BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-8/ORDER/KS/AA/2018-19/1560]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

Apollo Tyres Limited

(CIN: L25111KL1972PLC002449)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had received complaints wherein it was alleged that M/s Apollo Tyres Ltd. (hereinafter referred to as "**Apollo/ ATL/ The Noticee**") and its promoters had bought back the shares of Apollo in the year 2003 in contravention of Section 77A of the Companies Act, 1956 and SEBI (Buy Back of Securities) Regulations, 1998 (hereinafter referred to as "**Buy-Back Regulations**"). Upon examination of the complaints, SEBI initiated adjudication proceedings against the Noticee and appointed Shri D. Ravikumar as Adjudicating Officer under Section 15-I of the SEBI Act, 1992(hereinafter referred to as '**SEBI Act**') to inquire into and adjudge under Section 15HB of the SEBI Act, the violation of Buy-Back Regulations alleged to have been committed by the Noticee.

2. The Adjudicating Officer passed an order on July 09, 2014 after perusal of facts and evidences imposing a consolidated penalty of Rs. 1.03 crore on the Noticee. The said order was challenged by the Noticee in the Hon'ble Securities

Appellate Tribunal (hereinafter referred as '**SAT**'). Hon'ble SAT, vide order dated December 30, 2016, set aside the aforesaid order of the Adjudicating Officer and restored the case to the file of the Adjudicating officer. Thereafter, a fresh adjudication proceeding was initiated by SEBI in the matter.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh Gupta was appointed as the Adjudicating Officer, vide order dated March 31, 2017 and communique dated April 17, 2017 under section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under Section 15HB of SEBI Act for the violations of Regulations 4(1), 5A and 19(7) of the Buy-Back Regulations alleged to have been committed by the Noticee. Subsequently, the Adjudication proceedings have been transferred to the undersigned vide order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated November 08, 2017 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Adjudication Rules read with section 15-I of SEBI Act and penalty be not imposed under Section 15HB of the SEBI Act for the alleged violation of Regulations 4(1), 5A and 19(7) of the Buy-Back Regulations.

5. The following were the contents of the SCN issued to the Noticee:

   (i) SEBI received complaints from Ms. Jyoti H Mehta, legal heir of Late Shri Harshad S Mehta and others vide letters dated September 09, 2011, December 21, 2011 and February 15, 2012 with regard to the buy-back of shares by Apollo from the Custodian appointed under the Special Court

(Trial of Offences Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as the "**Special Court Act**"). The complainants were the notified persons under the Special Court Act. The complaints raised the issue of non-compliance with Section 77A of Companies Act, 1956 and the Buy-Back Regulations relating to buy-back of shares, when the same were bought back by the Noticee in the year 2003.

(ii) It was observed that the Hon'ble Special Court vide its order dated August 17, 2000 had approved the scheme of sale of shares framed by the Custodian, wherein shares were divided into 3 categories - (i) Routine Shares, (ii) Bulk Shares and (iii) Controlling Block of Shares.

(iii) The aforesaid scheme of sale of shares was affirmed by the Hon'ble Supreme Court of India vide its order dated August 23, 2001 with minor changes. The Hon'ble Supreme Court of India *inter alia* observed as follows:

a) *"....In respect of bulk shares, the Special Court has directed that the offer will first be made to the institutional buyers. With the change which has taken place in the financial market, it would be more appropriate that the offer be not restricted only to the institutional buyers and the non-institutional buyers including the Management of the Company may also be offered the sale of such shares of the appellant company...."*

b) *"...If the Court thinks that it is best to adopt the norms laid down by it for sale of controlling block of shares (the 3rd method) then when highest offer is received and the Management of the Company is given an option to buy those shares at that price, then if the Management so desires the Court should give the Company an opportunity to buy back the shares at the highest price offered by complying with the provisions of Section 77A of the Companies Act. In other words, on the receipt of the offer for sale of the controlling block, the Court will give an opportunity, if it chooses to consider the offer, to the Management to buy or to the Company to buy back under*

Section 77A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for..."

(iv) In compliance with the aforesaid Order / direction of the Hon'ble Supreme Court of India, the Custodian had drafted the 'terms and conditions' for sale of 54,88,850 shares of ATL which *inter alia* included the following condition –

"...The Custodian will obtain directions of the Hon'ble Court for approval of the offer of the highest bidder so identified by the Disposal Committee. The Hon'ble Special Court after ascertaining the highest offer may give an opportunity to the management of the said Company to buy or to the Company to buy back as per provisions of the Companies Act, 1956, the said "Controlling Block" of shares if it so desires..."

(v) The Custodian issued a Public Notice for sale of 54,88,850 shares of ATL that represented 15.1% of the then equity capital of ATL on March 27, 2003. In response, only 2 bids were received and the Hon'ble Special Court vide Order dated April 30, 2003, corrected vide order dated May 02, 2003, directed sale of 54,88,850 shares to Apollo and its Management at Rs. 90 per share.

(vi) It was further observed that the buy-back of aforesaid shares was challenged by Shri Ashwin S Mehta and Anr. before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India in its order dated November 08, 2011 had observed that the directions given by the Hon'ble Supreme Court of India vide its order dated August 23, 2001 were ignored by the Special Court. Further, the Hon'ble Supreme Court of India *inter alia* directed the Special Court for taking necessary steps to recover 4.95% shares from ATL or its management, as the case may be and to put them to fresh sale strictly in terms of the norms as approved by the Hon'ble Supreme Court of India vide its order dated August 23, 2001.

(vii) From the order dated August 23, 2001 of Hon'ble Supreme Court of India, it is clear that the buy-back of shares of ATL was required to take place by complying with the provisions of Section 77A of the Companies

Act, 1956. It is observed from the Hon'ble Supreme Court of India order dated November 08, 2011 that the learned senior counsel representing the Noticee had submitted that - *"...pursuant to the buy back of shares and on due compliance with the provisions of Section 77A read with Section 77A (7) of the Companies Act, Apollo had already extinguished 36.90 Lakh shares so bought back and therefore, to that extent, prayer of the appellant to rescind the purchase of shares is rendered infructuous..."*

(viii) From the above submission of the Noticee's learned senior counsel, it appears that the Noticee was aware of the requirement of compliance with the provisions of Section 77A of the Companies Act, 1956. Section 77A(2)(f) of the Companies Act, 1956 unequivocally states that the buy-back of the shares or other specified securities listed on any recognised Stock Exchange has to be in accordance with the Regulations made by SEBI in this behalf. Thus, the aforesaid buy back of 54,88,850 shares by Apollo was to be in accordance with the Buy Back Regulations.

(ix) Regulation 4(1) of the Buy Back Regulations specifies the methods for buy back of securities. It was alleged that none of the methods for buy back as specified under Regulation 4(1) were followed by the Noticee for buy-back of the said shares. In view of the foregoing, it is alleged that the Noticee had failed to comply with the Regulation 4(1) of Buy-Back Regulations.

(x) Further, as per Regulation 5A of the Buy Back Regulations, the Board Resolution of Apollo authorizing the buy-back of shares, which is passed before such buy back, was required to be filed with SEBI and the stock exchanges where the shares of the Noticee were listed within two working days of passing of the resolution. It was alleged that the Noticee failed to submit the Board resolution dated April 24, 2003 authorising the buy-back of shares to SEBI resulting in violation of Regulation 5A of the Buy-Back Regulations.

(xi) It was also noted that as per the requirements of Regulation 19(7) of the Buy-Back Regulations, a company should issue a public advertisement in a national daily within two days of completion of buy-back disclosing the information specified in the said Regulation. The Noticee had issued the public advertisement on May 13, 2003 and it is seen from the available records that the Noticee submitted Form 4C in pursuance to Rule 5C of the Companies (Central Government's) General Rules & Forms, 1956 to the Registrar of Companies on May 12, 2003 stating the date of buyback/ date of cancellation / extinguishment of securities bought back as May 09, 2003. Further, the public notice was also signed on May 09, 2003 by the Noticee's company secretary. In view of the same, it was alleged that the Noticee had exceeded the time limit for issuing public advertisement specified under Regulation 19(7) of the Buy-Back Regulations on account of shares being extinguished on May 09, 2003. In addition, it was also alleged that the public notice issued by the Noticee did not contain the pre and post shareholding pattern, as specified under Regulation 19(7) of the Buy-Back Regulations.

6. The SCN issued to the Noticee was duly delivered. The Noticee vide letter dated November 27, 2017 acknowledged the receipt of the SCN and requested an extension of 4 weeks for filing a comprehensive reply to the SCN. In view of the said request, the Noticee was, vide hearing notice dated November 28, 2017, granted a final opportunity to submit its reply to the SCN on or before December 26, 2017. The Noticee was also granted an opportunity of personal hearing on January 05, 2018 vide the said hearing notice.

7. In view of the Hon'ble SAT's directions in order dated December 30, 2016, it was decided to give an opportunity of hearing in respect of the matter to the applicants - Smt. Jyoti Mehta, Shri Ashwin Mehta and others. Therefore, vide

letter dated December 06, 2017, Shri Ashwin Mehta and other applicants were granted an opportunity of hearing in the matter on December 15, 2017. The said letter was sent by RPAD and by hand delivery and was duly delivered. Shri Ashwin Mehta, vide email and letter dated December 12, 2017 requested for a letter of notice of at least 15 days for hearing. In view of the same, Shri Ashwin Mehta and other applicants were granted an opportunity of hearing on January 04, 2018 vide letter dated December 15, 2017.

8. The Noticee vide letter dated December 26, 2017 submitted its reply to the SCN and *inter alia* made the following submissions:

(1) "We refer to the captioned SCN received by us, Apollo Tyres Ltd. ("Apollo") at our Registered Office at Kochi on November 13, 2017. Apollo, vide its letter dated November 27, 2017, had sought for an extension of time to file a reply to the SCN, which you had kindly granted.

(2) At the outset, we state that no regulatory intervention and imposition of penalty is at all necessary or is borne out from the facts of the case. From the reply provided herein, it will become abundantly clear that there is no violation at all of any provision of law to warrant the initiation of penalty proceedings.

(3) We state that none of the contents of the notice under reply be considered as deemed to have been admitted unless specifically admitted herein below. Before submitting our detailed response to the SCN, we are setting out the following preliminary submissions, which we respectfully submit are vital in determining the issues raised in the SCN:

PRELIMINARY OBJECTION:
The present proceedings have been initiated after a gross delay and ought to be dropped in limine, among others, for being in breach of public policy

(4) The SCN has been issued on November 8, 2017 after the order dated July 9, 2014 passed by an Adjudicating Officer ("First AO Order") was set aside by way of remand by the Hon'ble Securities Appellate Tribunal ("SAT") vide its order dated December 30, 2016. The First AO Order had been passed pursuant to a show cause notice dated January 24, 2014 ("First SCN"). The facts to which these proceedings relate to an auction process conducted in open court under the aegis of the Hon'ble Special Court under the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ("Special Court Act") in 2003.

(5) In short, the SCN has been issued nearly a year after the First AO Order had been set aside by the Hon'ble SAT. The First AO Order itself was based on the First SCN, which had been issued over eleven years after the transaction in

question was conducted, and that too by the Hon'ble Special Court, on which Parliament had conferred special powers, overriding the provisions of other laws including the SEBI Act, 1992. The very noticing of this extraordinary and dilatory timeline of activity would demonstrate a miscarriage of natural justice and breakdown of the rule of law, in attempting to interdict old and closed transactions, which had attained quietus.

(6) *By our letter dated December 1, 2017, we had inter-alia requested you to furnish us copies of letters / pleadings / representations or any documents which may have been filed by Mr. Ashwin Mehta before you, and had requested you to let us know whether you propose to allow Mr. Ashwin Mehta to participate in the proceedings before you. We have not as yet received any response to our letter, but we are filing the present reply since you have been requiring us to file the same. Further, in para 4 of the SCN, it is alleged that complaints dated September 9,2011, December 21,.2011 and December 15, 2012 were lodged by Ms. Jyoti Mehta, but no copies thereof are attached to the SCN. We reserve our right to file further replies / submissions if and when any such letters / pleadings, representations or documents are furnished to us.*

(7) *What makes matters worse is the fact that SEBI had notice of the transaction in question and raised queries way back in June 2003, which was effectively responded to on July 18, 2003. Annexed hereto and marked Annexure A is a copy of SEBI's letter dated June 16, 2003. Annexed hereto and marked Annexure B is a copy of Apollo's reply dated July 18, 2003.*

(8) *After this exchange, there was no correspondence whatsoever from SEBI, and Apollo was entitled to believe that the issue stood resolved. By initiating proceedings in 2014 - eleven years later - and that too resulting in an unsustainable order in the form of the First AO Order, it was but natural that the proceedings could not be sustained, leading to a remand of the matter. The matter having been remanded, Apollo is free to agitate all contentions in the matter, and wishes to, at the threshold, record its fundamental and foundational objection to these proceedings being persisted with. The narrative of the very dates and timeline of action demonstrates the extraordinary delay and latches that renders these proceedings untenable.*

(9) *On this ground alone, the SCN ought to be withdrawn and discharged. It is settled law that such gross delay in the initiation of proceedings would itself lead to the principles of natural justice being vitiated, leading to the very conduct of these proceedings being bad in law. It is noteworthy that there is not a whisper of justification or explanation for the inordinate and extraordinary delay. It is also settled law that it is a matter of public policy that old and stale matters should be allowed to rest. It is also noteworthy that the Hon'ble SAT too has adversely commented on such extreme delay in initiation of and proceedings. Apollo craves leave to refer to and rely on the contents of the Hon'ble SAT Order in this regard. Suffice it to say, the proceedings stand vitiated at the threshold, and all submissions made on merits in this reply are without prejudice to the foundational and fundamental objection to the very initiation of these proceedings.*

Transaction was in accordance with the directions of the Hon'ble Supreme Court

(10) At the very outset, it is submitted that the impugned Show Cause Notice which alleges violations of various provisions of the SEBI Buy Back Regulations, i.e. Regulations 4, 5 and 19 (7) is not only in excess of SEBI's jurisdiction but would clearly amount to penalising the Noticee Company for having undertaken a buyback expressively permitted pursuant to an auction scheme for sale of the shares of the notified parties approved by the Hon'ble Special Court and confirmed by the Hon'ble Supreme Court.

(11) What is significant to note is that the contention namely that the buyback was allegedly not in compliance with Section 77A read with the Buy Back Regulations was expressively raised by Mr. Ashwin Mehta in Civil Appeal No. 4263 of 2003 before the Hon'ble Supreme Court, wherein Mr. Ashwin Mehta sought the relief of recession of 54.88 lakh shares which included 36.90 lakh shares which are the subject matter of the present proceedings.

(12) After considering the submissions made by Mr. Ashwin Mehta and the Company, the Hon'ble Supreme Court by its order dated 8th November, 2011 rejected the prayer made by the said Mr. Ashwin Mehta for rescinding the buyback of 36.90 lakh shares by holding that "This brings us to the question of relief. In view of our finding that the decision of the Special Court is vitiated on the afore-stated grounds, it must follow as a necessary consequence that in the normal course, the impugned order must be struck down in its entirety. However, bearing in mind the fact that the sale of 54,88,850 shares was approved and all procedural modalities are stated to have been carried out in the year 2003, we are inclined to agree with Mr. Vellapally and Dr. Singhvi that at this stage, when 36.90 lakh shares of Apollo are claimed to have been extinguished, the relief sought for by the Appellants to rescind the entire sale of 54,88,850 shares will be impracticable and fraught with grave difficulties. In our opinion, therefore, the relief in this appeal should be confined to 4.95% of the shares, subject matter of interim order, dated 29th May, 2003, extracted above."

(13) It is therefore submitted that this issue having been decided after hearing Mr. Ashwin Mehta cannot be said to be res integra but is clearly res judicata and therefore the same cannot be re-agitated in the present proceedings in keeping with the principles of issue estoppel.

(14) In light of the above, any order passed in the impugned Show Cause Notice which has the effect of attempting to re-open the said issue and/or to penalise the Company would be contrary to the decision of the Hon'ble Supreme Court as contained in its Order dated 23rd August 2001 read with Order dated November 8, 2011.

(15) The fact that the Hon'ble Supreme Court by its order dated 11th February 2013 passed in I.A. No. 2 of 2013 filed by Mr. Ashwin Mehta which referred to the complaint filed by Mr. Ashwin Mehta with the SEBI making allegations of alleged

violations of Buy Back Regulations in respect of 36.90 lakh shares, has observed that "As per clause (d) of para 34 of the application, we observe that a complaint has already been made by applicant no. 1 before the Securities and Exchange Board of India (SEBI) in regard to buyback of 36,90,000 shares. Obviously, the complaint shall be considered by SEBI on its own merits uninfluenced by any observations in the decision of this Court dated November 8, 2011" does not mean that any issue which is either res judicata or covered by issue estoppel can be re-opened in the present Show Cause Notice.

(16) *In other words, the order dated 8th November 2011 which was sought to be reviewed by Mr. Ashwin Mehta has not been reviewed by the Hon'ble Supreme Court. The Hon'ble Supreme Court in its order dated February 11, 2013 has only stated that 'observations' made in the Order dated November 8, 2011 in considering Ashwin Mehta's complaint, which should be decided on its own merits, but not that the findings/directions contained in the order dated November 8, 2011 of the Supreme Court can be re-opened, re-agitated or overturned in the present proceedings.*

(17) *It is submitted that the reason for the same is that the order passed by the Hon'ble Supreme Court dated 8th November 2011 has finally and conclusively adjudicated upon the issue of whether there has or has not been a violation of Section 77A read with the Buy Back Regulations. This is on account of the fact that Mr. Ashwin Mehta and the Company in the course of the pleadings/written submissions filed before the Hon'ble Supreme Court in Civil Appeal No. 4263 of 2003 joined issue on the question with regard to the violation of Section 11A of the Companies Act, 1956 read with Buyback Regulations.*

This is apparent from the pleadings and the written submissions filed by the parties in the Hon'ble Supreme Court.

(18) *It is respectfully submitted that the Supreme Court rejected the application made by Mr. Ashwin Mehta for rescinding the buyback of 36.90 lakh shares by the Company, not only by the Original Order dated 8th November 2011 but also by the Order dated February 11, 2013 passed in the I.A. No. 2 of 2013 filed by Mr. Ashwin Mehta for review as well as the Order dated August 26, 2013 passed in Civil Appeal No. D- 19010 of 2013 filed by Mr. Ashwin Mehta where the prayers sought for by Mr. Ashwin Mehta were:-*

"(b) This Hon'ble Court may be pleased to declare that Apollo Tyres Ltd has played a fraud upon this Hon'ble Court in the proceedings in Civil Appeal No. 4263 of2003 with a dishonest intention to deny the Appellants and other notified entities, a relief of reversal of sale 36,90,000 shares of Apollo Tyres Ltd made to Apollo Tyres Ltd which shares are allegedly bought back by this Company in the year 2003.

(c) This Hon'ble Court may be pleased to consequently direct Apollo Tyres Ltd to issue 3,69,90,000 shares of Re. 1/- face value in lieu of Rs. 10/- face value and also pay to the Appellants, all the accrued dividends became payable to the Appellants by levying interest from the respective dates of payments of

such dividends till the date of actual payment to the Appellants and other notified entities."

(19) *Therefore it follows that Hon'ble Supreme Court (which it is now well-settled can only pass orders in compliance with law) has accepted that the buyback by the Company of 36.90 lakh shares was in accordance with law.*

(20) *It is, therefore, submitted that the first order passed by the Hon'ble Supreme Court dated 23rd August 2001 by which the Company could offer to buy back its shares "by complying with the provisions of Section 77A of the Companies Act" was not and could not be taken to be the final word on the subject, in as much as the Supreme Court itself, by its subsequent order dated 8th November 2011 rejected the prayer to rescind the buyback of 36.90 Lakhs shares bought back by the Company on the allegations raised by Mr. Ashwin Mehta that the same did not comply with the buyback regulations.*

(21) *Therefore, so long as the subsequent order of the Hon'ble Supreme Court can be said to be based/traced on the underlying principle that the buyback of 36.90 Lakhs shares by the Company is in accordance with law, the question of levying any penalty for alleged violation of the Buy Back Regulation on the Company can never arise as a consequence thereof.*

BACKGROUND FACTS

How the Shares of Apollo came to be on the Auction Block

(22) *It is evident from the record that SEBI is acting on the basis of Mr. Ashwin Mehta, sibling of 1992-securities-scam-accused Harshad Mehta. The complainant had raised a grievance vide letter dated November 9, 2011 about the conduct of an open- court auction of 54.88 lakh shares of Apollo ("Subject Shares") by the Hon'ble Special Court. The orders of the Hon'ble Special Court dated April 30, 2003 and May 2, 2003 are relevant in this regard.*

(23) *The Special Court Act was legislated inter alia to ensure speedy recovery of the huge amounts illegally obtained by "notified persons" while engaging in large scale irregularities and malpractices in transactions in securities in collusion with the employees of various banks and financial institutions. The Special Court Act provided for the establishment of a Special Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. The Special Court Act also provided for appointment of one or more Custodians for attaching the property of the offenders with a view to prevent diversion of properties by the offenders. Section 13 of the Special Court Act provides as follows:-*

> *"13. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority. "*

(24) *Mr. Harshad S. Mehta, his other family members and the corporate entities belonging to the family members (29 entities in all) came to be "notified" under Section 3(2) of the Special Court Act vide notification dated June 6, 1992. This group had allegedly purchased more than 90 lakh shares in Apollo. Prior to the notification, about 15 lakh shares of Apollo stood registered in the name of the notified parties and the balance shares were unregistered. About 39.16 lakh unregistered shares were handed over by Mr. Harshad S. Mehta to the office of the Custodian.*

(25) *The Central Bureau of Investigation ("CBI") seized about 7 to 8 lakh un-registered shares (approximately) in 1992, which also were handed over by them to the Custodian. The Custodian was also authorized to deal with a few lakh shares, identified as benami shares. Thereafter, the Custodian moved an application before the Hon'ble Special Court seeking orders for effecting registration of unregistered shares in the name of the Custodian and for recovery of lapsed benefits that accrued on the said unregistered shares. The Hon'ble Special Court, vide order dated November 19, 1999, allowed the registration of the un-registered shares in the name of the Custodian.*

Court-driven Scheme for disposal of Securities of Notified Persons

(26) *By order dated March 11, 1996, in Civil Appeal No.5225 of 1995, the Hon'ble Supreme Court of India, in a suo motu action, directed the Custodian to draft a "scheme" for sale of shares of the notified parties, which constituted a bulk of the attached assets. Accordingly, a scheme was drafted by the Custodian in consultation with the Government of India and was presented to the Hon'ble Supreme Court.*

(27) *Vide an order dated May 13, 1998, in Civil Appeal No. 5326 of 1995, the Hon'ble Supreme Court directed that the said scheme may be considered by the Hon'ble Special Court, with further modifications, if any. In furtherance of the said direction, the scheme was presented to the Hon'ble Special Court for its approval.*

(28) *The Hon'ble Special Court, vide order dated August 17, 2000 ("Scheme"), categorized the shares into three classes - (i) routine shares; (ii) bulk shares and (iii) controlling block of shares. The Hon'ble Special Court constituted a Disposal Committee for disposal of shares as per the norms laid down in the said order. Norms in respect of sale of controlling block of shares read as follows:*

> *"NORMS FOR SALE OF CONTROLLING BLOCK OF SHARES:*
> *After completion of demat procedure for registered shares, the Custodian will give public advertisement in the newspapers inviting bids for purchase of Controlling Block of shares. The offers should be for the entire block of registered shares. The offers should be accompanied by a Demand Draft/Pay Order/Bankers' cheque representing 5% of the offered amount in cases of thinly traded shares of companies like Killick Nixon whereas in cases of highly valued shares like Apollo Tyres, the offers shall be accompanied by Demand Draft/Pay Order/Bankers' cheque representing 2% of the offered amount. The*

said Pay Order/Demand Draft/bankers' cheque should be drawn in favour of the Custodian, A/c - name of the notified parties say Dhanraj Mills. The offers can he made by individuals as well as hv corporate and other entities. The offerer, whose offer is accented by the Court, will he required to make payment within 15 days from the date of acceptance of the offer by the Court. Here also, the Court reserves its rights to accept or reject any of the highest offer or bid that may be received by the Court without assigning any reason whatsoever. Once the highest offer is ascertained, the management of the Company should he given an option to buy the shares. This is to avoid destabilization of the Company. The purchaser(s) shall comply with all regulations including the Take Over Regulations of SEBI. In cases where the Custodian finds that as on the relevant date, he does not possess shares of a Company to the extent of 5% or above, but he anticipates that in near future, the limit is likely to reach with the other shares coming in, then the Custodian shall submit his report to the Court for keeping aside such shares of a notified party for future disposal. However, public financial institutions will not be required to make any deposit along with their offer(s)."

[Emphasis Supplied]

(29) The Hon'ble Special Court approved the scheme, propounded by the Custodian for sale of Controlling Block of Shares in toto and ordered sale of all registered shares. Shares of Apollo were left out because of objection regarding registration of unregistered shares in the name of Custodian/notified parties, was pending adjudication before the Hon'ble Supreme Court of India. A copy of the order dated August 17, 2000 is annexed herewith and marked as Annexure C.

