

MHCC020197942014



Received on : 12.11.2014
Registered on : 12.11.2014
Decided on : 19.07.2025
Duration : Y M D
10 08 07

IN THE DESIGNATED SPECIAL COURT UNDER SEBI ACT, 1992

FOR MAHARASHTRA STATE

AT COURT ROOM NO.22, SESSIONS COURT, GREATER MUMBAI

(Presided over by R. M. Jadhav, SEBI Special Judge, Mumbai)

SEBI SPECIAL CASE NO. 352 OF 2014

Exh. 235

Complainant	: Securities and Exchange Board of India
Represented by	: Ms. Anubha Rastogi, SPP
Accused	: 1. M/s. M'Belle International Pvt. Ltd. G Wing, 4 th floor, Tex Center, Narayan Properties, off Saki Vihar Road, Andheri, Mumbai 72. and G-7, Sai Sangeet, 368 Linking Road, Khar, Mumbai 52. and Mahendra Chambers, 142, D. N. Road, Fort, Mumbai 01. 2. Shri. Suresh Hemwani (abated as per roznama order dated 20.12.2021) 3. Shri. Gopu Parimal Belani, 5D, Ajanta Apartments, M L Dhanukar Marg, Mumbai 50.

		4. Ms. Anupama S. Motwani Salisbury, Pali Mala, Mumbai 50. 5. Rita K. Motwani 201, Salisbury, Pali Mala, Mumbai 50. 6. Sushil M. Thakkar (Separated as per roznama order dated 25.10.2017)
Represented by	:	Advocate Mr. Ramsinghani for accused No. 3. Advocate Mr. Manish Bohra for accused No. 4 and 5.
Date of offence	:	--
Date of FIR	:	--
Date of Chargesheet	:	--
Date of Framing of Charge	:	20.11.2017, Charge altered dated 13.05.2025
Date of Commencement of Evidence	:	06.09.2023
Date on which judgment is reserved	:	19.07.2025
Date of the Judgment	:	19.07.2025
Date of the Sentencing Order, if any	:	---

Accused details

Rank of the accused	Name of accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentenc e impose d	Period of Detention undergon e during Trial for purpose of Section 428 Cr.PC
3.	Shri. Gopu Parimal Belani,		03.09.16 03.09.16	U.S. 24(2) r/w 27 of SEBI	Accused No. 3 and 4 are convicted.	-	-

4.	Ms. Anupama S. Motwani		03.09.16	Act.	Accused No. 5 is acquitted.		
5.	Rita K. Motwani						

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
P.W.1	Mr. Prasad Jagdale	Witness
C.W. 1	Mr. Santanu Mitra	Witness
C.W. 2	Ms. Pradnya Prasad Pawar	Witness

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
D.W. 1	Mr. Gopu Parumal Belani	Witness

C. Court Witnesses, if any : NIL

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution :

Sr.No.	Exhibit Number	Description
1	66	Authority Letter
2	99	Letter dated 21.05.2007
3	100	Letter dated 28.06.2007
4	101	Certified copy of decision of SAT
5	102	Authority Letter
6	104	Authority letter
7	105	Certified copy of Appeal Memo
8	106	True copy of Form No. 32.
9	118	Letter received from ROC

10	119	Annual return (page No. 16 to 47)
11	120	Director report dated 02.09.1999
12	121	Auditor report with annexures
13	198	Certified copy of the ROC record.
14	225	Adjudication order
15	226	Vakalatnama filed along with complaint

B. Defence :

Sr.No.	Exhibit Number	Description
1	152	Copy of Aadhar Card
2	153	Copy of Pan Card
3	154	Copy of Migration certificate
4	158	Certificate issued by University of Bombay for B.Sc.
5	159	Death certificate of Parumal Parasram Belani
6	160	Death certificate of Sugnibai Parumal Belani
7	161	Share certificate of Ajantha Co-Op. Hsg. Society
8	162	Voters ID dated 06.02.1995
9	163	Passport of accused No. 3 for the year 1997-1999 and 1999-2009.
10	164	Application for allotment of code number of Esspee Enterprises.
11	165	Certificate of Registration of Import Export Code dated 18.06.1998.
12	166	Certificate of Importer Exporter Code (IFC) issued to Esspee Enterprises.
13	167	Application form of Registration-cum-Membership certificate dated 12.04.2022.
14	168	Certificate of Registration under Central Sales Tax Rules 1957 dated 01.04.2006.
15	169	Certificate of Registration under VAT Act, 2002 dated 01.04.2006.

16	170	Registration Certificate of Establishment of Tisya Jewels dated 11.11.2004.
17	171	Letter dated 04.01.2024 of Saraswat Co-Op Bank Ltd. Khar, Mumbai.
18	172	Certificate dated 30.12.2023 issued by Saraswat Co-Op Bank Ltd.
19	173 (colly)	Sanction for credit facility letter dated 08.01.2021 issued by Saraswat Co-Op Bank Ltd. and certified copy.
20	174	Pan card of Tisya Jewels.
21	175 (colly)	Income tax return of Tisya Jewels for the period of 2005-06 and 2006-07.
22	178	Certified copy of the original registered agreement of sale.
23	179	Certified true copy of account opening form.
24	180	P. R. Bond of accused No. 3.
25	184(colly)	Document at Sr. No. 1 filed with pursis below Exh. 183

C. Court Exhibits :

	Court Exhibits	Description
1	13	Charge
2	132 to 134 227 to 229	Statement of accused Nos. 3 to 5 u/s. 313 of Cr. P.C.

D. Material Objects: - NIL**J U D G M E N T****(Delivered on 19.07.2025)**

The Accused No. 1 company and accused Nos.2 to 6 being the directors of accused No. 1 company are prosecuted for the offence punishable under Section 24(2) r/w 27 of Securities and Exchange

Board of India Act, 1992 (hereinafter referred to as the “SEBI Act”) for failure to deposit the penalty amount of Rs.1,00,00,000/- (Rs. One Crore only) imposed on the accused No.1 company vide adjudication order dated 30.06.2004, communicated to it.

2. The abridged facts of the prosecution case are as under :-

SEBI has been constituted under the Securities and Exchange Board of India Act, 1992. The SEBI has been established with a view to protect the interests of investors in securities markets and for matters connected therewith or incidental thereto.

SEBI conducted investigation into, the transaction of share prices of M/s. Roofit Industries Limited (hereinafter referred to as ‘RIL’). During the course of the investigation, the investigating authority had, in pursuance of the power conferred under Section 11C(3) of the Act, sent summons to the Accused, dated 23.07.2002, calling upon accused No.1 company to furnish information pertaining to investigation in the matter of share prices of RIL. On receipt of the summons, the accused No.1 company vide letter dated 26.07.2002 sought time till 20.08.2002 for providing the information as sought for. Accused No.1 company from SEBI also sought further extensions for production of information.

The accused failed to furnish the information as sought for by the investigating authority. Therefore, Chairman of SEBI appointed an adjudicating officer. Adjudicating officer was constrained to proceed with the inquiry ex-parte. After following the legal procedure and consideration of the facts and the material on record, the adjudicating officer passed an order on dated 30.06.2004 and imposed a penalty of Rs.1,00,00,000/- (Rupees One Crore) on the accused No. 1 company and directed the accused to pay the penalty amount. On receipt of the order accused filed an appeal against the order passed by the

adjudicating officer before the Securities Appellate Tribunal (SAT) bearing appeal No. 154 of 2004. The said appeal was dismissed by the SAT vide its order dated 13.11.2006. After the appeal was dismissed, the investigating department of SEBI issued notice dated 23.07.2007 to all the accused informing them to the decision of SEBI to initiate prosecution against them as they had failed to pay the penalty imposed by the order of the adjudicating officer.

