BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 26.06.2014
Date of Decision: 30.06.2014

Appeal No. 1 of 2013

Reliance Industries Limited
3rd Floor, Maker Chambers IV,
222, Nariman Point,
Mumbai 400 021 …Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051 …Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Somasekhar Sundaresan, Mr. Paras Parekh, Mr. Abishek Venkatraman and Mr. Dhaval Kothari, Advocates for the Appellant.

Mr. Darius Khambata, Advocate General with Mr. Shiraz Rustomjee, Senior Advocate, Mr. Jayesh Ashar, Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar

1. Appellant herein seeks to challenge order of Securities and Exchange Board of India ("SEBI" for short) dated January 2, 2013 whereby consent application filed by appellant on April 26, 2011 for settling the dispute raised in show cause notice dated December 16, 2010 has been rejected as not consentable under paragraph 1(ii) of the consent circular dated May 25, 2012.

2. This appeal was fully heard on January 6, 2014 and on conclusion of arguments order was reserved. Before reserved order could be pronounced, SEBI in exercise of powers conferred by Section 15JB of SEBI Act, 1992 and Section 23JA of Securities Contracts (Regulation) Act, 1956 and Section 19IA of the Depositories Act, 1996, framed SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 with retrospective effect from April 20, 2007 ("2014 Regulations" for short). In view of 2014 Regulations issued on January 9, 2014 with retrospective effect from April 20, 2007, present appeal was placed on Board for directions/ hearing from time to time to consider effect of newly introduced provisions to facts of present case.

3. In written submissions filed on June 20, 2014, SEBI has submitted that apart from fact that dispute raised in show cause notice dated December 16, 2010 is not consentable under consent circulars issued by SEBI, present appeal itself is not maintainable in view of Section 15JB(4), inserted to SEBI Act, 1992 under Ordinances promulgated from time to time. As on date, Section 15JB (4) inserted to SEBI Act by Securities Laws (Amendment) Ordinance No. 2 of 2014 and also 2014 Regulations, framed thereunder are in force.

4. Question, therefore, to be considered in this appeal filed prior to insertion of Section 15JB(4) is, whether SEBI is justified in rejecting the consent application filed by the appellant as not consentable under paragraph 1(ii) of consent circular dated May 25, 2012. If answer to the above question is in the negative, then in view of Section 15JB read with

Section 30A inserted to SEBI Act by Ordinance No. 2 of 2014, with retrospective effect, whether appeal against the impugned order dated January 2, 2013 is maintainable before this Tribunal.

5. Dispute in the present case relates to sale of approximately 20 crore Reliance Petroleum Ltd. ('RPL' for short) shares by appellant in November 2007. After investigations SEBI issued show cause notice dated April 29, 2009/ corrigendum dated October 8, 2009, wherein it was alleged that the appellant in connivance with other entities related/connected to it, took short positions in the Futures and Options ('F & O') segments of the National Stock Exchange of India Ltd. in the scrip of RPL, while the appellant, on or about the same time sold approximately 20 crore shares of RPL in the cash segment with a view to depress the settlement price in the F& O segment and thereby made illegal gain of ₹ 513.12 crores on the short positions. On receiving above show cause notice, appellant by letter dated October 12, 2009 sought inspection of documents which were referred to in the said show cause notice/corrigendum. Since there was delay in receiving inspection of documents, appellant filed its reply to the show cause notice/corrigendum under protest.

6. While aforesaid show cause notice/corrigendum was pending, appellant filed consent application on November 5, 2009 seeking settlement of dispute raised in show cause notice dated April 29, 2009. The said consent application was rejected by SEBI on March 8, 2010.

7. Thereafter, SEBI deemed it fit to reinvestigate the matter. On completion of reinvestigation, SEBI in supersession of its earlier show cause notice dated April 29, 2009 issued a fresh show cause notice on December 16, 2010 in relation to the very same transactions which were subject matter of earlier show cause notice dated April 29, 2009 but with certain modifications, such as, dropping the charge relating to insider trading. Vide its reply dated December 28, 2010 appellant raised preliminary objections against issuance of show cause notice dated December 16, 2010 inter alia on ground that reinvestigating the matter without hearing the appellant was bad in law and that the new show cause notice replaces previous show cause notice in its entirety and raises new issues which were not part of previous show cause notice. By that letter dated December 28, 2010 appellant sought inspection of all the documents that were referred to in show cause notice dated December 16, 2010.

