THE HON'BLE THE CHIEF JUSTICE HIMA KOHLI

AND

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

+ **WRIT PETITION No.7972 of 2021**

% **Date**: **25.08.2021**

Animish Pradip Raje

… Petitioner

vs.

$ Securities and Exchange Board of India, SEBI Bhavan,
Plot No.C-4A, G Block, Bandra-Kurla Complex, Bandra (East),
Mumbai – 400051,
and another.

… Respondents

! Counsel for the Petitioner : Mr. S. Ravi
(Senior Advocate)
For Sri Yogesh Kumar Heroor.

^ Counsel for respondents : Mr. Datar Aravind
(Senior Advocate)
For
Mr. S. Dwarakanath

Mr. Nanduri Siram
Ms.Rishika Harish

< GIST:

> HEAD NOTE**:**

? CASES REFERRED:

1. (1994) 4 SCC 711
2. (2000) 7 SCC 640
3. (2002) 1 SCC 567
4. (2004) 6 SCC 254
5. (2006) 6 SCC 207
6. (2014) 9 SCC 329
7. (2007) 11 SCC 335
8. (2007) 6 SCC 769
9. ILR (2011) VI DELHI 729
10. [1924] 1 KB 256 = [1923] All ER Rep 233
11. (1967) 2 QB 617
12. (1967) 2 QB 864
13. (1969) 2 SCC 262
14. (1990) 2 SCC 48
15. (2008) 14 SCC 151
16. AIR 1957 SC 425

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ORDER: (Per the Hon'ble the Chief Justice Hima Kohli)

1. The present petition has been filed challenging the order dated 20.10.2020, passed by the respondent No.1/Securities and Exchange Board of India (SEBI), appointing Grant Thornton Bharat LLP (for short, 'GTB') as a Forensic Auditor in respect of the financial statements of the respondent No.2/company for the Financial Years 2018-19 and 2019-20 on the ground of conflict of interest and violation of the principles of natural justice.

2. The facts of the case leading to filing of the writ petition are as follows:-

(a) The writ petitioner is a resident of Hyderabad and a minority shareholder of the respondent No.2/company, holding 790 equity shares in D-MAT form, vide DP ID IN301151.

(b) Respondent No.2 is a Public Limited Company listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE) having a paid-up share capital of Rs.97,67,61,310 (Rupees ninety seven crores sixty seven lakh sixty one thousand three hundred and ten only). The respondent No.2/company was

engaged in the business of procurement of milk, manufacturing of milk products and distribution of the same and cattle feed. After sale of its dairy business, the respondent No.2/company is in the business of cattle feed and nutrition.

(c) The Board of Directors of the respondent No.2/company decided to sell the shareholding of the company in its subsidiary company, namely Sunfresh Agro Industries Private Limited (SAIPL), to Tirumala Milk Products Private Limited (TMPPL), which is a wholly owned subsidiary of French Dairy Multinational Groupe Lactalis. A public disclosure dated 21.01.2019 was issued by the respondent No.2/company for conducting the said sale and its shareholding to its sister concern.

(d) The respondent No.2/company entered into a Share Price Agreement dated 21.01.2019 for the sale of the entire share capital of SAIPL to TMPPL for a sale consideration of Rs.1,227 crores approximately. It also approved the sale and transfer of its dairy product business to SAIPL, after completion of the transfer of the shares of SAIPL to TMPPL, in terms of the Business Transfer Agreement dated 21.01.2019, for a total consideration of Rs.473 crores approximately.

(e) On 25.03.2019, the respondent No.2/company made a further public disclosure to the BSE and NSE informing them about setting up of an escrow account to hold the proceeds of the

aforesaid sale and constitution of a five member 'Transaction Committee' comprising three independent Directors and not more than two other Directors in order to oversee, supervise and manage utilisation of the net proceeds from the aforesaid sale transaction in the escrow account held in trust for the shareholders. The said Transaction Committee was to deliberate upon and evaluate various options available for the distribution of the proceeds of the sale transactions to the shareholders. Mr. Anoop Krishna, an independent Director, appointed in the company on 30.07.2018 was one of the members of the aforesaid Transaction Committee constituted by the respondent No.2/company.

(f) The respondent No.2/company held an Extraordinary General Meeting (EGM) of its shareholders for approval of the aforesaid sale transactions whereby it informed the shareholders that from out of Rs.1700 crores that was likely to be received as proceeds of the sale transaction, Rs.1000-1200 crores (approx) may be available for distribution to them. Around 92% of the shareholders of the respondent No.2/company were present and voted in favour of the resolution of the sale transaction. On 11.04.2019, the respondent No.2/company announced that the sale transactions had culminated and executed. This was informed to the Stock Exchanges on 11.04.2019.

(g) On 04.09.2019, the promoters of the respondent No.2/company, namely Mr. Sarangdhar Ramchandra Nirmal and Mr. Vivek Sarangdhar Nirmal (cumulatively holding around 50.10% of the total shareholding of the company), addressed letters to the respondent No.2/company expressing their intention to acquire 4,87,40,547 shares (i.e., 49.90% of the paid up equity share capital) held by the public shareholders of the respondent No.2/company and voluntarily delist the equity shares of the respondent No.2/company from the BSE and the NSE. Thus, a delisting offer was made by them, giving an exit opportunity to the shareholders. In the meeting of the Board of Directors of the respondent No.2/company held on 10.09.2019, the delisting proposal was deliberated upon and a resolution was passed for appointment of a Private Limited Company to perform the necessary due diligence for the delisting proposal. The floor price of Rs.63.77 per share was set by the Board of Directors for voluntary delisting of the shares. The resolution of the Board of Directors for voluntary delisting was duly approved by the shareholders on 16.10.2019.

(h) Based on some news/information, the respondent No.1/SEBI sought the comments of BSE and NSE on the details of the distribution of the proceeds deposited by the respondent No.2/company in the escrow account, the proposed floor price and the delisting offer price of the respondent No.2/company and its

plans to ensure that a fair exit price is given to the minority shareholders. At the end of November, 2019, dissatisfied with the response received from the respondent No.2/company, the respondent No.1/SEBI advised the stock exchanges to conduct an independent critical analysis of the issues based on the disclosures made by the respondent No.2/company. In the month of December, 2019 and January, 2020, BSE and NSE submitted reports where certain issues were raised with regard to the sale transaction and both the exchanges stated that they would not go ahead with the delisting process of the respondent No.2/company without obtaining express permission from the respondent No.1/SEBI. As a result, the entire delisting process was brought to a grinding halt.

(i) The petitioner has further averred in the writ petition that on 23.07.2020, he became aware of the public disclosure made by the respondent No.2/company wherein it had stated that the respondent No.1/SEBI had appointed GTB as a forensic auditor to conduct forensic audit of the company in respect of the financial years ending on March, 2019 and March, 2020. Following were the terms of reference for the audit assignment of GTB, recorded by the respondent No.1/SEBI in its order dated 20.10.2020:-

> *"a. Manipulation of books of accounts;*
>
> *b. Misrepresentation including of financial and/or business operations;*

c. Wrongful diversion/siphoning of company funds by Promoters/Directors/Key Managerial Personnel;

d. Scrutiny of Business Transfer and Share Purchase Agreements;

e. Various disclosure requirements and its compliances;

f. Utilization of funds received out of sale proceeds;

g. Payment made to advisors and their appropriateness;

h. Provision in relation to indemnity obligation, tax liability and their appropriateness;

i. Any other references communicated from time to time during the course of the audit."

(j) After receiving the news of appointment of GTB as a forensic auditor of the respondent No.2/company, the petitioner came across information that one Mr. Anoop Krishna who was deeply connected with the respondent No.2/company prior to his engagement with a sister concern of GTB, namely GT Restructuring Services LLP, was a member of the Board of Directors of the respondent No.2/company. He was also appointed as a Chairman of the Audit Committee of the respondent No.2/company till 11.11.2019. Further, he was a Member of the Transaction Committee constituted by the respondent No.2/company to oversee and manage the funds received upon completion of the sale transaction of SAIPL to TMPPL. Vide letter

dated 21.11.2019, the resignation of Mr. Anoop Krishna was communicated by the respondent No.2/company vide its public disclosure at BSE and NSE.

(k) Stating that Mr. Anoop Krishna had been at the helm of affairs of the respondent No.2/company and was closely connected to its management and even to the promoters of the respondent No.2/company during the entire period of execution and the sale of SAIPL to TMPPL and the period during which a decision had been taken place to delist the respondent No.2/company, the writ petitioner raises a grievance about the existence of a bias and conflict of interest of GTB, appointed by the respondent No.1/SEBI to act as a forensic auditor in respect of the respondent No.2/company, when one of its own directors is a close affiliate who is presently engaged with GT Restructuring Services LLP, a sister concern of GTB.

