# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Date: 10.12.2014**

**Misc. Application No. 157 of 2014**
**And**
**Misc. Application No. 158 of 2014**
**In**
**Appeal No. 331 of 2014**

DLF Limited
DLF Centre, Sansad 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

**AND**

Kimsuk Krishna Sinha
R/O F5/2, Vasant Vihar,
New Delhi- 110 057 …Applicant

Mr. Amit Sibal, Senior Advocate with Mr. Beni Chatterji, Senior Advocate, Mr. Rajnish Chopra, Mr. Vinay P. Tripathi and Mr. Prateek Malik, Advocates for the Applicant.

Mr. Janak Dwarkadas, Senior Advocate with Mr. Gaurav Joshi, Senior Advocate, Mr. Shardul S. Shroff, Ms. Reena Chaudhary, Mr. Dhruv Dewan, Ms. Anannya Ghosh, Mr. Kostubh Devnani, Mr. Rajbeer S. Sachdeva, Advocates and Mr. Ashok Tyagi, CFO for the Appellant.

Mr. Rafique Dada, Senior Advocate, with Mrs. Poornima Advani, Advocate and Mr. Manish Chhangani, Advocate i/b The Law Point for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A.S. Lamba, Member

Per: Justice J.P. Devadhar (Oral)

1. Both these Miscellaneous Applications were heard extensively on December 10, 2014 and on conclusion of hearing we had pronounced that both these Miscellaneous Applications are liable to be rejected for the reasons to be recorded separately. Accordingly we are recording our reasons for rejecting the two Miscellaneous Applications.

2. These two Miscellaneous Applications are filed by the applicant for being impleaded as party respondent in Appeal No. 331 of 2014. Appeal No. 331 of 2014 is filed by DLF Limited to challenge the order passed by Whole Time Member ("WTM" for short) of Securities and Exchange Board of India ("SEBI" for short) on October 10, 2014 ("Impugned Order" for short)

3. In the impugned order the WTM of SEBI, after investigating the complaints filed by the applicant has held that DLF Limited and its Directors named therein have violated various Regulations/Guidelines framed by SEBI and accordingly restrained them from buying, selling or otherwise dealing in the securities, directly or indirectly, in any manner whatsoever for a period of three years.

4. Basic argument of the applicant is that since the impugned order is passed after investigating the complaints filed and information furnished by the applicant, the applicant ought to be impleaded as party respondent to the appeal filed by DLF Limited. It is contended that if the impugned order is set aside, modified or altered in the appeal filed by DLF Limited, then, the interests of the applicant who had complained against DLF Limited would be prejudicially affected.

5. Question, therefore to be considered is, whether the applicant is a necessary /proper party to the appeal filed by DLF Limited and whether interests of the applicant would be prejudicially affected if the impugned order passed after investigating the complaints filed/information furnished by the applicant is set aside/modified/varied in the appeal filed by DLF Limited.

6. Consistent view taken by this Tribunal, for example, in the case of Investors Grievances Forum (Misc. Application No. 63 of 2002 in Appeal No. 109 of 2002 decided on February 17, 2003), in the case of Mr. Deepak Khosla (Misc. Application No. 120 of 2013 in Appeal No. 224 of 2012 decided on December 2, 2013) and in the case of QVT Fund LP (Misc. Application No. 88 of 2014 in Appeal No. 72 of 2014 decided on December 9, 2014) is, that, where an order is passed by SEBI against a company, the shareholder/bondholder/investor of that company cannot be said to be necessary/proper party to the appeal filed by the company against the order of SEBI, unless, it is demonstrated that they have a cause of action against the company relating to the issue which is subject matter of that appeal. In case of A.K. Muthuswamy, this Tribunal has allowed his application for being impleaded as party respondent to the appeal filed by Osian's Connoisseurs of Art Private Limited against SEBI (Misc. Application No. 22 of 2014 in Appeal No. 62 of 2013) on June 16, 2014, on ground that if the appeal filed by Osian's Connoisseurs of Art Private Limited is allowed it would prejudicially affect the legal right of Mr. A. K. Muthuswamy. In that case, after investigating the complaint

filed by Mr. A. K. Muthuswamy SEBI had held that all investors including Mr. A. K. Muthuswamy were entitled to receive from Osian's Connoisseurs of Art Private Limited, the promised return with interest on the amount invested by them. Since Mr. A. K. Muthuswamy was heard by SEBI before passing the impugned order and any order allowing the appeal filed by Osian's Connoisseurs of Art Private Limited would have prejudicially affected the legal rights of Mr. A.K. Muthuswamy, this Tribunal allowed the Misc. Application filed by Mr. A.K. Muthuswamy for being impleaded as party respondent in the appeal filed by Osian's Connoisseurs of Art Private Limited.

