

**IN THE SECURITIES APPELLATE TRIBUNAL
AT MUMBAI**

Dated this the 6th day of March, 2026

CORAM: Justice P.S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 654 of 2021
[Along with Misc. Application No. 711 of 2022 & 181 of 2025]

BETWEEN:

Kotak Mahindra Asset Management Company Limited
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. Appellant

(By Mr. Pesi Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Joby Mathew, Mr. Aditya Joby and Ms. Sanskrity Purohit, Advocates i/b Joby Mathew & Associates for the Appellant)

AND:

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. ...Respondent

(By Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary and Mr. Abhishek Khare, Advocates i/b Khare Legal Chambers for the Respondent-SEBI.)

AND
Appeal No. 527 of 2022

BETWEEN:

1. Kotak Mahindra Trustee Company Limited
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
2. Mr. Nilesh Shah
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
3. Ms. Lakshmi Iyer
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
4. Mr. Deepak Agrawal
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
5. Ms. Jolly Bhatt
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
6. Mr. Abhishek Bisen
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
7. Mr. Gaurang Shah
27 BKC, C-27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

.... Appellants

(By Mr. Pesi Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Joby Mathew, Mr. Aditya Joby and Ms. Sanskrity Purohit, Advocates i/b Joby Mathew & Associates for the Appellants)

AND:

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

....Respondent

(By Mr. Shiraz Rustomjee, Senior Advocate with Mr. Suraj Choudhary and Mr. Abhishek Khare, Advocates i/b Khare Legal Chambers for the Respondent-SEBI)

THESE APPEALS ARE FILED UNDER SECTION 15T OF THE SEBI ACT, 1992 TO SET ASIDE THE IMPUGNED ORDER DATED AUGUST 27, 2021 PASSED BY THE WHOLE TIME MEMBER AND ORDER DATED JUNE 30, 2022 PASSED BY THE ADJUDICATING OFFICER, SEBI RESPECTIVELY.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 19, 2025, COMING ON FOR PRONOUNCEMENT OF ORDER, THE TRIBUNAL MADE THE FOLLOWING:

ORDER

Per: Ms. Meera Swarup, Technical Member

These two appeals are filed by Kotak Mahindra Asset Management Company, its trustee company and its employees. They were heard together and are disposed of by this common order.

2. Kotak Mahindra Asset Management Company Limited ('Kotak AMC' for short) has filed Appeal No.654 of 2021 challenging the order dated August 27, 2021 passed by the WTM, SEBI¹ directing the appellant to refund a part of investment management and advisory fees collected from the unit holders of 6 Fixed Maturity Plans ('FMP' for short) along with simple interest at 15% per annum from the date of maturity of such schemes and not to launch any new FMP

¹ Whole Time Member, Securities and Exchange Board of India

scheme for a period of 6 months from the date of the impugned order and imposing a penalty of Rs.50 Lakhs on the appellant for violating the provisions of Regulation 10(a), 25(1), 25(2), 25 (16), 25(19), 33 (4), 39 (1), 47, 53(b) and clauses 2,6 and 9 of the fifth schedule of MF Regulations² read with Regulation 33(4) of MF Regulations and SEBI circulars.

3. Kotak Mahindra Trustee Company Limited ('Trustee Company' for short) and its employees have filed Appeal No. 527 of 2022 challenging the order dated June 30, 2022 passed by the AO, SEBI³ imposing a penalty on the appellants totalling to Rs.1.60 Crores under Section 15-I of the SEBI Act⁴ read with Rule 5 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 for violations of provisions of MF Regulations and various circulars under section 15 D (b) and 15 HB of the SEBI Act.

4. Brief facts of the case are:

- (i) Kotak Asset Management Company ('Kotak AMC' for short) is a wholly owned subsidiary of Kotak Mahindra Bank Ltd., and provides management & administrative services. It was appointed as the Asset Management Company of Kotak Mahindra Mutual Fund by the Kotak Trustee Company as per Investment Management Agreement ('IMA' for short) dated May 20, 1996 to provide management and administrative services to the Trust and to deploy the funds raised by the Mutual Fund under the Scheme by authorizing them to do all such acts

² SEBI (Mutual Fund) Regulations, 1996

³ Adjudicating Officer, Securities and Exchange Board of India

⁴ Securities and Exchange Board of India Act,1992

and things on behalf of the Trust as are necessary for the discharge of the responsibilities of the AMC.