It is further contention that SEBI issued another notice dated 21.05.2007 and 28.06.2007 to all the accused and directing them to comply with the order of the adjudicating officer. The accused No. 1 company pursuant to the communication of the adjudication order not deposited the penalty amount within the stipulated period and has committed the offence punishable under Section 24(2) of SEBI Act.

Accused Nos. 2 to 6 were the directors of the accused No.1 company and were in complete control and management of the affairs of accused No.1 company. The accused having failed to comply the order of adjudication officer, has committed offences and therefore, all the accused are liable for prosecution under Section 24(2) r/w Section 27 of the SEBI Act, 1992.

The complaint containing above particular was filed by the authorized officer Mr. Santanu Mitra for the offence punishable under Section 24(2) r/w 27 of Securities and Exchange Board of India Act, 1992. The cognizance of the said complaint was taken.

3. Initially, complaint was filed before the Court of Id. Additional Chief Metropolitan Magistrate, 9th Court, Bandra, Mumbai. The cognizance of offence was taken and process for the offence punishable under Section 24(2) r/w Section 27 of the SEBI Act came to be issued against the accused.

Due to the change in forum, in view of amendment in SEBI Act, the matter came to be transferred to this Special Court constituted as per the SEBI Act. Earlier for want of prosecution complaint was separated against accused Nos. 2 and 6 as per the roznama order dated 25.10.2017. But, subsequently accused No. 2 reported dead therefore, as per the roznama order dated 20.12.2021 the proceeding against accused No. 2 stands dismissed as abated.

The charge was framed below Exh.13 and subsequently altered to the extent of accused No.1 company, for the offence punishable under Section 24(2) r/w Section 27 of SEBI Act. The accused abjured the guilt and claimed trial. The defense of accused is of total denial and false implication.

4. Amid trial the SEBI examined P.W. 1 Mr. Prasad Jagdale (As per roznama order dated 24.08.2022, demise of the said witness PW-01 Jagdale further examination-in-chief could not be completed.), C.W. 1 Mr. Santanu Mitra below Exh.98, C.W.02 Ms. Pradnya Pawar below Exh. 103 and closed its evidence below Exh.130.

5. Apart from the oral evidence the complainant SEBI relied upon the following documentary evidence.

Sr.No.	Exhibit Number	Description
1	66	Authority Letter
2	99	Letter dated 21.05.2007
3	100	Letter dated 28.06.2007
4	101	Certified copy of decision of SAT
5	102	Authority Letter

6	104	Authority letter
7	105	Certified copy of Appeal Memo
8	106	True copy of Form No. 32.
9	118	Letter received from ROC
10	119	Annual return (page No. 16 to 47)
11	120	Director report dated 02.09.1999
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14	225	Adjudication order
15	226	Vakalatnama filed along with complaint

6. Towards the mandatory compliance of Section 313 (1) (b) of Cr.P.C. the incriminating circumstances appearing as evidence against the accused were explained to them and their responses to it were recorded. The defense of accused is of total denial. The accused No. 3 in addition to that filed his written statement under Section 313(5) of Cr.P.C. below Exh. 135. All the accused denied themselves to be the directors of the accused No.1 company.

Further, additionally the accused No.3 took the defence that he was not served with the summons dated 23.07.2002 or any notice by the adjudication officer prior to the passing of adjudication order. Accused No. 3 has not preferred the appeal before the SAT challenging the decision of the adjudication order on behalf of the accused No.1 company. The signatures on the SAT appeal, the address of the accused and the name of the accused No.3 is disputed. The accused No.3 is not acquainted with the advocate Vishwas Pathak and has not paid professional fees to him. The notices below Exhs. 66, 99 and 100 were not dispatched and delivered to him. The address mentioned on the complaint is not of the accused. The accused has no concerned with the accused No.1 company and was not director and

person responsible for the conduct of the business of the accused No.1 company.

7. Heard Ms. Anubha Rastogi, Ld. SPP for the complainant/SEBI, Ld. Advocate Mr. Ramsinghani for accused No. 3 and Ld. Advocate Mr. Manish Bohra for the accused No. 4 and 5.

8. It is argued by Ld. SPP Ms. Anubha Rastogi that despite service of the adjudication order the accused has not deposited penalty amount therefore, accused has omitted to deposit the penalty amount and thus committed the offence. It is argued that the evidence on record goes to establish and prove the fact of passing of the adjudication order dated 30.06.2004 against the accused No.1 company. The tried accused are the directors of the company therefore, are vicariously liable. The accused has preferred an appeal challenging the adjudication order before the SAT and the said appeal came to be dismissed. As such the adjudication order imposing penalty of Rs.1 Crore has attained finality. The filing of appeal against the adjudication order imputes knowledge to the accused about the passing of the adjudication order. It is further argued that the CW-01 Prasad Jagdale had issued letter Exh. 66 communicating the adjudication order. The evidence of CW-01 Prasad Jagdale proved the contents of the said letter. His evidence though not completed for want of cross-examination on account of his death is relevant in view of the Section 33 of Indian Evidence Act. There are no indication on record that for want of cross his testimony is likely to be shaken or impeached. Therefore, his evidence requires to be relied upon. The CW-01 Santanu Mitra has categorically deposed about the filing of the complaint and the letters issued vide Exh. 99 and Exh. 100 to the accused with the signature of CW-01 Prasad Jagdale. The CW-01

deposed about the failure of the accused in making payment of penalty. Likewise, the CW-02 Pradnya Pawar placed on form No. 32 of ROC record Exh. 106. She deposed about the certified copy of the appeal Memo vide Exh.105. Her evidence on the above aspect remained unchallenged. The prosecution further has placed on the certified copy of the Form No.18 below Exh. 198, which establish the role of the tried accused. She further argued that annexed to the memorandum of SAT appeal below Exh. 105 there is vakalatnama signed by the accused No. 03. The accused No. 3 is mentioned as a director of the company in the said appeal memo. The accused has not challenged the said order of SAT dismissing appeal. Further, the accused has not made any complaint either before the SAT or any other authority that he has not preferred the said appeal. The prosecution thus established and proved that the accused are the directors of the accused No.1 company and they failed to deposit the penalty as per the adjudication order inspite of the knowledge of the same and thus committed the offence.

It is submitted in response to the arguments of the Ld. Adv. of accused that the accused can not challenge the procedure followed in the adjudication proceeding violating the principle of natural justice before this Court. The ROC record, certified copy of the judgment of SAT and appeal memo being the certified copy of public document are admissible in evidence. Further, the CW-02 deposed about the same.

It is further argued that, there is testimony of the witness CW-02 stating that the accused No. 3 was in fact served with the prosecution notice. The CW-02 voluntarily said the statement. Further she submitted that prosecution notice is not mandatory, and the material on record imputes knowledge to the accused about passing of the adjudication order. The Ld. SPP argued that the considering the address mentioned below Exh.06 bail application, PR bond Exh.180 and

the address come on record during the cross-examination of DW-01 and address on the ROC record, the prosecution has cleared the doubts relating to the address of the accused.

Further, the accused have executed documents i.e. Vakalatnama Exh.04, Exh. 69 wherein the accused signed as accused No. 3. The accused has not challenged the order taking cognizance against him and evasively denying himself to be the director of the company by bringing on record the different address and the name Gopu Parimal Belani instead of his correct name Gopu Parumal Belani. Thus, the accused No. 3 is proved to be the director of the accused No.1 company. Further, the accused No. 4 and 5 have not discharged their burden of disproving that they were not directors of the accused No.1 company. Hence, all the tried accused being the directors of the accused No.1 company are liable vicariously.

Lastly, it is submitted by SPP Ms. Rastogi that the evidence on record established and proved beyond all reasonable doubt, the failure of accused in depositing of penalty amount as per adjudication order. Hence, the accused requires to be convicted and liable to be punished under Section 24(2) of SEBI Act. In addition to this the Ld. Adv for accused No. 3 filed written notes of argument below Exh. 214.

