

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

APPLICATION FOR LEAVE TO APPEAL (PVT) NO. 92 OF 2024

Securities and Exchange Board of India

....**APPLICANT**

: VERSUS :

Mahendra Shah and Anr.

...**RESPONDENTS**

Mr. Chetan Kapadia, Senior Advocate with Ms. Sabiha Ansari, Ms. Tanvi Rane and Ms. Vidisha Rohira for the Applicant.

Mr. Sarosh Bharucha with Mr. Kaevaan Setalwad and Ms. Payal Upadhyay i/b M/s. ANP Chambers for the Respondent.

Mr. Vinit A. Kulkarni, APP for Respondent/State.

Umar Arya, Officer SEBI present in Court.

Sharika KG, DGM SEBI present in Court.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON : 17 DECEMBER 2025.

JUDGMENT PRON. ON : 24 DECEMBER 2025.

JUDGMENT :

1) This is an Appeal preferred by the Securities and Exchange Board of India (**SEBI**) allowing the Compounding Application and discharging the Respondent of the offence punishable under Section 24(2) of the Securities and Exchange Board of India Act, 1992 (**SEBI Act**). The Special Court has allowed the application preferred by the Respondent for

compounding of offences and has permitted compounding by directing Respondent No.1 to pay penalty of Rs.54,00,000/- alongwith interest @ 6% p.a. from the date of adjudication of order in addition to payment of amount of Rs.1,00,000/- towards legal charge. Appellant-SEBI is aggrieved by orders dated 4 March 2024 and 4 April 2024 to the limited extent of the Special Court reducing the rate of interest from 12% p.a. to 6% p.a. and this is the limited remit of enquiry in the present Appeal.

2) Briefly stated, facts of the case are that, Respondent No.1-Mahendra A. Shah was the promoter of Ransi Software India Ltd (**RSL**). It is alleged that in his capacity as the promoter of RSL, Respondent No.1 was involved in manipulation in issuing preferential shares, on consideration other than cash, to some entities by overvaluing the said entities. When the shares were denied listing due to overvaluation, the unlisted shares were dematerialised and traded in Stock Exchange. It is further alleged that as a promoter of RSL, Respondent No.1 acted in fraudulent manner by publishing news items in order to disseminate false information creating interest in the scrip of RSL. It was alleged that RSL issued shares on preferential basis to shareholders / promoters of non-genuine companies and the shares were traded without listing on the Stock Exchange. Thus, the allegation of violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 were leveled. SEBI accordingly issued summons dated 25 August 2004 and 9 September 2004 calling upon Respondent No.1 to submit the requisite information in respect of his dealings in the script of RSL and to personally

appear before the Investigating Authority of SEBI. Respondent No.1 neither submitted information nor appeared before the Investigating Authority.

3) A notice dated 10 June 2005 was issued to Respondent No.1 in terms of Regulation 4 of Securities and Exchange Board of India (Procedure for Holding Inquiries and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**SEBI Rules, 1995**). Respondent No.1 did not respond to the show cause notice. The Adjudicating Officer directed holding of inquiry and called upon Respondent No.1 to attend the same on 22 July 2005. Respondent No.1 failed to attend the inquiry. He was once again summoned for inquiry to be held on 18 August 2005 and again, he failed to attend the inquiry. The Adjudicating Officer accordingly proceeded to pass order dated 30 September 2005 imposing penalty of Rs.54,00,000/- on Respondent No.1 directing him to pay the same within 45 days.

4) Respondent No.1 failed to pay the adjudicated amount of penalty. Accordingly, Appellant-SEBI filed complaint under Section 24(2) of the SEBI Act before the Special Court. Respondent No.1 was arrested and by order dated 4 October 2017, he was released on bail subject to direction of scrupulously attending the dates before the Special Court. On account of failure to attend the Court, Respondent No.1 was arrested once again and by order dated 8 April 2019, he was released on bail.

5) In the meantime, Respondent No.1 filed application for compounding of offence under Section 24A of SEBI Act on 7 December 2017. SEBI filed reply dated 25 July 2018 setting out

the amount to be paid inclusive of interest @ 12% p.a. and gave conditional consent for compounding subject to the payment of the determined amount. It appears that Respondent No.1 was unable to pay the amount of Rs.1,37,77,378/- determined by SEBI and accordingly the Special Court proceeded to reject the compounding application by order dated 21 August 2019.

6) On 16 October 2023, Respondent No.1 filed second application for compounding and by reply dated 15 January 2024, SEBI set out the amount of Rs.1,73,61,063/- comprising of 12% interest on penalty amount of Rs.54,00,000/- and legal expenses of Rs.1,00,000/-.