- (ii) Kotak Mahindra Trustee Company Limited (appellant No.1 in Appeal No. 527 of 2022) holds the property of Kotak Mahindra Mutual Funds in trust for the benefit of unit holders. Appellant No.2, Mr. Nilesh Shah is the Managing Director of Kotak AMC. Appellant No.3, Ms. Lakshmi Iyer is the Chief Investment Officer (Debt) and Head Products of Kotak AMC. Appellant No.4, Mr. Deepak Agarwal is the Vice President & Fund Manager of Kotak AMC. Appellant No.5, Ms. Jolly Bhatt, is the Compliance Officer of Kotak AMC; Appellant No.6, Mr. Abhishek Bisen is the Fund Manager of the Fixed Maturity Plans ("FMP") series 127 and 183; Appellant No. 7, Mr. Gaurang Shah, is a Director of Kotak AMC who was also one of the members of the Investment Committee that approved the investment decisions of the FMP Schemes 127, 183, 187, 189, 193 and 194 along with Appellants 2 and 3.
- (iii) Kotak Mutual Fund launched six⁵ 'Fixed Maturity Plans' as 'close ended' debt schemes. They were to mature between April 8, 2019 and May 15, 2019. Kotak FMP Series 127 was listed on the BSE. Kotak FMP Series 183, 187, 189, 193 and 194 were listed on the NSE.
- (iv) Kotak AMC constituted an Investment Committee to take decisions on investments in debt instruments. Based on its decisions investments were made in

⁵ series bearing nos. 127, 183, 187,189, 193 and 194

Zero Coupon Non-Convertible Debentures (ZCNCD) of two Companies (Issuers), namely:

- 'Konti Infrapower & Multiventures Pvt. Ltd' ('Konti' for short) and
 - 'Edison Utility Works Pvt. Ltd' ('Edison' for short).
- (v) Konti and Edison belonged to 'Essel Group'. Essel Group is the promoter of Zee Entertainment Enterprises Limited (ZEEL) and some other companies.
- (vi) Cyquator Media Services Pvt. Ltd ('Cyquator' for short), is also an entity of 'Essel group' and one of the promoters of ZEEL.
- (vii) Cyquator agreed to secure investment made by Kotak AMC with Konti and Edison by pledging its equity shares in ZEEL equivalent to 150% and to top up in case of drop in share price of ZEEL. The collateral security cover was monitored on daily basis by independent debenture Trustee (IDBI Trustee).
- (viii) On January 25, 2019, share price of ZEEL had sharp fall. Consequently, the collateral also fell below the mandated 150%. However, Cyquator did not top it up as agreed. Thereafter, letters of intent were executed amongst the issuers (Konti and Edison) and pledger (Cyquator). A separate agreement was also entered between the issuers and the Kotak AMC to extend the date of maturity of the Zero-Coupon Debentures till September 30, 2019.

- (ix) The schemes were wound up on their respective maturity dates and payment was made to the investors except for the portion invested in Zero Coupon Debentures, which was ultimately paid in September 2019 by invoking the pledge and selling the ZEEL shares.

5. Following allegations were made in the show cause notices issued to the appellants in both the appeals:

- Lack of due diligence while investing in Essel Group Companies;
- Investment decisions made without research reports and analyzing various factors;
- Maturity Date of the security exceeded the maturity date of schemes;
- Partial redemption of FMPs at the end of their maturity periods and the FMPs not being wound up at the end of their maturity dates;
- Creation of Segregated Portfolio;
- Non- Compliance with principles of valuation of securities;
- Inadequate disclosures to investors of FMP 127, 183, 187, 189, 193 and 194;

6. Noticees submitted their replies. SEBI issued some additional show cause notices. They were also replied. After adjudication, the impugned orders have been passed.

