

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. OF 2019**

(Arising out of the impugned common judgment and final order of the Securities Appellate Tribunal, Mumbai, dated 09.09.2019 in Appeal Nos. 6, 7, 190 and 191 of 2018)

**STATUS OF PARTIES**

**BETWEEN:**

<b><u>IN THE</u></b> <b><u>TRIBUNAL</u></b>	<b><u>IN THIS</u></b> <b><u>HON'BLE</u></b> <b><u>COURT</u></b>
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**APPEAL NO. 6 OF 2018**

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C-4A, "G" Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.  
Through its Manager,  
NRO, New Delhi.

RESPONDENT

APPELLANT

**AND**

1. Price Waterhouse & Co. now known as Price Waterhouse & Co. Bangalore LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 007567S/S200012 5th Floor, Tower D, The Millennia, #1 & 2 Murphy Road, Ulsoor, Bangalore - 560008.  
Through its Partner.

APPELLANT  
No.1

RESPONDENT  
NO.1

2. Price Waterhouse & Co. now known as Price Waterhouse & Co. Chartered Accountants LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 304026E/E300009. Plot No. Y-14, Block EP, Sector V, Salt Lake, Electronics Complex, Bidhan Nagar, Kolkata – 700091,  
Through its Partner.

APPELLANT  
NO.2

RESPONDENT  
NO.2

- |   |                           |                            |
|---|---------------------------|----------------------------|
| <p>3. M/s. Lovelock &amp; Lewes, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 301056E Plot No. Y-14, Block EP, Sector V, Salt Lake, Electronics Complex, Bidhan Nagar, Kolkata - 700091.<br/>Through its Partner.</p>                    | <p>APPELLANT<br/>NO.3</p> | <p>RESPONDENT<br/>No.3</p> |
| <p>4. M/s. Lovelock &amp; Lewes now known as Lovelock &amp; Lewes LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 116150W/W100032. 252, Veer Savarkar Marg, Shivaji Park, Dadar (West), Mumbai - 400 028.<br/>Through its Partner.</p> | <p>APPELLANT<br/>No.4</p> | <p>RESPONDENT<br/>NO.4</p> |
| <p>5. Price Waterhouse, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 301112E. Plot No. Y-14, Block EP, Sector V, Salt Lake, Electronics Complex, Bidhan Nagar, Kolkata - 700091.<br/>Through its Partner.</p>                            | <p>APPELLANT<br/>No.5</p> | <p>RESPONDENT<br/>NO.5</p> |
| <p>6. Price Waterhouse now known as Price Waterhouse Chartered Accountants LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 12754N/N500016. Sucheta Bhawan, 11A Vishnu Digambar Marg, New Delhi - 110002.<br/>Through its Partner.</p>  | <p>APPELLANT<br/>No.6</p> | <p>RESPONDENT<br/>No.6</p> |
| <p>7. Price Waterhouse &amp; Co., a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 50032S. 8th Floor, Prestige Palladium Bayan, 129-140, Greams Road, Chennai, Tamil Nadu 600006.<br/>Through its Partner.</p>                               | <p>APPELLANT<br/>No.7</p> | <p>RESPONDENT<br/>No.7</p> |

8. Price Waterhouse & Co. now known as Price Waterhouse & Co. LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 016844N/N500015. Sucheta Bhavan, 1st Floor, 11-A, Vishnu Digambar Marg, New Delhi - 110002.  
Through its Partner.

APPELLANT      RESPONDENT  
No.8              NO.8

9. M/s. Dalal & Shah now known as Dalal & Shah LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 102020W/W100040. 1701, 17th Floor, Shapath V, Opp. Karnavati Club, S. G. Highway, Ahmedabad 380051, Gujarat. 3  
Through its Partner.

APPELLANT      RESPONDENT  
No.9              No.9

10. M/s. Dalal & Shah now known as Dalal & Shah Chartered Accountants LLP, a partnership firm registered with the Institute of Chartered Accountants of India bearing Registration No. 102021W/W100110. 252, Veer Savarkar Marg, Shivaji Park, Dadar (West), Mumbai - 400028.  
Through its Partner.

APPELLANT      RESPONDENT  
No.10             No.10

**RESPONDENT NOS. 1 TO 10 ARE  
CONTESTING Respondents**

**APPEAL NO. 7 OF 2018**

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C-4A, "G" Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.  
Through its Manager,  
NRO, New Delhi.

RESPONDENT      APPELLANT

**AND**

Price Waterhouse, Bangalore,  
a partnership firm registered with the  
Institute Of Chartered Accountants of India,  
bearing Registration No. 007568S,  
5<sup>th</sup> Floor, Tower D, The Millennia,  
1 & 2 Murphy Road, Ulsoor,  
Bangalore – 560008.  
Through its Partner.

APPELLANT      CONTESTING  
RESPONDENT

**APPEAL NO. 190 OF 2018**

Securities and Exchange Board of India      RESPONDENT      APPELLANT  
SEBI Bhavan, Plot No.C-4A, "G" Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.  
Through its Manager,  
NRO, New Delhi.

AND

Mr. S. Gopalakrishnan,      APPELLANT      CONTESTING  
LH5, 1404, Lanco Hills,      RESPONDENT  
Manikonda, Rajendra Nagar,  
Hyderabad - 500 089.

**APPEAL NO. 191 OF 2018**

Securities and Exchange Board of India      RESPONDENT      APPELLANT  
SEBI Bhavan, Plot No.C-4A, "G" Block,  
Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.  
Through its Manager,  
NRO, New Delhi.

AND

Srinivas Talluri      APPELLANT      CONTESTING  
Flat No. 4B, Macherla      RESPONDENT  
Apartments,  
6-3-1218/6, Umanagar,  
Begumpet,  
Hyderabad - 500 016

**AN APPEAL UNDER SECTION 15Z OF THE SECURITIES AND  
EXCHANGE BOARD OF INDIA ACT, 1992**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE  
HON'BLE SUPREME COURT OF India

THE HUMBLE APPEAL OF THE  
APPELLANT ABOVENAMED.

**MOST RESPECTFULLY SHEWETH:**

1. The present Appeal filed by the Securities and Exchange Board of India ("SEBI"), a Statutory Regulator entrusted with the regulation and

development of the securities market in India as well as the interest of investors in the securities market, under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), is directed against the common judgment and final order of the Securities Appellate Tribunal, Mumbai ("the SAT"), dated 09.09.2019 in Appeal Nos. 6, 7, 190 and 191 of 2018, whereby the Appeals filed by Respondents herein have been partly allowed by setting aside the order dated 10.01.2018 passed by the Whole Time Member ("WTM") of the Appellant, *inter-alia*, debarring the Respondents from auditing listed Companies and directing listed companies not to engage any audit firm forming part of the Price Water House Network, for a period of two years.

It is most respectfully submitted that the SAT has grossly erred in law by failing to appreciate that, on conclusion of inquiry, after a detailed consideration of the evidence adduced and materials on record, WTM, SEBI had found that there has been a total abdication by the Respondents of their duty to follow the Accounting Standards prescribed by the ICAI and minimum standards of diligence and care expected from a statutory auditor, compelling the WTM to draw an inference of malafide and involvement of Respondents in the large scale financial manipulations of Satyam Computer Services Limited ("SCSL", "the Company") that had come to light with the e-mail dated 07.01.2009 forwarded by Mr. B. Ramalinga Raju, the then Chairman of the said Company. The WTM had also taken into account the law laid down by this Hon'ble Court in the case of N. Narayana vs. SEBI,

reported in (2013) 12 SCC 152, wherein it has been inter alia held thus:

"43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behaviour of Directors and Insiders of the listed companies so as to safeguard market's integrity."