8. During the course of hearing of show cause notice dated December 16, 2010, SEBI addressed a letter to the appellant on April 15, 2011 stating therein that even though the show cause notice dated December 16, 2010 does not state anything about the consent proceedings, appellant had a right to seek settlement through the consent procedure as per consent circular issued by SEBI.

9. Thereupon, appellant filed consent application on April 26, 2011 seeking settlement of dispute raised in show cause notice dated

December 16, 2010 as per SEBI circular dated April 20, 2007 as amended by circular dated May 25, 2012.

10. Before discussing consent proposal by and between appellant and SEBI at the Internal Committee ("IC" for short) meetings, appellant insisted on seeking inspection of documents referred to in show cause notice dated December 16, 2010 as also basis on which reinvestigation was carried out. By an e-mail dated December 7, 2011 SEBI informed appellant that request for inspection of documents was not tenable in consent proceedings. However, after almost one year on appellant insisting on inspection, SEBI vide letter dated November 2, 2012 furnished notings relating to reinvestigation but declined to give inspection of various documents sought by the appellant. Thereupon, appellant while seeking postponement of discussion before IC in relation to consent application dated April 26, 2011, filed Appeal No. 224 of 2012 before this Tribunal to challenge decision of SEBI in refusing to give inspection of documents. While Appeal No. 224 of 2012 was pending, SEBI chose to give inspection of documents substantially between November 21st to 23rd, 2012 and on November 27, 2012 and also supplied photocopies of documents running into 1300 pages.

11. Thereafter, by a letter dated November 27, 2012 SEBI informed appellant that meeting before IC is scheduled on December 7, 2012. By a letter dated December 3, 2012 appellant requested that since photocopies of documents running into 1300 pages have been given belatedly in the last week of November 2012 i.e., after almost two years

of making request and inspection of some material documents were yet to be given, meaningful participation in consent proceedings would be possible only when inspection of all material documents are given and sufficient time is given to the appellant to review photocopies of documents running into 1300 pages. By the said letter appellant further requested that since Senior Counsel of appellant would not be available once the Courts are on vacation from December 17, 2012, meeting before the IC scheduled on December 7, 2012 may be postponed to any date in the third week of January 2013.

12. Internal Committee of SEBI did not accede to the request of the appellant and referred the matter to the High Powered Advisory Committee ("HPAC" for short). On December 21, 2012, HPAC after considering seriousness of the charges levelled in show cause notice, recommended that the case may not be settled in view of Clause 1(ii) of SEBI consent circular dated May 25, 2012. Above recommendation of HPAC was approved by panel of Whole Time Members ("WTM" for short) of SEBI on December 31, 2012. Accordingly, vide impugned order dated January 2, 2013 appellant was informed that in view of recommendation of HPAC being accepted by SEBI, the consent application cannot be entertained. In the impugned order dated January 2, 2013 it is also stated that HPAC has noted that adequate opportunity has been provided to the appellant to attend the IC meetings. Challenging order dated January 2, 2013 present appeal has been filed.

13. To complete narration of facts, it may be noted that Appeal No. 224 of 2012 filed by the appellant was disposed of on December 20, 2013 on the basis of statement made by counsel for SEBI that even though inspection of some of the documents have already been given, without prejudice, SEBI would furnish copies of eight documents demanded by the appellant in its note dated December 3, 2013.

