Nirma Industries Ltd. & Anr vs Securities & Exchange Board Of India on 9 May, 2013

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Bench: Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6082 OF 2008

Nirma Industries Ltd. & Anr.
...Appellants

VERSUS

Securities & Exchange Board of India ...Respondent

J U D G M E N T

SURINDER SINGH NIJJAR,J.

1. This statutory appeal is filed under Section 15Z of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') against the order dated 5th June, 2008 (impugned order) passed by the Security Appellate Tribunal (SAT) whereby SAT has dismissed the appeal filed

by the appellants impugning the direction contained in the communication dated 30th April, 2007 of SEBI (SEBI order). By the aforesaid order, the request of the appellants for withdrawal of an offer to acquire the equity shares of Shree Ram Multi Tech Limited (SRMTL) under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Code/Takeover Regulation) has been rejected.

Facts :

2. On 22nd March, 2002, the Promoters (including friends, relatives and associates) of SRMTL – a listed company – borrowed a sum of Rs.48.94 crores from the appellants and pledged equity shares of SRMTL worth Rs.1,42,88,700/- (24.25% of equity capital) as security. The debt was in form of issue of Secured Optionally Fully Convertible Premium Notes by three closely held unlisted companies (Issuer Companies) for an issue price of Rs.1,00,000/- each having nominal value of Rs.1,35,000/- each. The issue was made by the Issuer Companies by way of subscription agreements and the individual premium notes issued by each are as under :

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(i) Shree Rama Polysynth Pvt. Ltd.      -    1664

(ii) East-West Polyart Ltd.       -     1500

(iii) Ideal Petroproducts Ltd.          -    1730

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            Total                       -    4894
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3. The Issuer Companies pledged equity shares in the capital of SRMTL and other closely held companies as security in favour of the appellants till the redemption of the Premium Notes by way of pledge agreements (Pledged Shares). The equity shares of SRMTL pledged by each of the Issuer Companies are as under :

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(i) Shree Rama Polysynth Pvt. Ltd.      -    52,49,786

(ii) East-West Polyart Ltd.       -     28,74,800

(iii) Ideal Petroproducts Ltd.          -    62,64,114

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 Total                       -     1,42,88,700
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4. In May-June, 2002, the pledge over the shares, which were in dematerialized form, was carried out in the form prescribed by National Securities Depository Limited and was recorded in the records of the respective depositories of the appellants and the Issuer Companies. On June 10, 2005, the appellants, in terms of the enforcement provisions contained in the subscription agreements and the pledge agreements issued notices to the Issuer Companies calling upon them to redeem the outstanding Premium Notes within a period of 30 days, failing which the appellants would be constrained to invoke the pledge. Premium notes were not redeemed (i.e. debt was not repaid). Upon default, under the provisions of the Notes, the appellants called upon each of the Issuer Companies to redeem the outstanding Notes within 30 days. Since the Notes were not redeemed within the notice period, the pledge was invoked on July 22, 2005.

5. The invocation of the pledge triggered Regulation 10 of the Takeover Code.

6. On 26th July, 2005, in accordance with the Regulation 10 of the Takeover Code, the appellants made a Public Announcement (PA) for proposed open offer to acquire upto 20% of the shares of the existing shareholders. The Public Announcement was published in the Financial Express, Mumbai Edition. According to the appellants, the price offered in the PA, being Rs.18.60/- per share, was arrived at as per Regulation 20(4) of the Takeover Code (applicable to frequently traded shares). The PA stated that SRMTL has suffered business losses and its net worth has been eroded. The PA also clearly stated that the offer may be withdrawn as per Regulation 27 of the Takeover Code.

7. The appellants further claimed that as per Regulation 18 of the Takeover Code, draft letter of offer was submitted to SEBI on August 8, 2005. According to the appellants in the aforesaid letter, it was specifically stated that details were given of the composition of Board of Directors and audited balance sheets of last three years, share holding pattern PRE-OFFER and POST-OFFER and justification of offer price. The letter further stated that "Acquirers reserve the right to withdraw the offer pursuant to Regulation 27 of the Regulation". In the meanwhile, the concurrent auditor appointed by the Lenders of SRMTL, M/s Ernst & Young and the internal auditor of SRMTL, M/s. R. C. Sharma & Co. in their respective audit reports for the quarter July-September, 2005, had noted certain irregularities in the operations and systems of SRMTL. The Audit Committee, therefore, recommended a special investigative audit to look into the irregularities. In view of the above, a change in management was effected on the insistence of the Lender Banks. All Promoter Directors tendered their resignations in their place independent Directors were appointed. The Board of Directors of SRMTL, after considering the respective audit report of the aforesaid two accountants, accepted the recommendations of the Audit Committee and on January 28, 2006 directed a special investigative audit into the financial affairs of the company. The Board appointed M/s. R. C. Sharma & Co., to conduct the special investigative audit and submit its report. After investigation, M/s. R. C. Sharma & Co. submitted its report in three parts, comprising of two interim reports and one final report on January 30, 2006. In March-April, 2006, the aforesaid report of M/s. R.C. Sharma came in the public domain, resulting in sharp decline in prices of shares of SRMTL. It is claimed by the appellants that M/s. R.C. Sharma's report enclosed two earlier inspection reports of 2002 by Kalyaniwala & Mistry (Kalyaniwala Report) and by Sharp and Tannan Associates (Sharp Report), respectively. These reports were not made available to public. Their existence was disclosed for the first time when they were filed in the Gujarat High Court as part of

proceeding in Company Petition No.111 of 2005. The appellants further claimed that under Regulation 18 of the Takeover Code, SEBI was expected to revert with its comments and observations in about 21 days, i.e. by 29th August, 2005. However, letter of offer submitted to SEBI was issued after more than 249 days on 26th April, 2006.

8. The appellants further claim that pursuant to the fraud perpetrated by the Promoter Directors of SRMTL and fraudulent embezzlement of funds in SRMTL in excess of Rs.350 crores being unearthed, an application was made on 4th May, 2006 to either exempt them from making the open offer or to permit them to withdraw the open offer under Regulation 27 of the Takeover Code or to re-fix the price of the Open Offer. The appellants further claimed that the aforesaid request was justified on the basis of special circumstances cited by the appellants in the aforesaid letter of May 4, 2006. It had been pointed out that an investigation into the affairs of SRMTL by M/s Ramesh C. Sharma and Co. Chartered Accountants revealed that a cumulative amount of Rs.326.48 Crores had been siphoned out of/embezzled from the coffers of SRMTL by its erstwhile Promoter Directors. This conclusion was based on the reports submitted by M/s. R.C. Sharma & Co. It was pointed out that the financial accounts of SRMTL revealed that it had lost its net worth. Asset Reconstruction Company (India) Limited (ARCIL) had acquired the debts and underlying rights and obligations from the secured creditors of SRMTL. ARCIL had also issued a notice dated January 25, 2006 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) threatening action under Section 13(4) thereof. In the meantime, the High Court of Gujarat had disposed of the winding up petition filed against SRMTL by the UTI Bank and Karnataka Bank Ltd. on February 27, 2006. It had also come to the knowledge of the appellants that though the balance sheets of SRMTL disclosed a contingent liability of only Rs.15.28 Crores as on March 31, 2005, the actual value was about Rs.263.65 Crores (out of which Rs.30.65 Crores had already crystallized). The final reason given was share price of SRMTL shares had fallen substantially from the date of making the Public Announcement.

9. Since the appellants did not receive any response from the respondent, a request was made on July 1, 2006 to the Merchant Bankers requesting them to forward an application for withdrawal of the open offer to the respondent. It appears that the Merchant Bankers vide letter dated 27th June, 2006 inter alia informed the appellants that the grounds mentioned in the letter dated 4th May, 2006 are not valid grounds, in terms of the provisions of Regulation 27 of the Takeover Code. On July 1, 2006, the appellants requested the Merchant Bankers to convey its request in a renewed form to SEBI for its consideration. The renewed request was contained in a letter dated July 01, 2006 which was sent to the Merchant Bankers as an annexure to the letter which was also sent on July 01, 2006, in reply to the letter of the Merchant Bankers dated 27th June, 2006. In the aforesaid reply, the appellants had also informed the Merchant Bankers that it did not agree with the views expressed by the Merchant Bankers even prior to the consideration of the facts presented by the appellants to SEBI. Regulation 27(1) (c) does not provide for specific approval of SEBI for withdrawal of the open offer, which is what they were seeking. On July 8, 2006, the Merchant Bankers informed the appellants that the relevant regulation is 27(1)(d) and not 27(1)(c). The letter also refers to a telephonic conversation with one Mr. Deepak Shah on 8th July, 2006 informing him about certain particulars required by the Merchant Bankers. A complete list of details, required by the Merchant Bankers, was listed in the aforesaid letter. The appellants were requested to send the

same at the earliest. The appellant sent a reply to the aforesaid request on 8th July, 2006. Thereafter, on 1st September, 2006, the appellant was informed by the Merchant Bankers that based on the information supplied on July 1, 2006 and August 28, 2006, an application had been drafted by them for being filed with SEBI, seeking withdrawal of the open offer. The aforesaid draft application was sent to the appellant for verification of the factual position stated therein. From a perusal of the letter dated 21st September, 2006, the appellants informed the Merchant Bankers that the clarifications sought on September 1, 2006 had been sent to them on 7th September, 2006. Therefore, a request was made to include the clarifications in the original draft letter and include the same in the paragraph in contingent liability under special circumstances for withdrawal of the open offer.