2. The present Appeal raises the following questions of law arising out of the impugned common judgment and final order of the Securities Appellate Tribunal, Mumbai:

- (a) Whether the impugned judgment is vitiated in law being rendered without appreciation and consideration of the facts and law?
- (b) Whether the SAT did not gravely err in law in not appreciating the fact that the appellants/ auditors therein chose to ignore vital materials such as the internal audit report which flagged material discrepancies in reconciliation of the invoices; the omission to get independent verification of the cash and Bank balances done from banks for a period of around 8 years and instead relying on purported one line confirmations obtained through Satyam itself; that accordingly the current account balance of Rs. 1731.88 crore and the FD balance of Rs. 3318.37 crore projected in the accounts of Satyam as on 30<sup>th</sup> September 2008 and as audited by PW throughout the previous 8 years and wrongly published to the world at large was without following the procedures mandated under prescribed Accounting Standards; that the verification of the invoice management system was done in a perfunctory manner by the statutory auditors in total disregard of the Accounting standards and Guidances given by the ICAI; the auditors ignored the internal audit findings on invoices; that the Auditors did not evaluate whether the results from any other alternative / additional procedures stated to have been performed provided sufficient appropriate audit evidence regarding the financial statement assertion being audited, that the auditors clearly obfuscated the true position to the investors by deliberately skipping several

other steps of auditing, all of which were sufficient to establish their complicity, acquiescence, negligence and collusion with the company and its promoters and would amount to "fraud", as contemplated under the SEBI Act?

- (c) Whether the SAT was right in ignoring the valid findings given by the Hon'ble High Court of Bombay to the effect that SEBI had jurisdiction over Chartered Accountants and that exercise of power does not come into conflict with the provisions of Section 24 of the ICAI Act, 1949; that the Chartered Accountants of listed companies can be said to be persons associated with the securities market within the meaning of the SEBI Act, 1992; that SEBI cannot be said to be encroaching upon the powers of the ICAI under the ICAI Act, 1949; that SEBI can 'certainly consider' whether the Chartered Accountant has violated the audit norms prescribed by the ICAI and whether such a professional should continue to function as an auditor of a listed company; and that in view of the duties cast upon the Chartered Accountants as upheld by the Hon'ble Supreme Court in various cases, SEBI in the instant case, on the basis of the SCNs, has jurisdiction to inquire into and investigate the matter in connection with manipulating and fabricating the books of account and balance sheets of the company?
- (d) Whether the order of the SAT is contradictory to the finding of the Bombay High Court to the extent the SAT has held that reckless and clearly willful non adherence to the accounting standards in the course of auditing the accounts only points out



to professional negligence which would amount to a misconduct to be taken up only by ICAI and that SEBI cannot take action in such cases?

- (e) Whether SAT has erred in holding that this Hon'ble Court in Securities and Exchange Board of India vs. Shri Kanaiyalal Baldev Bhai Patel reported in (2017) 15 SCC 1 has held that the element of "inducement" must exist and should be proved before holding that a person is guilty of fraud under the FUTP Regulations?
- (f) Whether the SAT has failed to appreciate the role of statutory auditors -who are responsible for expressing a view on the accounts of the company- by holding that action can be taken against them only if SEBI can to prove that the audit firm or the engagement partners had willfully with intent and knowledge connived with the management of SCSL in the fabrication and falsification of the accounts and induced the investors in taking a wrong decision?
- (g) Whether SAT has erred in holding that the finding of this Hon'ble Court in the case of SEBI vs. Rakhi Trading Pvt. Ltd. Reported in (2018) 13 SCC 753, that the standard of proof for "fraud" under PFUTP regulations was preponderance of probability is only applicable to persons dealing in the securities market and mens rea is required to be proved when fraud is alleged against persons associated with the securities market who are not directly dealing in securities?

- (h) Whether indeed the above does not ignore the much higher standard of care imposed on auditors who perform a fiduciary role by certifying the accounts as proper and valid for the entire body of investors?
- (i) Whether the SAT erred in overlooking the fact that the different firms of the same global network of such audit firms could get registered with different registration numbers with the ICAI under different partners being the signing authorities, the shareholders only recognized and approved the appointment of the global firm as the auditors of Satyam, without segregating each unit of the firms inter se either based on the place of registration or their registration numbers?
- (j) Whether the SAT has failed to appreciate that the company had engaged 'PW' and not an individual network firm for undertaking the audit of the company, and this had resulted in findings by the United States Securities and Exchange Commission, against the entire network and payment of penalties in that jurisdiction?
- (k) Whether SAT had erred in its finding that the Bombay High Court had held that SEBI could not issue directions to the other firms forming part of the network unless there was a finding of connivance or collusion or intention or knowledge on the part of the said firms in the audit of SCSL?
- (l) Whether SAT had erred in not considering the admission on the part of the network firms that they are part of the PW network before various judicial bodies including this Hon'ble Court and the Securities and Exchange Commission, USA?

- (m) Whether the order of the SAT is contradictory to the extent that on one hand, it set aside the debarment imposed by SEBI on PW firms (while holding that SEBI as a regulator has no authority under SEBI laws and regulations to look into the quality of audit services performed by the auditors and on the other hand, it upheld the disgorgement of Rs.13,09,01,664/- (based on the finding of professional lapse amounting to negligence, breach of duty and failure to maintain the expected standard of care on the part of the auditors)?
- (n) Whether the SAT is right in over emphasizing on an observation in the nature of obiter of the Bombay High Court to the effect that "only some omission without any mens rea or connivance with anyone in any manner" would disentitle SEBI from passing the directions proposed in the SCNs against the audit firms?
- (o) Whether the SAT was right in ignoring a contextual reading of the said observation and has failed to appreciate the true tone and tenor of the Bombay High Court's order?
- (p) Whether the SAT was right in making the observation that the omission on the side of the auditors may amount to lapses or negligence but not serious enough to fall within the standard of evidence laid down by the Bombay High Court, without actually appreciating any evidence which was elaborately brought out in the SEBI order and demonstrated before SAT during the course of the hearings?
- (q) Whether the impugned order is sustainable in law, in view of the fact that it ignores the decisions cited and submissions made on

behalf of SEBI highlighting the role and relevance of a Chartered Accountant with respect to listed companies?

- (r) Whether the SAT has not contradicted the finding of the High Court of Bombay while observing that the provisions of Section 12 A of the SEBI Act, 1992 and Regulations 3 and 4 of the SEBI (PFUTP) Regulations apply only to persons dealing in securities and who are associated with the securities directly or indirectly and holding that the Appellants therein are not dealing in the securities either directly or indirectly?
- (s) Whether the SAT was right in interpreting the requirement of mens rea or connivance stipulated by the High Court of Bombay in the context of the SCNs of 2009 and 2010 already issued to the auditors and audit firms invoking the provisions of the SEBI Act and Regulations to mean mens rea and connivance in the 'criminal' sense of the terms, especially when SEBI's proceedings are neither criminal nor quasi criminal?
- (t) Whether the SAT exceeded its jurisdiction by ignoring the finding of the High Court viz. ".....In our view, the petitioners in their capacity as auditors of the Company Satyam, .....can be said to be persons associated with the securities market within the meaning of the provisions of the said Act." and by virtually seeking to overrule that finding while purportedly paraphrasing the High Court findings in para 27 of the Impugned Order?
- (u) Whether the Securities and Exchange Board of India can exercise jurisdiction over professionals such as Chartered

Accountants, if on account of their non-adherence to/disregard of the standards/ rule/ regulations/norms, the integrity of the securities market as also the interest of investors in securities are affected?