3. On receiving a letter dated 27.09.2020 from the respondent No.2/company regarding the non-independence of GTB as a forensic auditor, respondent No.1/SEBI sought comments from GTB on the issues raised in respect of Mr. Anoop Krishna. Vide letter dated 30.09.2020, GTB gave a response and based thereon the respondent No.1/SEBI addressed a letter dated 27.10.2020 to the respondent No.2/company stating *inter alia* that there was no conflict of interest on the independence of GTB as a forensic

auditor. The clarification offered by the GTB has been extracted in para 26 of the impugned order dated 20.10.2020, passed by the respondent No.1/SEBI and reads as follows:-

> *"i. In a professional services firm constituted as partnerships, a director/senior advisor is a fairly junior position and should not be construed to have same level of authority or responsibility as a director has in a company registered under the Companies Act, 2013. Such responsibility and authority in respect of a partnership firm rest with the "designated partners" under the provisions of the Limited Liability Partnership Act, 2008 and the other partners at the Firm;*
>
> *ii. Anoop Krishna is an independent consultant/contractor who is on a part-time retainer basis with GT Restructuring Services LLP who has been assigned the designation of "Director/Senior Advisor". Anoop Krishna is not an employee, partner or a designated partner under the provisions of the Limited Liability Partnership Act, 2008 in GT Restructuring Services LLP.*
>
> *iii. Anoop Krishna is also not an employee, partner or a designated partner under the provisions of the Limited Liability Partnership Act, 2008 in GTBL. He is not and never has been in the chain of command of GTBL or GT Restructuring Services LLP or any business unit of either entity or of any entity that uses "Grant Thornton" or GT in its name. He is neither a leader of any business unit of these entities to which various service lines report. Anoop Krishna was formerly an Independent Director of PDL and ceased*

to be a Director of that Company well before GT was appointed to undertake the forensic audit. Therefore, Mr. Anoop Krishna is in no position either in terms of authority or responsibility to influence the engagement for Prabhat Dairy Limited carried out by the Forensic Team of GTBL.

iv. In addition to the above and in continuation to our response dated 11 September, 2020, we reiterate that there are strict "Ethical dividers" within the Firm which ensures that there is no impact on the independence, legal, regulatory, professional and contractual obligations of the Firm or on the services provided to its clients. The ethical dividers and processes include:

a. Completely separate teams for the forensic engagement and other engagements.

b. No sharing of client's information or data between the different functions.

c. No communications between members of the different functions on details of the engagements or on relevant matters related to the engagements.

d. Specific undertakings from team members confirming their awareness of the requirements and acknowledging their contractual obligation to comply.

e. Appropriate and adequate monitoring of compliance.

v. Thus, having regard to the above stated safeguards in place, our assessment of this matter is that there is no actual or potential threat (including the Self Review threat and Familiarity threat) to our independence or objectivity in the forensics audit of Prabhat Dairy Limited."

4. The respondent No.2/company challenged the order dated 20.10.2020 passed by the respondent No.1/SEBI before the Securities Appellate Tribunal (SAT) which was quashed and set aside vide order dated 09.11.2020. The review application filed by the respondent No.1/SEBI, for seeking review of the aforesaid order was dismissed on 09.02.20201. During the pendency of the review application, the respondent No.1/SEBI passed an order directing BSE and NSE not to proceed with the delisting process of the respondent No.2/company and simultaneously, granted an extension of six months to the special resolution passed for delisting, i.e., till 13.04.2021.

5. On 09.03.2021, the petitioner addressed an e-mail to the respondent No.1/SEBI expressing an apprehension of breach of the rules of professional ethics, conflict of interest and bias in the appointment of GTB as a forensic auditor of the respondent No.2/company and requested for a fair and independent audit. Vide e-mail dated 09.03.2021, the respondent No.1/SEBI directed the petitioner to file a complaint on its '*SCORES PLATFORM'*. It was also mentioned that the said reply was an auto-generated one, addressed by the Investor Assistance and Education Cell of the respondent No.1/SEBI, which is extracted below:-

> "*Dear Sir/Madam,*
>
> *This is with reference to the trailing mail.*

Please lodge your complaint on SEBI Complaint Redress System (SCORES) at https://www.scores.gov.in or SCORES Mobile App which is available on both Apple App Store and Google Play Store.

Please note that as per circular No.SEBI/HO/ OIAE/IGRD/CIR/P/2018/58 dated March 26, 2018 investors who wish to lodge a complaint are required to register themselves on SCORES before lodging the complaint against a listed company, a SEBI registered intermediary or a SEBI recognised Market Infrastructure Institution. *While registering the complaints, mandatory details like name of the investors, PAN, contact details, email id are to be provided for registration.*

SCORES aids in tracking the status of the complaints anytime by the investor while also providing them notifications from time to time with respect to their complaints. Complaints lodged on SCORES Portal or SCORES Mobile App help in keeping proper audit trail of the complaint which is essential for future references. In view of the same, complaints sent through e-mails shall not be processed.

For any help in lodging complaint on SCORES or with respect to your complaints you can contact the SEBI Toll Free Help Line Number 1800 266 7575 or 1800 22 7575.

Please note this is an auto-generated e-mail and may not be replied to.

With regards,

Office of Investor Assistance and Education
SEBI"

(emphasis added)

6. The petitioner replied to the above e-mail dated 09.03.2021, on 19.03.2021, stating *inter alia* that his grievance is against the respondent No.1/SEBI and not against the respondent No.2/company or any Market Infrastructure Institution which would require him to file a complaint on the '*SCORES PLATFORM'*. When the respondent No.1/SEBI did not deal with the issues flagged by the petitioner, he filed the present petition on 23.03.2021.

7. Advancing arguments on behalf of the petitioner, Mr. S.Ravi, learned Senior Counsel has urged that appointment of GTB as a forensic auditor by the respondent No.1/SEBI has been without any application of mind, in complete disregard of the rules against bias and in contravention of the principles of professional ethics and rules regarding conflict of interest; that the said order violates the rights of the petitioner as a minority shareholder of the respondent No.2/company and the forensic audit process adopted in respect of the respondent No.2/company is liable to be tainted due to the affiliation of Mr. Anoop Krishna with GTB; that even though some shareholders of the respondent No.2/company had expressed

an apprehension about the possibility of bias against the GTB on account of the affiliation of Mr. Anoop Krishna with its sister concern i.e. GT Restructuring Services LLP, the respondent No.1/SEBI has blindly accepted the reply received from GTB without applying its own mind on the aspect of clash of interest as pointed out; that it was not as if the petitioner was seeking appointment of a particular forensic auditor in respect of the respondent No.2/company, his request was only for appointment of any forensic auditor on the panel of the respondent No.1/SEBI to exclude any chance of bias or conflict of interest; that the presence of Mr. Anoop Krishna who is affiliated with the sister concern of GTB and has a close connection with the respondent No.2/company as its Director, as a Member of its Audit Committee and Transaction Committee are aspects that highlight the conflict for interest of appointment of GTB as a forensic auditor of the respondent No.2/company, but have been completely ignored by the respondent No.1/SEBI.

8. It was further argued that when the terms of reference of GTB as conveyed by the respondent No.1/SEBI itself shows that the Promoters/Directors/Company Managerial Personnel of the respondent No.2/company are suspected of wrongful diversion/siphoning of company funds, respondent No.1/SEBI ought to have blocked any attempt to influence/meddle with the forensic audit by appointing an independent forensic auditor; that

this would have served the basic principles of natural justice, namely *nemo judex in sua causa*; that the very fact that Mr. Anoop Krishna was a member of the Audit Committee of the respondent No.2/company and had an active role in overseeing, reviewing and approving the internal audit system, internal control systems and financial reporting system relating to the sale of the dairy division of the respondent No.2/company to its subsequent delisting process and subsequently, on account of the individual working as a Director in the sister concern of the GTB, namely GT Restructuring Services LLP, there is a serious apprehension that he will adversely affect the interest of the minority shareholders and influence the forensic audit in favour of the respondent No.2/company, thus vitiating the entire audit process.

9. A counter affidavit in opposition of the writ petition has been filed by the respondent No.1/SEBI. In its counter affidavit, the respondent No.1/SEBI has justified its stand of continuing with the appointment of GTB as a forensic auditor in respect of the respondent No.2/company for which it has relied on the e-mail dated 30.09.2020, received from the GTB, clarifying the role of Mr. Anoop Krishna. Based on the response of GTB, it has been stated that Mr. Anoop Krishna is not in a position of authority or responsibility to influence the engagement of GTB as a forensic auditor of the respondent No.2/company and that there are strict "*ethical dividers within the firm that ensures that there is no impact*

on the independence on the contractual obligations of GTB on the services provided to its clients". It has further been stated on behalf of the respondent No.1/SEBI that after examination of the complaint regarding the allegations of conflict of interest, it was concluded that there was no such conflict of interest in the matter.

