

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.6493 OF 2008

C.MACKERTICH & COMPANY & ANR.APPELLANTS

VERSUS

CUSTODIAN & ORS.RESPONDENTS

WITH

CIVIL APPEAL No.6632 OF 2008

O R D E R

With a view to deal with the situation created due to large scale irregularities and malpractices by some brokers in collusion with the employees of the banks and financial institutions in financial transactions involving Government and other securities, to punish the guilty and restore public confidence and to maintain the basic integrity and credibility of the banks and financial institutions, the President promulgated the Special Courts (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992. The same was replaced by the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short, 'the Act'). The preamble of the Act and Sections 3 to 5, 9-A and 14 thereof, which have bearing on the decision of these appeals read as under:

" An Act to provide for the establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows:-

Statement of Objects and Reasons- (1) In the course of the investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions. In both the Government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and malpractices led to the individual accounts of certain brokers.

(2) To deal with the situation and in particular to ensure speedy recovery of the huge amount involved, to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, was promulgated on the 6th June 1992. The Ordinance provides for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It also provides for appointment of one or more custodians for attaching the property of the offenders with a view to prevent diversion of such properties by the offenders.

(3) The Bill seeks to replace the said Ordinance.

3. Appointment and functions of Custodian.-- (1) The Central Government may appoint one or more Custodians as it may deem fit for the purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992, notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date of notification under sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached simultaneously with the issue of the notification.

(4) The property attached under sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and Section 4.

4. Contracts entered into fraudulently may be cancelled.--(1) If the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time after the 1st day of April, 1991 and on and before the 6th June, 1992 in relation to any property of the person notified under sub-section (2) of Section 3 has been entered into fraudulently or to defeat the provisions of this Act, he may cancel such contract or agreement and on such cancellation such property shall stand attached under this Act:

Provided that no contract or agreement shall be cancelled except after giving to the parties to the contract or agreement a reasonable opportunity of being heard.

(2) Any person aggrieved by a notification issued under sub-section (2) of Section 3 or any cancellation made under sub-section (1) of Section 4 or any other order made by the Custodian in exercise of the powers conferred on him under Section 3 or Section 4 may file a petition objecting to the same within thirty days of the assent to the Special Court (Trial of Offences Relating to Transactions in Securities) Bill, 1992, by the President before the Special Court where such notification, cancellation or order has been issued before the date of assent to the Special Court (Trial of Offences Relating to Transactions in Securities) Bill, 1992 by the President and where such notification, cancellation or order has been issued on or after that date, within thirty days of the issuance of such notification, cancellation or order, as the case may be; and the Special Court after hearing the parties, may make such order as it deems fit.

5. Establishment of Special Court--(1) The Central Government shall, by notification in the Official Gazette, establish a Court to be called the Special Court.

(2) The Special Court shall consist of one or more sitting Judges of

the High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.

(3) When the office of a Judge of the Special Court is vacant by reason of absence or leave, the duties of the officer shall be performed by such Judge of the High Court within the local limits of whose jurisdiction the Special Court is situated as the Chief Justice of that High Court may, with the concurrence of the Chief Justice of India, nominate for the purpose and the Judge so appointed shall have all the jurisdiction and powers of a Judge of the Special Court including the powers to pass final orders.

9-A. Jurisdiction, powers, authority and procedure of Special Court in civil matters.---(1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement by any Civil Court in relation to any matter or claim---

(a) relating to any property standing attached under sub-section (3) of Section 3;

(b) arising out of transactions in securities entered into after the 1st day of April, 1991, and on or before the 6th day of June, 1992, in which a person notified under sub-section (2) of Section 3 is involved as a party, broker, intermediary or in other manner.

(2) Every suit, claim or other legal proceeding (other than an appeal) pending before any Court immediately before the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, being a suit, claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of the Special Court under sub-section (1), shall stand transferred on such commencement to the Special Court and the Special Court may, on receipt of the records of such suit, claim or other legal proceeding proceed to deal with it so far as may be in the same manner as a suit, claim or legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the Special Court may deem fit.