- (v) Whether the Securities and Exchange Board of India cannot exercise a power to debar professionals found to have totally abdicated their professional duty to follow minimum standards of diligence and care from extending their professional services with respect to listed companies or intermediaries against whom the Securities and Exchange Board of India has jurisdiction?
- (w) Whether the action of the Securities and Exchange Board of India in debarring the auditors/Respondents from conducting audit and issuing compliance certificates to listed companies and intermediaries for a period of two years can be termed as encroachment on the jurisdiction of the Institute of Chartered Accountants of India, when the Hon'ble High Court of Bombay had directly held that the SEBI can take appropriate remedial steps which may include keeping a person including a Chartered Accountant at a safe distance from the securities market and that the exercise of powers by SEBI under the SEBI Act cannot be said to be regulating the profession of Chartered Accountants in any manner and that such exercise of powers by SEBI in the investors' interest and the interest of the securities market can never be said to be in conflict with the powers of ICAI under section 24 of the Chartered Accountants Act?

- (x) Whether powers exercised by the Securities and Exchange Board of India under Sections 11 and 11B
- (y) of the Securities and Exchange Board of India Act, 1992 in issuing directions including debarring auditors from conducting an audit of listed companies, can be termed as punitive in nature and not remedial and preventive, disregarding judicial precedents especially in view of the fact that such directions are deterrent in nature, not only for other similarly placed auditors but also for the same set of auditors while carrying out such statutory functions in future?
- (z) Whether debarring auditors from conducting an audit of only listed companies or intermediaries with respect to non-compliance of the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder can at all be termed as being violative of Articles 14 and 19(1)(g) of the Constitution of India?
- (aa) Whether the standard of proof required to establish the alleged violations under the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder, is to be direct and beyond a reasonable doubt or would preponderance of probability suffice and whether mens rea is an essential ingredient to establish violations of the provisions of the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder qua persons associated with the securities market?

- (bb) Whether the impugned judgment is contrary to the principles of law laid down by this Hon'ble Court in the case of The Chairman, Sebi vs Shriram Mutual Fund & Anr reported in (2006) 5 SCC 361, which judgment was held to be correct by a three Judge Bench of this Hon'ble Court in the case of Union of India Vs. Dharmendra Textile Processors reported in (2007) 15 SCC 109 ?
  - (cc) Whether the impugned judgment is contrary to the law laid down by this Hon'ble Court in the case of N. Narayanan vs. SEBI, reported in (2013) 12 SCC 152?
  - (dd) Whether continuous non-adherence of Audit and Accounting Standards for a period of 8 years resulting in a large scale scam misleading the investors, could be termed as a mere lapse rather than gross, recklessness and fraud as defined under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003?
  - (ee) Whether it is unsustainable in law to place reliance on circumstantial evidence drawn on the basis of acts and omissions of the party, when direct evidence is not available?
3. The facts in brief leading to and culminating in the present Appeal are set out below:
- (i) Pursuant to the email dated 07.01.2009 forwarded by Mr. B. Ramalinga Raju, the then Chairman of Satyam Computer Services Ltd. ("SCSL") admitting the falsification of books of accounts of the said company and the investigation carried out thereafter by SEBI, the Appellant issued a show cause notice

dated 14.02.2009 to Respondents under Sections 11, 11B and 11(4) of Securities and Exchange Board of India Act, 1992 ("the SEBI Act") and Regulation 11 of the SEBI (Prohibition of fraudulent and unfair trade practices relating to Securities Market) Regulations 2003 ("FUTP Regulations") in connection with the quality of audit of the books of accounts of Satyam Computer Services Ltd. ("SCSL") and violations of the FUTP Regulations. A copy of the said show cause notice dated 14.02.2009 is annexed hereto and marked as **ANNEXURE – A/1 - (PAGES TO )**.

- (ii) Respondents filed a preliminary reply on 10.08.2009 to the show cause notice. A copy of the said reply dated 10.08.2009 is annexed hereto and marked as **ANNEXURE – A/2 - (PAGES TO )**.
- (iii) Appellant issued a supplementary show cause notice dated 19.02.2010 to Respondents making raising therein further violations in connection with the audit of SCSL and contemplating to disgorge the amount of fees/ gains of Rs. 23.31 crore made by the respondents or any further amount found to have been received by the Respondents for the audit of SCSL from the years 2001 to 2008. A copy of the supplementary show cause notice dated 19.02.2010 is annexed hereto and marked as **ANNEXURE – A/3 - (PAGES TO )**.



- (iv) The Respondents filed a preliminary reply on 06.05.2010 to the Supplementary show cause notice. A copy of the said reply dated 06.05.2010 is annexed hereto and marked as **ANNEXURE – A/4 - (PAGES TO )**.
- (v) Respondents on 06.07.2010 filed Writ Petitions bearing Nos. 5249 of 2010 and 5256 of 2010 before the High Court of Judicature at Bombay challenging the jurisdiction of the Appellant in the proceedings.
- (vi) The High Court of Judicature at Bombay passed a judgment dated 13.08.2010 in Writ Petition Nos. 5249/2010 and 5256/2010 setting out the scope and extent of Appellant's powers under relevant sections of the SEBI Act and the FUTP Regulations to act against Chartered Accountants and the circumstances under which the Appellant can issue directions to Chartered Accountants acting in their professional capacity and also held that the jurisdiction of Appellant would depend upon the evidence which is available during the inquiry. A copy of the judgment dated 13.08.2010 passed by the High Court Judicature at Bombay in Writ Petition Nos. 5249/2010 and 5256/2010 is annexed hereto and marked as **ANNEXURE – A/5 - (PAGES TO )**.
- (vii) The Respondents thereupon filed applications dated 22.11.2010 before the Whole Time Member, SEBI seeking cross examination of various persons.

- (viii) The Whole Time Member, after affording an opportunity of hearing to the respondents on 27.11.2010, passed an order dated 15.12.2010 granting the cross examination of some individuals, while rejecting the others.
- (ix) Respondents preferred Appeal Nos. 8 & 9 of 2011 before the Securities Appellate Tribunal, Mumbai ("the SAT") challenging the order passed by the WTM, SEBI.
- (x) The SAT by an order dated 01.06.2011 allowed the Respondents' Appeal and set aside the order passed by the WTM, SEBI.
- (xi) SEBI filed a Review Application on 08.07.2011 before the SAT seeking a review of the order.
- (xii) The SAT by order dated 09.09.2011 rejected the Review Application filed by SEBI.
- (xiii) SEBI thereupon preferred Civil Appeal Nos. 6003-6004 of 2012 and Civil Appeal Nos. 6000-6001/2012 challenging the orders of the SAT before this Hon'ble Court.
- (xiv) This Hon'ble Court, vide order dated 10.01.2017 directed that all statements recorded during the course of investigation by SEBI are to be provided to the Respondents and all documents collected during investigation to be permitted to be inspected by the Respondents. A copy of the order dated 10.01.2017 passed by this Hon'ble Court in Civil Appeals Nos. 6000-6001 and 6003-6004 of 2012 is annexed hereto and marked as **ANNEXURE – A/6 - (PAGES TO )**.

