Andreza

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3977 OF 2024
WITH
INTERIM APPLICATION NO. 2566 OF 2024
IN
WRIT PETITION NO. 3977 OF 2024
WITH
WRIT PETITION NO. 4828 OF 2024
WITH
INTERIM APPLICATION (L) NO. 9433 OF 2024
IN
WRIT PETITION NO. 4828 OF 2024
AND
WRIT PETITION (L) NO. 2325 OF 2024
WITH
INTERIM APPLICATION (L) NO. 9266 OF 2024
IN
WRIT PETITION (L) NO. 2325 OF 2024

WRIT PETITION NO. 3977 OF 2024
WITH
INTERIM APPLICATION NO. 2566 OF 2024
IN
WRIT PETITION NO. 3977 OF 2024

Bharat Nidhi Limited through its ‘Authorised Representative having its registered office at First floor, Express Building 9-10, Bahadur Shaah Zafar Marg, New Delhi- 110002 ... Petitioners

V e r s u s

1. Securities and Exchange Board of India, having its headquarters at SEBI Bhavan, Plot No. C4-A, G Block, Near Bank Of India, Bandra Kurla Complex, Bandra East, Mumbai — 400051.

2. Ashoka Marketing Limited, through its Authorised Representative having its office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi — 110002.

3. Arth Udyog Limited, through its Authorised Representative having its registered office at 16A, Lajpat Nagar-IV, New Delhi— 110024.

4. Matrix Merchandise Limited, through . its Authorised Representative having its _registered office at 101, Pratap Nagar, Mayur Vihar, Phase — 1, East Delhi, New Delhi— 110091.

5. Mahavir Finance Limited, through its Authorised Representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase — 1, East Delhi, New Delhi — 110091.

6. TM Investments Limited, through its Authorised Representative having its registered office at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

7. Sanmati Properties Limited, through its Authorised Representative having its registered office at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi – 110092.

8. Vineet Jain, 15, Motilal Nehru Marg, New

Delhi – 110002.

Rider 'A'

9. Ashok Dayabhai Shah, Indian inhabitant, having permanent address at 20, Alli Chambers, 2nd Floor, Tamarind Lane, Fort, Mumbai - 400 023.

10. Rupal Ashok Shah, Indian inhabitant, having permanent address at 20, Alli Chambers, 2nd Floor, Tamarind Lane, Fort, Mumbai - 400 023

11. Kuntal Hasmukhlal Shah, Indian inhabitant, having permanent address at 104, 1st Floor, Panchsheel, Plot No. 53, C Road, P.M. Shukla Marg, Churchgate, Mumbai - 400020

12. Hasmukhlal Vrijlal Shah, Indian inhabitant, having permanent address at 104, 1st Floor, Panchsheel, Plot No. 53, C Road, P.M. Shukla Marg, Churchgate, Mumbai — 400020

13. Shilpa Ajay Shah, Indian inhabitant, having permanent address at 107 /4 Natwar House, V.P. Road, Near Girgaon P.O Mumbai - 400004

14. Gautam Kantilal Pandhi, Indian inhabitant, having permanent address at Royal Garden, Flat No. 303, 3 Floor, 203 New Palasia Indor, Madhya Pradesh, Indore-452001

15. Madan Lal Narula, Indian inhabitant, having permanent address at 162, Venus Apartment, Cuffe Parade, Near President Hotel, Colaba, Mumbai – 400005.

16. Sneha Anil Whabi, Indian inhabitant, having permanent address at Krishna Kunj,

P no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014

17. Anil Vithaldas Whabi, Indian inhabitant, having permanent address at Krishna Kunj, P no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014

18. Pravin Hiralal Jain, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune - 411001.

19. Jain Pravinlal Biralal HUF, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune- 411001

20. Lokesh Pravin Jain, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune – 411001.

21. Asha Manik, Indian inhabitant, having permanent address at 12 A II Palazzo Little Gibbs Road, Mumbai 400006.

22. Rohan Manik, Indian inhabitant, having permanent address at 12 A II Palazzo Little Gibbs Road, Mumbai 400006.

23. Jayshree Gokal, Indian inhabitant, having permanent address at 12 A II, Palazzo Little Gibbs Road, Mumbai 400006.

24. Prasham Shah, Indian inhabitant, having permanent address at 10/12, 4th Floor Jolly Center, Tilak Road, Santacruz West, Mumbai – 400054.

25. Gandhi Securities and Investment Pvt

Ltd., Indian inhabitant, having permanent address at 9, Haji Kasam Building, 66, Tamarind Lane, Fort, Mumbai - 400 001.

26. Pina Pankaj Shah, Indian inhabitant residing at Flat 10, 4th Floor, Jolly Center, Tilak Road, Santacruz West, Mumbai 400054.

27. Pankaj Shah, Indian inhabitant residing at 10/12, 4th Floor Jolly Center, Tilak Road, Santacruz West, Mumbai – 400054. ... Respondents

INTERIM APPLICATION NO. 2566 OF 2024

IN

WRIT PETITION NO. 3977 OF 2024

Bharat Nidhi Limited through its 'Authorised Representative having its registered office at First floor, Express Building 9-10, Bahadur Shaah Zafar Marg, New Delhi- 110002 ... Applicant

IN THE MATTER OF :

Bharat Nidhi Limited, a company incorporated under the Companies Act, 1956, having its registered office at First Floor, Express Building, 9-10, Bahadur Shah Zafar Marg, New Delhi – 110002. ... Petitioners

V e r s u s

1. Securities and Exchange Board of India, having its headquarters at SEBI Bhavan, Plot No. C4-A, G Block, Near Bank Of India, Bandra Kurla Complex, Bandra East, Mumbai — 400051.

2. Ashoka Marketing Limited, through its Authorised Representative having its office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi —

110002.

3. Arth Udyog Limited, through its Authorised Representative having its registered office at 16A, Lajpat Nagar-IV, New Delhi— 110024.

4. Matrix Merchandise Limited, through . its Authorised Representative having its _registered office at 101, Pratap Nagar, Mayur Vihar, Phase — 1, East Delhi, New Delhi— 110091.

5. Mahavir Finance Limited, through its Authorised Representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase — 1, East Delhi, New Delhi — 110091.

6. TM Investments Limited, through its Authorised Representative having its registered office at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

7. Sanmati Properties Limited, through its Authorised Representative having its registered office at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi – 110092.

8. Vineet Jain, 15, Motilal Nehru Marg, New Delhi – 110002.

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10. Rupal Ashok Shah, Indian inhabitant, having permanent address at 20, Alli Chambers, 2nd Floor, Tamarind Lane, Fort,

Mumbai - 400 023

11. Kuntal Hasmukhlal Shah, Indian inhabitant, having permanent address at 104, 1st Floor, Panchsheel, Plot No. 53, C Road, P.M. Shukla Marg, Churchgate, Mumbai - 400020

12. Hasmukhlal Vrijlal Shah, Indian inhabitant, having permanent address at 104, 1st Floor, Panchsheel, Plot No. 53, C Road, P.M. Shukla Marg, Churchgate, Mumbai — 400020

13. Shilpa Ajay Shah, Indian inhabitant, having permanent address at 107 /4 Natwar House, V.P. Road, Near Girgaon P.O Mumbai - 400004

14. Gautam Kantilal Pandhi, Indian inhabitant, having permanent address at Royal Garden, Flat No. 303, 3 Floor, 203 New Palasia Indor, Madhya Pradesh, Indore-452001

15. Madan Lal Narula, Indian inhabitant, having permanent address at 162, Venus Apartment, Cuffe Parade, Near President Hotel, Colaba, Mumbai – 400005.

16. Sneha Anil Whabi, Indian inhabitant, having permanent address at Krishna Kunj, P no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014

17. Anil Vithaldas Whabi, Indian inhabitant, having permanent address at Krishna Kunj, P no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014

18. Pravin Hiralal Jain, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune -

411001.

19. Jain Pravinlal Biralal HUF, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune- 411001

20. Lokesh Pravin Jain, Indian inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune – 411001.

21. Asha Manik, Indian inhabitant, having permanent address at 12 A II Palazzo Little Gibbs Road, Mumbai 400006.

22. Rohan Manik, Indian inhabitant, having permanent address at 12 A II Palazzo Little Gibbs Road, Mumbai 400006.

23. Jayshree Gokal, Indian inhabitant, having permanent address at 12 A II, Palazzo Little Gibbs Road, Mumbai 400006.

24. Prasham Shah, Indian inhabitant, having permanent address at 10/12, 4th Floor Jolly Center, Tilak Road, Santacruz West, Mumbai – 400054.

25. Gandhi Securities and Investment Pvt Ltd., Indian inhabitant, having permanent address at 9, Haji Kasam Building, 66, Tamarind Lane, Fort, Mumbai - 400 001.

26. Pina Pankaj Shah, Indian inhabitant residing at Flat 10, 4th Floor, Jolly Center, Tilak Road, Santacruz West, Mumbai 400054. ... Respondents

27. Pankaj Shah, Indian inhabitant residing at 10/12, 4th Floor Jolly Center, Tilak Road,

Santacruz West, Mumbai – 400054.

WITH

WRIT PETITION NO. 4828 OF 2024

WITH

INTERIM APPLICATION (L) NO. 9433 OF 2024

IN

WRIT PETITION NO. 4828 OF 2024

1. Matrix Merchandise Limited, 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

2. Mahavir Finance ·Limited, 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

3. TM Investments Limited, 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

4. Sanmati Properties Limited, 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi – 110092.

5. Vineet Jain, 15, Motilal Nehru Marg, New Delhi - 110002. ... Petitioners

Versus

1. Securities And Exchange Board of India, having its headquarters at SEBI Bhavan, Plot No. C4-A, G Block, Near Bank Of India, Bandra Kurla Complex, Bandra East, Mumbai - 400051.

2. Bharat Nidhi . Limited, through its Authorised Representative having its registered, office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg,

New Delhi- 110002.

3. Ashoka Marketing Limited, through its Authorised Representative having its office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi- 110002.

4. Arth Udyog Limited, through its Authorised Representative having its registered office at 16A, Lajpat Nagar-IV, New Delhi- 110024.

... Respondents

WITH

INTERIM APPLICATION (L) NO. 9433 OF 2024

IN

WRIT PETITION NO. 4828 OF 2024

1. Matrix Merchandise Limited, through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

2. Mahavir Finance Limited, through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

3. TM Investments Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

4. Sanmati Properties Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre,

East Delhi, New Delhi – 110092.

5. Vineet Jain, 15, Motilal Nehru Marg, New Delhi – 110002.

... Applicants / Original Petitioners

IN THE MATTER OF

1. Matrix Merchandise Limited, through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

2. Mahavir Finance Limited, through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

3. TM Investments Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

4. Sanmati Properties Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi – 110092.

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... Petitioners

Versus

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2. Bharat Nidhi Limited, through its Authorised Representative having its registered, office at First floor, Express

Building 9-10, Bahadur Shah Zafar Marg, New Delhi- 110002.

3. Ashoka Marketing Limited, through its Authorised Representative having its office at First floor, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi- 110002.

4. Arth Udyog Limited, through its Authorised Representative having its registered office at 16A, Lajpat Nagar-IV, New Delhi- 110024.

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6. Rupal Ashok Shah, Indian Inhabitant, having permanent address at 20, Alli Chambers, 2nd Floor, Tamarind Lane, Fort, Mumbai – 400 023.

7. Kuntal Hasmukhlal Shah, Indian Inhabitant, having permanent address at 104, 1st Floor, Panchsheet, Plot No. 53, C Road, P. M. Shukla Marg, Churchgate, Mumbai – 400020.

8. Hasmukhlal Vrijlal Shah, Indian Inhabitant, having permanent address at 104, 1st Floor, Panchsheet, Plot No. 53, C Road, P. M. Shukla Marg, Churchgate, Mumbai – 400020.

9. Shilpa Ajay Shah, Indian Inhabitant, having permanent address at 107/4, Natwar House, V. P. Road, Near Girgaon,P. O. Mumbai 400004.

10. Gautam Kantilal Pandhi, Indian inhabitant, having permanent address at Royal Garden, Flat No. 303, 3rd Floor, 203

New Palasia Indore, Madhya Pradesh, — Indore- 452001.

11. Madan Lal Narula, Indian Inhabitant, having permanent address at 162, Venus Apartment, Cuffe Parade, Near President Hotel, Colaba, Mumbai – 400005.

12. Sneha Anil Whabi, Indian Inhabitant, having permanent address at Krishna Kunj, P. no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014.

13. Anil Vithaldas Whabi, Indian Inhabitant, having permanent address at Krishna Kunj, P. no. 41, Parkland Society, Near Bajaj Finserv Viman Nagar, Pune – 411014.

14. Pravin Hiralal Jain, Indian Inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune – 411001.

15. Jain Pravin Hiralal HUF, Indian Inhabitant, having permanent address at Flat no. 301, Queens Court Housing Society Ltd., Narangi Baugh Road, Off Boat Club Road, Pune – 411001.

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19. Jayshree Gokal, Indian Inhabitant, having permanent address at 12 A II Palazzo Little Gibbs Road, Mumbai 400006.

20. Prasham Shah, Indian Inhabitant, having permanent address at 10/12, 4th Floor Jolly Center, Tilak Road, Santacruz West, Mumbai – 400054.

21. Gandhi Securities and Investment Pvt. Ltd., Indian Inhabitant, having permanent address at 9, Haji Kasam Building, 66, Tamarind Lane, Fort, Mumbai – 400 001.

22. Pina Pankaj Shah, Indian Inhabitant, residing at Flat 10, 4th Floor, Jolly Center, Tilak Road, Santacruz West, Mumbai 400054.

23. Pankaj Shah, Indian Inhabitant, residing at 10/12, 4th Floor Jolly Centre, Tilak Road, Santacruz West Mumbai – 400054.

...Respondents

WRIT PETITION (L) NO. 2325 OF 2024

WITH

INTERIM APPLICATION (L) NO. 9266 OF 2024

IN

WRIT PETITION (L) NO. 2325 OF 2024,

1. Ashoka Marketing Limited, through its authorised representative having its registered office at First Floot, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi – 110002.

2. Arth Udyog Limited, through its authorised representative having its office at 16A, Lajpat Nagar-IV, New Delhi – 110024.

... Petitioners

V e r s u s

1. Securities and Exchange Board of India, having its headquarters at SEBI Bhavan, Plot

No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E) Mumbai, 400 051.

2. Bharat Nidhi Limited through its authorized representative having its registered address at First floor, Express Building, 9-10 Bahadur Shah Zafar Marg, New Delhi – 110002.

3. Matrix Merchandise Limited through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

4. Mahavir Finance Limited, through its authorized representative having its registered office at 101, Pratap Nagar, Mayur Vihar, Phase 1, East Delhi, New Delhi - 110091.

5. TM Investments Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi - 110092.

6. Sanmati Properties Limited, through its authorized representative having its registered office address at 814, Plot No. 7, Roots Tower, Laxmi Nagar, District Centre, East Delhi, New Delhi – 110092.

7. Vineet Jain, 15, Motilal Nehru Marg, New Delhi – 110002.

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14. Madan Lal Narula, Indian Inhabitant, having permanent address at 162, Venus Apartment, Cuffe Parade, Near President Hotel, Colaba, Mumbai – 400005.

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WITH

INTERIM APPLICATION (L) NO. 9266 OF 2024

IN

WRIT PETITION (L) NO. 2325 OF 2024,

1. Ashoka Marketing Limited, through its authorised representative having its registered office at First Floot, Express Building 9-10, Bahadur Shah Zafar Marg, New Delhi – 110002.

2. Arth Udyog Limited, through its authorised representative having its office at 16A, Lajpat Nagar-IV, New Delhi – 110024.

... Applicants/ Original Petitioners

IN THE MATTER OF

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26. Pankaj Shah, Indian Inhabitant, residing at 10/12, 4th Floor Jolly Centre, Tilak Road, Santacruz West Mumbai – 400054. ... Respondents

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Mr. Venkatesh Dhond, Senior Advocate *a/w. Mr. Ameya Gokhale, Mr. Rishabh Jaisani, Ms. Karishma Rao, Mr. Harit Lakhani and Mr. Ansh Kumar i/by. Shardul Amarchand Mangaldas and Co. for the Petitioners in WP No.3977/2024 and for Applicant in IA No.2566/2024.*

Mr. Janak Dwarkadas, Senior Advocate *a/w. Mr. Ameya Gokhale, Mr. Rishabh Jaisani, Mr. Harit Lakhani and Mr. Ansh Kumar i/by. Shardul Amarchand Mangaldas and Co. for the Petitioners in WP No.4828/2024 and for Applicant in IAL No.9433/2024.*

Mr. Ashish Kamat, Senior Advocate *a/w. Mr. Ameya Gokhale, Mr. Rishabh Jaisani, Mr.Harit Lakhani and Mr. Ansh Kumar i/by. Shardul Amarchand Mangaldas and Co. for the Petitioners in WP (L) No.2325/2024 and for Applicant in IAL No.9266/2024.*

Mr. J. J. Bhatt, Senior Advocate *a/w Mr. Vishal Kanade, Mr. Mihir Mody,Shreyans Menkudale i/by. K. Ashar and Co. for Respondent No.1 (SEBI) in WP No.3977/2024, WPL No.2325/2024 and WP No.4828/2024.*

Mr. Gaurav Joshi, Senior Advocate *a/w. Mr. Kunal Katariya i/b Garima Mehrotra for Resp nos.26 and 27 in WP 3977/24, for Respondent nos.25 and 26 in WPL 2325/24 and Respondent Nos.22 and 23 in WP No.4828/2024.*

Mr. Navroze H. Seervai, Senior Advocate *a/w Ms. Arti Raghavan, Mr. Pulkit Sukhramani, Ms. Samreen Fatima and Mr. Juan Dsouza i/by. JSA Advocates and Solicitors for Respondent Nos. 9 to 25 in WPL No. 3977/2024, for Respondent Nos. 8 to 24 in WPL No.2325/2024 and for Respondent Nos. 5 to 21 in WP 4828/2024.*

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

RESERVED ON: 11th March, 2025

PRONOUNCED ON: 11th June, 2025

(THROUGH V.C.)