10. In response to the aforesaid request of the appellants, the Merchant Bank applied to SEBI on September 22, 2006 requesting that the appellants be permitted to withdraw the offer. The letter also mentioned the special reasons for the withdrawal as given by the appellants in the letter dated 4th May, 2006. It is important to notice here that no request for personal hearing was made in any of the aforesaid communications.

11. The appellants further claimed that on 30th April, 2007, the application of the Merchant Bankers/appellants was rejected on the ground that the appellants ought to have conducted due diligence. The appellants pointed out that the aforesaid decision was taken by SEBI without affording any personal hearing to the appellants and without application of mind. The appellants claim that the respondent did not appreciate that the fraudulent transactions, systematic embezzlement and siphoning of funds was unearthed by special investigative audit and could not have been found by an outside third party like appellants before invoking the pledge. Even any due diligence that could be conducted could only have been done on published financial information in the public domain, which has now been found to be fraudulent in character. The appellants have in the Public Announcement and Letter of Offer relied on books of accounts for last three financial years i.e. 2002-03, 2003-04 and 2004-05 of SRMTL. Even SEBI with all its compliance requirements and investigative powers was unable to unearth these instances of fraud perpetrated by promoters of SRMTL.

12. Being aggrieved by the SEBI order, the appellants filed Appeal No.74 of 2007 before the SAT. By the impugned order dated 5th June, 2008, the SAT rejected the appeal filed by the appellants. It has been held by SAT that :

> "a) Regulation 27(1)(d) of the Takeover Code is to be given a strict interpretation and the words "such circumstances as in the opinion of the Board merit withdrawal" is to be read ejusdem generis to be limited to only circumstances where it is impossible to make a public offer.
>
> b) Appellants ought to have conducted due diligence.
>
> C) Appellants knew about (i) poor financial condition of SRMTL;

(ii) filing of winding up petitions by UTI Bank against SRMTL;

(iii) net worth of SRMTL being negative; (iv) several cases of recovery being filed against SRMTL."

13. The aforesaid order of SAT is challenged before us by Nirma Industries Ltd. in this statutory appeal under Section 15Z of the SEBI Act.

14. We have heard very elaborate submissions made by Mr. Shyam Divan, learned senior counsel on behalf of the appellants and Mr. Pratap Venugopal for SEBI. Mr. Divan submits that the main issue involved in this appeal is whether under Regulation 27(1)(d), SEBI has power to grant exemption to the appellants from the requirement of making a public offer under Regulation 10. The alternative issue framed by Mr. Divan is as to whether dehors Regulation 27(1) (d), SEBI would still have the residual power to grant exemption. Apart from the aforesaid two legal issues, Mr. Divan's primary submission is based on breach of rules of natural justice. He submits that the order passed by SEBI has been passed without granting any opportunity of hearing to the appellants. Even if the regulations do not specifically provide for the grant of an opportunity of hearing, it ought to be read into the regulations in view of the drastic civil consequences, which the appellants would suffer under the impugned order passed by the SEBI upheld by SAT. Mr. Divan has straightaway pointed out to the order passed by SEBI on 30th April, 2007 rejecting the request made in letter dated 22nd September, 2006 for withdrawal of the public offer. He has pointed out the observations made in Paragraph 4 of the aforesaid order, which are as under:-

"We are of the view that the acquirer should have done due diligence before invocation of pledge, and refrained themselves from invoking their pledge if circumstances so warranted. Such circumstances, arising out of omission on the part of the acquirers to have taken due precaution or business misfortunes, in our opinion, are not reasons sufficient enough to merit withdrawal of the open offer."

15. The aforesaid conclusions, according to Mr. Divan, are not supported by any reasons let alone sufficient reasons. The order passed by SEBI, according to him, is non-speaking and, therefore, ought to have been quashed on that ground alone.

16. The same submission was also made before the SAT. It has been rejected by the SAT by giving detailed reasons. Taking into consideration the facts and circumstances of this case, it cannot be said that Rules of Natural Justice have been violated. The special circumstances which had been elaborately set out in the two letters written by the appellants on May 4, 2006 and July 1, 2006 and the application made by the Merchant Bankers on September 22, 2006 have been summarized by Mr. Shyam Divan in the written submission which are as follows :

"a. An investigation into the affairs of SRMTL by Ramesh C. Sharma & Co., Chartered Accountants, revealed that a cumulative amount of Rs. 326.48 Crores had been siphoned out of/embezzled from the coffers of SRMTL by its erstwhile Promoter Directors. Ramesh C. Sharma & Co. submitted two interim reports [in February and

> March 2006] and a final report (in March 2006) to arrive at its aforesaid conclusions.
>
> b. Further the financial accounts of SRMTL revealed that it had lost its net worth.
>
> c. Asset Reconstruction Company (India) Limited ("ARCIL") had acquired the debts and underlying rights and obligations from the secured creditors of SRMTL. ARCIL issued a notice dated January 25, 2006 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI") threatening action under Section 13(4) thereof.
>
> d. The High Court of Gujarat had disposed of the winding up petition filed against SRMTL by the UTI Bank and Karnataka Bank Ltd. vide order dated February 27, 2006.
>
> e. It had come to the Appellant's knowledge that though the Balance Sheets of SRMTL disclosed a contingent liability of only Rs. 15.28 Crores as on March 31, 2005, the actual value was about Rs. 263.65 Crores (out of which Rs.30.65 Crores had already crystallized).
>
> f. The share price of SRMTL shares had fallen substantially from the date of making the Public Announcement."

17. In the letter dated May 4, 2006, it was pointed out that subsequent to the Public Announcement dated 26th July, 2005 and filing of the draft letter of offer, the circumstances leading to the requirement of making of Public Announcement by the appellants (pledgee acquirers) or requirements of the regulation has substantially changed to the prejudice of the appellants and, therefore, it was constrained to seek exemption from requirement of the Regulations and/or permission to withdraw the draft letter of offer. The letter sets out the sequence of events leading to the acquisition, which triggered the provisions of Regulation 10. It sets out the reasons for fixing the offer price at Rs. 18.60 per share. The price had been determined at deriving the average of weekly high and low closing prices of shares of SRMTL (the target company) at Bombay Stock Exchange (BSE) during 26 weeks preceding the date of Public Announcement. In Paragraph 4 of the letter, it is mentioned as under:-

> "Subsequent to the Public Announcement and filing of the draft Letter of Offer, the price of the shares of SRMTL has fallen substantially due to circumstances beyond the control of the Acquirers. It has come to the knowledge of the Acquirers that subsequent to the Public Announcement and filing of the draft Letter of Offer, the financial condition of SRMTL has substantially deteriorated on account of gross mismanagement and embezzlement by the promoter directors of SRMTL. It is apparent that SRMTL has lost its substratum and that chances of its revival are negligible."

18. In Paragraph 5 of the letter, a prayer is made for permission either to exempt the Regulation 3(1)(1) read with Regulation 4(2) of the Takeover Regulations or withdrawal of offer under Regulation 27, on the basis of the justification given for seeking withdrawal. The complete justification is given thereafter in Paragraph 6, which consists of sub-paragraphs 6.1 to 6.8. The ultimate reason for seeking withdrawal is given in Paragraphs 7 and 8, which are as under:-

"7. Under the aforesaid circumstances, it is apparent that SRMTL has lost its substratum and that chances of its revival are negligible. The Pledgee Acquirers while enforcing the security created by pledging the shares of SRMTL, are being saddled with an additional burden of Rs.21,91,54,314 to the undue advantage of the other shareholders of SRMTL. The purpose sought to be achieved by operation of the Regulations is lost in view of the subsequent developments and the Regulations are operating harshly against the Pledgee Acquirers. In view of the changed scenario, it would be inequitable and unfair to compel the Pledgee Acquirers to offer to purchase the shares of SRMTL from the other shareholders of SRMTL in accordance with the draft Letter of Offer.

