REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.16805 of 2017

CHINTALAPATI SRINIVASA RAJU …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

WITH

CIVIL APPEAL NO.19494 of 2017

CHINTALAPATI HOLDINGS PVT. LTD. …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.17997 of 2017

SRSR HOLDINGS PRIVATE LIMITED …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.17313 of 2017

B. RAMA RAJU (JR.) …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.17303 of 2017

B. APPALANARASAMMA …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.17383 of 2017

B. SURYANARAYANA RAJU …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.17978 of 2017

B. TEJA RAJU …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

CIVIL APPEAL NO.__5180 of 2018
DIARY NO.37202 OF 2017

ANJURAJU CHINTALAPATI (DEAD)
THROUGH CHINTALAPATI
SRINIVASA RAJU …APPELLANT

VERSUS

SECURITIES AND EXCHANGE
BOARD OF INDIA …RESPONDENT

J U D G M E N T

R.F. NARIMAN, J.

1. The present appeals have their genesis in what is popularly known as the "Satyam scam". By a letter dated 7.1.2009, one B. Ramalinga Raju, former Chairman of Satyam Computer Services Limited (hereinafter referred to as "SCSL") sent a letter to various stock exchanges and the SEBI stating that the financial statements of SCSL had been grossly overstated and did not reflect the true and fair view of the financial position of SCSL.

Civil Appeal No.16805 of 2017

2. In the present appeal, the appellant was roped in by the Whole Time Member of the SEBI as well as the Appellate Tribunal as he happened to be an executive director of SCSL from 1993 upto 31.8.2000 and a non-executive director from 1.9.2000 to 23.1.2003. He also happens to be the "co-brother" of B. Ramalinga Raju as the two of them have married two sisters.

3. SCSL was originally incorporated as a private limited company with two shareholders, namely, B. Ramalinga Raju and D.V. Satyanarayana Raju on 24.6.1987. These two gentlemen were the original promoters of this company. The appellant, who was an executive director of this company from 1993 onwards, was confined to operating a joint venture company of SCSL, namely, Satyam Enterprise Solutions Private Limited (SES). The appellant stated that he was never involved in the day to day affairs of SCSL. In the said joint venture company, 80% shareholding was held by

SCSL and the appellant held the remaining 20% shares. SES merged into SCSL pursuant to a scheme of arrangement, approved by the Andhra Pradesh High Court in 1999, as a result of which the appellant was issued 8,00,000 equity shares of SCSL. Later in the same year, SCSL declared a bonus, thereby doubling the number of shares held by the appellant to 16,00,000 equity shares of SCSL. On 7.8.2000, SCSL announced a stock split by which the face value of the shares was reduced from Rs.10/- to Rs.2/- as a result of which every shareholder got an additional five shares of Rs.2/- for each share of Rs.10/- held by them. Consequently, the shareholding of the appellant increased to 76,50,000 equity shares of SCSL. The first time that unpublished price sensitive information (hereinafter referred to as "UPSI") came into existence so far as SCSL is concerned is stated to be on 31.3.2001. It is pertinent to note that as on this date, as has been stated hereinabove, the appellant was a non-executive director of the said company. Various annual reports from 2000 till 2003 disclosed B. Ramalinga Raju and B. Rama Raju as promoters of SCSL, but not the appellant. The appellant sold his shares in SCSL from 22.2.2001 to December, 2008. Ultimately, by a show cause notice dated 19.6.2009, after referring to the said letter dated 7.1.2009 by the Chairman of SCSL, it was stated that as the appellant was a promoter and director of SCSL, he was liable as an "insider", having knowledge of UPSI, as a result of which he stood to gain by selling shares which he

owned at an inflated value. The appellant replied to the show cause notice, taking detailed factual grounds as well as grounds in law, stating that he could not be said to be an "insider" as defined by the SEBI (Prohibition of Insider Trading Regulations), 1992 (hereinafter referred to as the "1992 Regulations"). By an order dated 10.9.2015, the Whole Time Member of the SEBI, after extracting relevant sections of the SEBI Act, 1992 and the relevant regulations referred to in the show cause notice, held that given Annexure 15 to the show cause notice, the appellant being a promoter was not the only ground of violation of the 1992 Regulations, but being a director of SCSL and co-brother of B. Ramalinga Raju would also rope the appellant in. After referring to Regulations 2(c) and 2(e) of the 1992 Regulations, the Whole Time Member held that being a director of SCSL, the appellant was a "connected person" under Regulation 2(c) and, therefore, an "insider" under Regulation 2(e). The Whole Time Member went on to hold that the fact that the books of accounts of SCSL were fabricated and manipulated since 2001 remains within the knowledge and possession of "insiders" who were reasonably expected to have access to them. When it was sought to be contended that the Special Court, Enforcement Directorate and Serious Frauds Investigation Office (SFIO) have given findings that only B. Ramalinga Raju and his cohorts were involved in the manipulations of accounts of SCSL, and had hidden the same from and deceived the rest of the board of directors, the Whole

Time Member stated that SEBI's investigation is independent and separate from that of other investigation agencies, and that since the appellant was part of the board of directors and declared as a promoter in disclosures filed by SCSL with stock exchanges, and being a co-brother of B. Ramalinga Raju, he was, therefore, closely connected with SCSL and its Chairman and "could have in all probability known about affairs of Satyam Computers including the claimed wrong disclosure of him being a promoter". It is important to note that it was held that the appellant had no role in the fraud committed by B. Ramalinga Raju and his cohorts. It was then held that the appellant was barred from accessing the securities market for a period of 7 years. Further, the appellant was to disgorge the amount mentioned against his name, which is an amount of Rs. 136.64 crores, for the entirety of the period till he sold his shares i.e. upto December, 2008.

4. An appeal to the Appellate Tribunal was largely dismissed by the majority judgment. The majority judgment held that it would not be necessary to decide whether the appellant was a promoter of SCSL. It further went on to construe Regulation 2(e) of the 1992 Regulations stating that it would be enough that the appellant was a director until January, 2003, which is after the date of occurrence of UPSI, which took place on and from 31.3.2001. Since there is no real difference between an executive and a non-executive director, he would reasonably be expected to know about

the fraud and manipulation by the Chairman and his cohorts, as he was closely connected to the same, being his co-brother. The majority went on to hold that 71% of the shares were sold in 2003 itself, and the fact that the appellant was not mentioned in the charge sheet filed by the CBI and was not responsible for the fraud would make no difference. Even the SFIO's report, which stated that only B. Ramalinga Raju and his cohorts were responsible for the fraud, and that they actually duped the board of directors of SCSL, would make no difference as the appellant being an "insider" had sold shares of SCSL when in possession of UPSI and made profits in violation of the 1992 Regulations. It was held by the majority judgment of the Appellate Tribunal that given Annexure 15 to the show cause notice, the appellant being a promoter was not the only ground of violation of the 1992 Regulations, but being a director of SCSL and co-brother of Ramalinga Raju would also rope the appellant in. However, the appellant was given relief to the extent that under the Explanation to Regulation 2(e) of the 1992 Regulations, the appellant could only be held liable for a period of six months beyond his resignation as a director i.e. upto July, 2003. A remand order, therefore, was made to assess the quantum of unlawful gains that the appellant had made upto July, 2003.