9. As against this Ld. Advocate Mr. Ramsinghani for accused No. 3 argued that the complaint as such is not maintainable against the accused directors. There is no sanction for the prosecution of the accused director. Further the complaint is shown to be filed by one Santanu Mitra and the said name is inserted on Exh. 01 in hand writing but the vakalatnama is signed by one Kalyankar and in the said vakalatnama name of one Narandar Rawat is mentioned. So, doubt about the authority of the Santanu Mitra and filing of the complaint is

created.

It is argued that there is no any show cause notice issued to the present accused during the adjudication proceeding. The accused could have explained before the adjudication officer that he was not the director of the company. So, the passing of the adjudication order itself is bad in law for violation of the principle of natural justices.

It is submitted that the CW-01 Prasad Jagdale was not available for cross-examination. Further, his examination in chief was partly recorded therefore, his evidence issuing the letter below Exh. 66 communicating the adjudication order can not be relied upon and his evidence is not admissible.

It has brought on record in the cross-examination of the CW-01 that he is not author of the letters below Exhs. 66, 99 and 100 and he has not played any role in the investigation of the case. The said witness further deposed in cross-examination that he has not filed the minutes of the board meeting dated 28.06.2003 which was necessary to file the complaint and he can not say whether such meeting of the board and its resolution is necessary to file the complaint. Further, he has deposed that the entire annexure of delegation of power is not filed.

Further, it has brought on record in the cross-examination of CW-01 Santanu Mitra that he is not aware about the number of pages of resolution and who attended the meeting since the meeting took place before CW-01. The CW-01 further deposed that he has not filed on record any documentary evidence showing the address of the accused No. 3 as 5-D, Ajanta Apartment, and he has not personal knowledge of the residential address of the accused No.3. Further, it has brought on record that he does not recall whether letter issued prior the filing of the complaint are served to the accused No. 3. For the circumstances came on record it is submitted that the evidence of CW-01 Santanu

Mitra is not reliable.

Likewise, the evidence of CW-02 Pradnya Pawar is assailed on the point of the authorization, the production of the certified copy of the SAT Appeal memo below Exh. 105 and the SAT order below Exh. 101.

It is argued by Ld. Adv of accused No. 3 that the evidence of the prosecution witnesses is not reliable and do not go to establish and prove the guilt of the accused. There is no service of the prosecution notices upon the accused as well as the communication of the adjudication order. The accused has not filed the SAT appeal wherein his name is mentioned in correctly as Gopu Parimal Belani. The accused would not make such mistake by stating his father name as Parimal instead of Parumal. It goes to indicate that the said appeal has not filed by him before the SAT. Therefore, it can not be said that the imputes knowledge to the accused about passing of the adjudication order. Further, it is argued that on perusal of the SAT order it is seen that apart from the name of the accused No.1 company being shown as a appellant there is nothing in the said order to show or suggest that the said appeal has been filed by the accused No.1 through his authorized representative i.e. accused No. 3. It has brought on record the cross-examination of CW-02 the complaint it is not mentioned that the SAT appeal was preferred by the accused No.1 company through the accused No.3 as its authorized representative. No identification documents of the deponent in the SAT appeal are filed on record to establish and prove that the appeal is filed and signed by the accused No.3. It is further submitted by the Ld. Adv for accused No. 3 that the SAT appeal is not a public document and the same is not proved by the complainant by following the procedure known to the law.

He further argued that the complaint simply makes the

averments that the accused Nos. 2 to 6 are solely responsible for the affairs of the accused No.1 company, but has not mentioned the specific role of the accused No.03 in the commission of the offence by the accused No.1 company.

None of the prosecution witnesses deposed in their examination-in-chief that the accused No. 3 was the director of the accused No.1 company at any point of time. Further, the ROC record was not filed along with the complaint. It goes to show that the prior the filing of the complaint and while recording of evidence of complainant the witnesses were consciously aware that the accused No. 3 was not the director of accused No.1 company.

The Ld. Adv for accused No. 3 further argued that the prosecution bearing SEBI Special case No.138 of 2014 for non-compliance of summons dated 23.06.2002 against the present the accused No.1 company and accused Nos. 4 and 5. The present accused was not prosecuted in the said prosecution which goes to show that the present persecution filed against the present accused is not sustainable in eye of law.

The burden of proof is always on the prosecution to establish guilt of the accused beyond all reasonable doubt and the same never shifts. But, the prosecution has failed to discharge the said burden. Consequently, the accused No. 3 deserves to be acquitted. In addition to this the Ld. Adv for accused No. 3 filed written notes of argument below Exh. 209.

10. As against this Ld. Advocate Mr. Bohra for accused No.4 and 5 argued that the SEBI has initiated the prosecution bearing SEBI special case No. 138 of 2014 against the accused No. 4 and 5 and in the said proceeding the accused were acquitted on the count that they were

not the directors of the accused No.1 company at the relevant time of issuance of the summons. He argued that the MCA record goes to show that the accused No. 4 and 5 were retired on 16.06.1999. The prosecution has not led any evidence to establish and prove that the accused No. 4 and 5 were the directors of the accused No. 1 company at the relevant time. Consequently, the Ld. Adv for accused No. 4 and 5 prayed for acquittal of the accused in the present prosecution also. He has placed on record the photocopy of the judgment and order dated 02.12.2024 passed in SEBI Special case No. 138 of 2014 wherein the present accused No. 4 and 5 got acquitted.

11. In view of the adumbrated facts, evidence on record and rival submission, following points arise for my determination I have recorded my findings thereon for the reasons stated below:-

<u>Sr. No.</u>	<u>P O I N T S</u>	<u>F I N D I N G S</u>
1.	Does the complainant proves that accused No. 1 company and accused No. 3 to 5 being its director despite of the communication of the adjudication order dated 30.06.2004 failed to pay the penalty amount of Rs. 1 Crore imposed on the company within stipulated period of 45 days and thereby committed the offence punishable under Section 24(2) r/w 27 of SEBI Act, 1992.	... In the affirmative to the extent of accused No. 3 Gopu Belani and 4 Anupama Motwani being the directors of accused No.1 company.
2.	What Order ?	... Accused No.3 and accused No. 4 are convicted under Section 24(2) r/w 27 of SEBI Act and accused No. 5 is acquitted as per the final Order.

: R E A S O N S :

12. At the outset I would like to mention here that, both the sides pressed into service the plethora of the decisions of Hon'ble Apex Court and of the Hon'ble High Courts in support of their submissions. So first up all let me advert on record the legal position pressed into service by rival side.

13. The Ld. SPP for SEBI relied upon the decision of Hon'ble Delhi High Court in Krishan Dayal Vs. Chandu Ram in R.S.A No. 28/1962, decided on 08.07.1969 wherein the admissibility and value of the statement of witness in examination-in-chief who subsequently died before his cross-examination is discussed. It is held that the Court should see whether there are indication on record that a result of cross-examination his testimony was likely to be seriously shaken or his good faith or predict to be successfully impeached. The Court may also adopt a rule not to act upon such a testimony unless it is material corroborated and it is supported by surrounding circumstances. If applying that rule of caution, the Court decided to rely upon the statement of the witness who was examined in chief but who died before cross-examination, the decision of the Court in this respect would not suffer from any infirmity.

On identical line the decision of Hon'ble Kerla High Court in Food Inspector Vs. James reported in 1997 SCC Online Ker 255 is relied wherein the Kerla High Court observed that,

“the general proposition that the evidence of witness who is not subjected to cross-examination can not be looked into, can not be disputed. But, the witness who could not be subjected to cross-examination due to his death before he

could be cross-examined is admissibility in evidence those the evidential value will depend upon the fact and circumstances of the case”.

