

IN THE SECURITIES APPELLATE TRIBUNAL AT
MUMBAI

DATED THIS THE 16TH DAY OF JANUARY 2026

CORAM : **Justice P. S. Dinesh Kumar, Presiding Officer**
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 838 of 2022
And
Misc. Application No. 1789 of 2022
And
Misc. Application No. 1632 of 2022

Between

1. The Bombay Dyeing and
Manufacturing Company Ltd.
Neville House, J. N. Heredia Marg,
Ballard Estate,
Mumbai – 400 001.
2. Durgesh Mehta
2402, Glenridge Cliff Avenue,
Hiranandani Gardens, Powai,
Mumbai – 400 076. Appellants

By Mr. Mustafa Doctor, Senior Advocate with Mr. Rohan Kelkar, Mr. Abhay Jadeja, Mr. Varun Satiya, Mr. Arun Unnikrishnan, Ms. Urvi Gulechha, Advocates i/b. Jadeja & Satiya for the Appellants.

And

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

By Mr. Gaurav Joshi, Senior Advocate with Mr. Sumit Rai, Ms. Kajol Punjabi, Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b. K. Ashar & Co. for the Respondent.

Mr. Amarpal Singh Dua, Advocate with Mr. Rangasaran Mohna, Ms. Ashita Chawla, Advocates and Mr. Rohit Mansukhani, Chartered Accountant for the Intervener.

**With
Appeal No. 839 of 2022**

Between

1. Nusli Neville Wadia
2. Ness Nusli Wadia
3. Jehangir Nusli Wadia

C-1, Wadia International Centre,
Pandurang Budhkar Marg, Worli,
Mumbai – 400 025. Appellants

By Mr. Darius Khambata, Senior Advocate and Mr. Mustafa Doctor, Senior Advocate with Mr. Rohan Kelkar, Mr. Tushar Hathiramani, Mr. Abhay Jadeja, Mr. Varun Satiya, Mr. Arun Unnikrishnan, Ms. Urvi Gulechha, Advocates i/b. Jadeja & Satiya, Advocates for the Appellants.

And

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

By Mr. Gaurav Joshi, Senior Advocate with Mr. Sumit Rai, Ms. Kajol Punjabi, Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b. K. Ashar & Co. for the Respondent.

**With
Appeal No. 840 of 2022**

Between

1. SCAL Services Ltd.
Raheja Point I,
Pandit Jawaharlal Nehru Road,
Vakola, Santacruz (East),
Mumbai – 400 055.
2. N. H. Datanwala
112, Beach Tower, P. Balu Road,
Prabhadevi, Mumbai – 400 025.
3. Shailesh Karnik
B- 108, New Sarvottam Society,
Irla Bridge, S. V. Road, Vile Parle
(W), Mumbai – 400 056.
4. R. Chandrasekharan
Raheja Point I,
Pandit Jawaharlal Nehru Road,
Vakola, Santacruz (East),
Mumbai – 400 055. Appellants

By Mr. Navroz Seervai, Senior Advocate with Mr. Abhishek Venkatraman, Ms. Arti Raghavan, Ms. Sonam Pandey, Advocates i/b. Sujit Lahoti & Associates for the Appellants.

And

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

By Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b. K. Ashar & Co. for the Respondent.

**With
Appeal No. 1016 of 2022**

Between

1. Mr. R. A. Shah
Panorama, 209, Walkeshwar Road,
Teen Batti, Mumbai – 400 006.
2. Mr. S. S. Kelkar
No. 1, Sindhula, N. Gamadia Road,
Mumbai – 400 026.
3. Mr. S. Ragothaman
33, Golden Gate Apartments,
11, Habibullah Road, T. Nagar,
Chennai – 600 017.
4. Mr. S. M. Palia
16, Ruchir Bungalows, Off Judges
Bungalows Road, Bodakdev,
Vastrapur, Ahemdabad – 380 054.
5. Mr. Ishaat Hussain
222-A, NCPA Apartments,
Nariman Point, Mumbai – 400 021.
6. Mr. Vinod Hiran
401, Anmol Prestige, Opp. Patel
Petrol Pump, Off. S. V. Road,
Goregaon (West),
Mumbai – 400 062.
7. Mr. Puspamitra Das
Flat No. 305, B Wing, 3rd Floor,
Serenity,
2nd Hasnabad Lande, Santacruz
(West), Mumbai – 400 054.
8. Mr. Vishnu Peruvamba
Flat No. 204, Tower 19, Orchid
Petals, Sohna Road, Gurgaon,
Haryana 122 018.
9. Parth Shah
Office No. 4, 1st Floor, Kala Vaidya
Sankul, Opp. Central Plaza Theatre,

Mumbai – 400 004.

.... Appellants

By Mr. Rohan Kelkar, Advocate with Mr. Tushar Hathiramani,
Advocate i/b. Mr. Parth Shah, Advocate for the Appellants.

And

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

.... Respondent

By Mr. Sumit Rai, Advocate with Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, Advocates i/b. K. Ashar & Co. for the Respondent.

**THESE APPEALS ARE FILED UNDER SECTION 15T OF
SEBI ACT, 1992 TO SET ASIDE ORDERS DATED
OCTOBER 21, 2022 (EX-A) PASSED BY WTM, SEBI AND
OCTOBER 31, 2022 PASSED BY AO, SEBI.**

**THESE APPEALS HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON APRIL 3, 2025, COMING ON FOR
PRONOUNCEMENT OF ORDER THIS 16TH DAY OF
JANUARY 2026, THE TRIBUNAL MADE THE
FOLLOWING :**

ORDER

The following four set of appeals are filed against order dated October 21, 2022 passed by the learned WTM, SEBI and the order dated October 31, 2022 passed by the AO¹ of SEBI, both of which are based on an investigation carried out

¹ Adjudicating Officer

by SEBI in respect of BDMCL², in response to certain complaints received by the SEBI:

- a) **Appeal No. 838 of 2022** has been filed by appellant No. 1 BDMCL (Noticee No. 1) and Mr. Durgesh Mehta, (Noticee No. 10) who was CFO, BDMCL (till October 2011) and Joint M. D. till February 15, 2014 (appellant No. 2).

Appellant No. 1 (BDMCL) has been imposed penalty of Rs. 2 crore under Section 15HA and Rs. 25 lakh under Section 15HB. Appellant No. 2 (Noticee No. 10) has been charged with penalty of Rs. 50 lakh under Section 15HA.

Appellant No. 2 has been restrained from being associated with securities market including as director/ KMP of a listed company for 2 years.

One Mr. Rohit Mansukhani, an investor in BDMCL shares since October 2017 has filed an intervention application in respect of Appeal No. 838 of 2022, seeking compensation for losses incurred to fall in share prices of BDMCL.

- b) **Appeal No. 839 of 2022** has been filed by BDMCL's chairman Mr. Nusli N. Wadia (Noticee No. 3), its Non-executive director, Mr. Ness N. Wadia (Noticee No. 4) and Mr. Jehangir N. Wadia its managing director (Noticee No. 5), who are family members as well.

² Bombay Dyeing and Manufacturing Company Ltd.

Noticee Nos. 3, 4 and 5 have been charged with penalty under Section 15HA of Rs. 4 crore, Rs. 2 crore and Rs. 4 crore, respectively.

Noticee No. 5 has additionally been charged with penalty of Rs. 1 Cr. under Section 15HB. All of them are debarred from accessing the securities market or to act as director / KMP in a listed company for one year.

- c) **Appeal No. 840 of 2022** has been filed by M/s. SCAL Services Ltd. (Noticee No. 2), a group company of BDMCL, and its 3 non-executive directors, namely, Mr. N. H. Daatanwala (Noticee No. 7), Mr. Shailesh Karnik (Noticee No. 8) and Mr. R. Chandrasekharan (Noticee No. 9).

Noticee No. 2 has been charged with penalty of Rs. 1 crore while Noticee Nos. 7 to 9 were levied penalty of Rs. 25 lakh each under Section 15HA.

All four of them are debarred from dealing in securities and/or accessing the securities market for one year.

- d) **Appeal No. 1016 of 2022** has been filed by 9 appellants including 5 independent directors-cum-Member of Audit Committee of BDMCL (Appellant Nos. 1 to 5) and its 3 CFOs- at different times (Appellant Nos. 6 to 8), against the order dated October 31, 2022, passed by the AO³ of SEBI, thereby imposing penalty under Section 15HA of Rs. 10 lakh each on Appellants

³ Adjudicating Officer

No. 1 to 5, Rs. 2 lakh each on Appellants No. 6 & 8; and Rs. 5 lakhs on Appellant No. 7.

2. Brief facts in the matter as per the records and submissions of both sides are as follows:

2.1 BDMCL is the main company of Wadia Group, which is engaged in the business of real estate, polyester and retail/textile manufacturing. Equity shares of BDMCL are listed at BSE and NSE. The company had promoters' holding of 52.07% in FY 2011-12, which rose to 52.29% in FY 2012-13 and then to 52.35% in FY 2013-14 and 2014-15, and thereafter remained static at 53.69%.

2.2 In addition, Wadia group includes **Pentafil, Archway** and **BDRECL**, which are investment companies. **SCAL**, an unlisted company of the group was primarily engaged in the business of (a) Real Estate and (b) Trading during the IP⁴. Later, pursuant to an order dated February 21, 2019 passed by the Hon'ble NCLT, Mumbai Bench, the Real Estate Business Undertaking of SCAL got demerged and vested into BDMCL, with effect from July 01, 2018.

2.3 Till March 29, 2012, BDMCL held 49% of SCAL's⁵ shares, when it sold 30% of SCAL's shares to another group company BDRECL, thereby, reducing its stake in SCAL to 19% with effect from March 29, 2012.

2.4 BDMCL's real estate division was engaged in developing Project one ICC and Project Two ICC, at Dadar, Mumbai.

⁴ Inspection Period

⁵ SCAL Services Ltd.

2.5 Starting from March 30, 2012 to March 27, 2014, BDMCL and SCAL signed eleven MoUs⁶ for bulk sale of flats/allotment rights in respect of 325 flats in the said Project One ICC and Project Two ICC schemes, with agreed sale consideration of Rs. 3,033 crores over 2011-12 to 2017-18. This revenue was recognised by BDMCL from FY 2011-12 to 2017-18 as per Accounting Standard-7 (applicable for contractors) as per percentage completion method, depending upon stage of completion, starting with initial broking amount of 10%.

The year-wise revenue was recognised as under :-

Table 1: Revenue from Real Estate Segment recognised by BDMCL (in Rs. Crore)

FY (A)	Revenue for real estate segment (B)	Out of which Revenue based on MoUs entered with SCAL1 (C)	% of revenue recognized from SCAL (D=C/B *100)	Operating Profit for Real Estate Segment (E)	Profit Before Tax on sales made to SCAL (F)
2011-12	566.27	341.32	60%	268.58	Not provided
2012-13	665.70	339.47	51%	349.61	203.96
2013-14	803.28	670.13	83%	372.46	355.45
2014-15	444.23	301.11	68%	302.69	224.49
2015-16	470.23	239.26	51%	277.20	158.63
2016-17	296.95	156.07	53%	160.57	102.63
2017-18	1182.91	445.58	38%	586.43	257.04
2018-19	<i>The real estate business undertaking of SCAL got merged with BDMCL.</i>				
Total	4429.57	2492.94	56%	2317.54	1302.20

2.6 Out of total revenue from the Real estate segment of Rs. 4429.57 crore, BDMCL recognized revenue of Rs.

⁶ Memoranda of Understanding

2,492.94 crore in respect of these MOUs with SCAL, which accounted for 56% of total real estate segment revenue. This resulted in PBT⁷ of Rs. 1,302.20 crore (56% of total profit of BDMCL).

2.7 In its books, SCAL accounted for net profit/loss on sale of such flats to ultimate buyers in its P&L account in the year of purchase /sale of such flats.

2.8 One Mr. Rohit Mansukhani (intervener in Appeal No. 838 of 2022), who became an investor in BDMCL shares since December 2017, asked for compensation from BDMCL for losses incurred due to share price drop, which was rejected by BDMCL, stating that market price of shares are driven by fluctuations in market. He filed complaints with SEBI, BSE⁸, NSE⁹, and MCA¹⁰, alleging improper accounting and concerns regarding demerger or real estate business of SCAL and merger with BDMCL.

2.9 On June 11, 2021, SEBI issued SCNs¹¹ to the Appellants, alleging that the MoUs between BDMCL and SCAL were fraudulent, which artificially inflated reported revenue and profits of BDMCL in violation of PFUTP¹² Regulations.

2.10 The Appellants responded vide letter dated July 27, 2021 and August 9, 2021. On August 30, 2021, SEBI issued another SCN to BDMCL's Audit Committee, in which certain

⁷ Profit before tax

⁸ Bombay Stock Exchange Ltd.

⁹ National Stock Exchange Ltd.

¹⁰ Ministry of Corporate Affairs

¹¹ Show Cause Notice/ Notices

¹² SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003

allegations were omitted. It was alleged that through this device, BDMCL inflated its profits and misled its investors.

2.11 Opportunity of hearing was given on January 10, January 13, 2022 and January 17, 2022. Written submissions were filed on February 3, 2022 and July 2022. The Appellants accessed SEBI's investigation records on April 12, 2022 and filed additional submissions on August 3, 2022. Thereafter, both impugned orders were passed.

3. Before us, **BDMCL and its promoters (in Appeal Nos. 838 and 839 of 2022 respectively)** were represented by Mr. Darius Khambata and Mr. Mustafa Doctor, learned senior advocates with Mr. Rohan Kelkar, Mr. Abhay Jadeja, Mr. Varun Satiya, Mr. Arun Unnikrishnan, Ms. Urvi Gulechha, Mr. Tushar Hathiramani, Mr. Abhishek Venkatraman, Ms. Arti Raghavan and Ms. Sonam Pandey. **SCAL (Appeal No. 840 of 2022)** was represented by Mr. Navroj Seervai, learned senior advocate. In **Appeal No. 1016 of 2022**, appellants were represented by Mr. Rohan Kelkar, with Mr. Tushar Hathiramani, learned advocate.

Respondent SEBI was represented by Mr. Gaurav Joshi, learned senior advocate along with Mr. Sumit Rai, Mr. Mihir Mody, Mr. Yash Sutaria, Mr. Tushar Bansode, learned advocates.

