BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 07.11.2022
Date of Decision : 02.02.2023

Appeal No. 1 of 2019

SRSR Holdings Pvt. Ltd.
Fortune Monarch Mall, 3rd Floor,
#306, Plot No. 707-709,
Jubilee Hills, Road No. 36,
Hyderabad – 500033. … Appellant

Versus

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

Mr. Vikram Nankani, Senior Advocate with Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Sagar Hate, Advocates i/b. Visesha Law Services for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh, Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 2 of 2019

B. Suryanarayana Raju
R/o. H. No. 1-123/A, Satyam Enclave,
Pet Bashirabad (V), N. H. No. 07,
Secunderabad – 500 855. … Appellant

Versus

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

Mr. Kevic Setalvad, Senior Advocate with Mr. L. S. Shetty, Mr. Darshan Bafna, Advocates i/b. L. S. Shetty & Associates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 3 of 2019

B. Rama Raju
Plot No. 1326, Road No. 66,
Jubilee Hills, Hyderabad – 500 033. … Appellant

Versus

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

Mr. Gaurav Joshi, Senior Advocate with Mr. Feroze Patel, Ms. Namrata Zaveri, Advocates i/b. DSK Legal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 4 of 2019

B. Ramalinga Raju
Plot No. 1242, Road No. 60,
Jubilee Hills, Hyderabad – 500 033. … Appellant

Versus

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

Mr. Gaurav Joshi, Senior Advocate with Mr. Feroze Patel, Ms. Namrata Zaveri, Advocates i/b. DSK Legal for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 5 of 2019

V. Srinivas
H. No. 2-62/a, Road No. 3,
KakatiyaNagar, Habsiguda,
Hyderabad – 500 007. … Appellant

Versus

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

Mr. KRCV Seshachalam, Advocate with Ms. Sabeena Mahadik, Ms. Vidhisha Rohira, Mr. Sagar Hate, Advocates i/b. Visesha Law Services for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh Advocates i/b K. Ashar & Co. for the Respondent.

With
Appeal No. 53 of 2019

G. Ramakrishna
Plot No. 40, Vayu Nagar,
Chinna Tokatta, New Bowenpally,
Secunderabad – 500 011. … Appellant

Versus

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

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Two separate orders have been challenged by six appellants. Since the issue is common, all the six appeals are being decided together. Appeal No. 1 of 2019 (SRSR Holdings Pvt. Ltd. vs. SEBI), Appeal No. 2 of 2019 (B. Suryanarayana Raju vs. SEBI), Appeal No. 3 of 2019 (B. Rama Raju vs. SEBI) and Appeal No. 4 of 2019 (B. Ramalinga Raju vs. SEBI) are against a common order dated November 2, 2018 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') against B. Ramalinga Raju, B.

Rama Raju, B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. modifying its earlier order dated September 10, 2015 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Sections 11, 11(4) and 11B of the SEBI Act and Regulation 11 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 'PFUTP Regulations') and Regulation 11 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992) whereby the following directions were issued :-

a) The appellants named aforesaid were prohibited from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market, in any manner, whatsoever for a period of 14 years.

b) The appellants shall disgorge the wrongful gains made by them alongwith simple interest at the rate of 12% p.a. from January 7, 2009 till the date of payment as detailed hereinbelow :-

Sr. No.	**Noticee**	**Illegal Gain to be disgorged (in Rs.)** *(rounded of to the nearest integer)*
1.	B. Ramalinga Raju	26,62,50,000
2.	B. Rama Raju	29,54,35,195
3.	B. Suryanarayana Raju	81,84,35,650
4.	SRSR Holdings Pvt. Ltd.	675,39,48,813
	TOTAL	**813,40,69,658**

c) The appellants shall disgorge the amount of Rs. 813,40,69,658/- jointly and severally alongwith simple interest at the rate of 12% p.a. from January 7, 2009.

2. Appeal No. 5 of 2019 (V. Srinivas vs. SEBI) and Appeal No. 53 of 2019 (G. Ramakrishna vs. SEBI) are against a common order dated October 16, 2018 passed by the WTM in partial modification of its earlier order dated July 15, 2014 restraining the appellants V. Srinivas and G. Ramakrishna from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities directly or indirectly for a period of 7 years. In addition to the aforesaid, the WTM directed that the appellant V. Srinivas will

disgorge the wrongful gains amounting to Rs. 15,65,97,987/- and the appellant G. Ramakrishna Rs. 11,50,00,000/- alongwith interest at the rate of 12% p.a. from January 7, 2009.

3. The facts leading to the filing of the present appeals is, that an email by B. Ramalinga Raju was addressed to the board of directors of the company Satyam Computer Services Ltd. (hereinafter referred to as 'Satyam') stating that the books of accounts of Satyam were inflated for several years showing artificial cash and bank balances. Based on the aforesaid email, SEBI carried out an investigation which revealed that the books of accounts of Satyam were inflated during the years 2001-08.

4. Accordingly, a show cause notice dated March 9, 2009 was issued to B. Ramalinga Raju, B. Rama Raju, V. Srinivas, G. Ramakrishna and V. S. Prabhakara Gupta under Sections 11, 11(4) and 11B of the SEBI Act, Regulation 11 of the PFUTP Regulations and Regulation 11 of the PIT Regulations directing to show cause as to why an appropriate directions under the aforesaid provisions should not be issued prohibiting the appellants from accessing the securities market in any capacity, directly or indirectly, in any manner, and from prohibiting the appellants from buying, selling or

otherwise dealing in securities directly or indirectly for impounding restraint as provided in the Regulations.

5. Three supplementary show cause notices dated June 2, 2009, July 1, 2009 and March 22, 2010 were issued to B. Ramalinga Raju, B. Rama Raju, V. Srinivas and others. The WTM passed an ex-parte order dated July 15, 2014 (hereinafter referred to as '1st SEBI order') holding that all the five noticees were guilty of violating the SEBI Act, PFUTP Regulations and PIT Regulations. By the said order, B. Ramalinga Raju and B. Rama Raju were directed to disgorge unlawful gains of Rs. 543.93 crores made on the sale of Satyam shares and were further directed to disgorge unlawful gains of Rs. 1,258.88 crores made by pledging the shares of Satyam through SRSR Holdings Pvt. Ltd. V. Srinivas and G. Ramakrishna were also directed to disgorge Rs. 29.5 crore and Rs. 11.5 crore respectively.

6. The aforesaid order of the WTM (1st SEBI order) was challenged by B. Ramalinga Raju and B. Rama Raju, V. Srinivas and G. Ramakrishna before this Tribunal. This Tribunal by an order dated May 12, 2017 (1st SAT order) upheld the violations of the SEBI Act, PFUTP Regulations and PIT Regulations committed by B. Ramalinga Raju, B. Rama Raju, V. Srinivas and G. Ramakrishna

holding that they were instrumental in manipulating the books of accounts of Satyam during the period 2001-08. However, this Tribunal held that the direction given by the WTM to B. Ramalinga Raju and B. Rama Raju to disgorge unlawful gains of Rs. 543.93 crores on sale of Satyam shares and unlawful gains of Rs. 1,258.88 crores by pledging of Satyam shares could not be sustained. This Tribunal held that SEBI was not clear as to who made the illegal gains and who should be directed to disgorge the illegal gains. Further, no reasons were given as to how illegal gains made by the connected entities were liable to be treated as illegal gains made by B. Ramalinga Raju and B. Rama Raju. This Tribunal further held that the two orders passed by the WTM in relation to illegal gains made by the connected entities were mutually contradictory and that the direction to disgorge unlawful gains jointly and severally by B. Ramaling Raju and B. Rama Raju was without merit. The Tribunal further found that no reasons were recorded to show as to how the pledging of shares through SRSR Holdings Pvt. Ltd. amounts to making an illegal gain by B. Ramalinga Raju and B. Rama Raju. The Tribunal further found that the pledging of shares in inflated value could not be a ground to hold that the sanctioned loan of Rs. 1,258.88 crores was unlawful gains and further held that the loan

sanctioned with an obligation to repay the loan could not by itself constitute a gain under the securities laws. The Tribunal further held that no reasons were given as to why the appellants were debarred for 14 years. Similarly, this Tribunal held that the quantum of illegal gain determined in the case of V. Srinivas and G. Ramakrishna was also faulty, in as much as, the WTM had taken the prevailing closing price on the date on which Satyam Shares were sold / transferred by them and not the amount actually received by them on sale / transfer of Satyam shares. Further, the cost of acquisition and taxes paid has not been considered while computing the unlawful gain. The Tribunal accordingly remitted the matter to the WTM to decide the matter afresh with regard to disgorgement and the debarment period.

