

Atul Agarwal vs Uoi & Ors on 19 May, 2023

Author: Satish Chandra Sharma

Bench: Chief Justice, Tushar Rao Gedela

Neutral Citation Number: 2023:DHC:3

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 03.0

% Judgment delivered on: 19.

+ W.P.(C) 1759/2012 & CM APPL. 3863/2012

ATUL AGARWAL

Through: Mr. Nikhil Tyagi, Mr.
Khare, Advocates

versus

UOI & ORS

Through: Mr. Ravi Prakash, CGS
Mr. Farman Ali, Ms. Us
Advocates for R-1
Ms. Manisha Agrawal N
with Mr. Sandeep Sing
Rakshita Goyal, Advoc
Mr. Neeraj Malh
Advocate with Mr. Ash
Mr. Nimish Kumar, Mr.
Yadav, Advocates for
Ms. Surekha Raman, Mr
Valasan, Ms. Unnimaya
for R-3/BSE

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

SATISH CHANDRA SHARMA, C.J.

1. The present petition has been filed as a public interest litigation by the Petitioner Atul Aggarwal who is holding a Bachelor's Degree in Law stating Neutral Citation Number: 2023:DHC:3474-DB that he is espousing the cause millions of investors who are being duped by the unscrupulous promoters of the companies as the promoters of the companies vanish after siphoning off the

hard-earned money of the investors.

2. The Petitioner's contention is that the Respondent No.3 BSE is empowered under the statutory provisions to list or to suspend the trading of shares/ stocks/ securities and the listed companies on the stock exchange keeping in view Rule 19(5) of the Securities Contracts (Regulation) Rules, 1957 and the power to suspend the listed company is being arbitrarily used by Respondent No.3 being the stock exchange, merely on the grounds of non-compliance of procedural disclosures under listing agreement, non- payment of the listing fees etc. and the shares/ stocks/ securities of the listed companies have been suspended from time to time.

3. It has been stated that large number of companies have been suspended from continued listing by Respondent No.3 and subsequently many of them have been de-listed without ensuring any protection to investors and, therefore, appropriate mechanism should be in place to take action against those persons who are duping the investors.

4. It has been further stated that the Respondent No.2 is the apex regulatory body and the Securities and Exchange Board of India Act, 1992 (SEBI Act) was enacted to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto.

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5. It has been further stated that according to Section 11 of the SEBI Act, it shall be the duty of SEBI to protect the interest of public investors in securities and to promote the development of and to regulate the securities market by such measures as it thinks fit. The SEBI Act also empowers the Board to regulate the business in Stock Exchanges, to register and regulate the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisors, etc to register and regulate the working of collective investment schemes including mutual funds, to prohibit fraudulent and unfair trade practices and insider trading, to regulate take-overs, to conduct enquiries and audits of the stock exchanges.

6. It has been further stated that Respondent No.3 BSE is recognized by Respondent No.1 Union of India under the provisions of Section 4(1) of Securities Contracts (Regulation) Act, 1956 for providing trading facilities for stock brokers and traders to trade shares/ stocks and other securities and also provides facilities for the issue and redemption of securities as well as other financial instruments. The Petitioner has stated that Respondent No.3 has de-listed large number of companies. It has been stated on affidavit that shares/ stocks of as many as 464 companies has been arbitrarily and without any efforts on the part of the Bombay Stock Exchange have been de-listed.

7. The Petitioner has raised various grounds before this Court to protect the interest of investors and has prayed for the following reliefs:

□. Issue appropriate writ(s), order(s) or direction(s) in the nature of a writ of mandamus directing the Respondent No.2 to issue the directions to Respondent No.3 making mandatory the Neutral Citation Number: 2023:DHC:3474-DB provisions like purchase of shares/ stocks/ securities by promoters of a company, proposed to be suspended, from its investors or any such alternative as a pre-condition of initiating the suspension of trading of shares/ stocks/ securities procedure by the Stock Exchanges;

ii. Issue appropriate writ(s), order(s) or direction (s) in the nature of a writ of mandamus directing the Respondent No. 2 to issue the directions to Respondent No. 3 so as to come out with more stringent and effective alternative penal provisions against promoters and management of the errant listed companies;

iii. Issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction(s) to the Respondent no.2 to constitute an internal panel to monitor the conduct of the promoters of a listed company whose trading of shares / stocks / securities is proposed to be suspended;

iv. Issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction(s) to the Respondent No.1 to institute a grievance redressal mechanism within Respondents No. 2 and 3 for the redressal of grievances of the public investors of the listed companies whose trading of shares already remains suspended and to trace out the promoters and management of such listed companies and make them settle the dues of innocent public shareholders / investors; v. Issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction(s) to the Respondent No. 3 for not implementing the new norms for the revocation of suspension of trading to shares/ stocks / securities of suspended / delisted companies which will come into effect from 01.04.2012; vi. Issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction(s) to the Respondent No. 2 and Respondent No. 3 to issue directions to the promoters and management of 1405 suspended companies to make all required compliances and to get their shares/stocks/securities re-listed and traded or to provide exit route to its public shareholders / investors at a Neutral Citation Number: 2023:DHC:3474-DB fair price. Also to issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction (s) to the Respondent No. 2 to formulate adequate guidelines for calculation of fair price of shares of these 1405 suspended companies; vii. Issue a writ of mandamus or any other appropriate writ(s) / order(s) / direction(s) to the Respondent No. 2 to initiate action under section 23(2) of Securities Contract Regulations Act against the promoters and management of the suspended / delisted companies, who even after the directions of Respondent NO. 2 do not fulfill necessary compliances; viii. Issue any other order(s) as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.

8. A detailed reply has been filed by Respondent No.2 Securities and Exchange Board of India (SEBI) and it has been stated that the SEBI has been established under the special enactment of the

Parliament i.e. Securities and Exchange Board of India, 1992 with the aim object to protect the interest of investors in securities and to promote the development of, and to regulate, the securities market and for the matters connected therewith or incidental thereto.

