2024:BHC-OS:13006-DB

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

WRIT PETITION NO. 1590 OF 2021

Dr. Pradeep Mehta ..Petitioner

Vs.

1. Union of India
2. Securities and Exchange Board of India
3. Bombay Stock Exchange Ltd.
4. National Stock Exchange Ltd.
5. Central Depository Services (India) Ltd.
6. National Securities Depository Ltd. ..Respondents

WITH
WRIT PETITION NO. 2228 OF 2021

Neil Pradeep Mehta
Represented through its Constituted Attorney
Dr. Pradeep Mehta ..Petitioner

Vs.

1. Union of India
2. Securities and Exchange Board of India
3. Bombay Stock Exchange Ltd.
4. National Stock Exchange Ltd.
5. Central Depository Services (India) Ltd.
6. National Securities Depository Ltd. ..Respondents

Mr. Yeshwant Shenoy with Ms. Navneetha Krishnan, Krishnan T., Ms. Pooja Singh i/b. Nava Legal, for Petitioner.
Mr. Parag A. Vyas, for Union of India.
Mr. Suraj Choudhary with Mr. Omprakash Jha, Mr. Atul Agrawal i/b. The Law Point, for Respondent No.2 (SEBI)
Ms. Sarnaab Aswad i/b. Khaitan & Co., for Respondent No.3 (BSE Ltd.)
Mr. Pradeep Sancheti, Senior Advocate with Mr. Ranjeev Carvalho with Mr. Sachin Chandarana, Mr. Aagam Mehta, Mr. Amol Rasal i/b. Manilal

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Ambalal & Co., for Respondent No.4 (National Stock Exchange of India)
Ms. Aparna Wagle i/b. Alliance Law, for Respondent No.5 (CDSL)
Mr. Kunal Katariya with Mr. Pulkit Sukhramani, Ms. Vidhi Jhawar, Mr. Shourya J. Tanay, Mr. Deepank Annand i/b. JSA Advocates and Solicitors, for Respondent No.6 (NSDL).

CORAM : G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

RESERVED ON : MARCH 12, 2024.
PRONOUNCED ON: AUGUST 26, 2024

JUDGMENT: (Per G. S. Kulkarni, J.)

1. These are two petitions filed under Article 226 of the Constitution of India. The reliefs prayed for are quite similar, which pertain to challenging the action of the Bombay Stock Exchange and the National Stock Exchange under the directives of the Securities and Exchange Board of India (SEBI) to freeze the Demat Accounts of the Petitioner. The first Petition No.1590 of 2021 is filed by Dr. Pradeep Mehta and the second Petition (Writ Petition No.2228 of 2021) is filed by his son Neil Pradeep Mehta. We proceed to adjudicate each of these Petition as under.

Writ Petition No.1590 of 2021 (Dr. Pradeep Mehta v/s. Union of India).

2. The challenge raised in the petition is to the freezing of the "demat account" of the petitioner by the respondent no. 6 – National Securities Depository Limited (for short "**NSDL**") under the regulations / orders of the Securities and Exchange Board of India (for short "**SEBI**") merely for

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the reason that at one time petitioner happened to be one of the promoters of a company. The case of the petitioner is that such action of the NSDL at the behest of the Bombay Stock Exchange (for short **"BSE")** apart from being wholly illegal under the relevant statutory provisions, crosses all norms of fairness, reasonableness and legitimacy when tested on the touchstone of the rights guaranteed to the petitioner under Article 14, 21 read with 300A of the Constitution of India.

3. The relevant facts are:

The petitioner is a medical practitioner. He is a Gynaecologist and a senior citizen. He has investment in the shares and securities issued by Indian companies, which are long term investments held in the Demat accounts in question. Such investments were intended to have the benefit of funds, as per his retirement. One of the investments the petitioner made was in a company, which appears to have been promoted in the year 1989 by his father-in-law namely Shrenuj & Company Limited (for short "**Shrenuj**"). The petitioner subscribed 2000 shares of Shrenuj in the year 1989 and thereafter 1000 shares in the year 1993. By way of a sub-division (1:5) in the year 2005, the petitioner's shareholding in Shrenuj increased to 15,000 and further by bonus shares in the proportion of 1:2 issued in the year 2014, which made the petitioner's shareholding at 30,000 shares. The petitioner contends that he sold 9478 shares in February 2016

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keeping his shareholding in Shrenuj to about 20,522 shares, which was less than 0.01% of the total paid-up share capital of Shrenuj.

4. In 2016, the petitioner learnt that there was some litigation in regard to the affiliate of Shrenuj in Hong Kong. It was learnt that Shrenuj was facing financial issues. It is stated that as a result of which , Shrenuj could not file its financial results as per the SEBI Regulations namely the "Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015", (for short "**SEBI (LODR) Regulations**")

5. On 2 March 2017, respondent no. 3 – BSE issued a letter to Shrenuj in regard to non-submission of Financial Results under Regulation 33 of the SEBI (LODR) Regulations, *inter alia* stating that the company had not submitted to the Exchange its quarterly financial results for the period ended in December 2016, and hence, the company was liable to pay a fine of Rs. 1,84,000/- (penalty inclusive of service tax). The company was further advised to refer to Circular No. CIR/CFD/CMD/12/2015 dated 30 November 2015 issued by the SEBI. Shrenuj had taken up the issue with the SEBI by submitting its reply dated 20 March 2017 addressed to the BSE and National Stock Exchange Ltd. (for short "**NSE**").

6. It is the petitioner's case that he had no control whatsoever in regard

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to the affairs of Shrenuj or its functioning, directly or indirectly. He was never a part of its management or ever acted in any advisory capacity. He was classified as a 'Promoter' merely based on his relationship with the Chief Promoter of the Company, i.e. his father-in-law, about which he was unaware until June 2017, which he learnt only when his demat accounts were frozen by NSDL merely for the reason that he was one of the promoters of Shrenuj having initially subscribed to its shares . It is stated that the background for this being in March 2017, the petitioner, when received his monthly statement of accounts, found that some of his shares in his demat account maintained with the Stock Holding Corporation of India Limited (for short "**SHCIL**") were frozen. The case of the petitioner is that the NSDL by communications dated 23 March 2017 and 13 April 2017 freezed the demat account of the petitioner applying Circular No.CIR/CFD/CMD/12/2015 dated 30 November 2015 and Circular No. SEBI/*HO*CFD/CMD/CIR/P/2016/116 dated October 26, 2016. The NSDL freezed not only the petitioner's shareholding in Shrenuj & Company but also in ITC Limited. These communications addressed by NSDL to the SHCIL are required to be noted which read thus:

" **Exhibit C**

NSDL/SC/2017/ss/0070A March 23, 2017
Ms. Sheela Kothavle
Divisional Manager
Stock Holding Corporation of India Limited-IN"

Sub: SEBI Circular No. CIR/CT/D/CMD/12/2015 dated

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November 30, 2015.

This is to inform you that in accordance with to the above SEBI circular and based on the emails received from the Stock Exchange(s) on January 10, 2017, ISIN Level Freeze (Suspended for Debit & Credit) has been marked in the following Beneficial Owner (DO) account hased on list of PAN of Promoters/Promoter Group of the concerned ann-compliant company as provided by Stock Exchange(s) and holding securities of the arncerned non-compliant company.

Name of account holder	Client ID	DP ID	ISIN	Name of company
PRADEE P MEHTA	17431870	IN301330	INE633A01028	Shrenuj & Company Ltd.

Yours faithfully,
Amit Shinde Senior Manager
Copy to: PRADEEP MEHTA
4 SETHNA HOUSE 13 LABURNUM
ROAD MUMBAI MUMBAI-4000007."

-------------------------------x-------------------------------

Exhibit D

NSDL/SC/2017/ND/0095 April 13, 2017

Ms. Sheela Kothavle
Divisional Manager
Stock Holding Corporation of India Limited – IN301330

Madam,

Sub: SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2016/116 dated October 26, 2016.

This is to inform you that in accordance with to the above SEBI circular and based on the emails received from NSE, 'Quantity level freeze' has been marked on following securities held in the Beneficial Owner (BO) account of Promoters/Promoter Group of the concerned non-compliant company as provided by NSE.

Name of account holder	Client ID	DP ID	ISIN	Scrip Name	Quantity
PRADEEP MEHTA	17431870	IN301330	INE154A01025	ITC LIMITED	6235

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				EQ NEW FV RE.1/-	

Yours faithfully,
Amit Shinde
Senior Manager

Copy to: PRADEEP MEHTA
4 SETHNA HOUSE 13 LABURNUM
ROAD MUMBAI MUMBAI-100007

-------------------------------x-------------------------------

Exhibit E

NSDL/SC/2017/ND/0095 April 13, 2017

Ms. Sheela Kothavle
Divisional Manager
Stock Holding Corporation of India Limited – IN301330

Madam,

Sub: SEBI Circular No. SEBI/HO/CFD/CMD/CIR/P/2016/116 dated October 26, 2016.

This is to inform you that in accordance with to the above SEBI circular and based on the emails received from NSE, 'Quantity level freeze' has been marked on following securities held in the Beneficial Owner (BO) account of Promoters/Promoter Group of the concerned non-compliant company as provided by NSE.

Name of account holder	Client ID	DP ID	ISIN	Scrip Name	Quantity
PRADEEP MEHTA	17431870	IN301330	INE154A01025	ITC LIMITED EQ NEW FV RE.1/-	1240.42 3203210 5069

Yours faithfully,

Amit Shinde
Senior Manager

Copy to: PRADEEP MEHTA, ANJALI MEHTA
4 SETHNA HOUSE 13 LABURNUM

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ROAD MUMBAI MUMBAI-100007"

7. The petitioner contends that even though the aforesaid letters were addressed to the SHCIL, and recorded that a copy of the same was endorsed to the petitioner, the petitioner never received such letters, although the purport of these letters was so draconian.

8. Meanwhile, Shrenuj addressed a letter dated 27 September 2017 to the BSE stating the reasons as to why the company could not submit the Quarterly Financial Results since the quarter ended on 30 June 2016.

9. The petitioner also addressed a detailed letter dated 4 January 2018 to the SEBI stating that he was never in any direct or indirect control of Shrenuj, and that he never held any post in the company; that he was unaware of the company having allegedly violated the (LODR) Regulations. He further stated that he was named as an investor promoter of Shrenuj and company at the time of its incorporation in the year 1989 and that he had never been a director of the company or involved in any of its day to day affairs. He stated that no notice or an opportunity of a hearing was given to him before freezing his shares.

10. In such circumstances, against the freezing of his demat account, the petitioner preferred an appeal before the Securities Appellate Tribunal (for short "**the Tribunal**"). The Tribunal disposed of petitioner's appeal by its order dated 18 April 2018 directing the BSE and NSE to dispose of the

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representation made by the Petitioner. The relevant contents of the said order are required to be noted which read thus:

> "2. On 04.01.2018 appellant had made representation to SEBI against the impugned communications dated 23.03.2017 and 13.04.2017 and copies of the said representation were also forwarded to National Stock Exchange of India Limited)"NES" for short) and Bombay Stock Exchange Limited ("BSE" for short). Admittedly, SEBI has disposed of the representation made by the appellant by stating that it is for NSE & BSE to consider the representation made by the appellant. It is not in dispute that neither the BSE nor the NSE have considered the representation made by the appellant.
>
> 3. In these circumstances, we dispose of the appeal by directing BSE & NSE to dispose of the representation made by the appellant on 04.01.2018 within 4 weeks from today."

11. Pursuant to the order dated 18 April 2018 passed by the Tribunal, Respondent no. 4 - NSE replied to the said representation of the petitioner by its letter dated 11 May 2018 *inter alia* stating that in accordance with the SEBI circulars dated 30 November 2015 and 26 October 2016 which prescribed for Standard Operating Procedure (SOP), detailing the manner in which the Exchange shall deal with non-compliance by the listed companies, the Exchange suspended the trading in the securities of Shrenuj, as Shrenuj had defaulted in filing of its Financial Results with the BSE for the quarters ending on June 2016, September 2016 and December 2016. A fine of Rs. 25,10,815/- also came to be imposed on Shrenuj. Further, the Exchange, seven days before freezing the petitioner's shareholding, had issued a notice to Shrenuj informing of the freezing of the promoters' shareholding and recording

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that it would defreeze the petitioner's shares upon receipt of the fine amount from Shrenuj.

12. Respondent no. 3/BSE replied to the said representation of the petitioner by its letter dated 15 May 2018, stating that it is not in a position to issue instructions to de-freeze the petitioner's securities except in accordance with the SEBI circulars and further advised the petitioner as a promoter to insist upon Shrenuj to comply with the applicable requirements at the earliest.

13. It is contended by the petitioner that on 2 June 2018, BSE issued a public notice published in the daily newspaper "Financial Express" notifying the delisting of several companies including Shrenuj with effect from 4 July, 2018. In pursuance thereto, on 4 July 2018, SEBI delisted Shrenuj as per the public notice. NSE also issued a further notice dated 27 July 2018 to delist Shrenuj with effect from 8 August 2018. As a consequence of such delisting, the petitioner's demat accounts were wholly frozen. Consequent thereto Respondent no. 6-NSDL issued a letter dated 8 August 2018 informing the petitioner of freezing of his demat account as 'suspended for debits'.