7. Against the aforesaid order, civil appeals were filed before the Hon'ble Supreme Court wherein interim orders were passed directing that the remand proceedings pursuant to the order of SAT would continue and order would be passed, but the same would not be given effect without leave of the Hon'ble Supreme Court. These appeals are still pending consideration before the Hon'ble Supreme Court.

8. The WTM issued another show cause notice dated June 19, 2009 to SRSR Holdings Pvt. Ltd., B. Suryanarayana Raju and

certain relatives of the appellants alleging that the appellants were insiders under the PIT Regulations and that the appellants had sold / pledged the shares of Satyam when in possession of Unpublished Price Sensitive Information (hereinafter referred to as 'UPSI') alongwith B. Ramalinga Raju and B. Rama Raju and made unlawful gains in contravention of SEBI Act, PFUTP Regulations and PIT Regulations. A supplementary show cause notice dated September 15, 2009 was also issued to the aforesaid entities.

9. The WTM passed an order dated September 10, 2015 (2nd SEBI order) against SRSR Holdings Pvt. Ltd., B. Suryanarayana Raju and certain relatives of the appellants directing SRSR Holdings Pvt. Ltd. to disgorge unlawful gains of Rs. 1,258.88 crores jointly and severally alongwith B. Ramalinga Raju and B. Rama Raju and further directing the remaining noticees to disgorge the amount mentioned against their individual names jointly and severally with B. Ramalinga Raju and B. Rama Raju which was cumulatively computed at Rs. 543,93,25,874/- alongwith interest at the rate of 12% p. a.

10. The aforesaid order of the WTM dated September 10, 2015 (2nd SEBI order) was challenged before this Tribunal. This Tribunal

by an order dated August 11, 2017 (2nd SAT Order) upheld the violations committed by the appellants except those pertaining to Ms. Jhansi Rani. This Tribunal however set aside the directions of the WTM with respect to the quantum of illegal gains to be disgorged by the said appellants and the period of restraint in dealing in securities and accessing the securities market. This Tribunal held that the two orders passed by the WTM were mutually contradictory. However, the WTM was directed to consider that the shares acquired by SRSR Holdings Pvt. Ltd. were for valuable consideration and also take into consideration that the loan was repaid. This Tribunal also directed the WTM to consider the cost of acquisition. This Tribunal directed the WTM to decide the matters afresh in terms of the direction given thereunder.

11. Against the order of this Tribunal, civil appeals were filed before the Hon'ble Supreme Court which were disposed of by an order dated May 14, 2018. The Hon'ble Supreme Court exonerated the relatives of the appellants but found B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. guilty of the violations alleged against them.

12. Pursuant to the two orders of this Tribunal, the matters were re-heard on the limited issues, based on which the impugned orders dated October 16, 2018 and November 2, 2018 were passed directing the appellants to disgorge the unlawful gains and debarring them for specified period.

13. The WTM in its order dated November 2, 2018 held that the benefit of intrinsic value cannot be given since the appellants were instrumental in perpetuating a fraud and, therefore, the intrinsic value cannot be considered while arriving at the amount of disgorgement. The WTM further held that only the acquisition cost and actual sale proceeds are to be considered plus statutory taxes while arriving at the disgorged amount. The WTM further came to a conclusion that interest should be levied from the point of accrual of the ill-gotten gains but since the earlier order of the WTM directed interest to be levied from the date of cause of action, the same should continue. The WTM further held that the end use of gains does not change the illegal nature of receipts. Further, since neither B. Ramalinga Raju nor B. Rama Raju provided any details regarding cost of acquisition of shares, consequently, the amount to be disgorged would be the entire sale proceeds.

14. Similarly, the WTM held that the intrinsic value cannot be considered in case of B. Suryanarayana Raju and only the cost of acquisition and statutory taxes would be considered.

15. The WTM further held that pledging of shares and raising funds was done by SRSR Holdings Pvt. Ltd. on the basis of UPSI. Further, the pledge transaction cannot be treated as a loan transaction simplicitor as it was an ingenuously structured transaction and, therefore, the amount raised by SRSR Holdings Pvt. Ltd. are illegal gains and was liable to be disgorged which worked out to Rs. 675,39,48,813/-.

16. The WTM also came to the conclusion that all the appellants are equal perpetrators to the fraud and, therefore, the disgorgement is joint and several. The WTM further held that these appellants are prohibited from accessing the securities market for a period of 14 years.

17. In an another order of the WTM dated October 16, 2018, against V. Srinivas and G. Ramakrishna, the WTM again came to the conclusion that the intrinsic value is not to be considered and only the cost of acquisition, sale proceeds and taxes payable is to be

considered. Further, interest is payable with effect from January 7, 2009 and that the said appellants are liable to disgorge the amount specified against their names jointly and severally. The said appellants were also restrained from accessing the securities market for a period of 7 years.

18. We have heard Mr. Vikram Nankani, Mr. Kevic Setalvad, and Mr. Gaurav Joshi, the learned senior counsel with Mr. KRCV Seshachalam, Ms. Sabeena Mahadik, Mr. Sagar Hate, Mr. L. S. Shetty, Mr. Darshan Bafna, Mr. Feroze Patel, Ms. Namrata Zaveri, Ms. Vidhisha Rohira, the learned counsel for the appellants and Mr. Shiraz Rustomjee, the learned senior counsel with Mr. Jai Chhabria, Ms. Shreya Parikh, Mr. Prateek Pai, Mr. Mihir Mody, Mr. Mayur Jaisingh, the learned counsel for the respondent.

19. The contention of the learned senior counsel for the appellant B. Ramalinga Raju is, that the order of disgorgement is patently erroneous and has been made without any application of mind. The quantification is incorrect as it does not take into account the intrinsic value of the shares. It was also urged that the direction to disgorge the amount jointly and severally was wholly illegal and against the provisions of Section 11B of the SEBI Act. It was also urged that the

direction to pay the interest was wholly illegal and unwarranted in as much as the show cause notice did not specify imposition of interest and, therefore, interest could not have been imposed. In the alternative, it was urged that the rate of interest was excessive and in similar matters, SEBI has taken a stand imposing a lower rate of interest. It was lastly urged that the restraint order of 14 years has been passed without any application of mind. No reason has been given and, in any case, the restraint order is excessive.

20. It was contended that the concept of disgorgement as analyzed from a reading of Section 11 and 11B of the SEBI Act and various decisions of this Tribunal and of the Hon'ble Supreme Court, is namely, that a monetary and equitable remedy that is designed to prevent a wrongdoer from unjustly enriching himself as a result of illegal conduct; it is neither a penal action nor is it a punishment nor is it concerned with the damages sustained by the victims of the unlawful conduct; it is a measure to strip the wrongdoer of ill-gotten gains and deter improper conduct; it is to make sure that wrongdoers do not profit from their illegal acts and / or wrongdoing; it is limited to the amounts which were wrongfully and / or illegally made and the

amount to be disgorged should not exceed the total profits of the unlawful activity.

21. It was urged that, in the instant case, the WTM has passed an order not for disgorgement but for restitution. It was submitted that there is a distinction between the disgorgement and restitution. The basic distinction between restitution and disgorgement is, that while restitution operates to reverse a wrongful / unjust transfer of value gained by a person from the investor, the latter operates to disgorge the profits which have accrued to a defendant from a wrongful act leading to a wrongful gain. Thus, restitution is a separate remedy, and cannot be conflated with the concept of disgorgement.

22. It was also urged that the methodology for computation of illegal gain was wrongly made. It was urged that while quantifying the amount to be disgorged, it ought to be borne in mind that disgorgement was to be limited to only those amounts that are wrongful and/or illegal.

23. In arriving at such a computation of gain (when the gain is alleged to have been made while in possession of UPSI), it is imperative to exclude unrelated market factors. The inherent value

of the stocks and extrinsic factors (unrelated to fraudulent conduct) must be factored in as well.

24. It was contended that in cases where particular information allows the stock to maintain an artificially high value, the underlying value of the stock should not be reflected in the gain calculation and only the artificially high value should be reflected in the gain calculation. There is a baseline stock value from which the gain (i.e., increase) ought to be measured and, in such cases, the baseline would be the inherent and/or the underlying value.