10. Mr. Arvind Datar, learned Senior Advocate appearing for the respondent No.1/SEBI has argued that the writ petition is liable to be dismissed on the ground that no cause of action has arisen within the jurisdiction of this court, in as much as the registered office of the respondent No.1/SEBI is in Mumbai and the registered office of the respondent No.2/company is at Ahmednagar and the forensic auditor, GTB is also based in Maharashtra. He submitted that GTB ought to have been impleaded as a co-respondent in the present proceedings and its non-joinder is fatal to the writ petition; that the appointment of GTB as a forensic auditor by the respondent No.1/SEBI was after due diligence and the objections against the appointment of GTB were duly taken into account before passing the order dated 20.10.2020.

11. On the impugned decision of the respondent No.1/SEBI, dated 20.10.2020, learned Senior Advocate submitted that though the respondent No.2/company had questioned the appointment of GTB on the ground of lack of impartiality and conflict of interest, such a ground was specifically given up before SAT. The

respondent No.2/company had agreed that it will cooperate and provide all necessary papers, as demanded by the forensic auditor. He contended that the SAT in its order dated 09.11.2020, had clarified that the forensic report has no relationship with the delisting approval of the respondent No.2/company and its order was confined to the scope of the forensic audit in respect of the sale transactions and distribution of the tax liability, indemnity and transaction cost. Aggrieved by the said order, the respondent No.1/SEBI had preferred an appeal before the Supreme Court, primarily pleading that the forensic audit of the respondent No.2/company must be completed before the delisting process could be permitted. However, vide order dated 07.04.2001, passed in Civil Appeals No.1009-1010 of 2021, the Supreme Court had declined to interfere with the order of the SAT and had clarified that the forensic audit shall be conducted in respect of the nine terms of reference. It was thus urged that the Supreme Court did not interfere with the appointment of the forensic auditor and had restored the terms of reference formulated by the respondent No.1/SEBI which would show that GTB's appointment as a forensic auditor had also been recognised and not disturbed. Learned counsel further submitted that if the Supreme Court's order is read in the context of the observations made in the order dated 09.11.2020 passed by the SAT, it would show that the order would

be in respect of nine terms of reference and the GTB would continue as a forensic auditor of the respondent No.2/company.

12. It was next contended by learned counsel for the respondent No.1/SEBI that the petitioner's conduct is suspect, as he had been tracking the affairs of the respondent No.2/company since January, 2019 but did not make any complaint to SEBI till 09.03.2021. Even when he was requested to file a complaint in the prescribed format in *"SCORES" (*an online complaint filing system of SEBI), he did not follow the said procedure; that he has suppressed the fact that his registered address with NSDL is in Pune and his KYC was in Ahmednagar. Despite that, he has filed the present petition in this court on a plea that he had shifted his work place and residence to Hyderabad, State of Telangana, which cannot be a ground for creating a jurisdiction in this court. Lastly, it was canvassed that no rights of the petitioner have been violated. He has only 790 shares of the respondent No.2/company that has over 20,000 shareholders and his only right as a shareholder are the right to dividend, right to participate in the surplus funds during winding up of the company and right to vote at an AGM/EGM. It was submitted that no shareholder can have a right to question the appointment of an investigator appointed by a statutory body and the only person who can raise such a grievance is the concerned company itself.

13. A counter affidavit has also been filed by the respondent No.2/company, wherein it has been admitted that the company did set up an escrow account in order to hold the consideration proceeds of the sale transaction and it had set up a Transaction Committee on 13.02.2019, which included Mr. Anoop Krishna as a member. The said Transaction Committee was entrusted with the role and function to oversee, supervise and manage the utilization of the net proceeds from the sale transactions as held in the escrow account, for being distributed among its shareholders. It has been stated that the proposed delisting of the respondent No.2/company has been completed and its shares were to be delisted on 25.04.2021 and that as per the records of the respondent No.2/company, the petitioner did not offer his shares in the exit offer that was provided by company. Referring to the order dated 09.11.2020, passed by the SAT, it has been averred that the SAT has delinked the forensic audit and the voluntary delisting of the respondent No.2/company. In paragraph 16 of the counter affidavit, it has been stated that Mr. Anoop Krishna was appointed as an Additional Independent Director on the Board of Directors of the respondent No.2/company on 30.07.2018 and the said appointment was regularised in the AGM of the respondent No.2/company held on 22.09.2018; that he was also made Chairman of the Audit Committee of the Board and had remained on the said Board till 11.11.2019, when he resigned; while remaining an Independent

Director of the respondent No.2/company Mr. Anoop Krishna was a part of the Transaction Committee of the Board, formed for overseeing and supervising the transaction of sale of shares of SAIPL by the respondent No.2/company and Cheese Land Agro Private Limited to TMPPL and the transfer of business from the respondent No.2/company and Cheese Land Agro Private Limited to SAIPL.

14. The respondent No.2/company has also averred that it had received complaints through e-mails from the shareholders regarding non-independence of GTB and its unsuitability, which were forwarded to the respondent No.1/SEBI for its perusal on 28.11.2020; that the respondent No.2/company had also sought expert legal advice from a former Judicial Member of SAT and had forwarded the same to the respondent No.1/SEBI, wherein, it was opined that in view of the presence of Mr. Anoop Krishna on the Board of the Group of GTB, it would be appropriate if the forensic audit is conducted by any other audit firm of equal stature.

15. Ms. Rishika Harish, learned counsel for the respondent No.2/company submitted that the company is a public limited listed company and it is amenable to the jurisdiction of the respondent No.1/SEBI and is honouring the directions issued regarding delisting and the forensic audit and that the company has no role to play in the appointment of GTB as a forensic auditor. It was

clarified that learned Senior Counsel appearing for the respondent No.1/SEBI had stated that in the appeal preferred by the respondent No.2/company before the SAT, a plea was taken in ground (s) questioning the appointment of GTB, but the company elected not to challenge the order passed by the SEBI holding that GTB ought to continue as a forensic auditor before the appellate forum.

16. In his rejoinder arguments, Mr. S.Ravi, learned Senior Advocate clarified that the petitioner has been residing in Hyderabad since the year 2019 and is residing at the address given in the Memo of Parties and that he had executed a rent agreement in respect of the flat taken by him on lease. He is working as a Project Engineering Consultant to a company situated in Hyderabad and he had purchased the shares of the respondent No.2/company on 10.10.2020, after shifting to Hyderabad; that the respondent No.1/SEBI has a local office in Hyderabad and simply because its registered office is situated in Mumbai would not mean that no part of cause of action has arisen in Hyderabad, for filing the petition in this court, more so when the e-mail was sent by the petitioner from Hyderabad and was lodged at the Centralised e-mail address of the respondent No.1/SEBI. It was urged that the petitioner is a minority shareholder of the respondent No.2/company and has not tendered his shares in the delisting offer and therefore, his *locus standi* to file the present petition and pursue the same within the State of Telangana, cannot be questioned. Referring to clause (1) of Article

226 of the Constitution of India, learned Senior Advocate submitted that this court is empowered to issue directions and passed orders in respect of any Government authority or person in relation to the territories within which the cause of action has arisen, wholly or in part, notwithstanding that the seat of Government/authority is not within those territories, as prescribed in clause (2) of Article 226.

17. On the aspect of non-joinder of necessary parties, it was submitted that the petitioner has challenged the decision of respondent No.1/SEBI to continue GTB as a forensic auditor of the respondent No.2/company and therefore, it is for the SEBI to defend the said decision. The submission made on behalf of the respondent No.1/SEBI that the order dated 07.04.2021 passed by the Supreme Court refusing to interfere with the order of the SAT, which had set aside orders dated 20.10.2020 and 23.12.2020, passed by the respondent No.1/SEBI, ought to be treated as an order approving the appointment of GTB as a forensic auditor was vehemently disputed and it was canvassed that this could not be a ground to dismiss the writ petition since the issue raised before the Supreme Court was on the scope of the forensic audit, as determined by the respondent No.1/SEBI. The aspect of any bias on the part of the forensic auditor appointed by the respondent No.1/SEBI, was not raised before the Supreme Court at all. Therefore, even the concept of *constructive res judicata* would not come into play in the instant case. In fact, the point of

independence of GTB was neither urged before the SAT or before the Supreme Court.

