

PVR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 530 OF 2023

Ashok Dayabhai Shah And Ors. ..Petitioners
Versus
Securities And Exchange Board of India And Ors. ..Respondents

**WITH
WRIT PETITION NO.447 of 2023**

Pina Pankaj Shah ..Petitioner
Versus
Securities And Exchange Board of India ..Respondents

Ms. Arti Raghavan, Mr. Vikram Raghani, Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar, Mr. Deepank Anand and Mr. Shourya Tanay i/b JSAAdvocates & Solicitors, for Petitioner in WP/530/2023.

Mr. Gaurav Joshi, Sr. Adv. a/w Ms. Garima Mehrotra, for Petitioner in WP/447/2023.

Mr. J. J. Bhatt, Sr. Adv. a/w Mr. Mihir Mody and Mr. Arnav Misra i/b K. Ashar & Co. for Respondent No. 1 in WP/530/2023.

Mr. Vishal Kanade with Mr. Mihir Mody and Arnav Misra i/b K. Ashar & Co., for Respondent No. 1 in WP/447/2023.

Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika Indapurkar and Mr. Manas Kotak i/b Shardul Amarchand Mangaldas & Co., for Respondent No. 2 in WP/530/2023.

Mr. Ashish Kamat, Sr. Advocate with Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika Indapurkar and Mr. Manas Kotak i/b Shardul Amarchand Mangaldas & Co., for Respondent No. 2 in WP/447/2023.

Mr. Rahul Narichania, Sr. Adv. a/w Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika Indapurkar and Mr. Manas Kotak i/b Shardul Amarchand Mangaldas & Co., for Respondent No. 7 & 8 in

WP/530/2023.

Mr. Janak Dwarkadas, Sr. Adv. a/w Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika Indapurkar and Mr. Manas Kotak i/b Shardul Amarchand Mangaldas & Co., for Respondent No. 9 in WP/530/2023.

Mr. Ameya Gokhale, Mr. Vaibhav Singh, Ms. Radhika Indapurkar and Mr. Manas Kotak i/b Shardul Amarchand Mangaldas & Co., for Respondent No. 7, 8 & 9 in WP/447/2023.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 01 DECEMBER, 2023.

ORAL ORDER : (Per G. S. Kulkarni, J.)

1. Today the proceedings are before us on the backdrop of our detailed order dated 23 October 2023 by which we had directed the SEBI to provide documents to the petitioners as prayed for in prayer clause (g) of the petition.

2. Such order was assailed by respondent Nos.2 – Bharat Nidhi Ltd. (for short, “BNL”) and by respondent No.9 – Vineet Jain before the Supreme Court. Such Special Leave Petitions [(Civil) Diary No.45529 of 2023, *Bharat Nidhi Ltd. Vs. Ashok Dayabhai Shah & Ors.*] and [(Civil) Diary No.45770 of 2023 (*Vineet Jain Vs. Ashok Dayabhai Shah*)] were dismissed by the Supreme Court by an order dated 6 November 2023.

3. Thereafter respondent no.1-SEBI had filed a Special Leave

Petition before the Supreme Court [*Petition(s) for Special Leave to Appeal (C) Nos.25783-25784/2023, Securities and Exchange Board of India vs. Ashok Dayabhai Shah & Ors.*] assailing the said order, which also came to be dismissed by the Supreme Court by an order dated on 28 November, 2023.

4. After our order dated 23 October 2023 passed against the respondents which attained finality in view of the Special Leave Petitions filed on behalf of the private respondents being dismissed by the Supreme Court, there were substantive developments in the proceedings, which are referred in the subsequent part of this order and on which we have extensively heard the parties on 29 November 2023, as recorded by us in our order passed on the even date, for the present order to be passed.