(30) The order of the Hon'ble Special Court dated August 17, 2000 was challenged both by the notified parties and by Apollo. By order dated August 23, 2001 in Civil Appeal No.7629 of 1999 [connected C.A. Nos. 7630 of 1999 and 5813 to 5814 of 2000], the Supreme Court, while approving the basic structure of the scheme and the directions given by the Hon'ble Special Court for disposal of shares, disposed of the appeal with the following directions insofar as the sale of controlling block of shares, was concerned:

"In respect of the sale of controlling block of shares the only method laid down by the Special Court is to offer the sale of shares in a composite block. It is not known whether such a sale will get the best price in respect thereof, Ii t1, therefore, direct that it will be open to the Special Court to decide whether to have the sale of the controlling block of shares either by inviting bids for purchase of controlling block as such or by selling the said shares according to the norms fixed for the sale of hulk shares or by the norms fixed in respect of routine shares. The object being that the highest price possible should he realised, it is left to the Court to decide what procedure to adopt."

"If the Court thinks that it is best to adopt the norms laid down by it for sale of controlling block of shares (the 3rd method) then when highest offer is received and the Management of the Company is given an option to buy those shares at that price, then if the Management so desires the Court should give the Company an opportunity to buy back the shares at the highest price offered by complying with the provisions of Section 77A of the Companies Act.

In other words, on the receipt of the offer for the sale of the controlling block, the Court will give an opportunity, if it chooses to consider the offer, to the Management to buy or to the Company to buy back under Section 77A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for.

It is made clear that in respect of the controlling block of shares the third method will first be adopted, namely, the norms for sale of controlling block of shares; and it is only if the Court is satisfied that by adopting that method the highest price is not available then it will have an option to follow the 2nd method relating to sale of bulk shares. Further, if the Court is satisfied that by following any of the above two methods the highest price is not available, then it will have an option to follow the norms as laid down for routine shares (the 1st method).
These appeals are disposed of in the aforesaid terms."
[Emphasis Supplied]

(31) *A copy of the order dated August 23, 2001 passed in Civil Appeal No.7629 of 1999 [connected C.A. Nos. 7630 of 1999 and 5813 to 5814 of 2000] is annexed herewith and marked as Annexure D.*

(32) *It is submitted that in terms of the order of the Hon'ble Special Court dated August 17, 2000 and the order dated August 23, 2001 passed by the Hon'ble Supreme Court, the manner of disposal/sale of a Controlling Block of shares (which were attached properties of the notified entities under the Special Court Act) was:*

a) *By inviting bids through public advertisement in newspapers;*
b) *Individuals/ corporate entities/ financial entities were permitted to make offer for the shares on sale;*
c) *The bids were to be ultimately accepted by the Hon'ble Special Court (presided by a sitting judge of the Hon'ble Bombay High Court) with the Hon'ble Special Court having the right to accept or reject any of the highest offer or bid that may be received without assigning any reason;*
d) *Once the highest offer is ascertained, the Company and/or its management (whose shares are being sold) will be given an option to buy the shares with a view to avoid destabilization of the Company. The Company had the right to accept or reject the offer made by the Hon'ble Special Court.*

It is therefore clear that as per the Scheme for sale of shares as confirmed by the Hon'ble Supreme Court, and in view of the said non-obstante provisions of section 13 of the Special Courts Act, such a buy-back by a Company was not a "buy back" of shares as envisioned in the SEBI Buy-Back Regulations, all the provisions thereof would not be applicable to such a buy-back / sale of shares by the Hon'ble Special Court.

Scheme for Disposal of Apollo Shares

(33) *In compliance with the aforesaid orders/directions, the Custodian drafted the 'terms and conditions of sale' for sale of 54,88,850 shares of Apollo. Some of the*

terms and conditions, which are relevant for the present proceedings are as follows:

> *5. Even after acceptance of the offer/ identification of the highest bidder by the Disposal Committee, the approval of sale will be subject to the sanction of Hon'ble Special Court.*
>
> *7. The Bids are to be submitted for the entire lot of shares of the said Company viz. 54,88,850 shares. Bids in part (less number of shares than total) shall not be considered.*
>
> *14. The Custodian will obtain directions of the Hon'ble Court for approval of the offer of the highest bidder so identified by the Disposal Committee. The Hon'ble Special Court after ascertaining the highest offer may give an opportunity to the management of the said Company to buy or to the Company to buy-back as per provisions of the Companies Act, 1956, the said "Controlling Block " of shares if it so desires.*
>
> *15. The sale as stated herein above is subject to the sanction of Hon'ble Special Court. The Hon'ble Special Court reserves the right to accept or reject any of the offer or bids that may be received for purchase of the shares."*
>
> *[Emphasis supplied]*

(34) *Pursuant thereto, the Custodian vide a public notice dated April 1, 2003 invited bids from individuals as well as from corporates and other entities for sale of 54.88 lakh shares of Apollo. The offers were to reach the office of the Custodian by 3.00 p.m. on or before April 25, 2003. On April 25, 2003 the Custodian submitted its report to the Hon'ble Special Court on the sale of 54.88 lakh shares of Apollo.*

(35) *It is pertinent to note that the Hon'ble Special Court also had the benefit of a report of a Disposal Committee, which is a committee of experts comprising of (a) Representative of Director General of Income Tax (Investigation); (b) Representative of ICICI Securities & Finance Co. Ltd.; (c) Managing Director, UTI Securities Exchange Ltd and (d) Deputy Secretary, Office of the Custodian. The Disposal Committee identified the highest bidder and recommended obtaining the approval of the Hon'ble Special Court expeditiously.*

(36) *Since the Hon'ble Supreme Court in its order dated August 23, 2001 had categorically stated that the Hon'ble Special Court would give an opportunity to the Management of the Company or the Company to buy the shares, the Company prepared itself to be in readiness to respond as and when the offer was received from the Hon'ble Special Court. Towards this end, the Company convened a Board Meeting on April 24, 2003. At this meeting, the Board of Directors of Apollo considering the time available and powers of the board to buyback, passed a Board Resolution authorizing its officials to take necessary action to appear in the Hon'ble Special Court, and to bid and negotiate for buy back of shares as and when the option to purchase was given to the Company.*

(37) *The relevant extract of the said resolution is extracted hereunder for the convenience of SEBI:*

"RESOLVED THAT the Company do buy-back shares, when option to purchase is given to the Company, belonging to Harshad Mehta Group, as per details of the bid dated 27th March, 2003 called by the Custodian upto and including 10% of the share capital plus free reserves of the Company at such price as may be negotiated and agreed upon before the Special Court for the purposes of buyback"

(38) It is clear from the resolution passed on April 24, 2003 that it was only an enabling resolution permitting the officials of Apollo to attend the Court and make an offer to buy back shares (if given an option) as and when the matter of sale of shares of Apollo was taken up by the Hon'ble Special Court. At that stage it was not known whether the Company would be given the option, or the price or quantity, or whether there would in fact be any such buy-back at all. A copy of the Board Resolution dated April 24, 2003 is annexed herewith and marked as Annexure E.

(39) Thereafter on April 28, 2003 a letter was received by Apollo from the solicitors of the Custodian stating the following:

a) The offers received towards sale of shares of Apollo had been forwarded (under a sealed envelope) to the Hon'ble Special Court. The report of the Custodian and the offers for sale were to be considered by the Hon'ble Special Court on April 30, 2003;

b) In line with the order of the Hon'ble Special Court dated August 17, 2000 and the order of the Hon'ble Supreme Court dated August 23, 2001, Apollo was put to notice by the Custodian that the Company and/or its management shall have the right to buy back the shares at the highest offer to be ascertained by the Hon'ble Special Court on April 30, 2003;

c) The Company was to give appropriate instructions to its representatives/lawyers to either accept or reject the offer on the same date as the Custodian would oppose any adjournment keeping in view the sensitivities of the stock market and the possibility of a fall in the price of the shares and/or the possibility of losing a bidder in case the offer for sale is not confirmed on the same date i.e. April 30, 2003. This instruction of the Custodian's Solicitor was in line with the recommendation of the Disposal Committee that there should be no delay in the sale of shares of Apollo.

A copy of the letter dated April 28, 2003 received from the solicitors of the Custodian is enclosed herewith as Annexure F.

(40) On April 30, 2003, the Hon'ble Special Court considered the report of the Disposal Committee and ascertained the offers/bids received pursuant to the advertisement issued by the Custodian. Having ascertained that only two offers were received by the Custodian i.e. by Punjab National Bank at Rs. 80/- per share and the second offer at Rs. 40/- by one Shreya Capital Finances and in view of Punjab National Bank being unwilling to increase the price offered by them, the Hon'ble Special Court exercised the option of offering Apollo and/or its management to buy back or buy the shares. After Apollo having expressed

willingness to purchase the shares at Rs. 85/- per share and since the other bidders were not willing to increase the price offered, the Hon'ble Special Court called upon Apollo and its promoters to further increase the price, which Apollo eventually did and agreed to a price of Rs. 90/- per share. This proposal was agreed to and accepted by the Hon'ble Special Court.

(41) The relevant extracts of the order dated April 30, 2003 are extracted herein below for convenience:

> *"1. In pursuance of the offer for the controlling block of shares and the public notices, published for that purpose, only two offers were received by the Custodian. The highest bid was given by Punjab National Bank at Rs.80/- per share and the second highest bid was by Shreya Capital Finances, which was only Rs.40/-.*
>
> *2. On enquiry, it was revealed by the learned advocate for the Custodian and also by the notified parties that the market price today is Rs.120/-. It was also pointed out to me that in last six months the price has been ranging between Rs. 100/- to 123/-. However, earlier to that the price was at lower level. In the earlier one year and six months the price was fluctuating from Rs. 37/- onwards.*
>
> *It was also realized that once this news of such a huge quantity of shares being purchased by one party is broken in market, there is every likelihood of market falling down. Of course, it must be noted that the market sentiments cannot be imagined and specially the Courts are not having the necessary information and data or the knowledge as to how the market would fluctuate in a particular situation. However, considering the huge difference between today's market price and the highest offer of Punjab National Bank, the Company and the promoters were asked to give an offer at a high rate.*
>
> *The Company and the promoters together stated that they would be willing to purchase at Rs. 85/- per share. The Punjab National Bank was not willing to increase anything in the price offered, and therefore, the Court intervened and asked the Company and the promoters to increase their offer and ultimately I realized that if some offer is given by the Court, then they would consider it. I did ask them to purchase @ book value, which is Rs. 99.92. However, the Company and the promoters were not willing to purchase at that rate and therefore, I quoted whether they are willing to accept the offer at Rs. 90/- per share. This offer is accepted by the Company and promoter and they indicated that they would come on Friday, 2nd May, 2003 at 2.45 pm. with necessary details of modalities as to how they would make inter se adjustment and the purchase bid split between themselves. The payment of the price would be as per the condition already prescribed and advertised and since this offer is made today, 2% of the purchase price would be paid on Friday, 2nd May, 2003 when they come up with modalities and further payments would be made as per the earlier terms and conditions published in the public notice. In view of this, the cheques given by Punjab National Bank and Shreya Finance Corporation for 2% of their offer be returned to them forthwith.*

8. Matter be placed on board on Friday, 2nd May 2003 for considering the modalities indicated by the purchasers. All the parties to act on the copy of this order duly authenticated by the Associate of this Court."

A copy of the order dated April 30, 2003 passed by the Hon'ble Special Court is annexed herewith and marked as Annexure G.

(42) *Pursuant to the Order dated April 30, 2003, the Hon'ble Special Court had placed the matter on board for May 2, 2003 to consider the modalities for purchase of shares by Apollo and its promoters. On May 2, 2003, the Hon'ble Special Court approved the modalities of buy back and acquisition by promoters of 54.88 lakh shares of Apollo. A copy of the order dated May 2, 2003 passed by the Hon'ble Special Court is annexed herewith and marked as Annexure H.*

(43) *In terms of the said Orders dated April 30, 2003 and May 2, 2003 passed by the Hon'ble Special Court read with the Hon'ble Supreme Court's order dated August 23,2001, the sale of Apollo shares by the Custodian and the buyback of shares by Apollo was to be in the following terms:*

a) *From a single person i.e., the Custodian;*
b) *At a price and in the manner as approved by the Hon'ble Special Court i.e. Rs. 90/- per share*

(44) *Thus, the method and manner of purchase/buyback of shares by the Company was strictly in terms of Orders passed by the Hon'ble Special Court and the Hon'ble Supreme Court of India and Regulation 4 (1) of the Buyback Regulations was not at all applicable to the same.*

Voluntary Compliance with some Processes in SEBI Buy-Back Regulations

(45) *In view of the aforesaid special and particular circumstances and directions of the Hon'ble Supreme Court vide its Order dated August 23, 2001 and the "Scheme" settled by the Hon'ble Courts, the Company sought legal advice with regard to its obligations to comply with the said provisions, particularly since Section 77A of the Companies Act and SEBI Buy-Back Regulations never contemplated such a situation.*

(46) *The opinion received by Apollo was inter alia as under:*

"On the contrary, ATL is buying back the shares from the Custodian by virtue of an order of the Supreme Court dated 23.08.2001. That order is "law" by virtue of Article 141 of the Constitution of India.

"In my view, it is the Supreme Court which permitted ATL to buyback the securities from the Custodian. Pursuant to this order, the Special Court has directed the Custodian to sell certain securities to ATL. It is called "buyback" because the Supreme Court has referred to the method as "buyback" and has also referred to Section 77A of the Companies Act, 1956. No doubt the Supreme' Court has directed that ATL should have an opportunity to buyback the shines "by complying with the provisions of Section 77A of the Companies Act". In my view, the direction to comply

with section 77A has to be read in a reasonable and meaningful manner, and so reading of the direction, I am of the opinion that what the direction means is that ATL should comply with such of those provisions of Section 77A as is feasible and practical to comply."
[Emphasis Supplied]

(47) *In so far as the SEBI Buy-Back Regulations are concerned, the opinion received by the Company was as under:*

"For the reasons stated by me earlier, neither Chapter III nor Chapter IV of the said Regulations are applicable. In so far as Chapter II is concerned, Regulation 4 is not attracted. Nor is this a case where a special resolution in a general meeting is required and therefore Regulation 5 is not attracted. So far as the General Obligations contained in Chapter V are concerned, ATL is in a position to satisfy many of the obligations, e.g. ATL is in a position to comply with the obligations in Regulation 19(1), (b), (c), (e) etc."

(48) *Accordingly, the Company undertook the following voluntary compliances, purely in the spirit although clearly the process of buy-back undertaken under the Special Court Act was, in law, abundantly clearly would prevail over subordinate legislation under the SEBI Act:*

i) May 9, 2003:	*A Board of Directors meeting of Apollo was held and it was resolved for the first time that Apollo would buy back 36,90,000 shares out of the said 54,88,850 shares in terms of the aforesaid various Orders of the Hon'ble Supreme Court and the Hon'ble Special Court, and other relevant details with respect to buyback. (Annexure I).*
ii) May 9, 2003:	*A letter was sent by Apollo to the Registrar of Companies enclosing a declaration of solvency in Form A as prescribed under Section 77A of the Companies Act. A copy of the same letter with the said Form 4A was also forwarded to SEBI. (Annexure J).*
iii) May 9, 2003:	*A letter was sent by Apollo to all the concerned stock exchanges, enclosing a certified true copy of the said Board Resolution dated 09.05.2003 in respect of the said decision to buy back the said shares. (Annexure K)*
iv) May 10,2003:	*A letter was sent by Apollo to SEBI, enclosing a certified true copy of the said Board Resolution dated 09.5.2003 in respect of the said buy back of shares. (Annexure L).*
v) May 12, 2003:	*Apollo sent communications to the depository for extinguishment of shares bought back by Apollo. (Annexure M)*
vi) May 12,2003:	*A Return under Form 4C pursuant to Section 11A (10) of the Companies Act, 1956 was filed by Apollo with the Registrar of Companies, containing particulars of the buyback. (Annexure N).*

vii) May 13, 2003:	*A Public Notice was issued by Apollo intimating the general public that pursuant to the said buy back of shares by the Company, the share capital of the Company stood reduced to Rs.32.62 crores (approximately). (Annexure O)*
viii) May 15,2003:	*Letter of Central Depository Services (India) Limited confirming the reduction in share capital of Apollo in view of the extinguishment of shares pursuant to the said buy-back. (Annexure P).*
ix) May 15,2003:	*Pursuant to the buy-back of shares and their extinguishment as contemplated by Section 77A(7) of the Companies Act, the Company updated its 'Register of Securities Bought Back' required to be maintained pursuant to Section 77A (9) and indicated the details of the shares bought back by Apollo (Annexure Q).*
x) May 19,2003:	*Apollo's Letter to all the concerned stock exchanges forwarding a copy of the said letter received from CDSL confirming extinguishment of share capital in terms of the buyback of shares by Apollo and intimating the pre and post extinguishment. (Annexure R)*
xi) May 21,2003 & May 23, 2003	*Letter of Statutory Auditors of Apollo confirming submission of certificate to SEBI about the extinguishment of shares pursuant to the said buy back by the Company. (Annexure S).*
xii) May 16, 2003 & May 23, 2003	*Letter of Apollo to National Securities Depository Ltd. and their response confirming the reduction in share capital of Apollo in view of the extinguishment of shares. (Annexure T).*

(49) The afore stated voluntary compliance undertaken by Apollo makes it abundantly clear that Apollo made all effort possible to follow processes under the SEBI Buy-Back Regulations to the extent feasible and practical, purely from a spirit perspective. However, it can never mean that the provisions of law as set out in the Buy-Back Regulations would apply to Apollo's participation in the Special Court- conducted buy-back process. Separately, in this reply, Apollo has dealt with the interplay between the provisions of the Special Court Act and the SEBI Act to show how the former would override the latter.

(50) The actions of Apollo in making the requisite disclosures to the Registrar of Companies, stock exchanges and to SEBI make it evident that Apollo had no intention or motive to gain any advantage and/or cause any harm/loss to the public and Apollo adhered to the highest standards of transparency and public disclosure to the extent it was possible and applicable.

(51) A chart indicating the compliance undertaken by Apollo is annexed herewith and marked as Annexure U.

Complainant's Participation in the Process

(52) On May 19, 2003, Mr. Ashwin S. Mehta (along with another notified entity) filed an appeal before the Hon'ble Supreme Court of India challenging the orders dated April 30, 2003 and May 2, 2003 passed by the Hon'ble Special Court permitting buy back of shares by Apollo and its promoters. At the time of admission of the said Appeal on May 29, 2003, the following order was passed:

"Appeal admitted.

Mr. A.D.N. Rao, Ms. Manik Karanjawala and Ms. Pallavi Shroff, learned counsel accept notice on behalf of respondent Nos. 1, 3 and 7 respectively. Learned counsel appearing for the Management - Respondent No. 7 submits that as on date only 4.95% of the shares purchased alone are in existence. In regard to these existing shares, the learned counsel undertakes not to further alienate them. We record the said undertaking. "

(53) It is pertinent to note that the Advocates on behalf of Apollo had pointed out to the Hon'ble Supreme Court that the shares bought back by the Company already stood extinguished, and therefore only shares bought by the promoters survived. Therefore, the aforesaid statement only referred to the shares bought by the promoters. A copy of the order dated May 29, 2003 passed by the Supreme Court of India is annexed herewith as Annexure V.

(54) Thereafter, the said Civil Appeal was heard by the Hon'ble Supreme Court on August 30, 2011 and judgment was reserved. Vide its judgment dated November 8, 2011, the Hon'ble Supreme Court allowed the Appeal partly by remitting the matter to the Hon'ble Special Court for taking necessary steps to conduct a fresh sale of the said 4.95% shares in terms of the norms as approved by the Hon'ble Supreme Court vide its Order dated August 23, 2001 and directed that the amounts paid by the promoters of the Company for purchase of the said shares be refunded to them along with simple interest.

(55) Therefore, the buy-back by Apollo was not in any manner disturbed or interfered with by the Hon'ble Supreme Court, despite the objections and contentions of the said Appellants, including the same allegations, which were purported to be raised in the "complaint" to SEBI. This will also show that SEBI must not lend itself to someone indulging in forum shopping. A copy of the judgment of the Hon'ble Supreme Court dated November 8, 2011 is annexed herewith and marked as Annexure W.

(56) It is further submitted that the afore stated background facts have already been brought to the attention of SEBI, inter alia vide letters dated April 17, 2012, December 28, 2012, March 15, 2013 and reply dated February 26, 2014. Copies of the said letters (without annexures) are annexed herewith and collectively marked as Annexure X.

(57) Consequently, SEBI issued a show cause notice dated January 24, 2014 to Apollo inter-alia alleging that Apollo had failed to comply with the provisions of the Buy Back Regulations as required by Section 11A of the Companies Act,

1956, and had failed to comply with Regulation 5A and Regulation 19 (7) of the Buyback Regulations. Copy of Show Cause Notice dated January 24, 2014 is annexed herewith and marked Annexure Y.

(58) In the meantime, on September 9, 2011, Mr. Ashwin Mehta and others filed a complaint before SEBI inter-alia alleging violation of the provisions of Section 77A of the Companies Act and the Buy Back Regulations, and contended that SEBI should annul and rescind the buyback of the said 36,90,000 shares of Apollo. However, as aforesaid, the Hon'ble Supreme Court by its judgment dated November 8, 2011, refused to disturb or interfere with the said buy back of shares despite the objections and contentions of the said Appellants that the Buyback Regulations had not been complied with.

(59) On January 1, 2013, Mr. Ashwin Mehta filed I.A. No. 2 of 2013 in the disposed of Civil Appeal No. 4263 of 2003 before the Hon'ble Supreme Court seeking certain "clarifications". The said I.A. once again alleged that Apollo had not complied with the provisions of Section 77A of the Companies Act and the Buy Back Regulations. It was inter-alia prayed therein that Apollo be directed to issue 36,90,000 shares and reverse the Buyback. By an Order dated February 2, 2013, passed in the said I.A. No. 2 of 2013, the Hon'ble Supreme Court inter alia observed that a complaint had already been made by Mr. Ashwin Mehta before SEBI, and that the complaint may be considered by SEBI on its own merits, uninfluenced by the said judgment dated August 8, 2011. Copy of Order dated February 2, 2013 is annexed herewith and marked Annexure 'Z'.

(60) On June 28, 2013, Mr. Ashwin Mehta filed Civil Appeal No. D- 19010 of 2013 in the Hon'ble Supreme Court praying for recovery of the said 36,90,000 buy back shares, once again alleging violation of Section 77A of the Companies Act and the Buy Back Regulations. The said Appeal was disposed of by the Hon'ble Supreme Court on August 26, 2013 by directing SEBI to decide Mr. Ashwin Mehta's said complaint. Copy of Order dated August 26, 2013 is annexed herewith and marked Annexure 'AA'.

(61) By an order dated July 9, 2014, the Ld. Adjudicating Officer, SEBI, directed Apollo to pay a monetary penalty of Rs. 1 crore for failure to comply with the Buy Back Regulations, and a further penalty of Rs. 3 lakhs for failure to comply with Regulation 5A and 19 (7) of the Buy Back Regulations.

(62) The said Order dated July 9, 2014 was challenged by Apollo before the Hon'ble Securities Appellate Tribunal vide SAT Appeal No. 322 of 2014. Mr. Ashwin Mehta & Ors had filed Misc. Application No. 172 of 2014 in the said Appeal, and sought to intervene and be impleaded as Respondents in the said Appeal. Mr. Ashwin Mehta's said Application inter alia made completely false, baseless and unsubstantiated allegations against Apollo and the officials of SEBI.

(63) By an Order dated December 30, 2016, the Hon'ble Securities Appellate Tribunal inter alia held that a penalty could not have been imposed upon Apollo by simply stating that Apollo had violated the Buy Back Regulations, and that the Ld. AO

ought to have specifically stated which Regulations, apart from Regulation 5A and 19 (7) were applicable and were violated by Apollo. Consequently, the Hon'ble SAT set aside the aforesaid order of SEBI dated July 9, 2014, and remanded the matter to SEBI for reconsideration.

(64) Thereafter, the Ld. AO issued the present show cause notice under reply dated November 8, 2017, and has now alleged that apart from Regulations 5A and 19 (7), Apollo had violated only Regulation 4 (1) of the Buyback Regulations.

SEBI's Show Cause Notice

(65) In the present show cause notice, the following allegations are being levelled:

a) None of the methods for buyback as specified under Regulation 4(1) of the SEBI Buy-Back Regulations were followed by Apollo for buyback of the subject shares;

b) Alleged failure to file a copy of the board resolution dated April 24, 2003 authorising the buyback with SEBI and the concerned Stock Exchanges as per Regulation 5A of the SEBI Buy-Back Regulations;

c) Alleged exceeding of time limit specified under Regulation 19(7) of the Buy-Back Regulations to issue public notice; and Public Notice allegedly not containing pre- and post-buy back shareholding pattern as specified under Regulation 19(7) of the SEBI Buy-Back Regulations.

