BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 05.05.2017
Date of Decision : 12.05.2017

Appeal No. 286 of 2014

Shri B. Ramalinga Raju
Plot No. 1242, Road No. 62,
Jubilee Hills,
Hyderabad- 500 059 …Appellant

Versus

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

Mr. Amit Desai, Senior Advocate with Mr. Gaurav Joshi, Senior Advocate, Mr. Ankit Lohia, Mr. Gopalkrishna Shenoy, Mr. Ajai Achuthan, and Mr. Mehul Jain, Advocates i/b Bharucha & Partners for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 287 of 2014

Shri B. Rama Raju
Plot No. 1326, Road No. 66,
Jubilee Hills,
Hyderabad- 500 034 …Appellant

Versus

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

Mr. Pradeep Sancheti, Senior Advocate with Mr. Ankit Lohia, Mr. Ajai Achuthan and Mr. Mehul Jain, Advocates i/b Bharucha & Partners for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 284 of 2014

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

Versus

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

Mr. Chetan Kapadia, Advocate with Mr. Sunil Humbre, Mr. KRCV Seshachalam, Mr. A. Ramarao, Ms. Sabeena Mahadik, and Mr. Sagar Hate, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 282 of 2014

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

Versus

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

Mr. G. Ramakrishna, Appellant in Person.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 285 of 2014

V. S. Prabhakara Gupta
Plot No. 8, Madhupala Enclave,
Inside BHEL Enclave Bowenpally
Secunderabad- 500 009 …Appellant

Versus

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

Mr. Joby Mathew, Advocate with Ms. Harshada Nagare and Mr. Hemanth Joseph, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Jayesh Ashar, Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar

1. Appellants are aggrieved by the directions given by the Whole Time Member ("WTM" for short) of Securities and Exchange Board of India ("SEBI" for short) in his order dated July 15, 2014. By the said order the WTM has held that the appellants who were the then Chairman, Managing Director, Chief Financial Officer ("CFO" for short), Vice President (Finance), Head (Internal Audit) of Satyam Computer Services ("Satyam" for short) respectively are guilty of violating the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP" Regulations" for short) and SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT

Regulations, 1992" for short). By the said order, apart from restraining the appellants from accessing the securities market and prohibiting the appellants from buying, selling or otherwise dealing in securities, directly or indirectly for a period of 14 years, the WTM has directed the appellants to disgorge the unlawful gains arising on sale/ pledge of Satyam shares during the period from 2001-2008 as more particularly set out in para 140 of the impugned order dated July 15, 2014 with interest at the rate of 12% per annum from 07.01.2009 till the date of payment. Since all these appeals arise from a common order passed by the WTM on 15.07.2014, all these appeals are heard together and disposed of by this common decision.

2. The accounting fraud committed by Satyam came to light on 07.01.2009 when the then Chairman of Satyam Mr. B. Ramalinga Raju addressed an email to the Board of Directors of Satyam and copy to SEBI, which reads thus:-

> *"From B. Ramalinga Raju*
> *Chairman, Satyam Computer Services Ltd.*
>
> *January 7,2009*
>
> *Dear Board Members,*
>
> *It is with deep regret, and tremendous burden that I am carrying on my conscience, that I would like to bring the following facts to your notice:*
>
> *1. The Balance Sheet carries as of September 30, 2008*
>
> *a. Inflated (non-existent) cash and bank balances of Rs.5,040 crore (as against Rs.5361 crore reflected in the books)*

b. An accrued interest of Rs.376 crore which is non-existent

c. An understated liability of Rs.1,230 crore on account of funds arranged by me

d. An over stated debtors position of Rs.490 crore (as against Rs.2651 reflected in the books)

2. For the September quarter (Q2) we reported a revenue of Rs.2,700 crore and an operating margin of Rs.649 crore (24% of revenues) as against the actual revenues of Rs.2,112 crore and an actual operating margin of Rs.61 Crore (3% of revenues). This has resulted in artificial cash and bank balances going up by Rs.588 crore in Q2 alone.

The gap in the Balance Sheet has arisen purely on account of inflated profits over a period of last several years (limited only to Satyam standalone, books of subsidiaries reflecting true performance). What started as a marginal gap between actual operating profit and the one reflected in the books of accounts continued to grow over the years. It has attained unmanageable proportions as the size of the company operations grew significantly (annualized revenue run rate of Rs.11,276 crore in the September quarter, 2008 and official reserves of Rs.8,392 crore). The differential in the real profits and the one reflected in the books was further accentuated by the fact that the company had to carry additional resources and assets to justify higher level of operations –thereby significantly increasing the costs.

Every attempt made to eliminate the gap failed. As the promoters held a small percentage of equity, the concern was that poor performance would result in a take-over, thereby exposing the gap. It was like riding a tiger, not knowing how to get off without being eaten.

The aborted Maytas acquisition deal was the last attempt to fill the fictitious assets with real ones. Maytas' investors were convinced that this is a good divestment opportunity and a strategic fit. Once Satyam's problem was solved, it was hoped that Maytas' payment can be delayed. But that was not to be. What followed in the last several days is common knowledge.

I would like the Board to know:

1. That neither myself, nor the Managing Director (including our spouses) sold any shares in the last eight years – excepting for a small proportion declared and sold for philanthropic purposes.

2. That in the last two years a net amount of Rs.1,230 crore was arranged to Satyam (not reflected in the books of Satyam) to keep the operations going by resorting to pledging all the promoter shares and raising funds from known sources by giving all kinds of assurances (Statement enclosed, only to the members of the board). Significant dividend payments, acquisitions, capital expenditure to provide for growth did not help matters. Every attempt was made to keep the wheel moving and to ensure prompt payment of salaries to the associates. The last straw was the selling of most of the pledged share by the lenders on account of margin triggers.

3. That neither me, nor the Managing Director took even one rupee/dollar from the company and have not benefitted in financial terms on account of the inflated results.

4. None of the board members, past or present, had any knowledge of the situation in which the company is placed. Even business leaders and senior executives in the company, such as, Ram Mynampati, Subu D, T.R. Anand, Keshab Panda, Virender Agarwal, A.S. Murthy, Hari T, SV

Krishnan, Vijay Prasad, Manish Mehta, Murali V, Sriram Papani, Kiran Kavale, Joe Lagioia, Ravindra Penumetsa, Jayaraman and Prabhakara Gupta are unaware of the real situation as against the books of accounts. None of my or Managing Director's immediate or extended family members has any idea about these issues.

Having put these facts before you, I leave it to the wisdom of the board to take the matters forward. However, I am also taking the liberty to recommend the following steps:

1. A Task Force has been formed in the last few days to address the situation arising out of the failed Maytas acquisition attempt. This consists of some of the most accomplished leaders of Satyam: Subu D, T.R. Anand, Keshab Panda and Virender Agarwal, representing business functions, and A.S. Murthy, Hari T and Murali V representing support functions. I suggest that Ram Mynampati be made the Chairman of this Task Force to immediately address some of the operational matters on hand. Ram can also act as an interim CEO reporting to the board.

2. Merrill Lynch can be entrusted with the task of quickly exploring some Merger opportunities.

3. You may have a 'restatement of accounts' prepared by the auditors in light of the facts that I have placed before you.

I have promoted and have been associated with Satyam for well over twenty years now. I have seen it grow from few people to 53,000 people, with 185 Fortune 500 companies as customers and operations in 66 countries. Satyam has established an excellent leadership and competency base at all levels. I sincerely apologize to all Satyamites and stakeholders, who have made Satyam a special organization,

for the current situation. I am confident they will stand by the company in this hour of crisis.

In light of the above, I fervently appeal to the board to hold together to take some important steps. Mr. T.R. Prasad is well placed to mobilize support from the government at this crucial time. With the hope that members of the Task Force and the financial advisor, Merrill Lynch (now Bank of America) will stand by the company at this crucial hour, I am marking copies of this statement to them as well.

Under the circumstances, I am tendering my resignation as the chairman of Satyam and shall continue in this position only till such time the current board is expanded. My continuance is just to ensure enhancement of the board over the next several days or as early as possible.

I am now prepared to subject myself to the laws of the land and face consequences thereof.

(B. Ramalinga Raju)

Copies marked to
1. Chairman SEBI
2. Stock Exchanges"

3. On the basis of above email, SEBI carried out detailed investigation of Satyam which revealed the following:-

a) Books of account of Satyam as on 30.09.2008 disclosed balance of ₹ 1782.60 crore in its current account with Bank of Baroda, New York Branch ("BoB" for short) whereas, the actual balance in the current account as per BoB was ₹ 50.72 crore.

b) Satyam was maintaining two sets of statements for its current account in BoB, i.e. daily bank statements and Monthly Bank Statements. 'Daily Bank Statement' was received through email which was printed and filed in the accounts wing and the 'Monthly Bank Statement' was received through 'internal' courier from its Chairman's office. From the two sets of bank statements it was observed that the closing balances as well as the number of debit and credit entries in the said two statements differed substantially during the period from 2001-2008 as shown in the following chart set out in para 25 of the impugned order:-

(In ₹ crore)

Item	***Year ending***							
	2001	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*
As per books	*125.93*	*229.63*	*208.05*	*288.28*	*373.60*	*977.56*	*350.61*	*872.66*
As per bank	*5.64*	*16.09*	*39.95*	*16.07*	*44.95*	*28.06*	*49.92*	*43.74*
Overstated balance in the books	*120.29*	*213.54*	*168.10*	*272.21*	*328.66*	*949.51*	*300.69*	*811.28*

Thus, it was seen that in the books of Satyam the balances in the current account with BoB were found to be steadily inflated during the years 2001-2008.

c) As on 30.09.2008 the actual balance in the current account of Satyam as confirmed by BoB New York Branch was USD 1,08,36,569 whereas in the monthly bank statement, such balance was shown as USD

37,96,12,384. BoB confirmed the balances as reflected in the Daily Bank Statements but not the balances shown in the monthly bank statements.

d) It was observed that the entries in the books of Satyam were passed on a regular basis by using the data contained in the daily bank statement, but it was the Monthly Bank Statement that was used for the purpose of monthly closing of the bank ledger and preparation of monthly bank reconciliation statement. The changes for prior entries were carried out through the rectification module available in the accounting package. The transactions in the monthly bank statement which were not appearing in the daily bank statement were accounted as and when the differences were identified. It was also observed that certain transactions in the daily bank statement were not accounted for without assigning reasons. Further, transactions already accounted for were reversed. Monthly bank statements were found to be manipulated by showing additional entries largely in the nature of extra receipts. Thus, it was observed that fake monthly bank statements were being prepared at the end of every month containing desired debit/credit entries, which were additional to the daily statements and the accounts were drawn up on the

basis of fake monthly bank statements which obviously reflected false balances.

e) As per the books of Satyam, the amounts kept in Fixed Deposit ("FD") with Citibank, HDFC Bank, HSBC Bank, ICICI Bank & BNP Paribas as on 30.09.2008 was ₹ 3318.37 crore., when in fact Satyam had FD of only ₹ 9.96 crore with two banks (₹ 1.32 crore with Citibank and ₹ 8.64 crore with BNP Paribas Bank).

f) Investigation revealed that the Fixed Deposit Receipts ("FDRs") were maintained in the office of the Chairman of Satyam and taken from there by a single designated official of the accounts wing and handed over to another official of the wing who would in turn show them to the auditors as and when requested. From the records of Satyam as well as the books held with the auditors, it was noted that two sets of letters of confirmation of balances of FDRs were available with the auditors i.e.-

(i) Confirmation received directly in the office of the auditors, in the prescribed format which would inter-alia state the balances of all FDRs held by Satyam with the respective bank as on a particular quarter ending date.