9. The Respondent SEBI has further stated that the SEBI Act provides a complete mechanism to protect the interest of investors in securities and Section 11 provides the measures for regulating the business in stock exchanges or any other security market.

10. It has been further stated that the Securities Contract (Regulations) Act, 1956 (SCRA) empowers recognized stock exchange which is considered to be the first regulator for providing conditions for listing of Neutral Citation Number: 2023:DHC:3474-DB securities on the stock exchanges and it also empowers for de-listing securities from any recognized stock exchange after recording reasons. It has been further stated that Section 30 of the SCRA empowers the Central Government to make rules for the purpose of carrying the objects of SCRA and it also provides for the requirements which shall be complied with by public companies for the purpose of getting their securities listed on any stock exchange. It has been further stated that SCRA prescribes the requirement with respect to the listing of securities on a recognized stock exchange and it empowers the stock exchange to suspend or withdraw admission to the dealings in the securities of a company for breach of any condition of admission to dealings or any other reason, to be recorded in writing.

11. It has been further stated that the SCRA also provides that the stock exchange shall provide a reasonable opportunity to the concerned company to show cause against the proposed action and a remedy of appeal is provided to the aggrieved company or a body corporate before the Securities Appellate Tribunal. Thus, the stand of Respondent No.2 is that there is a complete mechanism in place to deal with the companies who are playing fraud upon the investors.

12. In respect of the Petitioner's contention that the promoters and the management of the company's default in complying with the listing agreement is resulting in suspension of such companies and their subsequent de-listing (compulsory) is affecting the investors and in fact it is hurting the investor's interest rather than serving as a punitive measure against promoters and management of companies. The Respondent No.2 has Neutral Citation Number: 2023:DHC:3474-DB categorically stated that in case the Petitioner is aggrieved by such de-listing norms of stock exchange, the Petitioner or any other investor is certainly having a remedy of appeal under Securities Appellate Tribunal challenging the de-listing of the securities of the company under Section 21A(2) of the SCRA.

13. It has been further stated that the SEBI (Delisting of Equity Shares Regulations, 2009) provides for separate regulations on compulsory de- listing by stock exchange.

Regulation 23 of the Delisting Regulations provides for provisions with respect to the rights of public shareholders in case of compulsory delisting and there is a complete procedure prescribed for delisting of a company and penalties are also provided under Section 23(2) for non- compliance of the provisions of Section 21 or Section 21(A) or with the orders of or Section 22. The imprisonment provided may extend upto 10 years or fine which may extend up to Rs.25 crores or both. It has been

stated on affidavit by SEBI that as per Section 26 of the SCRA, the Central Government or State Government or the SEBI or a recognized stock exchange or any person, may file a prosecution on case to case basis and it is wrong on the part of the Petitioner to say that the SEBI has not taken any action against the promoters and management of the errant listed companies for compliance of the listing agreement.

14. It has been further stated that the Government of India has also set up a Co-Ordination and Monitoring Committee, a joint mechanism of Ministry Neutral Citation Number: 2023:DHC:3474-DB of Corporate Affairs and SEBI which is also the policy making body for vanishing companies.

15. The Co-Ordination and Monitoring Committee has arrived at certain criteria for identifying a company as vanishing company. The Government of India has also set up seven (reduced to four subsequently) regional task forces comprising of officials of MCA, SEBI and stock exchanges which undertakes verification of compliance of criteria at the operational level.

16. It has been further stated that against vanishing companies, SEBI has invoked powers granted to it under Section 11B of the SEBI Act and issued orders against the defaulting companies and their directors/ promoters prohibiting them from associating in any way with the capital market activities. At the time when reply was filed, the SEBI has furnished figures and has informed that SEBI has passed orders under Section 11B of SEBI Act against 102 companies and 391 of its promoters/ directors debarring them from activities connected with capital market, raising funds from capital markets and dealing in securities.

17. It has been further stated that the Indian regulatory framework is based on a disclosure based regime and the SEBI has taken large number of measures to enhance disclosures and tighten the regulatory framework. The measures taken by SEBI as detailed in the affidavit are reproduced as under:

- a) The issuer company is required to inter alia make disclosures of complete profile of the promoters and directors alongwith photograph, Voter ID Number, Driving License Number, DIN, age etc. in the offer document.

Further, the Permanent Account Number, Bank Account Number and Neutral Citation Number: 2023:DHC:3474-DB Passport Number of the promoters are required to be submitted to the Stock Exchanges on which securities are proposed to be listed, at the time of filing the draft offer document with them.

- b) In terms of the Equity Listing Agreement of the stock exchanges, when money is raised through an issue, issuer shall disclose to the Audit Committee, the uses / applications of funds on a quarterly basis as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee for review. Such disclosure shall be made till such time that the full money raised through the issue has been fully utilized.

c) In addition to the above, issuer raising funds through public/rights issue in excess of rupees five hundred crore, in terms of the SEBI (Issue of Capital and Disclosure Requirements Regulations, 2009 (ICDR Regulations), are required to appoint a Monitoring Agency to monitor the use of proceeds of the issue. The Monitoring Agency is required to submit its report to the issuer on half yearly basis, till the full utilization of issue proceeds and this report is also reviewed by Audit Committee of the issuer company.

d) For material variations between the proposed utilization of issue proceeds and the actual utilization, the company is required to furnish an explanation by way of advertisement and also provide the same in the Directors' Report.

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18. The SEBI has also filed a list of the compliances on the basis of which the SEBI has taken actions against errant companies for non-redressal of investor's compliances. The stand of the SEBI is that the Petitioner has filed the present petition without appreciating the fact that the interest of investors has been duly taken care of and protected by SEBI in terms of De-Listing Regulations as well as SCRA and the revocation norms brought by Respondent No.3 BSE, have been done so in furtherance of the provisions of SCRA and the Securities Contract Regulation Rules, 1957 and all efforts are being made by the SEBI as well as BSE to ensure that no fraud is played upon the investors. A prayer has been made for disposing of the present writ petition.