7) The Special Court passed order dated 4 March 2024 on second compounding application of Respondent No.1 at Exhibits- 57 and 61 allowing compounding by directing Respondent No.1 to pay interest @ 6% p.a. on the penalty amount of Rs.54,00,000/- by invoking provisions of Section 4 of the Interest Act, 1978. The Special Judge also directed payment of legal expenses of Rs. 1,00,000/- by the Respondent. Respondent No.1 handed over demand draft of Rs.1,14,97,767/- to the Authorised Officer of SEBI on 3 April 2024. Accordingly, the learned Special Judge proceeded to pass order dated 4 April 2024 discharging Respondent No.1 of offence punishable under Section 24(2) of the SEBI Act, disposing of SEBI Special Case No. 255/2014.

8) Appellant is aggrieved by orders dated 4 March 2024 and 4 April 2024 and has accordingly filed the present Appeal under the provisions of sub-section (4) of Section 378 of the Code of

Criminal Procedure, 1973. By order dated 17 December 2025, this Court granted leave to file Appeal and the Appeal has been admitted. The Appeal is taken up for hearing on 17 December 2025 with consent of the learned counsel appearing for the rival parties.

9) Mr. Kapadia, the learned Senior Advocate appearing for the Appellant/SEBI would submit that the Special Court has erred in reducing the rate of interest from 12% p.a. to 6% p.a. by exceeding its jurisdiction. That the Recovery Officer had issued Recovery Certificate dated 19 June 2018 computing the interest payable @ 12% p.a. and the said Recovery Certificate has attained finality. That Respondent No.1 did not challenge the said Recovery Certificate. That therefore the learned Special Court had no jurisdiction to go beyond the Recovery Certificate. That consent of SEBI for compounding was conditional upon Respondent No.1 paying interest @ 12% p.a. as per the Recovery Certificate. Mr. Kapadia would further submit that the Special Court is not invested with any discretion in the matter of determining the amount of penalty or interest thereon. That the learned Special Judge cannot go into the issue of quantum of penalty payable and can make an order of compounding only if the entire amount determined in the Recovery Certificate is paid by the accused. That the learned Special Judge is not the forum for adjudicating the issue of quantum of amount recoverable from the accused.

10) Mr. Kapadia, would further submit that earlier compounding application was rejected due to incapacity of

Respondent No.1 to pay the determined amount including interest @ 12% p.a. and that Respondent No.1 never questioned charge of interest @ 12% p.a. Having rejected the previous compounding application by accepting charge of interest @ 12% p.a., it was not open for the learned Special Judge to take a diametrically opposite view and allow second compounding application by reducing the rate of interest. That the principle of comity of courts requires that the Courts and Tribunals do not pass orders contrary to one another. That previous order dated 21 August 2019 refusing to compound the offence due to non-payment of interest @ 12% p.a. bound the learned Special Judge while deciding the successive compounding application. Mr. Kapadia would further submit that the learned Special Judge erred in misreading the judgment of the Apex Court in Dushyant Dalal vs. SEBI¹ which is not applicable to the present case. Mr. Kapadia would further submit that the learned Special Judge has also misread the judgment of the Apex Court in Prakash Gupta vs. SEBI². That the judgment emphasizes the importance of giving higher degree of deference to the views of SEBI while deciding application for compounding of offences. Without prejudice, he would submit that the learned Special Judge ought to have directed interest @ 12% p.a. as per Section 28A of the SEBI Act w.e.f. 18 July 2013 onwards.

11) On above broad submissions, Mr. Kapadia would pray for setting aside the impugned orders dated 4 March 2024 and 4 April 2024.

1 Civil Appeal No. 5677 of 2017 decided on 4 October 2017

2 Criminal Appeal No.569 of 2021 decided on 23 July 2021

12) The Appeal is opposed by Mr. Bharucha, the learned counsel appearing for Respondent No.1. He would submit that the demand of SEBI of interest @ 12% p.a. is not supported by any statutory provision. That the provision for statutory interest came to be incorporated in SEBI Act in the form of Section 28A for the first time on 18 July 2013. That in the judgment in *Dushyant Dalal* (supra), the Apex Court has held that the said provision for interest under Section 28A cannot be made retrospectively applicable. That the contention of the Appellant-SEBI is in the teeth of the judgment of the Apex Court as it is indirectly seeking to enforce provision of Section 28A by charging interest @ 1% per month in the form of interest @ 12% p.a. He would submit that the learned Special Judge is the ultimate authority to decide the issue of compounding. That SEBI can only express its views before the Special Court, which needs to be taken into consideration by the Court. However, there is nothing under the SEBI Act, which makes the views of SEBI binding on the Court. In support, he relies upon judgment of the Apex Court in *Prakash Gupta* (supra). He would submit that the power invested in the Special Court to direct compounding of offence also includes power to decide interest payable on the penalty amount. That in the present case, the learned Special Judge has not reduced the amount of penalty, and has taken into consideration the fact that the penalty order did not prescribe any interest. That the Recovery Certificate itself has been issued under Section 28A of the SEBI Act by charging interest from 30 September 2005 in violation of ratio of the judgment in *Dushyant Dalal* (supra). That in any case, the amount reflected in erroneously issued Recovery Certificate is not

sacrosanct and there is nothing in the SEBI Act which binds the Special Court. That the Special Court has necessary discretion atleast to reduce the amount of interest.

