

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved:28.10.2021**

**Date of Decision:09.11.2021**

**Misc. Application No.432 of 2019**

**And**

**Appeal No.358 of 2019**

Shree Kumar Bangur  
16, Alipore Road,  
Kolkata-700027, India.

...Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (East), Mumbai 400 051.

...Respondent

Mr. Yogesh Chande, Advocate with Mr. Rohit Mukherji and  
Ms. Preeti Kapany, Advocates i/b. Shardul Amarchand  
Mangaldas & Co. for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva and  
Mr. Yash Dhruva, Advocates i/b. MDP & Partners for the  
Respondent.

**With**  
**Misc. Application No.93 of 2020**  
**And**  
**Appeal No.394 of 2019**

1. Taparia Tools Limited  
423/424 Shah & Nahar, A/2, S.J. Marg,  
Lower Parel (West), Mumbai- 400 013.
2. Harnarayan Taparia  
Taparia Tools Limited  
423/424, Shah & Nahar, A/2, S.J. Marg,  
Lower Parel (W), Mumbai- 400 013.
3. Devi Prasad Taparia  
Taparia Tools Limited  
423/424, Shah & Nahar, A/2, S.J. Marg,  
Lower Parel (W), Mumbai- 400 013.
4. Jaya Krishna Taparia  
Taparia Tools Limited  
423/424, Shah & Nahar, A/2, S.J. Marg,  
Lower Parel (W), Mumbai- 400 013.
5. Madhav Prasad Taparia  
Taparia Tools Limited  
423/424, Shah & Nahar, A/2, S.J. Marg,  
Lower Parel (W), Mumbai- 400 013.                   ...Appellants

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400 051.                   ...Respondent

Mr. Nikhil Sakhardande, Senior Advocate with Mr.  
Ravichandra Hegde and Mr. Samyak Pati, Advocates i/b.  
Parinam Law Associates for Appellants.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva and Mr. Yash Dhruva, Advocates i/b. MDP & Partners for the Respondent.

Mr. Suresh Kabra, Intervener in person for the Intervention Application.

**With  
Appeal No.435 of 2019**

Virendraa Bangur  
16, Alipore Road,  
Kolkata-700027, India.

...Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (East), Mumbai 400 051.

...Respondent

Mr. Saurabh Bacchawat, Advocate with Mr. Yogesh Chande, Mr. Rohit Mukherji and Ms. Preeti Kapany, Advocates i/b. Shardul Amarchand Mangaldas & Co. for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva and Mr. Yash Dhruva, Advocates i/b. MDP & Partners for the Respondent.

**With  
Appeal No.436 of 2019**

Saurabh Bangur  
16, Alipore Road,  
Kolkata-700027, India.

...Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (East), Mumbai 400 051. ...Respondent

Mr. Saurabh Bacchawat, Advocate with Mr. Yogesh Chande,  
Mr. Rohit Mukherji and Ms. Preeti Kapany, Advocates i/b.  
Shardul Amarchand Mangaldas & Co. for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva and  
Mr. Yash Dhruva, Advocates i/b. MDP & Partners for the  
Respondent.

**With  
Appeal No.218 of 2021**

Jaya Krishna Taparia  
Flat No.82, Nymph Building,  
Narayan Dabholkar Road,  
Mumbai-400 006. ...Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
'G' Block, Bandra Kurla Complex,  
Bandra (E), Mumbai 400 051. ...Respondent

Mr. Kunal Kataria, Advocate with Mr. Ankur Loona, Ms.  
Aparna Wagle and Ms. Swapna Roopavate, Advocates i/b.  
Alliance Law for the Appellant.