7. We have heard Mr. Pesi Modi, learned Senior Advocate for the appellants and Mr. Shiraz Rustomjee, learned Senior Advocate for the respondents in both the Appeals.

8. Mr. Modi for the appellants made following common submissions:

8.1 There is no allegation of any 'fraud' against the appellants. The primary allegation is 'lack of due diligence' while making investment choice and not following the mandated procedure. Appellants had disclosed their investment portfolio in public domain from 2016 to 2019 as mandated by the SEBI circulars. No objections were raised by any investor nor any complaints were filed.

8.2 The impugned order records that the investment portfolio in question benefitted the investors since they got the full investment with profit and interest. The actual payment made to the investors after selling the pledged ZEEL shares was with an additional profit of Rs.24.16 crores, more than what they would have got if the scheme was closed as per the original schedule.

9. Mr. Modi next submitted that SEBI had cherry picked the appellants and no action was taken against other mutual funds which had made similar investments.

10. Amplifying his submissions, Mr. Modi submitted that the SEBI has incorrectly held that there was lack of due diligence, considering the fact that the investments were made with India's one of the largest media industries. Appellant had made monthly disclosure to the SEBI and SEBI was aware of the investment portfolio. The investments were fully secured by the pledge of ZEEL shares. ZEEL was a well-known company and also formed part of the BSE's Sensex and the NSE's NIFTY enjoying A+(SO) rating by Credit Rating Agency and thus, justified the investments made with Konti and Edison.

11. He submitted that the investment proposal had come from ZEEL and Essel group and the same was secured by pledge of promoter's shares. Therefore, the identity of Konti and Edison was irrelevant.

12. Mr. Modi contended that the word 'timely' is not defined and has to be distinguished from 'immediately'. Communicating information in a 'timely' manner would have much wider discretion as the regulations stipulate no specific time for the same. On April 5, 2019, appellants informed the investors about the steep fall in price of ZEEL shares. On April 12, 2019, appellants informed the investors the decision to provide additional time to the promoters of Essel group to complete strategic sales process. Appellants also communicated that they would withhold certain parts of units of the FMPs for the benefit of the unit holders.

13. Mr. Modi submitted that none of the investors objected or demanded immediate liquidation. He contended that since the share price of ZEEL had fallen, if the pledged shares were sold by the Kotak AMC, the market could have crashed. Therefore, the pledged shares were not sold. However, they were sold on a later date to get full recovery and additional profit. He submitted that rescheduling is recognised by SEBI in its circular dated June 20, 2002. Further, Regulation 41(2)(a) of MF Regulations expressly mandates winding up of the scheme in the best interests of the unit holders.

14. He submitted that the allegation that the appellants did not reflect the realizable values of securities and valued the portfolio on amortization basis is factually incorrect as the appellants' valuation was on fair valuation basis till February 6, 2019, thereafter, it was on amortization basis only from

February 7, 2019 till the respective maturity dates of the schemes. Thereafter, in view of the peculiar situation, the appellants relied on the valuation done by external valuers (CRISIL and ICRA) who valued the securities on the basis of similarly placed securities in the market, i.e. on fair valuation basis. Therefore, the allegation that after the maturity dates, the appellant continued to value the portfolio on amortization basis, is factually incorrect.

15. Mr. Modi further submitted that while considering the mitigating factors, the learned WTM has noted that though there was delay, the investors have been fully paid. He referred to the following in the impugned order:

"126. I note from the submissions of the Noticee that the investors have been fully repaid the amounts due to them, albeit with a delay but interest to the extent of delay has also been paid to the investors. Therefore, in monetary terms, the unitholders of six FMP schemes ultimately did not suffer any loss. While the same is a mitigating factor to be considered at the time of imposing penalties, I also cannot rule out the possibility of the opportunity cost attached with such delay in redemption, which cannot be calculated in the present matter."

16. In addition to the above common submissions Mr. Modi made following additional submissions in Appeal No.654 of 2021.

17. With regard to the SEBI's allegation that the appellant violated Regulation 25(2) of MF Regulations, 1996 read with SEBI Circular dated July 27, 2000, he submitted that the investments were "structured investments". They were considered essentially as an investment in Essel Group. Therefore, research was done on ZEEL shares, which were pledged to secure the investment.

