REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2595 OF 2013

SECURITIES AND EXCHANGE BOARD OF INDIA … Appellant(s)

Versus

SHRI KANAIYALAL BALDEVBHAI PATEL … Respondent (s)

With

CIVIL APPEAL NO. 2596 OF 2013
[SECURITIES AND EXCHANGE BOARD OF INDIA V. SHRI DIPAK PATEL]

CIVIL APPEAL NO. 2666 OF 2013
[SECURITIES AND EXCHANGE BOARD OF INDIA V. SUJIT KARKERA AND ORS.]

CIVIL APPEAL NO. 5829 OF 2014
[Pooja Menghani v. SECURITIES AND EXCHANGE BOARD OF INDIA]

CIVIL APPEAL NO. 11195-11196 OF 2014
[Vibha Sharma and Anr. V. SECURITIES AND EXCHANGE BOARD OF INDIA]

JUDGMENT

N. V. RAMANA J.

1. The important question of law, arising in these batch of cases, being similar and the facts involved being largely comparable, all the appeals were heard together and are being decided by this common judgment.

2. This case revolves round the legality of 'non-intermediary front-running' in security market under the SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 [*hereinafter* '**FUTP 2003**' *for brevity*]. As SEBI Appellate Tribunal [*hereinafter* '**SAT**' *for brevity*] has taken two different views in different cases appealed herein, Securities and Exchange Board of India [*herein after* '***SEBI***' *for brevity*] as well as private individuals, who are alleged to have been involved in front running, are in appeal before us.

3. A brief factual background would be necessary before we deal with the question of law that has arisen in this case instant. Broadly to understand the issue at hand, the facts in **CIVIL APPEAL NO. 2595 OF 2013 AND 2596 OF 2013 (related cases)** may be stated in brief. SEBI investigated into the activities of Shri Kanaiyalal Baldevbhai Patel [*herein after* '**KB**' *for brevity*] an individual trader. During the investigation, it was found that KB was putting orders ahead of orders placed by Passport India Investment (Mauritius) Ltd. [*herein after* '**PII**' *for brevity*]. One Dipak Patel, was the portfolio manager of PII, who also happens to be a cousin of KB and one Shri Anandkumar Baldevbhai Patel [*herein after* '**AB**' *for brevity*]. It was alleged that Dipak Patel provided information to KB and AB regarding forthcoming trading activity of the PII. It is to be noted that trades were executed using the telephone number registered in the name of AB at the common residential address of KB and AB. Taking advantage of the information received from Dipak Patel, KB had indulged in trading before the PII and consequently squared off the position when the order of PII were placed in the market. It was estimated that the KB earned a total profit of Rs. 1,56,32,364.01/-

from the alleged trades. This Court in **CIVIL APPEAL NO. 2594 OF 2013**, by order dated 05.04.2017, while remanding the matter back to the Appellate Tribunal with respect to AB, held that there is no finding or conclusion recorded with respect to AB in the following manner-

> Learned counsel for the appellant (SEBI) has vehemently urged that such findings are recorded in the Adjudication Order and the said order has merged with the order of the learned Appellate Tribunal. We disagree with the aforesaid contention urged by the learned counsel for the appellant. In the appeal(s) filed by the aggrieved person(s) against the order(s) of the Adjudicating Officer, the learned Appellate Tribunal was expected to record its own independent findings and arrive at its own conclusions for holding the respondent liable for the penalty imposed. It seems that the learned Appellate Tribunal has proceeded on the basis that the case of the respondent is same and similar to the case of Kanaiyalal Baldev Patel and Dipak Patel which, evidently, is not.

4. In **CIVIL APPEAL NO.2666 OF 2013,** Sujit Karkera and Group were trading through B.P. Equity Pvt. Ltd. SEBI alleges that they were trading ahead of the trades of CITIGROUP Global Markets Mauritius Pvt. Ltd.(CGMMPL) on the basis of information provided by Suresh Menon (trader of CGMMPL) who was in possession of the orders of CGMMPL for 6 scrip days. SEBI in its investigation had found that there were several calls made between Suresh Menon and his family friend Sujit Karkera during this time period of 6 days. In these telephonic conversations, it was alleged that there was exchange of information related to scrip name, order quantity, order timing, and order price of the orders placed by Suresh Menon for CGMMPL. Sujit Karkera utilized the information provided by Suresh Menon to trade thereby making huge profits.

5. In **CIVIL APPEAL NO.11195-96 OF 2014,** Jitendra Kumar Sharma was an equity dealer employed by the Central Bank of India. His responsibilities entailed preparation of charts for the chief equity dealer and placing of orders based on instructions of the chief equity dealer. Vibha Sharma, who is the wife of Jitendra Kumar Sharma,

was a regular trader in the stock market and this fact was disclosed to Central Bank of India as a good practice of making disclosure to the employer. It is the allegation of SEBI that Vibha Sharma engaged herself in front running Central Bank of India's large scale orders allegedly with the knowledge obtained from her husband. Further the SEBI had alleged that Vibha Sharma's trades substantially matched with the trades of the bank during the relevant period thereby violating regulations 3(a), (b), (c), (d) and 4(1) of FUTP 2003.