8. In light of the change in circumstances as stated hereinabove, considering the present state of affairs, it would be just, fair and equitable (i) to exempt the Pledgee Acquirers from operation of Regulation 10 of the Regulations in exercise of powers conferred by Regulation 3(1)(1) read with Regulation 4(2) of the Regulations or

(ii) to permit withdrawal of the Public Announcement and the draft Letter of Offer in terms of Regulation 27 of the Regulations or (iii) permit the Pledgee Acquirers to re-fix the offer price on the basis of the current market price of the shares of SRMTL."

19. It is an admitted fact that the aforesaid letter was sent by the appellants to its Merchant Bankers. In its letter dated 27th June, 2006, the Merchant Bankers informed the appellants that the grounds mentioned in the letter dated 4th May, 2006 are not valid grounds in terms of provisions of Regulation 27 of the Takeover Code. Therefore, clearly the Merchant Banker was also of the opinion that the specific circumstances relied upon by the appellants were of no relevance in seeking withdrawal under Regulation 27. However, on the insistence of the appellants, the Merchant Bankers by its letter dated 22nd September, 2006 requested SEBI to exempt the appellants from the open offer or withdraw the open offer under Regulation 27 or re-fix the price of the open offer. It appears that the Merchant Bankers had discussions with the officers of the SEBI before giving the aforesaid opinion in its letter dated 27th June, 2006. it was only thereafter the appellants were informed as under:-

> "We have perused the various grounds you have mentioned in your above letter to SEBI and are unable to find any of these as valid grounds in terms of the provisions of Regulation 27 of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997. The fact that the market price of the target company is far below the offer price cannot be a reason for seeking withdrawal of the offer. Regulation 27(1) of the Takeover code is the only regulation permitting withdrawal of public offers and the same is reproduced below:

> ...."

20. Still not satisfied, the appellants wrote to its Merchant Bankers on 1st July, 2006 requesting it to forward the letter dated 4th May, 2006 to SEBI for its consideration. In the letter, it was mentioned as follows:-

> "Meanwhile, we do not agree with your views even prior to SEBI's consideration of the facts presented by us. Please do note that Regulation 27(1)(c) does provide for specific approval of SEBI for withdrawal of the open offer, which is what we are seeking. Unless SEBI considers our letter and informs us of a decision not to approve the application for withdrawal, it would be premature to foreclose the options available to us by a fair application of the law. Consequently, you are requested to forward our enclosed application formally to SEBI so that SEBI can consider the same and take a decision in the matter. Once the decision of SEBI is communicated, we can take further steps in the matter."

21. As noticed earlier, the Merchant Bankers were still not satisfied with the information provided by the appellants in support of its request for withdrawal of the open offer. Therefore, the appellants had given further clarifications to the Merchant Bankers. It was only on receipt of the clarifications that the Merchant Bankers forwarded the request to SEBI for consideration.

22. From the above, it is apparent that all the necessary information was available before SEBI for taking a decision as to whether the claim of the appellants seeking exemption from the Takeover Code, or withdrawal of the Letter of Offer would fall within the purview of Regulation 27(1) (d). The purpose of granting an opportunity of hearing is to ensure fair treatment of the person or entity against whom an order is likely to be passed. In the present case, we are unable to accept the submission of Mr. Shyam Divan that the impugned order passed by SEBI on 30th April, 2007, rejecting the application of the appellants for exemption/withdrawal by SEBI caused any "adverse civil consequences". Having acquired the shares of the target company to the extent which triggered the Regulation 10 of the Takeover Code, the appellants published in the Financial Express, Mumbai Edition the proposed open offer to acquire upto 20% of the shares of the existing shareholders. The price offered in the Public Announcement, being Rs. 18.60 per share was arrived at as per Regulation 20(4) of the Takeover code, which is applicable to frequently traded shares. It is undisputable that normally the public offer once made can only be withdrawn in exceptional circumstances as indicated in Regulation 27(1) (b), (c) and (d). In their letter dated 4th May, 2006, the appellants had given detailed reasons giving justification for seeking exemption/withdrawal/price fixation. Not being given the opportunity of oral hearing cannot always be equated to a situation, where no opportunity is given to a party to submit an explanation at all, before an order is passed causing civil consequences to it. Mr. Shyam Divan has been at pains to point out that rules of natural justice require that an opportunity of hearing should have been given to the appellants. We see no reason to read into Regulation 27 - the provision that the party seeking to withdraw from the public offer is required to be given an oral hearing before an order is passed on the request for withdrawal. We also see no merit in the submission that an oral hearing was particularly necessary in the light of the fraud, which has been perpetrated by the promoters of the

target company on the innocent shareholders, which will also include the appellants. Such a submission can not be accepted either on facts or in law. The appellants had made a business decision in deliberately purchasing the shares of the target company to such an extent that it had to, under the law; make the Public Announcement for purchase of other shares at the price of Rs.18.60 per share.

23. In support of his submissions on breach of Rules of Natural Justice, in his written submission, Mr. Shyam Divan has relied on Canara Bank & Ors. Vs. Debasis Das & Ors.[1] In this case, this Court reiterated the well known Rules of Natural Justice. Otherwise the particular case relied upon has no relevance to the present proceedings. In the Canara Bank's case (supra), this Court was considering the case of an employee subjected to the disciplinary proceedings. Again this Court reiterated the well known principle that natural justice is the administration of justice in a commonsense liberal way. Further that the rules have been enforced by the Courts to ensure that substantial justice is done to the party proceeded against. In the present case, it is a matter of record that all material had been placed by the appellants before the SEBI in its letter dated 4th May, 2006 and the same material was also placed before the Merchant Bankers. Necessary clarifications, as required by the Merchant Bankers, had also been given in the subsequent correspondences, as noticed by us in the earlier part of the judgment. Therefore, it cannot be said that substantial justice has not been done in the case of the appellants. This Court in Canara Bank's case (supra) reiterated the principle laid down in Managing Director, ECIL, Hyderabad & Ors. Vs. B. Karunakar & Ors.[2] Here again, this Court has reiterated that even an administrative order, which involved civil consequences, must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In other words, anything which affects the rights of the citizen in ordinary civil life.

24. In our opinion, the appellants cannot justifiably claim that any order had been passed by SEBI that would cause adverse civil consequences, as envisaged by this Court in B. Karunakar & Ors. (Supra). The appellants after making a market assessment decided to invoke the pledge on July 22, 2005. Since the shares which came to the appellants were more than 15%, statutorily Regulation 10 was triggered. The rejection of the request made by the appellants for withdrawal from the public offer or exemption under Regulation 27(1)(d) cannot be said to be an order causing adverse civil consequences. The appellants had made and informed business decision which unfortunately for them, instead of generating profits was likely to cause loses. In such circumstances, they wanted to pull out and throw the burden on to the other shareholders. We, therefore, fail to see what prejudice has been caused to the appellants by the order passed by the SEBI rejecting the request of the appellants.

25. In B. Karunakar & Ors. (supra), having defined the meaning of "civil consequences", this Court reiterated the principle that the Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished to the employee. It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. In other words, the Court reiterated that the person challenging the order on the basis that it is causing civil consequences would have to prove

the prejudice that has been caused by the non-grant of opportunity of hearing. In the present case, we must hasten to add that, in the letter dated 4th May, 2006, the appellants have not made a request for being granted an opportunity of personal hearing. Therefore, the ground with regard to the breach of rules of natural justice clearly seems to be an after thought.

26. Mr. Shyam Divan had also relied on Automotive Tyre Manufacturers Association Vs. Designated Authority & Ors.[3] The aforesaid judgment is again of no relevance in the present case. The scope and ambit of the Anti-Dumping Regulations, the Customs Tariff (Identification, Assessment & Collection of Anti-Dumping Duty on Dumped Articles & for Determination of Injury) Rules, 1995 was under consideration of this Court. Upon consideration of the entire matter, the Court reiterated the principle of law, which is stated as follows:-

> "80. It is thus, well settled that unless a statutory provision, either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences which obviously cover infraction of property, personal rights and material deprivations for the party affected. The principle holds good irrespective of whether the power conferred on a statutory body or Tribunal is administrative or quasi-judicial. It is equally trite that the concept of natural justice can neither be put in a straitjacket nor is it a general rule of universal application."

27. Considering the 1995 Rules, it was held as follows:-

> "83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli, if one person hears and other decides, then personal hearing becomes an empty formality."

28. It was noticed by the Court that in the matter under consideration, the entire material had been collected by the predecessor of the DA. He had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor DA, who had no occasion to hear the appellants. Therefore, it was held that the final order passed by the new DA offends the basic principle of natural justice. In the present case, the appellants did not make a formal request before SEBI for being given an opportunity of personal hearing. Thus, the reliance on the aforesaid case is misplaced.

