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(BEFORE D.K. JAIN AND A.K. GANGULY, JJ.)

ASHWIN S. MEHTA AND ANOTHER .. Appellants;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Civil Appeal No. 4263 of 2003†, decided on November 8, 2011

A. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3(3) & (4), 9-A, 9-A(4), 10 and 11 — Attachment and sale of shares of notified parties — Approach adopted by Special Court — Disregard of scheme/norms framed by it for sale of attached shares and violation of principles of natural justice — Special Court's permission to Custodian for sale of shares of Apollo Tyres belonging to family of late *HM* (main accused in Securities Scam) allowing buyback by company/management at Rs 90 per share — Maximum price not realised — Sustainability — Held, in light of statutory provisions and norms laid down for sale of shares, Special Court failed to make a serious effort to realise highest possible price for shares — Special Court overlooked norms laid down by it, ignored directions by Supreme Court in respect thereto and glossed over procedural irregularities committed by Custodian — Moreover, Special Court failed to comply with principles of natural justice, as required by the Act, by rejecting appellants' prayer to grant them 48 hours' time to secure a better offer — Special Court also ignored its past precedents whereby it had granted time to parties to get better offers for sale of shares — Thus appellants and notified parties were denied proper opportunity to bring a better offer for sale of shares, resulting in realisation of lesser amount to their detriment — Hence, matter remitted to Special Court to recover 4.95% existing shares from Apollo/its management and put them up for fresh sale — No relief could be granted in respect of certain shares that stood extinguished — Corporate Laws — Companies Acts, Rules and Company Law — Company Law — Shareholder, stocks and shares — Sale — Buyback of shares**

(Paras 35, 38, 44, 48 and 49)

Apollo Tyres Ltd. v. *A.K. Menon*, (2011) 14 SCC 689, *relied on*

Harshad Shantilal Mehta v. *Custodian*, (1998) 5 SCC 1; *Ashwin S. Mehta* v. *Union of India*, (2011) 14 SCC 769; *Desh Bandhu Gupta* v. *N.L. Anand*, (1994) 1 SCC 131; *Gajadhar Prasad* v. *Babu Bhakta Ratan*, (1973) 2 SCC 629; *Ashwin S. Mehta* v. *Custodian*, (2006) 2 SCC 385 at paras 67-72; *Rajesh D. Darbar* v. *Narasingrao Krishnaji Kulkarni*, (2003) 7 SCC 219, *referred to*

B. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3(3) & (4) — Notified person(s) — Interest of, in realisations from sale of attached property — Nature, object and purpose of enactment — Held, Act is a complete code in itself — Object and purpose is to punish persons involved in criminal misconduct by defrauding banks and financial institutions and**

† From the Judgment and Order dated 2-5-2003 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 at Bombay in Misc. Petition No. 64 of 1998

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to see their properties are appropriated and disposed of for discharge of their liabilities — Hence, notified parties have intrinsic interest in realisations on disposal of any attached property because it has a direct bearing on discharge of their liabilities (Paras 29 and 33)

C. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 9-A(4) — Proceedings before Special Court — Held, statute mandates that Special Court shall be guided by principles of natural justice — Natural Justice — Generally — Nature, Scope and Applicability (Para 34)**

D. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3 and 4 — Custodian — Jurisdiction to deal with property under attachment — Scope — Obligatory for Custodian to perform all functions strictly in accordance with directions of Special Court — Hence, Custodian by inviting Apollo to bid to buyback its shares even before highest price was ascertained by Special Court, held, exceeded directions issued to him by Special Court, but in absence of mala fides, the same was only a procedural omission, not per se sufficient to nullify sale of shares (Paras 34 and 38)**

B.O.I. Finance Ltd. v. *Custodian*, (1997) 10 SCC 488, *relied on*

E. **Natural Justice — Rule of audi alteram partem — Right to hearing — Applicability/Extent of the principle of — Held, cannot be put in a straitjacket formula — Whether or not principle has to be applied is to be considered bearing in mind express language and basic scheme of provision conferring the power; nature of power conferred; purpose for which it is conferred and final effect of exercise of that power on rights of the person affected — Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, S. 9-A**

Held :

The rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by any authority, irrespective of whether the power which is conferred on a statutory body or tribunal is administrative or quasi-judicial. The concept of "natural justice" implies a duty to act fairly i.e. fair play in action. The aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice. It is thus, trite that the requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi-judicial or judicial authority, particularly when such an order entails adverse civil consequences, which would include infraction of property, personal rights and material deprivation for the party affected, cannot be sacrificed at the altar of administrative exigency or celerity. Undoubtedly, there can be exceptions to the said doctrine and as aforesaid the extent and its application cannot be put in a straitjacket formula. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected. (Paras 40 and 42)

