A DUSHYANT N. DALAL AND ANOTHER

v.

SECURITIES AND EXCHANGE BOARD OF INDIA

(Civil Appeal No. 5677 of 2017)

B OCTOBER 04, 2017

[R. F. NARIMAN AND SANJAY KISHAN KAUL, JJ.]

Interest:

Whether interest can be recovered on orders of penalty issued C *under SEBI Act and/or orders of disgorgement of unlawful gains when the said amounts have remained unpaid – Held: Interest Act enables the Tribunals such as Securities Appellate Tribunal to award interest in equity, from the date on which cause of action arose, till the date of commencement of proceedings for recovery of such* D *interest – In the present case, interest was payable in equity, because all the penalties collected by SEBI were to be credited to the Consolidated fund u/s. 15JA of SEBI Act i.e. public purpose – Such interest would be chargeable u/s. 28A of SEBI Act r/w. s.220(2) of Income Tax Act only prospectively – Interest Act, 1978 – Securities and Exchange Board of India Act, 1992 – ss.28A and 15JA – Income* E *Tax Act, 1961 – s.220 – Equity.*

Interest – Levy of – Whether can have retrospective operation – Held: Interest belongs to the field of substantive law and not procedural law – Therefore, cannot have retrospective operation.

Securities and Exchange Board of India Act, 1992:

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s.28A – Nature of and whether can have retrospective operation – Held: s.28A belongs to the realm of procedural law and would originally be retrospective – But when this provision seeks to levy interest, which belongs to the realm of substantive law, such interest would be chargeable only prospectively.

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Disposing of the appeals, the Court

HELD: 1. The Interest Act of 1978 would enable Tribunals such as Securities Appellate Tribunal to award interest from the date on which the cause of action arose till the date of H **commencement of proceedings for recovery of such interest in**

equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the SEBI Act. There is no greater equity than such money being used for public purposes. Despite the fact that Section 28A of SEBI Act belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest would be chargeable under Section 28A of SEBI Act read with Section 220(2) of the Income Tax Act only prospectively. However, since it has not taken into account the Interest Act, 1978 at all, the Tribunal's findings that no interest could be charged from the date on which penalty became due is set aside. [Para 28][466-F-H; 467-A]

2. If there is default in payment of Rs. 6 crores within the stipulated time, no future interest is payable inasmuch as a much severer penalty of being debarred from the market for 7 years was instead imposed. The SAT was incorrect in stating that the order dated 21.7.2009 contained an obligation to pay interest at the rate of 12% per annum on the unlawful gain of Rs.4.05 crores till payment. [Para 32][469-D-E]

Clariant International Limited and Another v. Securities and Exchange Board of India **(2004) 8 SCC 524 : [2004] 3 Suppl. SCR 843**; *Tahazhathe Purayil Sarabi & Ors. v. Union of India & Anr.* **(2009) 7 SCC 372 : [2009] 10 SCR 70**; *Ferro Alloys Corpn. Ltd. v. A.P. State Electricity Board and Anr.* **(1993) Suppl. 4 SCC 136 : [1993] 3 SCR 199**; *South Eastern Coalfields Ltd. v. State of M.P. and Ors,* **(2003) 8 SCC 648 : [2003] 4 Suppl. SCR 651**; *Indian Council For Enviro-Legal Action v. Union of India* **(2011) 8 SCC 161 : [2011] 9 SCR 146**; *Union of India v. Tata Chemicals Limited* **(2014) 6 SCC 335 : [2014] 3 SCR 298**; *Life Insurance Corporation of India and Another v. Smt. S. Sindhu* **(2006) 5 SCC 258 : [2006] 1 Suppl. SCR 854 – relied on.**

Prabhavati Ramgarib B. v. Divisional Railway Manager **(2010) 4 Mah LJ 691 – approved.**

A *Raghunath Rai Bareja and Anr. v. Punjab National Bank and Ors.* **(2007) 2 SCC 230 : [2006] 10 Suppl. SCR 287**; *J.K. Synthetics Ltd. v. Commercial Taxes Officer* **(1994) 4 SCC 276**; *India Carbon Limited v. The State of Assam* **(1997) 6 SCC 479 : [1997] 3 Suppl. SCR 1**; *Purbanchal Cables & Conductors Pvt. Ltd. v. Assam State Electricity Board & Anr.* **(2012) 7 SCC 462 : [2012] 6 SCR 905**; *NTPC Ltd. v. M.P. SEB* **(2011) 15 SCC 580 : [2011] 11 SCR 651**; *Bengal Nagur Railway Co. Ltd. v. Ruttanji Ramji and Ors.* **AIR 1938 PC 67**; *Satinder Singh v. Amrao Singh* **[1961] 3 SCR 676**; *Hirachand Kothari v. State of Rajasthan* **(1985) Supp SCC 17 : [1985] Suppl. SCR 644 – referred to.**