18. On the objection taken by the respondent No.2/company that the appointment of GTB on 13.07.2020, was a statutory appointment, it was urged on behalf of the petitioner that the appointment order does not refer to any provision under which the GTB was appointed as a forensic auditor and therefore, it cannot be treated as a quasi judicial order for the petitioner to have preferred an appeal before the statutory authority, namely SAT. Learned Senior Advocate asserted that no grievance could have been registered by the petitioner against the acts of the respondent No.1/SEBI, on the SCORES platform which would be apparent from a perusal of FAQs published by the respondent No.1/SEBI in respect of complaints that are lodged on the SCORES platform. Lastly, it was contended that the petitioner being a minority shareholder of the respondent No.2/company, is well entitled to approach this court with a grievance that the respondent No.1/SEBI is not acting in the interest of the minority shareholders and investors of the respondent No.2/company and is insisting that GTB ought to continue as a forensic auditor to look into the affairs of the respondent No.2/company, when it has been clearly brought out that the integrity of the forensic audit would be compromised and the interest of the investor/shareholder of the respondent No.2/company, which the respondent No.1/SEBI is under a

mandate to protect, will be adversely affected due to the same. Learned Senior Advocate concluded by submitting that the respondent No.1/SEBI has itself admitted that it has a panel of nine forensic auditors and the petitioner has not requested for any particular forensic auditor to be appointed in respect of the respondent No.2/company. His only grievance is that continuation of GTB as a forensic auditor would not result in a free and fair scrutiny of the books of accounts, to the detriment of the minority shareholders.

19. We have perused the records and given our careful consideration to the arguments advanced by learned counsel for parties.

20. Coming first to the preliminary objections raised by Mr. Datar, Senior Advocate appearing on behalf of the respondent No.1/SEBI of absence of cause of action within the jurisdiction of this Court for maintaining the present petition, there is plethora of rulings by the Supreme Court and the High Courts on the said aspect in the context of exercising powers under Article 226 of the Constitution of India.

21. The expression *"cause of action"* has been defined in Mulla's Code of Civil Procedure as follows:-

> *"12.* ***Cause of action.—*** *The expression "cause of action" has acquired a judicially settled meaning.*

> *In the restricted sense, "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact by which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court."*

22. In Halsbury's Laws of England (4th Edn.), it has been stated that ""*Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."*

23. As can be seen from the above, *"cause of action"* is a bundle of facts which when taken together, with the law applicable to the said facts, gives a right to the plaintiff to seek relief against the defendant. In other words, cause of action is premised on the

existence of a group of facts put together that would entitle a plaintiff to approach the court for a remedy against the defendant.

24. In ONGC v. Utpal Kumar Basu, reported as **(1994) 4 SCC 711**, referring to the ambit of Clauses (1) and (2) of Article 226 of the Constitution of India, a three-Judge Bench of the Supreme Court held thus:-

> "***5.*** *Clause (1) of Article 226 begins with a non obstante clause — notwithstanding anything in Article 32 — and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.* ***On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to***

which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. *In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.*

6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. *In Chand Kour v. Partab Singh* ***[ILR (1889) 16 Cal 98, 102 : 15 IA 156]*** *Lord Watson said:*

> *"… the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."*
>
> *Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts.* ***In other words the question whether a High***

Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. *Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Calcutta High Court."*

(emphasis added)

25. In Navinchandra N. Majithia v. State of Maharashtra, reported as **(2000) 7 SCC 640**, keeping in mind the object of the amendment to Article 226 of the Constitution of India, by virtue of the Constitution (Forty-third Amendment) Act, 1977, the Supreme Court made the following pertinent observations on the aspect of exercise of territorial jurisdiction by a High Court under Article 226 (2) of the Constitution of India:-

"37. The object of the amendment by inserting clause (2) in the article was to supersede the decision of the Supreme Court in Election Commission v. Saka Venkata Rao [Election Commission v. Saka Venkata Rao, ***AIR 1953 SC 210****] and to restore the view held by the High Courts in the decisions [****Ed.*** *: The*

reference is to K.S. Rashid Ahmed v. Income Tax Investigation Commission, ***1950 SCC OnLine P&H 58****; M.K. Ranganathan v. Madras Electric Tramways* ***(1904) Ltd., 1952 SCC OnLine Mad 34****; Aswini Kumar Sinha v. CCE and Land Customs*, ***1951 SCC OnLine Gau 53****.] cited above.* ***Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which 'the cause of action, wholly or in part, arises' and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court.*** *The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."*

(emphasis added)

26. In Union of India v. Adani Exports Limited, reported as **(2002) 1 SCC 567**, it was held by the Supreme Court that in order to confer jurisdiction on a High Court to entertain a writ petition, the averments in the writ petition must disclose that such integral facts have been pleaded in support of the cause of action that would empower a court to decide the dispute and it is not as if each and every fact pleaded in the petition would automatically lead to a conclusion that there would arise a cause of action within the territorial jurisdiction of a particular High Court, unless the facts are of such a nature that they would have a nexus or relevance with the *lis* involved in the case. In Kusum Ingots & Alloys Limited v. Union of India, reported as **(2004) 6 SCC 254**, the Supreme Court

has observed that even if a small fraction of the cause of action has accrued within the jurisdiction of a High Court, the said court will have jurisdiction in the matter as long as there is a nexus between the facts pleaded in the writ petition and the prayers sought.

27. In Om Prakash Srivastava v. Union of India, reported as **(2006) 6 SCC 207**, the Supreme Court has observed in the same vein that a plain reading of clause (2) of Article 226 of the Constitution of India would make it clear that the High Court can exercise its power to issue any direction, order or writ for the enforcement of any fundamental right or for any other purpose if the cause of action wholly or in part had arisen within the territorial limits in relation to which the Court exercises jurisdiction, regardless of the fact that the seat of the Government or authority or the residence of the person against whom the direction/order/writ is issued, does not fall within the territorial jurisdiction of the said Court. We may usefully extract below; para 7 of the said ruling:-

> *"7.* ***The question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limits of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution.*** *In order to maintain a writ petition, a writ petitioner has to establish that a legal right claimed by him has prima facie either been infringed or is threatened to be infringed by the respondent within the territorial limits of the Court's jurisdiction*

and such infringement may take place by causing him actual injury or threat thereof."

(emphasis added)

28. We may profitably refer to another decision of the Supreme Court in Nawal Kishore Sharma v. Union of India, reported as **(2014) 9 SCC 329**, wherein emphasis has been laid on the nature of averments made in the writ petition for deciding the question of cause of action as follows:-

> *"16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution.* ***In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.****"*
>
> (emphasis added)

29. In Alchemist Limited v. State Bank of Sikkim, reported as **(2007) 11 SCC 335,** the Supreme Court referred to several earlier rulings on the aspect of "*cause of action"* and held thus:-

> *"34. In Kusum Ingots & Alloys Ltd. v. Union of India,* ***(2004) 6 SCC 254 : JT (2004) Supp 1 SC 475****, the appellant was a Company registered under the Companies Act having its head office at Mumbai. It obtained a loan from the Bhopal Branch of the State*

Bank of India. The Bank issued a notice for repayment of loan from Bhopal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The appellant Company filed a writ petition in the High Court of Delhi which was dismissed on the ground of lack of territorial jurisdiction. The Company approached this Court and contended that as the constitutionality of a parliamentary legislation was questioned, the High Court of Delhi had the requisite jurisdiction to entertain the writ petition.

35. Negativing the contention and upholding the order passed by the High Court, this Court ruled that passing of a legislation by itself does not confer any such right to file a writ petition in any Court unless a cause of action arises therefor. The Court stated: (Kusum Ingots case, SCC p. 261, para 20)

> *"20. A distinction between a legislation and executive action should be borne in mind while determining the said question".*

Referring to ONGC v. Utpal Kumar Basu, ***(1994) 4 SCC 711 : JT (1994) 6 SC 1****, it was held that all necessary facts must form an "integral part" of the cause of action. The fact which is neither material nor essential nor integral part of the cause of action would not constitute a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution.*

36. In National Textile Corporation Ltd. V. Haribox Swalram, ***(2004) 9 SCC 786 : JT (2004) 4 SC***

***508**, referring to earlier cases, this Court stated that: (SCC p. 797, para 12.1)*

> *"12.1 ...the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained."*

37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant- petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. ***It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.****"*

(emphasis added)

30. In Ambika Industries v. Commissioner of Central Excise, reported as **(2007) 6 SCC 769**, the Supreme Court has opined that even if a small portion of cause of action arises in its jurisdiction,

the court will have jurisdiction over a matter. Para 40 of the judgment states as follows:-

> ***"40.*** *Although in view of Section 141 of the Code of Civil Procedure the provisions thereof would not apply to writ proceedings, the phraseology used in Section 20(c) of the Code of Civil Procedure and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 20(c) CPC shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action, as what is necessary to be proved, before the petitioner can obtain a decree, is material facts. The expression material facts is also known as integral facts.*
>
> ***41. Keeping in view the expression "cause of action" used in Clause (2) of Article 226 of the Constitution of India, indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered."***
>
> (emphasis added)

31. In a five-Judge Bench decision of the Delhi High Court in Sterling Agro Industries v. Union of India, reported as **ILR (2011) VI DELHI 729**, speaking for the Bench, Justice Dipak Misra (as His Lordship then was) has explained the concept of *forum conveniens*, in relation to "*cause of action"* and made the following pertinent observations:-

"31. ***The concept of forum conveniens fundamentally means that it is obligatory on the part of the court to see the convenience of all the parties before it. The convenience in its ambit and sweep would include the existence of more appropriate forum, expenses involved, the law relating to the lis, verification of certain facts which are necessitous for just adjudication of the controversy and such other ancillary aspects. The balance of convenience is also to be taken note of.*** *Be it noted, the Apex Court has clearly stated in the cases of Kusum Ingots (supra), Mosaraf Hossain Khan (supra) and Ambica Industries (supra) about the applicability of the doctrine of forum conveniens while opining that arising of a part of cause of action would entitle the High Court to entertain the writ petition as maintainable.*

32. The principle of forum conveniens in its ambit and sweep encapsulates the concept that a cause of action arising within the jurisdiction of the Court would not itself constitute to be the determining factor compelling the Court to entertain the matter. While exercising jurisdiction under Articles 226 and 227 of the Constitution of India, the Court cannot be totally oblivious of the concept of forum conveniens. The Full Bench in New India Assurance Co. Ltd. (supra) has not kept in view the concept of forum conveniens and has expressed the view that if the appellate authority who has passed the order is situated in Delhi, then the Delhi High Court should be treated as the forum conveniens. We are unable to subscribe to the said view.