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994, no Court other than the Special Court shall have, or be entitled to exercise any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1).

(4) While dealing with cases relating to any matter or claim under this section, the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and subject to the other provisions of this Act and of any rules, the Special Court shall have power to regulate its own procedure.

(5) Without prejudice to the other powers conferred under this Act, the Special Court shall have, for the purposes of discharging its functions under this section, the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a case for default or deciding it ex parte;

(h) setting aside any order of dismissal of any case for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government under sub-section (1) of Section 14.

14. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made. The rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

For regulating its procedure in relation to the civil cases, the Special Court invoked the provision of Section 9-A(4) and framed Regulations. Clauses 4, 7, 14, 15, 16, 17, 18, 19, 20 and 22 of the Regulations read as under:

"4. As a rule matters in category (a) should first be filed by way of Petitions supported by affidavits and replies to the Petitions should be by way of affidavits, the intention being to dispose off the matter as expeditiously as possible on affidavits. If at the first hearing of the Petition or at any stage thereafter the Court finds that the matter cannot be decided on affidavits, the Petition will be converted into a Suit and renumbered accordingly. The affidavit in reply will be considered as the Written Statement. Any further

affidavits already filed will be considered as supplementary pleadings of the parties in the Suit, any pending matters of category (a) will likewise be considered by the Court. Pending suits which are transferred to this Court will be continued as Suits.

7. All Applications and Petitions where no oral evidence is necessary shall be taken up every day in the forenoon for an hour. All Suits, Petitions or matters where Orders for oral evidence passed by Court shall be given fixed dates. If it appears to Court that a matter fixed on particular date cannot be taken up on that date, then at 11.00 a.m. or as soon as possible thereafter a fresh date will be fixed. Parties and/or their Advocates must remain present at 11.00 a.m. as only in exceptional cases a change in the date so fixed shall be permitted. It being clarified that once date is fixed, convenience of Counsel/Advocate will not be a ground for adjournment.

14. All parties, including Plaintiffs/ Petitioner's, in Suits and Petition; shall, within three weeks of filing of Written Statement / Affidavit in Reply, file on Affidavit a List of Documents which they are going to rely on or produce at the trial. This will be done without specific Order to the effect being passed by the Court.

15. Each party must serve his pleading on all other parties to the proceedings simultaneously with the filing of that pleading. At the time of supplying the pleading a date and time must be intimated for giving inspection of the documents relied upon in that pleading, if the time so fixed is not convenient to other side then, on the same day or latest on the immediate following day, the party wishing to change the date and time must contact the party giving inspection and fix up a mutual convenient day and time. This change of date must be such that inspection is to be taken and given within two weeks of receipt of the pleading. Unless the Court orders otherwise, a party will not be permitted to rely upon or use at the trial, for any purpose whatsoever, any documents which has not been disclosed inspection of which has not been forthwith offered or apply for aforesaid. Any party not taking inspection within time as aforesaid shall neither be allowed to raise any objections nor be entitled to any adjournment in this behalf it is clarified that merely annexing a list of documents to a pleading will not deemed to be sufficient compliance with this guidelines, unless the notice for taking inspections also sent with the pleading.

16. In the event of documents being in the possession of some third party including the Custodian or the C.B.I or the I.T. Department, the party relying on them should simultaneously with the filing of the pleading make a written Application for production of those documents in Court and for enabling inspection to be given thereof. On such Application appropriate Orders, for inspection by all parties, will be passed. The fact of the documents being in possession of the Custodian and/or the C.B.I, or the Income Tax Department, will under no circumstances excuse a party from filing pleadings, including the Affidavit with list of documents, within the time aforesaid.

17. After an appearance has been filed on behalf of a counter party and/or at any stage prior to the date fixed for hearing, the parties shall call upon all counter parties (except the Custodian) to admit facts and documents and/or to disclose and produce documents in this behalf the provisions of Order XI and XII of the Code of Civil Procedure shall be applicable.

