if the SEBI had the authority to pass such final orders under law, it could certainly pass the orders of ad interim nature to preserve the subject-matter of controversy. It goes without saying that in appropriate cases even judicial orders are passed in the first instance without hearing the parties against whom the ad interim order is passed and, thereafter, when the parties appear, the final orders are passed after hearing both the sides. In the facts of this case, this is exactly what the SEBI has done and it has been mentioned in the operative part of the order, which is reproduced in the end of para. 4 in the earlier part of this judgment that the intimation was to be given by the SEBI with regard to the opportunity of hearing and the aggrieved persons could submit detailed representation and such representations were to be dealt with by a committee to be set up by the SEBI and the committee was to submit a report for final decision on such representation and further that to the extent of

the acceptance of the representation the impounded monies would be returned by the concerned stock exchange on receipt of the SEBI's order. It is, therefore, clear that final orders are to be passed only after hearing the concerned parties and after considering their representations by the committee set up by the SEBI. The very nature of the orders passed by the SEBI, which were impugned by the respondents before the learned single judge, shows that the orders were of interim nature, no finality is attached to the action taken by the SEBI at this stage and hence it cannot be said to be a case in which the money stood impounded or forfeited finally. In this view of the matter, the orders cannot be said to be the orders so as to take away any earned benefit for all times to come or an action to the prejudice of any party entailing any penal consequences for all times to come. In the absence of any express provision making it obligatory for the SEBI to hear the parties before taking such measures, it cannot be successfully argued that it must have followed the principles of natural justice before passing the impugned orders. It was not a case either of inflicting any penalty or a case of levy of tax on profit or a case of penultimate order and, therefore, there was no obligation on the SEBI. The learned single judge himself has noted in para. 253 of this judgment that in case where there is no specific requirement of pre-decisional hearing, post-decisional hearing has been countenanced, not as a rule, but only in exceptional circumstances like the one where pre-decisional hearing may frustrate the very purport of prompt action. In the facts of the present case, the SEBI had to rise to the occasion to take prompt action and pass the impugned orders, lest the very purpose of taking such action would have been frustrated. Had the parties taken away the amount of difference the whole exercise would have been rendered to be futile. It is not a case in which the consequence of the orders passed by the SEBI could not be undone completely at a subsequent stage after hearing the parties or that the situation could not be salvaged completely in their favour if they were able to satisfy the committee concerned in their favour. In para. 256 of the judgment, the learned single judge while referring to section 11B of the Act has observed that the very fact that before issuing directions an inquiry is required to be made and conclusions are to be reached, necessarily implies a pre-decisional hearing before the conclusion of the inquiry and that section 11B by itself does not exclude the application of rules of natural justice nor speak about giving post-decisional hearing. The learned single judge has also made reference to certain rules and regulations and the inquiry to be held. In our opinion, implication has been construed by the learned single judge on the basis of the use of the word, "inquiry" and, therefore, an implied pre-decisional hearing is not correct. Merely because of the use of the word, "inquiry" in section 11B it cannot be said that the pre-decisional hearing is implied. Section 11B is essentially a power to issue directions after inquiry and, therefore, at the time of issuing the directions of ad interim nature it cannot be assumed that the pre-decisional hearing has to be given and in our opinion, on the basis of the use of the word "inquiry" the requirement of pre-decisional hearing cannot be read as implied, much less to say that the pre-decisional hearing is a statutory requirement or that in the

absence of it there will be a case of procedural unfairness at the stage of issuing directions of ad interim nature.

25. We are alive to the fact that the tendency of the courts at present is to apply the rules of natural justice to a very wide range of decision making process, but the clue to the application of principles of natural justice is to be found in the nature of the decision to be made, the duty of the concerned body to act and the manner and the extent to which the rights or interests of the other party are affected. In our opinion in the cases of following nature the principles of natural justice stand excluded :

A. Decision as a prelude to taking further proceedings in the course of which the party concerned will have an opportunity to be heard, e.g., ex parte injunctions, search warrants, seizure of goods, the cases of preventive detention, etc.

