BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 08.02.2017
Date of Decision : 10.03.2017

Appeal No. 41 of 2014

1. Mr. Dushyant N. Dalal
   62B Pedder Road,
   (Dr. Gopalrao Deshmukh Marg),
   Mumbai- 400 026

2. Mrs. Puloma D. Dalal
   62B Pedder Road,
   (Dr. Gopalrao Deshmukh Marg),
   Mumbai- 400 026 …Appellants

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. Gaurav Joshi, Senior Advocate with Mr. Ravichandra Hegde and Ms. Aashni Dalal, Advocates i/b J. Sagar Associates for Appellants.

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

WITH
Appeal No. 313 of 2014

M/s Alka Securities Ltd.
Maitri, Plot No. 10, Road No. 10,
Nutan Laxmi Society, JVPD, Juhu,
Mumbai- 400 054 …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. Sean Wassoodew, Advocate for the Appellant.

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

WITH
Appeal No. 314 of 2014

Brijesh Kothari
Maitri, Plot No. 10, Road No. 10,
Nutan Laxmi Society, JVPD, Juhu,
Mumbai- 400 054 …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. Sean Wassoodew, Advocate for the Appellant.

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

WITH
Appeal No. 315 of 2014

Smt. Alka Pandey
Maitri, Plot No. 10, Road No. 10,
Nutan Laxmi Society, JVPD, Juhu,
Mumbai- 400 054 …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. Sean Wassoodew, Advocate for the Appellant.

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

WITH
Appeal No. 400 of 2014

Mr. Ashok Ramswaroop Panchariya
Also on behalf of

Shri Ramswaroop Panchariya

Smt. Saritadevi Panchariya

Smt. Radhadevi Panchariya

Address of the Appellants:
04, Vrundavan Bunglows,
Near Shyam Vihar Bunglows,
Thaltej, Shilaj Road,
Ahmedabad 380 052 …Appellants

Versus

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

Ms. Mona Vora, Advocate for Appellants.

Mr. Rajesh Nagory, Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

WITH
Appeal No. 392 of 2015

1. Parsoli Corporation Limited

2. Zafar Sareshwala

3. Uves Sareshwala

4. Talha Sareshwala

5. Saleha Sareshwala

6. Mohammed Kothawala

7. Amena Kothawala

8. Fatema Kothawala

9. Maksud Kothawala

10. Mariam Kothawala

11. Mukhtar Kothawala

12. Gulam Bombaywala

13. Iftekhar Mansoori

14. Aslamkhan Pathan

15. Abdulhamid Memon

16. Abdulsamad Memon

17. Taskeen Sareshwala

18. Vajiha Sareshwala

19. Juveria Puthawala

20. Aaliya Sareshwala

Address of the Appellants:

6, Faize Mohammedi Society,
Narayan Nagar Road,
Paldi,
Ahmedabad- 380 007 …Appellants

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. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Deepak Dhane and Mr. Joseph, Advocates i/b Joby Mathew & Associates for Appellants.

Mr. Rajesh Nagory, Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat and Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

AND
Appeal No. 432 of 2015

Shri Suresh Bharrat
C-2/7, Janak Puri,
New Delhi 110 058 …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. J. J. Bhatt, Advocate i/b Ms. Rinku Valanju, Advocate for Appellant.

Mr. Rajesh Nagory, Advocate with 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. Whether Section 28A inserted to the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) with effect from 18.07.2013 imposes interest liability on a person who fails to pay the amounts specified in Section 28A within the stipulated time and if so, whether Section 28A can be invoked for demanding interest on the amounts due to SEBI pursuant to the orders passed prior to 18.07.2013 is the question raised in all these appeals.

2. The appellants in all these appeals have challenged the orders passed by the Recovery Officer ("RO" for short) wherein the RO has demanded interest on the amounts due to SEBI under the orders passed prior to 18.07.2013 from the date of the order till payment. In Appeal No. 41 of 2014, the interest is demanded on the disgorgement amount

from the date of the disgorgement order till payment. In all other appeals, interest is demanded on the penalty amount from the date of the penalty orders passed prior to 18.07.2013 till payment. Since the dispute raised in these appeals is common, all these appeals are heard together and disposed of by this common decision.

3. For resolving the dispute raised in these appeals, facts of each case have little relevance. However, for better appreciation of the dispute, we set out relevant facts in Appeal No. 41 of 2014. Counsel for the parties state that the decision in Appeal No. 41 of 2014 would equally apply to all other appeals.

4. **Facts in Appeal No.41 of 2014 (Dushyant Dalal & Anr. vs. SEBI):-**

a) After conducting investigation in relation to shares of various companies that were issued through initial public offerings ("IPO" for short) during the period 2003-2005, the Whole Time Member ("WTM" for short) of SEBI, pending further investigation, passed an ex-parte ad-interim order on 27.04.2006 against the appellants under Sections 11, 11(4) and 11(B) of the SEBI Act. By the said order, appellants were, inter alia, prohibited from buying, selling or otherwise dealing in the securities market directly or indirectly until further orders. As a result, the shares belonging to the appellants in the demat accounts of the

appellants and their family members, were frozen and rendered inactive until further orders.

b) Thereafter, by an order dated 21.07.2009, the WTM of SEBI prohibited the appellants from accessing the securities market for a further period of 45 days from 21.07.2009 and directed the appellants to disgorge unlawful gain of ₹4.05 crore with interest amounting to ₹1.95 crore calculated @ 12% per annum for four years (2005-2009) on the unlawful gain of ₹ 4.05 crore within 45 days from 21.07.2009. The WTM of SEBI further held that if the aforesaid amount was not paid within 45 days, then, the appellants shall be restrained from accessing the securities market for a further period of seven years without prejudice to SEBI's right to enforce the disgorgement order.