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A.K. Kraipak v. *Union of India*, (1969) 2 SCC 262; *Swadeshi Cotton Mills* v. *Union of India*, (1981) 1 SCC 664, *relied on*

F. **Securities, Markets and Exchanges — Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — Ss. 3(3), (4), 9-A, 10 and 11 — Sale of attached shares of notified persons — Discretion of Special Court in relation to — Interference by Supreme Court with — When permissible — Held, "discretion", when applied to a court of justice means discretion guided by law — It must not be arbitrary, vague and fanciful but legal and regular — Same principle governs an appeal under S. 10 of Special Court Act — As Special Court has exercised its discretion in disregard to its own scheme and "terms and conditions" approved by it for sale of shares and in violation of principles of natural justice, Supreme Court's interference called for — Constitution of India — Art. 136 — Discretionary power, Exercise of by lower forum — Practice and Procedure — Discretionary power — Exercise of**

Held :

There is no quarrel with the general proposition that an appellate court will not ordinarily substitute its discretion in the place of the discretion exercised by the trial court unless it is shown to have been exercised under a mistake of law or fact or in disregard of a settled principle or by taking into consideration irrelevant material. A "discretion", when applied to a court of justice means discretion guided by law. It must not be arbitrary, vague and fanciful but legal and regular. The same principle would govern an appeal preferred under Section 10 of the Special Court Act. However, since the conclusion has already been reached that the Special Court has exercised its discretion in complete disregard to its own scheme and the "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, the facts in hand call for interference of the Supreme Court, to correct the wrong committed by the Special Court. (Paras 45 and 46)

R. v. *Wilkes*, (1770) 4 Burr 2527 : (1558-1774) All ER Rep 570 (HL), *relied on*

Sudhir S. Mehta v. *Custodian*, (2008) 12 SCC 84; *Ramji Dayawala and Sons (P) Ltd.* v. *Invest Import*, (1981) 1 SCC 80 at p. 96; *Wander Ltd.* v. *Antox India (P) Ltd.*, 1990 Supp SCC 727; *ESI Corpn.* v. *Jardine Henderson Staff Assn.*, (2006) 6 SCC 581 : 2006 SCC (L&S) 1458; *State of M.P.* v. *Nandlal Jaiswal*, (1986) 4 SCC 566; *Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489; *Sesa Industries Ltd.* v. *Krishna H. Bajaj*, (2011) 3 SCC 218; *Sharp* v. *Wakefield*, 1891 AC 173 : (1886-90) All ER Rep 651 (HL), *referred to*

[**Ed.**: *See also* Art. 136, '(c)(13) Scope of Interference under Art. 136 — Discretionary power, Exercise of by lower forum', pp. 439 et seq. in **Vol. 8**, *Complete Digest of Supreme Court Cases*, 2nd Edn.]

Appeal partly allowed B-D/48903/CRV

Advocates who appeared in this case :

Joseph Vellapally and Dr. A.M. Singhvi, Senior Advocates [Ms Kamini Jaiswal, Ms Manik Karanjawala, Manu Nair, Anuj Berry, Amit Bhandari (for M/s Suresh A. Shroff & Co.), Arvind Kr. Tewari, Subramonium Prasad, Varun Thakur and Varinder Kr. Sharma, Advocates] for the appearing parties.

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1. (2011) 14 SCC 769, *Ashwin S. Mehta* v. *Union of India* 90*a-b*, 100*d*
2. (2011) 14 SCC 689, *Apollo Tyres Ltd.* v. *A.K. Menon* 88*c-d*, 90*d-e*, 91*b-c*, 91*d-e*, 93*d-e*, 96*e*, 96*f*, 96*h*, 100*e*
3. (2011) 3 SCC 218, *Sesa Industries Ltd.* v. *Krishna H. Bajaj* 94*f*
4. (2008) 12 SCC 84, *Sudhir S. Mehta* v. *Custodian* 92*g-h*, 93*f-g*
5. (2006) 6 SCC 581 : 2006 SCC (L&S) 1458, *ESI Corpn.* v. *Jardine Henderson Staff Assn.* 94*f*
6. (2006) 2 SCC 385 at paras 67-72, *Ashwin S. Mehta* v. *Custodian* 93*e-f*
7. (2003) 7 SCC 219, *Rajesh D. Darbar* v. *Narasingrao Krishnaji Kulkarni* 95*a-b*
8. (1998) 5 SCC 1, *Harshad Shantilal Mehta* v. *Custodian* 87*c-d*
9. (1997) 10 SCC 488, *B.O.I. Finance Ltd.* v. *Custodian* 96*d*
10. (1994) 1 SCC 131, *Desh Bandhu Gupta* v. *N.L. Anand* 91*f-g*
11. 1990 Supp SCC 727, *Wander Ltd.* v. *Antox India (P) Ltd.* 93*a*
12. (1986) 4 SCC 566, *State of M.P.* v. *Nandlal Jaiswal* 94*f*
13. (1981) 1 SCC 664, *Swadeshi Cotton Mills* v. *Union of India* 98*a*
14. (1981) 1 SCC 80 at p. 96, *Ramji Dayawala and Sons (P) Ltd.* v. *Invest Import* 92*h*
15. (1979) 3 SCC 489, *Ramana Dayaram Shetty* v. *International Airport Authority of India* 94*f*
16. (1973) 2 SCC 629, *Gajadhar Prasad* v. *Babu Bhakta Ratan* 91*f-g*
17. (1969) 2 SCC 262, *A.K. Kraipak* v. *Union of India* 97*g-h*
18. 1891 AC 173 : (1886-90) All ER Rep 651 (HL), *Sharp* v. *Wakefield* 94*f-g*
19. (1770) 4 Burr 2527 : (1558-1774) All ER Rep 570 (HL), *R.* v. *Wilkes* 99*g*