18. On the date fixed for first hearing, the Court shall (after framing issues in Suits) ascertain from each party and/or his Advocate what facts and documents are admitted either expressly or by

implication. The Court shall then record the admission of fact of legal position and take on record all admitted documents. The Court shall then either on the same day or on any other adjourned date, proceed to try the Suit/Petition on the disputed points.

19. All examination in chief, in matters where oral evidence is necessary, shall be by way of Affidavit - evidence. Such Affidavit-evidence to be supplied to all parties to the proceedings at least two weeks in advance of the date fixed for hearing. The counter party will state, by a letter addressed to the advocate of the other side, at least one week in advance of the date fixed whether they wish to cross examine the witness. The cross examination to be only on disputed and relevant aspects as permitted by Court.

20. The provisions of Section 75 and Order XXVI (except Rules, 13, 14, 19, 20, 21 and 22) of the Code of Civil Procedure will also be made applicable in appropriate cases, on sufficient grounds being made out and after hearing all parties. The examination of witnesses on Commission to be conducted by the Officer on Special Duty or such other Officer of this Court or of the High Court as may be nominated by this Court. All expenses for travel, lodging and boarding of the Officer to be borne, in the first instance, by the party applying for Commission.

22. After oral evidence has been recorded, a date will be fixed for arguments. Written submissions on law (with case law if any relied upon) and facts must be submitted to Court and exchanged between the parties at least one week in advance of the day fixed for arguments. The court would appreciate if the Written submissions are also supplied to Court on a computer floppy. All parties will exchange their written submission (without waiting for the other side to give their written submissions) on the date which will be fixed by Court. Oral submissions will be restricted only on those aspects on which the Court wishes to hear submissions and a limited time will be granted to Advocates to argue on such aspects as they consider very important and/or which they wish to highlight and/or in reply to submissions of the other party."

Fairgrowth Financial Services Limited (for short, 'FFSL') was incorporated on 09.07.1990. Ajay Kayan (appellant No.2 herein), who was the sole proprietor of M/s. C. Mackertich and Company (appellant No.1 herein) made an application to FFSL for allotment of 1,25,000 shares of Rs.10/- each. Similar application was made by Utsav Parekh and Kamal Parekh (partners of M/s Stewart and Company). FFSL accepted the applications of both the parties and informed them vide letter dated 1.10.1990 that its Board has decided to allot the required shares to them.

In March, 1991, FFSL made an application to the Controller of Capital Issues for increase of its paid up capital to Rs.3.60 crores. The Controller of Capital Issues sanctioned the increase subject to the rider that the equity shares to be allotted to the promoters, etc., shall not be sold/hypothecated or transferred for a period of three years. Similar condition was incorporated in the sanction accorded by the Controller of Capital Issues in June, 1991 for increase of the paid up capital of FFSL to Rs.5 crores.

On 08.02.1992, Hiten P. Dalal approached appellant No.1 for purchase of 2,50,000 shares of FFSL at the rate of Rs.718.50 per share and forwarded a cheque of Rs.3,42,52,000/- as part consideration. The offer of Shri Hiten P. Dalal was accepted by the appellants and after entering into a separate transaction with Utsav Parekh and Kamal Parekh for purchase of 1,25,000 equity shares of FFSL held by them, appellant No.1 transmitted 2,50,000 shares of FFSL from Calcutta to Bombay for being delivered to Hiten P. Dalal. The balance amount of Rs.14,53,73,000/- was received in the Bombay office of appellant No. 1 on 13.2.1992 in the form of debentures of Parasampur Ltd. having face value of Rs.4.98 crores and 13% bonds of NPC having face value of Rs.6.5 crores from Hiten P. Dalal. On the next day,

i.e., 14.2.1992, 2,50,000 shares are said to have been delivered to Hiten P. Dalal.

On 8.6.1992, the Custodian notified the name of Hiten P. Dalal under Section 3(2). FFSL was notified on 06.07.1992 and appellant No. 1 - M/s C. Mackertich and Company and appellant No.2 - Ajay Kayan were notified in November, 2001.