c) Appeals filed by the appellants against the disgorgement order dated 21.07.2009 were dismissed by this Tribunal on 12.11.2010.

d) Further appeal filed by the appellants against the order of this Tribunal dated 12.11.2010 was dismissed by the Apex Court on 21.02.2011. Review Application filed by the appellants was also dismissed by the Apex Court on 24.08.2011.

e) On 18.07.2013 the Securities Laws (Amendment) Ordinance ("1st Ordinance" for convenience) was promulgated by the President of India. By that Ordinance, inter alia, Section 28(A) was sought to be inserted to SEBI Act with a view to provide a mechanism for recovery of the amounts specified in that Section.

f) As the Securities Laws (Amendment) Bill in terms of the 1st Ordinance (with certain modifications) could not be passed, with a view to give continued effect to the provisions of 1st Ordinance, the Securities Laws (Amendment), Second Ordinance 2013 ("2nd Ordinance" for convenience) was promulgated by the President of India on 16.09.2013, whereby the 1st Ordinance was repealed and, inter alia, Section 28A was once again sought to be inserted to SEBI Act with effect from 18.07.2013.

g) As the 2nd Ordinance ceased to operate from 16.01.2014, the President of India on 28.03.2014 promulgated Securities Laws (Amendment) Ordinance, 2014, whereby, Section 28A was sought to be inserted to SEBI Act once again with retrospective effect from 18.07.2013.

h) With some modifications to the aforesaid Ordinance, Parliament enacted the Securities Laws (Amendment) Act, 2014 which received the assent of the President of India on 22.8.2014. Thus, Section 28A stood inserted to the SEBI Act with retrospective effect from 18.07.2013.

i) In the meantime on 25.09.2013, RO of SEBI in purported exercise of the powers conferred under the provisions of 2nd Ordinance dated 16.09.2013 i.e. under Section 28A of SEBI Act read with Sections 222 to 232of the Income Tax Act, 1961 and the Second Schedule to the said Act and the Rules framed thereunder, issued a certificate-cum-notice of demand, demanding ₹6 crore as per the disgorgement order. In the said notice of demand, it was stated that as per the 2nd Ordinance, the appellants would also be liable for interest, all costs, charges and expenses incurred in that behalf.

j) As the appellants failed to comply with the aforesaid certificate-cum-notice of demand, the RO on 28.10.2013 declared the appellants as "defaulters" and issued a notice of attachment under Section 28(A)(1)(b) read with Section 226 of the Second Schedule to the Income Tax Act.

k) Challenging the notice of attachment dated 28.10.2013 appellants filed Appeal No.199 of 2013 before this Tribunal. During the pendency of the said appeal, appellants sought permission to sell shares lying frozen in the demat accounts of the appellants for the purpose of making payment to SEBI as per the disgorgement order. Accordingly, by an order dated 06.12.2013 appellants were permitted to sell the shares lying in the demat accounts.

l) In continuation of the certificate-cum-notice of demand dated 25.09.2013 further certificate-cum-notice of demand was issued by the RO to the appellants on 12.12.2013 demanding ₹6 crore (₹4.05 crore towards disgorgement of unlawful gain + ₹1.95 crore towards interest @ 12% per annum on ₹ 4.05 crore for four years from 2005 up to 21.07.2009). By the said certificate-cum-notice the appellants were called upon to pay further interest on ₹ 4.05 crore @ 12% per annum from 21.07.2009 till 12.12.2013 amounting to ₹2,13,30,000/- and further interest @ 12% per annum on ₹ 4.05 crore from 13.12.2013 till payment along with costs, charges and expenses incurred in that behalf.

m) Appellants ultimately paid ₹ 6 crore to SEBI on 06.01.2014, but failed to discharge the interest liability on ₹ 4.05 crore from 21.07.2009.

n) On 16.01.2014 RO passed the impugned order demanding interest @ 12% per annum on ₹ 4.05 crore from 21.07.2009 to 12.12.2013 amounting to ₹ 2,13,30,000/- with further interest @ 12% per annum on ₹ 4.05 crore from 13.12.2013 to 5.1.2014 plus costs and charges.

o) On 17.01.2014, Appeal No.199 of 2013 filed by the appellants was disposed of by this Tribunal by permitting the appellants to file appeal against order passed by RO of SEBI on 16.01.2014 demanding interest on ₹ 4.05 crore from 21.07.2009. The appellants were also permitted to file an application before SEBI for lifting the additional debarment of 7 years imposed upon the appellants on ground that the appellants have paid ₹ 6 crore on 06.01.2014.

p) Accordingly, present appeal is filed by the appellants to challenge the order passed by the RO of SEBI dated 16.01.2014 demanding interest on ₹ 4.05 crore from 21.07.2009 till 05.01.2014. It is not in dispute that the application filed by the appellants for vacating the 7 year debarment has been rejected by SEBI.

5. Mr. Joshi, Mr. Modi learned Senior Advocates and Mr. Bhatt, Mr. Sean Wassoodew & Ms. Mona Vora, learned Advocates appearing on behalf of respective appellants submit that neither in the disgorgement order nor in any of the penalty orders passed against the respective appellants it was recorded that delay in payment would entail interest liability and therefore, in the absence of any interest liability recorded in the disgorgement/ penalty orders, the RO is not justified in demanding interest for the delayed payment of the amounts specified in the respective orders. It is further submitted that Section 28A inserted to SEBI Act with retrospective effect from 18.07.2013 does not authorize the RO to demand interest in the case of delay in paying the amounts due to SEBI under the disgorgement order or penalty order. Alternatively, it is submitted that assuming Section 28A authorizes the RO to recover the amounts referred to in Section 28A with interest in case of delay, then such authority would commence prospectively from the date on which Section 28A came into force i.e. from 18.07.2013 and therefore, the RO is not justified in demanding interest for the period prior to 18.07.2013.