14. Subsequent thereto, the petitioner again filed an appeal before the Tribunal, which was disposed of by an order dated 4 September 2018, in view of an appeal as filed by Shrenuj (appeal no. 298 of 2018) being

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earlier disposed of by an order dated 28 August 2018, by which Shrernuj was directed to make a representation within 15 days to the BSE, and BSE was directed to consider the representation and pass a fresh order within 8 weeks thereafter. In this view of the matter, it was observed by the Tribunal that nothing survived in the petitioner's appeal.

15. On 23 March 2021, the Petitioner received an email from the Chairman of Action Financial Services (India) Ltd, (for short "**AFSIL**") informing the petitioner that his demat account with a depository participant "AFSIL" was either in suspended status or case of death transmission and all accounts which could not be closed due to this issue will get shifted to NSDL managed "Omnibus System" w.e.f. 23 March 2021. The petitioner however desired that the securities in the petitioner's frozen demat account, be transferred to his other demat account, however, due to the freezing of the securities by NSDL, the securities could not be transferred and the same was sent to the 'omnibus system' of NSDL.

16. The petitioner on such backdrop, addressed an e-mail dated 5 May 2021 to the NSDL making a grievance that the action to freeze the petitioner's demat account and the securities held by him was wholly illegal. NSDL responded to such e-mail by its letter dated 1 June 2021, directing the petitioner to approach BSE and NSE for clarification in regard to the freezing of his account. The petitioner responded to such

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letter of NSDL by e-mail dated 8 June 2021 bringing to its attention the NSDL's notices issued earlier, which clearly stated that the demat accounts were 'suspended for debits'.

17. Lastly, the petitioner, through his advocates addressed a detailed notice dated 7 June 2021 to respondent no. 2 – SEBI setting out its grievances and requesting to immediately take steps to defreeze the petitioner's demat accounts and the securities held by him. There were exchange of letters between the parties, however, there was no response from the respondents.

18. It is on such conspectus, the petitioner has filed the present petition. The reliefs, as prayed for in the petition are required to be noted which read thus:-

> "A. Issue a writ of mandamus or any other writ to quash Regulation No. 97, 98 and 99 of the (LODR) Regulations issued by the Respondent No. 2 as being ultra vires the SEBI Act and declare that the Respondent No. 2 has no powers whatsoever to come out with any circular or notification that 'creates' offences.
>
> B. Issue a writ of mandamus or any other writ to quash the circulars issued by the Respondent No.2 under the powers granted to itself under Regulation 98 of (LODR) and declare that the Respondent No.2 has no powers whatsoever to come out with any circular or notification that empowers them to delegate the power to regulate, adjudicate, penalize or freeze accounts.
>
> C. Declare that the Respondent No.3, 4, 5 and 6 have no powers whatsoever to direct collection of Penalties from the Listed entities or Promoters or Investors or to freeze demat accounts.
>
> D. Direct the Respondent No. 1 to inquire into violations/non-compliances with law made by the Respondent No.2 that resulted in thousands of crores of government revenues getting diverted.

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E. Direct the Respondent No. 3, 4, 5 & 6 to defreeze forthwith all demat accounts of the Petitioner.

F. Direct the Respondent No. 3 & 4 to pay a compensation of Rs. 1 Crore each to the Petitioner for freezing his demat accounts illegally and for preventing him from trading in shares.

G. Direct the Respondent No. 5 & 6 to compensate the Petitioner with Rs. 1 Crore each for maligning his public image by unethical public display of names under "Accounts Frozen based on SEBI Orders" section since 2017 even when no such order was passed.

H. Pending disposal of this Writ Petition this Hon'ble Court direct the Respondent No. 6 to transfer the securities of the Petitioner lying in the omnibus system to his demat account.

I. Pending disposal of this Writ Petition this Hon'ble Court direct the Respondent No. 3, 4, 5 & 6 to stop public display of the Petitioner's name on their portals.

J. For ad-interim relief in terms of prayer clause (H) & (I).

K. The costs and expenses of this Petition to be paid to the Petitioner.

L. Any other orders be passed as this Hon'ble Court may deem fit and proper."

Reply Affidavits

Reply Affidavit of SEBI

19. A reply affidavit is filed on behalf of the respondent no. 2 – SEBI of Ms. Suvarna Agarwal, Assistant Manager, Corporation Finance Department, Securities and Exchange Board of India. The affidavit states that the petitioner's demat accounts are frozen in pursuance of the Circulars dated 30 November 2015 and 26 October 2016 issued by SEBI which prescribe the 'Standard Operating Procedure', for suspension and revocation of trading of specified securities, detailing the manner in which the exchanges shall deal with non-compliance or contravention of SEBI

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(LODR) Regulations, 2015, by listed companies. It is stated that SEBI was established to *inter alia* protect the interests of investors in securities and to promote the development of and to regulate the securities market. It is stated that under section 11 of the Securities and Exchange Board of India Act, 1992 (for short "**SEBI Act**"), SEBI has wide powers to protect the interests of the investors in securities and to promote the development of and to regulate the securities market. These powers *inter alia* include the power to specify the requirements for listing and transfer of securities as provided under Section 11A of the SEBI Act. It is further stated that in terms of section 30 of the SEBI Act and section 31 of the Securities Contracts (Regulation) Act, 1956 (for short "**SCR Act**"), SEBI has power to make regulations to carry out the purposes of the Act. It is next stated that SEBI thus exercises powers to protect the investors' interests and make regulations consistent with the provisions of the SEBI Act and that similar to Section 31 of the SCR Act, Section 31 of the SEBI Act provides every regulation made by SEBI under the SEBI Act to be laid, as soon as after it is made, before each House of Parliament, while it is in session, for thirty days. If both Houses agree that any regulation should not be made or should be made in a modified form, such modification or annulment has to be followed.

20. It is next stated that pursuant to the powers conferred on the SEBI

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under Sections 11(2), 11A and 30 of the SEBI Act, read with Section 31 of the SCR Act, the SEBI (LODR) Regulations, 2015 were made and brought into force after following the procedure as stipulated in Section 31 of the SEBI Act. It is stated that under sub-section (2) of Section 11A of the SEBI Act, SEBI may specify the requirements of listing and transfer of securities or other incidental matters. Prior to SEBI (LODR) Regulations 2015, the listing obligations and disclosure requirements were governed by the listing agreements entered into between a company which intended to be listed on the stock exchanges. Clause 39 of such Listing Agreements entered between the companies intending to get listed and the Stock Exchange(s) provided that such Company would agree that in the event of the application for listing being granted, such listing shall be subject to the Rules, Bye-laws and Regulations of the Exchange which are in force at the time of entering into the agreement or thereafter. It is stated that the Bye-Laws of the Stock Exchanges *inter alia* mandate that every listed Company shall comply with the conditions of the Listing Agreement as prescribed from time to time by such Stock Exchanges and/or SEBI and shall be liable to pay such fine(s) as may be prescribed by such Stock Exchanges and/or SEBI for non-compliance of the Listing Agreement or any of the SEBI Regulation dealing with listing.

21. It is next stated in SEBI's affidavit that a need was felt for laying

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down a regulatory framework by consolidating the listing obligations and disclosure requirements for listed entities at one place. It is stated that accordingly, the SEBI (LODR) Regulations 2015 were framed, to ensure that the rights of shareholders are protected and transparency in necessary disclosures by listed entities is maintained. Such regulations also provides for the rights, obligations, duties etc. of the listed companies and the stock exchanges. It is hence contended that the issuance of impugned Circulars dated 30 November 2015 and 26 October 2016 is well within the powers of SEBI under Regulations 97, 98, 99 and 102 read with Regulation 101(2) of SEBI (LODR) Regulations 2015. It is contended that the actions taken by respondent nos. 3 to 6 are in consonance with the SEBI (LODR) Regulations 2015 and the aforesaid circulars of SEBI.

22. It is next stated that respondent no. 3 and 4 issued directions to respondent no. 5 and 6 to freeze the demat account of the petitioner under the aforesaid statutory mechanism. It is also stated that the freezing of demat account of the petitioner is also a consequence of Compulsory Delisting of Shrenuj, under the provisions of the **SEBI (Delisting of Equity Shares) Regulations, 2009** (for short **"Delisting Regulations 2009"**), as applicable at the relevant time, which have been replaced by SEBI (Delisting of Equity Shares) Regulations, 2021. The affidavit further states that Circular dated 7 September 2016 pertaining to *"Restrictions on*

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Promoters and Whole-Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders" was issued in terms of Chapter V of the Delisting Regulations 2009. It is stated that under Regulation 24 of Chapter V of the Delisting Regulations 2009, the company, its whole-time directors, its promoters and the companies promoted by any of them are not allowed to directly or indirectly access the securities market or seek the listing of any equity shares for ten years from the date of such compulsory delisting. It is next stated that under Regulation 23(3) of Chapter V, in case of compulsory delisting of the company, the promoters of such delisted company are required to acquire delisted equity shares from the public shareholders, subject to their option of retaining their equity shares, by paying public shareholders the fair value as determined by the independent valuer appointed by the concerned stock exchange. It is stated that Regulation 29 of the Delisting Regulations 2009 itself envisages that the respective recognized stock exchanges shall monitor compliance with the provisions of these regulations and shall report to the Board any instance of non-compliance which comes to their notice. It is hence stated that as a result of compulsory delisting of the securities of Shrenuj, NSDL informed the petitioner on 8 August 2018, that the petitioner's account was "Suspended for Debits" in accordance with the Circular dated 7 September 2016.

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23. It is next stated that the power to regulate has been delegated to the recognised Stock Exchanges by the Parliament by virtue of Section 9 of the SCR Act to include power to levy fees, fines and penalties. It is stated that by virtue of the powers conferred under the SCR Act, the stock exchanges are first level regulators to regulate the companies listed on the exchange. However, it is denied that SEBI has delegated its own powers to regulate securities market to the stock exchanges.

24. It is further stated that if petitioner is aggrieved by the actions taken by the Stock Exchanges then under Section 23 of SCR Act, the statutory remedy lies before the Tribunal. Further, if the petitioner is aggrieved by the orders dated 18 April 2018 (Ex-H of the petition) and 4 September 2018 (Ex-M of the petition) passed by the Tribunal, then the remedy would lie before the Supreme Court pursuant to Section 15Z of the SEBI Act.

25. The relevant extracts from the SEBI's affidavit are required to be noted which read thus:-

> "36. …..(a) .. ... A promoter plays a vital role in raising capital for a company and, therefore, the promoter who continues to flout the byelaws and rules of exchange, LODR regulations and SCRA has to be dealt appropriately to protect the interest of the investors/shareholder of the said company. Additionally, under Regulation 5 of the LODR Regulations 2015, the Promoters, directors, key managerial personnel or any other person dealing with the listed entity are obligated to fulfil the responsibility assigned to the listed entity under the said Regulations. In addition to this, the Impugned Circulars are also in conformity with Regulation 98 of the LODR Regulations 2015 which explicitly provide for freezing of

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promoter/promoter group holding of designated securities as may be applicable.

(b).....In the instant case, several notices were issued to Shrenuj regarding its non-compliance with the LODR Regulations 2015 and the consequences flowing out of such non-compliance i.e. freezing of promoter shareholding was also duly informed to Shrenuj. An opportunity to rectify the non-compliance was also given by the Stock Exchanges which is abundantly clear from the documents produced on record by the Petitioner. Respondent No. 3, as per the SOP prescribed in the Impugned Circular dated 30.11.2015, issued a notice dated 02.03.2017 [Exh. A, Pg. 35, Petition] to Shrenuj intimating them of the non-compliance of Regulation 33 of the LODR Regulations 2015 and cautioning them that non-payment of fine would attract freezing of promoter and promoter group demat accounts. As Shrenuj did not pay the necessary fine, a Quantity Level Freeze was carried out on the Petitioner's demat account.

37. … .. ..Further, it is denied that the personal demat accounts of the promoters or their relatives came to be frozen in violation of the Companies Act. I say and submit that their accounts were frozen as a direct consequence of continuous non-compliance of the LODR Regulations 2015 and non-payment of fines. **Further, while it may be correct that the liability of a shareholder is curtailed only to the unpaid portion of the shares held by him/her, the Petitioner being a member of the promoter group is still liable in the said capacity for the actions, fines, and penalties as prescribed in the securities laws and regulations.**

38… … … ...As per the contents of the said letter, the petitioner stated that he was named as an investor promoter of the Company at the time of its incorporation in the year 1989.