25. It was urged that all stock has an inherent and underlying value i.e. the market's assessment of the stock's value an intrinsic or underlying value of a share is understood as the fundamental, objective value contained in the Company's asset, or financial contracts. Intrinsic or underlying value of shares is essentially the actual (real) value of the share which is calculated on the basis of a fundamental analysis of tangible and intangible factors. The intrinsic or underlying value is not necessarily the same as the market value and may differ from the market value.

26. In view of the aforesaid, it was urged that disgorgement is only of profits linked to illegal acts and not other acts. The underlying value of the stock, inflation of that value due to the fraud and either inflation or deflation of that value due to unrelated causes must be disentangled while computing the illegal gain and / or loss. For the purposes of calculating the amount of illegal gain, the inherent and underlying value of the stock ought not be considered as a component of the gain amount, particularly in computation of illegal gain and / or loss in cases apropos situations involving an otherwise legitimate company wherein the stock may continue to have a residual value even after the fraudulent scheme was revealed.

27. It was suggested that in cases where the only allegation made is that the wrongful gain accrued on account of sale carried out on the basis of UPSI, the inherent / underlying value of a stock / share cannot be considered as part of the illegal gain. It is also particularly so in cases where the acquisition of the shares which were sold, had no co-relation to the alleged wrong, and / or the acquisition of the shares which were sold was not based on UPSI. It therefore necessitated that the stocks inherent / underlying / intrinsic value was required to be established. Further, even if the sale was not carried

out prior to coming into possession of UPSI or after such information ceased to be UPSI, the sale of shares would still have generated profits. Therefore, while quantifying the illegal gain, it is imperative that the profit / gain, which would have been generated in the event of a sale without any UPSI ought to be considered and due credit for the same should be provided.

28. In the present case, it was submitted that the impugned order had merely sought to hold that the alleged illegal gain is the total value realised from the sale of shares, without ascertaining the baseline stock value, or underlying value of the shares, from which the gain ought to be measured. It was urged that even if the share price was not artificially higher, the sale of shares would have generated profits in any event and such amount ought to have been considered and not taken into consideration as the amount of alleged illegal gain. The impugned order has reflected merely the alleged artificially high value in the computation for the alleged illegal gains and has not considered the underlying value of the stock as a part of the alleged illegal gain.

29. In support of his submission, the learned senior counsel placed reliance on the decision in ***United States of America vs.***

Joseph P. Nacchio [573 F.3d 1062] and a decision in ***United States of America vs. Marshall ZOLP [479 F.3d 715].***

30. It was urged that SEBI in many cases have taken into consideration the intrinsic value whereas, in the instant case, the same has not been taken into consideration without assigning any cogent reasons. In support of his submission, the learned senior counsel placed reliance upon a decision of the WTM in the matter of ***Kirloskar Brothers Ltd.*** wherein the unlawful gain was calculated after considering the intrinsic value of shares.

31. It was contended that the computation of illegal gains made by the appellants was not based on any independent analysis and that the WTM has mechanically reiterated the earlier SEBI order. It was urged that the finding that there was no direction of this Tribunal to consider the intrinsic value of the shares while computing the disgorged amount was wholly erroneous. The WTM was required to calculate the unlawful gains in accordance with law and choose the best method in order to arrive at the disgorged amount. In this regard, it was urged that in the absence of norms and / or guidelines, alternate methods of calculation should have been considered. In support of his submission, a reliance was placed on the decision in

Hindustan Lever Employee's Union vs. Hindustan Lever Ltd. & Ors. [(1995) Supp (1) SCC 499] and a decision of the Hon'ble Bombay High Court in the matter of ***Cadbury India Ltd. [(2014) SCC OnLine Bom. 4934].***

32. It was urged that the appellant had sold 6 lacs shares for philanthropic purpose which was utilized towards medical emergencies through 108-ambulance scheme in the state of Andhra Pradesh. It was urged that the appellant had not made any gains or profits from the sale of these 6 lacs shares of Satyam and had not unjustly enriched itself and, consequently, this amount was liable to be considered and discounted while calculating the unlawful gains.

33. It was also urged that this Tribunal in its earlier order had given a specific finding that a loan which is subject to repayment cannot be considered an unlawful gain by the borrower and without taking this aspect into consideration, the WTM has mechanically directed that an unlawful gain was made by SRSR Holdings Pvt. Ltd. from the pledge made by it through its associated companies.

34. It was also urged that the direction to disgorge the amount jointly and severally was contrary to the provisions of the SEBI Act

and such direction could not be issued. In support of his submission, the learned senior counsel placed reliance on the decisions of this Tribunal in ***Mahavirsingh N. Chauhan vs. SEBI Appeal No. 393 of 2018 decided on October 18, 2019*** and in the case of ***Navin Kumar Tayal & Ors. vs. SEBI Appeal No. 8 of 2018 decided on August 2, 2021.***

35. It was also urged that the direction to pay the interest at the rate of 12% p. a. from January 7, 2009 was wholly illegal. It was urged that since the show cause notice did not mention an imposition of interest, as such, no interest could have been imposed. Alternatively, it was urged that the respondent in the case of ***Kirloskar Brothers Ltd. (supra)*** had imposed interest at the rate of 4% on the amount to be disgorged in view of the long passage of time since the date of the transaction. It was urged that the appellants are similarly placed and the same yardstick should have been adopted instead of adopting the different yardstick in imposing interest at the rate of 12% p. a. which was wholly excessive and arbitrary. Further, in the matter of ***NDTV,*** the respondent has imposed interest at the rate of 6% p. a. In the end, it was contended that the debarment of 14

years was done mechanically without applying its mind which was wholly excessive and disproportionate to the violation.

36. Similar argument was raised by the learned senior counsel for the appellant in the matter of B. Rama Raju.

37. Learned counsel for the appellant V. Srinivas contended that this Tribunal while remanding the matter had observed in paragraph No. 34(c) of its order dated May 12, 2017 that the matter is remanded to the file of the WTM for passing a fresh order on merits and in accordance with law. It was contended that it was open to the appellant to raise all relevant issues with regard to the amendment to Regulation 3 of the PIT Regulations with effect from February 28, 2002. It was urged that since a point of liability was being raised, it could be raised at any stage of proceedings including the stage when the matter is remanded by the Tribunal.

38. It was urged that shares were sold by the appellant “when in possession” of UPSI. It was urged that transactions made before February 2002 i.e. prior to the amendment in the Regulation 3 of the PIT Regulations cannot be taken into consideration “on the basis of” Regulation 3 of the PIT Regulations whereas, in the instant case,

shares sold prior to April 1, 2001 was taken into consideration. It was further urged that proper methodology for computation of disgorgement should have been taken into consideration in as much as the burden of calculating the disgorged amount was upon the board which in the instant case was not properly computed. Arguments on rate of interest, intrinsic value and period of debarment was the same as raised by the learned senior counsel for the appellant B. Ramalinga Raju and, therefore, is not being repeated.

39. The appellant G. Ramakrishna has also adopted the arguments of the other appellants.

40. The learned senior counsel for SRSR Holdings Pvt. Ltd. has stated that the individual holdings of the Raju brothers was transferred to the Company in September 2006 and the company paid due consideration. Thereafter, the company pledged the shares to different third party borrowers as collateral security who had taken the loan. In this manner, 5,57,28,000 shares were pledged on a total borrowing of Rs. 889 crores. Further, 5,23,00,000 shares were sold when the pledge was invoked, based on which, a sum of Rs. 675,39,48,813/- was realised before December 23, 2008 and January 6, 2009 i.e. the date when the alleged letter written by B.

Ramalinga Raju surfaced. The show cause notice alleged that the amount gained by the lenders is unlawful gain and has to be disgorged by the appellant.

41. It was urged that the WTM passed the impugned order in a mechanical manner and in complete disregard to the direction of this Tribunal in its order dated August 11, 2017. The learned senior counsel contended that this Tribunal while remanding the matter had specifically directed to consider the plea on merits of the appellant that it had acquired the shares of Satyam for valuable consideration and that the loan obtained by pledging shares of Satyam had been substantially repaid.

42. It was also urged that this Tribunal had given a categorical finding that the sanctioned loan of Rs. 1258.88 crores with an obligation to repay could not by itself constitute gain under any provision of the securities laws. It was urged that in spite of this specific finding, the WTM chose to ignore and did not deal on this aspect and, at the same time, passed the impugned order with a pre-conceived notion that the pledge was an ingenuously structured transaction.