Case Law Reference

[2006] 10 Suppl. SCR 287	referred to	Para 6
(1994) 4 SCC 276	referred to	Para 11
[1997] 3 Suppl. SCR 1	referred to	Para 12
[2012] 6 SCR 905	referred to	Para 13
[2004] 3 Suppl. SCR 843	relied on	Para 14
[2009] 10 SCR 70	relied on	Para 15
[1993] 3 SCR 199	relied on	Para 15
[2011] 11 SCR 651	referred to	Para 15
[2003] 4 Suppl. SCR 651	relied on	Para 15
[2011] 9 SCR 146	relied on	Para 15
[2014] 3 SCR 298	relied on	Para 15
AIR 1938 PC 67	referred to	Para 18
[1961] 3 SCR 676	referred to	Para 19
[1985] Suppl. SCR 644	referred to	Para 20
[2006] 1 Suppl. SCR 854	relied on	Para 25
(2010) 4 Mah LJ 691	approved	Para 27

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5677 of 2017. A

From the Judgment and Order dated 10.03.2017 of the Securities Appellate Tribunal (SAT) in Appeal No. 41 of 2014.

WITH

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C. A. No. 10410-10412 of 2017.

Subramonium Prasad, Arvind P. Datar, Sr. Advs., Abhay Kumar, Ravichandra S. Hegde, Utkarsh Srivastava, Saurabh Mishra, Himanshu Pal, Himanshu, Anip Sachthey, Ms. Anjali Chauhan, Ms. Ria Sachthey, Advs. for the appearing parties. C

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. The present appeals raise an interesting question under Section 28A of the Securities and Exchange Board of India Act, 1992 (SEBI Act), namely, as to whether interest can be recovered on orders of penalty issued under the Act and/or orders of D disgorgement of unlawful gains, when the said amounts have remained unpaid. In the penalty cases, it is SEBI who is before us as appellant, whereas in the disgorgement case, it is private individuals who are before us.

2. First, the facts in C.A. 5677 of 2017, the disgorgement case. E By an order dated 21.7.2009, passed by a whole-time member of SEBI, the noticees, namely Shri Dushyant N. Dalal and Mrs. Puloma D. Dalal, were found to have manipulated the demand for shares in the retail individual investor category (RII) and thereby distorted the integrity of the market. By doing this, they denied other RIIs of allotment of their legitimate shares in initial public offers (IPOs) of various companies and F made an unlawful gain of Rs.4,05,61,579/- to the detriment of other RIIs. The conclusion, therefore, was that they had employed fraudulent, deceptive and manipulative practices to garner shares meant for RIIs in the aforesaid IPOs and hence violated Section 12A (a), (b) and (c) of the SEBI Act, and Regulations 3 and 4(1) of the Securities and Exchange G Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (PFUTP Regulations). Given this, the following directions were issued:

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A "a) The noticees [Mr. Dushyant Natwarlal Dalal (PAN AAAPD 5859Q) and Mrs. Puloma Dushyant Dalal (PAN AAEPD 2909B)] shall not buy, sell or deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of 45 days from the date of this order; and

B b) The noticees shall disgorge the unlawful gain of Rs.4.05 crores (rounded off from Rs. 4,05,61,579).

c) The noticees shall also pay Rs.1.95 crores (rounded off from Rs. 1,94,69,558), being the simple interest at the rate of 12% per annum for 4 years (2005-09) on the unlawful gain Rs. 4,05,61,579.

C d) The noticees shall pay the above amount of Rs.6 crores (Rupees six crores) within 45 (forty five) days from the date of this order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.

e) In case the aforesaid amount Rs.6 crores is not paid within the
D specified time, the noticees shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of seven years, without prejudice to SEBI's right to enforce disgorgement."

E An appeal from this order was dismissed by the Securities Appellate Tribunal (SAT) on 12.11.2010. An appeal from the order of the SAT to this Court met with the same fate on 21.2.2011.