5. Shri K.V. Viswanathan, learned senior counsel appearing on behalf of the present appellant, has argued that the basis of the show cause notice is that the appellant as a promoter made illegal gains contrary to the 1992

Regulations. Once it is demonstrated that he is not a promoter, the findings of the Whole Time Member and the majority view of the Appellate Tribunal must be set aside as they go beyond the show cause notice. He further argued that a fundamental error made by the Whole Time Member as well as the majority judgment of the Appellate Tribunal is in the construction of Regulation 2(e)(i) of the 1992 Regulations, in that an insider is defined as a "connected person" and a person who is reasonably expected to have access to unpublished price sensitive information by virtue of such connection. The second part of the definition after the word "and" has been ignored by both authorities and they are, therefore, wrong in their construction of Regulation 2(e)(i) of the 1992 Regulations. Otherwise also, according to the learned senior counsel, even assuming that the appellant was an insider, Regulation 3(i) would, in any case, not be attracted in the facts of the present case as the appellant was neither in possession of nor acted on the basis of any unpublished price sensitive information. According to the learned senior counsel, the Whole Time Member's order suffered from pre-determinational bias, inasmuch as he had by an earlier order, which related to B. Ramalinga Raju and his cohorts, found against the appellant without the appellant being a party to the earlier decision and without hearing him. Further, according to the learned senior counsel, the impugned judgments erred in ignoring very important findings of the Special Court, the charge sheet of the CBI and

the SFIO's report. He relied very heavily on the minority judgment of the Appellate Tribunal which went into great detail on facts and ultimately exonerated his client.

6. Shri C.U. Singh, learned senior counsel appearing on behalf of the SEBI, countered each of these allegations and took us through the Whole Time Member's judgment as well as the majority judgment of the Appellate Tribunal, and stated that they appreciated the law as well as the facts absolutely correctly. He referred to Section 21 of the Securities Contracts (Regulation) Act, 1956 in order to show that where securities are listed in any recognized stock exchange, the conditions of the Listing Agreement with that stock exchange have to be complied with. He then took us to Clause 35 of a standard form of the Listing Agreement, in which it is stated that the company has to file, with the stock exchange, the shareholding pattern on a quarterly basis in a form which contains the promoters' holding. "Promoter" is defined in Regulation 2(1)(h)(i) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the "1997 Regulations"), which definition is incorporated in the Listing Agreement. This definition clearly shows that a promoter means a person who is in control of the company, directly or indirectly, whether as shareholder, director or otherwise. According to Shri Singh, the appellant, by virtue of being an executive director from 1993, was, therefore, clearly a promoter within the meaning of the aforesaid

definition. He also referred to and relied upon Section 159 of the Companies Act, 1956, which requires certain particulars to be furnished by companies in their annual return. What is conspicuous by its absence is the fact that there is no requirement to disclose who the promoters of a company are. This has since been changed, for in the Companies Act, 2013, Section 92(1)(e) now requires disclosures in the annual return as to who the promoters of the company are. This being the case, according to the learned senior counsel, the annual returns filed by the company did not, in law, need to disclose who were the promoters of the company and for this reason, SCSL did not disclose the appellant as a promoter. According to Shri Singh, this aspect is adverted to in the majority judgment of the Appellate Tribunal, even though the majority judgment, according to Shri Singh, does not ultimately decide on the basis that the appellant is a promoter. He also relied upon the annual reports of the company, which show the appellant as a director on and from 2000 to 2003, but not as an independent director thereof. He referred to the averments of the appellant himself to argue that until a suitable replacement was found, the appellant would continue as a non-executive director, meaning thereby that he would continue to do what he had done as an executive director. This being the case, the majority judgment of the Appellant Tribunal was right in saying that insofar as the appellant was concerned, there was no distinction between being an executive and a non-executive director.

According to the learned senior counsel, when it comes to the definition of "insider", Regulation 2(e)(i) must be contrasted with Regulation 2(e)(ii) of the 1992 Regulations, whereas sub-clause (i) requires a connected person only to be reasonably expected to have insider information, under sub-clause (ii), persons who are not connected persons need to have actual knowledge of insider information. According to the learned senior counsel, the majority judgment of the Appellate Tribunal was correct in considering five important factors in ultimately holding that the appellant was an insider, namely, (i) that he was a promoter; (ii) that he promoted two joint venture companies which were closely linked with SCSL; (iii) that one of these companies ultimately merged with SCSL; (iv) that he would continue as a director till he was replaced; and (v) that he was co-brother of B. Ramalinga Raju. These factors, according to Shri Singh, were foundational facts from which it was reasonable to draw an inference that the appellant could be expected to have knowledge of UPSI. He relied upon certain judgments of this Court in order to show that penalty proceedings and criminal proceedings are different and independent of each other, and that, therefore, what is held by a Special Court would not have any real bearing on SEBI's penalty proceeding.

7. Having heard learned counsel on both sides, it is important to first set out the relevant statutory provisions.

SEBI Act, 1992

“**Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.**

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

Penalty for insider trading.

15G.If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Prohibition of Insider Trading Regulations, 1992

Definitions.

2. In these regulations, unless the context otherwise requires:

(c) “connected person” means any person who—

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation :—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;

xxx xxx xxx

(e) “insider” means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information;

xxx xxx xxx

(h) “person is deemed to be a connected person”, if such person—

(i) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be; or

(ii) is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or director thereof or an official of a stock exchange or of clearing house or corporation;

(iii) is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a

member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;
(iv) is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956; or
(v) is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body; or
(vi) is a relative of any of the aforementioned persons;
(vii) is a banker of the company.
(viii) relatives of the connected person; or
(ix) is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest;

(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.
Explanation.—The following shall be deemed to be price sensitive information:-
(i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);
(iii) issue of securities or buy-back of securities;
(iv) any major expansion plans or execution of new projects.
(v) amalgamation, mergers or takeovers;
(vi) disposal of the whole or substantial part of the undertaking;
(vii) and significant changes in policies, plans or operations of the company;

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(i) "relative" means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

Prohibition on dealing, communicating or counselling on matters relating to insider trading.
3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange on the basis of any unpublished price sensitive information;

Regulation 3(i) was amended with effect from 20.2.2002 as follows:

> "**Prohibition on dealing, communicating or counselling on matters relating to insider trading.**
> 3. No insider shall— (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;"

8. Similarly, the phrase "by virtue of such connection" contained in Regulation 2(e) was also deleted by the same amendment in 2002. The 1992 Regulations were repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015 (2015 Regulations). What is important to note is the change in the definition of "insider" with effect from 2015. Regulation 2(1)(g) of the 2015 Regulations reads as under:

> "**Definitions.**
> 2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:
> (g) "insider" means any person who is: i) a connected person; or ii) in possession of or having access to unpublished price sensitive information;"

9. By Regulation 12 of the said regulations, the 1992 Regulations were repealed with an inbuilt Section 6 of the General Clauses Act contained in clause 2 of Regulation 12.

