

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 16.07.2019

Date of Decision : 02.08.2019

Appeal No. 44 of 2019

1. Mrs. Ram Kishori Gupta,
Aged about 69 years,
W/o Shri Harish Chandra Gupta

2. Mr. Harish Chandra Gupta
Aged about 74 years,
S/o Late R.P. Gupta,

Both Resident of 142/38,
Ka Amaniganj, Aminabad,
Lucknow – 226 018.

At present address for
correspondence:

Flat No. 17, Ground Floor,
Sujata Niwas, “C” Wing,
Opp. Siddharth Hotel, S.V. Road,
Bandra (W), Mumbai – 400 050.

..... Appellants

Versus

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

....Respondent

Mr. Harish Chandra Gupta, Appellant-in-person.

Mr. Mustafa Doctor, Senior Advocate with Mr. Mihir Mody and Mr. Sushant Yadav, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed to challenge the order of the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) dated September 28, 2018. By the said order M/s. Vital Communications Limited ('VCL' for short) and certain other entities specified therein have been directed to disgorge the unlawful gain of Rs. 4,55,91,232/-, with interest at the rate of 10% per annum from August 1, 2002 till the date of payment for violation of various provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 ('PFUTP Regulations, 1995' for short) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 ('PFUTP Regulations, 2003' for short).

2. This appeal has been filed by the two investors who are husband and wife, and who invested Rs. 18,25,041/- in buying the shares of VCL in 2002. These appellants are aggrieved by the impugned order as they contend that the said order violates the directions given by this Tribunal by its order dated April 30, 2013 as well as the mandate given to SEBI by the SEBI Act, 1992 in protecting the investors.

3. For facility, we reproduce the directions contained in this Tribunal's order dated April 30, 2013 below:-

“In the fitness of things, we, therefore, direct SEBI to look into the part of the complaint of the Appellants which relates to the alleged misleading and fraudulent advertisements issued by VCL, along with the investigation, understandably, being carried on in respect of VCL or separately, as it may be advised and considered fit and proper in the circumstances of this case as per law. The outcome of such investigation should also be conveyed to the Appellants on completion of the investigation proceedings which are stated to be at an advanced stage by the Respondents. Needless to say that in case SEBI finds VCL guilty of playing fraud on the investors, it may consider directing the concerned entity or VCL to refund the actual amount spent by the Appellants on purchasing the shares in question and with appropriate interest and as per law.”

4. The contentions of the appellants are that despite a clear direction of this Tribunal as above directing SEBI to refund

the amount spent by the appellants on purchasing the shares of VCL with appropriate interest as per law, the WTM of SEBI has passed only a disgorgement order against the Company and the connected entities. There is no direction to pay any amount to the appellants despite such a clear direction from this Tribunal. Accordingly, it is contended that SEBI is in breach of not following the directions of this Tribunal, apart from not fulfilling its mandate of protecting the investors. This is particularly relevant in the context that the appellants have been pursuing this matter since 2002 by running from pillar to post. Apart from informing SEBI about the violations committed by the Company VCL in 2003, by means of misleading announcements they approached the National Consumer Disputes Redressal Commission (NCDRC), SEBI and SAT multiple times at very high personal cost. On account of these complaints SEBI has now confirmed that the Company VCL has committed several violations and passed the disgorgement order, (impugned order). However, still the appellants are left in the lurch without any compensation despite the fact that they are genuine investors in the shares of VCL and despite the explicit direction for compensation by this Tribunal.

5. We have heard Shri Harish Chandra Gupta, Appellant-in-person and Shri Mustafa Doctor, leaned senior counsel for the respondent SEBI. The learned senior counsel for respondent SEBI submitted that the direction contained in this Tribunal's order dated April 30, 2013 was further modified by this Tribunal's order dated December 19, 2013. While the first order stated that SEBI may consider compensating the appellants, the second order of this Tribunal modified it by stating that such consideration, if any, has to be as per the provisions of the law and if the circumstances so require. Further, citing paragraph 32 of the impugned order the learned senior counsel for the respondent SEBI submitted that it is virtually impossible for SEBI to provide for restitution to a large number of investors who have invested in the secondary market and incurred losses and giving compensation on a selective basis would be discriminatory as there may be a large number of affected investors and restitution to investors as a class is a complex task beyond the capacity of SEBI.

6. While we sympathise with the submission of the learned senior counsel for the respondent SEBI, we do not agree with the helplessness of SEBI in the context like in this appeal. It is

on the relentless efforts of the appellants before us that the violations made by VCL and other entities have been brought to the fore. Such efforts have been going on since the year 2002. The direction contained in our order dated April 30, 2013 though amended in December 2013 was that if violation by the VCL was proved the appellants' claim may be considered as per law. This direction has to be placed in the context of the disgorgement order issued by SEBI (impugned order) whereby Rs. 4.5 crore (approximately) along with interest has been ordered to be paid by VCL and other entities jointly and severally. The basic idea behind disgorgement is restitution. In the given context, we are of the view that as an investor protection measure the appellants needs to be compensated, since disgorgement without restitution does not serve any purpose.

7. The spirit of the April 2013 order of this Tribunal is that in the facts and circumstances of this matter, appellants deserve to be compensated in case VCL was found violating securities laws. Violation by VCL has been now conclusively proved by the impugned order and, as such, the impugned order should have contained provision for compensating the appellants. Accordingly, in the light of this Tribunal's earlier

orders, and purely in the given facts and circumstances of this matter, we direct SEBI to compensate the appellants by Rs. 18,25,041/-, the amount they invested in the shares of VCL in 2002. No interest thereon shall be paid, since the appellants should also bear part of the risk of investing in the securities market following the principle of caveat emptor. SEBI shall pay the said amount to the appellants either from the amount being disgorged from VCL and connected entities as given in the impugned order or from SEBI's Investor Protection and Education Fund within a period of three months from the date of this order.

8. Appeal is partly allowed without any order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M.T. Joshi
Judicial Member

02.08.2019

Prepared and compared by:msb