

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

ORIGINAL SIDE APPEAL NO.3 OF 2020

IN

COMPANY APPLICATION NO.289 OF 2016

C/W

ORIGINAL SIDE APPEAL NO.28 OF 2015

IN

COMPANY APPLICATION NO.1415 OF 2015,

COMPANY APPLICATION NO.313 OF 2015,

COMPANY APPLICATION NO.1648 OF 2014,

COMPANY APPLICATION NO.1778/2014,

COMPANY APPLICATION NO.1416/2014

IN OSA No.3/2020

BETWEEN:

BSE LIMITED

A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956

HAVING ITS REGISTERED OFFICE AT
PHIROZE JEEJEEBHOY TOWERS
DALAL STREET, MUMBAI-400 001

(REPRESENTED BY MR. ASHOK KUMAR SINGH)

...APPELLANT

BY SRI M.G. NANJAPPA, ADVOCATE FOR
SRI N.K. DILIP, ADVOCATE)

AND:

KHODAY INDIA LIMITED

A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956

HAVING ITS REGISTERED OFFICE AT

BREWERY HOUSE, 7TH MILE
KANAKAPURA ROAD
BENGALURU-560 062
REPRESENTED BY ITS EXECUTIVE DIRECTOR
MR. K.L. SWAMY

...RESPONDENT

(BY DR. ADITHYA SONDHI, SENIOR COUNSEL FOR
SRI KARAN JOSEPH A/W DUSHYANTH NARAYANAN, ADVOCATE)

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THIS ORIGINAL SIDE APPEAL IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 READ WITH RULE 6 AND 9 OF THE COMPANIES COURT RULES, 1969 READ WITH SECTION 4 OF KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE ORDER DATED 7-2-2020 AS PER ANNEXURE-A WHICH WAS CORRECTED ON 20-2-2020 AS PER ANNEXURE-B PASSED BY THE LEARNED COMPANY JUDGE AND ETC.

IN OSA NO.28/2015

BETWEEN:

SECURITIES AND EXCHANGE BOARD OF INDIA
CONSTITUTED UNDER THE SECURITIES AND
EXCHANGE BOARD OF INDIA ACT, 1992,
HAVING ITS LOCAL OFFICE AT 2ND FLOOR
JEEVAN MANDAL BUILDING
NO.4, RESIDENCY ROAD
BENGALURU-560 025
REPRESENTED HEREIN BY ITS
ASSISTANT GENERAL MANAGER
MR. N.S. SHESHASHAYEE

...APPELLANT

(BY SRI RVS NAIK, SENIOR COUNSEL FOR
SRI NITIN PRASAD AND SRI VIDUR NAIR, ADVOCATES)

AND:

KHODAY INDIA LIMITED
"BREWERY HOUSE" 7TH MILE
KANAKAPURA ROAD
BENGALURU-560 062
REPRESENTED HEREIN BY ITS

EXECUTIVE DIRECTOR
MR. K.L. SWAMY.

...RESPONDENT

(BY DR. ADITHYA SONDHI, SENIOR COUNSEL FOR
SRI KARAN JOSEPH A/W SRI DUSHYANTH NARAYANAN,
ADVOCATES)

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THIS ORIGINAL SIDE APPEAL IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 READ WITH SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 21-9-2015 IN COMPANY APPLICATION NOS.1415 OF 2015, 313 OF 2015, 1648 OF 2014, 1778 OF 2014 AND 1416 OF 2014 AND ETC.

THESE ORIGINAL SIDE APPEALS HAVING BEEN HEARD AND RESERVED ON 15-10-2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE **VENKATESH NAIK T. J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VENKATESH NAIK T)

OSA No.3/2020 is filed by the appellant/BSE Limited (Bombay Stock Exchange Limited) under Section 483 of the Companies Act, 1956 r/w Rules 6 and 9 of the Companies Court Rules, 1969 read with Section 4 of the Karnataka High Court Act to set-aside the order dated 07.02.2020 passed by

the learned Company Judge in C.A.No.289/2016 in CoP.No.132/2014, whereas, OSA No.28/2015 is filed by the Security Exchange Board of India('SEBI' for short) to set-aside the order dated 21.09.2015 passed in C.A.No.1415/2014, C.A.No.313/2015, C.A.No.1648/2014, C.A.No.1778/2014 and C.A.No.1416/2014 in CoP No.132/2014.