Intervener was given opportunity to plead in person.

4. Mr. Darius Khambata and Mr. Mustafa Doctor, learned Senior Advocate and Mr. Rohan Kelkar, learned Advocate representing in Appeal No. 838 of 2022 (by BDMCL) and Appeal No. 839 of 2022 (by KMPs of BDMCL), made submissions on the following lines:

Appeal No. 838 of 2022

4.1 Mr. Khambata submitted that BDMCL's reduction of its shareholding in SCAL to 19% in 2012, before the enactment of the Companies Act, 2013, was lawful. Throughout the investigation period from FY 2011–12 to 2018–19, SCAL did not qualify as an "*associate company*" under Section 2(6) of the Companies Act with 19% stake, being below 20% threshold for holding existence of "*significant influence*".. Hence, there was no statutory obligation on BDMCL to consolidate SCAL's financials under Section 129(3) or to disclose it as a 'related party' under Section 2(76) of Companies Act, 2013, both requirements being for 'Associate company', which SCAL was not. The MoUs and other inter-corporate arrangements cited by SEBI did not confer any statutory *control* or *influence* of BDMCL over SCAL under the Companies Act, 2013.

4.2 The SCN did not allege fraud or inducement to trade, or diversion/mis-utilisation of funds, or any gain / loss to investors. Further, there was no price impact analysis or statistical correlation demonstrating any influence on BDMCL's share price due to alleged inflation of profits, by such non-consolidation of financial statements of SCAL.

4.3 Mr. Khambata further submitted that the findings in the order exceeded the scope of the SCN, thereby violating principles of natural justice. While the SCN focused on two core allegations i.e., (i) non-consolidation of SCAL's accounts and (ii) non-disclosure of related party transactions, it did not allege deliberate orchestration of a fraudulent scheme, or

influence through MoUs, or assigned specific roles to the individual appellants. The impugned order aided new grounds *inter-alia*, reliance on Accounting Standards (AS-23/IndAS-28), materiality of MoUs, and claims of a grand fraudulent scheme, etc. which were not part of the SCN. This jurisdictional overreach contravenes settled principles that an inquiry cannot travel beyond the scope of the SCN. In this regard, he relied on ***Nasir Ahmad v. Assistant Custodian General***¹³ and ***UMC Technologies v. Food Corporation of India***¹⁴.

4.4 Mr. Khambata submitted that in case of conflict, the provisions of Companies Act, 2013 must prevail over the Accounting Standards. The WTM erred in relying on AS-23, AS-18, IndAS-28, and Clause 49 of the Listing Agreement and thereby imposing obligations for consolidation of financials of SCAL and for related party disclosure, by disregarding specific provisions of Section 2(6) read with Section 129(3) and Section 2(76) of the Companies Act, 2013, under which SCAL did not meet the statutory criteria for being held as an 'associate company' or a "related party". As per the ICAI Preface and applicable accounting rules, if there is any conflict between Accounting Standards and statutory provisions, the latter must prevail. To support this, he relied on ***J. K. Industries Ltd. & Anr. Vs. Union of India & Ors.***¹⁵ and ***Tata Sky Ltd. vs. State of Madhya Pradesh & Ors.***¹⁶

4.5 The learned senior advocate submitted that WTM's reliance on AS-21 to suggest elimination of cross-holding is

¹³ (1980) 3 SCC 1

¹⁴ (2021) 2 SCC 551

¹⁵ (2007) 13 SCC 673

¹⁶ (2013) 4 SCC 656

flawed, as AS-21 applies only to subsidiaries, and not to an 'Associate company'. Further, AS-23 requires clear demonstration of '*Significant influence*', which the 19% stake of BDMCL over SCAL does not establish. With regard to the alleged holding of influence by BDMCL over 'business decisions of SCAL, he submitted that the MoUs merely reflect commercial safeguards and do not give BDMCL power to *influence* SCAL's policies. Hence, the '*significant influence*' argument lacks statutory force for invoking Accounting Standards to override the express statutory provisions of Companies Act, 2013.

4.6 Mr. Khambata submitted that there was no violation of PFUTP Regulations, as there was no "*dealing in securities*" or inducement to deal in securities, neither alleged or proved, which are essential ingredients for establishing fraud under the PFUTP Regulations. He submitted that SEBI's theory of artificial inflation of profits is speculative and unsupported by actual investor behavior or share price movement. The IO records the admission that "*no statistical analysis or empirical data supported the claim of price impact or market manipulation*". He submitted that reliance on a pre-SCN chart in the impugned order that was not included in the SCN itself is a breach of natural justice.

4.7 Further, with regard to reliance on the new Explanation to Regulation 4(1) of PFUTP Regulations inserted in 2019, he submitted that the same came into effect only in 2020 and hence cannot be invoked retrospectively to criminalise non-consolidation decisions taken several years earlier.

4.8 Learned senior advocate submitted that SEBI's reliance on judicial precedents such as ***N. Narayanan v. SEBI, SEBI***

v. Rakhi Trading Pvt. Ltd.¹⁷ and **SEBI v. PAN Asia Advisors Ltd.¹⁸** is misplaced, as these cases involved instances of actual trading in/pledging of securities and demonstrable inducement or manipulation. In contrast, admittedly, no actual securities transaction or inducement has been shown in the present case. Relying on **SEBI v. Kanaiyalal Baldev Patel¹⁹**, he submitted that mere misrepresentation in financial statements, does not constitute PFUTP violation. Admittedly, there was no "*dealing in securities*" as defined under Regulation 2(1)(b), neither was there any finding of deceptions of investor's or fraudulent intent. Therefore, the IO's conclusions rests on misapplication of law and speculative reasoning.

Mr. Khambata contended that the amended provisions of PFUTP Regulations were introduced on February 1, 2019 and October 19, 2020. These amendments broadened the scope of "*dealing in securities*" "*knowingly influencing investor decisions*" and introduced new grounds for liability. Such retrospective application for FY 2011-12 to FY 2017-18 is impermissible in the absence of express legislative intent and cannot be held as clarificatory in nature. Reliance was placed on **Pernod Ricard India (P) Ltd. v. State of Madhya Pradesh²⁰**, **Ritesh Agarwal v. SEBI²¹** and **Federation of Indian Mineral Industries v. Union of India²²**.

¹⁷ ((2018) 13 SCC 753)

¹⁸ (2015) 14 SCC 41

¹⁹ (2017) 15 SCC 1

²⁰ (2024) 4 S.C.R. 664)

²¹ (2008) 8 SCC 205

²² (2017) 16 SCC 186

4.9 Without prejudice, substantive amendments that enlarge the scope of liability cannot apply to prior conduct. Further, the IO has misapplied Regulation 4(2)(k), to equate the “alleged misstatements in financials” with “*planting misleading news*”, disregarding that this clause applied to ‘misleading advertisements’ only during the relevant period and not to ‘accounting practices’.

In this regards, the learned senior advocate also referred to certain case laws relied upon by SEBI in respect of U.S. jurisprudence such as ***Lorenzo v. SEC***²³, ***Basic, Inc. v. Levinson***²⁴, ***Halliburton Co. v. Erica P. John Fund***²⁵ and submitted that since these cases arose under a different statutory framework and involved actual instances of securities transactions and demonstrable price impact, neither of which is alleged or proven in the present case.

4.10 With regard to the allegation of a “single and continuous” scheme, Ld. Senior advocate submitted that the WTM himself has held that there were no violations for FYs 2011–12, 2012–13, 2013–14 and 2017–18, and therefore, the appellant orchestrating a “single and continuous” scheme is untenable.

4.11 On facts, Mr. Khambata, submitted that the MoUs between BDMCL and SCAL were *bona fide*, legally enforceable, and were duly disclosed transparently in the financial statements of BDMCL for each of the financial years. He produced the extracts of Notes to accounts by which such disclosures was made for each financial years. It was also

²³ 139 S. Ct. 1094 (2019).

²⁴ 485 US 224, 241 (1988).

²⁵ 573 US 1 (2014).

submitted that in terms of the MoUs, payments were made; interest was duly charged on delays; and SCAL assumed '*risk and reward*' in the immovable properties being the subject matter of such MOUs, which confirms commercial substance of these MOUs. These MoUs allowed SCAL to sell each unit independently and to bear all profits or losses. Further, similar MoUs in respect of same projects were also executed by BDMCL even with unrelated third parties such as Accord and Mandhana. In case of **Accord**, disputes under the MoUs signed with BDMCL arose which were adjudicated in formal legal proceedings, which further evidences transfer of risks and rewards and their enforceability.

4.12 Learned senior advocate submitted that the allegation that the MoUs were a "device" to inflate profits or were sham, is without evidence and baseless. Relying on the **Azadi Bachao Andolan²⁶**, **Phoenix Arc (P) Ltd. v. Spade Financial Services Ltd²⁷** and **CIT v. Walfort Share and Stock Brokers (P) Ltd.²⁸**, he submitted that there is a high burden of establishing a sham transaction or fraud, and none of the applicable legal tests were met in the appellants' case. Moreover, the SCN issued by the SEBI admits their legal validity for revenue recognition under the 2006 ICAI Guidance Note.

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4.13 Mr. Khambata, learned senior advocate representing the Appellant Nos. 1 to 3, who are promoters of BDMCL, submitted that no specific role was attributed to Appellants

²⁶ (2004) 10 SCC 1

²⁷ (2021) 3 SCC 475

²⁸ (2010) 8 SCC 137

beyond their existing positions in the company but they were charged for being aware of the transactions. The SCN did not allege their active participation in decision making or being a decision-making authority in the purported scheme. Appellant No. 1 (Noticee No. 3), is the Chairman of BDMCL; Appellant No. 2 (Noticee No. 4) is a non-executive director; and Appellant No. 3 (Noticee No. 5) is the Managing Director of BDMCL. All of them were held liable without any evidence, by their alleged direct control over financial reporting of BDMCL. No proof of delegated authority or specific misconduct was shown, and SEBI's reliance is solely on the basis of their designations, which is legally insufficient as held in ***Shubh Shanti Services v. Manjula Agarwalla***²⁹:

"19... In the matter of company affairs, Directors act as a body and collectively as a Board. Any Director acting individually has no power to act on behalf of the company in respect of any matter except to the extent to which any power or powers of the Board have been delegated to him by the Board within the limit permitted by the Companies Act or any other law. The position of the Chairman of the Board of Directors is not substantially different from an individual Director. Under the Companies Act, the Chairman of the company does not have any special or extraordinary rights to be exercised by him without being authorised by the Board of Directors."

4.14 Ld. Senior advocate also submitted that the impugned order ignores that it is the Board and Audit Committee (majority comprised of independent directors) that approved all financials, and similarly placed directors were neither charged nor penalized. Further, the allegation relating to non-disclosure of Related Party Transactions for FY 2014-15 to

²⁹ [(2005) 5 SCC 30]

2016-17 is also flawed, being rested on the erroneous premise that AS-23 could override statutory legal provisions of Sections 2(6) and 2(76) of the Companies Act. Without prejudice, there was full disclosure of transactions with SCAL across all financial years.

5. Mr. Gaurav Joshi, learned senior advocate of the respondent representing in Appeal No. 838 of 2022 and Appeal No. 839 of 2022 made the following submissions:

5.1 The BDMCL, as a developer of the One ICC and Two ICC projects, executed 11 unregistered and inadequately stamped MoUs with SCAL during 2012 and 2014, through which it booked fictitious revenue of Rs. 2,492.94 crores and operating profit of Rs. 1,302.20 crores. As against this, SCAL made cash payment of only Rs. 186 crores (only 7.46% of transaction value). Further, these transactions were booked during the period when there was stay on construction by the Bombay High Court (2012-2015). SCAL had a negative net worth and no capacity to enter into such transactions. SCAL did not account for the flats as purchase, and incurred no marketing or brokerage expenses. The MoUs signed with SCAL were not enforceable, lacked essential legal formalities, and were reversed in 2015, which evidences that these were sham arrangements, and designed to inflate BDMCL's financials under the guise of legitimate sales.

5.2 Mr. Joshi also argued that by lifting of the corporate veil, SEBI revealed BDMCL had absolute control over SCAL through intricate web of group companies, making it an instrumentality to misrepresent financial performance. Further, common directorship amongst these group companies, use of BDMCL's premises and resources without

compensation and absence of independent operations by SCAL indicate that these entities functioned as one. This structure was deliberately designed to evade the application of AS-23 and mislead stakeholders. He submitted that the SEBI had valid authority to look through legal form, and in this regard, placed reliance on ***Delhi Development Authority v. Skipper Construction Co.***³⁰, ***Vodafone International Holdings BV v. Union of India***³¹ and ***Sahara Asset Management***³².

5.3 He also contended that these MoUs were unenforceable under the Indian Registration Act, 1908 and the Maharashtra Stamp Act, 1958, and were not acted upon or legally enforced, unlike BDMCL's legitimate MoUs with third-party buyers, where disputes were resolved through arbitration. He alleged that SCAL's role was only to facilitate accounting entries that inflated profits of BDMCL. He relied on ***Snook v. London and West Riding Investments***³³, ***NetJets Aviation, Inc. v. LHC Communications***³⁴ and ***National Westminster Bank PLC v. Jones***³⁵ in support of the contention that the transactions were never intended to be effectuated between parties but were created to mislead investors by fabricating financial results.

5.4 Mr. Joshi submitted that these acts were in violation of Section 12A(c) of the SEBI Act, 1992 and PFUTP Regulations 2(1)(c), 3, and 4 of the PFUTP Regulations, and such provisions do not require establishing 'actual inducement of

³⁰ (1996) 4 SCC 622

³¹ 2012) 6 SCC 613

³² (2017) SCC OnLine SAT 173

³³ (1967) 2 QB 786

³⁴ *LLC* (537 F.3d 168, 2d Cir. 2008)

³⁵ [2000] 6 WLUK 556

investors' nor "dealing in securities" to establish fraud. It suffices that the issuer disseminates false information which is likely to influence investor' decisions and market prices. In this regard, relying on ***N. Narayanan v. SEBI***³⁶, ***SEBI v. Kanaiyalal Baldev Patel***³⁷ and ***SEBI v. Pan Asia Advisors Ltd.***³⁸, he submitted that by misusing SCAL's corporate identity, BDMCL artificially inflated its financial statements, which is a clear case of manipulative practices within the PFUTP Regulations.