10. It is important to note that Regulation 2(e)(i) is in two parts. The first part has reference to any person who is connected with the company or is deemed to be connected with the company. There can be no doubt that the definition of "connected person" contained in Regulation 2(c) would rope in the appellant under sub-clause (i) thereof, as the appellant was undoubtedly a director of SCSL upto 2003. However, the second limb of

clause 2(e)(i) also has to be satisfied, which is that such person must reasonably be expected to have access to unpublished price sensitive information by virtue of such connection in respect of securities of a company. It has been held in a series of judgments that the word "and" should be given its ordinary meaning and should be understood in a conjunctive sense, unless it would lead to an absurd situation or an unintelligible result. See **Maharaja Sir Pateshwari Prasad Singh v. State of U.P**., (1963) 50 ITR 731 at paragraph 10; **M. Satyanarayana v. State of Karnataka**, (1986) 2 SCC 512 at paragraph 5; **Union of India v. Justice S.S. Sandhawalia,** (1994) 2 SCC 240 at paragraph 18 and **Spentex Industries Ltd. v. CCE**, (2016) 1 SCC 780 at paragraph 30. In the present case, the new 2015 Regulations also throw considerable light on the definition of "insider", as an insider is now defined to mean only a person who is a connected person or a person who is in possession of or having access to unpublished price sensitive information. Obviously, post 2015, an "insider" need not satisfy the second test of the 1992 Regulations and it is enough that such person be a "connected person" as defined. The disjunctive "or" contained in the 2015 Regulations must be contrasted with the expression "and" contained in the 1992 Regulations. Therefore, it is clear that the majority view of the Appellate Tribunal, in giving effect to only the first part of Regulation 2(e)(i) of the 1992 Regulations, cannot be sustained in law.

11. Further, under the second part of Regulation 2(e)(i), the connected person must be "reasonably expected" to have access to unpublished price sensitive information. The expression "reasonably expected" cannot be a mere ipse dixit – there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information.

12. This brings us to the minority judgment of the Appellate Tribunal. First and foremost, this judgment correctly brings out the role of the expression "and" contained in Regulation 2(e)(i). The judgment also correctly appreciates the difference in language in Regulation 3 before and after it was amended in 2002, and contrasts the expression "on the basis of" with the expression "when in possession of". The minority judgment then goes on to refer and rely upon the SFIO's report, which found that the manipulation of financial statements was done by B. Ramalinga Raju and his cohorts, and was suppressed from the board of directors, which would include the appellant as a member of such board. In a significant paragraph, the minority holds:

> "97. If the fabrication of the financial results (which is the UPSI herein) was suppressed from the Board of Directors of Satyam, it will be difficult to hold that the Appellant was even in possession of UPSI, leave alone trading on the basis of UPSI. If the Appellant as a director had knowledge of the fabrication of the financial statements (which is UPSI herein), he must be held to have violated the PFUTP Regulations. However, in the Impugned Order, the WTM drops the charge of PFUTP violation for lack of evidence. This clearly shows that the appellant CSR was never in possession of UPSI. In view of this, the finding of the WTM that the

Appellant violated PIT Regulations during this period is held to be not legally sustainable."

13. The said judgment went on to hold that the appellant cannot be described as a promoter inasmuch as the annual reports, which contained his signatures as a director, did not show him as a promoter. What was done behind his back was that B. Ramalinga Raju and B. Rama Raju described him as a promoter only to various stock exchanges in letters written to those exchanges without the knowledge or consent of the appellant. The minority judgment also refers to the fact that the appellant's shares were not subject to a lock-in period at the time of merger of SES into SCSL, which lock-in period was mandated by law for promoters. In fact, the appellant was one of the persons duped by B. Ramalinga Raju and his brother B. Rama Raju and was, therefore, a victim of the fraud perpetrated by the former Chairman of SCSL. One very important finding of the minority judgment is as follows:

"114. In response CSR asserts that he had compelling reasons to sell shares and the same was not done while in the possession of UPSI, since he was never in possession of UPSI. Appellant asserts that his trading pattern also demonstrates that he was not in possession of UPSI. Specifically, CSR asserts that

a. he was selling shares even before the relevant period to fund his newly created venture capital investment business (Appellant sold 70,000 shares between 28.12.1999 to 20.06.2000, he again sold 2,00,000 shares in 2000-2001).

b. Unlike other Appellants, the Appellant did not sell his entire shareholding at one go, but sold his shareholding as and when he had a business requirement. Appellant explained that he had setup his own venture capital investment business which purchased the

shares in unlisted companies and therefore there was no rationale for him to purchase the shares of Satyam.

c. While the actual promoters sold their entire shareholding by 2005, the Appellant continued to have his shareholding till the year 2008.

d. Appellant disposed off his entire shareholding following the collapse of Satyam shares price after the announcement of the merger and subsequent cancellation of the merger between Satyam and the Maytas entities (promoted by Mr. Ramalinga Raju and his sons)

e. The sale proceeds went to fund the Appellant's business requirement over a period of time. The Appellant adduced evidence to show the utilization of sale proceeds for genuine business requirements."

14. It was also found that by the year 2006, all the actual promoters disposed of their shareholding in SCSL because they were aware of the credit crunch faced by SCSL. The fact that the appellant continued to retain substantial shareholding in SCSL right till the end of 2008 clearly points to lack of possession of UPSI. Another important point is that the last transaction of sale of shares by the appellant on 22.12.2008, which was a substantial chunk of shares, was made by the appellant just like any other shareholder of SCSL. News had got out into the market that the merger proposal of SCSL with Maytas Infra Limited and Maytas Properties was not going ahead. The hysteria in the share market resulted in a steep drop in the price of shares of SCSL. The fact that the appellant disposed of a huge chunk of his shareholding on 22.12.2008 to avail of the price on that date completely negates the inference that there was any information flow

between B. Ramalinga Raju, B. Rama Raju and the appellant. It was also pointed out that the appellant had no professional or business relationship with his co-brother and had no connection with any of the entities floated by his co-brother. The fact that the appellant was not involved with fraudulent manipulation is clear from the fact that he ceased to be an executive director in the year 2000. Fraudulent manipulation began only from 2001 onwards. It was also considered significant by the minority judgment that the appellant was not a nominee of SCSL on the board of directors of Satyam Infoway, but of another third party investor.

15. The minority judgment then went on to notice the distinction between an executive and a non-executive director.

16. In **Pooja Ravinder Devidasani v. State of Maharashtra** (2014) 16 SCC 1 at 9, it is stated:

> "17. There is no dispute that the appellant, who was wife of the Managing Director, was appointed as a Director of the Company—M/s Elite International (P) Ltd. on 1-7-2004 and had also executed a letter of guarantee on 19-1-2005. The cheques in question were issued during April 2008 to September 2008. So far as the dishonour of cheques is concerned, admittedly the cheques were not signed by the appellant. There is also no dispute that the appellant was not the Managing Director but only a non-executive Director of the Company. Non-executive Director is no doubt a custodian of the governance of the company but is not involved in the day-to-day affairs of the running of its business and only monitors the executive activity. To fasten vicarious liability under Section 141 of the Act on a person, at the material time that person shall have been at the helm of affairs of the company, one who actively looks after the day-to-day activities of the company and is particularly responsible for the conduct of its business. Simply because a person is a Director of a company, does not make him liable under the NI Act. Every person connected with the

> Company will not fall into the ambit of the provision. Time and again, it has been asserted by this Court that only those persons who were in charge of and responsible for the conduct of the business of the Company at the time of commission of an offence will be liable for criminal action. A Director, who was not in charge of and was not responsible for the conduct of the business of the Company at the relevant time, will not be liable for an offence under Section 141 of the NI Act. In *National Small Industries Corpn.* [*National Small Industries Corpn. Ltd.* v. *Harmeet Singh Paintal*, (2010) 3 SCC 330 : (2010) 1 SCC (Civ) 677 : (2010) 2 SCC (Cri) 1113] this Court observed: (SCC p. 336, paras 13-14)
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> > "*13*. Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company *without anything more as to the role of the Director*. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.
> > *14*. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfilment of the requirements under Section 141."