2. The brief facts of the appellant's case in OSA No.3/2020 are as under:-

The appellant/BSE is a recognized stock exchange as defined under the Securities Contracts (Regulation) Act, 1956 (for short 'SERA'). The respondent/Khoday India Limited is a company incorporated under the Companies Act, 1956 and is engaged in the business of manufacture and sale of Indian Manufactured Liquor. The respondent's authorized share capital is Rs.45,00,00,000/- divided into 4,50,00,000 equity shares of Rs.10/-each. The paid-up capital of the Company is Rs.37,59,12,370/- divided into 3,75,91,237/- equity shares of Rs.10/- each which is fully paid up. The respondent being a listed company was mandated to maintain minimum Public

Shareholding(MPS) (atleast 25%) under applicable provisions of law on continuous basis, till the securities are listed with the respondent. MPS is regulated under Rule 19A of the Securities Contracts(Regulation) Rules, 1957 (for short 'SCRR') and Clause 40A of the erstwhile Listing Agreement entered into between the appellant and the respondent, currently Regulation 38 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (for short 'LODR' Regulations) and Section 21 of the SCRA.

3. Since MPS was not maintained, SEBI vide its letter dated 22.12.2012 advised the respondent for necessary compliance. The respondent instead of complying MPS requirement, it has voluntarily delisted its securities with a view to avoid complying with the MPS requirement. Even, SEBI (Delisting of Equity Shares) Regulations, 2009 more specifically, Regulation 8 (1B) and the exchange requirements for voluntary delisting mandates that a listed company needs to comply with all requirements of securities laws including MPS requirement and under the Delisting Regulations, SEBI has prescribed the mode and manner of delisting the securities of a listed company from a stock

exchange, thereby, ensuring protection of the interest of shareholders/investors of the said listed company.

4. The respondent - M/s. Khoday India Limited filed C.A. No.289/2016 in Co.P No.132/2014, under Rules 6 and 9 of the Company (Court) Rules, 1959, before the Company Judge to issue a direction to the appellant-M/s. BSE Limited to confirm the 'record date' to be fixed afresh by the respondent and consequently, to issue necessary instructions to the NSDL and CDSL in that regard. In turn, the learned Company Judge directed the appellant to confirm the 'record date', that is to be fixed afresh by the respondent and also directed to issue necessary instructions to NSDL and CDSL in that regard. Being aggrieved by the directions issued by the Company Judge, the appellant preferred this appeal.

5. In the appeal, the appellant has taken the contention that the Company Judge has decided C.A. No.289/2016, which prejudiced SEBI's rights, thus, the finding of the Company Judge is contrary to the Hon'ble Apex Court's order dated 27.01.2020. Further, the sanctioning Court has to see that all the requisites and statutory

procedures for supporting such a scheme has been complied with and that the requisite meetings as contemplated under Section 391(1) (a) of the Companies Act has been held. The same principle has been enunciated in ***Hindustan Lever and another v. State of Maharashtra and another*** disposed of on 18.11.2003 reported in ***AIR 2004 SC 326*** and ***Delhi Transport v. NCT of Delhi*** disposed of on 04.12.2009 reported in ***164 DLT 375*** passed by the Delhi High Court. It is further contended that the Company Court contradicted its order dated 21.09.2015, wherein, it was observed that the SEBI proceedings shall be entertained, which would mean that the respondent is required to first comply with the provisions of Securities laws and applicable circulars issued by SEBI, pursuant to which, 'record date' could be fixed. However, the Company Court failed to appreciate the fact that, SEBI had challenged the order dated 21.09.2015 in OSA No.28/2015 in Co.P No.132/2014, which is pending adjudication before this Court. Further, the sanctioning scheme is also challenged by SEBI in OSA No.28/2015 in CoP No.132/2014. Thus, the Company Court could not have prematurely decided and passed the

impugned order. It is contended that the promoters of the respondent by violating the MPS requirements and retaining approximately 90% of the shareholding in the respondent Company had approved the scheme which would be against the interest of the public shareholders of the respondent-Company. This aspect has not been considered by the Company Court. The Company Court did not notice the aspect that the shareholders and the minority shareholders of the respondent-Company were forced to exit from respondent-Company without being adequately compensated by the promoters of respondent-Company, as required under the De-listing Regulations.