Similarly, the decision of the Hon’ble High Court of Andhra Pradesh at Hyderabad in **Somagutta Erapa Reddy (died) and Ors. Vs. Palapandia Chinna Gangappa and Ors. reported in 2001 SCC OnLine AP 1322** wherein it is observed that, if the examination-in-chief substantially complete and witness is prevented by death, weakness or other causes for finishing his testimony it ought not to be rejected entirely. But, if not so far advanced as to substantially complete it must be rejected.

On similar line the decision of the Hon’ble Bombay High Court in **Veerawali Pishorilal Sethi Vs. Sunil P. Sethi & Anr. reported in 2018 SCC OnLine Bom 12729** is relied on.

Further, the decision of the Hon’ble Apex Court in **Rajesh Yadav & Anr. Vs. State of Uttar Pradesh reported in (2022) 12 Supreme Court Cases 200** is relied on wherein it is observed that,

“Section 33 is an exception to the general rule which mandates adequate facility for cross examining a witness. However, in a case where a witness after the completion of the chief examination and while subjecting him to a substantial and rigorous cross examination, did not choose to get into the witness box on purpose, it is for the court to utilize the said evidence appropriately. The issues over which the evidence is completed could be treated as such by the court and then proceed”.

14. As against this the Ld. Adv Mr. Ramsinghani for accused No. 3 relied upon the decision of Hon’ble Bombay High Court in **S. M.**

Dubash Vs. V. M. Bhosale reported in 1996(2) Mh.L.J.(Pg. 312)

wherein it is held that sanction to prosecute the company can not be availed for prosecuting the directors. Hence, the complaint file against the accused is without proper sanction/authority so not maintainable.

The decision of the Hon'ble Delhi High Court in **Rashima Verma Vs. SEBI reported in 2009 SCC OnLine Del 106** wherein the Delhi High held that the complainant is required to be specific and explicit as to the nature of allegations should be definite and coherent to the role played by the director in committing such offence in the complaint against the directors of the company.

On similar line decision of the Hon'ble Apex Court in **Pooja Ravinder Devidasani Vs. State of Maharashtra and Anr. Reported in (2014) 16 Supreme Court Cases 1** wherein the Hon'ble Apex court held that in case of the offences by the companies for making the director liable there must be specific averments against the directors showing as to how and in what manner he/she was responsible for conduct of the business of the company.

In the absence of the specific role in the complaint and evidence connecting the accused with the commission of the offence the guilt of the accused can not said to be proved is the submission made by Ld. Adv for accused.

The Ld. Adv. for accused has pressed into service the following decisions :-

1. **Legal Representative of Manohar And anr. Vs. Vishweshwar Tukaram Giripunje and Ors. reported in 2008 SCC OnLine Bom 93.**
2. **Dhirajlal Raishi Chheda Vs. Raishi Shivji Chheda Through his L. Rs. Mithiben R. Chhed, Mr. Mekesh Raishi Chheda and Ors. reported in 2016 SCC OnLine Bom 12001.**

3. **Saritha S. Nair Vs. Union of India reported in 2022 SCC OnLine Ker 4049.**

On the point that the SAT appeal memo is not a public document and no procedure is followed to prove the SAT appeal memo by the SEBI in this case.

The Ld. Adv for accused further has relied upon the decisions of Hon'ble Apex Court in **Shailendra Swarup Vs. Dy. Director, Enforcement Directorate reported in (2020) 16 Supreme Court Cases 561** wherein the Hon'ble Apex Court held that liability to be proceeded with, for the offence under Section 68 of FERA Act depends on the role one plays in the affairs of the company and not on near designation or the status. Had the legislature intended that all the directors irrespective of their role and responsibilities must be deemed to be guilty of contravention said Section could have been worded in a different manner.

On similar line he relied on order of Hon'ble High Court in **Jindal Drugs Limited Vs. The Union of India and Ors. in Civil Writ Petition No. 14045 of 2018, decided on 19.06.2019.**

In view of the legal position in the above decisions, the Ld. Adv for accused No. 3 submitted that the pari-materia provisions of other enactments are relevant while interpreting Section 27 of the SEBI Act.

Further, the Ld. Adv. for accused relied upon the decision of Hon'ble Apex Court in **Dharampal Satyapal Ltd. Vs. Dy. Commissioner of Central Excise, Gauhati & Ors. reported in (2015) 8 Supreme Court Cases 519** wherein the Hon'ble Apex Court held that,

“the decision making authority can not itself dispense with the requirement of principal of natural justice on the ground that affording such an opportunity will not make any

difference i.e. that no prejudice will be caused to the person against whom the action is contemplated. It is not permissible for that authority to jump over compliance with the principal of natural justices”.

Further, the decision of Hon’ble Bombay High Court in **Meena Anand Suryadutt Bhatt Vs. UOI reported in 2022 SCC OnLine Bom 1505** wherein it was observed that, “No where it is stated that Ms. Bhatt was in control and management of the TPI as a director or that he was personally responsible for the acts committed by or on behalf of the company. No notice was admittedly issued to the petitioner in petitioner’s name. That being the case there was clear cut violation of the principal of natural justice”.

On similar line the decision of Hon’ble Apex Court in **Inspection of six debt scheme of Franklin Templeton Mutual Fund and Mywish Marketplaces Pvt. Ltd. reported in 2021 SCC OnLine SEBI 838.**

In view of the above exposition it is argued by Ld. Adv. for accused that the principal of natural justice mandates prior service of the show cause notice upon the accused before the imposition of the penalty.

The Ld. Adv for accused relied upon the decision in and orders of Hon’ble Bombay High Court in **Lloyds Metals and Engineers Ltd. Vs. Y. Y. Kelkar reported in 2015 SCC OnLine Bom 6376** wherein the Hon’ble Bombay High Court held that, “Needless to state that to invoke the deeming provision under Section 27 of General Clauses Act the complainant was required to establish that he had dispatched the letter by registered post at correct address”.

Further, in Order of the Hon’ble Bombay High Court in **Parmeshwar Gangadhar Aage Vs. Kishor Damodhar Kulkarni in Stamp No. 78 of 2021** the Hon’ble Bombay High Court it is observed that,

“Though there is presumption under Section 27 of General Clauses Act about service of notice. However, it is necessary at the same time to prove that the address given on the notice was correct address where the addressee resides”.

Lastly, the Hon’ble Apex Court in *State of Maharashtra Vs. Rajkaran reported in 1987(Supp) Supreme Court Cases 183* held that the prosecution version of dispatched by registered post not acceptable in the absence of the postal receipt.

The Ld. Adv for accused relied on the decision in *S.C. Miter V/s. State ILR 1951 page 480* wherein it was held that three conditions are necessary to be fulfilled before evidence given by witness can be admissible in a subsequent judicial proceeding or in a later stage judicial proceeding, They are as...

1. When the witness is dead.,
2. When the accused has right and opportunity to cross examine the witness in the first proceeding or in the earlier stage of the same,
3. When the questions in issue in both proceedings are the same.

On similar line the decision in *Shashi Jinha and Ors. V/s. Khadal Swain and Anr. (2004)4 Supreme Court cases 2036* is relied upon wherein also it was held that, one of the requirement of application of Section 33 of the evidence Act, is that the adverse party in a proceeding should have right and opportunity to cross-examine.