14. Mr. Dwarkadas, learned Senior Advocate appearing on behalf of appellant submitted that the process of consent order under SEBI circular involves exercise of due caution and the said circular contains three levels of proceedings which are carried out separately at different stages and even persons conducting such proceedings are different. First stage involves processing the consent application by the IC where the applicant appears before the committee for formulating the terms of consent as per guidelines and thereafter the IC places the consent terms before the HPAC for its consideration. Second stage involves HPAC considering the consent proposal forwarded by IC. If HPAC agrees with those consent terms or agrees with modification, then suitable consent terms are recommended to the Panel of WTM of SEBI for passing suitable order. Third stage relates to the panel of WTM’s of SEBI considering facts and circumstances of the case and gravity of charges and then passing suitable order either to accept or refuse to consider the case under the consent process.

15. Counsel for appellant further submitted that although consent circulars of SEBI list out certain defaults which cannot be consented,

those circulars specifically record that notwithstanding the aforesaid list, HPAC as well as panel of WTM's of SEBI in the facts of a particular case may settle any of the defaults set out in that list. In the present case, on account of failure on part of SEBI to give complete inspection of all documents referred to and relied upon in the show cause notice, the appellant could not attend IC meetings and without giving an opportunity of hearing before IC/HPAC/WTM to explain as to why the matter needs to be settled, those authorities could not have held that the consent application cannot be settled merely because the dispute falls under Clause 1(ii) of consent circular dated May 25, 2012. Accordingly, counsel for appellant submitted that the impugned decision of SEBI dated January 2, 2013 be quashed and set aside and SEBI be directed to dispose of consent application of appellant dated April 26, 2011 on merit and in accordance with law.

16. As regards applicability of Section 15JB(4) to the facts of present case, counsel for appellant submitted that passing impugned order arbitrarily, capriciously and disregarding due process of law, would render the order a nullity and such an order which suffers from nullity could be challenged before this Tribunal irrespective of insertion of Section 15JB(4) with retrospective effect from June 20, 2007. To hold that appeal is not maintainable even where the order is a nullity would mean conferring unbridled, unfettered and arbitrary absolute discretion on SEBI, which is not the concept of law adopted in India. In support of aforesaid contentions reliance is placed on decisions of the Apex Court in the case of B.P. Singhal vs Union of India & Anr. reported in (2010)

6 Supreme Court Cases 331 and State of Orissa vs Dr. (Miss) Binapani Dei & Ors reported in AIR (1967) Supreme Court 1269.

17. Mr. Khambata, learned Advocate General appearing on behalf of SEBI submitted that the consent procedure framed by SEBI does not contemplate any appeal from the decision of competent authority on the consent application. Appellant has specifically given an undertaking in the consent application to waive its right of appeal/review before Securities Appellate Tribunal/ Courts. Therefore, appellant is not justified in filing the present appeal in breach of undertaking given by it. Consent process is availed by an entity without the admission and/or denial of guilt with respect to matter sought to be settled and hence the consent process does not contemplate any adjudication and/or conclusion as to the guilt or innocence of an applicant. Therefore, rejection of consent application has not affected any substantive right of the appellant and the appellant is at liberty to argue its case at length in the quasi judicial proceedings initiated against it. Thus, the letter rejecting the consent application cannot be regarded as an appealable order and hence the present appeal is not maintainable.

18. Counsel for SEBI further submitted that the appellant was provided as many as six opportunities to appear before the internal committee in relation to the consent proceedings i.e., on June 29, 2011, September 21, 2011, April 25, 2012, November 9, 2012, November 15, 2012 and December 7, 2012. Appellant did not attend any of these meetings despite SEBI intimating vide e-mail dated December 7, 2011

that the appellant's demand for inspection of documents in a consent proceedings was misplaced. Appellant refused to proceed with the consent application on ground that inspection of documents has not been given, knowing fully well that those documents were wholly irrelevant documents for the consent proceedings and further knowing fully well that so long as the consent application remains pending, final order under Section 11B proceedings cannot be passed. Thus, stalling proceedings under consent procedure was with a view to stall proceedings under Section 11B of the SEBI Act.

19. Counsel for SEBI further submitted that fact that an officer of SEBI on April 15, 2011 had informed appellant about existence of right to file consent application in relation to show cause notice dated December 16, 2010, does not automatically mean that consent application filed by appellant on April 26, 2011 has to be allowed. In the present case, consent application was examined and on being found that it did not satisfy the requirements of circular dated May 25, 2012, the application was rejected.