7. In the present case, whether the applicant has made out a case for being impleaded as party respondent to the appeal filed by DLF Limited is the question.

8. Admittedly, the applicant is neither a shareholder nor an investor in DLF Limited and applicant has no claim against DLF Limited. Applicant had filed a complaint before SEBI on June 4, 2007 alleging that Sudipti Estates Pvt. Ltd. ("Sudipti" for short) had duped the applicant to the tune of approximately ₹ 34 crore and in that respect FIR No: 249/2007 dated April 26, 2007 has been registered at Police Station, Connaught Place, New Delhi. It was alleged in the complaint that Sudipti was controlled by DLF Limited and since shares of DLF Limited were slated to be listed on the Bombay Stock Exchange and in that respect an 'Initial Public Offer' of shares of DLF Limited were in the offing, applicant requested SEBI to take immediate action so that gullible

investors are not influenced to blindly invest in the shares of DLF Limited without being aware of the criminal conduct of the person actually controlling that company. As no decision was taken by SEBI on the complaint filed by the applicant and DLF Limited in its letter addressed to the applicant on July 11, 2007 had stated that 'as on date' they are not connected with 'Sudipti', applicant field another complaint before SEBI on July 19, 2007 annexing therewith a document dated May 11, 2006 to demonstrate that Sudipti was still a 'joint venture/ associate' of DLF Limited and that the claim of DLF Limited to the contrary was false.

9. In view of delay on part of SEBI in investigating the two complaints, applicant filed W.P. No. 7976 of 2007 before the Delhi High Court and by an order dated April 9, 2010, learned Single Judge of the Delhi High Court directed SEBI to undertake investigation on the basis of the complaints filed by the applicant and also on the basis of averments made in the affidavits and additional affidavits filed by the applicant in the said Writ Petition. SEBI was further directed to complete the investigation within a period of three months and communicate the investigation report as well as the decision taken thereon to the applicant within the time stipulated therein.

10. Challenging above order of the learned Single Judge, DLF Limited, Sudipti, and SEBI filed three separate L.P.A's before a Division Bench of the Delhi High Court and by a common order dated July 21, 2011 Division Bench of Delhi High Court set aside the order of the

Single Judge dated April 9, 2010 and directed SEBI to examine only the complaints filed by the applicant on June 4, 2007 and July 19, 2007. SEBI was further directed to pass an order on the said complaints after hearing the parties and if necessary by calling for documents and communicate its decision to the parties including the applicant.

11. Accordingly, SEBI conducted preliminary investigation and after hearing the parties including the applicant, the WTM of SEBI by his order dated October 20, 2011, directed SEBI to investigate the complaints filed by the applicant on June 4, 2007 and July 19, 2007 against DLF Limited and Sudipti by focusing the investigation on the violations, if any, of the provisions of the erstwhile SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with the relevant provisions of the Companies Act, 1956. A copy of the said order was furnished to the applicant as directed by the Delhi High Court.

12. Challenging the order passed by WTM of SEBI on October 20, 2011 DLF Limited filed W.P. No. 8128/2011 before the Delhi High Court which was dismissed on January 3, 2012 with costs quantified at ₹ 2 lac. LPA No. 100/2012 filed by DLF Limited against the order of Single Judge dated January 3, 2012 was also dismissed by a Division Bench of Delhi High Court on November 20, 2012. Thus, the order passed by WTM of SEBI on October 20, 2011 directing investigation of two complaints filed by applicant against DLF Limited attained finality.

13. Accordingly, SEBI investigated the complaints filed by the applicant on June 4, 2007 and July 19, 2007 and by the impugned order dated October 10, 2014, WTM of SEBI held that DLF Limited has violated regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practice Relating to Securities Market) Regulations, 2003, Clause 17.1 of SEBI (Disclosure and Investor Protection) Guidelines, 2000 and Regulation 111 of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and accordingly restrained DLF Limited and its Directors named therein from accessing the securities market and prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever for a period of three years. Challenging above order dated October 10, 2014, DLF Limited has filed Appeal No. 331 of 2014.