- (xv) In compliance with the order of this Hon'ble Court, SEBI, on 06.02.2017, granted the inspection of documents to the Respondents. The Respondents completed the inspection of all the documents relating to the investigation – of approximately 200 files containing approximately 50,000 pages; this inspection continued till 18.04.2017.
- (xvi) SEBI, by letter dated 21.04.2017, addressed to Respondents called upon the Respondents to conduct cross examination of 8 (eight) witnesses as per the order of this Hon'ble Court, scheduling the same on 08.05.2017 and 09.05.2017.
- (xvii) The cross-examination of witnesses identified by SEBI commenced on 08.05.2017 and concluded on 15.06.2017.
- (xviii) Respondents called upon the Appellant to confirm whether they were relying upon statements/depositions of certain individuals whose statements/depositions had been recorded by the Respondent. The said letter/Application also requested for cross examination of certain individuals.
- (xix) The Appellant did not accede to the request of Respondents, whereupon, the Respondents filed Appeal Nos. 138-141 of 2017 before the SAT.
- (xx) By orders dated 21.06.2017 and 23.06.2017, the SAT allowed the four Appeals filed by Respondents viz., Appeal Nos. 138-141 of 2017. During the hearing, Appellant stated that it had no objection to produce Mr. Ravindranath and Mr. Siva Prasad Pulavarthi for cross-examination. The SAT further directed SEBI to produce Mr. VVK Raju, Mr. Prekki Srinivas Sudhakar and Ms.

Madduri Naga Venkata Gayatri, whose cross-examination was closed, for further cross-examination by Respondents.

- (xxi) The Appellant as well as Respondents filed separate applications viz. M.A.No. 47306 of 2017 and M.A.No. 00350 of 2017, before this Hon'ble Court, seeking extension of time to conclude the proceedings.
- (xxii) This Hon'ble Court, by an order dated 03.07.2017, granted an extension of time by a further period of six months. A copy of the said order dated 03.07.2017 passed by this Hon'ble Court is annexed hereto and marked as **ANNEXURE – A/7 - (PAGES TO )**.
- (xxiii) The proceedings continued before the Hon'ble Whole Time Member and the cross-examination of the witnesses was concluded.
- (xxiv) The Respondents also filed their written submissions before the Whole Time Member, SEBI. Hearings were conducted and concluded before the Whole Time Member.
- (xxv) The Appellant, on 10.01.2018, passed an order containing, *inter-alia*, the following directions:
  - (a) Prohibiting the entitles/firms practicing as Chartered Accountants in India under the brand and banner of PW from, directly or indirectly, issuing any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, the SCRA 1956, the Depositories Act 1996, those provisions of the Companies

Act 2013 which are administered by SEBI under Section 24 thereof, the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI for a period of two years;

- (b) Directing two Noticees i.e. Mr. S.Gopalakrishnan and Srinivas Tilluri, to not, directly or indirectly, issue any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI and the requirements under the SEBI Act, the SCRA 1956, the Depositories Act 1996, those provisions of the Companies Act 2013 which are administered by SEBI under Section 24 thereof, the Rules, Regulations and Guidelines made under those Acts which are administered by SEBI for a period of three years;
- (c) Directing the Appellant along with the two other noticees i.e. Mr. S.Gopalakrishnan and Srinivas Tilluri, jointly and severally, to disgorge the amount of Rs.13,09,01,664/- with interest calculated at the rate of 12% per annum from January 07, 2009 till the date of payment in favour of SEBI.
- (d) Directing listed companies and intermediaries registered with SEBI not to engage any audit firm forming part of the PW Network for issuing any certificate with respect to compliance of statutory obligations which SEBI is competent to administer and enforce, under various laws for a period of two years.

A copy of the order dated 10.01.2018 passed by the WTM, SEBI is annexed hereto and marked as **ANNEXURE – A/8 - (PAGES TO )**.

(xxix) Being aggrieved by the aforesaid order of the WTM, SEBI, the Respondents herein filed Appeals dated 17.01.2018 before the SAT, being Appeal Nos. 6, 7, 190 and 191 of 2018 for urgent reliefs and challenging the impugned order. dated 10.01.2018 passed by the WTM, SEBI. A copy of Appeal No. 6/2018 is annexed hereto and marked as **ANNEXURE – A/9 - (PAGES TO )**.

(xxxi) The SAT heard arguments on all the Appeals filed by Respondents and reserved orders on 04.04.2019. Thereafter, on 09.09.2019, by the impugned common judgment and final order in Appeal Nos. 6,7, 190 and 191 of 2018, the SAT allowed Appeal Nos. 6,190 and 191 of 2018 by quashing the order of the WTM, SEBI, debarring the Price Waterhouse Firms as well as the 2 auditors from auditing listed companies and the direction that listed companies and intermediaries listed with SEBI are not to engage any audit firm forming part of the Price Waterhouse network.

Pertinently, the SAT upheld the order of the WTM, SEBI, directing disgorgement of Rs. 13,09,01,664/- along with interest and consequently dismissed Appeal No. 7 of 2018.

4. The Appellant, being aggrieved by the impugned common judgment and final order of the Securities Appellate Tribunal, Mumbai ("the SAT"), dated 09.09.2019 in Appeal Nos. 6,190 and 191 of 2018

whereby the said Appeals filed by Respondent herein have been allowed by setting aside the order dated 10.01.2018 passed by the Whole Time Member ("WTM") of Appellant, seeks to challenge the same, by way of the present Appeal under Section 15Z of the SEBI Act, before this Hon'ble Court, on inter alia, the following grounds, which are urged strictly in the alternative and without prejudice to one another:

**GROUND**

- A. BECAUSE the impugned judgment is vitiated in law being rendered without appreciation and consideration of the facts and law.
- B. BECAUSE the SAT has grossly erred in not appreciating the fact that the appellants/ auditors therein chose to ignore vital materials such as the internal audit report which flagged material discrepancies in reconciliation of the invoices; the omission to get independent verification of the cash and Bank balances done from banks for a period of around 8 years and instead relying on purported one line confirmations obtained through Satyam itself; that accordingly the current account balance of Rs.1731.88 crore and the FD balance of Rs. 3318.37 crore projected in the accounts of Satyam as on 30<sup>th</sup> September 2008 and as audited by PW throughout the previous 8 years and wrongly published to the world at large was without following the procedures mandated under prescribed Accounting Standards; that the verification of the invoice management system was done in a perfunctory manner by the statutory auditors in total disregard of the Accounting standards and Guidances given by the

ICAI; the auditors ignored the internal audit findings on invoices; that the Auditors did not evaluate whether the results from any other alternative / additional procedures stated to have been performed provided sufficient appropriate audit evidence regarding the financial statement assertion being audited, that the auditors clearly obfuscated the true position to the investors by deliberately skipping several other steps of auditing, all of which were sufficient to establish their complicity, acquiescence, negligence and collusion with the company and its promoters and would amount to "fraud", as contemplated under the SEBI Act.

C. BECAUSE the SAT has grossly erred in ignoring the valid findings given by the High Court of Bombay to the effect that SEBI had jurisdiction over Chartered Accountants and that exercise of power does not come into conflict with the provisions of Section 24 of the ICAI Act, 1949; that the Chartered Accountants of listed companies can be said to be persons associated with the securities market within the meaning of the SEBI Act, 1992; that SEBI cannot be said to be encroaching upon the powers of the ICAI under the ICAI Act, 1949; that SEBI can 'certainly consider' whether the Chartered Accountant has violated the audit norms prescribed by the ICAI and whether such a professional should continue to function as an auditor of a listed company; and that in view of the duties cast upon the Chartered Accountants as upheld by the Hon'ble Supreme Court in various cases, SEBI in the instant case, on the basis of the SCNs, has jurisdiction to inquire into and investigate the matter in connection with manipulating



and fabricating the books of account and balance sheets of the company.

