

Mr. Nilesh Shah & Ors.

v.

Securities and Exchange Board of India & Anr.

(Civil Appeal No. 6529 of 2026)

13 July 2026

[Dipankar Datta* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Whether, in the facts and circumstances, there could be any breach or violation of SEBI (Mutual Funds) Regulations, 1996 where, as contended by the appellants: (i) the actions complained about did not result in any loss or harm to the investing public; (ii) the actions of the Appellants resulted in gain to the investors; (iii) all three sets of Appellants acted *bona fide* in the interest of investors and did not make any monetary benefit or gain; (iv) had the Appellants taken steps as postulated by SEBI, there would have been a substantial monetary loss and harm to investors in the range of Rs.376.05 crores.

Headnotes[†]

Securities and Exchange Board of India Act, 1992 – SEBI (Mutual Funds) Regulations, 1996 – Violation of, when – Market integrity paramount, profit or loss to investors immaterial to determine whether a regulatory infraction occurred – Kotak Mahindra Mutual Fund launched 6 close ended schemes (a scheme having a fixed maturity period) between 2013 and 2016 which were to mature in or around April/May 2019 – Rs.266 crore (out of Rs. 1625 crore) collected under the said Schemes was invested in debt securities, *i.e.*, Zero Coupon Non-Convertible Debentures (ZCNCs) issued by ESSEL group of companies and were backed by a pledge over 22.8% shares of Zee Entertainment Enterprises Limited (ZEEL) – Drop in the share value of ZEEL, resulting in the security cover to drop below 1.5 times the exposure – Kotak Mahindra Asset Management Company Limited (Kotak AMC) agreed with other lenders of ZEEL for restructuring the redemption of the ZCNCs and maturity dates of ZCNCs were extended

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beyond the maturity dates of the Schemes – The 6 Schemes matured and ideally, the entire amount therein should have been paid to the unitholders as per the scheme document however, a part of the amount was withheld and was paid only subsequently – Show Cause Notice issued by SEBI to Kotak AMC – Order passed by the Whole Time Member, SEBI *inter alia* imposing penalties of Rs.50,00,000/- on Kotak AMC for lack of due diligence and care while investing in ESSEL Group Companies; extension of maturity dates of the ZCNCDS; and inadequate disclosures to the investors and to SEBI – Adjudicating Officer levied penalties on Kotak TRUSTEE and its senior executives – Appeals thereagainst, partly allowed by Tribunal – Challenge to – Plea of Kotak AMC *inter alia* is that its act of extending the maturity dates of ZCNCDS beyond the maturity dates of the Schemes and consequential partial redemption of the Schemes by winding them up much after the maturity dates did neither cause any loss to the unitholders nor did anyone complain rather, it only resulted in profits to the unitholders:

Held: The contention that no loss was caused to the investors/unitholders and, on the contrary, they gained and, hence, action should not have been taken is no defence at all – The 1996 Regulations make no distinction between a breach resulting in profit and a violation resulting in loss – Breaches of the regulatory framework, fortuitously, could ultimately result in gain but excusing a breach which led to profit is likely to incentivize the next breach – Progression from profit to greed, from greed to regulatory breach and from breach to systemic failure is not too unfamiliar – Market integrity being the paramount consideration, profit or loss to investors is immaterial to determine whether a regulatory infraction has occurred – A wrongdoer cannot be allowed to use the plea of the investors having gained, notwithstanding the violation, as a shield for evading penalty – The 1996 Regulations operate in a specific field: to ensure compliance – Variable scenarios of violation is not contemplated – The ordinary intent behind investments in mutual funds is stability and security coupled with profits – Kotak AMC having represented to the unitholders, who invested in the Schemes, that their investment would be for a fixed term and that the returns would be credited to them on the maturity dates or soon thereafter, it is a roll over in the manner ordained, as noticed, that could have saved it from breach –

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Since no notification of a proposed roll over was made to the unitholders as well as to SEBI, there was no roll over – The breach is brazen and indefensible – Also, the argument that taking of steps as postulated by the regulatory mechanism would have resulted in loss to the investors and that was sought to be averted, is wholly opposed to the very scheme of the securities law – The course adopted by Kotak AMC was wholly unknown to, and irreconcilable with, the legislative scheme enacted under the SEBI Act – It departed from the carefully calibrated framework established under the SEBI Act by not winding up the Schemes on the respective dates of maturity, thereby inviting penalty – Any breach committed to avert loss in the given circumstances does not find favour in law – Compliance with the regulatory mechanism being mandatory and non-negotiable, it is no valid defence that compliance with law would have resulted in loss – All three parties, viz. Kotak AMC, Kotak Trustee and the Senior Executives failed to ensure compliance with the 1996 Regulations – No scope for grant of any relief on merits – Appeals of Kotak AMC, Kotak Trustee and the Senior Executives dismissed – Kotak AMC and Kotak Trustee will, however, bear costs assessed at Rs.30 lakh and 20 lakh, respectively. [Paras 32-34, 42, 52, 53]

SEBI (Mutual Funds) Regulations, 1996 – rr.33(4), 39 – Violation of – Extension of maturity dates of the ZCNCDs; inadequate disclosures to the investors and SEBI:

Held: Regulation 33(4) casts a statutory duty of information being provided to the unitholders and SEBI – Regulation 39, dealing with winding up of a close-ended scheme, provides in sub-regulation (1) that a close-ended scheme shall be wound up on the expiry of duration fixed in the scheme on the redemption of the units unless it is rolled over for a further period under sub-regulation (4) of regulation 33 – The first scheme to mature was FMP Series 127 on 08.04.2019 – Regulation 33(4) r/w regulation 39 of the 1996 Regulations, in its plain language, lays down what was required of the appellants – The only exception provided by the regulations is, if the scheme is rolled over – Admittedly, this was not done – Neither is that the contention of the appellants – The unitholders and SEBI were kept in the dark – Statutory violation of this nature has to be strictly viewed – After the entire operation, right from the decision to extend the ZCNCDs to the execution of agreements *inter alia* with KONTI and