SCN is without Jurisdiction

(66) Each of these is dealt with in this reply, but at the threshold it should be noted that the SCN is without jurisdiction and SEBI cannot conduct adjudication proceedings for participation in a Scheme propounded by the Hon'ble Special Court under the Special Court Act, as endorsed by the Hon'ble Supreme Court, on the basis that buyback under such Scheme is non-compliant with the SEBI Buy-Back Regulations. At the threshold, it should be noticed that the SCN constitutes an accusation that the Hon'ble Special Court's processes are violative of the SEBI Buy-Back Regulations and merely because Apollo participated in the process, Apollo would be guilty of violative conduct.

(67) Under the Scheme propounded by the Hon'ble Special Court, the sale of the Subject Shares was conducted in terms of and in exercise of powers under the Special Court Act, under the aegis of the office of the Custodian with the sale being recommended by a committee of experts i.e. Disposal Committee and finally approved by the Hon'ble Special Court presided over by a sitting judge of the Hon'ble High Court of Bombay.

(68) The Special Court Act is a special legislation with a non-obstante provision, by which the powers there under supersede all other laws. The Special Court Act was passed with the following stated objective:

> *"In the course of investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions in both the Government and other securities, indulged in by some brokers in collusion with the employees of various bonds and financial institutions. The said*

irregularities and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

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

A copy of the Special Court Act is annexed herewith as Annexure BB.

(69) *With a view to achieve the said objective, the assets of all notified entities including the Subject Shares were attached by the Custodian in terms of Section 3 of the Special Court Act and were to be dealt with by the Custodian in such manner as the Hon'ble Special Court may direct.*

(70) *In terms of Section 9A of the Special Court Act, the Hon'ble Special Court was conferred the exclusive jurisdiction to exercise powers and authority in relation to any matter or claim relating to any property standing attached under Section 3(3) of the Special Court Act. Further, in terms of Section 9A (3) of the Special Court Act, no Court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim with regard to any property standing attached in terms of the Special Court Act.*

(71) *In addition to the above, it is also pertinent to note that as per section 11(1) the Hon'ble Special Court has the power to dispose of the attached properties of notified parties. More importantly, as stated at the outset in this reply, as per Section 13 thereof, the Special Court Act has overriding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law.*

(72) *Without prejudice to the submissions above, it is further pertinent to put forth that Section 9A of the Special Court Act provides for the jurisdiction, powers, authority etc. of the Hon'ble Special Court. As per Section 9A (3), the power to adjudicate any non-compliance of any matter over which Hon'ble Special Court has jurisdiction vests only with the Hon'ble Special Court. The matters over which the Hon'ble Special Court can exercise its jurisdiction is also enlisted under Section 9A (1). The relevant clauses are being reproduced herein below:*

"9A. Jurisdiction, powers, authority and procedure of Special Court in civil matters.—

(1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994) the Special Court shall exercise all such jurisdiction, powers and authority as were

exercisable, immediately before such commencement, by any civil court in relation to any matter or claim—

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

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

(2) ..

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994), no court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1)."

(73) *From the powers and jurisdiction of Special Court as provided under Section 9A read with Section 13 of the Special Court Act, it is abundantly clear that violation, if any, arising out of the transaction with respect to the securities hereunder, is under sole jurisdiction of the Hon'ble Special Court and SEBI cannot have jurisdiction thereof.*

(74) *It is further explained hereunder that the buy back as carried out by the Company were with respect to the Securities which were attached by the Custodian pursuant to the provisions under section 3(3) of the Special Court Act. Thus violation (if any) with respect to the buy-back of Securities (which is a property under Section 9A(l)(a)) can only be adjudged and taken cognizance of by the Hon'ble Special Court only.*

(75) *In fact, the Hon'ble Supreme Court of India in its judgment dated November 8, 2011 passed in the matter of Ashwin S. Mehta v Union of India & Ors. [2012 (1) SCC 83] has observed as follows:*

"it is plain that the Special Court Act which is a special statute, is a complete code in itself. The purpose and object for which it was enacted was not only to punish the persons who were involved in the act of criminal misconduct by defrauding the banks and financial institutions hut also to see that the properties, movable or immovable or both, belonging to the persons notified by the Custodian were appropriated and disposed of for discharge of liabilities to the hanks and financial institutions, specified government dues and any other liability".

(76) *The inter-play between the SEBI Act and the Special Court Act has been considered by courts. The SEBI Act came into force on January 30, 1992. The Special Courts Act came into force later in time - with effect from June 6, 1992. Parliament was aware of the SEBI Act's existence when making the Special Court Act and consciously provided for a non-obstante provision to enable an overriding character to the Special Court Act when dealing with properties of notified persons. The general ouster of jurisdiction of civil courts in the SEBI Act (Sections 15Y and 20A) only relate to matters on which SEBI and the SAT would have jurisdiction - essentially, matters of regulatory intervention would be outside*

the pale of civil suits. Taking this into account, Parliament deliberately has chosen to give an overriding effect in the Special Court Act by using the non-obstante provision.

(77) It is a settled principle of interpretation that should there at all emerge any inconsistency between two legislation (in this case, there is a clear non-obstante provision in the Special Court Act and there is no doubt that the SEBI Act would have to yield), it is legislation that is made later in time that would prevail. So also, what can be done under the Special Court Act cannot be done by SEBI at all and therefore, there is no question of SEBI or the Hon'ble SAT being able to do what the Special Court and the Hon'ble Supreme Court (in appeal) can do. Some case law would make the position crystal clear.

(78) In Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. (2001) 1 SCR 932, the Supreme Court held:

"The Special Court (Trial of Offences Relating to Transactions and Securities) Act, 1992, provides in Section 13, that its provisions are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act....It is a settled side of interpretation that if one construction leads to a conflict, whereas on another construction, two Acts can be harmoniously constructed then the latter must be adopted. H an interpretation is given that the Sick Industrial Companies (Special Provisions) Act, 1985, is to prevail then there would be a clear conflict. However, there would be no conflict if it is held that the 1992 Act is to prevail. "

(79) In L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd., (2004) 11 SCC 456 at page 470, the Supreme Court observed:

"39. In terms of the provisions of the said Act, no period of limitation is prescribed, evidently because Parliament thought it to be wholly unnecessary. Once the statutory operation relating to the attachment of the property belonging to a notified person conies into being, the duties and functions of the Special Court start. In relation to the duties and functions required to be performed by a court of law, no period of limitation need be prescribed. Furthermore, Section 13 of the said Act provides for a non obstante clause which has been used as a device to modify the ambit of the provisions of law mentioned therein or to override the same in the specified circumstances. (See T.R. Thandur v. Union of India [(1996) 3 SCC 690], SCC para 8.) The said Act does not provide for any period of limitation, the reasons wherefor have been noticed hereinbefore and in that view of the matter, in our considered opinion, Articles 19, 28 and 55 providing for period of limitation prescribed would have no application. Section 13 of the said Act provides for a non obstante clause which is of wide amplitude. In a case of conflict between the said Act and any other .let, the provisions of the former shall prevail."

(80) *In Recovery Officer v Custodian & Others (2007) 7 SCC 461, the Supreme Court observed:*

"The language employed in Section 13 of the Special Courts .let is clear anti explicit when it says that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 also contains a similar clause that the provisions of the said Act and of any rules or schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulation) Act, 1976. In Solidaire India Ltd, (supra) the provisions of Section 13 of the Special Courts (Trial of Offences Relating To Transactions In Securities) Act, 1992 and Section 32 of the Sick Industrial Companies (Special Provisions) Act, 1985 were examined and it was held that both these Acts are special Acts and in such an event it is the later Act, namely, the Special Courts (Trial Of Offences Relating To Transactions In Securities) Act, 1992 which must prevail. Thus there can be no manner of doubt that the provisions of the Special Courts Act, wherever they are applicable, shall prevail over the provisions of the Income-tax Act."

(81) *In Bank of India v. Ketan Parekh, (2008) 8 SCC 148 at page 156, the Supreme Court held:*

"17. Section 13 clearly lays down that this Act will have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority. The analysis of these necessary provisions clearly establishes that once the property of a notified person is attached by the Custodian anti the same bovine been notified then the property of the notified person being movable or immovable shall he subject to the order passed by the Special Court and the manner in which properties for discharge of the liabilities would be dealt with has already been mentioned in Section 11 of the Act of 1992 and lastly that the provisions of this Act will have the overriding effect even on tribunals as is clearly and categorically mentioned in Section 13 of the Act of 1992. Therefore, in the scheme of things this Act has been given priority over all Acts. The Act of 1993 came for recovery of debts due to the banks and financial institutions. This Act also contains the overriding effect. Section 34 of the Act of 1993 clearly says that this Act will have the overriding effect for recovery of debts due to the banks and financial institutions. Both the Acts have non obstante clause.

28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause. Section 34 of the Act of 1993 starts with non obstante clause, likewise Section 9-A (sic 13) of the Act of 1992. But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the Act of 1993. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would

he that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the Act of 1993 came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the Act of 1993. "

(82) Thus, in terms of the aforesaid scheme of the Special Court Act, the following is abundantly clear:

a) The properties of the notified parties, which stood attached and were to be dealt with by the Custodian as per the directions of and under the exclusive jurisdiction of the Hon'ble Special Court and any issues concerning these properties are to be raised before and dealt with by the Hon'ble Special Court, and if at all, in appeal before the Hon'ble Supreme Court

b) If SEBI too has any grouse with a decision of the Hon'ble Special Court, the forum for doing so would have been the Hon'ble Supreme Court. SEBI took no such position when the matter was widely known and the auction was publicly conducted. Now, proceedings are being conducted nearly fourteen years later to impose penalty;

c) The Subject Shares having been sold in terms of and in exercise of powers under the Special Court Act and in terms of the approval given by the Hon'ble Special Court (presided over by a sitting judge of the Hon'ble High Court of Bombay); the jurisdiction of any other court/tribunal/authority (save and except the Hon'ble Supreme Court of India) is barred in terms of Section 9A and Section 13 of the Special Court Act;

d) Therefore, any issue concerning any alleged violation or non-compliance of any law or Regulation in respect of or relating to the sale of the Subject Shares by the Hon'ble Special Court, lies exclusively with the Hon'ble Special Court and no other forum. It is submitted that since the right to buy back their own shares was granted to companies and/or their management in terms of the order dated August 17, 2000 passed by the Hon'ble Special Court (and slightly modified by the Hon'ble Supreme Court of India); the jurisdiction to adjudicate any alleged violation in respect thereof, also vests exclusively with the Hon'ble Special Court and hence the present Notice is without jurisdiction.

e) It is submitted that the jurisdiction of SEBI is barred in terms of the Special Court Act being the special law, whereas the SEBI Act and regulations framed there under, are the general law. In view of the statutory scheme of the Special Court Act and the overriding effect it has over other laws; and

f) The SEBI Act and regulations framed there under have no application to the sale of the Subject Shares and/or any purported violation with regard

to their buy back by Apollo. Consequently, the SCN must be discharged at the threshold.

SCN is without Merit

(83) Without prejudice to the submission that SEBI does not have the necessary jurisdiction to adjudicate the issues raised in the Notice under reply, it is submitted that the sale of the Subject Shares was carried out in a fair and transparent manner and under close scrutiny of the Hon'ble Special Court (presided over by a sitting judge of the Hon'ble High Court of Bombay) - thereby obviating any scope for regulatory concerns about the objective of the SEBI Buy-back Regulations not being met.

(84) As has been stated hereinabove: -

- *a) the sale of the Subject Shares was carried out pursuant to a public advertisement floated by the Custodian;*
- *b) pursuant to the said advertisement bids were invited by the Custodian;*
- *c) bids received were scrutinized by a committee of experts i.e. the Disposal Committee, which made its recommendation to the Hon'ble Special Court;*
- *d) the Hon'ble Special Court at a hearing conducted in open court, examined the bids received and upon scrutiny of the bids identified the highest bid received and asked Apollo and/or its promoters to give an offer at a higher rate than the highest bid received;*
- *e) as against the highest bid of Rs. 80/- per shares received from Punjab National Bank by the Hon'ble Special Court, Apollo and the promoters together stated that they would be willing to purchase the shares at Rs. 85/- per shares;*
- *f) Punjab National Bank was given a further opportunity to match this price as offered by Apollo, but was not willing to increase the price offered by them;*
- *g) the Hon'ble Special Court intervened and asked Apollo and the promoters to increase their offer and put to them a proposal of purchase of the Subject Shares at Rs. 90/- per shares; and*
- *h) Apollo and the promoters agreed to effect an upward revision in their offer and sought time until May 2, 2003 to revert with necessary details of modalities of the purchase.*

(85) Thus, it will be clear from this public process that the sale of the Subject Shares was done in a fair and transparent manner after due advertisement to the public at large. It was open to any shareholder / institution / individual to have participated in the purchase of shares of Apollo. Indeed, it was open to other stakeholders (including SEBI) to bring to the attention of the Hon'ble Special Court, any objection or reservation about the Scheme - which could have been noticed and dealt with.

(86) As stated earlier, the provisions of the Special Court Act override all other legislation. Besides, SEBI is aware of the interplay between Company law and

its own jurisdiction when it comes to schemes of arrangement and has amended its regulations to provide for making observations and comments prior to a scheme of arrangement being considered by the High Court / Tribunal when it comes to schemes of arrangement. Till date, despite having conducted these proceedings, SEBI has not amended the SEBI Buy-back Regulations to make any such legislative intervention in relation to transactions under the Scheme under the Special Court Act.

(87) Therefore, without prejudice to the fundamental opposition to the SCN on the ground of jurisdiction, Apollo seeks to address regulatory objectives in this reply. In this context, the purpose of introducing Section 77A in the Companies Act, as noticed by the Hon'ble SAT in the case of D-Link (India) Ltd. v SEBI [(2008) 85 SCL 385 (SAT)] may be noticed:

"Section 77 of the Companies Act, 1956 (hereinafter called the Act) prohibits a limited Company from buying its own shares. The main reason for this prohibition is that it may amount to trafficking in its own shares thereby enabling the Company to influence the market price of its shares by reducing the floating stock. It also operates as a reduction of capital to the prejudice of the creditors. However, a report of the working group constituted by the Central Government recommending to provide buyback of shares was accepted and accordingly Sections 77A, 77AA and 77B were inserted by the Companies (Amendment) Act, 1999 and they provide for buy-back of its own securities by a Company subject to the safeguards specified therein.

The provisions of these sections (Sections 77A, 77AA and 77B) are administered by the Securities and Exchange Board of India (hereinafter referred to as the Board) in respect of companies already listed or companies which intend to get listed. With a view to administer the provisions of Section 77A of the Act, the Board in exercise of its powers conferred by Section 11(1) read with Section 30 of the Securities and Exchange Board of India Act, 1992 has framed the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998 (for short the buy-back regulations). These regulations apply to buyback of equity shares by a Company listed on a stock exchange. Buy-back regulations then provide methods in which a Company may buy-back its securities and this could be done from the existing security holders on a proportionate basis through the tender offer or from the open market."

(88) It is clear from a bare perusal of the SEBI Buy-Back Regulations as also the decision of the Hon'ble SAT (extracted above) that the applicability of Section 77A as also the SEBI Buy-back Regulations is to regulate a situation where the Company is on its own buying back shares from its existing shareholders - where a Company takes a voluntary commercial decision to effect a buy-back under the aegis of this regulatory framework.

(89) In fact, Regulation 4(2) of the SEBI Buy Back Regulations expressly provides as follows: -

"A Company shall not buy-back its specified securities from any person through negotiated deals, whether on or of the stock exchange or through snot transactions or through any private arrangement".

(90) Therefore, on the very face of it, the SEBI Buy-Back Regulations are meant to apply only in situations where any other legal framework that has overriding power and remit over the SEBI Act and regulations made thereunder, do not come into play. The Subject Shares were offered under the Scheme propounded by the Hon'ble Special Court in which Parliament has vested special powers. The purchase of shares by Apollo thereunder was from one person (i.e. the Custodian), through a negotiated deal. This was an offer for purchase of shares by the public - unlike in a conventional buy-back transaction where the Company offers to buy shares from the public. The price for a buy-back transaction is fixed by the board of directors of the Company whereas in the instant case, it was the Hon'ble Special Court that conducted and oversaw the transaction.

(91) Therefore, the SCN is without foundation inasmuch as it seeks to even apply the SEBI Buy-back Regulations to the participation by Apollo in the Scheme of the Hon'ble Special Court.

(92) Even the requirement to comply with Section 77A of the Companies Act, could be only in respect of such of its provisions as could apply to such a situation i.e. to extinguish the shares acquired and to factor in the statutory limits on the size of the networth that could be used for the buy-back. Apollo was in full, formal and substantive compliance with the same. Likewise, Apollo went out of its way to voluntary adopt some of the processes under the SEBI Buy-back Regulations to the extent it was practical and feasible purely from the spirit of transparency of process. Now, to have to face regulatory proceedings for alleged violation of these regulations and that too, having to face an allegation that participation in the Hon'ble Special Court's Scheme is illegal, is grossly unfair, untenable and unjust.

(93) It is pertinent to note that the Hon'ble Special Court while formulating the scheme for sale of shares (pursuant to which the Subject Shares were sold) in its order dated August 17, 2000, while specifying the norms for sale of controlling block of shares (similar to the Subject Shares) had specified as follows: -
'....once the highest offer is ascertained, the management of the Company should be given an option to buy the shares. This is to avoid destabilization of the Company".

(94) Thus, the option to buy back the shares was given to the Company to avoid its own destabilization. Therefore, Section 77A of the Companies Act was referred to only for the basic corporate law framework for the consequences of a buy-back and to be in conformity with other prudential aspects such as limits on size of buy-back, extinguishment of shares bought back etc.

(95) On the other hand, the SEBI Buy-back Regulations only govern the procedure to be followed in the case of a normal buy back and that too by listed companies

alone. These regulations do not even envision coverage of a Scheme propounded by the Hon'ble Special Court on which law has conferred special powers, backed by special legislation. Therefore, while the SEBI Buy-back Regulations have no application at all, the provisions of Section 77A of the Companies Act were a reasonable source of prudential limits that were complied with.

(96) As stated earlier, even today, SEBI has not amended the SEBI Buy-back Regulations to provide for any subordinate level intervention of review by SEBI before participating in the Scheme of the Hon'ble Special Court. With Schemes of Arrangement, SEBI has done so by amending the erstwhile listing agreement and then by providing for it in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(97) Therefore, in view of the above it is submitted that since the buyback of Subject Shares was done under a special Scheme overseen by the Hon'ble Special Court under the Special Court Act, which has overriding effect over the SEBI Act and was legislated later in time as compared with the SEBI Act, there is no question of the SEBI Buy-back Regulations becoming applicable.

(98) Since the buyback of shares by Apollo was not even a pari-passu offer to all shareholders as is the normal case, the compliance requirements of the SEBI Buyback Regulations do not even get attracted to the facts of the present case. To the extent it was practical and feasible, Apollo effected voluntary compliance as explained hereinabove.

(99) Without prejudice to each of the above, it is submitted that Apollo did not violate the provisions of the SEBI Buy Back Regulations as is sought to be alleged in the Notice under reply. Each of the allegations is set out below for ease of reference, with the response thereto.

Allegation: None of the methods for buyback as specified under Regulation 4(1) of the Buy Back Regulation were followed by Apollo for buyback of the subject shares

(100) This allegation is entirely unsustainable for the following reasons:

- *a) Regulation 4(1) of the Buyback Regulations enunciates three modes of buyback i.e.*
  - *(i) buyback of shares through tender offer;*
  - *(ii) buyback from the open market through- (x) book-building process, (y) stock exchange; and*
  - *(iii) buyback from odd-lot holders.*
- *b) It is humbly submitted that the methods prescribed under the buyback regulations is to provide level playing field and transparency to the existing shareholders to make informed decisions regarding participating in the buyback. However, in the present case, the prescribed methods could not have been complied with as it was done as per the directions of the Special Court which was limited to purchase of shares from the*

Custodian appointed by the Special Court and not from the shareholders of the Company. The non-applicability of the various methods prescribed under buy back regulations for the present case is as mentioned below:

First, buyback through Tender offer means an offer by a Company to buy back its securities through a letter of offer from the holders of the security of the Company. Tender means an offer made in writing by one party to another to execute certain work or supply certain commodities, etc., at a given cost; a bid. In this mode, specified securities are bought back by the Company at a certain price within a stated time limit, often in an effort to win control of the Company. In the instant case, it was the Hon'ble Special Court that floated a tender under the special Scheme under special law. Apollo was given an opportunity to buy back the shares at the highest price offered. Therefore, as per the direction of the Hon'ble Special Court, the buy-back of shares was to be only from the Custodian appointed by the Special Court at a pre-determined price. Therefore, the question of tender offer to shareholders does not arise.

Second, in a transaction of buyback from the open market, the Company intending to buy back its securities in accordance with the provisions of Section 77A, may buyback from the open market in compliance of buyback regulations. The buyback of shares or other specified securities from the open market may be through the Stock Exchange, or through book building process. It may be mentioned that as per the direction of the Hon'ble Special Court, the buy-back of shares was to be only from the Custodian appointed by the Special Court at a pre-determined price. Therefore, the question of purchase from open market through Book building process or Stock exchange does not arise

Finally, the term odd lot denotes those shares or other specified securities of a listed Company which are not in market lot fixed by the stock exchange. For example, if a market lot is 50 shares or other specified securities in numbers less or more than 50 will be treated as odd lot. The provision pertaining to buy back through tender offer will apply mutadis mutandis to odd lot shares or other specified securities. On the face of it, this is not at all in any manner remotely connected to participation in the Scheme of the Hon'ble Special Court.

c) *Therefore, it can be inferred that since the instant buy-back of shares was not a voluntary buy back and was as per the directions of the Hon'ble Special Court, there was no liberty for the Company to choose any prescribed mode of buyback as suggested in the Buy Back Regulations. The said prescribed methods were meant to protect the interest of the shareholders in general of the Company in case of a buyback and since in this case the buyback was not from the shareholders in general and was from the Custodian, any compliance with buyback regulations should start after this stage of prescribed methods of buy-back.*

d) *Further, it will be seen that this allegation boils down to alleging that the very participation in a framework laid down under special law is illegal. It*

is not at all open to SEBI to level such an allegation - quite apart from the jurisdictional arguments made above. SEBI did not raise any such objection before the Hon'ble Special Court. SEBI has not even amended even today, its regulations, which it has done with schemes of arrangement.

In addition, it is noteworthy that in all of these abovementioned modes/routes of buyback of shares, the "Company" initiates the process of buyback of shares. In the facts of the present case, the buyback transaction was admittedly as a result of the Orders passed by the Hon'ble Special Court dated April 30, 2003 and May 2, 2003 and thereafter confirmed by the Hon'ble Supreme Court in its Order dated November 8, 2011.

e) *It may be mentioned that Mr. Ashwin S. Mehta, who challenged the buyback of shares by Apollo and purchase of shares by its promoters by way of an appeal before the Hon'ble Supreme Court of India, had inter alia prayed that the Hon'ble Supreme Court should set aside the said sale / buy-back of shares and direct fresh sale thereof. The Hon'ble Supreme Court of India, in its reasoned order dated November 8, 2011, did not interfere with the Subject Shares acquired by Apollo and extinguished in any manner whatsoever.*

f) *Therefore, from the facts and circumstances of the case, it can be inferred that the direction for compliance with Section 77A of the Companies Act, never envisaged any compliance with Regulation 4(1) of the Buy Back Regulations.*

(101) In addition to aforesaid, it is also well settled principle of law that a statute cannot be interpreted as such which would lead to absurdity, hardship or injustice and if an interpretation leads to absurdity then the purpose approach is to be followed that is to go to the purpose of the enactment.

(102) Herein in the present case, if the directions of the Supreme Court to carry out the buyback in compliance with the SEBI Buy-back Regulations as if this were a routine and normal buy-back transaction, ignoring the context of the Subject Shares being a "controlling block of shares" being auctioned by the Hon'ble Special Court with special powers that formulated a special Scheme, it would defeat the very essence of the directions of the Hon'ble Supreme Court, and moreover will lead to significant absurdity and would further nullify the very object of the direction of the Supreme Court and also the Hon'ble Special Court.

(103) To pluck Regulation 4(1) of the SEBI Buy-back Regulations out of context leads to many absurd consequences. Regulation 4(1) is logical only if the purchase were part of the scheme of the regulations, and not pursuant to the special Scheme of the Hon'ble Special Court. For example, Regulation 4(2) of the same Regulations prohibits negotiated deals of any nature. The transaction in question was negotiated in open court in a bidding process with options to match and better the highest price being offered. The purchase of shares was from a single party i.e. the Custodian at a pre-determined price. Therefore, as stated earlier,

for the SCN to be valid, SEBI would have to go as far as to say that the Hon'ble Supreme Court-approved special scheme from the Hon'ble Special Court is illegal. This would be totally absurd in the light of the scheme of the Special Court Act and the conscious overriding nature given to it.