43. It was urged that the respondent has failed to consider the fact that the loans obtained by pledge of Satyam shares had been repaid substantially. The appellant submits that out of a sum of Rs. 1258.88 crores; it had only availed Rs. 1219.25 crores. Out of this Rs. 1219.25 crores, an amount of Rs. 889.26 crores were sanctioned by pledging shares of Satyam and a sum of Rs. 330 crores were sanctioned by pledging shares of MIL Ltd. Out of the total loan of Rs. 1219.26 crores, an amount of Rs. 1215.83 crores has been repaid. Hence, the outstanding loan was only Rs. 3.43 crores.

44. The WTM has not taken into consideration that a specific portion of the loan was repaid nor any finding has been given as to how the securities laws were violated which could lead to a conclusion that the appellant had made an unlawful gain by pledging its shares.

45. The appellant thus submitted that the respondent has miserably failed to apply the ratio laid down by this Tribunal. The respondent abruptly concluded that the amount of Rs. 675,39,48,813/- repaid by way of invocation of pledge of Satyam shares was a wrongful gain to the appellant which is without

application of mind and without appreciation of the findings of this Tribunal.

46. It was urged that the explanation to Section 11B of the SEBI Act empowers the board to direct any person to disgorge any ‘unlawful gains’ or ‘losses averted’. It was contended that, the respondent can only direct disgorgement of ‘unlawful gains’ or ‘losses averted’. The learned counsel submitted that, the respondent had failed to consider, the fact that the appellant has neither made any wrongful gains nor had it averted any losses. Moreover, unless it is proved that the appellant in fact had made any ‘unlawful profits’ or ‘averted losses’, the appellant cannot be directed to disgorge any sum.

47. It was further urged that the respondent has passed the impugned order on a completely wrong footing, namely, that the amount raised as a loan by third party entities amounts to ‘unlawful gain’ by the appellant. This kind of vicarious liability is not foreseen in Section 11B of the SEBI Act. Therefore, the respondent’s order directing the appellant to disgorge a sum of Rs. 675,39,48,813/- was untenable and was liable to be set aside.

48. The appellant submitted that, it had acquired shares of Satyam at the then prevailing market price. These shares were pledged as collateral security for the borrowers who raised funds from banks and financial institutions. When these borrowers were unable to pay, the banks and financial institutions (lenders) invoked the pledge and sold the shares to recover the sum of Rs. 678,82,01,244/-.

49. In these circumstances, it was urged that the appellant had in fact incurred a loss, instead of receiving any advantage or gain. The appellant, on facilitating pledge to certain third party entities incurred a liability on such facilitation of pledge of shares. When a person incurs a liability, in any form or capacity, the question of gain or advantage, much less wrongful gain or advantage does not arise at all against such a person. The learned counsel contended that the order of disgorgement was passed without understanding the true meaning and legal effect of the pledge.

50. It was contended that the pledge is created under Section 172 of the Contract Act, 1872 (hereinafter referred to as ‘Contract Act’). Section 176 of the Contract Act provides that, if the pledger makes default in payment of the debt or performance at the stipulated time

of promise, in respect of which the goods were pledged, the pledgee may bring a suit against the pledger upon the debt or promise, and retain the goods pledged as a collateral security; or sell the goods pledged, on giving the pledger reasonable notice of sale.

51. It was thus contended that what the appellant incurred was a liability in relation to a debt and the loss incurred by the appellant has also been duly accounted for in the books of accounts. There is no gain or advantage reflected in the books of accounts. There being only a loss, the question of disgorgement, on the principle of unjust enrichment by taking away wrongful gain or advantage, does not arise at all. It was thus urged that the impugned order was fundamentally flawed and was liable to be set aside.

52. In addition to the above, the appellant stated that, the respondent has also directed the appellant to pay "simple interest at the rate of 12% p. a. from January 7, 2009 till the date of payment." The learned senior counsel submitted that the show cause notices issued by the respondent did not mention anything about the levying of interest and quantum of interest and period for which interest needs to be paid. Consequently, imposition of interest was in

violation of the principles of natural justice and hence the impugned order was liable to be set aside.

53. Without prejudice to the above, the appellant submitted that the interest rate of 12% is arbitrary, excessive and exorbitant especially in view of the fact that the interest rates have come down drastically over the years and will have a debilitating effect on the appellant and hence, the same should be set aside.

54. It was further urged that the intrinsic value should have been considered and that the restraint order of 14 years was wholly illegal. In the first round, the WTM had passed an order of 7 years restraint which has now been increased to 14 years without assigning any reason. It was urged that the appellant cannot be worse off on remand and the period of debarment cannot be more than the period stipulated in the earlier order. It was also urged that the joint and several liability could not have been imposed and that no case of disgorgement has been made out against the appellant.

55. The learned senior counsel for the appellant B. Suryanarayana Raju contended that in the 2nd SEBI order dated September 10, 2015, the appellant was exonerated by the PFUTP

charges but was found guilty of violating PIT Regulations and accordingly was directed to disgorge an amount of Rs. 89 crores. The Tribunal by an order dated August 11, 2017, remanded the matter to the WTM to re-decide the matter relating to disgorgement.

56. The Hon'ble Supreme Court by an order dated May 14, 2018 upheld the remand order. The Hon'ble Supreme Court confirmed the majority view of the 2nd SAT order dated August 11, 2017. It was contended that the scope of the remand as ordered by 2nd SAT order was not altered by the Hon'ble Supreme Court. It was urged that the principles of Order 43, Rule 23-A of the Code of Civil Procedure would apply, namely, that the court which decides the matter after the order of remand cannot go beyond the scope of order of remand.

57. It was submitted that it was not open for the WTM upon remand to revisit the issue of the appellant alleged complicity in the fraud of B. Ramalinga Raju and B. Rama Raju in as much as the issue of the appellants involvement in the fraud by B. Ramalinga Raju and B. Rama Raju was not an issue involved in the remand order.

58. It was urged that in the second SEBI order, the appellant was directed to pay disgorged amount of Rs. 89 crores and by the impugned order dated November 2, 2018, the disgorgement was reduced from Rs. 89 crores to Rs. 81 crores. But at the same time, by the said impugned order, the appellant had been directed to disgorge a sum of Rs. 813,40,69,658/- jointly and severally with B. Ramalinga Raju, B. Rama Raju and SRSR Holdings Pvt. Ltd. which is 10 times more than amount ordered in the 2nd SEBI order. It was urged that the principles of *res-judicata* would apply. The WTM was bound by the remand order and cannot enlarge the scope of the remand proceedings. It was also contended that the party cannot be worse off by filing an appeal against the 2nd SEBI order dated September 10, 2015. In support of his submission, the learned senior counsel placed reliance on a decision of a Division Bench of the Hon'ble Bombay High Court in [***(2021) 1 Bom CR 289] Jyoti Plastic Works vs. Union of India, [(2019) 2 SCC 684] Akhil Bharatvarshiya vs. Jatiya Kosh, [(2015) 17 SCC 769] Jaswal Neco. Vs. Commissioner of Customs, [MANU/TN/6127/2018] Rajaram Johra vs. Commissioner of Customs, [(2016) SCC Online Mad 8995] Servo Packaging vs. CESTAT.***

59. It was urged that the finding of the WTM that the appellant has violated the PFUTP Regulations is wholly incorrect in as much as the appellant has been exonerated of the PFUTP charges. The learned senior counsel also contended that the method of disgorgement was wholly incorrect and that the intrinsic value should have been taken into consideration. Further, the direction to pay the amount jointly and severally is wholly illegal and against the provisions of the Act.

60. On the other hand, the contention of the learned senior counsel for the respondent is, that the impugned order has been passed in accordance with the direction given by this Tribunal. The basis of remand by this Tribunal was that the 1st and 2nd SEBI orders were mutually contradictory as to who made the unlawful gains, namely, whether B. Ramalinga Raju or B. Rama Raju on the sale of the shares of Satyam either by the promoter and promoter entities or whether it was the promoter / promoter entities themselves who made the unlawful gains. Further, the Tribunal direction on pledging of shares through SRSR Holdings Pvt. Ltd. amounted to making unlawful gains by B. Ramalinga Raju and B. Rama Raju were duly considered and complied with and reasons have been given in the

impugned order. It was urged that consideration of the intrinsic value was not required to be considered as no such direction was given by this Tribunal to consider the intrinsic value. Even otherwise, it was contended that the persons who themselves were instrumental in perpetuating the fraud cannot be given the benefit of intrinsic value.