3. By a notice of demand dated 25.9.2013, Rs. 6 crores, along with interest payable within 15 days of the receipt of the notice, was
F demanded, failing which recovery was to be made under Section 28A of the SEBI Act. By a second demand notice dated 12.12.2013, stated to be in continuation of the first demand notice, interest was demanded at 13% per annum from 21.7.2009 upto 12.12.2013 amounting to Rs.2,13,30,000/-. The appellants before us replied to the aforesaid notices
G of demand by a letter dated 13.1.2014, stating that the said amount of interest was not payable in law. This was turned down by an order dated 16.1.2014, passed by the Recovery Officer, SEBI, in which the objections of the appellants were rejected and bank accounts of the appellants were attached. By an interim order dated 6.9.2016, the SAT noticed that the appellants had already undergone the full debarment

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period and hence, attachment levied on their demat accounts, except account No.40333429, was released. By the impugned judgment dated 10.3.2017, the SAT ultimately found that, with effect from 18.7.2013, Section 28A read with Section 220 of the Income Tax Act, 1961 empowered SEBI to collect interest, but that so far as the appellants were concerned, it was held that interest payable by the appellants could not be quantified at the time of passing the order dated 21.7.2009 and, therefore, it was held:

> "In Appeal No. 41 of 2014 the directions given by the WTM of SEBI on 21.07.2009 was to disgorge the unlawful gain of Rs. 4.05 crores with interest @ 12% per annum quantified at Rs. 1.95 crores up to 21.07.2009 within 45 days from 21.07.2009 failing which, the appellants were debarred from entering the Securities market for a period of 7 years without prejudice to the right of SEBI to recover the unlawful gain with interest till payment. Since the order passed by the WTM of SEBI on 21.07.2009 contained an obligation to pay interest @ 12% per annum on the unlawful gain of Rs. 4.05 crores till payment, the RO was justified in demanding interest on the unlawful gain of Rs. 4.05 crores from 21.07.2009 till payment. Accordingly, Appeal No. 41 of 2014 is dismissed."

4. Insofar as the penalty orders are concerned, the facts are similar. In **SEBI** v. **Ashok Panchariya**, C.A. 10410 of 2017, a penalty order dated 13.11.2009 was passed for a sum of Rs. 25 lakhs under Section 15HA of the SEBI Act, which was made payable within 45 days of the receipt of the said order. This was because it was found that wrongful and misleading disclosures were made by the respondents to the Bombay Stock Exchange, by which investors were deprived of important information at the relevant point of time. This was an unfair trade practice for which the respondents were held liable, inasmuch as Regulations 3(a) to 3(d), 4(1) and 4(2)(a) of the PFUTP Regulations had been breached by the respondents. An appeal was carried against the aforesaid order, which was dismissed by the SAT on 6.5.2010. By a recovery certificate dated 30.5.2014, the aforesaid amount of Rs. 25 lakhs was demanded, together with interest, under Section 28A of the SEBI Act. On 3.6.2014, the amount of Rs. 25 lakhs was deposited by the respondents, by way of demand drafts, with the SEBI. Acting on the basis of a show cause notice dated 10.7.2014, an order was passed by

A the Recovery Officer, SEBI on 19.8.2014 directing the respondents to pay interest at 12% per annum for the period of 13.11.2009 till 3.6.2014, amounting to Rs. 13,66,849/-.

5. In an appeal to the SAT against the order of the Recovery Officer, the SAT held that interest was payable on and from 18.7.2013 B (i.e. the date of introduction of Section 28A by way of ordinance), but held that since the awarding of interest belongs to the realm of substantive and not procedural law, the aforesaid provision could not be held to be retrospective, and that, therefore, interest demands that were prior to this date were set aside. It is against this part of the order that SEBI has appealed.

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6. Shri Subramonium Prasad, learned counsel appearing on behalf of the appellants in C.A.5677 of 2017, has argued before us that, on his facts, it was clear that the order dated 21.7.2009 had, while awarding interest for the years 2005 to 2009, not expressly awarded any future interest and that this was done deliberately inasmuch as if the amount of D Rs. 6 crores was not paid within 45 days from the date of the order, the consequence was specified as being debarment for a further period of 7 years which was so severe that further future interest was deliberately not found necessary to be awarded. He brought to our notice certain other orders passed by the same whole-time member of the SEBI in E which, in similar circumstances, future interest was also provided. He pointed out that by an order dated 6.12.2013 passed by the SAT, the appellants were permitted to sell their shares, as a result of which they were able to make the payment of Rs. 6 crores on 6.1.2014. He further argued that their case should not have been segregated from the penalty cases by the SAT and that, along with the other individuals in these F cases, they should have been made to pay interest only on the unpaid amount from 18.7.2013 and not otherwise. On law, Shri Prasad argued that equity cannot override written law but can only supplement it and cited **Raghunath Rai Bareja and another v. Punjab National Bank and others**, (2007) 2 SCC 230 at 241-242, paragraphs 29-33. He also G relied upon the principle that an executing Court cannot go behind a decree or add to it and that since future interest was expressly not provided for in his case, the SAT was in error in going behind the order dated 21.7.2009. He also argued that *casus omissus* cannot be filled by Courts, but only by the Legislature.