(ii) Confirmation from the bank received by Satyam and addressed to the auditors but not in the prescribed format. The said confirmation would state in a single sentence, the balances of FDRs held by Satyam with the respective bank.

g) It was noticed that in the confirmation letters of the banks such as ICICI Bank, HDFC Bank, HSBC Bank, HDFC, BNP Paribas received by the auditors through Satyam referred to above, several particulars were found to be missing and in some cases it was found that the letterheads were of an earlier period and persons who had signed the letters were not in the employment of the banks as on the date indicated on the letter. When enquired, the banks stated that the said confirmation letters were not sent by them, which means that the confirmation letters of the banks as available with the auditors were fake.

h) Investigation revealed that the sales revenues of Satyam were inflated and shown in the books through insertion of a large number of fictitious invoices raised in respect of fake customers and/or transactions. The fake invoices were introduced into the system through the Invoicing Management System ("IMS").

i) Investigation revealed that the IMS was the tool used by Satyam for generating the invoice to the Customer and was a downstream system for tools like OPTIMA/SPR/e-Support/ ONTIME/ PBMS etc. In other words, generating of invoice in the normal course of business began with the inception of a project with a unique serial number and project ID which was then passed on to other tools for approval and then finally the invoice for delivery to the customer was generated at the IMS level.

j) Apart from the above, the system adopted by Satyam also enabled porting of data through MS Excel directly at the IMS stage. In such a situation, all the fields were entered in the IMS manually by a process known as “excel porting”. When excel porting was done, there was no need for the data to pass through all the stages referred to above. However, it was necessary to have the Admin ID to generate invoices through excel porting. It was observed that Admin ID and password required for the one-step intervention through excel porting was with Mr. G. Ramakrishna, the then V.P. (Finance) and was made available to the accounts receivable team working under him, which included Mr. Srisailam Chetkuru, Mr. K. Malla Reddy

and Mr. Suresh Kumar, who were responsible for entering invoice data on the system.

k) Mr. Malla Reddy in his statement stated that he used to receive an excel attachment from Mr. Srisailam Chetkuru, who was his reporting manager, and Mr. Srisailam instructed Mr. Malla Reddy to hide the invoices mentioned in the attachment while updating collections in the IMS. At the end of the month, or mid-month, he used to import excel files from a server folder into the IMS and generate invoices against the imported data. Mr. Malla Reddy further stated that he used to hide the invoices raised by him in the system. Mr. Malla Reddy had also stated that he used to receive the BoB, New York branch statement on a daily basis and monthly basis. When the monthly statement was received through the office of the then Chairman, an excel sheet containing details of customers names, invoice numbers, credit amount, was also received based on fake invoices. On updating, they used to return the monthly statement and excel sheet to the treasury. Above position was also corroborated by Mr. P.B.V. Suresh Kumar (then Executive, Finance of Satyam). Mr. Malla Reddy and Mr. Suresh Kumar stated that about 300 to 400 such

fake invoices were generated each quarter resultantly showing inflated revenues in the books.

l) Mr. V.V.K Raju the then Senior V.P., Finance of Satyam furnished details of 7,561 fake invoices ("S" Series) generated in the IMS, out of which 6,603 invoices were posted into the Oracle Financials. Mr. V.V.K Raju further stated that the said invoices were fake since they did not have roots in SPR and Project ID tools and were not visible to business finance personnel. Mr. V.V.K Raju had confirmed that 7561 fictitious invoices are in the nature of off shore invoices, that they do not have linkage into PBMS and that the payment instruction therein were found to be different compared to the instruction normally given by a company in case of genuine invoices.

m) Fact that there were about 7561 fake invoices was also confirmed by Mr. Ramarao Remella, AVP (Finance) of Satyam. In his statement Mr. Ramarao Remella confirmed that two sets of MIS were prepared on the basis of changes suggested by Mr. V. Srinivas. When asked as to why the MIS coming from IMS tool should be changed, Mr. V. Srinivas told Ramarao Remella that the MIS coming from the IMS tools which matched with the published sales was not

giving the correct MIS as the IMS tool had certain drawbacks and that V. Srinivas had better information collected through review reports and to give effect to the said review reports it was necessary to make changes in the MIS. Mr. Ramarao Remella further stated that he had intimated to Mr. G. Ramakrishna, (to whom he was reporting), that Mr. Srinivas was asking him to make the changes, in the MIS, whereupon Mr. Ramakrishna informed Mr. Ramarao Remella that as the CFO Mr. Srinivas knew the rationale for the change better and therefore the changes in MIS be carried out as directed by Mr. Srinivas.

n) Investigation revealed that there were 27 invoices in the IMS in relation to the development of certain customized products by the customers who were non-existent. Investigation carried out in relation to one such non- existent customer called Cellnet Inc. revealed the follows:-

i) On 9 April, 2006, Mr. Rama Raju, MD had sent an email to Mr. TR Anand requesting Mr. Anand to develop a proposal on the lines set out in the attachment to the said email. In that email, Mr. Rama Raju had directed

Mr. Anand that the team should not know that he had mooted the proposal and therefore only the attachment to the email be forwarded to the team members and not the email. Copy of the email was also marked to Mr. Ramalinga Raju.

ii) Accordingly, on 18 April, 2006 Mr. Anand had sent to Mr. Rama Raju a software project conceived, designed and built on the line suggested by Mr. Rama Raju. The software product named as 'DRM Rightsman' was intended to help music and video companies to expand their offerings in the online space.

iii) It is interesting to note that even before the "DRM Rightsman" software product proposal was conceived and designed, Mr. Anand had received an email dated 9th April, 2006 itself from one Mr. John V. Elite, of M/s Cellnet Inc, wherein it was stated that Mr. John V. Elite had approached Satyam vide purchase order dated 9, April 2009 for a project on DRM Rightsman and asked Mr. Anand to provide him (Mr. John) a high-level

design and progress made in the deliverable packet as on date. Copy of the said email was also marked to Mr. Rama Raju.

iv) Investigation carried out by SEBI on the internet revealed that the Cellnet Inc. did not exist at the address mentioned in the email. Further it was noticed that there did not exist, the website www.cellnetinc.net, which was given as URL of Cellnet Inc. in the email of Mr. John Elite. Thus, it was noted that Cellnet Inc. was a fictitious entity. Mr. V.V.K Raju had also confirmed that the customers mentioned in all the 27 invoices including the invoices of Cellnet Inc. were fake.

v) Mr. Anand in his statement had also stated that the aforesaid invoices which appear in the eIMS System, were not received by him for submission to the customers nor he had followed up with the customers for payment. Mr. Anand had also stated that Mr. Rama Raju was directly dealing with the said customers

and that in the eIMS records it was shown that payments have been received. Thus, the investigation revealed that not only the customers and the invoices were fictitious, but also the payments from those customers were falsely shown to have been received.

o) Mr. Prabhakara Gupta, Head, Internal Audit in his statement had stated that in the 1st quarter of 2007-08, data in the IMS was compared with that in the Oracle Financials by the Internal Audit for the first time. That comparison was made while conducting internal audit in case of the clients viz; Cigtigroup, Bear Stearns & Agilent and found differences between the invoices reflected in the IMS as against those in the Oracle Financials. When the said differences were reported to the Finance Department of Satyam, he was told that the differences were being reconciled, however, thereafter, the Internal Audit team's access to the OFF module in Oracle Financials was removed. Mr. Prabhakara Gupta further stated that Mr. Rama Raju had directed him to close the observations regarding the reconciliation of the invoices and told him that Mr. Ramakrishna would take care of the same. Similarly, Mr. Ramakrishna told his team that

reconciliation had been done in the Citigroup case and directed them to close the observations in the Citigroup report. Thereupon, Mr. Prabhakara Gupta advised his team to close the observations in the Citigroup report, as he could not over rule the directions given by Rama Raju. Prabhakara Gupta stated that same approach was also taken in other cases. Thus, the Internal Audit team headed by Prabhakara Gupta, inspite of noticing the mismatch between the invoices in the IMS & Oracle Financials as far back as in the 1st quarter of 2007-08, closed its observations and filed false reports by recording 'that the observations has been settled' or 'to check compliance on scheduled date' or 'settled. To be verified in future'. The above invoices indentified in the Internal Audit Reports were among the 7561fake invoices noticed during the course of investigation.

p) Investigation revealed that on the basis of fictitious invoices alone the revenues of Satyam were over-stated to the extent of ₹ 4782.75 crore between 2003-04 and September 2008. The over-stated revenues necessarily had a bearing on the actual margins earned by Satyam Computers vis-à-vis the margins declared and published in the financial statements. In other words, the inflation of Satyam's sales revenues by the

huge amount of at least ₹ 4782 crore had a direct impact on the Earnings Per Share ("EPS" for short) and other ratios and norms used to evaluate the value of equity shares of Satyam in the market.

q) For the September 2008 quarter, Satyam had reported a revenue of ₹ 2,700 crore and an operating margin of ₹ 649 crore (24% of revenues) as against actual revenues of ₹ 2,112 crore and an actual operating margin of ₹ 61 crore (3% of revenues). If the sales recorded in the fictitious invoices were excluded, then Satyam would actually have reported a loss as early as in the 3rd quarter of the year 2007-2008 itself and the EPS would actually have been negative in many quarters.

r) Investigation revealed that on account of fictitious invoices the figure of debtors of Satyam was over stated to the extent of ₹ 252.44 crore as at the end of 31.03.2007, ₹ 571.12 crore as at the end of 31.03.2008 and ₹ 500.20 crore as at the end of 30.09.2008. It was observed that fictitious invoices were created in the books of Satyam with a view to create inflated receivables from fake customers.

s) In the books of Satyam it was recorded that as on 30.09.2008 Satyam had accrued interest of ₹ 376

crore on FDR amounting to 3308.41 crore which were all fictitious. Thus, there was an overstatement of accrued interest to the tune of ₹ 376 crore as on 30.09.2008. Investigation revealed that such fictitious FDRs and fictitious interest were also recorded in the book of Satyam during the years from 2003 till 2008.

t) Mr. Ramalinga Raju in his email dated 07.01.2009 stated that he had arranged for funds amounting to ₹ 1230 crore for Satyam over the past two years which were not reflected in the books of Satyam. On 08.01.2009, Satyam received identically worded letters from 37 entities, claiming that various amounts were paid by them to Satyam and asked Satyam to acknowledge receipt of the outstanding amounts in the books. Investigation revealed that Satyam had received ₹ 1425 crore through cheques drawn on behalf of the said 37 entities on various dates in 2007-2008, however, none of these receipts were reflected in the Oracle Financials. It was further observed that an amount of about ₹ 194.6 crore was paid by Satyam to various entities. These payments were reflected in the Oracle Financials, but shown as advances paid on behalf of Panchakalyani Agro Farms Pvt. Ltd. Various cheques amounting to ₹ 194.6 crore paid by Satyam were signed either by Mr. Ramalinga Raju or

