IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 25 of 2016

(arising out of Order dated 30th September, 2016 passed by National Company Law Tribunal, Mumbai Bench, in I.A No. 73 of 2016)

IN THE MATTER OF:

BSE Ltd **... Appellant**

Vs

M/s Ricoh Company Ltd & Ors. **... Respondents**

Present:

For Appellant :- Ms Madhavi Diwan, Mr Sonakshi Malhan, Ms Tamoghna Goswami and Ms Nidhi Khanna, Advocates

For Respondents 4-6:- Mr Dinesh Kumar Sabharwal and Heena Ahluwalia, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by Appellant Bombay Stock Exchange Limited (hereinafter referred to as B.S.E) against order dated 30th September 2016 passed by National Company Law

Tribunal, Mumbai Bench (hereinafter referred to as Tribunal) in I.A No. 73 of 2016.

2. In the pending Company Petition the Tribunal on 24th August 2016 at the instance of 1st Respondent/Petitioner ordered that the 1st Respondent/Petitioner before cancellation of shares of 1st Respondent or NRG, shall bring in Rs.1123 crores as share application money and the company was asked to cancel the shares of 1st Respondent/Petitioner or NRG and issue the same number of shares already cancelled on premium to the money brought in by 1st Respondent/Petitioner or NRG. An independent authority was also ordered to monitor the affairs of the company for a period of one year.

3. Subsequently, the 1st Respondent/Petitioner filed the Interlocutory Application in question for clarification of order dated 24th August 2016, inter alia, to the following effect: -

> *"a. Pass ad-interim ex-parte orders restraining Respondent No. 8 from seeking compliance with the provisions of Sections 100 to 104 of the Companies Act, 1956 or other provisions thereto for the cancellation and re-issuance of 1,09,59,792 shares held by NRP Group Limited in R1. (emphasis supplied)."*

4. The Tribunal by impugned order dated 30th September, 2016 clarified the order with following observation: -

> *"2. To which, the petitioner has sought clarification that the company need not follow the procedure laid under Section 100 to 104 of 1956 Act, when this Bench passed an order u/s 242(2) (c) of the Companies Act 2013/402 (c) of the Companies Act, 1956 for*

cancellation of the shares of the company which ultimately led to reduction of share capital in the company.

3. The company counsel, to drive this point, relied upon Cosmosteels Pvt. Ltd. v. Jairam Das Gupta (1978) SCC page no. 215 (FB) to say that when cancellation of shares is ordered by involving Section 402 of the Companies Act, 1956, basing on para 6&8 of the citation, the procedure set out u/s 100-104 of the Act, 1956 need not be followed.

4. On hearing the submissions of the counsel, this Bench having passed an order u/s 242 (2) (c) of the Companies Act, 2013 for cancellation of these shares, it is hereby clarified that it need not be said separately that the procedure set out u/s 100-104 is not application to this case.

5. On perusal of the citation supra, it is understood that the Apex Court made it clear that the procedure u/s 100-104 and the procedure u/s 402 (para material to Section 242 of the Act, 2013) are distinct and separate, therefore, when an order is passed under 242 of the Act, 2013, company does not require to follow the procedure laid u/s 100-104 of the Companies Act, 1956.

6. In view of the same, this Bench hereby holds that the order dated 24.8.2016 for reduction of the share capital of the company u/s 242 is suffice to say that company does not require to follow the procedure laid u/s 100-140 of the Companies Act, 1956.

5. Ld. Counsel appearing on behalf of the Appellant while assailed the impugned order submitted that the Securities & Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act) being a special law is required to be followed by all the parties, including 1st and 2nd Respondents. The Respondents not only wants to get rid of Section 100 to 104 of the Companies Act, 1956 but also in the other provisions made under the SEBI Act. It was submitted that the Tribunal has no jurisdiction to interfere with guidelines and circulars issued under SEBI Act which is binding on all the parties, including the 1st and 2nd Respondents.

Reliance was also placed on Hon'ble Supreme Court decision in "Sahara India Real Estate vs. SEBI- (2013) Vol 1 SCC p.1". In the said case the Hon'ble Apex Court observed as follows:-

"66. SEBI Act is a special law, a complete code in itself containing elaborate provisions to protect interests of the investors. Section 32 of the Act says that the provisions of that Act shall be in addition to and not in derogation of the provisions of any other law.