JUDGMENT (*Per Bharati Dangre, J.)*

1. Commonality of the three Writ Petitions lies in the fact that all the three, raise a challenge to the order dated 10.11.2023. passed by Securities and Exchange Board of India (SEBI)revoking the settlement order passed by it on 12.09.2022.

By the said order, involving the entities, who are the Petitioners in the three Writ Petitions, the decision is taken by SEBI to revoke the Settlement Order dated 12.09.2022, in exercise of the power conferred under Regulation 28 of the SEBI (Settlement Proceedings) Regulations, 2018, for failure to comply with its terms. The impugned order also direct that upon revocation, no amount paid by way of compliance of the monetary terms be refunded and the Board shall restore or initiate the proceedings with respect to which the Settlement Order was passed against the Petitioners.

2. To begin with, it would be appropriate to introduce the Contenders in the proceedings, which are placed before us for consideration; on one hand stand the Petitioners, the prime contender amongst them being Bharat Nidhi Limited ("BNL") the Petitioner in Writ Petition No.3977/2024, an unlisted public limited company incorporated under the provisions of Companies Act, 1930, presently placed on the Dissemination Board (DB) of National Stock Exchange of India Limited ("NSE") since February 2019, pursuant to the circular issued by SEBI.

Whereas, in Writ Petition No.4828/2024 (Stamp No.2326/2024) the Petitioners are the following entities :-

1) Matrix Merchandise Limited, New Delhi;
2) Mahavir Finance Limited, New Delhi;
3) T. N. Investments Limited, New Delhi;
4) Sanmati Properties Limited, New Delhi;
5) Vineet Jain, New Delhi.

The Petitioner Nos.1 to 4 are the Companies incorporated under the Companies Act, 1930 having its registered office at the address mentioned in the title clause of the Petition, whereas Petitioners No.5 Vineet Jain is an Indian Inhabitant, a resident of New Delhi.

In the third Writ Petition, WP(L) No.2325/2024, the Petitioners are Ashoka Marketing Limited, alongwith Arth Udyog Limited

Companies registered, which also raise challenge to the impugned order.

3. Opposing the Petition, on one hand stands SEBI, the Regulation and on the other hand are the Minority Shareholder Group headed by Ashok Dayabhai Shah (known as 'Ashok Shah Group') as well as 'Pina Pankaj Shah Group', all of whom being impleaded in WP No. 2326/2024 as Respondent Nos.5 to 23 in terms of the amendment permitted to be carried out by order dated 08/02/2024 and 15/02/2024.

The Respondent Nos. 5 to 23 are the minority shareholders in BNL, who had approached this court by filing separate Writ Petitions viz. WP No.447/2023 and WP No.530/2023 respectively challenging the Settlement Order of SEBI and the postal ballot notice issued by it.

We will refer with the Petitions and the orders passed therein as and when the occasion arises.

4. The three Writ Petitions, face opposition at the instance of SEBI as well as private respondents, minority shareholders of BNL, who were aggrieved by the Settlement Order passed in favour of the 8 Petitioners and as it is their specific contention that the Settlement Order must fail as it has resulted into breach by the Petitioners and they find justification in SEBI revoking the order of Settlement.

5. In support of the Petitioners, we have heard the learned senior counsel Mr. Janak Dwarkadas, representing the Petitioners in WP 4828/2024, Senior Counsel Mr. Ashish Kamat, representing the Petitioners in WP no.2325/2024 and the learned senior counsel Mr. Dhond, representing BNL (WP No.3977/2024).

SEBI is represented by the learned Senior Counsel Mr. J. J. Bhatt, whereas the respective minority shareholders are represented by the learned senior counsel Mr. Navroz Seervai and Mr. Gaurav Joshi.

6. Bharat Nidhi Limited (In short, 'BNL'), the Petitioner, is an unlisted Public Limited Company, which was initially listed on Delhi Stock Exchange and then on Calcutta Stock Exchange prior to its de recognition by SEBI. While it find itself placed on the Dissemination Board (In short, 'DB') of National Stock Exchange of India Limited (NSEL) since 12.02.2019 and being subjected to control of SEBI, pursuant to complaints and representations from certain shareholders, primarily alleging violation SEBI's minimum shareholding norms (NPS norms) and disclosure requirements, common show cause notice bearing reference No.SEBI/HO/IVD/IDI/OW/P/2020 of 18105 dated 20.10.2020 along with the other seven Petitioners, who are the shareholders of BNL.

The show cause notice attributed violations to BNL and the other Petitioners, the notice being issued under Section 11(1), 11(4), 11(4A), 11B(1) and 11(2) of the SEBI Act, 1992, read with SEBI (Procedure for

Holding Enquiry and Imposing Penalties) Rules, 1995 and Section 12A(1)(a) and Section 23E of Securities Contract (Registration) Act, 1956. The notice specifically attributed violation of Regulation 31(1)(b) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("LODR Regulation") read with SEBI circular no. CIR/CFD/CMD/13/2015 dated 30 November 2015 read with regulation 2(za) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and Rule 19 A(1) of Securities Contract Regulation Rules, 1957.

7. The show cause notice issued also indicated that since a settlement mechanism is formulated under the SEBI (Settlement Proceedings) Regulation, 2018, the noticee is at liberty to opt for the settlement process in the manner prescribed, in the Regulation though it was clarified that filing of settlement application did not confer any right to settle the proceedings.

The aforesaid resulted into filing of Settlement Applications by each of the Petitioners separately, along side the response to the show cause notice, so as to settle the purported allegations in the show cause notice.

8. Neither the show cause notices nor the Applications for settlement or the replies submitted, form part of the Petition as it is the pleaded case of the Petitioners that they are confidential documents under Regulation 29 of the Regulations. It is however worth to note

that the Settlement Applications preferred on distinct dates were registered under different numbers and they were placed before the Internal Committee (IC), a body of SEBI. Thereafter, meetings were held between IC and the representatives of the Companies on various dates to deliberate on each of the Settlement Application and to discuss and negotiate the terms of settlement.

As per Petitioners, during this process, various queries were raised by IC from time to time and the Petitioners responded resulting into filing of revised Settlement Terms, based on the interse deliberations.

The IC finalised the terms of settlement in respect of each of the Petitioner and in terms of Regulation 13(3) of the Settlement Regulation, forwarded the same for consideration of the High Powered Advisory Committee (HPAC) which comprise of Judicial member, who has been a Judge of the Supreme court or High court and three external experts having expertise in securities market or in connected matters. The HPAC considered the Settlement Applications and also settlement terms forwarded by the IC.

In the wake of pendency of WP (C) No.10756/2019 before the Delhi High Court, Aditya Agrawal and others Versus SEBI alleging violation of SEBI Regulations by BNL, HPAC directed Matrix Merchandise and the co-Petitioners to seek permission from the Delhi High Court to decide and dispose of the settlement applications.

On a green signal being shown by the Delhi High Court, permitting SEBI to deal with / adjudicate the Settlement Applications on their merits, HPAC approved the Terms of Settlement and forwarded the same to the Panel of Whole Time Members of SEBI ("Panel of WTM's), the ultimate authority within SEBI for passing of settlement orders as per the Regulation.

9. The Petitioners, vide email were communicated by SEBI that it had in principle agreed to accept the terms of settlement and also advised to pay the respective settlement amounts to SEBI.

In compliance of the agreed Terms of Settlement applicable to the Petitioners, each of them remitted the respective settlement amounts, the details of which are contained in the respective Petitions.

While the Settlement applications were pending for consideration before SEBI, the Petitioners were also called upon by it for hearing on the show cause notice before the SEBIs WTM, on different dates and on the hearing being concluded, SEBI allowed the Settlement Applications, by passing a common Settlement Order on 21/09/2022.

The Settlement Order has a mention of all the 8 entities including BNL with reference to their distinct settlement applications.

10. In the backdrop of the applications filed by the Applicants, proposing to settle , without admitting or denying the findings of fact and conclusion of law, in response to the show cause notice received, alleging violation of various provisions and pending enforcement proceedings initiated under SEBI Act read with SEBI (Procedure for Holding Enquiry and Imposing Penalties) Rules, 1995, the Settlement Order clearly noted that the SEBI conducted an investigation in the matter to ascertain whether there had been any misrepresentation of the shareholding of promoters as public shareholding and the possible non compliance with the minimum public shareholding norms.

Based on the findings of the investigation, enforcement proceedings were initiated resulted into show cause notice alleging lapses separately against each of the eight Noticee, which came to be settled by a common order.

11. The Settlement order dated 12.09.2022, specifically referred to the meeting of the representative of the Applicants with the IC and that the applications being placed before HPAC, which considered the Settlement Terms proposed by the Applicants and recommended the case for settlement on distinct following terms, formulated against each of the Petitioners and referred to the recommendation of HPAC in its meeting held on 09.06.2022.

The order of Settlement further stated that upon acceptance of the recommendations by the panel fo WTM in terms of Regulation 15(2) of the Settlement Regulations, notices of demand were issued to the Applicants, on 20.07.2022 and the Applicants informed about the remittance of the respective settlement amounts and SEBI has confirmed crediting of the same.

Paragraphs 7 and 8 of the Settlement Order specifically record thus :-

> "7. The applicants informed about the remittance of the respective settlement amounts between August 10 to August 16, 2022 and SEBI has confirmed the credit of the same. The applicants also provides an undertaking to comply with the non-monetary terms forming part of the settlement terms as mentioned at paragraph no.5.
>
> 8. In view of the above, in exercise of the powers conferred under Section 15JB read with Section 19 of the SEBI Act and under Section 23JA of the SCR Act and in terms of Regulation 23 read with Regulation 28 of the Settlement Regulations, it is hereby ordered that the pending enforcement proceedings for the alleged defaults as mentioned at paragraph 1 and 2 are settled qua the applicants on the following terms:
>
> i. this Order disposes of the enforcement proceedings initiated by SEBI for the defaults as mentioned earlier in respect of the applicants'
>
> ii. SEBI shall not initiate any other enforcement action against the applicants for the said defaults; and
>
> iii. Bharat Nidhi Limited shall submit a report of compliance with the terms of its undertaking given at paragraph 5, within 15 days of the passing of this settlement order, failing which the settlement order shall cease to operate qua all the applicants."

12. The Settlement Order clearly stated that passing of the order is without prejudice to the right of SEBI under Regulation 28 of the Settlement Regulations to take enforcement action including

continuation of the proceeding against the Applicants in the following contingencies :-

> "a) any representation made by the applicants in the present settlement proceedings is subsequently found to be untrue'
>
> b) the applicants have breached any of the clauses/conditions of Undertaking/Waivers filed during the present settlement proceedings; and
>
> c) there was a discrepancy while arriving at the settlement terms."

The Settlement Order passed on 12.09.2022, to the above effect stated that it shall come into force immediately and copy of the order shall be forwarded to the Applicants and also published on the website of SEBI.

13. This Settlement Order, is however revoked by SEBI on 10.11.2023 as regards all the 8 entities, by invoking Regulation 28 of the SEBI (Settlement Proceedings) Regulations, 2018 alleging failure to comply with it. The order dated 10.11.2023 is communicated to each of the Petitioner through separate communication and find annexed to each of the Petition.

The communication resulting into revocation of the Settlement Order is signed by one Shri L. KAGIO MAO on behalf of SEBI.

14. The impugned order is assailed in the three Petitions, by setting out distinct grounds, the foremost ground advanced being that no case is made out for revocation of the order under Regulation 28, as it permit revocation of Settlement Order only in the contingencies

stipulated therein viz. if there is failure to comply with the settlement order or if at any time after the settlement order is passed it comes to the notice of the Board, that the Applicant has not made full and true disclosure or has violated the undertakings or waiver and only upon such happening, the order of settlement shall stand revoked and withdrawn and thereupon the Board shall restore or initiate the proceedings with respect of which the the Settlement Order is passed.

It is the case of the Petitioners before us that the order of settlement was withdrawn by SEBI alleging that there is failure to comply with the Settlement Order.

The decision is clamped by the Petitioners as arbitrary as it has failed to follow the principles of natural justice and also procedure contemplated under SEBI (Settlement Proceedings) Regulations, 2018, which would have justified revocation of the Settlement Order.

15. We shall briefly refer to the arguments advanced by the senior counsel, representing the Petitioners in the three Petitions.

For the sake of convenience we have considered the Petition filed by BNL, (Writ Petition No. 3977 of 2024) as lead Petition.

To begin with we would refer to the arguments advanced by Mr. Dwarkadas and Mr. Kamat, representing one set of Petitioners.

Mr. Dwarkadas, representing Petitioners in Writ Petition no. 4828 of 2024, Matrix Mercandise Limited, Mahavir Finance Limited, T.M. Investment Limited, Sanmati Properties Limited the four companies and one individual Mr. Vineet Jain has taken us through the Securities and Exchange Board of India (Settlement Proceedings) Regulations 2018 as regards power available to SEBI, constituted under the Act of 1992 and the Regulation being framed providing for the terms of settlement and prescribing the procedure of settlement and the matters connected therein.

The Regulation having coming into force from 01.01.2019, according to Mr. Dwarkadas, has culled out the scope of settlement in Chapter III and has vested the power in the Board, to take into account various factors while it consider application for settlement and it expect the Board to take into account factors as contemplated under sub-rule (3) of Regulation 5 which include a factor, as to whether the Applicant has provided an exit or purchase option to investors in compliance with securities laws to the satisfaction of the Board.

According to him, the board is given discretion not to settle specific proceedings, in case where the Applicant is a willful defaulter, a fugitive economic offender or has defaulted in payment of any fees, dues or penalty imposed under the Securities Laws.

The Terms of Settlement according to Mr. Dwarkadas, which are contemplated under Chapter V of the Regulation, cover a Settlement amount and/or non monetary terms which may include the one specified in sub-rule (2) of Regulation 9 including suspension or cessation of business activities for a specified period, Exit from Management, Loss of securities, submit to enhanced internal audit and reporting requirements, restraining and accessing the securities market and /or prohibiting from buying, selling or otherwise dealing in securities directly or indirectly and associating with the securities market in any manner, for a specified period.

The procedure contemplated for settlement as set out in Chapter V is a three tier system according to Mr. Dwarkadas involving a High Power Advisory Committee (HPAC), Internal Committee(s) (IC) and the panel of Whole Time Members, which ultimately is the authority either to accept or reject the recommendation to settle the specified proceedings.

16. Inviting our attention to the procedure for passing settlement orders, as specified in Regulation 23, the learned Senior Counsel would submit that the WTM, adjudicating officer or the competent officer of the Board before whom the proceedings are pending, shall dispose of the respective proceedings , by an appropriate order on the basis of the approved settlement terms.

Focusing his attention on Regulation 28 pertaining to revocation of Settlement order , according to Mr. Dwarkadas, the revocation is permissible only upon the contingencies occurred, stipulated in Sub Rule 1. Further Sub Rule 2 of Regulation 28 categorically set out that whenever any Settlement Order is revoked, no amount paid under the

Regulations shall be refunded meaning thereby that that the amount paid under the Settlement order shall be forfeited, thereby resulting into civil consequences. In the wake of Regulation 28 specifically setting out the contingencies when the settlement order can be revoked, according to Mr. Dwarkadas, none of the contingencies have occurred in the present case.

17. It is contended on behalf the Petitioners that the sudden U turn by SEBI in revoking the Settlement Order which it had passed after following the appropriate procedure for settlement as set out in the Regulation of 2018, has its roots in the proceedings, instituted by Ashok Shah Group.

For this purpose, our attention is invited to the WP No. 530/2023 filed filed by Ashok Shah and Group as well as another WP No.447/2023 instituted by Pina Shah, challenging settlement order of BNL which resulted into an interim order being passed on 17/10/2022 by the High court, restraining BNL from finalising the offers received by it.

The Petitions were exhaustively amended, alleging revocation of the settlement order by operation of law by categorically stating that BNL by not following the terms of Settlement have caused its breach and thereby the consequences contemplated under Rule 28 automatically followed, as upon failure to comply with the settlement order it stand revoked and withdrawn and the proceedings instituted stand restored, as if no settlement order was ever passed.

It is, in these proceedings, according to Mr. Dwarkadas, SEBI adopted a fair stand, as when it filed an Affidavit on 30.03.2023, specifically stating the Settlement Order has been passed by following the appropriate procedure and it contained monetary and non monetary terms and BNL had already paid the settlement amount.

It also conceded that in the wake of the order passed by the High Court on 17.10.2022, the buy-back cannot be completed by BNL, but BNL alongwith other entities mentioned in the Settlement Order had furnished an Undertaking to comply with the non monetary terms forming part of the settlement terms . It also assured to the Court by stating that it shall ensure that the terms of the Settlement Order are complied with in letter and spirit by BNL as well as the other Applicants forming part of the settlement order and in case of any breach it shall take enforcement action forming part of the settlement order.

Though according to Mr. Dwarkadas, on 05.09.2023, SEBI made a categorical statement before the High Court that since there was a change in its WTM members, it would take an appropriate decision upon revocation of the settlement order.

18. Referring to the order dated 13/09/2023, Mr. Dwarkadas would submit that the Court was called upon to deal with prayer clause (g) of

the Petition filed by the minority shareholders of BNL who had complained to SEBI, of violation of various provisions of Securities Laws.

As before hearing of the Petitions of the Petitioners therein, they insisted for prayer clause (g), in form of a direction to direct SEBI to produce copies of investigation report, show cause notices, minutes of meetings of IC, HPAC and panel of WTMs, order/communication, noting vide which the settlement applications filed by the eight applicants were approved by SEBI.

By order dated 23.10.2023, the Division Bench of this Court directed SEBI to furnish the necessary documents, as the Court was of the opinion that all actions taken by SEBI and its various bodies constituted under the Act and the Regulations are required to be in the paramount interest of the investors and there is no reason why the documents shall be not made available to the Petitioners, who were not strangers but minority shareholders of BNL. As SEBI was directed to furnish the copies of the documents within a period of 3 weeks of passing of the order, which rattled SEBI, according to Mr. Dwarkadas and thereafter resulted into revocation of settlement order in an extremely hush up affair.