19. The Bombay Stock Exchange, Respondent No.3 has also filed a detailed reply in the matter and it has been contended by Respondent No.3 that Securities Contracts (Regulations) Act, 1956 provides for complete mechanism for dealing with complaints. Section 23L of the SCRA provides for a remedy to any person aggrieved by the order or decision of a recognized stock exchange before the Securities Appellate Tribunal. It has been further contended that the Securities Exchange Board of India Act, 1992 and Securities Contracts (Regulations) 1956 empowers the Securities and Exchange Board of India to supervise and to have a control over the stock exchanges. It has been further contended that Section 21 of the SCRA mandates that where securities are listed, on the application of any person in any recognized Stock Exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

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20. It has been further stated that Rule 19 of the Securities Contracts (Regulation) Rules, 1957 provides various formalities and procedures required to be mandatorily complied with by a Public Limited Company, before its shares and securities can be traded on the floor of the recognized stock exchange.

21. The Respondent No.3 has further stated that the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 provides adequate and sufficient protection for investors and the market. Rule 21 of the Securities Contracts (Regulation) Rules provides for delisting of any security listed on the following grounds:

(a) the company has incurred losses during the preceding three consecutive years and it has negative networth;

b) trading in the securities of the company has remained suspended for a period of more than six months;

(c) the securities of the company have remained infrequently traded during the preceding three years;

(d) the company or any of its promoters or any of its director has been convicted for failure to comply with any of the provisions of the Act or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 (22 of 1996) or rules, regulations, agreements made there under, as the case may be and awarded a penalty of not less than rupees one crore or imprisonment of not less than three years;

(e) the addresses of the company or any of its promoter or any of its directors, are not known or false addresses have been furnished or the company has changed its registered office in contravention of the provisions of the Companies Act, 1956 (1 of 1956); or

(f) shareholding of the company held by the public has come below the minimum level applicable to the company as per the listing agreement under the Act and the company has failed to Neutral Citation Number: 2023:DHC:3474-DB raise public holding to the required level within the time specified by the recognized stock exchange:

Provided that no securities shall be delisted unless the company concerned has been given a reasonable opportunity of being heard.

22. It has been stated that the Regulations on the subject are in place and complete mechanism provides to ensure that no fraud is played upon an investor keeping in view the statutory provisions.

23. The Respondent No.3 has explained the process of delisting of securities from a recognized stock exchange in the following manner:

i. Delisting from one or more stock exchanges after which the equity shares would remain listed on any recognized stock exchange which has nationwide trading terminals. In such kind of delisting no exit opportunity to the public shareholders is provided (Voluntary Delisting), [Regulation 6 (a)] ii. Delisting from stock exchanges after which the equity shares would not remain listed on any recognized stock exchange which has nationwide trading terminals. In such kind of delisting exit opportunity to the public shareholders is provided in accordance with Chapter IV (Voluntary Delisting). [Regulation 6 (b)].

iii. Compulsory Delisting [Chapter V of the Delisting Regulations]

24. The Respondent No.3 has further stated that Section 2IA (2) of the SCRA provides that a listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities. It has been further stated that Section 23 (2) of the SCRA provides that any person who fails to Neutral Citation Number: 2023:DHC:3474-DB comply with the provisions of Section 21 and 21A of SCRA shall be liable for a punishment with an imprisonment for a term which may extend to ten years or with fine, which may extend to twenty five crores rupees, or with both.

25. It has been further stated that Rule 19 (5) of the SCRR states that a recognized stock exchange, may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or noncompliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action. Provided, however, that no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action. Rule 19 (6) of the SCRR provides that a stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities Appellate Tribunal restore or re-admit to dealings any securities suspended or withdrawn from the list.

26. Bye-law 35 of the Rules, Bye-laws and Regulations of the Respondent No.3 provides as follows:

Listing Conditions and Requirements -

The Governing Board may not grant admissions to dealings on the Exchange to the securities of company unless it complies with the listing conditions and requirements prescribed in the relative Regulation or such other conditions and requirements as the Governing Board may from time to time prescribe in addition thereto or in modification or substitution thereof in addition to the listing requirements prescribed in the Securities Contracts Neutral Citation Number: 2023:DHC:3474-DB (Regulation) Rules, 1957 which are incorporated in the aforesaid Regulation.

27. Bye-law 39 of the Rules, Bye-laws and Regulations of the Respondent No.3 provides as follows:

☐ Suspension of Admission to Dealings on the Exchange - Subject to the provisions of the Securities Contracts (Regulation) Act 1956 and the Securities Contracts (Regulation) Rules 1957 the Governing Board may suspend at any time the admission to dealings on the Exchange granted to any security for such period or periods as it may determine. At the expiration of the period of suspension the Governing Board may reinstate such security subject to such conditions as it deems fit.

28. Bye-law 42 of the Rules, Bye-laws and Regulations of the Respondent No.3 provides as follows:

□Withdrawal of Admission to Dealings on the Exchange - Subject to the provisions of the Securities Contracts (Regulation) Act 1956 and the Securities Contracts (Regulation) Rules 1957 the Governing Board may by a special resolution and where deemed necessary after giving an opportunity to the Company to explain withdraw the admission to dealings on the Exchange granted to its securities either for breach of or no-compliance with any of the listing conditions or requirements or for any other reason whatsoever to be recorded in the minutes.

29. It has been further stated that the aforesaid statutory provisions provide for transparent mechanism of delisting of securities, adequate participation and/ or representation of public shareholders in the process of delisting and also provides for challenge to the decision of delisting by any aggrieved investor. The Respondents have further stated that even in case of compulsory delisting which is a disciplinary mechanism an aggrieved Neutral Citation Number: 2023:DHC:3474-DB investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognized stock exchange delisting the securities under section 21A (2) of the SCRA.