6. In **CIVIL APPEAL NO. 5829 OF 2014**, facts of the case are that appellant used to trade in scrips of four companies namely Amtek Auto Ltd., Amtek India Ltd., Monnet Ispat Ltd. and Ahmednagar Forgings Ltd. through Religare Securities Ltd., ISF Securities Ltd., India Infoline Securities Ltd. and Narayan Securities Private Ltd. It is alleged against the appellant that, she had bought and sold equal quantities of shares in large volume in these four scrips by utilizing the information provided by Deepak Khurana who was privy to certain confidential information of Religare. SEBI conducted an investigation in the trading of appellant from June 1, 2008 to

January 12, 2009. During the investigation, SEBI noticed irregularities in her dealings in the scrips of above mentioned four companies. A general trend of trading was noticed which further revealed that the appellant was indulged in Front Running. It was found that the appellant's sell orders (quantity and price) substantially matched with the buy orders (quantity and price) of other traders and that her sell order limit price was always above the sell LTP but was same or very close to the buy limit price of other traders. Moreover the selling price, quoted by her, was close to the highest price reached on market on those days.

7. With this factual background, a reference needs to be made to the scheme of FUTP 2003. SEBI, by a notification under Section 30 of the SEBI Act, 1992, dated 17.07.2003, formulated FUTP 2003.

8. Indisputably, the object and purpose of this regulation (FUTP 2003) is to safeguard the investing public and honest businessmen. The aim is to prevent exploitation of the public by fraudulent schemes and worthless securities through misrepresentation, to place adequate and true information before the investor, to protect honest

enterprises seeking capital by accurate disclosure, to prevent exploitation against the competition afforded by dishonest securities offered to the public and to restore the confidence of the prospective investor in his ability to select sound securities.

9. FUTP 2003 has three chapters, namely 'preliminary', 'prohibition of fraudulent and unfair trade practices relating to securities market' and 'investigation'. Regulation 1 contains the short title and commencement. Regulation 2 consists of certain definitions. Clause (b) of regulation 2 defines 'dealing in securities' which includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the SEBI Act. Clause (c) of regulation 2 defines fraud in the following manner-

> c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a

person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation.

(8) a false statement made without reasonable ground for believing it to be true.

(9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And "fraudulent" shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to

(a) the economic policy of the government

(b) the economic situation of the country

(c) trends in the securities market or

(d) any other matter of a like nature

whether such comments are made in public or in private

10. Regulation 3 prohibits certain dealings in securities, whereas regulation 4 prohibits manipulative, fraudulent and unfair practices. Regulation 5 deals with the power of the board to order investigation. Regulation 6 elaborates on the power of the investigating authority.

11. It is important to note that SEBI has amended the regulation, a number of times, to keep up with the technology and times. A reference may be made to the amendments carried out to the regulation -

Table No.1- *comparison of relevant provisions*

FUTP 1995	FUTP 2003 (APPLICABLE REGULATION)	AMENDMENT OF 2013

REGULATION 2 (C) (DEFINITIONS)	"Fraud" includes any of the following acts committed by a party to ac contract, or with his connivance, or by his agent, with intent to decive another party thereto or his agent, or to induce him to enter into the contract:- (1.) The suggestion, as to a fact, of that which is not true, by one who does not believe it to be true; (2.) The active concealment of a fact by one having knowledge or belief of the fact; (3.) A promise made without any intention of performing it; (4.) Any other act fitted to deceive; (5.) Any such act or omission as the law secially declares to be fraudulent; (6.) And "fraudulent" shall be construed accordingly	**REGULATION 2 (C) (DEFINITIONS)**	"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include- (1) A knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment; (2) A suggestion as to a fact which is not true by one who does not believe it to be true; (3) An active concealment of a fact by a person having knowledge or belief of the fact; (4) A promise made without any intention of performing it; (5) A representation made in a reckless and careless manner whether it be true or false; (6) Any such act or omission as any other law specifically declares to be fraudulent, (7) Deceptive behavior by a person depriving another or informed consent or full participation, (8) A false statement made without reasonable ground for believing it to be true. (9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other then the market price.	No amendments to Section 2(c)

REGULATION 3 (Prohibition of certain dealings in securities)	No person shall buy, sell or otherwise deal in securities in a fraudulent manner.	**REGULATION 3 (Prohibition of certain dealings in securities)**	**Prohibition of certain dealings in securities** No person shall directly or indirectly- (a)buy, sell or otherwise deal in securities in a fraudulent manner; (b)use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under; (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange; (d)engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.	No amendments to Section 3(c)

REGULATION 4 (PROHIBITION AGAINST MARKET MANIPULATIONS)	No person shall- (a) Effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; (b) Indulge in any act, which is calculated to create a false or misleading appearance of trading on securities market; (c) Indulge in any act which in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) Enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities; (e) Pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole objection of inflating, depressing, or causing fluctuations in the market price of securities.	**REGULATION 4 (PROHIBITION AGAINST MANIPULATIVE, FRAUDULENT AND UNFAIR TRADE PRACTICES)**	(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. (2) Dealing in secuties shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:- (a.) Indulging in a act which creates false or misleading appearance of trading in the securities market; (b.) Dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss; … (e.) Any act or omission amounting to manipulation of the price of a security; … (q.) **An intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract**.	**Explanation**.- For the purposes of this sub-registration, for the removal of doubt, it is clarified that the acts or omissions listed in this sub-regulation are not exhaustive and that an act or omission is prohibited if it falls within the purview of regulation 3 notwithstanding that it is not included in this sub-regulation or is described as being committed only by a certain category or persons in this sub-regulation'