14. Mr. Amit Sibal, learned Senior Advocate appearing on behalf of the applicant submitted that the applicant ought to be impleaded as party respondent in the appeal filed by DLF Limited against the decision of WTM of SEBI dated October 10, 2014 for the following reasons:-

a) Impugned order is based on the complaints filed and documents furnished by the applicant and therefore the said order passed by SEBI cannot be set aside/modified/varied in the appeal filed by DLF Limited without hearing the applicant and hence it is absolutely essential to implead the applicant as party respondent to the appeal.

b) Impugned order is passed after protracted litigation between the applicant, DLF Limited and SEBI and therefore modifying/altering the impugned order of SEBI without hearing the applicant would be travesty of justice and against the basic tenets of principles of natural justice.

c) In the year 2006, applicant had entered into business transaction with Sudipti which was owned and controlled by two associate companies of DLF Group of Companies. Since applicant was deceived and misled into associating with and trusting Sudipti which is owned by two associates of DLF Limited and since the applicant was duped to the extent of ₹ 34 crore by Sudipti, applicant being concerned with the potential devastating consequences of dubious entity like DLF Limited being allowed to operate on the Stock Exchange and accessing extraordinary sums of public and other funds, the applicant had filed complaints requesting SEBI to investigate the affairs of DLF Limited. Although DLF Limited in its letter dated July 11, 2007 stated that 'as on date' it was not connected with Sudipti, in the impugned order above contention of DLF Limited has been rejected on the basis of the documents furnished by the applicant.

Therefore, when the findings recorded by SEBI in the impugned order are on the basis of documents furnished by the applicant, it is just and proper to implead the applicant in the appeal filed by DLF Limited against the order of SEBI.

d) Delhi High Court in its orders passed in various proceedings initiated before it has repeatedly held that the applicant must be heard and a copy of the investigation report as also the decision taken thereon must be communicated to the applicant. Accordingly, applicant was heard and decision taken on October 20, 2011 to investigate the complaints were communicated to the applicant. Fact that SEBI did not choose to hear the applicant during the investigation or before passing the impugned order dated October 10, 2014 inspite of repeated requests made by the applicant cannot be held against the applicant, because, even if SEBI has committed an error in not hearing the applicant, it is open to this Tribunal to entertain the application of the applicant for being impleaded as party respondent to the appeal by DLF Limited against the decision of SEBI which is based on the complaints filed by the applicant.

e) Challenging the decision of WTM of SEBI dated October 20, 2011 DLF Limited had filed W.P. No. 8128 of 2011 before the Delhi High Court wherein DLF Limited had impleaded the applicant as party respondent. Having considered the applicant to be a necessary party in the Writ Petition filed against the initial order of SEBI dated October 20, 2011, DLF Limited is not justified in contending that the applicant is not a necessary/ proper party in the appeal filed by it against the final order of SEBI dated October 10, 2014.

f) Relying upon decisions of the Apex Court in case of (i) J.K. International vs. State (2001 3SCC 462, (ii) Sundeep Kumar Bafna vs. State of Maharashtra (AIR 2014 SC 1745) and (iii) Competition Commission of India vs. Steel Authority of India Limited (2010 10 SCC 744) counsel for the applicant submitted that even if complainant-applicant was not heard by SEBI before passing the impugned order, inspite of repeated requests made by the applicant, it is open to the applicant to approach this Tribunal and seek an order for being heard and such a request of the applicant cannot and ought not to be rejected.

g) Counsel for applicant sought to tender a compilation of documents to demonstrate that the applicant has

been consistently knocking at doors of SEBI as also the Delhi High Court seeking the status report of the investigation carried out by SEBI as also copy of the investigation report/ decision taken on the investigation report. While noting the contention that the applicant has been consistently persuing the matter for being heard and for getting the status report/ decision of SEBI on the complaints filed by the applicant, we declined to accept the compilation of documents sought to be tendered on ground that apart from the documents annexed to the application filed by the applicant, accepting any other additional document sought to be tendered by way of compilation would amount to enlarging the scope of the appeal.