6. It is submitted that the respondent had violated repeatedly and not complied with the provisions of Rule 19A of SCRR, Clause (40A) of the erstwhile Listing Agreement, Currently Regulation No.38 of LODR Regulations r/w Section 21 of SCRA, the violations pertain to not maintaining the minimum level of public shareholding (at least 25%) as on 03.06.2013.

7. The SEBI had cautioned the respondent vide its letter dated 22.12.2012 and 15.04.2013 to maintain minimum level of public shareholding, but the respondent did not fulfill the conditions of maintaining the minimum level of public shareholding. The act of respondent would amount not safe-guarding the interest of its investors and its shareholders.

8. The appellant-BSE, in order to safeguard the interest of the public would submit that no 'record date' could have been directed to be fixed or granted till the respondent complied with the observations made by the appellant and provisions under security law.

9. It is contented that as per Regulations 14(1) of the De-listing Regulations, all public shareholders are entitled to participate in the book building process which leads to fair price discovery. BSE informed that the price to be paid to the public shareholders under the share capital scheme may not be fair, since there is no provision for price discovery mechanism put in place by the respondent-Company. This lapse would put the public shareholders in a disadvantageous

position as they may not be able to get the best price for exiting from the respondent-Company. The result would be a forced exit with an unfair price, which would be a compelled acceptance on the part of the public shareholders.

10. Further, the respondent-Company is trying to circumvent the De-listing Regulations through the proposed scheme. Chapter IV of LODR Regulations provides for obligations of listed entity which has listed its specified securities. Regulation 42 deals with fixing of 'record date'. The appellant, Bombay Stock Exchange, sought for setting aside the order dated 07.02.2020 passed by the learned Company Judge and to allow the Company Application in Co.P No.132/2014.

11. Brief facts of the appellant's (SEBI) case in OSA No.28/2015 are as follows:-

M/s. Khoday India Limited (respondent) had filed Co.P No.132/2014 under Sections 101-104 of the Companies Act seeking confirmation of the reduction of share capital before the Company Court. The Company Court, after securing

publication of filing of the petition and after inviting objections, had allowed the petition by order dated 07.08.2014. However, it is to be noted that SEBI was not made a party in the said petition. Subsequently, the SEBI filed C.A. No.1415/2014 along with other applications and sought for its impleadment as the respondent in the aforesaid petition and to recall the order dated 07.08.2014 passed by the Company Court. This Court while taking note of the said applications, though had kept the said applications pending, by the order dated 08.01.2015, ordered that the final order dated 07.08.2014 be kept in abeyance. In the mean-while, M/s. Khoday India Limited filed an appeal being aggrieved by order dated 08.01.2015 in OSA No.7/2015 before this Court and in turn, this Court remitted the matter to the learned Company Judge for consideration of applications of SEBI. Ultimately, the Company Court rejected C.A.No.1415/2014 and other connected applications. Being aggrieved by the impugned order, the SEBI has preferred the appeal in OSA No.28/2015.

12. The SEBI has taken contention that the respondent was not in a position to comply with the requirements for

voluntarily de-listing on account of non-compliance with MPS requirement. Accordingly, the respondent vide letter dated 13.02.2013, requested SEBI to grant it exemption from the applicability of De-listing Regulations in reply to the letter dated 22.12.2012 issued by SEBI, advising the respondent to comply with the MPS requirement.