29. Mr. Shyam Divan then relied on Darshan Lal Nagpal (Dead) by LRs. Vs. Government of NCT of Delhi & Ors.[4] The Court in this case was considering whether the Government of NCT of Delhi

could invoke Section 17(1) and (4) of the Land Acquisition Act and dispense with the rule of hearing embodied in Section 5A (2) for the purpose of acquiring certain land. In this context, the Court observed that the reasons given by NCT for invoking the emergency provision were not justified. It was observed that the documents produced by the parties including the notings recorded in the concerned file and the approval accorded by the Lieutenant Governor do not contain anything from which it can be inferred that a conscious decision was taken to dispense with the application of Section 5A which represents two facets of the rule of hearing that is the right of the land owner to file objection against the proposed acquisition of land and of being heard in the inquiry required to be conducted by the Collector. There is no such duty caused on SEBI under the Regulations, which would make it incumbent upon it to grant an opportunity of hearing before rejecting the application made by the appellants or its Merchant Bankers. This apart, we again reiterate that the appellants in its letter of 4th May, 2006 did not make any request for a personal hearing. In such circumstances, in our opinion, SAT has correctly concluded that:

> "Having acquired the shares of the target company which breached the threshold limit prescribed by the takeover code, the appellants were required to make a public officer to acquire further shares of that company for which a public announcement was made. The normal rule being that the public offer once made could not be withdrawn, it was only in the exceptional circumstances referred to in the earlier part of our order that such an offer could be withdrawn. The appellants were invoking those exceptional circumstances and the Board having considered the matter took a decision. It is not that they had no opportunity to place their point of view before the Board. In these circumstances, it was not necessary for them to be given a personal hearing."

30. Mr. Venugopal has further pointed out that apart from the appellants, even the Merchant Bankers did not make a request for a personal hearing. He submitted that grant of an opportunity for a personal hearing can not be insisted upon in all circumstances. In support of this submission, he relied on judgment of this Court in the case of Union of India & Anr. Vs. Jesus Sales Corporation[5]. The submission can not be brushed aside in view of the observations made by this Court in the aforesaid judgment, which are as under:-

> "5. The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same.

> Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi- judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. ...."

31. Taking into consideration the facts and circumstances of this case, we are unable to accept the submission of Mr. Shyam Divan with regard to the breach of rules of natural justice, in this case, merely because the appellants were not given a personal hearing.

32. Mr. Shyam Divan had also submitted that grant of opportunity of hearing ought to be read into Regulation 27(1) (d), which enables SEBI to grant exemption or permit withdrawal in "such circumstances as in the opinion of the Board merit withdrawal". He submits that an informed opinion could only be taken by the Board under the aforesaid Regulation by permitting the concerned applicant an opportunity of personal hearing. The learned senior counsel also sought support for the aforesaid submission that Regulation 32(1) which permits the Board to issue directions as it deem fit in the interests of investors in the securities and securities market under Section 11 or 11(b) or 11(d). Regulation 32(2) specifically provides that in any proceedings initiated by the Board, it shall comply with the principle of natural justice, before issuing directions to any person. In our opinion, the aforesaid provisions are of no assistance to the appellants. Firstly, neither the appellants nor their Merchant Bankers requested for an opportunity for a personal hearing. Secondly, in the present case, SEBI has not issued any instructions or directions under Section 11, which requires that the rules of natural justice be complied with. Thirdly, it cannot be said that the appellants had been condemned unheard as the entire material on which the appellants were relying was placed before SEBI. It is upon consideration of the entire matter that the offer of the appellants was rejected. This is evident from the detailed order passed by SEBI on 30th April, 2007. The letter indicates precisely the exceptional circumstances mentioned by the appellants seeking to withdraw the public announcement. Each and every circumstance mentioned was considered by SEBI. Therefore, it can not be said that the appellants have been in any manner prejudiced by the non-grant of the opportunity of personal hearing. Therefore, the submission made by Mr. Shyam Divan with regard to the breach of rules of natural justice is rejected.

33. Mr. Shyam Divan then submitted that the interpretation placed on Regulation 27(1) (d) by SEBI as well as the SAT results in restriction on the wide powers given to SEBI to regulate the securities market to further the object of the SEBI Act. He submits that the appellants are equally "an investor" in the market; therefore, the regulator also has to keep the interest of the appellants in mind. He makes a reference to Regulation 3(1)

(f) which provides that nothing contained in Regulations 10, 11 and 12 shall apply to acquisition of shares in the ordinary course of business by banks and financial institutions as pledgees. This, according to Mr. Shyam Divan, is an indicator that, for a certain class of institutional investor there is a carve out. He submits that similar carve out is also provided for the small investors. In the present case, the appellants have lost out only because there was an inordinate delay in taking action by SEBI. Specifying the changes that would be required in the letter of offer, the necessary decision was to be taken by SEBI within 21 days under Regulation 18. But it was not taken by SEBI for a period of 8 months or 239 days, to be precise. Thus, there was a delay of 221 days. During this period, the entire scenario had changed. In such circumstances, the appellants would be entitled to exit option like any other ordinary investor. He submits that by giving a very narrow and restrictive interpretation to Regulation 27, SAT has actually curtailed the wide powers vested in SEBI to regulate the securities market to further the object of the Regulations.

34. He submits that Regulation 27(1) (d) should be construed to confer wide powers on SEBI to allow withdrawal of an open offer in cases where although it is not impossible to complete open offer, but such an offer, in its opinion, merits withdrawal. It is submitted that the words "such circumstances as in the opinion of the Board merit withdrawal", appearing in Regulation 27(1)(d) of the Takeover Regulations must mean – "a. The formation of an opinion by Respondent – which though subjective in nature – must be based on the existence of objective facts;

b. The opinion must be one that is formed by Respondent based upon, circumstances which merit withdrawal of the public offer;

c. Circumstances which go into the formation of the opinion, must be circumstances that are relevant to the question of withdrawal of the public offer;

d. The circumstances must be such that no reasonable person, who comes into possession or knowledge thereof, can be compelled to (ignore such circumstances and) proceed with the public offer."

35. Therefore, the discretion conferred on respondent under Regulation 27(1) (d), entailed the duty of respondent to form its opinion based on relevant facts and the circumstances prevailing at the time when the application for withdrawal of open offer was made. Admittedly, the respondent failed to do so.

36. Learned senior counsel further submitted that the SAT in interpreting Regulation 27 has wrongly relied upon the principle of Ejusdem Generis. He submits that the rule of ejusdem generis applies only if the statutory provision – (i) contains an enumeration of specific words; (ii) the

subjects of enumeration constitute a class or category; (iii) that class of category is not exhausted by the enumeration; (iv) the general terms follow the enumeration; and (v) there is no indication of a different legislative intent.

37. Learned senior counsel submits that in the present case none of the said requirements are met. The rule of ejusdem generis is restricted to cases where the specific words precede the general words in the language of the statute, and in totality from a singular genus along with the general words. The sub-clauses of Regulation 27 do not form a common genus of cases where it is impossible to do an open offer. Learned senior counsel submitted that the provisions contained in the Takeover Code are regulatory in nature and, therefore, have to be construed widely. The Takeover Code provisions do not apply to pledgees. The text of the Takeover Code indicates a different legislative intent so far as the pledgees are concerned. He submits that the court is entitled to look at the legislative history for interpretation of any provision in the Act, Rule or Regulation. He submits that the legislative history of Regulation 27(1) would clearly show that ejusdem generis was not the appropriate rule of interpretation to be implied while construing the aforesaid provisions. He pointed out that sub-regulation (a) of Regulation 27(1), as originally enacted, dealt with a case of a competing acquirer which would entitle the first acquirer to be exempted from making the open offer. However, to ensure that shareholders of Target Company should have an option to decide from both offers, sub-regulation

