BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 13.12.2021

Date of Decision : 20.12.2021

Appeal No. 318 of 2019

Vital Communications Ltd.
3G, Gopala Tower, 3rd Floor,
Rajendra Place,
New Delhi – 110 008. ….. Appellant

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. Prakash Shah, Advocate with Mr. Kushal Shah, Advocate i/b Prakash Shah & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

WITH
Appeal No. 321 of 2019

Flare Finance (India) Limited
4346/4C, Ansari Road,
Daryaganj,
New Delhi – 110 001. ….. Appellant

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. Chintan Sheth, Chartered Accountant i/b Chintan Sheth & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

WITH
Appeal No. 442 of 2021

Master Finlease Limited
606, Kailash Building,
K G Marg,
New Delhi – 110 001. ….. Appellant

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. Prakash Shah, Advocate with Mr. Kushal Shah, Advocate i/b Prakash Shah & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

AND
Appeal No. 444 of 2019

Ms. Shubha Jhindal
S-520, Greater Kailash Part – I,
New Delhi – 110 048. ….. Appellant

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. Prakash Shah, Advocate with Mr. Kushal Shah, Advocate i/b Prakash Shah & Associates for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates i/b. K. Ashar & Co. for Respondent SEBI.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Four appeals have been filed against a common order dated September 28, 2018 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) directing the appellants to disgorge unlawful gains totaling Rs. 4,55,91,232/- along with interest @ Rs. 10% per annum with effect from August 1, 2002 till the date of payment. The WTM further directed that if the amount is not paid within the specified period of 45 days the appellants would be further restrained from buying, selling or dealing in securities market for a period of five years.

2. The facts leading to the filing of the present appeal is, that the Vital Communications Limited ('VCL' / 'the Company' for short) came out with an Initial Public Offering of 20 lakh equity shares of Rs. 10/- each in December 1995

which was subsequently listed on Delhi Stock Exchange, Bombay Stock Exchange Ltd. ('BSE' for short) and National Stock Exchange of India Limited ('NSE' for short). SEBI conducted an investigation in the misleading advertisements issued by certain companies including VCL relating to buy-back of its shares, issue of bonus shares and preferential issue of shares.

3. Based on the investigation a show cause notice dated May 24, 2005 was issued directing to show cause as to why appropriate direction under Sections 11 and 11B of the SEBI Act, 1992 including a direction debarring from accessing the capital market and trading in securities should not be issued for violation of Regulation 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 ('PFUTP Regulations' for short).

4. The WTM after considering the material evidence on record and after hearing the parties passed an order dated February 20, 2008. The operative portion of the order is extracted here under:-

> *"36. The response of the company and its representatives has been evasive and the denial of responsibility as director by officials of the company like Shri J.P. Madaan is uncalled for. I thus find that Shri J P Madaan, Shri R K Garg, Smt Subha Jhindal, have*

violated provisions of Regulation 3, 4, 5(1) & 6(a) of PFUTP Regulations whereas Shri Vijay Jhindal has violated 6(a) of PFUTP Regulation.

37. Taking into consideration the facts and circumstances of the case, in exercise of the powers conferred upon me under Sections 11B and 19 of the SEBI Act 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I hereby drop the charges against Shri Vinay Talwar (PAN No. AAAPT0316L) in these proceedings. As regards Smt. Shubha Jhindal, her involvement was confined to the issuance of bonus shares only and therefore I am inclined to impose a lesser penalty on her. Accordingly, I hereby restrain Smt Shubha Jhindal (PAN No. AAGPJ0051N) from accessing the securities market and prohibit her from buying, selling and dealing in securities in any manner for a period of six months.

38. As regards the remaining Noticees i.e.Vital Communications Ltd. and its Directors Shri J P Madaan (PAN no. AIAPM8977E), Shri R K Garg, and Shri Vijay Jhindal (PAN No. AADPJ9438J), I hereby restrain them from accessing the securities market and prohibit them from buying, selling and dealing in securities in any manner for a period of two years.