5.5 Mr. Joshi further submitted that provisions of Regulations 4(1), 4(2)(c), (o), and (r) of the PFUTP Regulations cover '*mis-statements in financial books*' as fraudulent acts, and SEBI is empowered under Sections 11, 11B, and 12A of the SEBI Act, 1992 to act against such misconduct. In this regard, reliance was placed on ***Pan Asia Advisors (Supra)*** to assert that financial mis-statements impact securities markets through price manipulation and misrepresentation of BDMCL's financials falls squarely under Regulation 2(1)(c). He submitted that the "effects doctrine" and "fraud on the market theory," as endorsed in ***SEBI v. Rakhi Trading Pvt. Ltd.***³⁹ and ***N. Narayanan (Supra)***, establish that financial disclosures relied upon by the public are presumed to influence investor behaviour, thereby constituting unfair trade practices.

5.6 With regard to the 2019 and 2020 amendments to the PFUTP Regulations, Mr. Joshi submitted that these amendments were clarificatory in nature, which merely

³⁶ (2013) 12 SCC 152

³⁷ (2017) 15 SCC 1

³⁸ (2015) 14 SCC 71

³⁹ ((2018) 13 SCC 753)

reinforce well-established position regarding SEBI's existing authority to treat financial misstatements and accounting manipulations as violations. The clarificatory nature of these amendments is established by SEBI's own Consultative Paper and the judgments in ***SBI v. V. Ramakrishnan***⁴⁰ and ***Gottumukkala Venkata Krishnamraju v. Union of India***⁴¹, which hold that acts such as misclassifying related parties or concealing 'associate relationships' have always been treated as fraudulent conduct under the SEBI framework.

5.7 Learned senior advocate submitted that BDMCL deliberately avoided consolidation of SCAL's accounts, in violation of AS-21, AS-23, and the LODR Regulations, despite exercising *de facto* 'control' and 'significant influence' over SCAL. BDMCL exercised 100% effective control over it via direct and indirect holdings and operational control over latter's board decisions. He submitted that in view of the Hon'ble Supreme Court's interpretation of the terms "control" and "significant influence" in ***Arcelormittal India (P) Ltd. v. Satis Kumar Gupta***⁴² and ***J. K. Industries Ltd. v. Union of India***⁴³, BDMCL was required to consolidate SCAL's accounts.

Intervention Application No. 1789 of 2022

5.8 Pursuing his intervention application in Appeal No. 838 of 2022, Mr. Rohit Mansukhani submitted that BDMCL had *de facto* control over SCAL, - a shell entity since its incorporation in 1983. He submitted that BDMCL engaged in fraudulent real

⁴⁰ (2018) 17 SCC 394

⁴¹ (2019) 17 SCC 590

⁴² (2019) 2 SCC 1

⁴³ (2007) 13 SCC 673

estate transactions with SCAL in violation of arm's length, with a 25% discount and favourable terms like "*pay as you re-sell*" and 10% upfront payment which enabled SCAL to retain profits from subsequent sales, while causing significant losses to BDMCL's shareholders.

5.9 He submitted that BDMCL exercised '*significant influence*' over SCAL, due to its powers to participate in operational and financial decisions of SCAL, a fact recorded in board meeting dated December 21, 2012. BDMCL's consolidated Revenues boosted by Rs. 2492.92 crores and profits by Rs. 1799.09 crores by not cancelling out transactions with SCAL by not classifying it as subsidiary. Further, all transactions with SCAL were illegal in contravention of '*related party*' norms under Listing agreement.

5.10 He also submitted that in this case, quantification of diversion of funds and consequent losses suffered by the investors (including the intervener) was submitted to SEBI but no order for disgorgement was passed by SEBI to that effect. It is untenable claim of SEBI that losses to the Investors cannot be quantified. Accordingly, he prayed that the application may be allowed.

Appeal No. 839 of 2022

5.11 Mr. Gaurav Joshi, learned senior advocate for the respondent submitted that the promoters of BDMCL, namely; Mr. Nusli Wadia, Mr. Ness Wadia, and Mr. Jehangir Wadia, who exercised *control* over its Board, played active role and were aware of the sham transactions with SCAL. Their

respective positions and knowledge of the SCAL transactions establish complicity under Section 27 of the SEBI Act. As promoters and directors, they are presumed liable even without direct evidence of fraudulent conduct. To support this contention, he relied on ***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla⁴⁴, Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar⁴⁵ and National Small Industries Corporation Ltd. v. Harmeet Singh Paintal⁴⁶.***

Appeal No. 840 of 2022

6. Mr. Navroz Seervai, learned senior advocate for appellants in **Appeal No. 840 of 2022** submitted that SEBI failed to establish the foundational jurisdictional facts necessary to invoke Section 12A(c) of the SEBI Act and the PFUTP Regulations. The MoUs signed by SCAL, an unlisted company with BDMCL were commercial real estate transactions within SCAL's lawful objectives, and SEBI lacked authority to question their business rationale. Relying on ***Arun Kumar & Ors. v. Union of India & Ors.⁴⁷ and Carona Ltd. v Parvathy Swaminathan & Sons⁴⁸***, he submitted that failure of SEBI in passing a speaking order confirming its jurisdiction renders the proceedings *ultra vires* and procedurally improper.

6.1 Ld. Senior advocate also submitted that since MoUs signed by SCAL pertained to immovable property and involve

⁴⁴ (2005) 8 SCC 59

⁴⁵ (1973) 1 SCC 602

⁴⁶ (2010) 3 SCC 330

⁴⁷ (2007) 1 SCC 732

⁴⁸ (2007) 8 SCC 559

no “dealing in securities”, the jurisdictional requirement under Section 12A and PFUTP Regulations 3 and 4 is not satisfied. In this regard, he relied on the SAT’s judgment in **Price Waterhouse v. SEBI**⁴⁹, holding that PFUTP Regulations are not applicable to persons not ‘dealing in securities’. As the impugned transactions were real estate-related and not securities-related, SEBI’s findings are legally untenable. He submitted that the Gujarat High Court in **Karnavati Fincap Ltd. v. SEBI**⁵⁰ affirmed that only persons engaged in securities market activities can be covered under section 11-B. In this regard, he also placed reliance on authorities such as **Siddheshwari Cotton Mills v. Union of India**⁵¹ and **Bank of Baroda v. SEBI**⁵².

6.2 Mr. Seervai submitted that in the absence of any proof of appellants’ role in the alleged manipulation of financial statements of BDMCL, the SEBI’s assertion that SCAL’s directors (Appellants Nos. 2-4) had knowledge of or had participated in BDMCL’s accounting decisions, is unfounded. He submitted that SEBI's reliance on circumstantial evidence fails to meet the required legal standard of evidence for fraud, in the absence of a complete and conclusive chain ruling out innocence.

6.3 Mr. Seervai submitted that the charge of “*aiding and abetting*” is not recognized under the SEBI Act except under the penal provision in Section 24, and even if hypothetically held as permissible, the Impugned order does not satisfy its

⁴⁹ (2019 SCC OnLine SAT 165) *PwC Case*

⁵⁰ (1996 SCC OnLine Guj 119)

⁵¹ (1989) 2 SCC 458

⁵² (2000) 26 SCL 532 (SAT)

evidentiary threshold. Relying on ***Churchill v. Walton***⁵³, he contended that liability for '*aiding and abetting*' requires knowledge of the entire fraudulent scheme, which SEBI failed to demonstrate. Learned senior advocate further submitted that SEBI failed to demonstrate as to how or when the appellants acquired knowledge of the alleged fraudulent scheme and contradicts itself by alleging that the appellants harmed SCAL's interest, while allegedly simultaneously secured favorable terms for it. These inconsistent assertions indicate arbitrary reasonings in the impugned order.

6.4 Mr. Seervai adopted the contentions of Mr. Khambata in Appeal No. 839 of 2022 that SEBI has wrongly applied provisions of the PFUTP Regulations as amended in 2019 and 2020 to the events that took place between 2011 and 2014. These amendments, particularly the explanation to regulation 4(1), expanded the scope of fraudulent practices to include '*manipulation of financial statements*', which was not part of the pre-amendment regime. Applying these changes retrospectively violates settled principles of statutory interpretation.

6.5 On facts, he contended that the eleven MoUs executed between SCAL and BDMCL during FY 2012-13 and FY 2013-14 were lawful commercial transactions, in pursuance of which SCAL made payments exceeding Rs. 450 crores, incurred interest and bore the risk of profit and loss. These were consistent with past similar practice between BDMCL and SCAL since FY 2006-07 and were adequately disclosed in BDMCL's financials.

⁵³ [(1967) 2 AC 224 (HL)]

6.6 Mr. Seervai further argued that the impugned order is *punitive* and *ultra vires* SEBI's *remedial* mandate under Section 11. Relying upon the decision in **PwC (supra)**, he submitted that SEBI cannot impose penal directions in the guise of remedial action. Further, it was submitted that the order was issued after nearly a decade with an inordinate delay, which renders it arbitrary and disproportionate.

6.7 Learned senior advocate submitted that SEBI's reliance on Section 10 of the Indian Evidence Act to establish jurisdiction to make conspiracy charges, is misplaced. Section 10 is a rule of evidence that allows co-conspirators' statements to be admissible only after a *prima-facie* case of conspiracy is established. It does not create substantive jurisdiction or liability. In this case, SEBI has failed to lay out any *prima-facie* conspiracy either in the SCN or in the impugned order. Therefore, invoking Section 10 to extend or establish jurisdiction is without legal foundation, and hence, the proceedings initiated by SEBI are void and untenable.

7. Mr. Sumit Rai, learned Advocate for the respondent in all the Appeals, made the following additional submissions:

7.1 Supporting the contentions of the Mr. Gaurav Joshi, Senior advocate, Mr. Rai submitted that reduction of its shareholding in SCAL from 49% to 19% on March 29, 2012 by BDMCL was only to circumvent requirement of consolidation of financial statements under AS-23, which presumes existence of "*significant influence*" where voting rights are 20% or more. This was strategically executed to portray SCAL as a bulk buyer of flats in BDMCL's real estate projects in order to inflate BDMCL's profits/revenue. However, SCAL functioned either as an agent of Bombay

Dyeing, or as a propped-up entity with no independent operations.

7.2 Mr. Rai also submitted that other Wadia group companies held remaining shares in SCAL but these were investment companies with no independent operations and derived revenue primarily from dividends and interest on inter-corporate deposits. When their *inter-se* cross-holdings are eliminated, BDMCL emerges as the sole controlling shareholder.

7.3 Ld. Advocate submitted that Bombay Dyeing exercised complete *control* over SCAL through direct and indirect shareholdings establishing itself as the ultimate beneficial owner. SCAL's directors were also employed by other Wadia Group companies; they received no separate remuneration from SCAL; and the company shared Bombay Dyeing's registered office and telephone numbers without incurring rent or lease charges. Further, SCAL had no real estate experience nor capacity to undertake the sale, being a negative net worth company which relied on Bombay Dyeing or its affiliates for payments, and played no role in marketing or onward sales of flats under the MoUs.

7.4 He submitted that while Bombay Dyeing recognised revenue of Rs. 3033 crores over a period of time under Accounting Standard-7 in respect of 11 MoUs signed with SCAL, the latter did not record these flats as purchases but as commission income, reflecting only the profit/loss from sales, indicating no genuine transfer of flats. Further, despite a stay by Bombay High Court on construction from May 11, 2012 to January 2015, nine MoUs worth Rs. 2,290 crores were signed between June 2012 and March 2014, allowing

Bombay Dyeing to book sales during a period while third-party buyers would not have purchased at market rates.

7.5 Alleging that SCAL was wholly owned and controlled by Bombay Dyeing, he submitted that during FY 2011-12 to FY 2017-18, SCAL transacted exclusively with Bombay Dyeing, with no other business dealings. SCAL's registered office was located at Bombay Dyeing's Neville House, without paying rent or lease charges. In FY 2018-19, SCAL shifted office to a property owned by another Wadia Group entity (Wadia Techno-Engineering Services Ltd.), without paying rent.

7.6 Mr. Rai argued that SCAL had negative net worth of Rs. (-) 3 crores, Rs. (-) 14 crores, and Rs. (-) 42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, which shows that it was incapable of meeting the Rs. 3,033 crore payment obligations, out of which only 7.46% of committed payments were made during FY 2011-12 to FY 2017-18. Further, Bombay Dyeing facilitated loans for SCAL by issuing comfort letters, resulting in borrowings of Rs. 113 crores and Rs. 266 crores from other Wadia Group entities in 2014 and 2015, respectively to meet milestone payments under the MOUs. Later, in December 2015, Bombay Dyeing returned Rs. 271 crores to SCAL citing construction delays and granted a payment moratorium until June 2017, a concession not offered to other bulk buyers, which further evidences violation of arm's length principle.

7.7 Refuting the SCAL's contention that it was not directly associated with the securities market, Mr. Rai relied upon the

ratio in ***Anand Rathi & Ors. vs SEBI***⁵⁴ and contended that if SCAL's alleged scheme with Bombay Dyeing to manipulate revenue is proven, it links SCAL with the securities market through impacting price discovery of a listed entity, thereby influencing investor decisions. Thus, SCAL falls within SEBI's regulatory ambit under Sections 11 and 11B.

7.8 Mr. Rai further contended that the Appellant's claim that being an unlisted entity it falls outside SEBI's regulatory ambit under the SEBI Act, 1992, is untenable considering the SEBI's objectives of protecting investors and regulating the securities market. The Appellants' reliance on ***Price Waterhouse (Supra)*** decision is misplaced, as in that case, relying upon the Bombay High Court, SAT had held that SEBI's jurisdiction depends on case-specific facts, and in that case, fraud was not proven due to lack of evidence of collusion. In contrast, in the instant case, the Impugned Order establishes that SCAL entered into MoUs with Bombay Dyeing solely to facilitate revenue recognition under AS-7, by acting as a counterparty in a sham transaction.