6. Mr. J. J. Bhatt learned Senior Advocate appearing on behalf of SEBI submitted that Section 28A inserted to SEBI Act with retrospective effect from 18.07.2013 incorporates certain provisions of the Income Tax Act, 1961 as if the said provisions form part and parcel of the SEBI Act. As a result, the RO of SEBI is empowered to recover the amounts specified under Section 28A with interest, if the said amounts are not paid within the stipulated time. Admittedly, the appellants have failed to pay the amounts demanded by SEBI within the time stipulated in the

respective orders and therefore, the RO was justified in demanding interest from the date of the order till payment. Counsel for SEBI submits that in the case of Dushyant Dalal & Anr. (Appellants in Appeal No. 41 of 2014) the order passed by the WTM on 21.07.2009 itself stipulates that if the amount of ₹ 6 crore (₹ 4.05 crore unlawful gain + ₹ 1.95 crore interest) is not paid within 45 days, then, without prejudice to the SEBI's right to enforce disgorgement, the appellants would be further restrained from accessing the securities market for a period of seven years. According to SEBI, the order of WTM dated 21.07.2009 envisages that if ₹ 4.05 crore with interest quantified at ₹ 1.95 crore was not paid within 45 days from 21.07.2009, then the appellants subject to the right of SEBI to recover ₹ 4.05 crore with interest @ 12% per annum quantified at ₹ 1.95 crore and further interest @ 12% per annum on ₹ 4.05 crore from 21.07.2009 till payment would have to undergo additional debarment for 7 years. Therefore, fact that the appellants in Appeal No. 41 of 2014 have undergone additional debarment of 7 years on account of delay in disgorging the unlawful gain, cannot be a ground for the appellants to deny their liability to pay interest on the unlawful gain of ₹ 4.05 crore from 21.07.2009 till payment. Mr. Rajesh Nagory learned Advocate appearing on behalf of SEBI for some of the appellants submitted that although the penalty orders passed against those appellants do not specifically record the liability to pay interest on delayed payment of penalty amount, on insertion of Section 28A to SEBI Act, penalty remaining unpaid as on 18.07.2013 becomes recoverable with interest @ 12% per annum and therefore, no fault could be found with the decision of RO in demanding interest on delayed payment of the penalty.

7. Before dealing with the rival contentions it would be appropriate to quote Section 28A of SEBI Act (to the extent relevant) and Section 220 of the Income Tax Act, 1961, which read thus:-

Section 28A of SEBI Act, 1992 w. r. e. f. 18/07/2013

"***Recovery of amounts.***

28A. *(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—*

(a) attachment and sale of the person's movable property;

(b) attachment of the person's bank accounts;

(c) attachment and sale of the person's immovable property;

(d) arrest of the person and his detention in prison;

(e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from

time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1.-…….

Explanation 2.— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assessee shall be construed as a reference to the person specified in the certificate.

Explanation 3.— Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) ……..

(3) ……..

(4) For the purposes of sub-sections (1), (2) and (3), the expression "Recovery Officer "means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.]"

Section 220 of Income Tax Act, 1961

"When tax payable and when assessee deemed in default.

220. *(1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the*

service of the notice at the place and to the person mentioned in the notice :

Provided *that, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand.*

(2) If the amount specified in any notice of demand under section 156 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one per cent for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid :

Provided *that, where as a result of an order under section 154, or section 155, or section 250, or section 254, or section 260, or section 262, or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded :*

Provided further *that in respect of any period commencing on or before the 31st day of March, 1989 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated at the rate of one and one-half per cent for every month or part of a month.*

(2A) Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner may reduce or waive the amount of interest paid or payable by an assessee under the said sub-section If he is satisfied that-

(i) payment of such amount has caused or would cause genuine hardship to the assessee;

(ii) default in the payment of the amount on which interest has been paid or was payable under the said sub-section was due to circumstances beyond the control of the assessee; and

(iii) the assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him].

(2B) Notwithstanding anything contained in sub-section (2), where interest is charged under sub-section (1A) of section 201 on the amount of tax specified in the intimation issued under sub-section (1) of section 200A for any period, then, no interest shall be charged under sub-section (2) on the same amount for the same period.

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the

case may be, at the place and to the person mentioned in the said notice the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits defaults in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where an assessee has presented an appeal under section 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(7) Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.

Explanation.—For the purposes of this section, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes

of any expenditure actually incurred by the assessee outside India or if the income, whether capitalised or not, has been brought into India in any form."

Whether Section 28A imposes interest liability for the delay in payment.

8. Basic argument advanced on behalf of the appellants is that Section 28A does not contain any substantive provision for levy of interest on delayed payment of the amounts specified therein and therefore, in the absence of a statutory provision in the SEBI Act, the RO is not justified in demanding interest on the delayed payment of the amounts specified in Section 28A of SEBI Act. We see no merit in the above contention for the following reasons:-

a) Object of inserting Section 28A to the SEBI Act was to provide a mechanism for recovery of the amounts due to SEBI. Instead of prescribing an independent mechanism for collection and recovery of the amounts due to SEBI, the legislature deemed it fit to follow the mechanism provided under the Income Tax Act and accordingly inserted Section 28A to SEBI Act wherein the provisions of the Income Tax Act relating to 'collection and recovery' have been incorporated. Thus, the legislature by inserting Section 28A to SEBI Act has provided that if a person fails to pay the amounts referred in Section 28A, then the RO shall draw up a statement/certificate and proceed to recover the amounts specified in the certificate by any one or

more of the five modes specified therein and for that purpose the provisions of Section 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 as in force from time to time, in so far as may be, would apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of SEBI Act and referred to the amount due to SEBI under the SEBI Act.

