Darshan/Niti

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4457 OF 2024

1] **ABANS ENTERPRISES LTD.**]
A public listed company]
incorporated under the erstwhile]
Companies Act, 1956 having its]
Registered Office at 36/37/38A, 3rd]
Floor, 227, Nariman Bhavan,]
Backbay Reclamation, Nariman]
Point, Mumbai – 400 021.]
]

2] **ABHISHEK BANSAL**]
36/37/38A, 3rd Floor, 227, Nariman]
Bhavan, Backbay Reclamation,]
Nariman Point, Mumbai-400 021.]**... Petitioners**

Versus

1] **SECURITIES AND EXCHANGE BOARD**]
OF INDIA]
SEBI Bhavan, Plot No.C4-A, "G"]
Block, Bandra – Kurla Complex]
Bandra (E), Mumbai – 400 051]**... Respondent**

Mr Gaurav Joshi, **Senior Advocate** a/w Mr. Janak Dwarkadas, Senior Advocate, Mr. Ravichandra Hegde, Mr. Paras Parekh, Mr. Saurabh Pakale, Ms. Mitravinda Chunduru, Mr. Samyak Pati and Mr. Ashok Pandey i/by RHP Partners for the Petitioners.

Mr Hormaz C. Daruwalla, **Senior Advocate** a/w Mr. Suraj Choudhary, Ms. Hubab Sayyed, Mr. Nishin Shrikhande, Ms. Komal Shah i/by Vidhii Partners for Respondent - SEBI.

CORAM	M.S. Sonak & Jitendra Jain, JJ.
RESERVED ON:	15 October 2024
PRONOUNCED ON:	11 November 2024

JUDGMENT: (*Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. This petition challenges the following: -

(a) The validity of regulations 6(1)(f) and 13(2)(ba) of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (Settlement Regulations);

(b) Communication dated 31 July 2024 (impugned rejection letter) by which the petitioners' settlement proposal came to be rejected.

3. The petition also refers to a challenge to the regulation 11-A of the Settlement Regulations. However, no such provision exists in the copy of the Settlement Regulations handed over to us. In any event, no submissions were made in the context of this regulation 11-A.

4. The first petitioner is a publicly listed company incorporated under the Companies Act of 1956. It trades shares, currencies, and derivatives on all the leading exchanges in India. The second petitioner is a promoter of the first petition company, with a shareholding of 74.56%.

5. The respondent, the Securities and Exchange Board of India (SEBI), issued a show-cause notice (SCN) dated 29 August 2023 to the petitioners and seven others regarding the trading in the first

petitioner's scrip. The executive summary on pages 3 to 11 of the SCN contains the gist of the allegations.

6. The SCN alleges serious violations by the petitioners and the other noticees. There are allegations about the petitioners and the other noticees acting in concert with each other through common directors, employees, signatories, bank accounts, etc. There are allegations about the noticees acting in concert while acquiring shares of Abans Enterprises Ltd. (AEL) without making the required disclosures under the SAST Regulations. There are allegations about the noticees creating false and misleading appearance of trade and contributing to price rise by manipulative trading practices leading to inflated contribution of net market Long Term Plan (LTP) during the prescribed patches. There are allegations about manipulation of volumes of shares by deliberately placing high buy orders and subsequently deleting the same thereby creating misleading appearance of trading.

7. The petitioners sought for documents, insisted upon cross-examination and raised several preliminary objections. The petitioners filed applications insisting upon the adjudication of the preliminary objections before the proceedings in the SCN could advance any further. Offers of repeated personal hearings were mostly turned down by raising all kinds of objections. Even Writ Petition No.3147/2024 was filed in this Court for direction to place the petitioners' applications raising preliminary issues before the Whole Time Members (WTM).

8. Simultaneously, without prejudice, the petitioners filed settlement applications on 23 September 2023, duly registered on 20 October 2023 as application nos.7404 and 7405 of 2023 seeking settlement.

9. After preliminary scrutiny via email dated 14 December 2023, SEBI sought information on disclosures made by the second petitioner under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations). However, the petitioners declined to make the necessary disclosures, stating that such disclosures would prejudice their defence in the SCN. In the personal hearing before the Internal Committee (IC) on 17 January 2024, the petitioners claim to have been informed by the IC about specific "*condition precedent(s)*" that they would have to comply with for consideration of their settlement applications.