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7. Shri Arvind Datar, on the other hand, argued that in the order dated 21.7.2009, the debarment for a period of 7 years was without prejudice to SEBI's right to enforce disgorgement, which would necessarily include future interest. He added that Section 28A belongs to the realm of procedural law, and when Section 220(2) of the Income Tax Act gets attracted, because of Section 28A, such interest belonging to the realm of procedural law would necessarily be payable. Even otherwise, according to learned counsel, interest is payable in equity. Considering the larger public interest of disgorgement amounts and penalty amounts not being paid within the stipulated time, interest would certainly attach as public interest demands that such amounts be made payable to the public exchequer. He referred to Section 15JA of the SEBI Act, which makes it clear that all amounts realized by way of penalties by SEBI are to be credited to the Consolidated Fund of India and would, therefore, be public monies which can be utilized as such by the Government. He cited a number of judgments to show that even though there may be no direct statutory provision in the SEBI Act enabling SEBI to charge interest for the past period, interest may yet be awarded in equity. He also referred to various authorities on the law of restitution, to submit that interest is payable under this law because the defendant has received a benefit unjustly, which the defendant is not entitled to, and should, therefore, pay for the use of this unjust benefit by way of interest.

8. Having heard learned counsel for both sides, it is first important to underline the genesis of Section 28A. The said Section was first inserted by an ordinance dated 18.7.2013. As it then stood, Section 28A did not refer to Section 220 of the Income Tax Act but only referred to Sections 221 to 227, 228A and 229, 231 and 232 along with the Second and Third schedules to the said Act. Since this ordinance lapsed, a second ordinance was promulgated on 16.9.2013, re-enacting the same provision. The second ordinance also lapsed and a third ordinance dated 28.3.2014 was then promulgated with the same Section.

9. However, the Bill which led to the amendment of the SEBI Act, and which inserted Section 28A, eventually included Section 220 of the Income Tax Act as well.[1]

[1] Section 220 is an important provision, in that under sub-section (2) thereof, interest is leviable in the circumstances mentioned therein.

A 10. Ultimately, Section 28A was enacted by the Securities Laws (Amendment) Act of 2014 by which this Section was brought into force, with effect from the date of the first ordinance i.e. with effect from 18.7.2013.

Section 28A reads as follows:

B **"28A. Recovery of Amounts.**

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

(*a*) attachment and sale of the person's movable property;

(*b*) attachment of the person's bank accounts;

(*c*) attachment and sale of the person's immovable property;

E (*d*) arrest of the person and his detention in prison;

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

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

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

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

(2)The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (*1*).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (*1*), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(*4*) For the purposes of sub-sections (*1*), (*2*) and (*3*), the expression "Recovery Officer" means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer."

11. A number of judgments have held that interest belongs to the field of substantive and not procedural law. Foremost among these judgments is **J.K. Synthetics Ltd.** v. **Commercial Taxes Officer** (1994) 4 SCC 276 at 291, in which a Constitution Bench held:

"16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed

A and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See *Whitney* v. *IRC* [1926 AC 37 : 42 TLR 58], *CIT* v. *Mahaliram Ramjidas* [(1940) 8 ITR 442 : AIR 1940 PC 124 : 67 IA 239], *India United Mills Ltd.* v. *Commissioner of Excess Profits Tax, Bombay* [(1955) 1 SCR 810 : AIR 1955 SC 79 : (1955) 27 ITR 20] and *Gursahai Saigal* v. *CIT, Punjab* [(1963) 3 SCR 893 : AIR 1963 SC 1062 : (1963) 48 ITR 1]). But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount. (See *Bengal Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji* [AIR 1938 PC 67 : 65 IA 66 : 67 CLJ 153] and *Union of India* v. *A.L. Rallia Ram* [(1964) 3 SCR 164, 185-90 : AIR 1963 SC 1685]). Our attention was, however, drawn by Mr. Sen to two cases. Even in those cases, *CIT* v. *M. Chandra Sekhar* [(1985) 1 SCC 283 : 1985 SCC (Tax) 85 : (1985) 151 ITR 433] and *Central Provinces Manganese Ore Co. Ltd.* v. *CIT* [(1986) 3 SCC 461 : 1986 SCC (Tax) 601 : (1986) 160 ITR 961], all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the Legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any

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provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the *Associated Cement Co. case* [(1981) 4 SCC 578 : 1982 SCC (Tax) 3 : (1981) 48 STC 466] , that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the Legislature." A B

12. This judgment has been repeatedly followed and the law reiterated in a number of judgments. We need refer to only one such judgment, which is **India Carbon Limited** v. **The State of Assam**, (1997) 6 SCC 479 at 482-483. C

13. We were also referred to **Purbanchal Cables & Conductors Pvt. Ltd.** v. **Assam State Electricity Board & Another**, (2012) 7 SCC 462 at 484, where this Court dealt with the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, as follows:- D