- D. BECAUSE the order of the SAT is contradictory to the finding of the Bombay High Court to the extent the SAT has held that reckless and clearly willful non adherence to the accounting standards in the course of auditing the accounts only points out to professional negligence which would amount to a misconduct to be taken up only by ICAI and that SEBI cannot take action in such cases.
- E. BECAUSE the SAT has erred in holding that this Hon'ble Court in Securities and Exchange Board of India vs. Shri Kanaiyalal Baldev Bhai Patel reported in (2017) 15 SCC 1 has held that the element of "inducement" must exist and should be proved before holding that a person is guilty of fraud under the FUTP Regulations.
- F. BECAUSE the SAT has failed to appreciate the role of statutory auditors who are responsible for expressing a view on the accounts of the company- by holding that action can be taken against them only if SEBI can to prove that the audit firm or the engagement partners had willfully with intent and knowledge connived with the management of SCSL in the fabrication and falsification of the accounts and induced the investors in taking a wrong decision.
- G. BECAUSE the SAT has grossly erred in holding that the finding of this Hon'ble Court in the case of SEBI vs. Rakhi Trading Pvt. Ltd. Reported in (2018) 13 SCC 753, that the standard of proof for "fraud" under PFUTP regulations was preponderance of probability is only applicable

to persons dealing in the securities market and mens rea is required to be proved when fraud is alleged against persons associated with the securities market who are not directly dealing in securities.

- H. BECAUSE the SAT has chosen to ignore the much higher standard of care imposed on auditors who perform a fiduciary role by certifying the accounts as proper and valid for the entire body of investors.
- I. BECAUSE the SAT has erred in overlooking the fact that the different firms of the same global network of such audit firms could get registered with different registration numbers with the ICAI under different partners being the signing authorities, the shareholders only recognized and approved the appointment of the global firm as the auditors of Satyam, without segregating each unit of the firms inter se either based on the place of registration or their registration numbers.
- J. BECAUSE the SAT has grossly erred in failing to appreciate that the company had engaged 'PW' and not an individual network firm for undertaking the audit of the company, and this had resulted in findings by the United States Securities and Exchange Commission, against the entire network and payment of penalties in that jurisdiction.
- K. BECAUSE the SAT has erred in its finding that the Bombay High Court had held that SEBI could not issue directions to the other firms forming part of the network unless there was a finding of connivance or collusion or intention or knowledge on the part of the said firms in the audit of SCSL.

- L. BECAUSE the SAT had erred in not considering the admission on the part of the network firms that they are part of the PW network before various judicial bodies including this Hon'ble Court and the Securities and Exchange Commission, USA.
- M. BECAUSE the impugned judgment is contradictory to the extent that on one hand, it set aside the debarment imposed by SEBI on PW firms (while holding that SEBI as a regulator has no authority under SEBI laws and regulations to look into the quality of audit services performed by the auditors and on the other hand, it upheld the disgorgement of Rs.13,09,01,664/- (based on the finding of professional lapse amounting to negligence, breach of duty and failure to maintain the expected standard of care on the part of the auditors).
- N. BECAUSE the SAT has grossly erred in over emphasizing on an observation in the nature of obiter of the Bombay High Court to the effect that "only some omission without any mens rea or connivance with anyone in any manner" would disentitle SEBI from passing the directions proposed in the SCNs against the audit firms.
- O. BECAUSE the SAT has grossly erred by ignoring a contextual reading of the said observation and has failed to appreciate the true tone and tenor of the Bombay High Court's order.
- P. BECAUSE the SAT has erred in making the observation that the omission on the side of the auditors may amount to lapses or negligence but not serious enough to fall within the standard of evidence laid down by the Bombay High Court, without actually appreciating any evidence which was elaborately brought out in the

SEBI order and demonstrated before SAT during the course of the hearings.

- Q. BECAUSE the impugned judgment is unsustainable and warrants setting aside in view of the fact that it ignores the decisions cited on behalf of SEBI and also submissions on behalf of SEBI highlighting the role and relevance of a Chartered Accountant with respect to listed companies.
- R. BECAUSE the SAT has contradicted the finding of the High Court of Bombay while observing that the provisions of Section 12 A of the SEBI Act, 1992 and Regulations 3 and 4 of the SEBI (PFUTP) Regulations apply only to persons dealing in securities and who are associated with the securities directly or indirectly and holding that the Appellants therein are not dealing in the securities either directly or indirectly.
- S. BECAUSE the SAT has grossly erred in interpreting the requirement of mens rea or connivance stipulated by the High Court of Bombay in the context of the SCNs of 2009 and 2010 already issued to the auditors and audit firms invoking the provisions of the SEBI Act and Regulations to mean mens rea and connivance in the 'criminal' sense of the terms, especially when SEBI's proceedings are neither criminal nor quasi criminal.
- T. BECAUSE the SAT has exceeded its jurisdiction by ignoring the finding of the High Court viz. ".....In our view, the petitioners in their capacity as auditors of the Company Satyam, .....can be said to be persons associated with the securities market within the meaning of the provisions of the said Act." and by virtually seeking to

overrule that finding while purportedly paraphrasing the High Court findings in para 27 of the Impugned judgment.

- U. BECAUSE the Securities and Exchange Board of India can exercise jurisdiction over professionals such as Chartered Accountants, if on account of their non-adherence to/disregard of the standards/ rule/ regulations/norms, the integrity of the securities market as also the interest of investors in securities are affected.
- V. BECAUSE the Securities and Exchange Board of India can exercise a power to debar professionals found to have totally abdicated their professional duty to follow minimum standards of diligence and care from extending their professional services with respect to listed companies or intermediaries against whom the Securities and Exchange Board of India has jurisdiction.
- W. BECAUSE the action of the Securities and Exchange Board of India in debarring the auditors/Respondents from conducting audit and issuing compliance certificates to listed companies and intermediaries for a period of two years can be termed as encroachment on the jurisdiction of the Institute of Chartered Accountants of India, when the High Court of Bombay had directly held that the SEBI can take appropriate remedial steps which may include keeping a person including a Chartered Accountant at a safe distance from the securities market and that the exercise of powers by SEBI under the SEBI Act cannot be said to be regulating the profession of Chartered Accountants in any manner and that such exercise of powers by SEBI in the investors' interest and the interest of the securities market can never be said to be in conflict with the powers of ICAI under section 24 of the CA Act.

- X. BECAUSE the powers exercised by the Securities and Exchange Board of India under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in issuing directions including debarring auditors from conducting an audit of listed companies, cannot be termed as punitive in nature but are remedial and preventive. The SAT has grossly erred in disregarding judicial precedents especially in view of the fact that such directions are deterrent in nature, not only for other similarly placed auditors but also for the same set of auditors while carrying out such statutory functions in future.
- Y. BECAUSE debarring auditors from conducting an audit of only listed companies or intermediaries with respect to non-compliance of the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder cannot at all be termed as being violative of Articles 14 and 19(1)(g) of the Constitution of India.
- Z. BECAUSE the standard of proof required to establish the alleged violations under the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder, is not required to be direct and beyond a reasonable doubt and preponderance of probability would suffice and mens rea is not an essential ingredient to establish violations of the provisions of the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder qua persons associated with the securities market, as has been held by this Hon'ble Court in a catena of decisions.
- AA. BECAUSE the impugned judgment is contrary to the principles of law laid down by this Hon'ble Court in the case of The Chairman, SEBI vs Shriram Mutual Fund & Anr reported in (2006) 5 SCC 361, which

judgment was held to be correct by a three Judge Bench of this Hon'ble Court in the case of Union of India Vs. Dharmendra Textile Processors reported in (2007) 15 SCC 109.