39. .. … .. ....**I submit and reiterate that under the Impugned Circulars, the stock exchanges are authorised to collect fines for non-compliance of LODR Regulations 2015, in the matter specified therein. It is further denied that the fines collected by the stock exchanges are being deposited into the account of stock-exchanges in violation of the Section 15JA of the SEBI Act.**

47.. .. … .....I refer and rely upon the contents of paragraph 12 and submit that the **Stock Exchanges have power to freeze the promoter/promoter group holding of designated securities in coordination with the depositories when such freezing is in terms of and in the manner specified by the Respondent No 2 under the SEBI Act and SCRA and the Regulations and Circulars issued thereunder. SEBI/ Respondent No. 2 Circular dated 07.09.2016 issued under the Delisting Regulations 2009 also provides for coordination between the depository and the stock exchanges in order to ensure the compliances of the said regulations and initiate actions for non-compliance.**

48. .. … .. .... As stated in the foregoing paragraphs, the Petitioner in

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> his correspondences has admitted to being the promoter of the said Company since 1998 and **as a promoter, he ought to have known the consequences of non-compliance of LODR Regulations, Delisting Regulations and the Circulars issued under the said Regulations, by the Company promoted by him. The freezing actions taken against him come as a direct consequence of the non-compliance with the LODR Regulations 2015 and the compulsory delisting carried out in accordance with the Delisting Regulations 2009.**
>
> 54. … …. .....I say and submit that the freezing of accounts is in consonance with the LODR Regulations 2015 and the Delisting Regulations 2009 (now Delisting Regulations 2021), which were duly laid before the Parliament as per Section 31 of the SEBI Act and then brought into force. I further say and submit that the action of freezing of demat account is not a blanket provision applicable to all investors of a listed entity."
>
> **(emphasis supplied)**

Reply Affidavit of BSE

26. A reply affidavit on behalf of respondent no. 3-BSE of Ms. Arpita Joshi, Manager is filed. The primary contention urged in the reply affidavit is in regard to the non-compliance of the SEBI (LODR) regulations by Shrenuj, which is stated to have resulted in its compulsorily delisting from the platform of stock exchanges and freezing of the demat account of the promoter and promoter group of the Shrenuj. It is stated that the petitioner's demat account being frozen on account of non-compliance with the provisions of the SEBI (LODR) Regulations for two consecutive quarters by Shrenuj. It is stated that the Notice dated 3 March 2017 issued by respondent no. 3 also provides for freezing of the shareholding of promoter and promoter group of the Shrenuj. It is stated that the petitioner was admittedly classified as the promoter of Shrenuj

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and accordingly, the Demat account of the petitioner was frozen on account of such default of Shrenuj. Respondent No.3 contends that the petitioner had never objected of being classified as a "promoter" until the freezing of his demat account.

27. It is next stated that the petition suffers from delay and laches inasmuch as the petitioner has approached the court after a considerable delay of three years. The Petitioner's demat account was frozen in July 2018, hence, the cause of action to file any proceeding had accrued to the petitioner in the year 2018, however, the petitioner approached the court in the July/September 2021, that is after 3 years of delay. It is also stated that this petition also suffers from the vice of non-joinder of necessary party as Shrenuj was required to be impleaded as a respondent, for the reason that the consequence of freezing of demat account has befallen upon the petitioner on account of the non-compliance with provisions of the SEBI (LODR) Regulations by Shrenuj and its compulsory delisting from stock exchange platforms.

28. It is next stated that the securities of Shrenuj were suspended from trading w.e.f. 27 March 2017 on account of non-compliance with Regulation 33 of the SEBI (LODR) Regulations for two consecutive quarters i.e., June 2016 and September 2016, pursuant to the provisions of Circular no. CIR/CFD/CMD/12/2015 dated 30 November 2015 and

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subsequent Circular no. SEBI/HO/CFD/CMD/CIR/P/2016/116 dated 26 October 2016 issued by SEBI with respect to Standard Operating Procedure (SOP) for non-compliance of SEBI (LODR) Regulations, in terms of Notice bearing reference number 20170303-14 dated 3 March 2017 issued by respondent no.3/BSE. It is stated that the said notice also prescribed for freezing of the shareholding of promoter and promoter group of Shrenuj.

29. It is next stated that the petitioner challenged the freezing of the Demat Account in an appeal filed before the Securities Appellate Tribunal, which was disposed of by an order dated 18 April, 2018 directing Respondent-BSE to dispose of the representation made by the Petitioner dated 4 January 2018, within 4 weeks therefrom. Accordingly, respondent no. 3-BSE disposed of the petitioner's representation by its communication dated 15 May 2018 *inter alia* recording that the petitioner was a promoter of Shrenuj, hence, the consequences of freezing of the demat account of Shrenuj applied to the petitioner.

30. It is next stated that Respondent No.3 is duty bound to implement the SEBI circular dated 7 September 2016 providing for *'Restrictions on Promoters and Whole-Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders'*, as a consequence of which the Demat account of the petitioner was freezed

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with effect from July, 2018 as the petitioner was admittedly classified as the promoter of Shrenuj. It is next stated that before freezing of the demat account, the petitioner never raised any objection of being classified under the 'promoter' category qua the said company. It is stated that after having failed to secure reliefs in respect of de-freezing his demat accounts, the Petitioner has belatedly filed this petition seeking diverse reliefs challenging the SEBI (LODR) Regulations as being ultra vires and claiming that compulsory delisting of securities of Shrenuj does not apply to him.

Reply Affidavit of NSE

31. Reply affidavit filed on behalf of respondent no. 4 – NSE of Mr. Ajinkya Patil, Senior Manager (Legal), NSE, opposing the petition on the ground that the appropriate remedy is available to the petitioner against the order dated 11 May 2018 passed by respondent no. 4, freezing the demat account of the petitioner lies before the Securities Appellate Tribunal, and the remedy in respect of the order dated 4 September 2018 of the Securities Appellate Tribunal lies before the Supreme Court.

Reply Affidavit of CDSL

32. Reply affidavit of Mr. Nilay R. Shah, Group Secretary and Head Legal, Central Depository Service (India) Limited (for short "**CDSL**") is filed on behalf of respondent no. 5 – CDSL *inter alia* contending that the

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petitioner holds no demat account maintained with respondent no. 5, yet the petitioner has made monetary claims against respondent no. 5. Therefore, the petitioner's claim for compensation does not arise and be dismissed.

Reply Affidavit of NSDL

33. Reply affidavit is filed on behalf of respondent no. 6 –NSDL of Mr. K.R. Harish Kumar, Senior Manager, National Securities Depository Ltd. It is stated that on 6 March 2017 and on 6 April 2017, NSE addressed emails to NSDL and directed for freezing of certain other securities held by the promoter/promoter group entities of certain listed entities (which included Shrenuj) on account of non-compliance, by such listed entities with the provisions of the "SEBI (LODR) Regulations". The said emails of NSE contained details of the Petitioner by virtue of him being a promoter of Shrenuj and the shares of ITC Limited, that were required to be frozen as held in the petitioner's Demat Account, in accordance with the SEBI Circular dated 26 October 2016. It is stated that accordingly NSDL initiated an ISIN level freeze in respect of shares of ITC Limited, based on the directions received from NSE. It s stated that thereafter, on 9 July 2018, BSE informed NSDL that trading notices had been issued by BSE for compulsory delisting of certain companies from the trading platform of the exchange w.e.f. 4 July 2018. BSE also shared a list of such companies

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along with details of promoters, including PAN number of such companies and directed NSDL to freeze all demat accounts of such promoters as per the SEBI Circular dated 7 September 2016. Accordingly, based on PANs of promoter/promoter group of compulsorily delisted companies as received from BSE, the Petitioner's account was marked as 'Suspended for Debit' until further instructions from BSE/ SEBI and the same was communicated to the Petitioner vide letters dated 8 August 2018.

34. It is next stated that NSDL also received an email communication dated 7 August 2018 from NSE forwarding a list of companies which had been compulsorily delisted w.e.f. 8 August 2018. NSE also provided details of promoters of such delisted companies and directed NSDL to freeze all demat accounts of such promoters in accordance with SEBI Circular dated 7 September 2016. It is hence stated that NSDL acted on the instructions of NSE and BSE and implemented a freeze on the demat accounts of promoters of companies, that have been compulsorily delisted in which Shrenuj was one such company and the Petitioner (having PAN AHXPM0093R), was disclosed as a promoter of the company. Accordingly, the demat account bearing DP ID IN301330 and Client ID 17431870 and DP ID IN300271 and Client ID 10100565 were 'Suspended for Debits', as the same were linked to the PAN of the

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Petitioner, a promoter of Shrenuj. It is next stated that NSDL, as a depository, acts only on the instructions received from SEBI/stock exchanges and is not involved in the decision-making process relating to freezing of any individual's demat accounts.

35. With reference to the contentions raised by the Petitioner in respect of transfer of shares held in a demat account with AFSIL, a depository participant of NSDL, it is contended that since participantship of AFSIL was terminated w.e.f. 20 March 2021, all demat accounts of investors held with AFSIL were taken over into NSDL omnibus system. In accordance with the NSDL's bye-laws and Business Rules, the demat accounts of investors held with AFSIL (a terminated depository participant) were frozen for debit, and fresh credit by way of transfer of securities was disabled in these accounts. It is stated that in this regard, as a standard procedure, an intimation was sent by NSDL to all the investors holding demat account with AFSIL, including the Petitioner, setting out the procedure to be followed for transfer of securities and closure of demat accounts held with AFSIL. Accordingly, a letter dated 4 May 2021 was issued to the Petitioner from NSDL. Upon receiving a reply from the Petitioner, it was clarified to the Petitioner that since his demat account had been frozen as per the instructions received from NSE and BSE, it was advised to the petitioner to approach NSE and BSE for defreezing of his

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demat account.

36. It is next stated that it is the petitioner's case that he had no control over Shrenuj or its functioning, however, petitioner in his representation dated 4 January 2018 (Exhibit G) has categorically admitted that he was named as an investor promoter of Shrenuj and Company at the time of its incorporation in the year 1989. It is stated that as admittedly the Petitioner was named as a promoter of Shrenuj, in due compliance with the directions of the stock exchanges, NSDL had initiated a freeze on the demat accounts of the Petitioner.

Submissions

37. On behalf of the petitioner, it is submitted that the impugned action of freezing the demat accounts of the petitioner could not have been taken by the NSDL at the behest of BSE/NSE and the SEBI, as the same is in contravention of Section 11 of the Securities and Exchange Board of India Act, 1992. It is submitted that Section 11 of the SEBI Act provides for functions of the Board, and more particularly Section 11(4)(e) which provides that the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take the measures to attach, for a period "not exceeding ninety days", bank accounts or other property of any intermediary or any person associated with the securities

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market in any manner involved in violation of any of the provisions of the SEBI Act, or the rules or the regulations made thereunder. It is submitted that such substantive power as conferred on SEBI would not contemplate such action as impugned namely to freeze the demat account of the petitioner, even assuming that the petitioner could be held liable for the acts of the company (to which the petitioner is actually not).

38. It is submitted that no notice was issued to the petitioner before freezing of his demat accounts, which not only affected the shares held by the petitioner in Shrenuj, but also the shares he held in other companies. It is also submitted that no opportunity of a hearing in any form was granted to the petitioner before any action of freezing the property of the petitioner was taken. It is submitted that, apart from the breach of the principles of natural justice, no reasoned order is passed as to how and in what manner and under what provisions of the statute or the regulations, the petitioner becomes liable for the acts of Shrenuj.

39. It is next submitted that the circular dated 7 September 2016, on the basis of which the SEBI intends to rely in justifying the impugned action, cannot go beyond the provisions of the SEBI Act.

40. It is submitted that the provisions of Section 15A of the SEBI Act provides for penalty for failure to furnish information, return, etc., in which the maximum penalty is Rs. 1 crore, provided the essential

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requirements of Section 15A are satisfied for levy of such penalty. It is hence submitted that in any case, penalty cannot be imposed unless the procedure in law is followed, namely, that hearing be given to the person on whom penalty is to be imposed. Such amount of penalty is not being taken in the Consolidated Fund of India but as income as GST and TDS are deducted. It is submitted that such action on the part of the SEBI is, in fact, as good as a scam as in such manner large amounts of money are being collected, in a manner not recognized by law and not credited to the Consolidated Fund of India.

41. It is submitted that Section 15-I of the SEBI Act specifically confers power to adjudicate for the purpose of adjudging under Section 15A in the manner as prescribed by the said provision. The procedure contemplated is of an inquiry to be held in a prescribed manner and after giving the person concerned, a reasonable opportunity of being heard for imposing penalty.

42. On the other hand, learned Counsel for the SEBI has relied on the reply affidavit to justify the impugned action referring to the provisions of the SEBI Act, SCR Act and the regulations framed thereunder as referred to in the reply affidavit. The arguments are not different from what has been contended in the reply affidavit, which we have referred to in detail in the foregoing paragraphs. Additionally, it is argued that Section 9(2) of

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the Securities Contracts (Regulation) Act, 1956 confers power on the recognized Stock Exchange to make bye-laws for regulation and control of contracts, which includes in clause (o) under sub-section (2) which prescribes the power to levy and recover fees, fines and penalties. It is submitted that what has been done by the impugned order is to levy a penalty on the petitioner and hence, the action of the SEBI to have such regulations, cannot be assailed.

43. On behalf of the other respondents, submissions are advanced which is in fact the case of these respondents as urged in the reply affidavits which we have noted hereinabove.

44. We have heard learned counsel for the parties. With their assistance, we have perused the record and the relevant provisions of the law as involved.