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EDISON, the decision not to invoke pledge, and several others, none of this was ever intimated to SEBI till SEBI knocked on KOTAK AMC's doors – It was imperative for Kotak AMC, at the very least, to apprise SEBI being the regulator, of the proposed action when the action itself was not in consonance with the regulations – All three parties, viz. Kotak AMC, Kotak Trustee and the Senior Executives failed to ensure compliance with the 1996 Regulations. [Paras 24, 25, 38, 39, 40, 42]

Securities and Exchange Board of India Act, 1992 – SEBI (Mutual Funds) Regulations, 1996 – Contention of Kotak AMC that it was not the only fund which had invested in ESSEL securities – Several mutual funds in the market had also invested in ESSEL securities and without acting against the other market participants, SEBI has singled Kotak AMC out for action which is wholly arbitrary and incorrect:

Held: Contention rejected, as has been rightly done by the Whole Time Member and the Tribunal – Apart from the established principle that negative equality cannot be claimed, there is *ex facie* violation of the 1996 Regulations – Kotak AMC can neither seek shelter under the alleged violations of others to justify its own breach nor would existence of other violations, if at all, absolve Kotak AMC of its own liability – Illegality is not cured by numbers; a collective wrong remains illegal, regardless of majority. [Para 28]

Circular – Securities and Exchange Board of India Act, 1992 – SEBI (Mutual Funds) Regulations, 1996 – Kotak AMC contended that a circular issued by SEBI dtd.28.12.2018 which permits creation of a segregated portfolio would enure to its benefit – It was contended that despite non-invocation of the 2018 circular, the action of partial redemption would be saved thereby:

Held: This is in stark contrast with the stance adopted by Kotak AMC before the Whole Time Member (WTM) – It was their specific stand before the WTM and in its replies to the Show Cause Notices, that the act of partial winding up cannot amount to creation of a segregated portfolio – The WTM held that the division of portfolios in part amounted to segregation but the same being a technical violation, it was not proceeded further – However, before this Court, Kotak AMC contended that

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albeit without following the procedure under the 2018 Circular, it acted in accordance with it and thus, no violation of regulation 33 of the 1996 Regulations can be attributed to it – Once Kotak AMC claimed that it in fact did not segregate the portfolio, the question of claiming benefit thereof, by any stretch of imagination, cannot arise – To claim segregation, Kotak AMC would have had to scrupulously follow the procedure under the 2018 Circular, clause 3 of which mandates that a provision therefor must be made in the Scheme Information Documents (SID) – The WTM held that there was no provision in the SID for Kotak AMC to undertake such a course – That apart, the procedure under the 2018 Circular, such as issuance of press release, trustee approval, intimation to unitholders, allotment of segregated units, etc. was not followed – It is, admittedly, not Kotak AMC's case that this was done. [Paras 36, 37]

Financial and Technical Matters – Findings of Expert Regulator – No challenge to:

Held: In cases of financial and technical matters, the line of thinking adopted by the expert regulator, if found reasonable, cogent, and in consonance with the established principles of law, may not be lightly departed from – Given that the WTM duly considered all the relevant factors, its reasoning deserves deference. [Para 17]

Securities and Exchange Board of India Act, 1992 – SEBI (Mutual Funds) Regulations, 1996 – Violation of – Penalty imposed upon Senior Executives – Waiver of, when not warranted – It was contended on behalf of Senior Executives, that while a beneficial outcome cannot justify a regulatory infraction, the absence of investor prejudice may be considered a mitigating factor for waiving penalty:

Held: The conduct of the Senior Executives is material – They are supposed to be individuals who are domain experts, being well-versed in the field of securities law – It is unimaginable that they were not aware of the consequences of infraction of the regulatory framework – Future of the unitholders was put to immense risk by them – In matters such as this, where the margin for error is virtually non-existent, the conduct of the Senior Executives treads beyond condonable limits and, consequently, disentitles them even to any interference with the penalty imposed – Waiver. [Para 51]

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Securities and Exchange Board of India Act, 1992 – SEBI (Mutual Funds) Regulations, 1996 – Violation of – Committing a breach to save investors, no justification for deviation from the regulatory mandate and does not absolve liability – Plea on behalf of Kotak AMC *inter alia* is that taking of steps as postulated by the regulatory mechanism would have resulted in loss to the investors and that was sought to be averted and; its act of extending the maturity dates of ZCNCDS beyond the maturity dates of the Schemes and consequential partial redemption of the Schemes by winding them up much after the maturity dates did neither cause any loss to the unitholders nor did anyone complain and rather, it only resulted in profits to the unitholders:

Held: Taking of steps as postulated by the regulatory mechanism would have resulted in loss to the investors and that was sought to be averted is wholly opposed to the very scheme of the securities law – Those interested to invest in mutual funds are put on guard from the very inception with regard to the likely risks involved – The ‘Risk Disclosure Statement’ and the ‘Due Diligence Advisory’, comprise the ‘Statutory Disclaimer’ – Those willing to invest in mutual funds despite such disclaimer do so at their own risk and peril – Committing a breach to save such investors is no justification for deviation from the regulatory mandate and does not absolve liability – The statutory scheme is consequence-neutral and the regulatory regime has been designed to enforce compliance, irrespective of the outcome – In any event, in an appeal u/s.15Z, this Court is not to sit in judgment over the expediency of the breach, the pecuniary consequence of the breach and the absence of complaints – Commission of breach having practically stood admitted and established, any justification by referring to investor satisfaction and/or absence of complaint would not provide any immunity to the appellants. [Para 34]

Case Law Cited

Chairman, SEBI v. Shriram Mutual Fund [2006] 2 SCR 833 : (2006) 5 SCC 361 – referred to.