Like wise on the similar line the decision in *2012 SCC online Del 4864 Mohd. Shahabuddin V/s. State (GNCT) of Delhi, 2021 SCC online Ker 297 P. Muhammed V/s. State of Kerala, 2023 SCC online Bom 2434 Ramanand Gunaji Amonkar & Ors. V/s. Raghuvir Shamba Amonkar & Ors.* are pressed in to service about the admissibility of the evidence on the death of a witness prior to his cross-examination

The Ld. Advocate for accused relied upon the decisions in

(2013) 10 Supreme Court Cases 758 Kaliya V/s. State of Madhya Pradesh, (2011) 4 Supreme Court Cases 240 H. Siddiqui V/s. A. Ramalingam, (2004) 7 Supreme Court Cases 747 Shyam Sunder Kohli V/s. Sushma Kohli, (2007) 5 Supreme Court Cases 730 J. Yashoda V/s. K. Shobha Rani which dealt with the circumstances in which and the mode of proof of documents by secondary evidence can be adduced.

On similar line in respect of the proof of contents of the public documents in evidence the following decisions are pressed into service by the Ld. Advocate for accused :-

1. 1945 SCC online Bom 44 Madholal Sindhu V/s. Asian Assurance Co. Ltd. and others
2. 1982 SCC online Bom 148 Om Prasad Berlia and another V/s. Unit Trust of India and others
3. 2009(2) Mh.L.J. Geeta Marine Services Pvt. Ltd. & Anr V/s. State & Anr.
4. 2008 SCC online Bom 1610 Suhas Bhand V/s. State of Maharashtra & Anr.
5. 2010 4 Supreme Court Cases 329 Tukaram S. Dighole V/s. Manikrao Shivaji Kokate
6. 2010 4 Supreme Court Cases 491 Life Insurance Corporation of India and another V/s. Ram Pal Singh Bisen
7. 2011(3) Mh.L.J. Havoil Kersi Sethna V/s. Kersi Gustad Sethna
8. 2011 SCC online Bom 2076 Umesh Mehra and Others V/s. State of Maharashtra and Another
9. Cr. W.P. No. 376/2019 (Coram: Revati Mohite Dere J.) Date: 20.09.2021 Rajesh M Kunte V/s. Rahul Rajeev Gandhi & Ors.
10. 2019 SCC online Bom 235 Indira Rajguru V/s. Balkrishna K. Rajguru.

Lastly the decision in Manik and ors. V/s. State of

Maharashtra 2024 SCC online SC 2625 is being pressed into service on the point that, prosecution must stand on its own legs to establish and prove the guilt of accused.

Further the Ld. Advocate for accused relied upon the decision in **Bheri Nageshwarrao V/s. Mauri Virbhadra Rao 2006 SCC online AP330** and the decision in **T. Laxmi V/s. State of Andhra Pradesh 2021 SCC Online AP 3670** in support of the submissions that the opinion of expert or comparison of signatures can not be given based on the xerox copies of the document.

He further relied the decision upon **Lallan Kumar Singh and Ors. V/s. State of Maharashtra 2022 SCC online SC 1383** in support of the submission that, vicarious liability u/s 27 of the SEBI Act is dependent on the role of a person proved through evidence and not based on the designation of the director.

15. Gone through the above decisions cited.

16. Now, let me advert on record the Section 24 (2) of the SEBI Act, for which the accused are prosecuted. It reads as under ;

“If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both”.

In view of the legal position reproduced above the imposition of penalty by the adjudication officer and failure of the accused to pay the penalty amount within stipulated period inspite of

communication of the adjudication order are the essential ingredients of offence which are required to be proved by the prosecution i.e. SEBI beyond all reasonable doubt to sustain the guilt of accused.

17. Now, let me see the evidence on record whether it satisfy the ingredients of the offence as reproduced above. It appears that the CW-01 Prasad Jagdale deposed about the passing of the adjudication order and issuance of the letter below Exh. 66 by him communicating the adjudication order. The above witness after recording of his examination-in-chief was not available for further cross-examination.

The prosecution appears to have examined Santanu Mitra as CW-01. He deposed about the authority to file the complaint, passing of the adjudication order imposing penalty of 1 crore against the company and the filing of the appeal challenging the said adjudication order before the SAT. he deposed about the letters issued by Prasad Jagdale vide Exh. 66, 99 and 100. He further deposed about the production of the certified copy of the decision of SAT below Exh. 101 and his authority filed below Exh. 102. The CW-02 Pradnya Pawar deposed about her authority vide Exh. 104 she too deposed about the filing of the appeal before the SAT and dismissal of the said appeal by the SAT vide order below Exh. 101. She deposed that she has applied by issuing letter to Registrar of SAT for applying the appeal memo and accordingly got the certified copy of the appeal memo below Exh. 105. She deposed and placed on record the form No. 32 below exh. 106. This is the sum and substance of the evidence of the prosecution.

18. As against this accused No. 3 stepped into the witness box in support of his defence and he denied the communication of the adjudication order, the filing of the appeal and the fact that he was

director of the accused No.1 company. He deposed and placed on record his educational document, death certificate of his parents, voter ID card and other documents which bears his name as Gopu Parumal Belani and not Gopu Parimal Belani as mentioned in the appeal memo filed before the SAT. He denied the correctness of the address mentioned on Exh. 66, 99 and 100. He deposed that in year 2014 Gurubaksh Motwani that is the father of Kishor Motwani and Suresh Motwani called him and he stated that accused has not concerned with accused No.1 company and he will take care that the name of the accused will be taken out of the matter. Therefore, on his asking he signed the vakalatnama. Advocate Santosh Thakur was engaged by Gurubaksh Motwani and upon asking by Santosh Thakur in the year 2016 he availed bail. The DW-01 further deposed that since the year 2022 his name was not removed therefore, he took legal opinion and engaged advocate Mr. Ramsinghani for himself. The DW-01 deposed that from beginning from 2022 he has not received any notice from the Court. This is the sum and substance of the evidence led by the accused No. 3.

19. Upon appreciating the evidence on record, the prosecution appears to have examined PW-01 Prasad Jagdale below Exh. 65. The said witness deposed about the passing of the adjudication order dated 30.06.2004 and issuance of the letter Exh. 66 to the accused No. 1 company communicating the adjudication order. On account of demise of the said witness PW-01 Jagdale further examination-in-chief could not be completed. He was not available for cross-examination to the accused. The Ld. SPP and the Ld. Advocate of accused relied upon the decisions as mentioned above about the admissibility of the evidence of witness who was not available for cross-examination on account of his death. I found that in the case in hand the examination-in-chief of the

PW-01 Prasad Jagdale was not completed. Therefore, prima facie it can not be said that the evidence of PW-01 Prasad Jagdale is the substantive piece of evidence and, it can be relied upon although PW-01 not available for cross-examination.

20. Be that as is may, on scrutinizing the evidence of CW-01 Santanu Mitra, it appears that the fact that Santanu Mitra has filed the complaint is not seriously disputed. It has come on record during the course of cross-examination of Santanu Mitra that,

“It is true that prior to filing of the complaint I have not played any role in the investigation of the case”.

Further, it has come on record in the cross-examination of CW-01 Santanu Mitra that,

“Along with the complaint the copy of the adjudication order is filed with specify the role of the each accused. I have not filed any other documents along with the complaint to specify to role of each accused except the adjudication order”.

Further it is come on record in the cross-examination of CW-01 Santanu Mitra that,

“I have filed the complaint on the basis of the record available”.

All these circumstances came on record during the course of cross-examination CW-01 Santanu Mitra presupposes and indicate the fact that has filed the complaint.

21. But, the Ld. Adv. for accused by bringing attention to the vakalatnama vide Exh. 226 which is allegedly signed by one Kalyankar and in the cause title of the said vakalatnama name of one Mr. Narendra Rawat is trying to show that the complaint is not filed by CW-01

Santanu Mitra. I found that the above defects are technical or may be the typographical mistake which can not be taken into account more particularly when CW-01 Santanu Mitra stepped into the witness box deposed about the filing of the complaint and was subjected to cross-examination at length on behalf of the accused. Significant to mention here that no cross-examination appears to have been made by the Ld. Adv. For accused in respect of the above defects in the vakalatnama filed along with the complaint to CW-01 Santanu Mitra. Consequently, I found no substance in the above said defects/infirmities, pointed out by Ld. Adv for accused.