"51. There is no doubt about the fact that the Act is a substantive law as vested rights of entitlement to a higher rate of interest in case of delayed payment accrues in favour of the supplier and a corresponding liability is imposed on the buyer. This Court, time and again, has observed that any substantive law shall operate prospectively unless retrospective operation is clearly made out in the language of the statute. Only a procedural or declaratory law operates retrospectively as there is no vested right in procedure. E F

52. In the absence of any express legislative intendment of the retrospective application of the Act, and by virtue of the fact that the Act creates a new liability of a high rate of interest against the buyer, the Act cannot be construed to have retrospective effect. Since the Act envisages that the supplier has an accrued right to claim a higher rate of interest in terms of the Act, the same can only be said to accrue for sale agreements after the date of commencement of the Act i.e. 23-9-1992 and not any time prior." G

14. However, Shri Arvind Datar brought to our notice several judgments in which interest in equity could be awarded if the fact H

A circumstance so warranted. The first of these judgments is **Clariant International Limited and Another v. Securities and Exchange Board of India,** (2004) 8 SCC 524 at 539, where after noticing that Regulation 44 of the 1997 SEBI Regulations was substituted with effect from September 2002 so that interest could be statutorily charged, this Court stated that interest could be awarded on equitable considerations as follows:

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> "30. Interest can be awarded in terms of an agreement or statutory provisions. It can also be awarded by reason of usage or trade having the force of law or on equitable considerations. Interest cannot be awarded by way of damages except in cases where money due is wrongfully withheld and there are equitable grounds therefore, for which a written demand is mandatory."

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15. He also referred us to **Tahazhathe Purayil Sarabi & Ors.** v. **Union of India & Another,** (2009) 7 SCC 372 at 380-381, in the context of death caused by a rail accident. The Court noticed that the Railway Acts do not grant any substantive power to levy interest, but went on to state that interest could be awarded on principles contained in Section 3 of the Interest Act, 1978 and Section 34 of the Code of Civil Procedure. The Court held:

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> "30. As we have indicated hereinbefore, when there is no specific provision for grant of interest on any amount due, the court and even tribunals have been held to be entitled to award interest in their discretion, under the provisions of Section 3 of the Interest Act and Section 34 of the Civil Procedure Code.
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> 35. Though, both the two aforesaid cases were in relation to awards having been made under the Arbitration Act, a principle has been enunciated that in cases where a money award is made, the principles of Section 34 of the Civil Procedure Code and Section 3 of the Interest Act could be invoked to award interest from the date of the award till the realisation thereof."

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Shri Datar then referred to **Ferro Alloys Corpn. Ltd. v. A.P. State Electricity Board and another,** (1993) Supp (4) SCC 136 at 178-181, paragraphs 128-133 where, according to him, the Court upheld interest payable in equity as a principle of law, though on the facts of that case,

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equity was not attracted so as to enable electricity boards to charge interest on security deposits. He also sought to rely upon **NTPC Ltd.** v. **M.P. SEB** (2011) 15 SCC 580, in which interest was not awarded on equitable grounds only because, on facts, it was held that it cannot be said that NTPC held on to excess amounts in an unjust way, so as to justify the claim of electricity boards for interest on these amounts. Shri Datar also cited **South Eastern Coalfields Ltd.** v. **State of M.P. and others,** (2003) 8 SCC 648, **Indian Council For Enviro-Legal Action** v. **Union of India,** (2011) 8 SCC 161 and **Union of India** v. **Tata Chemicals Limited**, (2014) 6 SCC 335 at 350, paragraphs 38-39 to buttress his submission that interest can always be granted on equitable considerations.

16. We are of the view that an examination of the Interest Act, 1978 would clearly establish that interest can be granted in equity for causes of action from the date on which such cause of action arose till the date of institution of proceedings.

17. Section 1 of the old Interest Act, 1839 read as follows:-

> **"Power of Court to allow interest.** It is, therefore, hereby enacted that, upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time; or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment: provided that interest shall be payable in all cases in which it is now payable by law."

18. The judgment of the Privy Council in **Bengal Nagur Railway Co. Ltd.** v. **Ruttanji Ramji and others**, AIR 1938 PC 67 at 70, while referring to Section 1 proviso held:

> "The Interest Act however contains a proviso that "interest shall be payable in all cases in which it is now payable by law". This proviso applies to cases in which the Court of equity exercises jurisdiction to allow interest. As observed by Lord Tomlin in *Maine*

A *and New Brunswick Electrical Power Co.* v. *Hart* (1929 AC 631):

> "In order to invoke a rule of equity, it is necessary in the first instance to establish the existence of a state of circumstances which attracts the equitable jurisdiction, as, for example, the
B non-performance of a contract of which equity can give specific performance."