Non-executive directors are, therefore, persons who are not involved in the day to day affairs of the running of the company and are not in charge of and not responsible for the conduct of the business of the company.

17. An instructive judgment of Lord Halsbury is contained in **Dovey and the Metropolitan Bank v. John Cory** [1901] AC 477. The Lord Chancellor put it thus:

> “The charge of neglect appears to rest on the assertion that Mr. Cory, like the other directors, did not attend to any details of business not brought before them by the general manager or the chairman, and the argument raises a serious question as to the responsibility of all persons holding positions like that of directors, how far they are called upon to distrust and be on their guard against the possibility of fraud being committed by their subordinates of every degree. It is obvious if there is such a duty it must render anything like an intelligent devolution of labour impossible. Was Mr. Cory to turn himself into an auditor, a managing director, a chairman, and find out whether auditors, managing directors, and chairmen were all alike deceiving him? That the letters of the auditors were kept from him is clear. That he was assured that provision had been made for bad debts, and that he believed such assurances, is involved in the admission that he was guilty of no moral fraud; so that it comes to this, that he ought to have discovered a network of conspiracy and fraud by which he was surrounded, and found out that his own brother and the managing director (who have since been made criminally responsible for frauds connected with their respective offices) were inducing him to make representations as to the prospects of the concern and the dividends properly payable which have turned out to be improper and false. I cannot think that it can be expected of a director that he should be watching either the inferior officers of the bank or verifying the calculations of the auditors himself. The business of life could not go on if people could not trust those who are put into a position of trust for the express purpose of attending to details of management. If Mr. Cory was deceived by his own officers - and the theory of his being free from moral fraud assumes under the circumstances that he was - there appears to me to be no case against him at all. The provision made for bad debts, it is well said, was inadequate; but those who assured him that it was adequate were the very persons who were to attend to that part of the business; and so of the rest. If the state and condition of the bank were what was represented, then no one will say that the sum paid in dividends was excessive.
>
> (at pages 485-86)

Per Lord Davey, it was held:

> “In this state of the evidence, my Lords, I ask whether the course of business at the board meetings, as described by the respondent, was a reasonable course to be pursued by the respondent and other directors, or whether the knowledge which

> might have been derived from a careful and comparative examination of the weekly states and quarterly returns from the different branches of the bank ought to be imputed to the respondent, or (alternatively) whether he was guilty of such neglect of his duty as a director as would render him liable to damages. I do not think that it is made out that either of the two latter questions should be answered in the affirmative. I think the respondent was bound to give his attention to and exercise his judgment as a man of business on the matters which were brought before the board at the meetings which he attended, and it is not proved that he did not do so. But I think he was entitled to rely upon the judgment, information, and advice of the chairman and general manager, as to whose integrity, skill, and competence he had no reason for suspicion. I agree with what was said by Sir George Jessel in Hallmark's Case, and by Chitty J. in In re Denham & Co., that directors are not bound to examine entries in the company's books. It was the duty of the general manager and (possibly) of the chairman to go carefully through the returns from the branches, and to bring before the board any matter requiring their consideration; but the respondent was not, in my opinion, guilty of negligence in not examining them for himself, notwithstanding that they were laid on the table of the board for reference. The case is no doubt one of some difficulty, but the appellant has not made out to my satisfaction that the respondent wilfully (as that term is explained in the cases I have referred to) misappropriated the company's funds in payment of dividends."
>
> (at pages 492-493)

18. It is also important to note that the appellant attended only six out of ten board meetings of SCSL for the period that he was a non-executive director. The appellant was not involved in any business development, diversification plans and advise on new ventures of SCSL post 1999. It was also held by the minority judgment that the findings of the Whole Time Member and the majority went clearly beyond the show cause notice, which, when read with Annexure 15 thereof, makes it clear that the appellant is only sought to be roped in as a promoter. Once it is found that

he is not a promoter, then the basis of the show cause notice goes as also the basis of the impugned judgment.

19. In **Godrej Industries Ltd. v. CCE,** (2008) 17 SCC 471 at 471, this Court stated:

> "3. The Tribunal in its impugned order has exceeded its jurisdiction by recording a finding to the effect that Godrej Soap Ltd. (GSL) is a "related person" vis-à-vis Procter & Gamble Godrej Ltd. (PGG) which is beyond the scope of the show-cause notice. We ourselves have gone through the show-cause notice and we are satisfied that the finding recorded by the Tribunal insofar as it relates to a "related person" is beyond the scope of show-cause notice and therefore, the same cannot be sustained and is accordingly set aside."

To similar effect is the judgment in **SACI Allied Products Ltd. v. CCE**, (2005) 7 SCC 159 at 168-169:

> "15. The Appellate Tribunal, by the impugned order, has upheld the order of the respondent Collector, however, on a totally new and different basis which was never the case of the Department either in the show-cause notice or in the impugned order. The Appellate Tribunal, in the impugned order, has held as under:
>
> > "All the wholesale dealers and all the wholesale buyers in the whole of the country would not be taken to form a single class of buyers. M/s SACI and SCIL were related persons. M/s SACI sold their goods in the State of U.P. through SCIL and no direct sales were effected by SACI in the State of U.P. Seen in the light of the Tribunal's decision in the case of *Goramal Hari Ram Ltd.*, the prices at which SCIL were disposing of the goods of SACI in the State of U.P. had been correctly taken as the normal price for determining the duty liability of SACI under Section 4 of the Act."
>
> 16. Thus according to the Appellate Tribunal, since the dealers in Uttar Pradesh who purchased the goods from Syndet, and independent dealers in other parts of the country to whom the appellants directly sold the goods are different class of buyers, the

appellants' price to the independent dealers cannot be taken as the basis for assessing the appellants' sales to Syndet in Uttar Pradesh. This finding of the Appellate Tribunal is based on first proviso to Section 4(1)(*a*) of the Act. While the show-cause notice and the order of the Collector proceeded on the basis of the invocation of third proviso to Section 4(1)(*a*) of the Act, the Appellate Tribunal for the first time in the impugned order has sustained the proceedings on the basis of first proviso to Section 4(1)(*a*) of the Act. It was argued that the first proviso to Section 4(1)(*a*) of the Act was never invoked by the Department either in the show-cause notice or in the impugned order and it was for the first time that the Appellate Tribunal in the impugned order has sought to sustain the impugned order by invoking the first proviso to Section 4(1)(*a*) of the Act. It is thus seen that the Tribunal has gone totally beyond the show-cause notice and the order of the Collector, which is impermissible. The Appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show-cause notice or in the order.

17. In this context, we may usefully refer to the judgment of this Court in the case of *Reckitt & Colman of India Ltd.* v. *CCE* [(1997) 10 SCC 379 : (1996) 88 ELT 641]. This Court held that it is beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never canvassed and which the appellants had never been required to meet.

18. The impugned order of the Tribunal which had gone beyond the show-cause notice and the order of the respondent Collector is, therefore, liable to be set aside."