b) It is well established in law that once the legislature incorporates certain provisions of an earlier Act into later Act then the provisions of the earlier Act so incorporated become part and parcel of the later Act as if the said provisions have been bodily transposed into the later Act. In the present case, by providing that the provisions of Income Tax Act and the Rules relating to 'Collection & Recovery' shall be treated as if the said provisions were the provisions of SEBI Act, the legislature has made it clear that on insertion of Section 28A, recovery of the amounts referred to in Section 28A shall be made by following the procedure prescribed under the Income Tax Act relating to 'Collection & Recovery' with such modifications as is deemed necessary.

c) Since Section 220 of the Income Tax Act is deemed to be incorporated in Section 28A of SEBI Act in its entirety, it is apparent that recovery of the amounts referred to in Section 28A are liable to be made by applying the provisions contained in Section 220 of the Income Tax Act. Section 220(1) of the Income Tax Act provides that any amount specified as payable in the notice of demand under Section 156 shall be paid within 30 days of the service of the notice of demand under Section 156 and Section 220(2) provides that if the amount specified in any notice of demand referred in Section 220(1) is not paid within 30 days, then the assessee shall be liable to pay simple interest at one percent for every month (i.e. @ 12%) or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in Section 220(1) and ending with the day on which the amount is paid.

d) It is relevant to note that Section 220(1) of the Income Tax Act does not contemplate issuance of any notice of demand, but refers to the notice of demand served under Section 156 and mandates that the amount specified in the said notice of demand shall be paid within 30 days failing which interest @ 12% per

annum would be payable under Section 220(2) on the amounts set out in the notice of demand from the end of the period mentioned under Section 220(1). Since Section 156 of the Income Tax Act is not incorporated in Section 28A of SEBI Act, the expression 'notice of demand' referred to in Section 220(1) for the purposes of recovery under the SEBI Act would be referable to the amounts demanded by SEBI under the disgorgement orders passed under Section 11B or under the penalty orders passed under Chapter VIA of the SEBI Act. Thus, on insertion of Section 28A with retrospective effect from 18.07.2013, the amounts demanded by SEBI which are enumerated in Section 28A, must be paid within 30 days, failing which the amounts demanded are liable to be recovered with interest @ 12% per annum.

e) Fact that Section 28A of SEBI Act does not specifically mention the interest liability for the delayed payment of the amounts specified therein cannot be a ground to hold that there is no substantive provision in the SEBI Act to demand interest on delayed payments. By incorporating Section 220 of the Income Tax Act in Section 28A of SEBI Act, the legislature has statutorily imposed interest liability on the delayed payment of the amounts set out in Section

28A of the SEBI Act. In other words, the liability to pay interest under Section 28A read with Section 220 is automatic and arises by operation of law. Therefore, the argument of the appellants that there is no substantive provision in the SEBI Act to demand interest and hence, the RO, could not demand interest for the delayed payment cannot be accepted.

9. Referring to regulation 32(1)(h)&(j) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 which provide for levy of interest in case of delayed open offer, it was contended on behalf of the appellants that wherever a power to levy interest was intended to be conferred, SEBI has expressly provided for the same and since Section 28A does not contain any clause for levy of interest, the RO is not justified in demanding interest on delayed payment of the amounts referred to in Section 28A. There is no merit in the above argument, because, it is the prerogative of the legislature either to impose a liability by way of a substantive provision in the statute itself or impose such liability by incorporating such substantive provisions contained in an earlier Act. In the present case, by treating inter alia Section 220 of the Income Tax Act, 1961 as forming part of Section 28A of SEBI Act, the legislature has mandatorily imposed interest liability contained in Section 220 of the Income Tax Act for recovery of the amounts set out in Section 28A. Section 220(1) of the Income Tax Act, requires the person to whom notice of demand is already served to pay the amounts set out in the demand notice within 30 days. Section 220(2) provides that if the

amounts demanded under the notice of demand is not paid within 30 days as specified in Section 220(1), then interest @ 12% per annum would be payable on the amounts specified in the notice of demand from the end of the period set out in Section 220(1). Thus, by incorporating Section 220 in Section 28A, the legislature has statutorily imposed interest liability, on the person who fails to pay the amounts specified in Section 28A of SEBI Act within 30 days of Section 28A coming into force. Therefore, argument of the appellants that under Section 28A of the SEBI Act interest cannot be demanded on delayed payment of the amounts due to SEBI cannot be accepted.

10. Strong reliance was placed by counsel for the appellants on a decision of the Apex Court in case of India Carbon Ltd. v/s State of Assam reported in (1997) 6 SCC 479 in support of their contention that provisions of the Income Tax Act incorporated into Section 28A of SEBI Act were for the limited purpose of facilitating recovery under the five modes specified in Section 28A and not with a view to impose interest liability for the delayed payment of the amounts referred to under Section 28A.