12. Although aforesaid amendments are made to the regulation, yet such amendments sometimes fail to live up to human ingenuity and growth of technology. Usurpation of reprehensible profits by fraudsters, who are not entitled to them, must be made answerable

by this Court as per established tenants of rule of law without leaving incentives for fraudulent practices, based on creativity of disingenuous, to survive the legal gambits. Before embarking upon the necessary discussions, I would like to record my views on a somewhat unclear picture that emerge from undefined concepts contained in the Act and the Regulations framed there under, a comprehensive legislation can bring about more clarity and certainty on these aspects.

13. Submissions of Mr. K. T. S. Tulsi, learned senior advocate, appearing on behalf of the appellant in CIVIL APPEAL NO. 5829 OF 2014.

- The finding with regard to the appellant being guilty of fraud under regulations 3 and 4 of FUTP 2003 is contrary to the definition of fraud as contained in Regulation 2(1)(c) of the said Regulations.
- Sub-clauses (i), (j), (l), (m), (p), (o) and (q) of clause (2) of regulation 4 expressly make themselves applicable only to the case of intermediaries and not to individual buyers or sellers.

The rest of the sub-clauses being part of the scheme which seeks to regulate the conduct of intermediaries, will be deemed on their face, to pertain to activities undertaken by intermediaries. Thus, the whole of Regulation 4 seems to be inapplicable to the case of the applicant.

Submissions of Mr. Arvind P. Datar, learned senior advocate, appearing on behalf of SEBI-

- That the ambit of FUTP regulations has been substantially increased from 1995 to 2003.
- That inclusion of specific prohibition of front-running with respect to intermediaries under Regulation 4 (2)(q) should not whittle the scope of regulation 4 of the FUTP 2003.
- Moreover, '*Expressio Unius Est Exclusio Alterius*' may not be a safe principle to oust the liability for non-intermediary front-running.

14. Other learned counsels appearing for parties have either adopted the submissions made by the above named advocates or

provided alternative reasons for the conclusions reached by the abovementioned advocates.

15. The question which has arisen for our consideration is whether 'front running by non-intermediary' is a prohibited practice under regulations 3 (a), (b), (c) and (d) and 4(1) of FUTP 2003?

16. As this case involves practice of 'front-running' in security market, a reference may be made to various definitions and meanings of front-running-

Major Law Lexicon by P. Ramanatha Aiyar (4th Ed. (2010)	**FRONT RUNNING**.- Buying or selling securities ahead of a large order so as to benefit from the subsequent price move. This denotes persons dealing in the market, knowing that a large transaction will take place in the near future and the parties are likely to move in their favour. The illegal private trading by a broker or market maker who has prior knowledge of a forthcoming large

movement in prices

The Black's Law dictionary (9th Ed.)	**Front running**, n. Securities. A broker's or analyst's use of non-public information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in many ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares.
Nancy Folbre[1]	In the world of financial trading, a front-runner is someone who gains an unfair advantage with inside information

[1] **Nancy Folbre, The Front-Runners of Wall Street, 07.04.2014 (The New York Times).**

17. SEBI has defined front-running in one of its circular[2] in the following manner-

> **Front-running**; for the purpose of this circular, front running means usage of non public information to directly or indirectly, buy or sell securities or enter into options or futures contracts, in advance of a substantial order, on an impending transaction, in the same or related securities or futures or options contracts, in anticipation that when the information becomes public; the price of such securities or contracts may change.

18. Further a consultative paper[3] issued by SEBI had grouped front running to be an undesirable manipulative practice in the following manner-

> 'However, SEBI Act does not prescribe or specify as to which practice would be considered to be

[2] **Circular CIR/EFD/1/2012, dated 25.05.2012.**
[3] **Consultative Paper issued by SEBI, pursuant to a Press release No. 34/95 dated March 16, 1995.**

fraudulent and unfair trade practices. While the fraudulent and unfair trade practices are commonly understood, it would be desirable if these practices are defined specifically.

..this will bring about clarity among the intermediaries, issuers, investors and other connected persons in the securities markets about the practices that are prohibited, fraudulent and unfair.

…**The draft defines fraudulent and unfair trade practices. These regulations seek to cover market manipulation on the stock exchanges also. Practices like wash sales, front-running, price rigging, artificial increasing or decreasing the prices of the securities are brought within the ambit of the regulations'**

(**emphasis added**)

19. In actuality, front-running is more complicated than these definitions suggest. It comprises of at least three forms of conduct. They are: (1) trading by third parties who are tipped on an impending block trade ("tippee" trading); (2) transactions in which the owner or purchaser of the block trade himself engages in the offsetting futures or options transaction as a means of "hedging" against price fluctuations caused by the block transaction ("self-front-running"); and (3) transactions where a intermediary with knowledge of an impending customer block order trades ahead of that order for the intermediary's own profit ("trading ahead"). In this batch of appeals we are concerned with the first and the last types of trade i.e., tippee trading and trading ahead. It is important to note that trading ahead has been explicitly recognized under regulation 4(2)(q) of FUTP 2003.