Reasons and Conclusion:-

45. At the outset, we may observe that this is a classic case wherein the demat accounts held by the petitioner with NSDL are freezed in July, 2018, at the behest of BSE / NSE under the directives of the SEBI on account of an alleged default of Shrenuj in compliance of the SEBI (LODR) Regulations. Such action against the petitioner is taken only for the reason that, when such company was formed in the year 1989, the

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petitioner was one of the promoters of the company. The impugned action is taken after about 29 years of the petitioner being declared to be the promoter. It appears that except for the fact that in 1989 when Shrenuj was incorporated when the petitioner was set out to be a promoter, the petitioner had no association whatsoever with Shrenuj, subsequent to the formation of the said company. The Petitioner had remained as an ordinary shareholder of Shrenuj qua his limited shareholding. He was never a director of the company. He was never involved with the company, in any other capacity, in managing the affairs of the company. Such specific case of the petitioner appears to have gone unchallenged. Shrenuj suffered losses. It had also defaulted in complying with certain regulations as issued by the SEBI under the provisions of the SEBI Act and regulations sometime in the year 2016, at which point of time, status of the petitioner was nothing but merely of a shareholder of the company. It would be appropriate to note the default of Shrenuj as informed to Shrenuj by the Bombay Stock Exchange by its letter dated 2 March 2017 imposing a penalty/fine on Shrenuj for non-compliance of the Regulation 33 of the SEBI (LODR) Regulations. Such non-compliance of which is being held against the petitioner to freeze the petitioner's demat accounts, so as to recover the penalty/fine from the petitioner. The said letter reads thus:

"LIST/COMP/Reg.33-Dec-16/523236/834/2016-17

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March 2, 2017

The Company Secretary/Compliance Officer
Shrenuj & Company Ltd.
405,
Dharam Palace, 100-103 N S Patkar Marg,
Mumbai-400007,
Maharashtra

Dear Sir/Madam,

Sub: Non-submission of Financial Results under Regulation 33 of the SEBI (LODR) Regulations, 2015 for December 2016 Quarter.

Pursuant to Regulation 33 of the SEBI (LODR) Regulations, 2015 where the companies required to furnish Quarterly Financial Result within 45 days of the end of that quarter to the Exchange & for the last quarter, the company has to submit, within 60 days from the end of the financial year, the Audited Financial Results for entire financial year along with the audited financial results in respect of the last quarter (balancing figure).

On scrutiny of our records we observe that the company has not submitted to the Exchange the quarterly financial results for the period ended on December 2016.

The company is advised to refer to Circular no. CIR/CFD/CMD/12/2015 dated November 30, 2015 issued by Securities Exchange Board of India (SEBI) with respect to non-compliance of certain listing regulations and adopting Standard Operating Procedure for suspension and revocation of trading of shares of listed entities or such non-compliances including levy of financial penalties. The company is liable to pay Rs. 184000/- (penalty inclusive of service tax) as on March 2, 2017. As per the provisions of the circular the penalties will continue to be computed further as mentioned below plus service tax as per applicable rates (currently @ 15%) till the date of submission (including the date of submission):

Regulation	Fine payable for 1st non-compliance	Fine payable subsequent and consecutive non-compliance
Regulation 33 Non-submission of the financial results within period prescribed under this regulation	Rs.5,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1% of Paid Up capital of the entity or Rs. 1 crore, whichever	Rs. 10,000 per day of non compliance till the date of compliance and if non-compliance continues for more than 15 days, additional fine of 0.1% of Paid Up capital of the entity or Rs. 1 crore, whichever is less.

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	is less.	

Paid up Captial as on the first day of the financial year in which the non-compliance occurs.
The company is therefore advised to note that as per the provisions of this circular:
• The aforesaid fines plus service tax alongwith the financial results for the said Quarter must be submitted within 15 days from the date of this letter.
• Further In the event of this being the second consecutive quarter of non-compliance for this Regulation, non-payment of fines including service tax and non-submission of financial results, within 15 days of this letter, would result the company being transferred to Z group and liable for suspension of trading of its equity shares.

Additionally, the company is also advised to note that provisions of SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2016/116 dated October 26, 2016 titled "Freezing of Promoter and Promoter group Demat accounts for Noncompliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015" would be applicable immediately with respect to nonpayment of fine.

A signed scanned copy of the financial results along with the covering letter can be uploaded on the following link of Listing Center: http://listing.bseIndia acom (for assistance in login and uploading on listing centre the company can contact helpdesk on Tel. No. 022-61363155 or email id: listingcentre@bseindia.com).
The format of financial results can be downloaded from the website: http://www.bseindia.com/

It may be noted that effective from December 1, 2015, those fillings that are not filed with the Exchange through the Listing Centre are liable to be considered as non-submission and consequent non-compliance with the Regulations. In this regard companies are requested to refer Circular issued by the Exchange on November 30, 2015 on MANDATORY FILING OF INFORMATION WITH THE EXCHANGE IN ELECTRONIC MODE.

In case of any further clarification in this matter please contact Mr. Mandar Chavan on Tel. No. 22728514/ Mr. Sambhaji Solat on 22728074/ Mr. Manish Raval on 22725025 or email at bse.revocation@bscindia.com

Yours faithfully,

Sambhaji Solat
Associate Manager
Listing Compliance

Manish Raval
Asst. Manager
Listing Compliance

Company is requested to remit the fine amount through electronic transfer to the designated bank-details given below; or through cheque favoring BSE Ltd. The company is required to submit the cheque alongwith the

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covering letter (format given at Annexure below):

Bank Name	Branch Name	Account No.	IFSC Code
HDFC Bank Ltd.	Fort, Mumbai	00600340005 156	HDFC000060

Annexure-1 (On the letterhead of the Company)

Listing Compliance, BSE Limited, Ground Floor,
P. J. Towers, Fort, Mumbai-400001.

Sub: Details of Payment of Penalties for Non-Compliance of regulation(s) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Remittance details:

Scrip Code	Regulation number & Quarter	Amount paid	TDS deducted, if any	Net Amount paid

Remitted by:

Cheque/DD No.	Date	UTR No. for RTGS/NEFT

Compliance Officer/Company Secretary

1. Please mention the Regulation No., Quarter, and amount of TDS deducted on the reverse side of the Cheque/Demand Draft.

2. In case of payment through RTGS/NEFT, you are requested to send a soft copy of this annexure to be revocation@bseindia."

(emphasis supplied)

46. It is clear from the reading of the aforesaid communication addressed by BSE to Shrenuj that a "penalty/fine" is to be recovered from Shrenuj. However, while doing so, BSE has also put Shrenuj to notice of the "Freezing of Promoter and Promoter Group Demat accounts for non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015" to be applicable

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immediately with respect to non-payment of fine.

47. However, what is pertinent is that once the petitioner's role as the promoter had come to an end after the formation of the company and once the company stood incorporated i.e. "a legal person born", according to the petitioner, it would be subjective and issue of fact, as to what is the role of the promoter, as such role would cease to exist, as the entire management of the company, as per the provisions of the Companies Act, 2013 would stand vested with the Board of Directors. It is hence, the petitioner's submission that the compliance of all the obligations under the SEBI Act and the regulations made thereunder was the obligation of the company as managed by its Board of Directors. Even assuming that there was a default in complying with the regulations, the petitioner's case is to the effect that such obligation can never be attributable to the promoters like the petitioner, who was not concerned with the day-to-day affairs of the company.

48. If this be the contention of the petitioner, we need to examine as to how and in what manner for the defaults of the company, the petitioner, who remained to be an ordinary shareholder and whose role as a promoter having come to an end and/or had become extinct, could at all be liable, for any defaults of the company for non-compliance of the SEBI regulations. We examine this question by noting the relevant provisions

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which are sought to be applied in taking the impugned action against the petitioner. The relevant provisions of the SEBI Act read thus:-

"SEBI Act

Section 11. Functions of Board.

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests 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;

(ba) registering and regulating the working of the depositories, 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 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;

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(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;

[(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;

(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 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;

(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

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prescribed.

(2A) 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 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) 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 (2A);

(v) issuing commissions for the examination of witnesses or documents.

(4) **Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, 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

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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;

(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:

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Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.

(4A) **Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under Sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner**.

(5) The amount disgorged, pursuant to a direction issued, under Section 11B of this Act or Section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or Section 19 of the Depositories Act, 1996 (22 of 1996) 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.

Section 15-A. Penalty for failure to furnish information, return, etc.—If any person, who is required under this Act or any rules or regulations made thereunder,—

(*a*) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty, of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(*b*) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

(*c*) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of one lakh

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rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 15-I. Power to adjudicate.— (1) For the purpose of adjudging 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 the Board may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under Section 15-T, whichever is earlier.

… … …

15J. Factors to be taken into account by the adjudicating officer.

While adjudging quantum of penalty under section 15-I, the

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adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

15JA. Crediting sums realised by way of penalties to Consolidated Fund of India.

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

… … .. .. ..

Section 30. Power to make regulations —

(1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of Section 7 including the quorum necessary for the transaction of business;

(b) the term and other conditions of service of officers and employees of the Board under sub-section (2) of Section 9;

(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under Section 11-A;

(ca) the utilisation of the amount credited under sub-section (5) of Section 11;

(cb) the fulfillment of other conditions relating to collective investment scheme under sub-section (2-A) of Section 11-AA;

(d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under Section 12.

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(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of Section 15-JB

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations."

(emphasis supplied)

49. The relevant provisions of SEBI (LODR) Regulations, 2015 read thus:

97. Monitoring of Compliance/Non Compliance & Adequacy/ Accuracy of the disclosures

(1) The recognised stock exchange(s) shall monitor compliance by the listed entity with provisions of these regulations.

(2) The recognised stock exchange(s) shall also monitor adequacy/ accuracy of the disclosures made by listed entity with respect to provisions of these regulations.

(3) The recognised stock exchange(s) shall submit a report to the Board, with respect to the obligations specified in sub-regulations (1) and (2), in the manner specified by the Board.

(4) The recognised stock exchange(s) shall put in place appropriate framework including adequate manpower and such infrastructure as may be required to comply with the provisions of this regulation.

98. Liability for contravention of the Act, rules or the regulations.

(1) **The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the Board**:

(a) imposition of fines;

(b) suspension of trading;

(c) **freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.**

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(d) any other action as may be specified by the Board from time to time

(2) The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in circulars or guidelines issued by the Board.

99. Failure to pay fine.

If listed entity fails to pay any fine imposed on it within such period as specified from time to time, by the recognised stock exchange(s), after a notice in writing has been served on it, the stock exchange may initiate action.

102. Power to relax strict enforcement of the regulations.

(1) The Board may in the interest of investors and securities market and for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

(a) any provision of Act(s), Rule(s), regulation(s) under which the listed entity is established or is governed by, is required to be given precedence to; or

(b) the requirement may cause undue hardship to investors; or

(c) the disclosure requirement is not relevant for a particular industry or class of listed entities; or

(d) the requirement is technical in nature; or

(e) the non-compliance is caused due to factors affecting a class of entities but being beyond the control of the entities.

(1A) The Board may after due consideration of the interest of the investors and the securities market and for the development of the securities market, relax the strict enforcement of any of the requirements of these regulations, if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity.

[(2) For seeking relaxation under sub-regulation (1), an application, giving details and the grounds on which such relaxation has been sought, shall be filed with the Board.

[(3) The application referred to under sub-regulation (2) shall be accompanied by a non-refundable fee of rupees one lakh payable by way of direct credit into the bank account through NEFT/ RTGS/ IMPS or online payment using the SEBI Payment Gateway or any other mode as may be specified

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by the Board from time to time.

(emphasis supplied)

50. The relevant provisions of the Depositories Act, 1996 are also required to be extracted, which read thus:

> "**2. Definitions.**—(1) In this Act, unless the context otherwise requires, —
>
> (a) "beneficial owner" means a person whose name is recorded as such with a depository;
>
> (b) "Board" means the Securities and Exchange Board of India established under section 3 of the
>
> Securities and Exchange Board of India Act, 1992 (15 of 1992);
>
> (e) "depository" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
>
> (k) "regulations" means the regulations made by the Board;
>
> …..
>
> (2) Words and expressions used herein and not defined but defined in the Companies Act, 1956 (1 of 1956) or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Securities and Exchange Board of India Act, 1992 (15 of 1992), shall have the meanings respectively assigned to them in those Acts.
>
> **19. Power of Board to give directions in certain cases**.—(1) Save as provided in this Act, if after making or causing to be made an enquiry or inspection, 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 depository or participant being conducted in the manner detrimental to the interests of investors or securities market,
>
> it may issue such directions—
>
> (a) to any depository or participant or any person associated with the securities market; or
>
> (b) to any issuer,
>
> as may be appropriate in the interest of investors or the securities

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market.

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

(2) Without prejudice to the provisions contained in sub-section (1) and section 19H, the Board may, by order, for reason to be recorded in writing, levy penalty under sections 19A, 19B, 19D, 19E, 19F, 19FA and 19G after holding an inquiry in the prescribed manner.

…. … .. .

19F. Penalty for failure to comply with directions issued by Board under section 19 of the Act.—If any person fails to comply with the directions issued by the Board under section 19, within the time specified by it, he shall be liable to a penalty which shall not be less than one lakh rupees but which which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

19G. Penalty for contravention where no separate penalty has been provided.—Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

19H. Power to adjudicate.—(1) For the purpose of adjudging under sections 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G, the Board may appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

(3) The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of

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the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:

Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 23A, whichever is earlier."

51. The provisions of the **SEBI (Delisting of Equity shares)Regulations 2009** also need to be noted which reads thus :-

"23. Rights of public shareholders in case of a compulsory delisting:

(1) Where equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer or valuers who shall determine the fair value of the delisted equity shares.

(2) The recognised stock exchange shall form a panel of expert valuers from whom the valuer or valuers shall be appointed for purposes of sub-regulation (1).

(3) The promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares.