Ms. Anubha Rastogi, Advocate with Mr. Nishit Dhruva and Mr. Yash Dhruva, Advocates i/b MDP & Partners for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer  
Justice M.T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The appellants have filed the present appeals against a common order dated 26<sup>th</sup> June, 2019 passed by the Whole Time Member ('WTM' for short) confirming the ex-parte ad-interim order dated 20<sup>th</sup> May, 2015 wherein the appellants were found to have failed to comply with the minimum public shareholding as required under Rule 19(2)(b) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as the 'SCRR Rules, 1957').
2. Vide interim order the WTM directed that the voting rights of the promoter/promoter group and corporate benefits like dividend, rights, bonus shares etc. will remain frozen and further the directors/promoters were restrained

from holding any fresh position as a director in any listed Company. For facility, the directions given in the interim order is extracted hereunder:

*“22. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of section 19 and under Sections 11(1), 11(2)(j), 11(4) and 11(B) of the Securities and Exchange Board of India Act, 1992 read with section 12A of Securities Contracts (Regulation) Act, 1956, pending passing of the final order, hereby:*

*a. direct freezing of voting rights and corporate benefits like dividend, rights, bonus shares, split, etc. with respect to the excess of proportionate promoter/promoter group shareholding (including persons allegedly shown as public shareholders) in the Company, till such time the Company complies with the minimum public shareholding requirement.*

*i. For the purpose of above direction, proportionate promoter/promoter group shareholding shall be computed on the basis of the public shareholding in the company; e.g. if public shareholding in a company after the deadline is less than 25%, say 10%, in such case, the proportionate promoter shareholding would be 30% (i.e. three times the existing public shareholding). Thus the excess promoter/promoter group holding i.e. 60% shall be frozen till the minimum public shareholding requirement is complied with.*

ii. In case of more than one entity in the promoter/promoter group in a company, the excess promoter holding for the purpose of taking action shall be computed on a proportionate basis. For illustrating the example above, if there are three promoters; A, B and C with shareholdings of 45%, 35% and 10% respectively; the excess promoter holding of 60% shall be allocated as follows:

1. A:- (60% multiplied by  $[45\%/45\% + 35\% + 10\%]$ ) = 30.00%
  2. B:- (60% multiplied by  $[35\%/45\% + 35\% + 10\%]$ ) = 23.33%
  3. C:- (60% multiplied by  $[10\%/45\% + 35\% + 10\%]$ ) = 06.67%
- Total = 60.00%

Based on the above, the excess shareholding of the promoters (including persons allegedly shown as public shareholders) of the Company that should be frozen is presented in the following table:

Sl. No.	Name of the promoter / shareholder	Shareholding (as on March 17, 2015)	Excess shareholding to be frozen
1	Harnarayan Taparia	12.01	9.86
2	Harnarayan Taparia (Huf)	4.39	3.60
3	Devi Prasad Taparia (Huf)	2.67	2.19
4	Devi Prasad Taparia	3.35	2.75
5	Rajdulari Devi Taparia	5.96	4.89
6	Jaya Krishna Taparia	4.86	3.99
7	Jaya Krishna Taparia (Huf)	2.18	1.79
8	Kusum Devi Taparia	4.84	3.97
9	Madhav Prasad Taparia	4.73	3.88
10	Madhav Prasad Taparia	3.82	3.14

	(Huf)		
11	Prema Devi Taparia	4.18	3.43
12	Sudha Devi Taparia	3.42	2.81
13	Shashi Devi Bangur	2.28	1.87
14	Shree Kumar Bangur	1.89	1.55
15	Harsha Mundhra	1.65	1.35
16	Sushil Kumar Taparia (Huf)	1.45	1.19
17	Sushil Kumar Taparia	2.37	1.95
18	Bela Taparia	0.31	0.25
19	Bharat Kumar Taparia (Huf)	0.35	0.29
20	Bharat Kumar Taparia	4.39	3.60
21	Bhagwati Binani (55 shares)	0.00	0.00
22	Veer Enterprises Ltd	9.04	7.42
23	Shree Satyanarayan Investment Co. Ltd.	1.52	1.25
24	Om Shri Yogeshwar Mfg. & Trading Co. Pvt. Ltd.	0.83	0.68
25	Abhimanyu Mundhra- Minor	1.65	1.35
26	Anant Taparia	1.99	1.63
27	Aryaman Taparia- Minor	1.16	0.95
28	Saurabh Bangur	1.86	1.53
29	Shreekanta Devi Taparia	3.30	2.71
30	Virendra Bangur	1.86	1.53
31	Satish kumar Mundhra	0.05	0.04
	<b>TOTAL</b>	<b>94.36</b>	<b>77.44</b>