18. That, appellant's Investment Committee Notes considered various factors including the pledged shares of ZEEL. Appellants were tracking the scrip of ZEEL for about 10 years. Thus, there was proper due diligence.

19. With regard to Appeal No. 527 of 2022, Mr. Modi made an additional submission that the impugned order records that there was no additional or disproportionate gain to the appellants. Therefore, the penalty imposed upon the appellants is untenable.

20. Opposing the appeals, Mr. Rustomjee, learned Senior Advocate for the respondent submitted that:

- i. The appellants' contention that they have been targeted is factually incorrect. He produced an order of settlement of proceedings in the case HDFC Mutual Fund and contended that SEBI has taken action against mutual funds which violated the Regulations. Appellants have not given the specific names of any mutual fund but made vague allegations. In absence of relevant facts, it is not possible for SEBI to place its version on record. He also submitted that it is settled that there can be no claim based on negative equality.
- ii. The main allegation is lack of due diligence. While investing in the Zero Coupon NCDs, appellants failed to exercise proper due diligence in examination of repayment capacity of the two issuers as well as in assessment of adequacy of collateral/security cover. According to the appellants' note dated March 07, 2016 seeking approval of Investment Committee, the Issuers

were Arm Infra & Utilities Pvt. Ltd. and Continental Drug Company Pvt. Ltd. (now Konti). However, it is the admitted position that investment was made in Konti and Edison which shows that the appellants' investment committee did not even bother to ascertain the name of the actual issuer entity even after approving the proposal to invest. The financials examined were not of Issuer Entities but of Zee & Dish TV. The investment committee had approved the 1st investments on March 7, 2016 whereas the offer documents were issued by the issuers on March 11, 2016 and March 28, 2016. The 2nd investment decision was taken on May 18, 2016 whereas offer documents was issued in June 2016. Thus, even before the offer documents were issued by the issuers approvals were given by the investment committee which indicates gross lack of due diligence.

- iii. Further, the financial losses of the issuers were also not taken into account. As per investment notes, the repayment was to be done through refinancing, however, the ability to get such refinance in case of insufficient security was not recorded. Thus, the credit risk of the issuers was not assessed.
- iv. Appellants appear to have been influenced only by the reputation of Essel Group, the repayment history of promoters of Essel Group and the strength of collateral provided by Cyquator. Appellants did not bother to collect the actual figures of the pledged shares of ZEEL from the promoters of Essel Group and based it solely on guess work, expecting to get back the money

invested by it through refinance without obtaining a detailed plan about future refinance.

- v. When the share price of the scrip fell below 1.50 times, the issuers expressed their inability to pledge more shares to increase the cover to 1.50 times. However, appellants failed to inform these adverse developments to the unit holders till April 5, 2019, which was close to the closing date of the scheme.
- vi. The extension of maturity date of Zero-Coupon NCDs beyond the maturity date of scheme is not permissible in view of restrictions on investments in close ended schemes. Such debt funds should be invested only in schemes maturing on or before the date of maturity of the scheme, thus by entering into agreements unilaterally without taking unitholder's consent and extending the maturity dates of the Zero Coupon NCDs by around 6 months is in violation of SEBI Circular⁶ dated December 11, 2008. Further there was no such provision for roll over scheme in the Scheme Information Document as required under the MF Regulations, 1996.
- vii. Appellants contend that SEBI circular⁷ dated June 26, 2002 contemplates rescheduling of date of maturity. This contention is incorrect because the said circular deals with treatment and disposal of illiquid securities and NPAs.
- viii. The extension of maturity of the Zero Coupon NCDs by the appellants lead to failure to wind up FMPs at

⁶ Circular No. SEBI/IMD/CIR No.12/147132/08

⁷ SEBI Circular MFD/CIR/05/432/2002 dated 20.6.2002

the end of maturity period which violates Regulation 33(4) of MF Regulations. Permissible exception to the mandate of making a full redemption on maturity date of a scheme is contained in the proviso to the Regulation 33(4) of the MF Regulations, which provides for roll over to close ended schemes subject to disclosures to the investors and a copy thereof being filed with SEBI, whereas, no such roll over was sought in the present case.