10. The petitioners protested and refused to comply, claiming that such condition precedent(s) were nothing but an admission of the allegations in the SCN. The petitioners, however, submitted revised settlement terms and insisted they be placed before the High-Powered Advisory Committee (HPAC). On the one hand, expeditious hearings were claimed. On the other, requests were made by the petitioners to keep in abeyance the decision on the settlement applications by linking the same with the preliminary issues raised. The petitioners also sought postponement of hearings before the Quasi Judicial Authority (QJA) by insisting on resolving pending issues like cross-examination of witnesses, inspection of documents, and the pendency of settlement applications.

11. Ultimately, the settlement division of SEBI issued the impugned rejection letter dated 31 July 2024, rejecting the petitioners' settlement applications. On 21 August 2024, the petitioners were again called to attend the personal hearings before the QJA on 06 September 2024. By communications dated 23 August 2024, 4th, 5th and 06 September 2024, the petitioners

insisted on resolving allegedly pending issues and declined to participate in the personal hearing. This modus was followed regarding another personal hearing opportunity scheduled in mid-September 2024.

12. Finally, this petition was instituted on 15 September 2024 to challenge the validity of some of the Settlement Regulations' clauses and the impugned rejection letter dated 31 July 2024. Significantly, the interim relief in this petition is to direct the SEBI '*to maintain status quo and keep the personal hearing for adjudication of the SCN in abeyance*'.

Submissions of the Petitioners :-

13. Mr Joshi, the learned Senior Advocate for the petitioners, after taking us through the scheme of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and Settlement Regulations, submitted that the impugned provisions were ultra vires the SEBI Act. Mr. Joshi submitted that the impugned provisions have no rationale nexus to the scope and object of what is sought to be achieved via a settlement application under the settlement regulations, as the impugned provisions permit the rejection of a settlement application by the IC imposing arbitrary and unreasonable "conditions precedent(s)" without the settlement application being placed for consideration before the panel of WTM. He submitted that the impugned provisions, besides being ultra vires the SEBI Act, also suffer from manifest arbitrariness.

14. Mr Joshi submitted that the power of SEBI to agree to the settlement of any proceedings is contained in Section 15-JB of the SEBI Act. This section, among other things, provides that the conditions and eligibility criteria under which the SEBI may agree

to a settlement proposal will be carried out through corresponding regulations, i.e. Settlement Regulations. The Settlement Regulations provide that firstly, the IC must examine if the settlement application could be considered and, if so, determine the settlement terms (Regulation 12); secondly, the proposed settlement terms must be placed before the HPAC for making a recommendation (Regulation 13); and thirdly, the matter must be placed before the panel of WTM to accept or reject HPAC's recommendation (Regulation 15).

15. Mr Joshi submitted that in terms of Regulation 15 of the Settlement Regulations, only the panel of Whole Time Members had the final authority to accept or reject the settlement terms. He, therefore, submitted that the impugned provisions, which empowered the IC to prescribe "conditions precedent" and, based upon alleged non-compliance with such "conditions precedent", to reject the settlement applications, rendered the impugned provisions ultra vires the SEBI Act. He submitted that the settlement regulations delegated the power to accept or reject the settlement proposals to the panel of WTMs by the Settlement Regulations. The impugned provisions, however, circumscribe the powers of the panel of WTMs to consider the settlement proposal, and to that extent, the impugned provisions are ultra vires the SEBI Act.

16. Mr Joshi submitted that the impugned provisions militate against the objective and purpose of the settlement mechanism provided by the Settlement Regulations and the SEBI Act. He submitted that the impugned provisions, by giving the IC overreaching powers at the very entry gate of the settlement proceedings, discourage the legislative mandate to encourage settlements and alternative methods of disposal of cases, which is

the prime objective of the settlement provisions. He submitted that the prescription of Regulation 13(2)(ba) is fundamentally at odds with the remit of the IC itself as it goes beyond examining the feasibility of a settlement proposal on the touchstone of Regulations 5(2) to 5(4) and traverses into the fundamental aspect of even consideration of the settlement application.

17. Mr Joshi submitted that the impugned provisions, by allowing the IC to impose "condition precedent(s)", have allowed the IC to act unreasonably and arbitrarily. He submitted that the impugned provisions are an instance of excessive delegation because the SEBI Act contains no provisions to guide the IC on imposing such "condition precedent(s)". He submitted that the IC had unfettered discretion in choosing the "condition precedent(s)". He submitted all this violated Article 14 of the Constitution of India.