B. Cases of collection of evidence to be used later on in the making of a decision.

C. When any preliminary order is drawn during an interval only and for a limited period and purpose at hand.

D. The cases in which the body having the power to pass the final orders is also charged with the duty under the statute to strike a balance between the rights of the parties and the object sought to be advanced and achieved by the statute under which it seeks to function.

E. The cases in which the effect of the ex parte orders may be undone or the mischief caused is capable of being salvaged later on after hearing the concerned party.

F. Where for ends of public policy the practical considerations demand or for reasons of expediency and promptitude, an immediate action is required to be taken to save the ill or evil object from reaching the point of no return.

26. Therefore, we have no hesitation in holding that the courts must be very slow to read, construct and enforce an implied obligation to follow natural justice even in cases of bodies dealing with the property rights particularly when the activity is only a trading activity based on speculation in a market controlled by such body under law. In our opinion the present case is certainly a case of this nature.

27. Keeping in view the position of law, as aforesaid, and that there was no statutory requirement of pre-decisional hearing and keeping in view the contents and the nature of the impugned orders, we are of the opinion that it was not obligatory on the part of the SEBI to follow the principles of natural justice before passing the impugned orders dated July 4, 1996, and January 25, 1996, and thus we answer question No. 2 in favour of the appellants.

28. So far as the third question with regard to the orders being violative of article 300A of the Constitution of India is concerned, it will be sufficient to say that firstly the respondent-companies have not been deprived of any part of their

property as such. It is only a case of not allowing a party to take away the money claimed to have been earned by it in a speculative market controlled by the SEBI for the time being till a decision is taken on the basis of the investigation ordered by the SEBI. Question No. 1 regarding the SEBI's authority under law under the existing statutes has already been answered in favour of the appellants and, therefore, it cannot be said to be a case of deprivation of a property without authority of law. Once it has been held that the SEBI had the authority of law to pass the impugned orders, there is no question of invoking article 300A of the Constitution of India, as even if it is taken to be a case of depriving of property for the time being, it is not a case of doing so without authority of law and, therefore, this third question formulated by us is answered against the respondent-companies.

29. On the fourth question relating to unjust enrichment a lot of controversy has been raised. Whether in fact it is a case of unjust enrichment or not, it is certainly a case of making money out of money without putting or investing anything more except the speculation and buying and selling shares and this activity is subject to the control of the SEBI under law. The question of unjust enrichment is yet to be finally considered and decided by the SEBI. At this stage, the SEBI has only passed orders of interim nature pending final order. The learned single judge has dealt with the question of unjust enrichment in paras. 267 to 277 and has come to the conclusion that the relief could not be denied on the anvil of doctrine of unjust enrichment. The learned single judge has made reference to the collection of taxes under the Excise Act and statutes relating to sales tax laws etc. In our opinion, notwithstanding the question of unjust enrichment by the respondent-companies or otherwise, the relief could not be granted to the respondent-companies for the simple reason that the SEBI had not exceeded its powers under law while passing the impugned orders, the impugned orders had been passed in due exercise of its authority under law and we have already held that the impugned orders passed by the SEBI do not suffer from want of authority. The SEBI had the authority to pass such orders under the existing statutes, it was not necessary to follow the principles of natural justice at this stage and there is no question of violation of article 300A of the Constitution of India and, therefore, the relief could not be granted to the respondent-companies in the facts and circumstances of this case, regardless of the question of unjust enrichment or otherwise and the fourth question is, therefore, answered in the terms, as aforesaid.

30. In view of the conclusions arrived at by us with regard to the four points formulated by us the order dated February 19, 1997, in so far as quashing the orders dated July 4, 1996, in Special Civil Application No. 2224 of 1996 and dated January 25, 1996, in Special Civil Application No. 5483 of 1996 are concerned passed by the learned single judge cannot be sustained in the eye of law and the same is set aside.

31. As a consequence Letters Patent Appeal No. 236 of 1997 (in Special Civil

Application No. 2224 of 1996) is hereby allowed. No order as to costs.

32. So far as Letters Patent Appeal No. 237 of 1997 (in Special Civil Application No. 5483 of 1996) is concerned, it may be observed that nobody had appeared on behalf of respondent No. 2, the appellate authority, to defend the order dated May 22, 1996, passed by the Central Government and on behalf of the appellant SEBI a note was submitted on August 14, 1998, i.e., the date on which the arguments were concluded. This note submitted on behalf of the SEBI is reproduced as under :

"IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Letters Patent Appeal No. 237 of 1997, in Special Civil Application No. 5483 of 1996.