5. The petitioners in these two writ petitions are minority shareholders of respondent no.2-Bharat Nidhi Ltd. (for short, “**BNL**”). They had made various complaints to respondent no.1-SEBI of violation by BNL of various provisions of securities laws, including violations pertaining to the Minimum Public Sharing Norms (**MPS**) as also serious violations in respect of the promoter’s disclosure in the BNL’s shareholdings. The petitioners contend that the complaints as made by the petitioners were subject matter of investigation by the SEBI. It is the petitioners case that neither the investigation report nor any other relevant

documents in such regard were supplied to the petitioners, despite the fact that the petitioners were shareholders of the BNL. It is the petitioners' case that on such investigation, SEBI issued a show cause notice to respondent no.2-BNL. However, copy of the same was not furnished to the petitioners. It is their case that the SEBI at the behest of respondent nos.2 to 9 there is a farce of proceedings against respondent Nos.2 to 9. The approach of the SEBI is as if such proceedings are required to be held 'in camera' and that all materials / documents pertaining to such proceedings as initiated by SEBI against respondent nos. 2 to 9 are privileged documents. The petitioners contend that such approach can never be adopted by a public body like SEBI.

6. The petitioners have contended that BNL was earlier listed on the Delhi Stock Exchange and after the same ceased to be functional, BNL had sought listing of its shares at the Calcutta Stock Exchange which is also not functional. It is stated that BNL is now on the Dissemination Board of the National Stock Exchange.

7. On such conspectus, the case of the petitioners is to the effect that there is a severe prejudice caused to the petitioners due to several illegalities committed by BNL, at the instance of the majority shareholders who are respondent Nos.3 to 9. The petitioners have contended that they are the victims of BNL not being listed on a recognized stock exchange,

which has severely affected their interest as investors in BNL. The petitioner contend that BNL is a majority shareholder of a reputed company known as Bennett, Coleman & Co. Ltd. (for short '**BCCL**') in which BNL and respondent Nos.3, 4, 7 to 9 had approximately 68% shareholding. It is also the case of the petitioners that there are several reasons for BNL to resort to such illegalities of suppression, to the prejudice of the petitioners and of the nature as complained by them, namely, the violations of the Minimum Public Sharing Norms (**MPS**) and violation of the promoter shareholding, as per the SEBI norms.

8. As noted above, SEBI considering such illegalities had issued a show cause notice dated 28 October 2020 to respondent No.2 - BNL and respondent Nos. 3 to 9, however, before the show cause notice(s) could be taken to its logical conclusion, respondent No.2 to 9 had moved an application for settlement of the show cause notice(s), by invoking the provisions of the Securities and Exchange Board of India (Settlement Proceedings) Regulation, 2018 (for short '**2018 Regulations**'). The petitioners have contended that the complaints subject matter of the show cause notice, could never have been subjected to any settlement as according to the petitioners gross violation of the provisions of the rules and regulations can never be settled. In such circumstances, the petitioners interalia assailing the settlement order passed by the SEBI had filed these

petitions, the prayers in which are similar.

9. The prayers as made in the writ petition No. 530 of 2023 can be noted which read thus:-

“(a) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records of the settlement proceedings in respect of Respondent No.2 (culminating into the Impugned Settlement Order passed in respect of Respondent Nos. 2 to 9), and after going into the legality and validity of the same, to quash or set aside the Impugned Settlement Order (Exhibit A).

(b) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India, ordering and directing SEBI to withdraw and cancel the Impugned Settlement Order passed in the matter of Respondent No. 2 (Exhibit A).

(c) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing SEBI to take the necessary and appropriate steps to ensure that full and true disclosure as required under the applicable securities laws is made in respect of the actual promoter holding of Respondent Nos. 2; and further ordering and directing SEBI to ensure all consequential compliances with securities laws, including but not restricted to compliance with MPS Norms by Respondent Nos. 2 to 9.

(d) That this Hon’ble Court be pleased to declare as illegal and void, all actions taken by the Respondents (by themselves, or through their subordinate officers, servants and agents) pursuant to the Impugned Settlement Order, including the 2022 Postal Ballot Notice (Exhibit B);

(d1) That, in respect of Respondent No.2, this Hon’ble Court be pleased to declare that by virtue of Regulation 28(1) of the Settlement Regulations the Impugned Settlement Order stands statutorily and automatically revoked;

(d2) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India,

ordering and directing SEBI to restore the regulatory proceedings against Respondent No.2 with respect to which the Impugned Settlement Order was passed (and conclude the same expeditiously).