30. The Respondent No.3 has further stated that the Listing Agreement also explicitly mentions that the Company agrees and declares that all or any of its securities listed on the stock exchange shall remain on the list entirely at the discretion of the stock exchange and that stock exchange may, in its absolute discretion, suspend or remove the securities from the list at any time and for any reason whatsoever.

31. The Respondent has further submitted that the norms under challenge were reconsidered by Respondent No.3 suo-moto in the interest of the investors and much prior to the filing of the present Writ Petition. It has been stated that the new norms for revocation of suspension have been approved by the Board of Directors of Respondent No. 3 in a Board meeting dated 27.04.2012 and the minutes of the said meeting are under the process of approval. The approved norms are as follows.

□NORMS FOR REVOCATION OF SUSPENSION, WHERE THE SUSPENSION IS FOR A PERIOD EXCEEDING 1 YEAR Particulars Revised Norms Trading in Compulsory Should have signed with at Demat least one depository.

Provided that where the company has not signed with either/ both the depositories for dematerialization, it shall submit a letter from the relevant depository rejecting admission of the security in Neutral Citation Number: 2023:DHC:3474-DB the depository.

2. Information Memorandum Information Memorandum as provided in Schedule II of Companies Act, 1956 to the extent applicable, as certified by the Company Secretary/ MD of the Company.

3. Other requirements 1. Entire issued capital of the company must be listed.

2. No investor complaints pending against the company.

3. The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR.

4. The shareholding of promoter and promoter group entities shall be under lock-in from the date of in-principle revocation of suspension upto a period of 1 year following the date of commencement of trading, post revocation of suspension.

5. Company should have its own website. 6. Payment of reinstatement fees as applicable.

4. Additional requirements 1. Post revocation of suspension, the trading in the securities of the company will be permitted only after the company demonstrates timely Neutral Citation Number: 2023:DHC:3474-DB compliance for a period of 2 consecutive quarters succeeding the revocation of suspension. Such companies in watch list will be displayed on www.bseindia.com

2. Promoters and Promoter group entities should not have diluted their shareholding (in terms of no. of shares) during the six months period prior to the date of revocation of suspension.

3. The names of the promoter and promoter group entities shall be displayed on the website www.bseindia.com.

NORMS FOR REVOCATION OF SUSPENSION, WHERE THE SUSPENSION IS FOR A PERIOD LESS THAN 1 YEAR

1. Entire issued capital of the company must be listed.

2. No investor complaints pending against the company.

3. The company is in compliance with clauses of the listing agreement, filings under SEBI regulations/ circulars, SCRA and SCRR.

4. The shareholding of promoter and promoter group entities shall be under lock-in for a period of 3 months from the date of commencement of trading, post revocation of suspension.

5. Company should have its own website.

6. Payment of reinstatement fees as applicable.

32. It has been further stated that the aforesaid norms are approved in the interest of investors. The aforesaid norms are necessary and vital for Neutral Citation Number: 2023:DHC:3474-DB enabling the investor to take an informed decision with regards to their investments and to deal safely in securities market. The contention of Respondent No.3 is that the aforesaid norms are not extraneous, unreasonable and can be complied easily by the Listed Company thereby enabling the investor to deal in securities market prudently and safely.

33. It has been further stated that the Respondent No.3 has always endeavoured to maintain fair, just and equitable norms for revocation of suspension after taking into consideration the interest of the investor, the company and the securities market. The Respondent No.3 has further submitted that it is the duty of the Respondent No.3 as a stock exchange to take a balanced view on the norms for revocation of suspension, in order to maintain the sanctity of the securities market and discourage habitual violation of the listing requirements by the companies.

34. The Respondent No.4, Ministry of Corporate Affairs has also filed a reply in the matter and it has been stated that a fund has been created i.e. Investor Education and Protection Fund and investor awareness programme is also conducted by Respondent No.4 and Respondent No.4 has also adopted the reply filed by SEBI as well as BSE.

35. The Respondent Ministry of Finance has adopted the reply filed by Respondent No.2 SEBI and has prayed for dismissal of the writ petition.

36. Heard Learned Counsel for the Parties at length and perused the record. The matter is being disposed of with the consent of the parties at admission stage itself. The SEBI has been established under the enactment of Parliament i.e. SEBI Act with the object to protect the interest of investors in the securities and to protect the interest of investors in the Neutral Citation Number: 2023:DHC:3474-DB securities and to promote development of, and to regulate the securities market and for the matters connected therewith or incidental thereto. Section 11 and 11B of the SEBI Act reads under:

□1. Functions of Board.--(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for--

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

18[(ba) registering and regulating the working of the depositories, 19[participants,] custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.]

(c) registering and regulating the working of 20[venture capital funds and] collective investment schemes, including mutual funds;

- (d) promoting and regulating self-regulatory organisations;
 - (e) prohibiting fraudulent and unfair trade practices relating to securities markets;
 - (f) promoting investors' education and training of intermediaries of securities markets;
 - (g) prohibiting insider trading in securities;
 - (h) regulating substantial acquisition of shares and takeover of companies;
 - (i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges 21[, Neutral Citation Number: 2023:DHC:3474-DB mutual funds, other persons associated with the securities market,] intermediaries and self-regulatory organisations in the securities market;
- 22[(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;] 23[(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;]

(j) performing such functions and exercising such powers under the provisions of 24[* * *] the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

25[(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]

(m) performing such other functions as may be prescribed. 26[(2-A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in Section 12) which intends to get its securities listed on any recognised stock Neutral Citation Number: 2023:DHC:3474-DB exchange where the Board has

reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.] [(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under clause (i) 28[or clause (ia) of sub-section (2) or sub-section (2A)] the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:--

- (i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) inspection of any books, registers and other documents of any person referred to in Section 12, at any place;] [(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2-A);
- (v) issuing commissions for the examination of witnesses or documents;] [(4) Without prejudice to the provisions contained in sub-

section (1), (2), (2-A) and (3) and Section 11-B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:--

- (a) suspend the trading of any security in a recognised stock exchange;
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- (c) suspend any office bearer of any stock exchange or self- regulatory organisation from holding such position;
- (d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

Neutral Citation Number: 2023:DHC:3474-DB [(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under Section 26-A, having jurisdiction and on such confirmation, such attachment shall

continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of Section 28-A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.]