The Custodian filed a petition (Miscellaneous Petition No.82 of 1996) before the Special Court established under Section 5(1) of the Act for recovery of the sale consideration of 2,50,000 shares of FFSL purchased by Hiten P. Dalal by asserting that the sale transaction was contrary to the sanction accorded by the Controller of Capital Issues and permission was not obtained from Calcutta Stock Exchange. Later on, the Custodian withdrew Miscellaneous Petition No.82/1996 with liberty to file fresh petition.

After about 10 months of withdrawing the earlier petition, the Custodian filed Miscellaneous Petition No.73 of 1998 impleading M/s C. Mackertich and Company, Ajay Kayan and Hiten P. Dalal as the non-petitioners and made the following substantive prayers:

"The said transaction of 8/10/1992 between Respondent No.1A and IB and 2 may be declared as illegal, null and void.

The Respondent No.1A and 1B be ordered and decreed by this Hon'ble Court to pay to the Petitioner on behalf of Respondent No.2 a sum of Rs.17,96,25,000/- together with interest thereon at the rate of 24% per annum or at such rate which may be deemed appropriate by the Special Court from 8th February, 1992 till payment and/or realization thereof.

That pending the hearing and final disposal of the present Petition, the Respondent No.1A and IB be ordered and decreed to deposit in Court a sum of Rs. 17,96,25,000/-."

On being noticed by the Special Court, appellant No.1 filed reply dated 09.04.1999 and controverted the assertions made by the Custodian that the transaction entered with Hiten P. Dalal was illegal or sham. The Custodian filed rejoinder on 20.7.1999 and reiterated the case set up by it in the main petition. Hiten P. Dalal filed reply on 15.2.2000 wherein he confirmed the purchase of 2,50,000 shares of FFSL from appellant No.1.

After about 3 years and 5 months, the Custodian amended the petition and joined C. Mackertich Ltd., which was incorporated in 1994 under the Companies Act, 1956, as a non-petitioner. The latter filed reply dated 19.8.2004 and pleaded that it had nothing to do with the transaction involving purchase of shares of FFSL by Hiten P. Dalal from appellant No.1.

After considering the pleadings of the parties, the Special Court framed the following issues:

"1. Whether the petition is barred by the law of Limitation?

2. Whether the Petition is not maintainable for the reasons alleged in paragraph 3 of the Affidavit in reply of the 1st Respondent dated 9-4-1999?

3. Whether the transaction which is subject matter of the Petition is illegal and void as it is in breach of the lock-in-period imposed by the Controller of Capital Issues as alleged in the Petition?

4. Whether the transaction which is subject matter of the Petition is illegal and void as it is in breach of bye-law 331 of the Calcutta Stock Exchange Association of India Limited as alleged by the Petitioner?

5. Whether the transaction which is the subject matter of the Petition is illegal and void as it is not genuine and has been recorded merely in order to pass on funds to Respondent No.1 as alleged in the Petition?

6. Whether the Petitioner is entitled to interest as claimed or at all?

7. What relief, if any?"

Although, the pleadings of the parties gave rise to several contentious issues, which could have been decided by the Special Court only by treating the miscellaneous petition filed by the Custodian as a suit and after recording evidence of the parties, the Special Court decided the matter without calling upon the Custodian to adduce evidence in the form of affidavit or otherwise and without giving opportunity to the appellants to cross-examine the persons, who could prove the documents produced on behalf of the Custodian.

The learned Presiding Judge of the Special Court extensively referred to the arguments advanced by the counsel for the parties on various issues. He then considered the objection of limitation raised on behalf of the appellants, referred to the provisions of the Act and the Limitation Act, 1963, the judgments of this Court in L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd. (2004) 11 SCC 456 and Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. (2001) 3 SCC 71 and observed:

"21. It is clear from the aforesaid observations that apart from other reasons given by the Supreme Court, why the provisions of the Limitation Act do not apply to the proceedings before a special court, the Supreme Court has held that because there is no period of limitation provided under the Special Court Act for institution of proceedings under the Special Court Act in view of the provisions of Section 29(2) of the Limitation Act, provisions of Section 3 of the Limitation Act do not apply and therefore this court cannot dismiss any proceedings instituted before it in relation to attached property as barred by the law of limitation. In my opinion, therefore, in view of the position of law as settled by the Supreme Court in its judgment in the case of L.S.Synthetics Ltd., it cannot be said that these proceedings which have been filed before the Special court under the Special Court Act invoking the provisions of sub-section 3 of Section 3 and Section 9A of the Special Court Act can be said to be barred by the law of limitation. This question has been considered by the Supreme Court in its judgment in the case of Mukri Gopalan v/s. Cheppilat Puthanpurayil Aboobacker, AIR 1995 SC 2272. The Supreme court after quoting the provisions of sub-section 2 of Section 29 in paragraph 8 has observed thus:

"A mere look at the aforesaid provision shows for its applicability to the facts of a given case and for importing the machinery of the provisions containing Ss. 4 to 24 of the Limitation Act the following two requirements have to be satisfied by the authority invoking the said provision.

(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special

or local law should be different from the period prescribed by the schedule to the Limitation Act."

The Special Court then referred to the pleading of the parties in the context of issue No.2 and rejected the appellants' objection to the maintainability of the petition filed by the Custodian.

While dealing with the issue relating to the legality of transaction involving transfer of shares by appellant No.1 to Hiten P.Dalal, the Special Court noted that neither party has placed on record the original shares, but relied upon the Share Certificates issued to seven other parties by FFSL, referred to Section 114 (f) of the Evidence Act and proceeded to observe:

"I do not find any reason whatsoever to say that though the shares allotted to others pursuant to the same Board Resolution carried the stamp referred to above only share certificates allotted to the contesting Respondents and their associates in the same allotment did not bear that stamp.

FFSL has categorically stated in its letter dated 19th July 1997 both that the allotment was made in pursuance of its application dated 25th August 1990 and that the shares were issued with a stamp to the effect that they were subject to the lock-in period. The 1st Respondent has also not even contended that there was any other issue of shares by FFSL which were made under the consents of the CCI. The reliance by Respondent No.1 on the Board Resolution of FFSL dated 30th September 1990 in support of its contention that no permission was sought from the CCI as the issue was kept below Rs.1 crore, is also misplaced. The Resolution, inter alia, states as under:

"As per the Capital Issues (Exemption) Order 1969, if the total issue of capital is for a value exceeding Rs. 1 crore, permission from the Controller of Capital Issues has to be obtained. Hence, it is proposed to restrict allotment of shares up to Rs.1 crore only (including subscribers to the memorandum) keeping the amount received above Rs.1 crore as application/advance money towards allotment of equity shares subject to consent from CCI. An application, in this regard has already been made to CCI."

FFSL therefore clearly made the issue of capital in pursuance of the application "already made" to the CCI and intended to keep any amount received above Rs.1 crore as application/advance money, subject to the consent of the CCI. As stated by FFSL itself, the application to which reference is made, had already been made by FFSL on 25th August, 1990 and the consents were issued by the CCI in February and June 1991. The reliance by Respondent No.1 on section 4(i) of the Capital Issues (Exemption) Order, 1969, is misplaced. The exemption from the provisions of section 3, 4 and 5 of the Capital Issues Control Act is only available under section 4(i) in cases where "the value of the consideration involved in such issue together with the value of the consideration involved in any previous issue of securities made by the company within the twelve months immediately preceding such issue, does not exceed one crore of rupees." In the present case, FFSL clearly intended to make an issue of well over Rs.1 crore in the year, (including the allotment of September 1990), and therefore applied for the consent of the CCI. The consent of the CCI dated 19th March 1991 was for Rs.3.6 crores and that of 21st June 1991 was for Rs.5 crores. These amounts, together with the allotment of Rs.99,99,300 made in September 1990, took the issue within the twelve months in question, to about 9.6 crores - well over the limit of 1 crore. The exemption was therefore not available to FFSL and the Capital Issues (Control) Act and consents issued thereunder were applicable to, and binding on FFSL."