Mr. Rama Raju. It was, therefore, observed that the amount of ₹ 1425 crore was received by Satyam but was not reflected in the books and financial statements, however, an amount of ₹ 194.6 crore paid by Satyam was recorded in the Oracle Financials in an incorrect and misleading manner.

u) As per the books of Satyam, net addition to TDS for assessment year 2008-09 (financial year 2007-08) was ₹ 88.73 crore, whereas the TDS amount reflected in the audited balance sheet was ₹ 61.04 crore and the actual amount of TDS for which the benefit was claimed in the income tax return filed by Satyam for the same period was only ₹ 42.68 crore. Similar, mismatch was noticed in the earlier assessment years as well.

v) Under clause 49 of the Listing Agreement, the CEO, (Mr. Rama Raju) and the CFO (Mr. V. Srinivas) were required to issue periodic certification to the effect, inter alia, that (i) the financial statements of Satyam do not contain any materially untrue statement or omit any material fact or contain misleading statements (ii) the financial statements present a true and fair view of Satyam's affairs and are in compliance with existing accounting standards, and applicable laws (iii) no transactions entered into by Satyam during the year

which are fraudulent, illegal or violative of Satyam's code of conduct (iv) they accept responsibility for establishing and maintaining internal controls for financial reporting and have evaluated the effectiveness of internal control systems of Satyam pertaining to financial reporting, have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls and the steps they have taken or propose to take to rectify those deficiencies (v) they have indicated to the auditors and the Audit Committee, the instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in Satyam's internal control system. Since the investigation revealed that the books of Satyam were inflated for years it was considered that Mr. Rama Raju and Mr. V. Srinivas had issued false certificates under clause 49 of the Listing Agreement during the relevant period.

w) Satyam had come out with a sponsored American Depository Share ('ADS' for short) issue in the year 2005, the draft prospectus of which was filed with the Securities and Exchange Commission, USA on 25.02.2005. Mr. Ramalinga Raju went ahead with this

ADS issue although he knew that it was being made on a fraudulent and false financial position. The ADS issue boosted the image of Satyam and its shares in the mind of investors. The prospectus contained inflated financial status of Satyam which were all false and manipulated. Thus, misleading picture of Satyam's financial position and business was given in the prospectus as regards the ADS issuance.

x) In April 2006 it was announced that Satyam was considering issue of bonus shares and in fact Satyam issued 32,76,94,738 equity shares in the ratio of 1:1 to the shareholders in October 2006 on the basis of false financial position disclosed in the books and made available to the public. On the above announcement made in April 2006, there was a rally in the scrip of Satyam on the NSE and BSE. As the bonus was issued on the basis of false and manipulated financial position, it was considered that Satyam declared bonus with a view to mislead the investors and to maintain an artificial price of Satyam in the market.

y) In December 2008, Satyam purported to acquire Maytas Properties Ltd. and Maytas Infra Ltd. which was abandoned on account of stiff opposition by the shareholders. Thereupon, Satyam announced that a

proposal to buy back its shares would be considered at the Board meeting to be held on 29.12.2008. All these steps were taken even though Satyam was in financial crisis and was not even able to meet its regular payment obligations. Mr. Ramalinga Raju, in his statement admitted that Satyam lacked the capacity to buy-back the shares and that the announcement was made to gain additional time to sort out the issues faced by Satyam. As a result of the above announcement made by Satyam, the Satyam scrip at NSE had risen from ₹ 157.1 to ₹ 178.4 (about 13.55%) before closing at ₹169.5 (about 7.89%). Similar upward movement was also noticed at BSE.

z) During the relevant period, Satyam had published a quarterly Investor News Update called "Investorlink", in which various business and financial "highlights" and information regarding the performance of Satyam were given. Each edition of the "Investorlink" contained Chairman's address by Mr. Ramalinga Raju wherein Satyam was shown to have sound financial position when in fact the said information was false and misleading. Similarly, Mr. V. Srinivas and others had also made various public statements from time to time including press releases in which they had made various statements regarding financial

performance, assets, liabilities, etc. which were false and misleading.

4. On the basis of the aforesaid investigation report, show cause notice/ supplementary show cause notices were issued to the appellants during the period from March 2009 to March 2010 calling upon them to show cause as to why they should not be held guilty of violating the provisions of the SEBI Act, PFUTP Regulations & PIT Regulations. They were also called upon to show cause as to why directions restraining them from entering the securities market and to disgorge the unlawful gain made by them on account of sale of Satyam shares and/or borrowings against the said shares should not be issued against them under the said provisions.

5. By a letter dated 19.04.2010, advocates for Mr. Ramalinga Raju stated that their client was in judicial custody since January 2009 and hence he was not physically in a position to meet his legal advisors or to provide instructions to any person on account of ill health. Further, it was stated that it would not be possible to reply to the SCNs unless requisite papers and documents of Satyam were made available. Similarly, other appellants in their preliminary reply, apart from denying the charges alleged in the show cause notice, submitted that in view of their detention and in the absence of obtaining inspection of all the documents, it would not be possible for them to file detailed reply to the show cause notices. Even after the appellants were released on bail, the appellants addressed letters from time to time requesting that the proceedings be kept in abeyance on the ground that the criminal proceedings initiated against the

appellants were going on a day to day basis and as per the order passed by the Apex Court it was necessary for the appellants to attend the criminal court on regular basis. Although, SEBI offered personal hearing on Saturdays when the criminal court was not functioning, the appellants expressed their inability to avail personal hearing on Saturdays inter alia on ground that on Saturdays they instruct their lawyers and prepare for the hearing on the next working day. The request made by the appellants was repeatedly rejected and the appellants were repeatedly warned that in case of failure to avail the opportunity of personal hearing, ex-parte order would be passed. Ultimately, by notice dated 30.04.2014 final opportunity of personal hearing was offered to the appellants on 12.05.2014. In the said notice it was clearly stated that pendency of CBI trial would not be accepted as a justifiable ground for their non-attendance on the date fixed for personal hearing. They were also advised that the proceedings cannot be kept abeyance anymore, as sufficient time and opportunities of being heard have been given to them in adherence to the principles of natural justice. It was also made clear, that if the appellants fail to avail the last opportunity of personal hearing (either in person or through their authorized representative), SEBI will proceed to conclude the matter and pass such order as it deems fit, based on the material available on record without any further intimation. However, none appeared on 12.05.2014 and therefore the case against the appellants was closed for orders.

6. Mr. V. Srinivas vide letter dated 09.05.2014 (received by SEBI on 12.05.2014) and Mr. B Ramalinga Raju & Mr. Rama Raju, vide letter

dated 26.05.2014, requested for cross-examination of certain persons named therein. However, rejecting the request for cross examination as a device adopted to delay the proceedings, the WTM of SEBI passed the impugned order on 15.07.2014 holding that the appellants are guilty of violating Section 12A (a) (b) (c) of the SEBI Act and regulation 3(b)(c) and (d) and regulation 4(1) and 4(2),(a),(e),(f),(k), and (r) of the PFUTP Regulations and regulations 3 and 4 of the PIT Regulations. By the said order the WTM of SEBI has restrained the appellants from accessing the securities market for a period of 14 years and further directed Mr. Ramalinga Raju and Mr. Rama Raju to disgorge jointly and severally the unlawful gain of ₹ 543.93 crore made on sale of Satyam shares while in possession of unpublished price sensitive information ("UPSI" for short) and similarly directed them to disgorge ₹ 1258.88 crore being the amount of loan sanctioned by pledging the shares of Satyam while in possession of UPSI. Mr. V. Srinivas, Mr. G. Ramakrishna and Mr. V S Prabhakara Gupta have been directed to disgorge ₹ 29.5 crore, ₹ 11.5 crore and ₹ 5.12 crore respectively, being the unlawful gain made by them on sale of Satyam shares while in possession of UPSI. All the appellants were directed to disgorge the aforesaid unlawful gains made by them with simple interest @ of 12% per annum from 07.01.2009 till the date of payment.

7. Challenging the aforesaid order dated 15.07.2014 the appellants have filed these appeals.

ISSUES

8. Basically three issues arise in these appeals, namely;

a) Whether the appellants are justified in contending that the impugned order is passed in violation of the principles of natural justice.

b) Assuming that there is no violation of the principles of natural justice, whether the WTM is justified in holding that the appellants are guilty of violating the SEBI Act, PFUTP Regulations and the PIT Regulations, 1992.

c) Assuming that the appellants are guilty of violating the SEBI Act and the regulations made thereunder, whether the WTM is justified in restraining the appellants from accessing the securities market for a period of 14 years and directing the appellants to disgorge unlawful gains quantified against each appellant with interest @ 12% per annum from 07.01.2009 till payment.

Violation of the principles of natural justice.

9. Basic argument of the appellants is that, when the appellants had repeatedly sought inspection of the documents and had sought cross-examination of the persons whose statements were relied upon in the show cause notice/ supplementary show cause notices, the WTM,

without offering inspection of documents and without offering cross-examination could not have proceeded to pass ex-parte order against the appellants. Appellants contend that they had repeatedly requested the WTM to keep the proceedings in abeyance in view of the ongoing criminal trial initiated against the appellants by CBI and the WTM even after rejecting that request had repeatedly granted adjournment from 2011 till May 2014. In such a case, it is submitted that abruptly in May 2014 the WTM could not have proceeded to close the hearing and pass ex-parte order on 15.07.2014 especially when the criminal trial was nearing completion and in fact the criminal trial was concluded on 26.06.2014. Accordingly, appellants submit that the impugned order which is passed in gross violation of the principles of natural justice is liable to be quashed and set aside.

10. Appellants further submit that the WTM was not justified in proceeding to pass ex-parte order for the following reasons:-

a) Since the WTM had granted adjournment regularly even after rejecting the plea for keeping the proceedings in abeyance the appellants had every reason to believe that on 12.05.2014 the proceedings would be adjourned.

b) After the email addressed by Mr. Ramalinga Raju on 07.01.2009, all the documents lying with the appellants were taken away by various governmental agencies. Thereafter, the appellants who ceased to be

associated with Satyam had no access to the records of Satyam and therefore, the appellants could not file detailed reply to the show cause notice. Moreover, since the criminal trial was going on day to day basis appellants could not appear before the WTM. In these circumstances, passing of the ex-parte order without giving inspection of documents has caused serious prejudice to the appellants.

c) In case of relatives/ family members/ group entities of Mr. Ramalinga Raju and Mr. Rama Raju, the WTM had granted adjournment from time to time till the criminal trial was over and only thereafter passed an order against them on 10.09.2015. However, in case of appellants, the WTM without offering inspection of documents/ cross-examination, chose to conclude the hearing even before the completion of criminal trial and chose to pass ex-parte order on 15.07.2014 which is wholly unjustified.

d) On 09.01.2009 CBI had lodged FIR against the appellants. As a result, appellants had become 'accused persons' as contemplated under Article 20(3) of the Constitution of India. As per Article 20(3) of the Constitution no person accused of any offence shall be compelled to testify against himself.