11. In our opinion, decision of the Apex court in case of India Carbon Ltd. (Supra) has no relevance to the facts of present case. In that case, it was noticed that Section 9(2) of the Central Sales Tax Act, 1956 ("CST Act" for short) provided that subject to the provisions contained in the CST Act and the rules made thereunder, the appropriate State shall on behalf of the Government of India, asses, reassess, collect and enforce payment of Central Sales Tax including any penalty payable by a dealer

under the CST Act as if the Central Sales Tax or the penalty imposed thereunder is a tax or penalty under the general Sales Tax Law of the state and for that purpose all or any of the powers under the general Sales Tax Law of the State may be exercised. In that case, the Central Sales Tax payable by India Carbon Ltd. was assessed by the Assam Sales Tax authorities and the Central Sales Tax determined as payable was demanded with interest by applying Section 35A of the Assam Sales Tax Act, 1947. Since the CST Act, 1956 did not contain any provision for levy of interest and the applicability of State Act under Section 9(2) of CST Act was limited for assessment, reassessment, collection of tax including penalty, it was held that in the absence of any specific provision to levy interest for delayed payment of Central Sales Tax under the CST Act, demand for interest based on the Assam Sales Tax Act cannot be sustained. In the present case, Section 28A specifically provides that inter alia, Section 220 of the Income Tax Act shall be deemed to be bodily incorporated into Section 28A of SEBI Act and shall be applied for recovery of the amounts due to SEBI with such modifications as deemed necessary. In other words, by incorporating Section 220 in Section 28A, the legislature has statutorily applied the interest provisions contained in the Income Tax Act for collection & recovery of the amounts under the SEBI Act. The Apex Court, in the aforesaid case noticed that no such provisions contained in the State Act were incorporated in the CST Act. Therefore, the decision of the Apex Court in case of India Carbon Ltd. (supra) has no relevance to the facts of present case.

12. It was contended on behalf of the appellants that since Section 28A uses the words 'and for this purpose' after setting out the five modes of recovery and provides that the provisions of the Income Tax Act referred to in Section 28A shall 'in so far as may be, apply with necessary modifications' clearly shows that the object of incorporating certain provisions of the Income Tax Act in Section 28A was for the limited purpose of facilitating recovery of the amounts under the five modes specified in Section 28A. We see no merit in the above contention. Very fact that the legislature has sought to incorporate in Section 28A of SEBI Act almost all the provisions contained in Chapter XVII D of the Income Tax Act under the head 'collection and recovery' clearly show that the incorporation was not limited to the modes of recovery but to adopt the entire mechanism provided under the Income Tax Act for 'collection and recovery'. It is relevant to note that Section 220 of the Income Tax Act provides for the point of time when tax etc. is, payable, and when, upon non-payment the assessee is deemed to be in default. It is only when the assessee is in default or is deemed to be in default, the Tax Recovery Officer is authorized under 222 of the Income Tax Act to issue a certificate and proceed to recover the amounts specified in the certificate by any one or more of the modes specified therein. Thus, reading Section 28A with Section 220 of the Income Tax Act it is evident that a person liable to pay the amounts specified under Section 28A must pay the said amounts within 30 days of Section 28A coming into force, failing which the RO may declare such person to be defaulter and after issuing a certificate proceed to recover the amount mentioned in the certificate with interest @ 12% per annum by any one or more of the

modes mentioned therein. Since Section 220 read with Section 28A contemplate a mechanism to be followed before initiating recovery under the five modes specified in Section 28A, the appellants are not justified in contending that Section 220 of the Income Tax Act is incorporated in Section 28A only to facilitate recovery of the amounts specified in the certificate under the five modes of recovery mentioned in Section 28A.

13. If the contention of the appellants that certain provisions of the Income Tax Act are incorporated in Section 28A only for the limited purpose of facilitating recovery under the five modes mentioned in Section 28A is accepted, then, it would render Section 220 incorporated in Section 28A otiose or redundant because, Section 220 deals with the mechanism to be followed while drawing up a recovery certificate i.e. before initiating recovery under the five modes specified in Section 28A. Moreover, once the provisions of Section 220 of the Income Tax Act are incorporated in Section 28A, full effect must be given to Section 220 of the Income Tax Act for recovery of the amounts referred to in Section 28A of SEBI Act. Not to do so would defeat the object with which Section 220 has been incorporated in Section 28A of SEBI Act. Thus, the arguments of the appellants if accepted it would render the provisions of Section 220 specifically incorporated in Section 28A redundant or otiose and therefore, such argument advanced by the appellants cannot be accepted.

14. Fact that in the 1st & 2nd Ordinances promulgated by the President of India for amending the SEBI Act, Section 220 of the Income Tax Act

was not sought to be incorporated in Section 28A, cannot be a ground to ignore the rights and obligations contained in Section 220 of the Income Tax Act which are specifically incorporated in Section 28A of SEBI Act by the Securities Laws (Amendment) Act, 2014 with retrospective effect from 18.07.2013. Very fact that the legislature, contrary to the provisions contained in the Ordinances, deemed it necessary to incorporate Section 220 of the Income Tax Act in Section 28A of SEBI Act for recovery of the amounts specified under Section 28A, clearly shows that the legislature intended to apply the rights and obligations contained in Section 220 of the Income Tax Act for recovery of the amounts specified under Section 28A of SEBI Act. Therefore, argument of the appellants that the interest liability contained in Section 220 of the Income Tax Act incorporated in Section 28A of SEBI Act would not be applicable for recovery of the amount specified under Section 28A cannot be accepted.

15. Accordingly, we hold that Section 28A read with Section 220 inserted to SEBI Act with retrospective effect from 18.07.2013 imposes interest liability on a person who fails to pay the amounts specified in Section 28A of the SEBI Act within the stipulated time.

Whether Section 28A can be invoked for demanding interest on the amounts due to SEBI pursuant to the orders passed prior to 18.07.2013.

16. Question then to be considered is, where the amounts directed to be paid under the orders passed prior to 18.07.2013 remain unpaid, then, on insertion of Section 28A, whether interest is leviable on the unpaid

amounts from the date of the orders passed prior to 18.07.2013 till payment. In other words, the question is, when Section 28A imposes the interest liability on the unpaid amounts due to SEBI from 18.07.2013, whether interest could be demanded under Section 28A on the amounts due to SEBI for the period prior to 18.07.2013.