13. The SEBI passed the order dated 04.06.2013 against 105 companies including the respondent and held that the respondent had failed to comply with the MPS requirement of 25% as on 03.06.2013 and imposed various restrictions on the promoters/promoter group shareholding in the said companies including freezing their voting rights and corporate benefits. On 11.06.2013, the respondent requested SEBI to pursue the salient features of the scheme and to desist from initiating action against it. In the meanwhile, the SEBI by its order dated 30.08.2013, informed the BSE of its objections to the respondent's proposed scheme and informed that the scheme of arrangement did not appear to be in the interest of investors/public shareholders and expressed concerns that the shareholders would be forced to exit without their consent and the price to be paid

to public shareholders through share reduction of capital would not be fair, since there was no price discovery mechanism put in place. This would lead to public shareholders being put in a disadvantageous position. Hence, on 06.09.2013, the BSE conveyed to the respondent its objection to the proposed scheme and expressed its inability to grant its 'No Objection Certificate' to the proposed scheme of reduction of share capital filed by the respondent.

14. In spite of objections raised by the appellants-BSE and SEBI, the respondent issued notice to all its shareholders on 20.11.2013 for the proposed scheme and facilitated voting on the Special Resolution. The respondent through its Annual General Body Meeting of its Members held on 30.12.2013 passed a special resolution for reduction of paid-up Equity Share Capital of the respondent. Consequent to the resolution passed, the respondent filed CoP.No.132/2014 before this Court for reduction of share Capital on or around 07.08.2014. On 24.07.2014, SEBI passed the final order against the respondent confirming its interim order dated 04.06.2013 with regard to non-compliance of MPS requirements prescribed in SCRR. In view of SEBI's order dated 24.07.2014 and the order

dated 07.08.2014 by this Court, the respondent filed an appeal No.326/2014 before the Securities Appellate Tribunal on 30.09.2014. In the mean-while, this Court by order dated 07.08.2014 allowed the Company Petition and sanctioned the scheme for reduction of share capital. Pursuant to the order dated 07.08.2014 passed in Company Petition by this Court, the SEBI also filed Intervening Applications in C.A.Nos.1415/2014, 1416/2014, 1467/2014 and 1468/2014 and sought to be impleaded in the proceedings.

15. Aggrieved by the order of dismissal of Company applications, SEBI filed OSA No.28/2015 in CoP.No.132/2014.

16. Subsequently, the respondent sought withdrawal of Appeal No.326/2014, which was pending before the Securities Appellate Tribunal on 07.07.2016 with liberty to make representations before SEBI, which came to be allowed by the Securities Appellate Tribunal. Thereafter, the respondent filed representations dated 26.07.2016 and 16.11.2016 before SEBI, however, the SEBI by its order dated 08.05.2017 dismissed the representations by holding

that the respondent had violated the Delisting Regulations and the MPS requirement and confirmed the Interim order dated 04.06.2013 and Confirmatory Order dated 24.07.2014.

17. In the mean-while, the respondent challenged the Interim order dated 04.06.2013 and Confirmatory Order dated 24.07.2014 passed by SEBI before the Securities Appellate Tribunal and the Appellate Tribunal by order dated 04.09.2019 allowed the appeal and quashed the Interim order dated 04.06.2013 and Confirmatory Order dated 24.07.2014 passed by SEBI. In the order dated 04.09.2019, the Appellate Tribunal issued directions requiring the respondent to comply with Part B of Annexure 1 to the Circular dated 04.02.2013 issued by SEBI, failing which, the SEBI would be at liberty to initiate proceedings against the respondent.

18. The said order dated 04.09.2019 passed by the Appellate Tribunal was challenged by SEBI before the Hon'ble Supreme Court in Civil Appeal Diary No.243/2020. The Hon'ble Supreme Court vide order dated 27.01.2020

directed that the proceedings to be continued without prejudice to the rights of SEBI. Subsequently, C.A. No.289/2016 in CoP.No.132/2014 was filed by M/s. Khoday India Limited to fix the 'Record Date' and by the impugned order dated 07.02.2020, the BSE was directed to confirm the 'Record Date' to be fixed afresh by the BSE and to subsequently issue necessary instructions to NSDL and CDSL in that regard.

19. It is contention of the learned counsel for the appellant that the impugned order passed by the Company Court is wholly perverse, arbitrary and void in law and suffers from jurisdictional error in terms of provisions of Securities and Exchange Board of India Act, 1992 and Securities Contracts (Regulation) Act, 1956.