Therefore, SEBI could not have recorded the statements of the appellants after the FIR was filed by CBI on 09.01.2009. Consequently, the WTM could not have passed the impugned order based on the inadmissible statements of the appellants.

e) In the absence of any independent corroborative evidence, the WTM could not solely rely on the email and inadmissible statements of the appellants and arrive at a conclusion that the appellants are guilty of violating SEBI Act and the regulations made thereunder and further the WTM could not have relied upon the statements of co-accused and various other persons, that too without offering cross-examination of those persons to the appellants.

f) Since the officer who had recorded the statements of the appellants was not allowed to be cross-examined, the statements recorded by those officers of SEBI were involuntary statements which had no evidentiary value.

g) Even if it is held that the email sent by Mr. Ramalinga Raju on 07.01.2009 was admissible in evidence, the WTM ought to have considered the email in its entirety and not only a part of that email.

h) Relying on various decisions of this Tribunal as well as the decisions of the Apex Court including the decision of this Tribunal in case of Price Waterhouse (Appeal No. 208 of 2011 decided on 01.06.2011) and decision of the Apex Court in case of SEBI v/s Price Waterhouse (Appeal No. 6003-6004 of 2012 decided on 10.01.2017) it is submitted on behalf of the appellants that without giving inspection of documents and without permitting cross-examination, the WTM could not have proceeded to pass ex-parte order especially when the criminal trial initiated by CBI in respect of the very same violations was going on a day to day basis before the Additional Chief Metropolitan Magistrate at Hyderabad.

11. We see no merit in the above contentions.

12. Ramalinga Raju in his email dated 07.01.2009 and also in his statements recorded by SEBI had admitted that the books of Satyam were inflated/ manipulated for several years. Similarly other appellants have also admitted in their statements recorded by SEBI that the books of Satyam were inflated/ manipulated for several years. However, appellants contend that without giving inspection of documents sought for and without permitting cross-examination of the persons whose statements were relied upon in the show cause notice/supplementary show cause notices, the WTM could not have passed the impugned ex-parte order against the appellants.

13. There can be no dispute that while determining the rights and obligations of the parties the quasi judicial authority must adhere to the principles of natural justice which inter alia, includes the obligation to furnish requisite documents on the basis of which charges are framed and permit cross-examination of the persons whose statements are relied upon and further provide reasonable opportunity of personal hearing.

14. In the present case, along with the show cause notice/ supplementary show cause notices, SEBI had annexed documents on the basis of which charges were levelled against the appellants. In their preliminary reply, appellants, generally denied the allegations made against them and submitted that they could not file detailed reply due lack of access to the records and documents of Satyam. During the course of personal hearing on 10.10.2009 advocates for Rama Raju, V. Srinivas and G. Ramakrishna sought inspection of documents which was allowed. Thereafter, on issuance of supplementary show cause notices in June- July 2009 and 22nd March 2010, apart from writing letters seeking inspection of documents/cross examination, none of the appellants (except Prabhakara Gupta) filed detailed reply and none of the appellants including Prabhakara Gupta deemed it proper to appear before the WTM whenever personal hearings were offered to them. During the period from March 2010 till May 2014 appellants repeatedly sought adjournment either on ground that inspection of documents/ cross-examination was not offered or on ground that the criminal trial initiated against them was going on a day to day basis. Even Prabhakara Gupta in

his reply stated that unless records of Satyam are furnished he cannot give meaningful reply to the charges levelled against him.

15. Argument of the appellants that they could not file their detailed reply, because, all documents lying with them were taken away by other government agencies after the email of Ramalinga Raju dated 07.01.2009 is without any merit, because, before commencement of the criminal trial initiated by CBI against the appellants in February 2011 requisite documents of Satyam were furnished to the appellants. In none of their letters the appellants had stated that apart from the records of Satyam furnished to them in the criminal trial, inspection of any other document was necessary for filing their detailed reply to the show cause notices issued to them by SEBI. Thus, the conduct of the appellants in expressing their inability to file detailed reply on ground that all documents were taken away by CBI and other governmental agencies without disclosing the fact that requisite documents of Satyam were furnished to them in the criminal trial is wholly unjustified. Appellants have not made out a case that any other specific document which was not furnished to them before commencement of the criminal trial was necessary for filing a detailed reply and failure to furnish to those documents has caused prejudice to the appellants.

16. During the period from March 2010 till May 2014 repeated requests made by the appellants to keep the proceedings initiated by SEBI in abeyance till completion of criminal trial initiated by CBI was repeatedly rejected by SEBI and the appellants were repeatedly warned

that ex-parte order would be passed if the appellants fail to avail the opportunity of hearing offered. Inspite of repeated warnings given, appellants, repeatedly failed and neglected to attend on the dates when personal hearings were offered. In fact, appellants were offered personal hearing even on Saturdays when the criminal trial was not scheduled for hearing, however, the said proposal was not accepted by the appellants on ground that on Saturdays they were holding conferences with their counsel appearing in the criminal trial. It is a matter of record that on several dates fixed for personal hearing before the WTM, appellants failed to appear even though criminal trial was not scheduled on those dates. In these circumstances, conclusion drawn by the WTM that the appellants were deliberately avoiding to participate in the proceedings and accordingly proceed to dispose of the show cause notices based on the material on record cannot be faulted.

17. Fact that SEBI even after rejecting the plea of the appellants to keep the proceedings in abeyance had adjourned the proceedings from time to time could not be a ground for the appellants to presume that adjournment would be granted on 12.05.2014, because, while adjourning the matter, every time the appellants were warned that ex-parte order would be passed if they fail to appear on the next date of hearing. Similarly, fact that V. Srinivas by his letter dated 09.05.2014 (received by SEBI on 12.05.2014) and Ramalinga Raju & Rama Raju by their letters dated 26.05.2014 sought cross-examination of the persons named therein, could not be a ground for them not to appear before the WTM on 12.05.2014. Therefore, in the facts of present case, appellants (except

Prabhakara Gupta) who are guilty of not filing detailed reply to the show cause notice/ supplementary show cause notices and the appellants including Prabhakara Gupta who are guilty of not availing the opportunity of personal hearing repeatedly offered to them, are not justified in contending that the impugned order is passed in violation of the principles of natural justice.

18. Argument advanced on behalf of the appellants that once CBI filed FIR on 09.01.2009, appellants became 'accused persons' under Article 20(3) of the Constitution and therefore, statement of appellants who were accused persons could not be recorded after 09.01.2009 under Article 20(3) of the Constitution is without any merit, because, firstly, FIR filed by CBI was not in relation to the violation committed by the appellants under the securities laws and therefore, on filing of FIR by CBI, appellants could not be said to be 'accused persons' under the securities laws. Secondly, SEBI had recorded the statements of the appellants while in judicial custody after 09.01.2009 pursuant to the order passed by the Apex Court. Once the Apex Court, subsequent to the filing of FIR by CBI on 09.01.2009, permitted SEBI to record the statements of appellants, it is not open to the appellants to contend that their statements recorded while in custody by SEBI are in contravention of Article 20(3) of the Constitution. Hence, the WTM was entitled to dispose of the show cause notices, inter alia based on the statements of appellants recorded by SEBI.

19. If at all the appellants were aggrieved by the decision of SEBI in refusing to keep the proceedings in abeyance till the criminal trial was over, the appellants could have challenged that decision of SEBI. However, the appellants neither challenged the decision of SEBI nor participated in the proceedings by availing the opportunity of personal hearing offered to them during the period from March 2010 till 12.05.2014. Thus, the appellants by their conduct have driven the WTM to proceed ex-parte and hence, appellants are not justified in contending that the impugned order is passed in violation of the principles of natural justice.

20. Strong reliance was placed by counsel for the appellants on the decision of this Tribunal in case of Price Waterhouse v/s SEBI (Appeal No. 208 of 2011 decided on 01.06.2011) & decision of the Apex Court in case of SEBI v/s Price Waterhouse (Civil Appeal No. 6003-6004 of 2012 decided on 10.01.2017) wherein the Apex Court directed SEBI to furnish all statements recorded during the course of Satyam's investigation and further directed SEBI to give inspection of all the documents collected during the investigation of Satyam.

21. In our opinion, aforesaid decisions are distinguishable on facts, because, firstly, in that case, Price Waterhouse had filed its reply to the show cause notices and had filed a detailed application seeking documents/ statements/ cross- examination. In the present case, apart from addressing letters, appellants (except Prabhakara Gupta) neither filed their reply to the show cause notices nor availed the opportunity of

personal hearing repeatedly offered to them. Secondly, Price Waterhouse had promptly challenged the decision of SEBI in refusing to give inspection of documents/ statements/ cross- examination by filing an appeal before this Tribunal. In the present case, repeated requests made by the appellants to keep the proceedings in abeyance till the criminal trial was over was repeatedly rejected and the appellants were repeatedly warned that ex-parte order would be passed if they do not avail the opportunity of personal hearing. However, the appellants neither challenged the aforesaid decision nor participated in the proceedings by availing the opportunity of personal hearing offered to them. Thirdly, in case of Price Waterhouse fact that requisite documents were furnished to them before commencement of the criminal trial, were neither raised nor considered, whereas, in the present case, specific plea of SEBI is that requisite documents of Satyam were furnished to the appellants before the commencement of the criminal trial and that fact is not disputed by the appellants. Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants.

22. Argument of the appellants that the WTM while granting adjournments to the relatives/family members of Ramalinga Raju from

time to time till the criminal trial was over was not justified in refusing to grant to the appellants is without any merit because, relatives/ family members of Ramalinga Raju had participated in the proceedings and adjournments were granted to them on merits and on ground of ongoing criminal trial. As held by the Apex Court in case of Sahara India Real Estate Corporation Ltd. v/s SEBI reported in (2013) 1 SCC 1, the rules of natural justice being founded on principles of fairness can be available only to a party which has itself been fair, and therefore, deserves to be treated fairly. In the present case, appellants who are guilty of not being fair for the reasons stated above are not justified in contending that the WTM acted unfairly by refusing to grant further adjournment to the appellants.

23. Various decisions of this Tribunal as also the decisions of the Apex Court relied upon by counsel for appellants in support their contention that inspection of documents and cross- examination ought to have been offered before proceeding to decide ex-parte, are distinguishable on facts because, in all those cases the noticees had participated in the proceedings by filing reply and by availing opportunity of personal hearing. In the present case, appellants (except Prabhakara Gupta) failed to file reply to the show cause notices for several years and the appellants including Prabhakara Gupta failed to avail opportunity of personal hearing offered to them for several years. Thus, the conduct of the appellants in not appearing before the WTM (either personally or though their representative) for several years, inspite of repeated warning given to them is wholly unjustified. In these circumstances, impugned decision

cannot be said to have been passed in violation of the principles of natural justice.