33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows:

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situate and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/ revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary

jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a malafide manner is too restricted / constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of malafide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

32. On an understanding of the aforesaid rulings, there is no manner of doubt that the question as to whether cause of action has arisen wholly or in part, within the territorial limits of a High Court where a writ petition has been filed, would have to be decided keeping in view the nature and the characteristics of the proceedings filed. Even a fraction of a cause of action having arisen in the territorial jurisdiction of the court will vest jurisdiction on it. But that should be integral to the relief prayed for in the petition and not some extraneous or irrelevant averment, that has no nexus with the remedy sought against the respondent. While examining an objection taken on lack of cause of action, the court must also be mindful of the principles of *forum conveniens.*

33. We may now proceed to apply the aforesaid law to the facts of the instant case. The relevant averments made by the petitioner to approach this High Court for relief are that he is residing and working for gain in Hyderabad, Telangana from the year 2019; that subsequent to his shifting his residence to Hyderabad, he had purchased the shares of the respondent No.2/company in October, 2020; that the respondent No.1/SEBI has a local office in Banjara Hills, Hyderabad and further, that as a shareholder of the respondent No.2/company he had sent e-mails dated 09.03.2021 and 19.03.2021 from Hyderabad to the centralized e-mail address of the respondent No.1/SEBI. The petitioner has also averred that

he has not offered his shares in response to the delisting offer made by the promoters for buying back the shares of the respondent No.2/company. Instead, he has raised a grievance on the competence and the objectivity of GTB to conduct a forensic audit of the respondent No.2/company on the directions of the respondent No.1/SEBI, which has not been addressed by the latter, compelling him to file the present writ petition.

34. On examining the aforesaid bundle of facts, it cannot be stated that not even a small fraction of the cause of action has arisen within the jurisdiction of this Court to entertain the writ petition, only because the registered office of the respondent No.1/SEBI and that of the respondent No.2/company is situated within the State of Maharashtra and therefore, they are outside the territorial limits of the jurisdiction of this Court. In our opinion this cannot be a ground to non-suit the petitioner/minority shareholder. Such an approach would run contrary to the object of the amendment to Article 226 of the Constitution of India by inserting clause (2), the underlying aim whereof was to widen the scope of jurisdiction of the High Courts to enable the courts to address the grievance of a petitioner against a particular act of the respondent, that would have given him a cause to complaint, notwithstanding the place where the respondents are situated. The facts pleaded in the writ petition have a direct nexus to the relief prayed for and therefore, the preliminary objection raised by the respondent No.1/SEBI regarding lack of

cause of action for filing the writ petition in this court, is turned down as devoid of merits. The principle of *forum conveniens* is also in favour of the petitioner who being a minority shareholder, cannot be expected to approach the High Court at Mumbai for relief merely because the registered offices of the respondents are situated in the State of Maharashtra. Even otherwise, no hardship has been caused to the respondents as they are not expected to produce any records for the perusal of the court, causing any inconvenience. The petition is being decided on the basis of the pleadings and arguments advanced by learned counsel.

35. The next objection taken by the respondent No.1/SEBI regarding non-joinder of GTB as a necessary party in the present proceedings would have been persuasive, had the clarification given by GTB not been extracted in the impugned order dated 20.10.2020 passed by the respondent No.1/SEBI. Having the benefit of the explanation offered by GTB to the respondent No.1/SEBI, this court is only required to examine the reasons that have weighed with the respondent No.1/SEBI for continuing with GTB as the forensic auditor of the respondent No.2/company, despite objections raised by other shareholders, as extracted in para 24 of the same order.

36. Before we proceed to deal with the objections taken by the petitioner against continuation of GTB as a forensic auditor of the

respondent No.2/company, it is apposite to examine the concept of principles of natural justice, as developed in our jurisprudence over the years, initially by drawing strength from the celebrated decisions of King's Bench Division in the King v. Sussex Justices, *ex parte* McCarthy, reported as **[1924] 1 KB 256 = [1923] All ER Rep 233** and Queen's Division Bench in In re H.K. (an infant), reported as **(1967) 2 QB 617**, and in Baging v. Criminal Injuries Compensation Board Ex-parte Latin, reported as **(1967) 2 QB 864** and thereafter, on the Supreme Court building the edifice of Rule of Law, brick by brick and case by case.

37. In the landmark case of A.K.Kraipak v. Union of India, reported as **(1969) 2 SCC 262**, a Constitution Bench of the Supreme Court has expounded on the scope of exercise of quasi judicial powers vis-à-vis administrative powers and application of the principles of natural justice to such an exercise of power for ensuring a just and fair decision and held as follows:-

> ***"13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under***

our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. *In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner.* ***The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously.*** *The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision.* ***In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power.*** *The following observations of Lord Parker C.J., in Regina v. Criminal Injuries Compensation Board Ex parte Lain* ***[(1967) 2 QB 864 at p. 881]*** *are instructive.*

> *"With regard to Mr Bridge's second point I cannot think that Atkin L.J., intended to confine his principle to cases in which the determination affected rights in the sense of enforceable rights. Indeed, in the Electricity Commissioners case the rights determined were at any rate not immediately enforceable rights since the scheme laid down by the commissioners had to be approved by the*

Minister of Transport and by resolutions of Parliament. The Commissioners nevertheless were held amenable to the jurisdiction of this court. Moreover, as can be seen from Rex v. Postmaster-General Ex parte Carmichael ***[(1928) 1 KB 291]*** *and Rex v. Boycott Ex parte Kesslay* ***[(1939) 2 KB 651]*** *the remedy is available even though the decision is merely a step as a result of which legally enforceable rights may be affected.*

The position as I see it is that the exact limits of the ancient remedy by way of certiorari have never been and ought not to be specifically defined. They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court, later its ambit was extended to statutory tribunals determining a lis inter partes. Later again it extended to cases where there was no lis in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned.

Finally, it is to be observed that the remedy has now been extended, See Reg. v. Manchester Legal Aid Committee, Ex parte R.A. Brand & Co. Ltd. [(1952) 2 QB 413] to

cases in which the decision of an administrative officer is only arrived at after an inquiry or process of a judicial or quasi-judicial character. In such a case this court has jurisdiction to supervise that process.

We have as it seems to me, reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely, within the jurisdiction of this court. It is, as Mr Bridge said, 'a servant of the Crown charged by the Crown, by executive instruction, with the duty of distributing the bounty of the Crown.' It is clearly, therefore, performing public duties".

14. *The Court of Appeal of New Zealand has held that the power to make a zoning order under Dairy Factory Supply Regulation, 1936, has to be exercised judicially, see* *New Zealand and Dairy Board v. Okita Co-operative Dairy Co. Ltd.* ***[(1953) New Zealand Law Reports, p. 366]*** *This Court in* *Purtabpore Co. Ltd. v. Cane Commissioner of Bihar* ***[Civil Appeal No. 1464 of 1968, decided on 21-11-1968]*** *held that the power to alter the area reserved under the Sugarcane (Control) Order, 1966, is a quasi-judicial power.* ***With the increase of the power of the administrative bodies it has become***

> ***necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, courts are gradually evolving the principles to be observed while exercising such powers. In matters like these, public good is not advanced by a rigid adherence to precedents. New problems call for new solutions.*** *It is neither possible nor desirable to fix the limits of a quasi-judicial power. But for the purpose of the present case we shall assume that the power exercised by the selection board was an administrative power and test the validity of the impugned selections on that basis."*
>
> (emphasis added)

38. Applying the above principles to the case on hand, it can be seen that the allegation of the petitioner is not of real bias, but the possibility of bias on the part of GTB *qua* the forensic audit that it has been directed to conduct in respect of the financial statements of the respondent No.2/company. The grievance raised is about a reasonable likelihood of bias and acceptance of a reasonable ground for believing that GTB would be likely to be biased, while conducting the forensic audit of the respondent No.2/company. In the above background, the court is required to test the reasonableness of the decision of the respondent No.1/SEBI of continuing with GTB as the forensic auditor.