19. Mr. Dwarkadas has taken us through the sequence of subsequent events, which resulted into filing of SLP by BNL as well as the other Petitioners, which resulted into an order on 06/111/2023, as

the Apex Court was of the view that the impugned order of the High Court was clearly interlocutory in nature and therefore the SLP was not entertained though parties were granted liberty to pursue their remedies in accordance with law on all count after the final Judgment of the High Court. According to Mr. Dwarkadas SEBI adopted a dubious stand as before the High Court on 08/11/2023, SEBI agreed to supply the documents, but immediately with one day in between, on 10.11.2023, chose to pass the impugned order, withdrawing the settlement order.

20. According to Mr. Dwarkadas, as far as his clients are concerned, though the Settlement Order bifurcated the terms of settlement qua each of the Applicant, as far as the Petitioners he is representing are concerned, it only contemplated monetary terms as settlement amount, quite distinct from BNL, which in addition to the Settlement amount, was required to submit a voluntary undertaking to provide exit offer to its shareholders for a period of 3 months after the Settlement order is passed, at the same exit price that was offered in the year 2019 and also to refrain from accessing the capital market by issuing prospectus, documents or advertisement soliciting money from public for a period of 24 months from the date of Settlement Order. According to Mr. Dwarkadas, the necessary payments were made towards the settlement amount by the five Petitioners which is clearly recorded in the Settlement Order.

21. The learned Counsel would submit that the Settlement order was passed after following the appropriate procedure of processing the Applications through HPAC which recommended its acceptance and therefore, the revocation of the settlement order against the Petitioners according to Mr. Dwarkadas is a gross illegality. It is also his specific contention that assuming for a moment that there was some default on part of BNL, why should the other Applicants suffer, as the terms of settlement clearly contemplate different monetary terms and except for BNL the settlement order did not contemplate any non monetary term.

According to him, only when the High Court directed disclosure of certain documents at the instance of Ashok Shah Group, as a knee jerk reaction, SEBI sprung into action and without following the procedure contemplated under the Regulation of 2018, deemed it appropriate to revoke the settlement order despite there being no breach of Undertaking or default to comply with any of the terms stipulated in the Settlement Order by his clients.

It is also an arguments advanced by Mr. Dwarkadas that when SEBI filed SLP being aggrieved by the order of 23.11.2023 passed by the High Court which directed it to disclose to the minority shareholders the documents sought in terms of prayer clause (g) of their Petition the SLP do not contain any averment about a process being initiated by SEBI revoking the Settlement Order and according to him it was not therefore even on the mind of SEBI to do so. However, all of a sudden 10.11.2023 at 7.52 p.m. by exchanging a communication the settlement order stood revoked.

22. Inviting our attention to the Regulation wherein the procedure is contemplated as to follow a particular route Mr. Dwarkadas allege that did the file was moved from Stage 1 to Stage 2 i.e. from the HPAC to the WTM, with supersonic speed and it is highly an impossibility, as it was a Diwali day, a holiday, which saw flurry of activity.

He would also raise a doubt as to whether the communication dated 10/11/2023 is an order or it is a communication and for this purpose he has placed reliance upon two affidavits filed by SEBI, the first filed by Sachin Sonawane, Deputy General Manager, who had referred to the communication dated 10/11/2023 as an 'order', where he specifically stated that since the revocation order is passed on 10/11/2023 which is self explanatory nothing survive in Writ Petition NO.530/2023 filed by Ashok Shah and others and the same to be disposed off. However, another affidavit filed by SEBI specifically affirmed by Mr. Mao a stand is adopted that communication dated 10/11/2023 is not an order.

23. Harping upon the contradictory stand adopted by SEBI particularly when it is a Regulatory authority expected to act with responsibility and accountability, Mr. Dwarkadas has called in question the entire approach of SEBI. Another limb of argument of

Mr. Dwarkadas is that the impugned order/communication dated 10/11/2023 is violative of principles of natural justice and he would place reliance upon two decisions of the Apex Court in case of **State Bank of India vs Zha Developers Pvt. Ltd. & Ors**[1], as well as decision in case of **State Bank of India & Ors. vs. Rajesh Agarwal & ors.**[2], holding that administrative action having civil consequences must adhere to the principles of natural justice.

24. The learned Senior Counsel Mr. Ashish Kamat representing Ashoka Marketing Limited and Arth Udyog Limited in Writ Petition No.2325 of 2024 has adopted the argument advanced by Mr. Dwarkadas and he would submit that the petitioners had filed separate and independent settlement applications with SEBI in accordance with the Settlement Regulations, pursuant to a show notice being issued on 28.10.2020 alleging non-disclosure of promoter share holding in BNL by the petitioners and resultantly violating the MPS norms as well as the circular providing the manner of achieving MPS as well as the accusations being levelled as per the SEBI (Prevention of Fraudulent and Unfair Trading Practices Regulation 2003).

According to Mr. Kamat, applications were filed to settle purported allegations contained in the show notice against the petitioners and it was followed by separate meetings being held between the representatives of the petitioners and the members of the

1 2019 6 SCC 687,
2 (2023) 6 SCC 1

internal committee of SEBI, which resulted in submission of revised settlement terms based on *interse* deliberations. According to him, when SEBI informed the petitioners that it had in principle agreed to accept the terms of settlement and calling upon them to pay their respective settlement amounts, the petitioners tendered the respective settlement amounts to SEBI, which was a pre requisite for passing of the settlement order.

On the settlement order being passed on 12/09/2022, as far as the petitioners are concerned, which comprise of monetary and non-monetary settlement terms, the petitioners complied with both.

25. Mr. Kamat concurred with Mr. Dwarkadas in bringing to our attention the stand of SEBI, in the affidavit filed, while responding to the Petition filed by minority group. However according to him, when the direction was issued, by the Division Bench of Bombay High Court on 23.10.2023, directing SEBI to furnish the documents enlisted in prayer clause (g) of the Petition, which interalia included internal noting and communications of SEBI and the investigation report, SEBI adopted an adversarial stand from then.

On 10.11.2023, the impugned orders were passed, revoking the Settlement Order and the orders have been subjected to challenge by specifically stating that the order has been passed by the Deputy General Manager and not by the panel of WTM's. Further, it is also urged that SEBI is now contending that it is just a communication and not an order and if this is so, SEBI is admitting that there is no order revoking settlement order as on date. Also stating that revocation of the settlement order has entail civil consequences, which necessarily contemplate a reasoned order to be passed after an opportunity of hearing being provided, the impugned order on the aforesaid grounds, which fails to adhere to the well settled norms of principles of natural justice cannot therefore be sustained.

26. According to Mr. Kamat there is no order revoking the settlement order within the meaning and scope of the Regulation of 2018. Assuming that there exist an order, he would submit that SEBI has attempted to support the revocation for extraneous reasons, which in no case can be justified as the revocation of settlement order is nothing but an knee-jerk reaction, when SEBI was directed by the Court to disclose the necessary details to the minority shareholders in the petition filed by Ashok Shah Group.

According to Mr. Kamat, in passing the impugned orders, SEBI has skipped various stages and in an hurried manner has taken a decision to revoke the order on 10/11/2013, within a short span of 2-3 days. To support his contention, he would place reliance upon a decision in case of **Noida Entrepreneurs Association vs. Noida and ors**[3].

It is also the submission of Mr. Kamat that, at this stage, SEBI cannot renege from its understanding/interpretation of para 8 (iii) of

3 WP (C) No. 150 of 1997

the Settlement Order, which contemplated filing of an undertaking of complying with the terms of the settlement order, including providing an exit to the public shareholders (within 15 days of passing of the settlement order). According to him BNL had complied with the said direction on 27.09.2022, and therefore, SEBI was quite clear and conscious about the compliance which it intended to have when it considered the application for settlement by BNL.

In addition, according to him, the revocation of settlement order can be only on the grounds which are stated in Regulation 28 and in absence of any of the contingency being attracted in the present case, the impugned order can only be stated to be based on extraneous contention and that to at the instance of Ashok Shah Group, the minority shareholders. According to him, the BNL the petitioners and others have complied with the settlement order and merely because the minority shareholding group is of the opinion that there is no compliance as BNL was required to give an exit offer and not a buyback, the different approach adopted by SEBI cannot be justified as the decision taken by SEBI now find its root in the contentions advanced by Ashok Shah Group when it raise challenge to the validity of settlement order, which is completely irrelevant.

Apart from this, Mr. Kamat would submit that the settlement order is not composite and is severable qua the petitioners that is his client Ashoka Marketing Limited and Arth Udyog Limited and assuming for a moment that there is no compliance of the terms of settlement by BNL, the petitioners cannot be painted by the same brush and cannot be put to prejudice.

It is also his specific contention that the revocation of the settlement order in-flagrant violation of principles of natural justice, that is, without any notice, hearing or a reasoned order, do not meet the parameters of an order, which should stand to the judicial scrutiny, particularly when the petitioners have already paid the amounts pursuant to the demand notice and prior to the passing of the settlement order and therefore, there was no question of retrospectively imposing coextensive liability upon the petitioners. Mr. Kamat has also placed reliance upon various authoritative pronouncements, which include the decision in case of **Oryx Fisheries Pvt Ltd vs. Union of India & ors**[4], **Dayaram vs Raghunath & ors**[5] as well as the decision in case of **Noida Entrepreneurs and Association vs. Noida and ors**[6] and also the decision of the Apex Court in case of **63 Moons Technologies Ltd. (formerly known as Financial Technology India Ltd.) & Ors vs. Union of India & Ors**[7].

27. Senior Counsel Mr. Venkatesh Dhond, representing Bharat Nidhi Limited in Writ Petition no. 3977 of 2024, has advanced his

4 (2010) 13 SCC 247

5 (2007) 11 SCC 241

6 WP(C) No. 150 of 1997

7 Civil Appeal No. 4476 of 2019

arguments with reference to the relevant dates leading to the passing of revocation order on 10.11.2023 in exercise of powers under Regulations 28, on the ground that BNL has failed to comply with its settlement order.

While raising a challenge to the impugned order, he has focussed his attention upon the analysis of the settlement order, since its revocation is based on the ground of non-compliance and in the words of SEBI, for the reasons of "failure to comply". According to him, the policy of the law is to facilitate and/or promote settlements and not derail them, particularly for extraneous reasons as, unsettling well considered decisions to settle erodes the confidence of parties, leading to multiplicity of litigation, where settlement was already worked out. According to him, a body which has to decide the matters of settlement must bear in mind the larger picture and/or policy underlying the compounding provisions.

He is extremely critical about the revocation order which is a non-speaking and unreasoned order, having been passed without following the principles of natural justice, due process and conduct of necessary inquiries and investigations. In addition, it is also his submission that the revocation order has not been passed by an appropriate authority under law which makes the order without jurisdiction.

Adopting the arguments advanced by Mr. Dwarkadas as well as Mr. Kamat, for the other two Petitioners, Mr. Dhond has also urged that the timing of the revocation order is full of suspicion and contrary to SEBI's stand adopted in previous litigation, challenging the settlement order.

28. Mr. Dhond would submit that the settlement order passed by SEBI involving BNL, prescribed that it shall provide an exit offer to its public shareholders for a period of three months, in addition to the monetary terms of which the compliance was already ensured by BNL as early as on 27.09.2022. According to him, the settlement order did not specify the mode of exit to be provided by BNL and in any case BNL was already moved to the dissemination board in February, 2019 and was no longer a listed entity and therefore the SEBI norms/compliances or listed entities, could not be made applicable to it.

According to him, in compliance with the settlement order, BNL had taken all necessary steps to ensure the compliance and immediately after passing the settlement order on 12.09.2022, a meeting of the Board of Directors of BNL was convened wherein the Resolution was passed approving the buy-back of 1.067 percent shares of BNL at the price of INR 11,229/- per share (subject to enhancement by Delhi High Court) and also according approval for approaching share holders holding more than one percent in BNL, who had previously in 2019 expressed their willingness to not exit BNL, to ascertain their willingness to continue to remain share holders of BNL.

Pursuant to the Board's approval, postal ballot notices were issued to the share holders seeking their consent for buy-back offer and the voting being kept open.

BNL also made a public announcement of the proposed buy-back in two widely circulated newspaper and it also updated SEBI of the steps taken by it.

29. According to Mr. Dhond, BNL intended to provide exit by way of buy-back of shares and it was in the process of writing to certain share holders asking if any public share holder is willing to come forth and provide an exit to the other public shareholders by offering to purchase their shares at the same price at which date buy-back will be undertaken by BNL, after completion of buy-back offer by BNL. It also addressed letters to all share holders holding more than one percent shares and out of them three share holders namely TM Investments Limited, Sanmati Properties Limited and Vineet Jain had expressed their interest to provide exit to other shareholders i.e. to participate in the Proposed Exit Offer. However, in the wake of the two Writ Petitions filed by the Shah Group, BNL was restrained from finalising the buy-back offer by the Bombay High Court by its Order dated 17.10.2022.

On 03.12.2022, the buy-back offer lapsed and a total of 4.046 percent of shares tendered by the interested share holders were held in escrow accounts.

30. Mr Dhond has invited our attention to heap of correspondence entered with SEBI in order to support his contention that SEBI was kept in loophole throughout the said process when BNL was attempting to comply with the settlement order and according to Mr. Dhond, the exchange of communications placed on record is clearly reflective of the fact that SEBI was conscious of the steps taken by BNL and it never contemplated the compliance in a particular fashion.

31. The submission of Mr. Dhond is that SEBI was aware of the steps taken by BNL to comply the non monetary terms specified in the settlement order, as it had set out the manner of compliances by BNL. BNL also sought in person meeting with SEBI to explain the matter in detail and it addressed a detailed representation on 08.09.2023, requesting for a hearing and this representation, according to Mr. Dhond, categorically amounted to its written submission, as it apprehended that SEBI was likely to take a decision on revocation of settlement order. BNL categorically highlighted, in its representation that the buy-back process for 30 days would be followed by the Proposed Exit Offer by TM Investments Ltd., Sanmati Properties Ltd., and Vineet Jain for a period of 60 days at the same exit price in two steps. It also stated that there was statutory limitation in

implementation of buy-back, in the wake of the restraint order dated 17.10.2022 and a request was made that SEBI must keep in mind the interest of all the share holders, as Ashok Shah and PINA Shah Groups had obtained a restraint of buy back, thereby jeopardising the exit of willing 4.046 percent share holders as against 1.27 percent holding of the Shah Group.

32. Mr. Dhond has also invited our attention to the steps taken by BNL pursuant to the passing of impugned order which include the application filed by Ashok Shah in the Bombay Petitions seeking revival of the Petitions and also seeking restraint on the public announcement issued by BNL in relation to the buy-back on 11.12.2023, which was not entertained by the Court. According to him, the BNL took all the requisite steps in compliance of the settlement order under the supervision of SEBI but everything was thrown in air, as SEBI was perturbed because it was asked to disclose its internal record and the only way to wriggle out of the whole procedure was to revoke the settlement order.

Further, the timing of passing of the impugned order is very crucial as per Mr. Dhond this order has been passed only after SEBI was directed to furnish copies of internal noting and communications with respect to the settlement order to the Ashok Shah Group and, therefore, even in his opinion, the issuance of impugned order is a knee jerk reaction of SEBI, to avoid disclosure despite the fact that on

30.09.2023 SEBI itself had made a statement before this Court that after taking instructions from the new panel of WTM's, it did not intend to revoke the Petitioners' settlement order. With no material and information having surfaced, what made SEBI revoke the settlement order is a point to ponder upon according to Mr. Dhond as in a hurried manner the impugned order was passed without affording an opportunity to the Petitioners to defend itself or by adhering to the principles of natural justice as so much was the hurry that the revocation order was a non-speaking and a unreasoned order.

33. In support of his submission, Mr. Dhond has also placed reliance upon catena of decisions. He would rely upon the decisions of the Apex Court in case **Standard Chartered Bank & Ors. vs. Directorate of Enforcement & Ors.**[8], as regards principle of corporate criminal liability. Reliance is also placed on the decision of the **Indore Development Authority vs. Manoharlal & Ors.**[9] to submit that when there is a disability to perform a part of the law, such a charge has to be excused particularly when performance of the formalities prescribed by a statute is rendered impossible by circumstances over the person's concern had no control and in such a case it has to be taken as a valid excuse. In addition he would also place reliance upon the decision in the case of **Reliance Industries Limited vs. Securities and Exchange Board of India & ors.**[10] in support of

8 2005(4) SCC 530

9 2020(8) SCC 129

10 2022 (10) SCC 181

his submission that SEBI is a regulatory body and is cast with a duty to act fairly while conducting proceedings or initiating any action against the parties and it must act in accordance with the Rules prescribed by law. Further reliance is placed upon the decision of the Bombay High Court in case of **Milind Patel vs. Union Bank of India & Ors.**[11] with reference to the orders of proceedings of the settlement commission. Mr. Dhond has also placed reliance upon the report on the settlement mechanism by the High Level Committee to review the enforcement and settlement mechanism, and it is intended to encourage settlement.

34. Learned Senior Counsel, Mr. Bhatt, representing SEBI, the statutory body, has rebutted the arguments advanced on behalf of the three learned Senior Counsel in favour of the Petitioners and, according to him, the five points which were raised by the Counsel for the Petitioners are devoid of any merit and substance.

He would summarise the arguments of the Petitioners on five major counts, namely,

(i) violation of principles of natural justice - the order being unreasoned;

(ii) because of the orders passed by the Bombay High Court, BNL could not comply with the non-monetary terms of the settlement order;

(iii) manner of passing of the impugned order is not in terms of the Regulation of SEBI;

(iv) the settlement order reflected individual settlement qua the Petitioners and on failure on part of BNL, it could not have warranted a wholesome withdrawal of the settlement order by taking recourse to Regulation 29; and

11 2020(4) SCC OnLine Bom 745

(v) SEBI's revocation of the settlement was a knee-jerk reaction as the Bombay High Court ordered disclosures.

35. Mr Bhatt has put before us a compilation of documents which include the various orders passed by the Court and while dealing with the objection that SEBI had passed the order of revocation to defeat the orders of disclosure as prayed in the Writ Petition filed by Ashok Shah Group, and in specific prayer clause (g), he would submit that SEBI never hesitated in making full disclosure before the Court and by inviting our attention to the order dated 05.09.2023, he would submit that SEBI fairly made a statement before the Court that there was a change in the Whole Time Members (WTM) of SEBI and that it would be in a position to take a decision whether the settlement order in question has to revoked and if it stands revoked, in such an event further adjudication of the Petition would not be necessary.