15. Mr. Dwarkadas learned Senior Advocate appearing on behalf of appellant submitted that the applicant is neither a shareholder nor an investor in DLF Limited and hence, the applicant cannot be impleaded as party respondent in the appeal filed by DLF Limited. Merely because, the complaints filed by the applicant against DLF Limited have been investigated by SEBI as per the directions given by the Delhi High Court and merely because SEBI held that the appellant is guilty of violating regulations/Guidelines framed by SEBI does not give rise to any cause of action to the applicant for being impleaded as party respondent to the appeal filed by DLF Limited. According to the applicant, Sudipti has

allegedly duped him to the tune of ₹ 34 crore for which applicant has initiated civil and criminal proceedings against Sudipti. Applicant had filed complaint against DLF Limited before SEBI on ground that Sudipti belonged to DLF group, because 100% shares of Sudipti were held by two associates of DLF Limited. By the impugned order SEBI has rejected the claim of DLF Limited and held that DLF Limited continues to control Sudipti and further held that by not disclosing above facts in the prospectus, DLF Limited has violated Guidelines/Regulations framed by SEBI. Question as to whether DLF Limited continues to control Sudipti or not, has no relevance to the proceedings initiated by the applicant against Sudipti for recovering ₹ 34 crore. Moreover, in the impugned order SEBI has not investigated the issue relating to the alleged duping of ₹ 34 crore by Sudipti. Therefore, in view of consistent view taken by this Tribunal in various decisions, applicant who has no legal right or claim against DLF Limited cannot be impleaded as party respondent to the appeal filed by DLF Limited against the order of SEBI. Fact that DLF Limited had impleaded applicant as party respondent to the Writ Petition filed against the preliminary order of SEBI dated October 20, 2011 cannot be a ground to implead applicant as party respondent to the appeal filed by DLF Limited against the final order of SEBI dated October 10, 2014, because, the initial order of SEBI dated October 20, 2011 was passed after hearing the applicant and a copy of the said order was furnished to the applicant as per the directions of the Delhi High Court, whereas, impugned order dated October 10, 2014 is neither passed after hearing the applicant nor a copy of the said order has been served upon

the applicant by SEBI, obviously for the reason that they were not obliged to hear the applicant or furnish a copy of the order to the applicant. In fact, applicant had taken out an application in the disposed of proceedings before the Delhi High Court seeking an order directing SEBI to complete the pending adjudication proceedings within the stipulated time and furnish copy of the investigation report as well as the show cause notice issued to DLF Limited. Said application was dismissed by a Division Bench of the Delhi High Court by an order dated September 23, 2013. In that order it is specifically recorded that all directions given by the Delhi High Court order dated July 21, 2011 have been complied with and that the applicant cannot seek enlargement of the scope of the petition which is already disposed of. In these circumstances, it is submitted by counsel for the appellant that the application of the applicant being without merit ought to be rejected.

16. Mr. Dada learned Senior Advocate appearing on behalf of SEBI submitted that SEBI neither supports the intervention application nor does it oppose the intervention application and the application filed by the applicant be decided on the basis of the merits of the arguments advanced by the applicant and the appellant.

17. We have carefully considered rival submissions.

18. At the outset, it may be noted that the applicant is neither a shareholder nor an investor in DLF Limited and has no claim against DLF Limited.

19. Applicant had filed complaints before SEBI on June 4, 2007 and July 19, 2007 against DLF Limited, alleging that in the year 2006 he had business transaction with Sudipti which was wholly owned and controlled by two associates of DLF Limited viz DLF Home Developers Limited ("DHDL" for short) and DLF Estate Developers Limited ("DEDL" for short). It was stated in the said complaints that Sudipti has duped the applicant approximately ₹ 34 crore for which FIR No. 249 of 2007 has been registered at Police Station, Connaught Place, New Delhi. It was further alleged in the complaints that, as Sudipti was owned by two associates of DLF Limited and as DLF Limited had announced 'Initial Public Offer' of shares and the said shares of DLF Limited were slated to be listed on the Stock Exchange, applicant wanted SEBI to take immediate action so that innocent, gullible investors do not blindly invest in shares of DLF Limited without being aware of the criminal conduct of the persons actually controlling that company. Thus, from the complaints filed by the applicant against DLF Limited it is evident that the claim of the applicant was against Sudipti, but since Sudipti was controlled by DLF Limited, applicant wanted SEBI to take action against DLF Limited so that interest of the investors intending to invest in shares of DLF Limited are protected.