39. In Management of M/s. M.S.Nally Bharat Engineering Company Limited v. State of Bihar, reported as **(1990) 2 SCC 48**,

the point that came up for consideration before the Supreme Court was whether the Government ought to have afforded an opportunity of hearing to the appellant/company therein before accepting the representation of the respondent/workmen, transferring a labour dispute raised by them from the Labour Court, Dhanbad to the Labour Court, Patna and the validity of the reasons given by the Government for passing such an order. Highlighting the concept of rule of law which requires the authorities vested with judicial or administrative functions to discharge their duty in a fair and just manner, the Supreme Court has made the following pertinent observations:-

> *"**12.** After the leading English case of Ridge v. Baldwin **[1964 AC 40 : (1963) 2 All ER 66]** and an equally important case of this Court in A.K. Kraipak v. Union of India **[(1969) 2 SCC 262 : (1970) 1 SCR 457]** there was a turning point in the development of doctrine of natural justice as applicable to administrative bodies. **Both the authorities laid down that for application of rules of natural justice the classification of functions as 'judicial' or 'administrative' is not necessary.** Lord Reid in Ridge case **[1964 AC 40 : (1963) 2 All ER 66]** explained: 'that the duty to act judicially may arise from the very nature of the function intended to be performed and it need not be shown to be superadded'. Hegde, J., in Kraipak case **[(1969) 2 SCC 262 : (1970) 1 SCR 457]** said that under our Constitution the rule of law pervades over the entire field of administration.*

Every organ of the State under our Constitution is regulated and controlled by the rule of law. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. *The procedures which are considered inherent in the exercise of a judicial power are merely those which facilitate if not ensure a just and fair decision.*

13. What is thus important in the modern administration is the fairness of procedure with elimination of element of arbitrariness. The State functionaries must act fairly and reasonably. *That is, however, not the same thing to state that they must act judicially or quasi-judicially. In Keshav Mills Co. Ltd. v. Union of India [(1973) 1 SCC 380 : (1973) 3 SCR 22] Mukherjea, J. said (SCC p. 387, para 8: SCR p. 30)*

> *"The administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly."*

14. *The procedural standards which are implied by the duty to act fairly has been explained by Lord Pearson in Pearlberg v. Varty [(1972) 1 WLR 534, 547 : (1972) 2 All ELR 6] :*

> *"**A tribunal to whom judicial or quasi-judicial functions are entrusted is held to be***

required to apply those principles (i.e. the rules of natural justice) in performing those functions unless there is a provisions to the contrary. *But where some person or body is entrusted by Parliament with administrative or executive functions there is no presumption that compliance with the principles of natural justice is required although, as 'Parliament is not to be presumed to act unfairly', the courts may be able in suitable cases (perhaps always) to imply an obligation to act with fairness."*

15. In <u>Mohinder Singh Gill v. Chief Election Commissioner</u> [(1978) 1 SCC 405, 434 : (1978) 2 SCR 272] Krishna Iyer, J. commented that natural justice though varying is the soul of the rule as fair play in action. It extends to both the fields of judicial and administrative. *The administrative power in a democratic set up is not allergic to fairness in action and discretionary executive justice cannot degenerate into unilateral injustice. Good administration demands fair play in action and this simple desideratum is the fount of natural justice. Fairness is flexible and it is intended for improving the quality of government by injecting fair play into its wheels.*

16. *In <u>Maneka Gandhi v. Union of India</u>* ***[(1978) 1 SCC 248 : (1978) 2 SCR 621]*** *Bhagwati, J., expressed similar thought that audi alteram partem is a highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power.*

17. In Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664 : (1981) 2 SCR 533] Sarkaria, J., speaking for himself and Desai, J., said that irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial, a duty to act fairly, that is, in consonance with the fundamental principles of substantive justice is generally implied. *The presumption is that in a democractic polity wedded to the rule of law, the State or the legislature does not intend that in the exercise of their statutory powers its functionaries should act unfairly or unjustly.* ***In the same case, Chinnappa Reddy, J., added (at p. 212) that the principles of natural justice are now considered so fundamental as to be 'implicit in the concept of ordered liberty'. They are, therefore, implicit in every decision making function, call it judicial, quasi-judicial or administrative.*** *The learned Judge went on to state that where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice. The implication of natural justice being presumptive, it should be followed by the authorities unless it is excluded by express words of statute or by necessary implication.*

18. *Citations could be multiplied since there is fairly abundant case law which has come into existence : See, for example, E.P. Royappa v. State of Tamil Nadu* ***[(1974) 4 SCC 3: 1974 SCC (L&S) 165: (1974) 2 SCR 348]*** *and Union of India v. Tulsiram Patel* ***[(1985) 3 SCC 398 : 1985 SCC (L&S) 672 :***

1985 Supp 2 SCR 131] *. More recently in a significant judgment in* *Charan Lal Sahu v. Union of India* ***[(1990) 1 SCC 613: (1989) 4 JT 582]*** *learned Chief Justice Sabyasachi Mukharji has referred to almost all the authorities of this Court on this aspect and emphasized that the principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. Justice is a psychological yearning, in which men seek acceptance of their viewpoint by having an opportunity before the forum or the authority enjoined or obliged to take a decision affecting their right.*

19. It may be noted that the terms 'fairness of procedure', 'fair play in action', 'duty to act fairly' are perhaps used as alternatives to "natural justice" without drawing any distinction. *But Prof. Paul Jackson points out that 'Such phrases may sometimes be used to refer not to the obligation to observe the principles of natural justice but, on the contrary, to refer to a standard of behaviour which, increasingly, the courts require to be followed even in circumstances where the duty to observe natural justice is inapplicable" ("Natural Justice" by Paul Jackson, 2nd edn., p. 11).*

20. *We share the view expressed by Professor Jackson. Fairness, in our opinion, is a fundamental principle of good administration. It is a rule to ensure the vast power in the modern State is not abused but properly exercised. The State power is used for proper and not for improper purposes. The authority is not*

> *misguided by extraneous or irrelevant considerations. Fairness is also a principle to ensure that statutory authority arrives at a just decision either in promoting the interest or affecting the rights of persons.* ***To use the time hallowed phrase "that justice should not only be done but be seen to be done" is the essence of fairness equally applicable to administrative authorities. Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case.*** *As Lord Pearson said in* Pearlberg v. Varty ***[(1972) 1 WLR 534, 547 : (1972) 2 All ELR 6] (at p. 547)****, fairness does not necessarily require a plurality of hearings or representations and counter-representations. Indeed, it cannot have too much elaboration of procedure since wheels of administration must move quickly."*

40. It can thus be seen that the oft quote expression that *"Justice must not only be done, but seen to be done"* is deeply engrained in the discharge of duties by authorities, whether administrative or quasi-judicial in nature. The question that would engage a court is not as much whether it is a case of actual injustice caused to a party, but whether there is a chance of possible injustice which ought to be ruled out. The fact that principles of natural justice have not been observed would itself be a ground for interference notwithstanding whether the aggrieved party could independently produce proof of prejudice that may have been caused to him.

41. On the same lines, is the decision of the Supreme Court in Sahara India (Firm) v. Commissioner of Income Tax, reported as **(2008) 14 SCC 151**, where dealing with a case of special audit of the accounts of the appellant/assessee, a plea was raised that before any direction could be issued under Section 142 (2-A) of the Income Tax Act, it was necessary to afford an opportunity of hearing to the appellant, the Supreme Court answered the said question in the affirmative by reading the concept of natural justice into the special provision and holding thus:-

> *"**4.** Before dealing with the rival submissions to determine whether the principles of natural justice demand that an opportunity of hearing should be afforded to an assessee before an order under Section 142(2-A) of the Act is made, we may appreciate the concept of "natural justice" and the principles governing its application.*
>
> ***15. Rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by the State or its functionaries. Therefore, the principle implies a duty to act fairly i.e. fair play in action. As observed by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262] the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice.*** *These rules can operate only in areas not covered by*

any law validly made. They do not supplant law but supplement it. (Also see ITO v. Madnani Engg. Works Ltd ***[(1979) 2 SCC 455 : 1979 SCC (Tax) 140]*** *).*