To be fair to the Court and to the opponent, Mr. Bhatt would submit that on 19.10.2023, when the Court considered the prayer clause (g) of the Petition, it is the private Respondents who objected to the disclosure of the documents but SEBI had been fair as it placed before the Court the copies of the Show Cause Notice dated 20.10.2020 and also the application for settlement filed by BNL and the Court directed that the documents be placed in a sealed cover.

36. It is on 23.10.2023, the Division Bench by a detailed order granted prayer clause (g) of the Petition and though in the said order, an observation of the Court is to the effect that SEBI had resorted to all

possible efforts not to comply with the order of 23.10.2023 and to the effect some more observations to paragraph 29, it is a specific contention of Mr. Bhatt that SEBI never objected to furnishing of the documents, as when the said order was passed, SEBI put its firm stand that principal prayer clauses of the Petition i.e. prayer clauses (a) and (b) do not survive for adjudication as the settlement order itself was revoked by SEBI. This argument according to him was supported by the Counsel representing Respondent Nos. 2, 7, 8 and 9 as they unanimously contended that the settlement order dated 12.09.2022 stood revoked and therefore the show cause notice issued to Respondent nos. 2 to 9 are now required to be taken forward and decided on merits.

37. It is in the wake of these peculiar circumstances, the Learned Senior Counsel would vehemently submit that SEBI never adopted a stand of confidentiality of the documents and in fact it was always ready and willing to place all the relevant documents involving the settlement proceedings before the Court.

Mr. Bhatt would also submit that even SEBI filed a Special Leave Petition before the High Court but this Petition was restricted to the interpretation of Regulation 29 of the SEBI (Settlement Proceedings) Regulation 2018, framed under Section 50 (j)(b) read with Section 30 of the Securities and Exchange Board of India Act, 1992. Mr. Bhatt would also place before us the copy of the Special Leave Petition, which has formulated the question of law in specific as to whether SEBI holding the documents relating to the settlement proceedings in a statutory fiduciary capacity under Regulation 29 of the SEBI Regulations, 2018 can be directed contrary to the Regulations, to disclose details of settlement applications, etc.

In short, it is the submission of Mr. Bhatt that SEBI never dithered from supplying the necessary documents in terms of prayer clause (g). Thus, the contention of Mr. Dwarkadas that the passing of the impugned order by SEBI was a knee-jerk reaction to the High Court's order dated 23.10.2023 is a misconstrued argument and in any case, he would submit that finally the Special Leave Petitions before the Apex Court were disposed off and SEBI never hesitated in disclosing the documents to the Court.

38. Coming to the second point as regards the common settlement order being passed against the six entities but the non-compliance being only attributed to BNL, the other entities/the Petitioners did not put to disadvantage, according to Mr. Bhatt, the show cause notice dated 28.10.2020 which he has placed before us clearly establish the connect of the entities with one another and the settlement order had categorically mentioned that any non-compliance of the same would result into consequences of its revocation without making any distinction as to on whose failure to abide by the settlement order would stand revoked.

Coming to his prominent submission, rebutting the argument of Mr. Dhond representing BNL that the compliance of the settlement order became an impossibility, he would invite our attention to the settlement order dated 12.09.2022 and submit that because show cause notices being issued alleging that the Petitioners were the promoters and who filed settlement applications proposing to settle, through a settlement order, without admitting or denying the findings and conclusions of law, in pursuance to the enforcement proceedings being initiated against them and the settlement was accepted, after following a procedure, by obtaining inputs from the IC as well as the HPAC, which considered the settlement terms proposed by the applicants and recommended the case for settlement.

According to Mr Bhatt, the order of settlement made it clear that the exit offer shall be given to its shareholders within a period of 15 days and it would be kept open for a period of three months. The order made it very clear that if there is no compliance, SEBI reserved its rights under Regulation No. 28.

He has also placed before us a compilation of documents which is comprise of the communications exchanged between SEBI and BNL. According to him, there were two options open, either to buy-back or provide an exit offer to buy-back the equity shares of the company and, according to him, BNL passed a resolution to be compliant with the SEBI settlement order, thereby resolving to buy-back of up to 30,958 fully paid up equity shares of Rs.10/- each of the Company, representing 1.06 percent paid up of equity shares of the Company (exit offer) at a price of Rs.11,229/- per equity share, being the same exit price at which an exit offer was given in 2019, payable in cash for an aggregate amount of up to Rs.34,76,27,382/- equivalent to the maximum permissible buy-back amount, in accordance with the limit of aggregate of 25% of the fully paid-up equity share capital and free reserve of the company, as per the Unaudited and Limited Reviewed Financial Statement of the Company for the period ending on 3.08.2022.

Inviting our attention to the circular of SEBI, dated 10.10.2016, which was the guideline which BNL ought to have been followed, according to Mr Bhatt, it failed to comply with the said guideline. He would submit that on 27.09.2022, the BNL wrote to the Settlement Department, Enforcement Division-II, as a compliance of the non-monetary terms of settlement to provide an exit offer to its public shareholders for a period of three months, after the order and referred to the resolution passed by the company. However, it is the specific contention of Mr Bhatt that they followed it to buy-back only to the extent of 1.067%, but leaving 21.33% still not being offered for buy-back.

As far as the remaining shareholders are concerned, it was communicated that the company had received letters/confirmations from shareholders holding an aggregate of 77.83% of the total paid-up share capital of the company, stating their willingness to continue to remain as shareholders of the company and not to participate in the upcoming exit offer of the company, thus leaving 21.33% of the total equity shares outstanding even after the buy-back offer. Thus, according to Mr Bhatt, BNL restricted the buy-back offer only to 1.067% of the shareholders.

39. Mr. Bhatt has placed before us the correspondence exchanged with BNL, to indicate that BNL did nothing to ensure compliance of the non-monetary terms of the settlement order.

He would invite our attention to the communication addressed by SEBI, to BNL, right from 03.03.2023, when it sought compliance status with respect to the settlement (1:24) order in the matter of BNL Limited, and sought to know about the status of the buy-back offer, as well as the compliance with respect to the settlement order. By communication dated 10.03.2023, Bharat Nidhi submitted its response, submitting that the company had approached certain public shareholders, asking if they are willing to come forth and provide an exit offer to other public shareholders of the company, for a period of two months following the buy-back, (referred to as the 'Proposed Exit Offer'). However, it also informed that since the buy-back offer has been kept on hold in the Bombay High Court by the interim order, it is posing a difficulty in taking any further steps with respect to the

Proposed Exit Offer. The statutory body was therefore informed that the company is unable to complete the buy-back offer and the Proposed Exit Offer in the wake of the interim orders issued by the Bombay High Court.

40. According to Mr. Bhatt, when SEBI querried with BNL, with specific reference to its public announcement, as it proposed to buy-back up to Rs.1.067 of the paid-up equity capital through buy-back offer and, with reference to the three public shareholders who had indicated their willingness to provide an exit offer to the remaining shareholders for a period of two months following the buy-back offer. However, it was clearly indicated that the said shareholders had put up a maximum ceiling on the amount that can be deployed towards the purchase of the shares, and this amounted to Rs. 105 crores.

First of all, according to Mr. Bhatt, computing on the basis of the said disclosure, SEBI indicated that the aforesaid three shareholders can purchase maximum of 3.22% paid-up capital of BNL, and therefore BNL shall provide the status of exit opportunity provided to the remaining shareholders holding of 17.87% of paid-up capital of BNL in terms of the settlement order. It also requested BNL to provide total number of shares of the company as on 31.03.2019 and 30.09.2022, with any deviation, if any.

SEBI, however was of the view that BNL however remained as evasive as possible, as it communicated through its Company Secretary, but the compliance of the settlement order was not in foresight, as could be reflected from the entire correspondence placed before us.

Secondly, on 24.05.2023, SEBI addressed a communication to BNL, stating that the complete exit process for the remaining shareholders, i.e. 22.17% shareholding has not been submitted and BNL was therefore advised to submit the process undertaken to provide exit to the remaining 22.17% shareholders as per the conditions mentioned in the settlement order dated 12.09.2022, and also submit a copy of the consent provided by the remaining shareholders. This received a response from BNL, by stating that the company is willing and has in fact given an offer to all its shareholders to participate in the buy-back offer, and all the remaining shareholders holding an aggregate of 22.17% were free to apply and participate in the buy-back offer at their option. Ultimately, it categorically informed SEBI that the company's obligation is limited to providing an exit offer for a period of 90 days to its public shareholders. However, the shareholders retain their rights to choose to not avail/participate in the exit opportunity offered to them, if they so wish, as no shareholder is legally bound to provide an express undertaking that they have chosen to remain as a shareholder in the company, but they may simply choose to not tender their shares as a part of the exit offer, by conveying their intention to continue the company as a shareholder.

41. According to Mr. Bhatt, BNL attempted to offer a stepwise plan which, according to him, is their gateway to escape and ultimately, BNL informed SEBI that their ability to complete the exit offer has been restrained and complicated on account of the litigation by the minority shareholders, who had asked for implementation of the exit offer and sought injunction. According to Mr. Bhatt, the pendency of the legal proceedings was put up as a shield for BNL not complying with the terms of settlement. SEBI continued with its stand when on 26.05.2023, it sought a list of shareholders who had tendered their shares in the buy-back offer announced by BNL, vide public announcement dated 2.09.2022 in the format which was also furnished. It also sought compliance in respect of remaining 6,11,868 shares as BNL was required to provide exit offer in respect of 29,00,132 shares (100%), whereas BNL received undertaking to continue as shareholders in respect of 22,57,307 shares.

42. On 08.09.2023, BNL once again addressed a communication to SEBI in form of a representation regarding compliance of the settlement order dated 12.09.2022 since SEBI had made a statement before the High Court in the pending Writ Petitions in its order dated 05.09.2023, to the effect that since there was a change in the Whole Time Members of SEBI, SEBI would now be in a position to take a decision as to whether settlement order in question has stood revoked, and if it has, in that case, adjudication of the proceedings is not called

for. In this communication, which has been projected as a stand as BNL, where a huge cloud has been raised about the proposed decision to revoke the settlement order, or whether the settlement order stood revoked in the wake of the deeming provision, BNL accused SEBI of not following principles of natural justice.

43. According to Mr Bhatt, in the present case, the Petitioners cannot try to project non-compliance of principles of natural justice, as it is a peculiar case where consent order of settlement has been passed, but when the question came of its compliance, the Petitioners are dragging their feet and claimed an opportunity of hearing. According to him, the Petitioners need not be heard personally, as the settlement order made the terms and conditions of compliance very clear, and the Petitioners, including BNL, had rightly understood the context of the order, but still committed its breach. According to Mr Bhatt, this is not a case of impossibility of performance, and rather, by inviting our attention to the correspondence that is placed on record, is a specific contention that BNL had no plan as to how they were going to ensure compliance of the order of settlement, but all the while, they attempted to shield themselves by taking recourse to the interim order passed by the High Court in the Petition filed by Shah Group. Knowing very well that they were in breach of the order, according to Mr Bhatt, BNL filed a detailed representation on 08.09.2023, praying for an opportunity of hearing, which has been rightly rejected.

44. Mr Bhatt has distinguished the decision cited on behalf of the Counsel for Petitioners in case of **Rajesh Agarwal** (supra), and he would submit that the civil consequences in the said case were so grave that no decision could have been taken by hearing. He would rely upon the decision of the Apex Court in case of **State of U.P. vs. Sudhir Kumar Singh**[12]**,** to support his submission that before a party alleges violation of principles of natural justice, rendering a decision to be void, it is necessary for it to establish prejudice and the Court would look into this aspect as to whether prejudice is more than an apprehension or even a reasonable suspicion of a litigant, as the prejudice should be a matter of fact or be based upon a definite inference of likelihood of prejudice flowing from non-observance of natural justice.

To elaborate his submission, Mr Bhatt would submit that in the present case, there has been no prejudice caused to the Petitioners because they were not afforded an opportunity of hearing before the decision to revoke has been taken as all the facts involved are admitted and not denied, as it is admitted that a settlement order was passed which was subject to ensuring certain compliances and there has been no compliance of the non-monetary terms by BNL.

Further, according to Mr Bhatt, BNL is not in a position to comply and nor did they ever offer a plausible explanation or a road map to SEBI as to how they would ensure compliance of the settlement

12 (2021) 19 SCC 706

order. At the end of the entire correspondence, ultimately BNL raised its hand and categorically stated that it is not possible for it to comply with the order and therefore, according to Mr Bhatt, there is no question of violation of principles of natural justice as the Petitioners are now harping upon the sacrosanct principle of non-observance of principles of natural justice and therefore the decision having been rendered void, which is a non-acceptable argument.

45. Another limb of argument of Mr Bhatt is the statutory provisions and the Regulations formulated thereunder. He has invited our attention to Section 19 of the SEBI Act 1992, which is a provision as regards the delegation and permit the Board, by general or special order in writing, to delegate to any member, officer of the Board or any other person, as may be specified in the order, such of its powers and functions under this Act as it may deem necessary, subject to such conditions. He would then proceed to invite our attention to Regulation 28 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations 2018, when he would submit that if the power which is to be exercised by the Board under Section 28, this provision has to be read along with Section 19 where delegation of power is permitted. Therefore, according to him, the panel of Whole Time Members (WTM), are entitled to act as delegatee and the revocation of settlement orders, the authority has been delegated under the new regime of 2019 on the members of the WTM

and therefore there is no illegality when the order is passed by the delegate.

In short, it is the submission of SEBI that the objections raised on behalf of the Petitioners in raising a challenge to the impugned order has no merit and substance and therefore the revocation order passed by SEBI falls within the four corners of the Regulation of 2018 and in absence of any prejudice being shown, on not affording an opportunity before the impugned order has been passed, deserves to be upheld and the petitions are liable to be dismissed.

46. Learned Senior Counsel Mr. Navroze Seervai and Mr. Gaurav Joshi, representing Respondent nos. 9 to 25 and Respondent nos. 26 and 27 in Writ Petition No. 3997 of 2024 referred to as 'Ashok Shah Group' and 'PINA Shah Group', the minority public shareholders of Bharat Nidhi Limited, which have also supported the stand of SEBI.

Mr. Seervai has submitted before us that BNL is the single largest shareholder in Bennett Coleman and Company Limited as it holds 24.41% of shareholding and also in its wholly owned subsidiary Bennett Property Holdings Company Limited into (BPHCL) are unlisted companies. According to him, based on publicly available details of investments of the two companies the valuation exercise carried out by a category one merchant banker has valued BCCL at approximately 79,000 crores and BPHCL at 3226 crores and BNL's direct holding in BCCL is valued at approximately 20,000 crores and indirect holdings approximately at 40,500 crores.

According to Mr. Seervai it is for this reason that BNL's share presented a lucrative investment opportunity for the Respondents (the minority shareholders) and they invested in BNL. He would unfurl before us the true nature of control over BCCL's holding companies as he would submit that it is owned and controlled by certain companies in which Mr. Vineet Jain, Mr. Sameer Jain and their immediate family members have direct and indirect holding.

According to him, Vineet Jain group along with BNL Arth Udyog Limited TM Investment Limited and Sanmati Properties Limited, has 50% shareholding in BCCL whereas Mr. Sameer Jain along with Vineet Jain and four other limited companies have 50% shareholding in BCCL.

The entities in Vineet Jain Group and Sameer Jain Group are owned and controlled through a complex web of cross-holding and once this is eliminated the ultimate beneficiaries are Vineet Jain and Sameer Jain and he would accuse that despite the fact that BNL is owned and controlled by Vineet Jain, it has falsely represented itself as a promoter-free company and the company sans any promoters has only public shareholders, which claim is absolutely false.

According to Mr. Seervai the minority shareholders have consistently sought disclosure/compliance from BNL, as it had failed to disclose the real identity of its promoters by making false and misleading claims in violation of SEBI (Listing Obligation and Disclosure Requirements) Regulations 2015, as well as SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015 and as BNL declared itself to be a promoter free company. In addition according to him, BNL has failed to comply with applicable securities law that mandated all listed companies to have minimum public shareholding of 25% (Minimum Public Shareholding Norms).

According to Mr. Seervai, if SEBI had enforced the applicable securities law, BNL would have required to reduce its promoter shareholding percent in accordance with the NPS norms and this would have allowed BNL to be listed as a company on the Nationwide Stock Exchange, and provided ready marketability and liquidity to the script, ensure proper supervision and control over dealings in the script market driven valuation as well as prestige and brand value.

47. The Respondents, according to Mr Seervai, since 2013 filed multiple complaints with SEBI regarding violation of NPS norms and disclosure requirements *inter alia* by BNL along with connected entities under the control of Mr. Vineet Jain and Mr. Samir Jain along with other members of Jain family, however SEBI chose to turn blind eye towards the issues which were highlighted and did not take any action. According to Mr. Seervai, the action of the Shah Group was always directed towards achieving liquidity and fair price discovery in

respect of their investments, in accordance with law. The complainant therefore sought that SEBI should identify the true extent of the promoter holding in BNL and ensure that it is compliant with NPS norms as well as SEBI's exit circulars in respect of ELCs by having BNL listed on a Nationwide Stock Exchange, which would ensure a more dispersed public shareholding, promoting liquidity and price discovery. In addition to the minority share holders i.e. the Shah Group, various other groups had addressed numerous correspondence to SEBI alleging violations by BNL and other connected entities which had resulted into institution of proceedings before Delhi High Court including the case of **Mr. Aditya Agrawal & Ors. vs. SEBI**[13] .