20. A word on interpretation would be appropriate before I take up legal aspects of this case. Mr. K.T.S. Tulsi, learned senior counsel, states that penal laws have to be strictly construed. He places reliance on ***Govind Impex Pvt. Ltd. v. Income Tax Department***[4],

[4] **(2011) 1 SCC 529.**

Krishi Utpadan Mandi Samiti v. Pilibhit Pantnagar Beej Ltd.[5] Although strict construction is well established principle when interpreting a penal provision, but such interpretation should not result in incongruence when compared with the purpose of the regulation. In ***SEBI v. Kishore R. Ajmera***, this Court observed that-

> the SEBI Act and the Regulations framed there under are intended to protect the interests of investors in the Securities Market which has seen substantial growth in tune with the parallel developments in the economy. Investors' confidence in the Capital/Securities Market is a reflection of the effectiveness of the regulatory mechanism in force. All such measures are intended to preempt manipulative trading and check all kinds of impermissible conduct in order to boost the investors' confidence in the Capital market. The primary purpose of the statutory enactments is to provide an environment conductive to increased participation and investment in the securities market which

[5] **(2004) 1 SCC 391.**

> is vital to the growth and development of the economy. The provisions of the SEBI Act and the Regulations will, therefore, have to be understood and interpreted in the above light.[6]

21. The object and purpose of FUTP 2003 is to curb "market manipulations". Market manipulation is normally regarded as an "unwarranted" interference in the operation of ordinary market forces of supply and demand and thus undermines the "integrity" and efficiency of the market.[7] This Court in ***N. Narayanan v. adjudicating Officer, SEBI***[8], has laid down that-

> Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve 'market integrity' and to prevent 'Market abuse'. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and

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[6] ***SEBI v. Kishore R. Ajmera*, (2016) 6 SCC 368**
[7] **Palmer's Company Law, 25th Edition (2010), Volume 2 at page 11097; Gower & Davies – Principles of Modern Company Law, 9th Edition (2012) at page 1160.**
[8] **(2013) 12 SCC 152**

to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. 'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality'.

22. From the line of decisions cited herein above, it can be inferred that as a matter of principle, while interpreting this regulation, the court must weigh against an interpretation which will protect unjust claims over just, fraud over legality and expediency over principle. Once this rule is clearly established, individual cases should not pose any problem.

23. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts should presume that the Legislature inserted every part for a purpose and the legislative intention is that every part of the statute should have effect. It must be kept in mind that whenever this Court is seized with a matter which requires judicial mind to be applied for interpreting a law, the effort must always be made to realize the true intention behind the law.

24. Before dealing with the legal issue we are seized with, it would be important to observe certain definition as occurring under the regulations. The definition of 'dealing in securities' acquires some

importance as charge under regulation 3 completely depends on the aspect whether the tippee was dealing in securities in the first instant or not. For a transaction to be termed as dealing in securities, following ingredients need to be satisfied-

1. includes an act of buying, selling or subscribing pursuant to any issue of any security, or
2. Agreeing to buy, sell or subscribe to any issue of any security, or;
3. Otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.

25. The definition of 'dealing in securities' is broad and inclusive in nature. Under the old regime the usage of term ' to mean' has been changed to 'includes', which *prima facie* indicates that the definition is broad. Moreover, the inclusion of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one.

26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human

ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.

27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian

Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.

28. The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term 'fraud'. The ingredients of the first part of the definition are-

1. includes an act, expression, omission or concealment whether in a deceitful manner or not;
2. By a person or by any other person with his connivance or his agent while dealing in securities;
3. So that the same induces another person or his agent to deal in securities;
4. Whether or not there is any wrongful gain or avoidance of any loss.

The second part of the definition includes specific instances-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behavior by a person depriving another of informed consent or full participation.

(8) a false statement made without reasonable ground for believing it to be true.

(9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting

in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

29. Although unfair trade practice has not been defined under the regulation, various other legislations[9] in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the

[9] Monopolies and Restrictive Trade Practices Act, 1969, Section 36A; The Consumer Protection Act, 1986, Section 2(1)(r); The Competition Act, 2002, Section 3; The Food Security and Standards Act, 2006, Section 24(2); Specific Relief Act, 1963, Section 20; Usurious Loans Act, 1918, Section 3.

transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'.

30. Although learned counsel for SEBI has admitted that there is no difference between fraud and unfair trade practice under regulation 4 (1), but we are of the opinion that such submission may not be conclusive. As these cases do not require further investigation, the question regarding the scope of prosecution for unfair trade practice is kept open.

31. Regulation 3 prohibits a person from committing fraud while dealing in securities. A reading of the aforesaid provision describes the width of the power vested with the SEBI to regulate the security market. In our view, the words employed in the aforesaid provisions are of wide amplitude and would therefore take within its sweep the inducement to bring about inequitable result which has happened in this case instant.

32. Regulation 4 prohibits manipulative, fraudulent and unfair trade practices. It is to be noted that the regulation 4 (1) starts with

the phrase '*without prejudice to the provisions of regulation 3*'. This phrase acquires significance as it portrays that the prohibitions covered under the regulation 3 do not bar the prosecution under regulation 4 (1). Therefore regulation 4 (1) has to be read to have its own ambit which adds to what is contained under regulation 3.