SEBI Act is a special Act dealing with specific subject, which has to be read in harmony with the provisions of the Companies Act 1956. In fact, 2002 Amendment of the SEBI Act further re-emphasize the fact that some of the provisions of the Act will continue to operate without prejudice to the provisions of the Companies Act, qua few provisions say that notwithstanding the regulation and order made by SEBI, the provisions of the Companies Act dealing with the same issues will remain unaffected. I only want to highlight the fact that both the Acts will have to work in tandem, in the interest of investors, especially when public money is raised by the issue of securities from the people at large.

6. It was also submitted that the petition filed by the 1st Respondent/Petitioner before the Tribunal, a promoter (shareholder) of 2nd Respondent company amounts to seeking immunity from action by statutory authorities, including SEBI, which is not permissible.

7. According to Ld. Counsel for the Appellant the SEBI Act,1992 and the Rules framed thereunder are binding. Therefore, originally when the Respondents preferred the Company Petition did not implead the Securities & Exchange Board of India (hereinafter referred to as SEBI) or the Appellant – BSE Ltd – or the Registrar of Companies, Mumbai as the party respondent. It was at the instance of Tribunal by order dated 12th August, 2016 the SEBI, the Appellant – BSE Ltd – and the Ministry of Corporate Affairs were directed to be impleaded as party to the Petition.

8. It was contended that in its order dated 24th August 2016, the Tribunal has already noticed that prayers against the regulatory authorities, in particular, were not maintainable. Despite the above by the impugned order dated 30th September

2016, the Tribunal excluded the applicability of Section 100 to 104 of the Companies Act, 1956 through SEBI Act and its guidelines stipulate compliance of Section 100 to 104 of the Companies Act, 1956. The Act which is in force otherwise is required to be acted upon in view of the guidelines issued by the SEBI.

9. In support of aforesaid contention, it was submitted that there is an express reference in Section 101 of the Companies Act, 1956 as well as Section 66 of Companies Act, 2013, "whichever is applicable" in the Listing Obligations and Disclosure Requirements Regulations, 2015 (hereinafter referred to as LODR). She placed reliance on Regulation 37 of LODR.

10. Reliance was also placed on SEBI circular dated 30.11.2015 which makes an express reference to inter alia Regulation 37 in addition to Regulations 11 and 94 and lists out the "Requirements before the Scheme of Arrangement is submitted for sanction by the Hon'ble High Court". According to Ld. Counsel for the Appellant, on perusal of LODR (Regulations 11,37 and 94) as also SEBI circular dated 30.11.2015, it is apparent that it is necessary/mandatory for the purposes of reduction of share capital, that a draft scheme is required to be filed before the Hon'ble High Court/Tribunal as is contemplated under Section 101 of the 1956 Act/ Section 66 of the 2013 Act. This is absolutely necessary to ensure transparency, accountability and ascertain whether the scheme is bona fide or whether there are any oblique/ulterior purposes.

11. Ld. Counsel for the Appellant while contended that Section 100-104 of 1956 Act/Section 66 of 2013 Act, whichever is applicable, are incorporated in SEBI Code. It must be read as part and parcel thereof. The doctrine of legislation by incorporation is explained by the Hon'ble Supreme Court in "Mahindra and Mahindra Limited v Union of India (1979) 2 SCC 529" was relied on wherein the Hon'ble Supreme Court held:-

> *"8.. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute. Lord Esher, M.R., while dealing with legislation in incorporation in In re. Wood's Estate (1886) 31 Ch.D. 607 pointed out at page 615:*
>
> > *"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act.*
> > *just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all."*

12. Reliance was also placed on decision of Hon'ble Supreme Court in "Girnar Traders (3) v. State of Maharashtra (2011)3 SCC 1", wherein the Hon'ble Supreme Court explained the rule of legislation by incorporation and by reference as follows:-