48. Alleging violation of NPS norms and disclosure requirement *inter alia* by BNL and other connected entities under the control of Mr. Vineet Jani along with other members of the Jain family he would submit that Delhi Stock Exchange de-recognized BNL pursuant to SEBI circulars in the year 2014 and BNL obtained listing on Calcutta Stock Exchange. However, in 2015, BNL came to be placed on dissemination board of Bombay Stock Exchange, which provided a platform where transaction could take place between the buyer and seller on trade for trade basis. The placement of BNL on dissemination board resulted in self operating disadvantages, but BNL preferred to remain so and ultimately, in the year 2019, BNL was moved to dissemination board of NSE. In the year 2019, it issued a postal ballot notice seeking

13 Writ Petition (C) 105 of 2019

shareholder approval for buy-back up to 21,791 equity shares and this prompted the minority shareholders to file a complaint on SEBI SCORES portal whereby issues relating to non-disclosure of promoter shareholdings of DNL and violation of minimum public shareholding requirement were raised. This complaint was however summarily closed by SEBI which emboldened BNL to continue with its illegality. The minority shareholders approached the Securities Appellate Tribunal by filing an appeal and certain harsh words were used by the Tribunal reminding SEBI that it has a role to play as a regulator but it has failed to perform its duties and had kept the complaint pending for more than six years which speaks volumes and directed to decide the representation within a period of six weeks. He preferred an appeal against this order before the Supreme Court which confirmed the directions of the Appellate Tribunal and directed SEBI to pass appropriate orders.

This extensive exercise ultimately resulted in issuance of show-cause notice to the Petitioners in the year 2020, pursuant to which the settlement applications came to be filed separately by the Petitioners and the settlement order came to be passed on 28.09.2021. The minority group had filed a Writ Petition raising a challenge to the settlement proceedings but was allowed to withdraw it with a liberty to approach the Court upon an appropriate order being passed by SEBI.

49. According to Mr Seervai, when the settlement order was passed pursuant to the show cause notices being issued by SEBI, the order clearly recorded that upon the settlement application being preferred, the settlement is granted "without admitting or denying", specific allegations in the show cause notice. His first contention is that SEBI in stipulating so in the order of settlement had acted in violation of its own Regulations and SEBI should have not allowed such a settlement at all. According to him, even assuming that the settlement order was passed, the settlement was based on voluntary undertaking given by BNL and its promoters, by giving the exit offer to all public shareholders on certain terms, it ought to have been given after considering its effect, when this was voluntarily undertaken to be complied with, that there is no question of they wriggling out of it on the ground that it is not possible for them to ensure compliance.

According to him the argument advanced on behalf of the Petitioners is a fanciful dishonest argument when they talk of 'buy-back', and they offer it only to one percent of the shareholders. It is his specific contention that the use of the word 'exit' was coined as an afterthought after the settlement order was passed.

Mr. Seervai is critical of the lackadaisical approach of SEBI as it did not initiate any action against BNL, he accused SEBI that the Petitioners are turning deaf ear in complaints filed by the minority share holders from time to time. He would submit before us that SEBI initiated action for violation of its Regulations after thirteen years and despite this, permitted a settlement, thereby condoning serious lapses of the Petitioners.

50. Having unconditionally accepting the terms and conditions set out in the order of settlement which were routed through the IC as well as the HPAC of SEBI, according to Mr. Seervai, there is no question of going back on the order of settlement. According to him, the buy-back was made only to 1.044% of the shareholders, which was clearly in breach of the stipulations in the settlement order as the buy-back was intended for all shareholders and not for a miniscule percentage. It is his specific contention that the offer was being kept open for three months and the BNL kept it open only for one month and therefore the consequences are *res ipsa loquitur* as there was a breach in stipulations of the settlement.

Mr. Seervai has invited our attention to Regulation 28, which has been invoked while revoking the settlement order on 10.11.2023 and, according to him, the Regulations itself is operating and once there is a failure to ensure compliance with the stipulations in the settlement order, whether any order is passed or not by SEBI, the consequences follow. According to him, once this self operating clause kicks in, the subsequent events are irrelevant. On expiry of fifteen days, according to him, stipulations in the settlement order being failed, the proceedings did revive.

51. Further, Mr. Seervai has placed before us the sequence of events to submit that BNL, pursuant to the settlement order being passed, issued a postal ballot notice seeking shareholder approval for buy-back of 30,958 shares, which only amounts to 1.067% and the voting on the buy-back offer was kept open from 27.09.2022 to 26.10.2022. It is his specific contention that the postal ballot notice demonstrate that the exit offer was only to 1.06% of his shareholders, which was not in compliance with the terms of the settlement order, which contemplated providing an exit to all public shareholders, i.e., 100% shareholders of BNL. Further, the explanatory statement to the postal ballot notice declared that there are no promoters in the company, which is contrary to the terms of the settlement order.

In addition, it is his specific submission that the postal ballot notice failed to make any mention of the purported exit opportunity offered by the public shareholders, the same being represented to be part of the exit offer in compliance with the settlement order. In addition, BNL also failed to disclose that there was a possibility of buyback offer price being announced by Delhi High Court and therefore, according to Mr. Seervai, BNL acted deceptively right from the beginning.

According to Mr. Seervai, the compliance report clearly establish that BNL has failed to comply with requirement of paragraph 8(iii) of the settlement order and therefore the settlement order, which is a composite order had ceased to operate against all the Petitioners from that date. He would submit that BNL cannot now contend that after issuance of the settlement order, its Board of Directors recognised purported legal difficulties in complying with the stipulations therein, as BNL was always aware of the consequences of undertaking to ensure compliance and in fact, BNL had previously done buy-backs and therefore it was aware of regulatory limitations posed by buy-back.

Thus, according to Mr. Seervai, BNL adopted a half-hearted approach and when it addressed communications to the three entities, Sanmati Properties, TM Investments and Vineet Jain taking their expression of interest to provide exit to the shareholders, they replied indicating their willingness, for a period of two months, after closure of BNL's buy-back offer at the exit price of Rs. 11.229 per equity share for aggregating amount of Rs.50 crores and Rs. 10 crores respectively.

Thereafter, when the Writ Petition No. 447 and 530 of 2023 was filed before the Bombay High Court by his client, an ad-interim order was passed on 17.10.2022 directing BNL to proceed with the buy-back by inviting offers but not to finalise the same. Once again, on 02.11.2022, BNL issued a public announcement informing that the buyback would be kept open from 04.11.2022 to 03.12.2022 and a public announcement was also issued in Financial Express and Jan Satta informing inability to finalise the buy-back offer on 18.12.2022. On 19.12.2022, BNL informed SEBI that it cannot take any further steps with respect to the Proposed Exit Offer due to the interim order passed by the High Court.

According to him, BNL had demonstrably failed to comply with the settlement order on the ground that the High Court's interim order prevented it from doing so, however, according to Mr. Seervai, it is a false cover as for whatsoever reason, since the Petitioners had unconditionally accepted the settlement order and defended it in the proceedings instituted by his client, they are estopped from disputing or disowning any terms of the settlement order. Mr. Seervai is very harsh in submitting that if they have derived the benefit of the settlement order, as a result of which the charges against them have been dropped, they ought to have been conscious and meticulous in complying with the terms and conditions subject to which the settlement order was passed.

52. It is a specific contention of Mr. Seervai that there is a distinction between an exit and the buy-back as the settlement order did not require that exit was to be provided by way of a buy-back offer and, therefore, any purported statutory restraints arising as a result of electing to offer an exit through a buy-back shares, is a problem created by BNL itself and it cannot be cited as a '*statutory restraint*'. It is a specific contention that BNL had ample opportunity to consider the feasibility of complying which in itself had put in if the HPAC were accepted and therefore now it is not open for it to wriggle it out once

the settlement order is passed, it cannot be modified and that too by an unilateral interpretation/application of its terms by the applicants, i.e. BNL and other entities.

Mr. Seervai has also insisted in submitting that revocation of the settlement order upon non-compliance in terms of Regulation 28 is automatic and is an operation by law, which cannot be stalled. According to him, providing BNL and the entities with an opportunity of notice of hearing in the event of an apprehended violation of terms of settlement order is wholly unnecessary and rather it would defeat the purpose of having brought the litigation to a quietus and in fact, it would impart to revisit or relocate the settlement terms through an adjury criteria process relating to revocation. He would also submit that Regulation 28 does not contemplate an opportunity of hearing and failure to provide a hearing would not render an action illegal or illegal as no prejudice is caused to the parties who have abjectly failed to comply and abide by the settlement order. According to him, natural justice does not necessarily or invariably contemplate a personal hearing and in cases where facts are undisputable/admitted, it is the duty of the Court to determine if prejudice has been caused on account of a party not being afforded a personal hearing. He has placed reliance upon **K. K. Chari v. R. M. Seshadri**[14], as also decision in case of **S. L. Kapoor v. Jagmohan & Ors**[15], in support of his contention. He

14 (1973) 1 SCC 761

15 (1980) 4 SCC 379

would also rebut the contention of civil consequences having been entailed upon passing of the impugned order, which necessarily require an opportunity of hearing, as he would submit that there is no vested right of settlement in the Petitioners, as it is the submission of Mr. Seervai, that no civil consequences follow the revocation of the settlement order, as to entail civil consequence to an action, the effect must be demonstrable and material, and it must affect the party's civil right. He would therefore distinguish the decision relied upon in case of **Rajesh Agarwal** (supra) as well as **Zha Developers Pvt. Ltd.** (supra). In short, it is the submission of Mr. Seervai that if the impugned order is quashed, it would result in revival of a patently illegal settlement order, which by no stretch of justification, could be allowed to stand and in any case this would not be allowed by the Court in exercise of its extraordinary jurisdiction conferred under Article 226 of the Constitution as an *ex facie* illegal order would stand revived. He would therefore request for dismissal of the petition as according to him, SEBI is duty bound to protect the small investors, and the Respondents have been fighting for a cause alleging violation of the provisions of SEBI regulations and if once the settlement order having been passed and there was a failure to abide by the stipulations therein, according to SEBI, has rightly revoked the settlement order.

53. The rival arguments advanced before us deserve appreciation in the backdrop of the factual scenario as well as the statutory scheme.

At the outset we must make it clear that we are proceeding ahead by accepting that the communication dated 10.11.2023 addressed to the Petitioners is the order of revocation of the settlement order, passed by SEBI.

The factual scenario deserve a narration commencing from the show cause notice issued by the Investigation Department of SEBI on 28.10.2020 to Bharad Nidhi Limited as well as six other entities and one individual, Mr Vineet Jain. The genesis of this notice be issued by SEBI is in the complaint alleging misrepresentation of promoter holding as public holding and non-compliance of Minimum Public Shareholding against Bharat Nidhi Limited, (BNL) along with Arth Udyog limited (AUL) as well as few other entities, apart from the noticees.

The complainant approached Securities Appellate Tribunal (SAT) seeking a direction to SEBI to examine the allegations, in pursuance of which SAT directed the complainant to file a consolidated representation and directed SEBI to take a decision within a period of six weeks.

SEBI therefore conducted an investigation which resulted in issuance of the show cause notice, as it focussed its attention on BNL, a company incorporated whose shares were listed at Delhi Stock Exchange (DSC) as well as Calcutta, Stock Exchange,(CSE) and in

2019, the scrip was transferred to the dissemination board of NSE, with its total shareholding of 29,19,722%.

BNL was identified as one of the largest shareholders of Bennett Coleman and Company Limited (BCCL) holding 21.41% shares. Similarly, the other noticee also held shares in BCCL in the following percentage :

Sr. No	Name	Percentage
1	Sanmati Properties Limited	9.75 %
2	Arth Udyog Ltd	9.31 %
3	TM Investments Ltd	5.96 %
4	Vineet Kumar Jain	0.57 %

54. The investigation revealed that BNL was under the control of eleven Directors which included Mr. Vineet Jain from 28.04.2003 to 16.07.2014 along with Mr Amit Jain and Mr Revati Jain, the close family members of Mr Vineet Jain.

In response to the complaint, BNL asserted that it had no identifiable promoters but the investigation revealed that six entities along with an individual Mr Vineet Jain held 77.31% shares of BNL and as on 31.03.2017, Vineet Jain was holding 20.21% of shares whereas Matrix Merchandise Limited had a shareholding to the extent of 20.55%.

As on 31.03.2019, the share holding of the noticees in BNL was found to the following extent :

Sr. No.	Name	31-March-2018		31-March-2019	
		Shares held	% of shares held	Shares held	% of shares held
1	Matrix Merchandise Ltd	600000	20.55	600000	20.55
2	Vineet Jain	590000	20.21	590000	20.21
3	Sanmati Properties Ltd.	471588	16.15	471588	16.15
4	Ashoka Marketing Ltd.	300000	10.27	300000	10.27
5	Mahavir Finance Ltd.	200000	6.85	200000	6.85
6	Arth Udyog Ltd	57974	1.99	57974	1.99
7	TM Investments Ltd.	37744	1.29	37744	1.29
	Total	2257306	77.31	2257306	77.31

55. The investigation highlighted the connect amongst the shareholders, namely Vineet Jain and the shareholder of BCCL. Similar connect was established amongst the entity/company and the conclusion was drawn to the effect that eight companies mentioned in the show show cause notice were sharing addresses among themselves, reflecting that they had a connect with BCCL.

56. The show cause notice alleged of wrongful disclosure of promoter shareholding as public shareholding with reference to the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 as well as the SEBI (Substantial Accusation of Shares and Takeovers) Regulations 2011. In order to ascertain the promoters of BNL, based on the annual reports filed, as well as their reply to the notice issued to the SEBI the

analysis of share holding of BNL was carried out to find that Vineet Jain, the living entity was holding 12.87% shares in Matrix Merchandise Limited, 20% in Ashoka Marketing Limited, 25% in Mahavir Finance Limited, 33.67% in Arth Udyog and 18.50% in TM Investments Limited.

It was thus concluded that out of the six shareholders which were body corporates and one living entity had a significant share holding in BNL and the percentage of share holding held by Vineet Jain in each of the Companies was more than one percent.

57. On the basis of the annual returns, the major shareholders of the five companies, Ashoka Marketing Limited, Matrix Merchandise Limited, TM Investments Limited, Arth Udyog Limited and Mahavir Finance Limited were traced out, with the inference drawn to the effect that in case of all the eight noticee's, apart from the shareholding held by Shri Vineet Jain, the majority shareholding was held by BNL and other shareholders of BNL i.e. Arth Udyog Ltd, Matrix Merchandise Ltd, Mahavir Finance Ltd.

The show cause notices attributed the lapse on part of each noticee separately.

58. The investigation by SEBI divulged, the control over Bharat Nidhi Ltd. through Ashoka Marketing Ltd. as well as Arth Udyog Limited and its connect with the BCCL to reveal that two out of four Directors of Ashoka Marketing were employees of BCCL and one

Director, was a non-independent Director as well Director of Times Journal India Limited (BCCL). Similarly, three Directors on the audit committee and nomination and regulation Committee was shown as independent Director associated with BCCL. Similarly, in Arth Udyog Ltd., three out of five Directors were employees/consultant of BCCL. It was thus concluded that majority of Board of Directors of Ashoka Marketing Limited (AML) and Arth Udyog Ltd. (AUL) were employees of consultants of BCCL and Shri Vineet Jain, who was MD of BCCL, held 20% shares in AML and 33.67% in AUL leading to an inference that through the share holding and directorship, he had direct/indirect control over the companies and could influence its decision making.

59. In addition, as per the disclosures made by BNL under Regulation 31(1)(b) of SEBI (Listing Obligations & Disclosure Requirement) 2015, clause 35 of the listing agreement, the entire share holding of BNL was shown as held by public shareholders which was a completely incorrect. For wrong disclosure of promoter holding, it was alleged that BNL had failed to comply with the Regulation of 2015 as well as the circular of SEBI dated 30.11.2015, read with Regulation 2 (za) of SEBI (ICDR), Regulations 2009.

60. According to SEBI as per SEBI (SAST) Regulation 2011, the disclosures are required to be made to every stock exchange where the shares of the target company are listed and also were the target company has its registered office. BNL was listed on Calcutta Stock

Exchange between 2015 to 2019 but no disclosures were made either by Shri Vineet Jain or the other entities of other share holding in BNL during the investigation period and, therefore, it was alleged that they had failed to comply with the SEBI Regulations 2011.

Similarly, as per Regulation 7(1)(a) of SEBI (Prohibition of Insider Trading) Regulation 2015, every promoter, key managerial personnel and director of every company whose securities are listed on any recognized stock exchange shall disclose his holding of securities of the company as on the date of these regulations taking effect to the company within thirty days of these regulations taking effect.

However, there was no disclosure of share holdings in BNL by the noticees which violated SEBI (PIT) Regulations 2015.

61. Similarly, the show cause notice also alleged non compliance of minimum public shareholding as, according to SEBI, every listed company (other than Public Sector Company), had to maintain public share holding of atleast 25% as per Securities Contract (Regulations) and every listed Public Sector Company had large public share holding of 25% on commencing of SEBI Regulation of 2018 shall increase its public share holdings to 25% within a period of two years in the manner provided by SEBI.

Not only this, it was alleged that there was misrepresentation and wrongful disclosure regarding public shareholders, as the majority shareholding of BNL had been structured in the manner to camouflage the actual share holding of Shri Vineet Jain and this structured manner reflected a deliberate attempt on the part of the company/promoters of BNL to mislead the non-promoters investors of the listed entity, though the true nature of BNL indicated controlled by the noticees. It was alleged that the non-disclosure by the promoter entities of the Company having shareholding of 77.31% adversely effected the actual interest of the share holders and they were accused of perpetuating a fraud on promoter share holders of BNL and of violating Section 12-A(a) and (b) of SEBI Act, 1992 read with Regulations 2003 relating to prohibition of fraudulent and unfair trade practices relating to securities market.

62. Coming to the statutory regime, it is to be noted that SEBI established under SEBI Act, 1992, is cast with a duty to protect the interest of securities and to promote the development and to regulate the securities market by such measures as it think fit is a competent body to regulate the business stock exchanges and any other security markets. It is also cast with the function of prohibiting fraudulent and unfair trade practices relating to security markets as well as prohibiting insider trading in securities.

The Board constituted under the SEBI 1992, is also empowered to carry out investigation, if it has reasonable ground to believe that the transactions and securities are being dealt with in a manner detrimental to the investors or the securities market.

63. The Act of 1992 contemplate imposition of penalty for failure to furnish information, written, etc., as directed by the Board and similarly by virtue of Section 15C, if any listed company or person register as intermediary, after having been called upon by the Board in writing, failed to redress the grievance of the investors, such company or intermediary is liable for penalty.