- ix. Though the default and extension of maturity date had occurred, the appellants continued valuing the portfolios on amortization basis rather than fair value basis. They were well aware that the maturity date would be extended beyond 60 days making the Circular inapplicable.

21. We have carefully considered the rival contentions and perused the records.

22. The admitted facts are as follows: -

- (i) Six closed ended debt schemes (FMPs 127, 183, 187, 189, 193 & 194) were launched by Kotak Mahindra Mutual Fund during the period November 2013 to July 2017 with maturity dates falling between April 8, 2019 to May 15, 2019.
- (ii) Investments with Konti and Edison had an exposure ranging from 3.06% to 11.34% in the Asset under management ('AUM').

- (iii) The maturity dates of the Zero Coupon NCDs were on or before the maturity dates of the Fixed Maturity Plans.
- (iv) Both the issuers namely, Konti and Edison, belonged to the 'Essel Group' which was a promoter of Zee Entertainment Enterprises Ltd. (ZEEL).
- (v) The investments in the Zero Coupon NCDs were secured by Cyquator Media Services Private Limited, also an entity of Essel Group and one of the promoters of ZEEL, by pledging shares of ZEEL. The cover for these investments was decided to be a minimum of 1.50 times of the exposure amount. In case of any drop in the share cover below 1.50 times of the investment exposure, it was mandated to be topped up immediately.
- (vi) The investment in issuer companies was based on the reputation, standing and future prospects of the ZEEL / Essel Group and the reputation and standing of their promoters.
- (vii) The price of ZEEL scrip suffered sharp fall on January 24 and 25, 2019 leading to fall in security cover for these investments. The issuers, pledger Cyquator and the promoters of ZEEL group failed to top-up the collateral security.
- (viii) The unit holders of the FMPs were informed about developments with regard to the investments in Konti and Edison, between April 5 and April 12, 2019.

- (ix) On the respective maturity dates of the FMPs, partial redemptions were made, excluding the investments in the Zero Coupon NCDs of Konti and Edison.
- (x) The balance amounts were paid to the unit holders between September 9 and September 25, 2019 when proceeds were received by sale of shares by Essel Group Promoters and sale of remaining shares by the appellants by invoking pledge.

23. There are primarily three issues before us –

- (i) Whether the appellants exercised due care and diligence; and provided high standards of service while taking the decision to invest in Essel Group Companies?
- (ii) Whether the appellants violated the MF Regulation while extending the maturity dates of the investments made in Konti & Edison and made partial redemption of the FMPs at the time of their maturity?
- (iii) Whether the disclosures to the unit holders were made timely and adequately?

24. Re: Issue No. (i): ***Whether the appellants exercised due care and diligence; and provided high standards of service while taking the decision to invest in Essel Group Companies?***

24.1 Appellants have fairly admitted that the investment decision in Zero Coupon NCDs of Konti and Edison were made

on the basis of investment proposal received from the promoters of the ZEEL / Essel Group. Konti and Edison were merely the investment vehicles of ZEEL / Essel Group and their identity was not relevant. The investments were based on the reputations, standing and future prospects of the Group and their promoters. It was argued that, the investments were secured by pledge of equity shares of ZEEL equivalent to 150% of the exposure amount, with an assurance to top up, in case, the value dropped below 150%. But, the fact remains that when the collateral value dropped below 150%, it was not topped up.