7.9 Refuting the contention that SCAL, its directors, and other Noticees had no knowledge of fraud or manipulation, learned advocate submitted that the Paragraph Nos. 11 and 27 of the impugned order establish that SCAL, its directors, and other Noticees participated in the fraudulent scheme involving sham MoU transactions.

7.10 Regarding the SCAL's contention that it cannot be held liable for conspiracy or for *aiding* and *abetting* without specific knowledge of BDMCL's accounting practices, Mr. Rai

⁵⁴ (2002) 1 MhLJ 522

submitted that once it is *prima-facie* established that SCAL and its directors engaged in sham transactions to artificially inflate Bombay Dyeing's revenue, all related actions are relevant to prove their role in the conspiracy.

Appeal No. 1016 of 2022

8. Mr. Rohan Kelkar, learned Advocate representing the appellants in Appeal No. 1016 of 2022 made following submissions:

8.1 The Appellant Nos. 1-5 are Non-executive IDs⁵⁵ and Audit Committee Members of BDMCL, who allegedly failed in exercising due diligence and independent judgment for maintaining the accuracy of BDMCL's financial statements, and thus, violated provisions of Clauses 49(II)(D)(1) and 49(III)(D)(1) of the Listing Agreement, (as also relevant provisions of the LODR Regulations, 2015⁵⁶).

Similarly, Appellant Nos. 6-8, who served as BDMCL's CFOs⁵⁷ during the relevant period, were charged for making inaccurate certifications regarding the truthfulness and fairness of the company's financial statements, thereby breaching relevant provisions of the Listing Agreement /LODR Regulations (*qua* Appellants Nos. 7 & 8).

8.2 Mr. Kelkar also submitted that, the Impugned Order penalizes the Appellants under Section 15-HB of the SEBI Act, a residuary provision for contraventions without specific default, alleging negligence rather than connivance. The sole basis for action by AO against Appellants Nos. 1-5, (IDs and

⁵⁵ Independent Directors

⁵⁶ SEBI (Listing Obligation & Disclosure Requirements) Regulation, 2015

⁵⁷ Chief Financial Officers

Audit Committee members of BDMCL), was their failure to make assessment in respect of SCAL's capability as a bulk flat purchaser, and for not seeking explanation for payment deferrals granted to SCAL, or for SCAL's alleged non-payment of rent. He submitted that the AO failed to adhere to the principle against doubtful penalization, as reaffirmed by the Supreme Court in **SEBI v. Sunil Krishna Khaitan**⁵⁸.

8.3 He submitted that AO's allegations against the Appellants are baseless, as SEBI's investigation exonerated BDMCL's auditors M/s. Kalyaniwalla & Mistry, finding no evidence of misrepresentation or non-disclosure in BDMCL's financial statements, as noted in their *Emphasis of Matter* paragraphs referencing revenue recognition in respect of MoUs with SCAL. He submitted that based on BDMCL's own disclosures under Section 128 of the Companies Act, 2013, and presented before the Board under Section 129(2), should absolve the Appellants on the same footing.

8.4 On merit, Ld. advocate submitted that the allegation of misleading financial statements due to non-consolidation of SCAL's accounts ignores the fact that applicable statutory provisions and Accounting Standards were dully followed by BDMCL based on expert accounting advice. The financial statements with detailed notes to accounts fully disclosed the MoUs, SCAL's group company status, and related income, which demonstrates due compliance with applicable accounting standards. Thus, there is no merit in holding that the IDs failed in due diligence or independent judgment as Audit Committee members, or that the former CFOs issued inaccurate certifications, as their actions aligned with the

⁵⁸ (2023) 2 SCC 643

auditors' findings and professional advice. To support his contention, he relied on ***Dovey v. Cory***⁵⁹, ***Chintalapati Srinivasa Raju v. SEBI***⁶⁰ and ***The Seksaria Cotton Mills Ltd. v. The State of Bombay***⁶¹.

8.5 Ld. advocate also drew our attention to inordinate delay in issuing the Show Cause Notice and in questioning duly audited financial statements of five financial years after lapse of another five years. This delay and SEBI's persistence in pursuing the proceedings contravenes public interest, resulting in a miscarriage of justice and abuse of power. In support, he relied on ***Sunil Krishna Khaitan (Supra)***.

8.6 In his rejoinder submissions, learned advocate questioned the merit of SEBI's allegations stating that SCAL's non-payment of rent for maintaining its registered office in BDMCL's property was not illegal. Further, the impugned order does not indicate that the MoUs between BDMCL and SCAL were sham, yet it provides no clarification as to what "explanation" were the Appellants expected to seek, as referred to in paragraph 5(e) of SEBI's Note. Further, BDMCL's financial statements did not represent the MoUs for 'sales to SCAL'.

9 In response, Mr. Sumit Rai, learned advocate representing respondent, made the following submissions:

9.1 **Allegations Against Appellants 1-5:** The Appellant Nos. 1-5 in Appeal No. 1016 of 2022 were Audit Committee members who were charged for having failed to exercise *due diligence* and independent judgment, resulting

⁵⁹ [1901] A.C. 477

⁶⁰ (2018) 7 SCC 443

⁶¹ 1953 SCR 825

in financial statements containing material misstatements. This violates relevant provisions of the Listing Agreement and LODR Regulations.

9.2 Allegations Against Appellants 6-8: Appellants 6-8 were CFOs, were charged for certifying that BDMCL's financials were accurate and compliant, despite failure to disclose SCAL as an associate and consolidate its financials. This led to violation of Clause 49(IX) and Regulation 103 (in case of Mr. Hiran), while there was violation of Regulations 17(8) and 33(2)(a) of LODR Regulations in case of Mr. Peruvemba and Mr. Das, respectively.

9.3 Mr. Rai also submitted that non-consolidation of SCAL's accounts with Bombay Dyeing is only one aspect of a broader scheme for inflating financial statements through non-genuine sales to SCAL, which added no value to the supply chain. The core issue is whether Bombay Dyeing inflated its accounts by transacting with an entity it controlled. Prior to FY 2014-15, Bombay Dyeing was not required to consolidate financials under Clause 41(I)(e) and Clause 32(a) of the Erstwhile Listing Agreement, as it had no recognized subsidiaries. However, with effect from April 1, 2014, under Section 129(3) of the Companies Act, 2013 upon declaring Archway as a subsidiary, BDMCL was required to prepare consolidated financial statements under AS-21 and AS-23 in respect of all associates.

9.4 He submitted that BDMCL was obligated under Section 129(1), Clause 50(a) of the Listing Agreement and Regulation 48 of LODR Regulations to comply with AS-23, which mandated consolidating SCAL's financials due to Bombay

Dyeing's '*significant influence*' over SCAL through these transactions, which were material to both BDMCL and SCAL.

9.5 Mr. Rai refuted the claim of appellants that the impugned order overrides the Companies Act with Accounting Standards by submitting that the impugned order aligns with LODR Regulations, 2015, which harmoniously applies the definitions of "Related Party" under both the Companies Act, 2013, and Accounting Standards. He also submitted that the Appellants' claim that SCAL's non-disclosure as a 'Related Party' exceeds the SCN's scope is baseless, since the SCN addressed the appellants' failure to prevent misrepresentation of financials, for which SCAL's related-party status was a key factor. SCAL's board admitted its lack of expertise and manpower to sell flats, yet it entered MoUs worth hundreds of crores with Bombay Dyeing. This evidences that SCAL was used as a conduit for non-genuine sales to inflate Bombay Dyeing's financials.

9.6 Ld. advocate submitted that the Appellants' attempt to equate their roles with those of statutory auditors is irrational, as the Impugned Order clearly distinguishes their distinct responsibilities under the SCN, holding them accountable for their role in the scheme to inflate Bombay Dyeing's financials through non-genuine sales to SCAL.

10. We have carefully considered the facts of the case in the light of the rival submissions and the documents placed on record by both the parties as also by the intervener. The appeals of BDMCL and SCAL and their respective promoters/KMPs deal with the same issue and hence, are being decided together through this common order. For this purpose, we have framed the following two questions:

Issue - I Whether there was a 'fraudulent scheme' of misrepresentation of financial statements of BDMCL continuing from FY 2011-2012 to FY 2017-18, comprising of (a) signing 11 non-genuine MOUs with SCAL; (b) reducing BDMCL's stakes from 49% to 19% on March 29, 2012; and (c) non-consolidation of SCAL's financial statements, for inflating the financials of BDMCL, with the intention to mislead its investors?

Issue-II- Related Party status for FY 2014-15, 2015-16 and 2016-2017

Question: Whether SCAL was correctly held as a 'related party' of BDMCL for the FY 2014-15, 2015-16 and 2016-2017, even though it was not held as a related party for FY 2017-18 on the ground that it was not an 'Associate' under section 2(6) of the companies Act, 2013?

Issue-I (Fraudulent scheme)

11. In order to decide the issue-I, we have divided the same in 4 sub-parts, which are being addressed as under:

A. Whether the 11 MOUs signed by BDMCL with SCAL during FY 2011-12 to FY 2013-14 (From March 2012 to June 2014) were non-genuine/sham and not legally enforceable?

11.1 We note that BDMCL is engaged in various business activities, with the real estate development contributing the most to the operating profit. Even in the past, the company had successfully developed and executed real estate projects. There is no doubt that both the projects in question, namely, One ICC and Two ICC at Dadar, Mumbai were actually got developed and flats constructed thereunder, were eventually sold out to the ultimate buyers (despite a halt during 2012-14 due to litigation before Hon'ble Bombay High Court). Thus, the credibility of these 2 real estate projects itself is not in doubt. Evidently, the development cost of project and sale proceeds of flats will have to be eventually captured in the financial statements of BDMCL, irrespective of whether certain number of flats were sold out to ultimate buyers through SCAL/Third parties or directly by BDLCL. Evidently, it is not a case of inflation of financials by creating fictitious book entries.

11.2 Having acknowledged the genuine nature of development and sales of flats by BDMCL in the one ICC & Two ICC projects developed by it, we now examine the second key issue, i.e. credibility of sales of 325 flats in these schemes to SCAL. The SEBI has raised doubts on the capability of SCAL based on its inadequate/ negative net worth, sharing of office, staff and other logistics with group companies, etc. We note that the sales made to M/s SCAL, (an unlisted group company of Wadia Group) contributed 56% to the sales of flats in these two schemes. Based on this, the charge of executing a fraudulent scheme for luring (potential) investors of BDMCL (through misleading financials) has been made.

In this regard the following observations are relevant:

- (a) Undoubtedly, it is not the first occasion that BDMCL entered into such MOUs with SCAL for sale of flats developed by the former. In respect of another real estate project namely; "Springwell", which was developed by BDMCL during 2005-06 to 2007-08, around 100 flats were sold through similar arrangement with SCAL. No adverse observations have been made by the SEBI in this regard. This also shows that SCAL has proven record of trading in real estates.
- (b) In the same 2 schemes namely 'One ICC' and 'Two ICC', BDMCL made sales through 3 unrelated third parties as well by entering into similar MOUs as were signed with SCAL. it is not the case of the respondent that sales to SCAL was in any way, in violation of arm's length price, compared with the unrelated third-party buyers.
- (c) While the main charge is that the transactions with SCAL resulted in inflating the profits of BDMCL, no findings have been recorded to suggest as to whether there was any '*profit shifting*' from SCAL to BDMCL. This would have been the case, if BDMCL's profits were artificially inflated at the cost of SCAL. Further, since sales to the ultimate buyers (through SCAL or third party traders or directly by BDMCL) is bound to be governed by market only, any manipulation of price with SCAL (for inflating profits of BDMCL) will lead to incurring of losses/reduction of profits for SCAL, compared with third party traders. No such findings have been given. On the other hand, contrary observations were made in the IO

imputing that BDMCL was offering more favorable terms and conditions to SCAL compared with Third Parties. If these charges were correct, it should have implied adverse impact on the profits of BDMCL and not inflating the profits, which is contrary to the allegations of inflation of its profits.

(d) Serious doubts have been raised on the SCAL's capacity to undertake these transactions based on certain observations, *inter alia*, that SCAL too operated from the same premise, where other Wadia group companies operated; that it did not have sufficient staff; that it had common directors; that it did not incur brokerage expenses (but compensated BDMCL for that). In our considered view, none of these observations point out any element of illegality. It is not unusual for group companies to operate in sync in such a way that their overall overhead expenses are minimized. There is no legal requirement that a group should work literally at arm's length, in physical terms from a different premise. Therefore, in itself, findings such as having common office space, sharing of staff, telephone, etc. could not be held as cogent basis for doubting the veracity of MOUs for effectuating sales through SCAL. Similarly, there is nothing unusual in SCAL compensating BDMCL for brokerage expenses incurred by the latter since BDMCL, besides being a real estate developer is also engaged in direct sale of real estate, in addition to sales through traders including 3rd parties and SCAL. Further, merely because the directors of the company are common and were not paid specific remuneration with respect to

SCAL, does not *ipso facto* imply that the MOUs between the two companies were sham or not genuine.

(e) Net worth of a trader of real estate company *per se* is of no great relevance for the selling developer, particularly in case of a group entity, with a proven track record. From a trader, what a developer expects is certainty of sales and time-bound payment as per the agreed schedule. Moreover, there is no risk to developer since title is not passed till full payment in terms of agreed schedule is made by the trader or the ultimate buyer. Thus, low net/negative worth of SCAL, being the trader of real estate and not investor, is of no great concern, particularly for BDMCL, another group entity. What matters is successful sale and SCAL had success story on its sleeve of selling off 100 flats developed by BDMCL in another scheme "Springwell" during 2005-06 to 2007-08. The proof of pudding is in eating and the fact that even in the instant case, no doubts were raised on the genuineness of ultimate sale of flats by SCAL to the buyers is sufficient to justify the *bona fide* of the MOUs.