Violation of SEBI Act, PFUTP Regulations, 2003 & PIT Regulations, 1992

24. Before considering the question as to whether the WTM was justified in holding that the appellants have violated SEBI Act, PFUTP Regulations, 2003 & PIT Regulations, 1992, it would be appropriate to quote relevant provisions, which read thus:-

> ***SEBI Act, 1992***
>
> ***"Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***
>
> *12A. No person shall directly or indirectly –*
>
> *(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
>
> *(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;*
>
> *(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the*

provisions of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized stock exchange in contravention of the regulations made under this Act.]"

"Regulation 3 & 4 of PFUTP Regulations, 2003.

Prohibition of certain dealings in securities

3. *No person shall directly or indirectly-*

(a) ……..

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized

stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(e) any act or omission amounting to manipulation of the price of a security;

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities."

"Regulation 3 & 4 of PIT Regulations, 1992.

PROHIBITION ON DEALING, COMMUNICATING OR COUNSELLING

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(ii) communicate [or] counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

***Provided** that nothing contained above shall be applicable to any communication required in the ordinary course of business [or profession or employment] or under any law.*

Violation of provisions relating to insider trading.

***4.** Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

Mr. Ramalinga Raju

25. Decision of the WTM that Mr. Ramalinga Raju had violated aforesaid provisions contained in the SEBI Act, PFUTP Regulations & PIT Regulations cannot be faulted for the following reasons:-

a) Mr. Ramalinga Raju was the Promoter/Chairman of Satyam during the period from 2001 to 2008 and during that period the books of Satyam were found to be inflated/ manipulated.

b) In the email admittedly sent by Mr. Ramalinga Raju on 07.01.2009, he had stated that the Balance Sheet of Satyam as of 30.09.2008 contained inflated (non-existent) cash and bank balance of ₹ 5040 crore, (as against ₹ 5361 crore reflected in the books), contained

non-existent accrued interest of ₹ 376 crore on non-existent fixed deposits, contained understated liability of ₹ 1230 crore which was arranged by him and that there was overstated debtors position to the extent of ₹ 490 crore. He had stated in the email that for the September quarter (Q2), revenue of ₹ 2700 crore and an operating margin of ₹ 649 crore was reported as against the actual revenue of ₹ 2112 crore and an actual operating margin of ₹ 61 crore, which had resulted in artificial cash and bank balances going up by ₹ 588 crore in Q2 alone. He had also stated in the email that the gap in the Balance Sheet of Satyam had arisen purely on account of inflated profits over a period of last several years.

c) Very fact that Mr. Ramalinga Raju in his email dated 07.01.2009 stated that every attempt made to eliminate the gap over the years had failed and that in the last two years he had arranged ₹ 1230 crore by pledging the shares of Satyam (which were not recorded in the books of Satyam) clearly shows that Mr. Ramalinga Raju was instrumental in inflating/ manipulating the books of Satyam for several years. In the email, it was further stated that the gap between actual operating profit and the one reflected in the books of Satyam which was initially marginal

continued to grow over the years and attained unmanageable proportions and since the promoters shareholding in Satyam was small, his concern was that reporting actual poor performance of the Company would result in takeover and thereby exposing the gap. This statement contained in the email unequivocally shows that the books of Satyam were inflated/ manipulated with the sole object of the promoters of continuing to have control over Satyam, namely, Ramalinga Raju and his family members. Inflating/ manipulating the books is a serious offence under the SEBI Act and the PFUTP Regulations.

d) If the financial status of Satyam as reflected in the books were true, then there was no reason for Ramalinga Raju to arrange ₹ 1230 crore over a period of two years which were admittedly not reflected in the books of Satyam. This fact recorded in the email of Mr. Ramalinga Raju clearly justifies the conclusion drawn by the WTM that Ramalinga Raju was the chief orchestrator in inflating/ manipulating the books of Satyam.

e) Contents of email dated 07.01.2009 were reiterated and confirmed by Mr. Ramalinga Raju in his statements recorded on 4th, 5th & 6th February 2009. The said statements recorded by SEBI were not

retracted by Mr. Ramalinga Raju at any time till passing of the impugned order. Thus, the email and statements of Ramalinga Raju conclusively establish that he was the chief orchestrator in inflating/ manipulating the books of Satyam for several years which obviously was a price sensitive information. Before, the said price sensitive information was made public on 07.01.2009, Ramalinga Raju had sold/ disposed of Satyam shares while being in possession of unpublished price sensitive information. ("UPSI" for short). Dealing in shares of a listed company while in possession of the UPSI of that company is prohibited under the PIT Regulations, 1992.

f) Very fact that the books of Satyam were directed to be prepared on the basis of monthly bank statements received from the office of Chairman Ramalinga Raju and the fact that Ramalinga Raju in his unretracted statement had admitted to have given instruction to V. Srinivas (CFO) to 'inflate performance' of Satyam so that it was in line with 'market expectations' establishes beyond any shadow of doubt that Ramalinga Raju was instrumental in inflating/ manipulating the books of Satyam.

g) Apart from inflating/ manipulating the books of Satyam to show high performance, Mr. Ramalinga

Raju as Chairman of Satyam resorted to issuing Bonus shares to the shareholders, raised funds for expansion through American Depository Share issue, attempted to acquire group concerns, sought to buy back shares of Satyam etc. so as to mislead the investors in believing that Satyam was financially strong which was not factually true. In the news update called 'Investorlink' published by Satyam, Mr. Ramalinga Raju as Chairman of Satyam made false and misleading statements to the effect that the financial status of Satyam had reached greater heights which were factually incorrect and false.

h) Argument advanced by counsel for Ramalinga Raju that no reliance was placed on copies of the manipulated monthly statements, fabricated FDRs and excel sheets recording bogus inter-link transfers in the show cause notices and therefore, no reliance could be placed on those documents is without any merit. Show cause notices merely stated that on the basis of above documents the books of Satyam were inflated during the period from 2001 to 2008. Fact that the books of Satyam were inflated for several years is not disputed by Ramalinga Raju. It is not the case of Ramalinga Raju that the books of Satyam were inflated by documents other than the aforesaid

documents. It is also not the case of Ramalinga Raju that the documents referred in the show cause notices were not fictitious. Therefore, the above argument advanced by counsel for the appellant is without any merit and hence rejected.

i) Although statements of V. Srinivas, G. Ramakrishna and other employees of Satyam further establish that Ramalinga Raju was involved in inflating/ manipulating the books of Satyam, in our opinion, the email dated 07.01.2009 and the unretracted statements of Ramalinga Raju are sufficient to uphold the decision of the WTM that Ramalinga Raju had violated the SEBI Act, PFUTP Regulations and PIT Regulations.

Mr. Rama Raju

26. Decision of the WTM that Mr. Rama Raju had violated SEBI Act, PFUTP Regulations & PIT Regulations cannot be faulted for the following reasons:-

a) Mr. Rama Raju brother of Ramalinga Raju was the promoter/ Managing Director ("MD" for convenience) of Satyam during the period from 2001 to 2008 and during that period the books of Satyam are found to have been inflated/ manipulated.

b) As MD of Satyam, Mr. Rama Raju had access to all the financial dealings of Satyam. On 21.01.2002 the Board of Directors ("BoD" for short) of Satyam had passed a resolution authorizing either Mr. Ramalinga Raju/ Mr. Rama Raju to invest or place any fixed deposit from the surplus funds of Satyam without any limit. Investigation carried out by SEBI revealed that fictitious bank balances have been shown in the books of Satyam from 2001 onwards. During the period from 2001 to 2008 fictitious fixed deposits were shown in the books of Satyam and as on 30.09.2008 the fixed deposit as per the books of Satyam was ₹ 3318.17 crore when in fact, Satyam had fixed deposit of only ₹ 9.96 crore.

c) Investigation carried out by SEBI revealed that on 26.10.2006 Mr. Rama Raju as MD of Satyam had sent a letter to the General Manager, HSBC Ltd. at Chennai, stating that Satyam had remitted a wire transfer of USD 70 million equivalent to ₹ 316.75 crore to the Chennai branch on value dated 27.10.2006 and requested that the said funds be placed in rupee deposits as per the instructions given therein. Above letter was found to be a false letter addressed by Mr. Rama Raju, because, HSBC to whom the letter was addressed, confirmed that no

such wire transfer was received from Satyam. Investigation carried out by SEBI further revealed that the amount set out in the above letter was one of the fictitious fixed deposits shown in the books of Satyam. In these circumstances, the inference drawn by the WTM that Rama Raju was involved in generating letters requesting the creation or renewal of fictitious fixed deposits with banks so as to make such fixed deposits appear to be genuine cannot be faulted.

d) On 09.04.2006 Mr. Rama Raju had addressed an email to Mr. T.R. Anand, the then business leader of Satyam, requesting him to develop a software proposal along the lines set out in the annexure to the email. In that email Mr. Rama Raju had stated that other team members should not know that he had sent the email and directed Mr. T. R. Anand to mark to the team members only the annexure to the email and not the email itself. Copy of the said email was marked by Mr. Rama Raju to Mr. Ramalinga Raju. Accordingly Mr. T.R. Anand and his team developed a software proposal called 'DRM RightsMan' and forwarded the same to Mr. Rama Raju on 18.04.2006. Investigation carried out by SEBI revealed that Satyam had received a purchase order on 09.04.2006 itself from John V. Elite, Vice President of CellNet

Inc, London for subscribing to the DRM RightsMan for USD 98,20,000. Thereafter, Mr. T. R. Anand had received an email from John V. Elite of CellNet Inc. enquiring about the purchase order dated 09.04.2006. Copy of that email was marked by John Elite to Rama Raju. In the eIMS records of Satyam it was shown that payment of USD 98,20,000 has been received from CellNet Inc. However, investigation carried out by SEBI revealed that CellNet Inc. was a fictitious entity and in fact Satyam had not received any payment from CellNet Inc. Above facts clearly show that Rama Raju was involved in inflating/ manipulating the records of Satyam.

e) From 2005 onwards Mr. Rama Raju as M.D. of Satyam had signed 'CEO Certification' in compliance with Clause 49 of the Listing Agreement whereby he had assured the investors that the books of Satyam are maintained in accordance with law. However, investigation carried out by SEBI revealed that the books of Satyam were inflated/ manipulated for several years. Thus, it is evident that Rama Raju by his CEO certification made the investors to believe that the books of Satyam were maintained in accordance with law when in fact it was not true.

f) As an MD of Satyam, Rama Raju had signed Income Tax returns and audited balance sheets which to his knowledge did not reflect true state of affairs. Moreover, TDS amounts were also found to be differing in the Income Tax return and Balance Sheet for the same year.

g) Rama Raju as MD of Satyam was party to various issues, announcements and press releases relating to financial performance, assets, liabilities etc. of Satyam wherein rosy picture was shown about Satyam which were all false and intended to maintain an artificially high price of Satyam in the market. Adopting a manipulative device to lure the investors to invest in the shares of that company is prohibited under the SEBI Act and the PFUTP Regulations.

h) While in possession of the unpublished price sensitive information relating to the books of Satyam being inflated for several years, Rama Raju had sold shares of Satyam and made illegal gains which is prohibited under the PIT Regulations. Therefore, the decision of the WTM that Rama Raju has violated PIT Regulations cannot be faulted.