*b. prohibit the promoters/promoter group including persons allegedly shown as public shareholders, as mentioned in the Table in sub-paragraph (a) above and Ms. Devki Devi Jhawar (who had earlier held shares in the Company) and the directors of the Company from buying, selling or otherwise dealing in securities of Company, either directly or indirectly, in any manner whatsoever, except for the purpose of complying with minimum public shareholding requirement till such time the Company complies with the minimum public shareholding requirement.*

*c. restrain the shareholders forming part of the promoter/promoter group including persons allegedly*

*shown as public shareholders, as mentioned in the Table in sub-paragraph (a) from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement;*

*d. restrain the directors of Company from holding any new position as a director in any listed company, till such time the Company complies with the minimum public shareholding requirement.*

*23. This order is without prejudice to the right of SEBI to take any other action, including the following against the Company, their promoters and directors including persons allegedly shown as public shareholders, as mentioned in the Table in paragraph 22(a) and Ms. Devki Devi Jhawar, or issuing such directions in accordance with law:*

- a. Levying monetary penalty under adjudication proceedings;*
- b. initiating criminal proceedings by way of prosecution proceedings*
- c. moving the scrip to trade-to-trade segment;*
- d. excluding the scrip from F&O segment;*
- e. any other action/direction as may be deemed appropriate.*

*For the above purpose, this Order shall be treated as a show cause notice and the above persons may show cause as to why such proposed action should not be initiated against them.*

*24. The Board/audit committee of the Company shall, at the end of each quarter, submit compliance report, to the stock exchanges where the shares of Company are listed, giving the extent to which compliance has been achieved and the efforts taken therefor.*

*25. Copies of this order shall be served on the stock exchanges, depositories and the Company to enable them to take necessary steps to implement the order. The stock exchanges and depositories shall collaborate for the purpose of implementing the order. Depositories shall rely on the filings made with the stock exchanges for ascertaining the promoters, their shareholding and public shareholding. Stock exchanges shall provide the aforesaid data to the depositories to enable them to take necessary action as mentioned above.*

*26. The entities/persons against whom this order is being passed may file their replies, if any, within 21 days from the date of this order. The entities mentioned herein may also, if they so desire indicate in their replies whether they wish to avail of the opportunity of personal hearing before the Securities and Exchange Board of India at its Head Office at SEBI Bhavan, Plot C4-A, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051 on a date and time to be fixed on a specific request.*

*27. This order shall come into force with immediate effect.”*

3. For facility, the appeal of Taparia Tools Ltd and Ors. are being taken into consideration. The facts leading to the filing of the present appeal is, that the appellant Taparia Tools Ltd is a listed Company since 1965 on the BSE Ltd. platform and is engaged in the manufacture of tools. The appellant nos.2 to 5 in this appeal are the promoters of the Company.
4. On 20<sup>th</sup> February, 1997, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the SAST Regulations, 1997) came into force. Regulation 2(h) of the SAST Regulations, 1997 defines 'promoter' as under:-

*"2(h) "promoter" means*

- (1) (i) the persons or persons who are in control of the company, or*
- (ii) person or persons named in any offer document as promoters:*

*(2) a relative of the promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and*

*.....”*

5. A perusal of the aforesaid provision indicates that relatives of the promoter within the meaning of Section 6 of the Companies Act, 1956 were also included as a promoter. The definition of relatives under Section 6 of the Companies Act included a wide group of entities going up to 22 degree of relationship. Because of this provision the appellants considering the wider definition of the term ‘promoter’ under the SAST Regulation, 1997 included the extended family of the promoters under the definition of ‘promoter’ and ‘promoter group’. The Company had shown the extended family as part of the promoter group in all the disclosures and statutory filings.
6. In 2000, SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as ‘DIP Guidelines’) were introduced which gave a restricted definition of the term ‘promoter group’ to include only

immediate relatives of the promoters (i.e. any spouse of that person, or any parent, brother, sister or child of the person or of the spouse).