The Act also imposes penalty for fraudulent and unfair trade practices and the Board is also vested with the power to adjudicate the complaints upon holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing the penalty.

64. A specific provision contained in form of Section 15JB, permit settlement, upon an application being filed by any person against whom proceedings are being initiated under the provisions of the Act, if such an application is filed to the board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

The Board after taking into consideration the nature, gravity and impacts of default(s) may agree to the proposal for settlement, on payment of such sums or such other terms as determined by the Board in accordance with the Regulations made under the Act.

Sub-section(3) of Section 15JB stipulate that the settlement proceedings shall be conducted in accordance with the procedure specified in the Regulations made under the Act.

65. The SEBI (Settlement Proceedings) Regulations, 2018, set out the terms of settlement and the procedure to be followed, in case if an application is made by a person against whom any proceedings have been initiated and are pending or may be initiated.

The manner in which such application shall be preferred as well as the details which shall be provided is clearly set out in the Regulations 2018, which make it imperative for the applicant to make full and true disclosure in respect of the alleged default(s) and an application for settlement of defaults related to disclosures, in terms of sub-rule (8) of Regulation 3 shall, to the extent possible, is to be made after making the required disclosure.

66. Chapter III of the Regulations set out the scope of settlement by specifically prohibiting applications to be considered in certain situations prescribed.

Sub-clause (3) of Regulation 5 prescribe guidelines for settling any specified proceedings pending before the Board and it require following factors to be considered:

> "(a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;

(b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

(c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;"

67. Chapter IV contemplate the terms of settlement and Regulation 9, categorically prescribe that the settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule II and the non-monetary terms may include suspension or cessation of business activities for a specified period, exit from management, law in all securities, submission to enhance internal audit and reporting requirement, etc.

While arriving at the settlement terms, the Board may consider the conduct of the applicant during the specified proceedings, investigation, inspection or audit and also the nature, gravity and impact of the alleged defaults as well as the extent of harm and/or loss to the investors and/or gains to the applicant as well as the compliance schedule proposed by the applicant.

68. Regulation of 2018 provide a three tier system before a decision is taken on an application for settlement as the Regulations contemplate constitution of a HPAC for consideration and determination of the terms and settlement. Apart from this, the

Regulations also prescribe for constitution of an Internal Committee(s) which shall comprise of all the Officers of the Board.

The application for settlement shall be referred to an IC to examine whether the proceedings may be settled and if so, to determine the settlement terms. The Internal Committee is empowered to call for relevant information, documents, etc., pertaining to the alleged default(s) and is also empowered to call for personal appearance of the applicant before it and may also require the applicant to comply with condition precedent(s) within a specified time period of consideration of application for settlement.

Pursuant thereto, the proposed settlement terms, if any, shall be placed before the High Powered Committee, which shall consider the proposed settlement terms and is empowered to seek revision of the settlement terms.

69. The recommendation of the HPAC shall be placed before the panel of WTM which shall consider the recommendation of the Committee which shall accept or reject the same. Whether the panel of WTMs accept the recommendation of the HPAC to settle the specified proceedings, a notice of demand shall be issued and thereupon the applicant shall remit the settlement amount forming part of settlement terms not later than 30 calendar days from the date of receipt of the demand notice and also fulfill/undertake in writing to abide by other settlement terms, if any, within the time provided to the applicant.

Chapter VII set out the summary settlement procedure and Chapter IX, comprise of a provision for confidentiality of an applicant seeking the benefit of settlement.

70. Chapter X of the Regulations contains provisions as regards the settlement order, in form of an appropriate order which shall dispose of the respective proceedings, on the basis of the approved settlement terms by the panel of WTMs. The settlement order passed under the Regulations is expected to contain the details of the alleged detail(s), relevant provisions of the securities laws, brief facts and circumstances relevant to the alleged default as well as the admission made by the applicant, if any, and the terms of settlement. The settlement order as soon as it is passed, shall be served on the applicant as per Regulation 25 and shall also be published on the website of the Board, subject to the confidentiality clause.

71. Regulation 28, which is most crucial for determination of the dispute before us pertains to revocation of the settlement order and it reads thus :

> "28.(1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded."

Regulation 29, categorically provide that all information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be reduced to public, if it prejudices the Board and/or the applicant.

72. It is in the backdrop of the aforesaid Regulations of 2018, the settlement order was passed pursuant to the show cause notice dated 28.10.2020 issued to seven entities and one individual Mr. Vineet Jain under Section 11(1), 11(4), 11(4)(a), 11B(i) and 11B(2) of the SEBI Act, 1992, read with SEBI Rules, 1995 and Section 12A(1)(a) and Section 23E of the Securities Contract (Regulation) Act 1956 read with Securities Contract (Regulation) procedure for holding inquiry and (Imposing Inquiry) Rules 2005.

Pursuant to the show cause notices being received, each of the noticee preferred separate application for settlement as contemplated under the Regulations of 2018, being allotted a distinct number, proposing to settle, through a settlement order without admitting or denying the finding of facts and conclusion of law as regards the enforcement proceedings initiated against them vide show cause notice dated 28.10.2020.

73. Pursuant to the receipt of the settlement application, their authorized representative had a meeting with the IC of SEBI and

pursuant to the deliberations on the terms of settlement, they proposed revised settlement terms to settle the proceedings initiated against them. The applications along with the revised settlement terms were placed for consideration before the HPAC in its meeting on various dates, when HPAC recommended that the deliberations of the settlement applications may be deferred till they seek specific permission from Delhi High Court and accordingly necessary steps to that effect were initiated and Delhi High Court cleared the way for consideration of the settlement application by directing that the SEBI shall be free to deal with them on its own merits, the applications were once again placed for consideration before the HPAC on 09.06.2022.

HPAC recommended the case for settlement with the applicants by clearly stipulating conditions qua each of them and the settlement order dated 12.09.2022 categorically recorded the settlement terms formulated as per SEBI Regulations 2018.

Name of the Applicant	Settlement Terms formulated as per SEBI (Settlement Proceedings) Regulations, 2018
Bharat Nidhi Limited	Rs.2,43,10,000/- (Rupees Two Crore Forty Three Lakh Ten Thousand Only) as settlement amount along with voluntary undertaking: (i) to provide another exit offer to its public shareholders for a period of three months after Settlement Order at the same exit price as was offered in the offer given by it in 2019, subject to any enhancement of such exit price if so directed by the High Court of Delhi and (ii) to refrain from accessing the capital markets by issuing prospectus, offer documents or advertisements soliciting money from the public for a period of 24 months from the date of the settlement order and refrain from accessing the capital markets by issuing prospectus, offer documents or advertisements soliciting money from the public for a period of 24 months from the date of the settlement order Bharat Nidhi Limited.

Mr. Vineet Jain	Rs.1,12,01,300/- (Rupees One Crore Twelve Lakh One Thousand Three Hundred Only) as settlement amount in respect of Mr. Vineet Jain.
Ashoka Marketing Limited	Rs.2,37,40,200/- (Rupees Two Crore Thirty Seven Lakh Forty Thousand Two Hundred Only) as settlement amount along with voluntary undertaking to refrain from accessing the capital markets by issuing prospectus, offer documents or advertisements soliciting money from the public for a period of 24 months from the date of the settlement order in respect of Ashoka Marketing Limited.
Arth Udyog Limited	Rs.2,24,21,300/- (Rupees Two Crore Twenty Four Lakh Twenty One Thousand Three Hundred Only) as settlement amount along with voluntary undertaking to refrain from accessing the capital markets by issuing prospectus, offer documents or advertisements soliciting money from the public for a period of 24 months from the date of the settlement order in respect of Arth Udyog Limited.
Matrix Merchandise Limited	Rs.2,24,21,300/- (Rupees Two Crore Twenty Four Lakh Twenty One Thousand Three Hundred Only) as settlement amount in respect of Matrix Merchandise Limited.
Mahavir Finance Limited.	Rs.2,24,21,300/- (Rupees Two Crore Twenty Four Lakh Twenty One Thousand Three Hundred Only) as settlement amount in respect of Mahavir Finance Limited.
TM Investment Limited.	Rs.2,24,21,300/- (Rupees Two Crore Twenty Four Lakh Twenty One Thousand Three Hundred Only) as settlement amount in respect of TM Investment Limited.
Sanmati Properties Limited.	Rs.2,24,21,300/- (Rupees Two Crore Twenty Four Lakh Twenty One Thousand Three Hundred Only) as settlement amount in respect of Sanmati Properties Limited.

74. The recommendations of the HPAC were placed for consideration before the panel of WTMs in terms of Regulation 15(2) of the Settlement Regulations and the notices of demand were issued to the applicants on 20.07.2022.

The applicants informed SEBI about remittance of the respective settlement amounts and SEBI confirmed the same. The settlement order also record that the applicants provided an undertaking to comply with the non-monetary terms forming part of the settlement terms as mentioned in paragraph 5.

It is in the wake of the power conferred under Section 15JB read with Section 19 of the SEBI Act and under Section 23 JA of the SCR Act and in terms of Regulations 23 read with Section 28 of settlement Regulations, it was ordered that pending enforcement proceedings for the alleged default against all the applicants (Petitioners before us) were settled and the enforcement proceedings initiated by SEBI for the defaults stood disposed off and SEBI was restrained from initiating any enforcement action against the applicants for the said defaults.

The settlement order also cast an onus on BNL to submit a report of compliance with terms of its undertaking given at paragraph 5, within fifteen days of passing of the settlement order, failing which, it contemplated that the settlement order shall cease to operate qua all the applicants.

The copy of the settlement order was sent to all the applicants and it was also published on the website of SEBI.

75. In the wake of the rival contentions advanced, without going into the aspect whether in passing the settlement order, SEBI was justified, we are restricting our deliberation only on the issue whether on the revocation of the order, by SEBI was justified.

It is not in dispute that in all eight noticees were served the show cause notice were accusing them of violation of the provisions of SEBI Act as well as various Regulations. By following the procedure prescribed in the Regulations of 2018, upon each of the applicant filing separate settlement application, a common settlement order was passed on 21.09.2022. The order itself reveal that the procedure prescribed under Regulations 2018 was strictly followed as initially the meetings were held between the representative of the applicants/the noticee with the IC when they deliberated on the terms of settlement and upon deliberation, the terms were revised and they were placed for consideration before the High Powered Committee which accepted the settlement terms proposed by the applicants and recommended their case for settlement.

76. A close reading of the settlement order would reveal that as far as Bharat Nidhi Limited is concerned, apart from the fact that it was under obligation to abide by the monetary term, by paying the settlement amount, it was also cast with an obligation in form of non-monetary term as it agreed to provide a voluntary undertaking to the following effect:

> (i) to provide another exit offer to its public share holders for a period of three month after settlement order at the same exit price that was offered in the year 2019;
>
> (ii) to refrain from accessing the capital markets by issuing prospectus, offer documents or advertisements, soliciting money from public for a period 24 months; and
>
> (iii) refrain from accessing the capital market by issuing prospectus, offer documents or advertisements, soliciting money from public for a period of 24 months from the date of settlement.

The other noticees were cast with an obligation only to make payment of settlement amount, whereas Ashoka Marketing Limited and Arth Udyog Limited, in addition to the monetary terms had also agreed to submit a voluntary undertaking to refrain from accessing capital markets, by issuing prospects, offer documents or advertisements or soliciting money from the public for a period of 24 months from the date of settlement order passed in their favour.

77. The bone of contention between the Petitioners and SEBI on one hand and the minority share holders on other hand, is, that Bharat Nidhi Limited failed to comply with non-monetary terms of settlement as it failed to provide exit offer to its public share holders, in terms of the settlement order itself, and in particular clause 8(iii), the settlement order ceased to operate qua all the applicants.

Mr. Seervai and Mr. Bhatt are categorical in their submission when they submitted that Bharat Nidhi was under obligation to submit the report of compliance with the terms of its undertakings in paragraph 5 of the settlement order within 15 days of the passing of the order, failing which the settlement order ceased to operate qua all the applicants.

Mr. Dwarkadas and Mr. Kamat representing Bharat Nidhi Limited, have advanced two-fold argument; first being, no case for non-compliance is at all made out as SEBI was all the while supportive of the steps taken by BNL in complying with the non-monetary terms but all of a sudden chose to revoke the settlement order by invoking the deeming provision contained in Regulations 28, without affording it an opportunity of hearing.

78. In order to ascertain whether SEBI was justified in revoking the settlement order on the ground of non-compliance, we have carefully gone through the exchange of communication between BNL and SEBI.

SEBI's stand apart from the arguments advanced by Mr. Bhatt as featured before us through its affidavit filed by one L. Kajio Mao, Deputy General Manager, SEBI affirmed on 28.02.2024, which has offered an insight into the procedure i.e. followed by SEBI when it issued the impugned order revoking the settlement.

The affidavit attributed non-compliance to the applicants when it categorically averred to the following effect -

> "I say that the impugned Communication dated 10th November 2023 was made after adhering with the procedures required under the SEBI Act, 1992 (the said Act), the Settlement Regulations framed thereunder including SEBI Delegation of Powers Order. It is submitted that as the Settlement Applicants had not taken effective steps to provide exit opportunity to all the public shareholders, as stipulated in paragraph 5 of the Settlement Order as undertaken by them. The correspondence between SEBI and the Petitioners was examined and it was found that the requirement of giving exit offer to all the public shareholders of BNL as stipulated in the Settlement Order has not been complied with. Thereafter, the Settlement Division, after due consultation/discussions with other relevant departments of SEBI, had proposed Revocation of the Settlement Order and restoration of the original enforcement action, as contemplated under

Regulation 28 of the Settlement Regulations, 2018. The said proposal was thereafter placed before the concerned DGM, the concerned CGM and the panel of WTM's who approved of the said action after scrutinizing the facts arising from passing of the Settlement Order until events subsequent thereto. The said decision of Revocation of the Settlement Order was thereafter communicated by the Dy. General Manager to all the Applicants including the Petitioners vide the Impugned Communication i.e. email and letters dated 10th November 2023. All the steps followed for revocation were followed in accordance with Delegation of Power issued by the Board."

SEBI, has therefore, adopted the stand of admitted non-compliance and, according to him, granting of an opportunity of hearing would have been an empty formality.

79. A perusal of the settlement order dated 12.09.2022 make it clear that BNL undertook *inter alia* to provide exit offer to its share holders for a period of three months after the settlement order, at the same exit price as was offered by it in 2019 subject to enhancement of such exit price if so directed by the High Court of Delhi. The manner/type of exit offer to be provided by BNL was not specified in the settlement order.

It is therefore necessary to examine as to what steps were taken by BNL to ensure compliance of this particular stipulation as it is violation of this part of the settlement order which forms the basis of its revocation.

After the settlement order was passed on 12.09.2022, BNL convened a meeting of the Board of Directors when it passed a resolution for buy-back of 1.067% of shares of BNL at the price of INR

11,229/- per share. It also accorded approval of postal ballot to be issued to the share holders seeking their approval for buy-back and approval was also accorded to approach those share holders holding more than 1% shares of BNL, who had previously in 2019 expressed their desire not to exit BNL and to ascertain their willingness to continue to remain the share holders of BNL.

80. It is worth to note that under Section 68(2)(b) of the Companies Act, 2013, a special resolution is contemplated authorizing the buy-back and BNL could only buy-back a maximum of 25% of its total paid up capital and free reserves, amounting to approximately 1.067% of its share holdings. Section 68(2) which imposes the embargo, reads thus :

> "Section 68 - Power of company to purchase its own securities
> (1) ...
> (2) No company shall purchase its own shares or other specified securities under sub-section *(1)*, unless--
> (a) the buy-back is authorised by its articles;
> (b) a special resolution has been passed at a general meeting of the company authorising the buy-back:
> Provided that nothing contained in this clause shall apply to a case where--
> (i) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of the company; and
> (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
> (c) the buy-back is twenty-five per cent. or less of the aggregate of paid-up capital and free reserves of the company:
> ......
> ...... "

Sub-section (11) of Section 68 of the Companies Act provide that if a company makes any default in complying the provision of the

Section, it shall be liable for punishment in form of fine and also imprisonment for a prescribed term.

Further, Section 70 of the Companies Act imposes a prohibition for buy-back and no company is permitted to directly or indirectly purchase its own shares or other specified securities through any subsidiary company or through any investment company or group of investment companies.

Worth it to note that Section 68 comes with a Non Obstante clause and make the power of the company to purchase its securities subject to the stipulations in sub-section (2) of Section 68.

81. It is the case of BNL that it had indulged itself in a buy-back in 2019 where out of 75% of its share capital 0.68% of shareholders had participated in the buy-back process. Pursuant to the Board approval, postal ballots were issued to the shareholders for securing their consent to the buy-back offer and the voting on buy-back was kept open for a period of 30 days. Even BNL made a public announcement of the proposed buy-back by publishing it in two widely circulated news paper.

SEBI was informed about this compliance by communication dated 27.09.2022 when BNL made its intention clear to provide exit by way of buy-back of shares and it was specified that BNL was in the process of writing to shareholders if they are willing to come forth with an exit to the public shareholders of BNL by offering to purchase their shares at the same offer which was given in 2019. As per BNL, SEBI was aware that BNL could only buy-back a maximum of 25% of its total paid up capital and free reserves amounting to approximately 1.067% of its shareholders.

Followed by this, on 30.09.2022, BNL addressed letter to all shareholders who were holding more than 1% of its share to ascertain their willingness to continue to remain its shareholders and its intention to provide exit to other public shareholders for a period of two months at the same price as that of buy-back offer (INR 11,229/-) (Proposed Exit Offer).

82. Pursuant to this step taken, TM Investments, Sanmati Properties and Vineet Jain expressed their interest to provide exit to the shareholders i.e. by participating in the Proposed Exit Offer and they provided their willingness to provide an exit to public shareholders with a cap of INR Rs.10 crores, Rs.50 crores and Rs.40 crores respectively, cumulatively offering an exit to 3.224% of shareholders.

The proposed buy-back offer given was approved by the shareholders of BNL and BNL who made a public announcement, whereby shareholders were informed that buy-back would be kept open for a period of 30 days and even letters were issued to the shareholders. This step was compliant with Rule 17(5) of the Companies (Share Capital and Debenture) Rules 2014.