33. Regulation 4 (2)(q) of FUTP 2003 states that-

> (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-
>
> …
>
> q) an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.

Under the provisions of regulation 4(2)(q), only intermediary trading on the information of substantial client order, if it involves fraud then the dealing in securities will be deemed to be fraudulent.

34. An argument has been introduced by the Mr. K.T.S. Tulsi, learned senior counsel, that sub-clause (q) of regulation 4(2) includes only front-running by the intermediaries, by implication it means that any persons other than intermediaries are excluded from the rigors of law. In our opinion such submission cannot be sustained in the eyes of law as the intention of the legislation was to provide for a catchall provision and the deeming provision under sub-clause (q) of regulation 4(2) was specifically provided as the intermediary are in fiduciary relationship with the clients. There is no dispute as to the fact that a fiduciary must act in utmost good faith; he should not act for his own benefit or benefit of any third party without the informed consent of his client. The essential irreducible core of fiduciary duty is the duty of loyalty[10]. Such heightened standard demanded a deeming provision under the FUTP 2003.

35. The reliance on '*expressio unius est exclusio alterius*' may not be appropriate in this case instant as the intention of the regulation is apparent in this case. Moreover, it has been well established that

[10] **SEBI (Stock Brokers and Sub-brokers) Regulations, 1992, Schedule II.**

'*expressio unius est exclusio alterius*' is not a rule of law but a tool of interpretation which must be cautiously applied.[11] In light of the above discussion, this rule of interpretation does not help the case of the violators.

36. A crucial aspect which needs to be observed at this point is the element of causation which is embedded under regulation 2(1)(c) read with regulations 3 and 4. In order to establish the aforesaid charges in this case, it is required by the SEBI to establish that the harm was induced by the materialization of a risk that was not disclosed because of the tippee's fraudulent practice. Further the charges under the FUTP 2003 needs to be established as per the applicable standards rather than on mere conjectures and surmises.

37. It should be noted that the provisions of regulations 3 (a), (b), (c), (d) and 4(1) are couched in general terms to cover diverse situations and possibilities. Once a conclusion, that fraud has been committed while dealing in securities, is arrived at, all these provisions get attracted in a situation like the one under

[11] **Colquhoun v. Brooks, (1887) 19 Q.B.D. 400; Lowe v. Darling & Sons, (1906) 2 K. B. 772**

consideration. We are not inclined to agree with the submission that SEBI should have identified as to which particular provision of FUTP 2003 regulations has been violated. A pigeon-hole approach may not be applicable in this case instant.

38. Before we conclude, it would be useful to have a look at American jurisprudence which has developed around Title 17, Code of Federal Regulations, Part 240, Rule 10b-5 (**Prohibition of use of manipulative or deceptive devices or contrivances with respect to certain securities exempted from registration**). It is to be noted that much of Indian securities laws have similar provisions and a brief survey of jurisprudence might be useful for the discussion herein. The complexity of the subject we are dealing is reflected even in the American jurisprudence as the U.S Supreme Court seems to have accepted the aforesaid provision to be the most litigated ones.[12] In ***David Carpenter, Kenneth P. Felis and R. Foster Winans, v. United States***[13]**,** the United States Supreme Court dealt with the

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[12] **Securities and Exchange Commission vs. National Securities, Inc., et al., 393 U.S. 453 (1969)**
'Although section 10(b) and 10 b-5 may well be the most litigated provisions in the federal securities laws, this is the first time this Court has found it necessary to interpret them. We eneter the virgin territory cautiously…'

[13] **484 U.S. 19.**

matter of fraud under section 10(b). In this case, the Petitioner, who was a co-author in a Journal's investment advice column, entered into a deal with a stock broker wherein he provided pre-publication information on the content of the column. Further the stockbroker bought and sold shares based on such information and shared the profits made therein with the Petitioner. The Court, while convicting the Petitioner, elaborated the meaning of fraud in following manner –

> We cannot accept petitioners' further argument that Winans' conduct in revealing prepublication information was no more than a violation of workplace rules and did not amount to fraudulent activity that is proscribed by the mail fraud statute. Sections 1341 and 1343 reach any scheme to deprive another of money or property by means of false or fraudulent pretenses, representations, or promises. As we observed last Term in *McNally,* the words "to defraud" in the mail fraud statute have the "common understanding" of " 'wronging one in his property rights by dishonest methods or schemes,' and 'usually signify the

> deprivation of something of value by trick, deceit, chicane or overreaching.' " 483 U.S., at 358, 107 S.Ct., at 2881 (quoting *Hammerschmidt v. United States,* 265 U.S. 182, 188, 44 S.Ct. 511, 512, 68 L.Ed. 968 (1924)). The concept of "fraud" includes the act of embezzlement, which is " 'the fraudulent appropriation to one's own use of the money or goods entrusted to one's care by another.' " *Grin v. Shine,* 187 U.S. 181, 189, 23 S.Ct. 98, 102, 47 L.Ed. 130 (1902).