18. Mr Joshi finally submitted that the "conditions precedent" imposed upon the petitioners by the IC were arbitrary and unreasonable. He submitted that the petitioners could not be forced to call upon other noticees in the SCN to submit their settlement proposals or to join in settlement proposals submitted by the petitioner. He submitted that the direction for disgorgement was contrary to the prescribed scope under the Settlement Regulations. Besides, he submitted that the disgorgement referred to "notional profits" and not actual profits. For all these reasons, Mr Joshi submitted that the "condition precedent(s)" imposed by the IC were ultra vires, arbitrary and unreasonable.

19. Mr Joshi did not raise any other contentions in support of this petition, including the contention that the power to impose conditions precedent in the 2018 Regulations was introduced

without any public consultation. However, it is necessary to record this because one of the grounds in the petition alleges that it was introduced without public consultation.

20. Mr Joshi submitted that a rule be issued in this petition, and, by way of interim relief, the SEBI be directed not to act in furtherance to the show cause notice dated 29 August 2023 read with hearing notice dated 21 September 2024.

Submissions of Respondent – S.E.B.I. :-

21. Mr Daruwalla, learned Senior Advocate for SEBI, submitted that this petition is nothing but a ploy to defer or delay the adjudication of the SCN issued to the petitioners. He submitted that the petitioners were never serious about their settlement applications and declined to cooperate despite the fair opportunities. He submitted that the conditions the petitioners are assailing are fair and reasonable in the circumstances, given the allegation in the SCN about all the noticees being Persons Acting in Concert.

22. Mr Daruwalla submitted that the challenge to the regulations was misconceived. He submitted that none of the challenged Regulations were ultra vires the SEBI Act or vitiated due to any arbitrariness or manifest arbitrariness. He submitted that there was a presumption of validity in such matters, which the petitioners did not even dent. He submitted that the Settlement Regulations were an economic measure where expert bodies like SEBI are generally conceded with substantial latitude and flexibility given the complexities of the transactions they had to deal with.

23. Mr Daruwalla submitted that petitioners' applications were duly considered and rejected in terms of the law. He submitted that the petitioners have no unfettered right to insist upon accepting their settlement proposals on their own terms. He maintained that the petitioners' approach was only to stall the adjudication in the SCN by filing the settlement applications and, if possible, prolonging their pendency. He, therefore, submitted that this petition may be dismissed.

Analysis and Conclusions :-

24. The rival contentions now fall for our determination.

25. The SCN dated 29 August 2023 issued to 8 noticees, including the petitioners, gives a glimpse into the allegations against the noticees. Since the adjudication of the SCN is in progress, it would be premature to comment one way or the other on the various allegations contained therein. However, we cannot help observing that the allegations in the SCN, if proven, are indeed grave.

26. From the pleadings in the petition itself, we believe that Mr Daruwalla was justified in contending that the main objective of the petitioners, and perhaps the other noticees, was to stall, as long as possible, the adjudication on the SCN dated 29 August 2023. Regulation 8 of the Settlement Regulations provides that filing an application for settlement of any specified proceedings shall not affect the continuance of the proceedings '*save that the passing of the final order shall be kept in abeyance till the application is disposed of*'. Thus, as long as the settlement applications remained pending, no final order could be made on the SCN dated 29 August 2023.

27. The record shows that the petitioners made all kinds of applications and even refused to cooperate with the personal hearing offers. Requests in the applications, at times, contradicted each other. From the record, we cannot dismiss Mr Daruwalla's contention about the petitioners are attempting to stall the proceedings in the SCN, including by way of filing settlement applications and then even insisting that no orders be passed on the settlement applications until the preliminary or other issues raised by them in the SCN were first resolved.

28. From the above perspective, the conduct of the present petitioners is no different from that of the petitioners in ***Binny Limited V/s. Securities and Exchange Board of India*** [1]. There, Binny Limited, by submitting a settlement proposal and insisting that the same should have been considered "on merits" had sought a restraint on the proceedings in the Show Cause Notice issued to them alleging massive diversion of funds of several crores leading to loss to investors and an adverse impact on the integrity of the market.

29. A coordinate Division Bench of this Court dismissed Binny Limited's petition with exemplary costs by noting that the settlement application was used as "*a mechanism to block the final adjudication of the SCN".* The Bench pointed out that this was evident from the prayers in the petition seeking a stay on the adjudication of the SCN until a decision on the settlement applications "on merits". The position of the petitioners in the present case, at least *prima facie*, is not significantly different given the petitioners' conduct of stalling or delaying the adjudication of the SCN.