61. It was contended that the computation based on net profit methods was rightly adopted by the WTM and was validly applied in the facts and circumstances of the present case. In support of his submission, the learned senior counsel placed reliance upon certain decisions of United States as persuasive value, namely, in ***United States vs. Mooney [425 F.3d 1093(8th Cir. 2005) decided on October 10, 2005, United States vs. Rajaratnam decided on January 31, 2012, United Stated vs. Mathew Martoma [48 F. Supp. 3d 555(2014)], S. E. C. vs. Whittemore (District Court of Columbia) dated March 9, 2010 [691 F. Supp. 2d 198], S. E. C. vs. Whittemore (Court of Appeals) [398 U.S. App. D. C. 67], United States of America vs. Joseph P. Nacchio [(MANU/FETT/0717/2009; 573 F.3d 1062], United States of America vs. Marshall ZOLP***

[(MANU/FENT/4086/2007; 479 F.3d 715] and S. E. C. vs. Patel [61 F.3d 127 (2d Cir. 1995)].

62. It was urged that the WTM, while computing the unlawful gains, adopted the method of taking into account the sale proceeds of the shares as reduced by the acquisition cost and statutory taxes on the transactions which was the appropriate method and which required no interference. In this regard, it was urged that in working out an unlawful gain in the context of the provisions regarding disgorgement, a number of factors are required to be taken into consideration, including the nature of the transactions, the conduct of the party, and the various facts and circumstances of the case. These are often complex and involved. Hence, no hard and fast rule or formula can be laid down as to the method of computation to be adopted in a given case. SEBI, as the market regulator, ought to be given a wide latitude in applying its judgment and exercising its discretion as to the method of computation to be applied in a given case. It was urged that unless the method applied by SEBI is manifestly arbitrary or absurd, the exercise of SEBI's discretion and judgment ought not to be interfered with. Further, interference in the method of computation adopted by SEBI is not warranted merely on

the basis that another method or approach is possible, or *prima-facie* appears preferable.

63. It was urged that the method of computation was in accordance with Section 11B of the SEBI Act and as well as in accordance with the general concept of disgorgement. In the facts of the present case, the entire gain made by the appellants was considered to be the wrongful gain which they were directed to disgorge.

64. It was further urged that the requirement to disgorge ill-gotten gains is based on the principle that the person guilty ought not to be permitted to unjustly enrich himself by taking the offending action. In the case of a gain made by sale of securities, such a gain would ordinarily be the amount realised by the sale of shares less the acquisition cost to the person concerned.

65. It was further urged that the appellants deliberately did not provide any information either regarding the cost of acquisition or the taxes, if any, paid by them, although both were exclusively within their knowledge. It was contended that, an adverse inference should be drawn against the appellants. It was, thus, urged that the

impugned order has computed the appellant's unlawful gain as being the actual gain made by the appellant, i.e., the difference between the cost of acquisition of shares and the amount realised by the sale.

66. It was also urged that the basic idea behind the disgorgement is restitution and, in support of his submission, has relied upon the judgment in the case of ***Kokesh vs. Securities Exchange Commission of the Hon'ble U.S. Supreme Court [(2017) SCC Online US SC 58]*** in which it was held that the disgorgement is a form of restitution measured by the defendant's wrongful gain.

67. It was also alleged that neither the 1st SAT order nor the 2nd SAT order had set aside the order of the WTM imposing interest at the rate of 12% p.a. on the amount of illegal gains to be disgorged. Since the remand was not to decide the rate of interest, it was urged that such submission relating to rate of interest which had attained finality cannot be allowed to be raised again. It was also urged that no submissions were made with regard to the rate of interest before the WTM and, therefore, the appellant cannot be permitted to raise this issue for the first time in the present appeal. Similarly, no argument can be raised by the appellants with regard to the rate of interest at 12% p. a. with effect from January 7, 2009. It was also

contended that in the decision of ***Kirloskar Brothers Ltd. (supra)*** interest at the rate of 4% p.a. was charged as interest was distinguishable as the said case was rendered in the facts and circumstances of that case and did not lay down any general proposition of law regarding the levy of interest. The learned senior counsel contended that the order of the WTM does not suffer from any error of law and the appeals were liable to be dismissed.

68. We have given our thoughtful consideration on the issues raised before us. On the issue of disgorgement, we find that the requirement to disgorge ill-gotten gains is based on the principle that the person guilty ought not to be permitted to unjustly enrich himself by taking the offending action. In the case of a gain made by sale of securities, such gain would ordinarily be the amount realised by the sale of shares less the acquisition cost and statutory taxes to the person concerned. The computation based on “net profits” method adopted in the impugned orders is usually applied by SEBI in many cases while computing the disgorged amount but is not the only method adopted by SEBI.

69. The WTM while computing the unlawful gains has adopted the method of taking into account the sale proceeds of the shares as reduced by the acquisition cost and statutory taxes on the transaction.

70. There is no doubt that while calculating the unlawful gains, a number of factors are required to be taken into consideration. However, there is no hard and fast rule or formula laid down with regard to the method of computation to be adopted in a given case. SEBI, as a market regulator, has been given a wide latitude and discretion in choosing the appropriate method of computation of unlawful gain. However, the appropriate method to be adopted for computation of unlawful gains cannot be arbitrary or made on whims and fancies but is required to be based on the facts of each case and on sound principles of law.

71. In a given case, the "net profit" method may be appropriate; in a another case, "the intrinsic value" may be appropriate and yet in another case, "market absorption" method could be most suitable. In our opinion, the discretion to be exercised by the regulator in computing the unlawful gains has to be made on sound reasoning and cannot be made on whimsical methods. The methodology has to be

practical and best suited to compute the unlawful gain in a given case.

72. While quantifying the amount to be disgorged, the unlawful gain is to be limited to only those amounts that are wrongful or illegal. The unlawful gain is, thus, required to be computed in that manner and unrelated market factors are to be excluded. The value of the stocks has to be factored as well. If the value of the stocks is inflated artificially, the underlying value of the stock should be reflected while calculating the gain. Since all stocks have an inherent and underlying value, the increase in the gain ought to be measured and, in such cases, the baseline would be the inherent underlying value. The underlying value or the intrinsic value is essentially the actual value of the share which is calculated on the basis of a fundamental analysis of tangible and intangible factors. The intrinsic or underlying value is not necessarily the same as the market value and may differ from the market value as held in ***United States of America vs. Joseph P. Nacchio (supra) as well as United States of America vs. Marshall ZOLP (supra).*** The underlying value or the intrinsic value was also considered by the WTM in the matter of

Kirloskar Brothers Ltd. where the unlawful gain was calculated by considering the underlying or intrinsic value of shares.

73. In the instant case, the WTM has adopted the "net profit" method, namely, the difference between the cost of acquisition of shares and the amount realised by sale less statutory taxes. While computing the unlawful gain in the matter of B. Ramalinga Raju and B. Rama Raju, the WTM held that the said appellants did not provide any information regarding the cost of acquisition and, therefore, an adverse inference was drawn and the value of the shares was taken as 'nil'. In this manner, the entire sale value was taken as the unlawful gain.

74. In our view, such approach adopted by the WTM was patently erroneous.

75. In the first instant, the scheme of the SEBI Act especially Section 11 and Section 11B cast a burden upon the WTM to quantify the unlawful gain. This burden cannot be shifted upon the appellants. In ***Karvy Stock Broking Ltd. vs. SEBI in Appeal No. 6 of 2007 decided on May 2, 2008***, this Tribunal held that the burden and onus of showing that the amount sought to be disgorged

reasonably approximates the amount of unjust enrichment was upon SEBI.

76. In the instant case, the WTM failed to take into consideration the value of the shares while calculating the unlawful gains. The mere fact that the appellants did not provide the cost of acquisition of the shares did not discharge the burden upon the WTM. The WTM was still required to arrive at some costing of the value of the shares.

77. We also find that disgorgement is only of profits linked to illegal acts and not to other acts. To arrive at the unlawful gain, the underlying value of the shares has to be ascertained. The underlying value of the stock must be disentangled while computing the illegal gain. While calculating the amount of illegal gain, the inherent and underlying value of the stock cannot be considered as a component of the unlawful gain.

78. The WTM has adopted the “net profit” method, i.e. difference in cost of acquisition and sale price less statutory taxes. This method is best suited in situation where shares are purchased and sold while in possession of / on the basis of UPSI. Where there is an intention to commit a fraud from the very beginning and shares are purchased

and sold to make unlawful gains by unethical means, then, in those cases the “net profit” method is best suited for calculation of the unlawful gain.