20. However, Shri Singh argued, based on Section 21 of the the Securities Contracts (Regulation) Act, 1956 and Clause 35 of the Listing Agreement, which takes us to Regulation 2(1)(h)(i) of the 1997 Regulations, to support the majority judgment of the Appellate Tribunal by stating that as the appellant was an executive director from 1993 to 2000, he must be said to be a person who is in control as a director of the company and hence a promoter. Regulation 2(1)(h)(i) of the 1997 Regulations states:

> "2. Definitions
> (1) In these Regulations, unless the context otherwise requires-
>
> (h) "promoter" means-
> (i) the person or persons who are in control of the company, directly or indirectly, whether as a shareholder, director or otherwise;"

"Control" is defined by Regulation 2(1)(c) of the 1997 Regulations as follows:

> "(c) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
>
> Explanation.
> (i) Where there are two or more persons in control over the target company, the cesser of any one of such persons from such control shall not be deemed to be a change in control of management nor shall any change in the nature and quantum of control amongst them constitute change in control of management:
>
> PROVIDED that the transfer from joint control to sole control is effected in accordance with clause (e) of sub-regulation (1) of regulation 3.
>
> (ii) If consequent upon change in control of the target company in accordance with regulation 3, the control acquired is equal to or less than the control exercised by person(s) prior to such acquisition of control, such control shall not be deemed to be a change in control."

Even though the definition of "control" in the 1997 Regulations is an inclusive one, yet the definition shows that control must mean a right to appoint majority of directors as a shareholder or to control management or policy decisions exercisable by persons in any manner. It may be pointed out, as has been correctly argued by Shri Viswanathan in rejoinder, that the appellant was an executive director on a fixed monthly salary, which was roughly in the range of Rs.1,00,000/- per month, when he stepped down as an executive director in

2000. After stepping down, it was pointed out to us that the salary was stopped, and he was paid only for board meetings which he attended. Nothing has been shown to us to indicate that, on facts, such executive salaried director was in any manner in control of SCSL directly or indirectly. The absence of the word "independent" in the annual report also does not take us very far, inasmuch as it is admitted that he was a non-executive director from 2000 to 2003, who only attended six board meetings and received salary therefor. We have not been shown how the appellant was in any manner responsible for actions taken by those in the management of SCSL. We have already demonstrated that the minority judgment is much more detailed and correct than the majority judgment of the Appellant Tribunal. We accept Shri Singh's submission that in cases like the present, a reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from foundational facts. This Court in **SEBI v. Kishore R. Ajmera**, (2016) 6 SCC 368 at 383, stated:

> "26. It is a fundamental principle of law that proof of an allegation leveled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and leveled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

21. We are of the view that from the mere fact that the appellant promoted two joint venture companies, one of which ultimately merged with SCSL, and the fact that he was a co-brother of B. Ramalinga Raju, without more, cannot be stated to be foundational facts from which an inference of reasonably being expected to be in the knowledge of confidential information can be formed. The fact that the appellant was to be continued as a director till replacement again does not take us anywhere. Shri Viswanathan has shown us that two other independent non-executive directors were appointed in his place on and from 23.1.2003. What is clear is that the appellant devoted all his energies to the businesses he was running, on and after resigning as an executive director of SCSL, as a result of which the salary he was being paid by SCSL was discontinued.

22. Having regard to the findings contained in the minority judgment and the aforestated discussion, we are clearly of the opinion that this view is correct both in law and on facts and deserves our acceptance. Therefore, this appeal is allowed and the majority judgment of the Appellate Tribunal is set aside.

CIVIL APPEAL NO.19494 of 2017

23. The appellant in this appeal is a closely held private company of Chintalapati Srinivasa Raju and his wife, each holding 50% of the share capital of this company. Shri Giri, learned senior counsel appearing on behalf of the appellant, has drawn our attention to the findings of the

Whole Time Member and the Appellate Tribunal insofar as it pertains to this appellant. His grievance is that after appreciating that the appellant had sold only 8,00,000 shares held in SCSL, yet, in the operative order of disgorgement, the learned Whole Time Member includes 24,00,000 shares which were never sold by the appellant, but for which only application money was received and returned by 17.4.2002. Thus, the disgorgement order includes gains made on account of 8,00,000 as well as 24,00,000 shares and, therefore, comes to the astronomical figure of Rs. 82,49,37,875/-. He also referred to the judgment of the Appellate Tribunal and strongly relied upon the minority judgment to state that the result of this appeal should follow upon the result of Civil Appeal No.16805 of 2017.

24. Shri C.U. Singh, learned senior advocate appearing on behalf of the SEBI, did not controvert the factual position and largely agreed that the fate of this appeal would be the same as the result in Civil Appeal No. 16805 of 2017.

25. On facts, the appellant sold 8,00,000 shares from 4.1.2001 to 14.3.2001. As has been pointed out hereinabove, the occurrence of the UPSI was only from 31.3.2001 and inasmuch as these sales were made prior to this date, obviously, the 1992 Regulations would not get attracted. The minority judgment of the Appellate Tribunal referred to this and stated that the result would be the same as the result in Appeal No.462 of 2015,

namely that of B. Jhansi Rani, who was the wife of B. Suryanarayana Raju, brother of B. Ramalinga Raju and B. Rama Raju. In that case also, shares had been sold prior to the occurrence of the UPSI and on the self-same ground, B. Jhansi Rani's appeal had been allowed by the majority judgment of the Appellate Tribunal with the minority concurring. The minority judgment further went on to state that 24,00,000 shares also, which were never sold but were merely returned to Chintalapati Srinivasa Raju, could not form the basis of any disgorgement order. We agree with the same.

26. The majority judgment then went on to rely upon Regulation 2(h)(ix). As is correctly pointed out by the minority judgment, Regulation 2(h)(ix) at the relevant time, prior to 20.2.2002, read as follows:

> "**Definitions.**
> 2. In these regulations, unless the context otherwise requires:-
> (h) "person is deemed to be a connected person", if such person—
> (ix) a concern, firm, trust, Hindu undivided family, company, association of persons wherein the relatives of persons mentioned in sub-clauses (vi), (vii) and (viii) has more than 10 per cent of the holding or interest."

27. Obviously, the appellant company does not have persons who are relatives of persons mentioned in sub-clauses (vi), (vii) and (viii) – under these sub-clauses, a person is deemed to be a connected person if such person is a relative of persons in clauses (i) to (v); or is a banker of the company; or is a relative of a connected person. Since none of these clauses are attracted, it is obvious that Section 2(h)(ix) would also, as a

matter of law, not be attracted in the facts of this case. In this view of the matter, this appeal also stands allowed. Consequently, the majority judgment of the Appellate Tribunal judgment is set aside.

DIARY NO.37202 OF 2017

28. In this civil appeal, Shri Subramonium Prasad, learned senior counsel appearing on behalf of the appellant, contends that the present appellant, who is the father of Shri Chintalapati Srinivasa Raju, was neither a promoter nor a director of SCSL and has since died on 3.12.2007. He was a connected person to Shri Chintalapati Srinivasa Raju, being his father, but as the shares which stood in his name were sold in August, 2005, he could not possibly be a relative of a connected person as Shri Chintalapati Srinivasa Raju himself ceased to be a connected person on and from July, 2003. The minority judgment of the Appellate Tribunal correctly appreciates this position in the following manner:

> "142. The Appellant was the father of CSR. The Appellant sold 2,50,000 shares on 04.08.2005. Appellant expired on 03.12.2007. The Impugned Order holds the Appellant to be a person deemed to be connected under Regulation 2(h)(viii), since he was a relative of a connected person (CSR) (Para 37). However, as discussed above, CSR ceased to be a connected person on 22.07.2003. Consequently, when the Appellant sold the shares on 04.08.2005, he could not be "a deemed to be connected person" since CSR himself ceased to be a connected person. On this short point alone, the order of the WTM is liable to be quashed and set aside."