11.3 The 3rd key issue in the matter is whether the MOUs, signed by BDMCL were sham, as alleged by the learned senior advocate for respondent on the grounds that these were unregistered documents and did not carry transfer of risk and reward, etc. We note that BDMCL signed similar MOUs with 3 unrelated third parties with regard to the same One ICC and Two ICC projects. With regard to the finding that no '*risks and rewards*' were transferred through the MOUs with SCAL, the appellants have drawn our attention to Clause-4 of the said MOUs signed with SCAL, which reads as under:

*"although the said apartments are yet to be constructed by the developers, **all risk and rewards to said apartments shall be that of the purchaser from the date of execution of this** and the obligation of the purchaser to pay the balance consideration as per the Annexure II on the due dates of the developers is final and absolute."*

[Emphasis supplied]

11.4 It was pointed out by the counsels of the appellants that similar clauses did exist in the MOUs signed by BDMCL with other unrelated third parties also, e.g. Clause-17 of the MOUs signed with Mr. Purshottam Mandana and Mr. Ghevarchand Jain and Clause-15 of MOU signed with Accord Holding Pvt. Ltd relating to same schemes, are on same lines. In fact, the 'transfer of risk and reward' got tested in the case of Accord, where a dispute arose between the two parties and the arbitration based on enabling provisions of MOUs reached up to Hon'ble Bombay High Court. Thus, it cannot be said that there was no transfer of '*risks or rewards*' and hence these MOUs were not legally enforceable.

11.5 Secondly, it was alleged that the MOUs were merely on Rs. 100 stamp papers and were not registered and, thus, there was no real transfer of risk and rewards. It appears that the learned WTM failed to appreciate the conspectus of the transaction. While BDMCL is a developer of the projects 'One ICC' and 'Two ICC', SCAL is a trader in respect of the flats under these developed by the BDMCL. There is no requirement for traders/brokers of real estate to get the trading assets first registered in their own name nor is the prevailing practice in this regard, since they are not investors but are traders for whom these flats are 'stock in trade'. Further, not registering MOUS could be for various reasons,

inter-alia, to reduce cost of acquisition in the hands of ultimate buyer, by avoiding double incidence of stamp duty, which is generally paid by the ultimate buyer. Therefore, merely because the MOUs were not registered does not *ipso facto* imply that the same were ingenuine.

11.6 Thirdly, the genuineness of MOUs was challenged on the ground that all these 11 MOUs were signed between March 30, 2012 to March 31, 2013, despite the fact that there was a stay order of Hon'ble Bombay High Court on the construction since May 2012, and the work at the site got resumed only in January 2015. Secondly, doubts were raised on the financial wisdom of refund of Rs. 271 crore to SCAL in December 2015 on the ground of 'rising operating cost on unfavorable market conditions", and as sales got stopped, BDMCL granted moratorium on future payments till 2017 or until sale of unsold flats.

11.7 Mr. Khambata, learned senior advocate for appellants gave detailed account of the matter. It was submitted that with the aim of stopping construction of balconies in the flats, there was change in Development Contract Regulations vide notification dated January 6, 2012, as a result of which construction of these flats got delayed. The revised plans (without balcony) were shared with customers on December 22, 2013 only, which resulted in litigation from customers and BDMCL was issued stop-work notice. This litigation reached up to Hon'ble Supreme Court, hence construction of projects was halted for two years. Later, when the company received approval for a revised IOD pursuant to change in compliance on October 7, 2015, the construction got resumed.

11.8 Subsequently, keeping in view the huge delay in construction, the board of BDMCL in its meeting on December 18, 2015 considered the request of SCAL, which had given 10% advance in terms of the MOUs, to grant certain concession considering substantial mounting interest costs. Accordingly, BDMCL board decided to grant certain concessions, *inter alia*, reducing the initial booking amount in terms of the signed MOUs by 7.5%, which resulted in refund of around Rs. 271 crore in respect of advance booking amounts.

11.9 In our considered opinion, no adverse view can be taken in the matter. Generally, uncertainties prevail in construction business and litigations are also one of the common bottlenecks. However, a prudent business entity does not stop entire gamut of activities except for the activities for which injunction by a court / authority is granted. Therefore, there is nothing unusual in BDMCL entering MOUs with SCAL (or any third party) during the period when construction was stopped. It is noteworthy that BDMCL had already signed two MOUs with SCAL before the legal halt on construction came in to operation.

11.10 The 4th key observation of the learned WTM is with regard to differential accounting treatment of sales booked by BDMCL compared with purchases shown by SCAL as per their respective audited financial statements. In our considered view, the possible reasons for the perplexity of the learned WTM is failure to distinguish accounting norms in case of a developer of Real Estate Projects in contrast with that of a broker/trader of real estate.

In the case of a developer, revenue is recognized by percentage completion method by applying provisions of Accounting Standards-7, which read as under: -

Accounting Standard-7

"10. Contract revenue should comprise:

- (a) *the initial amount of revenue agreed in the contract; and*
- (b) *variations in contract work, claims and incentive payments:*
 - (i) *to the extent that it is probable that they will result in revenue; and*
 - (ii) *they are capable of being reliably measured."*

Thus, revenue is recognized in the books of developers by accounting for stage-wise payment schedule agreed upon with the buyer as per the MOUs. The **Annexure-II** of various MOUs signed by the BDMCL with SCAL, lay down the following stage-wise payment schedule: -

Table 2: Stage-wise payment schedule under the MOUs

Sr. No.	Schedule of payment	Payment Installments
1.	<i>Booking stage</i>	<i>Booking Amount</i>
2.	<i>Within 60 days of the MOU</i>	<i>10% of total consideration value less the booking amount</i>
3.	<i>Within 180 days of the MOU</i>	<i>further 5% of total consideration value</i>
4.	<i>Within 360 days of the MOU</i>	<i>further 5% of total consideration value</i>

5.	<i>On completion of Podium Slab</i>	10%
6.	<i>On completion of 6th slab (60% in 12 slabs)</i>	- 10%
7.	<i>On completion of 12th slab</i>	5%
8.	<i>On completion of 18th slab</i>	5%
9.	<i>On completion of 24th slab</i>	5%
10.	<i>On completion of 30th slab</i>	5%
11.	<i>On completion of 36th slab</i>	5%
12.	<i>On completion of 42nd slab</i>	5%
13.	<i>On completion of 48th slab</i>	5%
14.	<i>On completion of 54th slab</i>	5%
15.	<i>On completion of 60th slab</i>	5%
16.	<i>On completion of 66th slab</i>	5%
17.	<i>On completion of top floor slab</i>	5%
18.	<i>On possession</i>	5%
	<i>Total Agreement Value</i>	

In view of the above, BDMCL was required to recognize revenue under AS-7, based on the above schedule of the MOU.

11.11 In contrast, in case of traders of real estate such as SCAL, the profit/loss are accounted for by making entries for purchase consideration and incidental expenses on the debit side of Profit and loss account and by accounting for the sale consideration on credit side on completion of sales, depending upon the method of accounting consistently followed. Alternatively, where both sale/ purchase of the same asset are made within same financial year, a single entry after netting off the sales consideration over purchase price, plus

expenses can be made. These are common accounting practices. Further, it is not necessarily needed that at the time of booking of sales, the entire scheduled payment is actually made, as has been presumed in the IO. Till the completion of sales, advances given are reflected in balance sheet as assets and where title of an asset has been passed on but further sale has not been made, the same is shown as inventory in balance sheet.

It appears that the Ld. WTM did not appreciate this and vaguely held it the profits shown by the SCAL in its books as commission income, without any cogent basis. There is clear difference between business profits and commission income. commission income is fixed (as a % of sale price or lumpsum), and cannot result in loss while trading income is difference of sales and purchase price and not fixed and may result in loss. Therefore, showing a single entry in books by netting off corresponding sales and purchase price does not mean that the nature of income becomes commission income.

11.12 Doubts were raised as to why there is no exact matching in respect of entry made in SCAL's P&L Account with the corresponding entry in BDMCL's books. We have already held that due to difference in the respective accounting methods for real estate developer in contrast with a traders/broker of real estate, such a matching is not possible nor required in law. Moreover, this in itself cannot be the basis for deciding genuineness of MOUs.

11.13 The respondent has taken a plea that SCAL paid only 7.46% of revenue recognized. These statistics emerged after reducing an amount of Rs 271 crores from the initial 10% advance made to BDMCL, considering delay in construction.

However, this derived figure is not relevant for recognizing revenue for BDMCL, as under the AS-7, revenue is recognized on percentage completion method in terms of agreed schedule, as referred to in Table 2 above. Moreover, in the accrual system of accounting, (and also for issue of dividends), the entire revenue recognized is not linked to cash flow. Any receivable/payable amount is a separate subject matter of financial transfers between the two entities and does not determine the nature of income or expenses to be recognized in profit & loss account. To the extent, it is duly recognized in the books, it serves the interest of the existing shareholders. Therefore, these statistical presentations do not have any bearing on delivering the genuineness of the MOUs.

11.14 In our considered view, evidences on record do not establish that the MOUs signed with SCAL for booking of flats by BDMCL to SCAL were sham / non-genuine transactions to inflate revenue/profits of BDMCL. The fact that SCAL successfully sold out some of these flats to ultimate buyers is sufficient proof of genuineness of MOUs. In the past too, SCAL had entered similar MOUS with BDMCL in 2006-07 and sold 100 flats in another scheme "springwell".

In view of the above, the sub-question-A is answered in ***Negative.***

B. Whether sale of 30% stakes in SCAL by BDMCL on March 29, 2012 to BDREL thereby reducing its stake to 19% from 49% can be held to be part of alleged fraudulent scheme?

12. We note that till March 29, 2012, BDMCL held 49% of equity shares in SCAL, an unlisted company, out of which 30% of the SCAL shares were sold by BDMCL to another group company, BDRECL on March 29, 2012. As a result, the BDMCL's equity in SCAL got reduced to 19%.

12.1 The crux of the allegation is that the said reduction in equity in SCAL to 19% of BDMCL was part of fraudulent scheme to circumvent consolidation of financial statements of SCAL with BDMCL, post-enactment of Companies Act, 2013. The Companies Act, 2013 for the first time introduced the term "Associate company" as under:

*"2(6). "Associate company", in relation to another company, means a company in which that other company has a **significant influence**, but which is not a subsidiary company of the company having such influence and includes a joint venture company.*

Explanation.—For the purpose of this clause,—

(a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement."

[Emphasis supplied]

12.2 It is noteworthy that the new Companies Act, 2013 was assented and enacted only on August 29, 2013 and the applicable provisions of Section 2(6) came into operation with effect from September 12, 2013. In the instant matter,

undisputedly the transfer of 30% equity in SCAL by BDMCL to BDRECL had taken place on March 29, 2012 itself. Under the circumstances, the allegation that the transfer of equity was to circumvent consolidation of financial statement of SCAL in terms of Companies Act, 2013, has no ground.

12.3 Moreover, the said transaction of 30% equity shares sales of SCAL between BDMCL and BDRECL being a substantial investment for both, would have required due process of approval by the respective Boards of the two companies. Unless the board of BDRECL approves the said transaction, BDMCL on its own, could not have unilaterally transferred 30% of the shares of SCAL to BDRECL. We find that neither the said BDRECL or its directors were charged in the matter.

12.4 Further, while with respect to the MOUs, the learned WTM has held the SCAL to be under control/significant influence of BDMCL, no such finding has been given in respect of BDRECL. The learned WTM, in a simplistic manner, has cancelled the cross-holdings amongst Wadia group entities, without examining their *inter-se control* in order to arrive at 100% control of BDMCL over SCAL, however without giving any findings against group entities. We are in agreement with the contentions of the appellants that the SEBI has failed to recognize the principle of separate legal entity.

The appellants had relied on the ratio in ***Balwant Rai Saluja vs. Air India Ltd.***⁶² wherein, relying on an English judgment, six principles for lifting of corporate veil have been set out. The Fifth principle states that "to justify piercing the

⁶² (2014) 9 SCC 407

corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or façade to conceal their wrongdoing;”.

Learned WTM has failed to establish as to how BDMCL exercised *control* over BDRECL, Archway, Pentafil, Springflower through which, it allegedly exercised *control* over SCAL. The fact that all these companies are same group entities and some of them are Investment companies, (which is not unusual as was made out by Mr. Rai), does not *ipso facto* imply that these were shell companies and passive devices for alleged *impropriety* by BDMCL, another same group entity. In our view, lifting of corporate veil as done by Ld. WTM in the matter is untenable.

In view of the above, the sub-question-B is answered in ***Negative.***

C. Whether BDMCL was required to consolidate the financial statements of SCAL for the FY 2014-15 to FY 2017-18, following AS-23/ Ind AS-18?

13. The learned WTM has noted that until FY 2013-14, BDMCL did not have to prepare consolidated financial statements in terms of Section 129(3) of Companies Act, 2013, because it did not have any subsidiary. Thus, AS-23 was rightly not followed by BDMCL until FY 2013-14. However, from FY 2014-15 onwards, in terms of Section 129(3) it was required to consolidate the financials of all

'associates' and 'subsidiaries' as in that year BDMCL recognized M/s Archway as its subsidiary, the only one.

13.1 In Para-21 of the IO, the learned WTM himself has acknowledged that SCAL was not an 'Associate' within Section 2(6) of the Companies Act, 2013. This definition is based on the concept of having '*significant influence*', which is limited to '*control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement*'. However, in his view the definition of "*significant influence*" as per AS-23 is much broader than the definition in Section 2(6) of the Companies Act, 2013. Therefore, he preferred to choose the definition as per AS-23/ IndAs-18 (which were made applicable from FY-2014-15). In our view, this is not in accordance with generally accepted principles of legal interpretation.

13.2 As per Explanation to Section 2(6) of the Companies Act, 2013, the expression "***significant influence***" reads as under:-

"The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement."

In contrast, AS-23, which was notified in pursuance of Section 133 of companies Act, defines the expression "Significant influence" (later adopted as such in IndAs-18) as under:-

"Significant influence" is the power to participate in the financial and/ or operating policy decisions of an associates but does not extend to control over such policies.

Significant influence may be gained by share ownership, statute or agreement. The existence of significant influence is usually evidenced in one or more ways:

- a) representation on the Board of Directors or corresponding governing body of the investee;*
- b) participation in policy making processes;*
- c) **material transactions between the investor and the investee;***
- d) interchange of managerial personnel; or*
- e) provision of essential technical information.*

[Emphasis supplied]"

The learned WTM has referred to above provisions of AS-23 above, which suggests certain illustrations of 'existence of significant influence'. Sub-para (c) thereof refers to '*material transactions*' between the investor and investee. In the learned WTM's view, transactions between BDMCL and SCAL were '*material*' based on which he held that BDMCL had 'significant influence' over SCAL, and hence SCAL was held to be an 'associate' of BDMCL.