13) Mr. Bharucha would further submit that the Appellant has failed to point out any element of perversity in the findings recorded by the learned Special Judge. Use of discretion by the learned Special Judge cannot be interfered with by the Court of appeal. In support of his contention that no interference can be made in an order of trial Court in absence of element of perversity, Mr. Bharucha would rely upon judgment of the Apex Court in Ramakant Ambalal Choksi vs Harish Ambalal Choksi & Ors.³ and of this Court in Municipal Council of Greater Mumbai vs. Mahendra Builders and Ors⁴. Mr. Bharucha would accordingly pray for dismissal of the Appeal.

14) Rival contentions of the parties now fall for my consideration.

15) The short issue that arises for consideration in the present Appeal is whether the learned Special Judge has committed an error in determining the rate of interest of 6% p.a. on the penalty amount decided by SEBI in the order dated 30 September 2005. By that order, the Adjudicating Officer of SEBI has imposed penalty of Rs.54,00,000/- on Respondent No.1 under the provisions of Section 15A(a) of the SEBI Act read with Rule 5 of the SEBI Rules, 1995. The learned Special Judge has not interfered with the quantum of penalty amount determined in the

3 Civil Appeal No. 13001 of 2024 decided on 22 November 2024

4 Appeal No. 45 of 2023 decided on 1 December 2025

adjudication order dated 30 September 2005. However, since the adjudication order dated 30 September 2005 is silent with regard to the rate of interest payable on the amount of penalty, the learned Special Judge has determined interest @ 6% p.a. from the date of adjudication order till realisation of the penalty amount. Appellant is aggrieved by fixation of rate of interest of 6% p.a. by the learned Special Judge and insists that interest as determined in the Recovery Certificate dated 19 June 2018 ought to have been directed to be paid by the learned Special Judge. Therefore, the issue that this Court is tasked upon to decide in the present Appeal is whether the learned Special Judge has any discretion in altering the amount indicated in the Recovery Certificate issued by the Recovery Officer of SEBI while exercising jurisdiction under Section 24A of SEBI Act for compounding of the offence.

16) In the present case, Respondent No.1 was accused of not co-operating with the investigations and his alleged fraudulent acts in issuance of preferential shares to promoters of non-existent entities, dematerialising them and trading them on Stock Exchanges without listing. The Adjudicating Officer conducted inquiry and passed a detailed order dated 30 September 2005 holding in paras-20, 21, 23, 24 and passing operative order in para-25 as under :

20. Shri Shah did not respond to the summons and appear before the Investigating Authority in response to Summons dated August 25, 2004 and September 9, 2004. It is further noted that Shri Shah did not respond to the show cause notice and also did not attend the inquiry on July 22, 2005 and August 18, 2005, despite receiving the notices and acknowledging the same. In view of the above facts, it is concluded that the violation committed by Shri Shah is repetitive in nature.

21. it is also pertinent to note from the facts of the case that apart from being a promoter, Shri Shah was also the Chairman cum Managing Director of RSL during investigation period. For calculating unfair advantage accrued to Shri Shah or amount of loss caused to the investors, following is noted from the facts available on records:

- a) On December 4, 2002 RSL issued 5,00,00,000 shares of Rs. 10/- each on preferential basis for consideration other than cash to the existing shareholders of Madho Agro Farm Pvt. Ltd. And P C Patel Green Wood Pvt. Ltd. On the terms and condition for acquisition of 100% equity of the said companies.
- b) The shares were issued on a valuation of Rs.50 crore.
- c) However it was revealed in the investigation that the said companies had a value of Rs. 5 crore only. As there was gross overvaluation for the purpose of issuing shares on preferential basis, listing permission for the said preferential issue was not granted by BSE.
- d) On January 28, 2002 and February 13, 2002, it was reported in newspapers that RSL has bagged an export order of Rs. 19.65 crore from Canada based V Karya and Company. Further, it was also reported that the company was on the verge of another export order from a US based company and it had initiated negotiations with a company in Singapore for a software development contract worth 12.21 crore. The said information was disseminated to create interest in the scrip and to dupe the investors and as a result of such false statements large trading has taken place in the scrip of the company.
- e) It is noted that large quantities of shares (approx. 60 lakhs shares) which were allotted to some preferential allottees and related entities were dematerialized by these entities.
- f) These entities entered into off market transactions with one Kishore Thakkar who in turn sold the shares in large quantity (approx. 54 lakhs shares) through market and off market deals during the period.
- g) The sale price of the above shares during the period ranged from Rs.1 to Rs.3.55. As details of sale price for each share is not available on record, on the basis that minimum price during the period that was Rs. 1, the sale proceeds would be minimum Rs. 54 Lakhs.
- h) It is pertinent to note that the issuance of the shares had been done without receipt of consideration by way of cash. The receipt from such sale were undue profit to the sellers at the cost of the small investors who purchased the shares. Hence there was undue enrichment to the sellers and the persons acting in concert with them as a result of this fraudulent activity.