(a) was omitted on September 9, 2002. Sub-Regulation (b) deals with a situation where requisite statutory approvals are not granted to make the open offer; and Sub-Regulation (c) deals with a situation where the sole acquirer dies and although it is possible that the legal heirs could make the open offer, nonetheless grants an exemption to the deceased acquirer and his heirs. Regulation 27(1) (d), is not confined to a particular situation, but grants a general power to SEBI to permit withdrawal of open offer where the facts and circumstances in its opinion may merit withdrawal, taking into account the facts and circumstances of that particular case. Therefore, according to the learned senior counsel, the SAT erred in law in construing Regulation 27(1) (d) on the principle of ejusdem generis. According to Mr. Shyam Divan, Regulation 27(1) (d) provides an exception for withdrawal of open offer not limited to the narrow confines of Clauses (b) and (c) of Regulation 27(1). According to him, the exception under Regulation 27(1) (d) deals with a separate and distinct class of cases i.e. where respondent has been conferred discretion to allow withdrawal of open offers in “such circumstances,” which “in the opinion of the Board merit withdrawal”. Therefore, for this reason also Regulation 27(1)(d) cannot be read ejusdem generis with the preceding clauses to restrict the scope. According to him, the word “such” used in Regulation 27(1)(d) is used in the context of circumstances that in the opinion of the Board merit withdrawal. According to learned counsel, the same does not take colour from Regulations 27(1) (b) or 27(1)(c). This apart, he submits that the interpretation given to Regulation 27 by the SAT is so narrow that it leads to absurd consequences. The narrow construction of Regulation 27(1) (d) would permit withdrawal only on the same footing as the circumstances enumerated under Regulation 27(1)(b) and (c). This would leave no discretion with SEBI to approve withdrawal, “in such circumstances”, which in the opinion of the Board “merit withdrawal.” Finally, it is submitted that it is an accepted principle that where two interpretations are possible then such an interpretation ought to be taken which will not render any provision of a statute otiose. According to him, Regulation 27(1)

(d) would be rendered meaningless if it is read ejusdem generis with Regulation 27(1) (b) and Regulation 27(1) (c). Learned senior counsel also relied on Regulation 3 of Takeover Regulations which empowers the respondent to grant a complete exemption to an acquirer from Regulations 10, 11 and 12 in certain cases. He submits that residuary power under Regulation 3(1) in addition to the specific scenario mentioned therein is strongly indicative of the intention of the legislature. In the facts of the present case, it is submitted by Mr. Shyam Divan that had the appellants realized that there was a fraud before making public announcement, it could have gone to the Takeover Panel after it exercised the pledge on July 22, 2005 and applied for exemption from Regulations 10, 11 and 12. In those circumstances, the plea of the appellants for exemption would have been considered before the making of the public announcement. It is only because the fraud was detected much after the making of the public announcement that the appellants had made an application for withdrawal of the open offer. In such circumstances, the respondent can certainly exercise its power under Regulation 27(1)(d) after granting a hearing. In short, the submission of Mr. Shyam Divan is that the regulations permit exercise of discretion before and after public announcement. Therefore, SEBI as well as SAT had erred in giving a very narrow interpretation to regulation 27(1)(d). Learned senior counsel also referred to Regulation 22(14) of the Takeover Regulations which provides that an acquirer who has withdrawn an open offer shall not be permitted to make an open offer for a period of six months from the date of withdrawal of the offer. Applying this to Regulation 27, he submits that it is amply clear that impossibility as sought to be interpreted in Regulation 27 cannot vanish in six months. Therefore, according to him, it is clear that withdrawal of an open offer need not be on account of impossibility only. In support of these submissions, he relied on Municipal Corporation of Greater Bombay Vs. Bharat Petroleum Corporation Ltd.[6] Maharashtra University of Health Sciences & Ors. Vs. Satchikitsa Prasarak Mandal & Ors. [7] and Union of India & Ors. Vs. Alok Kumar [8].

38. We are unable to accept the submission of Mr. Shyam Divan that the rule of ejusdem generis has been wrongly applied by SAT in interpreting the provisions of Regulations 27(1) (b) (c) and (d).

39. In our opinion, the SAT has correctly come to the conclusion that under the SEBI Act, Board has been entrusted with the fundamental duties of ensuring orderly development of the securities market as a whole and to protect the integrity of the securities market. It is precisely for this purpose that the provision is made in Regulation 7 that any acquirer, who acquires shares or voting rights which would entitle him to more than 5% or 10% or 14% shares or voting rights in a company, shall disclose at every stage the aggregate of share holding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed. Under Regulation (8), such an acquirer shall within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. Regulation 8A provides for disclosure of information with regard to pledged shares. The Board has power under Regulation 9, to call for information with regard to the disclosures made under Regulations 6, 7, and 8 as and when required by the Board. Regulation 10 mandates that no acquirer shall acquire shares or voting rights which entitle such acquirer to exercise 15% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations. The Takeover Code then prescribed a detailed procedure for making a public announcement and the manner in which the offer price is determined at which the

shares are offered to public shareholders. Regulation 11 provides that no acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15% or more but less than 55% of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him additional shares or voting rights entitling him to exercise more than 5% of the voting rights unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. Again, Regulation 12 provides that irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the Regulations. Under Regulation 13, before making any public announcement of offer referred to in Regulation 10 or Regulation 11 or Regulation 12, the acquirer is duty bound to appoint a Merchant Banker holding a certificate of registration granted by the Board. Such Merchant Banker is required to be not associates of or group of the acquirer or the target company. In other words, it has to be a totally independent entity. Under Regulation 14, the Merchant Banker is required to make public announcement under Regulation 10 or Regulation 11 within four working days of entering into an agreement for acquisition of shares or voting rights exceeding the respective percentage specified in Regulations 10 and 11. Regulation 15 provided that public announcement to be made under Regulations 10, 11 or 12 shall be made in all editions of one English national daily with wide circulation, one Hindi national daily with wide circulation and a regional language daily with wide circulation at the place where the registered office of the target company is situated and at the place of the stock exchange where the shares of the target company are most frequently traded. Simultaneously, a copy of the public announcement has to be submitted to the Board through the Merchant Banker; sent to all the stock exchanges on which the shares of the company are listed for being notified on the notice board; and sent to the target company at its registered office for being placed before the Board of Directors of the company. Regulation 16 sets out in detail the particulars which are required to be expressly stated and the public announcement is made under Regulations 10, 11 or 12. Regulation 17 provides that the public announcement or any advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares must not contain any misleading information. Under Regulation 18, within 14 days from the date of public announcement made under Regulations 10, 11 or 12, as the case may be, the acquirer, through its Merchant Banker, is mandated to file with SEBI the draft of the letter of offer, containing disclosures as specified by the Board. This letter of offer is to be dispatched to the shareholders not earlier than 21 days from its submission to the Board. However, the Board has the power to specify changes, if any, in the letter of offer which the merchant banker and the acquirer is required to carry out such changes before the letter of offer is dispatched to the shareholders. Regulation 20 provides that the offer to acquire share under Regulations 10, 11 or 12 shall be made at a price not lower than the price determined as per sub-regulations (4) and (5).Sub-Regulations (4) and (5) provides a complete procedure for determination of the price. Under Regulation 21, it is provided that the public offer made by the acquirer to the shareholders of the target company shall be for a minimum 20% of the voting capital of the company. Regulation 24 imposes certain general obligations of the merchant banker. Before the public announcement of the offer is made, the merchant banker is required to ensure that - (a) the acquirer is able to implement the offer; (b) the provision relating to Escrow account referred to in Regulation 28 has been made; (c) firm arrangements for funds and money for payment through verifiable means to fulfil the obligations under the offer are in place; (d) the public announcement of offer is made in terms of the Regulations. Under Regulation 24(2), it is provided that the merchant banker shall furnish to the Board a due diligence certificate which shall accompany the draft letter of offer. Under Regulation 24(4), the merchant banker is required to ensure that the contents of the public announcement of offer as well as the letter of offer are true, fair and adequate and based on reliable sources, quoting the source wherever necessary. To ensure the independence of the merchant banker under Regulation 24(5A), the merchant banker is not permitted to deal in the shares of the target company during the period commencing from the date of appointment in terms of regulation 13 till the expiry of 15 days from the date of closure of the offer. It is only upon fulfillment of all obligations by the acquirers under the Regulations, that the merchant banker is permitted to cause the bank with which the escrow amount has been deposited to release the balance amount to the acquirers. (Regulation 24(6)). Under Regulation 24(7), the merchant banker is called to send a final report to the Board within 45 days from the date of closure of the offer.

40. A conspectus of the aforesaid Regulations would show that the scheme of the Takeover Code is – (a) to ensure that the target company is aware of the substantial acquisition ; (b) to ensure that in the process of the substantial acquisition or takeover, the security market is not distorted or manipulated and (c) to ensure that the small investors are given an option to exit, that is, they are offered a choice to either offload their shares at a price as determined in accordance with the takeover code or to continue as shareholders under the new dispensation. In other words, the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders. It is keeping in view the aforesaid aims and objects of the takeover code that we shall have to interpret Regulations 27(1).