7. The aforesaid restrictive definition of promoter group in the DIP Guidelines was in variance with the wide definition of the term 'promoter' under the SAST Regulations, 1997 and, consequently, the appellants did not restrict the categorization of the promoter and continued to treat the larger set of relatives in the promoter category.
8. On 9<sup>th</sup> September, 2002 the definition of 'promoter' was amended vide SEBI (Substantial Acquisition of Shares and Takeovers) Regulations (Second Amendment) Regulations, 2002. By this amendment, the definition of the 'promoter' included persons in control of a Company, directly or indirectly, whether as a shareholder, director or otherwise. For facility, the definition of 'promoter' as amended by the (Substantial Acquisition of Shares and

Takeovers) Regulations Second Amendment Regulations, 2002 under Regulation 2(h) is extracted hereunder:

*“2(h) "promoter", means-*

*(i) the person or persons who are in control of the company, directly or indirectly, whether as a shareholder, director or otherwise; or*

*(ii) any person named as promoter in any document of offer of securities to the public or existing shareholders*

*and includes,*

*(a) where the promoter is an individual, -*

*(1) a relative of the promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);*

*(2) any firm or company, directly or indirectly, controlled by the promoter or a relative of the promoter or a firm or Hindu undivided family in which the promoter or his relative is a partner or a coparcener or a combination thereof:*

*Provided that, in case of a partnership firm, the share of the promoter or his relative, as the case may be, in such firm should not be less than 50%.”;*

*(b) where the promoter is a body corporate,-*

*(1) a subsidiary or holding company of that body; or*

(2) *any firm or company, directly or indirectly, controlled by the promoter of that body corporate or by his relative or a firm or Hindu undivided family in which the promoter or his relative is a partner or coparcener or a combination thereof:*

*Provided that, in case of a partnership firm, the share of such promoter or his relative, as the case may be, in such firm should not be less than 50%;*

9. From the aforesaid, it may be noted that the term persons in control of a company, either directly or indirectly were included in the definition of “promoter”. Further, the definition of the term relatives remained as per Section 6 of the Companies Act. Therefore, no reclassification of the shareholders was done by the Company.

10. In 2006, SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006 was issued with effect from 26<sup>th</sup> May, 2006, Section 2(h) was substituted as under:

*“2(h) “promoter” means—*

*(a) any person who is in control of the target company;*

*(b) any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later;*

*and includes any person belonging to the promoter group as mentioned in Explanation I:*

*Provided that a director or officer of the target company or any other person shall not be a promoter, if he is acting as such merely in his professional capacity.*

*Explanation I: For the purpose of this clause, “promoter group” shall include:*

*(a) in case promoter is a body corporate—*

*(i) a subsidiary or holding company of that body corporate;*

*(ii) any company in which the promoter holds 10 per cent or more of the equity capital or which holds 10 per cent or more of the equity capital of the promoter;*

*(iii) any company in which a group of individuals or companies or combinations thereof who holds 20 per cent or more of the equity capital in that company also holds 20 per cent or more of the equity capital of the target company; and*

*(b) in case the promoter is an individual—*

*(i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;*

*(ii) any company in which 10 per cent or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;*

*(iii) any company in which a company specified in (i) above, holds 10 per cent or more, of the share capital; and*

*(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 per cent of the total.*

*Explanation II: Financial Institutions, Scheduled Banks, Foreign Institutional Investors (FIIs) and Mutual Funds shall not be deemed to be a promoter or promoter group merely by virtue of their shareholding:*

*Provided that the Financial Institutions, Scheduled Banks and Foreign Institutional Investors (FIIs) shall be treated as promoters or promoter group for the subsidiaries or companies promoted by them or mutual funds sponsored by them;”*

11. On 29<sup>th</sup> August, 2009, Securities and Exchange Board of India (Issue of Capital and Disclosure

Requirements) Regulations, 2009 (hereinafter referred to as 'ICDR Regulations) were notified.