List of Acts

Securities and Exchange Board of India Act, 1992; SEBI (Mutual Funds) Regulations, 1996.

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List of Keywords

Mutual funds; Investments in mutual funds; Kotak Mahindra Mutual Fund; Kotak MF; Kotak Mahindra Asset Management Company Limited; Kotak AMC; Close ended schemes; Scheme having fixed maturity period; Zero Coupon Non-Convertible Debentures (ZCNCDs); ESSEL group of companies; Pledged shares; Backed by pledge shares; Zee Entertainment Enterprises Limited (ZEEL); Drop in share value; Security cover dropped; Restructuring the redemption of the ZCNDCs; Maturity dates of ZCNCDs extended beyond the maturity dates of the Schemes; Close ended schemes matured; Penalties imposed on Kotak AMC; Lack of due diligence and care while investing; Extension of maturity dates of ZCNCDs; Inadequate disclosures to investors and SEBI; Breaches of regulatory framework; Market integrity paramount consideration; Profit or loss to investors immaterial; Regulatory infraction; No roll over; Pledge not invoked; No loss to unitholders; No loss caused to investors; Kotak Mahindra Trustee Company Limited; Senior executives/fund managers; Kotak Trustee; Violation of SEBI (Mutual Funds) Regulations, 1996; Unitholders kept in dark; SEBI kept in dark; Statutory violation; Financial and Technical Matters; Findings of Expert Regulator; Segregated portfolio; Scheme Information Documents (SID); Waiver of penalty; Negative equality; Violation of statutory duties; Liable to regulatory action/penalty.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6529 of 2026

From the Judgment and Order dated 06.03.2026 of the Securities Appellate Tribunal, Mumbai in AN No. 527 of 2022

With

Civil Appeal No(s). 4681 and 6527 of 2026

Appearances for Parties

Advs. for the Appellant(s):

Shyam Divan, Mukul Rohatgi, Sr. Advs., Mahesh Agarwal, Ankur Saigal, Ashwath Rau, Ms. S. Lakshmi Iyer, Ms. Deepsikha Mishra, Kashish Bhatia, Ms. Anushree Kapooria, Ms. Aditi Shukla, Ritish Desai, Ms. Dishti Kaji, Ankur Singhal, Anshula L Bakhru, E. C. Agrawala, Mahesh Agarwal, Ankur Saigal, Ashwath Rau,

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Ms. S. Lakshmi Iyer, Ms. Deepsikha Mishra, Kashish Bhatia, Ms. Anushree Kapooria, Ms. Aditi Shukla, Ritish Desai, Ms. Dishti Kaji, E. C. Agrawala.

Advs. for the Respondent(s):

N. Venkataraman, A.S.G., Amarjit Singh Bedi, Ms. Surekha Raman, Sidharth Nair, Harshit Singh, Yashwant Sanjenbam, M/s. K J John And Co..

Judgment / Order of the Supreme Court

Judgment

Dipankar Datta, J.

***“Mutual fund investments are subject to market risks,
read all scheme-related documents CAREFULLY.”***

1. An average Indian is more than familiar with this unmistakable phrase. Brandished at most noticeable places, it cautions potential investors of the likely risks of investment in mutual funds. The present appeals deal with one such risky scenario ostensibly created by the appellants.

THE APPEAL

2. The appeals, under Section 15Z of the Securities and Exchange Board of India Act, 1992¹, are directed against a common judgment and order² of the Securities Appellate Tribunal³ dated 6th March, 2026, disposing of two appeals⁴. Appeal No. 654 of 2021 was the instance of Kotak Mahindra Asset Management Company Limited⁵, assailing an order dated 27th August 2021 of the Whole Time Member⁶ of the Securities and Exchange Board of India⁷ whereas, the appellants in Appeal No. 527 of 2022 were Kotak Mahindra Trustee

1 SEBI Act

2 impugned order

3 TRIBUNAL

4 Appeal No.654 of 2021 and Appeal No.527 of 2021

5 KOTAK AMC

6 WTM or Member, used interchangeably

7 SEBI

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Company Limited⁸ and its employees/officers/senior executives/fund managers⁹, collectively, wherein they assailed an order dated 30th June, 2022 passed by the Adjudicating Officer¹⁰, SEBI.

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3. The facts, shorn of unnecessary details, are:
 - a. A mutual fund by the name of Kotak Mahindra Mutual Fund¹¹ was sponsored by Kotak Mahindra Bank Limited¹². The funds thereof were held by KOTAK TRUSTEE in a fiduciary capacity. KOTAK TRUSTEE appointed KOTAK AMC (a wholly owned subsidiary of KOTAK BANK) as the asset management company to manage the funds of KOTAK MF.
 - b. KOTAK MF launched 6 close ended schemes¹³ (a scheme having a fixed maturity period) between 2013 and 2016 which were to mature in or around April/May 2019¹⁴. Accordingly, KOTAK AMC was to invest only in such securities which would mature on or before the date of the maturity of the scheme¹⁵. The Schemes were regulated by the SEBI (Mutual Funds) Regulations, 1996¹⁶. As per the 1996 Regulations, the scheme must be wound up at the end of the maturity period.
 - c. An amount of Rs. 266 crore (out of Rs. 1625 crore) collected under the said Schemes was invested in debt securities, i.e., Zero Coupon Non-Convertible Debentures¹⁷ issued by Konti Infrapower & Multiventures Private Limited¹⁸ and Edison