79. But where shares purchased were historic and includes bonus shares and these shares have grown in value over the years, in such cases, the calculation of unlawful gain by taking the value of the original cost of acquisition would not be the appropriate method. Taking the original cost of acquisition without taking into consideration the market value of the shares, in our opinion, would lead to a faulty calculation of unlawful gain. We must keep in mind that disgorgement is only profit linked to illegal acts and not to other acts. The underlying value of the shares which would be akin to the cost of acquisition in the instant case has to be reduced from the sale value while computing the unlawful gain. Thus, in cases where the acquisition of the shares which had no co-relation to the alleged wrong and the acquisition of shares was not based on UPSI, then, in our opinion, the calculation of unlawful gain has to take into consideration the underlying value / intrinsic value of the stock.

80. The finding of the WTM that no direction was given by this Tribunal to consider the intrinsic value while calculating the

unlawful gain is patently erroneous. In the first instance, this Tribunal in paragraph no. 22 of the order dated August 11, 2017, had directed that "while computing the unlawful gain, the WTM of SEBI shall consider the cost of acquisition, if any, incurred by each appellant."

81. The entire tenor of the 2nd SAT order while setting aside the computation of the unlawful gain was that the cost of acquisition was not taken into consideration. This was also noticed by the Technical Member in its minority view in paragraph no. 29 that "the cost of acquisition / intrinsic value was not taken into account by the WTM."

82. We are of the opinion that when the Tribunal directed the WTM to consider the cost of acquisition, it required the WTM to consider all appropriate methods / methodologies for calculating the unlawful gains, including the methodology of taking into consideration the intrinsic value. Thus, the WTM fell in error in not considering the intrinsic value.

83. The WTM has not taken the cost of acquisition on the ground that the appellants have not provided the cost of acquisition of shares. From a perusal of paragraph no. 9 of the order of the WTM dated

November 2, 2018, the WTM has recorded that SRSR Holdings Pvt. Ltd. had acquired the shares at the rate of Rs. 815/- per share. There is no finding by the WTM that the cost of acquisition of shares by SRSR Holdings Pvt. Ltd. was not the correct value. Even otherwise, the value of the share one day before the alleged manipulation of the books of account could be taken into consideration. The UPSI came into existence from January 2001. The last traded price of Satyam shares just before UPSI came into existence, i. e. December 29, 2000 was Rs. 323.35 per share. This value could have been taken into consideration.

84. In our opinion, the WTM fell in error in taking "Nil" as the value for the acquisition of shares. Every share has a value and, in the instant case, it cannot be said that the value of the shares was "Nil". Thus, the computation of unlawful gain made by the WTM was faulty and cannot be sustained.

85. In view of the aforesaid, we are of the view that the method of computation adopted by the respondent for calculating the unlawful gain cannot be accepted as the same is faulty. Considering the peculiar facts and circumstances of the case, the respondent is

required to take into consideration the intrinsic value of the shares while computing the unlawful gain.

86. The 1st SEBI order dated July 15, 2014 directed B. Ramalinga Raju and B. Rama Raju to disgorge Rs. 543.93 crore by sale of shares and Rs. 1258.88 crore by way of pledge to be paid jointly and severally. In the 2nd SEBI order dated September 10, 2015, the WTM directed SRSR Holdings Pvt. Ltd. to disgorge Rs. 1258.88 crore jointly and severally with B. Ramalinga Raju and B. Rama Raju. In addition to the aforesaid, the WTM further directed B. Ramaling Raju and B. Rama Raju to disgorge Rs. 543.93 crore jointly and severally alongwith other entities.

87. This Tribunal by its 2nd order dated August 11, 2017 held that the 1st and 2nd SEBI orders were mutually contradictory and accordingly remanded the matter directing the respondent to decide the quantum of unlawful gain made by each of the noticees. Pursuant to the direction of this Tribunal, some of the appellants filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court by an order dated May 14, 2018 upheld the majority judgment of this Tribunal dated August 11, 2017, namely, the direction of remand on the limited issues.

88. Pursuant to the order of this Tribunal, the WTM has held in the impugned order dated November 2, 2018 that B. Ramalinga Raju, B. Rama Raju, B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. are jointly and severally liable to disgorge the illegal gain as quantified in the impugned order arising from sale and pledge of Satyam shares.

89. Before us, it was urged that the direction of the WTM directing four entities to disgorge the amount jointly and severally is wholly illegal and is contrary to the direction of this Tribunal as well as contrary to the provisions of the SEBI Act. It was urged that under Section 11B of the SEBI Act, the liability to disgorge an amount is individual and, therefore, no direction could be issued to disgorge the amount jointly and severally. In support of their submission, the learned senior counsel placed reliance on the decision of this Tribunal in ***Mahavirsingh N. Chauhan vs. SEBI (supra).***

90. B. Suryanarayana Raju further submitted that the direction of the WTM holding the said appellant to be jointly and severally liable to disgorge illegal gain alongwith B. Ramalinga Raju, B. Rama Raju

and SRSR Holdings Pvt. Ltd. was wholly illegal and beyond the scope of the remand order as ordered by the 2nd SAT order. It was urged that the principles of Order 43 Rule 23A of the Code of Civil Procedure would squarely apply in the facts of the case.

91. We find that the direction to disgorge an amount jointly and severally has been used loosely without understanding the true import of the meaning of "joint and several" liability. All persons who aid or direct or join in the committal of a wrongful act, are joint tort-feasors. To constitute a joint liability, the act complained of must be joint and not separate. Where two or more persons combine together to commit an act, it is a joint action which amounts to a tort. The liability of joint tort-feasors i.e. the liability that an individual or business either shares with other tort-feasor or bears individually without the others. Thus, joint tort-feasors are jointly and severally liable for the whole damage resulting from the tort. In assessing damages against joint tort-feasors or several tort-feasors causing same or indivisible damage, one set of damages will be fixed, and joint tort-feasors may be assessed according to the aggregate amount of the injury resulting from the common act or acts. The reason

being is that where the cause of action is one and indivisible then all persons become liable jointly and severally.

92. The mere coincidence of a number of persons doing a series of acts will not make them joint tort-feasors. It must be shown that they acted concurrently or jointly with a common intention.

93. Thus, the damage caused by several tort-feasors may be the same or indivisible or it may be distinct referable to each tort-feasor. In case where the damage caused by the each of the several tort-feasors is distinct, then each of them is liable only for the damage attributable to his own act.

94. From the aforesaid, it is clear that where persons joined together to do a wrongful act, they are joint tort-feasors. That is to say, that when persons are acting in concert and by their wrongful acts caused damage, they are joint tort-feasors. If the damage caused by persons acting in concert jointly is the same and it is indivisible, then the damage is joint and several. But where persons are not acting in concert and the damage caused by each of the several tort-feasors is distinct, then each of them are liable only for the damage attributable to their own act. Further, if the damage caused by the

persons acting in concert is divisible even then, in that case, each one of them is liable for the damage attributable to them and the damage is to be computed against their name individually. In such cases, damages cannot be paid jointly and severally.

95. Considering the aforesaid principle, we find that the show cause notice alleged B. Ramalinga Raju and B. Rama Raju to be persons acting in concert under the PIT Regulations and, therefore, the violation committed by them is joint and several. But where the unlawful gains have been computed against each of the noticees the damage caused is no longer indivisible and is divisible, then in terms of Section 11B of the SEBI Act, the unlawful gain has to be disgorged by that noticee individually to the extent of the unlawful gain computed against its name. That is to say, each of the noticee is liable only for the unlawful gains attributable to his own act.

96. In the instant case, apart from B. Ramalinga Raju and B. Rama Raju, others did not act concurrently or jointly but sold the shares at different moment of time. All the appellants made a series of acts at different point of time and therefore their acts will not make them liable jointly and severally. Further, the WTM has calculated the unlawful gains against each of the appellants. Once

the amount is calculated, then each of them is only liable to pay the unlawful gains attributable to his own act. The unlawful gains cannot be clubbed together nor can any direction be issued to disgorge the amount jointly and severally. Thus, the direction of the WTM to disgorge the amount jointly and severally cannot be sustained.

97. We further find that this Tribunal in paragraph no. 20 of its order dated August 11, 2017 (2nd SAT order) held that "There can be no dispute that the role played by SRSR, Chintalapati group and other appellants in facilitating and liquidating the shares of Satyam when in possession of UPSI differ substantially."

The aforesaid finding of this Tribunal is another indicator that joint and several liability cannot be imposed.

98. This Tribunal in the case of ***Mahavirsingh N. Chauhan (supra)*** has held as under :-

> *"20. In the end, the contention that the liability to disgorge the amount cannot be made joint and several under Regulation 11B of the SEBI Act has same force. In this regard, the explanation to Section 11B is extracted hereunder :-*

"Explanation. - For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."