20. In the impugned order, SEBI has not investigated the question as to whether Sudipti has duped the applicant to the tune of ₹ 34 crore or not. What is held in the impugned order is that contrary to the claim made by DLF Limited, DLF Limited continues to control Sudipti and by failing to disclose in the prospectus that DLF Limited controls Sudipti, DLF

Limited and its Directors have violated SEBI Guidelines/Regulations. Whether DLF Limited has violated SEBI Guidelines/Regulations or not has no bearing on the proceedings initiated by the applicant against Sudipti. Therefore, whether, the impugned decision of SEBI is set aside/modified/varied or not by entertaining the appeal filed by DLF Limited would have no bearing on the proceedings initiated by the applicant against Sudipti.

21. During the course of investigation, DLF Limited had represented to SEBI that shares of Sudipti Estates Pvt. Ltd., Shalika Estate Developers Pvt. Ltd., ("Shalika" for short) and Felicite Builders and Construction Pvt. Ltd., ("Felicite" for short) held by its associates were transferred on November 29, 2006 and November 30, 2006 and since then DLF Limited had no control over those three companies. By the impugned order SEBI has rejected the contention of DLF Limited and held that the entire share transfer process in case of Sudipti, Shalika and Felicite was executed through sham transactions by DLF Limited and that DLF Limited continued to be in control of the Board of Directors of Sudipti, Shalika and Felicite. Thus, according to SEBI, the said three companies continued to be subsidiaries of DLF Limited even after the purported transfer of shareholding on 29th and 30th November, 2006. In the impugned order it is further held by SEBI that in the RHP/Prospectus, DLF Limited failed to disclose related party transactions, financial details relating to subsidiaries and outstanding litigation against subsidiaries and accordingly held that the RHP/Prospectus of DLF Limited, contained misleading disclosures with regard to material information. It is held that

as the RHP/Prospectus did not contain fair and clear disclosures with regard to material information, DLF Limited has violated DIP Guidelines. It is also held that the aforesaid active and deliberate suppression of material information in the RHP/Prospectus by DLF Limited amounted to misleading and defrauding the investors in the securities market and thus DLF Limited has violated the provisions of PFUTP Regulations. Correctness of all these findings are challenged in the appeal filed by DLF Limited. It is for DLF Limited to demonstrate as to how the impugned order of SEBI is erroneous and it is for SEBI to defend its order. In such a case, applicant has no role to play, especially when the applicant is neither the shareholder nor an investor in DLF Limited and that the applicant had no claim against DLF Limited.

22. It is true that the complaints filed by the applicant before SEBI and the orders passed by the Delhi High Court in the proceedings initiated by applicant were instrumental in SEBI investigating the complaints which led to passing of the impugned order. Admittedly, after deciding to investigate the complaints filed by the applicant, SEBI has neither heard the applicant during the course of investigation nor before passing of the impugned order, inspite repeated demands of the applicant. In fact, copy of the impugned order was not served upon the applicant inspite of repeated demands obviously because, the applicant had no role in the investigation which was independently carried on by SEBI on the basis of the complaints filed by the applicant. In these circumstances, in the appeal filed by DLF Limited against the aforesaid decision of SEBI, applicant could be impleaded as party respondent only if it is

demonstrated that setting aside/modifying/varying the order of SEBI in appeal would adversely affect the legal right or prejudicially affect the interests of the applicant. In the present case, apart from contending that the impugned order is passed on investigation of the complaints filed by the applicant pursuant to the orders passed by the Delhi High Court in the proceedings initiated by the applicant, nothing is brought to our notice as to how the applicant would be prejudicially affected if the appeal is decided on merits without hearing the applicant.

23. During the course of arguments, we repeatedly called upon the counsel for the applicant to demonstrate as to how the applicant would be prejudicially affected if the impleadment application filed by the applicant is rejected by this Tribunal. Save and except making aforesaid legal submissions, counsel for applicant could not demonstrate as to how interests of the applicant would be prejudicially affected if the application is rejected.