(e) That pending the hearing and final disposal of the present Petition this Hon'ble Court be pleased to stay the effect and operation of the Impugned Settlement Order (Exhibit A);

(f) That pending the hearing and final disposal of the present Petition this Hon'ble Court be pleased to stay the 2022 Postal Ballot Notice (Exhibit B);

(g) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to direct SEBI to produce copies of the Investigation Report, Show Cause Notices, minutes of meetings of the IC Committee, HPAC and Panel of WTMs, order/communication/noting vide which the settlement application filed by Respondent Nos. 2 to 9 was approved by SEBI and all other documents relevant to the proceedings in connection with the Impugned Settlement Order;

(g1) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to order and direct SEBI to forthwith restore the regulatory proceedings against Respondent No. 2 with respect to which the Impugned Settlement Order was passed (and conclude the same expeditiously).

(h) Ad-interim reliefs in terms of prayer clauses (f), (g) and (g1) above.

(i) For costs; and

(j) For such further and other reliefs as the nature and circumstances of the case may require.”

10. As noted above during the course of adjudication proceedings of these petitions, the petitioners had urged that the SEBI be directed to provide documents to the petitioners as prayed for in prayer clause (g). Such prayer made by the petitioners was met with vehement opposition not only on behalf of the SEBI – respondent No.1 but also respondent Nos.2 to 9. Considering the rival contentions as also the

provisions of the 2018 Regulations, and considering the plea of confidentiality as raised on behalf of the respondents under Regulation 29, this Court in its order dated 23 October 2023 *interalia* observed, that by no stretch of imagination, could it be said that the petitioners in the present case, who were minority shareholders and in such capacity, being part owners of the company (BNL), to the extent of their shareholding, were not outsiders / alien to the company, and that they were integral to the company, having an inextricable concern and interest in the functioning and management of the company. The relevant observations in that regard are required to be noted which read thus:-

“28. This apart what is further significant is that the bar as contained in Regulation 29 is only for such information not to be released, “to the public”. By no stretch of imagination, can it be said that the petitioners in the present case, who are minority shareholders and in such capacity, being part owners of the company to the extent of their shareholding, are persons who are alien/outside to the company (BNL), moreover they are integral to the company, having an inextricable concern and interest in the functioning and management of the company. Thus the word ‘public’ as used in Regulation 29 can in no manner be made attributable to shareholders of BNL like the petitioners. This apart, if such contention as urged on behalf of the respondents that the petitioners are ‘public’ and therefore, they are not entitled to receive information by the applicability of Regulation 29, if accepted, the same yardstick and parameters become applicable to respondent Nos.3 to 9, who are also shareholders of BNL, who are hence not a different class, than that of the petitioners. The petitioners as also respondent Nos.3 to 9 belong to the same species as shareholders. It thus cannot be countenanced that some shareholders can take shelter under Regulation 29 to plead confidentiality of settlement information, against a group of other shareholders, so as to bring about an

effect that information in relation to settlement be not supplied to such persons of their own class who are similarly situated. No shareholder can take a position that he cannot disclose any information on the affairs of the company to other shareholders. This would bring about a situation of disharmony, distrust causing damage to the management and functioning of the company. Also such proposition as urged by the private respondent if accepted, would amount to doing violence to Regulation 29 and would result in a patent absurdity.

29. Thus none of the contentions as urged on behalf of respondent nos.2 to 9 in opposing the prayer of the petitioners to furnish documents would persuade us to hold that there was any embargo legal and/or factual for such documents not to be furnished/supplied to the petitioners. The objection of such respondents that the petitioner ought not to have raised such plea on the documents at the midst of the final hearing, as this itself would show that no prejudice was caused to the petitioners, in our opinion, is certainly not a tenable contention, for more than one reason. Firstly on such case the petitioners have made a specific interim prayer as noted by us above. They have also supported such prayer, by pleading a case of a serious prejudice being caused to them in the capacity of being the shareholders of BNL. It is also not the case that they had in any manner given up their case on their necessity and entitlement to have such documents. In any event, the petition is being heard finally at the admission stage, which would not mean that a situation is brought about, that the specific contentions on documents, as urged by the petitioners and subject matter of specific prayers would stand given up by the petitioners much less on the law would understand. Moreover, as observed above, the case of the petitioners is that the very basis of the SEBI undertaking investigation on the complaints as made by the petitioners of BNL violating the rules, regulations and norms as prescribed by SEBI, being violated by BNL and the same forming subject matter of investigation by SEBI and the resultant show cause notice were foundational facts, hence, in such context, it was the petitioners' entitlement to receive all the documents in that regard. Such documents therefore have all relevancy as law would contemplate in the present lis between the parties. Thus, the impression of respondent nos.2 to 9 that the petitioners should not be provided with such documents, is not acceptable.