20. We have heard learned Senior counsel for the appellants and learned Senior counsel for the respondent in both appeals.

21. Learned counsel Sri M.G. Nanjappa alongwith Sri N.K. Dilip for the appellant in OSA No.3/2020 and learned

Senior counsel Sri R.V.S. Naik, representing Sri Nitin Prasad and Sri Vidur Nair, on behalf of the appellant in OSA No.28/2015 vehemently contended that, the respondent filed Co.P No.132/2014 for sanction of scheme of reduction of share capital to circumvent the minimum public share holding and the requirements of the De-listing Regulations. The admitted object of the scheme for the respondent is to seek De-listing. The respondent, in fact, requested the SEBI for exemption from the De-listing Regulations, but the SEBI did not accede for the reason that there was no such provision for exemption. If a Company wants to De-list, it is mandatory to proceed as per the De-listing Regulations. By resorting to the capital reduction route, the respondent has sought to avoid compliance of Regulation 14(1) and 15(1) read with Schedule II of the De-listing Regulations, i.e. for fair price to the public share holders through book-building process, thereby the interest of the public share holder is severally affected, as they are being forced to exit without their consent and without proper valuation of their shares. The respondent-M/s. KHODAY, being duty bound under the SEBI Act to protect the interest of the share holders, and,

therefore, it was certainly a necessary party in the Company Petition.

22. Learned Senior counsel further contended that, the scheme for reduction of share capital and scheme of arrangement was not in the interest of investors/minority share holders. None of the share holders has objected to and their interest are being prejudiced by not permitting further action, pursuant to the order permitting reduction of share capital despite their consent for such action. Therefore, learned Senior counsel prayed to remand the matter to the Company Court.

23. In support of his contentions, learned Senior counsel for the appellant in OSA No.3/2020 relies on the following judgments:

- i. Miheer H. Mafatlal v. Mafatlal Industries Limited, reported in (1997) 1 SCC 579;
- ii. Hindustan Lever and Another v. State of Maharashtra and another reported in (2004) 9 SCC 438;
- iii. Delhi Towers Limited v. G.N.C.T. of Delhi, reported in 2009 SCC Online Del 3888.

24. Learned counsel for the appellant in OSA No.28/2015

relied upon the following decisions:-

- i) N. Narayanan v. Adjudicating Officer, Securities and Exchange Board of India, reported in (2013) 12 SCC 152;
- ii) Vishal Tiwari v. Union of India and others reported in (2024) 4 SCC 115.

25. Learned Senior counsel has further contended that for non-compliance with SCRR, orders were passed by SEBI dated 04.06.2013, 24.07.2014 and 08.05.2017 requiring compliance, which has been challenged by the applicants before the Securities Appellate Tribunal, Mumbai in Application No.148/2017 and the appeal filed by the respondent M/s. Khoday was allowed on 04.09.2019. The Tribunal held that, the scheme relating to reduction of capital under Sections 100 to 104 of the Companies Act is essentially a 'Domestic Affair', to be decided by the majority and that process could not be linked with the provisions of De-listing Regulations, therefore, reduction of share capital sanctioned under Section 100 of the Companies Act does not breach the De-listing Regulations.

26. Learned Senior counsel Sri Adithya Sondhi representing Sri Karan Joseph a/w Sri Dushyanth Narayanan,

for the respondent in both appeals vehemently contended that, the respondent sought for issue of directions to BSE to confirm 'the record date' to be fixed afresh and to issue necessary instructions to the National Securities Depositories Limited (NSDL) and Central Depositories Services Limited (CDSL), in that regard. The respondent-M/s Khoday approached this Court in CoP. No.132/2014 and this Court confirmed the reduction of share capital of M/s. Khoday. Thus, this Court directed de-listing of equity shares listed with Bombay, Madras and Bengaluru Stock Exchanges. Thus, share capital was reduced by order of this Court.

27. Learned Senior counsel further contended that, M/s. Khoday had fixed the date viz., 29.09.2014 as the "record date" and requested the BSE to issue required letter to NSDL and CDSL. However, BSE had taken the stand that request of M/s. Khoday could not be considered, as they had been instructed by SEBI to keep the proceedings in abeyance till disposal of proceedings.