Regulation 27 reads as under:

> “Withdrawal of offer – (1) No public offer, once made, shall be withdrawn except under the following circumstances:-
>
> (a)..............’
>
> (b) the statutory approval(s) required have been refused;
>
> (c) the sole acquirer, being a natural person, has died;
>
> (d) such circumstances as in the opinion o the Board merits withdrawal.
>
> (2) In the event of withdrawal of the offer under any of the circumstances specified under sub-regulation (1), the acquirer or the merchant banker shall:
>
> (a) make a public announcement in the same newspapers in which the public announcement of offer was published, indicating reasons for withdrawal of the offer;

> (b) simultaneously with the issue of such public announcement, inform – (i) the Board; (ii) all the stock exchanges on which the shares of the company are listed; and (iii) the target company at its registered office."

41. We may notice here that Regulation 27(1) (a) was omitted by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment), Regulations, 2002 w.e.f. 9.9.2002. Prior to omission, it read as under :-

> "(a) the withdrawal is consequent upon any competitive bid."

42. A bare perusal of the aforesaid Regulations shows that Regulation 27(1) states the general rule in negative terms. It provides that no public offer, once made, shall be withdrawn. Since Clause (a) has been omitted, we are required to interpret only the scope and ambit of clause (b), (c) and (d). The three sub- clauses are exceptions to the general rule and, therefore, have to be construed very strictly. The exceptions cannot be construed in such a manner that would destroy the general rule that no public offer shall be permitted to be withdrawn after the public announcement has been made. Clause (b) would permit a public offer to be withdrawn in case of legal impossibility when the statutory approval required has been refused. Clause (c) again provides for impossibility when the sole acquirer, being a natural person, has died. Clause (b) deals with a legal impossibility whereas clause (c) deals with a natural disaster. Clearly clauses

(b) and (c) are within the same genus of impossibility. Clause (d) also being an exception to the general rule would have to be naturally construed in terms of clauses (b) and (c). Mr. Divan has placed a great deal of emphasis on the expression "such circumstances" and "in the opinion" to indicate that the Board would have a wide discretion to permit withdrawal of an offer even though it is not impossible to perform. We are unable to accept such an interpretation.

43. The term "ejusdem generis" has been defined in Black's Law Dictionary, 9th Edn. as follows :

> "A canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."

44. The meaning of the expression ejusdem generis was considered by this Court on a number of occasions and has been reiterated in Maharashtra University of Health Sciences and Ors. Vs. Satchikitsa Prasarak Mandal & Ors. [9] The principle is defined thus :

> "The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of the restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context". It may be regarded as an instance of ellipsis, or reliance on implication. This

> principle is presumed to apply unless there is some contrary indication [see Glanville Williams, The Origins and Logical Implications of the Ejusdem Generis Rule, 7 Conv (NS) 119].”

45. Earlier also a Constitution Bench of this Court in Kavalappara Kottarathil Kochuni vs. State of Madras[10] construed the principle of ejusdem generis wherein it was observed as follows :

> “ …….. The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary.”

46. Again this Court in another Constitution Bench decision in the case of Amar Chandra Chakraborty Vs. Collector of Excise[11] observed as follows :

> “. … The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent.”

47. Applying the aforesaid tests, we have no hesitation in accepting the conclusions reached by SAT that clause (b) and (c) referred to circumstances which pertain to a class, category or genus, that the common thread which runs through them is the impossibility in carrying out the public offer. Therefore, the term “such circumstances” in clause (d) would also be restricted to situation which would make it impossible for the acquirer to perform the public offer. The discretion has been left to the Board by the legislature realizing that it is impossible to anticipate all the circumstances that may arise making it impossible to complete a public offer. Therefore, certain amount of discretion has been left with the Board to determine as to whether the circumstances fall within the realm of impossibility as visualized under sub- clause (b) and (c). In the present case, we are not satisfied that circumstances are such which would make it impossible for the acquirer to perform the public offer. The possibility that the acquirer would end-up making loses instead of generating a huge profit would not bring the situation within the realm of impossibility.

48. We are unable to accept the submission of Mr. Shyam Divan that clause (d) would permit SEBI to accept the offer of withdrawal even in circumstances when it has become uneconomical for the acquirer to perform the public offer. The rule of ejusdem generis as defined by this Court in Commissioner of Income Tax, Udaipur, Rajasthan Vs. McDowell and Co. Ltd.[12] is as follows :

> “The principle of statutory interpretation is well known and well settled that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those

specified. This rule is known as the rule of ejusdem generis. It applies when:

(1) the statute contains an enumeration of specific words;

(2) the subjects of enumeration constitute a class or category;

(3) that class or category is not exhausted by the enumeration;

(4) the general terms follow the enumeration; and (5) here is no indication of a different legislative intent."

49. Mr. Divan has sought to persuade us that clause (d) in fact carves out an exception out of the exceptions provided in clauses (b) and

(c). We see no justification in moving away from the Latin maxim "noscitur a sociis", which contemplates that a statutory term is recognized by its associated words. The Latin word "sociis" means society. It was pointed out by Viscount Simonds in Attorney General vs. Prince Ernest Augustus of Hanover, (1957) AC 436 that when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context. Applying the aforesaid principle, we are unable to stretch the meaning of terms "such circumstances" from the realm of impossibility to the realm of economic undesirability. In essence, the submission made by Mr. Divan is that unless they are allowed to walk away from the public offer they would have to bear losses which would otherwise have been shared by the erstwhile shareholders of the target company. Accepting such a proposition would be contrary to the aims and objectives of the Takeover Code which is to ensure transparency in acquisition of a large percentage of shares in the target company. It would also encourage undesirable and speculative practices in the stock market. Therefore, we are unable to accept the submission of Mr. Shyam Divan. Regulation 27(1) (d) would empower the SEBI to permit withdrawal of an offer merely because it has become uneconomical to perform the public offer.

50. Mr. Venugopal, in our opinion, has rightly submitted that the Takeover Regulations, which is a special law to regulate "substantial acquisition of shares and takeovers" in a target company lays down a self contained code for open offer; and also that interest of investors in the present case required that they should be given an exit route when the appellants have acquired substantial chunk of shares in the target company. He has correctly emphasised in his submissions that the orderly development of the securities market as a whole requires that public offers once made ought not to be allowed to be withdrawn on the ground of fall in share price of the target company, which is essentially a business misfortune or a financial decision of the acquirer having gone wrong. SEBI as well as the SAT have correctly concluded that withdrawal of the open offer in the given set of circumstances is neither in the interest of investors nor development of the securities market. Mr. Venugopal is correct in voicing the apprehension that if on ground of fall in prices, public offer is allowed to be withdrawn, it could lead to frivolous offers, being made and withdrawn. This would adversely affect the interests of the shareholders of the target company and the integrity of the securities market, which is wholly contrary to the intent and purpose of the takeover regulations. In

such circumstances, we are unable to agree with the submission of Mr. Shyam Divan that the order passed by SEBI on 30th April, 2007 can be said to be an order causing civil consequences. The appellants wanting to withdraw the public offer merely wishes to cut its losses at the expense of the innocent shareholders, who are entitled under the Regulations to the exit option. In such circumstances, the appellants would have to buy the shares at the quoted prices of Rs.18.60 per share, placing a financial burden on the appellants. The aim of the appellants was merely to avoid such an added burden. This is patent from the plea made by the Merchant Bankers on 22nd September, 2006 on behalf of the appellants. In the aforesaid application, it is clearly mentioned as under:

> "Under the aforesaid circumstances, it is apparent that SRMTL has lost is substratum, has become a "sick company" and that chances of lis (sic) survival are negligible. The pledgee Acquirers while enforcing the security created earlier (invoking the pledge on the shares of SRMTL) had triggered Regulation 10 of the Regulations requiring the Pledgee Acquirers to make the open offer. However, on account of subsequent knowledge of development at SRMTL, it is apparent that if this offer is not withdrawn, the Pledgee Acquirers will be saddled with an additional burden of over Rs.25 crores. In our view, the purpose sought to be achieved by operation of the Regulations is lost in view of the subsequent developments and hence the Regulations will operate harshly again the Pledgee acquirers. In view of the changed scenario, it would be inequitable and unfair to compel the Pledgee Acquires to proceed with the offer to purchase the shares of SRMTL from the shareholders of SRMTL in accordance with the draft Letter of Offer.
>
> In light of the change in circumstances as stated above and considering the present state of affairs, we now appeal to you to kindly permit the acquirers to withdraw the offer by using the powers vested in you in terms of Regulation 27(4) of the Regulations."

51. In view of the foregoing reasons, we are not inclined to accept the submissions of Mr. Divan that the principle of ejusdem generis is not applicable for interpreting Regulation 27(1) (d) of the Takeover Code.