"89. With the development of law, the legislature has adopted the common practice of referring to the provisions of the existing statute while enacting new laws. Reference to an earlier law in the later law could be a simple reference of provisions of earlier statute or a specific reference where the earlier law is made an integral part of the new law, i.e., by incorporation. In the case of legislation by reference, it is fictionally made a part of the later law. We have already noticed that all amendments to the former law, though made subsequent to the enactment of the later law, would ipso facto apply and one finds mention of this particular aspect in Section 8 of the General Clauses Act, 1897. In contrast to such simple reference, legal incidents of legislation by incorporation is that it becomes part of the existing law which implies bodily lifting provisions of one enactment and making them part of another and in such cases subsequent amendments in the incorporated Act could not be treated as part of the incorporating Act.

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91. Another feature of legislation by incorporation is that the language is explicit and positive. This demonstrates the desire of the legislature for legislation by incorporation. Self-contained enactment should be clearly distinguished from supplemental law. When the later law depends on the former law for procedural/substantive provisions or is to draw its strength from the provisions of the former Act, the later Act is termed as the supplemental to the former law. The statement of object and reasons of both the Acts, i.e. the MRTP Act and the Land Acquisition Act as well as the scheme of these Acts, we have already discussed at length. They are Acts which operate in different fields. One is a Central Act while the other is a State Act. They derive their source from different entries in the constitutional lists."

13. The present case is not that of statute incorporated into another statute, while enacting or amending or by repeal.

14. It is true that SEBI Act is a special law, complete code in itself containing elaborate provisions to protect interest of investors. The Companies Act, 1956 or Companies Act, 2013 is not in conflict with the SEBI Act. Therefore, the SEBI Act is required to be followed by all parties, including 1st and 2nd Respondents.

Regulation 37 of LODR merely reiterates and adopts Section 101 of the Companies Act, 1956 and Section 66 of Companies Act, 2013 apart from other provisions such as Section 391 to 394 of the Companies Act, 1956 and Section 230 to 234 of the Companies Act, 2013.

15. However, it is to be seen up to what extent Regulation 37 or circular dated 30.11.2015 issued by SEBI can be followed in view of recent development which we will discuss in subsequent paragraphs.

16. It was contended that the Tribunal is required to decide the case and the Appellate Tribunal is to decide the appeal on the basis of law as it stood on the date of the cause of action. In support of said contention, Ld. Counsel relied on Hon'ble Supreme Court decision in "State of Kerala v. B.Six Holiday Resorts (2010) 5 SCC 186 at para 28". Ld. Counsel for the Appellant also argued on the effect of repeal of Act 1956 by Act 2013. Referring to judgement of Hon'ble Supreme Court in "Gammon India Limited vs. Special Chief Secretary (2006) 3 SCC 354", it was contended that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law.

17. Reliance was also placed on clause (a) and (c) of Section 6 of General Clauses Act, 1897 wherein the effect of repeal is shown as under:-

> ***" 6 Effect of repeal.*** *- Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not –*

(a) .....
(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; "

18. The aforesaid issue may not require to be deliberated in the present appeal in view of reasons given in the subsequent paragraph.

19. Section 434 of the Companies Act, 2013 relates to transfer of certain pending proceedings. Clauses (a) and (c) of sub-Section 1 of Section 434 reads as follows:-

*" **434. Transfer of certain pending proceedings** -*
1. On such date as may be notified by the Central Government in this behalf,—
a. all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;
b. xxxx
c. all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer."

From clause (a), sub-section (1) of Section 434, it will be clear that all cases pending before the Company Law Board transferred to Tribunal are required to be disposed of in accordance with the provisions of ("this Act") means Companies Act, 2013.

On the other hand, as per clause (c) of sub-section (1) of Section 434, the proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal require to be **dealt with such from the stage before their transfer** and not in accordance with the provisions of Companies Act, 2013, as stipulated under clause (a) of sub-section (1) of Section 434.

20. Therefore, it cannot be pleaded that the Tribunal is required to decide the petition or the Appellate Tribunal is required to decide the appeal on the basis of law as it stood on the date of cause of action insofar it relates to cases transferred from Company Law Board to the Tribunal. However, the aforesaid proposition will be applicable to transfer cases under clause (c) of sub-section (1) of Section 434 of Companies Act, 2013.