The Special Court concluded that the transaction was unlawful and respondent No.2 continued to hold title and the money which was handed over to the appellants in lieu of the shares. The Special

Court then referred to bye-law No.331 framed by the Calcutta Stock Exchange Association and held that the transaction was ultra vires the relevant bye-law.

Adverting to issue No.5, the Special Court referred to the Jankiraman Committee's Report and observed:

"The contention of the custodian that it was not a genuine transaction, but it was shown by the Respondent No. 2 and the contesting Respondents only to enable the Respondent No. 2 to siphon off the funds which he had received from the financial institutions is based on what is found in Jankiraman Committee, the Inter-Disciplinary Group headed by the Custodian and in other proceedings before the court. Perusal of the Jankiraman committee report and the Inter-Disciplinary Group report show that many instances of the Respondent No.2 siphoning of the funds which were received by him from the financial institutions by creating fictitious transactions are given. Involvement of the Respondent No.2 in the scam has been established. He has actually been convicted by this court. One more circumstance that clearly indicates that the transaction is not genuine is that in the transaction in question, the price of the shares is shown at Rs.718.50 per share. The shares were not listed on any stock-exchange. There is no material produced on record by the contesting Respondents or by the Respondent No. 2 to show what was the ruling price of these shares. In the transaction in question in these proceedings the shares are shown to have been transferred by contesting Respondents to Respondent No.2 in the month of February, 1992 at the rate of Rs.718.15 per share, whereas in the case of Mysore Fruit Products Ltd., which was before this court the Respondent No.2 claimed to have bought 1 lakh shares of the same company issued in the same allotment in April, 1992 for Rs.500 per share. In his affidavit filed in these proceedings, the second Respondent claims that on 14th May, 1992 he requested the first Respondent to sell 2,50,000 shares of the same company at the rate of Rs.175-200 per share. He also claims that he has credited in his account book in the account of the contesting Respondent an amount at the rate of Rs.193.40 per share on 26th May, 1992. In so far this issue is concerned, the contesting Respondents mainly relied on what is held by the authorities under the Income-tax Act. This court in its judgment in the case of Mysore Fruit Products, relied on by the custodian, has held that the transaction entered into by the Respondent No.2 in the month of March, 1992 in relation to shares of the same company is fraudulent and entered into to defeat the provisions of the Act. In my opinion, considering the aspect of different prices quoted at different stages of the same shares, which I have referred to above and considering the involvement of the contesting Respondents and the Respondent No.2 in the securities scam, the contention of the custodian that the transaction was sham and was shown to have been entered into only to siphoning off funds from the Respondent No. 2 to contesting Respondents has to be accepted. Issue No.5 is, therefore, answered in affirmative."

Shri Mukul Rohatgi, learned senior counsel appearing for the appellants made detailed submissions and argued that the miscellaneous petition filed by the Custodian for declaring the transaction involving the transfer of shares of FFSL by appellant Nos.1 and 2 to respondent No.2 was barred by time and that the order passed by the CIT (Appeals) and ITAT on the legality of the transaction was binding on the Custodian and further that in the absence of plea of fraud, the Special Court could not have recorded a finding on that issue.

Shri Subramonium Prasad, learned counsel appearing for the Custodian made some submissions on the maintainability of the petition filed by the Custodian and dismissal as such by the learned Judge, Special Court. Both the learned counsel relied upon some of the judgments in support of the causes of their respective clients.

We have considered the respective submissions. In our opinion, it is not necessary to deal with the arguments of the learned counsel in detail because, after carefully scrutinizing the record, we are convinced that the order under challenge is liable to be set aside on the short ground that the procedure adopted by the Special Court was not consistent

with the provisions of the regulations framed under Section 9-A(4) and the fundamental principles of natural justice.