19. This view of the law has since been followed in a number of judgments. In **Satinder Singh** v. **Amrao Singh,** (1961) 3 SCR 676 at 697, this Court held as under:

C "The power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to s. 1. This question was considered by the Privy Council in *Bengal-Nagpur Railway Co. Ltd.* v. *Ruttanji Ramji* [65 IA 66 SC : AIR 1938 PC 67]. Referring to the proviso to s. 1 of the Act the Privy
D Council observed "this proviso applies to cases in which the Court of equity exercises its jurisdiction to allow interest".

20. In **Hirachand Kothari** v. **State of Rajasthan,** 1985 Supp SCC 17 at 25-26, this Court held:

E "It was further held in *Amrao Singh case* [AIR 1961 SC 908 : (1961) 3 SCR 676 : (1961) 2 SCJ 372] that the Court had ample power under proviso to Section 1 of the Interest Act, 1839 to award interest on equitable grounds."

21. The 63rd Law Commission on the Interest Act, 1839 went into the aspect of grant of interest from the date of cause of action till the
F date of institution of proceedings in great detail. After setting out Section 1, together with the proviso, of the 1839 Act, the Law Commission recommended in paragraph 4.4A as under:

> "4.4A. But, in general, proceedings, other than suits would be outside the section. We are of the view that the section should be
G widened to cover proceedings other than suits. The discretion to award interest is as much needed in relation to other proceedings, as in relation to an ordinary civil suit. We are recommending an amendment of the section for the purpose."

22. After examining the proviso to Section 1, the Law Commission
H found that:

"7.2 Broadly speaking, courts have, in cases decided in reliance on the proviso to section 1, awarded interest where the equity of the case so required. For example, where immovable property is purchased or acquired, and the price or compensation (as the case may be) has not yet been paid, there is readiness to award interest. Same is the position where there is a fiduciary relationship.

7.3. The Supreme Court has observed[2], with reference to the words "interest shall be payable in all cases in which it is now payable by law", occurring in the proviso to section 1, that the proviso applies to cases in which the courts of Equity exercised jurisdiction to allow interest.

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7.5. A similar approach is illustrated by a Nagpur case[3], where it was stated:

"We are of opinion that we are exercising *equitable powers* in maintenance cases where a charge has been created by a decree."

XXX XXX XXX

7.8. Having carefully considered this aspect of the matter, we have come to the conclusion that it would be just and fair to provide for certain particular situations, without, of course, impairing the generality of the power preserved by the proviso. A few important situations are, accordingly, considered below.

XXX XXX XXX

7.15. Interest may also be recovered in equity in some other cases; for example, where a particular relationship exists between the creditor and the debtor, such as, mortgagor and mortgagee, obligor and obligee on a bond, executor and beneficiary, principal and agent, principal and surety, trustee and *cestui que trust*, vendor and purchaser, or in the case of arrears and annuities. These cases need not be provided for by specific provisions. The general provision in the proviso to section 1 will continue to take care of them.

[2] **Mahabir Prasad** v. **Durga Dutt**, (1961) 3 SCR 639: AIR 1961 SC 990.
[3] **Sitaram** v. **Wamurad**, AIR 1948 Nagpur 49, 50 para 6.

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7.17 This concludes consideration of points of substance as to the power to award interest under the proviso. We now deal with a verbal point arising from the words "now payable by law". We are of the view that the word "now" should be omitted from the B proviso. The word is confusing, and, from the point of view of drafting, inaccurate. We, therefore, recommend its deletion."

We also recommend that the words "enactment or other rule of law or usage having the force of law" should be substituted for the word "law", in this part of the proviso."

C (Emphasis supplied)

23. Parliament accepted the recommendation of the Law Commission and enacted the Interest Act of 1978.

Section 2(a) reads as under:

D **"Section 2 – Definitions**

In this Act, unless the context otherwise requires,-

(a) "court" includes a tribunal and an arbitrator;"

The Act has, therefore, been expanded to cover not merely civil E courts but Tribunals as well.

24. We are directly concerned with Section 4 of the Act which reads as follows:-

"Section 4 - Interest payable under certain enactments

F (1) Notwithstanding anything contained in section 3, interest shall be payable in all cases in which it is payable by virtue of any enactment or other rule of law or usage having the force of law.

(2) Notwithstanding as aforesaid, and without prejudice to the generality of the provisions of sub-section (1), the court shall, in G each of the following cases, allow interest from the date specified below to the date of institution of the proceedings at such rate as the court may consider reasonable, unless the court is satisfied that there are special reasons why interest should not be allowed, namely:-

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(a) where money or other property has been deposited as security for the performance of an obligation imposed by law or contract, from the date of the deposit;

(b) where the obligation to pay money or restore any property arises by virtue of a fiduciary relationship, from the date of the cause of action;

(c) where money or other property is obtained or retained by fraud, from the date of the cause of action;

(d) where the claim is for dower or maintenance, from the date of the cause of action."