22. The CW-01 Santanu Kumar has deposed about his authority below Exh. 102 in respect of the filing of the complaint and delegation of the Power. The above documents are the internal documents of the SEBI authorizing the CW-01 Santanu Mitra to file the complaint on behalf of the SEBI against the accused No.1 company. The complaint is filed by CW-01 Santanu Mitra along with the said authority letter below Exh. 102 and the delegation of power, during the discharge of his official duty. Consequently, I found no reason to doubt the said authority letter below Exh. 102 and the delegation of power which conferred the authority to the CW-01 Santanu Kumar who filed the complaint. Further, The non-production of meeting resolution will not affect the authority of CW-01 to file the complaint, as it is the indoor management of SEBI, to take resolution.

23. On traveling through the evidence on record, it appears that the complaint is filed by CW-01 in the matter of M'Belle International Pvt. Ltd. of whose the accused Nos. 2 to 6 are the directors, by virtue of Section 24 (2) r/w Section 27 of the SEBI Act.

Therefore, I found that the authority letter below exh. 102 impliedly speaks of sanction accorded to file the complaint against the accused No.1 company and its directors. Consequently, I found no substance in the submission of the Ld. Adv for accused that sanction for prosecuting the company can not be availed for prosecution of the directors of accused No.1 company. As such the present complaint against the accused Nos. 2 to 6 who are the directors of the accused No.1 company is perfectly maintainable.

24. It appears that the investigation was conducted by the SEBI in the matter of share prices of M/s. Roofit Industries Ltd. Therefore, on 23.07.2002 the summons to the accused No. 1 company was issued and as the accused No.1 company failed to furnish the said information after investigation into the matter, it was concluded that the company has violated the provisions of the Act and therefore, to inquire into the said violations the adjudication officers was appointed and he conducted the adjudication proceeding and imposed penalty against the accused No.1 company.

25. It is the submission of Ld. Adv for accused No.3 that no summons dated 23.07.2002 was issued to the accused and no prosecution for non-compliance of the said summons under Section 11 C of the SEBI was filed against him. There is clear cut violation of the principle of natural justice in doing the investigation as well as while conducting the adjudication proceeding. Number of decisions are pressed into service as mentioned above by Ld. Adv for accused No. 3 that serious prejudices are caused on account of violation of the principle of natural justices.

26. I would like to mention here that the present prosecution is filed for non-compliance of the adjudication order imposing penalty against the accused No.1 company. The non-compliance of the said order is the reason for filing the present prosecution against the accused No.1 company and accused Nos. 2 to 6 who are the directors of the accused No.1 company. This Court has got no power to inquire into the legality and propriety of the adjudication proceeding conducted by the adjudication officer and the investigation done by the SEBI officer, for which a separate forum i.e. SAT is available. Consequently, I found no substance in the submission of Ld. Adv for accused that there is violation of principle of natural justices in conducting the investigation by SEBI in the matter of Rooft Industries Ltd. and while conducting the adjudication proceeding by the adjudication officer which is fatal to the present prosecution. Therefore, the submission of the Ld. Advocate of accused and the decisions mentioned above relied upon by Ld. Adv for accused No.3 on that point will not be useful to the accused for creating any doubt on the creditability of the present prosecution.

27. The scope of the present prosecution is limited to inquire into whether there is any non-compliance of the accused persons in complying the adjudication order passed against accused No.1 company. It appears that the CW-01 Santanu Mitra deposed that he has filed the complaint for non-compliance of the order dated 30.06.2004 which is filed below Exh. 225. The CW-01 complainant Santanu Mitra also deposed that the accused company has preferred the appeal before the SAT vide Exh. 101 challenging the adjudication order imposing penalty and the said appeal came to be dismissed. Thereafter, the letters vide Exh. 66, 99 and 100 came to be issued to the accused persons with the signature of deceased witness Prasad Jagdale but, the accused persons

failed to deposit the penalty which resulted the filing of the complaint.

28. Looking to the tenor of the cross-examination it appears that accused have not disputed the passing of the adjudication order vide Exh. 225 imposing penalty. In fact, it has brought on record during the course of cross-examination that the adjudication order is passed only against the accused No.1 company. The communication of the adjudication order and the fact that contesting accused are the directors of the accused No.1 company appears to have been disputed.

29. Relevant to mention here that CW-01 Santanu Mitra deposed about issuance of the letter below Exhs. 66, 99 and 100 to the accused for informing and compliance of the adjudication order. Those letters are issued with the signature of PW-01 Prasad Jagdale. Indisputably, the PW-01 Prasad Jagdale is no more. The CW-01 Santanu Mitra identified the signature of Prasad Jagdale. The witness is a officer of SEBI and there is no reason before him to depose false, so I found no reason to disbelieve the evidence of CW-01 Santanu Mitra that the letters below Exh. 66, 99 and 100 are issued to the accused with the signature of the deceased witness Prasad Jagdale. Consequently, I found that the evidence of CW-01 on the above point to be reliable one. Therefore, the prosecution with the evidence of CW-01 Santanu has proved the issuance of the above letter to the accused.

30. The accused No. 3 suggested to the witness Santanu Mitra during the course of his cross-examination that the address of accused No. 3 mentioned on the complaint and the notices is false to which the witness answered that he does not have personal knowledge about the address of accused No. 3 and therefore he can not state whether the

address is correct or not. It has come on record during the course of cross-examination of CW-01 Santanu Mitra that he has filed the complaint on the basis of the record available. Further, it has brought on record in the course of cross-examination of CW-01 that,

“Today I am not able to produce any document to show that prior to the issuance of the notice below Exhs. 66, 99 and 100. The residential address of accused No. 3 was sent mentioned in the complaint”.

31. Be that as it may, the accused No.3 stepped into the witness box and during the course of his cross-examination conducted by the SPP on behalf of SEBI it has come on record that the Exh. 180 P. R. bond mentioned the address that,

“5D, Ajanta Apartment, M. L. Dhanukar Marg, Pedder Road, Mumbai 18”.

The above address is mentioned on Exh. 180 P. R. bond is identical to the address of accused No. 3 mentioned on the complaint and notices Exh.66 and Exh.99. In view of the circumstances came on record during the course of cross-examination of the accused No. 3, it can not be hold that the address mentioned on the complaint Exh. 01 and letter Exh.66 and Exh.99 is not of the accused No. 3.

32. Looking to the tenor of the cross-examination conducted by the accused persons of CW-01 Santanu Mitra, it appears that they have not given a single suggestion to the CW-01 that the letter/notices below Exhs. 66, 99 and 100 were not sent to them. Only the accused No. 3 has disputed the address on the notices which is already dealt with in the forgoing paras, which is required to be noted here. Consequently, non-production of the postal receipt will not be fatal to the prosecution.

33. Apposite to mention here that the prosecution has placed on record the certified copy of the decision of SAT below Exh. 101. The CW-01 deposed about it. Further, the prosecution has placed on record the certified copy of the appeal below Exh. 105. The CW-02 Pradnya Pawar deposed about the production of the certified copy of the appeal memo. It appears that the Ld. Adv of accused objected the exhibition of the documents on the ground that it can not be treated as a certified copy as it does not mention the date of application and receipt issued by the concerned authority. But, it is relevant to mention here that the Ld. Predecessor during the recording of evidence of CW-1 Santanu Mitra has observed that the SAT order below Exh. 101 is official document issued by the officer of the SAT and the said document falls under the definition of the public document as per Section 74 of the Indian Evidence Act. Further it is signed by Registrar of SAT and accordingly he turn down the objection raised by the Ld. Advocate for accused No. 3.