24. Decision of the Apex Court in case of J.K. international (Supra) relied upon by counsel for applicant, is distinguishable on facts. In that case, complaint was filed by J.K. International before the police alleging that Respondent No. 2 and 3 therein had committed offences of criminal breach of trust and cheating and on investigation, police had charge sheeted the Respondent No. 2 and 3 therein. Thereupon, Respondent No. 2 and 3 therein filed Petition before the High Court seeking an order for quashing the criminal proceedings. J.K. International filed an application for being impleaded which was rejected by the High Court. On appeal Apex Court held that where the complainant wishes to be heard when the

criminal proceedings are sought to be quashed, it would be a negation of justice to deny impleadment of the complainant if he makes a requests to the Court in that behalf. In the present case, claim of the applicant is against Sudipti and even the FIR lodged by the applicant is against Sudipti. It is only because Sudipti was controlled by DLF Limited, applicant wanted SEBI to investigate the affairs of DLF Limited with a view to protect interest of the investors who may be intending to invest in DLF Limited. Thus, it is evident that the complaints filed by the applicant before SEBI were not with a view to redress grievances of the applicant against Sudipti but with a view to safeguard the interests of the investors who may be interested in investing in the IPO shares of DLF Limited. Thus, in case of J.K. International (Supra) quashing of the criminal proceedings had direct bearing on the case of the complainant therein, whereas, in the present case, any decision on the appeal filed by DLF Limited would have no bearing on the claim of the applicant against Sudipti. Thus, the decision of the Apex Court in case of J.K. International (Supra) does not support the case of the applicant. For the same reason, decision of the Apex Court in case of Sundeep Kumar Bafna (Supra) would have no bearing on the facts of the present case.

25. Strong reliance was placed by the counsel for the applicant on the decision of the Apex Court in case of Competition Commission of India (Supra). In that case Jindal Steel and Powers Limited (‘informant’ for convenience) had provided information to the Competition Commission of India alleging that Steel Authority of India Limited (‘SAIL’ for short) had, inter alia, entered into an exclusive supply agreement with Indian

Railways for supply of rails and alleged that SAIL had abused its dominant position in the market and deprived others of fair competition. By its order dated December 8, 2009 Competition Commission rejected the application of SAIL seeking extension of time for filing its affidavit with reference to the information furnished by the informant and held that prima-facie case existed against SAIL and accordingly directed the Director General, appointed under Section 16(1) of the Competition Act, 2002 to make investigation into the matter in terms of Section 26(1) of that Act. Correctness of the directions contained in the order dated December 8, 2009 were challenged by SAIL before the Competition Appellate Tribunal. Thereupon, Competition Commission filed an application on January 28, 2010 before the Competition Appellate Tribunal seeking impleadment in the appeal filed by SAIL. The Competition Appellate Tribunal rejected the application filed by the Competition Commission. Against that order, Jindal Steels and Powers Limited filed an appeal before the Apex Court. After considering entire conspectus of the provisions of the Competition Act, Apex Court held that as per the regulations framed thereunder and even the interest of justice demands that for complete and effective adjudication, Competition Commission be added as a necessary and proper party in the proceedings before the Tribunal. Thus, Competition Commission was held to be necessary and proper party, because, the directions for investigation were given by the Competition Commission and it was the authority to adjudicate the matter effectively. In the present case, on the basis of the complaints filed by the applicant, SEBI has conducted

independent investigation. Admittedly, SEBI has undertaken complete and effective adjudication without hearing the applicant. Similarly, the appeal filed by DLF Limited can also be heard and disposed of effectively without impleading the applicant. Apart from the above, any order that may be passed in the appeal filed by DLF Limited would not affect any legal right of the applicant and would not prejudicially affect the interests of the applicant in the proceedings initiated by him against Sudipti for recovering ₹ 34 crore. Therefore, decision of the Apex Court in the case of Competition Commission of India (Supra) has no relevance to the facts of the present case.

26. Whether DLF Limited has violated SEBI Guidelines/Regulations is a question entirely between DLF Limited and SEBI and the applicant has no role to play, irrespective of the fact that the complaints filed by the applicant has led SEBI to investigate DLF Limited. As noted earlier, general tendency of shareholders/investors of a company is to make application for being impleaded in the proceedings initiated by the company against the decision of SEBI. In all those cases, this Tribunal has been consistently taking a view that impleadment would not be allowed unless it is demonstrated that any order passed in the appeal would affect the legal rights of the applicant or prejudicially affect the interests of applicant. In the present case, applicant who has no claim against DLF Limited has failed to demonstrate as to how his claim against Sudipti would be jeopardised or any of his legal rights would be jeopardised or interest of the applicant would be prejudicially affected, if the intervention application is rejected. Therefore, mere fact that the

impugned order culminated on account of SEBI investigating the complaints filed by the applicant cannot be a ground for the applicant to be impleaded as party respondent to the appeal field by DLF Limited against the order of SEBI, especially when the appellant has failed to establish as to how his legal rights would be jeopardised or his interest would be prejudicially affected, if his application for intervention is rejected.