Once it is the entitlement of the petitioners in law to receive such documents, they need to be furnished such documents, unless furnishing of these documents would stand prohibited in law, which is certainly not a situation in the present facts.

30. We may also add that the regulations are framed under the SEBI Act, 1992. The avowed object and intention of the Act is to protect the interests of investors in securities and to promote the development of, to regulate the securities market. Thus, all actions which are taken by the SEBI and through the various bodies as constituted under the Act and the regulations are required to act considering the paramount interest of the investors. For such reasons as well, we do not find as to why the petitioners ought not to be entitled to the documents. We do not find that there is any impediment whatsoever in law or otherwise for the documents, as demanded, to be supplied to the petitioners.”

11. Thus, on the aforesaid observations we had directed that the documents, subject matter of prayer clause (g) of the petition be provided to the petitioners.

12. As noted above, our order dated 23 October 2023 was initially assailed before the Supreme Court by respondent no.2-BNL in the proceedings of Special Leave Petition (Civil) Diary No.45529 of 2023 (*Bharat Nidhi Ltd. Vs. Ashok Dayabhai Shah & Ors.*) and by respondent no.9 Special Leave Petition (Civil) Diary No.45770 of 2023 (*Vineet Jain Vs. Ashok Dayabhai Shah*) which came to be dismissed by an order dated 6 November 2023 passed by the Supreme Court. The said order reads thus:-

“Special Leave Petition (Civil) Diary No(s). 45770/2023

(Vineet Jain Vs. Ashok Dayabhai Shah)

ORDER

1 Mr C A Sundaram, senior counsel, states that all material which is directed to be disclosed by the High Court shall be used only for the purpose of the proceedings pending before the High Court and shall not be disseminated to any third party.

2 Since the impugned orders of the High Court are purely of an interlocutory nature, we are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

3 However, the parties would be at liberty to pursue their remedies in accordance with law on all counts after the final judgment of the High Court.

4 The Special Leave Petitions are dismissed.

5 Pending applications, if any, stand disposed of.”

13. Thereafter, SEBI had also assailed our orders dated 23 October, 2023 before the Supreme Court in the proceedings of Petition(s) for Special Leave to Appeal (C) Nos.25783-25784/2023 (Securities and Exchange Board of India vs. Ashok Dayabhai Shah & Ors.). The Supreme Court did not entertain the special leave petition and dismissed the special leave petition by the order dated 28 November, 2023 which reads thus:-

“

ORDER

1 An earlier Special Leave Petition by one of the promoters, SLP(C) Diary No. 45529 of 2023 [Bharat Nidhi Limited vs Ashok Dayabhai Shah and Others] has been dismissed by this Court on 6 November 2023.

2 Mr Tushar Mehta, Solicitor General submits that the order of settlement which gave rise to the institution of the proceedings under Article 226 of the Constitution before the High Court has been revoked by SEBI. Hence, it has been submitted that the petition before the High Court is rendered infructuous.

3 Mr C A Sundaram, senior counsel appearing on behalf of the respondent, on the other hand, submits that the petition as

such has not been rendered infructuous since, in particular, prayer clauses (c) and (d) of the petition would survive for determination.

4 This Court is apprised of the fact that the proceedings are listed tomorrow (29 November 2023) before the High Court of Judicature at Bombay. Hence, it is not necessary for this Court to entertain the Special Leave Petition at this stage, particularly bearing in mind what has been observed in paragraphs 2 and 3 of the earlier order dated 6 November 2023, which read as follows:

“2 Since the impugned orders of the High Court are purely of an interlocutory nature, we are not inclined to entertain the Special Leave Petitions under Article 136 of the Constitution.

3 However, the parties would be at liberty to pursue their remedies in accordance with law on all counts after the final judgment of the High Court.”

5 Should it become necessary for SEBI to raise the issue of interpretation of Regulation 29 at a future date, that issue is kept open to be agitated.

