

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No.207 of 2012**

**Date of decision:30/04/2013**

1. Mrs. Ramkishori Gupta  
aged about 62 years, wife of  
Shri Harishchandra Gupta
  
2. Harischandra Gupta  
aged about 67 years,  
son of Late R. P. Gupta

Both resident of 38, Amani Ganj,  
Aminabad, Lucknow – 18.

... Appellants

Versus

1. Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A, G-Block,  
Bandra Kurla Complex,  
Mumbai – 400 051.
  
2. M/s. Bombay Stock Exchange  
Stock Exchange Building,  
Dalal Street, Fort,  
Mumbai – 400 001  
through its  
General Manager (Operation)
  
3. M/s. Vital Communication Ltd.  
606, Kailash Building,  
Kasturba Gandhi Marg,  
New Delhi – 110 001.

... Respondents

Mr. H. C. Gupta, Appellant No.2 in person for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Dr. (Mrs.) Poornima Advani, and Ms. Amrita Joshi, Advocates for Respondent No.1.

Mr. Omprakash Jha, Advocate for Respondent No.2.

None for Respondent No.3

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)  
Jog Singh, Member

Per : Jog Singh

The two Appellants have preferred the present appeal mainly seeking a direction to the respondents to pay them compensation to the tune of Rs.51,53,190/- for the loss suffered by them in the process of purchasing 1,71,773 shares from M/s. Vital Communication Limited, hereinafter referred to as "VCL", which is a listed company on the Bombay Stock Exchange Ltd., hereinafter referred to as "BSE". The Appellants appeared to have traded in the said shares (goods) of VCL between May 23, 2002 to June 25, 2002. The case of the Appellants is that they were impressed by the allegedly misleading advertisements published in various newspapers particularly as regards issue of buy-back as well as bonus shares. It is contended by the Appellants that both the schemes of buy-back and bonus shares did not materialize at all. In the process they suffered huge losses. Therefore, they are praying for a direction to SEBI to consider their prayer for grant of compensation for the loss suffered by them in the course of the transaction. They are seeking a direction to get compensation in respect of 1,71,773 shares in question @ Rs.30 per share at least.

2. The precise prayers of the Appellants are as under:-

“(a) As the BSE has failed to save the investor from the fraudulent and unfair practice adopted by VCL for the promotion of sale of their shares duly listed at BSE for wrongful gain against the land laws of the country as well as SEBI and BSE, BSE and VCL may kindly be ordered to compensate the Complainant/Appellant up to the extent of (a) Rs.51,53,190/- in the name of Appellant No.1 for Rs.1,171,773/- shares @ Rs.30/- per share at least, who has invested her valuable money in the purchase of shares or in alternative Rs.51,53,190/- in the name of joint account holder Smt. Ram Kishore Gupta & H.C. Gupta, after deducting an amount of Rs.4,41,767/- the value of shares sold in the month of may/June 2005 @ average Rs.2,37 per share jointly and severally.

(b) Pendentelite and future interest @ Rs.12% p.a. on the above amount w.e.f. the month of June, 2002 till the date of payment or recovery from the BSE and VCL as both are jointly and severally liable for the payment due to fraudulent and unfair trade practice adopted by them, for the wrongful gain.

(c) That the Respondent No.1 may kindly be ordered to act in accordance with the Act 59 of 2002 u/s 15HA which are mandatory as per law laid by our Hon’ble Supreme Court which is still not decided by the Respondent till date as per confirmation of CPIO/SEBI letter dated 8/8/2010.

(d) Cost of the appeal or any suitable order may kindly be passed in the interest of justice for which the Appellant shall be ever grateful.

The Appellant crave leave to add to alter/amend the above grounds at the time of hearing of the present appeal.

VII. Interim order prayed for-

The Appellant most respectfully prayed that the Respondent No.2 & 3 may kindly ordered to deposit the amount of compensation as prayed by the Appellant as well as amount of penalty as prescribed u/s 15HA of Act, 59 of 2002 till pending of this appeal with the Hon’ble SAT as the Respondent No.2 has suspended the trading of the share of Respondent No.3 for penal.”