24.2 It was argued that SEBI was always aware of the said investments as all the Mutual Funds have to disclose their investment portfolio every month. SEBI had conducted numerous inspections between 2014 and 2017 but no adverse observation was made. The NCDs were rated as A+ (SO) Rating by SEBI registered Credit Rating Agency. The pledge of shares of ZEEL provided high upfront security, ZEEL's shares formed part of BSE's Sensex and NSE's NIFTY. The appellants had previously invested in similar NCDs of the ZEEL promoter entities and the same were also secured by pledge of promoters shares and all such investments were duly paid without any delay or default. The NCDs were "structured obligations" and the debt was secured by collateral. The investment rationale in such cases is based on the underlying security. This concept is recognized by SEBI and there is no restriction in Mutual Fund Regulations or any Circular for such investments. Appellants were constantly monitoring the scrip, but ZEEL shares witnessed a sharp fall due to sale of huge quantity of shares by some investor.

24.3 While the above arguments are persuasive, we are unable to persuade ourselves to accept appellants' contention

that they had exercised due care and diligence while investing in the Zero Coupon NCDs of Konti and Edison. Firstly because, it is admitted by the appellants that no assessment of the Konti and Edison was ever made, instead the investments were based on the pledge of ZEEL shares as security. Investment in any Company must be made primarily based on the intrinsic strength of that company, whereas, in this case, focus was on the underlying shares of ZEEL pledged as security with the emphasis on reputation, track record and performance of ZEEL shares and Essel Group.

24.4 Secondly, we note that the Scheme Information Documents (SIDs) for the Fixed Maturity Plans clearly state:

- that appellants' Investment Committee would carry out 'credit research' including qualitative and quantitative assessment of the Issuers (Konti and Edison);
- that business and financial profile of the Issuer shall be assessed on various parameters including balance sheets, cash flow adequacy, debt servicing capability, funding flexibility etc.;
- to determine the exposure limits on the Issuer, the total outstanding for the Issuer entity shall be considered; and
- that "Securities carry a credit risk of repayment of principal or interest by the Borrower".

24.5 The investors in the Fixed Maturity Plans were made to believe that the appellants would follow all that is stated in the Scheme Information Documents. But it is admitted by the appellants that it was not done. Therefore, we conclude that the appellants did not carry out due diligence on the issuers

(Konti and Edison) as assured to the investors in the Scheme Information Documents.

24.6 Having failed to carry due diligence, appellants have sought to allege discriminatory treatment by the SEBI, contending that no action was taken against similarly situated Mutual Funds. As rightly pointed out by Mr. Rustomjee, appellants have not placed on record the names of any other defaulting Mutual Fund and thus the allegation is vague. Further, we were informed that investments by other Mutual Funds were in open-ended schemes. Therefore, this contention is devoid of merit.

24.7 We also note that in the 'Notes to the Investment Committee' dated March 7, 2016 and May 18, 2016 no reasons were forthcoming as to why pledge of 1.5 times was sufficient for the investments. Significantly, the approval notes record that there was no clarity on the promoter's share pledge-based borrowings and the promoters could run out of shares if prices in ZEEL and Dish TV shares fell by 20% (Note dated March 7, 2016 states it to be 30%).

24.8 Appellant's next contention is that the investment details were within SEBI's knowledge and that it had carried out numerous inspections but made no adverse observations. This argument does not absolve appellants of their duties and obligations. SEBI's explanation is that inspections are generally on sample basis and they cannot cover each and every aspect. Further, what was disclosed to the SEBI is the investment pattern and not the reasons for the investment. This is a plausible explanation and we accept it.

24.9 Further, when the shares of ZEEL witnessed a sharp fall, the promoters failed to top-up the security to maintain it at required 1.5 times. Though, appellants have pleaded that such

an event could not have been foreseen at the time of making investment, the fact remains that the issuers were unable to repay and the promoters failed to make good their pledge of 1.5 times the share value.

24.10 In view of the above, in our considered view, appellants failed to exercise adequate care and due diligence expected from a professional Mutual Fund Asset management company, the Mutual Fund Trustee Company and its professional employees who were part of the decision-making process to invest in Konti and Edison. Accordingly, we answer this point in the **negative**.

25. Re: Issue No. (ii) – ***Whether the appellants violated the MF Regulation while extending the maturity dates of the investments made in Konti & Edison and made partial redemption of the FMPs at the time of their maturity?***

25.1 Appellants' contention with regard to this issue is that, appellants did not make any fresh investments and only agreed to extend the time for repayment to avoid any crash in the share market. Further that, there was no roll over of the entire Fixed Maturity Plans, but liquidation of investments in Konti and Edison were delayed to get full recovery and additional profits. As a result of this extension, the investors have not suffered any loss and the extension was in the best interest of the unit holders.