29. This appeal has also to be allowed as even otherwise it follows upon allowing of Civil Appeal No.16805 of 2017.

CIVIL APPEAL NO.17303 of 2017

30. In this appeal, Shri C.A. Sundaram, learned senior counsel appearing on behalf of the appellant, states that the present appellant is the mother of B. Ramalinga Raju, B. Rama Raju and B. Suryanarayana Raju. She was neither a promoter nor a director of SCSL and had lost her husband in the year 2001. She sold her shares in SCSL on 12th and 15th December, 2003 to three group companies, in an off market sale, as she needed money considering that she had to sustain herself as a widow. According to Shri Sundaram, though his client would be a relative of B. Ramalinga Raju and, therefore, a connected person, yet, it is obvious that the off market transactions made way back in the year 2003 at a price of around Rs.340/- per share did not attract the 1992 Regulations as the price of these shares rose sharply only thereafter touching a figure of Rs. 966.80/- in the year ending of 2006. According to the learned senior counsel, there was no evidence whatsoever of any complicity of this lady with the fraud perpetrated by her son and his cohorts. He referred to the judgment of the Whole Time Member and to the majority judgment of the Appellate Tribunal holding that all that has been found against his client is that she is a close relative of B. Ramalinga Raju and by virtue of this close relationship, it, therefore, must be presumed that she had access to UPSI. Indeed, this is the basis of both the Whole Time Member's judgment as well as the majority judgment of the Appellate Tribunal. Given the fact that

this lady was not proceeded against by the CBI or by the Enforcement Directorate and that the SFIO's report does not, in any manner, refer to her, and given the fact that she was neither promoter nor director of SCSL, it is obvious that the test of the second part of clause 2(e)(i) is not met in the facts of this appeal. Also, it must be remembered that had she been in possession of UPSI, she would also have sold shares at their peak price instead of selling them at a depressed price in the year 2003. For all these reasons, this appeal is also allowed, and the majority judgment of the Appellate Tribunal is set aside.

CIVIL APPEAL NOs.17313 of 2017 and 17978 of 2017

31. Shri Neeraj Kishan Kaul, learned senior counsel appearing for the appellant in Civil Appeal No.17313 of 2017, and Shri Mohan Parasaran, learned senior counsel appearing for the appellant in Civil Appeal No.17978 of 2017, have drawn our attention to the fact that their clients, being sons of B. Ramalinga Raju, were certainly relatives within the meaning of that expression under the 1992 Regulations. However, they were neither directors nor promoters of SCSL and were not involved in the fraud perpetrated by their father, as has been held in their favour by the Appellate Tribunal. Also, the CBI and the Enforcement Directorate did not proceed against them and the SFIO's report says nothing about their involvement. Both these brothers sold off their shares in SCSL in August

and September, 2005 at a price of roughly Rs. 518/- per share, way below the price of Rs. 966.80/- at the end of 2006 when their father sold off his shares. According to them, therefore, the Appellate Tribunal was wrong in putting 2 and 2 together and making 22 only by virtue of the fact that they were the sons of B. Ramalinga Raju. Also, insofar as B. Rama Raju (Jr.) was concerned, the findings of the Appellate Tribunal that he had given a presentation to the Board of directors of SCSL in the meeting on 26.12.2008 in support of the proposed merger of Maytas Properties Limited with SCSL is factually incorrect, as has been stated by him in a subsequent application, and which is not denied by the SEBI. Given the fact that the second limb of clause 2(e)(i) cannot be put against either of these appellants, in that there is no evidence of any complicity in the fraud committed by their father; given the fact that they were expressly exonerated of the said fraud by the Appellate Tribunal; and given the fact that they were running independent businesses and were neither directors nor promoters of SCSL, and that they sold their shares for business purposes at a price much less than the peak price at which their father sold shares of SCSL in 2006, no case has been made against them. Consequently, their appeals also stand allowed and the Appellate Tribunal judgment is set aside in this behalf.

CIVIL APPEAL NO.17997 OF 2017

32. Shri Mukul Rohatgi, learned senior counsel appearing on behalf of the appellant, states that his client was a company that was incorporated on 22.6.2006 as a private limited company. According to him, his company owned 6,28,83,317 shares of SCSL, which were pledged as security for obtaining a loan amount of Rs.1258.88 crores. The said amount was borrowed to provide funds to 10 independent companies. Inasmuch as Rs. 1255 crores out of this sum have admittedly been repaid, partly through sale of the pledged shares, according to the learned senior counsel, this transaction of pledge cannot possibly drag his client into any violation of the 1992 Regulations.

33. Shri C.U. Singh, learned senior counsel appearing on behalf of the SEBI, has read to us the majority judgment of the Appellate Tribunal, in which it has been held that the amount that was borrowed was utilised to provide funds to 10 private limited companies, which were owned by the Raju family. Equally, the shareholding pattern of the appellant company, as it stood on and from 18.9.2006, made it clear that B. Ramalinga Raju and his wife Nandini Raju held 33.11% and 40.52% respectively, whereas the balance was held by his brother B. Rama Raju and his wife B. Radha. Obviously, therefore, as B. Ramalinga Raju and B. Rama Raju individually held more than 10% interest in the appellant company, the appellant company is deemed to be a connected person under Regulation 2(h)(ix) of

the 1992 Regulations. In this context, the Appellate Tribunal held:

> "h) It is now established that Ramalinga Raju and Rama Raju manipulated the books of Satyam during the period from 2001 to 2008. During that period Ramalinga Raju, Rama Raju and their wives transferred their shareholding in Satyam to SRSR and SRSR in turn pledged those shares for obtaining loan of Rs. 1258.88 crore to the group concerns and as the loan was not repaid the pledged shares have been sold by invoking the pledge. Thus, on one hand Ramalinaga Raju and Rama Raju manipulated the books of Satyam and ensured that the market price of Satyam were higher and on the other hand through SRSR got the Satyam shares pledged and obtained higher loan on the basis of higher market price of Satyam shares. In these circumstances, inference drawn by the WTM of SEBI that SRSR was reasonably expected to have access to the UPSI and hence an 'insider' under regulation 2(e) of the PIT Regulations cannot be faulted. Consequently, the decision of the WTM of SEBI that SRSR indulged in pledging the shares of Satyam belonging to Ramalinga Raju, Rama Raju and their spouses in contravention of regulation 3 of the PIT Regulations cannot be faulted.
>
> i) Apart from the above, mode and the manner in which SRSR was incorporated, mode and the manner in which shares of Satyam were transferred by Ramalinga Raju, Rama Raju and their wives to SRSR and the mode and the manner in which the shares of Satyam were pledged and the pledged amounts were utilized, leave no manner of doubt that SRSR was a front entity established by Ramalinga Raju and Rama Raju for off loading their shareholding in Satyam when the market value of Satyam shares were higher on account of fictitious bank balances shown in the books of Satyam. Therefore, argument that SRSR was not an 'insider' and had not pledged the shares of Satyam when in possession of UPSI cannot be accepted.
>
> xxx xxx xxx
>
> l) In the result, decision of the WTM of SEBI that SRSR was an 'insider' under the PIT Regulations and that SRSR pledged and got the shares of Satyam belonging to Ramalinga Raju, Rama Raju and their spouses sold when in possession of UPSI and thus SRSR violated SEBI Act and the PIT Regulations cannot be faulted."