3. The Appellants contend that VCL with connivance of the BSE for the purpose of promotion of sale and supply of shares (goods) of VCL adopted unfair and deceptive trade practice through advertisements in the Economic Times newspaper read by the Appellants which falsely

represented that their goods i.e. shares were of a very high grade and standard, deceptively alluring the general public and the Appellants by the visible representations on different dates e.g. 4/5/2002, 20/5/2002, 21/5/2002, 27/5/2002, and 4/6/2002 in the Economic Times, as well as websites of BSE giving out that the growth of VCL which was registered/listed for sale of its shares with the BSE (i) had been continuous for the last 7 years, (ii) there was increase in the company's turnover, (ii) there was also increase in the earning per shares (EPS) of VCL, and (iv) increase in its share holding of Foreign Institutional Investor i.e. FII, visibly shown by arrows as well as by phrases. Above all, they made deceptive and alluring promises of buy-back of equity shares at a maximum price upto Rs.30 per share and also preferential allotment to promoters at a price upto Rs.35/- per share which was never done. They exhibited false allurements of issuing bonus shares in 8:10 proportion in order to attract and wrongfully induce the public including the consumer/investor, like Appellants, to invest in their goods/shares to which neither were they entitled in accordance with company law nor with SEBI law, resulting in heavy losses to the Appellants.

4. Subsequently, the Appellants approached the consumer forum under the Consumer Protection Act, 1986 for redressal of their grievances and payment of alleged compensation suffered by the Appellants due to the above facts. The National Consumer Disputes Redressal Commission, New Delhi, while hearing the appeal of the Appellants on 17/1/2010 simply opined that the complaint of the Appellants was not within the purview of Consumer Protection Act, and if the Appellants wished to pursue their remedy, they might approach SEBI for the redressal of their grievance as per law. Accordingly, they preferred a petition before SEBI dated

21/8/2010 which was forwarded by SEBI to BSE vide their letter Ref.No.MRD/DMS/9497/2010 dated September 13, 2010. The petition was filed in respect of complaints regarding announcements relating to buy-back of shares, preferential allotment and bonus issue etc.

5. SEBI declined the request of the Appellants for grant of compensation stating, inter alia, that they do not have such jurisdiction to consider and grant compensation to the investors who incidentally suffer losses in the process of purchasing/selling shares in the open market. SEBI further submits that it has, in fact, otherwise taken action against VCL and its directors under section 11B. By an order dated 20<sup>th</sup> February, 2008, VCL was barred from accessing the securities market and from buying, selling or dealing in securities for a period of two years. However, this Tribunal by an order dated 28<sup>th</sup> August, 2008, remanded the matter to SEBI with the following directions:-

*“The appeals are accordingly allowed and the impugned order qua the appellants set aside and the cases remanded to the Board with a direction to issue fresh show cause notice(s) to the appellants herein who will file their replies, if necessary. The Board will then afford an opportunity of hearing to them and pass a fresh order in accordance with law. In case the Board comes to a conclusion that the advertisements are not misleading or fraudulent as contended by the appellants, then in that event, it shall be open to it to pass appropriate orders against the other entities as well including the recalling of the order against them.”*

6. SEBI further admits that the investigation in pursuance of the remanded proceedings has been concluded and proceedings against 15 entities, including the directors, under section 11B of the SEBI Act are in progress. In those proceedings, SEBI had issued show cause notices to the entities but some of them were returned undelivered. SEBI is also in the process of serving notices on the entities by means of publication in

newspapers. The Appellants have been informed, and are aware of the orders passed by SEBI and SAT mentioned above including the proceedings on remand. Thus, the submission of learned senior counsel Shri Shiraz Rustomjee, for the Appellants, is that SEBI is ill-equipped to adjudicate upon matters regarding the grant of compensation/damages. For if it is involved in such matters of various investors who lose money in the process of trading in the shares, etc., it would be flooded with cases and may divert SEBI from its main objectives for which it was created.

7. Both the learned counsel have been heard at length and the pleadings and documents have been perused.

8. The Appellants have raised a twofold issue in the present appeal. Firstly, they seek a clear relief in the form of a direction to the BSE and VCL to compensate them for the alleged losses suffered on account of purchase/sale of 1,71,773 shares of the company in question. The claim is to the tune of Rs.51,53,190 in the form of damages for the alleged loss. Secondly, the Appellants have raised grievances regarding misleading advertisements by VCL in various newspapers which motivated the Appellants to purchase the shares of the company. Such allegations have also been made against the BSE.