8 Kotak Trustee

9 Nilesch Shah; Lakshmi Iyer; Deepak Agarwal; Jolly Bhatt; Abhishek Bisen; Gaurang Shah (collectively, Senior Executives)

10 AO

11 KOTAK MF or KOTAK MUTUAL FUND, used interchangeably

12 KOTAK BANK

13 FMP series nos. 127, 183, 187, 189, 193 and 194; collectively referred as 'Schemes'

14 FMP Series 127 had maturity date of 8th April, 2019, FMP Series 183 had maturity date of 10th April, 2019; FMP Series 187 had maturity date of 15th April, 2019; FMP Series 189 had maturity date of 22nd April, 2019; FMP Series 193 had maturity date of 2nd May, 2019; FMP Series 194 had maturity date of 15th May, 2019.

15 see: Circular SEBI/IMD/CIR No. 12/147132/08 dated 11th December, 2008

16 1996 Regulations

17 ZCNCDs

18 Konti

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Utility Works Private Limited¹⁹ (parts of the ESSEL group of companies²⁰). These investments were backed by a pledge over 22.8% shares of Zee Entertainment Enterprises Limited²¹, which were owned by Cyquator Media Services Private Limited²². Amount of the shares pledged by CYQUATOR was to the extent of 1.5 times of the exposure amount, which was to be topped up by CYQUATOR by giving additional security (additional shares or otherwise) in case of drop in share cover below 1.5 times.

- d. The ZCNCDs were to mature on 8th April, 2019, which was on the maturity date of one of the 6 Schemes and prior to maturity of the remaining 5.
- e. On 13th November, 2018, ZEEL made a public disclosure expressing its intent to divest 50% of its shareholding. This, along with invocation of pledge by other lenders of ZEEL, caused a drop in the share value of ZEEL, resulting in the security cover to drop below 1.5 times the exposure. In view of this drop, notices were issued by the debenture trustee (IDBI Trustee) to KONTI, EDISON and CYQUATOR on 25th January, 2019, to create a security over more shares, so that the cover can be increased back to 1.5 times or to deposit additional money. This, admittedly, was not done.
- f. On 26th January, 2019, a meeting was held by the promoters of ZEEL and its lenders, of which representatives of KOTAK MF were also a part. In this meeting, promoters of ZEEL expressed unwillingness to provide further shares or deposit additional money and requested for a moratorium.
- g. At this juncture, KOTAK AMC claims to have had 2 options: first, to sell the shares of ZEEL pledged against the ZCNCDs, or second, to agree with other lenders of ZEEL for restructuring the redemption of the ZCNDCs. It chose the latter. This decision, KOTAK AMC claims, was to ensure that there was no further drop in the share price of ZEEL, which would impact

19 EDISON

20 ESSEL

21 ZEEL

22 CYQUATOR

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other lenders and mutual funds. On 28th January, 2019, KOTAK TRUSTEE was informed of this decision, to which it concurred. It advised KOTAK AMC to obtain a personal guarantee from the promoter.

- h. On 5th April, 2019, KOTAK AMC addressed emails to the unitholders of the Schemes, making them aware of the developments that had occurred. The emails are, however, not on record.
- i. On the very next date, i.e. 6th April, 2019, Kotak AMC, KONTI, EDISON, CYQUATOR, and a promoter of ZEEL entered into several multilateral agreements and deeds of guarantee.
- j. On 8th and 10th April, 2019, 2²³ of the 6 Schemes matured. Ideally, the entire amount in those Schemes should have been paid to the unitholders as per the scheme document. However, a part of the amount (about 10-21%) which was invested in KONTI and EDISON was withheld. Soon thereafter, the remaining 4 schemes²⁴ also attained maturity. A portion of the amount due was withheld in this case as well. In a chart tendered during the hearing before us, it is shown that an amount of about Rs. 376 crore was paid after the maturity dates of the Schemes out of the total payable of about Rs. 2116 crore.
- k. On 11th April, 2019, SEBI wrote to KOTAK AMC inquiring the manner in which the first two schemes were wound up and whether the same was in consonance with the 1996 Regulations. KOTAK AMC promptly responded to this letter the very next day, i.e., on 12th April, 2019 denying violation of the 1996 Regulations. Contemporaneously, KOTAK AMC wrote letters to the investors explaining its action and assuring that the remaining monies would be paid soon, in due course.
- l. On 10th May, 2019, SEBI issued a SHOW CAUSE NOTICE²⁵ to KOTAK AMC. It was required to show cause why directions under section 11(1) read with 11(B) of the SEBI Act should

23 FMP Series 127 and 183

24 FMP Series 187, 189, 193, and 194

25 SCN

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not be issued. A supplementary SCN and a subsequent SCN was also issued. SCNs were also issued to KOTAK TRUSTEE and its senior executives.

- m. On 25th September, 2019, all the monies concerning the Schemes were paid to the unitholders. An update thereof was also sent to the unitholders.
- n. Pursuant to the SCNs being issued to KOTAK AMC, KOTAK TRUSTEE and its Senior Executives, replies, submissions, and personal hearing followed. An order was passed by the WTM on 27th August, 2021 levying penalties on KOTAK AMC in the following terms:

127.1. The Noticee shall refund a part of the investment management and advisory fees collected from the unitholders of the six FMP schemes, equivalent to the percentage of exposure to the ZCNCDs of the Issuers in the respective schemes as on the date of maturity of the six FMP schemes, along with a simple interest at the rate of 15% per annum from the date of maturity of such schemes till the date of actual payment to the respective unitholders of the said schemes. The Noticee is also directed to submit a compliance report to The Division Chief, Investment Management Department-1, Division of Funds-2, Securities and Exchange Board of India, mentioning therein the details of such payments made to the unitholders of the six FMP schemes. The Noticee is directed to complete the exercise of payment of funds to the respective unitholders and submission of compliance report to the abovementioned authority within a period of 45 days from the date of this order.