28. During the pendency of CoP. No.132/2014, this Court by order dated 07.08.2014 kept the proceedings in abeyance. Thus, the respondent M/s. Khoday filed OSA. No.7/2015 and

same was remanded back to consider the application for implementation of the order of SEBI at first instance and to pass appropriate order on Company Application Nos.1415/2014 and 1416/2014. The learned Company Court passed the order approving the scheme for reduction of capital. Whereas, the Hon'ble Apex Court in Civil Appeal No.789/2020 permitted this Court to proceed with the present case.

29. In support of his contentions, the learned Senior counsel appearing for the respondent relies on the following judgments:

- i. Securities and Exchange Board of India and Union of India v. Sterlite Industries(India) Limited, reported in (2003) 113 Comp Cas 273;
- ii. Securities and Exchange Board of India vs. Sterlite Industries(India) Limited, Civil Appeal No.5438 of 2002;
- iii. Elpro International Limited., In re CP No.288/2007 disposed of on 22.06.2007 reported in (2009) 149 Comp cas 646
- iv. Mcx Stock Exchange Limited v. Securities and Exchange Board of India and others reported in (2012) 172 Comp cas 602;
- v. Securities and Exchange Board of India, SEBI Bhavan v. Ikisan Limited and a/w. Kakinada Fertilizers Limited reported in 2015 SCC Online Bom 6358;

vi.Reckitt Benckiser (India) limited In re reported in (2011) 167 Comp CAS 541;

vii.Tammalli Shivakumar v. Securities and Exchange Board of India reported in 2014 SCC Online AP 1550.

30. The contentions of BSE and SEBI are that the respondent-Khoday India Limited has not maintained minimum share holders as per the Rules. Hence, it is just and necessary to analyse Rules 10, 19(2)(b) and 19A of Securities Contract (Regulation) Rules, 2009, which reads as under:

"Rule 10. *The [Securities and Exchange Board of India] may nominate one or more persons not exceeding three in number, as member or members of the governing body of every recognised stock exchange. Such member or members shall enjoy the same status and powers as other members of the governing body."*

Rule 19 (2)(b) *31[The minimum offer and allotment to public in terms of an offer document shall be-]*

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

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

(iii) at least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company, if the post issue capital of the

company calculated at offer price is above four thousand crore rupees: Provided that the company referred to in sub-clause (ii) or sub-clause (iii), shall increase its public shareholding to at least twenty five per cent within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India: Provided further that this clause shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) Third Amendment Rules, 2014, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement."

Rule 19A.*(1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.: Provided that any listed company which has public shareholding below twenty five per cent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2014, shall increase its public shareholding to at least twenty five per cent, within a period of [four] years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India. Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of [***] clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent, public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.]*

(2) Where the public shareholding in a listed company falls below twenty five per cent. at any time, such company shall bring the public shareholding to twenty five per cent within a maximum period of twelve months from the date of such fall in the manner specified by the Securities and Exchange Board of India.]

*(3) [***]*

(4) Where the public shareholding in a listed company falls below twenty-five per cent. in consequence to the Securities Contracts (Regulation) (Amendment) Rules, 2015, such company shall increase its public shareholding to at least twenty-five per cent. in the manner specified by the Securities and Exchange Board of India within a period of three years, as the case may be, from the date of notification of: (a) the Depository Receipts Scheme, 2014 in cases where the public shareholding falls below twenty five per cent. as a result of such scheme; (b) the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014 in cases where the public shareholding falls below twenty-five per cent., as a result of such regulations."

31. Rule 10 of the aforesaid Regulations contemplates that, if Promoter group proposes to increase its holding to 100% of the share capital and proposes to reduce the share capital to the extent of the public share holding by offering an exit price to the public share holders, as valued by an independent registered valuer and thereby can seek for specific exemption from the provisions of SEBI (De-listing of equity shares) Regulation, 2009.