Explanation: For the purposes of sub-regulation (1), -

(a) 'valuer' means a chartered accountant within the meaning of clause (b) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949), who has undergone peer review as specified by the Institute of Chartered Accountants of India constituted under that Act, or a merchant banker appointed to determine the value of the delisted equity shares;

(b) value of the delisted equity shares shall be determined by the valuer having regard to the factors mentioned in regulation 15.

24. Consequences of compulsory delisting:

Where a company has been compulsorily delisted under this Chapter, the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting.

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> **Recognised stock exchanges to monitor compliance.**
>
> 29. The respective recognised stock exchanges shall comply with and monitor compliance with the provisions of these regulations and shall report to the Board any instance of non-compliance which comes to their notice."

52. On a plain reading of the relevant provisions of the SEBI Act as noted above, we do not find any explicit provisions that the SEBI would have a power to attach the demat account of the promoter much less qua the securities he would hold of companies other than the one of which he is a promoter. Further, none of the provisions postulate such drastic order to be passed against the promoter which is in the nature of a penalty without even a notice being furnished to him. Further, on a perusal of Regulation 98(1)(c) & (d) of the SEBI (LODR) Regulations 2015, it clearly provides that listed entity or any other person thereof, who contravenes any of the provisions of the regulations, shall be held liable by the respective stock exchange(s) for actions such as imposition of fines, suspension of trading, "freezing of promoter/promoter group holding", of designated securities, as may be applicable, in coordination with depositories or any other action as may be specified by the Board from time to time. Clause (2) of regulation 98 provides that the manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in circulars or guidelines issued by the Board.

53. We may observe that on a bare reading of the regulation 98(1), it

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can be seen that the action to freeze the holdings of the promoter/promoter group can apply only to those holdings of the promoter in the listed company that has violated the SEBI (LODR) Regulations. Hence, the action of freezing other shareholdings of the petitioner cannot be justified. The same is *ex facie* illegal, unjust and completely arbitrary.

54. We may also observe that the SEBI's contention referring to Regulation 98 of the SEBI (LODR) Regulations, being applicable so as to justify the freezing of the petitioner's demat account also cannot be accepted. This for the reason that we are not shown any primary obligation as fixed on the promoters and that too at a stage after almost 29 years of the formation of the company (Shrenuj), that the promoter nonetheless, would have certain obligations to be discharged under the Act and/or the Regulations. In our opinion, unless such basic obligation is statutorily fastened on the promoter, Regulation 98 cannot be applied in vacuum and moreso considering the facts and circumstances of the present case.

55. The object of SEBI (LODR) Regulation primarily concerns the listing obligations and a disclosure requirement to be complied by a company. In the present case, the company was formed in the year 1989, and after all statutory compliances, it was listed on the Bombay Stock

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Exchange. We are not shown any material that the petitioner did not cease to have any role, after the company was formed and/or till it defaulted under the said Regulation although it was managed by the Board of Directors. None of the respondents have showed any active role of the petitioner in the capacity of the promoter, in the management of the company and any role and obligation factually fastened on the petitioner in the various compliance which are required to be undertaken under the SEBI (LODR) Regulations, at the time of the freezing of his demat accounts. It is, therefore, difficult to accept that the listing obligations as postulated under the SEBI (LODR) Regulations were at all applicable qua the petitioner, so as to apply Regulation 98(1)(c) in freezing the demat account of the petitioner. We may observe that in the circumstances in hand when a basic obligation under the Regulations itself is not conferred on the promoter of the nature petitioner is, there could not have been a corresponding duty and a consequent default, attributable for any action to be taken under Regulation 98.

56. As we are dealing with the freezing of the demat accounts of the promoter, it would be relevant to consider the definition of the word 'promoter' as defined under clause (za) of Regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 which is extracted hereunder:

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"(za) "promoter" includes:

(i) the person or persons who are in control of the issuer;

(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;

(iii) the person or persons named in the offer document as promoters:

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

Provided further that a financial institution, scheduled bank, foreign portfolio investor other than Category III foreign portfolio investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person;

Provided further that such financial institution, scheduled bank and foreign portfolio investor other than Category III foreign portfolio investor shall be treated as promoter for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them."

57. It would also be necessary to examine the definition of "promoter" as defined in the Companies Act, 2013, which read thus:

2(69) "promoter" means a person —

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity;

(emphasis supplied)

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58. Thus, clause (a) of Section 2(69) of the Companies Act, 2013 refers to a *de jure* position, where a person is expressly named in a prospectus or is identified by the company as a promoter in the annual return referred to in Section 92. Clause (b) and (c) describes a *de facto* position where a promoter is a person who has control over the affairs of the company, directly or indirectly, whether as a shareholder, director or otherwise; clause (c) provides that the Board of Directors of the company is accustomed to act in accordance with the advice, directions or instructions of such person. Proviso to section 2(69) (supra) ordains that the provisions of sub-clause (c) shall not apply to a person who is acting merely in a professional capacity.

59. Section 92 of the Companies Act provides for filing of the annual return. Thus, assuming that the SEBI/BES/NSE intends to justify its action to take the petitioner as the promoter, it has to look into the last annual return filed by Shrenuj and its declaration qua the promoters as per the requirement of Section 92(1)(e). It cannot take a recourse to what was the position when the company was formed, i.e., in the year 1989. It was necessary for the SEBI/NSDL to look into the last return as filed by the company which in the present case would be of the year 2014 to 2016 which is of the period just prior to the default by Shrenuj. By no stretch of imagination, the first promoters of the company who might have severed

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their interest with Shrenuj could be held to be liable for any subsequent defaults of Shrenuj.

60. We may also examine the role of promoter insofar as the company law is concerned. In such context, we may usefully refer to the views of the learned author **A. Ramaiya** in his celebrated work **"Guide to the Companies Act"** 18th Ed. Vol. 1, when on the role of the promoter, is described as under :-

> The term is not one of law but familiar to the business world. It points to a person who forms a company and gets it going. It indicates 'a person who originates the scheme for the formation of the company, has the Memorandum and Articles prepared, executed and registered, and finds the first directors, settles the term of the preliminary contracts and prospectus (if any) and makes arrangement for advertising and circulating the prospectus and placing the capital, is emphatically a promoter in the fullest sense'. He controls the formation and future of the company, and it is this control which lies at the root of the fiduciary relation of the promoter to the company. Nor is he less a promoter if all or most of these activities are performed nominally by a company which he controls.
>
> …….
>
> **The question whether a person is or is not a promoter is a question of fact, depending upon what he really did in connection with the formation of the company. [*Lydney and Wigpool Iron Ore Co. v. Bird, (1886) 33 Ch D 85*]**
>
> …….
>
> **A person cannot become a promoter merely because he signed the memorandum as a subscriber for one or more shares.[*Official Liquidator v. VeluMudaliar, (1938) 8 Com Cases 7 : AIR 1938 Mad 192*] ….But persons who act in a professional capacity such as counsels, solicitors, accountants, engineers or other technicians, will not become promoters by reason of so acting, unless they exceed their professional function and do anything or take any interest in promoting the company.**
>
> …….

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> … **The relationship between the promoter and the company that he has floated must be deemed to be a fiduciary relationship from the day the work of floating the company started** *CIT v. Bijli Cotton Mills Ltd., (1953) 23 Com Cases 114, 120 : AIR 1953 All 232* **and continued upto the time that the directors take into their hands what remains to be done in the way of forming the company,** *Twycross v. Grant, (1877) 2 CPD 469, 541 (CA)* **and when there is no question open between the promoter and the company** *Eden v. Rids Dales Rly. Lamp & Lighting Co. Ltd, (1889) 23 QBD 368 (CA).*
>
> …. The status of a promoter is generally terminated when the Board of directors has been formed and they start governing the company."
>
> (emphasis supplied)

61. Thus, the promoter is a person who forms a company to get it going, that is who initiates the scheme for the formation of the company, gets the Memorandum and Articles prepared, executed, and registered, finds the first directors, settles the term of the preliminary contracts and prospectus, and arranges for advertising and circulating the prospectus and placing the capital. The determination of a person's status as a promoter is contingent upon his actual involvement in the formation of the company which is a question of fact. Further, the relationship between the promoter and the company, which is fiduciary, would stand terminated or discontinued when the Board of Directors take into their hands the affairs of the company and start governing the company.

62. We may refer to the decision of the Chancery Division in **Lydney and Wigpool Iron Ore Co. Vs. Bird**[1] which was a case in regard to the

1 (L.R.)33 Ch.D. 85

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formation of a company and the allegations of a secret commission being received by a person alleged to be a promoter. While examining the correctness of the judgment rendered by the trial Court, in appeal it was held that whether a person is a promoter or not is a question of fact, and it would depend on the evidence, referring to the decision in **Emma Silver Mining Company V. Grant.**[2] The Chancery Division considering the evidence on record held that a person against whom such allegations of misusing the position as a promoter was made (namely J. Bird in the said case) was in fact not the promoter of the company but was an agent of one M/s. Allaway who was a party desirous to prevent a sale of the property which had applied through its Solicitors one Bird & Co., who were iron merchants in the city of London, to render them the assistance of which J. Bird was one of the partners and who had suggested several schemes and one of the schemes being formation of a company to purchase the property. The observations of **Lindley, L.J.** which are of signifcance in the context of the role of the promoter qua a company read thus:

> "Moreover, to say that James Bird was a promoter of the company and therefore liable to account to it, is calculated to mislead; <u>for the word 'promoter' is ambiguous, and it is necessary to ascertain in each case what the so-called promoter really did before his legal liabilities can be accurately ascertained, and that in every case it is better to look at the facts and ascertain and describe them as they are.</u>"
>
> (emphasis supplied)

2 11 Ch.D. 918

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63. We are of the opinion that the above principles would necessarily apply when any action under the SEBI Act or Regulations framed thereunder is being taken against any promoter. This would necessarily involve robust evidence to be available and considered in regard to the role of the promoter not only qua the company but also whether any active role of the promoter exists qua the shareholders at large and whether the fiduciary capacity in which the promoter is required to discharge his role in formation of a company, would still bind him for various compliances, under the SEBI Regulations or it would be the liability of the company managed by the Board of Directors for achieving all the compliances, which are necessary to protect the interest of the investors who subscribe to the shares of a company. If there is no consideration and examination of such essential attributes before taking any action against the promoters, it would certainly lead to a serious prejudice and / or even a gross absurdity, rendering any action of penalty or freezing of any demat account of a promoter, as in the present case to be grossly arbitrary and illegal.

64. In **C. Thiruvenkatachariar, Official Liquidator of the National Live Stock Registration Bank Ltd. (in liquidation) vs. A.T. Velu Mudaliar and Anr.**[3], one of the questions which the Court was considering was whether the first respondent - A.T. Velu Mudaliar can be deemed to be a promoter.

3 AIR 1938 Mad 192

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Referring to the decision in **Twycross V. Grant**[4], the Court observed that Cockburn C. J. defined the word "promoter" as being one who undertakes to form a Company with reference to a given project, and to set it going, and to take the necessary steps to accomplish that purpose. It was observed that other definitions have been given by the learned Judges from time to time, but it is impossible to define accurately what is meant by the word "promoter". The Court also discussed the difficulty as pointed out by the learned author of **"Palmer's Company Precedents"**, to observe that each case must be decided according to the evidence. It was observed that a person who has not taken part in the formation or promotion of the company may be asked to sign the Memorandum as a subscriber for one or more shares, and as usually happens, would not make him a promoter. The following observations of the **Chief Justice Leach** are required to be noted which read thus:

> **" I will first discuss the question whether the first respondent can be deemed to be a promoter. In *Twycross* v. *Grant (1877)2 C.P.D. 469*, Cockburn C.J. defined the word "promoter" as being one who undertakes to form a Company with reference to a given project, and to set it going, and to take the necessary steps to accomplish that purpose. Other definitions have been given by the learned Judges from time to time, but it is impossible to define accurately what is meant by the word "promoter". The difficulty is discussed at length by the learned author of Palmer's Company Precedents at pages 103 to 109. After referring to a number of the more prominent cases, the learned author observes at page 106:**
>
> > " It is obvious, therefore, that a person who originates the scheme for the formation of the Company, has the memorandum and articles prepared, executed and registered, and finds the first directors, settles the

4 (1877)2 C.P.D. 469

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> terms (if any), and makes arrangements for advertising and circulating the prospectus and placing the capital, is emphatically a promoter in the fullest sense. He controls the formation and future of the Company, and it is this *control* which lies at the root of the fiduciary relation of the promoter to the Company. Nor is he the less a promoter if all or most of these activities are performed nominally by a Company which he controls.
>
> But a person who has done much less than this—takes a much less prominent part—may bring himself within the meaning of the term and may be held liable as a promoter."

Each case must be decided according to the evidence. If it is clear that the persons charged were merely servants or agents of the promoters or servants or agents of the Company, they cannot be classified as promoters, and in this connection the learned author makes mention of brokers, bankers and solicitors. Of course, brokers, bankers and solicitors could put themselves in the position of being promoters, but in order to do so they would have to travel outside their ordinary spheres.