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2-A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.] [(4-A) Without prejudice to the provisions contained in sub- sections (1), (2), (2A), (3) and (4), Section 11-B and Section 15- I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under Sections 15-A, 15-B, 15-C, 15-D, Neutral Citation Number: 2023:DHC:3474-DB 15-E, 15-EA, 15-EB, 15-F, 15-G, 15-H, 15-HA and 15-HB after holding an inquiry in the prescribed manner.] [(5) The amount disgorged, pursuant to a direction issued, under Section 11-B of this Act or Section 12-A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or Section 19 of the Depositories Act, 1996 (22 of 1996) 34[or under a settlement made under Section 15-JB or Section 23-JA of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or Section 19-IA of the Depositories Act, 1996 (22 of 1996)], as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.] xxxxxxxx [11-B. Power to issue directions [and levy penalty].-- [(1)] Save as otherwise provided in Section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary--

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,--

(a) to any person or class of persons referred to in Section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in Section 11-A, as may be appropriate in the interests of investors in securities and the securities market.] [Explanation.--For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by Neutral Citation Number: 2023:DHC:3474-DB indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.] [(2) Without prejudice to the provisions contained in sub-

section (1), sub-section (4-A) of Section 11 and Section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under Sections 15-A, 15-B, 15-C, 15-D, 15-E, 15-EA, 15-EB, 15-F, 15-G, 15-H, 15-HA and 15-HB after holding an inquiry in the prescribed manner.]

37. The aforesaid statutory provisions of law makes it very clear that it is the duty of the SEBI to protect the interest of the investor in securities and to promote the development of, and to regulate the securities market by such measures as it thinks fit. Meaning thereby, the SEBI is empowered to take all such measures in the interest of investors and such measures may include regulating the business in stock exchange, registering and regulating the working of stock brokers, performing such functions and exercising such powers under the Provisions SCRA, as may be delegated by the Central Government.

38. The SCRA confers ample power to any recognized stock exchange which is considered to be the first level regulatory for providing conditions for listing of securities with stock exchange. Section 21, 21A, 23 and 30 of the SCRA reads as under:

"21. Conditions for listing.--Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.] 21-A. Delisting of securities.--(1) A recognised stock exchange may delist the securities, after recording the reasons therefor, Neutral Citation Number: 2023:DHC:3474-DB from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act:

Provided that the securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

(2) A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of Sections 22-B to 22-E of this Act, shall apply, as far as may be, to such appeals:

Provided that the Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.] xxxxxx

23. Penalties.--(1) Any person who--

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of Section 6; or

(b) enters into any contract in contravention of any of the provisions contained in Section 13 or Section 16; or

(c) contravenes the provisions contained in [Section 17 or Section 17-A] or Section 19; or [(d) enters into any contract in derivative in contravention of Section 18-A or the rules made under Section 30.]

(e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or

(f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Neutral Citation Number: 2023:DHC:3474-DB Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or

(g) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-

laws of such stock exchange or not being a dealer in securities licensed under Section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or

(h) not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye- laws of such stock exchange or not being a dealer in securities licensed under Section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other persons

for any business connected with contracts in contravention of any of the provisions of this Act; or

(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;

[shall, without prejudice to any award of penalty by the Adjudicating Officer [or the Securities and Exchange Board of India] under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with fine, which may extend to twenty-five crore rupees, or with both.] (2) Any person who enters into any contract in contravention of the provisions contained in Section 15 or who fails to comply with the [provisions of [Section 21 or Section 21-A] or with the orders of] or the Central Government under Section 22 [or with the orders of the Securities Appellate Tribunal] [shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, be punishable with imprisonment for a term which may extend to ten years or with Neutral Citation Number: 2023:DHC:3474-DB fine, which may extend to twenty-five crore rupees, or with both].

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30. Power to make rules.--(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,--

(a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;

(b) the manner in which any inquiry for the purpose of recognizing any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;

(c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;

(d) the documents which should be maintained and preserved under Section 6 and the periods for which they should be preserved;

(e) the manner in which any inquiry by the governing body of a stock exchange shall be made under Section 6;

(f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;

(g) the manner in which applications may be made by dealers in securities for licences under Section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions; [(h) the requirements which shall be complied with-- (A) by public companies for the purpose of getting their securities listed on any stock exchange;

(B) by collective investment scheme for the purpose of getting their units listed on any stock exchange.] [(ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub- section (1) of Section 21-A;

(hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-section (2) of Section 21-A and the fees payable in respect of such appeal; (hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under Section 22-A and the fees payable in respect of such appeal;

(hd) the manner of inquiry under sub-section (1) of Section 23-I;

(he) the form in which an appeal may be filed before the Securities Appellate Tribunal under Section 23-L and the fees payable in respect of such appeal;]

(i) any other matter which is to be or may be prescribed. [(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

39. The aforesaid provisions of law provide for delisting of the securities and the mechanism to protect the interest of investors. The aggrieved investor can certainly prefer an Appeal before the Securities Appellate Tribunal (SAT) in case he is aggrieved in the matter of delisting of the security.

40. Section 30 of the SCRA empowers the Central Government to frame Rules for carrying on the objects the SCRA, and Rules have been framed which are known as Securities Contracts (Regulation) Rules, 1957. Rule 19 of the said Rules reads as under:

"19. Requirements with respect to the listing of securities on a recognised stock exchange.--

(1) A public company as defined under the Companies Act, 1956, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:

(a) Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.