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[1] 2023 SCC OnLine Bom 2881

30. The petitioners also appear to be under some misconception that it is their right to avail of a settlement on terms offered by them or on terms that they would like to accept. This approach appeared apparent from the pleadings in this petition and the tenor of submissions made before us. At the highest, the petitioners have a right to have their settlement applications considered fairly and following the Settlement Regulations. However, the insistence that the SEBI accepts the petitioners' settlement proposals on terms which the petitioners deem the best or that no counter terms can be suggested is entirely misconceived and wholly beyond the ambit of the Settlement Regulations.

31. In ***Shilpa Stockbroker Pvt. Ltd. and Anr. V/s. Securities and Exchange Board of India*** [2]**,** yet another coordinate Bench of this Court (D.Y. Chandrachud and A.A. Sayed, JJ., as their Lordships then were) on considering the scope and ambit of the 2007 Guidelines for Consent Orders and for considering requests for the composition of offences under the SEBI Act, 1992 held that *whether a dispute should be resolved or whether the wider public interest in ensuring regulatory compliance requires that proceedings should be initiated and, if initiated should be followed to their logical conclusion, is a matter which falls within the discretion of SEBI*. As a matter of first principle, a person against whom action has been initiated by SEBI or *a person who apprehends that action will be initiated by SEBI has no vested right to insist that the dispute be resolved in terms of a consensual settlement. SEBI has been constituted as an expert regulator to ensure the stable and orderly functioning of the securities market. Acting as a regulator of the securities market, decisions taken by SEBI impact upon the economy and financial stability.*

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[2] 2012 SCC OnLine Bom 58

32. The Division Bench further observed that SEBI is vested with statutory powers in the public interest, and the exercise of power must be guided by the public interest that SEBI is vested with the power to protect. The considerations spelt out in clause 11 provide some indication of the nature of the power that is exercised. Amongst the circumstances which are to be borne in mind are whether the violation is intentional, the conduct of the party during investigation, the gravity of the charge, the track record of the violator, whether a violation is technical or minor, the extent of harm that may be caused to investors, processes which have been adopted to minimise future violations, proposed compliance schedule, economic benefits that have accrued from delayed or failure in compliance, conditions necessary to deter future non-compliance, satisfaction of claims of investors and compliance of civil enforcement action. *These factors indicate that the question as to whether a dispute should be resolved by a consensual settlement does not merely involve a private lis between the violator and the regulator but involves a consideration of wider issues of public interest.*

33. The Court explained that the securities market impinges upon investor wealth. Investors as a body represent the collective wealth of numerous individual investors. Trading on the stock exchanges and conducting business on the stock exchanges has a material impact on institutional and individual investors. Actions of stakeholders in the securities market have consequences not merely for the role and position of the stakeholder but also his relationship with SEBI as a regulator. Those actions have serious consequences for the overall well-being of the securities market and those whose wealth and investment are impacted by the stock market. SEBI is within its power to protect and streamline the

functioning of the securities market. *A person who is alleged to be in breach of the Regulations or statutory provisions which are designed to protect the public interest can have no vested right either to insist upon SEBI settling a dispute or in enforcing compliance of the terms of a proposed offer of settlement.*

34. The coordinate Bench, therefore, declined to strike down the 2007 Guidelines or the requirement of the pendency of Court proceedings or adjudication in clauses 8, 11 and 17 of the Guidelines as being arbitrary and violative of Article 14 of the Constitution. The coordinate Division Bench also declined to issue a mandamus to SEBI to read the requirement of pendency to mean and include pendency of the enforcement proceedings post-adjudication. A mandamus to direct SEBI to enforce the willingness conveyed by the petitioners in their letter dated 18 August 2010 was also declined.

35. The coordinate Division Bench held that there was no merit in any of the submissions urged on behalf of the petitioners. The Guidelines in so far as they mandate that proceedings should either be in contemplation or be pending before they can be resolved, are based on a valid rationale. *The whole purpose of the Guidelines is to ensure that the time and effort of the regulator is devoted to cases which duly merit trial and enforcement.* The Guidelines thus recognise an enabling power in SEBI to resolve certain cases which, in the view of SEBI, can be set at rest without compromising either an issue of principle or public interest. The Court, therefore, concluded that the Guidelines do not confer a vested right in any person to insist on the acceptance of a proposed settlement.