Now, what are the facts here? As I have indicated the question of promotion only applies to the first respondent. It is said that he must be deemed to have taken part in the formation of the Company and to be a promoter because he signed the Memorandum and Articles of Association and subscribed for 100 shares. There is no evidence showing that he took any part in discussing the formation of the Company or in taking any steps to bring the Company into being, apart from the fact that he signed the Memorandum of Association and paid for 100 shares. It is not even suggested that he had anything to do with the drawing up of the Memorandum and Articles of Association. There is no suggestion that the first respondent had anything to do with the selection of the Directors or the settlement of any contract, except the contract under which his firm was to act as brokers. **After the Company had been formed and had started business the first respondent's firm induced certain people to subscribe for shares, but it is not alleged that they did anything before the Company was launched. The minimum subscription was fixed at 500 shares and the signatories to the Memorandum of Association themselves subscribed for 1200 shares**. In the Memorandum of Association the only persons referred to as promoters are V.K. Lakshmana Mudaliar and J.W. Samuel. It comes to this. **The Court is asked to hold the first respondent to be a promoter because his signature appears at the foot of the Memorandum and he took 100 shares of the 1200 initially subscribed. This is a contention which I am unable to accept. The law requires that there shall be seven signatories to the Memorandum of Association of a public Company. A person who**

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> **has taken no part in the formation or promotion of the Company may be asked to sign the Memorandum as a subscriber for one or more shares, and this usually happens.** It was mentioned in the course of the argument that the money subscribed by the first respondent for his 100 shares was utilised in defraying part of the expenses of forming the Company. That may be, but it was a matter which concerned the directors. **The application of the money which the first respondent paid for his shares was a matter over which he had no control, and the fact that the money was utilised in paying the expenses of formation, cannot make him a promoter.** The agreement with the respondents was an agreement which conscientious directors ought never to have entered into and in doing so the directors deliberately exceeded their powers. But this, of course, has nothing to do with the question whether the first respondent is to be deemed to be a person who took part in the formation and promotion of the Company. For the reasons indicated it must he held that the Official Liquidator was not entitled to take out a summons against the first respondent on the ground that he was a promoter."

(emphasis supplied)

65. Thus, applying such settled position in the context of the present case, the petitioner, a practicing gyneacologist, did not exceed his professional position, to take interest in the formation of Shrenuj or to promote or manage its day-to-day affairs. Also, after the incorporation of the company and constitution of the Board of Directors, the status and role of the petitioner as a promoter had come to an end. Hence, the obligation of non-submission of Financial Results and non-compliance with the provisions of SEBI (LODR) Regulations could not have been fastened and imposed on the petitioner.

66. Now coming to the impugned action of freezing of the demat accounts of the petitioner on the basis of SEBI Circular No.SEBI/HO/CFD/DCR/CIR/P/2016/81 dated 07 September 2016 and

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SEBI/HO/CFD/CMD/CIR/P/2016/116 dated 26 October 2016, in the context in hand, it may be necessary to extract these circulars, which reads thus:

"CIRCULAR

SEBI/HO/CFD/DCR/CIR/P/2016/81 September 07, 2016

To
All Listed Entities
All Registered Registrar & Share Transfer Agents
All Depositories
All Recognised Stock Exchanges

Dear Sir/Madam,

Sub: Restrictions on Promoters and Whole - Time Directors of Compulsorily Delisted Companies Pending Fulfillment of Exit Offers to the Shareholders

1. In terms of section 21A of the Securities Contracts (Regulation) Act, 1956 (SCR Act) read with rule 21 of the Securities Contracts (Regulation) Rules, 1957 and Chapter V of Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 ("Delisting Regulations"), a recognised stock exchange may compulsorily delist the equity shares of a listed company on certain grounds.

2. In terms of Regulation 24 of the Delisting Regulations, the company which has been compulsorily delisted, its whole-time directors, its promoters and the companies promoted by any such person, shall not directly or indirectly access the securities markets for a period of ten years from the date of compulsory delisting.

3. Sub-regulation (3) of regulation 23 of the Delisting Regulations provides that pursuant to compulsory delisting of a company, the promoter shall acquire delisted equity shares from the public shareholders, subject to their option of retaining their equity shares, by paying them the fair value, as dete rmined by the independent valuer appointed by the concerned recognised stock exchange.

4. In addition to the restriction imposed under Regulation 24 of the Delisting Regulations, in order to ensure effective enforcement of exit option to the public shareholders in case of compulsory delisting and taking into account the interests of investors, it is felt necessary to strengthen the regulatory mechanism in this regard. Accordingly, it is hereby directed that in

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case of such companies 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 and 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 (3) of regulation 23 of the Delisting Regulations, as certified by the concerned recognized stock exchange;**
>
> b. the promoters and whole-time directors of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as stated at 4.a. above is provided.

5. For the aforesaid purposes, "compulsorily delisted company" means a company whose equity shares are delisted by the recognised stock exchange under Chapter V of the Delisting Regulations.

6. The concerned recognised stock exchanges and depositories shall co-ordinate with each other for ensuring compliance of these requirements. SEBI may also take any other appropriate action(s) against the promoters/promoter group and directors of the compulsorily delisted company for non-compliance with sub-regulation (3) of regulation 23 of the Delisting Regulations.

7. This circular is issued in exercise of powers conferred under section 11
(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities markets.

8. A copy of this circular is available on SEBI website at www.sebi.gov.in under the category "Legal Framework/Circulars.

Yours faithfully,

Amit Tandon
Deputy General Manager
Division of Corporate Restructuring
Corporation Finance Department
+91-22-26449373
amitt@sebi.gov.in"

(emphasis supplied)

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"CIRCULAR

SEBI/HO/CFD/CMD/CIR/P/2016/116 October 26, 2016

To

<u>All the Recognized Stock Exchanges</u>
<u>All Depositories</u>

Dear Sir/Madam,

Sub: Freezing of Promoter and Promoter group Demat accounts for Non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

1. **SEBI, vide Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015, had prescribed the uniform fine structure for non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") and Standard Operating Procedure for suspension and revocation of trading of specified securities.**

2. It has been observed that some of the non-compliant listed entities have not paid the fines levied by the recognized stock exchange(s). In order to ensure effective enforcement, it has been decided in consultation with recognized stock exchanges to freeze the holdings of their promoters and promoter group entities in the manner specified below:

> 2.1. Where a non-compliant listed entity fails to pay fine levied as per the notice issued by the concerned recognized stock exchange in terms of paragraph 4 of Annexure I of the aforesaid circular, the concerned recognized stock exchange shall, upon expiry of the period indicated in the notice issued by it, freeze holdings in other securities in the demat accounts of promoter and promoter group to the extent of liability which shall be calculated on a quarterly basis.
>
> **2.2. In case of non-compliance for two consecutive periods, and failure to comply with the notice issued by the concerned recognized stock exchange as per paragraph 3 of Annexure II of the aforesaid circular, as per the current practice, the concerned recognized stock exchange <u>shall forthwith intimate the depositories to freeze the entire shareholding of the promoter and promoter group in such listed entity. In addition to the freeze of shares in the non-compliant listed entity, the holdings in the demat accounts of promoter and promoter group in other securities shall also be frozen to</u>**

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the extent of liability which shall be calculated on a quarterly basis.

2.3. While freezing the holdings as per paragraphs 2.1 and 2.2 above, the recognized stock exchange shall have discretion in determining which of the securities and holdings of which promoter or promoter group entity are to be frozen.

3. The depositories, shall furnish to the exchange upon receipt of request, all such information pertaining to holdings in the demat accounts of promoter and promoter group of such listed entities.

4. All provisions of Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 shall continue to be applicable.

5. The stock exchanges and depositories shall implement the circular in coordination with one another.

6. The Stock Exchanges are advised to bring the provisions of this circular to the notice of listed entities and also to disseminate the same on their websites.

7. This circular shall come into force with immediate effect. The circular shall be applicable to all fines outstanding on or after the date of this circular levied in accordance with Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 and Circular No. CIR/CFD/POLICYCELL/13/2013 dated November 18, 2013.

8. This circular is issued under regulations 97, 98, 99 and 102 read with regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

9. This circular is available on SEBI website at www.sebi.gov.in under the categories “Legal Framework” and “Continuous Disclosure Requirements”.

Yours faithfully,

Prasanta Mahapatra
General Manager
Compliance and Monitoring Division
Corporation Finance Department
prasantam@sebi.gov.in”

(emphasis supplied)

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67. Thus, even under the aforesaid Circular dated 7 September 2016 does not contemplate freezing of the demat account of the prmoter in the manner as resorted qua the petitioner. Further also the circular dated 26 October 2016, in paragraph 2.2, it is provided that at the first instance to freeze the entire shareholding of the "promoter" and the "promoter group" in the listed company which is held liable for non-compliance for two consecutive periods, and on a failure to comply with the notice issued by the concerned stock exchange as per paragraph 3 of Annexure II of Circular dated 30 November, 2015. It is significant that the second part of paragraph 2.2 of the Circular provides that in addition to the freezeing of shares in the non-compliant listed company, the holdings in the demat accounts of the promoter and promoter group in other securities shall be frozen to the extent of the liability which shall be calculated on a quarterly basis. In the present case, there is nothing placed on record that there is a semblance of compliance of paragraph 2.2 of the Circular even assuming that the same is applicable to the petitioner.

68. We may also observe that there can be no two opinions, that an action to freeze the petitioner's Demat account is an action entailing drastic civil consequences. The shares, subject matter of such account, are the property of the petitioner. Any coercive action in respect of one's property is required to be taken in accordance with law and after

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complying with the basic principles of natural justice. No show cause notice or a prior opportunity of a hearing was granted to the petitioner before the letters dated 23 March 2017 and 13 April 2017 were addressed to the SHCIL by NDSL, freezing not only the petitioner's shares in Shrenuj but also the other shareholding of the petitioner in ITC Limited. For such reason also, the impugned action on the part of NSDL is required to be held to be brazenly illegal, unreasonable and arbitrary.

69. This apart, insofar as applicability of the Circular 26 October 2016 is concerned, in our opinion, this circular cannot make a provision when it provides in paragraph 2.2 that in addition to the freeze of shares in the non-compliant listed entity, the holdings in the demat accounts of promoter and promoter group in other securities shall also be frozen to the extent of liability which shall be calculated on a quarterly basis. This would be contrary to the statutory requirements as the provisions we have noted hereinabove mandate and the basic requirement of Article 300A of the Constitution of India in the absence of any role of the promoter in the compliances as required to be discharged by a company.

70. The circular can only be recognized if it is validly issued, when the law would permit issuance of a circular qua its contents. The SEBI (LODR) Regulations do not confer any power with SEBI to issue a circular to freeze the demat account and shareholdings of the promoters

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which he would possess in respect of the shares held by him of companies other than the defaulting company of which he was a promoter. For any such action to be recognized under the Circular dated 26 October 2016, such power to freeze the demat account is required to be traced in the substantive law, namely, under the SEBI Act. We are not shown any specific power as conferred on the SEBI under the SEBI Act which would confer any authority to freeze the demat account of the promoter qua the shares held by him of a company other than of the defaulting company of which he is a promoter or any other office bearer. Even assuming that there is some power in the Regulations, the Regulations cannot override the substantive provisions of law and/or have any provision which itself is not recognized by the substantive law i.e. SEBI Act. The position in respect of a circular would be still worse, as the circular cannot provide anything which is not provided in the substantive law and the regulations.

71. For all these reasons, to generally and/or casually freeze the securities of the promoters in a company other than the defaulter company, is an action in the teeth of the provisions of the SEBI Act as also illegal, arbitrary and unreasonable, violative of Articles 14, 21 and 300A of the Constitution. Circulars cannot have an overriding effect on the statutory provision under which it is issued and cannot be implemented in defiance of principles of natural justice.

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72. There is another facet which also needs to be commented that the freezing of the petitioner's demat account as set out in the reply affidavit filed on behalf of SEBI, is regarded *inter alia* to be in the nature of a penalty/fine, as also seen from the letter dated 2 March 2017 (supra), addressed by the BSE to Shrenuj, and it is for defalut of Shrenuj, the petitioner is being penalised by the impugned action. Insofar as the applicability of the principles of law is concerned, it would not make much difference as to whether what is sought to be recovered from the petitioner is penalty or fine. The reason for this being that a penalty would include fine. A categorical stand is taken on behalf of the SEBI/BSE that a penalty / fine being imposed on Shrenuj is sought to be recovered by the impugned action of the freezing of the petitioner's demat account. It would be appropriate to note the jurisprudential meaning attributed to the terms 'penalty' and 'fine' and in the present context. We may usefully refer to the following extract from Advanced Law Lexicon of **P. Ramanatha Aiyar,** 3rd Edition, when the learned author distinguished fine from penalty.

> "DISTINGUISHED FROM "penalty". In its broadest sense "penalty" includes fines, as well as all other kinds of punishment. (Esselink v. Campbell, 4 lowa. 296.)
>
> DISTINGUISHED FROM FORFEITURE, "A fine is pecuniary penalty," while "a forfeiture is a penalty by which one loses his rights and interests in his property." (Esselink v. Campbell, 4 lowa, 296, 300,)1"

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73. In the above context, we may also refer to the decision of the Supreme Court in **Director of Enforecement Vs. M.C.T.M. Corporation Pvt. Ltd. & Ors.**[5], wherein it has been held that the expression 'penalty' is a word of wide significance. Sometimes, it means recovery of an amount as a penal measure even in civil proceedings. An exaction, which is not compensatory in character, is also termed as a 'penalty'.