However, upon the order being passed by the Bombay High Court in the Writ Petitions filed by the minority shareholding groups i.e. Ashok Shah and Pina Shah Group, on 17.10.2022, BNL was restrained from finalizing the buy-back offer.

The buy-back period however expired on 03.12.2022 and 4.046% of shares were tendered by the interested shareholders which were kept in an escrow account.

83. As per the submission of BNL, it was able to provide an exit to 4.291% of shareholders i.e. 1.067% by way of buy-back and 3.224% through way of TM Investments, Sanmati Properties and Vineet Jain. However, the tender shares only amounted to 4.046% and therefore BNL would have been in a position to provide exit all the willing shareholders which would be compliant with the settlement order. However, it is its specific allegation that the Ashoka Shah Group and Pina Shah Group did not tender their shares in the buy-back and chose to remain shareholders for BNL with an intention to extract higher monies from its shares.

Upon BNL approaching the Bombay High Court, on 05.12.2022, the High Court permitted it to claim the benefits of interim orders so far as time frame is concerned.

84. The communications exchanged between BNL and SEBI are placed on record by Mr. Dhond as well as by Mr. Bhatt, which to some extent are overlapping.

The letter dated 19.12.2022 addressed by BNL informed SEBI that the Bombay High Court has passed an order of restraint on 17.10.2022, as a result of which BNL is unable to finalize the buy-back offer and in view of the buy-back offer and therefore it would be inappropriate to proceed with the exit offer. It also informed that, it received communication from certain shareholders indicating their willingness to provide Proposed Exit Offer to the remaining public shareholders, over and above such shareholders who would be brought back as a part of the buy-back offer at the same exit price for two months following the buy-back. However, since the buy-back offer process was kept on hold, it had become difficult to BNL to take any further steps in respect of the Proposed Exit Offer.

BNL, the Respondent in the Petitions filed by the Shah Group also filed an affidavit before the High Court highlighting the steps taken by it pursuant to the passing of the settlement order and as to how the restraint order has impacted its further steps.

85. An important milestone came when SEBI itself filed an affidavit before the Bombay High Court making a categorical statement that the settlement order did not provide the manner in which the exit offer was to be provided by BNL and that in the wake of the order dated 17.10.2022 passed by the Bombay High Court, BNL had not been able to finalize the exit offer by way of buy-back.

It is thus evident that whatever steps were taken by BNL was all made known to SEBI and SEBI did not initiate any action, being was convinced that BNL was committed to provide exit to all public shareholders. BNL had also furnished to SEBI the names of the shareholders who would provide the Proposed Exit Offer namely, TM Investments, Sanmati Properties and Vineet Jain, with the cap indicated by them.

86. From the correspondence placed on record, it is seen that SEBI addressed a communication to BNL on 06.04.2023 *inter alia* calling upon BNL to disclose the name of the share holders who had indicated their willingness to provide an exit to the remaining shareholders of BNL and also the update on exit offer compliance as well as the documentary evidence reflecting the exit price offered in 2019. Pursuant thereto, according to Mr. Dhond, BNL provided to SEBI the requisite information and reiterated its commitment to provide exit to all public share holders. It also clarified in its communication dated 11.04.2023 that after the buy-back, another exit offer by certain share holders of BNL i.e. Proposed Exit Offer, shall be given for a period of 60 days and if it find that there are any intending share holders who wish to exit the company, BNL shall take adequate steps for the purpose of offering the exit. BNL also specified the names of the share holders who would provide the Proposed Exit Offer i.e. TM Investments Ltd.,

Sanmati Properties Ltd and Vineet Jain with a cap of INR 10 crores, 50 crores and 45 crores respectively.

On 04.05.2023, an email was addressed by SEBI to BNL seeking information on the share holding pattern of BNL pre and post exit offer, list of public share holders with their share holding and also the letters addressed to the proposed different share holders who had expressed their willingness to accept the exit offer. BNL immediately complied with the said requirement and thereupon on 22.05.2023 SEBI addressed another email to BNL seeking information on methodology which will be adopted by BNL to provide exit to remaining share holders after conclusion of buy-back and the Proposed Exit Offer. This prompted BNL to respond on 24.05.2023, stating that BNL shall provide an exit to the remaining share holders (17.87 percent) by exercising the options or combinations stipulated therein. BNL also highlighted to ascertain in excess share for an exit may be premature and unnecessary since during the previous buy-back conducted in 2019 only 08.68 percent of 0.75 percent of shares were tendered and therefore even the previous buy-back offer had been under subscribed. Thereafter SEBI called upon BNL vide its communication dated 24.05.2023 to submit complete exit process for the potentially willing share holders (22.17 percent) and also calling upon BNL to submit letters by the remaining share holders i.e. 77.83 percent share holding indicating their willingness to participate in the process. Thereafter BNL responded by its email dated 26.05.2023, categorically stating that BNL was in a position to provide exit to all of the 4.046 share holders who had tendered their share seeking an exit, through buy-back and Proposed Exit Offer. It also stated that BNL would follow a stepwise process to provide an exit to its share holders and ultimately reiterated its commitment to provide an exit to all its existing public share holders.

BNL also highlighted that it shall ascertain if excess shares shall be tendered for an exit, since during previous buy-back conducted in 2019, only 0.68% out of 0.75% shares were tendered and the buy-back offer was under subscribed.

87. The entire communication placed on record between SEBI and BNL, where SEBI called upon BNL to submit the exit process for potentially willing shareholders and also calling upon it to submit letters by the remaining shareholders i.e. 77.83% shareholding indicating their willingness to participate in the exit process, received a response from BNL on 26.05.2023, where BNL made it clear that only 4.046% shares were tendered during the 30 day period and exit could be only offered to those shareholders, through buy-back (1.067%) and Proposed Exit Offer (3.224%) but a step wise process would be followed by BNL to provide an exit to the shareholders who are willing to exit.

There is further exchange of communications between BNL and SEBI, in form of emails. However, when on 05.09.2023, SEBI made a statement before the Bombay High Court that there was a change in the panel of WTMs of SEBI and SEBI would be in a position to take a decision as to whether the settlement orders be revoked, BNL got alarmed and it addressed a detailed response in form of representation on 08.09.2023 to SEBI, where it clarified its stand as regards the invocation of Regulations 28, of the Settlement Regulations on the pretext of non-compliance of the terms of settlement.

88. The whole background scenario after passing of the settlement order could be garnered through series of communication between BNL and SEBI, as SEBI has resorted to Regulation 28 on account of alleged non-compliance which stands on two purported limbs, (a) that despite the settlement order requiring all public shareholders of BNL to provide exit, it gave an exit by way of buy-back of shares which came to be offered only to 1.067% of shareholders and, therefore, BNL has failed to comply with the terms of settlement; and (b) while this settlement order requires this exit offer to be kept open for a period of three months, the exit offer by BNL was only for a period of thirty days.

It is pertinent to note that the settlement order came to be passed on 12.09.2022 and pursuant to its communication, BNL took necessary steps for implementation of the non-monetary terms therein as the monetary terms were already complied with.

89. From the steps taken by BNL, it becomes apparent to us that the settlement order required BNL to provide an option to exit at the same

rate which was offered in the year 2019 and, therefore, according to BNL, the option to exit was pegged at a price of Rs.11,229/- per share and this exit was to be provided for a period of three months, within which the shareholders had to decide whether or not to exit.

The aforesaid necessarily contemplated devising of a structure, which necessarily had to be in accordance with the prevailing law including the provisions of the Companies Act and definitely intended BNL to be compliant with the prevailing statutory mechanism, so as to achieve the target of the settlement order.

90. From the heap of correspondence placed on record addressed to SEBI, it is evidently clear that the BNL initiated the process of offering exit to its public shareholders and as a step towards this, it initiated the process of buy-back of shares necessarily, in accordance with Companies Act, 2013 and the Companies (Share Capital and Debenture) Rules 2014. According to BNL, it opted for buy-back as a first step since it was one of the fastest mechanism to provide exit and even in 2019, BNL had resorted to the same mechanism.

In any case, we find that there was no particular mode of exit which was specifically prescribed by SEBI in the order of settlement dated 12.09.2022 which left it open for BNL to adopt a mode which would achieve a target of providing exit and this was clarified by SEBI in the affidavit filed in the Petition by minority shareholders when it concurred the view of SEBI that no particular mode of exit was contemplated in the order.

SEBI chose buy-back as it was in the interest of the shareholders and when it floated buy-back, it received letters from three buyers, Sanmati Properties Ltd, T.M.Investments and Vineet Jain addressing/expressing interest for providing an exit to the public shareholders of BNL and by Vineet Jain to the extent of INR 45 crores, 50 crores and 10 crores respectively after closure of the buy-back offer.

The buyers were categoric in communicating their interest for providing an exit, since BNL had proposed an exit offer to its public shareholders through a buy-back offer upto 1.067% of its total paid up equity share capital being the maximum permissible limit under the relevant law as shareholders holding an aggregate 77.83% of the total paid up share capital of BNL had provided confirmation to BNL that they will not be participating in the buy-back offer and expressed their willingness to continue to remain as its shareholders.

Therefore, the buyers gave an offer to its remaining shareholders (shareholders left after the closure of buy-back offer and all other exit offers, if any), for a period of two months after closure of BNL's buy-back offer at an exit price of INR 11,229/- per equity share.

However, in the wake of the order passed on 17.10.2022, a restraint was imposed upon BNL in finalizing the offer and therefore BNL could not ask the three shareholders to buy the shares and thus

BNL was disabled from moving ahead with its predetermined course of action.

91. The aforesaid inability is described by SEBI as breach of the terms of settlement at a belated stage, though we find that in an affidavit filed in Writ Petition No. 447 of 2023 before Bombay High Court, by the Assistant General Manager of SEBI on 13.03.2023, SEBI had made a statement as below :

> "... It may be noted that the manner/type of exit offer to be taken by the company was not specified in the impugned specified order. However, by virtue of voluntary undertaking by Respondent no.2, it is imperative upon Respondent no. 2 to provide an exit offer to all its public shareholders for a period of three months.
>
> 6. I say that as far as the present buy-back by Respondent no. 2 is concerned, this Hon'ble High Court vide its Order dated 17.10.2022 has directed that the Respondent no. 2 may proceed to the extent of inviting offers but shall not finalize the offers. Thus, the buy-back cannot be proceeded by Respondent no. 2 in view of the aforementioned directions of this Hon'ble Court."

92. Thus, SEBI was clear in its understanding when it filed an affidavit with the aforesaid statement on 13.03.2023 and did not find BNL to be at fault.

BNL pursuant to the order of settlement, took prompt steps to offer exit to its public shareholders since it chose the mechanism of buy-back which it offered in the year 2019 BNL found itself to be bound by Section 68 of the Companies Act read with Rule 17 which mandated that a company can buy-back only up to 25% of aggregate of its paid-up capitals and free reserves and in case of BNL, this aggregate as on 31.08.2022 was Rs.13,905.36 lakhs and 25% of it was computed as Rs.3,476.34 lakhs and it was therefore permissible for BNL to buy-back the shares only to this extent.

Since the exit price was fixed by SEBI at Rs.11,229/- per share, the number of shares which could be brought back was estimated to be 30,958/- equity shares which aggregated to 1.067% of its shares. Any offer by BNL to buy-back share holding in excess of 1.067% could have been violation of law and therefore BNL is justified in restricting its buy-back to 1.067% of its share capital.

All public shareholders were given buy-back offer and amongst those who accepted the buy-back offer, BNL would have brought their shares aggregating to 1.067% of the total shareholding but because of the interim order passed by the Bombay High Court, it could not complete the process.

93. Coming to the timeline for which the buy-back could be kept open, there is a statutory fixed limit of maximum thirty days as per Section 68 of the Companies Act and accordingly the buy-back offer was structured keeping it open for the window of thirty days.

BNL clarified to SEBI that considering the aforesaid constrain on buy-back of share under the Companies Act, it developed a methodology, by which its shareholders who desired to exit the company would be in a position to sell their shares and exit, without

BNL buying them and BNL would identify the shareholders in BNL who would purchase the shares of other shareholders, who desired to buy, offering it at the same price and the offer to be kept open for a further period of sixty days, after the thirty days buy-back period was closed.

BNL in its representation addressed to SEBI clarified that the shareholders who were desirous of accepting the offer but missed the bus because of the window of thirty days, would get a further opportunity to be brought out at the same price, within further period of sixty months, thus keeping the exit open for three months.

94. The detailed representation preferred by BNL on 08.09.2023 placed on record at exhibit NN in the Petition filed by BNL i.e. Writ Petition No. 3977 of 2024, has offered the details of shares tendered and those which would be brought back under the contemplated step one and step two proposed by BNL which had 29,00,132 total shares with 1,17,334 shares tendered by shareholders who wanted to exit (4.046%) and 30,958 shares which would be brought back by BNL under buy-back (1.067%). In the computation, BNL reflected 86,386 (2.979%) shares to be excess being tendered under the buy-back that cannot be brought by BNL due to threshold limits under the Companies Act but it estimated 93,506 (3.224%) of shares which could have been brought under step two.

BNL therefore demonstrated to SEBI in its representation that it was fully committed to comply with the terms of settlement order and if it had no intention to do so, it would not have paid the settlement amount of Rs.2,43,10,000 (Rupees two crores, forty three lakhs and ten thousand).

95. The Settlement Order required an exit offer to be kept open for three months and BNL was thus required to work out a strategy to ensure buying back the shares of even such persons who may opt to offer their shares in step two i.e. after the window of thirty days was over and this could have been ensured complete adherence to the terms of settlement.

In fact what is worth to note is that the entire arrangement devised by BNL was discussed with SEBI and forms part of the correspondence exchanged and SEBI never raised any murmur in this regard thereby directly or indirectly indicating that it found the action of BNL to be not headed in tune with the settlement, which necessarily had to be complied with by keeping in mind the statutory regime.

The exchange of communications between BNL and SEBI right from 27.09.2022 till 04.08.2023, is clearly indicative that BNL had kept SEBI informed about the manner in which it planned to comply with the settlement order and SEBI never indicated its dissatisfaction on the proposed compliance.

96. Though a serious attempt is made on behalf of learned Senior Counsel Mr. Dwarkadas as well as Mr. Dhond in arguing before us that when the Bombay High Court in the Petition filed by minority shareholders, ordered disclosure of its internal documents/notice, etc., which led to the passing of settlement order, BNL felt rattled and therefore decided to revoke the settlement order, we do not intend to ascribe this intention to a statutory body like SEBI, which is cast with an important duty of protecting the interest of investors and securities and to promote the development and regulate the securities market. At this juncture, we must however express that all the while after passing of the order of settlement till the passing of the impugned order revoking the same, not a single act is indicative of the intention of SEBI to revoke the settlement on the ground of non-compliance and we have noted Mr. Dhond arguing before us that all the while BNL was taken a garden path and all of a sudden, it is attributed of a failure to comply with the terms of settlement.

97. Regulation 28 empowered the board to revoke the settlement on failure to comply with the conditions in the order and in such case the settlement order would stand revoked and withdrawn and the board shall be competent to restore or initiate the proceedings with respect to which the settlement order is passed.

In the present case, SEBI vehemently told us that there is a failure to comply with the settlement order which is definitely distinct from a breach which is wilful as “failed to comply” would not govern an inability to perform in peculiar circumstances and all the while the stand of BNL through its representation is the impediment in its way, when it could not achieve the timelines and the steps which it contemplated as a compliance of the settlement order.

From the arguments advanced before us and in the wake of reading of exchange of communications, it cannot be said that BNL had an intention to evade or flout the settlement order and that the breach alleged is wilful. BNL sprung into action immediately when the settlement order was communicated to it and laid its blue print of action before SEBI, which SEBI tacitly accepted and never raised any objection and hence the accusation that there was failure to comply with the terms of settlement at the end of BNL and therefore the settlement order shall stand revoked against all the noticees is too broad a proposition to accept. However, we agree with Mr. Bhatt and Mr. Seervai that the settlement order is a composite order, since the show cause notice alleged a concerted action on behalf of all the noticees and therefore its effect was cumulative and, covered all of them.

98. Another facet of the matter is whether SEBI ought to have granted an opportunity of hearing to the Petitioners before the revocation order was passed as its action involved civil consequences and in particular when the breach alleged is not wilful but it is the case

of BNL that it was disabled from completing its course of action leading to a full dressed compliance of the terms of settlement. BNL had three buyers before it which was part of its first step but was unable to complete the transaction in the wake of the order passed by the Court restraining it from finalizing the offer.

The well known maxim "*Lex non cogit ad impossibilia*" - "*The law compels no impossibility*", being discussed in Bennion's Statutory Interpretation, IVth Edition at page 969, "*when an enactment requires what is legally impossible, it will be presumed that parliament intended it to modify so as to remove the impossibility element*" and this principle in form of doctrine of Impossibility of Performance has been gainfully applied by the Indian Courts and has been invoked by BNL by urging before SEBI, that it is excused from performing what it could not perform legally.

This principle has found its way in the Constitution Bench decision in the case of **Indore Development Authority (LAPSE-5J.) vs. Manoharlal & Ors.**[16] with the following observations :

> "314. The maxim "*lex non cogit ad impossibilia*" means that the law does not expect the performance of the impossible. Though payment is possible but the logic of payment is relevant. There are cases in which compensation was tendered, but refused and then deposited in the treasury. There was litigation in court, which was pending (or in some cases, decided); earlier references for enhancement of compensation were sought and compensation was enhanced. There was no challenge to acquisition proceedings or

16 (2020) 8 SCC 129

taking possession, etc. In pending matters in this Court or in the High Court even in proceedings relating to compensation, Section 24(2) was invoked to state that proceedings have lapsed due to non-deposit of compensation in the court or to deposit in the treasury or otherwise due to interim order of the court needful could not be done, as such proceedings should lapse."

...