i) Counsel for Rama Raju submitted that based on the internet search the WTM could not have arrived at a

conclusion that Cellnet Inc. was a fictitious entity. We see no merit in the above contention, because, firstly, it is not the case of Rama Raju that the dealing with Cellnet Inc. was in fact genuine and secondly, in the books of Satyam it was shown that payments have been received from Cellnet Inc., but actually amounts were not received. In these circumstances, inference drawn by the WTM that Cellnet Inc. was a fictitious entity cannot be faulted.

j) Counsel for Rama Raju argued before us that neither the letter addressed by Rama Raju to HSBC on 26.10.2006 nor the email sent by him on 09.04.2006 to T. R. Anand establish that Rama Raju was party to inflating/ manipulating the books of Satyam. There is no merit in the above contention, because, if the letter dated 26.10.2006 was in fact addressed by Rama Raju to HSBC, then that letter would have been found with HSBC. Since HSBC has denied to have received that letter, it is apparent that letter dated 26.10.2006 was created to give credibility to the inflated bank balances shown in the books of Satyam. Similarly, the conduct of Rama Raju in directing T. R. Anand not to disclose the email dated 09.04.2006 to the other team members, clearly shows that the entire exercise was not genuine and therefore, Rama Raju did not

want the steps taken by him in that behalf were known to many people in the team. In these circumstances, findings recorded by the WTM that Rama Raju had violated SEBI Act, PFUTP Regulations and PIT Regulations cannot be faulted.

k) Although statements of V. Srinivas (CFO), G. Ramakrishna (VP, Finance) and other employees of Satyam further establish the involvement of Rama Raju in inflating the books of Satyam, in our opinion, facts set out hereinabove are sufficient to hold that Rama Raju had violated Section 12A of SEBI Act, regulation 3 & 4 of PFUTP Regulations, 2003 & PIT Regulations, 1992.

Mr. V. Srinivas

27. Decision of the WTM that V. Srinivas had violated SEBI Act, PFUTP Regulations, 2003 & PIT Regulations, 1992 cannot be faulted for the following reasons.

a) During the period i.e. during the period from 2001 to 2008 V. Srinivas was the Senior Vice president/ Chief Financial Officer ("CFO" for short) overseeing the departments of Finance, Legal, Secretarial and Corporate Services of Satyam.

b) In his statement recorded on 10.01.2009, V. Srinivas admitted that although he had doubts about the

availability of the bank deposits of Satyam shown in the books, he had not taken any specific action because the same were verified and certified by the auditors. In his statement recorded on 20.02.2009 V. Srinivas inter alia stated thus:-

" It is true that Shri Ramalinga Raju and the MD, Shri Rama Raju used to have periodic interactions with me along with Shri G. Ramakrishna, VP, Finance. In those interactions which started 3-4 years back, both of them used to stress on the importance of keeping up the company performance in line with the market expectations. They used to tell us that it is very important to show good results to attract customers, employees etc. and they used to say that we shall show inflated results. This, they said, needs to be done only for a limited period of time after which we can stop the practice. Both myself and G. Ramakirishna were not convinced of his argument and used to resist these directions. But, we yielded to their pressure fully believing that they will quickly rectify the situation. But that was not the case and this practice was continued for quite some time for reasons better know to them – maybe with an intention to protect the share price. Neither me nor Shri Ramakrishna got any extraordinary benefit for doing this. We only continued to cooperate in view of the long standing relationship earnestly believing that this practice will be put to an end very quickly.

On the basis of the aforesaid statement, WTM has concluded that V. Srinivas was involved in inflating/ manipulating the books of Satyam.

c) Above statement dated 20.02.2009 was sought to be retracted by V. Srinivas belatedly on 14.10.2010 i.e. after more than one and half years, by merely stating that the said statements were false, untrue and involuntary. No explanation was given as to why he gave false statement on 20.02.2009 and why there was undue delay in retracting the statement. In the absence of any explanation for the delay, it is apparent that the belated retraction after one and half years was only an afterthought and does not cast doubt on the statements of V. Srinivas recorded on 20.02.2009. It is true that the WTM committed an error in passing the impugned order without considering the belated retraction made by V. Srinivas. However, in our opinion, above error does not warrant us to interfere with the impugned order, because, the delayed retraction is without any substance and in fact the statements made by V. Srinivas on 20.02.2009 are inconsonance with the facts revealed during the course of investigation conducted by SEBI.

d) Inspite of the fact that the bank balances reflected in the books of Satyam were not true, as CFO and Head of Finance, V. Srinivas was party to the issuance of bonus shares, raising funds through ADS issue and buy back of Satyam shares etc. from time to time,

which were all intended to mislead the investors in believing that Satyam was financially sound which were factually not true.

e) As CFO of Satyam, V. Srinivas had signed CFO Certification as required under Clause 49 of the Listing Agreement to the effect that the books of Satyam were maintained in accordance with law. Since it is established that the books of Satyam were inflated/ manipulated for several years, it is apparent that the CFO certification given by V. Srinivas were totally false. It is impossible to believe that during the period from 2001 to 2008 V. Srinivas as CFO & Head of Finance was oblivious of the fact that the bank balances/ FDR's reflected in the books of Satyam were totally false and far from truth.

f) V. Srinivas had regularly made various public statements including press releases regarding financial performance, assets, liabilities etc. of Satyam wherein he had stated that year after year Satyam was achieving greater heights which are all found to be false. It is apparent that all those false statements were made by V. Srinivas only with a view to facilitate creation of artificial market credibility for Satyam in gross violation of SEBI Act and PFUTP Regulations.

g) From the facts set out hereinabove it is apparent that V. Srinivas as CFO was privy to the fact that the books of Satyam were inflated/ manipulated for several years, which was a price sensitive information and while in possession of that UPSI, V. Srinivas had sold 9,75,242 shares of Satyam during the period from 2001-2008 and made illegal profits. Therefore, the decision of the WTM that V. Srinivas made illegal gains in violation of PIT Regulations cannot be faulted.

h) Various decisions were relied upon by the counsel for V. Srinivas in support of his contention that the WTM was not justified in taking only the inculpatory part of the retracted statement ignoring the earlier statement of V. Srinivas dated 10.01.2009. In our opinion, reading the statements of V. Srinivas dated 10.01.2009 and 20.02.2009 together with the retracted statement of V. Srinivas dated 14.10.2010 it is apparent that the statement made by V. Srinivas on 20.02.2009 is in consonance with the investigation report which reveals that the books of Satyam could not be inflated/ manipulated during the period from 2001-2008 without the direct or indirect approval of V. Srinivas. Therefore, fact that the belated retraction mad by V. Srinivas has not been considered by the

WTM, does not, in the facts of present case, affect the merits of the decision taken by the WTM.

i) Various decisions were relied upon by counsel for V. Srinivas in support of the contention that without offering inspection of documents/ cross-examination, the WTM could not have passed ex-parte order against V. Srinivas. We see no merit in the above contention, because, admittedly V. Srinivas was furnished with requisite documents relating to manipulation of the books of Satyam before commencement of the criminal trial in February 2011 and without making out a case that inspection of any other document was necessary to reply to the charges levelled against him and without establishing that failure to give inspection of those documents has caused prejudice, V. Srinivas is not justified in contending that the impugned order passed without giving inspection of documents/cross-examination is bad in law. In other words, V. Srinivas who is himself guilty of not acting fairly, who is guilty of not filing reply for several years and who is guilty of not availing the repeated opportunity of personal hearing offered to him, is not justified in contending on the basis of various decisions, that failure to furnish inspection of requisite documents/ cross- examination

has caused prejudice to him and therefore the impugned order is liable to be quashed and set aside.

j) Reliance placed on a decision of the Apex Court in the case of State Bank of India v/s Chandra Govindji reported in (2000) 8 SCC 532 is misplaced, because, in that case adjournment was granted by accepting the plea for adjournment. In the present case, plea raised for keeping the proceedings in abeyance till the criminal trial was over has been specifically rejected from time to time. Therefore, reliance placed on the decision of the Apex Court in case of State Bank of India (supra) is misplaced.

k) Although statement of G. Ramakrishna (V.P. Finance) and several others establish involvement of V. Srinivas in inflating/ manipulating the books of Satyam, in our opinion, facts set out herein above are sufficient to hold that V. Srinivas had violated Section 12A of SEBI Act and regulation 3 & 4 of the PFUTP Regulations and PIT Regulations, 1992.

Mr. G. Ramakrishna

28. Decision of the WTM that G. Ramakrishna had violated SEBI Act, PFUTP Regulations, 2003 and PIT Regulations, 1992 cannot be faulted for the following reasons:-

a) During the period from 2001 to 2008, Ramakrishna worked as General Manager (Finance), Assistant Vice President (Finance) & Vice President (Finance) of Satyam.

b) In his statement recorded on 13.01.2009 Ramakrishna stated that he was responsible for taking care of Global Payroll, Indian, US & IFRS GAAP financial statements and their audit, raising of invoices with correct local taxes, treasury functions and that he used to report to Senior Vice President V. Srinivas.

c) In answer to Question No. 10, Ramakrishna stated as follows:-

> *"Q10. Please elaborate on the peculiarity you have realized about the banking arrangements and also elaborate on the possible truthfulness as a result of the peculiarity.*
>
> *A10. About 6-8 years back, in a meeting called by the Chairman, Shri B. Ramalinga Raju, in the presence of CFO Shri V. Srinivas, Managing Director Shri B. Rama Raju, myself and Manager-Finance Shri Venkatapathy Raju, we were informed about a banking arrangement having being drawn up with the Bank of Baroda, New York, for the account no. 120559 for the purpose of restricting the access to all the funds which get deposited from customers and are available there. The arrangements resulted in treasury getting a*

daily statement from the bank and a summary of the daily statement every month from the bank. The balances in this and the daily statement were the ones based on which the cash flows were managed by the treasury. The arrangement also allowed access to the complete deposits and amounts in the bank to the Chairman, Shri B. Ramaling Raju and Managing Director, Shri B. Rama Raju alone. Based on such access, the Chairman's office procures the monthly statement from the bank and sends it to the treasury through internal courier. Majority of the transactions which happen in this bank account pertain to collections from customers or transfer to other bank accounts of the company in USA or India. The transactions in the monthly statement had transactions additional to the transactions in the daily statements. Since the type of transactions which occur in both the daily statements and monthly statements were similar, the accounting for the same was done similarly."

d) In his statement recorded on 13.01.2009 Ramakrishna further admitted that he had noticed differences in the entries that appear in the daily bank statements vis a vis the monthly bank statements of BoB New York Branch, however, as per the instructions given by Ramalinga Raju 6-8 years back, the monthly bank statements were taken as the final statement for the purpose of accounting and reconciliation.