21. From the aforesaid, it is clear that a person can be directed to disgorge amount equivalent to the wrongful gain made by him. By such contravention, the liability to disgorge the amount is individual and not collective. Thus, we are of the opinion that the direction of the WTM directing the appellants to pay the amount jointly or severally is against the provisions of Section 11B and to that extent, it cannot be sustained. The order of the WTM is consequently, modified to the extent that the liability of the appellants in question except Rajesh Ranka to disgorge the amount is to the extent of the profit earned by them as calculated by the WTM under Table 9. In the event of failure by these appellants to pay the amount, it would be open to SEBI to recover the amounts in the order of hierarchy stipulated in paragraph 145(e) of the impugned order. We are of the view that in view of the role played by Rajesh Ranka, the disgorgement is jointly and severally for which we do not find any fault with the order of the WTM."

99. Further, in the case of ***Navin Kumar Tayal & Ors. vs. SEBI (supra),*** this Tribunal has held as under :-

> *"49. The contention that an order of disgorgement cannot be fastened upon the appellants jointly and severally cannot be accepted. Reliance in the case of* ***Mahavir Chauhan vs. SEBI Appeal No. 393 of 2018 decided on October 18, 2019*** *is distinguishable. The findings of this Tribunal in the case of* ***Mahavir Chauhan (supra)*** *was based on the fact that the WTM had in that case separately quantified the profit made by each of the noticees and consequently, in that context this Tribunal held that there cannot be the order for joint and several liability.*"

100. In view of the aforesaid, the direction of the WTM to pay the unlawful gains jointly and severally cannot be sustained. The unlawful gain against each appellant has to be calculated separately which amount is required to be paid individually by the appellant.

101. We also find that the WTM has travelled beyond the scope of the remand order. The 2nd SEBI order acquitted B. Suryanarayana Raju of all allegations of fraud and PFUTP violation. WTM in paragraph No. 55 held as under :-

> *"55. It is noted that the charge of violation of the provisions of section 12(A) (b) and (c) of the SEBI Act and regulations 3 (c) and (d) of the PFUTP Regulations against the noticees is based on the charge of alleged insider trading by them to deceive or defraud the unsuspecting investors. As already noted above, there is no allegation of noticees having role in the fraud committed by Mr. B. Ramaling Raju, Mr. B. Rama Raju, Mr. Vadlamani Srinivasa, Mr. G. Ramakrishna and Mr. VS Prabhakara Gupta as found in the order dated July*

> *15, 2014. The SCN is silent with regard to the material which may establish the preponderance of probability of violations of these provisions relating to fraudulent or manipulative acts in connection with dealings in securities. I, therefore, find that this charge has not been made out in the SCN clearly. I also do not find any material on record to suggest that the noticees have contravened the provisions of section 12(A) (b) and (c) of the SEBI Act and regulations 3 (c) and (d) of the PFUTP regulations as alleged in this case."*

102. This Tribunal in its order dated August 11, 2017 (2nd SEBI order) upheld the violations committed by B. Suryanarayana Raju with regard to insider trading under the PIT Regulations and remitted the matter for recalculation of the quantum of unlawful gains, period of restraint and direction to disgorge the amount jointly and severally. B. Suryanarayana Raju filed an appeal before the Hon'ble Supreme Court which was dismissed by the judgment dated May 14, 2018. The Hon'ble Supreme Court while affirming the direction for remand held :-

> *"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."

103. The WTM has wrongly misconstrued the order of the Hon'ble Supreme Court in coming to the conclusion that B. Suryanarayana Raju has played a fraud in collusion with B. Ramalinga Raju and B. Rama Raju. The Hon'ble Supreme Court was considering the role of B. Suryanarayana Raju with B. Ramalinga Raju and B. Rama Raju only under the PIT Regulations and not under the PFUTP Regulations. We are of the opinion that it was no longer open to the WTM to re-appreciate the facts and come to this conclusion, in as much as, the appellant was only found guilty of violating the PIT Regulations in the 2nd SEBI order and was exonerated of all the violations under the PFUTP Regulations. The appellant was categorically exonerated of all the allegations of fraud committed by B. Ramalinga Raju and B. Rama Raju in connection with the alleged violation under the PFUTP regulations. The WTM in the 2nd SEBI order has given a conclusive finding that appellant

had no role in the fraud committed by the B. Ramalinga Raju and B. Rama Raju nor there is any finding with regard to the connivance between the appellant and SRSR Holdings Pvt. Ltd. The 2nd SEBI order on the aforesaid violations has become final and cannot be reopened nor can the facts be re-appreciated under the impugned order for the purpose of computing the unlawful gain.

104. In view of the aforesaid, the finding in paragraph No. 20 of the impugned order that B. Suryanarayana Raju had a role to play in the fraud in collusion with B. Ramalinga Raju and B. Rama Raju is patently erroneous and cannot be sustained.

105. In view of the aforesaid, we are of the view that the Hon'ble Supreme Court in its order dated May 14, 2018 only confirmed the majority view of this Tribunal (2nd SAT order) and had not modified the 2nd SAT Order, in any manner, whatsoever. The issue of B. Suryanarayana Raju involvement in the alleged fraud of B. Ramalinga Raju and B. Rama Raju under the PFUTP Regulations was not in issue before the Hon'ble Supreme Court. Thus, the scope of remand as ordered by 2nd SAT order was not altered by the Hon'ble Supreme Court and, therefore, the principles governing Order 43 Rule 23A of the Code of Civil Procedure is squarely

applicable. We are of the opinion that it is no longer available to the WTM upon remand to revisit the issue regarding the complicity in the fraud committed by B. Ramalinga Raju and B. Rama Raju. The WTM has gone beyond the scope of the order of remand.

106. We are further of the view that the appellant B. Suryanarayana Raju cannot be worse off on remand. The direction against B. Suryanarayana Raju to disgorge the amount jointly and severally arising from the sale and pledge of Satyam shares with B. Ramalinga Raju, B. Rama Raju and SRSR Holdings Pvt. Ltd. is wholly illegal and cannot be sustained as such direction is over and above the remand order.

107. The WTM in its order dated July 15, 2014 (1st SEBI order) directed B. Ramalinga Raju and B. Rama Raju to disgorge wrongful gains by way of pledge amounting to Rs. 1258.88 crore. The WTM by its order dated September 10, 2015 (2nd SEBI order) directed SRSR Holdings Pvt. Ltd. to disgorge the wrongful gain of Rs. 1258.88 crore jointly and severally with B. Ramalinga Raju and B. Rama Raju.

108. Both the 1st and 2nd SEBI order was set aside by this Tribunal by its order dated May 12, 2017 holding that the two orders are mutually contradictory. This Tribunal in paragraph no. 33(g), (h) and (i) held as under :-

> *"33(g) Similarly, direction given by the WTM that Ramalinga Raju & Rama Raju must jointly and severally disgorge ₹ 1258.88 crore is also without any merit. According to SEBI, in September 2006, Ramalinga Raju, Rama Raju and their spouses had transferred shares of Satyam held by them to SRSR Holdings Pvt. Ltd. ("SRSR" for short) a company wholly owned by Ramalinga Raju, Rama Raju and their family members. Between October 2007 and September 2008, SRSR pledged the Satyam shares transferred by Ramalinga Raju, Rama Raju and their spouses with a view to enable 10 group entities belonging to Ramalinga Raju and Rama Raju's family to avail loan from financial institutions. Without recording reasons in the impugned order as to how pledging Satyam shares through SRSR to avail loan for 10 group entities amounts to making illegal gain by Ramalinga Raju and Rama Raju, the WTM could not have directed disgorgement of ₹ 1258.88 crore by Ramalinga Raju and Rama Raju jointly and severally."*

> *"(h) Fact that the financial institutions while sanctioning loan to the 10 group entities took the market value of Satyam shares pledged by SRSR and the market value of Satyam shares was based on inflated/manipulated books of Satyam could not be a ground for the WTM to hold that the sanctioned loan of ₹1258.88 crore was the unlawful gain made by Ramalinga Raju and Rama Raju. Even if higher loan was sanctioned on the basis of inflated price of Satyam scrip, loan sanctioned with an obligation to repay could not by*

itself constitute gain under any provision of the securities laws."