23. In the instant case, as stated before, Shri. Shah failed to provide required information in respect of his dealings in the shares of RSL to the investigating authority. Further the conduct of Shri. Shah in not providing the information to the investigating authority and also not providing any explanation for his failure to provide information has to be taken into account in the light of the facts and circumstances of the case available on record which clearly indicate the manipulative role played by Shri. Shah in cheating the investors. In this regard it is also pertinent to note that Shri. Shah failed to reply to the showcause notice in the adjudication proceedings. Further Shri. Shah failed to attend the inquiry despite being given enough time and opportunities to do so. The conduct of Shri. Shah indicate his attempts to evade and resist the compliance of legal provisions.

24. Viewed in the background of the facts and circumstances of the case which clearly indicate the manipulative role played by Shri. Thakkar in duping the investors pursuant to a conspiracy. In view of the same, the failure to furnish information to the investigating authority have to be viewed seriously especially as Shri. Shah was the Managing Director of RSL. It is noted that the sale price of the above shares ranged from Rs.1 to Rs.3.55. As details of sale price for each share is not available on record, as the minimum price during the period was Rs. 1, the sale proceeds would be minimum Rs. 54 Lakhs. Hence it is seen that the loss caused to the investors appears to be Rupees 54 lakhs or more.

25. Considering the facts and circumstances of the case, for the failure on the part of Shri Mahendra A Shah to furnish information and appear before investigating authority of SEBI, in terms of the provisions of Section 15 A(a) of the SEBI Act and Rule 5 of the Rules, I , hereby impose a penalty of Rupees Fifty Four lakhs (Rs.54,00,000) on Shri Mahendra A Shah. This penalty is justified and appropriate as it would disgorge the unjust enrichment and disproportionate gain accrued to Shri Mahendra A Shah.

Thus, the penalty of Rs.54,00,000/- was imposed on Respondent No.1 under Section 15A(a) of SEBI Act for failure to submit information, returns, documents and reports.

17) Respondent No.1 did not pay the adjudicated amount of penalty of Rs.54,00,000/- in accordance with the order dated 30 September 2005 for over 7 years.

18) Under Section 24(2) of the SEBI Act, if a person fails to pay the penalty imposed by the Adjudicating Officer, such act constitutes offence punishable with imprisonment for a term not less than 1 month but which may extend to 10 years. Section 24, as it stands after Amendment of 2002, provides thus:

24. Offences.

(1) Without prejudice to any award of penalty by the adjudicating officer or the Board under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or the Board or fails to comply with any *** directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

19) Under Section 26, cognizance of offence under Section 24(2) can be taken by the Court upon a complaint made by SEBI. In accordance with the provisions of Section 26 of SEBI Act, SEBI filed complaint against the Respondent on 17 April 2013 for taking cognizance of offence under Section 24(2) of the SEBI Act against the Respondent and for punishing him. The Respondent was brought before the learned Special Judge by arrest and was released on bail. It appears that due to his failure to attend the dates of hearing regularly, Respondent No.1 was once again arrested and released on bail by order dated 8 April 2019.

20) Section 24A was inserted in SEBI Act by Amendment Act, 59 of 2002 and provides for compounding of offences. Section 24A provides thus :

24A. Composition of certain offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

21) Respondent No.1 applied for compounding under Section 24A on 7 December 2017 at Exh.5. SEBI consented for compounding subject to payment of penalty amount of Rs. 54 lacs with 12% interest, recovery cost of Rs.1,000/- and legal expenses of Rs.66,000/-. This is how the total amount of Rs.1,37,77,378/- was demanded by filing reply dated 25 July 2018. The learned Special Judge heard the application at Exhibit-5 and noted the objection of Respondent No.1 that the amount demanded by SEBI was exorbitant and that he did not have capacity to pay the same. Respondent No.1 further requested for necessary directions to SEBI for fixing of reasonable amount for compounding of the offence. On account of inability expressed by Respondent No.1, the learned Special Judge proceeded to reject the application at Exhibit-5.