Elaborating on the fiduciary relationship between the employee of a firm to safeguard the confidential information owned by the firm, the court observed as under-

> The District Court found that Winans' undertaking at the Journal was not to reveal prepublication information about his column, a promise that became a sham when in violation of his duty he passed along to his coconspirators confidential information belonging to the Journal, pursuant to an ongoing scheme to share profits from trading in

anticipation of the "Heard" column's impact on the stock market. In *Snepp v. United States,* 444 U.S. 507, 515, n. 11, 100 S.Ct. 763, 768, n. 11, 62 L.Ed.2d 704 (1980) *(per curiam),* although a decision grounded in the provisions of a written trust agreement prohibiting the unapproved use of confidential Government information, we noted the similar prohibitions of the common law, that "even in the absence of a written contract, an employee has a fiduciary obligation to protect confidential information obtained during the course of his employment." As the New York courts have recognized: "It is well established, as a general proposition, that a person who acquires special knowledge or information by virtue of a confidential or fiduciary relationship with another is not free to exploit that knowledge or information for his own personal benefit but must account to his principal for any profits derived therefrom." *Diamond v. Oreamuno,* 24 N.Y.2d 494, 497, 301 N.Y.S.2d 78, 80, 248 N.E.2d 910, 912

(1969); see also Restatement (Second) of Agency §§ 388, Comment *c,* 396(c) (1958).

We have little trouble in holding that the conspiracy here to trade on the Journal's confidential information is not outside the reach of the mail and wire fraud statutes, provided the other elements of the offenses are satisfied. The Journal's business information that it intended to be kept confidential was its property; the declaration to that effect in the employee manual merely removed any doubts on that score and made the finding of specific intent to defraud that much easier. Winans continued in the employ of the Journal, appropriating its confidential business information for his own use, all the while pretending to perform his duty of safeguarding it. In fact, he told his editors twice about leaks of confidential information not related to the stock-trading scheme, 612 F.Supp., at 831, demonstrating both his knowledge that the Journal viewed

> information concerning the "Heard" column as confidential and his deceit as he played the role of a loyal employee.

39. In ***Vincent F. Chiarella v. United States***[14], the United States Supreme Court was seized of the matter relating to securities fraud under section 10b of the Securities Exchange Act, 1934. The Petitioner therein was a printer of some corporate takeover bids. Despite attempts by the companies to conceal the names of the takeover targets, Chiarella was able to deduce, and he traded shares of the companies he knew were involved. Consequently he was convicted by the lower forum as he traded in target companies without informing its shareholders of his knowledge of proposed takeover. The Supreme Court while reversing his conviction, observed as under-

> "the Petitioner employee could not be convicted on theory of failure to disclose his knowledge to stockholders or target companies as he was under no duty to

[14] 445 U.S. 222 (1980).

> speak, in that he had no prior dealings with the stockholders and was not their agent or fiduciary and was not a person in whom sellers had placed their trust and confidence, but dealt with them only through impersonal market transactions."

On the issue of "General Duty between all participants (Tippee's), the Court stated that:

> "Formulation of a general duty between all participants in market transactions for forego actions based on material, nonpublic information, so as to give rise to liability under section 10(b) of Securities Exchange Act for failure to disclose, would depart radically from established doctrine that a duty arises from a specific relationship between two parties and should not be undertaken absent some explicit evidence of congressional intent. Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C.A. § 78j(b)."

40. Although excessive reliance on foreign jurisprudence may not be necessary as we have starkly deviated in many aspects from American jurisprudence, but we need to keep in mind the developments which other countries have undertaken regarding this issue.

41. Now we come back to the regulations 3 and 4 (1) which bars persons from dealing in securities in a fraudulent manner or indulging in unfair trade practice. Fairness in financial markets is often expressed in terms of level playing field. A playing field may be uneven because of varied reasons such as inequalities in information etc. Possession of different information, which is a pervasive feature of markets, may not always be objectionable. Indeed, investors who invest resources in acquiring superior information are entitled to exploit this advantage, thereby making markets more efficient. The unequal possession of information is fraudulent only when the information has been acquired in bad faith and thereby inducing an inequitable result for others.

42. The law of confidentiality has a bearing on this case instant. "Confidential information acquired or compiled by a corporation in the course and conduct of its business is a species of property to which the corporation has the exclusive right and benefit, and which a court of equity will protect through the injunctive process or other appropriate remedy."[15] The information of possible trades that the company is going to undertake is the confidential information of the company concerned, which it has absolute liberty to deal with. Therefore, a person conveying confidential information to another person (tippee) breaches his duty prescribed by law and if the recipient of such information knows of the breach and trades, and there is an inducement to bring about an inequitable result, then the recipient tippee may be said to have committed the fraud.

43. Accordingly, non-intermediary front running may be brought under the prohibition prescribed under regulations 3 and 4 (1), for being fraudulent or unfair trade practice, provided that the ingredients under those heads are satisfied as discussed above. From

[15] **3 W. Fletcher, Cyclopedia of Law of Private Corporations § 857.1, p. 260 (rev. ed. 1986)**

the above analysis, it is clear that in order to establish charges against tippee, under regulations 3 (a), (b), (c) and (d) and 4 (1) of FUTP 2003, one needs to prove that a person who had provided the tip was under a duty to keep the non-public information under confidence, further such breach of duty was known to the tippee and he still trades thereby defrauding the person, whose orders were front-runned, by inducing him to deal at the price he did.