20. Relying on a decision of the Bombay High Court in the case of Shilpa Stock Broker Pvt. Ltd. vs SEBI reported in 2012(3) ALL MR 908, counsel for SEBI submitted that the appellant cannot compel SEBI to settle the dispute as the appellant does not have vested right to insist that the dispute should be resolved by way of consensual settlement. Therefore, in the present case, where recommendation of HPAC has been accepted by panel of WTM of SEBI and held that the case is not

consentable, appellant is not justified in contending that the appellant has a vested right in getting the dispute settled and that the impugned order is violative of the principles of natural justice. In any event, assuming that there is violation of the principles of natural justice, since the appellant has failed to establish that it has suffered real and significant prejudice as a result of such violation, the appellant is not entitled to any relief in the present appeal. In support of above contention reliance is placed on decisions of the Apex Court in the case of Syndicate Bank vs Venkatesh G. Kurati reported in (2006) 3 SCC 150 and Haryana Financial Corporation vs Kailash Ahuja reported in (2008) 9 SCC 31.

21. Counsel for SEBI further submitted that all documents relied upon or referred to in the show cause notice dated December 16, 2010 were either provided to the appellant alongwith the said show cause notice or thereafter during the course of inspection of documents. Since appellant insisted on copies of irrelevant documents, with a view to avoid delay, copies of those irrelevant documents were also provided to the appellant. Fact that the appellant has been seeking irrelevant documents is evident from the fact that initially appellant in Appeal No. 224 of 2012 claimed inspection of 27 documents. During the course of hearing of Appeal No. 224 of 2012, demand for inspection was restricted to three documents and later on the demand was raised to 8 documents. Thus, it is evident that the plea of not getting inspection has been raised knowing fully well that they were wholly irrelevant documents and the said plea is raised with a view to stall the

proceedings under Section 11B. Fact that SEBI at the hearing of Appeal No. 224 of 2012 on December 20, 2013 has without prejudice, agreed to give inspection of 8 irrelevant documents demanded by the appellant does not in any enhance case of the appellant.

22. In any event, it is contended on behalf of SEBI that in view of Section 15JB(4) inserted with retrospective effect from June 20, 2007, read with Section 30A of SEBI Act no appeal would lie before this Tribunal against any order passed by SEBI under consent proceedings. Impugned order being an order passed in consent proceedings, appeal against impugned order would not be maintainable before this Tribunal in view of Section 15JB(4) of SEBI Act.

23. We have carefully considered rival submissions.

24. To promote orderly and healthy growth of the Securities market and to protect interests of investors, Parliament while establishing SEBI, has conferred power on SEBI to settle disputes under consent mechanism with a view to ensure speedy disposal of cases which otherwise would get entangled in long drawn litigation apart from incurring huge expenditure and also consume time in investigation and in litigation. Although, Section 15T(2) of SEBI Act stipulates that no appeal would lie before this Tribunal from an order of SEBI made with the consent of the parties, it is apparent that the bar is restricted to **an order** passed on merits of the consent application and would not apply to an ex-parte order passed in breach of the principles of natural

justice. In other words Section 15T(2) prohibits appeal against **an order** which is passed after considering the consent proposal put forth by the applicant during the discussion with the IC of SEBI. Therefore, in the facts of present case, where the impugned order is not **an order** passed with the consent of the parties but is an ex-parte order, appeal against impugned was maintainable before this Tribunal under Section 15T(1) of SEBI Act. Accordingly appeal was heard on merits.

25. Dispute the present case, relates to transactions that took place in year 2007. SEBI after investigating above transactions, issued show cause notice to the appellant on April 29, 2009. On November 5, 2009 consent application was filed by the appellant seeking settlement of dispute raised in the above show cause notice, but same was rejected on March 8, 2010. Thereafter, instead of adjudicating the show cause notice, SEBI reinvestigated the matter and issued fresh show cause notice on December 16, 2010 by superseding earlier show cause notice dated April 29, 2009.