127.2. Further, I impose a Monetary penalties of INR 50,00,000 (Rupees Fifty Lakhs only/-) on the Noticee under the provisions of Sections 15D(b) and 15 HB for the violations of the provisions of SEBI Act, 1992, MF Regulations, 1996 as well as various circulars discussed in the present order.

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127.3. The Noticee is also restrained from launching any new FMP scheme for a period of six months from the date of this order.

- o. Similarly, on 30th June, 2022 the Adjudicating Officer levied penalties on KOTAK TRUSTEE and its senior executives in the following terms:

Noticee	Penal Provisions	Penalty (Rs.)
Noticee 1 (Kotak Mahindra Trustee Company Limited)	Section 15D(b) and 15HB of SEBI Act	Rs. 40,00,000/- (Rupees Forty Lakh Only)
Noticee 2 (Mr. Nilesh Shah)	Section 15HB of SEBI Act	Rs. 30,00,000/- (Rupees Thirty Lakh Only)
Noticee 3 (Ms. Lakshmi Iyer)	Section 15HB of SEBI Act	Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)
Noticee 4 (Mr. Deepak Agarwal)	Section 15HB of SEBI Act	Rs. 20,00,000/- (Rupees Twenty Five Lakh Only)
Noticee 5 (Ms. Jolly Bhatt)	Section 15HB of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh Only)
Noticee 6 (Mr. Abhishek Bisen)	Section 15HB of SEBI Act	Rs. 15,00,000/- (Rupees Fifteen Lakh Only)
Noticee 7 (Mr. Gaurang Shah)	Section 15HB of SEBI Act	Rs. 20,00,000/- (Rupees Twenty Lakh Only)

- p. Both the orders, viz. the order passed by the WTM and the Adjudicating Authority or AO were carried in appeal before the TRIBUNAL as mentioned above. The TRIBUNAL, while partly allowing the appeals *vide* the impugned order, held as under:
- Appeal No. 654 of 2021 is ***allowed in part***. Direction with regard to disgorgement of investment management and advisory fee in paragraph 127.1 of the impugned order is set aside.
 - Appeal No. 527 of 2022 is ***dismissed***.

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- iii. Pending interlocutory application(s), if any, stands disposed of. No costs.

(emphasis in original)

- q. Appellants are now in appeal before us against the impugned order.

ANALYSIS

4. Section 15Z of the SEBI Act permits an appeal to be carried to this Court from any decision or order of the TRIBUNAL on any substantial question of law arising out of such order.
5. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for KOTAK AMC, Mr. Shyam Diwan, learned senior counsel appearing for KOTAK TRUSTEE and its Senior Executives, and Mr. N. Venkatraman, learned Additional Solicitor General appearing for SEBI. We have also perused the submissions filed on behalf of the parties.
6. We begin by examining the substantial question(s) of law proposed by the appellants in the appeal as well as during the hearing before us. Amongst others, the appellants would beseech us to examine whether the actions of KOTAK AMC taken in good faith could be held as violation of statutory duties or liable to regulatory action/penalty, when such action did not cause loss to the unitholders. All other question(s) flow therefrom. The primary question so framed, reads as follows:

Whether, in the facts and circumstances, there could be any breach or violation of SEBI (Mutual Funds) Regulations, 1996 where: (i) The actions complained about did not result in any loss or harm to the investing public; (ii) The actions of the Appellants resulted in gain to the investors; (iii) All three sets of Appellants acted *bona fide* in the interest of investors and did not make any monetary benefit or gain; (iv) Had the Appellants taken steps as postulated by SEBI, there would have been a substantial monetary loss and harm to investors in the range of Rs. 376.05 crores.

7. We preface our consideration of the above question by observing that though the Supreme Court is the highest court of the land as ordained by the Constitution of India, this Court is neither expected

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to nor can it pronounce on the economics of the securities market. Its role as an appellate court under Section 15Z is limited to answering substantial questions of law. The commercial wisdom behind a decision to take a *bona fide* risk which unfortunately results in loss or a (conscious) breach of the regulatory framework fortuitously resulting in gain to the investors is beyond the pale of appellate scrutiny of this Court under Section 15Z. It has to be borne in mind that the statutory scheme is consequence-neutral and the regulatory regime has been designed to enforce compliance, irrespective of the outcome. Needless to observe, absent manifest absurdity in the findings, this Court ought not to and would not interfere.

8. We draw guidance from the decision of this Court in ***Chairman, SEBI v. Shriram Mutual Fund***²⁶ in this regard. There, this Court in course of deciding an appeal under Section 15Z, SEBI Act was called upon to answer, *inter alia*, the question of law as to whether once it is conclusively established that a mutual fund has violated the terms of the certificate of registration and the statutory regulations, i.e., the 1996 Regulations, the imposition of penalty becomes a *sine qua non* of the violation. The question was answered in the following terms:

35. In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of *mens rea*, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15-D(b) and Section 15-E of the Act, there is nothing which requires that *mens rea* must be proved before penalty can be imposed under these provisions.

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Hence once the contravention is established then the penalty is to follow.