Mr. S. N. Shelat, on behalf of the appellant herein states that the impugned order dated May 22, 1996, passed in appeal be set aside and that the respondent (original petitioner) be relegated for hearing before the committee to be appointed by the SEBI to consider the case from the angle whether there was any market manipulation on the part of the respondent in the case of Rupangi Impex and whether or not the respondent was entitled to any relief more specifically mentioned hereinbelow.

That the said committee examines the representations of the persons affected by the impounding of the auction proceeds to the extent of the difference between the auction price and the standard rate and the close out proceeds representing the difference between the close-out price and the standard rate.

That the committee shall submit a report to the chairman on the said representations.

That the chairman shall then decide as to whether the respondent (original petitioner) was guilty of market rigging or market manipulation so as to take undue advantage of higher prices at the auction.

That if it is found that the respondent (original petitioner) was party to market rigging or market manipulation, the order passed by the chairman shall stand confirmed.

That if it is found that the respondent (original petitioner) was not in any way associated with market rigging or market manipulation so as to take undue advantage of higher prices at the auction, the chairman would pass necessary orders releasing the consequential benefits entitled by the respondent.

B. H. Chhatrapati".

33. After the order was reserved a note was submitted on behalf of respondent, i.e., original petitioner on August 18, 1998, and the same is also reproduced as under :

"IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Letters Patent Appeal No. 237 of 1997, in Special Civil Application No. 5483 of 1996.

Response of the respondent to the written statement of Mr. S. N. Shelat, made on behalf of the appellant on August 14, 1998.

Mr. Kamal Trivedi, advocate, on behalf of the respondent submits that there is no question of relegating the respondent for hearing before the committee for the purpose of investigating as to whether there was any market manipulation on the part of the respondent.

(i) This is because of the fact that a thorough investigation in this behalf was already conducted, final report was submitted to the chairman as mentioned on pages Nos. 11, 15, and 37 of the original petition record and nothing objectionable was found against the respondent.

(ii) During the course of arguments before the learned single judge, the aforesaid aspect of the matter was categorically argued and the respondent also called upon SEBI to produce the report of the investigation for the kind consideration of this court, but for the reasons best known to the SEBI, the said report was not produced.

(iii) Ultimately, the learned single judge recorded the finding of fact on pages Nos. 45 and 206 of LPA record to the effect that the respondent was not a party to market rigging or market manipulation.

(iv) A similar request of offering a post-decisional hearing was also made on behalf of the SEBI before the learned single judge as discussed (See pages Nos. 179 and 192 of LPA record) which was negated by holding that the post-decisional hearing is not a cure where pre-decisional hearing is a statutory requirement and the impugned order must stand or fall on what has been stated therein without supplying any additional reasons or facts not flowing from the order itself. (See page No. 199 of LPA record).

(v) In view of the above, as per the say of the SEBI itself; consequential benefits may be released to the respondent.

Place : Ahmedabad,

Date 18-8-1998.

(Sd.) Kamal B. Trivedi, Advocate for the respondent".

34. In this view of the matter, the order dated May 22, 1996, passed against the respondent-company (D.M. Investments) by the appellate authority is hereby set aside and the respondent-company, i.e., original petitioner in Special Civil Application No. 5483 of 1996 is relegated for hearing before the committee appointed by the SEBI and it is directed that the said committee shall examine the case of the respondent original petitioner (D.M. Investments) on the basis of the representation, if any, and/or otherwise on the basis of the final report

already given as a result of investigation, with due regard to the observations made by the learned single judge in para. 56 at pages 44-45 and para. 275 at pages 204-208 (relevant observations at page 206) of the judgment and order dated February 19, 1997, passed by the learned single judge. The committee shall submit its report to the chairman within a period of one month from today and the chairman shall thereupon pass the final orders in accordance with law within a period of two weeks thereafter. Letters Patent Appeal No. 237 of 1997 (in Special Civil Application No. 5483 of 1996) is partly allowed in the terms, as aforesaid. No order as to costs.