17. Counsel for the appellants submit that in all the orders passed against the appellants prior to 18.07.2013, there was no obligation to pay interest in case of delay in paying the amount demanded under the respective orders. In such a case, it is submitted, that interest cannot be demanded for the period prior to 18.07.2013, because substantive provision relating to levy of interest contained in Section 28A was introduced in SEBI Act with effect from 18.07.2013 and not for the period prior thereto. In other words, the submission is that, when the interest liability is statutorily introduced with effect from 18.07.2013, interest cannot be demanded for the period prior to 18.07.2013.

18. Counsel for SEBI, on the other hand, submitted that as on 18.07.2013, that is, the date on which Section 28A read with Section 220 of the Income Tax Act came into force, the amounts demanded under the respective orders had remained unpaid and therefore, applying Section 220 of the Income Tax Act 'mutatis mutandis' for recovery of the amounts referred to under Section 28A of SEBI Act, the RO was justified in demanding interest on the unpaid amount from the date of the orders passed prior to 18.07.2013 till payment. It is submitted that when the RO demanded interest on the unpaid amounts, Section 28A read with Section 220 was in operation. Since interest is demanded as per Section 28A, it

cannot be said that in all these cases Section 28A read with Section 220 has been applied retrospectively. Alternatively it is submitted that even in the absence of a specific provision in the statute, SEBI based on equity, justice and good conscience could demand interest if there was delay in paying the amounts due to SEBI and therefore the RO was justified in demanding interest for the period prior to 18.07.2013.

Findings relating to all appeals except in Appeal No. 41 of 2014.

19. Argument of SEBI that the amounts demanded by SEBI remaining unpaid on 18.07.2013 could be recovered with interest from the date of the orders passed prior to 18.07.2013 by applying the provisions contained in Section 28A cannot be accepted for the following reasons:-

a) Object of inserting Section 28A to SEBI Act, was to provide a mechanism for collection & recovery of the amounts due to SEBI. Instead of providing an independent mechanism, the legislature incorporated the provisions contained in the Income Tax Act relating to 'Collection & Recovery' in Section 28A.

b) As a result of incorporating Section 220 of the Income Tax Act in Section 28A obligation to pay interest for delayed payment of the amounts due to SEBI became statutorily introduced from the date on which Section 28A

came into force. Since, the legislature has inserted Section 28A with effect from 18.07.2013, it is apparent that the interest liability under Section 28A would be operative from 18.07.2013.

c) As held by the Apex Court in the case of CIT v/s Vakita Township (P) Ltd. reported in (2015) 1 SCC 1, any substantive provision inserted for the first time which imposes any burden or liability would be prospective in nature unless otherwise provided either expressly or by necessary implication. In the present case, by the Securities Laws (Amendment) Act 2014, Section 28A is inserted to SEBI Act retrospectively from 18.07.2013. Therefore, the interest obligation under Section 28A would commence from 18.07.2013.

d) There can be no dispute that the legislature is competent to impose a liability by enacting a provision retrospectively. For example, by Section 51 of the Finance Act 1982, rule 9 & 49 of the Central Excise Rules, 1944 ("1944 Rules" for short) were amended retrospectively from the date of framing 1944 Rules. As a

result of such amendment contained in the Finance Act 1982, yarn manufactured at an intermediate stage of an integrated, continuous and uninterrupted process became excisable retrospectively from 1944. That retrospective amendment was upheld by the Apex Court in the case of J. K. Cottton Spg & Wvg Mills Ltd. v/s Union of India reported in 1987 (supp) SCC 350. In the present case, instead of inserting Section 28A retrospectively, the legislature has chosen to insert Section 28A with effect from 18.07.2013. Therefore, the interest obligation contained in Section 28A read with Section 220 would come into operation from 18.07.2013.

e) Section 220(1) of the Income Tax Act does not contemplate interest liability from the end of the period for payment mentioned in the demand notice. On the contrary, Section 220(1) provides 30 days time to a person who has failed to pay the amount demanded under demand notice. Interest @ 12% per annum is leviable under Section 220(2) only if the person fails to pay the amount demanded, within 30 days as provided under Section 220(1). Since the interest liability, if any, arises under Section

220(2) only after the expiry of 30 days stipulated under Section 220(1) and since Section 220 is made applicable for recovery of the amounts specified in Section 28A with effect from 18.07.2013, it is clear that interest liability for recovery of the amounts specified in Section 28A would arise only if the amounts are not paid within 30 days from 18.07.2013 and not prior thereto.

f) Section 220(2) provides that the interest liability @ 12% per annum would commence from the end of the period mentioned in Section 220(1) till the date of payment. Since Section 220(1) gives 30 days time to a person to pay the amount demanded and in case of failure the interest liability arises from the end of the period specified in Section 220(1), it is apparent that the interest liability under Section would commence after 30 days from 18.07.2013 and not prior thereto.

g) Section 220(3) provides that if an application is made before the expiry of the period mentioned in Section 220(1), the assessing officer may extend the time for payment or allow payment by installments, subject to such conditions as he

> thinks fit. Since Section 220 is made applicable for recovery of the amounts specified in Section 28A of SEBI Act from 18.07.2013 it is apparent that a person who has failed to pay the amounts specified under Section 28A as on 18.07.2013 could make an application under Section 220(3) before the expiry of 30 days from 18.07.2013. If the argument of SEBI that interest is leviable on the amount remaining unpaid as on 18.07.2013 is accepted, it would mean that the right conferred on the applicant to make an application under Section 220(3) seeking time to pay the amount would not be available to the applicant. Such an interpretation which renders the rights conferred on the applicant nugatory cannot be accepted.