25.2 The above argument is legally faulty because, the decision taken by the appellants to extend the maturity dates of schemes goes against the basic tenet of closed ended schemes which mandates investment only in securities which mature on or before the date of maturity of the scheme. We are unable to appreciate the stand taken by the appellants

that they had no option but to extend the maturity dates of the securities to avoid crashing the price of ZEEL's share. The appellants have admitted that investments in Konti and Edison were made only on the strength of the ZEEL shares, however, the appellants did not take necessary action required under the terms of the agreement with the issuer and the pledger when the security cover fell below 1.5 times. In fact, appellants negotiated time and again with the promoters of the ZEEL / Essel Group thereby changing the terms of Zero Coupon NCDs without informing the investors.

25.3 It is also an admitted fact that the extension of the maturity dates led to partial redemption of the Fixed Maturity Plans. Thus, the unit holders were deprived of full redemption. Their consent was not taken for making the partial redemption.

25.4 Therefore, we are of the view that the appellants violated Regulation 33(4) of Mutual Fund Regulations by extending the maturity dates of the investments and by making partial redemption of the FMPs at the time of their maturity. Accordingly, we answer this point in the ***affirmative***.

26. Re: Issue No (iii) – ***whether the disclosures were made to the unit holders timely and adequately?***

26.1 Under the Regulation 60 of the Mutual Fund Regulations, the trustees are bound to make such disclosures to the unitholders as are essential in order to keep them informed about any information which may have an adverse bearing on their investments.

26.2 It is an admitted fact that price of ZEEL shares fell sharply in January 2019. On January 24 and 25, 2019, the debenture trustee (IDBI Trustee) issued top up notices to

Cyquator, Konti and Edison. Thus, the appellants were aware of adverse developments affecting the investments in Konti and Edison right from January 2019, however, the first communication was addressed to the unit holders only on April 5, 2019.

26.3 The appellants have pleaded that 'timely' is not defined in the MF Regulations and that the ZEEL Group had made disclosures with respect to fall in the share prices on January 28, 2019, hence, the unit holders were aware about the adverse situation.

26.4 We are not convinced by the above arguments. Even though 'timely' is not defined, the delay in informing the unit holders after three months cannot be considered as 'timely'. The appellants were in constant negotiations with the ZEEL Group and its promoters, from January, 2019 onwards, therefore, they were under obligation to keep the unit holders informed of the various developments. The disclosure by ZEEL on January 28, 2019 cannot be a substitute for appellants' duty to inform the investors. We, therefore, hold that the appellants failed to make adequate and timely disclosures to the unit holders with respect to the adverse developments in the investments made in Konti and Edison. Accordingly, we answer this point in the **negative**.

27. The appellants also argued that the direction to pay the investors the proportionate investment management fee with interest at 15% per annum is unjust and disproportionate because, the investors did not suffer any loss but got full amount with profit and interest. It was also argued that imposition of any penalty on the appellant is unjust especially when there is no finding with regard to 'fraud or mischief'. It was urged that appellant which has been in the mutual fund

business for over about 30 years and the impugned order has caused severe harm to appellant's reputation and market standing.

28. Similar arguments were made by the appellants in Appeal No. 527 of 2022 with regard to the penalties imposed by the learned AO. During oral arguments, the appellants had pleaded that the decision in this appeal would have to follow the decision in Appeal No. 654 of 2021. We have already held that adequate care was not exercised while making investments in ZCNCDs; extension of maturity dates was in violation of MF Regulations; and disclosure to unitholders was not made timely. Therefore, in our view Appellant No. 1, the Trustee Company, failed to ensure that the transactions of ZCNCDs entered into by the Kotak AMC were in accordance with MF Regulations and the scheme documents. The Trust further failed to ensure timely and adequate dissemination of information to all unitholders. The Appellant Nos. 2 to 7 failed to ensure that the Mutual Fund comply with the Regulations and the funds of schemes are invested as per the information given in SIDs and the unitholders are kept informed of all developments regarding the investments. In view of this, we see no ground to interfere with the penalties imposed by the AO as per the impugned order dated June 30, 2022.