9. *Ergo*, once a breach of the SEBI Act and the regulations framed thereunder is established followed by regulatory action/imposition of penalty, as in these appeals, the only defence available to the appellants would be to demonstrate that no breach occurred at all and the decision/order of the TRIBUNAL holding to the contrary is manifestly perverse. Nothing else will suffice.
10. Turning to the crux of the appeals, we find that the primary allegations of SEBI against KOTAK AMC, KOTAK TRUSTEE and its Senior Executives were:
 - A. Lack of due diligence while investing in ESSEL Group Companies;
 - B. Extension of maturity dates of the ZCNCDs; and
 - C. Inadequate disclosures to the investors and to SEBI.
 - A. LACK OF DUE DILIGENCE WHILE INVESTING IN ESSEL GROUP OF COMPANIES**
11. SEBI alleged that the investment made by KOTAK AMC in the ZCNCDs issued by KONTI and EDISON was without due diligence and proper care, and lacked a high standard of service. The WTM of SEBI observed, on a perusal of the papers before it, that the rationale behind investment in ZCNCDs issued by KONTI and EDISON was not the financial health of those companies itself but the fact that the investment was backed by shares of ZEEL to the extent of 1.5 times the exposure. Referring to the financial statements of KONTI and EDISON placed by Kotak AMC before it, the WTM noted that the consistent losses incurred by KONTI and EDISON were '*... quite alarming enough for any lender/investor to avoid investing any funds into the debt securities of these companies...*'. Despite having knowledge of these facts, the Investment Committee chose to invest in the ZCNCDs.
12. Apart from these facts, the WTM also made a reference to a circular dated 1st October, 2019²⁷ which mandates that investment

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in debt instruments, having credit enhancements backed by equity shares directly or indirectly, shall have a minimum cover of 4 times considering the market value of such shares. Admittedly, there was no such compliance.

13. These are, among others, the reasons which led the WTM to hold that KOTAK AMC failed to exercise due diligence and care.
14. KOTAK AMC defended by stating that the ZCNCDs were a structured obligation, hence, it did not give due consideration to the cash flow statement and made investment based on the reputation of ESSEL Group, repayment history of the group, and strength of collateral of shares of ZEEL. It also contended that apart from KOTAK AMC, 22 other persons including 8 other mutual funds invested in ESSEL Group. This appears to be KOTAK AMC's consistent stance across the documents, viz. in the appeals and submissions filed before the TRIBUNAL as well as before us.
15. What cannot be denied is the finding by the WTM which is: "*Thus, the internal approval note of the IC itself very strangely suggests that the IC of the Noticee was not aware about the issuer entity even on the date of approving the proposal to invest in the ZCNCDs of the Issuers.*" It also records: "*...The due diligence documents presented before me do not indicate that the Noticee has ever attempted to analyse various risk parameters, viz: credit risk, liquidity risk and interest rate risk etc. while evaluating the proposal to invest in the ZCNCDs of certain insignificant and financially handicapped entities of Essel Group such as Konti and Edison*".
16. There has been no challenge, far less serious challenge, to these findings.
17. It is trite that in cases of financial and technical matters, the line of thinking adopted by the expert regulator, if found reasonable, cogent, and in consonance with the established principles of law, may not be lightly departed from. Given that the WTM has duly considered all the relevant factors, its reasoning deserves deference.
18. Additionally, regulation 25(16) read with the Fifth Schedule of the 1996 Regulations demands due diligence. The focus should, therefore, have been on diligence, not dividends. Having faltered, the appellants have to bear the consequences. We, therefore, see no reason to agree with the contention that there was no lack of due diligence.

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19. The WTM's order, since affirmed by the TRIBUNAL, is cogent and commends itself for acceptance. The contentions of KOTAK AMC, thus, stand rejected.

B. EXTENSION OF MATURITY DATES OF THE ZCNCDs

20. This forms the core issue of the dispute—the trigger which caused SEBI to issue the SCNs and subsequent action that ensued against the appellants.
21. Undoubtedly, the Schemes were close-ended schemes. What does the 1996 Regulations provide in respect of close-ended schemes? We need to read regulation 33 (to the extent relevant) and regulation 39 thereof for a better understanding of the issue.
22. Regulation 33 and 39 are part of Chapter V of the 1996 Regulations titled 'Schemes of Mutual Fund'.
23. Regulation 33 of the 1996 Regulations provides for repurchase of Mutual Funds, with sub-rule (4) thereof ordaining as follows:

(4). A close ended scheme shall be fully redeemed at the end of the maturity period.

Provided that a close-ended scheme may be allowed to be rolled over if the purpose, period and other terms of the roll over and all other material details of the scheme including the likely composition of assets immediately before the roll over, the net assets and net asset value of the scheme, are disclosed to the unitholders and a copy of the same has been filed with the Board:

Provided further that such roll over will be permitted only in the case of those unitholders who express their consent in writing and the unit holders who do not opt for the roll over or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price.
24. Regulation 39, dealing with winding up of a close-ended scheme, provides in sub-regulation (1) that a close-ended scheme shall be wound up on the expiry of duration fixed in the scheme on the redemption of the units unless it is rolled over for a further period under sub-regulation (4) of regulation 33.