36. Though the challenge in the present petition to the impugned provisions in the Settlement Regulations appears to be of a different shade than the one involved in *Shilpa Stock Broker Pvt. Ltd.* (supra), the observations and the perspective explained by the Coordinate Bench in dealing with the role of SEBI, the broader issues of public interest involved in the parties breaching SEBI regulations and the rights of such parties in insisting upon acceptance of their terms of settlement, will equally apply. The circumstance that the guidelines referred to in *Shilpa Stockbroker Pvt. Ltd.* (supra) may have been non-statutory, and the regulations involved in the present matter are statutory will also make no difference. This is because the petitioners do not allege a breach of the Settlement Regulations, but they allege that specific clauses of the Settlement Regulations are ultra vires and unconstitutional.

37. The SEBI has made the Settlement Regulations in the exercise of powers conferred by Section 15-JB of the SEBI Act 1992, Section 23-JA of the Securities Contracts (Regulation) Act, 1956 and Section 19-IA of the Depositories Act, 1996 read with Section 30 of the SEBI Act, 1992, Section 31 of the Securities Contracts (Regulation) Act, 1956 and Section 25 of the Depositories Act, 1996. These Settlement Regulations were made by SEBI to provide for terms of the settlement, the settlement procedures and the matters connected therewith or incidental thereto. Therefore, the power of SEBI to make such regulations generally is not in doubt and has not even been challenged.

38. The only challenge is to Regulations 6(1)(f) and 13(2)(ba), under which an IC could require an applicant to comply with specific condition precedent(s) within a specified time for consideration of the application for settlement and where the applicant fails to comply with the condition precedent(s) for

settlement within the time as required by the IC to reject such application.

39. Mr Joshi contended that Regulation 13(2)(ba) was an instance of excessive delegation because unfettered powers were vested in the IC to impose condition precedent(s). He submitted that such a provision, when read with Regulation 6(1)(f), produced manifestly arbitrary results. Accordingly, he submitted that the impugned provisions were liable to be struck down for manifest arbitrariness.

40. The challenge based on excessive delegation was never really elaborated upon. In any event, the SEBI Act 1992 and the Settlement Regulations provide ample guidance on how discretion is to be exercised in dealing with settlement applications. Therefore, we find no merit in the challenge based on excessive delegation to the SEBI.

41. The SEBI Act of 1992 is enacted to provide for establishing a Board to protect the interests of investors in securities and to promote the development of and regulate the securities market and for matters connected therewith or incidental thereto. A Division Bench of the Gujarat High Court in ***Securities and Exchange Board of India V/s. Alka Synthetics Ltd.***[3] has explained that the SEBI Act is an Act of remedial nature and, therefore, could not be compared with the cases relating to the fiscal or taxing Statutes or other penal Statutes for collection of levy, taxes, etc. It is a matter of common knowledge that the SEBI has to regulate a speculative market, and in case of a speculative market, varied situations may arise, and all such exigencies and situations cannot be contemplated in advance and, therefore, looking to the

[3] AIR 1999 Guj. 221

exigencies and the requirement, it has been entrusted with the duty and function to take such measures as it thinks fit.

42. Section 15-JB of the SEBI Act is concerned with settlement of administrative and civil proceedings. It provides that notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11-B, section 11-D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults. Sub-section (2) of Section 15-JB provides that the Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the Regulations made under this Act. Sub-section (3) of Section 15-JB provides that the settlement proceedings under this section shall be conducted in accordance with the procedure specified in the Regulations made under this Act.

43. Thus, considering the scope and the actual provisions of the SEBI Act, 1992, it is too much to suggest that there is any case of excessive delegation involved in vesting the SEBI with the powers to frame regulations for dealing with proposals for settlement by defaulters. Section 15-JB specifically empowers the SEBI to determine the settlement terms and procedure for settlement. The SEBI or its Board must *consider the nature, gravity, and impact of defaults*. These, coupled with the very purpose of enacting the SEBI Act, offer more than sufficient guidelines for formulating the Settlement Regulations and their implementation. Accordingly, the

argument based upon any alleged excessive delegation is liable to be rejected and is hereby rejected.

44. Mr Joshi, apart from simply alleging that this was a case of excessive delegation, did not demonstrate why this was so. He did, however, urge that the ultimate decision on whether to accept the settlement proposal or not vested in the panel of Whole Time Members (WTMs) and, therefore, empowering the IC to impose any condition precedent(s) prevented the settlement proposal from being considered by the panel of WTMs. He submitted that this was a case of excessive delegation and, in any event, suggested manifest arbitrariness.