By Section 6(1), the Interest Act of 1839 was repealed.

25. This Court in **Life Insurance Corporation of India and Another** v. **Smt. S. Sindhu,** (2006) 5 SCC 258 at 263-264, while considering the changes made by the Interest Act, 1978, stated as follows:

"15. Even assuming that interest can be awarded on grounds of equity, it can be awarded only on the reduced sum to be quantified and paid from the date when it becomes due under the policy (that is on the date of death of the assured) and not from any earlier date. We do not propose to examine the question as to whether interest can be awarded at all, on equitable grounds, in view of the enactment of the Interest Act, 1978 making a significant departure from the old Interest Act (32 of 1839). The present Act does not contain the following provision contained in the proviso to Section 1 of the old Act: "interest shall be payable in all cases in which it is now payable by law". How far the decisions of this Court in *Satinder Singh* v. *Amrao Singh* [(1961) 3 SCR 676 : AIR 1961 SC 908] and *Hirachand Kothari* v. *State of Rajasthan* [1985 Supp SCC 17] and the decision of the Privy Council in *Bengal Nagpur Rly. Co. Ltd.* v. *Ruttanji Ranji* [(1937-38) 65 IA 66 : AIR 1938 PC 67] holding that interest can be awarded on equitable grounds, all rendered with reference to the said proviso to Section 1 of the old Interest Act (Act of 1839), will be useful to interpret the provisions of the new Act (Act of 1978) may require detailed examination in an appropriate case."

26. The important question which has to be answered in the present case is as to whether the expression "other rule of law" contained in

A Section 4(1) would enable the Court to continue with the position as it was under the proviso to Section 1 of the 1839 Act – namely, whether this expression would subsume interest being awarded in equity.

27. We find that a learned single Judge of the Bombay High Court has, in **Prabhavati Ramgarib B. v. Divisional Railway Manager**, B (2010) 4 Mah LJ 691 at 702-703, specifically held as follows:

> "35. The petitioner's claim for interest would fall within the ambit of the words "or other rule of law" in section 4(1). The other rule of law being on grounds of equity. Even under the Interest Act, 1839, interest was payable under the proviso to section 1 which C reads: "Provided that interest shall be payable in all cases in which it is now payable by law." Interest was payable by law under that Act in equity. This was recognized in a series of judgments. For instance in *Trojan and Co.* v. *Nagappa Chettiar*, 1953 SCR 789, the Supreme Court, in paragraph 23, observed that it was well settled that interest is allowed by a Court of equity in the case of D money obtained or retained by fraud. Interest was, therefore, awarded in equity.
>
> 36. The position is not different under the Interest Act, 1978. The words, in section 4(1) "or other rule of law" would include interest payable in equity. In fact, interest has been awarded by E our Courts in equity as well as on principles analogous to section 34 of the Code of Civil Procedure on the basis that section 34 is based upon principles of justice, equity and good conscience."

28. We agree with the aforesaid statement of the law. It is clear, therefore, that the Interest Act of 1978 would enable Tribunals such as F the SAT to award interest from the date on which the cause of action arose till the date of commencement of proceedings for recovery of such interest in equity. The present is a case where interest would be payable in equity for the reason that all penalties collected by SEBI would be credited to the Consolidated Fund under Section 15JA of the G SEBI Act. There is no greater equity than such money being used for public purposes. Deprivation of the use of such money would, therefore, sound in equity. This being the case, it is clear that, despite the fact that Section 28A belongs to the realm of procedural law and would ordinarily be retrospective, when it seeks to levy interest, which belongs to the realm of substantive law, the Tribunal is correct in stating that such interest H would be chargeable under Section 28A read with Section 220(2) of the

Income Tax Act only prospectively.[4] However, since it has not taken into account the Interest Act, 1978 at all, we set aside the Tribunal's findings that no interest could be charged from the date on which penalty became due. The Civil Appeals 10410-10412 of 2017 are allowed insofar as the penalty cases are concerned.