44. Taking into consideration the facts and circumstances of the case before us and the law laid down herein above and ***SEBI v. Kishore R. Ajmera*** (Supra) can only lead to one conclusion that concerned parties to the transaction were involved in an apparent fraudulent practice violating market integrity. The parting of information with regard to an imminent bulk purchase and the subsequent transaction thereto are so intrinsically connected that no other conclusion but one of joint liability of both the initiator of the fraudulent practice and the other party who had knowingly aided in the same is possible. Consequently, Civil Appeal Nos. 2595, 2596 and 2666 of 2013 are allowed. At the same time, for the same reason,

Civil Appeal Nos. 5829 of 2014 and 11195-11196 of 2014 are dismissed.

.....J.
(**N. V. RAMANA**)

NEW DELHI
SEPTEMBER 20, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2595 OF 2013

SECURITIES AND EXCHANGE BOARD OF INDIA ...APPELLANT(S)

VERSUS

KANAIYALAL BALDEVBHAI PATEL ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.2596 OF 2013
[S.E.B.I. VS. DIPAK PATEL]

CIVIL APPEAL NO.2666 OF 2013
[S.E.B.I. VS. SUJIT KARKERA & ORS.]

CIVIL APPEAL NO.5829 OF 2014
[POOJA MENGHANI VS. S.E.B.I.]

CIVIL APPEAL NOS. 11195-11196 OF 2014
[VIBHA SHARMA AND ANR. VS. S.E.B.I.]

J U D G M E N T

RANJAN GOGOI,J.

1. I have had the privilege of going through the very erudite judgment of my learned brother Ramana, J. I can only

agree with the trend of reasoning that my learned brother has chosen to adopt to arrive at his ultimate conclusions. However, I am of the view that the present case is capable of resolution within a very narrow spectrum of law and on an interpretation of the relevant provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 (hereinafter referred to as "2003 Regulations"). I, therefore, propose to record my own views in the matter.

2. The relevant provisions of the 2003 Regulations which would require consideration of this Court has been set out in extenso by my learned brother and, therefore, I need not burden this order with a repetition of the same. All that I

consider necessary to point out is that it is the provisions of Regulation 2(c),(3) and (4) of the 2003 Regulations which would require a consideration from the limited stand point of whether the actions attributable to the respondents in Appeal Nos.2595 of 2013, 2596 of 2013 and 2666 of 2013 and appellants in Appeal Nos.5829 of 2014 and 11195-11196 of 2014 come within the four corners of fraudulent or unfair trade practice as contemplated by the aforesaid provisions of the 2003 Regulations.

3. The gravamen of the allegations which can be culled out from the facts in Civil Appeal No.2595 of 2013 is that one Dipak Patel (respondent in Civil Appeal No.2596 of 2013), who was holding a position of trust and confidence in one M/s Passport India Investment (Mauritius)

Limited (hereinafter referred to as "M/s Passport India"), was privy to privileged/confidential information that M/s Passport India would be making substantial investments in particular scrips through the stock exchanges. Dipak Patel is alleged to have parted the said information to his cousins Kanaiyalal Baldevbhai Patel [respondent in Civil Appeal No.2595 of 2013] and Anandkumar Baldevbhai Patel [respondent in Civil Appeal No.2594 of 2013 (disposed of on 5th April, 2017)] who on various dates placed orders for purchase of scrips a few minutes before the bulk orders in respect of the same scrips were placed on behalf of M/s Passport India by Dipak Patel. The bulk order/orders, because of the sheer volume, naturally had the effect of pushing up the prices of the particular scrips and no sooner the prices had

increased, Kanaiyalal Baldevhai Patel and Anandkumar Baldevbhai Patel had traded the said scrips thereby earning substantial profits. The large volume of the shares traded in the above manner; the several number of days on which such trading took place; and the close proximity of time between the sale and purchase of the shares i.e. before and after the bulk purchases, were alleged by the appellant – Securities and Exchange Board of India ("SEBI" for short) to be amounting to fraudulent or unfair trade practice warranting imposition of penalty and visiting the offending individuals with other penal consequences.

4. The adjudicating authority held the respondents liable. The Securities Appellate Tribunal ("Appellate Tribunal" for short) before whom appeals were filed

by the aggrieved persons (respondents herein) interfered with the orders passed by the adjudicating authority primarily on the ground that on a reading of Regulation 2(c),(3) and Regulation(4) of the 2003 Regulations it does not transpire that the acts attributable amount to fraudulent or unfair trade practice warranting the findings recorded by the Adjudicating authority and the imposition of penalty in question on that basis.

5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of

the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.

6. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on

the meaning that must be attributed to the word "induce".