34. Likewise the Ld. Advocate for accused No. 3 while recording the evidence of CW-02 Pradnya Pawar raised objection for objecting the Exhibition of certified copy of the appeal memo Exh. 105 on the ground that, it can not be treated as certified copy as it does not mention the date of application and the receipt issued by the concerned authority. But, the Ld. Predecessor has observed that it is official document issued by the officer of the SAT comes under the definition of the public document as per the Section 74 of the Indian Evidence Act. It was observed that the copy of it was supplied free of cost, and it is a certified copy signed, and verified, by the Registrar of SAT. Therefore, he turn down the objection of the accused. Identical submissions are made by the Ld. Adv of accused No. 3 about the evidential value of the certified copy of decision of SAT below Exh.101 and the appeal memo

below Exh. 105 contending that, it is not a public document of whose certified copy is admissible in evidence.

I hold that since my Ld. Predecessor has dealt with the objections raised by the Ld. Adv of accused No. 3 on this point and also passed order while recording the evidence about the admissibility of the document below Exh. 101 and Exh. 105 in evidence, I found that the said finding and order of my Ld. Predecessor is binding on this Court and the same can not be reviewed. I would like to mention here that the SAT is the tribunal presided over by one justices and another member. It is a quasi judicial authority. Consequently, I found no force in the submission of Ld. Adv for accused No. 3 that the certified copy of the SAT order below Exh. 101 and the certified copy of appeal below Exh. 105 are not admissible in evidence. Therefore, the submission of Ld. Adv. for accused No.3 and the decisions pressed into service on this point will not be useful to the accused No. 3.

35. The certified copy of the SAT appeal below Exh. 105 imputes knowledge of the passing of the adjudication order against the accused No.1 company by the adjudication officer. Relevant to mention here that vide order Exh. 101, the SAT appeal came to be dismissed on merits therefore, on this count also the submission which the Ld. Adv for accused No. 3 has made about the violation of the principle of the natural justice and the aspect touching to the legality and propriety of the adjudication order are not maintainable before this Court. It has to be presumed that said aspects are considered by SAT while dismissing the appeal.

36. The Exh. 105 certified copy of the appeal memo mentions the fact of passing of the adjudication order and the fact that accused

No. 3 was the director of the accused No.1 company. The said appeal appears to have been filed by the accused No.3. The accused No. 3 is disputing fact that Exh. 105 appeal was preferred by him before the SAT on the count that his name is incorrectly mentioned as Gopu Parimal Belani instead of Gopu Parumal Belani. Further, he is not acquainted with any advocate by name Pathak who allegedly filed the said appeal before the Hon'ble SAT.

37. Indisputably the name in the verification clause of appeal memo is mentioned as Gopu Parimal Belani. The accused No. 3 has placed on record copy of Adhar Card, Pan Card and other educational document in which his name is mentioned as Gopu Parumal Belani. But, it would be apposite to mention here that the accused No. 3 during the course of his cross-examination deposed that,

"I have not taken any action against anyone for filing the SAT appeal in his name. Witness voluntarily say that I came to know about the SAT appeal in the year 2021. I have not made any correspondence with SAT or accused No.1 company upon knowledge of the SAT appeal till this date. Witness voluntarily say that because of the Covid-19 I have not made any correspondence with SAT or accused No.1 company".

38. Further, it has come on record in the cross-examination of accused No.3 that,

"I have not made any correspondence with accused No.1 company or with SEBI after knowledge of the present prosecution. Witness voluntarily say that Mr. Gurubaksh Motwani i.e. the father of Suresh Motwani told me that this prosecution against me and how I am involved in that. He

also stated that he will take care of this matter and removed is name from this case”.

39. It has further come on record of cross-examination of accused No. 3 that,

“It is correct to say that, I have not made any correspondence with Advocate Vishwas Pathak after knowledge of the SAT appeal and the present prosecution”.

The circumstances came on record goes to show that the accused No. 3 simply disputing the fact that he has not preferred the appeal challenging the adjudication order before the SAT but, has not taken any action against the persons who allegedly filed the SAT appeal in his name. The above circumstances came on record goes to demonstrate that the defence of accused is evasive one just to avoid the liability of the adjudication order passed against the accused No.1 company. Consequently, I am not impressed with the submission of Ld. Adv for accused No. 3 to that effect.

40. The certified copy of the appeal below Exh. 105 goes to show that the accused No. 3 is a director of the accused No.1 company and he being the director of the accused No. 1 company preferred the appeal challenging the adjudication order passed against the accused No.1 company before the Hon'ble SAT. The act of the accused No.3 in preferring the appeal before the SAT on behalf of the accused No.1 company spell out of his role and responsibility as being the director of the accused No.1 company. Consequently, I found no force in the submission of Ld. Adv for accused No. 3 that he is not the person who is looking after the affairs of the accused No.1 company and is not responsible to conduct of business of accused No.1 company. As a result

the number of decisions pressed in to service as mentioned above on the point will not be useful to the accused No.3.

41. It is pertinent to mention here that as per the complaint Exh. 01 the name of accused No.3 is mentioned as Gopu Parimal Belani. The Process appears to have been issued in the name of above accused no. 3. The accused No. 3 has not challenged order of issue process against accused No. 3 on the count of a mistaken identity. As against this during the course of cross-examination the accused No. 3 deposed that,

“Now, Exh. 69 VP is shown to me. It bears my signature. My name is mentioned on VP as Gopu P. Belani, accused No. 3 above named”.

It goes to show that the accused No. 3 accepted him to be the accused No. 3 as named in the complaint i.e. Gopu Parimal Belani. The above circumstances also goes to show that the accused No. 3 is taking evasive defence that he has not preferred the appeal before the SAT on behalf of the accused No. 1 company challenging the adjudication order imposing penalty.

42. Indisputably as per the Exh.106 i.e. Form No. 32, the name of accused No. 3 is not mentioned as the director of accused No. 1 company. However, the above piece of evidence would not be helpful to the accused No. 3 in view of the fact that accused No. 3 has preferred the appeal before the SAT challenging the adjudication order on behalf of accused No.1 company by mentioning the fact he is the director of accused No.1 company. The accused No. 3 therefore, is estopped by conduct to say that he is not the director of accused No.1 company. Further it is relevant to mention here that prosecution has placed on

record the certified copy of the ROC record below exh. 198 obtained on 30.10.2024 wherein the name of accused No. 3 is mentioned as the director of accused No. 1 company but, the said record was disputed by the Ld. Adv for accused No. 3 on the count that the entire document received from the ROC is not filed on record. It appears that as per Exh. 198 total pages were 16 in number but, only few pages are produced on record. So, there appears substance in the submission of the Ld. Adv of accused No. 3 that entire document below Exh 198 as received from the Assistant Registrar of companies, Mumbai is not filed on record. But the fact remains that the name of accused No. 3 is mentioned as director of the accused No.1 company.

43. The up shot of the discussion led me hold that there is reason to believe that the accused No. 3 was the director of the accused No.1 company and therefore is responsible to the accused No.1 company. The SAT appeal No. 154/2004 appears to have been preferred on 19.08.2004. The said appeal appears to have been preferred immediately after passing of the adjudication order within limitation. As discussed supra the above said appeal is preferred by the accused No.3, on behalf of the accused No.1 company, so it imputes knowledge of the passing of adjudication order against the accused No.1 company to the accused No.3. Despite knowledge of the said fact and even after dismissal of the SAT appeal the accused No.3 who is proved to be the director of accused No.1 company has failed to comply the adjudication order. Therefore, is liable for the non-compliance of the adjudication order.

44. As far as the contesting accused No. 4 and 5 are concerned. Their defence is that they were not the directors of the accused No.1

company and already resigned. The accused No. 4 and 5 have not disputed the fact of passing of the adjudication order, communication of the adjudication order as well as preference of the appeal before the SAT, during the course of cross-examination of the prosecution witnesses. As such the evidence of prosecution witness on above point remained unchallenged on the part of accused No. 4 and 5.