"(i) Apart from the above, facts on record reveal that out of the sanctioned loan of ₹1258.88 crore, the loan availed by the 10 group entities was ₹1219.25 crore and the loan repaid by the said 10 group entities on account of invocation of pledge and by other modes was to the extent of ₹1215.83 crore. Thus, the balance loan repayable was only to the extent of ₹ 3.43 crore. All these facts were available before the WTM. In such a case, decision of the WTM holding that the sanctioned loan of ₹1258.88 crore represents the illegal gain made by Ramalinga Raju and Rama Raju clearly shows total non-application of mind on part of the WTM."

109. This Tribunal in its order dated May 12, 2017 in paragraph no. 33(j) held as under :-

"33(j). Thus, the WTM has passed mutually contradictory orders and mechanically, SEBI is seeking to defend both the orders. Without expressing any opinion on the merits of the order dated 10.09.2015, we hold that the impugned order dated 15.07.2014 passed by the WTM treating ₹1258.88 crore being the loan sanctioned on pledge of Satyam shares was the illegal gain made by Ramalinga Raju and Rama Raju and directing them to disgorge the said of ₹1258.88 crore jointly and severally cannot be sustained, because, in the impugned order, the WTM has not recorded any reason as to why ₹1258.88 crore was the illegal gain made by Ramalinga Raju and Rama Raju, when the show cause notice dated 19.06.2009, issued to SRSR, SEBI had considered that the amount of ₹1258.88 crore

being the loan sanctioned on pledge of Satyam shares was the illegal gain made by SRSR."

110. This Tribunal in its order dated August 11, 2017 (2nd SAT Order) further held as under :-

"22. Before passing fresh order on remand, the WTM of SEBI shall give an opportunity of hearing to the appellants and consider their plea on merits, including the plea of SRSR that it had acquired the shares of Satyam for valuable consideration and that the loan obtained by pledging shares of Satyam have been substantially repaid."

111. From the aforesaid, the direction of this Tribunal was :-

(1) Record reason as to how pledging of Satyam shares through SRSR Holdings Pvt. Ltd. to avail loan for 10 group entities amounts to making an illegal gain by B. Ramalinga Raju and B. Rama Raju.

(2) Record reason as to how the financial institutions while sanctioning loan to the 10 group entities and taking the market value of Satyam shares pledged by SRSR Holdings Pvt. Ltd. could be a ground to hold that the

sanctioned loan of Rs. 1258.88 crore was unlawful gain made by B. Ramalinga Raju and B. Rama Raju

(3) Record reason that even if higher loan was sanctioned on the basis of inflated price of Satyam shares, loan sanctioned with an obligation to pay could not by itself contribute gain under any provision of the securities laws.

(4) Record reason as to whether or not the balance loan repayable to the extent of Rs. 3.43 crore was an unlawful gain, if any.

(5) Consider the pleas of the appellants on merits including the plea of SRSR Holdings Pvt. Ltd. that it had acquired the shares of Satyam for valuable consideration and the loan obtained by pledging shares of Satyam have been substantially repaid.

112. We find that the aforesaid direction of this Tribunal has not been considered nor followed by the WTM. On the other hand, the contention raised by the appellants has been disregarded holding that

the pledge transaction entered into by SRSR Holdings Pvt. Ltd. cannot be treated as a loan transaction simplicitor as it is an ingeniously structured transaction and that the amount raised by SRSR Holdings Pvt. Ltd. for the benefit of Satyam group entities is an illegal gain which is liable to be disgorged. In our opinion, without considering the direction of this Tribunal as to how the loan sanctioned by the financial institutions could be held to be an unlawful gain by B. Ramalinga Raju and B. Rama Raju or how the loan amount can be an unlawful gain when there was an obligation to repay the loan amount which has also been repaid and whether the balance loan amount of Rs. 3.43 crore which remained unpaid could at best be the unlawful gain. In the absence of any discussion that the shares of Satyam was purchased for valuable consideration, we are of the opinion that the finding of the WTM on the issue of unlawful gain on pledge of shares is without any application of mind and without following the direction of the Tribunal and, therefore, the said finding cannot be sustained.

113. The WTM in its order dated July 15, 2014 (1st SEBI order) had restrained B. Ramalinga Raju, B. Rama Raju, V. Srinivas and G. Ramakrishna from accessing the securities market for 14 years. The

WTM in its order dated September 10, 2015 (2nd SEBI order) had restrained SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju for a period of 7 years.

114. This Tribunal in paragraph no. 34(c) of its order dated May 12, 2017 (1st SAT order) held that for the reasons stated in paragraph no. 33, the decision of the WTM in uniformly restraining all the appellants from accessing the securities market for 14 years without giving any reasons was unjustified. Similarly, this Tribunal in paragraph no. 20 of its order dated August 11, 2017 (2nd SAT order) held that without considering the merits of each case, the WTM could not have imposed uniform restraint order against all the appellants.

115. By the impugned order dated November 2, 2018, the WTM held that in view of the finding of complicity in fraud committed by B. Suryanarayana Raju and since the liability in fraud has been upheld by this Tribunal which has been confirmed by the Hon'ble Supreme Court, therefore, there is no reason to distinguish between SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju on one hand and B. Ramalinga Raju and B. Rama Raju on the other hand. The WTM further held that since all of them are perpetrators, therefore,

the period of restraint would be the same and, consequently, restrained them from accessing the securities market for 14 years.

116. In our opinion, this approach of the WTM is patently erroneous and cannot be sustained for the following reasons :-

1. No reason has been given as to why the magic figure of 14 years of restraint was appropriate.

2. No reason is given, nor any discussion is made with regard to the restraint of 14 years against B. Ramalinga Raju and B. Rama Raju.

3. The WTM in the 1st SEBI order had restrained B. Ramalinga Raju, B. Rama Raju, V. Srinivas and G. Ramakrishna for 14 years in view of violating the PIT Regulations and the PFUTP Regulations. The WTM in the 2nd SEBI order restrained SRSR Holdings Pvt. Ltd. and B. Suryanarayana Raju for 7 years for violating only the PIT Regulations. The WTM exonerated them under the PFUTP Regulations. The Hon'ble Supreme Court was considering the appeal of B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. with regard to the

violation only under the PIT Regulations and while considering the SFIO's report found complicity of B. Suryanarayana Raju in the fraud. The fraud found by the Hon'ble Supreme Court was under the PIT Regulations and not under the PFUTP Regulations. In fact, the Hon'ble Supreme Court was not concerned with the violations under PFUTP Regulations.

In view of the aforesaid, the WTM has wrongly misconstrued the order of the Hon'ble Supreme Court and, consequently, the finding that B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. are equal perpetrators is without any basis.

4. In our view, B. Suryanarayana Raju and SRSR Holdings Pvt. Ltd. cannot be worse off on remand. The increase in period of restraint over and above the earlier order of remand is wholly illegal and cannot be sustained.

117. The WTM in its two orders has directed the appellants to disgorge the amount alongwith simple interest @ 12% p. a. with effect from January 7, 2009 till the date of payment. The WTM in

the impugned order has rejected the contention of the appellants on the issue of rate of interest on the short ground that this Tribunal had not specifically set aside the rate of interest in its orders.

118. In this regard, we find that this Tribunal had set aside the order of disgorgement and had directed the WTM to decide the issue of disgorgement afresh on merits. In our opinion, interest becomes payable after the computation of the disgorgement is made. Once the amount of disgorgement was set aside, the imposition of interest on it was automatically set aside. It is on account of this reason that the issue on interest was not considered and was left open by the Tribunal. To look at this issue from another angle, if for some reason, the WTM agrees with the contention of the appellants and holds that no amount of disgorgement is payable, then obviously, no interest is payable. In view of this, when the direction of disgorgement was set aside, the issue of payment of interest was automatically set aside and was left open.

119. In view of the aforesaid reasoning, it was necessary for the WTM to consider the plea of the appellants on the issue of interest, especially when it has been urged that SEBI has been imposing lower rate of interest in a large number of matters.

120. For the reasons stated in the preceding paragraphs, the impugned orders dated October 16, 2018 and November 2, 2018 passed by the WTM are set aside. All the appeals are allowed. The matter is remitted to the WTM to pass a fresh order within four months after giving an opportunity of hearing to all the appellants on the following issues :-

1. The WTM will consider the intrinsic value while calculating the unlawful gain.

2. The unlawful gain, if any, will be calculated individually for all the appellants by the WTM.

3. The WTM will consider the issue on interest.

4. The WTM will reconsider the issue on period of restraint afresh for all the appellants.

5. The WTM will reconsider the issue on pledge of shares.

121. In the circumstances of the case, parties shall bear their own costs.

122. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

02.02.2023
PTM

PRAMILA TANAJI MISAL

Digitally signed by PRAMILA TANAJI MISAL
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