39. This order shall come into force with immediate effect."

5. The appellants were restrained from accessing the securities market for a specified period as stated in the said order. The aforesaid order dated February 20, 2008 was challenged by some of the noticees being Appeal no. 61, 65 and 81 of 2008. These appeals were allowed by this Tribunal by order dated August 28, 2008 and the order of the WTM dated February 20, 2008 was set aside.

6. Pursuant to the order of this Tribunal, the WTM by an order dated July 31, 2014 passed a fresh order against the appellants and other entities under Section 11 and 11B of the SEBI Act restraining the appellants and other entities from accessing the securities market for a specified periods and further freezing their demat accounts. For facility, the operative portion of the order of the WTM dated July 31, 2014 is extracted here under:-

> *"38. Considering the above facts and circumstances, I, in order to protect the interest of investors and the integrity of the securities market, in exercise of powers conferred upon me by virtue of section 19 read with sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and regulation 44 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 hereby:*
>
> *(a) restrain the following entities from accessing the securities market and further prohibit them from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for the period as mentioned in the following table :-*

Sr. No.	Entities	PAN	Period
1	Vital Communications Ltd.	AAACV2016L	3years
2	Mr. Vijay Jhindal	AADPJ9438J	3 years
3	Ms. Shubha Jhindal	AAGPJ0051N	1 year
4	Mr. Vinay Talwar	AAAPT0316L	3 years
5	Master Finlease Pvt. Ltd.	AAACM6050D	3 years
6	Mr. J. P. Madaan	AIAPM8977E	3 years
7	Mr. R. K. Garg	AAAPG1594P	3 years
8	CBS System Ltd	Not available	3 years
9	Anupama Communications Pvt. Ltd.	AACCA4565H	3 years
10	Brut Finance (India)Pvt. Ltd.	AABCB9386Q	3 years
11	Chankya Apparels Pvt. Ltd.	AAACC0866H	3 years
12	Chankya Overseas Pvt. Ltd.	AAACC0868K	3 years

13	Cosmo corporate Services Ltd.	AAACC3529P	3 years
14	Fashion Tech India Ltd.	AAACF0332R	3 years
15	Flair Finance (India) Ltd.	AAACF2044G	3 years
16	Heritage Corporate Services Ltd.	AAACH2120D	3 years
17	Perfect Car Scanners Pvt. Ltd.	AAACP7864J	3 years
18	Rajat Stock Investments Pvt. Ltd.	AAACR4085K	3 years
19	Troop Trac Chits Pvt. Ltd.	AAACT0601P	3 years
20	Troop Trac Exports Pvt. Ltd.	AABCT6785F	3 years
21	Troop Trac Electrodes Pvt. Ltd.	Not available	3 years
22	Wisdom Publishing Pvt. Ltd.	AAACW0942L	3 years
23	S. V. Stock Land	Not available	3 years
24	Troop Trac Marketing Pvt. Ltd.	AABCT6800D	3 years

(b) direct that the preferentially allotted shares of VCL lying in the demat accounts of the preferential allottees shall remain frozen;

(c) direct VCL not to give effect to transfer of any shares acquired and held by the preferential allottees in the preferential allotment dated December 14, 1999;

(d) restrain the preferential allottees from exercising any voting rights (including through nominee or proxy) or other rights attached to the shares acquired and held by them in the preferential allotment dated December 14, 1999."