e) In his statement recorded on 16.01.2009 Ramakrishna admitted that the monthly bank statements had more receipts than the receipts reflected in the daily bank statements. As a result, bank balances shown in the financial statements were more than the actual bank balances. Ramakrishna admitted that he had never brought to the notice of the audit committee the material impact of reliance upon monthly bank statements on the books of accounts maintained by Satyam especially when the monthly bank statements were not tallying with the daily bank statements. Ramakrishna however, stated that he did not ever think that there was anything wrong with the banking arrangements. Ramakrishna further stated that he did not know of concealment/ misreporting and whenever he had raised question, V. Srinivas (CFO) used to say " *do not bother, Senior Management will take care of issues arising if any."*

f) In his statement recorded on 03.03.2009 in answer to Question No. 6 Ramakrishna stated as follows:-

> *"A6: The process of raising invoices starts from creation of a project ID and ends as a penultimate process of consolidation of the billing advice by the business unit finance. The final step is raising of the invoices based on the billing advices available. To the extent of this*

process, there was never any deviation. The application itself had inbuilt controls to make sure that no invoice can be raised without the consolidation billing advice being available for my team. The invoices raised were the only ones which were accounted in the financials and to that extent, periodic reconciliations were made. Any fictitious invoice could have come into existence only because a fictitious billing advice was made available in the application. Even in the case of excel porting, the advice for the excel porting comes to my team from the business unit finance only with reasons for the need for the excel porting. After such excel porting has been done, the business unit finance has to consolidate the ported billing advice from their log in and only after that my team can raise an invoice"

To this extent, I accept the responsibility that all the invoices raised based on consolidated billing advices was done."

g) Ramakrishna in his statement further admitted that he had given his login ID to whoever had asked since the work of raising invoices could be done only in admin login. Investigation carried out by SEBI revealed that fictitious invoices were generated by using the admin ID and password. Since Ramakrishna was the authorized person having admin ID and password, he cannot feign ignorance about the books of Satyam being inflated/ manipulated on the basis of fictitious

invoices generated by using admin ID and password. Apart of the above, Ramakrishna has further admitted in his statement that when additional entries in the monthly bank statements were bought to the notice of V. Srinivas, he was told by V. Srinivas "since we have been told that this is an arrangement let us not question". Ramakrishna admitted that the above explanation was not satisfactory, however, he did not pursue it further and instructed his staff to prepare the books on the basis of monthly statements. Ramakrishna has also admitted that he had passed on the instructions received from Ramalinga Raju, Rama Raju and V. Srinivas to his subordinates to prepare the draft accounts on the basis of monthly statements.

h) Aforesaid unretracted admissions contained in the statements of Ramakrishna clearly negate the statements/ arguments of Ramakrishna he was not aware of the fact that the books of Satyam were manipulated for several years. In these circumstances, decision of the WTM that Ramakrishna was involved in inflating/ manipulating the books of Satyam for several years in gross violation of SEBI Act and PFUTP Regulations cannot be faulted.

i) From the facts set out hereinabove, it is apparent that G. Ramakrishna (V. P. Finance) of Satyam was privy

to the fact that the books of Satyam were inflated/ manipulated for several years, which was a price sensitive information and while in possession of that UPSI, G. Ramakrishna had sold 3,53,947 shares of Satyam during the period from 2001 to 2008 and made illegal profits. In these circumstances, the decision of the WTM that Ramakrishna had made illegal gains in violation of SEBI Act and PIT Regulations cannot be faulted.

j) Argument of the appellant that failure to give inspection of documents, failure to furnish statement of Venkatapathy Raju and failure to give an opportunity to cross-examination of the persons whose statements were relied upon, has caused prejudice is unsustainable, because, G. Ramakrishna is himself guilty of not filing detailed reply to the show cause notices even after requisite documents were furnished to him before commencement of the criminal trial in February 2011 and Ramakrishna is himself guilty of not availing the repeated opportunity of personal hearing offered to him. In such a case, Ramakrishna is not justified in contending that prejudice is caused to him on account of SEBI failing to give inspection of documents and failing to provide copy of the statement/ cross-examination. Without

acting fairly in the proceedings initiated by SEBI G. Ramakrishna is not justified in contending that the WTM has acted unfairly against him.

k) Although statement of V. Srinivas and several others further establish involvement of Ramakrishna in inflating/ manipulating the books of Satyam for several years, in our opinion, facts set out hereinabove would justify the conclusion drawn by the WTM that Ramakrishna had violated SEBI Act, PFUTP Regulations and PIT Regulations.

Mr. Prabhakara Gupta

29. Decision of the WTM that Prabhakara Gupta had violated SEBI Act, PFUTP Regulations, 2003 and PIT Regulations, 1992 cannot be faulted for the following reasons:-

a) Prabhakara Gupta was the Head, Internal Audit of Satyam during the relevant period i.e. during the period from 2001-2008.

b) Role of Prabhakara Gupta was to get the internal audit conducted in accordance with the annual audit plan approved by the audit committee.

c) It is not in dispute that while conducting Internal Audits in case of clients of Satyam, such as, Citigroup, Bear Stearns & Agilent, Internal Audit

detected differences between the invoices reflected in the IMS as against those in the Oracle Financials. Investigation carried out by SEBI revealed that the invoices detected in Oracle Financials which were not appearing in IMS were among the fake invoices inserted in the system to inflate performance of Satyam.

d) Prabhakara Gupta in his statement admitted that subsequent to the Internal Audit reporting the disparity in the invoices shown in the IMS and Oracle Financials, the access to OFF module in Oracle Financials was removed for the Internal Audit team. Prabhakara Gupta admitted that some time in July 2008, Rama Raju telephoned and directed Prabhakara Gupta to close the audit observations relating to the mismatch of invoices found in the two systems of Satyam and that Ramakrishna would take care of it. Prabhakara Gupta stated that he could not overrule the directions given by Rama Raju and therefore advised his team to close the observations made in case of Citigroup. Accordingly, it was recorded in the report that the audit observation has been settled.

e) Investigation carried out by SEBI revealed that the audit observations were closed in case of Citigroup

without any reconciliation. Very fact that Prabhakara Gupta even after noticing the mismatch of invoices, agreed to close the observations without any reconciliation clearly justifies the conclusion drawn by the WTM that Prabhakara Gupta ensured that fake invoices detected during the course of audit were not pursued further. In these circumstances, Prabhakara Gupta is not justified in contending that he had no reason to believe that the books of Satyam were inflated/ manipulated and therefore, the finding recorded by the WTM that Prabhakara Gupta had violated SEBI Act and PFUTP Regulations cannot be faulted.

f) Under the Satyam's Internal Audit Manual, Prabhakara Gupta as Head of Internal Audit was duty bound to bring to the notice of audit committee the irregularities if any found in the financial statements during the course of Internal Audit. Although it is contended that the mismatch in the IMS and Oracle Financials was not considered to be a major irregularity so as to report it to the Audit Committee, in our opinion, very fact that Prabhakara Gupta closed the audit observations without any reconciliation clearly shows that Prabhakara Gupta made false observations in the audit report obviously with a view

to ensure that the audit committee is kept in dark about the fake invoices noticed during the course of internal audit on the basis of which the books of Satyam were inflated/ manipulated.

g) Argument advanced by counsel for Prabhakara Gupta that there was no reason for Prabhakara Gupta and his team to suspect that the mismatch was due to fake invoices and that they genuinely believed that the differences could be reconciled is untenable, because, if the mismatch in the two systems could be reconciled genuinely, then there was no reason for Prabhakara Gupta to close the audit observations without any reconciliation. Very fact that the audit observations were closed without reconciliation and the same was concealed from the audit committee, clearly shows that Prabhakara Gupta aided and abetted Ramalinga Raju and others in ensuring that the basis on which the books of Satyam were inflated/ manipulated, were not exposed.

h) Fact that the mismatch between the two systems were brought to the notice of the Finance Department and the Business Unit of Satyam did not absolve Prabhakara Gupta from his obligation to report the mismatch to the Audit Committee as contemplated under the Internal Audit Manual. In these

circumstances, Prabhakara Gupta who has falsely recorded that the audit observation regarding mismatch of invoices have been settled is not justified in contending that he has not violated SEBI Act and the PFUTP Regulations.

i) Fact that Prabhakara Gupta and his team did not have any role in the preparation of financial statements does not absolve Prabhakara Gupta as Head of Internal Audit from the obligation to ensure that the financial statements were prepared in accordance with law. Very fact that Prabhakara Gupta sought to close the audit observation without reconciliation and failed to bring it to the notice of the audit committee itself is in gross violation of the Inter Audit Manual. Therefore, the finding recorded by the WTM that Prabhakara Gupta even after noticing serious irregularities in the financial statements permitted the inflated/ manipulated financial statements to go as genuine financial statements in gross violation of SEBI Act and PFUTP Regulations cannot be faulted.

j) Argument that Prabhakara Gupta had no reason to believe that the mismatch between the two systems of Satyam was due to the accounting fraud committed by Satyam is falsified by his own conduct in falsely closing the audit observations regarding the mismatch

of invoices in the two systems of Satyam as settled. Making the above false statement in the audit report was obviously with a view to ensure that the fictitious invoices on the basis of which the books of Satyam were inflated/ manipulated were not exposed.

k) Various decisions were relied upon by the counsel for Prabhakara Gupta in support of the contention that the impugned order passed without offering inspection of documents/cross-examination is bad in law. We see no merit in this contention, because, admittedly requisite documents were furnished to the appellant before commencement of the criminal trial in February 2011. Prabhakara Gupta has not made out any case that even after receipt of those documents any particular document was necessary to effectively deal with the charge levelled against him and failure to furnish that document has caused prejudice. Apart from the above, Prabhakara Gupta who is guilty of not availing the repeated opportunity of personal hearing is not justified in contending that the impugned order is passed in violation of the principles of natural justice.

l) From the facts set out hereinabove, it is apparent that Prabhakara Gupta, Head (Internal Audit) was privy to the fact that the books of Satyam were inflated, which

was a price sensitive information and while in possession of that UPSI, Prabhakara Gupa had sold 95,064 shares of Satyam and 4950 ADS of Satyam during the period from 2001- 2008 and made illegal profits, in violation of PIT Regulations. In these circumstances, decision of the WTM that Prabhakara Gupta violated SEBI Act, PFUTP Regulations & PIT Regulations cannot be faulted.

Debarment for 14 years and direction to disgorge the illegal gains.

30. Question then to be considered is, whether in the facts of present case, the WTM is justified in restraining all the appellants from accessing the securities market for 14 years and directing the appellants to disgorge the amounts specified against each appellant with interest at the rate of 12% per annum for the period from 07.01.2009 till payment.

31. At the outset, it is relevant to note that the impugned order is an ex-parte order passed by the WTM as the appellants failed to appear before the WTM even though repeated opportunities of personal hearing were given to them. In such a case, the WTM was duty bound to consider all material facts on record before issuing the impugned direction against the appellants.