(104) What is important to note herein that the aforesaid Regulation is not applicable in the present case since herein the Company had carried out the buy back as per the directives of the Hon'ble Supreme Court of India and the Hon'ble Special Court under the provisions of the Special Court Act, 1992. Thus, if the transaction itself is contrary to Regulation 4(2) then it cannot be argued that Apollo is in non-compliance with Regulation 4(1).

Allegation: Failure to file a copy of the board resolution dated April 24, 2003 authorising the buyback with SEBI and the concerned Stock Exchanges as per Regulation 5A of the Buy Back Regulation

(105) The allegation that Apollo has failed to submit the Board resolution dated April 24, 2003 "authorizing the buyback" with SEBI, it is most respectfully submitted, is incorrect for the following reasons:

a) As has been submitted hereinabove, the resolution dated April 24, 2003 was merely an enabling resolution, authorizing the officials of Apollo to attend the Hon'ble Special Court as and when called upon to do so, and negotiate with the Hon'ble Court to buy back shares (if given an option) as and when the matter for sale of shares of Apollo was taken up by the Hon'ble Special Court;

b) The said resolution in fact was not a resolution "authorizing the buyback" within the meaning of the phrase under the SEBI Buy-back Regulations. It is submitted that as on the date of passing of the said resolution; i.e. on April 24, 2003, it was not even certain that the Company would buy back any shares, or the quantum thereof, or the price for the same etc.;

c) Since the Company was only going to be given an option to buy-back at or above the highest price offered by other bidders, there could have been a situation where the highest price ascertained through the bidding process was not acceptable to the Company and/or the Company would not have been in a position to offer the same/higher price;

d) The attempt to fit Regulation 5A, akin to the attempt to fit Regulation 4(1) constitutes an attempt to fit a square peg in a round hole. The reality is that the SEBI Buy-back Regulations have no application whatsoever to the transaction in question.

e) Further, even the quantity of shares which would be so offered to the Company by the Hon'ble Special Court was not known and what quantity the Company would actually choose to buyback out of such offered quantity was not known. In fact, on the date of the said Resolution, it was not even known if or when the Hon'ble Special Court would make the said offer to the Company. Therefore, the said Resolution was only in anticipation of a future uncertain event, and was only authorizing Apollo officials to attend the Hon'ble Special Court to hear the offer and negotiate the same if appropriate.

f) *It is evident from a bare perusal of the resolution dated April 24, 2003 that neither the number of shares to be bought back nor the price at which the said shares are to be bought back were approved by the board of directors. Hence, it cannot be alleged that the said resolution "authorized" the buyback of shares within the meaning of the term under the SEBI Buy-back Regulations. Nor can it be said that this was the resolution authorising the purchase of the Subject Shares that were ultimately bought by Apollo; i.e. 36.90 lakh shares at Rs. 90/- per shares.*

g) *The background facts set out above make it clear that the price of the shares bought back by Apollo were pursuant to a negotiation during the course of a hearing in open Court before the Hon'ble Special Court on April 30, 2003 and hence did not find any mention in the resolution dated April 24, 2003.*

(106) The buyback of the Subject Shares was actually approved by the board of Apollo on May 9. 2003 on which date the board passed the following resolution:

".RESOLVED THAT the Company do buy-back 36,90,000 shares of Rs. 10/- each of the Company at Rs. 90/- per shares, details whereof are placed before the Board and initialed by the Chairman for identification, aggregating to Rs. 33.21 crores, belonging to Harshad Mehta Group in line with the orders of the Hon'ble Supreme Court of India and the Hon'ble Special Court at Mumbai, as per the details of the bid dated 27th March 2003 called by the Custodian, at the price as agreed upon before the Special Court for the purposes of buy-back

RESOLVED FURTHER THAT the Company do make the payment of Rs. 33.21 crores to the Custodian, take authorization in demat form from the Custodian for delivery of the bought back shares.

RESOLVED FURTHER THAT the Company do cancel the shares bought back from the Custodian as stated hereinabove."

(107) It is clear from a bare perusal of the said resolution dated May 9, 2003 that the said resolution actually "authorized" the buyback of the Subject Shares as contemplated in Regulation 5A of the Buy Back Regulations. It is a well-acknowledged position that this resolution dated May 9, 2003 was admittedly submitted to SEBI under cover of a letter dated May 10, 2003; i.e. one day after the resolution dated May 9, 2003 was passed by the Board of Apollo, thereby duly complying with the requirements of Regulation 5A of the Buy Back Regulations. A copy of the letter dated May 10, 2003 has been submitted to SEBI vide our letter dated December 28, 2012 and is also annexed at Annexure CC.

(108) It is pertinent to note that the obvious object, purpose and intention of the provisions of Regulation 5A of the SEBI Buy-back Regulations is the disclosure of the information that a buy-back is proposed by the Company. The underlying reason is that buy-backs are meant to be proportionately available to all shareholders. In the instant case, as seen above, it was not even a case of a buy-back being offered to all shareholders, but on the contrary, a situation of shares being available from the Custodian, Apollo was given an opportunity to

buyback the shares at the highest price received- so that any premium could be extracted from Apollo, which the Hon'ble Special Court did extract.

(109) Such an extraordinary arrangement was only legally possible because of the special law under the Special Court Act being used, such law being overriding in nature not only over general law governing buy-back under regulations made under the SEBI Act, but also because the Special Court Act was legislated later in time, and with a specific non-obstante provision to have overriding effect over all other laws including the SEBI Act. The terms of the purchase by Apollo were dictated and overseen by the Hon'ble Special Court. Therefore, Regulation 5A could have had no application whatsoever to the facts of the present case.

(110) Thus, in view of the above it is most respectfully submitted that no violation of Regulation 5A of the Buy Back regulations is made out against Apollo and consequently there is no basis, rationale or justification to levy any penalty under Section 15HB of the SEBI Act.

(111) Without prejudice to the aforesaid, it is submitted that in any event there was a lacuna or ambivalence or lack of any clarity in the said Regulation 5A, since the said Buyback Regulations never envisioned or provided for a situation such as the present one. Therefore, in any event, Apollo is entitled to the benefit of the doubt, since Apollo interpreted and understood the said Regulation 5A as meaning that only the actual final "authorization" of the buyback was required to be filed, and not previous Resolutions which only authorized the Company's officials to attend the Court hearing and negotiations.

(112) Without prejudice to the aforesaid, it is submitted that in any event the alleged violation is merely technical and venial and invites no penalty.

Allegation: Exceeding time limit specified under Regulation 19(7) of the Buy Back Regulation to issue public notice

(113) Regulation 19(7) provides that "the Company shall within two days of the completion of buv-back issue a public advertisement. An allegation that Apollo violated this requirement is untenable for much the same reasons as articulated above.

(114) Without prejudice to the foregoing, it is most respectfully submitted that the notice under reply does not identify clearly the breach of Regulation 19(7) inasmuch as it vaguely alleges that Apollo has "exceeded the time limit specified under Regulation 19(7)".

(115) There is no specificity of what was required to be communicated and when it was to be communicated. This is critical under this allegation particularly since, for the reasons spelt out above, there is no question of the transaction in question at all fitting within the scheme of the legislative framework under the SEBI Buy-back Regulations. If the rest of the framework of these regulations were at all applicable, it would be logical and fair to expect the timeline of completion, and

the post-completion requirement being comprehensible in a reasonable and logical manner.

(116) Without prejudice to the aforesaid, it is submitted that the full payment for the purchase of the Subject Shares was directed by the Hon'ble Special Court vide its order dated May 2, 2003 to be made within 15 days commencing from that date. Therefore, Apollo had time until May 17, 2003 to make payment and complete the transaction in question. Therefore, it would be obvious that the deadline for "completion" was May 17, 2003, and if at all one were to force-fit the instant transaction into the regulations, the deadline would have to be computed in relation to May 17, 2003.

(117) Further, in terms of Section 77A of the Companies Act any Company buying back its own shares is prohibited from holding the said shares and further as per Section 77A(7) is mandatorily required to extinguish the said shares physically "within 7 days from the last date of completion of buy-back". Therefore, after full payment, Apollo wrote to the Central Depository Services (India) Ltd. on May 12, 2003 to extinguish the 36.90 lakh shares bought back by Apollo. A similar letter was addressed to the National Securities Depository Ltd. on May 12, 2003. The relevant extract of Section 77A(7) is reproduced herein below:

> *(7) Where a Company buy-back its own securities, it shall extinguish and physically destroy the securities so bought-back within seven days of the last date of completion of buy-back.*

(118) Further on May 15, 2003 the Central Depository Services (India) Ltd wrote to Apollo confirming the reduction in share capital of Apollo in view of extinguishment of shares. A similar letter was received from the National Securities Depository Ltd. on May 23, 2003.

(119) Pursuant to the buyback of shares and the instruction to the depositories on the extinguishment of the shares, in compliance of Section 77A (7) of the Companies Act, Apollo updated its 'Register of Securities Bought Back' as required to be maintained in terms of Section 11A (9) of the Companies Act on May 15, 2003.

(120) Without prejudice to the submissions above, presuming the buyback process was only completed once the share capital of Apollo was reduced and the 'Register of Securities Bought Back' was updated on May 15, 2003. Admittedly, the public notice (if one were to consider as being required to be issued in terms of Regulation 19(7) of the SEBI Buy-back Regulations) was in fact issued on May 13, 2003; i.e. two days prior to the actual completion of the buyback. Therefore, even if one were to force-fit the applicability of Regulation 19(7) of the SEBI Buy-Back Regulations to the facts of the case, it would follow that Apollo had complied well in time and by a wide margin.

(121) Without prejudice to the aforesaid, it is submitted that it is pertinent to bear in mind that Mr. Ashwin S. Mehta had challenged the buyback of shares by Apollo and purchase of shares by its promoters by way of an appeal before the Hon'ble Supreme Court of India. In the appeal before the Hon'ble Supreme Court; it was

inter alia prayed that the Hon'ble Supreme Court should set aside the said sale / buy-back of shares and direct fresh sale thereof. Therefore, in fact, the said buyback was under challenge and it could have been set aside by the Hon'ble Supreme Court.

(122) However, the Hon'ble Supreme Court did not interfere with or set aside the said buyback of shares. The Hon'ble Supreme Court of India delivered its judgment only on November 8, 2011 wherein the sale of 4.95% shares bought by the promoters of Apollo was set aside but the Subject Shares acquired by Apollo and extinguished was not interfered with in any manner whatsoever.

Allegation: Public Notice did not contain pre- and post-transaction shareholding pattern as specified under Regulation 19(7) of the Buy Back Regulations

(123) The allegation that the public notice issued by Apollo did not contain the pre- and post-transaction shareholding pattern is also untenable. Without prejudice to Regulation 19(7) being wholly irrelevant and inapplicable, the information containing the pre- and post-transaction shareholding pattern was in fact available in the public domain and was duly updated by Apollo upon completion of the extinguishment of the Subject Shares.

(124) The following filings/disclosures made by Apollo make it clear that due disclosure of the pre- and post-transaction shareholding pattern was made by Apollo:

a) Disclosure under Clause 35 of the Listing Agreement made on April 7, 2003 containing distribution of shareholding as on March 31, 2003 - i.e. before the buy-back. This disclosure was made to all the concerned stock exchanges where the shares of Apollo were listed. It was uploaded on the websites of the concerned stock exchanges. A copy of the said disclosure made is annexed herewith and marked as Annexure DD.

b) Form 4(c) as prescribed in terms of Section 77A of the Companies Act was filed with the Registrar of Companies on May 12, 2003, which also contained the pre- and post-transaction shareholding pattern of Apollo. A copy of Form 4 (c) is already enclosed hereinabove.

c) Disclosure under Clause 35 of the Listing Agreement made on July 3, 2003 containing distribution of shareholding as on June 30, 2003; i.e.; post-transaction. This disclosure was made to all the concerned stock exchanges where the shares of Apollo were listed and in line with the practice at the relevant point in time, this disclosure was uploaded on the respective websites of the concerned stock exchanges. A copy of the disclosure made is annexed herewith and marked as Annexure EE.

(125) The afore-stated facts make it abundantly clear that Apollo had no intention of withholding or suppressing any information with respect to the pre- and post-transaction shareholding pattern of the Company. In fact, during the relevant time, the said information was widely disseminated and fully available in the public domain.

The Unfounded Allegations are all Technical and Venial

(126) Without prejudice to each of the aforesaid, it is submitted that the Notice under Reply only seeks to allege defaults/violations, which are purely technical and venial in nature. It is submitted that it is well settled law that in case an entity is held to have made a technical or venial lapse, there is no justification to levy any penalty.

a) In fact, even in a recent judgment of the Hon'ble Supreme Court in the matter of Siddharth Chaturvedi V/s. SEBI ((2016) 12 SCC 119) it has been inter alia held that :-

"... In fact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed.... "

b) The Hon'ble Bombay High Court in SEBI v. Cabot International Capital Corporation (MANU/MH/0090/2004) has held that SEBI may refuse to levy penalty in instances where the breach is venial or too trivial.

c) The Hon'ble Securities Appellate Tribunal, has held repeatedly, in various judgments, including in the cases of R.R. Chokhani v. SEBI (Misc. Application No. 94 od 2013 and Appeal No. 217 of 2012), Finquest Securities Pvt. Ltd. v. SEBI (Appeal No. 119 of 2013), and Samkit Shares and Stock Brokers Pvt. Ltd v. SEBI (Appeal No. 53 of 2003) that in cases of a venial breach; i.e.; an inadvertent breach, no penalty should be imposed. It has been further held that where the lapse is technical, unintentional and does not involve any monetary loss to any party, mere warning to comply with norms of the SEBI is sufficient, and no penalty ought to be imposed. The relevant paragraph from the aforesaid judgment in the said case of R.R. Chokhani v. SEBI is reproduced below for convenience of reference

"In view of above said discussion of law, facts and precedent cited above, in present case also we are convinced that a mistake of venial nature has inadvertently occasioned. Moreover, error has been rectified immediately on being brought to notice of appellant. In these circumstances, when the lapse is technical, unintentional, and does not involve monetary loss to any party in our opinion, on facts of present case, it would have been just and proper to warn the appellant to be more diligent in complying regulatory norms prescribed by SEBI instead of imposing penalty... "

d) Further, as held by the Hon'ble SAT, in its Judgment dated 31.08.2004 in the case of Reliance Industries Limited v SEBI (Appeal No. 39/2002), the "...role of the regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, has maintained a good track record. The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence..." .

(127) Without prejudice to the above, it is also submitted that the present case is not a fit case for levy of any penalty as none of the ingredients of Section 15J of the SEBI Act are applicable to the facts of the present case. It is submitted that Section 15J of the SEBI Act provides that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors:

a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) The amount of loss caused to an investor or group of investors as a result of the default;

c) The repetitive nature of the default

(128) It is most respectfully submitted that none of the factors enumerated in Section 15J of the SEBI Act are attracted to the facts of the present case. It is submitted that the breaches alleged being merely of a technical nature, Apollo has in no manner gained or procured an unfair advantage. As has been stated above, Apollo acted under legal advice qua the compliance with applicable law, and effected voluntary compliance with the spirit and purpose behind the provisions of Section 11A and the SEBI Buy-back Regulations. Therefore, any violation that is alleged to have been committed by Apollo was inadvertent, unintentional and hence no penalty ought to be levied on Apollo for such alleged breaches.

(129) It is also submitted that no loss has been caused to any investor or group of investors as a result of the defaults alleged in the Show Cause Notice (in themselves, untenable and highly contentious). It is submitted that since the buyback of shares was from the Custodian and not the public at large, no harm, prejudice or damage whatsoever has been caused to any shareholders. It is submitted that since the said alleged violations have caused no gain to Apollo or any loss to anyone, there is no justification to levy any penalty, as inter alia also held by the Hon'ble Securities Appellate Tribunal in the matter of Samrat Holdings Ltd. v SEBI [Appeal No. 23/2000].

Ashwin Mehta's Interest Taints the Allegations

(130) The only person who has sought to assail the buyback is Mr. Ashwin S. Mehta and others, who are "notified" entities under the Special Court Act. They are the parties who are responsible for the scam that resulted in the Special Court Act being enacted. They are the parties because of whose misconduct and mischief the whole problem arose. It is because of their actions and to recover the money owed by them to the banks and financial institutions that the subject shares were put to sale by the Hon'ble Special Court. It was because of them and the said sale of a "controlling block" that Apollo was constrained to expend huge amounts to Buyback the said subject shares to avoid destabilization of the Company. Apollo suffered loss of liquidity due to the same, but the public shareholders have benefitted by the reduction in capital and consequent increase in the value of their shares.

(131) Yet, SEBI is now acting on the purported complaint and has issued the said show cause notice pursuant to their purported complaint by disgruntled persons, who

have not hesitated to level allegations even against SEBI. By no stretch of imagination are they parties who have come before SEBI with clean hands, nor are they entitled to any equities. Apollo has suffered years of litigation, harassment and the huge costs involved in the same and the Buyback because of them. It is therefore submitted that it is totally unfair, unjust and inequitable to now levy any penalty on Apollo pursuant to the said show cause notice or otherwise.

(132) Lastly, it is submitted that all the breaches alleged in the Notice under Reply are singular instances and are not repetitive in nature, hence even on this ground there is no reason or justification to levy any penalty on Apollo.

(133) In view of the submissions made hereinabove, Apollo submits that the present proceedings be closed and dropped against Apollo and no penalty be levied on Apollo."

9. As noted above, the hearing for Shri Ashwin Mehta and other applicants was scheduled on January 04, 2018. On the scheduled date of hearing, Shri Anil Shah, Advocate, Juris Matrix Partners LLP attended the hearing on behalf of Shri Ashwin Mehta and other applicants as their Authorized Representative ("AR"). The undersigned explained to the AR that the scope of the present proceedings is limited to adjudicating under Section 15HB of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, the violations of certain provisions of the SEBI (Buy Back of Securities) Regulations, 1998 alleged to have been committed by M/s Apollo Tyres Limited and that the opportunity of the hearing has been provided to the applicants in terms of the directions of the Hon'ble Securities Appellate Tribunal dated December 30, 2016. The AR undertook to file written submissions in the matter by January 09, 2018.

10. As noted earlier, the Noticee had been granted an opportunity of hearing on January 05, 2018. On the scheduled date of hearing, Shri P. N. Wahal, Shri P. N. Modi, Shri Manu Nair, Shri Neville, Shri Neelabh Shreesh and Shri Pavan Kumar Vijay appeared as ARs of the Noticee. The ARs reiterated the contents of the Noticee's reply dated December 26, 2017.

11. Thereafter, the applicants filed written submissions in the matter vide a letter dated January 04, 2018 which was received on January 09, 2018. The applicants in their written submissions *inter alia* stated the following:

(1) "I am addressing the present preliminary Written Submissions on my own behalf as well as on behalf of my family members whom I have been representing as their Constituted Attorney. Please note that the power of attorney drawn in my favour by my family members can be produced at the time of the hearing.

(2) We refer to the Adjudicating proceedings in the matter of Apollo Tyres Limited (ATL) and refer to your letter no. SEBI/HO/A&E/EAD/K3/AA/31789/2017 dated 15.12.2017 granting us an opportunity to appear before you on 04.01.2018. We submit that your Notice No. SEBI/HO/A&E/EAD/KS/AA/ 30525/2017 dated 06.12.2017 granting us an opportunity to appear before yourself on 11.12.2017 at 02.30 pm was received by us on 11.12.2017 at 03.30 pm and since no meaningful opportunity was granted vide our letter dated 12.12.2017 we had sought a proper opportunity for the hearing and now we thank your kindself for granting us another date on 04.01.2018. We are only aggrieved by the fact that in the notice fixing the time on 4.1.2018 of non-appearance on 11.12.2017 instead of attributing it to the failure of giving a notice with adequate time. The records put the blame on us. We therefore humbly pray that no such adverse record may be created against us particularly taking into account that facts that this is a complaint where Hon'ble Supreme Court has issued directions to SEBI under two separate orders dated 11.02.2013 and 26.8.2013, hereto annexed and marked as Annexure A and B respectively to examine our complaint a time bound manner without getting influenced by the judgment delivered by it. That the Hon'ble SAT in its order dated 30.12.2016, hereto annexed and marked as Annexure C has also directed your kindself to exercise your discretion whether an opportunity of hearing should be granted to us and also the fact that a number of letters have already been addressed by us including to the Hon'ble Chairman of SEBI time and again requesting for a personal hearing as our complaint dated 09.09.2011, hereto annexed and marked as Annexure D, which has not been replied to and which prayers have not been granted till date. However, we yet thank your kindself for granting us this opportunity of representing ourselves.

(3) At the outset we place on record the true and correct facts as under

(a) We (the Noticees) are all notified entities notified by the Custodian u/s.3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (herein after referred to as "the TORTs Act"). That all the Noticees save and except Smt. Rasila S Mehta and Smt. Rina S Mehta, Noticee 7 and 8 respectively, have been notified by Custodian on 08.06.1992 in terms of Section 3(2) of the TORTs Act and Smt. Rasila S. Mehta and Smt. Rina S. Mehta, Noticee 7 and 8 respectively have been notified by the Custodian on 04.01.2007.

(b) *The Noticees state that upon being so notified u/s.3 (3) of Torts Act, all their assets got attached whether such assets were in the possession of the Noticees or lying in the hands of third parties. That under the provisions of Torts Act there is an automatic attachment of assets even in the hands of third parties for which there is no requirement for the Hon'ble Special Court or Custodian to pass any separate order for attachment. In fact, Section 3(3) of the Torts Act carries a non-obstante clause because of which such automatic attachment of assets cannot be contested by persons in possession of such assets adopting defenses available under the general law. They carry an obligation to come forward and disclose possession of such attached assets and hand them over to Custodian or face adverse consequences.*

(c) *That even Section 13 of the Torts Act lays down that the provisions of this Act will prevail upon provisions of the other Acts and it is respectfully submitted that the provisions of the Torts Act will prevail upon even the provisions of the SEBI Act to the extent they are contrary to the provisions of the Torts Act. Thus attachment of assets and its recovery are given supremacy by the Parliament to achieve the objects for which the Torts Act is promulgated.*

Please find reproduced below Section 13 of the Torts Act for ready reference:
13. Act to have overriding effect.—the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority.

(d) *It is submitted that in the present case, recovery of attached shares from ATL who has illegally bought back the said 36.9 lakh equity shares of Rs.10/- each ought to be given utmost priority by your august institution. That as per settled law, no title would pass over to ATL since it has bought back and extinguished the subject shares illegally and in gross violation of order of Hon'ble Supreme Court approving the scheme governing sale of shares on 23.08.2001, hereto annexed and marked as Annexure E, have failed to make compliance with the terms and conditions governing sale of shares including several essential conditions, have already been found to have colluded with Custodian who have extended favours to ATL and its management and that Hon'ble Supreme Court has already found the sale of shares to be contrary to the scheme and violative of principles of natural justice. In support of above contentions, the Noticees rely upon several judgments of Hon'ble Supreme Court passed during past 25 years interpreting the aforesaid provisions of the Torts Act wherein the issue of recovery of attached assets has been given supremacy by Hon'ble Court where conflicts have occurred between the provisions of the Torts Act and the other statutes. These Judgments are as under:-*

i. *Solidaire vs. FFSL reported as (2001) 3 SCC 71. Hereto annexed and marked as Annexure F.*
ii. *Virendra Saigal & Ors. vs. A. K. Menon & Ors reported as (2003) 12 SCC 777. Hereto annexed and marked as Annexure G.*

iii. *L.S. Synthetic vs. FFSL reported as (2004) 11 SCC 456. Hereto annexed and marked as Annexure H.*

iv. *TRO & Ors. vs. Custodian reported as (2007) 7 SCC 461. Hereto annexed and marked as Annexure I.*

That in all the above cases the other statutes have been made to sub-serve the interest of recovery of attached assets as contemplated under the provisions of Torts Act.