21. Ld. Counsel for the 1st Respondent while referring to the earlier order passed by Tribunal on 12th August 2016 and 24th August 2016 submitted that the order has been passed under Section 242 of the Companies Act, 2013. It was further contended that reduction of share capital for recapitalisation of company can be carried out without compliance of Section 100 to 104 of Companies Act 1956 and/or, regulations and notifications as issued and formulated by SEBI. The Tribunal has wide power to pass any relief as it deem fit.

22. It was further contended that under sub-section (4) of Section 242 the Tribunal may on the application of any party to

the proceeding may make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appears to it to be just and equitable. Reliance was placed on the decision of Hon'ble Supreme Court in "Bennet & Coleman Company v. Union of India and Ors. (1977) 47 Company Cases 92" wherein the Bombay High Court held that the subjects dealt with by Sections 397 and 398 are such that it becomes impossible to read any such restriction or limitation on the powers of the court acting under Section 402. Reliance was also placed on decisions of the Madras High Court and Hon'ble Supreme Court to suggest that Tribunal can pass appropriate interim order.

23. We do not subscribe to aforesaid submission made on behalf of the Respondents that the Tribunal under sub-section (4) of Section 242 of Companies Act, 2013 can pass any interim order which it thinks fit in view of the said provisions which reads as follows:

> ***"242. Powers of Tribunal***
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> *xxxx*
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> *(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.*

From the aforesaid provision it is clear that the Tribunal on an application of any party to the proceeding may make any interim order which it **thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as it appears to it to be just and equitable.**

24. Admittedly, the Company Petition is pending before the Tribunal and no deliberation or finding has been given about

'oppression and mismanagement' by one or other respondents to the Company Petition. After final hearing the Company Petition may be allowed or may be dismissed or disposed off with certain observations. In such a situation whether the Tribunal was competent to pass the orders dated 24th August 2016 or not is to be doubted. The order passed on 24th August, 2016 **in true sense may not be called to be an interim order for regulating the conduct of the affairs of the company**. The said order has nothing to do with the affairs of the company.

25. However, as the order dated 24th August 2016 is not under challenge, expressing some doubt about the order, we do not intend to interfere with the said order as the order dated 24th August 2016 has reached finality.

26. The Tribunal in the impugned order dated 30th September 2016 referred to the decision of Hon'ble Supreme Court in "Cosmo Steels Private Limited and Others v. Jairam Das Gupta and Others (1978) 1 SCC 215" and Section 242(2) (c) of the Companies Act 2013.

27. In this connection we may refer to clause (c) of sub-Section (2) of Section 242 of the Companies Act, 2013 whereunder the Tribunal is empowered to pass order in case of 'purchase of shares by a company and the consequent reduction of share capital'. The relevant portion of Section 242 reads as follows:-

> *"**Section 242** (1) If, on any application made under section 241, the Tribunal is of the opinion--*
>
> *(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial*

to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub section (1), an order under that sub-section may provide for -

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

> *Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;*

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable."

28. In this connection we do not subscribe to finding of the Tribunal that the order was passed under clause (c) of sub-Section (2) of Section 242 of the Companies Act, 2013. An order under clause (c) of sub-Section (2) of Section 242 can be passed only when after final hearing the Tribunal comes to an opinion that the company's affairs have been or are being conducted in a manner 'prejudicial' or 'oppression' to any member or members or 'prejudicial' to public interest or interests of the company. Order under clause (c) of sub-section (2) of Section 242 of the Companies Act, 2013 cannot be passed by way of an interim order. No case was made out by Respondents asking for interim order under sub-section (4) of Section 242 of the Companies Act, 2013. Such interim order can be passed only **for regulating the conduct of the affairs of the company if so necessary**.

29. The next question is whether compliance of Section 100 to 104 of Companies Act, 1956 is to be followed in the cases in hand. If we accept the submission made on behalf of the Appellant that provisions of Section 100 to 104 of Companies Act, 1956 required to be followed then, in view of recent development the position would be different as apparent from our discussions made below.