Object of Takeover Code qua the Lenders

52. The next submission of Mr. Shyam Divan is based on Regulation 3(1)(f) of the Takeover Code, which exempts the banks and financial institutions from making a public offer where an acquisition of shares is made in the ordinary course of business, in pursuance of the pledge of shares made in its favour. It is submitted that the objective underlying the said provision appears to be to give an exemption to the creditors who acquire shares to secure the loan/credit and then invoke the pledge to recover such credit from the defaulting parties, but not to take over the management of the target companies. On similar reasoning, the said objective, as put forward by the learned senior, would be taken to apply in the case of a private company which gives credit and acquires shares as pledged in course of the business, since the object of such private companies is also not to takeover the

management but to secure their loan. It is also submitted that Regulation 27(1) (d) of the Takeover Code ought to be interpreted with such latitude to further the said objective of the Takeover Code.

53. We are unable to accept the aforesaid submission of Mr. Shyam Divan. Rather we find merit in the submission of Mr. Venugopal that Regulation 3(1) (f) (iv) (which exempts the acquisition of shares by banks and public financial institutions as pledgees, from the provisions of the Takeover Regulations), does not advance the case of the appellants any further. Under this regulation, exemption is provided to certain entities that acquire shares in the ordinary course of business. The regulation provides exemption from Regulation 10, 11 and 12 to Scheduled Commercial Banks or Public Financial Institutions acting as pledgees in the ordinary course of business, in order to facilitate their business operations. Such acquisition of shares in normal circumstances is not with the intention of taking over the target company. The shares are acquired to protect the economic interest of the banks and public financial institutions by securing repayment of the loan. Such acquisitions of shares have nothing in common with acquisition of shares by an acquirer company such as the appellants seeking to gain control in the affairs of the target company.

Powers of Respondent under SEBI Act:

54. Mr. Shyam Divan has further submitted that de hors the Takeover Regulations/Code, SEBI has wide powers to allow withdrawal of offer under Sections 11 & 11B of the SEBI Act. To safeguard the interest of the investors in securities, and also, to regulate the securities market, SEBI has the power to take whatever steps it considers appropriate. In this context, the learned senior counsel relied upon the case of Sahara India Real Estate Corporation Limited & Ors v. Securities and Exchange Board of India & Anr.[13]

55. We are not inclined to accept the aforesaid submission. In the aforesaid judgment in Sahara India Real Estate Corporation Limited (supra) this Court observed as under:

> "From a collective perusal of Sections 11, 11A, 11B and 11C of the SEBI Act, the conclusions drawn by the SAT, that on the subject of regulating the securities market and protecting interest of investors in securities, the SEBI Act is a stand alone enactment, and the SEBI's powers thereunder are not fettered by any other law including the Companies Act, is fully justified.

56. These observations have been made by this Court to emphasise that SEBI has all the powers to protect the interests of investors in securities and also to ensure orderly, regulated, and transparent functioning of the stock markets. The aforesaid observations would be of no assistance to the appellants herein who is seeking to walk away from public offer merely to avoid economic loses. Rather we agree with the submission of Mr. Venugopal that permitting such a withdrawal would lead to encouragement of unscrupulous elements to speculate in the stock market. Encouraging such a practice of an offer being withdrawn which has become uneconomical would have a destabilizing effect in the securities market. This would be destructive of the purpose for which the Takeover Code was enacted.

Fraud:

57. It is submitted that since fraud vitiates every solemn act, the withdrawal of the public offer by the appellants ought to have been allowed. In this regard, reliance is placed upon Ram Chandra v. Savitri Devi (2003) 8 SCC 319 (Paras 15-30).

58. This submission of Mr. Shyam Divan is wholly misconceived in the facts and circumstances of this case. In the case of Ram Chandra (supra), this Court has reiterated the principle laid down in the case of S.P.Chengalvaraya Naidu (dead) by LRs. vs. Jagannath (Dead) by LRs. and Ors. [14] The principle was explained by Kuldip Singh, J. in the following words:

> "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree — by the first court or by the highest court — has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

59. It was further held in paragraph 5, as follows:-

> "5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property- grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

60. In the present case, no fraud has been played on the appellants as such. The shares were acquired by the appellants on the basis of an informed business decision. The appellants cannot be permitted to take advantage of its own laxity to justify seeking withdrawal of the public offer.

61. Mr. Shyam Divan submitted that SEBI has wrongly concluded that the fact of the large scale embezzlement in the target company were existent prior to the exercise of the pledge by the appellants and, therefore, were "known" or "could have been known" by the appellants, if the appellants had exercised proper "due diligence". He points out that the entire basis and/or the

special circumstances in which the appellants made an application for permission to withdraw the public offer was on the basis of certain facts which came to light subsequently i.e. facts which came in the public domain and/or the knowledge of the appellants, only after the appellants exercised its right of pledge and after the appellants made consequential public announcement. According to the learned senior counsel, the Sharma Report, which came in public domain after the public announcement, for the first time informed the public that through fraudulent transactions, Rs.326 Crores were siphoned off/embezzled by erstwhile promoters of SRMTL. As soon as the Sharma Report was made public, the market price of the shares of the target company fell from Rs.18.60 to Rs.8.56. He also emphasised that the Sharma Report also brought to public notice the Kalyaniwala Report and Sharp Report. These reports were submitted to the erstwhile Board of Directors of the target company in 2002. However, these reports were not made public and in fact were deliberately withheld from the public in spite of the same being price sensitive. Therefore, according to Mr. Shyam Divan, the appellants, or for that matter, any person exercising due diligence and care, could not have and did not know the existence and nature of the fraud and embezzlements by the erstwhile promoters of the target company. If the SEBI, the capital market regulator, with all its infrastructure did not become aware of the damning indictment of a listed company permitting its controlling promoters to abuse, misuse and embezzle funds belonging to investors in the securities market, it cannot rationally be accepted that the appellants would have discovered the same by exercise of due diligence. Mr. Shyam Divan further brought to our notice the facts which were known at the time of public announcement and the facts which could not have been known even after due diligence since the same did not reflect in the balance sheet and/or financial statement of the target company. The known facts at the time of public announcement are listed as under:

> "SRMTL had negative net worth;
>
> ? SRMTL Company was recently faced with poor financial performance;
>
> ? Stated reasons for the aforesaid poor performance and negative net worth was:
>
> (i) Low volume of sales and products;
>
> (ii) Reduced price and lower realization;
>
> (iii) Working capital constraints;
>
> (iv) Higher unabsorbed fixed costs.

? Certain Litigations as stated in the Letter of Offer were pending."

62. The facts which could not have been known even after due diligence are stated to be as under:

> "Finding of special investigative audit by M/s. R.C.Sharma & Co., Chartered Accountants as contained in the three reports;

Unexplained shortfall of cash – cash being siphoned by those in management.

Issuance of warrants to Pan Emami Cosmed Ltd in concert with Emami's promoters with a view to fraudulently siphon Rs.2.74 Crores.

Promoters fraudulently appropriating money by sale of goods to Emami Ltd by creating charge on trade receivables.

Siphoning of Rs.50 Crores by promoters/directors of SRMTL through related party transactions "by creating a fictitious asset procurement case and subsequently creating false grounds of writing off the same amount in the books of the Company".

Rs. 143 Crores of "huge contingent liability is not disclosed in Balance Sheet as on 31.03.2005.

Systematic embezzlement and siphoning of funds by promoters director of more than 326 Crores by fraudulent transactions."

63. On the basis of the aforesaid, Mr. Shyam Divan submitted that the conclusion recorded by the SEBI which has been upheld and approved by SAT is without any factual basis.

64. Mr. Shyam Divan, relying on Regulation 3A which prohibits dealing in securities of a target company if a person has access to price sensitive information, submitted that if the appellants were privy to the contents of the Kalyaniwala and Sharp Reports it would have been precluded from invoking the pledges, as such action would constitute "dealing in securities". It is also submitted by Mr. Shyam Divan that the expression "due diligence" does not mean that the party has to assume the role of amateur detective, nor is the party obliged to make any enquiries unless it can be established that there existed any circumstances which should have aroused any suspicion. It is also submitted that the law laid down in Marfani and Co. Ltd. vs. Midland Bank Ltd.[15] and Indian Overseas Bank vs. Industrial Chain Concern[16] which enumerates the benchmark or standards accepted from a party while performing the due diligence should be taken into account.

65. We are not much impressed by any of the submissions made by Mr. Shyam Divan on this issue. Admittedly, the appellants were aware of the litigation against Shree Ram Multi Tech Limited and its Directors. The litigation commenced in the year 2003 i.e. before the public announcement made by the appellants. In fact, the letter of offer itself refers to the pending litigation by and against the target company and its directors.