45. The Settlement Regulations make detailed provisions explaining the scope of settlement proceedings, the contents of the settlement terms, the factors to be considered to arrive at the settlement terms, scrutiny of the application by the IC, the recommendations to be made by the HPAC and finally the action to be taken by the WTM on the settlement proposal and the recommendations made by the HPAC on the settlement proposal.

46. For example, Regulation 9 provides that the settlement terms may include a settlement amount and/or non-monetary terms in accordance with the guidelines specified in Schedule-II. Regulation 9(2) provides what the non-monetary terms may include. Regulation 10 provides for the factors to be considered to arrive at the settlement terms. All these are detailed provisions, and the charge about the absence of guidelines and excessive delegation is entirely misconceived.

47. Besides, the IC, which is tasked by Regulation 13 to examine whether the proceedings may be settled and, if so, to determine

the settlement terms in accordance with the Regulations, is constituted by the Board itself. The IC is to comprise an officer of the Board not below the rank of Chief General Manager and such other officers as may be specified by the Board. As was observed in the *Shilpa Stock Broker* case, *the whole purpose of the Guidelines is to ensure that the time and effort of the regulator is devoted to cases which duly merit trial and enforcement.*

48. The Settlement Regulations now also contemplate a three-tiered examination of the settlement proposal. At each level, proposals and counterproposals are very much contemplated. A settlement must account for the public interest, not just the commercial interests of the Petitioners proposing it. In such matters, the SEBI is duty-bound to protect the public interest. The SEBI cannot sacrifice the public interest by mechanically accepting settlement proposals made by defaulting parties.

49. While examining whether the proceedings may be settled and, if so, to determine the settlement terms in accordance with these Regulations, there is nothing wrong if the IC requires an applicant to comply with the specific condition precedent(s) within a specified period for consideration of the application for settlement. This is to test the seriousness of the applicant's proposal and to see that the public interest is not compromised unduly. This is also to ensure that the SEBI is not flooded with non-serious settlement proposals or proposals made only to delay the adjudication of the SCN.

50. There is no compulsion for an applicant to accept the terms suggested by the IC, just as there is no compulsion on the Board to accept the settlement terms offered by the applicant. The theoretical possibility with the conditions that the IC may propose

or suggest might be absurd or irrational is undoubtedly not a good enough reason to strike down the regulations. The mere possibility of abuse in a given case is not grounds for striking down the provision itself, though the abuse itself could be judicially reviewed if a good case is made out.

51. In this case, Mr. Daruwalla submitted that the HPAC and the panel of WTMs considered the petitioners' proposal. It is only upon due consideration of the petitioners' proposal that the impugned rejection letter was issued. Therefore, the argument that the petitioners' proposal was not considered by either the HPAC or the panel of WTMs is incorrect. The provisions in Regulations 14 and 15 show that the HPAC must examine a settlement proposal to consider whether the same can be recommended for acceptance. The HPAC can also seek revision of the settlement terms and refer the matter to the IC. Similarly, even the panel of WTMs, upon consideration of the recommendations of the HPAC, may either accept or reject the same. A rejection requires the panel of WTMs to record reasons and communicate them to the applicant.

52. The detailed provisions in the SEBI Act and the Settlement Regulations are sufficient to ward off the challenge based on excessive delegation or the challenge that the impugned provisions are ultra vires the parent Act. The impugned regulations do not transgress the scope of delegated powers to the SEBI. The SEBI is a Board composed of the members specified in Section 4 of the SEBI Act, 1992. Having regard to the composition of such a Board and the ample guidelines provided under the SEBI Act, we are satisfied that no case of excessive delegation is made out.

53. In ***Vivek Narayan Sharma (Demonetisation Case-5 J.) V/s. Union of India***[4]***,*** the Hon'ble Supreme Court has explained that the Court must examine the challenge of excessive delegation on a fair, generous and liberal construction of an impugned statute. The delegation must be held valid if guidance could be found in whatever part of the Act (including the preamble). The Court explained that empowering the Executive to make subordinate legislation within a prescribed sphere has evolved out of practical necessity and pragmatic needs of a modern welfare State.