30. Section 100 of the Companies Act, 1956 reads as under:-

"100. Special resolution for reduction of share capital *- (1) Subject to confirmation by the High Court, a company limited by*

shares or a company limited by guarantee and having a share capital, may, if so authorised by its articles, by special resolution, reduce its share capital in any way; and in particular and without prejudice to the generality of the foregoing power, may
(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;
(b) either with or without extinguishing or reducing liability on any of its shares, cancel any paid- up share capital which is lost, or is unrepresented by available assets; or
(c) either with or without extinguishing or reducing liability on any of its shares, pay off any paid- up share capital which is in excess of the wants of the company; and may, if and so far as is necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.
(2) A special resolution under this section is in this Act referred to as" a resolution for reducing share capital".

31. The Central Government issued notification w.e.f.1st June 2016 transferring all cases from the Company Law Board to Tribunal. By another notification dated 7th December 2016, the cases pending before the Hon'ble High Courts have been transferred to the Tribunal, except the cases where certain order (s) have been passed by the Hon'ble High Courts. Since 7th December, 2016, the Hon'ble High Courts have no jurisdiction to entertain any petition under Section 100 of the Companies Act, 1956. Therefore now onward, the question of confirmation by the Hon'ble High Court of a special resolution for reduction of the share capital, as stipulated under Section 100 of the Companies Act, 1956 does not arise. The provision of Section 100 has become redundant.

32. Similar is the position with Section 101 of the Companies Act, 1956, which reads as follows:-

"101. Application to High Court for confirming order, objections by creditors, and settlement of list of objecting creditors.
(1) Where a company has passed a resolution for reducing share capital, it may apply, by petition, to the High Court for an order confirming the reduction.
(2) Where the proposed reduction of share capital involves either the diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid- up share capital, and in any other case

if the High Court so directs, the following provisions shall have effect, subject to the provisions of sub- section (3):

(a) every creditor of the company who at the date fixed by the High Court is entitled to any debt or claim which, if that
date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction;

(b) the High Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction;

(c) where a creditor entered on the list whose debt or claim is not discharged or has not determined does not consent to the reduction', the High Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the High Court may direct, the following amount:-

(i) if the company admits the full amount of the debt or claim, or, though not admitting it, is willing to provide for it, then, the full amount of the debt or claim;

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not, ascertained, then, an amount fixed by the High Court after the like inquiry and adjudication as if the company were being wound up by the High Court.

(3) Where a proposed reduction of share capital involves either the diminution of any liability in respect of unpaid share capital or the payment to any share holder of any paid- up share capital, the High Court may, if, having regard to any special circumstances of the case, it thinks proper so to do, direct that the provisions of sub- section (2) shall not apply as regards any class or any classes of creditors."

Now onwards the question of confirmation by the High Court on application for objection by the creditor and settlement list of objecting creditors does not arise. The provision of Section 101 has become redundant.

33. Similar is the position of Section 102 of the Companies Act, 1956, as quoted below.

*"102. **Order confirming reduction and powers of High Court on making such order.***

(1) The High Court, if satisfied with respect to every creditor of the company who under section 101 is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged, or has determined, or has
been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

(2) Where the High Court makes any such order, it may

(a) if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period commencing on, or at any time

after, the date of the order, as is specified in the order, add to its name as the last words thereof the words' and reduced"; and
(b) make an order requiring the company to publish as the High Court directs the reasons for reduction or such other information in regard thereto as the High Court may think expedient with a view to giving proper information to the public, and, if the High Court thinks fit, the causes which led to the reduction.
(3) Where a company is ordered to add to its name the words' and reduced", those words shall, until the expiration of the period specified in the order, be deemed to be part of the name of the company."

34. If we read 'Tribunal' in place of 'High Court' in the aforesaid provisions which is not permissible in absence of any amendment in that case also requirement of following Section 100, 101 or 102 does not arise as Tribunal has ordered for reduction of share capital.