7. The aforesaid order of the WTM dated July 31, 2014 has become final and binding on all parties including SEBI.

8. In the meanwhile, prior to the passing of the order dated July 31, 2014 two investors, namely, Shri Harishchandra Gupta and Smt. Ramkishori Gupta filed Appeal no. 207 of 2012 seeking a direction to the respondent to pay them compensation to the tune of Rs. 51,53,190/- for the losses suffered by them in the process of purchasing 1,71,773 shares

from the VCL. These appellants prayed that they should get compensation in respect of 1,71,773 shares @ Rs. 30/- per share. This Tribunal by an order of April 30, 2013 directed SEBI to consider the complaint of the appellants relating to misleading and fraudulent advertisement issued by VCL and in the event SEBI found 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. For facility, paragraph 12 of the order of this Tribunal dated April 30, 2013 is extracted here under:-

> *"12. 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.*
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> *With the above said directions, the appeal preferred by the Appellants is disposed off. No costs."*

9. After the order of the WTM dated July 31, 2014 was passed Shri Harishchandra Gupta and Smt. Ramkishori Gupta filed Appeal no. 145 of 2014 praying that the WTM had failed

to comply with the directions of this Tribunal dated April 30, 2013 by not passing any order on refund of the amount invested by the appellants. A statement was made by the counsel for SEBI to the effect that the WTM would pass an additional order dealing with the directions of this Tribunal. On this basis, the appeal of two investors was disposed of by an order dated November 17, 2014. For facility, paragraph 2 of the said order is extracted here under:-

> *"2. In view of above grievance, counsel for SEBI on instruction states that the WTM of SEBI would pass additional order dealing with the directions of this Tribunal set out hereinabove. Accordingly, WTM of SEBI is permitted to pass additional order in relation to grievances set out in Miscellaneous Application No. 145 of 2014 within a period of 4 weeks from today after giving a personal hearing to appellants.*
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> *Misc. Application is disposed of in above terms with no order as to costs."*

10. Based on the aforesaid, the WTM passed an additional order on December 16, 2014 holding that the ill-gotten gains, if any, made by the persons / entities mentioned in the SEBI order dated July 31, 2014 has not been quantified during the investigation and, therefore, the same was not considered in the order. The WTM further held that the feasibility of quantifying the ill-gotten gains, if any, would be considered and thereafter consider restitution on merits in the case of complainants in accordance with the provisions of the SEBI

Act and that relief to the complainants could only be given through the process of disgorgement if justified by the facts and circumstances of the case. The WTM, accordingly, directed the Investigation Department to examine the feasibility of quantifying the ill-gotten gains, if any, and issue the requisite notice for disgorgement. For facility, paragraph 9, 10 and 11 of the impugned order is extracted here under:-

> *"9. I have considered the submissions and prayers of the complainants, as stated above, and have also perused the findings in the order of SEBI dated July 31, 2014. I note that some of the entities against whom the said order was passed have filed appeals before the Hon'ble SAT. I find merit in the arguments of the complainants that under the SEBI Act SEBI has the mandate to protect the interest of the investors in securities market and, therefore, should take appropriate measures to exercise this mandate. I am also of the view that no person can be allowed unjust enrichment by way of wrongful gain made on account of fraudulent, manipulative and unfair trade practices .I, however, find that in the instant case, the ill-gotten gain, if any, made by the persons/entities mentioned in the SEBI order dated July 31, 2014 had not been quantified during the investigation and therefore, the same was not considered in the aforesaid order.*
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> *10. I, therefore, in the facts and circumstances of the present case and after taking into account the findings of SEBI in the order dated July 31, 2014, consider it a fit case to examine the feasibility of quantifying the ill gotten gains, if any, and disgorgement of the same and, thereafter, consider restitution, on merits, in the case of complainants, in accordance with the provisions of the SEBI Act, 1992 and the regulations framed thereunder. As regards the other prayer of the complainants in the Miscellaneous Application, i.e., initiation of adjudication proceedings and prosecution, I note that actions under different sections of the SEBI Act and regulations are decided by the Competent Authority after taking into account the facts and circumstances of each*