27. Every order passed by SEBI against a company would obviously affect interests of shareholders/investors of that company. In such a case, the shareholders/investors of that company cannot be permitted to be impleaded as party respondent to the appeal, filed by the company, because, firstly, order passed by SEBI against the company is not an order enforceable against the shareholders/ investors and secondly, the shareholders/investors cannot be said to suffer any legal injury on account of the order passed by SEBI against the company. In the present case, the applicant is a stranger and is in no way concerned with DLF Limited and hence applicant cannot be permitted to be impleaded as party respondent to the appeal filed by DLF Limited.

28. For all the aforesaid reasons, we see not merit in the Miscellaneous Application filed by the applicant and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

**10.12.2014**
**Prepared & Compared By: PK**

Per: Jog Singh (For Self & A.S. Lamba)

1. The applicant, Mr. Kimsuk Krishna Sinha, a proposed intervener, has preferred these two miscellaneous applications Nos. 157 and 158 of 2014 for impleadment in Appeal No. 331 of 2014 filed by the appellant, namely, DLF Ltd. challenging the impugned order dated October 10, 2014 by which respondent has basically restrained the appellant from entering the capital market for three years.

2. Miscellaneous Application No. 158 of 2014 has been moved by the applicant seeking exemption from filing certified copies of annexures alongwith the Impleadment Application.

3. Turning to Miscellaneous Application No. 157 of 2014, the applicant submits that the applicant is a proper and necessary party to the present appeal, as such he be impleaded as one. The learned counsel for the appellant submitted that the applicant has entered into certain business transactions with the company, called Sudipti Estates Pvt. Ltd., hereinafter referred to as "SEPL", which was incorporated on March 24, 2006 and was promoted by DLF Home Developers Ltd., hereinafter referred to as "DHDL", DLF Estates Developers Ltd., hereinafter referred to as "DEDL". The appellant contends that he was duped of ₹ 31,09,50,000/- (Rupees Thirty One Crore Nine Lakh Fifty Thousand Only). However, surprisingly, in his complaint dated June 4, 2007 before SEBI, the applicant stated that he was duped of ₹ 34 crore by Sudipti. The applicant, therefore, filed a FIR dated April 26, 2007, mainly, against

the abovesaid three companies. It is submitted by the learned counsel for the applicant that various representations were also addressed to SEBI including letters dated June 4, 2007 and July 19, 2007 thereby complaining against the abovesaid companies for their alleged misdemeanor.

4. Learned senior counsel, Shri Amit Sibal who appeared alongwith Shri Beni Chatterji, Mr. Prateek Malik, Mr. Rajnish Chopra, Mr. Vinay P. Tripathi, strenuously argued that the impugned order dated October 10, 2014 has been passed against DLF Ltd. on the complaints made by appellant to SEBI, therefore, he has a right to be heard in the proceedings before this Tribunal. Learned senior counsel for the applicant has also drawn our attention towards various orders of Hon'ble High Court of Delhi by which SEBI was called upon to take a decision as regards as investigation into the alleged complaints made by applicant before SEBI and further action if so advised. Shri Sibal has relied upon certain judgments of Hon'ble Supreme Court as well as of this Tribunal.

5. Per contra, Shri Janak Dwarkadas, learned senior counsel for the appellant vehemently opposed the impleadment application on the ground that the applicant has no locus-standi to be heard. It is submitted that the applicant made complaint before SEBI ostensibly to protect the interest of investors but in fact it was for his own vested interest. Shri Dwarkadas further submitted that SEBI itself is competent enough to defend its case before this Tribunal and, as such, the Miscellaneous Application, being totally misconceived, is liable to be dismissed.

6. Similarly, Shri Rafique Dada, learned senior counsel, who has appeared for SEBI, fairly submitted that in the normal SEBI in such cases opposes the Impleadment Application but in the case in hand the applicant has already levelled wild allegation against SEBI before the Hon'ble High Court of Delhi as such he would like this Tribunal to take a decision on the application for impleadment.