26. Thereupon, as suggested by SEBI in its letter dated April 15, 2011, appellant filed consent application before SEBI on April 26, 2011 seeking settlement of the dispute raised in show cause notice dated December 16, 2010 as per the consent mechanism. In the said application it was stated that the consent application has been filed strictly without prejudice to the appellant's right to seek further information/documents/ material. After seven and half months SEBI sent an e-mail dated December 7, 2011 informing appellant that demand

for inspection in consent proceedings was untenable. However, instead of proceeding with consent application, SEBI went on postponing the meetings scheduled before the IC from time to time on ground that appellant was not willing to attend meetings scheduled before IC, until inspection of all documents referred to and relied upon in the show cause notice dated December 16, 2010 were given to the appellant. Admittedly, SEBI by its letter dated November 2, 2012, has furnished copies of some documents relating to carrying out reinvestigation but declined to give inspection of other documents. Appellant filed Appeal No. 224 of 2012 before this Tribunal to challenge decision of SEBI in declining to give inspection. During pendency of that appeal, SEBI voluntarily gave inspection of documents and even furnished copies of documents running into 1300 pages in the last week of November 2012 and by letter dated November 27, 2012 SEBI fixed meeting before IC on December 7, 2012. Appellant by letter dated December 3, 2012 requested that meeting before IC scheduled on December 7, 2012 be postponed to third week of January 2013 on ground that firstly, inspection of some more documents were yet to be received, secondly it would take time to review documents running into 1300 pages which were furnished in the last week of November 2012 and thirdly, counsel for appellant would not be available during Christmas vacation. Above request of appellant was rejected and impugned order is passed by SEBI on January 2, 2013.

27. First question therefore to be considered is, whether SEBI is justified in rejecting the request of the appellant for postponement of the meeting scheduled on December 7, 2012 to third week of January 2013 and by ex-parte order dated January 2, 2013 reject consent application of the appellant dated April 26, 2011.

28. Immediately after issuance of show cause notice dated December 16, 2010, appellant by letter dated December 28, 2010 had demanded inspection of all documents referred to and relied upon in the show cause notice dated December 16, 2010. Even in the consent application filed on April 26, 2011, appellant had specifically requested for inspection of the documents referred and relied upon in the show cause notice dated December 16, 2010. Though request for inspection was rejected by SEBI on December 7, 2011, in fact partial inspection was given voluntarily on November 2, 2012, substantial inspection was given voluntarily in the last week of November 2012 (after filing Appeal No. 224 of 2012) and full inspection was given voluntarily on December 20, 2013. Thus, it is evident that SEBI on one hand rejected inspection of documents as irrelevant and on other hand furnished copies of documents running into 1300 pages in the last week of November 2012. In other words, appellant was made to run around for nearly two years and substantial inspection was given voluntarily only after appellant filed Appeal No. 224 of 2012 before this Tribunal. In these circumstances, having postponed meeting before IC from time to time, even after rejecting claim for inspection and having given substantial inspection of documents in the last week of November 2012, SEBI was

not justified in passing ex-parte order on January 2, 2013 inspite of specific request from appellant on December 3, 2012 seeking postponement of meeting scheduled on December 7, 2013 on three grounds namely, inspection of some more documents are yet to be given, it would take time to go through documents running into 1300 pages inspection of which was given in the last week of November 2012 and lastly counsel for appellant would not be available in the last week of December 2012 and first week of January 2013 due to Christmas Vacation.