(b) Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.

(c) Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.

(d) Copies of balance-sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.

(e) A statement showing--

(i) dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),

(ii) dividends or interest in arrears, if any.

(f) Certified copies of agreements or other documents relating to arrangements with or between:--

(i) vendors and/or promoters, Neutral Citation Number: 2023:DHC:3474-DB

(ii) underwriters and sub-underwriters,

(iii) brokers and sub-brokers.

(g) Certified copies of agreements with--

(i) managing agents and secretaries and treasurers,

(ii) selling agents,

(iii) managing directors and technical directors,

(iv) general manager, sales manager, manager or secretary.

(h) Certified copy of every letter, report, balance-sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.

(i) A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.

(j) A brief history of the company since its incorporation giving details of its activities including any reorganisation, reconstruction or amalgamation, changes in its capital structure, (authorised, issued and subscribed) and debenture borrowings, if any.

(k) Particulars of shares and debentures issued--(i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.

(l) A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.

(m) Certified copies of--

[(i) acknowledgement card or the receipt of filing offer document with the Securities and Exchange Board of India;] Neutral Citation Number: 2023:DHC:3474-DB

(ii) agreements, if any, with the Industrial Finance Corporation, Industrial Credit and Investment Corporation and similar bodies.

(n) Particulars of shares forfeited.

(o) A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.

(p) Particulars of shares or debentures for which permission to deal is applied for:

Provided that a recognised stock exchange may either generally by its bye-laws or in any particular case call for such further particulars or documents as it deems proper.

(2) Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock

exchange that:

(a) Its articles of association provide for the following among others--

(i) that the company shall use a common form of transfer,

(ii) that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares,

(iii) that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared,

(iv) there will be no forfeiture of unclaimed dividends before the claim becomes barred by law,

(v) that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting:

Provided that a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfil the foregoing requirements and agrees to act in the Neutral Citation Number: 2023:DHC:3474-DB meantime strictly in accordance with the provisions of this clause.

[(b) [The minimum offer and allotment to public in terms of an offer document shall be--]

(i) at least twenty five per cent of each class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is less than or equal to one thousand six hundred crore rupees;

(ii) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of four hundred crore rupees, if the post issue capital of the company calculated at offer price is more than one thousand six hundred crore rupees but less than or equal to four thousand crore rupees;

(iii) at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above four thousand crore rupees 45[but less than or equal to one lakh crore rupees]:

[(iv) at least such percentage of each class or kind of equity shares or debentures convertible into equity shares issued by the company equivalent to the value of five thousand crore rupees and at least five per cent of each such class or kind of equity shares or debenture convertible into equity shares issued by the company, if the post issue capital of the company calculated at offer price is above one lakh crore rupees: Provided that the company referred to in this sub-clause (iv) shall increase its public shareholding to at least ten per cent within a period of two years and at least twenty-five per cent. within a period of five years, from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India:] Neutral Citation Number: 2023:DHC:3474-DB Provided that the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India:

Provided further that this clause shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of Rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:] 47[Provided also that the applicant company 48[referred to in clause (b)], who has issued equity shares having superior voting rights to its promoters or founders and is seeking listing of its ordinary shares for offering to the public under this rule and the regulations made by the Securities and Exchange Board of India in this regard, shall mandatorily list its equity shares having superior voting rights at the same recognized stock exchange along with the ordinary shares being offered to the public.]

(c) [* * *] (3) A company applying for listing shall, as a condition precedent, undertake inter alia--

(a)(i) letters of allotment will be issued simultaneously and that, in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted,

(ii) that letters of right will be issued simultaneously,

(iii) that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and examined and signed by a responsible officer of the Neutral Citation Number: 2023:DHC:3474-DB company and that whenever possible, they will contain the distinctive numbers of the securities to which they relate,

(iv) that letters of allotment and renounceable letters of right will contain a proviso for splitting and that, when so required by the exchange, the form of renunciation will

be printed on the back of or attached to the letters of allotment and letters of right,

(v) that letters of allotment and letters of right will state how the next payment of interest or dividend on the securities will be calculated,

(b) to issue, when so required, receipts for all securities deposited with it whether for registration, sub-division, exchange or for other purposes; and not to charge any fees for registration of transfers, for sub-division and consolidation of certificates and for sub-division of letters of allotment, renounceable letters of right, and split, consolidation, renewal and transfer receipts into denominations of the market unit of trading; (bb) to issue, when so required, consolidation and renewal certificates in denominations of the market unit of trading to split certificates, letters of allotment, letters of right, and transfer, renewal, consolidation and split receipts into smaller units, to split call notices, issue duplicates thereof and not require any discharge on call receipts and to accept the discharge of members of stock exchange on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders;

(c) when documents are lodged for sub-division or consolidation or renewal through the clearing house of the exchange:

(i) to accept the discharge of an official of the stock exchange clearing house on the company's split receipts and consolidation receipts and Neutral Citation Number: 2023:DHC:3474-DB renewal receipts as good and sufficient discharge without insisting on the discharge of the registered holders, and

(ii) to verify when the company is unable to issue certificates or split receipt or consolidation receipts or renewal receipts immediately on lodgement whether the discharge of the registered holders, on the documents lodged for sub-division or consolidation or renewal and their signatures on the relative transfers are in order;

(d) on production of the necessary documents by shareholders or by members of the exchange, to make on transfers an endorsement to the effect that the power of attorney or probate or letters of administration or death certificate or certificate of the Controller of Estate Duty or similar other document has been duly exhibited to and registered by the company;

(e) to issue certificates in respect of shares or debentures lodged for transfer within a period of one month of the date of lodgement of transfer and to issue balance certificates within the same period where the transfer is accompanied by a larger certificate;

(f) to advise the stock exchange of the date of the board meeting at which the declaration or recommendation of a dividend or the issue of right or bonus share will

be considered;