35. Section 103 relates to registration of order and minute of reduction, which is quoted below:-

*" **103. Registration of order and minute of reduction.***
(1) The Registrar-
(a) on production to him of an order of the High Court confirming the reduction of the share capital of a company; and
(b) on the delivery to him of a certified copy of the order and of a minute approved by the High Court showing, with respect to the share capital of the company as altered by the order, (i) the amount of the share capital, (ii) the number of shares[into which it is to be divided, (iii) the amount of each share and (iv) the amount, if any, at the date of the registration deemed to be paid up on each share; shall register the order and minute.
(2) On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order shall take effect.
(3) Notice of the registration shall be published in such manner as the High Court may direct.
(4) The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to
reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.
(5) The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein.
(6) The substitution of any such minute as aforesaid for part of the memorandum of the company shall be deemed to be an alteration of the memorandum within the meaning and for the purposes of section 40."

36. The question of order of High Court confirming the reduction of share capital of the company as mentioned in clause (a) or delivering to him a certified copy of the order or a minute approved by the High Court, as mentioned in clause (b) of sub-Section (1) of Section 103 of the Companies Act, 1956 does not arise. However, the registration of the order and minute of reduction is required to be made available to the Registrar, who is required to register the order and minute. The question of publication in any manner may not arise but in the interest of the company, it is required to be published in the manner as may be directed by the Tribunal. Rest of the provisions under sub-section (4) or (5) or (6) of Section 103 are required to be complied with.

37. Section 104 is 'liability of members'. The said provision has been adopted by SEBI in line with Section 103 of the Companies Act, 1956 is also required to be complied except where certain requirement of High Court's order as mentioned, is not required to be complied, in view of order passed by the Tribunal.

38. As SEBI Act is a special law, a complete code which is to be read in harmony with the provisions of Companies Act is required to be complied with by companies, including the Respondents. Similarly, the Regulations and circulars issued by SEBI are also required to be followed as they not in conflict with the Companies Act, 1956 or Companies Act, 2013 but are supplementary. Therefore, the Respondents are bound to follow all the Rules, Regulations and Circulars, except to the extent of Section 100, 101 and 102 of Companies Act, 1956 which are not feasible to comply, the power of the High Court having been divested.

39. Much reliance was placed on the decision of Hon'ble Supreme Court in "Cosmo Steels Private Limited and Others v. Jairam Das Gupta and Others (1978) 1 SCC 215" wherein the Hon'ble Supreme Court while discussing the case under Section 397, 398 and 402 of the Companies Act, 1956, noticed that Section 77 prohibits the company from buying its own shares unless consequent reduction of capital is effected and sanctioned in pursuance of Section 100 to 104 or Section 402 of Companies Act, 1956. In the said case, the question raised was whether reduction or share capital done pursuant to a direction of court was required to follow the procedure prescribed under Section 100 to 104 of Companies Act, 1956. In the said case the Hon'ble Supreme Court held :-

"9. The question is: whether when on a direction given by the Court, while granting relief against oppression to the minority shareholders of the Company, to the Company to purchase the shares of some of its members which would ipso facto bring about reduction of the share capital because a Company cannot be its own member, is it obligatory to serve a notice upon all the creditors of the Company ? It was conceded that the procedure prescribed in sections 100 to 104 is not required to be followed where reduction of share capital is necessitated by the direction given by the Court in a petition under- Section 397 and 398. Section 77 leaves no room for doubt that reduction of a share capital may have to be brought about in two different situations by two different modes. Undoubtedly, where the Company has passed a resolution for reduction of its share capital and has submitted it to the Court for confirmation the procedure prescribed by Section 100 to 104 will have to be followed, if they are attracted. On the other hand, where the Court, while disposing of a petition under Section 397 and 398, gives a direction to the Company to purchase shares of its own members, a consequent reduction of the share capital is bound to ensue, but before granting such a direction it is not necessary to give notice of the consequent reduction of the share capital to the creditors of the company. No such requirement is laid down by the Act. Two procedures ultimately bringing about reduction of the share capital are distinct and separate and stand apart from each other and one, or the other may be resorted to according to the situation. That is the clearest effect of the disjunctive or in section 77.