34. We agree with this finding of the majority judgment of the learned Appellate Tribunal and, therefore, dismiss this appeal.

CIVIL APPEAL NO.17383 of 2017

35. Shri Luthra, learned senior counsel appearing on behalf of the appellant, brought to our notice that the said appellant was neither a director nor a promoter of SCSL. The shares that were owned by this appellant in SCSL were sold by him from 5.2.2001 to 18.11.2004. According to the learned senior counsel, his case would be like the case of other family members of B. Ramalinga Raju, and any facts that are beyond the show cause notice cannot be looked at. According to the learned senior counsel, even though it is true that his client was indicted along with B. Ramalinga Raju and his brother B. Rama Raju in the SFIO's report, such report and the judgment of the Special Court, Hyderabad cannot be looked at as they are not relied upon in the show cause notice. Also, according to the learned senior counsel, they are not at all relevant under Sections 40 to 44 of the Indian Evidence Act, 1872 and, therefore, cannot be looked at. According to the learned senior counsel, adjudication proceedings and criminal proceedings are separate and distinct, and one cannot rely upon criminal proceedings in adjudication proceedings. For this purpose, he cited **Radheshyam Kejriwal v. State of W.B**., (2011) 3 SCC 581, which was followed in **Videocon Industries Ltd. v. State of Maharashtra**, (2016) 12 SCC 315.

36. Shri C.U. Singh, learned senior counsel appearing on behalf of the SEBI, drew our attention to Section 246 of the Companies Act, 1956 and stated that the SFIO's report was a report given under the investigatory powers

conferred by Section 235 of the said Act. Section 246 of the Companies Act, 1956 makes it clear that such report may be received as evidence in other cases. Shri Singh, apart from justifying the majority judgment of the Appellate Tribunal in the case of this appellant, also read to us extracts from the SFIO's report and from the judgment of the Special Court, Hyderabad to show that the appellant was hand in glove with B. Ramalinga Raju and his other brother, B. Rama Raju in the fraud committed on the public from 2001 onwards. He, therefore, submitted that so far as this appellant was concerned, we should uphold the majority judgment of the Appellate Tribunal.

37. Section 246 of the Companies Act, 1956 reads as under:

> "**Section 246. Inspectors' report to be evidence**
> A copy of any report of any inspector or inspectors appointed under section 235 or 237 authenticated in such manner, if any, as may be prescribed, shall be admissible in any legal proceeding as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report."

38. From this Section, it is clear that the report can be used as evidence in any other proceeding. Even though it is correct to state that this report was delivered on 13.4.2009, i.e. before the show cause notice was issued on 19.6.2009, the mere fact that this was not put against the appellant in the show cause notice cannot be any reason for us not to independently view the same. The appellant has not chosen to assail the findings contained in this report in a writ petition filed before the High Court. Under Section 246 of the Companies Act, 1956, this Court is empowered to look at the same

as evidence of the opinion of the inspector concerned in relation to any matter contained in the report. By virtue of Section 246, therefore, it is possible for us to appreciate the role of the appellant in the so-called Satyam scam. This report points out the following:

> "4.7.39. Shri Suryanarayana Raju is the younger brother of Shri B. Ramalinga Raju, Chairman and elder brother of Shri B. Rama Raju, Managing Director of SCSL. He has been adding, abetting and facilitating pledge, transfer, sale and management of funds for Shri B. Ramalinga Raju and Shri B. Rama Raju. He has been independently managing the affairs of SRSRHPL. In their statement given on oath, Shri B. Ramalinga Raju, Shri B Rama Raju, Smt. B. Nandini Raju and Smt. B. Radha Raju have confirmed that Shri Suryanarayana Raju has been helping them to fulfill various statutory formalities and meeting administrative exigencies. Shri Ramalinga Raju considered him as a trustworthy person to look after the statutory requirement of SRSRHPL. Shri B. Rama Raju in his statement dated 02.04.2009 **(Annexure E-2.4)**, could not state reasons for appointment of Shri B. Suryanarayana Raju but stated that there was no restriction to appoint a director without holdings shares in the company. Smt. B. Nandini Raju in her statement dated 24.03.2009 **(Annexure E-41.1)**, stated that Shri Suryanarayana Raju was made as director of SRSRHPL as a family member and trust worthy person. Smt. B. Radha Raju in her statement dated 25.03.2009 **(Annexure E-40.1)** also confirmed the same. Shri B. Suryanarayana Raju in his statement dated 23.03.2009 **(Annexure E-38.1)**, stated that he was executing the instructions of Shri B. Ramalinga Raju to pledge the shares of SCSL held by SRSRHPL for obtaining loans.
>
> 4.7.40. Shri Suryanarayana Raju was also appointed as power of attorney by all these persons to sell/transfer/deal/pledge etc. their share holding in whatsoever manner he thinks fit. He arranged funds by way of taking loans from various financial institutions/banks in the names of various private limited companies by pledging shares of SCSL and shares of Maytas Infra Ltd., held in the names of promoters.
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> xxx xxx xxx
>
> 4.7.42. Investigations also revealed that Shri B. Suryanarayana Raju has signed KYC form with M/s Gandhi Securities and Investments Ltd., member of BSE and NSE, and M/s Unifi Wealth Management Pvt. Ltd., member NSE for opening

account on behalf of Shri B. Rama Raju (Jr) and Shri B. Teja Raju both sons of Shri B. Ramalinga Raju, Chairman of SCSL. Copies of the same are placed at **Annexure D-26 & D-27**. Smt. B. Jhansi Rani in her statement dated 25.03.2009 **(Annexure E-39.1)**, stated that she was not knowing reasons for sale of shares of SCSL held in her name, her husband, Shri B. Suryanarayana Raju, makes decisions about her investments. Shri B. Suryanarayana Raju in his statement dated 04.04.2009 **(Annexure D-38.2)** admitted that he also facilitated sale of shares of SCSL held in the names of Shri B. Satyanarayana Raju, Smt. B. Appalanarsamma, Shri B. Teja Raju, Shri B. Rama Raju (Jr.), Smt. B. Jhansi Rani, M/s Maytas Infra Ltd.

4.7.43. From the statements of Shri B. Ramalinga Raju and Shri B. Rama Raju, Smt. Nandini Raju, Smt. Radha Raju and other family members, it is clear that Shri B. Suryanarayana Raju, was aiding, abetting and facilitating sale of shares of SCSL at manipulated price for and on behalf of promoters and others and thus actively connived in raising funds from the market. He followed the instructions of Shri B. Ramalinga Raju for pledging and sale of shares of SCSL by executing documents for the purpose of fund requirements of SCSL and was party to the criminal conspiracy for doing an illegal act of cheating of unsuspecting investors by selling shares at manipulated high price based on falsified financial statement of SCSL.

xxx xxx xxx

4.7.47. Shri Suryanarayana Raju was a Power of Attorney holder on behalf of the core-promoters and other family members of the core-promoters for sale/pledge of their shares at manipulated prices. The agreement here for doing any legal act was in the form of Power of Attorney giving him all powers to deal with the shares in SRSRHPL, a company promoted by the core-promoters. The act of facilitating sale and consequent pledge of shares was an illegal act which was carried out with deceptive motive for cheating the unsuspecting investors based on dishonest concealment of facts. By this dishonest and willful misrepresentation, investors were induced to purchase the shares of SCSL at highly manipulated prices. By this act of deception, Shri B. Suryanarayana Raju caused damage and harm to the investing public and hence committed the offence of cheating under Section 417, 420 read with Section 120B of the IPC, 1860 and make himself liable for prosecution under the above provisions of the Indian Penal Code, 1860."