74. As freezing of the petitioner's account for recovery of the amounts levied as penalty / fine is being resorted, the arguments as advanced on behalf of the petitioner of due adherence to the provisions of Section 15-A, 15-I and 15-J also become imperative. It cannot be overlooked that section 15A of the SEBI Act provides for a penalty for failure to furnish information, return, etc. and the amount of penalty it prescribes at different amounts as set out in clause (a), (b) and (c). However, for imposing of such penalty, the provisions of Section 15-I of the SEBI Act stand attracted for an adjudication by an adjudicating officer, by a procedure under Section 15-I and 15-J of the SEBI Act.

75. These provisions also become significant as it is a contention as urged on behalf of SEBI that the petitioner's demat account is freezed as a penalty for non-compliance of the regulations by the company. It is also SEBI's contention that it is of no consequence whether the petitioner is part of the management of Shrenuj as the same is not the criteria for

5 (1996) 2 SCC 471

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actions prescribed under the impugned circulars and the SEBI (LODR) Regulations, for non-compliance. In this context, as noted above, learned Counsel for the petitioner has vehemently argued that there are gross irregularities of the SEBI when he argues it to be a kind of scam, that the SEBI is acting in breach of the provisions of section 15JA of the SEBI act, inasmuch as the amounts realised by way of penalties under the Act are not being credited to the Consolidated Fund of India and in fact such amounts are received as income of the SEBI on which GST and TDS is being deducted. If this be so, and if the provisions of the section 15JA of the SEBI Act mandate that the sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India, as to whether strict adherence to the same and to similar provisions in the other relevant statutes are being complied by the SEBI or not is to be looked into by the concerned Ministry of the Government of India considering the overarching revenue interest of the Central Government.

76. If that be so, any action to impose/levy a penalty can be resorted after following due procedure in law as the nature of the action itself is a penalty. It is well settled that a penalty cannot be imposed, unless the procedure known to law is followed, namely, issuance of show cause notice, inviting reply on show cause notice and thereafter an opportunity of hearing being accorded and a final decision is taken, if law permits in

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case of penalty. The present case has wholly discarded any of such norms of legitimacy which is required to be followed in passing an order to freeze the demat account of the petitioner. If it is in the nature of penalty or even a fine, a procedure known to law is required to be followed. Even otherwise, if there were some other powers (there appear to be none) nonetheless it was incumbent on the SEBI/NSDL to follow the due procedure in compliance with the principles of natural justice and only thereafter take a decision to freeze the demat account of the petitioner.

77. There can be no manner of doubt that in his demat account the petitioner was holding shares not only of Shrenuj, but also of other companies. Such shares as held by the petitioner in the demat account are certainly a property within the meaning and purview of Article 300A of the Constitution of India and thus, no action could have been taken to deprive the petitioner the benefits of his property without following the procedure in law. Thus, looked from any angle, even assuming that the powers to defreeze the demat account of the promoter, the same could not have been done in the manner as in the present case. The action is fully draconian which cannot be sustained in law.

78. The action of freezing the petitioner's demat accounts is extremely coercive potentially attracting civil consequences. Such position in law is well settled. The Supreme Court in **Mohinder Singh Gill & Anr. vs. The**

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Chief Election Commissioner, New Delhi & Ors.[6] held that 'civil consequences' cover infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. The relevant observations read thus:

> "66. It was argued, based on rulings relating to natural justice, that unless civil consequences ensued, hearing was not necessary. A civil right being adversely affected is a sine qua non for the invocation of the *audi alteram partem* rule. This submission was supported by observations in *Ram Gopal* [*Ram Gopal Chaturvedi* v. *State of M.P.*, (1969) 2 SCC 240 : (1970) 1 SCR 472], *Col. Sinha* [*Union of India* v. *Col. J.N. Sinha*, (1970) 2 SCC 458 : (1971) 1 SCR 791] . Of course, we agree that if only spiritual censure is the penalty, temporal laws may not take cognizance of such consequences since human law operates in the material field although its vitality vicariously depends on its morality. But what is a civil consequence, let us ask ourselves, bypassing verbal booby-traps? 'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence. "Civil" is defined by Black (*Law Dictionary*, 4th Edn.) at p. 311:
>
> > "Ordinarily, pertaining or appropriate to a member of a *civitas* of free political community; natural or proper to a citizen. Also, relating to the community, or to the policy and government of the citizens and subjects of a state.
> >
> > The word is derived from the Latin civilis, a citizen .... In law, it has various significations.
> >
> > * * *
> >
> > 'Civil Rights' are such as belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants, and are not connected with the organisation or administration of Government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury etc.... Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a State or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the Constitution, and by various acts of Congress made in pursuance thereof.

6 AIR 1978 SC 851.

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(p. 1487, *Black's Legal Dictionary*)

The interest of a candidate at an election to Parliament regulated by the Constitution and the laws comes within this gravitational orbit. The most valuable right in a democratic polity is the "little man's" little pencil-marking, assenting or dissenting, called his vote. A democratic right, if denied, inflicts civil consequences. Likewise, the little man's right, in a representative system of Government, to rise to Prime Ministership or Presidentship by use of the right to be candidate, cannot be wished away by calling it of no civil moment. It civics mean anything to a self-governing citizenry, if participatory democracy is not to be scuttled by the law, we shall not be captivated by catchwords. The straight forward conclusion is that every Indian has a right to elect and be elected and this is a constitutional as distinguished from a common law right and is entitled to cognizance by courts subject to statutory regulation. We may also notice the further refinement urged that a right accrues to a candidate only when he is declared returned and until then it is incipient, inchoate and intangible for legal assertion — in the twilight zone of expectancy, as it were. This too, in our view, is logicid sophistry. Our system of "ordered" rights cannot disclaim cognizance of orderly processes as the right means to a right end. Our jurisprudence is not so jejune as to ignore the concern with means as with the end, with the journey as with the destination. Every candidate, to put it cryptically, has an interest or right to fair and free and legally run election. To draw lots and decide who wins, if announced as the electoral methodology, affects his right, apart from his luckless rejection at the end. A vested interest in the prescribed process is a processual right, actionable if breached, the Constitution permitting. What is inchoate, viewed from the end, may be complete, viewed midstream. It is a subtle fallacy to confuse between the two. Victory is still an expectation; qua *mado* is a right to the statutory procedure. The appellant has a right to have the election conducted not according to humour or hubris but according to law and justice. And so natural justice cannot be stumped out on this score. In the region of public law *locus standi* and person aggrieved, right and interest have a broader import. But, in the present case, the Election Commission contends that a hearing has been given although the appellant retorts that a vacuous meeting where nothing was disclosed and he was summarily told off would be strange electoral justice. We express no opinion on the factum or adequacy of the hearing but hold that where a candidate has reached the end of the battle and the whole poll is upset, he has a right to notice and to be heard, the quantum and quality being conditioned by the concatenation of circumstances."

79. Referring to the aforesaid decision, the Supreme Court in **State**

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Bank of India & Ors. vs. Rajesh Agarwal & Ors.[7] on challenge to Master Directions on Fraud issued by Reserve Bank of India, the Supreme Court observed thus:

> "32. ....It is now a settled principle of law that the rule of audi alteram partem applies to administrative actions, apart from judicial and quasi-judicial functions. It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.
>
> 33. In State of Orissa v. Dr (Miss) Binapani Dei, a two-judge bench of this Court held that every authority which has the power to take punitive or damaging action has a duty to give a reasonable opportunity to be heard. This Court further held that an administrative action which involves civil consequences must be made consistent with the rules of natural justice:
>
>> "9. […] The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would therefore arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."
>
> 34. In Maneka Gandhi v. Union of India, a seven-judge bench of this court held that any person prejudicially affected by a decision of the authority entailing civil consequences must be given an opportunity of being heard. This has been reiterated in a catena of decisions of this Court. In view of the settled position of law, the next question that arises before us is the scope and definition of the phrase 'civil consequences'.
>
> 35. **In Mohinder Singh Gill v. Chief Election Commissioner, New Delhi, a Constitution Bench of this Court held that 'civil consequences' cover infraction of not merely property or personal**

7 (2023) 6 SCC 1.

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> **rights but of civil liberties, material deprivations, and non-pecuniary damages. In that case, the Court held that denial of a democratic right to cast a vote inflicts civil consequences. In D K Yadav v. J M A Industries, a three-judge bench of this Court observed that "everything that affects a citizen in his civil life inflicts a civil consequence**."
>
> 36. In Canara Bank v. V K Awasthy, a two-judge bench of this Court succinctly summarized the history, scope, and application of the principles of natural justice to administrative actions involving civil consequences in the following terms:
>
> > "14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves 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 its wide umbrella comes everything that affects a citizen in his civil life."
>
> **There is a consistent pattern of judicial thought that civil consequences entail infractions not merely of property or personal rights, but also of civil liberties, material deprivations, and non-pecuniary damages. Every order or proceeding which involves civil consequences or adversely affects a citizen should be in accordance with the principles of natural justice**."
>
> (emphasis supplied)

80. In the context of the provisions of the Depositories Act, 1996, it also cannot be overlooked that a communication dated 23 March 2017 addressed by NSDL to SHCIL clearly records that the freezing of the petitioner's demat account is in pursuance of the SEBI circulars and based

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on the e-mail received from the Stock Exchanges (BSE and NSE) dated 10 January 2017 and as marked to the Beneficial Owner (BO) account, based on listing of company of promoters / promoters group on the non-compliance company Shrenuj as provided by the Stock Exchange. Thus, the depository is taking an action at the behest of the Stock Exchanges and in compliance of the requirements of the SEBI under the provisions of the SEBI Act and SEBI (LODR) Regulations. The provisions of Section 19 of the Depositories Act confers power on the SEBI to give directions in certain cases. Section 19F provides for penalty for failure to comply with directions issued by Board under Section 19 of the Act. Section 19G provides for penalty for contravention where no separate penalty has been provided. However, what is significant is that for a penalty to be imposed under the provisions of Section 19F and 19G, a power to adjudicate under Section 19H has been conferred on the Adjudicating Officer as provided for under Section 19H of the Depositories Act. Section 19-I provides for factors to be taken into account while adjudging quantum of penalty. Section 19-IB provides for recovery of amounts if a person fails to pay penalty imposed under the Act or fails to comply with the directions of disgorgement order issued under Section 19 or fails to pay any fees due to the Board and the manner the same can be executed. Section 19J provides for crediting sums realised by way of penalties to Consolidated Fund of India. All these provisions appear to have been completely overlooked in

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resorting to the impugned action as taken against the petitioner. Thus, even recovery of the amount from the petitioner's demat account which is held with the depositories would certainly be governed by the provisions of the Depositories Act, 1996 and even if any fine, penalty, is to be recovered, it would be required to be recovered strictly adhering to the provisions of law which we have noted hereinabove. The recovery can also be in terms of what has been provided under Section 19F which necessarily attracts the provisions of Section 19H in regard to adjudication. Thus, looked from any angle, the impugned action of freezing the petitioner's demat account is grossly illegal, arbitrary and unconstitutional.

81. However, what actually pains us is when the statutory complexion of what could be the respective powers to be exercised by the depositories, by the Stock Exchange(s) and ultimately by the SEBI are within the well defined spheres as envisaged by the respective statutes, which we have noted hereinabove, the SEBI as also the Stock Exchanges nonetheless have justified the actions being taken against the petitioner, when the same are not supported under the framework of any of laws as we have noted hereinabove. The petitioner who is a senior citizen for no fault of his, has severely suffered since the year 2017 as his entire shareholdings as maintained in the demat account could not be utilized by him which itself is a valuable property under Section 300A of the Constitution. The petitioner was illegally deprived of his property and on a completely

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untenable pretext, merely because he was a promoter. Over and above these respondents have acted in complete contravention of law and non application of mind in precipitating and compounding such action. In this view of the matter, we would be failing in our duty if we take a casual view of the matter and let the proceedings pass without any deterrent, failing which we shall be failing in our duty. We are therefore inclined to make an appropriate order imposing costs.

82. Having noted the provisions of SEBI Act, SCR Act, SEBI (LODR) Regulations, 2015, the Depositories Act, 1996 and the SEBI (Delisting of Equity Shares) Regulations, 2009, the following consequences of applicability of the various provisions would be evident:

i) That the SCR Act, 1956 is enacted to prevent undesirable transactions in securities by regulating the business of dealing therein and by providing for matters connected therewith. It *inter alia* makes provisions for recognition of stock exchanges, contracts and options in securities, listing of securities and for penalties and procedure. Section 9 which provides for power of recognized stock exchanges to make bye-laws, is relied on behalf of the respondents and more particularly Section 9(2)(o), which provides that the stock exchange would be empowered to make bye-laws in regard to levy and recovery of fees, fines and penalties. The power to levy

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penalty is required to be exercised by following the due process of law which is explicit in the provisions of section 23-I, namely, to adjudicate issues under section 23-A to 23-H. It is difficult to accept that such powers as conferred under SCR Act can at all be found to be relevant in the context of the present proceedings authorizing the Stock Exchanges to freeze the demat account of the petitioner on the ground that he was the promoter.

(ii) In the context of SEBI Act as noted above, we do not find that any of the powers read with the regulations, which we have discussed hereinabove confer any jurisdiction on the Stock Exchanges to recover any amounts by way of penalty or fine from the promoter without examining as to whether the person becomes liable to discharge any of the obligations of a promoter in a given case and more particularly, in the light of the provisions of Section 92 of the Companies Act providing for annual returns and appropriate disclosure in respect of the existing and recognized promoters the fact situation postulates.