(e) *That most notable of the above judgments is the judgment directed by 3 Judges in the case of L.S. Synthetics vs. FFSL reported as (2004) 11 SCC 456 where the Hon'ble Supreme Court has even cast a duty on Hon'ble Special Court to recover the attached assets of notified persons lying in the hands of third parties whenever the facts relating to it are brought to its notice either by notified persons or by Custodian or by any other means. It is laid down that for recovering the attached assets; no law of limitation is applicable.*

(f) *It is further submitted that even vide Para 33 in the relevant judgment dated 08.11.2011 of Hon'ble Supreme Court in CA 4263 of 2003 being Ashwin S. Mehta vs. Union of India reported as (2012) 1 SCC 83, hereto annexed and marked as Annexure J, the Hon'ble Supreme Court while ordering recovery of 17,88,850 equity shares of ATL of Rs.10/- f.v. held as under:-*

> *Para 33: "It is plain that the Special Court Act which is a special statute is a complete code in itself. The purpose and object for which it was enacted was not only to punish the persons who were involved in the act of criminal misconduct by defrauding the banks and financial institutions but also to see that the properties, movable or immovable or both, belonging to the persons notified by the Custodian were appropriated and disposed of for discharge of liabilities to the banks and financial institutions, specified government dues and any other liability. Therefore, a notified party has an intrinsic interest in the realizations, on the disposal of any attached property because it would have a direct bearing on the discharge of his liabilities in terms of Section 11 of the Special Court Act. "*

(g) *It is submitted that when the scheme governing sale of shares was formulated and put up for approval before Hon'ble Supreme Court, maximum emphasis was laid by it on realizing highest prices for the attached shares and for the purpose the Hon'ble Supreme Court injected flexibility in the scheme and suitably modified the same.*

(h) *It is submitted by the Noticees that they are pursuing recovery of 3.69 crore shares of ATL of Rs.1/- f.v. presently valued at about Rs.1000 crores from the company as the shares were bought back by the company in gross violation of scheme governing buy-back of shares and also because the company misrepresented and played a fraud on Hon'ble Supreme Court by falsely stating that it bought back the subject 36.9 lakh shares by making compliance with SEBI Regulations governing Buy Back of shares as recorded in Paras 23, 25*

and 48 of the aforecited judgment. That on the above ground alone, SEBI should recover the subject 3.69 crore attached shares of ATL of Rs.l/- each as the same are proposed to be used by the Noticees to discharge the claims made on them by the Income Tax department, the banks and others. Thus the recovery of above shares involves substantial public interest.

(i) *It is submitted that infact the Hon'ble Supreme Court held in Para 48 of their aforecited judgment as under:-*
Para 48 : "This brings us to the question of relief. In view of our finding that the decision of the Special Court is vitiated on the aforestated grounds, it must follow as a necessary consequence that in the normal course, the impugned order must be struck down in its entirety. However, bearing in mind the fact that the sale of 54,88,850 shares was approved and all procedural modalities are stated to have been carried out in the year 2003, we are inclined to agree with Mr. Vellapally and Dr. Singhvi that at this stage, when 3690 lakh shares of Apollo are claimed to have been extinguished, the relief sought for by the appellants to rescind the entire sale of 54,88,850 shares will be impracticable and fraught with grave difficulties."

(j) *That admittedly the Hon'ble Supreme Court has not dealt with all the contentions of the Noticees in their aforecited judgement as the sale of shares of ATL was set aside on some limited grounds which found favour with the Hon'ble Supreme Court and which are enumerated in Paras 44 and 46 of the judgment. Infact the Hon'ble Supreme Court has clarified in Para 47 that in the view that it has taken it deemed it unnecessary to deal with the other contentions urged on behalf of the Appellants on the merits of the impugned order. It is in the aforesaid background that the Noticees humbly submit to SEBI to examine all the violations committed by ATL and its promoters and not confine itself only to violations u/s.77(A) of the Companies Act and SEBI (Buy-back of Securities) Regulations Act, 1998.*

(k) *In support of above contentions the Noticees submit that ATL and the three investment companies belonging to their promoters jointly bought 15.1% of the equity capital of the company. That ATL and its promoters have always earlier submitted before Hon'ble Special Court and Hon'ble Supreme Court that SEBI Regulations governing Takeover of companies were applicable. That even the order passed approving the Scheme governing sale of shares as also the terms and conditions governing the sale laid down and stipulated that the bidders of the shares will be required to make compliance with SEBI Regulations on Takeover of companies viz. the SAST Regulations. That Noticees are aggrieved that after purchasing 15.1% equity capital of Company under the sale, neither ATL nor the investment companies make open offer for purchase of 20% of the equity of ATL. That the Custodian has ever sought compliance from them of the aforesaid conditions governing sale of shares. Thus by the purchase of shares, ATL and the investment companies of the promoters have also violated SEBI SAST Regulations. Under the circumstances, it is humbly prayed that your kindself may also examine aforesaid clear violations of SAST Regulations.*

(l) *The Noticees submit that thereafter they filed proceedings and placed the facts and evidence before Hon'ble Supreme Court that ATL had played a fraud upon them by making aforesaid misrepresentations and after hearing the parties, the Hon'ble Supreme Court issued directions to SEBI under two orders dated 11.02.2013 and 26.8.2013 to examine the complaint filed by the Noticees uninfluenced by their judgment dated 08.11.2011. In essence SEBI ought to examine each and every violation of the SEBI Regulations governing buy-back of shares in compliance with the directions given to it by Hon'ble Supreme Court particularly since the violations are committed by ATL with impunity and full consciousness to derive a huge monetary benefit for it at the cost of Noticees in turn at the cost of all the aforesaid public bodies. That thus the attached shares of ATL illegally extinguished are required to be recovered from it.*

(m) *That the Custodian is appointed u/s 3(2) of the TORTs Act and his duties, responsibilities; role and functions are very well defined under the TORTs Act and through various Judgments delivered by the Hon'ble Special Court and Hon'ble Supreme Court of India over past 25 years.*

(n) *That ATL is a corporate entity, whose securities and listed and quoted on Stock Exchanges. That the said ATL failed to comply with Regulation 5A and 19(7) of SEBI (Buy Back of Securities) Regulations, 1998.*

Please find reproduced below Regulation 5A and 19(7) of SEBI (Buy Back of Securities) Regulations, 1998 for ready reference:

Board resolution

5A. A company, authorized by a resolution passed by the Board of Directors at its meeting to buy back its shares or other specified securities under first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the
Companies (Amendment) Act, 2001, shall file a copy of the resolution, with the Board and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Obligations of the company

19 (7) The company shall within two days of the completion of buy-back issue a public advertisement in a national daily, inter alia, disclosing:

(i) number of shares bought;
(ii) price at which the shares were bought;
(iii) total amount invested in the buy-back;
(iv) details of the from whom shares exceeding one per cent of total shares were bought back; and
(v) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.

(o) *The Noticees submit that on 09.09.2011 they filed the complaint with SEBI well before the Hon'ble Supreme Court delivered its judgment in the aforesaid case on 8.11.2011 as from the facts and documents which were placed before Hon'ble Supreme Court the following facts and evidence emerged conclusively*

(i) *That ATL and the investment companies belonging to the promoters had acted in tandem and ATL bought back 36.90 lakh shares in gross violation of Section 77(A) of the Companies Act, 1956 as well as SEBI (Buy-back of Securities Regulations, 1998). These violations were committed consciously with a motive to secure a huge monetary goals.*

(ii) *That there was collusion between Custodian, ATL and its management wherein the Custodian conferred huge monetary and other benefits on ATL and the investment companies of their promoters. These acts of collusion are as under: -*

(a) The Custodian deliberately offered for sale 54,88,850 equity shares which constituted 15.1% of the Equity Capital of ATI/ for sale against much larger quantity of shares that were then available for sale by violating express orders of Hon'ble Special Court.

(b) The Custodian offered 15.1% shares for sale in order to attract SEBI SAST Regulations for the prospective bidders who would then be required to also make a public offer to purchase further 20% of the equity capital of the company. The outside bidders would thus end up having 35.1% at the highest of the equity capital which would not be sufficient to gain control on take over the company. That the entire quantity was put for sale, the same together with above public offer would offer an opportunity to bidder to get management block. Thus Custodian reduced the quantity and thereby destructed the premium attached to controlling block of shares.

(c) The further object of the Custodian in offering 15.1% was to completely drive out any potential bidders and create situation where no bids are received and consequently these shares would fall in the lap of ATL and the investment companies and its management at deep discount to the market price.

(d) That the Custodian instead of opposing the low bid of the ATL and its promoters at Rs.90/- being at a deep discount to the then market prices of Rs.120/- still supported the sale of the same in gross violation of directions given by Hon'ble Supreme Court to maximize realization from the sale only in order to favour ATL and its promoters while opposing the scheme governing sale of shares.

(e) That the Custodian designed the offer to meet all the requirements of ATL and its promoters which were not specified by it in Appeals preferred before Hon'ble Supreme Court but which were granted by Hon'ble Supreme Court while approving the scheme governing sale of shares on 23.8.2001.

(f) That the terms and conditions governing sale of shares were made so stringent that no offers are received and true price of the shares are not discovered. Thus the entire sale was stage managed to suit ATL and its promoters.

(g) *That though for the outsider bidders only one composite bid was made mandatory but for ATL and three investment companies of promoters a combined bid of four entities was accepted as one bid in complete violation of the terms and conditions governing the sale.*

(h) *That the Custodian foreclosed the option of the Noticees to bring better offer but on the same day without any power or authority to do so and without any order from Hon'ble Special Court invited ATL and its promoters to submit their bids knowing fully well that very poor response was received until that date.*

(i) *That even before inviting bids just to meet the requirements of ATL and its management the Custodian sought dilution in the scheme governing sale of Controlling Block of shares by repeatedly filing Applications before Hon'ble Special Court to sell the shares without inviting bids and to permit Custodian to sell shares under the routine category of shares.*

(j) *That though the stringent terms and conditions were devised by the Custodian for making sale of shares but these conditions was never enforced against ATL and the investment companies belonging to its promoters.*

(k) *That in terms of the order passed by Hon'ble Supreme Court on 23.8.2001 the Right of First Refusal (ROFR) was granted either to the ATL to buy-back the shares or to their promoters to purchase the shares subject to their making compliance with the applicable law. The ROFR was thus liable to be granted only to one of the above two but yet the Custodian and the Hon'ble Special Court granted the ROFR both to ATL to the extent of 36.90 lakh shares and to their promoters to the extent of 17.98 lakh shares. In this manner Custodian conferred favour and facilitated gross violation of the order of Hon'ble Supreme Court.*

(l) *That after granting ROFR in terms of the order of Hon'ble Supreme Court dated 23.8.2001 Custodian was liable to ensure that ATL and their promoters comply with the applicable law and the terms and conditions governing the sale of shares but yet he deliberately failed to secure compliance with both the above and thereby colluded with the bidders.*

(p) *ATL preferred an Appeal 322 of 2014 to Securities Appellate Tribunal (SAT) against the order dated 09.07.2014 of the Adjudicating Officer, hereto annexed and marked as Annexure K and pursuant thereto the Noticees have filed Intervener Application No. 172 of 2014 in SAT Appeal 322 of the SAT Appeal 2014 praying that the Noticees should to made parties to the appeal. The Noticees state that Hon'ble SAT vide order dated 30.12.2016 was pleased to set aside the order dated 09.07.2014 passed by the Adjudicating Officer and directing to restore the matter to the file of Adjudicating Officer for fresh decision on merits and in accordance with law.*

(q) *The Noticees submit that the Adjudicating Officer of SEBI has already earlier found and concluded ATL guilty of violation of the Buyback Regulations for buyback of 36.90 lakh shares of Rs.10/- purchased in the year 2003 for shares belonging to the Noticees which were purchased by ATL and its promoters from*

the Hon'ble Special Court under its orders dated 30.04.2003 and Copy of Orders dated 30.04.2003 and 02.05.2003, hereto annexed and marked as Annexure L.

(r) *The Noticees state that in its appeal against order of Adjudicating Officer, SEBI before SAT, ATL has averred that shares of ATL were sold by the Hon'ble Special Court under the above orders. That ATL purchased 36,90,000 shares and out of the balance 17,98,850 shares, M/s Constructive Finance Ltd purchased 8,98,850 shares and M/s Sunrise Properties and Investments Co. Ltd purchased 9,00,000 shares, both these companies are investment companies belonging to the promoters of ATL.*

(s) *The Noticees state that on 29.04.2003 the Hon'ble Special Court accepted the combined offer made by ATL and its promoters and investment companies to purchase the said shares but the breakup of quantities between the bidders was not furnished by bidders on that day. That on 02.05.2003 the details were furnished by the bidders in part by their promoters to the extent of 4.95% of the equity capital of ATL, being 17,98,500 shares and to the extent of 10.15% of equity capital being 36,90,000 shares of Rs.10/- face value of ATL for effecting aforesaid Buyback of shares. That over ruling all the objections of the Noticees, the Hon'ble Special Court on 02.05.2003 passed order in confirmation of the above sale.*

(t) *That the favours granted by Custodian to ATL and its management by offering to sell 15.1% of equity fructified as no offers were received for purchase of shares. The Noticees state that thus instead of fetching a premium for selling large block of management holding of 15.1%, the Hon'ble Special Court sold the said 54,88,850 shares at a deep discount to the then prevailing market price of Rs. 120/- per share by confirming the sale at Rs.90/- per share. The Hon'ble Special Court rejected and over ruled all the objections of the Noticees including their prayers to grant them time of 48 hours to secure a better offer for purchase of shares. By the above orders passed by Hon'ble Special Court the scheme of sale of shares and several conditions governing it as well as directions of Hon'ble Supreme Court stood violated all of which are duly recorded by Hon'ble Supreme Court in their Judgment dated 08.11.2011.*

(u) *The Noticees Shri Ashwin S Mehta and Smt. Deepika A Mehta being aggrieved by the above two orders of Hon'ble Special Court, therefore, preferred Civil Appeal No.4263 of 2003 before Hon'ble Supreme Court. The Noticees state that on 29.05.2003, the Hon'ble Supreme Court on the first day of hearing itself was pleased to grant interim reliefs by directing that the existing shares purchased by the management and investment companies of ATL being 4.95% of capital would not be alienated by them. The Hon'ble Supreme Court recorded the contentions of ATL that 36,90,000 shares purchased by them were no longer in existence since they had already effected buyback of the same and were thus extinguished.*

(v) *The Noticees state that the Hon'ble Supreme Court delivered its judgment on 08.11.2011 and the same is titled as Ashwin Mehta Vs Union of India reported as (2012) 1 SCO 83, annexed and marked as Annexure J hereinabove. The Noticees state that the Hon'ble Supreme Court has categorically recorded at para 44 and 47 that the sale ordered by the Hon'ble Special Court of 54,88,850 shares was in violation of the principles of natural justice and the Scheme governing sale of shares as approved by the Hon'ble Supreme Court by their judgment dated 23.08.2001. The Hon'ble Supreme Court therefore did not deal with the merits of all the other contentions of the Noticees including the prayer that ATL had not complied with section 77-A of the Companies Act and the Buyback Regulations framed thereunder. The Noticees crave leave to refer to paras 44 and 47 of the aforesaid judgment. It is significant to note that the Hon'ble Supreme Court further held in Para 48 that since the decision of the Special Court for effecting sale of shares stood vitiated and therefore it must follow as a necessary consequence that in the normal course, the order dated 09.07.2014 of the Adjudicating Officer must be struck down in its entirety. The Noticees state that however, and because of the false and misleading averments made by ATL and fraud played upon the Hon'ble Supreme Court, it accepted their contentions that all procedural modalities were complied with by ATL in the year 2003 and that 36,90,000 shares were extinguished and therefore the relief sought for by the Noticees Ashwin Mehta and Deepika Mehta, for rescinding the entire sale was not granted on the ground that it was impracticable and fraught with great difficulties, and on that ground, the relief was truncated to reversal of sale only to the extent of 17,98,850 shares which were in existence, and relief in respect of 36,90,000 shares was denied to the Noticees.*

(w) *The Noticees state that it is pertinent to note that the Noticees state that being aggrieved by the failure of SEBI to respond to their complaint dated 09.09.2011, the Noticee Ashwin Mehta preferred an application under the Right To Information Act, 2005 (herein after referred to as "RTI Act") inter alia seeking disclosure of all the records and noting where it has accorded approval to ATL for Buyback of 36,90,000 shares of ATL in the year 2003. The Noticees state that SEBI replied to the above application by a letter dated 16.04.2012 confirming that they had not received any application from ATL regarding the Buyback of 36,90,000 shares of ATL.*

(x) *The Noticee Ashwin Mehta thereafter filed an Appeal under RTI Act with SEBI on 17.07.2012 making the grievance of noncompliance and so as to ascertain from SEBI the accuracy of their reply. The Noticees state that by an order dated 17.08.2012 the Appellate Authority under RTI granted the Appeal of Noticee Ashwin Mehta and directed SEBI to reconsider their response.*

(y) *The Noticees state that in compliance of above order of Appellate Authority, SEBI on 06.09.2012 replied and admitted that no file on buyback of shares of ATL exists with the concerned department of SEBI. The Noticees state that the above reply of SEBI raised several serious issues of omission and commission*

and therefore, in the interest of justice and fair play, true and correct facts have to be ascertained.

(z) *The Noticees state that since SEBI was not responding to their complaint, they were constrained to prefer before Hon'ble Supreme Court an Interim Application No. 2 and 3 of 2013 in C.A. No. 4263 of 2003 to place on record the facts that SEBI had confirmed to the Noticees that no records and files existed with them relating to alleged Buyback of 36,90,000 shares of ATL. It was urged before Hon'ble Supreme Court that ATL and its promoters had played a fraud upon Hon'ble Supreme Court to obtain a favourable order. That after hearing the parties at length, the Hon'ble Supreme Court was pleased to grant relief to the Noticees and passed an order in the aforesaid Application on 11.02.2013 annexed and marked as Annexure A hereinabove, as under regards prayer clause (d) of para 34 of the application, we observe that a complaint has already been made by applicant No.1 before the Securities and Exchange Board of India (SEBI) in regard to buy back of 36,90,000 shares. Obviously, the complaint shall be considered by SEBI on its own merits uninfluenced by any observations in the decision of this Court dated November 8, 2011."*

(aa) *The Noticees state that in the aforesaid background of facts and circumstances they are aggrieved that despite ATL flagrantly violating provisions of Section 77-A of the Companies Act and the SEBI Buyback Regulations and despite ATL having played a fraud both on SEBI as well as on the Hon'ble Supreme Court and though SEBI is armed with substantial powers it has deliberately failed to act on the complaint filed by the Noticees and has also failed in causing recovery of the said 36,90,000 shares. The Noticees state that SEBI has thereby also failed to comply with two orders of Hon'ble Supreme Court dated 11.02.2013.*

(bb) *The Noticees state that through filing an Application on 12.03.2012 under RTI Act they ascertained the facts relating to the poor progress made in the proceedings in regard to their complaint and were pained to discover that their complaint was not being acted upon and therefore they once again approached Hon'ble Supreme Court by filing CA (D) 19010 of 2013 seeking a relief of further directions on SEBI. That upon hearing the parties the Hon'ble Supreme Court made an order on 26.08.2013 annexed and marked as Annexure B hereinabove, cited earlier wherein SEBI was directed to redress the complaint of Noticees within a period of 3 months from the date of their order. The Noticees state that only upon the above order of Hon'ble Supreme Court on 26.8.2013 that SEBI appointed an adjudication officer who passed his order on 09.07.2014, annexed and marked as Annexure L hereinabove, after hearing ATL but without hearing the Noticees though they had filed the complaint.*

(cc) *The Noticees state that it can be seen from above facts that in a systematic and pre meditated manner ATL has brazenly violated the Scheme governing the sale of shares, and the order of the Ronnie Special Court dated 17.08.2000 in M.P. No.64 of 1998 and the law laid down by Hon'ble Supreme Court by their Judgment dated 23.08.2001 in C.A. No.7629 of 1999 approving the Scheme of*

sale of shares. ATL has also violated the terms and conditions governing the sale of shares. The Noticees state that it has already been held in Para No.48 of their Judgment dated 08.11.2011 of HonTde Supreme Court of India that normally the entire sale of 54,88,850 shares would have been set aside and therefore it would have recovered all the shares but for the aforesaid fraud played by ATL on it.

(dd) That Noticees state that so far as SEBI is concerned, ATL has consciously violated Section 77(A) of Companies Act r/w SEBI (Buy-back of Securities) Regulations Act, 1998 and SEBI SAST Regulations by purchasing 15.1% of the equity capital of ATL. It is submitted by the Noticees that the violations found out to be committed by ATL by your predecessor did not cover all the violations and as directed by Hon'ble SAT, your kindself is now liable to carry a thorough inquiry so as to ascertain all the violations committed by ATL.

(ee) The Noticees wish to state that on 31.1.1995 Harshad Mehta disclosed the facts of purchase of 39.16 lakh shares of ATL which remained to be registered and pending such registration they handed over the shares to the Custodian who filed M.P. No. 123 of 1995 in respect of these unregistered shares. That similarly after disclosure made by Harshad Mehta and M.A. No.475 of 1996 relating to 7.40 lakh shares of ATL seized by CBI was also filed by Custodian. That in the aforesaid proceedings ATL opposed tooth and nail the registration of 46.56 lakh shares and created a bogey that there was a threat to the Takeover of their company. That ATL relied upon several provisions of Companies Act and SEBI Act to oppose the aforesaid Applications and finally the shares were ordered to be registered in the name of Custodian by a combined order dated 19.11.1999, hereto annexed and marked as Annexure M.

(ff) In the meantime, humongous losses were caused to the Noticees of more than Rs.400 crores as ATL did not keep in abeyance the rights entitlements of the Noticees in violation of two circulars issued by BSE to them on 10.07.1992 and 23.10.1992, hereto annexed and marked as Annexure N colly and despite a request made by the Noticees not to allot their rights entitlements to third parties and keep their rights in abeyance u/s.206 of Companies Act. That when the Noticees applied for the said rights the same was also opposed tooth and nail by ATL based on which their Applications came to be rejected. Thus in the aforesaid proceedings ATL and its management acted as an adversary of the Noticees for no justifiable reason but only with a view to cause them huge losses.

(gg) That thereafter when the Custodian presented to Hon'ble Special Court a scheme governing sale of shares by filing M.P. No.64 of 1998 ATL intervened in the said proceedings and sought several concessions from Hon'ble Special Court citing the same bogey of a Takeover threat on their company. The Hon'ble Special Court notwithstanding the above adversarial role being played by ATL granted the prayers made by ATL to protect their interest and thus extended them privileges.

(hh) That thereafter the scheme of sale of shares was approved by the Hon'ble Special Court taking into account the concerns of ATL, but yet they preferred several Appeals before Hon'ble Supreme Court challenging the orders in aforesaid two proceedings and itself represented before Hon'ble Supreme Court that it may be granted an opportunity to purchase the shares by giving them a Right of First Refusal (ROFR). That it undertook before Hon'ble Supreme Court that it will make compliance with Section 77(A) of Companies Act. The Supreme Court however expressly directed that after the receipt of offer the ROFR may be granted either to ATL or to their promoters and not to both subject to their making compliance with law and thus the Hon'ble Supreme Court also addressed the concerns of ATL.

(ii) That Noticees submit that after securing aforesaid favourable orders ATL and its promoters then hatched a plan and colluded with the Custodian to get the ROFR at a discount to the market price though in the scheme the category of Controlling block of shares was carved out on the premise that same will command premium over the market price. That ATL was both under a legal and moral obligation to reciprocate and offer a proper price and the premium associated with the Controlling block of shares but acting highhandedly and illegally it has purchased the subject shares at a throw away discounted prices which sale of shares has therefore been found by Hon'ble Supreme Court to be untenable and liable to be quashed and set aside.

(jj) That from the aforesaid facts and conduct of ATL and its management it becomes obvious that ATL is now liable to make compliance with the law cited and heavily relied upon by it in the aforesaid proceedings and ought to strictly comply with the same having taken full advantage of the privileges extended to it both by Hon'ble Special Court and Hon'ble Supreme Court of India. It is ironical that having been put on a higher pedestal ATL and its promoters have thereafter exploited and abused the privileges extended to it by the Hon'ble Courts to the hilt and in the aforesaid facts and grossly illegal conduct ATL now cannot be allowed to seek or take advantage of its own wrongs nor it should be penalized with a paltry penalty of Rs. 1.03 crores to reap the rewards of fraud of such gigantic proportions.

(kk) That if ATL is allowed to walk away with the gains then the very purpose for which SEBI has been formed i.e. to protect the interest of investors will stand defeated and therefore we pray to your kindself to get to the bottom of the matter and fully uncover the illegal acts rather than narrowing down on some small violations only to impose a small penalty which ATL will be very happy to pay to get away scot-free. The Noticees submit that this is fit case for disgorgement of the gains sought to be made by ATL by appropriate order and direction to it to make good the subject 3.69 crore shares together with all the accruals thereon and restore the status quo ante in favour of the Noticees. That it is very well settled law that fraud vitiates the entire proceedings and orders obtained by fraud are null and void ab initio. If the fraud of ATL is established through your enquiries ATL will become liable to make good the 3.69 crore shares to Noticees.

