

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 14.08.2020

**Misc. Application No. 251 of 2020
And
Appeal Lodging No. 220 of 2020**

Gautam Thapar & Ors.

..... Appellants

Versus

Securities and Exchange Board of India

... Respondent

Mr. J. J. Bhatt, Senior Counsel with Mr. Somasekhar Sundaresan,
Mr. M. P. Bharucha, Ms. Sneha Jaisingh, Mr. Aniruddha Banerji,
Advocates i/b Bharucha and Partners for the Appellants.

Mr. Fredun De Vitre, Senior Advocate with Mr. Mihir Mody,
Mr. Shehaab Roshan, Advocates i/b K. Ashar & Co. for the
Respondent.

Mr. Zal Andhyarujina, Advocate with Mr. Nausher Kohli, Mr. Sohil
Shah, Mr. Narendra Dingankar, Mr. Satish Kishanchandani,
Advocates i/b Pioneer Legal for the Intervener.

**Alongwith
Misc. Application No. 222 of 2020
(Exemption from filing certified
copy)
And
Appeal Lodging No. 227 of 2020**

B. Hariharan

..... Appellant

Versus

Securities and Exchange Board of India

... Respondent

Mr. Pradeep Sancheti, Senior Advocate with Mr. Amit Agrawal, Mr. Sumit Agrawal, Mr. Sahil Raveen, Ms. Radhika Yadav, Ms. Darsha Shetty, Advocates i/b Regstreet Law Advisors for the Appellant.

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

ORDER :

1. Connect this appeal alongwith Appeal Lodging No. 227 of 2020 (B. Hariharan vs. SEBI).

2. We have heard Shri J. J. Bhatt, the learned senior counsel for the appellant in Appeal of Mr. Gautam Thapar & Ors. and Shri Fredun De Vitre, the learned senior counsel for the respondent. We have also heard Shri Pradeep Sancheti, the learned senior counsel in the appeal of B. Hariharan and Shri Mustafa Doctor, the learned senior counsel for the respondent through video conference. We have also heard Shri Zal Andhyarujina, the learned counsel appearing for the applicant CG Power and Industrial Solutions Limited (hereinafter referred to as 'CG Power') who wants to be impleaded as a necessary party.

3. In so far as the intervention / impleadment application is concerned, we find that CG Power was also heard before the respondent and certain directions have also been issued to the said company. We are of the opinion that CG Power is a necessary party and, therefore, they should be impleaded as the necessary respondent in the aforesaid two appeals. We accordingly allow the intervention / impleadment application and direct CG Power to be impleaded as a respondent No. 2 in both the appeals. Necessary corrections in the memo of appeal and/or amended copy of the memo of appeals may

be supplied by the appellant to the Tribunal as well as to the newly impleaded respondent within a week from today.

4. By the impugned order, the appellants have been restrained from accessing the securities market. The appellants have been permitted to liquidate up to 25% of their securities. They have also been restrained from being associated with any intermediary registered with the respondent and also from taking fresh positions. However, all the appellants have also been allowed to make necessary expenses towards wages, legal expense, etc.

5. Pending final disposal of the present appeals, the learned senior counsel for the appellants prayed for an interim relief. In the appeal of Gautam Thapar & Ors. a specific prayer was made that appellants No. 2 and 3 should be given a sum of Rs. 1.75 crores or such amount as Tribunal may think fit for the purpose of paying internet, mobile, electricity bills and for other manufacturing activities. Such request was also made before the respondent which has gone unheard off. Further, the appellants contended that the impugned order speaks about forensic report being awaited. It was urged that some directions should be issued for the submission of the forensic report.

We have been informed at the bar by the learned senior counsel for the respondent that the forensic report has been submitted which is being analyzed by the respondents based on which, if necessary, further course of action in the form of show cause notice would be taken.

6. In so far as the case of B. Hariharan is concerned, the appellant prayed that the restraint order directing him not to be associated with any intermediary and restraining him from not utilizing the balance 75% amount of the mutual funds and other securities is totally unfair especially in the circumstance when there was no *prima-facie*, finding of diversion/defalcation of funds of the company.

7. Considering the aforesaid, we are of the opinion that at this stage no interim order can be passed considering the fact that the impugned order was passed in March 2020. In any event, it is open to the appellants to move an appropriate application for release of additional funds towards necessary expenses for running their manufacturing activities, payment of utility bills and for release of the mutual funds. If such an application is filed and cogent reasons are given, the authority will consider and pass an appropriate order

within two weeks thereafter. In so far as the forensic report is concerned, it has been stated that the forensic report is being analyzed and action if any would be taken in due course, We are of the opinion that the impugned order cannot be allowed to continue till infinity. The impugned order has passed in March 2020 and prior to that an ex-parte interim order has passed. Restraint order is continuing for quite some time and, therefore, it is necessary in the interest of justice that the respondent should analyze the report and take such action as advised to them at the earliest. We are hopeful that before the next date an appropriate action on the forensic report is taken by the respondent. In so far as the request for supply of a copy of the forensic report is concerned, it is open to the appellant to apply for a copy of the forensic report before the respondent. If such an application is filed, an appropriate order in accordance with law would be passed.

8. Four weeks time is allowed to all the respondents to file a reply including the newly impleaded respondent. Three weeks thereafter to the appellants to file rejoinder. The matter would be listed for admission and for final disposal on October 16, 2020.

9. Parties will seek instructions from the Registrar 48 hrs. before the date fixed in order to find out as to whether the appeal will be heard through video conference or through video conference depending upon the prevailing situation on that time.

10. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

14.08.2020
PTM