29. Having taken nearly two years to furnish inspection of documents and having furnished copies of documents running into 1300 pages in the last week of November 2012, SEBI ought to have awaited decision in Appeal No. 224 of 2012 or atleast given one opportunity to the appellant to present its case after giving full inspection of documents. Fact that appellant in Appeal No. 224 of 2012 had initially sought inspection of 27 documents, then sought to restrict it to 3 documents and finally claimed inspection of 8 documents may mean that the appellant was seeking inspection of some documents which were irrelevant. However, fact remains that SEBI has voluntarily agreed to give inspection of some documents at the hearing of Appeal No. 224 of 2012 on December 20, 2013 i.e., after disposing of the consent application on January 2, 2013 without prejudice to its contention that inspection of some documents were already given. When SEBI took time till December 20, 2013 for giving inspection of remaining 8 documents demanded by appellant, there was no reason for SEBI to pass ex-parte

order January 2, 2013, even before agreeing to give inspection of 8 documents demanded by the appellant. Therefore, in the facts of present case, request of appellant in seeking postponement of the meeting before IC scheduled on December 7, 2012 till third week of January 2013 could not be said to be unreasonable especially when SEBI took more than two years to give full inspection of documents demanded by the appellant. Undue haste shown by the officers of SEBI in disposing of the consent application even before disposal of Appeal No. 224 of 2012 and thereafter agreeing to give inspection of documents demanded by the appellant voluntarily at the hearing of Appeal No. 224 of 2012 shows total highhandedness on part of SEBI in handling the present case.

30. Argument of SEBI that the appellant was seeking inspection of wholly irrelevant documents with a view to stall proceedings under Section 11B is without any merit. If SEBI was of the opinion that the appellant was seeking inspection of irrelevant documents, then after rejecting the request for inspection, there was no reason for SEBI to give inspection of documents voluntarily after lapse of more than two years. In any event SEBI has preempted this Tribunal from going into the question of relevancy of documents by voluntarily agreeing to give inspection of the documents after rejecting consent application of the appellant. Therefore, in the facts of present case, SEBI in fact has stalled the proceedings by taking more than two years to give inspection of documents and appellant cannot be said to have stalled the proceedings by seeking inspection of documents.

31. Argument of SEBI that the consent application had to be disposed of because appellant had failed to attend IC meetings inspite of given repeated opportunities is without any merit, because, appellant did not attend meetings on ground that attending the IC meetings would be futile until inspection was given by SEBI. Inspection was given after two years and in the mean time consent application was disposed of without giving an opportunity to the appellant to attend meetings before IC which is highly improper and totally unreasonable.

32. Argument of SEBI that rejection of consent application has not caused any prejudice to appellant and that appellant is entitled to raise its grievances in the regular proceedings is without any merit. Gravity of the dispute in the present case involving in excess of ₹ 500 crores is such that even SEBI had to disregard its investigation and consequential show cause notice dated April 29, 2009 and had to reinvestigate the matter and thereafter issue fresh show cause notice dated December 16, 2010. Thus, in respect of transaction that took place in the year 2007, it took nearly three years (2008 to 2010) for SEBI to investigate /reinvestigate and it took more than two years for appellant to convince SEBI to give inspection of documents demanded by appellant. It is unimaginable as to how many more years it would take for SEBI to pass final order in regular proceedings and thereafter how many more years it would take in litigation. Since, two years of labour in running around SEBI to get inspection of documents had fructified, appellant had every reason to believe that the consent application of the appellant could be

disposed of on merits by arriving at amicable settlement, thereby saving time, money and energy of appellant as well as SEBI. Therefore, impugned decision of SEBI which abruptly seeks to reject consent application of appellant by ex-parte order dated January 2, 2013 has caused prejudice not only to appellant but also to investors at large. Instead of rejecting the consent application even before giving full inspection if SEBI had considered the consent application after giving full inspection no prejudice would have caused at all. Therefore, inordinate delay on part of SEBI to give inspection of documents and thereafter disposing of the consent application even before giving full inspection of documents has not only caused prejudice to appellant but also led to miscarriage of justice.

33. Consent application of the appellant is held to be un-consentable on ground that dispute set out in show cause notice is covered under paragraph 1(ii) of consent circular dated May 25, 2012. Fact that the default/dispute raised in the show cause notice dated December 26, 2011 was covered under un-consentable category specified in paragraph 1(ii) of consent circular dated May 25, 2012 was known from inception. Since consent circular dated May 25, 2012 specifically provided that notwithstanding anything contained in the said circular, based on facts and circumstances of each case the HPAC/Panel of WTM may settle any of the defaults set out therein, appellant had filed consent application.