22) Respondent No.1 thereafter filed fresh compounding application on 16 October 2023, and this time SEBI presented following amount for compounding of the offence :

Particulars	Amount (Rs.)
Penalty Amount	Rs. 54,00,000/-
Interest Amount till 15/01/2024	Rs. 1,18,61,063/-
Legal Expenses	Rs. 1,00,000/-
Total amount to be paid as on date	Rs. 1,73,61,063/-

23) The interest amount of Rs.1,18,61,063/- is computed by SEBI by applying the rate of interest of 12% p.a. The learned Special Judge has however reduced the rate of interest to 6% by recording following findings:

10. In view of submissions from both sides and on perusal of record of the case, there is no dispute about passing of adjudication order by the adjudication officer and about imposing penalty on accused. By way of application for compounding of offence accused want to compound case. Complainant SEBI has also no objection to compound offence, their condition is that, accused shall pay amount of compounding charges as claimed by them. Complainant has claimed amount by way of penalty amount, interest thereon at the rate of 12% per annum and legal charges. On perusal of adjudication order it is on dated 30.09.2005. In the said order there is no mention about payment of any interest in case of failure to pay amount of penalty. As the offence is of the year as per the complaint and at relevant time there was no provision in SEBI Act by way of Section 28 A, which provides to recover amount of penalty with interest @ 1% per month. In case of Dushyant Dalal Vs. SEBI the Hon'ble Supreme Court has made it clear that Section 28A of SEBI Act is not retrospective in respect of interest. It is further made clear that Section 28A of SEBI Act is prospective. On perusal of the adjudication order in present case it is clear that it is passed on 30.09.2005 which is prior to amendment of Section 28A of SEBI Act. By way of Section 28 A of SEBI Act, SEBI is entitled for recover interest on amount of penalty at the rate of 1% per month, on failure of concern person to pay amount of payment within stipulated period. As in this case adjudication order is prior to amendment Section 28 A of SEBI Act therefore in view of judgment in case of Dushyant Dalal Vs. SEBI, complainant SEBI is not entitled to recover amount of interest in view of Section 28 A of SEBI Act. Complainant SEBI may recover interest on the amount of penalty by invoking provision of Interest Act.

11. In view of guidelines for compounding of the offence given in Prakash Gupta's case following factors are required to be taken in to consideration while deciding application:

1. Whether violation is intentional.
2. Party's conduct in the investigation and disclosure of full facts.
3. Gravity of charge i.e. charge like fraud, market manipulation or insider trading.
4. History of non-compliance. Good track record of the violator i.e. it had not been found guilty of similar or serious violations in the past.
5. Whether there were circumstances beyond the control of the party.
6. Violation is technical and/or minor in nature and whether violation warrants penalty.
7. Consideration of the amount of investors' harm or party's gain.
8. Processes which have been introduced since the violation to minimize future violations/lapses.
9. Compliance schedule proposed by the party.
10. Economic benefits accruing to a party from delayed or avoided compliance.
11. Conditions where necessary to deter future non-compliance by the same or another party.
12. Satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them.
13. Compliance of the civil enforcement action by the accused.
14. Party has undergone any other regulatory enforcement action for the same violation.
15. Any other factors necessary in the facts and circumstances of the case."

12. If the proceedings of the case are taken into consideration it is clear that, adjudication order is passed in the year 2005, thereafter till no steps have taken by the complainant SEBI to recover amount of penalty. Present complaint is also filed after lapse of period of 8 years. Therefore, I am of the opinion that in present case amount of interest shall have to be calculated in view of Section 4 of Interest Act which allows to claim interest at the rate of maximum 6%. Taking into consideration fact of non payment of penalty amount by accused and taking into fact that accused is prosecuted by SEBI after lapse of period of 8 years from date of passing of the adjudication order by directing to accused to pay amount of penalty with simple interest at the rate of 6% per annum till payment of entire amount as well as to pay legal charges of Rs.1,00,000/- and accordingly, application is liable to be allowed.

24) Appellant's objection to reduction of rate of interest by the learned Special Judge is essentially premised on the Recovery Certificate dated 19 June 2018 of the Recovery Officer. It would be apposite to reproduce the said Recovery Certificate, which reads thus:

NOTICE OF DEMAND UNDER RULE 2 OF THE SECOND SCHEDULE TO THE INCOME TAX ACT, 1961 r.w **SECTION 28A** OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AS AMENDED BY THE SECURITIES LAWS (AMENDMENT) ACT, 2014.

This is to certify that a sum of Rs. 1,36,49,241.10 (Rupees One Crore Thirty Six Lacs Forty Nine Thousand Two Hundred Forty One and Paise Ten Only) as detailed below is due to SEBI from you

Description of Dues	Amount (Rs.)
Penalty imposed by the adjudicating Officer vide Order no. 2005-09-30 dated 30/09/2005 in the matter of Ransi Software India Ltd.	54,00,000.00
Interest from 30/09/2005 to 19/06/2018 @ 12% p.a.	82,48,241.10
Recovery Cost	1,000.00
Total	1,36,49,241.10

You are hereby directed to pay the above sum of Rs. 1,36,49,241.10 (Rupees One Crore Thirty Six Lacs Forty Nine Thousand Two Hundred Forty One and Paise Ten Only) along with further interest, all costs, charges and expenses within 15 (Fifteen) days of the receipt of this Notice (DD shall be drawn in favour of the Securities and Exchange Board of India (SEBI) payable at Mumbai, failing when recovery shall be made in accordance with the provisions of **Section 28A of the Securities and Exchange Board of India Act, 1992** as amended by the Securities Laws (Amendment) Act 2014 read with Section 220 to Section 232 of the Income Tax Act, 1961 and the Second Schedule to the said Act and the rules made thereunder.