- BB. BECAUSE the impugned judgment is contrary to the law laid down by this Hon'ble Court in the case of N. Narayanan vs. SEBI, reported in (2013) 12 SCC 152.
- CC. BECAUSE continuous non-adherence of Audit and Accounting Standards for a period of 8 years resulting in a large scale scam misleading the investors, could not be termed as a mere lapse and is clearly gross recklessness and fraud as defined under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- DD. BECAUSE the impugned common order is vitiated in law being wholly without a proper appreciation and consideration of facts and law.
- EE. BECAUSE the findings in the impugned common order is perverse being contrary to the record and hence wholly unsustainable in law.
- FF. BECAUSE the SAT has grossly erred in failing to appreciate that the SEBI can exercise jurisdiction over professionals such as Chartered Accountants, if on account of their non-adherence to/disregard of the standards/ rule/ regulations/norms the integrity of the securities market as also the interest of investors in securities are affected; the order of the Hon'ble Bombay High Court dated 13.08.2010, thereby, has not been considered.
- GG. BECAUSE the SAT has grossly erred in failing to appreciate that the SEBI can exercise power to debar professionals found to have totally abdicated their professional duty to follow minimum standards of

diligence and care from extending their professional services with respect to listed companies or intermediaries *qua* whom the SEBI has jurisdiction.

- HH. BECAUSE the SAT has grossly erred in failing to appreciate that the action of the SEBI in debarring the auditors/Respondents from conducting audit and issuing compliance certificates to listed companies and intermediaries can be termed as encroachment on the jurisdiction of the Institute of Chartered Accountants of India, in light of that fact that disgorgement of Rs. 13,09,01,664/- along with interest has been upheld by the Securities Appellate Tribunal, Mumbai.
- II. BECAUSE the SAT has grossly erred in failing to appreciate that powers exercised by the SEBI under Sections 11 and 11B of the SEBI Act, 1992 in issuing directions including debarring auditors from conducting an audit of listed companies, cannot be termed as punitive in nature and are wholly remedial and preventive *qua* the securities market as well as investors in securities.
- JJ. BECAUSE the reliance sought to be placed by the SAT on the judgment of the Bombay High Court to hold that SEBI has no jurisdiction *qua* Respondents is wholly erroneous and unsustainable in as much as the said judgment had in fact dismissed the Writ Petition filed by Respondents permitting SEBI to proceed with the matter after considering the issue whether directions could be issued by SEBI against Chartered Accountants on the basis of evidence available and in terms of Sections 11 and 12 of the SEBI Act i.e for investor protection and regulation of the securities market.



- KK. BECAUSE the impugned judgment is contradictory and unsustainable in as much as while on the one hand it seeks to hold that SEBI has no jurisdiction qua Respondents, on the other hand, disgorgement ordered by SEBI has been upheld.
- LL. BECAUSE the findings of the SAT qua mens rea are wholly unsustainable in view of the law laid down by this Hon'ble Court including in the case of SEBI Versus Kanaiyalal Baldevbhai Patel, reported in (2017) 15 SCC 1, wherein it has inter alia been held that mens rea is not an indispensable requirement and the correct test is one of preponderance of probabilities.
- MM. BECAUSE the SAT has grossly erred in failing to appreciate that the acquiescence and complicity of Respondents in the fraud /scam in the case of SCSL is writ large in as much as it is incredible and wholly unbelievable that a professional auditor(s) would or could miss the several indicators established from the record that would have alerted the auditor(s) to the wrong doings indulged in.
- NN. BECAUSE it is wholly inconceivable that the admitted wrongdoings with respect to the falsifying of financials and other wrong doings in SCSL continue for a period as long as eight years without the knowledge and involvement of the statutory auditors viz. Respondents herein.
- OO. BECAUSE the effect of the impugned judgment would be to prevent SEBI the statutory market regulator from proceeding against corporate wrongdoers/violators whose actions would directly impact the integrity and stability of the securities market which is not only undesirable but would be contrary to the object and intent of the SEBI Act and the

very purpose for which SEBI has been established by and under the said Act. (May be retained)

- PP. BECAUSE the SAT has grossly erred in failing to appreciate that debarring auditors from conducting an audit of only listed companies or intermediaries with respect to non-compliance of the SEBI Act, 1992 and Rules and Regulations framed there under cannot by any stretch of imagination be termed as being violative of Articles 14 and 19(1)(g) of the Constitution of India.
- QQ. BECAUSE the SAT has grossly erred in failing to appreciate that the standard of proof required to establish the alleged violations under the SEBI Act, 1992 and Rules and Regulations framed thereunder, is not required to be beyond reasonable doubt but preponderance of probability would suffice.
- RR. BECAUSE the SAT has grossly erred in failing to appreciate that mens rea is not an essential ingredient to establish violations of the provisions of the Securities and Exchange Board of India Act, 1992 and Rules and Regulations framed thereunder.
- SS. BECAUSE the impugned judgment is contrary to the principles of law laid down by this Hon'ble Court in the case of The Chairman, Sebi vs Shriram Mutual Fund & Anr reported in (2006) 5 SCC 361, which judgment has been held to be correct by a three Judge Bench of this Hon'ble Court in the case of Union of India Vs. Dharmendra Textile Processors reported in (2007) 15 SCC 109.
- TT. BECAUSE the impugned judgment is contrary to the law laid down by this Hon'ble Court in the case of N. Narayana vs. SEBI, reported in (2013) 12 SCC 152.

- UU. BECAUSE the impugned judgment, in so far as the aspect of liability of the PW network firms is concerned for the "fraud" under the SEBI Act , failed to consider the observations made by this Hon'ble Court in the matter of S. Sukumar (Civil Appeal No. 2422 of 2018) where in it was observed that despite Multinational Accounting Firms having setup registered partnership firms with the Indian partners to ensure compliance with the letter of the law, the real beneficiaries of transacting the business of chartered accountancy remain the companies of the foreign entities, if brand name is same, the controlling entity is same, human resources are same, it will be difficult to expect that there is full compliance on mere separate registration of a firm. Moreover, companies doing chartered accountancy business will not have personal or individual accountability which is required. Persons who are the face may be insignificant and real owners or beneficiary of prohibited activity may go scot free.
- VV. BECAUSE the SAT has grossly erred in failing to appreciate that continuous non-adherence of Audit and Accounting Standards for a period of 8 years could not and ought not be termed as a mere lapse, but is in fact gross negligence, recklessness amounting to fraud as defined under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.
- WW. BECAUSE the SAT has grossly erred in failing to appreciate that delay due to pendency of an Appeal in this Hon'ble Court and other courts could not be attributed to the SEBI.

- XX. BECAUSE the SAT has grossly erred in failing to appreciate that it is unsustainable in law to place reliance on circumstantial evidence drawn on the basis of acts and omissions of the party, when direct evidence is not available.
- YY. BECAUSE the SAT has grossly erred in failing to appreciate the exact role of the auditors. It is submitted that an auditor does not discharge his/its duty without undertaking sufficient enquiry to satisfy himself/itself that the books of accounts of the company reflect the true financial position of the company and must exercise reasonable care to ascertain that they do so.
- ZZ. BECAUSE the SAT has grossly erred in failing to appreciate that an auditor's certificate ought not to be issued casually and must be issued after carrying out absolute and complete diligence and caution.
- AAA. BECAUSE the SAT has grossly erred in failing to appreciate that Section 227 of the then Companies Act, 1956 which *inter alia* provides that a statutory auditor of a company is required to opine on the substantial accuracy and veracity of the figures reflected in the accounts and financials and whether it shows a true and fair view of the company's affairs, including its readiness, profit and loss for the relevant financial year, which was not done in the subject matter.
- BBB. BECAUSE the SAT has grossly erred in failing to appreciate that SEBI has the power to issue directions (such as debarment from the securities market or otherwise) against any 'person associated with the securities market'. It is submitted that Respondents herein are "persons associated with the securities market" as the audited report of listed companies are relied upon by investors and stock exchanges

and in fact paragraph 139 of the impugned judgment thus hold that these entities were in some way associated with the securities market.