7. The dictionary meaning of the word "induced" may now be taken note of.

> **BLACK'S LAW DICTIONARY, EIGHTH EDITION, defines 'inducement' as "the act or process of enticing or persuading another person to take a certain course of action."**
>
> **Merriam-Webster Dictionary defines 'inducement' as "a motive or consideration that leads one to action or to additional or more effective actions."**

8. A person can be said to have induced another person to act in a particular way or not to act in a particular way if on the basis of facts and statements made by the first person the second person commits an act or omits to perform any particular act. The test to determine whether the second person had been induced to act in the manner he did or not to act in the manner that he proposed, is

whether but for the representation of the facts made by the first person, the latter would not have acted in the manner he did. This is also how the word inducement is understood in criminal law. The difference between inducement in criminal law and the wider meaning thereof as in the present case, is that to make inducement an offence the intention behind the representation or misrepresentation of facts must be dishonest whereas in the latter category of cases like the present the element of dishonesty need not be present or proved and established to be present. In the latter category of cases, a mere inference, rather than proof, that the person induced would not have acted in the manner that he did but for the inducement is sufficient. No element of dishonesty or bad faith in the making of the inducement would be required.

9. While Regulation 3(a) of the 2003 Regulations prohibits a person to buy,

sell or otherwise deal in securities in a fraudulent manner, Regulation 4 declares that no person shall indulge in a fraudulent or an unfair trade practice in securities. Sub-regulation (2) of Regulation 4 enumerates different situations in which dealing in securities can be deemed to be a fraudulent or an unfair trade practice. Regulation 4 being without prejudice to the provisions of Regulation 3 of the 2003 Regulations would operate on its own without being circumscribed in any manner by what is contained in Regulation 3.

10. Adverting to the facts of the present case, if the information with regard to acquisition of shares by M/s Passport India was parted with by Dipak Patel to Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel and the latter

had transacted in huge volume of shares of the particular company/scrip mentioned by Dipak Patel a little while before the bulk order was placed by M/s. Passport India and the said persons had sold the same a short-while later at an increased price, such increase being a natural consequence of a huge investment made in the particular scrip by M/s Passport India, surely, it can be held that by the conduct of Dipak Patel, Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel were induced to deal in securities. A natural and logical inference that would follow is that the aforesaid two latter persons would not have entered into the transactions in question, had it not been for the information parted with by Dipak Patel. The track record of earlier trading of the concerned two persons does not indicate trading in such huge volumes

in their normal course of business. Such an inference would be a permissible mode of arriving at a conclusion with regard to the liability, as held by this Court in *Securities and Exchange Board of India* Vs. *Kishore R. Ajmera*[1] referred to by my learned brother Ramana, J. The volume; the nature of the trading and the timing of the transactions in question can leave no manner of doubt that Kanaiyalal Baldevbhai Patel and Anandkumar Baldevbhai Patel had acted in connivance with Dipak Patel to encash the benefit of the information parted with by Dipak Patel to them and, therefore, they are parties to the 'fraud' committed by Dipak Patel having aided and abetted the same.

11. If the parting of information by Dipak Patel to Kanaiyalal Baldevbhai Patel

[1] (2016) 6 SCC 368

and Anandkumar Baldevbhai Patel amounts to 'fraud' within the meaning of Regulation 2(c) of the 2003 Regulations, we do not see as to how the transactions entered into by Kanaiyalal Baldevbhai Patel and M/s Passport India through Dipak Patel both in regard to purchase and sale of the shares would not be hit by the provisions of Regulation 3(a) and Regulation 4(1) of the 2003 Regulations in question.

12. Coupled with the above, is the fact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities. However the said question, as suggested by my learned Brother, Ramana,

J. is being kept open for a decision in a more appropriate occasion as the resolution required presently can be made irrespective of a decision on the said question.

13. On the conclusions that has been reached, as indicated above, whether the deemed provisions contained in Regulation 4(2)(q) of the 2003 Regulations would be attracted to the facts of the present case and the scope, effect and contours of the explanation to Regulation 4 inserted by Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2013 would hardly require any specific notice of the Court.

14. To attract the rigor of Regulations 3 and 4 of the 2003

Regulations, *mens rea* is not an indispensable requirement and the correct test is one of preponderance of probabilities. Merely because the operation of the aforesaid two provisions of the 2003 Regulations invite penal consequences on the defaulters, proof beyond reasonable doubt as held by this Court in *Securities and Exchange Board of India* Vs. *Kishore R. Ajmera*(supra) is not an indispensable requirement. The inferential conclusion from the proved and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials, would be permissible and legally justified. Having regard to the facts of the present cases i.e. the volume of shares sold and purchased; the proximity of time between the transactions of sale and purchase and the repeated

nature of transactions on different dates, in my considered view, would irresistibly lead to an inference that the conduct of the respondents in Appeal Nos.2595 of 2013, 2596 of 2013 and 2666 of 2013 and appellants in Appeal Nos.5829 of 2014 and 11195-11196 of 2014 were in breach of the code of business integrity in the securities market. The consequences for such breach including penal consequences under the provisions of Section 15HA of the SEBI Act must visit the concerned defaulters for which reason the orders passed by the Appellate Tribunal impugned in Civil Appeal Nos.2595 of 2013, 2596 of 2013 and 2666 of 2013 are set aside and the findings recorded and the penalty imposed by the Adjudicating Officer are restored.

15. Consequently and in view of the

above Civil Appeal Nos. 5829 of 2014 and 11195-11196 of 2014 are dismissed and Civil Appeal Nos. 2595, 2596 and 2666 of 2013 are allowed.

.....,J.
(RANJAN GOGOI)

NEW DELHI
SEPTEMBER 20, 2017