Dated: 19/06/2018

Sd/-
Recovery Officer

(emphasis and underlining added)

25) What is noticeable at once in the Recovery Certificate dated 19 June 2018 is that the same is issued under Section 28A of SEBI Act. The interest @ 12% p.a. is thus levied by the Recovery Officer by referring to the provisions of Section 28A of the SEBI Act.

26) Section 28A was inserted in SEBI Act by Ordinance dated 18 July 2013. Later, Securities Laws (Amendment) Act, 2014 brought into force Section 28A in SEBI Act from the date of the First Ordinance i.e. w.e.f. 18 July 2013. Section 28A provides thus:

28A. Recovery of amounts.—

(1) If a person fails to pay the penalty imposed 5 [under this Act] or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, **the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate)** and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

- (a) attachment and sale of the person's movable property;
- (b) attachment of the person's bank accounts;
- (c) attachment and sale of the person's immovable property;
- (d) arrest of the person and his detention in prison;
- (e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 2.—Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.—Any reference to appeal in Chapter XVIII and the Second Schedule to the Income-tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

Explanation 4. —The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person. (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1). (3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person. (4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

(emphasis added)

Thus as per Section 28A, the recovery of penalty amount can be made by charging interest under Section 220 of the Income Tax

Act, 1961 which prescribes simple rate of interest of 1% per month.

27) In *Dushyant Dalal* (supra), the issue before the Apex Court was whether interest can be recovered on orders of penalty issued under the SEBI Act when the amounts remained unpaid under Section 28A. The Apex Court referred to the provisions of the Interest Act, 1978. It considered the judgment of Single Judge of this Court in *Prabhavati Ramgarib B. vs. Divisional Railway Manager*⁵ in which the words 'or other rule of law' appearing in Section 4(1) of the Interest Act were held to include payment of interest in equity. The Apex Court agreed with the said statement of law in *Prabhavati* and held that the Tribunals, such as Securities Appellate Tribunal, can award interest from the date the cause of action arises till the date of commencement of proceedings for recovery of such interest in equity. The Apex Court further held that Section 28A of SEBI Act would apply only prospectively as Legislature intended its insertion and application only prospectively as opposed to introduction of Section 15JB introduced vide same Amendment Act of 2014 retrospectively from 20 April 2007. The Apex Court thus held in para-28 of the judgment as under:

28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such

5 (2010) 4 Mh.L.J. 691

money would, therefore, sound in equity. **This being the case, it is clear that, despite the fact that Section 28A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28A read with Section 220(2) of the Income Tax Act only prospectively.** However, since it has not taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that no interest could be charged from the date on which penalty became due. The Civil Appeals 10410- 10412 of 2017 are allowed insofar as the penalty cases are concerned.

(emphasis added)

28) Thus, levy of interest in the Recovery Certificate dated 19 June 2018 prescribed under Section 28A of the SEBI Act is in the teeth of the judgment of the Apex Court in *Dushyant Dalal* (supra). As on the date of issuance of Recovery Certificate dated 19 June 2018, the law with regard to prospective applicability of Section 28A was declared by the Apex Court on 4 October 2017. Despite this position, the Recovery Officer proceeded to levy interest by referring to the provisions of Section 28A of the SEBI Act from 30 May 2005.

29) Mr. Kapadia has contended that even if the Recovery Certificate dated 19 June 2018 may be erroneous, the Special Court would not have jurisdiction to interfere with the same as there are other channels and remedies for challenging the said Recovery Certificate. Thus, what is sought to be contended by SEBI is that while seeking compounding of offence under Section 24A, an accused cannot seek to question correctness of the amount reflected in the Recovery Certificate indirectly. Though, ordinarily what Mr. Kapadia contends may be correct as it is well-settled principle of law that the executing court cannot go beyond

a decree. However, the act of issuance of Recovery Certificate by the Recovery Officer in pursuance of penalty order dated 30 September 2005 passed by the Adjudicating Officer cannot be treated as so inviolable that the Special Court entertaining application for compounding is bound to accept the figure reflected in the said Certificate.

30) There are multiple reasons why the Special Court was not bound by the amount indicated in the Certificate dated 19 June 2018. Firstly, the said figure was arrived at contrary to the law declared by the Apex Court in *Dushyant Dalal* (supra). Secondly, when the compounding application was decided on 4 March 2024, the amount indicated in the Recovery Certificate was no longer valid and the same had undergone a change. SEBI indicated an altogether different amount in its reply filed on 15 January 2024. It cannot be contended that the amount changed only on account of period during which the interest is levied. The Recovery Certificate dated 19 June 2018 demanded recovery cost of Rs.1,000/-, whereas, the reply filed by SEBI on 15 January 2024 indicated legal expenses of Rs.1,00,000/-. The Special Court has accepted demand of SEBI towards legal expenses of Rs.1,00,000/- and has directed Respondent No.1 to pay the same. Thus, the conduct of SEBI itself is not consistent with the Recovery Certificate dated 19 June 2018 and it cannot insist that the Special Court could not have varied the amount of interest levied in the Recovery Certificate.