12. The definition of the term promoter and promoter group changed. For facility, Regulation 2(z)(a) and 2(z)(b) of the ICDR Regulations are extracted hereunder:

*“2(za) “promoter” includes:*

*(i) the person or persons who are in control of the issuer;*

*(ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;*

*(iii) the person or persons named in the offer document as promoters:*

*Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:*

*Provided further that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person;*

*Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter for the subsidiaries or*

*companies promoted by them or for the mutual fund sponsored by them;”*

*“2(zb) “promoter group” includes:*

*(i) the promoter;*

*(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and*

*(iii) in case promoter is a body corporate:*

*(A) a subsidiary or holding company of such body corporate;*

*(B) any body corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter;*

*(C) any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent or more of the equity share capital in that body corporate also holds twenty per cent or more of the equity share capital of the issuer; and*

*(iv) in case the promoter is an individual:*

*(A) any body corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;*

*(B) any body corporate in which a body corporate as provided in (A) above holds ten per cent or more, of the equity share capital;*

*(C) any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent of the total; and*

*(v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":*

*Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent or more of the equity share capital of the issuer is held by such person:*

*Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;"*

13. For the first time only immediate relatives of promoters were included in the definition of the term promoter, such as, any spouse of that person, or any parent, brother, sister or child of the person or of the spouse. Thus, a restrictive definition of promoter was

given and the wider definition of the word promoter was done away. After the promulgation of the ICDR Regulations, 2009, only immediate relatives as defined therein were only to be included as promoter or promoter group.

14. It may be noted here that SAST Regulations, 2009 was rescinded and substituted by the SAST Regulations of 2011. For facility, Regulation 2(s) and 2(t) which defines ‘promoter’ and ‘promoter group’ are extracted hereunder which states that the term promoter and promoter will have the same meaning as given in the ICDR Regulations, 2009.

*“2(s) “promoter” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and includes a member of the promoter group;”*

*“2(t) “promoter group” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;”*

15. On 4<sup>th</sup> June, 2010, the SCRR was amended and Rule 19A was inserted to provide for minimum and continuous public shareholding requirement in listed companies. Rule 19A was inserted to introduce the MPS norms whereby all listed companies in the private sector were mandatorily required to achieve and maintain the minimum public shareholding of 25% of each class or kind of equity shares. This requirement was to be achieved within the period of three years, ie, by 3<sup>rd</sup> June, 2013. For facility, Rule 19A as inserted vide amendment dated SCRR Rules, 2010 with effect from 4<sup>th</sup> June, 2010 is extracted hereunder:

***“Continuous Listing Requirement.***

*19A.(1) Every listed company shall maintain public shareholding of at least twenty five per cent.:*

*Provided that any listed company which has public shareholding below twenty five per cent on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall bring the public shareholding to the level of at least twenty five per cent by increasing its public shareholding to the extent of at least five per cent per annum beginning from the date of*

*such commencement, in the manner specified by the Securities and Exchange Board of India.*

*Provided further that the company may increase its public shareholding by less than five per cent in a year if such increase brings its public shareholding to the level of twenty five per cent in that year.*

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

16. By the same amendment, Regulations 2(d) and 2(e) was inserted which defined public and public shareholding as under:

*“2(d) “public” means persons other than –*

*(i) the promoter and promoter group;*

*(ii) subsidiaries and associates of the company.*

*Explanation: For the purpose of this clause the words “promoter” and “promoter group” shall have the same meaning as assigned to them under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.*

*(e) “public shareholding” means equity shares of the company held by public and shall exclude shares which*

*are held by custodian against depository receipts issued overseas.”*

17. A perusal of the aforesaid indicates that the term ‘public’ means persons other than promoter and promoter group and the term promoter and promoter group would have the same meaning as defined under the ICDR Regulations, 2009. Further, public shareholding means the equity shares held by the public which means persons other than promoter and promoter group.
18. In view of the insertion of Rule 19A in the SCRR and the time line of three years given therein to achieve the minimum public shareholding requirement of 25% the appellants took appropriate steps to reduce its promoter shareholding. Between June 30 to September 30, 2010, the promoter and promoter group shareholding in the Company was 80.49%. Between September to December, 2010, the Company reclassified eleven of its promoter/promoter group entities which had a public shareholding of 12.28% as “public’ for the purpose of

reducing the promoter and promoter group shareholding thus, bringing down the shareholding of the promoter and promoter group to 68.21%.