6 The Special Leave Petitions are accordingly dismissed.

7 Pending applications, if any, stand disposed of.”

14. It is on the above conspectus, the proceedings are before us today. However, after the Special Leave Petition of respondent no.2 - BNL and respondent no.9-Vineet Jain was dismissed by the Supreme Court, as also a decision being taken by the SEBI to assail our order dated 23 October, 2023 before the Supreme Court, what has happened at SEBI's end in regard to the SEBI's proceedings against BNL, is not only interesting but quite intriguing.

15. Today, Mr. Bhatt, learned Senior Counsel for the SEBI had

placed on record an affidavit dated 20 November 2023 of Shri. Sachin Ashok Sonawane, Deputy General Manager, *interalia* placing on record an order dated 10 November 2023 passed by the SEBI informing respondent Nos.2 to 9 that the settlement order dated 12 September 2022 subject matter of challenge in prayer clauses (a) and (b) of the petition, stands revoked and withdrawn in terms of Regulation 28 of the SEBI (Settlement Proceedings) Regulations, 2018, for failure to comply with the Settlement Order and not on the ground as urged by the petitioners that there could never have been a settlement on the gross violations of rules and regulations by BNL and respondent Nos.3 to 9. The said order is required to be noted which reads thus:-

*“Enforcement Department – 2
Settlement Division
Tel.: 022-2644 9302
E-mail: lkmao@sebi.gov.in*

*Securities and Exchange
Board of India*

SEBI/HO/EFD2/EFD2-SD/P/OW/45453

November 10, 2023

<i>Settlement Application No.</i>	<i>Name of the Applicant</i>	<i>Address</i>
<i>6348/2021</i>	<i>Bharat Nidhi Limited</i>	<i>First Floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi 110002</i>
<i>6353/2021</i>	<i>Mr. Vineet Jain</i>	<i>15, Motilal Nehru Marg, New Delhi – 110011</i>
<i>6332/2021</i>	<i>Ashoka Marketing Limited</i>	<i>First Floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi 110002</i>

6338/2021	Arth Udyog Limited	16A, Lajpat Nagar-IV, New Delhi 110024
6342/2021	Matrix Merchandise Limited	101 Pratap Nagar, Mayur Vihar, Phase-1, New Delhi 110091
6344/2021	Mahavir Finance Limited	101 Pratap Nagar, Mayur Vihar, Phase-1, New Delhi 110091
6341/2021	TM Investment Limited	Gulab Bhawan, MBD House, 6, Bahadur Shah Zafar Marg, New Delhi 110002
6345/2021	Sanmati Properties Limited	Gulab Bhawan, MBD House, 6, Bahadur Shah Zafar Marg, New Delhi 110002

Ref: Settlement Order No. SO/EFD-2/SD/421/SEPTEMBER/2022 dated September 12, 2022 in the matter of Bharat Nidhi Limited in respect of Settlement Application nos. 6348, 6353, 6332, 6338, 6342, 6344, 6341 and 6345 of 2021

Sir,

1. This is to inform you that the Settlement Order dated September 12, 2022 under reference, stands revoked and withdrawn in terms of Regulation 28 of the SEBI (Settlement Proceedings) Regulations, 2018, for failure to comply with the Settlement Order.

2. You may also note that upon revocation, no amount paid under the SEBI (Settlement Proceedings) Regulations, 2018 shall be refunded and the Board shall restore or initiate the proceedings, with respect to which the Settlement Order was passed.

Regards,

Sd/-

Kajio Mao

Deputy General Manager”

(emphasis supplied to para. 1)

16. On such development and position being taken by SEBI, Mr. Bhatt would submit that nothing further survives for adjudication in the

present proceedings, as the settlement orders itself stand revoked by the SEBI. He submits that the principal prayers of the petitioners in terms of prayer clauses (a) and (b) are now rendered infructuous.

17. Mr. Bhatt's contention is also supported by Mr. Dwarkadas, learned Senior Counsel for respondent No.9, Mr. Ashish Kamat, learned Senior Counsel for Respondent No. 2 in Writ Petition No.447 of 2023 and Mr. Rahul Narichania, learned Senior Counsel for Respondent No. 7 & 8 in Writ Petition No.530 of 2023.