13.3 In our considered view, in case of conflict, provisions of Accounting Standards cannot over-ride the explicit provisions of Companies Act. It is settled position of law that rules framed under any Act cannot supersede the Act, at the same time they are to supplement the Act and not to supplant it, as has been laid down by the Hon'ble Supreme Court of India in ***J. K. Industries Ltd. (Supra)***. We have already held that in terms of Section 2(6), SCAL is not an 'associate company' of BDMCL, as the former holds less than 20% of voting rights. The same is acknowledged by the WTM in the IO as well. In view of the above, keeping in view the explicit provisions of Section 2(6) of Companies Act, 2013, BDMCL was not required to consolidate financials of SCAL from FY

2014-15, since it was not in *control* of or was participating in business decisions of SCAL under an agreement.

13.4 Moreover, in contra-distinction with the unambiguous definition of 'significant influence' under Section 2(6), based on percentage of voting power, the definition in AS-23 requires determination based on *share ownership, statute or agreement*. The existence of significant influence is illustrated by one or more ways such as *representation* on the Board of Directors or corresponding governing body of the investee; participation in policy making processes; material transactions between the investor and the investee; interchange of managerial personnel, etc. Being rebuttable propositions, these illustrative circumstances require making findings upon gathering facts and providing opportunity in terms of principles of natural justice.

13.5 Undisputedly, these MOUs were signed in 2012-14 and duly disclosed in the financial statements filed before the stock exchanges, and in the opinion of SEBI, AS-23 was applicable in this case since FY 2014-15. However, till June 2021 these rebuttable propositions were not framed and appellant was not confronted. Moreover, the sectoral regulator, the Registrar of Companies (ROC) before whom annual/quarterly returns with financial statements were regularly filed since 2012, has accepted the accounting practices of the appellant without making any adverse observations. No adverse observation has been made by National Financial Reporting Authority (NAFRA) in the matter. No doubts were raised by the Stock Exchanges/SEBI either, even though similar disclosure of financial statements was being made on quarterly basis before the Exchanges since

quarter ending March 31, 2012. No reference was made to ROC.

13.6 In view of the above, SCAL cannot be held as an "Associate company" of BDMCL considering the express provisions of Companies Act, 2013 which, in our view cannot be over-ridden by the rebuttable illustrative criteria contained in AS-18.

We, therefore, answer this question in **Negative**.

D. Whether the alleged manipulation of financial statements by BDMCL by not consolidating SCAL's financials could be charged as manipulation of fraudulent and unfair trade practices in securities?

14. The crux of the allegation is that through a fraudulent scheme of non-genuine MOUs, that continued over several years, BDMCL avoided consolidation of financial statements of SCAL resulting in inflation of its revenues/ profits, which could have potentially impacted the investors' decisions. This was allegedly made possible through inter-twining web of cross-holding amongst various Wadia group companies, which allowed reduction of BDMCL's stakes in SCAL to 19%. Since we have already held that consolidation of SCAL's financials was not called for, no case for violation of PFUTP Regulations is made.

14.1 We also note that admittedly, there is no evidence of any impact on market price of BDMCL shares, which was allegedly the underlying motive. The learned WTM in the impugned order has himself held as under: -

*"I note that the impact of 'concealment of a real picture and postulation of artificial picture', on the share price of a scrip, can hardly be assessed and recreated without the actual events taking place in reality. In the instant case, BDMCL is accused of inflating its sales and profit over a consistent period of seven years, so the only question that needs to be answered is, had these sales to SCAL, not been recorded in the books of BDMCL, [which infact constituted on an average more than 50% (it ranged from 84% to 38% across different FY's) of the real estate sales and real estate was the single handed profit making venture for BDMCL during the Investigation Period], then what would have been the impact on the share price of BDMCL. **I note that no statistical analysis can be made on this aspect. It may not be possible to assess as to how a rational investor would have made his decision on the basis of such an information being made public by the company.**"*

(Emphasis supplied)

14.2 It is also noteworthy that promoter's shareholding in BDMCL has not changed during the inspection period. There is no evidence that through the alleged price manipulation, the promoters of the company may have made any unlawful profits by offloading their stakes to manipulated investors. Undoubtedly, there is no such allegation in the impugned order either of promoters getting benefitted through the alleged potential price rise. The show-cause notice did not point out any price rise due to the said manipulation device, presumably to impress upon the potential investors, despite allegedly having continued over several years. An exercise was also got carried out in this regard by the SEBI which resulted in no negative finding.

14.3 We have no opinion on the credibility or accuracy of the exercise. However, absence of any findings in this regard

belies the alleged existence of any grand fraudulent scheme executed by BDMCL, allegedly aided and abated by SCAL. There is no finding of any price rise in BDMCL shares noticeable/attributable to the alleged device. Secondly, the ultimate objective of price manipulation does not stand substantiated as generally through artificial price manipulation, promoters and related entities tend to make unlawful gains by offloading their equity. However, in the instant case, the promoters' holding, which was at 52.07% in FY 2011-12, rather rose to 52.29% in FY 2012-13 and then to 52.35% in FY 2013-14 and 2014-15, and thereafter remained static at 53.69%. There was clearly no dilution of shares of promoters at the strength of allegedly manipulated price. In view of the above, none of the elements of the alleged fraudulent scheme could be established.

In view of this, this question too is replied in **Negative**.

Issue-II (Related Party Disclosures)

Question: Whether SCAL was correctly held as a 'related party' of BDMCL for the FY 2014-15, 2015-16 and 2016-2017, even though it was not held as a related party for FY 2017-18 on the ground that it was not an 'Associate' under section 2(6) of the companies Act, 2013?

15. The second major issue is with regard to alleged non-disclosure of 'Related party transactions' by BDMCL in respect of FY 2014-15 to FY 2016-17 for which penalty under Section 15HB has been for violation of Listing Agreement/LODR

Regulations levied separately on BDMCL and Mr. Jehangir N. Wadia, its Managing Director (Noticee No. 5).

15.1 Learned WTM noted that SCAL was shown as a 'Related party' of BDMCL during FY 2011-12 to FY 2013-14 which, in the admission of BDMCL was out of abundant caution. Further, the learned WTM was of the view that in terms of the Ind-AS, which was effective from FY 2017-2018, SCAL was not a 'related party' in FY2017-18 onwards keeping in view the definition of 'Related party' in Ind-AS-24 being an 'associate' of another entity with LODR Regulations and Section 2(6) of the Companies Act, 2013. The learned WTM categorically held that since BDMCL held 19% share capital of SCAL it was not an "associate". Based on this, learned WTM restricted the examination of the 'related party' status for FY 2014-15 to FY 2016-17 only.

15.2 For the three financial years i.e. FY 2014-15, 2015-16 and 2016-17 in learned WTM's view SCAL is 'related party' of BDMCL by applying the provisions of the AS-18 read with LODR Regulations / Clause 49(vii)(B) of the erstwhile Listing Agreement. With regard to the LODR / Listing Agreement, the learned WTM is of the view that BDMCL is in *control* of SCAL / exercises 'significant influence' in making the financial / operating decision of the SCAL.

15.3 We note that the learned WTM has made heavy reliance on the AS-18 which reads as under :-

*"Parties are considered to be related if at any time during the reporting period one party has the ability to **control the other party or exercise significant influence over the other party in** making financial and/or operating decisions."*

In holding existence of ***significant influence***, Learned WTM has held the transactions between two as *material* by following the illustration given in paragraph-13 of AS-18: -

"13. What constitutes 'significant influence', is also defined in AS- 18 itself as- "participation in the financial and/or operating policy decisions of an enterprise, but not control of those policies."

*Para 13 of AS-18 further states that, "Significant influence may be exercised in several ways, for example, by representation on the board of directors, participation in the policy making process, **material inter-company transactions**, interchange of managerial personnel,"*

[Emphasis supplied].

15.4 We note that based on Table-3 of the impugned order, transactions of BDMCL with SCAL for three relevant financial year, i.e. FY 2014-15, 2015-16 and 2016-17, amounted to 12.92%, 12.59% and 9.10% of total revenue of BDMCL. It does not justify how BDMCL exercised *control* or exercise *significant influence* over SCAL in its financial / operational decision making. No other evidence has been brought before us.

15.5 Moreover, "Related Party" can be held keeping in view specific provisions of Section 2(76) of the Companies Act, 2013, which reads as follows:- :

"2(76). "related party", with reference to a company, means—

- (i) *a director or his relative;*
- (ii) *a key managerial personnel or his relative;*
- (iii) *a firm, in which a director, manager or his relative is a partner;*
- (iv) *a private company in which a director or manager [or his relative] is a member or director;*
- (v) *a public company in which a director or manager is a director [and holds] along with his relatives, more than two per cent. of its paid-up share capital;*
- (vi) *any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;*
- (vii) *any person on whose advice, directions or instructions a director or manager is accustomed to act:*

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) *any body corporate which is—*
 - (A) *a holding, subsidiary or an associate company of such company;*
 - (B) *a subsidiary of a holding company to which it is also a subsidiary; or*
 - (C) *an investing company or the venturer of the company.*

Explanation.—For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate];

(ix) such other person as may be prescribed."

15.4 In our view, it is clear that the appellant is not a "Related party" under Section 2(76) of the Companies Act. Similarly, appellant is not a 'Related party' under SEBI LODR Regulations, 2015 either, which defines a 'related party' to mean a 'Related party' as in Section 2(76) of the Companies Act, 2013.

15.5 We have already held in Paragraph 13.6 that where express provisions of the Companies Act are applicable, conflicting accountings standards cannot be given precedence. Keeping in view the above, and taking into consideration the provisions of Section 2(76) of the Companies Act, 2013 read with Section 2(zb) of the LODR Regulations, we hold that SCAL cannot be held as "Related Party" of BDMCL for FY 2014-15, 2015-16 and 2016-17.

In view of the above, we answer this question in ***Negative***,

Inordinate Delay

16. Mr. Seervai took strong objection to inordinate delay in issuing SCN in June, 2021 and passing impugned order on October 21, 2022, while the alleged violations took place as early as FY 2011-12.

16.1 SEBI's explanation is two-folds;

(a) there was no delay as proceedings were initiated in January 2019 upon receipt of complaint; and

(b) the violation is 'single and continuous one' for a long period of time i.e., FY 2011-12 to FY 2018-19.

16.2 In our considered view, both explanations are hollow. Firstly, based on the strength of Quarterly/yearly disclosure to the Exchanges, SEBI was already aware of the relevant information since 2012-14 but made no observations, leave aside taking any action. Undisputedly, MoUs were signed during 2012-2014 and alleged reduction in SCAL shares by BDMCL to 19% took place in March 2012, both of which are the only crucial piece of information in the matter. However, SEBI took action only after 9 years statedly, on receipt of certain complaint.

The second argument of 'single and continuous violation' too fails as both reduction of SCAL Shares and signing of MOUs had taken place before March 2014 and there is admittedly no further chargeable action in subsequent years.

Therefore, there is no valid explanation for delay in taking action after 9 years. we are at pains to note that the SEBI, which is expected to play an important role in maintaining integrity of securities market, wakes up and acts only on receipt of certain complaints.

16.3 This Tribunal in ***Ashlesh Gunvantbhai Shah vs. SEBI⁶³*** ***has consistently taken an adverse view in case of inordinate delay in initiating proceedings without reasonable cause.*** This Tribunal has held as under:-

"12. Having considered the matter we are of the view that there has been an inordinate delay on the part of the respondent in

⁶³ Appeal No. 169 of 2019 decided on January 31, 2020

initiating proceedings against the appellants for the alleged violations. The controversy in this regard is squarely covered by a decision of this Tribunal in Mr. Rakesh Kathotia & Ors. vs SEBI in Appeal No. 7 of 2016 decided by this Tribunal on May 27, 2019.”

16.4 In view of the above, we find no merit in the explanation given by the SEBI and hold that there was inordinate delay in initiating action after 9 years, without reasonable cause.

Other Grounds

17. Appellants have taken several other legal grounds such as jurisdiction of SEBI on unlisted companies and SCAL not “*dealing in securities*”; and legality of retrospective application of amendments in PFUTP Regulations. However, since we have already held that there was no fraudulent scheme in respect of MOUs signed by BDMCL with SCAL, we keep these legal issues open for deliberation in some other case in future.

18. With regard to the intervention application⁶⁴ filed by a complainant in respect of Appeal No. 838 of 2022, seeking compensation for alleged losses due to fall in share prices of BDMCL, we note that the applicant became an investor in BDMCL in October 2017 only, while the alleged violations took place in FY 2012-14. Further, due disclosure was undisputedly made in the relevant annual financial statements of BDMCL. Even in subsequent years, disclosure of income recognized

⁶⁴ Miscellaneous Application No.1789 of 2022 in Appeal No.838 of 2022

from such MOUs was made through the Notes to accounts to BDMCL's financial statements.

18.1 It is expected that being a well-informed person, who pleaded at length before us, the applicant would have made decision to invest in BDMCL based on information available in public domain. Moreover, his contention of loss to investors of securities of BDMCL and accordingly plea for disgorgement, rather contradicts the key allegation of inflation of BDMCL's profit for misleading investors. Accordingly, the intervention application is dismissed.

19. As we have already answered **Issue Nos. I** in negative and held that there was no fraudulent scheme, the appeal filed by the CFOs and Audit Committee Members of BDMCL too deserves to be allowed.

20. There would be something amiss in this order, if we do not place on record the able and arduous assistance rendered by Learned Senior Advocates, Mr. Darius Khambata, Mr. Navroz Seervai, Mr. Gaurav Joshi, Mr. Mustafa Doctor and their teams and other advocates on either side in appreciating this complex issue involving interplay of finance, accounting standards, Company laws and Securities laws, and in dealing with voluminous records, lengthy arguments and catena of judgements relied upon.

21. In view of the above,-

(a) The Appeal Nos. 838 of 2022, 839 of 2022, 840 of 2022 and 1016 of 2022 are allowed and impugned

orders dated October 21, 2022 and October 31, 2022 are set aside.