19. The four entities who were earlier shown in the promoter/promoter group and who were now reclassified as public were

(1) Mr. Shree Kumar Bangur

(2) Mrs. Bela Taparia

(3) Veer Enterprises Ltd.

(4) Shree Satyanarayan Investment Company Limited

20. None of these entities were even in control of the company nor these entities had any right or were entitled to nominate any Directors on the board of appellant's Company. Further, these entities were never involved in the day to day management nor had any control in the decision making relating to the affairs of the appellant Company. These entities were never involved in the formulation of plan or program pursuant to which

specified securities were issued to the public. None of these entities were named in the offer document as promoters. Further, these entities were not immediate relatives. Thus, the appellants contended that they were in compliance of Rule 19A of the SCRR and has reduced its shareholding from 80.49% to 68.21%.

21. On 4<sup>th</sup> June, 2014, SEBI received a complaint on the SCORES platform alleging that the Company had failed to comply with Rule 19A of the SCRR and had moved some of the promoters to the public category thereby cheating its shareholders. Pursuant to an enquiry SEBI passed an ex-parte ad-interim order dated 20<sup>th</sup> May, 2015 issuing certain direction which has already been extracted aforesaid on the ground that the appellant Company had failed to meet the minimum public shareholding requirements. After considering the reply and considering all other factors the WTM has confirmed the ex-parte ad-interim order by the impugned order.

22. We have heard Mr. Yogesh Chande, Advocate assisted by Mr. Rohit Mukherji, Ms. Preeti Kapany, Advocates for the appellant in appeal no.358 of 2019, Mr. Nikhil Sakhardande, Senior Advocate assisted by Mr. Ravichandra Hegde, Mr. Samyak Pati, Advocates for the appellant in appeal no.394 of 2019, Mr. Saurabh Bacchawat, Advocate assisted by Mr. Yogesh Chande, Mr. Rohit Mukherji, Ms. Preeti Kapany, Advocates for the appellants in appeal nos.435 and 436 of 2019 and Mr. Kunal Kataria, Advocate assisted by Mr. Ankur Loona, Ms. Aparna Wagle, Ms. Swapna Roopavate, Advocates for the appellant in appeal no.218 of 2021 and Ms. Anubha Rastogi, Advocate assisted by Mr. Nishit Dhruva, Mr. Yash Dhruva, Advocates for the respondent.

23. We have also heard the intervener, Mr. Suresh Kabra, who is the complainant and contended that the appellant and SEBI have acted in concert and that SEBI has not punished the appellants for cheating the investors.

It was contended that the appellants are in control of 98% of the shareholding and have violated the MPS requirement. It was further contended that the intervener would be in a better position to submit his arguments after copies of memo of appeal etc. are provided to him. Having heard the intervener we are of the opinion that the request to provide him copies of the memo of appeal cannot be accepted as he is not a party to the proceedings but we have heard him as an intervener. The intervention application no.93 of 2020 is disposed of accordingly.

24. The short question that arises for consideration is, whether the appellant has complied with the provisions of Rule 19A of the SCRR. Under Rule 2(d) of the SCRR Rules 'public' means persons other than the promoter and promoter group. Under Rule 2(e) 'public shareholding' means equity shares of the Company held by public. The definition of the words 'promoter' and 'promoter group' would have the same meaning as assigned under the ICDR

Regulations, 2009. Regulation 2(za) defines the ‘promoter’ which includes persons or persons who are in control of the issues. The promoter group includes not only the promoter but an immediate relative of the promoter (that is any spouse of that person, or any parent, brother, sister or child of the person or of the spouse). In the instant case, the entities who have been declassified are not in control of the affairs of the Company. A specific assertion has been made by the appellants which has not been disputed by the respondent in the impugned order. It is also admitted by the respondent that these entities are not part of the promoter group as they are not immediate relatives of the promoter and they are one degree away.