> *case. In this case also, the Competent Authority at the relevant point of time had finalised the line of action considering the facts of the case. I do not find any reason to issue any direction on this issue. Moreover, I also find that as far as the relief to the complainants is concerned, it can be given only rough the process of disgorgement if justified by the facts and circumstances of the case.*
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> *11. I, in view of the above, in exercise of powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11and 11Bthereof, hereby, direct the Investigations Department (IVD) to examine the feasibility of quantifying the ill gotten gains, if any, and issue the requisite notice for disgorgement of the same within three months from the date of this order. The restitution, on merits, in the case of the complainants, should also be considered by the Department in accordance with the provisions of the Securities and Exchange Board of India Act, 1992and the Regulations framed thereunder. The prayers of the complainants and their grievances set out in the said Miscellaneous Application are accordingly disposed of."*

11. The investors Shri Harishchandra Gupta and Smt. Ramkishori Gupta filed Appeal no. 189 of 2015 questioning the direction of the WTM dated December 16, 2014. The said appeal was, however, dismissed as withdrawn with liberty to the said investors to appear before the WTM in connection with the report submitted by the Investigation Department.

12. Thereafter, the WTM passed an order dated April 1, 2016 on the complaint of Shri Harishchandra Gupta and Smt. Ramkishori Gupta and held that SEBI while passing the order dated July 31, 2014 had proceeded on a different footing and

therefore the ill-gotten gains are still to be arrived at and it would be appropriate to direct SEBI to initiate disgorgement proceedings. The WTM further held that the claim of the two investors would be considered in accordance with the provisions of SEBI Act. For Facility, paragraph 17 of the order of the WTM dated April 1, 2016 is extracted here under:-

> *"17. Considering the above, I note that SEBI while determining the ill-gotten gains in the scrip of Vital, had proceeded on a hypothesis different from the findings in the SEBI order dated July 31, 2014. In view of the above, as the ill-gotten gains are still to be arrived at, it is appropriate to direct SEBI to look into the exact figure of ill-gotten gains by Vital, its promoters/ directors, preferential allottees and MFL and initiate the disgorgement proceedings against those who perpetrated fraud on the investors, at the earliest. Further, it is also appropriate that the claims of the applicants be taken on record and the same may be considered in accordance with the provisions of the Securities and Exchange Board of India Act, 1992 and the Regulations framed thereunder, on disgorgement of the ill-gotten gains.*
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> *In view of the foregoing, I in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992, hereby order accordingly."*

13. Subsequently, a show cause notice dated January 17, 2018 was issued to the appellants and other entities and, on the basis of this show cause notice Shri Harishchandra Gupta and Smt. Ramkishori Gupta filed Appeal no. 332 of 2017 which was disposed of by this Tribunal with a direction to SEBI to

decide the matter preferably within six months. By an order of August 6, 2018, the period to pass an order was extended by five weeks on an application of SEBI. Subsequently, the impugned order dated September 28, 2018 was passed by the WTM directing disgorgement. For facility, paragraph 33 of the order is extracted here under:-

> *"33. In view of the above, in exercise of powers conferred upon me under Sections 11, 11B read with Section19 of the Securities and Exchange Board of India Act, 1992, I hereby issue the following directions:*
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> *(a) The Noticee nos. 1, 2, 3, 5 and 7-24 (i.e.VCL, Vijay Jhindal, Shubha Jhindal, MFL, Rajinder Kumar Garg, CBS, Anupama, Brut, CAPL, COPL, Cosmo, Fashion, Flare, Heritage, Perfect, Rajat, TTCPL, TTEXPL, TTELPL, Wisdom, SVS and TTMPL) shall, jointly and severally, disgorge the unlawful gain, as calculated in Table 7 under para 16 above, totalling to Rs.4,55,91,232/-(Rupees Four Crore Fifty Five Lakh Ninety One Thousand Two Hundred Thirty Two Only). They shall also pay intereston this unlawful gain at the rate of 10% per annum from August01, 2002 till the date of payment. The above-named Noticees 1, 2, 3, 5 and 7-24 shall disgorge the abovementioned amount with applicable interest within 45 days from the date of receipt of this order, by way of crossed demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai. In case the aforesaid amount is not paid within the specified time, the above named Noticee nos. 1, 2, 3, 5 and 7-24 shall be restrained from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of five years from the end of the specified time of 45 days. The same shall be without prejudice to SEBI's right to initiate appropriate enforcement action under SEBI Act, 1992 including Recovery, Adjudication or Prosecution.*