18. Learned Senior Counsel appearing for the respondents are unanimous in their contention, that as the settlement orders dated 12 September 2022 stands revoked, the show cause notice issued to respondent Nos.2 to 9 are now required to be taken forward and decided, in which all contentions of the petitioners including on non compliance of the security laws, rules and regulations as also the SEBI Act would be gone into. It is submitted that this was also desired by the petitioners, as seen from the prayers in the petitions. It is thus submitted that the present petitions would not require further adjudication as it would cause prejudice to respondent Nos.2 to 9 in the course of adjudication of the show cause notice. It is, hence, submitted that even the plea of the petitioners for the documents to be furnished to the petitioners, as per the orders of this Court dated 23 October 2023, is now rendered

inconsequential in view of the settlement order itself being revoked by the SEBI. It is therefore, a common contention as urged on behalf of the respondents that the petitions be disposed of by permitting the SEBI now to take forward the show cause notice issued to respondent Nos.2 to 9.

19. On behalf of the petitioners, Mr. Joshi, learned Senior Counsel and Ms. Raghavan have opposed the contentions as urged on behalf of the respondents. Mr. Joshi has drawn our attention to prayer clause (c) and (d) of the petition to submit that it may not be correct for the respondents to contend that nothing survives in these petitions, as prayer clause (c) being a substantive prayer, is now required to be adjudicated in the present proceedings. It is also his submission that it is not correct for the respondents to contend that the order dated 23 October 2023 passed by this Court is rendered inconsequential, merely for the reason, that the settlement order stands revoked by the SEBI. It is his submission that the petitioners as minority shareholders have an independent legal right to have all the documents touching the affairs of the BNL and relevant to the issues as raised by the petitioners. It is submitted that such order passed by the Court was also certainly in aid of the reliefs as prayed by the petitioners, which includes prayer clause (c) and (d), which very well survive.

20. Mr. Joshi has next submitted that the approach of the

respondents is ex-facie collusive. This, according to Mr. Joshi, can be seen from the fact that initially on 5 September 2023 the SEBI had sought an adjournment to consider as to whether a decision can be taken to withdraw the impugned settlement orders, and when such decision was not taken to withdraw the settlement order, the Court as per its order dated 13 September 2023 had proceeded to hear the present proceedings. He submits that it is during the course of the hearing, this Court passed a substantive order dated 23 October 2023, directing the SEBI to furnish the documents to the petitioners. It is submitted that some meaning would have to be given to some of these events, and more particularly, being a categorical case of the petitioners that SEBI in the present case, for some reason, is acting at the behest of respondent Nos.2 to 9. To buttress this submission, Mr. Joshi submits that initially the order dated 23 October 2023 was challenged by respondent Nos.2 and 9 before the Supreme Court, after such Special Leave Petition came to be dismissed by the Supreme Court by an order dated 6 November 2022, on 10 November 2023. It is submitted that thereafter SEBI filed its Special Leave Petition assailing the said order, which was also rejected by the Supreme Court, dismissing its SLP on 28 November 2023. It is Mr. Joshi's submission that now SEBI is taking a stand that the present petitions have become infructuous, as also a strange plea is being taken by SEBI and on behalf of

the other respondents that the documents as ordered by this Court no more are required to be provided to the petitioners, in view of the settlement order being withdrawn, merely, because prayer clauses (a) and (b) are rendered infructuous. Mr. Joshi's submission is that prayer clause (c) and (d) certainly survives and would now be the subject matter of adjudication in the present proceedings. It is, hence, his submission that the plea as urged on behalf of the respondents to dispose of this petition as infructuous, needs to be rejected.

21. We have given our anxious consideration to the rival contentions.

22. We may note that prayer clauses (a) and (b) of the petitions are in regard to the challenge to the settlement orders, which according to the petitioners were patently illegal being beyond the authority and power of the SEBI to accept any settlement. Prayer clause (c) of the petition is to the effect that an order be passed, against the SEBI to take necessary and appropriate steps to ensure that full and true disclosure as required under the applicable Securities Laws is made in respect of the actual promoters holding in respondent No.2 – BNL, and for further directions to the SEBI to ensure all consequential compliances with Securities Laws, including but not restricted, to compliance with MPS norms by respondent Nos. 2 to 9.