29. However, going to the facts in Civil Appeal No. 5677 of 2017, we feel that Shri Subramonium Prasad is on firm ground. He has pointed out similar orders that have been passed by the same whole-time member of SEBI. Thus, in **Mr. Dhaval A. Mehta** v. **Securities and Exchange Board of India**, the order passed by the same whole-time member reads as follows:

> "11... Accordingly, in exercise of powers conferred upon me under Section 19 read with Sections 11, 11(4) and 11B of the SEBI Act, 1992 and after taking into account the period of prohibition already undergone by the Noticee pursuant to the interim Order, I hereby direct that the Noticee, Mr. Dhaval A. Mehta (PAN No. ALKPM 2611G): (a) to disgorge the above unlawful gain of Rs. 72 lakhs and interest thereon @ 10% from the date of listing (August 12, 2005) of the IDFC IPO till the date of actual disgorgement, within 45 days of passing of this Order, by remitting the amount by a crossed demand draft in favour of SEBI, (b) be restrained from buying, selling or dealing in securities market in whatsoever manner or accessing securities market in any manner, directly or indirectly, for a further period of 2 years from the date of issuance of this Order. In case the amount is not disgorged within the specified time, the Noticee shall be restrained from buying, selling or dealing in securities market in whatsoever manner or accessing securities market, directly or indirectly, for an additional period of 5 years without prejudice to SEBI's right to enforce disgorgement."
>
> (Emphasis supplied)

30. Similarly, in **Netanand Bhambu**'s case, by an order dated 7.5.2009, the same gentleman passed the following order:

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[4] The same 2014 Amendment which introduced Section 28A, with effect from 18.7.2013, also introduced Section 15JB retrospectively, with effect from 20.4.2007. This is a positive indication that Section 28A was intended only to have prospective application. It must be clarified, however, that interest is chargeable only with effect from 25.8.2014, as Section 220 was not referred to, while enacting Section 28A, in any of the three Ordinances preceding the Amendment Act of 2014.

A "14...b. Mr. Netanand Bhambu (PAN: ACVPBB753A), Netanand Surajram Bhambu-HUF (PAN: AADHN2778P), Anand Netanand Choudhary-HUF (PAN: AAEHA7368H), Ms. Sarvani Choudhary (PAN: ACSPC7691P) and Ms. Vinita A. Choudhary (PAN: AEFPC1269F) shall disgorge the unlawful gain, as indicated in column 11 of the table under Para 8 above, against their names, totaling to Rs. 9,58,950 (Rupees nine lakhs fifty eight thousand nine hundred and fifty only). They shall also pay the interest on this unlawful gain at the rate of 10% (ten percent) per annum from the date of listing of the IPOs of Nandan and FCS, till the date of payment. The noticees shall disgorge the amount within 45 (forty five) days from the date of this order by way of crossed demand draft drawn in favor of "Securities and Exchange Board of India", payable at Mumbai. In case the aforesaid amount is not paid within the specified time, the noticees shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of five years, without prejudice to SEBI's right to enforce disgorgement."

(Emphasis supplied)

31. On 10.5.2010, in **Chandrakant Amratlal Parekh** v. **Securities and Exchange Board of India,** the same whole-time member passed the following order:

"12 a) Chandrakant Amratlal Parekh (PAN: AHXPP5708J) be restrained from buying, selling or dealing in the securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this Order; and

b) Chandrakant Amratlal Parekh shall disgorge the unlawful gain of Rs.24,29,340 (Rupees twenty four lakhs twenty nine thousand three hundred and forty only). He shall also pay the interest on this unlawful gain at the rate of 6% (six percent) per annum for 4 ½ years (October 2005 – April 2010, i.e. from the date of listing of the IPO of Suzlon till this Order), amounting to Rs.6,55,922. He shall thus disgorge a total amount of Rs.30,85,262 within 45 (forty five) days from the date of this Order by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai. In case the aforesaid amount

is not paid within the specified time, he shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of seven years without prejudice to SEBI's right to enforce disgorgement along with further interest till actual payment is made."

(Emphasis supplied)

32. All the aforesaid orders show that the said whole-time member was fully cognizant of his power to grant future interest which he did in all the aforesaid cases. In fact, in the last mentioned case, whose facts are very similar to the facts of the present case, the order was passed "without prejudice to SEBI's right to enforce disgorgement along with further interest till actual payment is made." The words "along with further interest till actual payment is made" are conspicuous by their absence in the order dated 21.7.2009. In the circumstances, we are of the view that Shri Subramonium Prasad is correct in his submission. If there is default in payment of Rs. 6 crores within the stipulated time, no future interest is payable inasmuch as a much severer penalty of being debarred from the market for 7 years was instead imposed. We have noticed how the appellant has, in fact, suffered the aforesaid debarment and how he made payment of Rs. 6 crores on 6.1.2014 from the sale of shares. The SAT was incorrect in stating that the order dated 21.7.2009 contained an obligation to pay interest at the rate of 12% per annum on the unlawful gain of Rs.4.05 crores till payment. We, therefore, allow C.A. 5677 of 2017 and set aside the SAT's judgment in this appeal as well.

Kalpana K. Tripathy

Appeals disposed of.