39. Also, the judgment of the Special Court at Hyderabad, which was

delivered only on 9.4.2015 i.e. long after the show cause notice, has concluded as follows:

> "1784.The facts and circumstances shows that the accused A6 as Director of M/s. M/s. SRSR Advisory Limited allowed the transfer of Rs.1425 crore from 37 companies into M/s. SCSL without any agreement, without any Board resolution either of M/s. SCSL or the said companies and without any agreement between the companies and without following any corporate norms and this shows that he has knowledge about the fraudulent activities happening in M/s. SCSL and with that knowledge he aided the accused A1 and A2 as a part of the criminal conspiracy for the flow of funds to cover up the non-existent cash and bank balances in M/s. SCSL and the manner in which Rs.195 crores was taken back by the 15 companies managed by the accused A6 through M/s. SRSR Advisory Limited without any Board resolution further corroborates his involvement in the conspiracy and offloading the shares of M/s. SCSL he gained Rs.199 crore having insider knowledge and the idea of corporatization was to raise more loans by pledging his shares in the name of corporate entity in order to shield original ownership from the market as it would have adverse impact on the share price if the market knows that promoters are pledging shares and the properties acquired by the companies with the pledged amount was all at the instance of the accused A6 as Directors of M/s. SRSR Advisory Limited and further the offloading of shares by the accused A1, A2 and their family members was done through M/s. Elem Investments Private Limited, M/s. Finciti Investments Private Limited, M/s. Higrace Investments Private Limited and Veeyees Investments Private Limited controlled by the accused A6 and immediately after the statement of the accused A1 on 07-01-2009, the accused A6 collected about 15 crore rupees by converting the amounts into demand drafts and got issued notices under exhibit P2964 by 37 companies which were referred in the statement of the accused A1 on 07-01-2009 covered by exhibit P2688 and all these circumstances proved that the accused A6 also played active role in the criminal conspiracy and cheating of M/s. SCSL, its share holders and investors."

40. Section 42 of the Indian Evidence Act, 1872 states:

> "**42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.** — Judgments, orders or decrees other than those mentioned in section 41 are

> relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state."

This Court in **K.G. Premshanker v. Inspector of Police**, (2002) 8 SCC 87 at 94 stated:

> "22. In the facts of the present case, Section 42 would have some bearing and the judgment and decree passed in a civil court would be relevant if it relates to a matter of public nature relevant to the enquiry but such judgment and decree is not a conclusive proof of that which it states."

While it is true that adjudication proceedings and criminal proceedings are separate proceedings, the relevance of the Special Court's judgment is only for the purpose of showing that the second part of the definition of an "insider" is made out in the appellant's case, for, if the appellant, along with his brothers, was party to the fraud practiced on the public, it is obvious that he was reasonably expected to have access to UPSI in respect of the securities of SCSL. This appellant's case, therefore, stands apart from the other family members of B. Ramalinga Raju, in that the SFIO's report as well as the aforesaid judgment clearly and unmistakably point to his complicity, unlike that of the other family members, in the fraud committed from 2001 onwards. This being the case, though for different reasons, we uphold the majority judgment of the Appellate Tribunal and dismiss this appeal.

……..…… J.
(R. F. Nariman)

…..…… J.
(Navin Sinha)

New Delhi.
May 14, 2018.

ITEM No. 1501 Court No. 11 SECTION XVII
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 16805 OF 2017

CHINTALAPATI SRINIVASA RAJU **Appellant(s)**

VERSUS

SECURITIES AND EXCHANGE BOARD OF INDIA **Respondent(s)**

WITH

C.A. No. 17383/2017 (XVII)

C.A. No. 17303/2017 (XVII)

C.A. No. 17978/2017 (XVII)

C.A. No. 19494/2017 (XVII)

C.A. No. 17313/2017 (XVII)

C.A. No. 17997/2017 (XVII)

Diary No(s). 37202/2017 (XVII)

Date : 14.05.2018 These matters were called on for pronouncement of judgment today.

For Appellant(s) **Mr. K.V.Vishwanathan, Sr. Adv.**
Ms. Amrita Panda, Adv.
Mr. Ravichandra Hegde, Adv.
Ms. Kriti Sandur, Adv.
Mr. Neil Chatterjee, Adv.
Mr. Debesh Panda, AOR

Mr. Sridhar Reddy, Adv.
Mr. R.L.Shankar, Adv.
Mr. R.Narayana Kumar, Adv.
Mr. Sanjay Verma, Adv.
Mr. Gunnam Venkateswara Rao, AOR

Ms. Rohini Musa, AOR

Mr. D. L. Chidananda, AOR

Mr. V.Giri, Sr. Adv.
Mr. Ravichandra Hegde, Adv.
Ms. Kriti Sansur, Adv.
Mr. Ritunjay Gupta, Adv.
Mr. Divyam Agarwal, AOR

Mr. N.K.Kaul, Sr. Adv.
Mr. E.R.Kumar, Adv.
Mr. D.P.Mohanty, Adv.
Mr. Tanuj Agarwal, Adv.
Ms. Raveena Rai, Adv.
Mr. Sarthak Gaur, Adv.
Ms. Pratyusha Priyadarshi, Adv.
M/S. Parekh & Co., AOR

Mr. S.Udaya Kumar Sagar, Adv.
Ms. Bina Madhavan, Adv.
Mr. Krishna Kumar Singh, Adv.
Ms. Swati Bhardwaj, Adv.
Mr. Laxmi Shankar, Adv.
M/S. Lawyer S Knit & Co, AOR

Ms. Supriya Juneja, AOR

For Respondent(s) **Mr. Pratap Venugopal, Adv.**
Ms. Surekha Raman, Adv.
Mr. Anuj Sarma, Adv.
Ms. Niharika, Adv.
Ms. Kanika Kalaiyarasan, Adv.
M/S. K J John And Co, AOR

Hon'ble Mr. Justice Rohinton Fali Nariman pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Navin Sinha.

Civil Appeal No. 16805 of 2017:

The appeal is allowed in terms of the signed reportable judgment.

Civil Appeal No. 19494 of 2017:

The appeal is allowed in terms of the signed reportable judgment.

Civil Appeal 5180 of 2018 @ Diary No. 37202 of 2017:

Delay condoned.

The appeal is allowed in terms of the signed reportable judgment.

Civil Appeal No. 17303 of 2017:

The appeal is allowed in terms of the signed reportable judgment.

Civil Appeal Nos. 17313 of 2017 and 17978 of 2017:

The appeals are allowed in terms of the signed reportable judgment.

Civil Appeal No. 17997 of 2017:

The appeal is dismissed in terms of the signed reportable judgment.

Civil Appeal No. 17383 of 2017:

The appeal is dismissed in terms of the signed reportable judgment.

(Shashi Sareen)
AR-cum-PS

(Saroj Kumari Gaur)
Branch Officer

(Signed reportable judgment is placed on the file)