(ll) *That in fact, being aggrieved by the approach of SEBI in not causing recovery of the subject shares but only in levying penalty of Rs.1.03 crores on ATL, on 04.08.2014 i.e. after your predecessor passed his order on 09.07.2014, a letter was addressed to the Chairman of SEBI requesting to cause recovery of the shares on the grounds and for the reasons which are set out in the said letter, a copy of which is enclosed at Annexure O. That the aforesaid letter has also not been replied to by SEBI despite substantial public interest involved. Even in view of the above, the Noticees once again pray that steps may be taken to recover the subject 3.69 crore shares since gross violations are committed by ATL as explained earlier, stands conclusively established.*

(mm) *That the Noticees may be allowed to place further facts and evidence in their possession in support of their above contentions and may also be kindly granted a further opportunity to file additional submissions taking into account the fact that the Noticees are notified persons presently having all their assets attached, facing constraints of securing proper representations of their choice, taking into account the enormity of stakes involved particularly keeping in mind the public interest involved and to show that in order to commit the fraud ATL has repeatedly changed its stand and approbated and reprobated on the issues at the same time depending upon the time and proceedings and forum before which it was required to take stand. That a proper opportunity may also be granted since Hon'ble Supreme Court has directed SEBI by two orders dated 11.02.2013 and 26.08.2013 to examine the complaint of the Noticees.*

(nn) *That the Hon'ble Supreme Court was deliberately misled by ATL into believing that ATL had made compliance with the Buyback Regulations as per the representations made and duly recorded in Para 25 and 48 of their Judgment dated 08.11.2011 and in this manner ATL played a fraud upon Hon'ble Supreme Court only to obtain a favorable order.*

(oo) *That the Hon'ble Supreme Court has thereafter taken note of the misrepresentations made by ATL and after taking them into account and in order to ascertain full and proper facts it has issued directions to SEBI by their orders dated 11.02.2013 in I.A. No.2 and 3 of 2013 in C.A. No. 4263 of 2003 and order dated 26.08.2013 in C.A. (D) No. 19010 of 2013 to redress the complaint filed by Noticees. The Hon'ble Supreme Court has given above directions after taking into consideration the allegations leveled by the Noticees in their Interim Application and Civil Appeals wherein evidence was adduced to show that ATL had perpetrated a fraud upon the Hon'ble Supreme Court of India in proceedings leading to their judgment and order dated 08.11.2011.*

(pp) *That substantial public interest is involved in recovery of 36,90,000 shares of ATL so much so that the same would lead to recovery of about Rs. 1000 crores which amount would become available to discharge the liabilities towards revenue and banks and thereby it will also meet the express objects of the Special Courts Act, 1992.*

(4) *The Noticees therefore pray as under:*

a. *The Adjudicating Officer be pleased to recover the subject 36.90 lac shares shares of ATL of Rs.10 Face Value which are now equivalent to 3.69 crore shares of Re. 1/- each of ATL since they are illegally extinguished by ATL*
b. *The Adjudicating Officer be pleased to declare the buy back and extinguishment of 36.90 lac shares of Rs.10/- F.V by ATL as null and void qua the Noticees.*
c. *That the Adjudicating Officer be pleased to enquire into each and every violations committed by ATL of SEBI (Buy Back of Securities) Regulations, 1998.*
d. *The Adjudicating Officer be pleased to inform the Ministry of Corporate Affairs and the Serious Frauds Investigation Office of the alleged fraud committed by ATL against the noticees and the general public.*
e. *The Adjudicating Officer be pleased to invoke provisions of Section 15 J (a) & (b) of SEBI Act, 1992 since there is material on record to deduce the amount of the profit made by ATL and the consequent loss incurred by the Noticees.*
f. *The Adjudicating Officer be pleased to invoke Section 24 of the SEBI Act, 1992 and prosecute ATL for contravention and abetting the contravention of the SEBI Act and Rules or Regulations made thereunder.*
g. *The Adjudicating Officer be pleased to invoke Regulation 25 (1) of SEBI (Buy-back of Securities) Regulations, 1998 and initiate such action as may be deemed fit and proper in the matter.*
h. *For such other reliefs as may be deemed fit in the matter."*

12. The Noticee vide letter dated January 11, 2018 sought copies of submissions made in the present proceedings by the applicants. In view of the same, a copy of written submissions made by the applicants in the matter was forwarded to the Noticee vide letter dated February 02, 2018. The Noticee was also advised to submit its comments, if any, on the submissions made by the applicants latest by February 09, 2018. In this respect, the Noticee vide letter dated February 06, 2018 requested for additional time to file its reply to the aforesaid submissions made by the applicants. In view of the request of the Noticee, it was advised vide letter dated February 08, 2018 to file its response in the matter by February 16, 2018. However, the Noticee vide email and letter dated February 15, 2018 requested for an additional time of 1 week to file the reply. In view of the same, the Noticee was advised vide email dated February 17, 2018 to submit its reply latest by February 23, 2018.

13. The Noticee made its submissions vide letter dated February 23, 2018 and *inter alia* submitted the following:

1) *"We refer to the Preliminary Written Submissions filed on behalf of Mr. Ashwin Mehta and other applicants ("Complainant") received by M/s Apollo Tyres Limited ("Apollo") via e-mails dated February 5, 2018 and February 6, 2018.*

2) *At the threshold, the context of the Complainant triggering a statutory regulatory process under the aegis of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") must be considered - particularly since it connotes a travesty of justice. The SEBI Act in fact came into existence owing to the discovery of the 1991 Securities Scam in which the prime-accused was Harshad Mehta. Harshad Mehta and his family members along with Ashwin Mehta and their associates were master-minds of one of the greatest and most prominent financial scams that took place in the entire country about 26 years ago. In 1980's they were the top traders in the securities market & they had giant turnovers in securities. They engaged in a massive stock manipulation schemes financed by worthless bank receipts, which they / their firms brokered in "ready forward" transactions between banks. They owed huge amounts to banks and financial institutions. The scam and manipulation by them were discovered in the beginning of the year 1992. Thus, in addition to the creation of SEBI as a securities market regulator, the scam also led another very important legislative innovation i.e. the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 ("Special Court Act"). Both these legislation, outcomes of the actions of persons whose interests are represented by the Complainant, are at play in the determination of issues and delivery of justice in these proceedings.*

3) *Further, the litigations in this regard have dragged on for years. Apollo has been dragged into the same only because of the huge scam committed by Mr. Ashwin Mehta and his family which damaged the entire country, and it certainly does not lie in his mouth to plead any public interest. The only reason why Mr. Ashwin Mehta and his family has kept up this campaign of harassment for decades, is once again for their own benefit, i.e. to gain out of accomplishments of Apollo and pleading public interest is nothing but a fake shield to hide own deceit and mischief as admittedly no member from public has ever approached any court /*

forum / regulator with respect to any complaint against Apollo for alleged violation of any law, whatsoever.

4) *In regard to the written submissions of the Complainant, at the outset, it is submitted that all the issues raised by the Complainant in the captioned submissions are false, baseless, irrelevant, untenable and denied and moreover were already earlier raised and pleaded in different proceedings that have eventually culminated in proceedings before the Hon'ble Supreme Court in Civil Appeal No. 4263 of 2003, I.A. No. 2 of 2013 in Civil Appeal 4263 of 2003 and Civil Appeal No. D- 19010 of 2013, wherein, the Hon'ble Supreme Court has conclusively decided every issue and therefore need no consideration before this Hon'ble Forum.*

5) *The Complainant seeks to re-agitate the very same issues and allegations that are already decided by the Hon'ble Supreme Court, which is clearly impermissible. So also, the Complainant's actions are nothing but vexatious in their content, tenor and impact, which SEBI, clothed with the powers of a civil court under the SEBI must not countenance. What is sinister is that the submissions that try to re-open and re-agitate old and closed matters is titled with the prefix "preliminary", suggesting that there is a scope for making more arguments on more issues to further vex us.*

6) *It is submitted that the issues raised are not only decided and settled but even a bare perusal of the captioned submissions and his purported prayers therein further show that the same are totally beyond the scope and ambit of the present proceedings.*

7) *That without prejudice to the aforesaid, it is stated that the only issue bearing any connection to the proceedings before you as the Ld. Adjudicating Officer are those with respect to the allegations in the Show Cause Notice dated November 8, 2017, which have been duly and correctly replied to vide Apollo's letter dated December 26, 2017, and we repeat, reiterate and confirm all that is stated therein and deny everything contrary thereto or inconsistent therewith. It is therefore submitted that the said captioned submissions be entirely disregarded.*

8) *Moreover, with respect to the allegations in the Show Cause Notice also, the stand of complainant as evident from complaint/applications filed before your good office as well as Hon'ble SAT has always been dwindling and manipulative*

which in itself reflects the devious nature of the Complainant. It is submitted that the original complaint filed by Mr. Ashwin Mehta was dated September 9, 2011 and was purportedly filed under Regulation 22 of the SEBI (Buyback of Securities) Regulations, 1998 ("Buyback Regulations"). SEBI commenced Adjudication Proceedings and issued the SCN dated January 24, 2014, which resulted in the passing of the erstwhile Order dated July 09, 2014. The same was set aside by the Hon'ble SAT in Appeal No. 322 of 2014. At the hearing of the said Appeal before the Hon'ble SAT, Mr. Ashwin Mehta and others sought to intervene vide their MA No. 172 of 2014, inter alia contending that SEBI ought not to have commenced adjudication proceedings, and instead ought to have taken action for recovery of the buy-back shares even though the same had been extinguished as held in the November 08, 2011 Order of the Hon'ble Supreme Court. Apollo had therefore opposed the said intervention application on the ground that in view of the settled law, since Mr. Ashwin Mehta and the other applicants were also opposing the said Adjudication Order dated July 09, 2014, they had no locus and could not be permitted to intervene in the said Appeal before the Hon'ble SAT. Mr. Ashwin Mehta in the captioned submissions also claims that he took the said contradictory stand vide a letter dated August 04, 2014 to SEBI. Mr. Ashwin Mehta had then filed his Affidavit dated March 10, 2016 in the said Appeal, doing a volte face and contending on oath that they were supporting the said Order dated July 09, 2014, and that they would pursue their "independent proceedings" which they had already filed for the purported recovery of the said buy-back shares. The independent proceedings referred to was Misc. Application 26 of 2013 which had been filed by them before the Hon'ble Special Court on or about February 25, 2013, inter alia praying for the recovery of the 36.90 lacs shares which had been bought back by Apollo. The present Show Cause Notice dated November 8, 2017 has been issued by SEBI pursuant to the directions of the Hon'ble SAT in its order dated December 30, 2016 in the same said Appeal No. 322 of 2014 by which the Hon'ble SAT remanded the matter for a fresh decision on merits and in accordance with law. Mr. Ashwin Mehta not only accepted the said SAT order, he also withdrew his said Miscellaneous Application 26 of 2013 which was filed before the Hon'ble Special Court as recorded in an Order dated March 24, 2017 of the Hon'ble Special Court. Yet, in the captioned submissions Mr. Ashwin Mehta has once

more purported to pray for the recovery of the said buy-back shares and has even contend that "....the order dated 9.7.2014 of the Adjudicating Officer must be struck down in its entirety.... ". It is therefore submitted that Mr. Ashwin Mehta keeps taking contradictory stands that his said captioned submissions are contradictory to and belied by his said Affidavit dated March 10, 2016 in the said SAT Appeal, and therefore on this ground alone the same ought to be rejected and disregarded in entirety. A copy of Miscellaneous Application No. 26 of 2013 and Affidavit dated March 10, 2016 is annexed herewith and marked as Annexure A and Annexure B respectively. A copy of the order dated March 24, 2017 is herewith marked and annexed as Annexure C.

Preliminary Submissions

9) *Without prejudice to our detailed response to the captioned submissions we are setting out the following preliminary submissions, which we respectfully submit are vital/essential in determining the issues raised in the captioned submissions.*

10) *The original complaint filed by the Complainant dated September 9, 2011 was a complaint filed under Regulation 22 of the SEBI (Buyback of Securities) Regulations, 1998 ("Buyback Regulations"). Admittedly, this complaint had been filed before the orders of the Supreme Court in I. A. 2 of 2013 in Civil Appeal 4263 of 2003 and Civil Appeal D-19010 of 2013 dated February 2, 2013 and August 26, 2013 respectively had been passed.*

11) *Further, the said complaint was filed with SEBI only with respect to alleged violations of Section 77A of the Companies Act, 1956 and of the Buyback Regulations, praying that the buyback of shares be annulled or rescinded and seeking a direction to Apollo to re-issue 36.90 lacs shares.*

12) *The present Show Cause Notice dated November 8, 2017 emanates directly from the remand order dated December 30, 2016 in Appeal No. 322 of 2014 ("SAT Order") of the Hon'ble Securities Appellate Tribunal ("SAT"). The SAT Order too sits in the context of the orders of the Supreme Court in I. A. No. 2 of 2013 and Civil Appeal No. D-19010 of 2013 dated February 11, 2013 and August 26, 2013 respectively.*

13) *The SAT Order set aside the earlier order of SEBI dated July 9, 2017 ("SEBI Order") and restored the matter to the file of AO for fresh decision on merits and in accordance with law. Further, it also held that the SEBI was not justified in*

imposing an additional penalty of Rs. 1 crore by merely stating that Apollo has violated the Buyback Regulations without specifically stating which regulations were violated by Apollo.

14) *The SAT Order did not render any findings on merits, with respect to the alleged violation of Regulations 5A and 19 (7) of the Buyback Regulations, which were process-related, and not germane on substance of the violation.*

15) *Admittedly, till date the Complainant has not challenged and in fact, has accepted the SAT Order in its entirety. These proceedings have within their scope only the original context of the Show Cause Notice and cannot be a means of re-opening and re-agitating all other closed matters, which have attained finality and certainly not the issues which are not even under the jurisdiction of this Hon'ble office.*

16) *The original Show Cause Notice dated January 24, 2014 only dealt with the alleged violation of Regulation 5 A and Regulation 19 (7) of the Buyback Regulations read with Section 77A of the Companies Act, 1956. The Complainant was an active participant in the proceedings held before the SAT in Appeal No. 322 of 2014. Thereafter, the conduct of the Complainant after the SAT Order demonstrates that he has accepted the SAT Order, and in fact, in the fresh proceedings before SEBI upon remand, it is evident that the Complainant has participated in proceedings held on January 4, 2018.*

17) *Further, in addition to what has been submitted above, it is reiterated that post the order of SAT, the same issues were in fact raised by Mr. Ashwin Mehta and others in the said Misc. Application 26 of 2013 which had been filed by them before the Hon'ble Special Court on or about February 25, 2013, which he withdrew as recorded in an Order dated March 24, 2017 of the Hon'ble Special Court.*

18) *Apollo denies Mr. Ashwin Mehta's purported interpretation of the various Orders of the Hon'ble Special Court and the Hon'ble Supreme Court and craves leave to refer to and rely upon the same for their true meaning and correct interpretation.*

Reply to Captioned Submissions

Buyback transaction was in accordance with law and not illegal

19) *Regarding para (d) of the captioned submissions, it is reiterated that the transaction in question was undertaken by Apollo was as per the Scheme propounded by the Hon'ble Special Court vide its order dated August 17, 2000. The powers of the Special Court flow from the Special Court Act with non-obstante overriding effect on other legislation including the SEBI Act - a point already articulated by us in our reply dated December 26, 2017 to the Show Cause Notice.*

20) *The transaction in question involving buyback by us and cancellation of the shares was approved and sanctioned by the Hon'ble Supreme Court in its order dated August 23, 2001. Therefore, the submissions of the Complainant are without any merit.*

21) *It is further submitted that the Hon'ble Supreme Court in its order dated November 8, 2011 held that since the said buyback transaction was carried out way back in the year 2003, and since, at this stage, when 36.90 lacs shares of Apollo have been extinguished, the relief to rescind the entire sale of 54.88 lacs shares is impractical and fraught with grave difficulties and relief was restricted / limited to 4.95 % of the shares.*

No collusion between Custodian and Apollo

22) *The allegations of Mr. Ashwin Mehta in the captioned submissions that there was collusion between the Custodian and Apollo and its management; that the Custodian extended favours to Apollo; that the Custodian conferred benefits on Apollo; that the entire sale was stage managed that Apollo played a fraud on the Hon'ble Supreme Court; that the Hon'ble Supreme Court did not deal with all the contentions of Mr. Ashwin Mehta etc. are all totally false, frivolous, vexatious and denied. In any event, the said allegations are totally irrelevant to the issues in the present case, and further the same are beyond the jurisdiction of SEBI.*

23) *Further, all the allegations against the Custodian about the mode and manner of the sale of the said shares are totally false and denied and in any event irrelevant to the present proceedings. Further, the post of the "Custodian" is a statutory office created under the said Special Court / Torts Act. The Custodian was appointed by the Central Government and it is subject to the supervisory jurisdiction of the Hon'ble Special Court and the Hon'ble Supreme Court, and*

not SEBI. Further, the same allegations were also raised by Mr. Ashwin Mehta before the Hon'ble Supreme Court and have been recorded and dealt with by the Hon'ble Supreme Court inter alia in its judgement dated November 8, 2011. It is therefore reiterated that Mr. Ashwin Mehta's captioned submissions be totally rejected and disregarded.

No misrepresentation or fraud was played upon the Hon'ble Supreme Court by Apollo

24) With respect to para (1) of the captioned submissions, it is submitted that Apollo never played fraud upon the Hon'ble Supreme Court by mispresenting any kind of facts, whatsoever and the said averments are frivolous and false. On the contrary, Apollo in its submissions filed before the Hon'ble Supreme Court in Civil Appeal No. 4263 of 2003 placed on record a list of all the voluntary compliances undertaken by it under Buyback Regulations read with Section 77A of the Companies Act, 1956 along with respective dates of the said compliances.

25) In fact, it appears that it is the Complainant who appears to be playing a fraud upon SEBI. It is completely incorrect on the part of the Complainant to state that Apollo misrepresented to the Hon'ble Supreme Court in any manner. Even the issue of violating Buyback Regulations read with Section 77A of the Companies Act, 1956 was specifically raised and pleaded by the Complainant in his additional written submissions in Civil Appeal No. 4263 of 2003 filed before the Hon'ble Supreme Court.

26) It is worthwhile to note here that the Hon'ble Supreme Court consciously chose not to interfere with the validity of the buyback transaction of 36.90 lacs shares with respect to Buyback Regulations read with Section 77A of the Companies Act, 1956.

Allegation regarding violation of SAST Regulations is false

27) The new allegations of Mr. Ashwin Mehta in the captioned submissions that there was violation of the provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("SAST Regulations") is false and denied. It can never be alleged that the said buy-back of shares in any manner triggered the SAST Regulations wherein the Management/Promoters only acquired merely 4.95% shares of Apollo Tyres that too pursuant to the direction

of the Special Court and which was much within the creeping acquisition limits and disclosure duly made for the same. Further, there is no such allegation even in Mr. Ashwin Mehta's earlier complaints to SEBI.

Buyback option ensured stabilization of Apollo

28) *The allegation of Mr. Ashwin Mehta in the captioned submissions that the said buyback by Apollo was "....to derive a huge monetary benefit..." for Apollo is ex facie absurd and untenable. As aforesaid, the Hon'ble Special Court and the Hon'ble Supreme Court were pleased to offer the buyback option to Apollo so as to ensure that the company was not destabilized by the sale of a controlling block of shares. Apollo accepted the offer of the Hon'ble Special Court for the same. The same resulted in a huge expense to the company with no advantage or benefit other than protecting itself from any hostile takeover. There was obviously no monetary benefit to the company as falsely alleged or otherwise. Moreover it is worth mentioning that the people who purported the biggest scam of the capital market defrauding lakhs of investors and banks is now showing fake and sham concerns for the investors and falsely alleging the Company of deriving monetary benefit, wherein the acts of the Company as well as its management had through and through in the best interest of the Company and its investors.*

Mandate of SEBI is to adjudicate only with respect to buyback regulations

29) *The Complainant is now seeking to expand the scope of these proceedings and further vex us, and to also distract from the core issue of the alleged violation of Buyback Regulations, which he appears to have discovered is without merit and likely to run out of steam eventually.*

30) *The Hon'ble Supreme Court inter alia passed the following order in Interlocutory Application No. 2 of 2013 in Civil Appeal No. 4263 of 2003 and Civil Appeal No. D- 19010 of 2013:*

"As regards prayer clause (d) of para 34 of the application, we observe that a complaint has already been made by applicant No. 1 before the SEBI in regard to buyback of 36.90 lacs shares. Obviously, the complaint shall be considered by SEBI on its own merits uninfluenced by any observations in the decision of this Court dated November 8, 2011",

31) *Therefore, liberty was granted to the Complainant as per his prayer in I.A. 2 of 2013 filed in Civil Appeal 4263 of 2003, which is as follows: lid) Be please to direct Respondent No. 3 to issue 3,69,00,000 shares to the notified entities together with all accruals therein including dividends and reverse the Buyback 36,90,000 shares effected by it @ Rs. 90/-per share."*

32) *Further, the SAT Order remanded the matter to Adjudicating Officer for fresh decision only with respect to adjudication on alleged non-compliance of Buyback Regulations and Section 77A of the Companies Act, 1956, since the provisions had not even been cited. The Order appointing the Adjudicating Officer had been in relation to Buyback Regulations. The SEBI Order came to be passed. Thereafter on remand, the SAT Order has direct conduct of proceedings. Now, at this stage, to bring in allegations of other alleged violations outside the Buyback Regulations is completely unfair and aimed at keeping matters alive with collateral purpose.*

33) *In view of the aforesaid, it is submitted that the Complaint seeks to vex us further by distorting the scope of jurisdiction of these proceedings.*

Issues raised in i) paras o(a), o(b) and o(c); ii) paras (k) and (hh) have attained finality vide Hon'ble Supreme Court's Order dated November 8, 2011

34) *With regard to paras o(a), o(b) and o(c) of the captioned submissions, it is submitted that the same issue / allegation was pleaded and raised by the Complainant before the Hon'ble Supreme Court in Civil Appeal No. 4263 of 2003 which finds place in para 10 of its judgement dated November 8, 2011 as follows:*

"Alleging collusion between the Custodian, Apollo and its management, learned Counsel submitted that, though the Appellants and their relatives and corporate entities promoted by them were together holding approximately one crore shares in Apollo, which were ready and available for sale, yet, the Custodian proposed sale of only 54,88,850 shares. Further, the Custodian never explained the rationale behind breaking up the controlling block of shares to only 15.1 % of the equity capital when the total share holdings were easily more than 25% of the capital of the company. It was asserted that, the offer for sale of 15.1% shares was deliberately resorted to by the Custodian only to ensure that no other hid came forward as such a prospective bidder would have been hound to make

a further public offer for purchase of 20% of the capital under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, It was strenuously urged that the Custodian, with ulterior motive, had made the conditions very stringent and onerous to restrict and for that matter, practically deny participation of any other institution or individual in the bidding process."

35) *However, while dealing with the issues / allegations raised by the Complainant in the later part of the judgement, the Hon'ble Supreme Court did not render any finding on the same. Therefore, in view of the aforesaid submissions, the aforesaid issue raised by the Complainant stands concluded and cannot be reopened again at this juncture, and that too, not only after six years of silence but also after one round of appeal that led to the SAT order.*

36) *Likewise, with regard to paras (k) and (hh) of the captioned submissions, it is submitted that the said issue that Right of First Refusal ("ROFR") may be granted either to Apollo or its promoters and not to both was also expressly pleaded and raised before the Hon'ble Supreme Court in Civil Appeal 4263 of 2003. The same was considered and mentioned in para 9 of its judgement dated November 8, 2011 as follows:*

"Elaborating her contention that the sale was in contravention of the scheme framed by the Custodian and duly approved by the Special Court by order dated 17th August, 2000 and with modifications by this Court vide order dated 23rd August, 2001. learned Counsel argued that Condition No. 14 in the 'terms and conditions for sale' had been violated on three counts: viz. (i) Apollo and/or its management could be invited to bid only after the Special Court had ascertained the highest offer and satisfied itself about the inadequacy of the other bids. But the Custodian vide letter dated 28th April 2003, invited Apollo to bid for purchase of the said shares on his own volition, even before the bids received were placed before the Special Court; (ii) the offer to bid was to be made either to Apollo 'OR' its management and not to both as was done in the present case and (Hi) the buyback effected by Apollo was in complete violation of Section 77A of the Companies Act, 1956 (for short 'the Companies Act') as well as SEBI (Buy back of Securities) Regulations, 1998. It was also urged that by accepting the bids of Apollo and Respondent Nos. 5 to 8, who were the investment companies of the promoters of Apollo, Condition No. 7 of the said terms and conditions was also

violated because each bid had to be for the entire lot of shares and not for a part of shares. "

37) *Again, similar to the earlier issue / allegation in the preceding para of this Reply, the Hon'ble Supreme Court did not render any finding / observation on it and in fact, the decision of the Hon'ble Supreme Court was limited only to the issue that the Custodian had erred in inviting Apollo and its management vide letter dated April 28, 2003.*

38) *In view of the above, it is submitted that the issue raised by the Complainant has also been conclusively decided by the Hon'ble Supreme Court wherein it held that:*

"In the present case, although we do not find any material on record which may suggest any malafides on the part of the Custodian yet we are convinced that by inviting Apollo to bid, vide letter dated 28th April, 2003, the Custodian did exceed the directions issued to him by the Special Court. However, we feel that this being in the nature of a procedural omission, the aliened violation is not per se sufficient to nullify the sale of shares."