> *(b) Copy of this Order shall be forwarded to the recognized stock exchanges and depositories for information and necessary action."*

14. The aforesaid order dated September 28, 2018 was challenged by Shri Harishchandra Gupta and Smt. Ramkishori Gupta. This Tribunal held that the spirit of the April 2013 order of this Tribunal was that two investors deserved to be compensated in case VCL was found violative with the securities laws. The Tribunal, however, observed that the impugned order did not contain any provisions for compensating the appellants and accordingly directed SEBI to compensate the appellants by Rs. 18,25,041/- which was the amount they invested in the shares of VCL in 2002. This order was challenged by SEBI before the Hon'ble Supreme Court of India wherein by an order of October 18, 2019 the operation and implementation of the order of this Tribunal was stayed.

15. Some of the noticees have filed the present appeals challenging the order dated September 28, 2018 passed by the WTM.

16. We have heard Shri Prakash Shah, the learned counsel and Shri Chintan Sheth, Authorized Representative for the appellants and Shri Kevic Setalvad, the learned senior counsel for the respondent.

17. The contention of the appellants is, that the impugned order is barred by the principles of *res judicata*. The WTM had issued a show cause notice which culminated into a final order dated July 31, 2014 whereby the appellants were debarred from accessing the securities market for a specified period. This order has become final and therefore for the same cause of action, no fresh order under Section 11 and 11B of the SEBI Act could be passed again by the WTM directing the appellants to disgorge the unlawful gains. It was also urged that even otherwise the appellants on merits have a good case and no case for disgorgement is made out.

18. On the other hand, the learned senior counsel for the respondent contended that no case of *res judicata* was made out in the facts and circumstances of the present case and that Section 15U of the SEBI Act specifically states that the Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 and therefore the applicability of the principles of *res judicata* would not apply in the instant case. It was further contended that the impugned order was passed pursuant to the directions given by this Tribunal from time to time. On this basis, the

respondent investigated the matter further with regard to the unlawful gains made by the appellants.

19. Having heard the learned counsel for the parties, we find that the respondent have mixed two sets of proceedings. The first set of proceeding is against the Company and other entities under Section 11 and 11B of SEBI Act read with Regulation 11 of the PFUTP Regulations, 1995. The first order in this regard is dated February 20, 2008 which was set aside pursuant to an order by this Tribunal and, on remand, a fresh order dated July 31, 2014 was passed by the WTM under Section 11 and 11B of SEBI Act read with Regulation 11 of the PFUTP Regulations, 2003. In this order the WTM found that the appellants and other noticees had contravened the provisions of Regulations 3, 4, 5 and 6 of the PFUTP Regulations, 1995 read with Regulation 3 and 4 of the PFUTP Regulations, 2003 and the preferential allottees had also violated Regulation 7 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ('Takeover Regulations' for short). Further, the preferential allottees, on account of illegal and fraudulent acquisition of 70.25% equity shares of VCL, had violated Regulation 10 and 11 of the Takeover Regulations, 1997. The WTM exercising powers

under Section 11 and 11B of the SEBI Act read with Regulation 11 of the PFUTP Regulations, 2003 and Regulation 44 of the Takeover Regulations, 1997 restrained the appellants and other entities from accessing the securities market for specified periods and further directed that their demat accounts shall remain frozen. This order has become final and binding between the parties.