25. The WTM has however, taken cognizance of the word “control” as provided under Regulation 2(za) which defines promoter to include person or persons who are in control of the issuer and further went on to hold that

merely reclassifying these eleven entities in the public category does not cease these entities to be in control, directly or indirectly, meaning thereby that because these eleven entities being part of the Taparia group are deemed or presumed to be in control either directly or indirectly. Further, they are presumed to be acting in concert with the promoters for the acquisition or exercise of control.

26. In our opinion, this approach by the WTM is patently erroneous and cannot be accepted. The word “control” has been correlated with the use of the word “control” under the SAST Regulations. Further, usage of the word ‘persons acting in concert’ is totally irrelevant to the issue in hand. In *Arcelormittal India Pvt. Ltd. vs. Satish Kumar (2019) 2 SCC 1* the Supreme Court held that expression ‘control’ as defined under Section 2(27) of the Companies Act is defined in two parts. The first part refers to de jure control which includes the right to appoint majority of the Directors of the Company and the second

part refers to de facto control. The Supreme Court further held that so long as the person or persons acting in concert, directly or indirectly can positively influence, in any manner, management or policy decision they should be said to be in control and, therefore, held that the expression “control” defines only positive control. The Supreme Court approved the decision of this Tribunal in *Subhkam Ventures (India) Pvt. Ltd. vs. SEBI (2010) SCC Online SAT 35* wherein the word ‘control’ as defined in Regulation 2(1)(c) of the SAST Regulations, 1997 which was similar to Regulation 2(1)(27) of the Companies Act, 2013 in which it was held that the term “control” as defined in Regulation 2(1)(c) of the SAST Regulations includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or person acting individually or in concert, directly or indirectly, including by virtue of their

shareholding or management rights or shareholders agreement or voting agreements or in any other manner.

27. In the instant case, the reclassified entities were never in control of the Company nor were involved in the day to day management of the Company. This fact has not been rebutted by the respondents. Therefore, presuming that the reclassified entities being part of the Taparia group are presumed to be in control of the management of the Company directly or indirectly is patently erroneous. Such presumptions cannot be taken into consideration.

28. The principle of acting in concert which is applicable in the Takeover code is not applicable under Rule 19 of the SCRR Rules. We find that over a period of time the definition of promoter and promoter group included persons which was very wide but has now become restricted and in that sense Rule 19A has to be interpreted. The contention that the larger picture

underlining the inclusion of Rule 19A of the SCRR Rules, namely, to provide disperse shareholding structure and further to ensure the fact that underlying philosophy behind the requirement of a minimum public shareholding of 25% as a tool to prevent concentration of shares in the hands of a few market players by ensuring a sound and healthy public float to stave off any manipulation or perpetration of other unethical activities in the securities market is neither here nor there. Once the restrictive meaning is given to the term promoter and promoter shareholding if certain entities do not come under category of promoter or promoter group then they automatically come under the category of public. Mere fact that some of the entities who are not categorized as public are distinct relatives of the promoter or promoter group does not entitle the respondent to come to a conclusion that these reclassified entities are part of the promoter or promoter group or come to a conclusion that they are in control

directly or indirectly or come to the conclusion that these reclassified entities are acting in concert with the promoter or promoter group. Such conclusion drawn by the WTM is against the teeth of the provision of Regulation 2(d), 2(e) read with Rule 19A of the SCRR Rules read with Regulations 2(za) and Regulation 2(zb) of the ICDR Regulations, 2009.

29. Consequently, for the reasons stated aforesaid the impugned order passed by the WTM dated 26<sup>th</sup> June, 2019 as well as the interim order dated 20<sup>th</sup> May, 2015 cannot be sustained and are quashed. The appeals are allowed. Misc. application no.432 of 2019 is also disposed of accordingly.

30. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the

Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Justice M.T. Joshi  
Judicial Member

09.11.2021  
RHN