39) *Therefore, in view of the above submissions made, it is reiterated that the said issue cannot be reopened as it has attained finality vide Supreme Court's order dated November 8, 2011.*

Submissions made with respect to Regulations 5A and 19 (7) of Buyback Regulations is not backed by any reason

40) *Further, the Complainant in para (n) of the captioned submissions has merely stated that Apollo failed to comply with Regulations 5A and 19 (7) of the Buyback Regulations without any material to substantiate the said allegation. Other than verbatim quoting Regulations 5 A & 19 (7) of the Buyback Regulations, there is not a word or whisper about how the said regulations have not been complied with. Already detailed arguments have been made by us vide our reply dated December 26, 2017 and in personal hearing held on January 05, 2018 in relation to the Buyback Regulations and therefore, such baseless portions of the complaint from the Complainant does not need to be dealt with.*

Two (2) other offers were also received by Hon'ble Special Court

41) *The allegations of Mr. Ashwin Mehta in the captioned submissions that no offers for the said shares were received by the Hon'ble Special Court and that the same were sold at a discount, are ex facie false and belied by the record. Offers were received from two (2) parties as recorded in the Order dated April 30, 2003. Apollo paid the highest price for the same by accepting the price offered by the Hon'ble Special Court. In any event, the same is irrelevant to the issues in the present matter.*

42) *Lastly, as regards the allegations of Mr. Ashwin Mehta in the captioned submissions in respect of an RTI application made by him, and the correspondence and proceedings therein, it is submitted that Apollo is not aware of or concerned with the same. In any event, the same is irrelevant to the issues in the present matter.*

Conclusions

43) *In the circumstances, it is summarized as follows: -*

a. *The issues sought to be re-agitated now by the Complainant are issues that have attained finality in proceedings before the Hon'ble Supreme Court of India;*
b. *The scope of these proceedings has always been in relation to what was sought to be covered to begin with;*
c. *The SAT Order desired SEBI to be specific and unambiguous about how the Buyback Regulations are purported to have been violated, and remanded the matter back to SEBI;*
d. *Pursuant to such remand, SEBI has added the alleged violation of Regulation 4 (1) of the Buyback Regulations, which has been responded to as being unsustainable vide our reply dated December 26, 2017 for the elaborate reasons set out therein. Suffice it to say, the auction conducted by the Hon'ble Special Court clothed with powers under the Special Court Act does not even constitute a buy-back covered by the Buyback Regulations;*
e. *To now attempt to expand the scope of these proceedings to beyond the Buyback Regulations, as has been made by the Complainant is illegal, impermissible and vexatious, particularly when these allegations were not even involved even in one full round of appeal;*

f. As stated above, various portions of the orders of the Hon'ble Supreme Court cover the matters sought to be raised by the Complainant; and

g. Consequently, the Complainant has not made out any case worthy of the Learned Adjudicating Officer's attention in these proceedings, which, as prayed earlier, deserve to be discharged.

44) In the event of the Learned Adjudicating Officer being in disagreement with anything stated above, we must be granted an opportunity of a personal hearing in the matter covered by this supplemental response so that we can demonstrate in person how the Complainant's efforts are illegal, unfair and impermissible."

14. Thereafter, at the request of the Noticee, it was decided to conduct a joint hearing with the Noticee and the applicants in the matter. In view of the same, the Noticee and the applicants were advised to attend a joint hearing in the matter on March 12, 2018 vide individual communications dated February 27, 2018. However, the applicants requested for the adjournment of the said joint hearing. In view of the same, the Noticee and the applicants were advised to attend joint hearing in the matter on March 19, 2018 vide individual communications dated March 09, 2018. However, the Noticee requested for adjournment of the said joint hearing vide letter dated March 12, 2018 citing non availability of its counsels on the scheduled dated of joint hearing. In view of the request of the Noticee, the said joint hearing was rescheduled to April 04, 2018 vide letters dated March 15, 2018. However, vide letters dated March 28, 2018, the Noticee and the applicants were informed that the said joint hearing has been rescheduled to April 24, 2018. Thereafter, the applicants vide email and letter dated April 23, 2018 requested for adjournment of the said joint hearing. Subsequently, the Noticee and the applicants were provided with final opportunity of joint hearing on June 27, 2018 vide letter dated May 24, 2018.

15. The ARs of the Noticee and the applicants appeared for joint hearing in the matter on June 27, 2018. The AR of the applicants reiterated the earlier

submissions made by the applicants. The AR of the Noticee *inter alia* stated that the matter has attained finality pursuant to the Hon'ble Supreme Court order dated April 20, 2018. In this respect, the AR of the applicants stated that the matter has to be viewed taking into account all the orders of the Hon'ble Supreme Court in the matter and as such the matter has not attained finality. The ARs undertook to file additional submissions in the matter by July 02, 2018. The applicants vide letter dated June 27, 2018 *inter alia* made the following submissions:

(i) *"That it was revealed to us during the course of hearing today that the above joint hearing has been granted to us by your Honour at the request and behest of ATL, and therefore kindly provide to us the copy of letter / application filed by ATL before your Honour seeking the said joint hearing, and if any order has been passed by your Honour, the same may also be made available to us. The above is sought for by us as a matter of record and since the above fact was discovered by us only today at the time of hearing.*

(ii) *That your Honour may once again consider my request made in my letters dated 05.03.2018, 16.03.2018 and 23.04.2018 wherein I had sought copy of the Show Cause Notice ("SCN") issued by your Honour on 08.11.2017 to ATL, and the reply filed by ATL on 26.12.2017.*

(iii) *Your Honour have been kind enough to grant us an opportunity to file our Written Submissions by 02.07.2018.*

(iv) *I humbly submit that therefore at the very outset today, I prayed for making the above SCN and the reply of ATL available to me, but I proceeded to argue the matter without the benefit of the same. I therefore request your Honour that at least before we file our Written Submissions on 02.07.2018, the above may kindly be made available to us."*

16. The applicants vide letter dated June 28, 2018 inter alia made the following additional submissions:

(i) *"This is further to my letter dated 27th June 2018 addressed after your Honour granted us an opportunity of a joint hearing, for which we shall ever remain grateful to your Honour.*

(ii) *That from what has emerged during the aforesaid joint hearing and taking into account the paucity and constraint of time caused by ATL as also the enormity of the matter where substantial public interest is involved as already explained by me yesterday, I humbly pray to your Honour to grant us an opportunity of a hearing before your Honour. This request is also made due to the fact that since 9.09.2011, when we filed our complaint and after addressing numerous reminders, yesterday was the first ever opportunity granted to us by your Honour after a span of 7 years, during which period we were feeling deeply aggrieved by the fact that our repeated requests and prayers to grant a personal audience was not being granted by The Chairman, Securities & Exchange Board of India (SEBI) nor our requests were replied to.*

(iii) *We hope that our above prayer will be considered favourably, particularly since it is in keeping with the orders passed by Hon'ble Supreme Court in our favour on 11.02.2013 and 26.08.2013 and even Hon'ble SAT has since directed that if your kindself so decides an opportunity of hearing may be granted to the Complainants. We are encouraged to make this request since your Honour has already granted us an opportunity of a joint hearing."*

17. The Noticee vide letter dated July 02, 2018 placed on record the:

(i) IA in Civil Appeal No. 4263 of 2003 as filed by Mr Ashwin Mehta and other applicants in the Hon'ble Supreme Court;

(ii) Order of the Hon'ble Supreme Court dated April 20, 2018 dismissing the aforesaid application.

18. The Noticee was advised vide email dated September 21, 2018 to submit the following documents:

(i) Copy of the submissions made by M/s Apollo Tyres Ltd. in Hon'ble Supreme Court in respect of compliance with Section 77A of the Companies Act, 1956 for buy back of its shares.

(ii) Copy of the approved scheme floated by the Custodian for sale of attached shares belonging to notified parties.

The Noticee vide email dated October 03, 2018 submitted the above documents.

CONSIDERATION OF ISSUES AND FINDINGS

19. I have carefully perused the documents / evidence available on record. The issues that arise for consideration in the present case are :

(a) Whether the Noticee had violated the provisions Regulations 4(1), 5A and 19(7) of the Buy Back Regulations?

(b) Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

(c) If yes, what should be the quantum of penalty?

20. Before moving forward, it is pertinent to refer to the relevant regulatory provisions of the Buy Back Regulations:

Company may buy-back its own shares or other specified securities

4. (1) A company may buy-back its shares or other specified securities by any one of the following methods:—

(a) from the existing security-holders on a proportionate basis through the tender offer;

(b) from the open market through—

(i) book-building process,

(ii) stock exchange;

(c) from odd-lot holders.

[1]Board resolution

5A. A company, authorized by a resolution passed by the Board of Directors at its meeting to buy back its shares or other specified securities under first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Act, 2001, shall file a copy of the resolution, with the Board and the stock exchanges, where the shares or other specified securities of the company are listed, within two working days of the date of the passing of the resolution.

Obligations of the company

19 (7) The company shall within two days of the completion of buy-back issue a public advertisement in a national daily, inter alia, disclosing:

(i) number of shares or other specified securities bought;

(ii) price at which the shares or other specified securities bought;

iii) total amount invested in the buy-back;

(iv) details of the security-holders from whom shares or other specified securities exceeding one per cent of total shares or other specified securities were bought back; and

(v) the consequent changes in the capital structure and the shareholding pattern after and before the buy-back.

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[1] *Substituted by the SEBI (Buy-back of Securities) (Amendment) Regulations, 2012, w.e.f. 07-02-2012 for the following:*

Board resolution

5A. (1) A company, authorised by a resolution passed by the Board of Directors at its meeting, to buy back its other specified securities under first proviso to clause (b) of sub-section (2) of section 77A of the Companies Act, 1956, as inserted by the Companies (Amendment) Act, 2001, may buy back its shares or other specified securities subject to the following conditions:

(a) before making a public announcement under sub regulation (1) of regulation 8, a public notice shall be given in at least one English national daily, one Hindi national daily and a regional language daily, all with wide circulation at the place where the registered office of the company is situated,

(b) the public notice shall be given within 2 days of the passing of the resolution by the Board of Directors;

(c) the public notice shall contain the disclosures as specified in schedule I.

(2) A copy of the resolution, passed by the Board of Directors at its meeting, authorising buy back of its shares or other specified securities, shall be filed with the Board and the stock exchanges where the shares or other specified securities of the company are listed, within two days of the date of the passing of the resolution.

21. The first issue for consideration in the instant matter is whether the Noticee had complied with the requirements laid under Regulation 4(1) of Buy-Back Regulations during the buy-back of its shares in the year 2003. The Noticee has stated that there has been inordinate and extraordinary delay in initiation of the present proceedings which renders these proceedings untenable. The Noticee has further stated that SEBI had raised queries in June, 2003 in respect of the impugned buy-back transaction and that it had responded to the same on July 18, 2003. I note that the above referred communication between SEBI and the Noticee had happened after the Noticee had already completed the impugned buy-back transaction.

22. In this respect, I am of the view that there is no limitation on initiation of adjudication proceedings for violation of various provisions of SEBI Act and Regulations made thereunder.

23. I note from the submissions made by the Noticee that it has not denied that it did not comply with the provisions of Regulation 4(1) of Buy-Back Regulations during the impugned buy-back transaction. From the order dated December 30, 2016 of Hon'ble SAT, I observe that *inter alia* the grounds of appeal of the Noticee against the adjudication order dated July 09, 2014 were as under:

    (i) The impugned buy-back was Special Court initiated and sanctioned buy-back, whose process was not initiated by the Noticee, and hence the buy-back was not within the scope of Buy-Back Regulations. The Special Court Act is a special statute of a later date and hence would override another Special Law (SEBI Act) of an earlier date.

    (ii) The Noticee had voluntarily undertaken steps to comply with the requirements of Section 77A of the Companies Act, 1956/ Buy-Back Regulations to the extent possible (i.e., compliance of regulation 5A & 19(7)) and therefore the Noticee cannot be held guilty of violating the Buy-Back Regulations.

24. The Noticee has also taken the above grounds in its submissions in respect of the SCN and the said submissions have been discussed in the succeeding paragraphs. I note that the Noticee in its reply has stated that it was a scheme driven by the Hon'ble Special Court for disposal of securities of notified persons. The Noticee has contended that since shares were purchased by it in terms of scheme formulated and the approval given by the Hon'ble Special Court, SEBI does not have jurisdiction in the matter in terms of Section 9A and non-obstante clause contained in Section 13 of the Special Court Act. The relevant text of the said provisions read as under:

"9A. Jurisdiction, powers, authority and procedure of Special Court in civil matters.—

(1) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994) the Special Court shall exercise all such jurisdiction, powers and authority as were exercisable, immediately before such commencement, by any civil court in relation to any matter or claim—

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

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

(2) ..

(3) On and from the commencement of the Special Court (Trial of Offences Relating to Transactions in Securities) Amendment Act, 1994 (24 of 1994), no court other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or claim referred to in sub-section (1)."

.....

13. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act, or in any decree or order of any court, tribunal or other authority."

25. I note that Section 15Y of the SEBI Act also contains non-obstante clause by which civil courts have no jurisdiction over matters for which SEBI has been

empowered to act. The said Section 15Y of the SEBI Act, reads as – *"No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*.

26. I am of the view that the presence of a non-obstante clause in one statute does not automatically obviate the obligation to comply with the provisions contained in other statutes. In this respect, I am inclined to be guided by some of the decided case laws that set out the principles for interpretation of statutes:

(i) The Hon'ble Supreme Court of India in the matter of Utkal Contractors & Joinery (P) Ltd. & Ors. Vs. State of Orissa & Ors [(1987) 3 SCC 279] observed that reason for a statute is a safest guide to its interpretation and held thus (P.288-89): - *"...The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it....No provision in the statute and no word of the statute may be construed in isolation..."*.

(ii) The Hon'ble Supreme Court of India has held in the matter of The Dominion of India and Anr. vs Shrinbai A. Irani and Anr. (decided on May 14, 1954) that - *".....If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof, a non obstante clause cannot out down that construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant 'caution and not by way of limiting the ambit and scope of the operative part of the enactment...."*

(iii) I note that in the matter of Raja Bhagwan Baksh Singh Vs. Secretary of State (decided on March 04, 1940) Lord Porter (Privy Council) has held that - *"...a right construction of the Act can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration...."*

(iv) In the matter of Utkal Contractors & Joinery (P) Ltd. V State of Orissa (1987 AIR 2310, 1988 SCR (1) 314), the Hon'ble Supreme Court of India has held that - *"...a statute is best understood if we know the reason for it.."*

(v) I note that in the matter of Union of India vs Elphinstone Spinning & Weaving Co Ltd. (decided on January 10, 2001), the Constitution Bench of the Supreme Court of India has observed that - "*When the question arises as to the meaning of a certain provision in a Statute it is not only legitimate but proper to read that provision in its context. The context means; the statute as a whole, the previous state of law, other statutes in para materia, the general scope of the statute and the mischief that it was intended to remedy. An Act consists of a long title which precedes the preamble and the said long title is a part of an Act itself and is admissible as an aid to its construction...."*

(vi) In the matter of State of West Bengal vs. Union of India (AIR 1963 SC 1241), the Hon'ble Supreme Court of India has held that - *"The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire Statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs..."*

(vii) In the matter of Poppatlal Shah Vs State of Madras (AIR 1953 SC 274), the Hon'ble Supreme Court of India observed that - *"It is a settled rule of*

construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

(viii) In the matter of Shri Ram Narain v. The Simla Banking & Industrial Co. Ltd. (1956 AIR 614, decided on May 05, 1956), the Hon'ble Supreme Court of India has observed that - *"...It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein...."*

(ix) In the matter of Sarwan Singh & Anr vs Kasturi Lal (1977 AIR 265, 1977 SCR (2) 421, decided on 14 December, 1976), the Hon'ble Supreme Court of India has observed that - *"...When two or more laws operate in the same field and each contains a non-obstante clause stating that its provisions will over-ride those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration..."*

(x) In the matter of ICICI Bank Ltd. Vs SIDCO Leathers Ltd. (Appeal (civil) 2332 of 2006, decided on April 28, 2006), the Hon'ble Supreme Court of India has observed that – *"....Section 529-A of the Companies Act no doubt contains a non-obstante clause but in construing the provisions thereof, it is necessary to determine the purport and object for which the same was enacted..... The non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the*

legislative policy….. A non-obstante clause must be given effect to, to the extent the Parliament intended and not beyond the same…"

(xi) In the matter of A.G. Varadarajulu vs State Of Tamil Nadu (AIR 1998 SC 1388, decided on March 23, 1998), the Hon'ble Supreme Court of India has observed that – *"…In Aswini Kumar v. Arabinda Bose, Patanjali Sastri. J observed: "The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously". In Madhav Rao Scindia v. Union of India, Hidayatullah, CJ observed that the non-obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. A search has therefore, to be made with a view to determining which provision answers the description and which does not…"*

27. From the above case laws, I find that there should be a clear inconsistency between the two statutes before giving an overriding effect to the non-obstante clause. Therefore, in the present matter, it is important to understand the objectives behind the Special Court Act and the SEBI Act. Hon'ble Supreme Court in the matter of Citi Bank N.A. Vs. Standard Chartered Bank & Others (decided on October 08, 2003) has observed in respect of the Special Court Act that – *"…During 1991-92, Reserve Bank of India noticed that large scale irregularities and mal practices were committed in transactions in both the Government and other securities, by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and mal practices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. To deal with this situation and, in particular, to ensure speedy recovery of the huge amount involved and to punish the guilty and restore confidence in and maintain the*

basic integrity and credibility of the banks and financial institutions, this Act was enacted for establishment of Special Courts to be presided over by a sitting Judge of the High Court to be nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India. The Act provided for appointment of one or more Custodian for attaching the properties of the offenders with a view to prevent diversion of such property by the offenders. The Custodian, on being satisfied, on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on and before 6th June, 1992 could notify the name of such person in the Official Gazette. Special Courts were given the jurisdiction to deal with cases of civil as well as criminal liability of the notified person…" Hon'ble Supreme Court in the matter of B.O.I. Finance Ltd vs The Custodian and Ors. (decided on March 19, 1997) has explained the intention behind the framing of the Special Court Act – *"….the intention of framing the aforesaid Act was to protect the interest of the banks and financial institutions from irregularities and malpractices which had been committed by some brokers in collusion with employees of various banks and financial institutions. The important feature of the Act was the attachment of the properties of the offenders with a view to prevent its diversion. The Special Court is required to pass orders directing the disposal of the properties under attachment. Sub-section (2) of Section 11 provides for the priorities in which the liabilities of the notified person are to be discharged from out of the attached properties. Considering that the Act has been passed because of the diversion of funds from the banks and financial institutions to the individual accounts of certain brokers, the implication of Section 11(2)(b) clearly is that after the discharge of the liabilities under Section 11(2)(a), the amounts which are paid to the banks would probably be those funds which were diverted from the banks by reason of malpractices in the security transactions. In other words, the losses caused to the banks and the financial institutions were to be made from out of the assets of the notified persons."*

28. The objectives of the SEBI Act have been enumerated in the preamble to the SEBI act, wherein SEBI is mandated with three principal objectives- (i) to protect the interests of investors in securities; (ii) to promote the development of the securities market; and (iii) to regulate the securities market. I note that Hon'ble

Supreme Court in the matter of Price Waterhouse & Co. vs SEBI (decided on August 13, 2010) has observed that – "*.....The powers available to the SEBI under the Act are to be exercised in the interest of investors and interest of securities market. In order to safeguard the interest of investors or interest of securities market, SEBI is entitled to take all ancillary steps and measures to see that the interest of the investors is protected. Looking to the provisions of the SEBI Act and the Regulations framed thereunder, in our view, it cannot be said that in a given case if there is material against any Chartered Accountant to the effect that he was instrumental in preparing false and fabricated accounts, the SEBI has absolutely no power to take any remedial or preventive measures in such a case. It cannot be said that the SEBI cannot give appropriate directions in safeguarding the interest of the investors of a listed Company. Whether such directions and orders are required to be issued or not is a matter of inquiry. In our view, the jurisdiction of SEBI would also depend upon the evidence which is available during such inquiry. It is true, as argued by the learned counsel for the petitioners, that the SEBI cannot regulate the profession of Chartered Accountants. This proposition cannot be disputed in any manner. It is required to be noted that by taking remedial and preventive measures in the interest of investors and for regulating the securities market, if any steps are taken by the SEBI, it can never be said that it is regulating the profession of the Chartered Accountants. So far as listed Companies are concerned, the SEBI has all the powers under the Act and the Regulations to take all remedial and protective measures to safeguard the interest of investors and securities market....*".

29. I further note that, in terms of Section 55A of the Companies Act, 1956 (parallelly Section 24 of the Companies Act, 2013), SEBI also has jurisdiction in respect of buy-back of securities of listed public companies. The relevant extract of the provision of Section 55A is reproduced here in below:

"55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA

The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, -

(a) in case of listed public companies ;

(b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India; and

(c) in any other case, be administered by the Central Government.

Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the Tribunal or the Registrar of Companies, as the case may be."

30. It is for reasons stated above, I find no merit in the argument of the Noticee that the right to buy-back their own shares was granted to it and/or its management in terms of the order dated August 17, 2000 passed by the Hon'ble Special Court (and slightly modified by the Hon'ble Supreme Court of India) and the jurisdiction to adjudicate any alleged violation in respect thereof also vests exclusively with the Hon'ble Special Court and that the present Notice is without jurisdiction. I further note from the above mentioned objectives of the Special Court Act and the SEBI Act that there is no inconsistency between the objectives behind the said acts. In this respect, I note that the Hon'ble Supreme Court in the matter of R.S. Raghunath v. State of Karnataka (decided on October 04, 1991) observed that – *"....there should be a clear inconsistency between the two enactments before giving an overriding effect to the non-obstante Clause but when the scope of the provisions of an earlier enactment is clear the same cannot be cut down by resort to non-obstante clause..."*. I am of the view that the objectives of the Special Court Act can be achieved even when the purchaser(s) of the shares of the notified persons comply with SEBI Regulations. In fact, I note from the "norms for sale controlling block of shares" from the scheme formulated by the custodian that these norms specify that the purchaser(s) shall comply with all regulations including the Takeover Regulations of SEBI (emphasis supplied). Hon'ble Supreme Court in the matter of Macquarie Bank Limited vs Shilpi Cable Technologies Limited (decided on December 15, 2017) has also observed that – *"....The doctrine of harmonious construction of a statute extends also to a harmonious*

construction of all statutes made by Parliament...". Considering the above, I am of the view that the buy-back transaction by the Noticee had to take place in such a manner that the objectives of both the Special Court Act and the SEBI Act were achieved. For the reasons as stated above, I am not inclined to accept the argument of the Noticee that the Special Court Act, being a later enactment, would override the SEBI Act. As mentioned, the objectives of both the acts could have been achieved in the matter as there is no inconsistency between the said Acts.

31. The Noticee has also stated that, as per the Scheme for sale of shares as confirmed by the Hon'ble Supreme Court and in view of the said non-obstante provisions of section 13 of the Special Court Act, the buy-back by the Noticee was not a "buy-back" of shares as envisioned in the SEBI Buy-Back Regulations and all the provisions thereof would not be applicable to such a buy-back / sale of shares by the Hon'ble Special Court. In this respect, I note that "buy-back" is the process by which a company purchases its own outstanding shares from its existing shareholders and then extinguishes the bought back shares, so as to reduce the number of outstanding shares of the company. In the present case, the Noticee had purchased its shares, which belonged to the applicants, and subsequently extinguished the said shares resulting in reduction of its issued share capital. I am of the view that the said buy-back by the Noticee is no different from the buy-back of shares that are done by various companies. Therefore, I find that the contention of the Noticee, that the impugned buy-back was a "special" buy-back, is not acceptable.

32. The Noticee has further stated the SCN is without any merit and jurisdiction and that the SCN constitutes an accusation that the Hon'ble Special Court's processes are violative of the Buy-Back Regulations and merely because Apollo participated in the process, Apollo would be guilty of violative conduct. I note that the present proceedings are not into the review of the orders of Hon'ble

Special Court. The purpose of the present proceedings is to determine whether the Noticee had complied with the applicable SEBI Regulations while carrying out the buy-back of its shares. I note that the obligation of compliance with the Buy-Back Regulations was not on the Hon'ble Special Court, but on the Noticee. As such, I find that the Noticee has grossly misconceived the purpose of the present proceedings. The Hon'ble Special Court had offered the shares of the notified persons to the Noticee for purchase in terms of the scheme of sale of shares floated by the Custodian. The term "offer" signifies that the Noticee was presented with an option to buy-back its securities and it was not mandatory that the Noticee accept the said offer even when it was unable to comply with applicable laws and regulations. The Noticee has admittedly stated it had the right to accept or reject the offer made by the Hon'ble Special Court. However, the Noticee still went ahead with buy-back of shares knowing fully well that it would not comply with the provisions of the Buy-Back Regulations.

33. I further observe that the Hon'ble Supreme Court of India while approving the scheme and the directions given by the Hon'ble Special Court for disposal of shares, gave the following directions on August 23, 2001 for the sale of controlling block of shares:

"..If the Court thinks that it is best to adopt the norms laid down by it for sale of controlling block of shares (the 3rd method) then when highest offer is received and the Management of the Company is given an option to buy those shares at that price, then if the Management so desires the Court should give the Company an opportunity to buy back the shares at the highest price offered by complying with the provisions of Section 77A of the Companies Act. In other words, on the receipt of the offer for sale of the controlling block, the Court will give an opportunity, if it chooses to consider the offer, to the Management to buy or to the Company to buy back under Section 77A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for..."