45. In support of the defence the accused No. 4 and 5 placed on record the copy of order dated 26.12.2018 passed in recovery certificate 68/14 and the copy of the decisions dated 02.12.2024 passed in SEBI Spl. Case No. 138/2014 wherein the accused got acquitted on the count that they were not the directors of the accused No.1 company when the alleged summons was issued.

46. As against this the prosecution has placed on record below Exh. 106 and Exh. 118. The Exh. 118 goes to show that the accused No. 5 Rita Motwani was appointed as director on 02.03.1989 and thereafter she ceased to be the director with effect from 16.06.1999. The Form No. 32 below Exh. 106 shows that accused No. 4 Anupama Motwani came to be appointed on 15.06.2005. No cessation is shown thereafter.

47. The order dated 26.12.2018 passed in recovery certificate 68/14 filed along with pursis Exh. 193 shows that the accused No. 4 and 5 resigned from the company with effect from 16.06.1999. The accused were acquitted in SEBI Spl case No. 138 of 2014 as they were not found to be the directors of accused No.1 company on 23.07.2002 when the summons under Section 11C(6) of SEBI Act were issued against them. Therefore, the said prosecution was culminated in the

acquittal of the accused No. 4 and 5.

48. Indisputably the accused no. 4 and 5 were not the directors of the accused No.1 company when the adjudication order in question came to be passed i.e. on 30.06.2004. But, the present prosecution is for non-compliance of the adjudication order. There is no material on record to show that accused No. 5 Rita Motwani is appointed as the director of accused No. 1 company after her cessation as director with effect from 16.06.1999. Consequently, I found that she can not be blamed for non-compliance of the adjudication order.

49. But, as far as the accused No. 4 Anupama Motwani concerned she came to be appointed on 15.06.2005 as the director of accused No.1 company as per the record below Exh. 106. The said record i.e. Form No. 32 below exh. 106 is not disputed by the accused No. 4 during the course of cross-examination. No evidence is led by the accused No.4 in defence to establish and prove that she resigned or ceased to be director after 15.06.2005. The Exh. 66, 99 and 100 were issued on 23.04.2007, 21.05.2007 and 28.06.2007 respectively i.e. after the appointment of accused No.4 Anupama Motwani on 15.06.2005. So there is reason to believe that accused No.4 who is appointed as director of accused No.1 company on 15.06.2005 and not ceased to be director thereafter, is the director of accused No.1 company at the time of issuance of the above notices/letters towards compliance of the adjudication order and as such is liable for the non-compliance of the adjudication order.

50. The evidence on record thus goes to establish and prove beyond all reasonable doubt that the accused No.3 Gopu Belani and

accused No.4 Anupama Motwani are the directors of the accused No.1 company and they failed to comply the adjudication order dated 30.06.2004, and thus have committed the offence punishable under Section 24(2) r/w Section 27 of the SEBI Act. The ingredients of the offence are prove beyond all reasonable doubt against the accused No.3 and 4. Hence, I hold the accused No.3 and 4 guilty for the above said charge. The accused No. 5 Rita Motwani is not found guilty as discussed supra. Hence, she is entitled for acquittal.

51. Since, I hold the accused No. 3 and 4 guilty, I stop here to hear accused No. 3 and 4 on the point of sentence.

Digitally signed
by RAVI
MANOHARRAO
JADHAV
Date:
2025.07.19
17:29:09 +0530

Date : 19.07.2025

(R. M. Jadhav)
SEBI Special Judge
City Civil & Sessions Court,
Gr. Bombay (C.R.No.22)

52. The accused No.3 and 4 along with their advocates present. The accused No. 3 and his advocate Mr. Ramsinghani submitted accused is 65 years old, having ailments. He is not having any criminal antecedents. He is permanent resident of Mumbai. Likewise the accused No. 4 and her advocate Mr. Bohra submitted that accused is old age person. She is lady. No criminal antecedents against her. She got not source of income. Hence, they prayed for leniency.

53. As against this the Ld. SPP Ms. Anubha Rastogi submitted that the act provides imprisonment or fine. The violation is of long back. The penalty amount is 1 Crores which is unpaid till today. The accused No.3 Gopu Belani is prosecuted by SEBI in other matter which is

pending. Hence, considering the above fact and circumstances punishment according to law may be passed.

54. Considered the rival submissions.

55. Indisputably accused are old age person. So naturally due to the age they must be having medical ailments. The offence which is proved against the accused persons is technical one i.e. non-compliance of the adjudication order passed against the accused No.1 company. No individual liability appears to have been imposed as per the adjudication order. The accused No. 3 and 4 being the directors of the accused No.1 company are vicariously held guilty for the non-compliance of the adjudication order. The prosecution has not produced on record any material to show that the convicted accused are convicted in any other proceeding initiated by SEBI or any other authority. Considering the above fact and circumstances, I hold that the custodial incarceration would not be the proper punishment to be imposed upon the accused. The nature of violation being monetary nature, I hold that the punishment of fine will be sufficient to meet out the ends of the justice.

56. The accused No.1 is a company. Indisputably, it is struck off and not in existence. No material is produced on record by SEBI to show that it has assets which can be attached. Further, as mentioned supra the present accused No. 3 and 4 are vicariously held liable for the offence against accused No.1 company as they being the directors of the accused No.1 company. Considering the above fact and circumstances, I hold that imposing fine upon the accused No.3 and 4 being the directors of the accused No.1 company would suffice and meet out end of justice.

In sequel, I pass following order :-

ORDER

1. The accused No. 3 Gopu Parimal Belani and accused No.4 Anupama Motwani being the directors of the accused No.1 company, for accused No.1 company are convicted of the offence punishable under Section 24(2) r/w 27 of SEBI Act, 1992 vide Section 235(2) of Cr.P.C.
2. Accused Nos. 3 and 4 are sentenced to pay fine of Rs.1,00,00,000/- (Rs. One crore only), each in default of payment of fine, the accused are directed to undergo simple imprisonment for six month.
3. Upon realization of fine amount half of the fine amount shall be paid to SEBI as compensation.
4. Accused No. 3 and 4 shall surrender their bail bonds.
5. Copy of judgment be supplied to the accused No. 3 and 4 free of cost.
6. The accused No. 5 Rita Motwani is acquitted of the offence punishable under Section 24(2) r/w 27 of SEBI Act, 1992 vide Section 235(1) of Cr.P.C. Her bail bond stands cancelled.
7. The accused No.5 is directed to furnish P R. of Rs.15,000/- and the cash bail deposited by her during trial is continued towards compliance of Section 437-A of the Code of Criminal Procedure.
8. As per the roznama order dated 25.10.2017 the SEBI is at liberty to prosecute the accused No. 6 Sushil Thakkar by way of separate complaint.

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SEBI Spl Case No.352/14

9. Accordingly, SEBI Special Case is disposed off by this judgment. The Record and Proceedings be sent to the Record Department.

(Judgment pronounced in the open Court)

Digitally signed
by RAVI
MANOHARRAO
JADHAV
Date:
2025.07.19
17:29:20 +0530

(R. M. Jadhav)
SEBI Special Judge,
City Civil & Sessions Court,
Gr. Bombay (C.R.No.22)

Date : 19.07.2025

Directly dictated on computer on : 19.07.2025
HHJ signed on : 19.07.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
19.07.2025	5.30 pm	Mrs. Manasi M. Kadam
Name of the Judge (With Court Room No.)		HHJ R. M. JADHAV (CR 22)
Date of Pronouncement of JUDGMENT /ORDER		19.07.2025
JUDGMENT /ORDER signed by PO. on		19.07.2025
JUDGMENT /ORDER uploaded on		19.07.2025