10. The scheme of sections 397 and 406 appears to constitute a code by itself for granting relief to oppressed minority shareholders and for granting appropriate relief, a power of widest amplitude, inter alia, lifting

the ban on company purchasing its shares under Court's direction, is conferred on the Court. When the Court exercises this power by directing a purchase of its shares by the Company, it would necessarily involve reduction of the capital of the Company. Is such power of the Court subject to a resolution to be adopted by the members of the Company which, when passed with statutory majority, has to be submitted to Court for confirmation ? No canon of construction would permit such an interpretation in which the statutory power of the Court for its exercise depends upon the vote of the members of the Company. This would inevitably be the situation if reduction of share capital can only be brought about by resorting to the procedure prescribed in Section 100 to 104. Additionally it would cause inordinate delay and the very purpose of granting relief against oppression would stand self defeated Viewed from a slightly different angle, it would be impossible to carry out the directions given under s. 402 for reduction of share capital if the procedure under ss. 100 to 104 is required to be followed. Under Section 100 to 104 the Company has to first adopt a special resolution for reduction of share ,capital if its articles so permit. After such a resolution is adopted winch, of necessity must be passed by majority, and it being a special resolution, by a statutory majority, it will have to be submitted for confirmation to the Court. Now, when minority shareholders complain of oppression by majority and seek relief against oppression from the Court under Section. 397 and398 and the Court in a petition of this nature considers it fair and just to direct the Company to purchase the shares ,of the minority shareholders to relieve oppression, if the procedure prescribed by Section 100 too 104 is required to be followed, the resolution will have to be first adopted by the members of the Company but that would be well nigh impossible because the very majority against whom relief is sought would be able to veto a at the threshold and the power conferred on the Court would be frustrated. That could never have been the intention of the Legislature Therefore, it is not conceivable that when a direction for purchase of shares is given by the Court under section 402 and consequent reduction in share capital is to be effected the Procedure, prescribed for reduction of share capital in sections 100 to 104 should be required to be followed in ,Order to make the direction effective."

40. Ld. Counsel appearing on behalf of the Appellant distinguished the decision of Hon'ble Supreme Court with the present case on the ground that the impugned order has been passed under clause (c) of sub-Section (2) of Section 242 of Companies Act, 2013 which is applicable only in the case of buy-back of shares. It was further contended that the case of the Respondent is not a case of buy-back by the company or reduction

of share and therefore clause (c) of sub-Section (2) of Section 242 of Companies Act, 2013 is not applicable.

41. We have already doubted the power of the Tribunal to pass interim order(s) under sub-Section (2) of Section 242 of Companies Act, 2013. Power to grant interim relief is vested with the Tribunal under sub-Section (4) of Section 242 only in such case where the Tribunal thinks it fit for regulating the company's affairs upon certain terms and conditions. In the present matter there was nothing on the record to suggest that Tribunal was required to pass order in regard to conduct of company's affairs, therefore we have doubted the order dated 24th August 2016. However, as the said order is not under challenge we refrained from interfering with the said order.

42. Insofar as the impugned order dated 30th September, 2016 is concerned, certainly it cannot be stated to be an order passed under clause (c) of sub-Section (2) of Section 242 of Companies Act, 2013 nor the Tribunal was competent to clarify the earlier impugned order giving reference to the said provision.

43. Insofar as the decision of Hon'ble Supreme Court in "Cosmo Steels Pvt. Ltd. v. Jairam Das Gupta" is concerned, we do not intend to decide whether the case of respondent is covered by the said decision or not as we have noticed that the provisions of Section 100, 101 and 102 have become redundant the power of the Hon'ble High Courts having divested to the Tribunal.

44. For the reasons aforesaid while we set aside the order dated 30th September 2016 passed by the Tribunal, Mumbai Bench in I.A. No. 73/2016 in Company Petition No. 10 of 2016, direct the Respondents to follow the mandatory provisions of SEBI Act, Regulations and directions, except Section 100 to 102 of Companies Act, 1956 for giving effect to Tribunal's order dated 24th August, 2016. As the main Company Petition is pending since long, parties are directed to cooperate with Tribunal for early disposal of Company Petition.

45. The appeal is allowed with aforesaid observations and directions. However, in the circumstances of the case, there shall be no order as to cost.

sd/-
(Mr. Balvinder Singh)
Member (Technical)

sd/-
(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
23rd May, 2017

sd/