20. The second set of proceedings were initiated by two investors Shri Harishchandra Gupta and Smt. Ramkishori Gupta. They had filed Appeal no. 207 of 2012 seeking a direction to the respondent to pay them compensation to the tune of Rs. 51,53,190/- for the losses suffered by them in purchasing the shares from VCL. This Tribunal disposed of the appeal of the two investors by an order dated April 30, 2013 directing SEBI to consider their complaint and if it found 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 as per law.

21. A clear cut direction was issued by this Tribunal to look into the complaint of the investors and if their claim was justified then issue orders directing the concerned entity or

VCL to refund the actual amount spent by the appellants. There was no such direction by this Tribunal directing the appellants to investigate into the unlawful gains made by the Company and other entities. Subsequent orders issued by this Tribunal were only with regard to compliance of the directions of this Tribunal dated April 30, 2013. This Tribunal had not issued any direction to SEBI to consider the feasibility of quantifying ill-gotten gains or initiate proceedings for disgorgement against the appellants and other entities.

22. In view of the aforesaid, the direction of the WTM dated December 16, 2014 directing the Investigation Department to examine the feasibility of quantifying ill-gotten gains, if any, and issue requisite notice for disgorgement was wholly without jurisdiction. The contention of the respondent that the said direction was issued only in pursuance of direction issued by this Tribunal is patently erroneous.

23. At this stage we may note that even pursuant to the impugned order dated September 28, 2018 no direction whatsoever was issued by the WTM giving any kind of relief to the two investors.

24. Thus, we are of the opinion that once a show cause notice has been issued to the appellants and other noticees alleging that misleading advertisement was issued by certain companies including VCL relating to buy-back of its shares, issue of bonus shares and preferential issue of shares which culminated into passing of an order dated September 28, 2018 and issuing appropriate directions under Section 11 and 11B of the SEBI Act. No fresh proceedings under Section 11 and 11B of the SEBI Act on the same cause of action for the same offence can be initiated nor can any further order be passed therein. Therefore, in our opinion, the impugned order dated September 18, 2018 is barred by the principles of *res judicata*.

25. The order dated July 31, 2014 was passed under Section 11 and 11B of the SEBI Act. The impugned order dated September 28, 2018 has been passed again under Section 11 and 11B of the SEBI Act for the same cause of action and therefore it is barred by the principles of *res judicata*.

26. In this regard Section 11 of the Code of Civil Procedure, 1908 is extracted here under:-

> ***"11. Res judicata****—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such*

subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I. — The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II. — For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. —The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. — Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI. — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

Explanation VII. — The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII. — An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

27. A perusal of the above provision indicates that no Court shall try any suit or issue in which issue has been directly or substantially been decided in an earlier suit.

28. In ***M. Nagabhushana v. State of Karnataka & Others [(2011) 3 SCC 408]*** the Supreme Court held:-

> *"12. The principles of res judicata are of universal application as they are based on two age-old principles, namely, interest reipublicae ut sit finis litium which means that it is in the interest of the State that there should be an end to litigation and the other principle is nemo debet bis vexari, si constat curiae quod sit pro una et eademn causa meaning thereby that no one ought to be vexed twice in a litigation if it appears to the court that it is for one and the same cause. This doctrine of res judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.*
>
> *13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of res judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of res judicata is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties."*

29. Similarly in ***Union of India & Ors. v. Major S.P. Sharma & Ors. [(2014) 6 SCC 351]*** the Supreme Court held:-

> *"81. Thus, the principle of finality of litigation is based on a sound firm principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law inasmuch as there will be no end to litigation. The doctrine of res judicata has been evolved to prevent such anarchy."*

30. From the aforesaid, it is clear that the Supreme Court held that the doctrine of *res judicata* is not a technical doctrine but a fundamental principle which sustains the rule of law in ensuring finality in litigation. The main object of the doctrine is to promote a fair administration of justice and to prevent abuse of process of the court on the issues which have become final between the parties on the principle that no person should be vexed twice in a litigation for the same cause of action.