A reading of the pleadings filed before the Special Court leaves no manner of doubt that there was serious dispute between the parties about the nature of the transactions between the appellants and Hiten P. Dalal. The appellants had seriously contested the Custodian's assertion that the share certificates issued by FFSL contained a restriction of transfer thereof for a period of three years or that the lock-in-period prescribed by the Controller of Capital Issues was applicable to their case. The appellants had also pleaded that the petition filed by the Custodian was in the nature of a suit for recovery of the specific amount. The tenor of the issue framed by the learned Judge, Special Court unmistakably shows that the same could not have been decided without requiring the parties to adduce evidence and, in our considered view, the Special Court could not have decided the matter only on the basis of the documents filed with the pleadings. The minimum which the learned Judge was required to do was to call upon the Custodian to file affidavits in support of the documents and the persons filing affidavits should have been made available for cross-examination by the appellants.

Though the technical rules of evidence and procedure are not applicable to the Special Courts, the fundamentals of the rules of natural justice which constitute an integral part of the rule of law are required to be followed by the Special Court. The requirement of complying with the rules of natural justice is also ingrained in Section 9-A(4) of the Act. In this connection, we may also usefully refer to the judgment of this Court in Central Bank of India Ltd. v. Prakash Chand Jain AIR 1969 SC 983. In that case, the appellant had challenged the order passed by Industrial Tribunal, Delhi refusing to accord approval to an order of dismissal of the respondent under Section 33(2)(b) of the Industrial Disputes Act. The respondent had been dismissed from service on the charge of financial irregularity. The Industrial Tribunal declined to accord approval on the ground that the inquiry held against the respondent was not fair and the findings recorded by the Inquiry Officer were perverse inasmuch as the same were based on hearsay or mere conjectures. This Court opined that the Tribunal was not entitled to interfere with the findings of fact recorded by the Inquiry Officer by making fresh assessment of the evidence of the witnesses. However, the view expressed by the Tribunal that the findings of the Inquiry Officer were based on hearsay and conjectures was approved and it was observed:

"The Tribunal gave the reason that these findings were based on hearsay evidence. This view taken by the Tribunal appears to be fully justified. The first and the third elements of the charge relating to payment of the sum of Rs. 30,400 to the respondent by Nand Kishore and of the respondent leaving for Muzaffarnagar in the company of some persons in order to retire the bills drawn by M/s. Gupta Iron Industries, were sought to be proved before the Enquiry Officer by the evidence of the Internal Auditor, N. N. Vazifdar, but the latter could not give any direct evidence, as he was not present at the time when money was paid to the respondent or when the respondent left for Muzaffarnagar. He purported to prove these elements of the charge by deposing that a statement was made to him by Nand Kishore to the effect that Nand Kishore had paid Rs. 30,400 to the respondent and that, thereafter, the respondent left for Muzaffarnagar in the company of two persons. The Enquiry Officer accepted this evidence of Vazifdar, but ignored the fact that Vazifdar's evidence was not direct evidence in respect of the elements of the charge sought to be proved, and that Vazifdar was only trying to prove a previous statement of Nand Kishore which, as rightly held by the Tribunal, would amount to hearsay evidence. Nand Kishore himself was also examined as a witness, but, in his evidence, which was admissible as substantive evidence, he made no statement that this sum of Rs. 30,400 was paid by him to the respondent or that the respondent left for Muzaffarnagar in the company of some persons to retire the bills drawn by M/s. Gupta Iron Industries. In fact, Nand Kishore even went further and denied that he had made any statement to Vazifdar as stated by Vazifdar. The Enquiry Officer was, of course, entitled to form his own opinion and to believe Vazifdar in preference to Nand Kishore; but on this basis, the

only finding that the domestic tribunal could record was that Nand Kishore's statement given before him was incorrect and that Nand Kishore had made statements to Vazifdar as deposed by Vazifdar. Those statements made by Nand Kishore to Vazifdar could not, however, become substantive evidence to prove the correctness of these elements forming part of the charge. It is in this connection that importance attaches to the views expressed by this Court in the cases cited above where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act."