- (b) The amount of penalty paid by the appellants, if any, shall be refunded within 4 weeks of this order.
- (c) The intervention application (Misc. Application No.1789 of 2022 in Appeal No.838 of 2022) is dismissed.
- (d) No costs.
- (e) All (pending) interlocutory application(s), if any, stand disposed of.

Dr. Dheeraj Bhatnagar
Technical Member

I agree.

Ms. Meera Swarup
Technical Member

16.01.2026
PTM

Per: Justice P. S. Dinesh Kumar, Presiding Officer

22. I have read the opinion rendered by the learned Hon'ble Technical Member Dr. Dheeraj Bhatnagar allowing these appeals, but unable to agree with the same. Hence, this separate judgment.

23. These four appeals are filed by Bombay Dyeing & Manufacturing Company Limited ('Bombay Dyeing' for short), Scal Services Limited ('SCAL' for short) and other individuals.

24. Undisputed facts are, Bombay Dyeing had taken up two real estate projects⁶⁵. It had 49% share in SCAL till 2012. On March 29, 2012, Bombay Dyeing transferred 30% of its shareholding in SCAL to another group company and retained 19% shareholding. In May 2012, Hon'ble Bombay High Court stayed the construction in the projects and it was resumed in January 2015. During investigation period, 11 MoUs were executed between Bombay Dyeing and SCAL and out of them nine were executed during the continuance of stay order passed by the Hon'ble Bombay High Court.

25. Based on the complaints alleging bogus sale and purchase by the said two companies, SEBI issued a show cause notice dated June 11, 2021, to 10 noticees alleging that

- during the investigation period (FY 2011-12 to FY 2018-19) Bombay Dyeing was directly or indirectly owned the entire shareholding of SCAL;
- during that period Bombay Dyeing entered into memoranda of understanding (MoUs) with SCAL, under

⁶⁵ One ICC and Two ICC, Dadar, Mumbai.

which SCAL agreed to make bulk purchase of flats for an aggregate value of ₹3,033 Crore;

- of the said aggregate value, Bombay Dyeing recognised a sum of ₹2,492.94 Crore as its revenue which represented 56% of its total revenue;
- throughout the investigation period, Bombay Dyeing booked a total profit of ₹2,317.54 Crore from the real estate segment, of which ₹1,302.20 Crore was Profit Before Tax on account of the said MoUs; and
- SCAL being an extended arm of Bombay Dyeing, the MoUs were not 'principal to principal agreements' and the revenue and profit were artificially inflated and disclosure profit figures to the public had resulted in violation of SEBI Act, PFUTP Regulations and LODR Regulations.

26. Noticee No.1 and 2 filed separate replies. Noticees No.3, 4, 5 and 10 adopted the reply filed by Noticee No.1. Noticee No.6, 7, 8 and 9 adopted reply filed by Noticee No.2. After adjudication, the learned WTM has passed the impugned order, issuing various directions and imposing monetary penalties resulting in these appeals.

27. The sum and substance of submissions made on behalf of Bombay Dyeing and Mr. Nusli Neville Wadia are as follows:

28. The show cause notice alleges two kinds of wrong doings namely

- Allegation of misrepresentation of financial statements of Bombay Dyeing; and
- Allegation of violation of related party transaction Regulations.

29. Misrepresentation of financial statements was premised on Bombay Dyeing's failure to ensure consolidation of SCAL's accounts with Bombay Dyeing. To achieve this, the shareholding in SCAL was brought down to 19%, so that SCAL may not be shown an 'associate company'.

30. The show cause notice also alleged that Bombay Dyeing and SCAL executed a well thought out and deliberate fraudulent scheme to record a non-genuine sales made to SCAL to the tune of ₹2,492.94 Crores and profits to the tune of ₹1,302.20 Crores for FY 2011-12 to FY 2017-18 were declared. The entire shareholding of SCAL was structured in a manner to camouflage the actual shareholding of Bombay Dyeing in SCAL. The entire shareholding in SCAL was held through various investment companies of Wadia Group to ensure non-consolidation of transactions and the financial statements of Bombay Dyeing were untrue and misleading to the shareholders of the listed company during the inspection period.

31. Appellants have raised several contentions challenging the findings in the impugned order. The principal allegation against Bombay Dyeing is, that it had booked a revenue of ₹2,492.94 Crores during the investigation period and this is an admitted position. It is also an admitted position that during the investigation period Bombay Dyeing has entered into 11 agreements with SCAL. Further that, SCAL being an extended arm of Bombay Dyeing, the MoUs were not 'principal to principal' rather SCAL acted as Bombay Dyeing's agent.

32. In the facts of the case, the point that arises for consideration is ***whether the financials declared by***

Bombay Dyeing during the investigation period were untrue with inflated profits?

33. To examine the point for consideration, we have to determine who is 'SCAL' and what is the transaction?

34. SCAL is an unlisted limited company. Bombay Dyeing held 49% shares in SCAL till March 28, 2012. With effect from March 29, 2012, its shareholding was reduced to 19%. SCAL's shareholders during different financial years is noted in Table Nos.6 to 10 of the impugned order, which are as follows:

Table 6

	2010-11	Shares held in		
		Scal	Pentafil	Archway
1	Scal	-	25.50%	25.50%
2	Pentafil	25.50%	-	25.50%
3	Archway	25.50%	25.50%	-
4	BDMCL	49%	49%	49%
	Total	100%	100%	100%

Table 7

	2011-12 And 2012- 13	Shares held in			
		Scal	Pentafil	BDRECL	Archway
1	Scal	-	25.50%	10%	25.50%
2	Pentafil	25.50%	-	40%	25.50%
3	BDRECL	30%	-	-	-
4	Archway	25.50%	25.50%	10%	-
5	BDMCL	19%	49%	40%	49%
	Total	100%	100%	100%	100%

TABLE 8

	2013-14	Shares held in				BDS	Spring flower
		Scal	Pentafil	BDRECL	Archway		
1	Scal	-	25.50%	10%	25.50%	-	
2	Pentafil	19%	-	40%	25.50%	81%	
3	BDRECL	19%	-	-	-	-	
4	Archway	19%	25.50%	10%	-	-	
5	BDS	19%	-	-	-	-	

6	<i>Springflower</i>	5%	-	-	-	-	-
7	<i>Havenkor es Real Estate Pvt. Ltd.</i>	-	-	-	-	-	100%
8	<i>BDMCL</i>	19%	49%	40%	49%	19%	
	<i>Total</i>	100%	100%	100%	100%	100%	100%

TABLE 9

	2014-15 to 2017- 18	Shares held in				
		<i>Scal</i>	<i>Pentafil</i>	<i>BDRECL</i>	<i>BDS</i>	<i>Springflower</i>
1	<i>Scal</i>	-	45.50%	45%	47%	-
2	<i>Pentafil</i>	19%	-	-	19%	-
3	<i>BDRECL</i>	19%	-	-	15%	-
4	<i>BDS</i>	38%	5.50%	15%	-	-
5	<i>Springflo wer</i>	5%	-	-	-	-
6	<i>Havenkor es Real Estate Pvt. Ltd.</i>	-	-	-	-	100%
7	<i>BDMCL</i>	19%	49%	40%	19%	-
	<i>Total</i>	100%	100%	100%	100%	100%

TABLE 10

	2018-19	Shares held in			
		<i>Scal</i>	<i>Pentafil</i>	<i>BDRECL</i>	<i>BDS</i>
1	<i>Scal</i>	-	45.50%	45%	47%
2	<i>Pentafil</i>	19%	-	-	19%
3	<i>BDRECL</i>	19%	-	-	15%
4	<i>BDS</i>	43%	5.50%	15%	-
5	<i>BDMCL</i>	19%	49%	40%	19%
	<i>Total</i>	100%	100%	100%	100%

The above tables show the cross-holdings of Wadia Group companies. Bombay Dyeing did not have any subsidiary till 2014-15 and during that financial year, when Archway Investment Company Limited ('Archway' for short) became its subsidiary. Consequently, Bombay Dyeing started preparing consolidated financial statements in which the financials of Archway, Pentafil Textile Dealers Limited

(‘Pentafil’ for short), Bombay Dyeing Real Estate Company Limited (‘BDRECL’ for short) and PT Five Star (Associate company) were consolidated.

35. The next admitted position is, Bombay Dyeing has entered into 11 MoUs with SCAL during the investigation period. The first MoU is dated March 30, 2012 and the last one is dated March 27, 2014. The MoU details are as follows:

Table No.4

MoU No.	MoU Date	Project	No. of Flats sold	Consideration for sale (Rs. In Crores)
1	March 30, 2012	One ICC	52	450
2	March 30, 2012	Two ICC	40	293
3	June 30, 2012	One ICC	9	82
4	June 30, 2012	Two ICC	8	61
5	September 27, 2012	One ICC	5	46
6	December 31, 2012	One ICC	10	91
7	March 29, 2013	One ICC	18	189
8	March 29, 2013	Two ICC	25	233
9	June 28, 2013	One ICC	12	127
10	March 27, 2014	One ICC	50	523
11	March 27, 2014	Two ICC	96	938
			325	3,033

36. The first MoU is executed on a non-judicial stamp paper of ₹100, under which Bombay Dyeing agreed to sell 52 flats for a consideration of ₹450.36 Crores and received an advance sale consideration of ₹13 Crores. Similar are the other MoUs.

37. In its reply dated July 27, 2021, in response to the show cause notice, Bombay Dyeing has asserted that the MoU transactions were entirely lawful and could not be termed as non-genuine or fraudulent. The reply also stated that the revenue recognition from the project commenced prior to April 1, 2012. Therefore, Bombay Dyeing was following the

guidance provided in the Guidance Note on Recognition of Revenue by Real Estate Developers issued by the Institute of Chartered Accountants of India in 2006.

38. Another crucial fact which requires to be noted is the first MoU was executed on March 30, 2012 i.e. during the FY 2011-12. By taking shelter under Guidance Note 2006, Bombay Dyeing was booking profits. In note No.37 of its Annual Report for FY 2015-16, Bombay Dyeing has declared that based on SCAL's inability to sell the flats, Bombay Dyeing had refunded ₹270.35 Crores retaining only 7.5% of the advance amount. The said note contained in Bombay Dyeing's reply to the show cause notice reads thus:

*"The Company has agreed to sell several apartments in the proposed residential towers being constructed at Island City Centre to SCAL Services Ltd, a Group company, in terms of various Memorandum of Understanding (MOUs) entered between the companies till March 31, 2016. Based on the method of accounting (percentage of completion) followed by the company, net revenue of ₹239.26 crores (**March 2015 ₹301.11 crores**) and the resultant **profit before tax of ₹158.63 crores** (March 2015 ₹224.49 crores) has been recognised during the year ended March 31, 2016 in respect of the sales to SCAL. During the year, SCAL has requested the company for certain concessions on grounds that due to the huge delays in construction by the Company, it had incurred substantial interest costs on account of its borrowing against the unsold inventory of flats, which could not be sold due to the delays in the project. Pursuant to the request, the Company considering the facts and circumstances that led to SCAL's inability to sell the flats, has granted SCAL*

deferment to milestone payments till June 2017 or till the sale of all the unsold flats, and also considering that SCAL was a bulk customer who had purchased a large number of flats and had not received the discounts given to other bulk purchasers, the Company reduced the advance payment made by SCAL 7.5% resulting in refund of about 270.35 crore to SCAL."

39. A careful analysis of the above annual report reveals that Bombay Dyeing declared Profit Before Tax of ₹158.63 Crores for March 2015. In one breath, Bombay Dyeing says in its annual report that it refunded ₹270.35 Crore to SCAL and retained 7.5% of advance consideration, in the other breath, it says that it recognises a profit of ₹158.63 Crores (before tax) in March 2015. It is relevant to note that the construction was resumed only in January 2015. Therefore, the plea that Bombay Dyeing made a profit of Rs.158.63 Crores by March 31, 2015 cannot be countenanced.

40. Another crucial aspect to be noted is that by March 31, 2017, SCAL was having an outstanding borrowing from HDFC, Archway and Pentafil, of ₹169.98 Crores, ₹216.55 Crores and ₹18 Crores respectively. It is significant to note that during 2013-14, Archway and Pentafil were holding 19% share each in SCAL. During 2014-17, Pentafil was holding 19% in SCAL. It is interesting to note that during FY 2017-18, all the borrowings were repaid by SCAL availing term loan from DHFL and to avail that loan from DHFL, Bombay Dyeing gave 'a comfort letter' to DHFL on behalf of SCAL stating that 'Bombay Dyeing shall ensure that SCAL shall duly and punctually observe and perform all its obligations under the aforesaid 'term loan'. It is further interesting to note that Bombay Dyeing gave an undertaking to the DHFL stating that

till the time the aforesaid term loan is repaid in full, it shall **not**, without DHFL's prior approval, dispose of any part of its shareholding in SCAL. Based on such a comfort letter, DHFL sanctioned ₹404.53 Crores (169.98+216.55+18 Crores). It is surprising to note that DHFL sanctioned ₹404.53 Crores to SCAL who had a **negative** net worth of ₹237.70 Crores.

41. To reiterate, in substance, here is a company called SCAL in which Bombay Dyeing initially held 49% shareholding and later reduced to 19%. The remaining shareholders of SCAL are group companies of Wadia Group. Bombay Dyeing envisaged a real estate project and the construction was stayed by a court order. Bombay Dyeing entered into 11 MoUs purporting to sell the flats in bulk and collected a meagre sum of ₹13 Crores as advance sale consideration out of a total sale value of ₹450 Crores in respect of the first MoU⁶⁶. Within three years, Bombay Dyeing collected further sums from SCAL and refunded ₹270.35 Crores by retaining only 7.5% of advance consideration. Bombay Dyeing has reported this fact in its annual report for FY 2015-16. By then, it had achieved its goal declaring a net revenue of ₹239.26 Crores and profit before tax of ₹158.63 Crores.