31) The statutory scheme of SEBI Act particularly of Section 24A is such that the Special Court can only consider views

of SEBI which are not binding on the court. This position is now settled by judgment of the Apex Court in *Prakash Gupta* (supra). In para-83 of the judgment, the Apex Court has held that Section 24A does not provide for consent for SEBI for passing an order of compounding by SAT or by a Court. By referring to the judgment in *Union of India Versus. Rajendra Kumar*⁶, the Apex Court held in paras-83 and 84 as under :

83 The plain language of Section 24A does not provide for the consent of SEBI. The issue is whether this Court should read the requirement of the consent of SEBI into the provision, on the ground that this is a casus omissus. This would, however, amount to re-writing the statutory provision by introducing language which has not been employed by the legislature. In a two Judge Bench judgment of this Court in *Union of India vs Rajiv Kumar*²³, Justice Arijit Payasat speaking for the Court held:

“22. While interpreting a provision, the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See *CST v. Popular Trading Co.* [(2000) 5 SCC 511]) **The legislative casus omissus cannot be supplied by judicial interpretative process.**

23. Two principles of construction – one relating to casus omissus and the other in regard to reading the statute/statutory provision as a whole – appear to be well settled. **Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself. But, at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature...**”

Emphasis supplied

6 (2003) 6 SCC 516

84 In the present case, it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose. The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

32) The Apex Court however has held that a high degree of deference needs to be shown to the views of SEBI while deciding the compounding application. It is held in paras-89 to 91 of the judgment as under :

89 Section 24(1) is an omnibus provision for all offences punishable for contravention (or attempts or abetments) of the provisions of the Act or of any rule or regulation made under it. As we have seen earlier, prior to Amending Act 59 of 2002 which came into effect from 29 October 2002, the punishment for offences extended to a period of one year of imprisonment, or with fine, or with both under Section 24(1). The term of imprisonment has been extended to up to ten years and a fine of Rs twenty-five crores by the amending legislation of 2002. The rationale for this amendment, as evinced from its Statement of objects and reasons, was to provide an effective deterrent for potential wrongdoers. Offences punishable under subSection (1) of Section 24 would cover a range of violations from the venial to the serious. The entrustment of the power to compound offences either before or after the institution of any proceeding is to SAT or a Court before which such proceedings are pending. The provisions of Section 24A must be read in a manner

consistent with the object and purpose underlying the position of SEBI as an expert regulator. SEBI, as the regulator, is entrusted with diverse roles and functions including the power to regulate the securities' market, make regulations and to enforce the provisions of the Act. Its functions have been recognized in a panoply of statutory provisions. Independent of initiating a prosecution, SEBI has been entrusted with wide ranging powers and functions including the power to investigate, to issue directions and levy penalties and make cease and desist orders.

90 While the statute has entrusted the powers of compounding offences to SAT or to the Court, as the case may be, before which the proceedings are pending, the view of SEBI as an expert regulator must necessarily be borne in mind by the SAT and the Court, and would be entitled to a degree of deference. While SEBI does not have a veto, having regard to the language of Section 24A, its views must be elicited. The view of SEBI, as envisaged in the FAQs accompanying SEBI's circular dated 20 April 2007, must undoubtedly be sought by the SAT or the Court, to decide on whether an offence should be compounded. For SEBI can provide an expert view on the nature and gravity of the offence and its implication upon the protection of investors and the stability of the securities' market. These considerations and others which SEBI may place before the SAT or the Court, would be of relevance in determining as to whether an application for compounding should be allowed. We, therefore, hold that before taking a decision on whether to compound an offence punishable under Section 24 (1), the SAT or the Court must obtain the views of SEBI for furnishing guidance to its ultimate decision. These views, unless manifestly arbitrary or mala fide, must be accorded a high degree of deference. The Court must be wary of substituting its own wisdom on the gravity of the offence or the impact on the markets, while discarding the expert opinion of the SEBI.

91 It is also important to note that the legislative scheme of the SEBI Act delineates several actions that are liable for penalty under Section 15, but includes a common sentencing provision under Section 24. Therefore, Section 24 would be the sentencing provision for the most banal of offences, to the most egregious of market disruptions and frauds. The maximum punishment prescribed under Section 24 has also seen an amendment and increase by the Amending Act 59 of 2002, in order to ensure effective deterrence. In exercising the power of compounding under Section 24A, the SAT or the Court must be conscious of the gravity of the offences that the accused are being prosecuted for, considering that the legislative scheme does not individually prescribe separate sentencing provisions which would otherwise have provided an insight into the gravity and gradation of the

offences. Hence, SEBI's view on the compounding would become all the more important, in this light.