23. In the context of such prayer, we may observe that on perusal of the show cause notice, a copy of which is produced for perusal of the Court on behalf of the SEBI, we find that non-compliance *interalia* of the Rules and Regulations of SEBI are subject matter of the show cause notice, and any plea in opposition as may be urged by BNL and respondent Nos.3 to 9 (the majority shareholders), would fall for consideration in the adjudication of the show cause notice. This would, however, not mean that the petitioners in their capacity as shareholders, would be dis-entitled or would cease to have any locus to have information / documents in regard to such affairs of BNL and to seek compliance of the Rules and Regulations and the norms of the SEBI by respondent No.2 and those controlling BNL.

24. In our opinion, considering the fact that the settlement order itself has been revoked, the SEBI now needs to resort to a lawful course of action, to adjudicate the show cause notice, so as to reach to a conclusion, whether respondent Nos.2 to 9 have violated the provisions of the Act, Rules and Regulations, as alleged in the show cause notice and the complaints of the petitioners. We are thus of the opinion that in the facts and circumstances of the case, it would be appropriate that the SEBI expeditiously takes forward the show cause notice and comes to an appropriate conclusion, in accordance with law, in regard to the allegations

as made in regard to respondent Nos.2 to 9 in the show cause notice.

25. However, there is some substance in what has been urged on behalf of the petitioners as noted by us above on the question of petitioners entitlement to the documents as per our orders dated 23 October, 2023. It is quite intriguing to note the approach of the SEBI, as clearly seen from the events which had transpired, and from the obstinate stand taken by the SEBI in not furnishing the documents to the petitioners in relation to respondent Nos.2 to 9. There has been persistent non-compliance of such orders passed by the Court, despite the Special Leave Petition of the SEBI being rejected, is too far to be imagined nay totally unacceptable. SEBI is a public body, it is required to act in public interest, it needs to comply with the orders passed by this Court, more particularly, when the orders have attained finality in the facts and circumstances of the present case, cannot be countenanced that SEBI would resort to such actions only when and / or, as may be, commanded by respondent Nos.2 to 9. Such approach of the SEBI, in our opinion, would cause a dent to the confidence, the investors would repose in the SEBI, which needs to function solely to further the object and purpose, for which it is created by the Act of the Parliament. We are constrained to make such observations being quite astonished by the stand taken by SEBI from time to time, in relation to the present proceedings. Even assuming

that the petitioners are not correct on their contentions on the different stands being taken by the SEBI, however, the SEBI needs to be consistent and firm in whatever it proposes to do in such eventuality, and above all, such actions must inspire confidence of the investors as also of the Court. In fact, in the varied stands taken by the SEBI, we are reminded of the celebrated observations of Mr. Justice Y. V. Chandrachud in **S. B. Patwardhan & Ors. vs. State of Maharashtra & Ors.**¹ when His Lordship in the facts of the said case observed that the State was acting according to the moods of the passing moment. The said observations needs to be noted, which reads thus:-

“Evidently, the State governments did not know their own mind and being unable to take up a firm and consistent stand, they defended the various Writ petitions filed against them by their employees according to the mood of the passing moment. That must be deprecated.”

26. The present case appears to be not different from what has been observed by us in relation to the actions of the SEBI, further discussion on this aspect would fortify our observations.

27. We may observe that when the final hearing of the present proceedings was to commence on 5 September 2023, SEBI had taken a position that the impugned settlement orders can be reconsidered as there

¹ AIR 1977 SC 2051

was a change in the Whole Time Members (WTM) of SEBI, and accordingly, the proceedings can be put to an end. We had accordingly passed the following order:-

1. We had placed this matter for final hearing today at 2.30 p.m.
2. Mr. Seervai, learned Senior Counsel for the Petitioners, has commenced his arguments. At the midst of the hearing Mr. Bhatt, learned Senior Counsel for the Respondent No.1-SEBI, has stated before us that there was a change in the Whole Time Members (WTM) of the SEBI. He states that SEBI would now be in a position to take a decision as to whether the settlement order in question (Exhibit- "A") has stood revoked. Mr. Bhatt would contend that if the settlement order stands revoked, in such event, further adjudication of the present petition would not be called for.
3. We are of the opinion that it would be appropriate to know the stand of the SEBI. Depending as what the SEBI informs the Court on the adjourned date of hearing, further course of action on the proceedings can be decided.
4. Accordingly, stand over to **13th September 2023 at 2.30 p.m.**