32. Rule 19(2)(a) of the Securities Contracts (Regulation) Rules, 1957 (SCRR) deals with the conditions for listing securities on a recognized stock exchange, specifically focusing on requirements for minimum public offer and allotment, ensuring a certain percentage of shares are available to the general public for trading, complementing related Rules like

Rule 19A on minimum public shareholding. It is a key provision under the Securities Contracts (Regulation) Act, 1956, governed by SEBI, setting standards for public participation in listed companies. It further mandates a minimum percentage (often 25% or more, though exceptions exist) of a company's capital must be offered to the public for listing. In essence, Rule 19(2)(a) ensures fairness and liquidity in the market by requiring companies to float a substantial portion of their shares to the public, preventing concentration of ownership and promoting wider investor participation.

33. Section 19A of the Securities Contracts (Regulation) Rules, 1957 (SCRR), mandates that all listed companies maintain a minimum public shareholding of 25%, with specific provisions for public sector companies, companies in Insolvency and Bankruptcy Code resolution, and exceptions for government control or strategic disinvestment, all aimed at ensuring sufficient public participation in listed entities, as enforced by SEBI.

34. In the background of the contentions raised, the fact that SEBI is a regulatory authority under the SEBI Act

and in that light, it is required to secure compliance of all the regulations by the listed companies cannot be in dispute. In that backdrop, a perusal of contention of SEBI which was considered in the decision of the Hon'ble Division Bench of Bombay High Court in the case of **SEBI v. Sterlite Industries (India) Limited** reported in **2003 Vol 113 Comp Cases 273** was that as a result of the scheme offered to the public, there is likelihood of reduction in the public shareholding to less than 25% amounting to violation of the regulations of the SEBI. Despite such contention, it was held that merely because the SEBI has been empowered to administer the provisions of Sections 77 and 77A, it does not give the SEBI any locus in a petition under Sections 391 or 394. Hence, in the instant cases, the SEBI is alleging non-compliance of SCRR for which proceedings in exercise of the power under Section 19A of the Act has already been initiated. If in that light the said conclusion in **MCX Stock Exchange** case is kept in view, there can be no doubt that the proceedings are independent of each other. If that be the position, irrespective of the sanction being granted by the Company Judge to the reduction of share capital, the non

compliance of any other regulations over which the SEBI has the jurisdiction would be dealt with by the SEBI as a regulatory authority.

35. The term 'Minimum Public Shareholding' means, a regulatory requirement, like one mandated by SEBI in India, that a minimum percentage of a listed company's shares must be held by the public, and not the promoters. In India, this is set at a minimum of 25% for most listed companies to ensure market liquidity, transparency, and broader participation. The main purpose or main goal is to ensure better corporate governance by making a company's stock available to a wider range of investors. The companies typically have a specified time frame, often three years from their listing date, to meet the MPS requirement. If the public share holding falls below the minimum, the company is required to bring it back upto the required level within a specified period. If a company fails to meet the MPS norms, it may face penalties such as fines.

36. The Hon'ble Supreme Court in the case of **Vishal Tiwari** cited supra at para 67 held as follows:-

67.1. *The power of this Court to enter the regulatory domain of SEBI in framing delegated legislation is limited. The court must refrain from substituting its own wisdom over the regulatory policies of SEBI. The scope of judicial review when examining a policy framed by a specialised regulator is to scrutinise whether it violates fundamental rights, any provision of the Constitution, any statutory provision or is manifestly arbitrary;*

67.2. *No valid grounds have been raised for this Court to direct SEBI to revoke its amendments to the FPI Regulations and the LODR Regulations which were made in exercise of its delegated legislative power. The procedure followed in arriving at the current shape of the regulations does not suffer from irregularity or illegality. The FPI Regulations and the LODR Regulations have been tightened by the amendments in question;*

67.3. *SEBI has completed twenty-two out of the twenty-four investigations into the allegations levelled against the Adani Group. Noting the assurance given by the Solicitor General on behalf of SEBI we direct SEBI to complete the two pending investigations expeditiously preferably within three months;*

67.4. *This Court has not interfered with the outcome of the investigations by SEBI. SEBI should take its investigations to their logical conclusion in accordance with law;*