16. *x x x*

17. *Initially, it was the general view that the rules of natural justice would apply only to judicial or quasi-judicial proceedings and not to an administrative action.* ***However, in State of Orissa v. Dr. Binapani Dei [AIR 1967 SC 1269 : (1967) 2 SCR 625] the distinction between quasi-judicial and administrative decisions was perceptively mitigated and it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistent with the rules of natural justice.*** *Since then the concept of natural justice has made great strides and is invariably read into administrative actions involving civil consequences, unless the statute, conferring power, excludes its application by express language.*

18. *Recently, in Canara Bank v. V.K. Awasthy* ***[(2005) 6 SCC 321 : 2005 SCC (L&S) 833]*** *the concept, scope, history of development and significance of principles of natural justice have been discussed in extenso, with reference to earlier cases on the subject.* ***Inter alia, observing that the principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making***

an order affecting those rights, *the Court said: (SCC pp. 331-32, para 14)*

> *"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held.* ***The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."***

42. In paragraphs 19, 20 and 21 of the aforesaid decision, the Supreme Court has concluded that no general rule of universal application of the principles of "*audi alteram partem*" can be laid down and each case would have to be examined on its own facts and observed as follows:-

*"**19.** Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.*

20. We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. *Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied.* ***The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power.*** *It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined. (See Union of India v. Col. J.N. Sinha* ***[(1970) 2 SCC 458]*** *.)*

> ***21.*** *In Mohinder Singh Gill v. Chief Election Commr.* ***[(1978) 1 SCC 405]*** *explaining as to what is meant by expression "civil consequence", Krishna Iyer, J., speaking for the majority said: (SCC p. 440, para 66)*
>
> > *"66. …* ***'Civil consequences' undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence."***
> >
> > *(emphasis supplied)*

43. On a conspectus of the case law cited above, what emerges with clarity is that it is fundamental law that justice should not only be done, but should be seem to be done and any circumstance which creates a suspicion in the mind of a party that there is a likelihood of interference with the due course of justice, ought to be given weightage in the context of the civil consequences likely to be suffered by a party on violation of such a rule, which may not just affect the property or personal rights of the aggrieved party, or result in pecuniary damages, but can also lead to other consequences such as violation of the civil liberties of a citizen.

44. We may pause here to cite King v. Sussex (supra). The relevant facts of the said case were that a collision had taken place between a motor vehicle belonging to the appellant and one belonging to W, resulting in summons being taken out by the police

against the applicant for rash and negligent driving. At the hearing of the summons, the acting clerk of the Justices happened to be a member of the firm of Solicitors who were acting for W in a claim for damages filed by him against the applicant for injuries received by him in the collision. After the evidence was concluded and the Justices retired to the chambers to consider their decision, the acting clerk retired with them, while taking along with him, the notes of evidence, if so required and to advise them on any point of law. Upon conferring with each other, the Justices returned to the Court and declared that they had decided to convict the applicant. At that stage, the applicant's solicitor mentioned to the court that only after the hearing was over, was he apprised of the relationship of the deputy clerk with one of the partners of the firm of solicitors engaged by W, in the civil proceedings filed by him against the applicant and raised an objection as to the sanctity of the judicial process.

45. Although the Justices submitted an affidavit in the above case, stating *inter alia* that the concerned Deputy Clerk was not consulted after they had retired to confer with each other before announcing an order of conviction against the applicant and they were not biased by the presence of the Deputy Clerk in their chambers during the course of conferring with each other, the King's Bench Division quashed the applicant's conviction order on the ground that it was improper for the acting clerk to have

remained present with the Justices when they were in consultation, having regard to his relationship with the Solicitor firm. We may usefully extract the following observations made in the captioned decision at pages 258 and 259:-

> *"It is clear that the deputy clerk was a member of the firm of solicitors engaged in the conduct of proceedings for damages against the applicant in respect of the same collision as that which gave rise to the charge that the justices were considering. It is said, and, no doubt, truly, that when that gentleman retired in the usual way with the justices, taking with him the notes of the evidence in case the justices might desire to consult him, the justices came to a conclusion without consulting him, and that he scrupulously abstained from referring to the case in any way.* ***But while that is so, a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk make any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.*** *Speaking for myself, I accept the statements contained in the*

justices' affidavit, but they show very clearly that the deputy clerk was connected with the case in a capacity which made it right that he should scrupulously abstain from referring to the matter in any way, although he retired with the justices; ***in other words, his one position was such that he could not, if he had been required to do so, discharge the duties which his other position involved. His twofold position was a manifest contradiction.*** *In these circumstances, I am satisfied that this conviction must be quashed, unless it can be shown that the applicant or his solicitor was aware of the point that might be taken, refrained from taking it, and took his chance of an acquittal on the facts, and then, on a conviction being recorded, decided to take the point. On the facts, I am satisfied that there has been no waiver of the irregularity, and, that being so, the rule must be made absolute and the conviction quashed."*

(emphasis added)

46. In Manak Lal v. Dr. Prem Chand reported in **AIR 1957 SC 425**, where a committee was constituted to enquire into a complaint leveled against an Advocate and the Chairman of the said committee had once appeared as a counsel for the complainant, the Supreme Court held that constitution of such a committee was bad and observed as follows:-

"4. xxx

In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably

apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done. *As Viscount Cave, L.C. has observed in* Frome United Breweries Co. v. Bath Justices ***[(1926) AC 586, 590]*** *"This rule has been asserted, not only in the case of Courts of Justice and other judicial Tribunals, but in the case of authorities which, though in no sense to be called Courts, have to act as Judges of the rights of others". In dealing with cases of bias attributed to members constituting Tribunals, it is necessary to make a distinction between pecuniary interest and prejudice so attributed. It is obvious that pecuniary interest, however small it may be in a subject-matter of the proceedings, would wholly disqualify a member from acting as a Judge.* ***But where pecuniary interest is not attributed but instead a bias is suggested, it often becomes necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the litigant or the public at large a reasonable doubt about the fairness of the administration of justice. It would always be a question of fact to be decided in each case.*** *"The principle", says Halsbury, "nemo debet esse judex in causa propria sua precludes a justice, who is interested in the subject-matter of a dispute, from acting as a justice therein"* ***[Halsbury's Laws of England, Vol 21, p. 535, para 952]*** *. In our opinion, there is and can be on doubt about the validity of this principle and we are prepared to assume that this principle applies not only to the justices as mentioned by Halsbury but to all*

Tribunals and bodies which are given jurisdiction to determine judicially the rights of parties."

47. Now applying the aforesaid principles of natural justice enunciated by courts to the facts of the instant case, it is not in dispute that before he had joined GT Restructuring Services LLP., a sister concern of GTB, Mr. Anoop Krishna was a member of the Board of Directors of the respondent No.2/company. Not only that, Mr. Anoop Krishna was appointed as a Chairman of the Audit Committee of the respondent No.2/company and he remained in the said position till 11.11.2019. He was also the Chairman of the Transaction Committee constituted by the respondent No.2/ company to oversee and manage the funds received on completion of the sale transaction of SAIPL (subsidiary company of the respondent No.2/company) to TMPPL (subsidiary company of French Groupe).

48. It is also not in dispute that the sale proceeds of the shares of SAIPL to TMPPL, i.e., a sum of Rs.1000-1200 crores had been placed in an escrow account held in trust for the shareholders and the very same Transaction Committee was required to deliberate upon and evaluate the various options available for distribution of the monies to the shareholders. As noted above, Mr. Anoop Krishna happened to be one of the members of the Transaction Committee constituted by the respondent No.2/ company. During the very

same period, the two promoters of the respondent No.2/company who cumulatively held 50.10% of its total shareholding, decided to acquire the remaining 49.90% of the paid up equity capital held by public shareholders and thereafter, voluntarily delist the equity shares of the company from the BSE and NSE. It has not been denied by the respondent No.2/company that during this entire period when a decision was taken to delist the company and give an exit option to the public shareholders by offering them a floor price of Rs.63.77 ps per share, Mr. Anoop Krishna was closely connected not only to the management, but also to the aforesaid promoters of the respondent No.2/company.

49. Expressing an apprehension about the likelihood of a bias creeping into forensic audit proposed to be undertaken by the GTB in view of the prominent presence of Mr. Anoop Krishna as a Member of the Board of Directors in the sister concern of GTB and a probability of conflict of interest, the petitioner had addressed an e-mail dated 09.03.2021 to the respondent No.1/SEBI, requesting for appointment of any other fair and independent auditor. The said e-mail was replied to by the respondent No.1/SEBI vide e-mail dated 09.03.2021 which was nothing but an auto generated reply fed into the software installed by the respondent No.1/SEBI simply stating that if an investor proposed to lodge a complaint against a listed company, a SEBI registered intermediary or a SEBI recognized Market Infrastructure Institution, he ought to register

himself on the SEBI Complaint Redress System (SCORES). Even though the petitioner had pointed out to the respondent No.1/SEBI vide e-mail dated 19.03.2021, he had no intention of lodging a complaint against any of the aforesaid entities and his grievance was directed against the respondent No.1/SEBI itself, for having decided to appoint GTB as a forensic auditor of the respondent No.2/company, SEBI did not give any response. In this background, it cannot be contended on behalf of the respondent No.1/SEBI that the petitioner failed to seek appropriate legal recourse and instead, has filed the present misconceived petition.