(g) to recommend or declare all dividends and/or cash bonuses at least five days before the commencement of the closure of its transfer books or the record date fixed for the purpose and to advise the stock exchange in writing of all dividends and/or cash bonuses recommended or declared immediately after a meeting of the board of the company has been held to finalise the same;

(h) to notify the stock exchange of any material change in the general character or nature of the company's business;

(i) to notify the stock exchange of any change--

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(i) in the company's directorate by death, resignation, removal or otherwise,

(ii) of managing director, managing agent or secretaries and treasurers,

(iii) of auditors appointed to audit the books and account of the company;

(j) to forward to the stock exchange copies of statutory and annual reports and audited accounts as soon as issued, including directors' report;

(k) to forward to the stock exchange as soon as they are issued, copies of all other notices and circulars sent to the shareholders including proceedings of ordinary and extraordinary general meetings of the company and to file with the stock exchange certified copies of resolutions of the company as soon as such resolutions become effective;

(l) to notify the stock exchange prior to intimating the shareholders of any new issue of securities whether by way of right, privilege bonus or otherwise and the manner in which it is proposed to offer or allot the same;

(m) to notify the stock exchange in the event of re-issue of any forfeited securities or the issue of securities held in reserve for future issue;

(n) to notify the stock exchange of any other alteration of capital including calls;

(o) to close the transfer books only for the purpose of declaration of dividend or issue of right or bonus shares or for such other purposes as the stock exchange may agree and to give notice to the stock exchange as many days in advance as the exchange may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to be taken); and

in the case of a right or bonus issue to so close the transfer books or fix a record date only after the sanctions of the competent Neutral Citation Number: 2023:DHC:3474-DB authority subject to which the issue is proposed to be made have been duly obtained, unless the exchange agrees otherwise;

(p) to forward to the stock exchange an annual return immediately after each annual general meeting of at least ten principal holders of each class of security of the company along with particulars as to the number of shares or debentures held by, and address of, each such holder;

(q) to grant to shareholders the right of renunciation in all cases of issue of rights, privileges and benefits and to allow them reasonable time not being less than four weeks within which to record, exercise, or renounce such rights, privileges and benefits and to issue, where necessary, coupons or fractional certificates or provide for the payment of the equivalent of the value of the fractional right in cash unless the company in general meeting or the stock exchange agrees otherwise;

(r) to promptly notify the stock exchange--

(i) of any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the exchange,

(ii) of the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the transfer books (or the date of the striking of the balance) for the drawing,

(iii) of the amount of securities outstanding after any drawing has been made;

(s) to intimate the stock exchange any other information necessary to enable the shareholders to apprise the position of the company and to avoid the establishment of a false market in the shares of the company;

(t) that in the event of the application for listing being granted, such listing shall be subject to the rules and bye- laws of the exchange in force from time to time and that the company will comply within a reasonable time, with Neutral Citation Number: 2023:DHC:3474-DB such further listing requirements as may be promulgated by the exchange as a general condition for new listings. [(4) An application for listing shall be necessary in respect of the following:

(a) all new issues of any class or kind of securities of a company to be offered to the public;

(b) all further issues of any class or kind of securities of a company if such class or kind of securities of the company are already listed on a recognised stock exchange.]

(5) A recognised stock exchange may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other

reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action:

Provided, however, that no such action shall be taken by a stock exchange without affording to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action:

[Provided further that where a recognised stock exchange has withdrawn admission to dealings in any security, or where suspension of admission to dealings has continued for a period exceeding three months, the company or body corporate concerned may prefer an appeal to the Securities Appellate Tribunal constituted under Section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the procedure laid down under the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000 shall apply to such appeal. The Securities Appellate Tribunal may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the stock exchange and its orders shall be carried out by the stock exchange.] [(6) A recognised stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities Appellate Tribunal under sub-rule (5) restore or re-

Neutral Citation Number: 2023:DHC:3474-DB admit to dealings any securities suspended or withdrawn from the list.] [(6-A) Except as otherwise provided in these rules or permitted by the Securities and Exchange Board of India under sub-rule (7), all requirements with respect to listing prescribed by these rules shall, so far as they may be, also apply to a public sector company.] [* * *] (7) The [Securities and Exchange Board of India] may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules.

[(8) Notwithstanding anything contained in this rule, the minimum offer and allotment requirements as prescribed under clause (b) of sub-rule (2) shall not be applicable to the listing of such equity shares having superior voting rights issued to the promoters or founders as the case may be, in cases where the applicant company is seeking listing of its ordinary shares for offering to the public in accordance with the provisions of this rule and the regulations made by the Securities and Exchange Board of India in this regard.]"

41. The aforesaid statutory provision of law provides a requirement with respect to the delisting of securities on recognized stock exchange. It empowers the stock exchange to suspend or withdraw admission to the dealings in the securities of a company for breach of or non-compliance of any of the conditions of admission to dealings or any other reason, to be recorded in writing. It also provides for a remedy to the aggrieved company or body corporate to prefer an appeal before the SAT.

42. The SEBI in exercise of powers conferred by Section 31 read with Section 21A of the SCRA and Section 30, Sub Section (1) of Section 11 and Sub Section (2) of Section 11A of the SEBI Act, has made regulations known as Securities and Exchange Board of India (Delisting of Equity Neutral Citation Number: 2023:DHC:3474-DB Shares) Regulation, 2021. Chapter-III and Chapter-IV deals with voluntary delisting and Chapter-V deals with compulsory delisting. Regulation 31, 32, 33 and 34 of the aforesaid regulations reads as under:

31. Cancellation of outstanding depository receipts.- After delisting of equity shares from all the recognized stock exchanges having nationwide trading terminals, the company shall be required to compulsorily cancel all the outstanding depository receipts issued overseas and change them into the underlying equity shares in the home jurisdiction after termination of the depository receipts program(s), within one year of such delisting.