(emphasis supplied)

However, on the adjourned date of hearing, that is, on 13 September 2023, the Court was informed by SEBI that the settlement orders cannot be revoked. The order dated 13 September 2023 reads thus:

- “1. Today the matter is placed before us on the backdrop of our order dated 5th September 2023. From what has been heard from the learned Counsel for the parties, it appears that the issues as raised in the petition cannot be resolved. The parties agree that the proceedings would be required to be now heard and decided.
2. We, accordingly, place the proceedings for hearing on **4th October 2023 at 2.30 p.m.** to be followed on **5th October 2023** and **9th October 2023.**”

28. Now ultimately SEBI has revoked the settlement orders, by its order dated 10 November 2023.

29. To our mind, it appears to be not meaningless, that the SEBI from 23 October 2023 has not complied our order directing that the documents be furnished to the petitioners. As pointed out on behalf of the petitioners, SEBI has resorted to all possible efforts, not to comply with the order dated 23 October, 2023. Even after the Special Leave Petitions of BNL and Vineet Jain - respondent no.9 were dismissed by the Supreme Court, the documents were not furnished to the petitioners. SEBI thereafter assailed the orders dated 23 October 2023 before the Supreme Court resulting in dismissal of its Special Leave Petition. Now the SEBI is before the Court taking a stand that the documents need not be furnished and the petitions be disposed of as they are rendered infructuous. We wonder, as what can weigh with the SEBI, in not complying our order dated 23 October, 2023 and not furnishing the documents to the petitioners, except to benefit respondent Nos.2 to 9. Even such plea that the SEBI would have a legal right or an entitlement, not to furnish documents to the petitioners as ordered by us, was the core issue under our orders, being urged by the SEBI before the Supreme Court, apart from the plea of interpretation of Regulation 29 of the 2018 Regulation.

30. Be that as it may, considering all these circumstances, we are of the clear opinion that the entitlement of the petitioners to our order dated 23 October 2023, would certainly subsist and the petitioners need to be provided such documents by the SEBI. Moreover, not providing such documents, merely on the ground of the subsequent development that the settlement orders now stands revoked, would completely be an untenable proposition and contrary to our orders dated 23 October 2023, as confirmed by the Supreme Court. Although respondent Nos.2 to 9 in their business interest may overlook the solemnity of the orders passed by this Court, however, SEBI in its public character cannot take the same approach. In these circumstances, the order dated 23 October 2023 cannot be rendered nugatory. The SEBI is required to holistically consider such orders and not merely in the context of the settlement proceedings, as such order considers the substantive rights of the petitioners, who are shareholders of respondent No.2 – BNL, having equal rights to that of respondent nos. 3 to 9. SEBI cannot have different yardstick between shareholders. We therefore, direct that our order dated 23 October 2023, which has attained finality, needs to be forthwith complied by SEBI.

31. However, on the issue whether the Court should adjudicate prayer (c) and (d) of the petitions, taking an overall view of the matter, and

that, now the show cause notice is required to be taken forward, we are of the opinion that in so far as such reliefs are concerned, the same needs to be kept open to be agitated by the petitioners at the appropriate time in appropriate proceedings in the context of the decision which may be taken by the SEBI on the show cause notice. We accordingly, propose to dispose of these petitions by the following order:-

ORDER

(I) The petitioners are entitled to the benefits of the order dated 23 October 2023 as confirmed by the Supreme Court, by rejection of the Special Leave Petitions of respondent Nos.2 and 9 and thereafter, by rejection of the Special Leave Petition filed by the SEBI.

(II) The order dated 23 October 2023 passed by this Court, be forthwith complied by SEBI.

(III) All the contentions of the petitioners and of the respondents on issues in regard to prayer clauses (c) and (d) are expressly kept open to be agitated at appropriate time in appropriate proceedings.

(IV) The petitions stand disposed of in the above terms. No costs.

32. At this stage, Mr. Bhatt, learned senior counsel appearing for the SEBI has prayed for stay of the order to the extent that it directs compliance of our order dated 23 October 2023 for the documents to be forthwith furnished by the SEBI to the petitioners. In the facts and circumstance of the case and more particularly for the reasons as set out in our order, we reject such prayer.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)