50. As for the contention of learned counsel for the respondent No.1/SEBI that the petitioner ought to have approached the Court for relief much earlier in time and the subsequent developments that have taken place would in any case disentitle him to relief, it cannot be ignored that an order was passed by the whole time member of the respondent No.1/SEBI on 20.10.2020, which records in para 17 that to ascertain the facts and circumstances relating to the financial dealings of the respondent No.2/company, SEBI had passed an order on 17.07.2020, appointing GTB as a forensic auditor to examine the financial statements of the respondent No.2/company for the years ending 31.03.2019 and 31.03.2020, along with an audit assignment containing nine terms of reference. Para 24 of the said order refers to the e-mails dated 09.09.2020 and 27.09.2020 received by the respondent No.1/SEBI

from the shareholders of the respondent No.2/company, raising similar grievances as raised by the petitioner herein. After considering the reply/clarification dated 30.09.2020, submitted by GTB in its letter dated 07.10.2020, the respondent No.1/SEBI turned down the objection of there being a conflict of interest on the independence of the forensic auditor and declined the request made for a change of the forensic auditor. The petitioner having filed the present petition within six months from October, 2020, it cannot be stated that the same is highly belated.

51. On merits too, a perusal of the order dated 20.10.2020 reveals that it is bereft of any reasons for ratifying the decision taken by the respondent No.1/SEBI on 07.10.2020 and for negating the plea of the shareholders of the respondent No.2/company that there exists a conflict of interest on the independence of the forensic auditor due to the presence of Mr. Anoop Krishna on the Board of the sister concern of GTB. The said order has simply extracted the grievance raised in para 24 and in para 26, the clarification offered by GTB vide reply dated 30.09.2020. This is followed by a reference made to the decision taken by the respondent No.1/SEBI to continue with the very same forensic auditor and the matter was closed there. The above is no more than a narration of the sequence of events. There is no discussion on the conflict of interest and no demonstrable application of mind on the

part of the whole time member of the respondent No.1/ SEBI for rejecting the request for a change of the forensic auditor.

52. We may note here that if application of mind for rejecting the objection relating to the objectivity of GTB to act as a forensic auditor of the respondent No.2/company could be deduced from a bare reading of the impugned order, then notwithstanding the objection taken by the petitioner herein that the respondent No.1/SEBI had declined to examine his objection to their appointment, we would have perhaps declined to interfere for the simple reason that the objections received by the respondent No.2/company from its shareholders on the conflict of interest *qua* GTB and placed before the respondent No.1/SEBI were akin in nature and having been taken into consideration and ruled upon, there would have been no good reason to delve into the matter all over again. However, in view of the complete absence of application of mind and silence on the reasoning offered by the respondent No.1/SEBI for upholding the decision dated 07.10.2020 to continue with GTB as a forensic auditor, we are afraid, we are not persuaded by the submission made on behalf of the respondent No.1/SEBI that the order of appointment of GTB as a forensic auditor, ought not to be disturbed or modified.

53. It is also a matter of record that aggrieved by the order dated 20.10.2020, the respondent No.2/company had preferred an appeal

before the SAT, Mumbai which was allowed vide order dated 09.11.2020. It is noteworthy that though the respondent No.2/company did raise a grievance about the independence of GTB to act as its forensic auditor in Ground (s) of the appeal grounds, it did not press the said objection. After dismissal of the review application filed by the respondent No.1/SEBI against the order of SAT, SEBI had preferred an appeal before the Supreme Court which was dismissed vide order dated 07.04.2021 in the following terms:-

> "*In the peculiar facts and circumstances of these cases, we are not inclined to interfere with the order passed by the Securities Appellate Tribunal. We clarify that the forensic audit shall be conducted in respect of the nine terms of reference at para 17 of page 81 of the paper book.*"

54. The submission made on behalf of the respondent No.1/SEBI that the order dated 07.04.2021 passed by the Supreme Court ought to be treated as binding on all the parties including the petitioner herein not only in relation to continuation of the forensic audit but also in respect of the appointment of GTB as a forensic auditor, is wholly devoid of merits as the Supreme Court was not even called upon to examine the issue of objectivity and impartiality of GTB to act as a forensic auditor in respect of the financial affairs of the respondent No.2/company. No such plea was taken by any of the parties before the Supreme Court for it to have ruled either ways.

55. The question that needs to be examined is whether GTB, tasked with the role of a financial auditor, should be above suspicion, like Caesar's wife? This is where the principle of *Nemo judex in causa sua*, the rule against bias comes into play. There are several types of bias, including pecuniary bias, subject matter bias, Departmental bias, Institutional bias, preconceived notion bias etc. The underlying principle is maintaining objectivity in dealing with or deciding a matter. There can be no gainsaying the fact that an auditor, being a professional person/entity has to function with complete impartially and independently. A shadow cast on the independence of a financial audit, need not necessarily be backed with any specific instance of bias or *mala fides.* The looming cloud of doubt itself would be a persuasive factor for interference. As observed by the Supreme Court in Management of M/s. M.S.Nally Bharat Engineering Company Limited (supra), non-observance of natural justice would itself cause prejudice to a person and independent proof of prejudice, is unnecessary. Due to the blurring of lines between an administrative order and a semi-judicial order, the decision of the respondent No.1/SEBI to appoint GTB as a forensic auditor of the respondent No.2/company would attract the doctrine of natural justice, requiring the authority to act in a just and fair manner. Acceptance by the respondent No.1/SEBI of the clarification offered by GTB on the aspect of bias, without offering any reasons for the same and continuing with GTB would, in our

opinion, fall foul of the principles of natural justice. As noted above, the objection taken by the petitioner is not to an active role of Mr. Anoop Krishna in the financial audit to be conducted by GTB. The objection is to his very presence in the sister concern of GTB and the existence of an element of doubt as to the impartiality of GTB, which may result in improper interference, thereby vitiating the audit itself. The test is whether a shareholder of the respondent No.2/company could harbour a reasonable apprehension of bias attributable to the financial auditor and not whether the bias would actually affect the result of the audit.

56. The submission made by learned counsel for the respondent No.1/SEBI that the rights of a minority shareholder are very limited and include only right the right to dividend, right to participate in the surplus funds during winding up of the company and right to vote at an AGM/EGM, cannot cut any ice when the respondent No.1/SEBI has itself enumerated in the FAQs and guidelines uploaded on its website, several rights that are vested in a shareholder which include the right to receive an offer, in case of a takeover or a buyback under the SEBI Regulations. In the instant case, the respondent No.1/SEBI has itself taken note of the complaints received against the promoters of the respondent No.2/company alleging *inter alia* that they were trying to hoodwink the investors, by voluntarily deciding to delist from BSE and NSE and offering a pittance as the exit price, i.e., Rs.63.77 ps. per share,

which was otherwise listed in the stock market at Rs.113/- in January, 2021 and was discounted at 20% vis-à-vis the earlier day's closing price. The allegations that are being examined by the respondent No.1/SEBI also relate to whether the exit price fixed by the promoters of the respondent No.2/company for buying back shares from the public shareholders has been depressed to cause them pecuniary loss.

57. Given the above background, we find merit in the submission made on behalf of the petitioner that what is involved in the present case is not the interest of the petitioner alone. The interest of all the minority shareholders/investors is involved and the issue of lack of confidence in GTB for undertaking the financial audit of the respondent No.2/company ought to be examined from the above perspective.

58. In view of the aforesaid discussion, we are unable to sustain the order dated 20.10.2020 passed by the respondent No.1/SEBI insofar as it has upheld the decision taken on 07.10.2020, of appointing GTB as a forensic auditor in respect of the financial affairs of the respondent No.2/company which is accordingly quashed and set aside. Respondent No.1/SEBI is directed to appoint any other auditor from its panel for conducting the forensic audit of the respondent No.2/company, as per the terms of reference drawn by it. We may note here that the financial audit was stayed

vide order dated 22.04.2021. At that stage, GTB was in the process of calling for documents from the respondent No.2/company. Steps had yet to be taken to examine the said documents, which are stated to be fairly voluminous in nature. Therefore, no undue hardship or delay is likely to be caused if any other auditor is appointed by the respondent No.1/SEBI to audit the accounts of the respondent No.2/company, for the audit assignment. The newly appointed auditor shall pick up threads from the point at which it was left by GTB and complete the audit assignment, in accordance with the terms of the reference. The writ petition is allowed. There shall however, be no order as to costs.

HIMA KOHLI, CJ

B. VIJAYSEN REDDY, J

25.08.2021

Note: LR copy be marked.
(By order)
Pln