31. In this regard, Explanation IV of Section 11 of the Code of Civil Procedure is also relevant. The fact that an order of disgorgement was not passed in the first round of litigation in the order of WTM dated July 31, 2014 does not entitle the WTM to pass a subsequent order for disgorgement on the same cause of action. The principle evolved in Explanation IV of Section 11 of the Code of Civil Procedure is constructive *res judicata* which is fully applicable in the instant case.

32. In ***Aditya Birla Money Limited vs National Stock Exchange of India Limited & Ors. (2020 SCC OnLine Mad***

1082) a complaint was decided by the Investor Grievance Redressal Panel. The complainant made another application to reexamine the complaint which was rejected. The Madras High Court held that the second application was barred by the principles of *res judicata*. The said decision is fully applicable in the instant case. In the light of the aforesaid, if SEBI has chosen to deal with its show cause notice in one particular manner and issue direction under Section 11 and 11B of the SEBI Act, it cannot thereafter bring the same transaction as a cause for issuing a fresh show cause notice, on the same cause of action and, issuing further directions under Section 11 and 11B. In our opinion once an adjudication is concluded it becomes final not only as to the actual matter determined but as to every other matter which the SEBI might or ought to have litigated or could have been decided as incidental to or connected with subject matter and every other matter coming into the legitimate purview of the original action.

33. In a country governed by the rule of law, the finality of a judgment is absolutely imperative and great sanctity is attached to the finality of the judgment. It is thus not permissible for SEBI to reopen the finality of the judgment. Issuance of a fresh show cause notice leading to the passing of

the impugned order is not only abuse of process of the court but has far reaching adverse effect in the administration of justice as held by the Supreme Court in ***Ambika Prasad Mishra v. State of Uttar Pradesh [(1980) 3 SCC 719]*** and ***Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715]*** and ***M. Nagabhushana (supra)*** .

34. A contention was raised by the respondent that the Civil Procedure Code is not applicable and therefore the principle of *res judicata* will not apply. Reliance was made with regard to the provisions of Section 15-U(1) of SEBI Act. For facility, the same is extracted here under:-

> *"**15-U. Procedure and powers of the Securities Appellate Tribunal**. —*
>
> *(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings."*

35. A perusal in the aforesaid provision indicates that Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. The said provision does not prohibit the Tribunal from adhering to the procedure laid down by the Code of Civil Procedure. In fact,

the provision gives wide powers to the Tribunal to lay down such procedure which is not envisaged under the Code of Civil Procedure and that the Tribunal would be guided by the principles of natural justice. In our opinion, the principle of *res judicata* is fully applicable in the instant case. The contention raised is patently erroneous and is rejected.

36. We find that the show cause notice was issued on May 24, 2005 which culminated into an order dated February 24, 2008 and upon remand the subsequent order was passed by WTM, SEBI on July 31, 2014 which order has become final and binding. Subsequent proceedings initiated by the respondent on the disgorgement of the alleged unlawful gains made by the appellants and other noticees were a clear abuse of the process of the court. Unnecessary time and money was spent by the parties. Since we have held that the fresh initiation of proceedings by show cause notice which culminated into the impugned order was an abuse of process of the court, the appellants are entitled for costs.

37. In view of the aforesaid, we are of the opinion that the issuance of the show cause notice dated January 19, 2018 was wholly illegal. The impugned order dated September 28, 2018 is clearly barred by the principles of *res judicata* and cannot be

sustained. In view of our finding it is not necessary to dwell on the merits of the case.

38. For the reasons stated aforesaid the impugned order is quashed. The appeal is allowed with costs of Rs. 2 lakh each to be paid by SEBI to the appellants within 8 weeks from today.

39. 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 Private Secretary 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

Justice M.T. Joshi
Judicial Member

20.12.2021
msb