CCC. BECAUSE the SAT has grossly erred in failing to appreciate that due to PW's successive failures to exercise minimum level of diligence in verifying the accounting systems and internal controls of SCSL, though accounting manipulations were going on for over 8 years, gross negligence and recklessness in conducting an audit in accordance with accounting standards and repeated deviation from the mandated course of audit, especially with respect to items of significant materiality, failure of the audit function in terms of professionalism, diligence and requisite application of mind on the part of the auditors led to dissemination of spurious and false data in the market which was certified as true and such dubious practices may have influenced decisions of investors for investment in the securities of SCSL.

DDD. BECAUSE the SAT has grossly erred in failing to appreciate that the acts of omission on the part of auditors, in discharge of their duties are squarely covered under the definition of fraud as defined under the FUTP Regulations.

EEE. SAT has erred in failing to appreciate the role of the statutory auditors and their primary role in audit to express an opinion on whether the financial statements are prepared, in all material respects, in accordance with prescribed financial reporting framework and therefore they would not be directly involved in the falsification of the accounts and it is their connivance/gross negligence in certifying fraudulent accounts that attracts the charge of 'fraud' under the FUTP regulations.

FFF. BECAUSE the SAT has grossly erred in holding that SEBI, as a Regulator, has no authority under the SEBI Act and the Rules and Regulations framed thereunder, to look into the quality of audit service performed by auditors, when however the erstwhile Listing agreement and the present Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LOD Regulations, 2015") require that audit of listed companies be conducted by Chartered Accountants.

The Appellant craves leave to add to /alter/amend all or any of the above grounds at the time of hearing of the present Appeal.

5. The Appellant has not filed any other Appeal/Petition before this Hon'ble Court or before any other Court against the impugned common judgment and final order dated 09.09.2019 of the SAT in Appeal Nos.6, 7, 190 and 191 of 2018.
6. The impugned judgment passed by the Securities Appellate Tribunal, Mumbai ("the SAT") is dated 09.09.2019 and hence the present Appeal has been filed within the time prescribed by and under Section 15Z of the SEBI Act, 1992.
7. The prescribed fixed Court Fee has been affixed on the present Appeal filed under Section 15Z of the SEBI Act, 1992.

### **PRAYER**

It is, therefore, most respectfully prayed that the Hon'ble Court may be pleased to:

- (a) admit and allow the present Appeal and set aside the impugned common judgment and final order dated 09.09.2019 of the

Securities Appellate Tribunal, Mumbai in Appeal Nos.6, 7, 190  
and 191 of 2018; and

- (b) pass such other and/or further order(s) as this Hon'ble Court  
may deem fit and proper in the facts and circumstances of the  
present case.

AND FOR THIS ACT OF KINDNESS, APPELLANT SHALL, AS IN DUTY  
BOUND, EVER PRAY.

DRAWN AND FILED BY:  
**M/s K.J.JOHN & CO.,**  
Advocates for the Appellant

DRAWN ON : 29.09.2019

FILED ON : 22.10.2019

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. OF 2019**

(Arising out of the impugned common judgment and final order of the Securities Appellate Tribunal, Mumbai, dated 09.09.2019 in Appeal Nos. 6, 7, 190 and 191 of 2018)

**IN THE MATTER OF:**

Securities and Exchange Board of India ..Appellant

Versus

Price Waterhouse & Co. & Ors. ..Respondents

**WITH**

**I.A.NO. OF 2019  
AN APPLICATION FOR STAY**

**VOLUME -I**

**PAPER BOOK**

**(FOR INDEX, PLEASE SEE INSIDE)**

**ADVOCATES FOR APPELLANT: M/S. K.J. JOHN & CO.**



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**VOLUME –II  
(PAGES TO )**

**PAPER BOOK**

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**ADVOCATES FOR APPELLANT: M/S. K.J. JOHN & CO.**



**THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.                      OF 2019**

**IN THE MATTER OF:**

Securities and Exchange Board of India

..Appellant

Versus

Price Waterhouse & Co. & Ors.

..Respondents

**OFFICE REPORT ON LIMITATION**

1. The Appeal is/are within time.
2. The Appeal is barred by time and there is delay of \_\_\_\_\_ days in filing the same against order dated 09.09.2019 and Petition for condonation of \_\_\_ days delay has been filed.
3. There is delay of \_\_\_\_\_ days in refiling the Appeal and Petition for condonation of \_\_\_\_\_ days delay in refiling has been filed.

**BRANCH OFFICER**

NEW DELHI  
DATED: 22.10.2019

## PROFORMA FOR FIRST LISTING

## SECTION – XVII

The case pertains to (Please tick/ check the correct box)

Central Act: (Title) 15Z of the Securities and Exchange Board of India Act, 1992

Section : 9  
Central Rule : (Title) N.A.

Rule No(s).: N.A.

State Act: (Title) N.A.

Section: N.A.

State Rule: (Title) N.A.

Rule No(s).: N.A.

Impugned Interim Order: N.A.  
(Date)

Impugned Final Order/Decree : (Date) 09.09.2019

High Court: (Name) N.A.  
Names of Judges: Justice Tarun Agarwala, Presiding Officer, Dr. C.K.G. Nair, Member

Tribunal/ Authority : SECURITIES APPELLATE TRIBUNAL, MUMBAI  
(Name)

1. Nature of matter:  Civil  Criminal
2. (a) Petitioner/ Appellant No.1 Securities and Exchange Board of India
- (b) e-mail ID: N.A.
- (c) Mobile phone number: N.A.
3. (a) Respondent No.1: Price Waterhouse & Co. & Ors.
- (b) e-mail ID: N.A.
- (c) Mobile phone number: N.A.

- |     |     |  |                               |
|-----|-----|--|-------------------------------|
| 4.  | (a) | Main category classification:                                    | 10                            |
|     | (b) | Sub classification:  | 1010                          |
| 5.  |     | Not to be listed before:   | N.A.                          |
| 6.  |     | Similar /Pending matter:   |                               |
|     | (a) | Similar disposed of matter with citation if any, & cases details | No similar disposed of matter |
|     | (b) | Similar/Pending matter with Case Details                         | No similar/pending matter     |
| 7.  |     | Criminal Matters:  | N.A.                          |
|     | (a) | Whether accused/convict has surrendered:                         | N.A.                          |
|     |     |  | N.A.                          |
|     | (b) | FIR No.  | N.A.                          |
|     |     |  | N.A.                          |
|     | (c) | Police Station:  |                               |
|     |     |  |                               |
|     | (d) | Sentence Awarded:  | N.A.                          |
|     |     |  |                               |
|     | (e) | Sentence Undergone:  | N.A.                          |
| 8.  |     | Land Acquisition Matters:  |                               |
|     | (a) | Date of Section 4 notification:                                  | N.A.                          |
|     | (b) | Date of Section 6 notification :                                 | N.A.                          |
|     | (c) | Date of Section 17 notification:                                 | N.A.                          |
| 9.  |     | Tax Matters: State the tax effect:                               | N.A.                          |
| 10. |     | Special Category (first Petitioner/Appellant only):              | N.A.                          |
|     | ( ) | Senior Citizen >   | ( )                           |
|     | ( ) | Disabled   | ( ) SC/ST                     |
|     |     |  | ( ) Woman/child               |
|     |     |  | ( ) Legal Aid Case            |
|     |     |  | ( ) In custody                |
| 11. |     | Vehicle Number (in case of Motor Accident Claim matters):        | N.A.                          |
| 12. |     | Decided cases with citation:                                     | N.A.                          |

Dated: 22.10.2019

AOR for Appellant  
**M/s. K.J.JOHN & CO.,**  
 Registration No.1287  
 E-mail: [mail@kjjohnco.in](mailto:mail@kjjohnco.in)

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2.	Listing Proforma	A1-A2	A1-A2	
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21.	<b><u>I.A. No. _____ of 2019</u></b> Application for Stay	636-640		
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**THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A.NO. OF 2019**

**IN  
CIVIL APPEAL NO. OF 2019**

**IN THE MATTER OF:**

Securities and Exchange Board of India ..Appellant

Versus

Price Waterhouse & Co. & Ors. ..Respondents

**APPLICATION FOR STAY**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUDGES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPEAL OF THE  
APPELLANT ABOVENAMED.