34. Having given inspection of documents belatedly in the last week of November 2012 SEBI ought to have given reasonable opportunity to

the appellant to demonstrate as to why the dispute deserves to be settled. By rejecting the consent application even before giving full inspection, SEBI has deprived the appellant from demonstrating that in the facts of present case, the dispute needs to be settled by consent mechanism.

35. We make it clear, that we are not expressing any opinion on merits of consent application filed by the appellant. Whether the terms offered by the appellant deserve to be accepted or not is a question left entirely to the discretion of SEBI. We are only finding fault with SEBI in keeping the consent application pending for years even after holding that request for inspection of documents is untenable and thereafter giving inspection in installments but disposing of the consent application before giving full inspection thereby not giving reasonable time to the appellant to go through the voluminous documents furnished by SEBI belatedly.

36. Strong reliance was placed by the counsel for SEBI on decision of Bombay High Court in the case of Shilpa Stock Broker Pvt. Ltd. (supra). In our opinion, that decision has no bearing on the present case. In that case decision of SEBI in suspending the certificate of registration of Shilpa Stock Broker Ltd. was carried in appeal before this Tribunal and ultimately before the Apex Court wherein the decision of SEBI was upheld. Thereafter, Shilpa Stock Broker Pvt. Ltd. filed a Review Petition before the Apex Court. During the pendency of Review Petition, Shilpa Stock Broker Pvt. Ltd. filed a consent application. Later on the Review Petition was dismissed by the Apex court on March 31, 2010. In such a

case, question was, whether consent application filed during the pendency of Review Petition could be allowed by SEBI? On filing a writ petition, Bombay High Court, rejecting the contention of Shilpa Stock Broker Pvt. Ltd., held that the consent Guidelines do not confer a vested right in any person to insist on the acceptance of a proposed settlement and since the adjudication proceedings initiated by SEBI had attained finality before the Supreme Court, the same cannot be reopened, as any attempt to enforce terms of consent would result in nullifying the effect of the order of the Supreme Court which is impermissible. In the present case, show cause notice issued by SEBI against the appellant is yet to heard on merits and hence above decision of Bombay High Court has no bearing on the facts of present case. Similarly, decisions of the Apex Court in the case of Syndicate Bank (supra) and Haryana Financial Corporation (supra) are also distinguishable on facts as the appellant herein has demonstrated that failure on part of SEBI to give inspection of all documents referred to and relied upon in the show cause notice before rejecting consent application has caused prejudice to the appellant. It is relevant to note that in respect of transaction that took place in 2007, appellant is made to face litigation in the year 2014 which according to appellant could have been avoided in public interest by giving an opportunity to the appellant to pursue consent application provided inspection of all documents were given before rejecting the consent application instead of giving it after disposal of consent application. Accordingly, we hold that SEBI was not justified in rejecting the consent application without

giving an opportunity to the appellant to present its case for settlement of the dispute.

37. Question then to be considered is, whether in view of insertion of Section 15JB(4) to SEBI Act, 1992 by Ordinance No. 8 of 2013, Ordinance No. 9 of 2013 and later on by Ordinance No. 2 of 2014, this Tribunal can entertain appeal against an order passed in consent proceedings. Although Ordinance No. 8 of 2013 and Ordinance No. 9 of 2013 have lapsed, since Ordinance No. 2 of 2014 promulgated on March 28, 2014 is in operation and is yet to be approved by Parliament, it cannot be disputed that an Ordinance promulgated under the Constitution of India has same force and effect of an Act of Parliament. Therefore, effect of insertion of Section 15JB to SEBI Act with retrospective effect from April 20, 2007 as also insertion of Section 30A to SEBI Act by Ordinance No. 2 of 2014 to the present appeal would have to be seen.

