



COMMERCIAL/CORPORATE

# SECURITIES CONTRACTS (REGULATION) ACT, 1956 PREVAILS OVER OTHER GENERAL PROVISIONS

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## Introduction

In the instant case of *Securities and Exchange Board of India v. M/s. Opee Stock-Link Ltd. & Anr.*<sup>[1]</sup>, the Supreme Court explored certain irregularities/illegalities in the Initial Public Offerings (“**IPO**”) of two companies, viz., Jet Airways Limited and Infrastructure Development Finance Company Limited.

## Facts

Jet Airways Limited and Infrastructure Development Finance Company Limited issued certain shares in the form of IPO, which were over-subscribed. This was brought to the notice of the Securities and Exchange Board of India (“**SEBI**”). It was observed by officials of SEBI upon investigation, that the shares which were meant for small investors had been unscrupulously purchased by several hundreds of fictitious demat account holders through off market transactions. This directly violates Sections 12A (a), (b), (c) of the SEBI Act, 1992, and Regulations 3 and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003.

## Decision of the Whole Time Member and the Adjudicating Officer of the SEBI, and Securities Appellate Tribunal

The investigations conducted by the officials of SEBI revealed that several shares had been purchased fraudulently through demat accounts at a price much lower than the market price, even prior to the date of listing without knowing the price of these shares, through off market transactions. They also concluded that these demat accounts through which these purchases had been made, were not genuine, and had been operated for the benefit of someone who was financing these fake demat accounts. Further, signatures of holders of these accounts were not consistent, and registered addresses of the account holders were common. These facts struck a blow to the veracity of the transaction. By doing so, the interests of small investors were harmed, as these shares had been reserved for them. Thus, a penalty was imposed on the Respondent.

In the appeal filed before the Securities Appellate Tribunal (“**SAT**”), there was no specific order to the effect that the findings of Whole Time Member and the Adjudicating Officer of the SEBI are incorrect. However, order of the Whole Time Member and the Adjudicating Officer of the SEBI was set aside.

## Decision of the Supreme Court

The Appellant preferred an appeal before the Supreme Court. The Apex Court observed that shares in the IPO had been allotted below market price before being listed through demat accounts with same registered addresses and bearing several inconsistent signatures, thereby denying small investors of their quota of shares, resulting in unjust enrichment. Thus, order of SAT was set aside, and the order of the Whole Time Member and the Adjudicating Officer of the SEBI was upheld.

The Court also observed that the Securities Contracts (Regulation) Act, 1956 (“**SCRA**”) which governs the offering of IPO is a special law to regulate the functioning of recognized stock exchanges, and to prevent undesirable transactions in securities, and that therefore, they shall prevail over general provisions contained in Contracts Act, 1872 and Sale of Goods Act, 1930, in matters which are specifically dealt with by SCRA.

<sup>[1]</sup> CIVIL APPEAL NO. 2252 OF 2010