7. We have had the benefit of going through the final order on these two Miscellaneous Applications in question passed by Justice Shri J.P. Devadhar, Hon'ble P.O. and handed over to us today. Agreeing with the same, we would like to add that the issue regarding the impleadment of an intervener, be it a shareholder, a bond holder, an investor or a public spirited person, is no more a res-integra as far as this Tribunal is concerned. Beginning from the case of Investors Grievances Forum in Misc. No. 63 of 2002 in Appeal No. 109 of 2002 decided on February 17, 2003 till as recent as December 9, 2014 when we decided a Misc. Application No. 88 of 2014 in Appeal No. 72 of 2014 filed by QVT Fund LP for intervention, this Tribunal has taken a consistent view that SEBI itself is competent enough to defend its order in appeal before this Tribunal and that the interveners do not have a locus-standi to intervene in the proceedings before this Appellate Tribunal in the normal course. The underlying idea in this approach is simpliciter not to open flood-gates for bond holders, shareholders, interveners and others which would, on the one hand, make the task of Tribunal very difficult in coping up with the divergent views of the interveners who were never heard by

SEBI; secondly, it would allow even certain buy- passers or ill-motivated persons to create hurdles in the way of smooth and independent functioning and dispensation of justice by this Tribunal.

8. In our order dated December 9, 2014 passed in Appeal No. 72 of 2014 in Misc. Applications No. 88 of 2014 and Appeal No. 130 of 2014 in the case of QVT Fund LP and Quintessence Fund Ltd. it has been categorically held that the Tribunal might be inclined to allow an application for intervention on behalf of an affected party depending upon the facts and circumstances of a given case but this rule cannot be generalized.

9. Turning to the facts of the present case, at the outset, we note that the applicant moved a complaint before SEBI on June 4, 2007 and its opening paragraph number 1 states that:- *"1. That M/s. Sudipti Estates Pvt. Ltd. has duped the undersigned of Rs. 34 crores (approx.) and in that respect FIR No. 249/2007 is registered at Police Station, Connaught Place, New Delhi. A copy of the said FIR is annexed hereto as Annexure A."* However, in para 7 of the same complaint, the applicant talks about the protection of investors' interest too.

10. We have minutely gone through the contents of this complaint which seem to have been reiterated by the applicant before SEBI later on also. The thrust of the complaint is the applicant's grievance regarding Rs. 34 crore (approx.) allegedly duped by Sudipti Estates Pvt. Ltd. Such grievances are not looked into either by SEBI or by this Tribunal which could be the subject matter of investigation/adjudication by appropriate

agencies like Police or Civil Courts. It is not out of place to mention that the applicant has already moved those machineries for redressal of his grievances regarding alleged duping of Rs. 34 crores by Sudipti Estates Pvt. Ltd.

11. Next, as far as para 7 of the said complaint dated June 4, 2007 regarding likehood of innocent and gullible investors being influenced by DLF Limited, we note that the applicant is neither a shareholder nor investor in DLF Limited and hence he has no claim for being impleaded as a party on this ground as well. The applicant has admittedly, never invested in the IPO floated in the DLF in the year 2007. Furthermore, we note that while reiterating his complaint dated June 4, 2007 vide complaint dated July 19, 2007, the applicant before SEBI sought to invoke jurisdiction of SEBI by misstating that SEBI was responsible to protect the interests of general public and other investors whereas it is clear from a reading of Preamble / Object and Reasons mentioned in the beginning of SEBI Act, 1992 that SEBI as a statutory body, is meant "....to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto". In fact, it is for SEBI to protect the interest of the investors in the securities market as an when such allegations are raised by appropriate parties before SEBI or even suo-moto. Similarly, in the complaint dated June 4, 2007 applicant has stated that he has been duped of ₹ 34 crore by Sudipti whereas from the FIR it emerges that he is alleged to have been duped to the extent of

₹ 31.095 crore only. It appears that the applicant is misrepresenting the figures, facts and mis-quoting the law for his own vested interest.

12. Thus, by no stretch of imagination could the applicant be termed as a necessary, an affected or even a proper party in the present proceedings before this Tribunal. Therefore without entering into the merits of the contentions raised by the appellant and respondent-SEBI before this Tribunal in the main appeal, we find no merit in the Misc. Application No. 157 of 2014 preferred by applicant for impleadment, along with Misc. Application No. 158 of 2014 and the same are, hereby, dismissed with no order as to costs.

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

**10.12.2014**
**Prepared & Compared By: PK/PTM**