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25. The first scheme to mature was FMP Series 127 on 8th April, 2019. Regulation 33(4) read with regulation 39 of the 1996 Regulations, in its plain language, lays down what was required of the appellants. The only exception provided by the regulations is, if the scheme is rolled over. This, admittedly, was not done. Neither is that the contention of the appellants.
26. In fact, the contentions, to put it mildly, are surprisingly puerile.
27. *First*, the contention is, KOTAK AMC was not the only fund which had invested in ESSEL securities. Several mutual funds in the market had also invested in ESSEL securities and without acting against the other market participants, SEBI has singled KOTAK AMC out for action which is wholly arbitrary and incorrect.
28. This contention must be and is rejected in its entirety, as has been rightly done by the WTM and the TRIBUNAL. Apart from the established principle that negative equality cannot be claimed, there is *ex facie* violation of the 1996 Regulations. KOTAK AMC can neither seek shelter under the alleged violations of others to justify its own breach nor would existence of other violations, if at all, absolve KOTAK AMC of its own liability. Illegality is not cured by numbers; a collective wrong remains illegal, regardless of majority.
29. *Secondly*, the contention advanced on behalf of KOTAK AMC is that its act of extending the maturity dates of ZCNCDS beyond the maturity dates of the Schemes and consequential partial redemption of the Schemes by winding them up much after the maturity dates did neither cause any loss to the unitholders nor did anyone complain. On the contrary, goes the contention further, it only resulted in profits to the unitholders.
30. We have no hesitation to reject this contention as well.
31. The approach proceeds on a fundamentally flawed premise. Instead of claiming that there had been no breach of the SEBI Act and the 1996 Regulations, the appellants are seeking to justify the breach on the ground that no investor suffered and no investor complained.
32. The contention that no loss was caused to the investors/unitholders and, on the contrary, they gained and, hence, action should not have been taken is no defence at all. The 1996 Regulations make no distinction between a breach resulting in profit and a violation

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resulting in loss. Neither do we. Breaches of the regulatory framework, fortuitously, could ultimately result in gain but excusing a breach which led to profit is likely to incentivize the next breach. Progression from profit to greed, from greed to regulatory breach and from breach to systemic failure is not too unfamiliar. Market integrity being the paramount consideration, profit or loss to investors is immaterial to determine whether a regulatory infraction has occurred. A wrongdoer cannot be allowed to use the plea of the investors having gained, notwithstanding the violation, as a shield for evading penalty. The 1996 Regulations operate in a specific field: to ensure compliance. Variable scenarios of violation is not contemplated.

33. The ordinary intent behind investments in mutual funds is stability and security coupled with profits. KOTAK AMC having represented to the unitholders, who invested in the Schemes, that their investment would be for a fixed term and that the returns would be credited to them on the maturity dates or soon thereafter, it is a roll over in the manner ordained, as noticed, that could have saved it from breach. Since no notification of a proposed roll over was made to the unitholders as well as to SEBI, there was no roll over. The breach is brazen and indefensible.
34. Also, the argument that taking of steps as postulated by the regulatory mechanism would have resulted in loss to the investors and that was sought to be averted, in our view, is wholly opposed to the very scheme of the securities law. Those interested to invest in mutual funds are put on guard from the very inception with regard to the likely risks involved. The 'Risk Disclosure Statement' and the 'Due Diligence Advisory', as has been noticed at the beginning of this judgment, comprise the 'Statutory Disclaimer'. Those willing to invest in mutual funds despite such disclaimer do so at their own risk and peril. Committing a breach to save such investors is no justification for deviation from the regulatory mandate and does not absolve liability. The course adopted by KOTAK AMC was wholly unknown to, and irreconcilable with, the legislative scheme enacted under the SEBI Act. It departed from the carefully calibrated framework established under the SEBI Act by not winding up the Schemes on the respective dates of maturity, thereby inviting penalty. Any breach committed to avert loss in the given circumstances does not find favour in law. Compliance with

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the regulatory mechanism being mandatory and non-negotiable, it is no valid defence that compliance with law would have resulted in loss.

35. In any event, in an appeal under Section 15Z, this Court is not to sit in judgment over the expediency of the breach, the pecuniary consequence of the breach and the absence of complaints. Commission of breach having practically stood admitted and established, any justification by referring to investor satisfaction and/or absence of complaint would not provide any immunity to the appellants.
36. *Thirdly*, in the submissions filed before us, KOTAK AMC contended that a circular issued by SEBI dated 28th December, 2018²⁸ would enure to its benefit. The 2018 Circular permits creation of a segregated portfolio. It was contended that despite non-invocation of the 2018 circular, the action of partial redemption would be saved thereby. Astonishingly, this is in stark contrast with the stance adopted by KOTAK AMC before the WTM. It was the specific stand of KOTAK AMC, before the WTM and in its replies to the SCNs, that the act of partial winding up cannot amount to creation of a segregated portfolio. The WTM held that the division of portfolios in part amounted to segregation but the same being a technical violation, it was not proceeded further. However, in the submissions before us, KOTAK AMC would contend that *albeit* without following the procedure under the 2018 Circular, it acted in accordance with it and thus, no violation of regulation 33 of the 1996 Regulations can be attributed to it.
37. Once KOTAK AMC claimed that it in fact did not segregate the portfolio, the question of claiming benefit thereof, by any stretch of imagination, cannot arise. To claim segregation, KOTAK AMC would have had to scrupulously follow the procedure under the 2018 Circular, clause 3 of which mandates that a provision therefor must be made in the Scheme Information Documents²⁹. The WTM held that there was no provision in the SID for KOTAK AMC to undertake such a course. That apart, the procedure under the 2018 Circular, such as issuance of press release, trustee approval, intimation to

28 SEBI/HO/IMD/DF2/CIR/P/2018/160 (referred as 2018 Circular)

29 SID

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unitholders, allotment of segregated units, etc. was not followed. It is, admittedly, not KOTAK AMC's case that this was done. Thus, even on this ground, we hold against the appellants.