The Judgment of the Court was delivered by

D.K. JAIN, J.— This appeal under Section 10 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 (for short "the Special Court Act") is directed against the order dated 30-4-2003, as corrected vide order dated 2-5-2003, passed by the Special Court at Bombay, in Miscellaneous Petition No. 64 of 1998. By the impugned orders, the Special Court has permitted the Custodian to sell 54,88,850 shares of Apollo Tyres Ltd. (for short "Apollo"), Respondent 3 in this appeal, at Rs 90 per share.

2. The material facts giving rise to the appeal are as follows: the appellants, one late Harshad S. Mehta, their other family members and the corporate entities belonging to the family members had purchased more than 90 lakh shares of Apollo. Except for the holding of two family members, the entire holding came to be attached by a Notification on 6-6-1992. Under the said notification, 29 entities both individual and corporate were notified under Section 3(2) of the Special Court Act. Prior to the issue of notification about 15 lakh shares of Apollo stood registered in the name of the notified parties and the balance shares were unregistered.

3. About 39.16 lakh unregistered shares were disclosed by the late Harshad S. Mehta to the office of the Custodian, which were subsequently handed over to the Central Bureau of Investigation (hereinafter referred to as "CBI"). CBI seized about 7 to 8 lakh unregistered shares in 1992, which also

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were handed over by them to the Custodian. The Custodian was also authorised to deal with a few lakh shares, identified as benami shares. Thereafter, the Custodian moved an application before the 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 management of Apollo objected to the proposed registration, alleging violation of the takeover code and raised the question of ownership. However, the Special Court, vide order dated 19-11-1999, allowed the registration of the unregistered shares in the name of the Custodian.

4. By an order dated 11-3-1996, in Civil Appeal No. 5225 of 1995, this Court, in a suo motu action, directed the Custodian to draft a scheme for sale of shares of the notified parties, which constituted bulk of the attached assets. Accordingly, a scheme was drafted by the Custodian in consultation with the Government of India and thereafter, presented to this Court. Vide order dated 13-5-1998 in *Harshad Shantilal Mehta* v. *Custodian*[1] this Court directed that the said scheme may be considered by the Special Court, with further modifications, if any.

5. In furtherance of the said direction, the scheme was presented to the Special Court for its approval. The notified parties strongly opposed the said scheme on several grounds. All the objections of the notified parties were overruled and the Special Court, vide order dated 17-8-2000, categorised the shares into three classes—(*i*) routine shares; (*ii*) bulk shares; and (*iii*) controlling block of shares. The 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 be made by individuals as well as by corporate and other entities. The offeror, whose offer is accepted by the Court, will be 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 be*

1 (1998) 5 SCC 1

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given an option to buy the shares. This is to avoid destabilisation of the company. The purchaser(s) shall comply with all regulations including the Takeover 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)

6. The Special Court approved the scheme, propounded by the Custodian for sale of the controlling block of shares in toto and ordered sale of all registered shares, except the shares of Apollo because their objection regarding registration of unregistered shares in the name of Custodian/notified parties, was pending adjudication by this Court.

7. The order of the Special Court was challenged both by the notified parties and Apollo. By an order dated 23-8-2001 in *Apollo Tyres Ltd.* v. *A.K. Menon*[2], this Court, while approving the basic structure of the scheme and the directions given by the Special Court for disposal of shares, disposed of the appeal with the following directions insofar as the sale of the controlling block of shares, was concerned: (SCC paras 6-9)

"*6.* 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. *We, 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 bulk shares or by the norms fixed in respect of routine shares. The object being that the highest price possible should be realised, it is left to the court to decide what procedure to adopt.*

7. If the court thinks that it is best to adopt the norms laid down by it for sale of controlling block of shares (the third 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 77-A 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 77-A of the Companies Act. No other change in the Scheme as formulated by the Special Court is called for.

2 (2011) 14 SCC 689

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8. 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 second 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 first method).

9. These appeals are disposed of in the aforesaid terms."

(emphasis supplied by us)

8. 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, relevant for this appeal 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 the 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 buyback as per provisions of the Companies Act, 1956, the said 'controlling block' of shares if it so desires.

15. The sale as stated hereinabove is subject to the sanction of the 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.

* * *"

9. Pursuant thereto, the Custodian invited bids from individuals as well as from the corporate and other entities. The offers were to reach the office of the Custodian by 3.00 p.m. on or before 25-4-2003. In response, only two bids were received, the highest being Rs 80 per share given by Punjab National Bank. The Disposal Committee evaluated the bids so received and vide its minutes dated 25-4-2003, recommended that in addition to the aforesaid 54,88,850 shares, additional 8,15,485 benami shares also be sold to the highest bidder subject to sanction by the Special Court. Accordingly, the Custodian submitted a report to the Special Court for consideration and appropriate orders.

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10. By the impugned order, dated 30-4-2003, corrected vide order dated 2-5-2003, the Special Court directed sale of 54,88,850 shares to Apollo and its management at Rs 90 per share. Being dissatisfied with and aggrieved by the order indicated hereinbefore, the appellants have preferred this appeal.

11. At the time of admission of this appeal on 29-5-2003[3] the following interim order was made:

> "Appeal admitted. Mr A.D.N. Rao, Ms Manik Karanjawala and Ms Pallavi Shroff, learned counsel accept notice on behalf of Respondents 1, 3 and 7 respectively. The learned counsel appearing for the management, Respondent 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."

12. Ms Kamini Jaiswal, learned counsel appearing on behalf of the appellants, while assailing the impugned orders on several grounds, strenuously urged that the sale of 54,88,850 shares of Apollo ought to be rescinded, particularly because, the said sale was in conscious breach of the scheme as also the terms and conditions laid down for the sale of these shares and was also in violation of the principles of natural justice.

13. Elaborating her contention that the sale was in contravention of the scheme framed by the Custodian and duly approved by the Special Court by the order dated 17-8-2000 and with modifications by this Court vide order dated 23-8-2001[2], the learned counsel argued that Condition 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 28-4-2003, 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 (*iii*) the buyback effected by Apollo was in complete violation of Section 77-A of the Companies Act, 1956 (for short "the Companies Act") as well as the SEBI (Buyback of Securities) Regulations, 1998. It was also urged that by accepting the bids of Apollo and Respondents 5 to 8, who were the investment companies of the promoters of Apollo, Condition 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.

14. Alleging collusion between the Custodian, Apollo and its management, the 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

3 *Ashwin S. Mehta* v. *Union of India*, (2011) 14 SCC 769

2 *Apollo Tyres Ltd.* v. *A.K. Menon*, (2011) 14 SCC 689

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Custodian never explained the rationale behind breaking up the controlling block of shares to only 15.1% of the equity capital when the total shareholdings 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 bidder came forward as such a prospective bidder would have been bound to make a further public offer for purchase of 20% of the capital under the 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.

15. It was contended that the impugned sale was in complete violation of the order of this Court dated 23-8-2001[2] wherein it was stated that the object for laying down the norms was to realise the highest possible price for the shares. It was urged that in the instant case, instead of maximising the price, the shares were sold at a discount of 25% of the then prevailing market price, thereby defeating the very purpose of the scheme. It was thus, contended before us that the Disposal Committee and the Custodian ought not to have recommended the acceptance of the bid at Rs 90 per share since both the offers received were way below the then prevailing market price as well as the book value of shares. Under the given circumstances, according to the learned counsel, the Special Court should have opted for the second method relating to sale of bulk shares, as stipulated in the order of this Court dated 23-8-2001[2].

16. It was urged that the Special Court also failed to follow its past precedents, particularly in M/s Ranbaxy Laboratories Ltd., when 8,04,777 shares were ordered to be sold @ Rs 565 per share. In that case, the bid was received under the bulk category @ Rs 540 per share but on the insistence of the Special Court, the offer was improved to bring it at par with the prevailing market price. In support of the proposition that the Custodian as also the Special Court having committed material irregularities, resulting in substantial injury to the appellants, the subject sale of shares is liable to be set aside, the learned counsel placed reliance on the observations of this Court in *Desh Bandhu Gupta* v. *N.L. Anand*[4] and *Gajadhar Prasad* v. *Babu Bhakta Ratan*[5].

17. The learned counsel strenuously contended that the impugned order was also arbitrary and in violation of the principles of natural justice inasmuch as the Special Court not only outrightly rejected the prayer made by the notified parties during the course of proceedings on 30-4-2003 for grant of 48 hours' time to secure a better offer in the same manner as was done to secure a better offer for the bulk category shares of M/s Ranbaxy Laboratories Ltd., it also failed to consider the objections raised by them in

2 *Apollo Tyres Ltd.* v. *A.K. Menon*, (2011) 14 SCC 689
4 (1994) 1 SCC 131
5 (1973) 2 SCC 629

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their written submissions filed on 2-5-2003. It was stressed that the Special Court rejected the legitimate request of the appellants without any justification and showed undue haste in ordering the sale of shares, even ignoring the direction of this Court i.e. to explore the possibility of selling the shares either under the bulk category or as routine shares to secure the maximum price for the shares. On the contrary, the Special Court granted Apollo and its management two days to bring their proper offer and earnest money on 2-5-2003, which fact is duly recorded in the impugned order dated 30-4-2003.

18. In order to bring home her allegation of discriminatory treatment at the hands of the Custodian as also by the Special Court, the learned counsel referred to the two letters dated 28-4-2003 and 29-4-2003, addressed to the notified parties by the Custodian intimating them about the date when the Special Court would consider the bids received in response to the advertisement for sale of the subject shares. While the letter dated 28-4-2003 allowed the notified parties to submit offers independently received by them for purchase of the said shares, the letter dated 29-4-2003, made it clear that no offers brought by the notified parties to the Court would be considered.

19. As regards the reasoning of the Special Court that any delay in finalisation of the bid would have resulted in a crash in the market price of the shares because of breaking news of purchase of a huge quantity of shares by one party, it was submitted that the said reasoning was again erroneous inasmuch as the news of sale of 54,88,850 shares of Apollo was already in public domain when the advertisement for sale of these shares was published. It was thus, pleaded that the impugned order be set aside and the entire sale of 54.88 lakh shares be rescinded in public interest and to achieve the object of the Special Court Act.

20. Per contra, Mr Joseph Vellapally, learned Senior Counsel appearing for Apollo, supporting the order of the Special Court, at the outset, submitted that the said order had been passed by the Special Court in exercise of wide discretionary powers conferred on it by the Special Court Act as also by this Court and that such discretion can be interfered with only if it is shown to have been exercised in violation of the statutory provisions or contrary to the well-established judicial principles. It was argued that in the present case the decision of the Special Court was based on the recommendation of the Disposal Committee, which consisted of experts in the field of securities and shares, and therefore, it cannot be said to be perverse so as to warrant interference by this Court. In order to highlight the role of the Disposal Committee and the probative value of its advice and recommendations, the learned Senior Counsel commended us to a decision of this Court in *Sudhir S. Mehta* v. *Custodian*[6].

21. In support of his submission that the appellate court should not lightly interfere with the discretion exercised by the trial court, the learned Senior Counsel placed heavy reliance on the decisions of this Court in *Ramji*

6 (2008) 12 SCC 84

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Dayawala and Sons (P) Ltd. v. *Invest Import*[7] and *Wander Ltd.* v. *Antox India (P) Ltd.*[8] wherein it was held that the appellate court would not ordinarily substitute its discretion in the place of the discretion exercised by the trial courts, save and except where the trial court had ignored the relevant evidence, sidetracked the approach to be adopted in the matter or overlooked various relevant considerations. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. It was strenuously urged that the Special Court having acted reasonably and in a judicious manner, this Court should not interfere with the decision of the Special Court in approving the sale of shares to Apollo.

22. It was further contended by Mr Vellapally that the appellants have no locus standi to assail the entire sale of 54.88 lakh shares as their shareholding was only 1,49,570 shares, as stated in the affidavit of the Custodian. It was pointed out that there was no averment in the appeal to the effect that the same was being filed in a representative capacity on behalf of other members of Harshad Mehta Group. At best, the appellants could impugn the sale of 1,49,570 shares.

23. It was also contended by Mr Vellapally that in terms of the order of the Special Court dated 17-8-2000 and the order of this Court dated 23-8-2001[2] the management of Apollo had the right to buy and Apollo had the right to buyback its own shares under Section 77-A of the Companies Act, once the highest offer is received from those entities who participated in the bid. Since the purchase of shares by Apollo was akin to an auction-sale, its interests as a bona fide purchaser in the shares are saved, having no connection with the underlying dispute between the Custodian and the notified parties. In support of the contention, reliance was placed on *Ashwin S. Mehta* v. *Custodian*[9] wherein, according to the learned counsel, (albeit dealing with sale of commercial properties) in a similar situation, the interests of bona fide purchasers were protected.

24. Refuting the claim of the appellants that the said sale of shares of Apollo was at a loss, it was submitted by Mr Vellapally that it is a matter of common knowledge that transactions in the stock market are speculative in nature and cannot be predicted with accuracy. It was submitted that this Court in *Sudhir S. Mehta*[6], while dealing with the notified parties' objections to a sale of shares of Reliance Industries Ltd. had observed that the sale of shares between the period "12-12-2000 to 1-11-2007" (the said period covering the sale of shares of Apollo) could not be said to be at a loss, especially because of the fact that the said sale had been approved by the Disposal Committee, a committee of experts.

7 (1981) 1 SCC 80 at p. 96
8 1990 Supp SCC 727
2 *Apollo Tyres Ltd.* v. *A.K. Menon*, (2011) 14 SCC 689
9 (2006) 2 SCC 385 at paras 67-72
6 *Sudhir S. Mehta* v. *Custodian*, (2008) 12 SCC 84

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25. Lastly, the learned Senior Counsel submitted that pursuant to the buyback of shares and on due compliance with the provisions of Section 77-A read with Section 77-A(7) of the Companies Act, Apollo had already extinguished 36.90 lakh shares so bought back and therefore, to that extent, the prayer of the appellants to rescind the purchase of shares is rendered infructuous. It was asserted that any order at this juncture, setting aside the impugned order, would not result in resurrection of the extinguished shares but entail a fresh issue of shares under Sections 79 and 81 of the Companies Act, which is fraught with statutory restrictions and difficulties, resultantly affecting the rights of third-party shareholders, who are not parties to the present dispute.

26. Mr Arvind Kumar Tewari, learned counsel appearing on behalf of the Custodian (Respondent 2), supporting the impugned order, vehemently argued that the Special Court had not only followed all the norms settled by this Court, it was also successful in obtaining a price higher by Rs 10 per share as compared to what was offered by the highest bidder viz. Punjab National Bank. It was alleged that in spite of being informed by the Custodian in advance, vide letter dated 28-4-2003, the appellants had failed to arrange for a purchaser who could bid higher than Apollo and had frivolously sought another two days' time to arrange for a higher bid.

27. Dr. A.M. Singhvi, learned Senior Counsel appearing for Respondents 3, 6 and 8, the co-bidders with Apollo, while adopting all the submissions made on behalf of Apollo, reiterated that the said respondents being bona fide bidders, having no concern with the procedure adopted by the Custodian for sale of shares, any interference by this Court with a well-reasoned and equitable order passed by the Special Court would cause extreme hardship to them. In support of the submission that having regard to the nature of controversy sought to be raised by the appellants, the notified parties under the Special Court Act, this Court will be loath to interfere with the discretion exercised by the Special Court, the learned Senior Counsel commended us to the decisions of this Court in *ESI Corpn.* v. *Jardine Henderson Staff Assn.*[10], *State of M.P.* v. *Nandlal Jaiswal*[11], *Ramana Dayaram Shetty* v. *International Airport Authority of India*[12], *Sesa Industries Ltd.* v. *Krishna H. Bajaj*[13] and on a decision of the House of Lords in *Sharp* v. *Wakefield*[14].

28. In the alternative, the learned counsel submitted that if for any reason, this Court was to come to a conclusion that the price realised for the sale of the said shares was at a discount and/or less than the market price then the relief granted to the appellants ought to be confined to their shareholding and the promoters may be directed to pay the difference between the price paid by them for the purchase of shares i.e. Rs 90 per share and the then

10 (2006) 6 SCC 581 : 2006 SCC (L&S) 1458
11 (1986) 4 SCC 566
12 (1979) 3 SCC 489
13 (2011) 3 SCC 218
14 1891 AC 173 : (1886-90) All ER Rep 651 (HL)

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prevailing market price i.e. Rs 120 per share. In support of his proposition that this Court had sufficient powers under Article 142 of the Constitution of India to balance the equities between the parties and render complete justice by moulding the relief, the learned Senior Counsel placed reliance on the observations made by this Court in *Rajesh D. Darbar* v. *Narasingrao Krishnaji Kulkarni*[15].

29. Before addressing the contentions advanced on behalf of the parties, it will be necessary and expedient to notice the overarching considerations behind the enactment of the Special Court Act, which came into force on 6-6-1992. It replaced the Special Court (Trial of Offences Relating to Transactions in Securities) Ordinance, 1992, as promulgated on 6-6-1992, when large-scale irregularities and malpractices pertaining to the transactions in both government and other securities, indulged in by some brokers in collusion with the employees of various banks and financial institutions were noticed. The Special Court Act provides for establishment of a Special Court for speedy trial of offences relating to transactions in securities and disposal of properties attached thereunder.

30. Section 3 of the Special Court Act relates to the appointment and functions of the Custodian. Sub-section (2) thereof clothes the Custodian with the power to notify in the Official Gazette, the name of a person, who has been involved in any offence relating to transactions in securities during the period as mentioned therein. Sub-sections (3) and (4) of Section 3 stipulate that with the issue of the aforesaid notification, properties, movable or immovable or both, belonging to the notified person shall stand attached, and such properties are to be dealt with by the Custodian in such manner as the Special Court may direct.

31. Section 9-A of the Special Court Act deals with the jurisdiction, power, authority and the procedure to be adopted by the Special Court in civil matters. In short, on and from the commencement of the Special Court Act, the Special Court exercises all such jurisdiction, etc. as is exercisable by a civil court in relation to any matter or claim relating to any property that stands attached under sub-section (3) of Section 3 and it bars all other courts from exercising any jurisdiction in relation to any matter or claim referred to in the said section. Sub-section (4) of Section 9-A of the Special Court Act contemplates that the Special Court shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 and shall have the power to regulate its own procedure, but shall be guided by the principles of natural justice.

32. The other provision, which is relevant for our purpose is Section 11 of the Special Court Act, which exclusively empowers the Special Court to give directions in the matter of disposal of the property of a notified person, under attachment. Sub-section (2) of Section 11 lists the priorities in which the liabilities of the notified person are required to be paid or discharged.

15 (2003) 7 SCC 219

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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 realisations, 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.

34. It is also clear that the Custodian has to deal with the attached properties only in such manner as the Special Court may direct. The Custodian is required to assist in the attachment of the notified person's 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, unlike a Receiver under the Civil Procedure Code or an Official Receiver under the Provincial Insolvency Act, 1920 or Official Assignee under the Presidency Insolvency Act. (See *B.O.I. Finance Ltd.* v. *Custodian*[16].) The statute also mandates that the Special Court shall be guided by the principles of natural justice.

35. At this juncture, it would also be profitable to briefly note the salient features of the scheme formulated by the Custodian for sale of shares in terms of the directions issued by this Court in its order dated 11-3-1996 (CA No. 5225 of 1995); the norms laid down by the Special Court vide order dated 17-8-2000 and the modification of these norms by this Court vide order dated 23-8-2001[2]. What clearly emerges from the scheme/orders is that the underlying object of the procedure/norms laid down in the scheme is to ensure that the highest possible price on sale of shares is realised. It is manifest that with this end in view, this Court vide order dated 23-8-2001[2] left it to the Special Court to decide what procedure to adopt in order to realise the highest price for the shares. The scheme/norms had been further modified by the Special Court and this Court in a way to inject flexibility in the scheme in order to secure the highest price for the shares.

36. Having examined the impugned order in the light of the statutory provisions and the norms laid down for sale of the subject shares, we are of the opinion that there is substance and merit in the submissions made by the learned counsel for the appellants to the extent that the Special Court failed to make a serious effort to realise the highest possible price for the said shares. We also feel that the Special Court overlooked the norms laid down by it in its order dated 17-8-2000; ignored the aforeextracted directions by this Court contained in the order dated 23-8-2001[2] and glossed over the

16 (1997) 10 SCC 488

2 *Apollo Tyres Ltd.* v. *A.K. Menon*, (2011) 14 SCC 689

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procedural irregularities committed by the Custodian. As stated above, Condition 14 of the terms and conditions of sale, clearly stipulated that it was only after the Special Court had ascertained the highest offer that Apollo or its management was to be given an option to buyback the shares. However, the letter of the Custodian dated 28-4-2003, addressed to Apollo clearly divulges the fact that the Custodian had, without any authority, invited Apollo and its management "to bid" on 30-4-2003, the settled date, when the report of the Disposal Committee was yet to be considered by the Special Court.

37. It is evident from Condition 15 of the terms and conditions of sale, that the Special Court has the discretion to accept or reject any offer or bid that may be received for purchase of shares. Therefore, the stand of the Custodian that inviting Apollo to make the bid was necessarily in compliance with the scheme/condition of sale, cannot be accepted inasmuch as it was for the Special Court to take such a decision at the appropriate time and not the Custodian. The Custodian could not have foreseen that the Special Court would not accept the bid of the sole bidder viz. Punjab National Bank.

38. As aforesaid, so far as issue of notification in terms of Section 3(2) is concerned, the Custodian derives his power and authority from the Special Court Act but his jurisdiction to deal with property under attachment, flows only from the orders which may be made by the Special Court constituted under the said Act. It is obligatory upon the Custodian to perform all the functions assigned to him strictly in accordance with the directions of the Special Court. In the present case, although we do not find any material on record which may suggest any mala fides on the part of the Custodian, yet we are convinced that by inviting Apollo to bid, vide letter dated 28-4-2003, 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 alleged violation is not per se sufficient to nullify the sale of shares.

39. The next question for determination is whether or not the impugned decision of the Special Court is in breach of the principles of natural justice, thereby vitiating its decision to sell the subject shares to Apollo and the companies managed by their promoters?

40. It is true that the rules of "natural justice" are not embodied rules. The phrase "natural justice" is also not capable of a precise definition. The underlying principle of natural justice, evolved under the common law, is to check arbitrary exercise of power by any authority, irrespective of whether the power which is conferred on a statutory body or tribunal is administrative or quasi-judicial. The concept of "natural justice" implies a duty to act fairly i.e. fair play in action. As observed in *A.K. Kraipak* v. *Union of India*[17] the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice.

17 (1969) 2 SCC 262

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41. In *Swadeshi Cotton Mills* v. *Union of India*[18] R.S. Sarkaria, J., speaking for the majority in a three-Judge Bench, lucidly explained the meaning and scope of the concept of "natural justice". Referring to several decisions, His Lordship observed thus: (SCC p. 666)

> "Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules. But there are two fundamental maxims of natural justice viz. (*i*) audi alteram partem and (*ii*) nemo judex in re sua. The audi alteram partem rule has many facets, two of them being (*a*) notice of the case to be met; and (*b*) opportunity to explain. This rule cannot be sacrificed at the altar of administrative convenience or celerity. The general principle—as distinguished from an absolute rule of uniform application—seems to be that where a statute does not, in terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely if the statute conferring the power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, courts will be extremely reluctant to construe such a statute as excluding the duty of affording even a minimal hearing, shorn of all its formal trappings and dilatory features at the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative process or frustrate the need for utmost promptitude. In short, this rule of fair play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. *But, the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise*."
>
> (emphasis supplied by us)

42. It is thus, trite that the requirement of giving reasonable opportunity of being heard before an order is made by an administrative, quasi-judicial or judicial authority, particularly when such an order entails adverse civil consequences, which would include infraction of property, personal rights and material deprivation for the party affected, cannot be sacrificed at the altar of administrative exigency or celerity. Undoubtedly, there can be exceptions to the said doctrine and as aforesaid the extent and its application cannot be put in a straitjacket formula. The question whether the principle has to be applied or not is to be considered bearing in mind the express

18 (1981) 1 SCC 664

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language and the basic scheme of the provision conferring the power; the nature of the power conferred; the purpose for which the power is conferred and the final effect of the exercise of that power on the rights of the person affected.

43. In the backdrop of the aforenoted legal principles and the requirement of sub-section (4) of Section 9-A of the Special Court Act, we are of the opinion that in the present case the Special Court failed to comply with the principles of natural justice. As noted above, the Special Court rejected the prayer of the appellants to grant them 48 hours' time to secure a better offer. In fact, by his letter dated 29-4-2003 addressed by the Custodian to the notified parties, including the appellants, the right of the appellants to bring better offer was foreclosed by the Custodian, which evidently was without the permission of the Special Court. Furthermore, the Special Court also ignored its past precedents whereby it had granted time to the parties to get better offers for sale of shares of M/s Ranbaxy Laboratories Ltd.

44. There is also force in the plea of the learned counsel appearing for the appellants that the reason assigned by the Special Court in its order dated 30-4-2003 for declining further time to the appellants, that deferment of decision on the sale of shares would have resulted in the share market falling down, is unsound and unfounded. As stated above, the share market was already aware of the sale of a big chunk of shares of Apollo in view of the advertisement published by the Custodian and therefore, there was hardly any possibility of further volatility in the price of said shares. We are thus, convinced that the appellants have been denied a proper opportunity to bring a better offer for sale of shares, resulting in the realisation of lesser amount by way of sale of the subject shares, to the detriment of the appellants and other notified parties. Therefore, the decision of the Special Court deserves to be set aside on that short ground.

45. We shall now advert to the plea strenuously canvassed on behalf of the respondents that the Special Court having exercised the discretion vested in it under the Special Court Act, keeping in view all the parameters relevant for disposal of the shares, this Court may not interfere with the impugned order. There is no quarrel with the general proposition that an appellate court will not ordinarily substitute its discretion in the place of the discretion exercised by the trial court unless it is shown to have been exercised under a mistake of law or fact or in disregard of a settled principle or by taking into consideration irrelevant material. A "discretion", when applied to a court of justice means discretion guided by law. It must not be arbitrary, vague and fanciful but legal and regular. (See *R.* v. *Wilkes*[19].)

46. We have therefore, no hesitation in agreeing with Mr Vellapally to the extent that the same principle would govern an appeal preferred under Section 10 of the Special Court Act. However, since we have come to the

19 (1770) 4 Burr 2527 : (1558-1774) All ER Rep 570 (HL)

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conclusion that the Special Court has exercised its discretion in complete disregard to its own scheme and the "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.

47. 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.

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 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 the interim order dated 29-5-2003[3], extracted above.

49. 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 aforenoted norms as approved by this Court vide order dated 23-8-2001[2]. The shareholders who will be affected by this order shall be entitled to the sale consideration paid by them to the Custodian along with simple interest @ 6% p.a. from the date of payment by them up to the date of actual reimbursement by the Custodian in terms of this order.

50. However, in the facts and circumstances of the case, the parties are left to bear their own costs.

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3 *Ashwin S. Mehta* v. *Union of India*, (2011) 14 SCC 769

2 *Apollo Tyres Ltd.* v. *A.K. Menon*, (2011) 14 SCC 689