42. In my view, these stark facts lead to one and only inference that in order to show profits in the balance sheet, Bombay Dyeing executed MoUs purporting bulk sale of flats to SCAL owned by it and other Wadia Group Companies. This resulted in Bombay Dyeing booking a revenue of ₹4,429.57 Crores in the real estate segment and recognising revenue of ₹2,492.94 Crores. It is significant to note that Bombay Dyeing did not have any notable revenue from other

⁶⁶ March 30, 2012

segments namely textile and Polyester. The segment wise revenue and profit during the investigation period is as follows:

Table 3

(Rs. in Crores)

Financial Year	Segment	Segment Revenue	Segment Profit
2011-12	Textile	423.18	8.90
	Polyester	1241.18	(0.86)
	Real Estate	566.27	268.58
	Total	2230.73	276.62
2012-13	Textile	454.65	(12.34)
	Polyester	1208.82	(27.04)
	Real Estate	665.70	349.61
	Total	2329.17	310.23
2013-14	Textile	535.16	15.15
	Polyester	1317.59	(110.01)
	Real Estate	803.28	372.46
	Total	2656.03	277.60
2014-15	Textile	578.09	25.1
	Polyester	1366.75	(9.77)
	Real Estate	444.23	302.69
	Total	2389.07	318.02
2015-16	Textile	310.11	(26.3)
	Polyester	1069.12	(22.66)
	Real Estate	470.23	277.2
	Total	1849.46	228.24
2016-17	Textile	306.97	(19.65)
	Polyester	1110.15	82.02
	Real Estate	296.95	160.57
	Total	1714.07	222.94
2017-18	Textile	257.89	(14.4)
	Polyester	1251.95	39.68
	Real Estate	1182.91	586.43
	Total	2692.75	611.71
2018-19	Textile	263	1.84
	Polyester	1439.28	18.54
	Real Estate	2727.48	1742.42
	Total	4429.76	1762.8

43. This is a classic case of fraud in the securities market. A careful analysis of the above table clearly shows that the major and significant revenue is only from the real estate segment based on the ostensible sale to SCAL. On the face of it, the transactions do not appear genuine. There was no real

sale of flats. It was only on paper in the form of MoUs between the group. If the MoUs were between two different entities and genuine consideration had flown in, it could be termed as profit. The cross holdings in SCAL clearly shows that it was an extended arm of Bombay Dyeing group. If it were not an extended arm of Bombay Dyeing, a company with such financial status could never venture to make an offer of purchase nor Bombay Dyeing agree to make bulk sale of its flats worth several hundred Crores to a company which had a net worth of ₹2.90 Crores during FY 2011-12 and negative net worth from FY 2012-13 to 2018-19. At the end of the day, SCAL was merged with Bombay Dyeing. This is another significant but ironic fact to note.

44. Thus, by entering into non-genuine MoUs, profits were booked by Bombay Dyeing. This gave an impression to the genuine investors that the Company was making profits of hundreds of crores of rupees, where in fact, there was none.

45. Elaborate arguments were addressed by the learned Senior Advocates for the appellants with regard to Bombay Dyeing holding 19% share in SCAL and thus, not under obligation to consolidate the financials. It was urged in their written submissions⁶⁷ that WTM's contempt for principle of 'separate legal identity' itself calls for this Tribunal's interdiction. It was also argued that SCAL being an independent legal entity, the WTM ought to have recognised its juridical status. It was further contended in the written submissions that not recognizing SCAL as a legal entity is done by applying the doctrine of 'piercing the veil', which

⁶⁷ Paragraph Nos.61 to 63 Consolidated written submissions filed on 22.11.2024 in Appeal No.839 of 2022

could not have been done. In substance, it was argued that corporate veil could not have been pierced. In support of this contention, reliance was placed on *Balwant Rai Saluja v. Air India Limited*⁶⁸. Mr. Khambata pointed out relevant portions of the authority and submitted that the Hon'ble Supreme court of India has approved two English cases describing the contingency, when the corporate veil can be pierced.

46. In *Ben Hashem v. Ali Shayif*⁶⁹, six principles have been stated. The fifth principle is relevant and it states that 'to justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is, use or misuse of the company by them as a device or facade to conceal their wrongdoing. In the case on hand, misuse of company as a device to conceal their wrong doing is largely writ on its face. Therefore, it is an eminently fit case to pierce the corporate veil to know who are the owners of SCAL.

47. The learned Senior Advocates for the appellants also made submissions with regard to the common Directors in Wadia Group companies also being Directors in SCAL without remuneration; SCAL having its registered office in Neville house of Wadia Group. It was urged that there was no legal bar to be a Director in more than one company and also having registered office in the same address. To that extent appellants may be correct. But, I may hasten to add that in the facts of this case, those aspects, in fact, reinforce the case of the Regulator.

48. Appellants also seriously contended that explanation to Regulation 4 of PFUTP Regulations was inserted on

⁶⁸ (2014) 9 SCC 407

⁶⁹ 2008 EWHC 2380 (Fam)

19.10.2020 and the alleged transactions are prior to that date and therefore, the said provision has no application. This argument is wholly devoid of merit because, firstly the explanation is for removal of doubts, secondly, it is settled that fraud unravels everything. In *N. Narayanan v. Adjudicating Officer, Securities and Exchange Board of India*⁷⁰, in somewhat similar set of facts namely serious irregularities in its books of accounts and showing inflated profits, the Hon'ble Supreme Court of India has held that prevention of market abuse and preservation of market integrity is the hallmark of securities law. In that case, SEBI had observed manipulated accounts by fictitious entries, false disclosure and other violations to hold that the appellant and others therein had violated the SEBI Act and Regulations. Apropos to the conduct of pledging the shares at artificially inflated prices based on inflated financial results, the Hon'ble Supreme Court of India has held in that case that the appellant therein had committed illegality and the principle of '**acta exteriora indicant interiora secreta**' (meaning external actions reveal internal secrets) was applicable in all force. In my considered view, that principle is applicable in no less measure in this case. The detailed facts recorded herein lead to an irresistible inference that Bombay Dyeing had booked a revenue of ₹2,492.94 Crores based on the MoUs and a profit before tax of ₹1,302.20 Crores⁷¹ in a deceitful manner. Such artificial profits lure gullible investors to invest in the scrip and such market abuse cannot be countenanced.

⁷⁰ (2013) 12 SCC 152

⁷¹ Table No.5 in the Impugned Order

49. It was also vehemently contended on behalf of the appellants that there was no requirement for consolidation of Bombay Dyeing and SCAL's accounts because Bombay Dyeing was holding only 19% stake in SCAL. Before this argument is dealt with, it is relevant to note the findings recorded in paragraph 2.17 to 2.21.8. It is noted by the learned WTM in para 2.17 that during each financial year from FY 2011-12 to FY 2017-18, Bombay Dyeing recognised a revenue on the basis of MoUs on 'percentage completion method' in accordance with AS-7 which prescribes accounting treatment of revenue and costs associated with construction contracts. Bombay Dyeing recognised a revenue and operating profit of ₹2,429.57 Crores and ₹2,317.54 Crores respectively for the real estate segment during FY 2011-12 to FY 2017-18 and posted a profit of ₹1,302.20 Crores. It is further noted by the WTM that Bombay Dyeing *vide* its letter dated October 17, 2019, has admitted that with respect to the MoUs entered into with SCAL, it had received only ₹186 Crores which was 7.46% of the revenue recognised during FY 2011-12 to FY 2017-18. In para 2.21.1 and 2.21.2, it is stated thus:

"2.21.1. Scal was having negative net worth of Rs.3 crores, Rs.14 crores and Rs.42 crores as on March 31, 2012, March 31, 2013 and March 31, 2014, respectively, still BDMCL entered into various MoUs with Scal under which Scal was expected to make a payment of Rs.3,033 crores over several years based on the physical stage of construction of Project One ICC and Project Two ICC. With respect to the due diligence for selling flats to Scal considering its weak balance sheet, BDMCL submitted that Scal was a bulk purchaser and as per its business model, it was required to sell these apartments to retail customers (i.e. individuals and entities) and make payments to BDMCL. It

is alleged that BDMCL was aware that Scal would not be able to pay to BDMCL if the flats are not actually sold by Scal to third parties. The same is also confirmed from the Annual Report of BDMCL for FY 2015-16 wherein BDMCL granted Scal deferment to milestone payments till June 2017 or till the sale of all the unsold flats. In this way, it is alleged that BDMCL fabricated a fraudulent scheme whereby it sold flats/allotment rights to Scal, a group company, and ensured that it continues to recognise the revenue based on MoUs entered into with Scal irrespective of whether or not the flats were further sold to retail customers by Scal.

2.21.2. As required under various MoUs, Scal was required to pay an amount equivalent to 10% of the total consideration within 60 days of the date of MoU. Being a negative net worth entity, Scal did not have funds of its own. The payment made by Scal towards booking amount was financed through borrowings from various group companies of BDMCL and external entities. As submitted by the Statutory Auditor of BDMCL vide letter dated February 12, 2021, till March 31, 2014 and March 31, 2015, Scal had made payment of Rs.262 crores and Rs.436 crores, respectively, to BDMCL towards purchase of flats under various MoUs. For making the aforesaid payments, funds to the tune of Rs.113 crores and Rs.266 crores were borrowed by Scal from various Wadia Group Companies as on March 31, 2014 and March 31, 2015, respectively. As seen from the financial statements of Britannia Industries Limited ("BIL") "another group company of Wadia group" for FYs 2014-15 and 2015-16, the loan was advanced by BIL to Scal based on comfort letter from BDMCL."

50. One of the principal contentions of Bombay Dyeing is that it was following the 'percentage completion method' and accordingly posted profits of ₹2,492.94 Crores based on the

MoUs with the SCAL and profit before tax of ₹1,302.02 Crores. It is admitted by Bombay Dyeing that the total money received was ₹186 Crores⁷². Therefore, declaring profit of ₹1,302.02 Crores appears *ex facie* false. Though elaborate arguments were addressed with regard to accounting standards, in view of facts noted hereinabove, it is unnecessary to consider that aspect any further. Resultantly, these appeals fail and liable to be dismissed.

51. The connected Appeal No.840 of 2022 is by SCAL and its Directors. It was argued that SCAL is an unlisted company and not amenable to SEBI's jurisdiction. It is no more *res integra* that a person or entity involved in manipulation is liable for action (See: *Price Waterhouse & Co. and Anr v. SEBI*⁷³). Hence, the said argument is noted only to be rejected.

52. The appellants in Appeal No.1016 of 2022 are Independent Directors and Chief Financial Officers of Bombay Dyeing. They have challenged the order dated October 31, 2022, passed by the AO, SEBI imposing penalties in the range of ₹2 Lakhs to ₹10 Lakhs on the appellants.

53. The main allegations levelled against the noticees are:

(i) That Noticee Nos.1 to 5 were the Independent Directors of Bombay Dyeing and failed to exercise due diligence

⁷² Page 434 in Vol-II in Appeal No.838 of 2022

⁷³ 2010 SCC OnLine Bom 1197

and independent judgment as members of the Audit Committee of a listed company to ensure that the financial statements are free from material misstatement; and they had violated Clause 49(III)(D)(1) of the Listing Agreement (post amendment dated April 17, 2014) read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Regulation 18(3) read with Clause A (1) under Part C of Schedule II of SEBI (LODR) Regulations, 2015.

(ii) With regard to Noticee Nos.6 to 9, it is alleged that they were working as CFOs with Bombay Dyeing and issued certificate in Bombay Dyeing's Annual Reports certifying that the financials of Bombay Dyeing presented true and fair view of its affairs and did not contain any misleading statement; and thus, Noticee No.6 had violated the provisions Clause 49(V) of the Listing Agreement and Noticee No.7 had violated Clause 49(IX) of the Listing Agreement (post amendment dated 17.04.2014) read with Regulation 103 of the SEBI (LODR) Regulations, 2015 and Noticee Nos.8 and 9 had violated Regulation 17(8) & 33(2)(a) of the SEBI (LODR) Regulations, 2015.

54. In their written submissions, appellants have urged that the subject matter of the appeal substantially overlaps with Appeal Nos.838 and 839 of 2022, these appellants have stated that they adopt the contents of each of the notes submitted in those two appeals and have prayed that they may be read in support of their appeal. It is further stated that though technically, the impugned order challenged in this

appeal is different, the cause of action being one and the same, the submission on merits are worthy of adoption.

55. It is relevant to note that I have dealt with the manipulation in the accounts and held that inflated revenues were posted in the financials and huge profits were declared. Having upheld the violations, those appeals are liable to be dismissed. Admittedly, appellants in this appeal have adopted the arguments advanced on behalf of the appellants in Appeal Nos. 838 and 839 of 2022. In view of the admitted position that the appellants herein are the Independent Directors and CFOs, their respective violations stand established. They were holding high positions with high pay packets. They cannot be heard to contend that they are not responsible for the acts and omissions. The only aspect that may remain for consideration is doctrine of proportionality. The Learned AO has imposed a penalty ranging between ₹2 Lakhs to ₹10 Lakhs. Keeping in view the fact that the misstatements in the financials displayed an incorrect profit of ₹1,302.20 Crores before tax, I find no ground to interfere even with the quantum of penalties imposed. In the result, this appeal also fails.

56. So far as the intervention application⁷⁴ is concerned, the same is filed by a complainant. In view of dismissal of these appeals, it is unnecessary to consider the said application.

⁷⁴ Miscellaneous Application No.1789 of 2022 in Appeal No.838 of 2022

57. In the light of above discussion, in my considered opinion, Appeal Nos.838 and 839 of 2022 are liable to be **dismissed** with costs of ₹50 Lakhs and ₹10 Lakhs respectively payable to the Investor Protection Fund. Appeal Nos.840 and 1016 of 2022 are liable to be **dismissed** without any order as to costs. The intervention application (Misc. Application No.1789 of 2022 in Appeal No.838 of 2022) does not survive for consideration. **Ordered accordingly.**

Justice P.S. Dinesh Kumar
Presiding Officer

16.01.2026
RHN

58. In view of the differing views of Hon'ble Members, based on the majority view, the

ORDER OF THE TRIBUNAL

- i. Appeal Nos. 838 of 2022, 839 of 2022, 840 of 2022 and 1016 of 2022 are **allowed** and impugned orders dated October 21, 2022 and October 31, 2022 are set aside.
- ii. The amount of penalty paid by the appellants, if any, shall be refunded within 4 weeks of this order.
- iii. The intervention application (Misc. Application No.1789 of 2022 in Appeal No.838 of 2022) is dismissed.
- iv. All (pending) interlocutory application(s), if any, stand disposed of.
- v. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member