66. In Paragraph 4.17 of the said letter, the appellants mentioned the cases filed by Banks and Financial Institutions; Cases/Appeals filed by SRMTL against Banks and financial Institutions; Cases filed by the Registrar of Companies in the Court of Additional Chief Metropolitan Magistrate, Ahmedabad in the matter of non payment of dividend under Section 205 of the Companies Act, 1956 and the application filed by the company against Registrar of Companies, Gujarat in Gujarat High Court in this matter under Section 482 of the Criminal Procedure Code. The list also mentions

a case filed in the City Civil Court, Ahmedabad by two commercial entities involving a sum of Rs.14275.47 lacs in the matter of recovery of dues and alleged claim for damages. The litany of cases also includes an appeal of SRMTL and its directors before the SAT against an order of SEBI dated 6th September, 2004 restraining the company and few of its directors from accessing the securities market and prohibiting from buying, selling and dealing in securities, directly or indirectly, for a period of five years on the charge of having violated sections 11 and 13 of the SEBI Regulations, 2003. There were six cases pending against the target company in the Labour Court, Kalol, (Gujarat) by ex-employees of the Company in the matter of their dues and compensation. There were cases pending in relation to Central Excise. In one case, CEGAT had passed an order on 25th February, 2004 claiming duty of Rs.101.81 lacs, fine of Rs.2 lacs and penalty of Rs.0.20 lacs. Excise duty authorities have in various cases raised a demand on target company for an aggregate sum of Rs.145.90 lacs towards excise duty and Rs.97.02 lacs towards penalty for various offences. Similarly, excise duty of Rs.1317.65 lacs was demanded as a result of a raid by the Intelligence Officer, Central Excise, Ahmedabad for non-accounted raw materials. Undoubtedly, the appeals were pending in the higher fora in a number of cases. Nonetheless any reasonable investor/group of investors/consortium would have come to a conclusion that investing in this entity would not be a prudent decision.

67. Taking into account the aforesaid state of affairs, SAT has concluded as follows:-

> “The above facts would seem to be enough to provide the appellants a correct prognosis regarding the financial health and prospects of the target company. Clearly, the appellants decided on invoking the pledge on the shares of the target company with open eyes and sufficient knowledge about the affairs of the target company. It is not as if the appellants were innocent and were caught napping in an unexpected turn of events. We are not, therefore, inclined to accept at its face value the argument of the appellants that they had no prior clue about the adverse financial information relating to the target company and were contained in the later reports of the Chartered Accountants. In this view of the matter, the Board was justified in characterizing the situation that the appellants are faced with as the result of lack of due diligence and/or sheer business misfortune. They are only trying to wriggle out of a bad bargain which is not permissible under Regulation 27(1) (d) of the takeover code.”

68. The aforesaid conclusion reached by SAT, in our opinion, does not call for any interference.]

69. We are inclined to agree with the submission made by Mr. Venugopal that the appellants cannot be permitted to wriggle out of the obligation of a public offer under the Takeover Regulation. Permitting them to do so would deprive the ordinary shareholders of their valuable right to have an exit option under the aforesaid regulations. The SEBI Regulations are designed to ensure that public announcement is not made by way of speculation and to protect the interest of the other shareholders. Very solemn obligations are cast on the merchant banker under Regulation 24(1) to ensure that –

(a) the acquirer is able to implement the offer;

(b) the provision relating to Escrow account referred to in Regulation 28 has been made;

(c) firm arrangements for funds and money for payment through verifiable means to fulfil the obligations under the offer are in place;

(d) the public announcement of offer is made in terms of the Regulations;

(e) his shareholding, if any in the target company is disclosed in the public announcement and the letter of offer.

70. Regulation 24(2) mandates that the merchant banker shall furnish to the Board a due diligence certificate which shall accompany the draft letter of offer. The aforesaid regulation clearly indicates that any enquiries and any due diligence that has to be made by the acquirer have to be made prior to the public announcement. It is, therefore, not possible to accept the submission of Mr. Shyam Divan that the appellants are to be permitted to withdraw the public announcement based on the discovery of certain facts subsequent to the making of the public announcement. In such circumstances, in our opinion, the judgments cited by Mr. Shyam Divan are of no relevance.

Delay:

71. Mr. Shyam Divan has also indicated that it was because of the unexplained delay of 8 months on the part of SEBI to process the Letter of Offer of the appellants that the prices for the shares of the target company went down from Rs. 18.60 to Rs. 8.56, during this period. This would impose huge financial liability on the appellants. This submission is also wholly misconceived. The submission was not made before SAT and it has been raised for the first time, in the submissions made by Mr. Shyam Divan. In fact, the ground is not even pleaded in the grounds of appeal. The submission is mentioned only in the list of dates. Since, we are considering a statutory appeal under Section 15Z of the SEBI Act, the same cannot be permitted to be raised in this Court for the first time, unless the submission goes to the very root of the matter. This apart, even on merit, we find that the submission is misconceived. Regulation 18(1) and (2) of the SEBI Takeover Code reads thus:-

> 18. Submission of letter of offer to the Board -
>
> (1) Within fourteen days from the date of public announcement made under regulation 10, 11 or 12 as the case may be, the acquirer shall, through its merchant banker, file with the Board, the draft of the letter of offer containing disclosures as specified by the Board.
>
> (2) The letter of offer shall be dispatched to the shareholders not earlier than 21 days from its submission to the Board under sub-regulation (1):

> Provided that if, within 21 days from the date of submission of the letter of offer, the Board specifies changes, if any, in the letter of offer (without being under any obligation to do so), the merchant banker and the acquirer shall carry out such changes before the letter of offer is dispatched to the shareholders :
>
> [Provided further that if the disclosures in the draft letter of offer are inadequate or the Board has received any complaint or has initiated any enquiry or investigation in respect of the public offer, the Board may call for revised letter of offer with or without rescheduling the date of opening or closing of the offer and may offer its comments to the revised letter of offer within seven working days of filing of such revised letter of offer.]"

72. A perusal of the aforesaid regulation clearly shows that the acquirer is required to file the draft letter of offer containing disclosures as specified by the Board within a period of 14 days from the date of public announcement. Thereafter, letter of offer has to be dispatched to the shareholders not earlier than 21 days from its submission to the Board. Within 21 days, the Board is required to specify changes if any, that ought to be made in the letter of offer. The merchant banker and the acquirer have then to carry out such changes before the letter of offer is dispatched to the shareholders. But there is no obligation to do so. Under the second proviso, the Board may call for revised letter of offer in case it finds that the disclosures in the draft letter of offer are inadequate or the Board has received any complaint or has initiated any enquiry or investigation in respect of the public offer. It is important to notice that in the first proviso the Board does not have any obligation to specify any change in the draft letter of offer within a period of 21 days. In the present case, in fact, the Board had not specified any changes within 21 days. We have already noticed earlier that the letter of offer was lacking and deficient in detail. The appellants themselves were taking time to submit details called for, by their merchant bankers through various letters between 08.08.2005 to 20.3.2006. We have already noticed the repeated advice given by the merchant banker to enhance the issue size of the open offer and to comply with other requirements of the Takeover Regulations. The appellants, in fact, were prevaricating and did not agree with the interpretation placed on Regulation 27(1) (d) by the Merchant Banker. We, therefore, reject the submission of Mr. Shyam Divan that there was delay on the part of SEBI in approving the draft letter of offer.

Court may direct fresh valuation:

73. Lastly, Mr. Shyam Divan has submitted that even if the appellants were not to be permitted to withdraw the public offer, the Court ought to appoint an independent valuer and direct a fresh valuation to be made on the basis of principles contained in Regulation 20(5) of the Takeover Regulations. Such a valuation, according to Mr. Shyam Divan, would be justified in the light of the foregoing submissions. We are not at all impressed by the aforesaid submission. The formula given in Regulation 20 would have no applicability in the facts and circumstances of this case. The determination of the lowest price under Regulation 20 would be at a stage prior to the making of the public announcement and not thereafter.

74. In view of the aforesaid, we find no merit in the appeal and it is accordingly dismissed.

................................J. [Surinder Singh Nijjar] ....J. [Anil R. Dave] New Delhi;

May 09, 2013.

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[1] (2003) 4 SCC 557

[2] (1993) 4 SCC 727

[3] (2011) 2 SCC 258

[4] (2012) 2 SCC 327

[5] (1996) 4 SCC 69

[6] (2002) 4 SCC 219,

[7] (2010) 3 SCC 786

[8] 2010) 5 SCC 349.

[9] (2010) 3 SCC 786.

[10] AIR 1960 SC 1080

[11] (1972 (2) SCC 444)

[12] (2009 10 SCC 755)

[13] (2012) 8 SCALE 101

[14] (1994) 1 SCC 1

[15] 1968 (2) All E.R. 573]

[16] 1990 1 SCC 484