(iii) The SEBI (Delisting of Equity Shares) Regulations, 2009 are also referred on behalf of the respondents to justify the action under Chapter V providing for "Compulsory Delisting". The reply affidavit has referred to Regulation 23, which deals with

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"Rights of public shareholders in case of a compulsory delisting". We have noted Regulation 23(3) as relied by the respondents, which provides that the promoter of the company shall acquire delisted equity shares from the public shareholders by paying them the value determined by the valuer, subject to their option of retaining their shares. Certainly, no obligation of this nature appears to have been crystallized in a manner known to law qua the petitioner. Thus, such obligation cannot be fastened on the petitioner by an action of freezing the petitioner's demat accounts. If such an obligation is to be enforced, there are several facts which would be required to be taken into consideration to determine the role of the person whether he is the promoter at the relevant time considering the relevant facts and in the real sense as the law would mandate. Thus, reference of the respondents to the SEBI (Delisting of Equity Shares) Regulations, 2009 appears to be an exercise in total futility.

(iv) Insofar as the SEBI (LODR) Regulation and Circular framed thereunder as observed above, the same cannot be stretched to an extent to take such draconian action of freezing the demat accounts of the petitioner and more particularly to recover any peanlty/fine payable by the company (Shrenuj). A determination of the petitioner's role whether in the real sense the law would mandate

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he continues to be a promoter, was required to be determined.

(v) In the context of the Depositories Act, 1996 as observed by us in paragraph 80, none of the provisions would support the contentions of the respondents that a power is conferred to freeze the demat accounts of the petitioner, so as to recover the amounts due and payable by the defaulter company (Shrenuj). A lawful procedure to impose any penalty and/or fine is certainly not adhered by the respondent even assuming that what is sought to be recovered was a permissible penalty.

83. Thus looked from any angle, under none of the provisions of law and regulations, the impugned action of the respondent to freeze the petitioner's demat account can be sustained.

84. For the aforesaid reasons, in our opinion, the freezing of the petitioner's demat account qua all the shares held by him was unwarranted, unjustified and in patent defiance of the principles of natural justice and brazenly illegal.

85. The petitioner is a senior citizen. Considering the nature of the illegality foisted on him, the petitioner has made a prayer (prayer clause F) for a direction to respondent nos. 3 and 4 to pay compensation of Rs.1 crore each, i.e., totaling to Rs.2 crores to be paid to the petitioner for freezing of his demat account illegally and for preventing him from

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trading in shares, in view of our aforesaid discussion. We see a valid justification for the petitioner to make such prayer. The petitioner has certainly suffered such illegality and for a long period of six years, which has prevented him from operating his demat account and dealing with the shares held by him other than of Shrenuj. The petitioner has categorically averred that looking at his age, the funds were to be utilized by him for his retirement. We would not expect any person to suffer in such manner and that too in a high-handed and arbitrary manner as in the present case. As noted hereinabove, we are of the clear opinion that BSE/NSE as also SEBI has clearly failed to discharge their duties and to act in accordance with law so as to deprive the petitioner of his shares in the demat account held by him which certainly, in our opinion, is an infringement of petitioner's right guaranteed under Articles 14, 21 and 300A of the Constitution. Any casual approach to such infringement certainly would not be an acceptable approach and in fact would strengthen the hands of these authorities to repeat such illegalities. In fact if we fail to impose costs, it would amount to putting a premium on such illegality of these respondents. In these circumstances, although we are not inclined to grant an amount of Rs.2 crores as compensation / cost in favour of the petitioner, we are inclined to award an amount of Rs.30 lakhs to be paid to the petitioner by BSE/NSE/SEBI, which shall be jointly paid. This also for the reason that breach of constitutional rights as noted by us is certainly a serious affair

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and cannot be permitted to happen in the manner respondents in the present case have resorted in such casual approach.

86. In the light of the aforesaid discussion, the petition needs to succeed. It is accordingly allowed in terms of the following order:

ORDER

(i) The freezing of the demat account of the petitioner pursuant to the impugned communciations dated 23 March, 2017 (Exhibit "C"), 13 April, 2017(Exhibit 'D' & 'E') ,8 August 2018 (Exhibit 'L') is declared to be illegal and invalid;

(ii) The petitioner shall be free to deal with all his shares as held in the Demat accounts in question.

(iii) The SEBI/BSE/NSE are directed to jointly pay to the petitioner cost of Rs.30 lakhs within a period of two weeks from today.

(iv) In regard to the petitioner's contention on the amounts of penalty/fine not being deposited in the Consolidated Fund of India, *inter alia* considering the provisions of Section 15JA of SEBI Act, Section 23K of the SCR Act and Section 19J of the Depositories Act, it is for the appropriate Ministry of Government of India to look into these issues and in the context of the observations as made by us hereinabove. In the event, the Government of India is of the

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opinion that such funds which need to be deposited in the Consolidated Fund of India, it is for the Government of India to take appropriate action. We leave such issue to be considered by the Government of India at the appropriate level.

(v) Having regard to our discussion and conclusion, we keep open all issues of law on the challenge raised by the petitioner to the legality of the statutory regulations.

(vi) The petition stands allowed in the aforesaid terms.

87. At this stage, learned counsel for respondent no. 4 seeks stay of the aforesaid order as passed by us. Considering the glaring and gross facts of the case, we reject the prayer to stay our order.

Writ Petition No. 2228 of 2021 (Neil Pradeep Mehta vs. UOI & Ors.)

88. In this petition, the petitioner is the son of Dr. Pradeep Mehta, the petitioner in the aforesaid Writ Petition, whose petition has been allowed in terms of our aforesaid judgment/order.

89. In our opinion, this is a gross case and more particularly considering that the petitioner in this petition was not the promoter of Shrenuj and merely for the reason that he held a demat account along with his father Dr. Pradeep Mehta, who was the second holder. The demat account of the petitioner has been freezed by the impugned order.

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90. The relevant facts in relation to this petition need to be noted:

The petitioner is a non-resident Indian currently residing in Singapore. He is also an angel investor investing in promising start-ups in India. In 2014, petitioner opened a NRO account and a demat account through HDFC Bank Ltd. and for logistical reasons of a local address and mobile number, the bank suggested adding the petitioner's father – Dr. Pradeep Mehta as a second holder to his Demat account.

91. It is the petitioner's case that in July 2018, the petitioner found that his demat account was frozen without any notice or intimation to him. On inquiring with HDFC Bank, the petitioner was handed over letters dated 10 July 2018 and 8 August 2018 addressed by respondent no. 5 – NSDL to HDFC Bank informing the Bank to freeze the demat account of the petitioner in which it was stated that in accordance with SEBI Circular No. SEBI/HO/CFD/DCR/CIR/P/2016/81 dated 7 September 2016 and based on the PANs of Promoters/Promoter Group of compulsorily delisted companies as received from BSE, the mentioned Beneficial Owner account has been 'Suspended for Debits' till further instructions in received from BSE/SEBI. Such communication is not different from the one issued to Dr. Pradeep Mehta, petitioner's father in the above writ petition.

92. The petitioner contends that the petitioner's advocate addressed two

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letters dated 9 August 2018 and 23 August 2018 to NSDL protesting against the freezing of his demat account. On 28 August 2018, NSDL replied to the advocate of the petitioner stating that NSDL vide letters dated 10 July 2018 and 8 August 2018 informed the Depository Participant – HDFC Bank Ltd. with copy of the same endorsed to the petitioner that the Beneficial Owner (BO) account of the petitioner has been "Suspended for Debits" in accordance with SEBI Circular No. SEBI/HO/CFD/DCR/CIR/P/2016/81 dated 7 September 2016 and based on Promoters/Promoter Group of compulsorily delisted companies i.e., Shrenuj received from BSE and NSE.

93. Thereafter, the petitioner addressed another letter dated 15 October 2019 to respondent no. 3 – BSE stating that HDFC Bank had asked the petitioner to have a resident Indian as a joint holder for logistic reasons such as having local telephone number for sending OTPs, having a local address for communication, etc. and as the petitioner's wife is also a NRI, he was constrained to add his father as a second holder. He stated that all the investments made by the petitioner in shares of the Indian Companies as held in his demat account are from his funds repatriated from overseas. The petitioner stated that he was unable to trade on his demat account was freezed.

94. BSE replied to such letter of the petitioner by an e-mail dated 24

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October 2019 stating that since the petitioner is a joint holder with Mr. Pradeep Mehta (promoter of Shrenuj and Company which was compulsorily delisted from the Exchange w.e.f. 4 July 2018), hence, his request for defreezing of his demat account cannot be accepted. On the said reply being received by the petitioner from BSE, the petitioner addressed a detailed letter dated 21 April 2021 to the SEBI stating that he was never a promoter or director in the delisted entity and the fact that freezing power itself is illegal and goes against the basic statute of Companies Act. The petitioner also addressed a letter dated 18 May 2021 to the respondent no. 1 pointing out that the arbitrary and illegal acts of the Securities Regulator and the service providers is also causing loss to the Government of India and diverting investments coming to India.

95. The petitioner has contended that his father is a practicing gynecologist with about 40 years of practice and even if he was to be branded as a 'promoter' of Shrenuj, merely because of his investments into his father in law's company as a shareholder, his father was never a promoter or director of the listed entity. It is in these circumstances, the petitioner had prayed for defreezing of his demat account.

96. We may observe that surprisingly the stand of the respondents – SEBI, BSE and NSE is not different from what is taken in the aforesaid writ petition of his father Dr. Mehta. In fact, the reply affidavits are

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identical to the first petition.

97. We have heard learned counsel for the parties. We have also perused the record on this petition. There is much substance in the contentions as urged on behalf of the petitioner that the impugned action in the present case crosses all boundaries of legitimacy, reasonableness, fairness, being the principles the statutory bodies like SEBI, BSE and NSE are required to adher being governed by statutes and regulations. We say so as in the present case ex-facie there were no reasons whatsoever, to freeze the petitioner's demat account which came to be freezed merely because the petitioner's father happens to be a second holder of his demat account. The petitioner in this case was never the promoter of Shrenuj. When the petition was filed, the petitioner was 39 years of age and when Shrenuj was promoted in the year 1989, the petitioner was 7 years of age, when his father Dr. Pradeep Mehta was styled as one of the promoters of Shrenuj.

98. The petitioner is a Non-Resident Indian (NRI) based in Singapore. His wife is also based in Singapore. The petitioner has invested in shares and securities of Indian Companies, and accordingly, the petitioner has held the demat account in question with his father as a second holder to be so included for logistic purpose.

99. On the face of it, it is evident that the petitioner in no manner

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whatsoever much less in the capacity as promoter was concerned and connected with Shrenuj. Thus, he could not be held liable for any default of Shrenuj much less that he could face any action of freezing of his demat account for the default of Shrenuj, merely for the reason his father Dr. Pradeep Mehta happened to be the second holder in his demat account, as detected by the BSE/NSE so as to consider the petitioner's demat account to be relevant for any penalty and fine payable by Shrenuj.

100. In our opinion, the present case is more gross and is a classic example of high-handed action and a reckless action to freeze the demat account of the petitioner. There is patent non-application of mind by any of these authorities, who are statutorily governed in resorting to take such drastic action. This apart, even the elementary principles of natural justice of a fair opportunity of calling upon the petitioner to show cause, a hearing and appropriate order to be passed have been thrown to the winds. This is certainly not the manner or method in which the rule of law would mandate these respondents to act.

101. The petitioner has suffered at the hands of respondents for these many years. He has lost valuable trading opportunities and to deal with his property as entitled to him under Article 300A of the Constitution of India. It is not only painful but extremely shocking that such actions can nonetheless be defended by the respondents considering the gross facts

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and circumstances of the case which would stare at them. There is not a semblance of reason for such action to be taken against the petitioner. We may also observe that the actions and cundect of the BSE / NSE and SEBI as the law mandates is to protect the interest of the investors. In the present case these statutory bodies have totally acted contratry to such norms. In fact the impugned actions of these respondents when taken against a person like the petitioner is also likely to shake the confidence of investors who are non residents Indian. This is certainly not what can be expected from the conduct of these entities. The duty to safeguard the investor's sentiments and confidence is paramount which stand breached in every possible manner in the present case.

102. We may observe that all our reasons as set out in the aforesaid judgment more particularly on law become applicable in the facts of the present case.

103. In the light of the above discussion and on the reasoning as contained in our aforesaid judgment in the case of Dr. Pradeep Mehta (petitioner's father), we are inclined to unhesitantly allow this petition, however, considering the severity and the gross illegality of the actions we will be failing in our duty as a writ Court if we do not impose a substantive costs to be awarded in favour of the petitioner. We accordingly allow the writ petition by the following order:

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ORDER

(i) The freezing of the demat account of the petitioner pursuant to the impugned communications dated 23 March, 2017 (Exhibit "C"), 13 April, 2017(Exhibit 'D' & 'E') ,8 August 2018 (Exhibit 'L') is declared to be illegal and invalid;

(ii) The petitioner shall be free to deal with all his shares as held in the Demat accounts in question.

(iii) The SEBI/BSE/NSE are directed to jointly pay to the petitioner cost of Rs.50 lakhs within a period of two weeks from today.

(iv) The petition stands allowed in the aforesaid terms.

104. Learned counsel for the SEBI and BSE have prayed for stay of the order. Considering the facts of the case, instantly we have no hesitation in rejecting such request.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI, J.)**

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