**MOST RESPECTFULLY SHEWETH:**

1. The present Appeal filed by the Securities and Exchange Board of India ("SEBI"), a Statutory Regulator entrusted with the regulation and development of the securities market in India as well as the interest of investors in the securities market, under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), is directed against the common judgment and final order of the Securities Appellate Tribunal, Mumbai ("the SAT"), dated 09.09.2019 in Appeal Nos. 6, 7, 190 and 191 of 2018, whereby the Appeals filed by Respondents herein have been partly allowed by setting aside the order dated 10.01.2018 passed by the Whole Time Member ("WTM") of the Appellant, *inter-alia*, debarring the Respondents from auditing

listed Companies and directing listed companies not to engage any audit firm forming part of the Price Water House Network, for a period of two years.

It is most respectfully submitted that the SAT has grossly erred in law by failing to appreciate that, on conclusion of inquiry, after a detailed consideration of the evidence adduced and materials on record, WTM, SEBI had found that there has been a total abdication by the Respondents of their duty to follow the Accounting Standards prescribed by the ICAI and minimum standards of diligence and care expected from a statutory auditor, compelling the WTM to draw an inference of malafide and involvement of Respondents in the large scale financial manipulations of Satyam Computer Services Limited ("SCSL", "the Company") that had come to light with the e-mail dated 07.01.2009 forwarded by Mr. B. Ramalinga Raju, the then Chairman of the said Company. The WTM had also taken into account the law laid down by this Hon'ble Court in the case of N. Narayana vs. SEBI, reported in (2013) 12 SCC 152, wherein it has been inter alia held thus:

"43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine

investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behaviour of Directors and Insiders of the listed companies so as to safeguard market's integrity."

2. The contentions and submissions of Appellant are set out in some detail in the accompanying Appeal and in order to maintain brevity and avoid unnecessary repetition, Appellant craves leave to refer to and rely upon the contents thereof, as if set out in extenso herein.
3. Appellant submits that the impugned judgment of the SAT would have the effect of restricting Appellant to only direct evidence against corporate violators of the securities market, without taking into consideration the chain of events and occurrences and preponderance of probabilities, which is wholly contrary to the judgments of this Hon'ble Court in a catena of decisions. Furthermore, this Hon'ble Court has in the case of SEBI Vs. Kanaiyalala Baldevbhai Patel observed that mens rea is not an indispensable requirement and the correct is one of preponderance of probabilities. The inferential conclusion from proved

and admitted facts, so long the same are reasonable and can be legitimately arrived at on a consideration of the totality of the materials would be permissible and legally justified.

4. Appellant has in its order that has been set aside by the SAT, established the acquiescence and complicity of Respondents in the "Satyam" case and the several issues which rose were all too obvious for any reasonable professional Auditor to miss and further a dispassionate analysis of the entire facts spanning a period of at least 8 years would reveal the perpetration of the fraud which could not have been possible without the knowledge and involvement of statutory auditors namely Respondent herein.
5. Appellant further submits that the SAT, pertinently has upheld the order of Appellant directing disgorgement by Respondents and other entities, which is wholly contradictory to the finding of the Sat that Appellant has no jurisdiction qua Respondents. It is respectfully submitted that the jurisdiction exercised by Appellant is only with regard to the securities market and the direction passed by Appellant in the order against Respondents does not impinge upon the powers of the Institute of Chartered Accountants for professional misconduct and other similar matters, but merely debars Respondents from conducting audit of listed companies, which fall well within the jurisdiction of Appellant.
6. Appellant further submits that Respondents had been permitted to proceed with and complete audit of all their existing clients, which period had been extended till 31.03.2020 or disposal of the Appeal by the SAT. Further the period of debarment directed by SEBI is only for 2

years for Respondents in Appeal No. 6/2018 and 3 years for the 2 individual auditors/Respondents in Appeal Nos. 190 and 191/2018, from the date of the order of SEBI i.e. 10.01.2018.

7. In the foregoing circumstances and keeping in view the detailed grounds set out in the accompanying Appeal, Appellant most respectfully submits that it would be just, expedient and in the interest of justice that the operation and effect of the impugned common judgment of the SAT be stayed.

**PRAYER**

- (a) Pass an order staying the operation and effect of the impugned common judgment and final order dated 09.09.2019 passed by the Securities Appellate Tribunal, Mumbai in Appeal Nos. 6, 7, 190 and 191 of 2018; and
- (b) Pass such other and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

AND FOR THIS ACT OF KINDNESS, APPELLANT SHALL, AS IN DUTY BOUND, EVER PRAY.

DRAWN AND FILED BY:

**M/s K.J.JOHN & CO.,**  
Advocates for Appellant

FILED ON : 22.10.2019

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. OF 2019**

**IN THE MATTER OF:**

Securities and Exchange Board of India ..Appellant

Versus

Price Waterhouse & Co. & Ors. ..Respondents

**CERTIFICATE**

Certified that the Civil Appeal is confined only to the pleadings before the Appellate Tribunal / Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in this Appeal. It is certified that the copies of the documents/annexures attached to the Appeal are necessary to answer the question of law raised in the Appeal or to make out grounds urged in the Appeal for consideration of this Hon'ble Court and form part of the record in the Tribunal below. This certificate is given on the basis of the instructions given by the Appellant/person authorised by Appellant whose affidavit is filed in support of the Civil Appeal.

FILED BY:

M/S K.J.JOHN & CO.,  
Advocates for the Appellant

Dated : 22.10.2019

**Securities and Exchange Board of India Act, 1992**

**Section 11**

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for--

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) registering and regulating the working of the <sup>2</sup>[depositories, participants, custodians] of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of <sup>3</sup>[venture capital funds and collective investment schemes], including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting investors' education and training of intermediaries of securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

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



(i) calling for information from, undertaking inspection, conducting inquiries and audits of the<sup>4</sup>[stock exchanges, mutual funds, other persons associated with the securities market] intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

(j) performing such functions and exercising such powers under the provisions of <sup>7\*\*\*</sup> the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;

(m) performing such other functions as may be prescribed.

(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to

get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

(3) Notwithstanding anything contained in any other law for the time being in force while exercising exercising the powers under <sup>11</sup>[clause (i) or clause (ia) of sub-section (2) or sub-section (2A)], the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:---

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

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

(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:---

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as if related to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

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

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

(5) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19 of the Depositories Act, 1996 (22 of 1996), <sup>12</sup>[or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19-IA of the Depositories Act, 1996 (22 of 1996)] as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.

### **Section 11-B**

**Power to issue directions** -- Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary--

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions--

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

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

**The Chartered Accountants Act, 1949**

**Section 24**

4. Penalty for falsely claiming to be a member, etc. Any person who -- (i) not being a member of the Institute -- 22 (a) represents that he is a member of the Institute; or (b) uses the designation Chartered Accountant; or (ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a chartered accountant, shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.