29. With regard to disgorgement of a part of the management fee, paragraph 125 of the impugned order states as follows:-

"125. Thus, keeping in view the deliberations as well as my observations as recorded in the foregoing paragraphs of this order with regard to the blatant and deliberate violation of various provisions of law, I hold that the SCNs have rightfully levelled various allegations against Noticee for committing those transgressions with open eyes unmindful of the regulatory & legal implications of such contraventions, thereby prejudicing the interest of

*the innocent investors and unit holders of those six FMP schemes. Hence in all fitness of things, taking into account the **abysmal standard of service rendered by the Noticee while handling the monies of the investors** of those FMP schemes, it is a deserving case for holding the Noticee liable for issuance of appropriate directions for disgorgement of a part of the management fee that it had unjustifiably charged from the unitholders of the six FMP schemes. As a logical consequence to the aforesaid findings, I also hold that the Noticee is liable for imposition of appropriate penalty under Section 11B(2) read with Section 15D(b) and 15HB of SEBI Act, 1992."*

[Emphasis supplied]

30. Thus, the reasoning for directions for disgorgement of part of the management fees are that the Appellant provided *abysmal standard of service* while handling the monies of the investors of the FMP schemes and therefore violated various provisions of law. In our view, such a reasoning cannot be used for directing disgorgement of management fees. In this regard, it would be appropriate to quote the relevant provisions of SEBI Act, 1992 which reads as follows:-

*"Section 11-B [Explanation.- For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, **to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.**]"*

[Emphasis supplied]

31. "Wrongful gain" as described under Section 447 of the Companies Act, 2013 is extracted below:-

"wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled."

32. This Tribunal in ***Karvy Stock Broking Ltd. vs SEBI, Appeal No. 6 of 2007*** has held that disgorgement is an equitable restitutive remedy designed to prevent unjust enrichment and is not punitive in nature. We note that in paragraph 126 of the impugned order, the WTM has given a clear finding – *“Therefore, in monetary terms, the unitholders of six FMP schemes ultimately did not suffer any loss.”* The respondents have failed to establish that the appellant made any ‘wrongful gain’ or wrongfully averted loss. Management fees is charged by the Appellant for the services rendered for management and administration of the schemes. The services rendered by the Appellant were not held as unlawful or in contravention of law but were found to be deficient in the impugned order for which penalty has been imposed. Therefore, in the facts of this case, we are unable to appreciate the reasoning given by WTM for issuing directions for disgorgement for rendering deficient standards of services by the Appellant. We have already held there were deficiencies in the services rendered by the Appellant, therefore, in our opinion, ends of justice could be met by imposition of penalty.

33. We have held that the findings in both the impugned orders against the appellants are substantiated. Investors repose trust in the Mutual Funds Companies and invest their hard-earned money. In our considered view, making investment in Konti and Edison based on a pledge, without assessing the financial strength of the Companies is a serious lapse. This is compounded by not informing the investors timely about the events leading to the partial redemption. In view of these serious lapses, we do not find any merit in the submissions with regard to penalty. Accordingly, the following:-

ORDER

- i. Appeal No. 654 of 2021 is ***allowed in part***. Direction with regard to disgorgement of investment management and advisory fee in paragraph 127.1 of the impugned order is set aside.
- ii. Appeal No. 527 of 2022 is ***dismissed***.
- iii. Pending interlocutory application(s), if any, stands disposed of. No costs.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

06.03.2026
msb

After pronouncement of the order, Mr. Pesi Modi, learned Senior Advocate for the appellants prayed that the stay order on penalties may be continued for a period of 8 weeks to enable the appellants to challenge the order in the Supreme Court. Heard Mr. Abhishek Khare, learned Advocate for the SEBI. Ordered accordingly.

Justice P.S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

06.03.2026
msb