54. The court held that much latitude must be given in such matters. It has been consistently held that Parliament and the State Legislatures are not bodies of experts or specialists. They function best when they concern themselves with general principles, broad objectives and fundamental issues instead of technical and situational intricacies, which are better left to better equipped with full-time expert executive bodies and specialist public servants. The Court held that RBI has a large contingent of expert advice in issuing currency notes and the country's evolving monetary policy. These observations equally apply to the present case, except that we are concerned with SEBI (also an expert body) and not the RBI here.

55. The Court held that we have a Parliamentary system in which the Government is responsible to the Parliament. In case the Executive does not act reasonably while exercising its power of delegated legislation, it is accountable to Parliament who are elected representatives of the citizens for whom there exists a democratic method of bringing to book the elected representatives who act unreasonably in such matters. The Court held that in such

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[4] 2023 3 SCC 1

issues, the nature of the body to which the delegation must be made must be considered. *The Court also held that a mere possibility or eventuality of abuse of delegated powers without evidence supporting such a claim cannot be grounds for striking down the provisions.* If a challenge is made to the delegated legislation framed by the executive, the constitutional court can examine the same. The Court also held that broad discretion must be given to the State in such matters. Once it is established that the legislature itself has willed that a particular thing be done and has merely left the execution of it to a chosen instrumentality, there can be no question of excessive delegation.

56. Regarding the challenge based on "manifest arbitrariness", we refer to the recent decision of the Hon'ble Supreme Court in the case of ***Assn. for Democratic Reforms (Electoral Bond Scheme) V/s. Union of India*** [5]. Here, the Constitution Bench has held that the manifest arbitrariness of subordinate legislation has to be primarily tested vis-a-vis its conformity with the parent statute. Therefore, in situations where subordinate legislation is challenged on the ground of manifest arbitrariness, the Court will proceed to determine whether the delegate has failed "*to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution*".

57. In contrast, applying the manifest arbitrariness test to plenary legislation passed by a competent legislature requires the Court to adopt a different standard because it carries greater immunity than subordinate legislation. A legislative action can also be tested for being manifestly arbitrary. However, it must be

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[5] 2024 (5) SCC 1

clarified that there is, and ought to be, a distinction between plenary and subordinate legislation when challenged for being manifestly arbitrary.

58. Applying the above test in the context of Settlement Regulations, which is subordinate legislation, there is nothing to suggest any failure to account for vital facts required by the SEBI Act or the Constitution to be considered. The impugned Regulations conform with the parent Acts. There is no serious charge for the regulations defying constitutional values or lacking logical consistency. Therefore, the charge of manifest arbitrariness cannot stick.

59. The Constitution Bench has also held that a provision can be struck down as manifestly arbitrary if its determining principle does not align with constitutional values and lacks logical consistency. The standard laid down is that the courts, while testing the validity of a law on the grounds of manifest arbitrariness, must determine if the statute is *capricious, irrational, and without an adequate determining principle or excessive and disproportionate*. Again, nothing in the impugned provisions suggests they lack any determining principle or logical consistency. The impugned provisions are not capricious, irrational and/or excessively disproportionate.

60. In ***Franklin Templeton Trustee Services (P.) Ltd. V/s. Amruta Garg And Ors.***[6], the Hon'ble Supreme Court explained that the principle of manifest arbitrariness requires something to be done in exercise in the form of delegated legislation, which is capricious, irrational or without adequate determining principle. Delegated legislations that are forbiddingly excessive or disproportionate can

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[6] 2021 9 SCC 606

also be manifestly arbitrary. These observations were made in the context of a challenge to the constitutional validity of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

61. The Hon'ble Supreme Court, while upholding the constitutional validity of the SEBI, 1996 Regulations, held that since the Regulations are like economic regulations while exercising the power of judicial review, the Court would exercise restraint unless clear grounds justify interference. The Court would not supplant views for that of the experts as this can jeopardize the marketplace and cause unintended complications. Policy decisions can only be faulted on malafides, unreasonableness, arbitrariness and unfairness, and violation of fundamental rights or exercise of power beyond the legal limits.

62. The Court reiterated that manifest arbitrariness requires something to be done in the form of delegated legislation, which is capricious, irrational, or without an adequate determining principle. Delegated legislations that are forbiddingly excessive or disproportionate can also be manifestly arbitrary. The Court concluded that the SEBI 1996 Regulations did not suffer from the vice of manifest arbitrariness. Incidentally, the decision of the Division Bench of Gujarat High Court in *Alka Synthetics Ltd.* (supra) was also approved in this case.