67.5. *The facts of this case do not warrant a transfer of investigation from SEBI. In an appropriate case, this Court does have the power to transfer an investigation being carried out by the authorised agency to an SIT or CBI. Such a power is exercised in extraordinary circumstances when the competent authority portrays a glaring, wilful and deliberate inaction in carrying out the investigation. The threshold for the transfer of investigation has not been demonstrated to exist;*

67.6. *The reliance placed by the petitioner on the OCCPR report to suggest that SEBI was lackadaisical in conducting the investigation is rejected. A report by a third-party organisation without any attempt to verify the authenticity of its allegations cannot be regarded as conclusive proof. Further, the petitioner's reliance on the letter by the DRI is misconceived as the issue has already been settled by*

concurrent findings of DRI's Additional Director General, CESTAT and this Court;

67.7. *The allegations of conflict of interest against members of the expert committee are unsubstantiated and are rejected;*

67.8. *The Union Government and SEBI shall constructively consider the suggestions of the expert committee in its report detailed in Part F of the judgment (see paras 51 to 66, hereinabove). These may be treated as a non-exhaustive list of recommendations and the Government of India and SEBI will peruse the report of the expert committee and take any further actions as are necessary to strengthen the regulatory framework, protect investors and ensure the orderly functioning of the securities market; and*

67.9. *SEBI and the investigative agencies of the Union Government shall probe into whether the loss suffered by Indian investors due to the conduct of Hindenburg Research and any other entities in taking short positions involved any infraction of the law and if so, suitable action shall be taken.*

37. Since two proceedings are held to be different and distinct, the order passed in CoP No. 132/2014 will only have the effect of providing the approval as contemplated under Sections 100 to 104 of the Companies Act to the extent the procedure contemplated therein has been adhered to, but it cannot be held as a shield by the Company to protect itself in the proceedings already initiated or to justify the non-compliance with the requirement of any other regulations, if it is still required to be complied.

38. Therefore, in the instant cases, when in a circumstance the proceedings under SEBI Act read with SCR Act for not

achieving the minimum public share holding requirement action is initiated and an order dated 04.06.2013 is made and a confirmatory order dated 25.07.2014 is passed, the reduction permitted if given effect also, the non-achievement of the public share holding will continue and consequences, if any, will follow. Hence, it would not preclude SEBI from proceeding further regarding which, as indicated, an order is already made by SEBI.

39. Whereas in the instant cases, it is clear that on the basis of the order of Securities Appellate Tribunal the question of proceedings under Sections 100 and 104 of the Companies Act relating to reduction of capital are held to be distinct for the requirement adhered to SCRR. In effect, some of the observations by Securities Appellate Tribunal remain undisturbed except with the exception as made out by the Hon'ble Supreme Court. Adjudicating on rival contentions may not be appropriate at this stage in light of the fact that the matter is still pending before the Hon'ble Supreme Court. Therefore, the learned Company Judge passed the impugned order directing the BSE to continue with the proceedings, the request of the Khoday Company made to the appellant-BSE to fix the 'record date' not having been honoured and in light of

subsequent order including that of the Securities Appellate Tribunal and the Hon'ble Supreme Court on 27.01.2020, all of which, would permit issuance of appropriate directions as sought for by the respondent Khoday's Company. Therefore, the Company Court issued directions to the respondent BSE to confirm the 'record date' to be fixed afresh and to subsequently issue necessary instructions to NSDL and CDSL in that regard. The order passed by learned Company Judge is well founded and no interference is called for in that regard.

Hence, we pass the following:-

ORDER

1. The appeals are ***dismissed***. However, we make it clear that, insofar as compliance referred to in the order of Securities Appellate Tribunal, the Company/KHODAY should adhere to comply the requirement as enumerated under Rule 19A of the Act and it is also made clear that no adjudication, as such, has been made with respect to elaborate contentions of both sides as final verdict is yet to be made by the Hon'ble Supreme Court as any order

passed by this Court would prejudice the contentions of all the parties.

2. In view of the dismissal of the appeals, all pending IAs, if any, stand disposed of, as they do not survive for consideration.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(VENKATESH NAIK T)
JUDGE

MN/-