32. Compulsory delisting by a stock exchange.--(1) A recognised stock exchange may, by a reasoned order, delist equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956): Provided that no order shall be issued under this sub-regulation unless the company has been given a reasonable opportunity of being heard.

(2) The decision regarding the compulsory delisting shall be taken by a panel to be constituted by the recognised stock exchange consisting of--

(a) two directors of the recognised stock exchange one of whom shall be a public representative;

(b) one representative of an investor association recognised by the Board;

(c) one representative of the Ministry of Corporate Affairs or Registrar of Companies; and

(d) the Executive Director or Secretary of the recognised stock exchange.

(3) Before passing an order under sub-regulation (1), the recognised stock exchange shall give a notice in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working Neutral Citation Number: 2023:DHC:3474-DB days from the date of such notice, within which representations, if any, may be made to the recognised stock exchange by any person aggrieved by the proposed delisting and shall also display such notice on its trading systems and website. (4) The recognised stock exchange shall, while passing any order under sub-regulation (1), consider the representation, if any, made by the company and also any representation received in response to the notice given under sub-regulation (3), and shall comply with the guidelines provided in Schedule III of these regulations.

(5) Where the recognised stock exchange passes an order under sub-regulation (1), it shall,--

(a) forthwith publish a notice in one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located, of the fact of such delisting, disclosing therein the name and address of the company, the fair value of the delisted equity shares determined under sub-regulation (1) of Regulation 33 of these regulations and the names and addresses of the promoters of the company who would be liable under sub-regulation (4) of Regulation 33 of these regulations;

(b) inform all other stock exchanges where the equity shares of the company are listed, about such delisting; and

(c) upload a copy of the said order on its website. (6) The provisions of Chapter IV of these regulations shall not be applicable to a compulsory delisting made by a recognised stock exchange under this Chapter.

33. Rights of public shareholders in case of compulsory delisting.--(1) Where the equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer(s) who shall determine the fair value of the delisted equity shares.

(2) The recognised stock exchange shall form a Panel of expert valuers and from the said Panel, the valuer(s) for the purposes of sub-regulation (1) shall be appointed.

Neutral Citation Number: 2023:DHC:3474-DB (3) The value of the delisted equity shares shall be determined by the valuer(s) having regard to the factors mentioned in sub-regulation (2) of Regulation 20 of these regulations. (4) The promoter(s) of the company shall acquire the delisted equity shares from the public shareholders by paying them the value determined by the valuer, within three months of the date of delisting from the recognised stock exchange, subject to the option of the public shareholders to retain their shares. (5) The promoter shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer, if the price payable in terms of sub-regulation (3) is not paid to all the shareholders within the time specified under sub-regulation (4):

Provided that in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the Board may grant waiver from the payment of such interest.

34. Consequences of compulsory delisting.--(1) Where a company has been compulsorily delisted under this Chapter, the company, its whole-time directors, person(s) responsible for ensuring compliance with the securities laws, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing of any equity shares or act as an intermediary in the securities market for a period of ten years from the date of such delisting. (2) In case of a company whose fair value is positive--

(a) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares held by the promoters/promoter group and the corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen for all the equity shares held by the promoters/promoter group, till the promoters of such company provide an exit option to the public shareholders in compliance with sub- regulation (4) of Regulation 33 of these regulations, as certified by the relevant recognized stock exchange;

(b) the promoters, whole-time directors and person(s) responsible for ensuring compliance with the securities laws, of the compulsorily delisted company shall also not be eligible to Neutral Citation Number: 2023:DHC:3474-DB become directors of any listed company till the exit option as mentioned in clause (a) is provided.

(3) The stock exchange(s) shall monitor the compliance of the provisions of this Chapter and take appropriate action for non- compliance thereof in accordance with the provisions of these regulations."

43. The aforesaid delisting regulations provide Provisions with respect to the rights of the share-holders and all kind of checks and balances are in place under the Regulations. It is pertinent to note that Section 23(2) of the SCRA gives a special power to SEBI to penalize any person who contravenes the Provisions inter alia Section 21 or Section 21A or Section 22, and a punishment upto 10 years or a fine which may extend up to Rs. 25 crores can be inflicted.

44. Not only this, as stated in the written reply filed by the SEBI, for vanishing companies, the exercise was undertaken by the Registrars of companies and action has been initiated in the matter against them. Thus in short, the statutory provisions do provide a robust mechanism to safeguard the interest of investors and by no stretch of imagination, it can be said that the interest of investors is not at all protected. Section 23L of the SCRA reads as under:

"Appeal to Securities Appellate Tribunal.

23L. (1) Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.

Neutral Citation Number: 2023:DHC:3474-DB (2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

45. The aforesaid statutory provisions of law provide for an Appeal against any order/ decision for recognized stock exchange before the SAT and any person aggrieved in the matter by the order or decision of the recognized stock exchange or the adjudicating officer or any order made by the SEBI under Section 4B can prefer an Appeal, therefore, an efficacious remedy is also available under the statutory provisions.

46. The statutory provisions governing the field make it very clear that a transparent mechanism of delisting the securities, adequate participation Neutral Citation Number: 2023:DHC:3474-DB and/ or representation of public shareholders in the process of delisting is in place, and a remedy is also available to aggrieved investor in the matter of delisting. Not only this, even in case of compulsory delisting, which is a disciplinary mechanism, an aggrieved investor may file an Appeal before the SAT against the decision of the recognized stock exchange delisting the securities under Section 21A(2) of the SCRA.

47. In the considered opinion of this Court, in view of the reply filed by the SEBI, Government of India and Bombay Stock Exchange, no further orders are required to be passed in the present PIL, and the interest of the investors is certainly protected under the Statutory Provisions governing the field.

48. In view of the above, the Present writ petition/ PIL stands disposed of.

(SATISH CHANDRA SHARMA) CHIEF JUSTICE (TUSHAR RAO GEDELA) JUDGE MAY 19, 2023
N.Khanna/aks