63. In ***Pioneer Urban Land and Infrastructure V/s. Union Of India*** [7], the Hon'ble Supreme Court held that the legislature must be given free play in the joints regarding economic legislation. Apart from the presumption of constitutionality in such cases, the courts must give the legislative judgment in economic choices a

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[7] 2019 8 SCC 416

certain degree of deference. Regarding economic legislation, even under-inclusion would not result in the death knell of such laws on the anvil of Article 14. In applying Article 14, mathematical precision, nicety, or perfect equanimity are not required.

64. In ***Swiss Ribbons Pvt. Ltd. V/s. Union Of India***[8], the Hon'ble Supreme Court held that to stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. The Courts do not substitute their social and economic beliefs for the judgment of legislative bodies elected to pass laws. Legislative bodies have a broad scope to experiment with economic problems. The court should feel more inclined to give judicial deference to legislative judgment in economic regulation than in other areas involving fundamental human rights.

65. The Court reiterated that every legislation, particularly in economic matters, is essentially empiric. It is based on experimentation or what one may call the trial-and-error method, and therefore, it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation, but it cannot be struck down as invalid on that account alone. The system of checks and balances must be utilised balanced with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.

66. The court reiterated that the laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. The

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legislature should be allowed some play in the joints because it must deal with complex problems which do not admit of solution through any doctrine or straitjacket formula, and this is particularly true in the case of legislation dealing with economic matters, where having regard to the nature of the problems greater latitude require to be allowed to the legislature.

67. Thus, applying the above principles, we think a challenge based on excessive delegation or manifest arbitrariness has no merit.

68. Similarly, we detect no infirmity whatsoever regarding the impugned rejection letter. The condition precedent(s) did not prevent the petitioners' proposal from being considered by the HPAC and, finally, the panel of WTMs. We see nothing unreasonable, irrational or capricious in the conditions itself. Merely because such conditions may not be to the liking of the petitioners, such conditions cannot be styled as arbitrary or unreasonable.

69. The conditions must be considered in the backdrop of the allegations in the SCN about the petitioners acting in concert with the other noticees. There are allegations about common directors or employees, trustees, common bank accounts, common signatories and manipulations. The question at this stage is not whether those allegations are correct. However, from the show cause notice, it is difficult to state that the allegations are based on no *prima facie* material. Therefore, to say that the conditions should never have been imposed, particularly the condition regarding the other noticees joining in the settlement proposal, cannot be accepted. As noted earlier, it is not the petitioners' right

to insist that their settlement proposal be accepted on the terms they deem most appropriate.

70. The scope of judicial review in examining counterproposals by experts is minimal. It is not for the Courts to second-guess or suggest counterproposals. There is discretion vested in the authorities. This does not appear to be a case where such discretion has been exercised unreasonably, capriciously, or irrationally. Fairness is not a one-way street; litigation is not a chess game. The settlement regulations need to be pragmatically construed, having regard to their objective and balancing the interests of the defaulters and the public interest. The scheme of the settlement regulations contemplates exchange proposals and counterproposals to see if some settlement could be reached without compromising the public interest. Therefore, there is nothing wrong if the IC suggests terms, adding that it would not favourably recommend a settlement should such terms not be agreed to.

71. As noted at the outset, the petitioners have even declined to furnish proper information about the disclosures to the waivers or undertakings by arguing that the same would prejudice their case in the SCN. The proceedings in the SCN are also stalled for one reason or another. At least, *prima facie*, even the settlement application appears to have been made only to benefit from the provisions of Regulation 8, which requires that the final order in the SCN be kept in abeyance until the settlement application is disposed of.

72. The petitioners perhaps expected to benefit from the tremendous pressure on the Court's docket and the consequent inability to decide issues of constitutionality or ultra vires on a

priority basis. Often, the strategy is to challenge the constitutional validity of some provision, launch long-winded arguments and, in an alternate, insist on interim relief until the Court can cull out some time despite the tremendous pressure on its docket. The Coordinate Bench that decided *Binny Limited (Supra*) noticed and adversely commented upon this tendency. In this case, however, Mr Gaurav Joshi, the learned Senior Advocate for the petitioners, was focused and precise.

73. Accordingly, for all the above reasons, we see no merit in this petition and consequently dismiss the same.

74. There shall be no order for costs.

(Jitendra Jain, J) **(M.S. Sonak, J)**