(emphasis supplied)

This Court then referred to the judgments of *Khardah Co. Ltd. v. Their Workmen* (1964) 3 SCR 506 and *Kesoram Cotton Mills Ltd. v. Gangadhar* (1964) 2 SCR 809 and proceeded to observe:

"These views expressed by this Court, in our opinion, bring out what was meant when this Court held that findings recorded by an Enquiry Officer must be supported by legal evidence. The evidence, as indicated in these cases, should consist of statements made in the presence of the workman charged. An exception was envisaged where the previous statement could be used after giving copies of that statement well in advance to the workman charged, but with the further qualification that that previous statement must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman."

We may also notice the recent judgment in *State Bank of India through General Manager v. National Housing Bank and others* 2013 (9) SCALE 710, in which a somewhat similar question was considered. Paragraphs 49-51 and 53-54 of the judgment read as under:

"49. The Special Court based its conclusions on Janakiraman Committee Report and the correspondence between the various parties (whose details are not even specified in the judgment).

50. We regret to say that the course adopted by the learned Judge of the Special Court of looking into the correspondence between the parties, which even according to the learned Judge had not been proved is not permissible in law. The Special Court Act though declares that the Court is not bound by the Code of Civil Procedure, it does not relieve the Special Court from the obligation to follow the Evidence Act. Further, the learned Judge extensively relied upon the second interim report of the Janakiraman Committee on the ground that the same was tendered by the 1st Defendant.

51. Irrespective of the fact whether such a report is admissible in evidence or not, it appears from the judgment under appeal that the relevant part of the report is substantially in accordance with the version of the 2nd Defendant, as contained in his written statement. It is recorded by the judgment under appeal at para 45:

"In respect of the Suit transactions the Janakiraman Committee notes that on 3rd January 1992 the Plaintiffs had entered into back to back transactions to purchase 9% IRFC Bonds face value Rs.100 crores from the 1st Defendant and sell the same to Canfina. The Janakiraman Committee notes that the Plaintiff's Bankers Receipt to Canfina stands discharged without the Plaintiffs having made any delivery whatsoever. The Janakiraman Committee notes that the Plaintiffs Bankers Receipt stood discharged by Canfina on 31st March 1992 by taking physical delivery of the Bonds from Defendant No. 2 (herein). The Janakiraman Committee notes that for the amount paid to the 1st Defendant, the Plaintiffs (herein) have made a claim which claim is being disputed by the 1st Defendant (herein)."

53. Therefore, Courts are not bound by the conclusions and findings rendered by such Commissions. The statements made before such Commission cannot be used as evidence before any civil or criminal court. It should logically follow that even the conclusions based on such statements can also not be used as evidence in any Court. Janakiraman Committee is not even a statutory body authorised to collect evidence in the legal sense. It is a body set up by the Governor of Reserve Bank of India obviously in exercise of its administrative functions, the Governor, RBI set up a Committee on 30 April, 1992 to investigate into the possible irregularities in funds management by commercial banks and financial institutions, and in particular, in relation to their dealings in Government securities, public sector bonds and similar instruments. The Committee was required to investigate various aspects of the transactions of SBI and other commercial banks as well as financial institutions in this regard.

54. The report of such a Committee in our view can at best be the opinion of the Committee based on its own examination of the records of the various banks (including the Plaintiff and the 1st Defendant) and the statements recorded (by the Committee) of the various persons examined by the Committee. In our considered view the report of Janakiraman Committee is not evidence within the meaning of Evidence Act - which the Special Court is bound to follow."

(emphasis supplied)

Since we have reached the conclusion that the learned Special Judge decided the matter without calling upon the Custodian to lead evidence to substantiate the allegation of fraud, etc., we do not consider it necessary to deal with other points raised by the appellants in support of their challenge to the impugned order.

In the result, the appeals are allowed, the impugned order is set aside and the matter is remitted to the Special Court for deciding the petition filed by the Custodian afresh in accordance with law.

The appellants shall be free to withdraw the amount of Rs.18 crores deposited before the Custodian subject to their furnishing bank guarantee to the satisfaction of the Custodian.

(G.S.SINGHVI)J.