33) While discussing the guidelines for compounding under Section 24A, the Apex Court referred to SEBI Circular dated 20 April 2007 which has enumerated indicative factors to be taken into consideration for the purpose of passing consent order and orders for compounding of offences. The Apex Court held in para-92(iii) as under :

(iii) The SAT or Court should ensure that the proceedings under Section 24A do not mirror a proceeding for quashing the criminal complaint under Section 482 of the CrPC, thereby providing the accused a second bite at the cherry. The principle behind compounding, as noted before in this judgment, is that the aggrieved party has been restituted by the accused and it consents to end the dispute. Since the aggrieved party is not present before the SAT or the Court and most of the offences are of a public character, it should be circumspect in its role. In the generality of instances, it should rely on the SEBI's opinion as to whether such restitution has taken place;

34) Thus, what needs to be taken into consideration by the Special Court are merely 'views' of SEBI with high degree of deference. Consent of SEBI is not required for passing order for compounding of the offence as SEBI does not enjoy veto power. It must be borne in mind that the views of SEBI contemplated in *Prakash Gupta* (supra) are, essentially, views on the aspect of compounding i.e. whether the facts and circumstances of the case warrant compounding or not. In the present case, SEBI is not principally opposed to compounding as such. In that view of the matter, the views expressed by SEBI in its reply dated 15 January 2024 did express its concurrence (though not required in law) for compounding of offences in the present case. Since

consent of SEBI itself is not mandatory, the question of strict following of condition, subject to which consent is given, does not arise. In that view of the matter, the contention raised on behalf of SEBI that the consent for compounding was conditional and that the Special Court did not have jurisdiction to allow compounding contrary to that condition deserves to be rejected.

35) In my view therefore, no serious flaw can be traced in the compounding order passed by the Special Court.

36) However, there is only one area where slight modification of the compounding order would be warranted, as it does tend to make a slight departure from the law expounded in *Dushyant Dalal* (supra). Careful perusal of the findings recorded by the Apex Court in para-28 of the judgment, which are culled out above, would indicate that the Apex Court has divided the interest regime into two parts. It has held that in respect of the period prior to introduction of Section 28A (18 July 2013), interest can be charged on the amount of penalty on the principle of equity. However, in respect of the period after introduction of Section 28A, interest as provided by that Section would obviously be applicable. The judgment in *Dushyant Dalal* cannot be read to mean that if the adjudication order is passed prior to introduction of Section 28A in SEBI Act, only interest in equity can be levied even in respect of period after introduction of Section 28A. Section 28A empowers the Recovery Officer to issue a Recovery Certificate and proceed to execute the same by enumerated means. Power of recovery under Section 28A can be exercised even in respect of order passed prior to introduction of the

Section. In *Dushyant Dalal* the Apex Court has held that Section 28A belongs to the realm of procedural law and is retrospective. However only the provision for levy of interest is held to be belonging to the realm of substantive law, and hence provision for charging of such interest under Section 28A read with Section 220(2) of the Income Tax Act, 1961 is held to be prospective. Therefore interest after introduction of Section 28A would be in accordance with Section 220 of the Income Tax Act, 1961 which prescribes simple rate of interest of 1% per month. Accordingly, Respondent No.1 would be liable to pay interest @ 1% p.m. on the penalty amount of Rs.54,00,000/- from 18 July 2013 onwards. This is the only modification which is required to be made in the order dated 4 March 2024. To this limited extent, the Appeal needs to be allowed.

37) I accordingly proceed to pass the following order :

(i) Order dated 4 March 2024 passed by the learned Special Judge on application at Exhibit-57 and 61 is modified only to the extent of direction for payment of interest.

(ii) It is directed that Respondent No.1 shall pay interest @ 6% p.a. from the date of adjudication order (30 September 2005) till 17 July 2013 and @ 1% p.m. from 18 July 2013 till 4 April 2024. SEBI shall communicate the differential amount of interest to the Respondent.

(iii) The difference in the amount of interest shall be paid by the Respondent No.1 within a period of 30 days of date of receipt of communication from SEBI.

(iv) Order dated 4 April 2024 discharging Respondent No.1 is set aside for the limited purpose of ensuring that Respondent No.1 pays the differential amount of interest.

(v) If the differential amount of interest is paid by Respondent No.1, within the stipulated time, the learned Special Judge shall proceed to pass an order of discharge of Respondent No.1 from the offence punishable under Section 24(2) of the SEBI Act.

(vi) For the above limited purpose, Special Case (SEBI) No. 255 of 2014 is restored on the file of the learned Special Judge. Parties shall appear before the Special Judge on 6 January 2026 and obtain further directions from the Court.

38) With the above directions, the Appeal is **partly allowed and disposed of.**

[SANDEEP V. MARNE, J.]