319. In *Standard Chartered Bank* v. *Directorate of Enforcement* [*Standard Chartered Bank* v. *Directorate of Enforcement*, (2005) 4 SCC 530 : 2005 SCC (Cri) 961] , the legal maxim "*impotentia excusat legem*" has been applied to hold that law does not compel a man to do that which cannot possibly be performed. Though the maxim with respect to the impossibility of performance may not be strictly applicable, however, the effect of the court's order, for the time being, made the authorities disable to fulfil the obligation. Thus, when they were incapable of performing, they have to be permitted to perform at the first available opportunity, which is the time prescribed by the statute for them i.e. the total period of 5 years excluding the period of the interim order."

The maxim founded principle of equity, clearly indicate - The law does not compel a man to do what he cannot possibly perform.

99**.** SEBI while revoking the order of settlement vide its communication dated 10.11.2023, has simply informed the Petitioners that the settlement order dated 12.09.2022 stands revoked and withdrawn in terms of Regulation 28 of the SEBI (Settlement Proceedings), Regulation 2018, for failure to comply with the settlement order. By the said communication, it has also intimated to the Petitioners that no amount paid shall be refunded and the board shall restore/initiate the proceedings.

In the common affidavit filed on behalf of SEBI, it is admitted that BNL undertook to provide exit offer to its public shareholders for period of three months after settlement order at the same exit price which was offered in 2019 and therefore it was imperative for it to provide an exit offer. In addition, it is the stand of SEBI that the show cause notice dated 28.10.2020 was a composite notice against all eight Petitioners and the Order dated 12.09.2022 was a composite order which bind all the eight entities.

This order, according to the affidavit of SEBI was to be complied in letter and spirit by all eight entities and SEBI categorically state that it was continuously examining if they are complying with the directions contained in the settlement order and it so stated in its affidavit dated 13.03.2023. If this is the stand of SEBI and particularly when it did not address any single communication to BNL or any of the Petitioners that they were not proceeding in accordance with the terms of settlement, its stand in the affidavit that since the Petitioners were not able to fully comply with the settlement order, SEBI decided to revoke the same and therefore it issued the impugned communication is nothing but a flip flop, in our view.

For reaching this conclusion, SEBI has relied upon the communication dated 19.12.2022, where the Petitioners (BNL) had stated that it would not be appropriate to proceed with the exit offer at that stage.

The affidavit therefore make a reference to the communication from BNL addressed to the Settlement Division on 19.12.2022 and also the affidavit of the Petitioners dated 09.03.2023 where it was categorically stated that by letter dated 19.12.2022, BNL informed SEBI that in the wake of the directions of the High Court with regard to buy-back process, it had become difficult for it to take any further steps with respect to exit proposed offer and it would not be appropriate to proceed with the exit offer at that stage and therefore SEBI was informed that Proposed Exit Offer was kept on hold, until it was permitted to finalise the buy-back offer.

100. A reading of the communication dated 19.12.2022 from BNL, in the wake of the interim order passed by the Court on 05.12.2022, apprising it about its resolve to the buy-back offer despite indicating that in the interest of fair disclosure, the company has already made a public announcement on 18.12.2022 informing the shareholders of the development relating to interim order and its impact on the finalisation of the buy-back offer. However, what is missed out is a subsequent narration, which was brought to the notice of SEBI :

> "7. Kindly note that as mentioned in the Compliance Report, the Company had approached its certain public shareholders asking if any such shareholder is willing to come forth and provide an exit offer to other public shareholders of the Company by offering to purchase their shares at the Exit Price, after the completion of the

Buy-back Offer by the Company. Thereafter, the Company had received communication from certain shareholders indicating their willingness to provide an exit offer, upto a certain amount (subject to necessary internal approvals at their end), to the remaining shareholders of the Company (over and above such shareholders who would be bought back as part of the Buy-back Offer), at the Exit Price, for a period of two months following the Buy-back Offer (hereinafter referred as, the Proposed Exit Offer). However, given that the Buy-back Offer has been kept on hold by the BHC by way of the Interim Orders, it has become difficult to take any further steps with respect to the Proposed Exit Offer. The petitioners to the Writ Petitions have challenged the terms of the Settlement Order and have inter alia sought quashing of the Settlement Order by the BHC. Therefore, pending directions from the BHC permitting the Company to proceed further in providing an exit to its shareholders by finalising the Buy-back Offer, it will not be appropriate to proceed further with the Proposed Exit Offer at this stage; accordingly, the Proposed Exit Offer has been kept on hold till the time the Company is permitted to finalise the Buy-back Offer.

8. We request your understanding and co-operation in considering that the Company has made its best efforts to comply with the Settlement Order, and the inability to complete the Buy-back Offer within the prescribed timelines is borne solely out of the Interim Orders of the BHC in the aforesaid ongoing judicial proceedings. We reiterate our commitment to take steps to finalise the Buy-back Offer as and when it becomes permissible for the Company to do so, in compliance with further directions of the BHC."

101. In terms of the affidavit dated 20.02.2024, SEBI has adopted a stand that in the wake of the admitted factual position when BNL itself had expressed its inability to follow the path chartered by it and clearly

stated that it has become difficult for it to take any further steps with respect to the proposed exit order, it has resulted into failure to comply with the settlement order. Based upon this stand, SEBI has pleaded that there was no necessity of affording of hearing to the Petitioners as the Petitioners did not comply with the non-monetary terms and there was no requirement of ensuring compliance of the principles of natural justice as in any case neither Section 15JB of SEBI Act, 1992 and SEBI (Settlement Proceedings) Regulation 2018 contemplate so.

102. It cannot be disputed that SEBI continued to entertain the Petitioners and specifically BNL, when it kept it informed about the steps taken for ensuring a compliance with the settlement order and at time also expressed, as to how it was placed in a difficult situation in the wake of the interim order passed by the High Court when it was unable to move ahead. It is not the case that SEBI arrived at a conclusion that there was the breach of the non-monetary terms of settlement order immediately after three months had lapsed but for almost for fourteen months, SEBI continued to entertain BNL and even found the stand of BNL to be a plausible one promoting it to file an affidavit before the Court on 13.03.2023, resonating with the stand of BNL, that the buy-back cannot be proceeded in view of the directions passed by the High Court, despite the fact that by virtue of voluntary undertaking given to it, it should provide exit offer to all its public shareholders for a period of three months.

What made SEBI suddenly adopt a 'U' turn and alleged failure of compliance of the directions as not fathomable.

103. SEBI functions as a Regulator and has a duty to act fairly, while conducting proceedings pursuant to initiation of action against the parties. Given the discharge of functions by the Board to protect the interest of investors in securities, and while it investigate the transactions in securities, being dealt in a manner detrimental to the interest of investors or securities market or initiate an action against any person/entity associated with securities which is alleged to have violated any of the violations of the SEBI Act or Rules made or directions issued by it, it is expected to act in a fair manner and shall make no attempt to circumvent the Rule of law. As observed by the Apex Court in the case of **Reliance Industries Ltd. v. SEBI**[17], there is a substantive duty on the Regulator to show fairness, in the form of public cooperation and deference. The observations of the Apex Court in paragraph 45 is worth to be taken note of :

> "45. The duty to act fairly by SEBI, is inextricably tied with the principles of natural justice, wherein a party cannot be condemned without having been given an adequate opportunity to defend itself. In State Bank of Patiala v. SK Sharma, (1996) 3 SCC 364, this Court while dealing with document disclosure and natural justice held as under: (SCC pp. 385-86, para 28)
>
> > "28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a straitjacket. Their applicability

17 (2022) 10 SCC 181

depends upon the context and the facts and circumstances of each case.

(..As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] , the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — ...”

104. In no uncertain terms, the importance of adopting transparency in the judicial process was highlighted in paragraph 48 of the decision by observing that keeping a party abreast of the information that influenced the decision promotes transparency of the judicial process which was discussed in **T. Takano vs. Securities and Exchange Board of India (SEBI)**[18] with the following observations :

“27. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest”

105. When SEBI, upon reflecting on the role played by SEBI throughout the process and which is brought before us through oral arguments as well as the affidavit placed before us, it is apparent that it was monitoring the steps taken by BNL to ensure compliance of the

18 (2022) 8 SCC 162

settlement order and it cannot be doubted that BNL has also already initiated elaborate process for ensuring compliance and now when SEBI alleges that the compliance as indicated in the settlement order is not adhered to whereas BNL strongly contending that it had kept SEBI into loophole and had furnished all necessary documents required, it becomes necessary to afford an opportunity of hearing as against the said action, there is no provision for appeal, review, etc.

One of the notable arguments advanced on behalf of the Petitioners is, since the impugned order entail civil consequences, as the settlement order being passed, conferred an immunity on the Petitioners from any further action being initiated against the entities/noticees, which could be both civil and criminal action and therefore when it is revoked, it is necessary to adhere to the principles of natural justice.

106. Rival contentions are advanced before us whether it was necessary for SEBI to pass a speaking order, without any opportunity of hearing or being afforded on consideration of its representation, as according to the Petitioners, the order prejudices them and particularly when SEBI as a public authority has a duty to act in a fair and transparent manner and that the arbitrary and hasty decision taken by it fail to follow due process of law.

It is trite position of law that principles of natural justice are not merely formalities but they constitute substantive obligations that need to be adhered to by the decision making and adjudicating authorities, it so a quasi-judicial authority. The adherence to the principles, act as a guarantee against arbitrary action, both in terms of procedure and substance and the two well known fundamental principles of natural justice cover a pivotal principal of *audi alteram partem,* meaning that a person affected must be heard before a decision he is visited with an advise.

By expansion of the said principle, which it is equally made applicable to the administrative as well as quasi judicial actions, it is considered mandatory to provide for an opportunity of being heard, when an administrative action results in civil consequence to a person or an entity and every such action which involves civil consequences must be consistent with the rules of natural justice.

107. Right from the decision of the Apex Court in the case of **A. K. Kraipak & Ors. vs. Union of India & Ors**.[19] till the recent decision in case of SBI vs. **Rajesh Agarwal** (supra) on which strong reliance is placed by the Petitioners, it is a well settled norm that a party who is prejudiced by an order intended to be passed, is entitled to hearing, applying alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences.

It is one of the fundamental rules of our constitutional set-up that every person is protected against exercise of arbitrary authority by the State or its officers and if there is a power to decide and determine to the prejudice

19 (1969 (2) SCC 262

of a person, duty to act judicially is implicit in the exercise of such power and if an action is found devoid of these ingredient, then the order is a nullity.

The distinction between a judicial act and an administrative act has withered away with passage of time and even an administrative order which involves civil consequences must necessarily adhere to the principles of natural justice.

The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages and in its wide umbrella covers everything that affects a citizen in his civil life.

108. In case of **Rajesh Agarwal** (supra), the Apex Court examined the facet of '*audi alteram partem'* in the backdrop of the duty of administrative authority to act fairly and without being discriminatory, with reference to the Reserve Bank of India, which is cast with the duty to protect the banking system and with reference to the directions issued to be followed by the bank before forming an opinion to proceed with the criminal complaint against a borrower as well as the civil consequences likely to flow therefrom.

With reference to the peculiar facts, while holding that rule of *audi alteram partem* ought to be read in the relevant clauses of Master Directions on Frauds, the Apex Court observed thus :

> "95. In light of the legal position noted above, we hold that the rule of *audi alteram partem* ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an

opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of *audi alteram partem*. In the present batch of appeals, this Court passed an ad interim order [*Shree Saraiwwalaa Agrr Refineries Ltd.* v. *Union of India*, 2022 SCC OnLine SC 1905] restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision."

Finally it is held that application of *audi alteram partem,* principle cannot be impliedly excluded under the Master Directors of Frauds and the principles of natural justice demanded that borrowers must be served a notice, given an opportunity to explain the conclusion of the forensic audit report and be allowed to be represented by the banks before their account is classified as 'fraud' under the Masters Directors of Fraud. In addition, the decision to classify in the borrowers account as fraudulent must be preceded by a reasoned order.

A specific direction was issued to read the principle of *audi alteram partem,* into the provisions of Master Directors on Frauds, which do not contemplate an opportunity of hearing to the borrower before classifying their account as fraud.

109. Another aspect which also compel us to accept the arguments advanced on behalf of the Petitioners, is the absence of reasons in the impugned order.

In India, the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affects a party adversely and even a quasi judicial authority is expected to record reasons in support of its conclusions, as it form the soul of the order. Necessity of recording of reasons is meant to serve a facet of principles of natural justice, that justice is not only been done, but should also appear to be done as well.

Recording of reasons operate as a valid restraint on possibly arbitrary exercise of power and ensure that the power has been exercised on relevant grounds and by disregarding extraneous considerations. The reasons afforded also facilitate the process of judicial review by the Superior Court and therefore offering of reason is a requirement for, both judicial accountability and transparency.

110. Though an attempt was made before us to submit that the revocation of the settlement order is a just a communication and is not an 'order', we are not ready to accept the said submission as Mr. Bhatt in no uncertain terms have argued before us orally and has also placed before us the entire record of the investigation proceedings which make

us accept the submission that the impugned communication is nothing but an order. We, then cannot but observe that the said order is unreasoned and it do not satisfy the requirement of the order being compliant with the rules of natural justice, as reasons substitute subjectivity by objectivity.

The rationale in passing a reasoned order is also being that the affected party know why the decision has gone against him and this being recognised as a statutory requirement of natural justice, the impugned order which fails to ensure its compliance cannot be sustained.

The one sentence order revoking the settlement order without offering any explanation or detail to support and particularly having been passed 14 months after settlement order is passed, with a heap of correspondence entered into between the parties, in our opinion, the impugned order of revocation, which failed to give any reason for its conclusion by submitting that Regulation 28 contemplate automatic revocation if there is no compliance, is not an argument which would persuade us to be accepted.

Absence of reason has rendered the impugned order unsustainable, when such order is subject to challenge before the higher forum and in this case, particularly when BNL was all the while in contact with SEBI and have complied with each of its directions to submit the documents and information from time to time, the one line order revoking settlement, justly arrived, order definitely defeats the principles of natural justice, as the reasoning in an order ensure transparency and fairness in decision making and particularly when SEBI, a Regulator is expected to act fairly while conducting proceedings or initiating any action against the parties.

111. Reliance by Mr. Bhatt in **State of U.P. vs. Sudhir Kumar Singh** (Supra), in our considered opinion do not apply to the facts before us.

There may be situations where fair hearing would make no difference, meaning that hearing would not change the ultimate conclusion reached by its maker and in such situation, there would arise no legal duty to offer hearing. In such situation, fair procedure appear to serve no purpose since the right could be secured without according such treatment to the affected party/person and, therefore, it may not be necessary to strike off the action only on the ground that it is in violation of principles of natural justice, rendering the order null and void. In such situation, the validity of the order has to be decided on the touchstone of prejudice, the ultimate test being test of prejudice or the test of fair hearing.

In **Sudhir Kumar Singh** (Supra), the relevant observation of the Apex Court reads thus :

> "36. What is important to note is that it is the court or tribunal which must determine whether or not prejudice has been caused, and not the authority on an ex parte appraisal of the facts. This has

been well-explained in a later judgment, namely, *Dharampal Satyapal Ltd.* v. *CCE* [*Dharampal Satyapal Ltd.* v. *CCE*, (2015) 8 SCC 519] , in which, after setting out a number of judgments, this Court concluded : (SCC pp. 538-41, paras 38-40 & 42-45)

> " ...
>
> *40.* In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.
>
> ...
>
> *42.* So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. *It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served*

no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority."

112. The decision making authority therefore itself cannot dispense with the requirement of natural justice on the ground that affording such opportunity will not make any difference as no prejudice will be caused to the person. Whether an opportunity of hearing will serve the purpose or not cannot be presumed by an authority but it is only for the Court to consider whether any purpose could be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken.

In the facts before us, we find great prejudice caused to the Petitioners and though Mr. Bhatt has vehemently urged before us that principles of natural justice need not be made as a shield, as in the present case since the facts are admitted and not denied and specifically that BNL did not comply with the undertaking of providing an exit offer and even today they are not in a position to comply and do not tell the Court or to SEBI as to how they are going to ensure its compliance and rather in their representation they have made it clear that they are unable to comply and, therefore, giving an opportunity of hearing would have made no difference.

Here we disagree as we find that in the peculiar facts of the case, when after a gap of more than fourteen months, SEBI argued before us that there is a failure to comply with the stipulations in the settlement order, while we have noted that SEBI never raised any objection when BNL was appraising it of the steps taken to ensure compliance of the settlement order and when all of a sudden it makes up its mind to revoke the settlement order, we are of the firm view, that this is a fit case where it ought to have granted an opportunity of hearing to the Petitioners before it embarked upon the journey to revoke the settlement order.

In the representation preferred to SEBI, BNL was consistently praying for an opportunity of hearing and the argument that since they have breached the undertaking, SEBI did not hear them and there is no possibility of them performing now, according to us, do not excuse SEBI of denying the hearing to the Petitioners, and particularly BNL, when it accused it of acting in breach of the terms of settlement.

113. Arguments are also advanced before us about the competency of the authority/person passing the order. We have noted the Regulation which permit the delegation of authority and since the SEBI has categorically stated in the affidavit that the delegated power has been put to use, we do not intend to interfere with the order on that ground.

In any case, since we are remanding the matter back to SEBI for reconsideration of its decision to revoke the order of settlement, on the ground of failure of the Petitioners to comply with its conditions and since we are of the view that the decision ought to have been preceded by an opportunity of hearing to the Petitioners, contemplating withdrawal of the settlement order on the ground of its breach, we permit the Petitioners to raise this ground before the SEBI, which shall then be duty bound to consider it.

114. In the wake of the aforesaid discussion, we quash and set aside the impugned order passed by SEBI, communicated to the Petitioners on 10.11.2023 and remand the proceedings of the settlement applications qua each of the Petitioner to SEBI for reconsideration, by affording an opportunity of hearing to the Petitioners within a time bound manner and we expect the order to be passed, to be reasoned order. The aforesaid exercise shall be carried out within a period of four months from the receipt of the order by SEBI.

Writ Petition Nos. 3977 of 2024, 4828 of 2024 and 2325 of 2024 are made absolute to the aforesaid extent.

All pending Interim Applications are disposed off.

MANJUSHA DESHPANDE, J **BHARATI DANGRE, J**

ANDREZA RODRIGUES EPEREIRA
Digitally signed by ANDREZA RODRIGUES EPEREIRA
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