34. From the above, I note that the Hon'ble Supreme Court had directed that the provisions of Section 77A of the Companies Act, 1956 had to be complied with by the Noticee for buy-back of its shares in terms of the scheme formulated by the Hon'ble Special Court. When the said directions were issued, the Hon'ble Supreme Court was aware of the non-obstante clause in the Special Court Act. I note that Section 77A of the Companies Act, 1956 was inserted vide the Companies (Amendment) Act, 1999 with effect from October 31, 1999. Before the introduction of the said section, it was forbidden for companies to purchase its own shares or give loans to anybody to purchase own shares or holding company's shares under Section 77 of the Companies Act, 1956. Contrary to the practice followed by OECD countries, companies in India were allowed to reduce capital under very special circumstances under section 100 to 104 or under section 402 of the Companies Act, 1956. Section 77A was introduced pursuant to the Report of the Working Group, which was set up to suggest reforms to the Companies Act, with certain restrictions and safeguards. I note that para 3.9 of the said report reads as under:

"3.9 There is an erroneous belief that the sole reason for buyback is to block hostile takeovers. In this connection it is pertinent to list the five reasons why the Bank of England favoured the making of law to allow companies to repurchase their shares, of which blocking takeovers was only one:

(i) to return surplus cash to shareholders,

(ii) to increase the underlying share value;

(iii) to support share price during periods of temporary weakness;

(iv) to achieve or maintain a target capital structure;

(v) to prevent or inhibit unwelcome take-over bids.."

35. I also note that Section 77A of the Companies Act, 1956 *inter alia* provides that buy-back of shares listed on any recognised stock exchange has to be in

accordance with the Regulations made by SEBI in this behalf. Section 77A of the Companies Act along with the Buy-Back Regulations have laid down the procedures by which a company can buy-back its shares, subject to safeguards specified therein. As the Hon'ble Supreme Court had directed compliance with Section 77A of the Companies Act, 1956, the Noticee ought to have complied with the said directions. I am of the view that the directions of the Hon'ble Supreme Court have to be complied with in both letter and spirit. I further note that Regulation 3 of the Buy-Back Regulations framed by SEBI provides for the applicability of the said Regulations and states that the said Regulation is applicable to buy-back of equity shares of a company listed on a stock exchange. It is a matter of record that the shares of the Noticee are listed on stock exchanges. I am of the view that the matter also involves the interests of shareholders of ATL, as the said buy-back altered the capital structure of ATL when the Noticee bought back controlling block of shares, and thus invoking the reasons noted by the Working Group. As the Noticee is a listed company, the said buy-back of its shares had to happen as mandated under the Buy-Back Regulations. In terms of Regulation 4(1) of the Buy-Back Regulations, a company may buy-back its shares by any one of following methods:-

(a) From existing shareholders on a proportionate basis through tender offer. I note that Buy-Back Regulations define "tender offer" as an offer made by a company to buy-back its shares or other specified securities through letter of offer from the holders of the shares or other specified securities of the company;

(b) From open market through – (i) book-building process, (ii) stock exchange;

(c) From odd-lot holders, i.e., from those shareholders whose holding is smaller than such marketable lot as specified by the stock exchange.

I note from above that none of the above prescribed methods were used by the Noticee citing that it bought shares through a Court driven process, while carrying out the buy-back of its shares.

36. The Noticee has also contended that Buy-Back Regulations were not applicable in the present case as it had purchased shares from one person, i.e., the Custodian appointed by the Hon'ble Special Court, through a negotiated deal. I note that the Hon'ble Supreme Court in the matter of B.O.I. Finance Ltd vs The Custodian and Ors. (decided on March 19, 1997) has made the following observations in respect of Custodians appointed under the Special Court Act:

".....12. Section 4 of the Act gives the custodian the power to cancel such contracts or agreements which have been entered into fraudulently. That apart, he is merely a custodian of the properties of the notified persons which stand attached under the Act and such properties are to be dealt with by him in such manner as the Special Court may direct.

13. The Act shows that the Custodian has three main functions to perform. Firstly; he has the authority to notify a person under Section 3(2) who has been involved in any offence relating to transactions in securities during the period 1.4.1991 to 6.6.1992. Secondly; he has been given the authority by Section 4 to cancel contracts or agreements relating to the properties of the notified persons which, in his opinion, have been entered into fraudulently or for the purpose of defeating the provisions of the Act. Lastly; he is required to deal with properties in the manner as directed by the Special Court. To put it simply the Custodian is required to assist in the attachment of the notified person property and to manage the same thereafter. The properties of the notified persons, whether attached or not, do not at any point of time, vest in him. He is merely a Custodian and his position is not like that of a Receiver under Civil Procedure Code (Section 94 Order 44) or an official receiver under Provincial Insolvency Act or official assignee under the Presidency Insolvency Act. There is no vesting of the attached properties of the notified persons in the custodian. This is in contrast with Section 28(2) of the Provincial Insolvency Act and Section 17 of the Presidency Insolvency Act. There is the vesting in the official receiver or official assignee. He is also not in a position of an official liquidator under the Companies Act in whom not only

the property vests but who is also in control thereof. This being so there is considerable force in the contention of the counsel for the appellants that, except for power exercisable under Section 4, the position of the Custodian is the same as that of the notified person himself……"

37. I am also of the view that the Custodian under the Special Court Act is not the beneficial owner of the shares. I tend to rely upon the view of the Department of Company Affairs communicated vide its Circular No. 5/75 (8/18/75-CL-V) dated March 31, 1975, wherein clarification in respect of Declaration of Beneficial Interests in Shares Rules, 1975 is provided that – "*The rules are not applicable to shares held by official designations only, e.g., court receiver, official liquidator, administrator general, Income-tax or Wealth-tax Commissioner, custodian of evacuee or enemy properties, etc., since no title to the shares vests in the officials who deal with the property under special judicial or statutory authority.*" The clarificatory circular issued by the Department of Company Affairs is in respect of Section 187C of the Companies Act, 1956 that deals with declaration of interest in shares by certain persons. The ratio that emerges from the circular in respect of a custodian is that the custodian does not become the holder of the title to the shares since he deals with the property under Special judicial or statutory authority. In this case, I note that the custodian has entered reference vide the powers and the authority conferred on him in terms of section 3 of the Special Court Act. So, in light of the above, the argument of the Noticee that the shares have been purchased from the custodian and not from any shareholder of the company has no basis. In view of the same, I find that the said buy-back of shares by Noticee cannot be termed as purchase from one person, i.e., the custodian.

38. The Noticee has also contended that the circumstances pertaining to the buy-back were unique and as such it was not possible for it to fully comply with the

Buy-Back Regulations. I note that the Noticee was given an option to buy-back its shares by Hon'ble Special Court so as to avoid the destabilization of the Company, as a controlling block of shares was offered for sale. I am of the view that if it was such a unique situation, the Noticee should have brought this to the notice of Hon'ble Supreme Court or Hon'ble Special Court and should have obtained suitable directions towards the applicability of Section 77A of the Companies Act, 1956/ Buy-Back Regulations in the matter. Moreover, the Noticee could also have approached SEBI under Regulation 26 of the Buy-Back Regulations regarding applicability of Buy-Back Regulations in the instant matter and, if required, obtained a suitable clarification from SEBI. However, the Noticee did not bring the above difficulty towards compliance of Section 77A of the Companies Act, 1956/ Buy-Back Regulations to the notice of the Hon'ble Court. Therefore, I am of the view that the Noticee had no intention to comply with the directions of Hon'ble Supreme Court.

39. I note from above that neither the Law, nor the Regulator nor did the Judiciary give any exemption to the Noticee from complying with the provisions of Buy-Back Regulations. On the contrary, the Noticee made a *suo moto* voluntary assumption of an otherwise inconceivable exemption from complying with the provisions of Buy-Back Regulations. I am of the view that no person has the authority to exempt himself from statutory compliance of law.

40. The Noticee has also stated that the Hon'ble Supreme Court, vide Order dated November 08, 2011, did not disturb or interfered with the Noticee's buy-back in any manner despite the objections and contentions of the applicants and that the Hon'ble Supreme Court accepted that the buyback of 36.90 lakh shares by the Noticee was in accordance with law. The Noticee has also stated that it had placed a list of compliances done by it before the Hon'ble Supreme Court to establish that it had in fact complied with the requirements of Section 77A and

the Buy-Back regulations to the extent as was reasonably possible and that the said submission was with specific reference to Section 77A(7) relating to extinguishment of the said bought back shares. The Noticee has further stated that it was in view of the extinguishment of shares that the Hon'ble Supreme Court refused to interfere with the buy-back in the order dated November 08, 2011. In this respect, I note that the Hon'ble Supreme Court in the said order dated November 08, 2011 has observed that:

"..We also feel that the Special Court overlooked the norms laid down by it in its order dated 17th August 2000; ignored the afore- extracted directions by this Court contained in order dated 23rd August 2001 and glossed over the procedural irregularities committed by the Custodian..

.....

However, since we have come to the conclusion that the Special Court has exercised its discretion in complete disregard to its own scheme and 'terms and conditions' approved by it for sale of shares and above all that the impugned order was passed in violation of the principles of natural justice, we think that the facts in hand call for our interference, to correct the wrong committed by the Special Court. For the view we have taken above, we deem it unnecessary to deal with the other contentions urged on behalf of the parties on the merits of the impugned order..

....

".. This brings us to the question of relief. In view of our finding that the decision of the Special Court is vitiated on the afore-stated grounds, it must follow as a necessary consequence that in the normal course, the impugned order must be struck down in its entirety. However, bearing in mind the fact that the sale of 54,88,850 shares was approved and all procedural modalities are stated to have been carried out in the year 2003, we are inclined to agree with Mr. Vellapally and Dr. Singhvi that at this stage, when 36.90 lakh shares of Apollo are claimed to have been extinguished, the relief sought for by the appellants to rescind the entire sale of 54,88,850 shares will be impracticable and fraught with grave difficulties. In our opinion, therefore, the relief in

this appeal should be confined to 4.95% of the shares, subject matter of interim order, dated 29th May, 2003, extracted above. In the result, we allow the appeal partly; set aside the impugned order to the extent indicated above and remit the case to the Special Court for taking necessary steps to recover the said 4.95% shares from Apollo or its management, as the case may be, and put them to fresh sale strictly in terms of the afore noted norms as approved by this Court vide order dated 23rd August, 2001.."

41. From the above observations of the Hon'ble Supreme Court, I note that the Hon'ble Supreme Court observed that its directions and the scheme for sale of shares were not followed for the impugned buy-back of shares. However, the Hon'ble Supreme Court did not find it practical to grant the relief as sought by the applicants in view of the extinguishment of shares after buy-back by the Noticee. I further note that the Hon'ble Supreme Court put the 4.95% of shares bought by the management of the Noticee to fresh sale strictly in terms of the norms as approved by the Hon'ble Supreme Court vide order dated August 23, 2001. The Hon'ble Supreme Court also did not deal with the last contention of the applicants that the buy-back effected by the Noticee was in violation of Section 77A of the Companies Act, 1956 as well as the Buy-Back Regulations. In view of the above, I am of the opinion that the contention of the Noticee that the Hon'ble Supreme Court accepted that it had purchased shares in accordance with law is too much of an assumption not supported by the order of the Hon'ble Supreme Court and therefore is not acceptable. On the contrary, the statement made by the Noticee that, the Hon'ble Supreme Court "rejected" the prayers made by the Shri Ashwin Mehta for rescinding, has no basis.

42. I further note that the Hon'ble SAT in its order dated December 30, 2016 in respect of the appeal filed by the Noticee against the adjudication order dated July 09, 2014 has observed that – "*...It is a matter of record that the buy-back proposal put up by the appellant was accepted by the Special Court subject to*

compliance of Section 77A of the Companies Act, 1956/Buy Back Regulations. Even in the order of the Apex Court dated 08.11.2011 the dispute relating to compliance of Section 77A of the Companies Act, 1956/Buy Back Regulations is specifically recorded and after holding that the buy-back was in violation of the principles of natural justice, in view of all procedural modalities for buy-back were stated to have been carried out in the year 2003, the Apex Court did not deem it fit to disturb the buyback of shares allowed to the appellant by the Special Court. Thus, the question as to whether the buy-back of its shares by the appellant company was in compliance of Section 77A of the Companies Act, 1956/ Buy Back Regulations or not, was a question that could be determined by SEBI...". **(emphasis supplied)**

43. Owing to the above, the argument of the Noticee that the issue is said to be *res judicata* and cannot be re-agitated in the present proceedings is not acceptable. Further, for the said reasons I find that the argument of the Noticee that the Hon'ble Supreme Court has accepted the buy-back by the Noticee of 36.90 lakh shares was in accordance with law has no basis, as I do not find any pronouncement in the order dated November 08, 2011 by the Hon'ble Supreme Court in this regard as has been contested by the Noticee. Further, the argument of the Noticee that the Hon'ble Supreme Court vide the order referred *supra* had rejected the prayer to rescind the buyback of 36.90 lakh shares on the allegation of the applicants that the same did not comply with the Buy-Back Regulations is unfounded in the order dated November 08, 2011 as the Hon'ble Supreme Court had only dealt with the manner in which the discretion was exercised by the Hon'ble Special Court and the non-compliance with the principles of natural justice. Thus, the Hon'ble Supreme Court has not pronounced any view of decision in regard to compliance or otherwise of Buy-Back Regulations and did not grant any exemption to the Noticee from compliance. Therefore, I find no merit in the arguments advanced by the Noticee in this regard. The present proceedings precisely deal with certain non-compliances with respect to certain

provisions of law, whose non-compliance by the Noticee, apparently, has not been accepted or agreed to by the Hon'ble Supreme Court of India. In fact, from the copies of the orders of the Hon'ble Supreme Court of India, I find that the Hon'ble Court has also mentioned that the complaint of Shri Mehta is to be considered by SEBI on its own merits. The orders of the Hon'ble Supreme Court of India nowhere bars the power of SEBI to intervene and take action as may be necessary on non-compliance with applicable laws. I further note that the Hon'ble Supreme Court has not granted any immunity or insulation or ring fenced the Noticee from any action by the Regulator.

44. The Noticee has also contended that it voluntarily adopted some of the processes under the Buy-Back Regulations for transparency of the process. I note that the Noticee at one hand has claimed that the Buy-Back Regulations were not applicable in the matter and then still went ahead for complying with some of the requirements of Buy-Back Regulations. I find the claims made by the Noticee in this regard to be contradictory in nature.

45. The AR of the Noticee during the joint hearing on June 27, 2018 argued that the matter has attained finality pursuant to the Hon'ble Supreme Court order dated April 20, 2018. I have perused the order of Hon'ble Supreme Court and note that the said order states that – *"Application (IA No.51717/2018) for direction is dismissed as withdrawn. M.A. stand disposed of accordingly."* Considering that the Hon'ble Supreme Court has dismissed the application of the applicants as withdrawn, I am of the view that the said order does not affect the present proceedings.

46. Based on the aforesaid discussions and findings, I am of the view that the Noticee failed to comply with Regulation 4(1) of Buy-Back Regulations while effecting the buy-back of its shares. The said violation attracts penalty under Section15HB of the SEBI Act. The text of Section 15HB is as follows:

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

47. Hon'ble SAT in its order dated December 30, 2016, while remanding the matter back to the file of Adjudicating Officer, had observed that - *"...Before passing the final order the AO shall consider the question as to whether the applicants from whom the shares were brought back by the appellant company should be heard in the matter and if found necessary, give an opportunity of hearing to the applicants before passing the final order"*. In view of the same, the applicants were also provided with opportunity of hearing and joint hearing in the matter. The applicants have made their submissions in the matter and have *inter alia* requested to rescind the said buy-back by the Noticee. However, I note that the scope of the present proceedings is limited to adjudicating the violations of Regulations 4(1), 5(A) and 19(7) of the Buy-Back Regulations alleged to have been committed by the Noticee and any other action as requested by the applicants is beyond the authority vested in me. This point was also clarified to the AR of the applicants during the hearing held on January 04, 2018 and is noted in the record of proceedings of the said hearing. The applicants have also alleged that there was a collusion between the Custodian, the Noticee and its management wherein the Custodian conferred huge monetary and other benefits to the Noticee and the investment companies of its promoters. However, I am of the view that the complaint/allegation against the Custodian is not within the purview of the present proceedings. I also note from the said submissions of the applicants that no new material has been provided in respect of the specific scope of the present adjudication proceedings. The applicants also requested for a copy of the SCN and the reply of the Noticee to the SCN. However, I am of the view that the SCN

and the reply of the Noticee to the SCN cannot be shared with any third person as the contents of the said documents are specific to the Noticee.

48. It was also alleged in the SCN that the Noticee failed to submit the Board Resolution dated April 24, 2003 authorising the buy-back with SEBI as per Regulation 5A of the Buy-Back Regulations. In this respect, the Noticee has contended that the resolution dated April 24, 2003 was merely an enabling resolution and as on date of the said resolution, it was not even certain that the Noticee would buy-back any shares, or the quantum thereof, or for the price for the same. The Noticee has further contended that buy-back of the aforesaid shares was approved by the Board of Noticee on May 09, 2003 and not on April 24, 2003. The Noticee has stated that the Hon'ble Supreme Court in its order dated August 23, 2001 had categorically stated that the Hon'ble Special Court would give an opportunity to the management of the Noticee or the Noticee to buy the shares. In view of the same, the Noticee prepared itself to be in readiness to respond as and when the offer was received from the Hon'ble Special Court and convened a Board Meeting on April 24, 2003.

49. In this respect, I note that, at the outset, there is no guarantee that any buy-back initiated by any company would succeed. That way, every resolution passed by Board of Directors of any company for buy-back of shares is an enabling resolution only. I also note from the extract from the minutes of the Board meeting dated April 24, 2003 that the Noticee had already authorised directors and company officials for buy-back of shares. The relevant extract of the board resolution is as under:

"The Board after further deliberations, in order to take action as may be required, based on situation arising on the basis of bids, authorised Directors and Company officials to take appropriate action and passed the following resolution:-

"RESOLVED THAT the Company do buy-back shares, when option to purchase is given to the Company, belonging to Harshad Mehta Group, as per details of the bid dated 27th March, 2003 called by the Custodian upto and including 10% of the share capital plus free reserves of the Company at such price as may be negotiated and agreed upon before the Special Court for the purposes of buy-back.

RESOLVED FURTHER THAT the Company do make the payment of the negotiated price to the Custodian, take authorisation in demat form from the Custodian for delivery of the bought back shares.

RESOLVED FURTHER THAT Shri Onkar S. Kanwar, Chairman & Managing Director, Shri Neeraj Kanwar, Chief Operating Officer & Whole 'Time Director, Shri U.S.Oberoi, Chief (Proj. & Corporate Affairs) & Whole Time Director, Shri P.N.Wahal, Head (Sectt.) & Company Secretary and Shri Harish Bahadur, Head (Accounts & Taxation) be and are hereby severally authorised to take all necessary actions as may be required in respect of the above."

50. In view of the above, I observe that the Noticee knew that the Hon'ble Special Court would give an opportunity to it for buying back the shares. I note that the Custodian in its public notice dated March 27, 2003 had clearly mentioned the number of shares which were available for sale. I also note from the Board Resolution that the Noticee had authorised its directors and company officials to buy-back shares as per details of the bid dated March 27, 2003 (emphasis supplied) called by the Custodian up to and including 10% of the share capital plus free reserves of the Company at such price as may be negotiated and agreed upon before the Special Court for the purposes of buy-back. Therefore, I find that the Noticee's contention, that the quantity of shares offered to it for buy-back was not known, is incorrect. Further, the Board of the Noticee had also permitted the Noticee to make the payment of the negotiated price to the custodian and take authorisation in demat form from the Custodian for delivery of the bought back shares. Thus, I find the Board of Directors of the Noticee has

duly authorized its officials to take necessary action towards buying back the shares from the notified persons. I note that any authorisation will have a purpose and in this case the authorisation is for the purpose of buying back the shares. In that way, I find the said resolution to be more firm and more decisive in implementing the buy-back. Therefore, the argument that it was only an enabling resolution permitting the officials of the Noticee to attend the court and make an offer to buy-back shares is not acceptable. Incidentally, I note that the above board resolution permits negotiation for the buy-back, which is not in line with the provisions of Buy-Back Regulations.

51. I am of the view that, in terms of Regulation 5A of the Buy-Back Regulations, the Noticee was obligated to submit a copy of the board resolution dated April 24, 2003 to SEBI as the resolution was duly passed by the Board of Directors of the Noticee deciding to buy-back shares as discussed in earlier paragraphs. However, the Noticee has only submitted a copy of board resolution dated May 09, 2003 to SEBI on May 10, 2003. Therefore, I am of the view that the Noticee has failed to comply with Regulation 5A of the Buy-Back Regulations. The said non-compliance attracts penalty under Section 15HB of the SEBI Act. The text of Section 15HB has been provided elsewhere in the order.

52. It was also alleged in the SCN that the Noticee failed to issue a public notice within the time limit specified under Regulation 19(7) of the Buy-Back Regulations. I note that the Noticee has stated that deadline for completion of buy-back was May 17, 2003 as it had 15 days from the order dated May 02, 2003 of Hon'ble Special Court. The Noticee has further submitted that completion of buy-back at the earliest can be deemed to be only on May 15, 2003, being the date of reduction of capital as confirmed by CDSL. The Noticee has also stated that a similar letter about reduction of capital from NSDL was received only on May 23, 2003.

53. In this respect, I note that the Noticee has stated that the public notice was issued by it on May 13, 2003. The following was *inter alia* stated in the said public notice – *"Notice is hereby given the pursuant to the orders of the Hon'ble Supreme Court / Special Court at Mumbai, the Company has bought back 36,90,000 equity shares of Rs. 10/- each at Rs. 90/- per share aggregating to Rs. 33.21 crore, being shares held by notified parties and put up for sale by the office of the Custodian. As a consequence, the paid up share capital, post buy back, stands reduced from 36.31 crores to 32.32 crore."*

54. The above public notice is dated May 09, 2003 and is signed by the Noticee's Company Secretary. As noted above, the Noticee has contrarily claimed the completion of buy-back at the earliest can be deemed to be only on May 15, 2003. However, the public notice issued by the Noticee was dated May 09, 2003 and the Noticee has *inter alia* stated in the said notice that the paid up share capital, post buy-back, stands reduced from 36.31 crores to 32.32 crore. Thus, the Noticee had informed public at large about reduction in its share capital, post buy-back, even before its claimed buy-back completion date of May 15, 2003. I find it difficult to accept that any company would give public notice about reduction in its share capital, post buy-back, even before completing the said buy-back. Thus, I am of the view that the Noticee had completed the buy-back before issuing the said public notice. Moreover, I note that the Noticee had submitted Form 4C in pursuance to Rule 5C of the Companies (Central Government's) General Rules & Forms, 1956 to the Registrar of Companies, Kochi on May 12, 2003 *inter alia* stating the date of buy-back/ date of cancellation / extinguishment of securities bought back as May 09, 2003. In view of the same, I find that the Noticee itself had unequivocally acknowledged that the bought back shares were extinguished on May 09, 2003. As per the requirements of Regulation 19(7) of the Buy-Back Regulations, a company

should issue a public advertisement in a national daily within two days of completion of buy-back disclosing the information specified in the said Regulation. As the Noticee had issued the public advertisement only on May 13, 2003, there was clear delay of two days in issuing the public notice by the Noticee.

55. In addition, it was also alleged that the public notice issued by the Noticee did not contain the pre and post shareholding pattern, as specified under Regulation 19(7) of the Buy-Back Regulations. The Noticee has submitted that the information containing the pre and post buy back shareholding pattern was already available in the public domain. I am of the view that the availability of information in public domain does not exempt the Noticee from complying with the requirement specifically mentioned Regulation 19(7) of the Buy-Back Regulations. In this context, I would like to rely on ratio from the order dated February 21, 2011 of the Hon'ble SAT in Premchand Shah and Others Vs. SEBI, wherein it was held that - *".....When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments....."*. In view of the above, I find that the Noticee has violated the provisions of Regulation 19(7) of the Buy-Back Regulations. The said non-compliance attracts penalty under Section 15HB of the SEBI Act. The text of Section 15HB has already been provided earlier.

56. In view of the foregoing, I am of the view that the Noticee has violated the provisions of Regulations 4(1), 5(A) and 19(7) of the Buy-Back Regulations. The Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"..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…".

57. I am convinced that it is a fit case to impose monetary penalty under Section 15HB of the SEBI Act. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

"Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

58. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, on account of default by the Noticee. However, it cannot be ignored that a listed company like the Noticee is required to adhere to the provisions of law. In the present case, the Noticee had bought back a controlling block of shares as per the scheme, but did not comply with the provisions of Buy-Back Regulations as established above.

ORDER

59. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 65,00,000/- (Rupees Sixty Five Lakh only) on the Noticee viz. Apollo Tyres Limited under the provisions of Section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

60. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

61. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1-DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

62. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Apollo Tyres Limited and also to the Securities and Exchange Board of India.

Date: November 22, 2018

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER