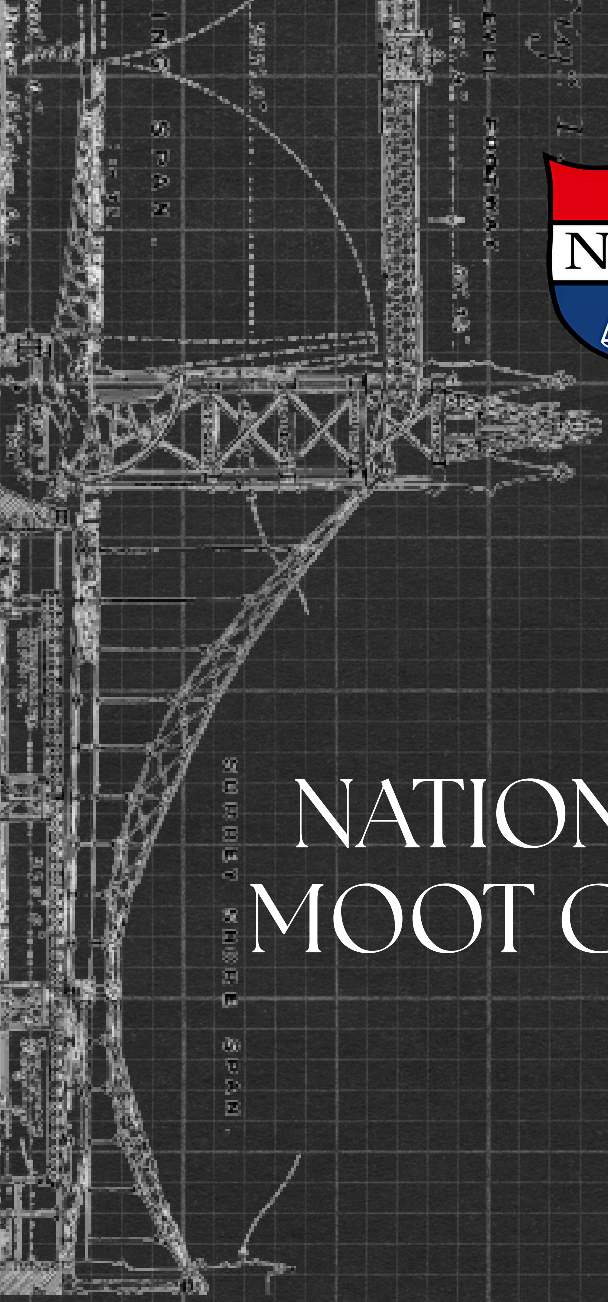
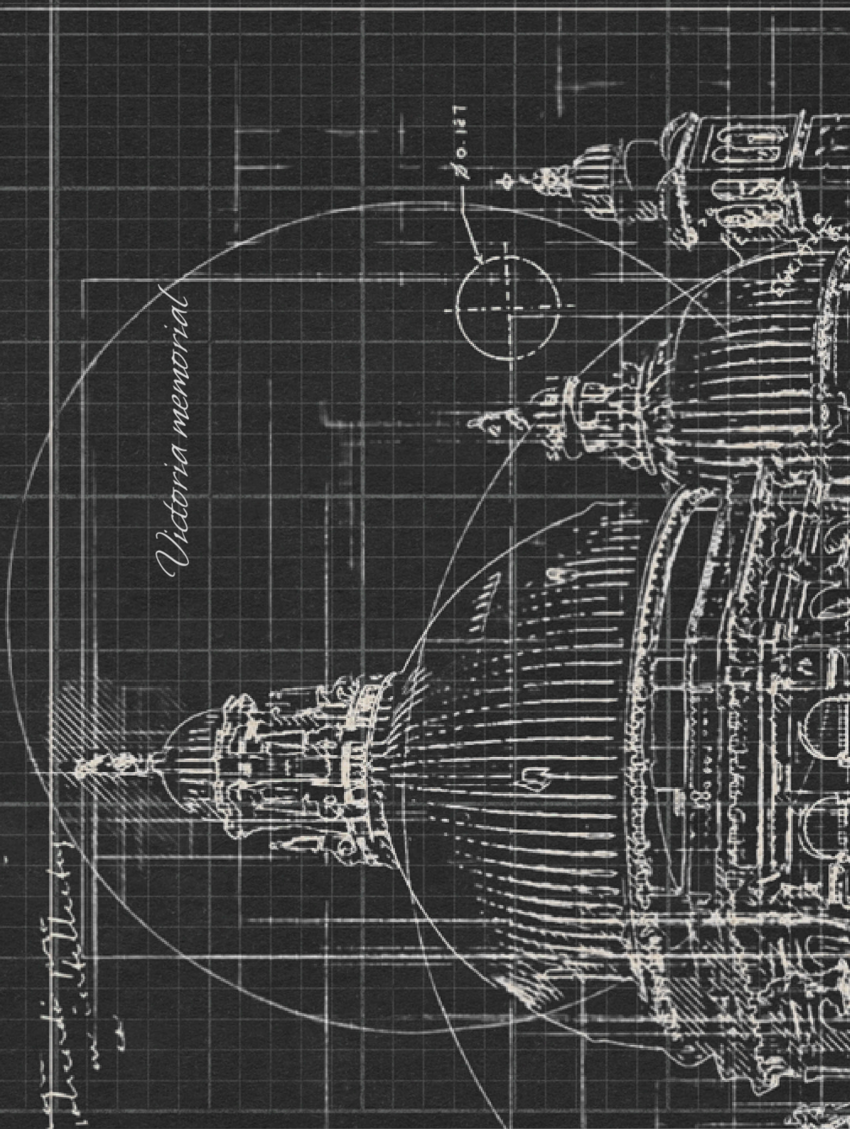


HERBERT SMITH FREEHILLS KRAMER

18th NUJS-HSF KRAMER NATIONAL CORPORATE LAW MOOT COURT COMPETITION

13th – 15th March, 2026

Case Record



MCS

IN THE SUPREME COURT OF INDIA

(Civil Appellate Jurisdiction)

Bharat Solar Energy Corporation Limited ("B-SEC")
Directors of B-SEC as of February 9, 2024
Mr. Richa Basu, Company Secretary of B-SEC
AlgoTrading Capital Private Limited
Mr. Sameer Shah, Chief Research Officer of AlgoTrading ... Appellants

v.

The Securities and Exchange Board of India ... Respondent

1. Bharat Solar Energy Corporation Limited ("B-SEC") is a listed Central Public Sector Enterprise ("CPSE") with Navratna status under the administrative control of the Ministry of New and Renewable Energy, Government of India ("MNRE"). The company was incorporated in the year 2000 and it undertook an initial public offering of shares in 2010, when its shares were listed on the Stock Exchange, Mumbai and the National Stock Exchange.

2. A total of 52.9 percent of the issued and paid-up share capital of B-SEC is held in the name of the President of India. The board of directors of B-SEC comprises nine members: (i) the chairperson and managing director ("CMD") is appointed by the Central Government; (ii) three of the directors are Government nominees; (iii) four are independent directors; and (iv) one is a director elected by small shareholders. For the last three years, Mr. Abhas Bakshi has been the CMD of B-SEC. He was appointed with the approval of the President of India, as required under the articles of association of B-SEC.

3. B-SEC plays a significant role in India's energy security by focusing on renewable energy solutions and, in particular, solar energy. Its mission is consistent with India's nationally determined contributions ("NDCs") in the context of action against the adverse effects of climate change. B-SEC owns and operates renewable energy projects around the country with a total capacity of 725 megawatts ("MW"). Over the years, it has built up a respectable portfolio of solar and other renewable energy facilities. Due to the momentum gained in ESG investing, B-SEC also became one of the darlings of the Indian stock market, pushing up its share price to INR 590 per share during the ESG boom in 2023.

4. B-SEC's articles of association contain the following clause:

> "117 *Notwithstanding anything contained in any of these Articles, the President of India may from time to time issue such directions or instructions as s/he may consider necessary in regard to the affairs or the conduct of business of the Company or Directors thereof and in like manner vary or annul any such direction or instruction. The Directors shall duly comply with and give immediate effect to the directions or instructions so issued. In particular, the President shall have power:*
>
> ...
>
> *(b) to give directions to the Company as to the exercise and performance of its functions in matters involving national security or substantial public interest and to ensure that the Company gives effect to such directions.*"

5. On February 9, 2024, the MNRE issued a written direction in the name of the President of India (after following appropriate constitutional procedures, which are not in question) requiring the board of directors of B-SEC to consider entering into a memorandum of understanding ("MOU") with Rampur Power Company Limited ("RPCL"), a government company whose majority of shares is owned by the Government of the State of Himachal Pradesh. Under the draft MOU, B-SEC is required to explore the possibility of entering into a 15-year power purchase agreement ("PPA") under which B-SEC would supply renewable energy to RPCL up to five percent of B-SEC's installed capacity. RPCL would offer an offtake obligation to B-SEC. More importantly, the draft MOU required B-SEC to supply such power at a price that represented a discount of 25% to the market for solar power in India based on other similar transactions in the sector during the time. Also, due to RPCL's precarious financial position, B-SEC was required, under the draft MOU, to offer lengthier credit periods before it received payments for its energy supplies. Even more, as the newfound relationship will make B-SEC a key stakeholder in RPCL, B-SEC agreed to invest INR 100 crores in upgrading RPCL's facilities. If concluded, the B-SEC-RPCL transaction would represent about four percent of the turnover of B-SEC as per its last audited consolidated financial statements.

6. Immediately upon receipt of the MNRE direction, the Company Secretary of B-SEC, Ms. Richa Basu, acting under the instructions of Mr. Bakshi, sent an email notice to all the directors convening a meeting the following day at 9am at the registered office of the company in New Delhi. The notice indicated that the presence of the directors was required in person and, due to the sensitive nature of the discussion, no option was available to the directors for attending the meeting virtually. Only seven of the directors were able to attend the meeting. One of the independent directors, Mr. Ravish Tandon, was overseas on a business trip, and a government nominee, Ms. Varnika Kulkarni, was

unwell. The three independent directors present at the meeting, and the small shareholder director, Ms. Payal Saini, vehemently protested at the outset regarding the calling of the meeting at such short notice. Mr. Bakshi responded by stating that he had no option but to call the meeting on an emergency basis since the company had received a direction from the President on a matter altogether significant.

7. The substantive discussions at the February 10 meeting were rather contentious too. The non-government directors objected to their company signing any form of MOU with RPCL. They cited the lack of a feasibility study for the proposal, which would determine the viability of any business relationship for the company with RPCL. They were also rather disturbed by the suggestion that, as a supplier, B-SEC will be making an investment in RPCL, which was bound to be a write-off as the state energy utility was in a shaky financial state. Mr. Bakshi impressed upon his colleagues on the board that B-SEC had a key role to play in ensuring "national energy security", and its actions had necessarily to be guided by that mission, among others. One of the independent directors, Mr. Gerald D'Souza, suggested that the optimal course of action would be for the board to consider these matters in great detail and reconvene in a few days to take a firm decision. In the meanwhile, he recommended that the board hire EneroConsult Private Limited, a leading energy consulting firm, to conduct a feasibility study for the proposed PPA as well as a limited due diligence on RPCL. However, Mr. Bakshi retorted that there was considerable urgency in the matter, and any recalcitrance on the part of B-SEC board would send the wrong signals to the Government. He sought to persuade the directors to make a favourable decision on the ground that "national energy policy considerations are as important, if not even more crucial, than pure commercial considerations".

8. Ms. Payal Saini, the small shareholder director, entered the fray with her strong plea to abort the deal and to persuade the Government to reconsider its stance, as it was altogether unfriendly to the minority shareholders, whose value will be significantly eroded. Mr. Bakshi then engaged in a lengthy monologue schooling Ms. Saini in the complexities of board decision-making in a public sector enterprise. In a raised voice, he let his frustration known by stating that "shareholder value" was not the "be and end all" in a CPSE, and that other stakeholder considerations of the community, economy, and national interest ought to dictate the decision making of its board. Mr. Bakshi exclaimed that he refuses to be browbeaten by capitalist shareholders who, in this particular case, are also "anti-nationalistic". He pointed to the fact that this was Ms. Saini's first board appointment, and that she is bound to realise these matters as she gains more experience as a director. Ms. Saini took serious objection to this form of "boardroom mansplaining" and, unable to bear this, gathered all her belongings and walked out of the meeting. Although Mr. Bakshi expressed some remorse to the other directors for his conduct, he did nothing to persuade Ms. Saini to stay or return.

9. After some further discussion, the matter of B-SEC entering into the MOU with RPCL was put to vote at the meeting. Mr. Bakshi and the two government nominees present

voted in favour of the proposed transaction, while the remaining three (independent) directors voted against. Mr. Bakshi used powers available to him in the articles of association of B-SEC and exercised a casting vote in favour of B-SEC entering into the MOU. Hence, the resolution put forth before the board was duly carried. One further housekeeping matter remained for discussion, and that pertained to whether and at what stage this deal needed to be publicly announced. Mr. Bakshi counselled in favour of exercising caution with going public regarding the matter. At the outset, he argued, this was only an MOU with no certainty yet as whether a firm deal will in fact materialise. While some of the broader contours of the RPCL deal were contained in the MOU (such as the pricing and term), more of the specifics of the transaction, including the rights and obligations of the parties therein (some of which were contentious), were to be hashed out in the PPA. Moreover, the arrangement was rather sensitive in nature involving "national strategic priorities" that must not be played out in front of the public eye that could even end up being an avoidable political spectacle. Hence, the board decided not to make any disclosure to the stock exchanges, a choice that did not receive any protestation from any of the directors, including the independent directors.

10. Soon thereafter, B-SEC and RPCL commenced negotiation of the more detailed terms of the MOU, which was signed on February 20, 2024. The parties decided that no disclosure needs to be made even at this stage as the MOU was expressed to be "non-binding", except for the confidentiality provisions (which had legal and binding effect). When further deliberations and negotiations regarding the PPA were ongoing, a news report appeared in the Bhartiya Financial Chronicle newspaper in early April 2024 indicating that "B-SEC was close to signing a deal with a state-owned enterprise for the supply of renewable energy". The report also quoted a noted energy expert who said that "the deal-dynamics in such transactions were usually favourable to the energy buyers rather than the suppliers". This news was also picked up by other media, including premium financial as well as international outlets, who carried similar news reports regarding B-SEC's deal-making trends with public sector enterprises.

11. After further deliberations and negotiations, the PPA was signed between B-SEC and RPCL on May 9, 2024. Mr. Bakshi signed the PPA on behalf of B-SEC under the authority conferred upon him for the purpose by way of the board resolution passed on February 9, 2024. Based on legal advice received, the management of B-SEC also decided that neither audit committee approval nor shareholder approval was required to be obtained as a precondition to this deal. Within 15 minutes of the signing ceremony, Ms. Basu e-mailed the fact of signing of the PPA with some essential details to the stock exchange. The email stamp showed a time of 11:13. This information was posted on the stock exchange website at 11:28. Alongside this, the communications department of B-SEC sent out a press release containing similar information. Mr. Bakshi also took questions from the media in a hastily put together press conference, where he continued to assert the "national import" of this deal to the energy security of the country.

12. At this juncture, the B-SEC management was blindsided by the strong negative reaction to the RPCL deal from the shareholders and the public, which the outside directors knew very well was coming. By the post-lunch trading session on May 9, 2024, the stock price of B-SEC dropped precipitously by 20%, thereby resulting the circuit breaker being invoked and a trading halt being imposed for the remainder of the day on both stock exchanges. That evening, two of the independent directors, Mr. Tandon and Mr. Harsh Subramanian, sent a letter to the B-SEC board resigning from their positions in view of persistent governmental interference in the functioning of B-SEC which, they lamented, deprived them of their ability to discharge their corporate law duties effectively.

13. The following day, GovernanceMonitor, a well-regarded proxy advisory firm issued a report stating that the PPA constitutes a "related-party type" arrangement, which reeks of unwarranted government influence in the functioning of a listed company with public investors. It also noted that the company pays short shrift to board independence, with a suggestion that the independent directors turned out to be weaklings. It warned of a material risk of value erosion for the minority shareholders due to a commercial mis-judgment on the part of B-SEC's management in entering into the RPCL deal. The report also castigated the CMD for succumbing to "extraneous political pressure" rather than exercising independent judgment in a manner that befits his office and benefits the company and its shareholders. The following week, B-SEC and Mr. Bakshi issued a notice through their lawyers alleging that GovernanceMonitor had engaged in defamation through their report. B-SEC also wrote to the Securities and Exchange Board of India ("SEBI") alleging that in issuing its report GovernanceMonitor had violated the provisions of the SEBI (Research Analyst) Regulations, 2014 as well as SEBI's Guidelines for Proxy Advisors. While B-SEC and Mr. Bakshi received a strong response from GovernanceMonitor's denying all allegations in the notice, SEBI is yet to initiate any action against the proxy advisory firm.

14. Although the stock price decline was somewhat stemmed in the weeks thereafter, sometime in August 2024 SEBI received an email from an anonymous whistleblower making two rather different but nevertheless serious allegations against the management of B-SEC. The first relates to the trading pattern of AlgoTrading Capital Private Limited, a SEBI-registered portfolio manager and investment adviser (known for high-frequency and algorithmic trading) in the stock of B-SEC during the period between February 9, 2024 and May 9, 2024. At the start of this period, AlgoTrading owned 90,000 shares in B-SEC. The whistleblower letter alleges that after the board meeting on February 9, 2024, Mr. Chetan Bhansali, an independent director of B-SEC met with Dr. Sameer Shah, the Chief Research Officer of AlgoTrading, for an unrelated discussion. According to the results of SEBI's investigation, this meeting is said to have occurred on February 25, 2024, during which Dr. Shah asked Mr. Bhansali how the latter was enjoying his time on the board of B-SEC. Mr. Bhansali remarked to Dr. Shah: "Being on the board of B-SEC is a nightmare. You know what the Government is up

to; strangling CPSEs by forcing them into deals to gain political mileage". The discussion between these two individuals did not enter into any further details.

15. The same evening, Dr. Shah altered AlgoTrading's algorithm to incorporate a new variable: "probability of leakage of value through government deals in CPSEs based on dealbook metadata and press coverage". In an internal Microsoft Teams message, Dr. Shah alerted his trading desk that "CPSE sentiment is too rosy. Our model needs a downward adjustment for the coming days." Between March 15, 2024 and April 15, 2024, AlgoTrading gradually sold all its positions in B-SEC and raked in a profit of INR 27 crores. The sales were executed using AlgoTrading's algorithm, the "Alpha-Algo" model, which automatically followed a predefined set of rules based on variables such as price, timing, and volume across the two stock exchanges. Alpha-Algo was effectively able to "mask" AlgoTrading's sale transactions in a manner that prevented detection of unusual trading activity by the surveillance mechanisms of the two stock exchanges where B-SEC is listed. This including building up fragmented orders across the exchanges as well as calculated timing of the trades.

16. During the SEBI investigation into the matter, it came to light that the discussion of the RPCL MOU at the board meeting of February 9, 2024 was known only to the board members and three other executives of B-SEC. The company failed to maintain a list of employees and other persons with whom sensitive information is shared, although it required all board members to sign a confidentiality agreement under which the directors are required "to maintain strict confidentiality over all confidential and proprietary information belong to the Company, including but not limited to trade secrets, financial data, business plans, customer lists, and proprietary technology". The agreement also required directors not to "disclose, publish, or communicate any confidential information to any person or entity, except as required to fulfil their directorial duties or as obligated by law". During the SEBI investigation, Mr. Bhansali defended himself claiming that his remark to Dr. Shah was mere "occupational frustration" rather than any breach of his confidentiality obligations.

17. The second allegation contained in the anonymous whistleblower's email relates to potential misstatements in B-SEC's sustainability reporting. Since the financial year 2023-2024, B-SEC began issuing its business responsibility and sustainability report ("BRSR"), in which the company claimed that it will achieve net zero emissions (across Scope 1, Scope 2, and Scope 3) by the year 2035. The BRSR also stated that B-SEC deployed 100% recyclable solar panel technology, its power generation units had zero discharge, and that the company's operations generated carbon credits worth two million tonnes. The slick report also claimed that B-SEC was one of the best employers among all CPSEs and that its labour standards extended across the supply chain.

18. The whistleblower's report to SEBI, however, pointed to several inaccuracies in B-SEC's BRSR disclosure. It alleged that the report was not subject to verification by an external party with the "requisite scientific experience". The whistleblower claimed that

planned or under-construction MW capacity was reported as if it was already commissioned, thereby giving an artificially inflated single capacity number without specifying how much is actually grid-connected. Also, the inability of the recyclable solar panel technology to be scalable was missing from the reporting. Moreover, the claims regarding carbon credits were inflated by 5 percent. In all, the whistleblower's concern was that B-SEC had made overly bold net zero claims "without disclosure of scope definitions, baselines, emissions factors, offsets used, or third-party assurance".

19. Sometime in September 2024, GovernanceMonitor too submitted a dossier to SEBI making similar allegations against inaccuracies in B-SEC's BRSR. The proxy advisory firm alleged a failure on the part of B-SEC to report a methane gas leak in one of its hydrogen plants that led to the death of a contractual worker in January 2024. GovernanceMonitor had also discovered that B-SEC was under-reporting its pollution data by about two to three percent. On the whole, GovernanceMonitor alleged an organisational culture that encourage "beautifying" the green efforts of B-SEC in order to make a compelling case to ESG- and sustainability-oriented investors and also buy peace with the environmental civil society. Overall, GovernanceMonitor alleged that while B-SEC was highlighting its net zero commitments and emissions reductions rather prominently, it engaged in selective omissions of factors that negatively affected its "green" commitment.

20. Over the next several months, SEBI conducted its investigations (both *suo moto* and based on whistleblower complaints) on various aspects relating to B-SEC and, during March 2025, issued four different orders. In the first ("SEBI Order No. 1), SEBI found irregularities in the transaction between B-SEC and RPCL. It noted that B-SEC grossly mis-utilized public investor funds to divert the same to another entity with which it was related. SEBI turned a blind eye to a letter it received from the MNRE during the investigation process stating that "matters involving national strategic partnerships should not be subjected to stock market governance rigidities." SEBI also noted that the management of B-SEC was running the company as if it were a public utility fully owned by the government without public shareholders. It found evidence of "blatant violation of the rules of corporate governance writ large over the workings of the company." Hence, SEBI directed that the CMD and government nominee directors of B-SEC as of February 9, 2024 be restrained from holding the position of director or key managerial personnel in the company. In addition, SEBI issued a cease-and-desist order against B-SEC from entering into improper or undisclosed transactions with other government entities, except on an arm's length basis. It also directed B-SEC to conduct a forensic or special audit of past transactions involving a value in excess of INR 10 crores. SEBI's order also indicated the initiation of adjudication proceedings against the independent directors of B-SEC for non-compliance with its regulations.

21. SEBI's second order ("SEBI Order No. 2) arose out of adjudication proceedings initiated by it against B-SEC as well as its CMD Mr. Bakshi and Company Secretary Ms. Basu for failure to disclose the MOU that B-SEC entered into with RPCL on

February 20, 2024 in a timely manner as required by the law. The regulator found that the noticees did not comply with the principles of fair disclosure of price sensitive information, as the details pertaining to the execution of the MOU was not made generally available to the market. Further, B-SEC did not issue an appropriate clarification to the stock exchanges when media reports carried speculative analysis of the B-SEC-RPCL deal. As such, SEBI imposed a penalty of INR 25 lakhs to be paid jointly and severally by B-SEC, Mr. Bakshi, and Ms. Basu.

22. In SEBI Order No. 3, the regulator found violations relating to the sale of shares by AlgoTrading. It restrained AlgoTrading, Dr. Shah, and Mr. Bhansali from accessing the securities market for a period of five years from the date of the order. It also prohibited AlgoTrading from providing portfolio management or investment advisory services for a period of two years from the date of the order. It ordered a disgorgement of INR 27 crores against AlgoTrading with 12 percent interest from the date of the order until the date of payment. SEBI also initiated adjudication proceedings for penalties against these parties as well as against B-SEC and Ms. Basu under the relevance provisions of the Securities and Exchange Board of India Act, 1992.

23. In SEBI Order No. 4, the regulator found that B-SEC made materially misleading statements in its BRSR. Although the board of B-SEC as a whole was found to have failed to exercise due care in its BRSR disclosures, the CMD and Company Secretary were held primarily responsible for “greenwashing”. The order also castigated the independent directors of B-SEC for “being asleep at the wheel” as they “failed to verify key sustainability claims.” Accordingly, SEBI imposed a penalty of INR 10 crores on B-SEC, and debarred the CMD Mr. Bakshi and Company Secretary Ms. Basu from accessing the securities markets for a period of two years from the date of the order. It also ordered the appointment of an ESG assurance firm to verify the sustainability claims of the company.

24. The various parties affected by SEBI filed appeals before the Securities Appellate Tribunal, which dismissed all the appeals after hearing them on merits.

25. The affected parties have, therefore, preferred further appeals before the Supreme Court of India. The respective appeals from the relevant SEBI orders have been numbered Supreme Court Appeal No. 1, Supreme Court Appeal No. 2, Supreme Court Appeal No. 3, and Supreme Court Appeal No. 4. With the consent of the parties, the Supreme Court has clubbed the four appeals for purposes of hearing and decision in a composite manner.

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