32. In the email dated 07.01.2009 Ramalinga Raju had admitted that the basic reason for inflating the books of Satyam was that the promoter group of Satyam apprehended that reporting poor performance of Satyam

may result in the control of Satyam being taken over by third parties especially when the promoters held a small percentage of equity of Satyam. Investigation carried out by SEBI revealed that Ramalinga Raju as Chairman and Rama Raju as, MD of Satyam were instrumental in creating fictitious invoices, fictitious receipts etc. on the basis of which fictitious monthly bank statements were prepared, whereas, V. Srinivas (CFO), G. Ramakrishna (V. P. Finance) and Prabhakara Gupta (Head, Internal Audit) inspite of noticing introduction of fictitious documents, allowed the books of Satyam being prepared on the basis of those fictitious documents. In such a case, reason as to why V. Srinivas, G. Ramakirshna and Prabhakara Gupta have been treated on par with Ramalinga Raju and Rama Raju and uniformly restrained from accessing the securities market for 14 years is not set out in the impugned order. In the absence of reasons recorded in the impugned order, it is difficult to ascertain the basis on which uniform restraint order has been passed against all the appellants.

33. Moreover, the directions given by the WTM against the appellants for disgorgement of the illegal gains are based on criteria which are wholly unsustainable in law and the said directions are given without application of mind as can be seen from the following:-

a) By show cause notices issued in the year 2009-10, Ramalinga Raju and Rama Raju were called upon to show cause as to why they should not be directed to disgorge jointly and severally ₹ 543.93 crore being

the illegal gain arising on sale/transfer of Satyam shares while in possession of UPSI during the period from 2001-2008 which were sold/ transferred by Ramalinga Raju, Rama Raju and several other connected entities/ persons ('connected entities' for convenience) named therein. Thus, the show cause notice requited Ramalinga Raju and Rama Raju to disgorge not only the illegal gain made by them but also required them to disgorge the illegal gain made by the connected entities. In the meantime, on 19.06.2009 (on 15.09.2009 in case of B. Rama Raju, Jr.) show cause notice was also issued to the connected entities calling upon them to show cause as to why illegal gains made by each member of the connected entity group should not be directed to disgorge the illegal gains individually. Thus, on one hand, illegal gain made by the connected entities were considered to be the illegal gain made by Ramalinga Raju and Rama Raju and on the other hand, illegal gain made by the connected entities were considered to be the illegal gain made by each member of the connected entity group individually. From the aforesaid two sets of show cause notices it is apparent that SEBI itself was not clear as to who had made illegal gains and who should be directed to disgorge

the illegal gains arising on sale/transfer of Satyam shares by the connected entities.

b) By the impugned ex-parte order dated 15.07.2014 the WTM held that the illegal gain arising on sale/ transfer of Satyam shares by the connected entities were the illegal gain made by Ramalinga Raju and Rama Raju and accordingly directed them to disgorge not only the illegal gain made by them but also to disgorge the illegal gain arising from sale/transfer of Satyam shares by the connected entities. In the impugned order, the WTM has not given any reason as to why the illegal gain made by the connected entities were liable to be treated as illegal gain made by Ramalinga Raju and Rama Raju especially when the show cause notice dated 19.06.2009 seeking to recover the said illegal gain from the connected entities was pending. The WTM was very well aware of the said show cause notice dated 19.06.2009 and in fact, the very same WTM was considering the cause shown by the connected entities in reply to the show cause notice dated 19.06.2009. Therefore, decision of the WTM in treating the illegal gain made by the connected entities as the illegal gain made by Ramalinga Raju and Rama Raju without assigning reasons is wholly unjustified.

c) It is interesting to note that the very same WTM has disposed of the show cause notice dated 19.06.2009 by order dated 10.09.2015, wherein he has held that the illegal gain made by the connected entities were liable to be disgorged by the respective member of the connected entity group, jointly and severally with Ramalinga Raju and Rama Raju. Thus, in relation to the illegal gain made by the connected entities, the WTM has passed two different orders which are mutually contradictory. It is unfortunate that SEBI is defending both the orders passed by the very same WTM which are mutually contradictory.

d) Very fact that the WTM by his order dated 10.09.2015 has held that the illegal gain made by the connected entities are liable to be disgorged by individual member of the connected entity group jointly and severally with Ramalinga Raju and Rama Raju clearly shows that the WTM did not agree with his own decision contained in the impugned order dated 15.07.2014. In such a case, WTM ought to have recorded reasons as to why the order dated 15.07.2014 was erroneous and the reason as to why he is taking a contrary view in his order dated 10.09.2015. Instead, in para 63 of the order dated 10.09.2015 the WTM has

recorded that the order dated 15.07.2014 is also correct and enforceable, however, the WTM has recorded that the same amount shall not be recovered twice. Thus, the decision of SEBI in seeking to enforce the direction contained in the order dated 15.07.2014 in relation to the illegal gain made by the connected entities, even after finding it to be erroneous is wholly unjustified.

e) Fact that two sets of mutually contradictory show cause notices issued by SEBI to the parties could be decided by two separate orders, did not mean that the WTM must also pass two orders which are mutually contradictory in nature.

f) Argument advanced by counsel for SEBI that Ramalinga Raju and Rama Raju cannot make any grievance about the impugned order in view of the subsequent order dated 10.09.2015, because, the subsequent order is beneficial to them and in fact seeks to reduce the burden imposed on Ramalinga Raju and Rama Raju by the impugned order dated 15.07.2014 is wholly without any merit. A quasi judicial authority is duty bound to pass orders which are consistent in nature and not to pass orders which are favourable/beneficial to the parties. In the present

case, the WTM was required to consider the question, as to who had made illegal gain on sale/transfer of Satyam shares by the connected entities while in possession of UPSI and accordingly direct that person/ entity to disgorge the illegal gain. By the impugned order dated 15.07.2014 the WTM without assigning any reason held that the said illegal gain was made by Ramalinga Raju and Rama Raju and accordingly directed them to disgorge the illegal gain jointly and severally. In the subsequent order dated 10.09.2015 the WTM has held that the illegal gain was made by individual member of the connected entity and without assigning any reason held that the said illegal gain be disgorged by individual member of the connected entity group jointly and severally with Ramalinga Raju and Rama Raju. Inspite of the above glaring inconsistency, argument of SEBI that the said inconsistency being favourable/ beneficial, the appellants cannot make a grievance, is really astonishing.

g) Similarly, direction given by the WTM that Ramalinga Raju & Rama Raju must jointly and severally disgorge ₹ 1258.88 crore is also without any merit. According to SEBI, in September 2006, Ramalinga Raju, Rama Raju and their spouses had

transferred shares of Satyam held by them to SRSR Holdings Pvt. Ltd. ("SRSR" for short) a company wholly owned by Ramalinga Raju, Rama Raju and their family members. Between October 2007 and September 2008, SRSR pledged the Satyam shares transferred by Ramalinga Raju, Rama Raju and their spouses with a view to enable 10 group entities belonging to Ramalinga Raju and Rama Raju's family to avail loan from financial institutions. Without recording reasons in the impugned order as to how pledging Satyam shares through SRSR to avail loan for 10 group entities amounts to making illegal gain by Ramalinga Raju and Rama Raju, the WTM could not have directed disgorgement of ₹1258.88 crore by Ramalinga Raju and Rama Raju jointly and severally.

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

an obligation to repay could not by itself constitute gain under any provision of the securities laws.

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

j) It is interesting to note that on one hand show cause notices were issued to Ramalinga Raju and Rama Raju in the year 2009-2010 for disgorgement of ₹1258.88 crore which was the loan amount sanctioned on pledge of Satyam shares by SRSR and on the other hand on 19.06.2009 show cause notice was issued to SRSR for disgorgement of the very same amount of ₹1258.88 crore, representing the sanctioned loan. Thus, the show cause notices issued by SEBI itself

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

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

k) Similarly, quantum of illegal gain determined in case of V. Srinivas, G. Ramakrishna and Prabhakara Gupta are also faulty, because in all the three cases the WTM has taken the closing price prevailing on the dates on which Satyam shares were sold/ transferred by those three persons and not the amounts actually received by them on sale/transfer of Satyam shares. Apart from the above, V. Srinivas in his reply dated 14.10.2010 had specifically stated that while computing the illegal gain, the sale proceeds received should be reduced by cost of acquisition and the taxes paid. However, in the impugned order, the WTM has neither recorded the quantum of sale proceeds realised by the above three persons nor considered their plea for reducing the cost of acquisition and taxes paid from the sale proceeds received. In these circumstances, in the absence of material facts, we have no option to set aside the impugned order to the extent it relates to restraining the appellants from accessing the securities market and the quantum of illegal gain directed to be disgorged by V. Srinivas, G. Ramakrishna & Prabhakara Gupta.

34. In the result, we pass the following order:-

a) Argument of the appellants that the impugned order passed on 15.07.2014 without giving inspection of documents and without permitting the appellants to cross-examine the persons whose statements were relied upon in the show cause notice, is violative of the principles of natural justice cannot be accepted because, admittedly, before commencement of the criminal trial in February 2011 all documents relating to the charge of inflating/ manipulating the books of Satyam were made available to the appellants and inspite of receiving requisite documents appellants (excluding Prabhakara Gupta) failed and neglected to file detailed reply to the show cause notices till May 2014. Moreover, during the period from 2011 till May 2014 appellants, including Prabhakara Gupta consistently failed and neglected to participate in the proceedings before the WTM even though their request for keeping the proceedings in abeyance till conclusion of the criminal trial was repeatedly rejected and repeatedly the appellants were warned that ex-parte order would be passed if they fail to avail the opportunity of hearing. In these circumstances, in the facts of present case, argument

of the appellants that the impugned order is violative of the principles of natural justice cannot be accepted.

b) Email admittedly sent by Ramalinga Raju on 07.01.2009 as also the statements of the appellants recorded by SEBI and the documents referred to in the show cause notices issued to the appellants clearly establish that the appellants were instrumental/ involved in inflating/ manipulating the books of Satyam during the period from 2001 to 2008. That information was a price sensitive information and while in possession of that unpublished price sensitive information, appellants had sold/ transferred shares of Satyam and made huge profits. In these circumstances, decision of the WTM that the appellants violated the provisions contained in the SEBI Act, PFUTP Regulations and PIT Regulations, 1992 cannot be faulted.

c) For the reasons stated in para 33 hereinabove, we hold that the decision of the WTM in uniformly restraining all the appellants from accessing the securities market for 14 years without assigning any reasons is unjustified. Similarly, the quantum of illegal gain directed to be disgorged by each appellant is based on grounds which are mutually contradictory and also

without application of mind. In these circumstances, we set aside the impugned order to the extent it relates to the period for which the appellants are restrained from accessing the securities market and the quantum of illegal gain directed to be disgorged by the appellants and remand the matter to the file of the WTM of SEBI for passing fresh order on merits and in accordance with law. Fresh order be passed as expeditiously as possible preferably within a period of 4 months from today. Appellants are directed to co-operate in the proceeding so as to enable the WTM to pass fresh order expeditiously.

d) Statement made by counsel for each appellant as also the statement made by G. Ramakrishna appearing in person that they shall not access the securities market and shall not buy, sell or otherwise deal in securities, directly or indirectly till the WTM passes fresh order on merits and in accordance with law, is accepted. Accordingly, we direct that the appellants shall not access the securities market and shall not buy, sell or otherwise deal in securities, directly or indirectly till fresh order is passed by the WTM of SEBI on merits and in accordance with law.

35. All the aforesaid appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

12.05.2017
Prepared & Compared By: PK