9. First, we deal with the issue as to whether any compensation can be granted by SEBI to an investor who loses money in the process of sale and purchase of certain securities, etc. We have minutely perused the scheme of the SEBI Act, 1992 and we note that its express object is to protect the interest of investors in securities and to promote the development of the securities market and also its regulation so as to have an orderly, systematic and a more organized capital market. Thus, greater emphasis is given by

the SEBI Act, 1992 to empower SEBI to streamline the functioning of the securities market as this task had remained scattered, uncertain and in many hands prior to 1992. Section 11(1) also deals with powers and functions of the Board in a manner similar to the preamble of the Act. Section 11(2), however, enumerates around 15 directives to SEBI to be undertaken by it in the discharge of its duties to attain the objectives for which it has been established. There is no directive or mandate in any of the 15 or 16 measures empowering SEBI to undertake the task of considering and granting compensation to an investor for the alleged losses he might have suffered due to certain misleading or fraudulent advertisements by a company. In view of this legal position, the prayer of the Appellants seeking a direction to the SEBI to grant them compensation to the tune of Rs.51,53,190/- for the alleged loss suffered on account of the purchase/sale of 1,71,773 shares of VCL is totally misconceived and is hereby rejected. In fact, the Appellants' prayer for compensating him for the alleged loss is in the nature of a claim for damages on account of such alleged fraudulent and misleading representations by the VCL through various advertisements. This aspect needs to be looked into by a civil court of competent jurisdiction in a trial and not by SEBI under the SEBI Act, 1992 for the simple reason that SEBI has neither the expertise nor infrastructure for this purpose. There is no mandate in law requiring SEBI to do so in case any investor suffers loss on account of trading in shares etc. Such jurisdiction is not envisaged anywhere in the entire scheme of the SEBI Act, 1992. In fact, the law of damages/compensation is a complex area and SEBI is not supposed to undertake the same for reasons stated hereinabove.

10. However, turning to the second limb of the Appellants' grievance regarding a direction to SEBI to launch an investigation into the alleged

misleading and/or fraudulent advertisement by VCL, we have no doubt in our mind that SEBI is duly authorized by the SEBI Act, 1992 to do so in any given and fit case in this connection. It is, however, pertinent to note that SEBI itself has stated in its affidavit in reply dated 6<sup>th</sup> March, 2013 filed by Ms. Doel Saha, Assistant Legal Advisor that SEBI has already taken action against VCL and its directors under Section 11B and by an order dated 20<sup>th</sup> February, 2008, VCL was barred from accessing the securities market and from buying, selling or dealing in securities for a period of two years. However, this Tribunal by its Order dated 28<sup>th</sup> August, 2008 allowed the appeals preferred by VCL and remanded the matter to SEBI for fresh investigation. Further, a simple perusal of the objects mentioned in the preamble of the Act, read with the provisions of Section 11(1) of the SEBI Act, reveals beyond a doubt that a sort of development philosophy underlies the whole SEBI Act, 1992 and SEBI is required to operate keeping in view the spirit of the legislation as enacted by the Legislature. Consideration and imposition of one or more of the penalties prescribed under Section 15, including a direction to a company to refund an amount collected by the company in an irregular or illegal manner is entirely a different aspect and well within the domain of SEBI.

11. Learned counsel for BSE, Shri Omprakash Jha, appeared and mainly adopted the arguments of learned counsel for SEBI. He, however, submitted that the Exchange has a very limited role of uploading the information furnished by the company and if any alleged fraudulent or misleading statement of the company is there in the newspapers, the Exchange has no role, whatsoever, in this regard. In this connection, it is pertinently noted that the documents on record do not reveal any type of alliance between the BSE and VCL. The BSE appears to have acted in a

transparent manner, within the four corners of law and the agreement between the two. Therefore, the act of the Appellants of involving the Exchange in the wrongs, if any, committed by VCL is totally improper and unjustified.

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.

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

Sd/-  
P. K. Malhotra  
Member &  
Presiding Officer (*Offg.*)

Sd/-  
Jog Singh  
Member

30/04/2013  
prepared and compared by  
ddg