38. Section 15T(2) of SEBI Act (as it then stood) provided that no appeal shall lie to this Tribunal from **an order** made by SEBI with the consent of parties. Obviously, appeal against **an order** made without the consent of parties was maintainable before this Tribunal. However, by Ordinance No. 8 of 2013 and thereafter by Ordinance No. 9 of 2013 and finally by Ordinance No. 2 of 2014, Section 15T(2) of SEBI Act has been omitted and Section 15JB is inserted to SEBI Act with retrospective effect from April 20, 2007. Section 15JB inserted to SEBI Act with retrospective effect from April 20, 2007 reads thus:-

> *"15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.*
>
> *(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Ordinance.*
>
> *(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Ordinance.*
>
> *(4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section."*

Thus, by promulgating aforesaid Ordinances from time to time, legislature has made it clear that although under Section 15T(2) of SEBI Act appeal against **an order** passed with the consent of parties was not maintainable before this Tribunal, by omitting Section 15T(2) and by inserting Section 15JB to SEBI Act with retrospective effect from April 20, 2007 and by inserting Section 30A to SEBI Act it is made clear that

no appeal would lie before this Tribunal against **any order** passed in settlement proceedings. In other words, by deleting Section 15T(2) and inserting Section 15JB as also Section 30A, legislature has sought to make partial bar under Section 15T(2) into complete bar under Section 15JB with retrospective effect from April 20, 2007 in relation to appeals against orders passed in consent/settlement proceedings. Since Section 15JB(4) expressly bars appeal against **any order** passed in settlement proceedings from April 20, 2007, in our opinion it would not be open to this Tribunal to entertain present appeal against impugned order passed in consent proceedings, even though the appeal was filed before promulgation of any of the Ordinance stated above.

39. Strong reliance was placed by counsel for appellant on decisions of the Apex Court in the case of B.P. Singhal (supra) and State of Orissa (supra). In our opinion those decisions are distinguishable on facts as in none of those cases, Apex Court was called upon to pronounce its decision on validity of an Ordinance which expressly bars appeals against any order in any particular proceedings. Therefore, it would not be proper on part of this Tribunal constituted under the SEBI Act, 1992 to dissect the expression **any order** in Section 15JB(4) of the SEBI Act and hold that the impugned order is a nullity and hence bar contained in Section 15JB(4) is not applicable to the present appeal.

40. Accordingly, we hold that appeal filed by appellant under Section 15T(1) of SEBI Act against order of SEBI dated January 2, 2013 was maintainable and the bar contained in Section 15T(2) of SEBI Act was

not applicable to the present case, because, the bar under Section 15T(2) was restricted to **an order** passed by SEBI in consent proceedings after discussing the consent proposal submitted by the applicant during the discussion before the IC of SEBI. In the present case, since consent application of appellant dated April 26, 2011 was disposed of on January 2, 2013 without giving an opportunity to the appellant to present consent proposal before the IC after perusing documents which were furnished by SEBI partly in the last week of November 2012 and partly in December 2013 (after disposal of consent application), appellant was entitled to file appeal under Section 15T(1) of SEBI Act alleging that the impugned order has been passed even before giving full inspection of documents referred to and relied upon in show cause notice dated December 16, 2010 and without giving an opportunity to submit consent proposal after perusing documents furnished to the appellant. Since Section 15T(2) is deleted and Section 15JB(4) is inserted to SEBI Act with retrospective effect from April 20, 2007 by Ordinance No. 2 of 2014 which bars appeal against **any order** passed in consent proceedings, we have no option but to dismiss the appeal.

41. Ordinarily we would have considered maintainability of appeal first and thereafter consider merits of appeal only if appeal is maintainable. In the present case, after the appeal was heard on merits, question regarding maintainability of appeal arose in view of SEBI framing 2014 Regulations retrospectively in exercise of powers conferred by Section 15JB inserted to SEBI Act retrospectively. There is no dispute that Section 15JB itself has been in and out of operation in

view of promulgation and lapsing of Ordinance No. 8 of 2013 and Ordinance No. 9 of 2013 from time to time, and there is no dispute that as on date Section 15JB (4) is in operation. Since Section 15JB(4) bars appeal against **any order** passed in consent proceedings, we have no option but to dismiss the appeal.

42. For all aforesaid reasons, appeal is dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

30.06.2014
Prepared & Compared By: PK