20. Thus, Section 28A, read with various provisions contained in Section 220 of the Income Tax Act makes it abundantly clear that the rights and obligations set out therein are prospective in nature. Accordingly, we hold that where the orders passed by SEBI prior to 18.07.2013 do not envisage interest liability for the delayed payment of the amounts specified in the respective orders, on insertion of Section 28A, the RO is authorised to demand interest on the amount remaining unpaid after expiry of 30 days from 18.07.2013 and not for the period prior to 18.07.2013.

21. In the result, we hold that in all appeals, (except in Appeal No. 41 of 2014) since the penalty orders passed prior to 18.07.2013 do not contemplate interest liability for the delayed payment, the RO could not invoke Section 28A and demand interest on the unpaid amount for the period prior to 18.07.2013.

Findings relating to the interest demanded from the appellants in Appeal No. 41 of 2014.

22. In case of appellants in Appeal No. 41 of 2014, the order passed by the WTM of SEBI on 21.07.2009 contains the following directions:-

> *"a) The noticees [Mr. Dushyant Natwarlal Dalal (PAN AAAPD 5859Q) and Mrs. Puloma Dushyant Dalal (PAN AAEPD 2909B) shall not buy, sell or deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period 45 days from the date of this order, and*
>
> *b) The noticees shall disgorge the unlawful gain of ₹4.05 crore (rounded off from ₹4,05,61,579).*
>
> *c) The noticees shall also pay ₹1.95 crore (rounded off from ₹1,94,69,558), being the simple interest at the rate of 12% per annum for 4 years (2005-09) on the unlawful gain ₹4,05,61,579.*
>
> *d) The noticees shall pay the above amount of ₹6 crore (Rupees six crore) within 45 (forty five) days from the date of this order by way of crossed demand draft*

drawn in favour of "Securities and Exchange Board of India", payable at Mumbai.

e) In case the aforesaid amount ₹ 6 crore is not paid within the specified time, the noticees shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a further period of seven years, without prejudice to SEBI's right to enforce disgorgement."

23. It is contended on behalf of the appellants in Appeal No. 41 of 2014 that as per the order passed by the WTM of SEBI on 21.07.2009 the appellants were liable to pay the unlawful gain of ₹ 4.05 crore with interest amount of ₹ 1.95 crore for the period from 2005-09 within 45 days and there was no direction to pay 'further interest' or 'continuing interest' from 21.07.2009 till payment and therefore the RO is not justified in demanding further interest on ₹ 4.05 crore from 21.07.2009 till payment. It is submitted that the order dated 21.07.2009 specifically provides that if the amount of ₹ 6 crore was not paid within 45 days, the appellants would have to undergo additional debarment for 7 years which the appellants have already undergone and therefore, the RO cannot demand interest on unlawful gain of ₹ 4.05 crore from 21.07.2009 till payment.

24. We see no merit in the above contentions. Specific directions given in the order dated 21.07.2009 was that the appellants shall disgorge

the unlawful gain of ₹ 4.05 crore with interest @ 12% per annum on ₹ 4.05 crore from 2005 to 2009 amounting to ₹ 1.95 crore within 45 days, failing which, without prejudice to SEBI's right to enforce disgorgement order, the appellants shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a further period of 7 years. From the aforesaid direction it is evident that the consequence of failure to pay the amount demanded within 45 days was further debarment for 7 years without prejudice to SEBI's right to enforce disgorgement order. It obviously means that if the amount demanded with interest was not paid within 45 days then apart from the right of SEBI to recover the unlawful gain with interest, the appellants shall be additionally debarred from buying, selling or dealing in securities or accessing the securities market for 7 years. Therefore, argument of the appellants that there was no direction to pay continued interest on the disgorgement amounts in case of failure to pay within 45 days cannot be accepted.

25. The directions contained in the order dated 21.07.2009 do not even remotely suggest that if the amounts demanded with interest were not paid within 45 days, then in lieu of the interest liability the appellants would have to undergo 7 year debarment. In fact the said order specifically records that 7 years debarment is without prejudice to the right of SEBI to enforce disgorgement i.e. recovery of unlawful gain with interest.

26. Argument of the appellants that demanding further interest on the unlawful gain of ₹ 4.05 crore from 21.07.2009 till payment in addition to the 7 year debarment amounts to double jeopardy is without any merit. By order dated 21.07.2009 the appellants were called upon to pay unlawful gain of ₹ 4.05 crore with interest quantified at ₹ 1.95 crore within 45 days. It is only if the appellants failed to pay the amounts demanded within 45 days, the appellants were to undergo additional debarment of 7 years. Interest payable by the appellants after 21.07.2009 could not be quantified at the time of passing the order on 21.07.2009. In these circumstances, it is not possible to hold that the order dated 21.07.2009 intended to discharge the appellants from paying interest on the unlawful gain from 21.07.2009 till payment on account of imposing additional debarment of 7 years. In fact, debarment of 7 years was in addition to the obligation to disgorge the unlawful gain with interest till payment. Imposing additional restriction for failing to pay the amount demanded within the stipulated time would not amount to double jeopardy. Therefore, fact that the appellants have undergone additional debarment of 7 years cannot be a ground to hold that the appellants are not liable to pay interest on the unlawful gain retained by the appellants till 06.01.2014.