C. INADEQUATE DISCLOSURES TO THE INVESTORS AND TO SEBI

38. Regulation 33(4) casts a statutory duty of information being provided to the unitholders and SEBI.
39. To avoid prolixity, we prefer not to repeat what has been discussed above with regard to the unitholders and SEBI being kept in the dark. Statutory violation of this nature has to be strictly viewed.
40. During the course of hearing, we posed a question to learned senior counsel for KOTAK AMC: when was SEBI, for the first time, informed of the course of action adopted by KOTAK AMC? The answer was: on 12th April, 2019, that is, in reply to SEBI's letter seeking information on the manner of winding up. This was a few days after the maturity dates of FMP Series 127 and 183. Thus, after the entire operation, right from the decision to extend the ZCNCDs to the execution of agreements *inter alia* with KONTI and EDISON, the decision not to invoke pledge, and several others, — none of this was ever intimated to SEBI till SEBI knocked on KOTAK AMC's doors. It was imperative for KOTAK AMC, at the very least, to apprise SEBI being the regulator, of the proposed action when the action itself was not in consonance with the regulations.
41. Insofar as the investors are concerned, we pity them. Did they have a choice not to accept the course of action adopted by KOTAK AMC? The conscious decision to extend the maturity dates of ZCNCDs beyond the maturity dates of the Schemes was not a choice left for the unitholders to elect. That was not a contingency, which they could foresee. In an ideal scenario, the unitholders were assured that, even in the event of a default on the debentures, their investments would be protected through the realization of the pledged shares serving as collateral — the very rationale underlying the creation of security in the first place. KOTAK AMC departed completely from the proposed action. Trotting behind it was KOTAK TRUSTEE who beelined the action instead of its independent assessment. As the trustee company holding the funds of unitholders in a fiduciary capacity, KOTAK TRUSTEE was bound to independently assess whether the course was, *first*, in adherence with the extant regulations,

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and *secondly*, whether the course was in the interest of the unitholders.

42. As held by the AO and upheld by the TRIBUNAL, all three parties, viz. KOTAK AMC, KOTAK TRUSTEE and the Senior Executives failed to ensure compliance with the 1996 Regulations. They adopted a course unknown to law. No case for interference is, thus, set up by any of the appellants.

ON CONDUCT

43. Having observed as above, dismissal of the appeals is the only available option for us. However, before we so order, there lies something to be said beyond the facts of the matter itself.
44. Several crucial documents are not on the record, including the Investment Committee notes for the Schemes in question. It is not that placing these documents on record would have made any difference to the outcome. However, these documents ought to have been placed on record, particularly when the conduct of KOTAK AMC is in question, to show a *bona fide* approach. Curiously, these documents were part of the appeal filed before the TRIBUNAL by all the appellants. We are not too impressed by the selective non-disclosure.
45. Additionally, we wish to observe that during the hearing, a sheet of paper was tendered across the Bar by learned senior counsel on behalf of KOTAK AMC. Such sheet purportedly contained extracts from the relevant regulations, for the Court's convenience and understanding. The same document was also referred to and relied upon by learned senior counsel on behalf of KOTAK TRUSTEE and its Senior Executives during the course of arguments.
46. The one-pager tendered by learned senior counsel for KOTAK AMC reveals incomplete and inaccurate reference to the provisions of the 1996 Regulations. For instance, reference was made to sub-regulation (4) of regulation 33 in a truncated form without the two provisos. Both, the proviso and the further proviso, are of significant relevance to the present controversy; yet, both were omitted from the said one-pager note. The omission could be deliberate; it could also be a mistake. We say no more than is necessary. Such omission, at times, could be viewed with suspicion by the Court.

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We caution the appellants to be more vigilant in future and thereby avert reoccurrence of such mistake.

47. Even otherwise, the manner in which the appellants have conducted themselves throughout, while keeping the unitholders, SEBI and us in the dark, meets our stern disapproval.
48. Thus, on merits, there is no scope for grant of any relief.
49. Penalty, imposed on KOTAK AMC and KOTAK TRUSTEE, also calls for no interference.
50. However, what remains for consideration is the quantum of penalty imposed upon the Senior Executives. Learned senior counsel on their behalf made a fervent appeal to waive the penalty. According to him, while a beneficial outcome cannot justify a regulatory infraction, the absence of investor prejudice may be considered a mitigating factor for waiving penalty.
51. To consider this aspect, the conduct of the Senior Executives becomes material. They are supposed to be individuals who are domain experts, being well-versed in the field of securities law. It is unimaginable that they were not aware of the consequences of infraction of the regulatory framework. Future of the unitholders was put to immense risk by them. In matters such as this, where the margin for error is virtually non-existent, the conduct of the Senior Executives treads beyond condonable limits and, consequently, disentitles them even to any interference with the penalty imposed.

ORDER

52. In view of the aforesaid, the appeals do not deserve to be entertained; thus, we dismiss the appeals of KOTAK AMC, KOTAK TRUSTEE and the Senior Executives.
53. KOTAK AMC and KOTAK TRUSTEE will, however, bear costs assessed at Rs. 30 lakh and 20 lakh, respectively.
54. The costs be deposited with the Secretary General of this Court within two months.
55. Secretary General will identify ten accredited organisations, not confined to Delhi but all over the country which are engaged in activities for a substantial period, in caring, supporting and uplifting the conditions of destitute children, children battling cancer, orphans,

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women in distress and victims of crime, mental patients - both children and adult, elderly people with no family, individuals requiring prosthetics, and the like; and ensure that the amounts received as costs are distributed equally among them.

56. Pending applications, if any, shall also stand disposed of.

MIRROR DISCLAIMER

57. We conclude by warning managers of AMCs/fund houses by coining this phrase:

**“MANDATE FIRST, GAINS LATER;
SEBI COMPLIANCE, NEVER FALTER.”**

Result of the case: Appeals dismissed.

[†]Headnotes prepared by: Divya Pandey