27. Relying on a decision of the Apex Court in case of Hope Plantations Ltd. v/s Taluk Land Board reported in (1995) 5 SCC 590 and a British decision in case of Thrasyvoulou v/s Secretary of State for the Environment reported in (1990) 2 AC 273 it was contended on behalf of the appellants that the question of levy of interest stood concluded by the

disgorgement order dated 21.07.2009 which has been upheld by this Tribunal as also the Apex Court and therefore, SEBI cannot seek to re-litigate the issue of interest in the garb of recovery proceedings.

28. It is relevant to note that while upholding the order of WTM dated 21.07.2009, neither this Tribunal nor the Apex Court held that the appellants were not liable to pay interest if the unlawful gain of ₹ 4.05 crore within 45 days after 21.07.2009. On the contrary, this Tribunal while upholding the order dated 21.07.2009 categorically held that the appellants who had made huge profits through their illegal acts and have used that money must pay interest. It is further held by this Tribunal that interest fixed @ 12% per annum by the WTM cannot be said to be excessive by any standard. Admittedly, the unlawful gain was disgorged by the appellants only on 06.01.2014 and, therefore, the RO was justified in demanding interest @ 12% per annum on ₹ 4.05 crore from 21.07.2009 till 05.01.2014.

29. Argument of the appellants that they could not disgorge the unlawful gain on account of SEBI attaching the shares lying in the demat accounts of the appellants is without any merit. For the first time in November/December 2013 the appellants requested this Tribunal to permit the appellants to sell the shares lying in the demat account and the said request was immediately allowed. Had the appellants made such request to SEBI earlier, the same would have been granted. Instead of approaching SEBI, seeking permission to sell the shares, the appellants challenged the order of SEBI before this Tribunal and before the Apex Court. Even after the dismissal of the appeal and Review Application by

the Apex Court the appellants did not approach SEBI seeking permission to sell the shares. In these circumstances, the appellants are not justified in contending that on account of attachment levied on the demat accounts, the appellants could not disgorge the unlawful gains from 21.07.2009.

30. Relying on principles analogous to Section 34 of the Code of Civil Procedure it was contended on behalf of the appellants that when the order is silent on further interest on the principal amount from the date of the order to the date of the payment, it is deemed that further interest has been refused and, therefore, in the present case since the WTM of SEBI in his order dated 21.07.2009 had not directed further interest after 21.07.2009, the RO was not justified in demanding interest from the date of the order passed by the WTM of SEBI on 21.07.2009. We see no merit in the above contentions. As already noted above, the debarment of 7 years imposed on the appellants was in addition to the obligation imposed on the appellants to disgorge the unlawful gain with interest @ 12% per annum from the date of the order till payment. Therefore, the argument of the appellants that the order passed by the WTM of SEBI on 21.07.2009 was silent with respect to further payment of interest cannot be accepted.

31. Based on the demand notices issued by the RO under Rule 2 of the Second Schedule to the Income Tax Act it was contended on behalf of the appellants that the interest liability under Section 220 would arise only after the demand notices were served on the appellants by the RO. This argument is unsustainable because, interest liability under Section

220 is automatic and does not come into operation after the demand is raised by the RO. In any event, in the present case, since the order passed by the WTM on 21.07.2009 required the appellants to disgorge the unlawful gain with interest, the RO was justified in demanding interest from the appellants. Admittedly, the unlawful gain of ₹ 4.05 crore remained with the appellants from 2005 till 06.01.2014. The appellants on 06.01.2014 paid ₹4.05 crore towards unlawful gain and ₹1.95 crore towards interest on unlawful gain only up to 21.07.2009. In these circumstances, no fault can be found with the decision of RO in demanding the interest on the unlawful gain for the period from 21.07.2009 till payment. Accordingly, we see no merit in Appeal No. 41 of 2014 and the same is hereby dismissed.

32. In the result we pass the following order:-

a) In all the appeals except in Appeal No. 41 of 2014, the penalty orders passed by the AO of SEBI prior to 18.07.2013 did not contain any obligation to pay interest if the penalty was not paid within the time stipulated in the respective penalty orders. In the absence of any direction contained in the penalty orders to pay interest for the delayed payment of penalty, the RO while implementing the penalty orders could not have demanded interest for the delayed payment of the penalty by invoking Section 28A inserted to SEBI Act with effect from 18.07.2013. On insertion of Section 28A the RO

could demand interest on unpaid penalty only if the penalty was not paid within 30 days from 18.07.2013, that is the date on which Section 28A read with Section 220 came into force. Accordingly, in all the appeals (except in Appeal No. 41 of 2014) interest demanded by the RO from the date of the penalty orders are quashed and set aside and all these matters are restored to the file of the RO for fresh computation of interest in terms of this decision.

b) In Appeal No. 41 of 2014 the directions given by the WTM of SEBI on 21.07.2009 was to disgorge the unlawful gain of ₹ 4.05 crore with interest @ 12% per annum quantified at ₹ 1.95 crore up to 21.07.2009 within 45 days from 21.07.2009 failing which, the appellants were debarred from entering the Securities market for a period of 7 years without prejudice to the right of SEBI to recover the unlawful gain with interest till payment. Since the order passed by the WTM of SEBI on 21.07.2009 contained an obligation to pay interest @ 12% per annum on the unlawful gain of ₹ 4.05 crore till payment, the RO was justified in demanding interest on the unlawful gain of ₹ 4.05 crore from 21.07.2009 till payment. Accordingly, Appeal No. 41 of 2014 is dismissed.

33. All the Appeals are disposed of in the aforesaid terms with no order as to costs.

34. After the Judgement was pronounced counsel for the appellants in Appeal No. 41 of 2014 and counsel for respondents in the remaining appeals sought stay of this decision. Accordingly, this decision is stayed for a period of 6 weeks from today.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

10.03.2017
Prepared & Compared By: PK