Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7941 OF 2019

SECURITIES AND EXCHANGE BOARD OF INDIA ..... Appellant

VERSUS

RAM KISHORI GUPTA & ANR. ..... Respondents

with
CIVIL APPEAL NOS. 1649-1652 OF 2022

and
CIVIL APPEAL NO. ..... OF 2025
(@ Diary No. 42829 OF 2019)

JUDGMENT

SANJAY KUMAR, J

1. Delay in the filing of Civil Appeal (Diary) No. 42829 of 2019 is condoned.

2. Considering the twists and turns that this litigation has taken since its inception in 2005, these appeals put to test the saying that the scales of justice may be slow to tip but when they do, let them tip in favour of what is right[1].

3. M/s. Vital Communications Limited, New Delhi (hereinafter, 'VCL'), is a public limited company whose shares were listed on the Bombay Stock Exchange, the Delhi Stock Exchange and the National Stock Exchange. While

[1] Nancy Taylor Rosenberg, American author.

so, the Securities and Exchange Board of India (hereinafter, 'SEBI') issued show-cause notice dated 24.05.2005 to VCL and its promoters and directors under Section 11(4) read with Sections 11 & 11B of the Securities and Exchange Board of India Act, 1992 (for brevity, 'the Act of 1992'), in relation to alleged misleading advertisements issued by VCL with regard to buyback of its shares, issue of bonus shares and preferential issue of shares within 30 days. Details of the advertisements published in the newspapers between 27th May, 2002 and 24th June, 2002 were furnished therein and these advertisements were stated to be a ploy to mislead investors by benchmarking the price of the scrip at ₹30/-, when the share was trading at around ₹3/- to ₹12/-. SEBI further stated that its investigation had revealed that VCL had allotted 72 lakh equity shares of ₹10/- each at a premium of ₹2.50/-, amounting to ₹9,00,00,000/-, on 14.12.1999 to 15 companies which had all given the same address at the time of opening their demat accounts. That apart, these 15 companies were shown as suppliers of VCL. VCL's funds were indirectly used for purchase of its own shares, inasmuch as it gave advances to M/s. Anupama Communications Pvt. Ltd. and M/s. CBS Systems Pvt. Ltd. which, in turn, gave trade advances to the 15 companies. Thereby, the same money came back to VCL as share application money. It was also alleged that, between 2nd May, 2002 and 31st July, 2002, 71.14 lakh shares were sold by promoter-related entities in the market, taking advantage of the artificial interest created by the misleading advertisements. SEBI asserted that the chain of events in respect of the buyback of shares, bonus issue and preferential allotment by VCL, along with

the unwarranted advertisements, etc., suggested an orchestrated ploy on the part of VCL and its promoters to create an artificial demand for the shares of VCL and induce innocent investors into purchasing shares so as to absorb sales by the promoter-related entities. VCL and its promoters and directors were alleged to have violated Regulations 3, 4, 5(1) & 6(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995, along with Section 77 of the Companies Act, 1956. SEBI, therefore, called upon the addresses of the notice to show cause as to why suitable directions, including a direction to restrain all of them from accessing the securities market, and prohibiting them from buying, selling or dealing in securities for a suitable period, should not be passed under Section 11(4) read with Sections 11 and 11B of the Act of 1992.

4. Thereafter, SEBI, speaking through a Whole-Time Member (WTM), passed order dated 20.02.2008 in exercise of power under Section 11B of the Act of 1992 and Regulation 11 of the aforestated Regulations of 1995. SEBI dropped the charges against Vinay Talwar, former Chairman-cum-Managing Director of VCL, and imposed a lesser penalty on Shubha Jhindal, Director of VCL, whereby she was restrained from accessing the securities market and prohibited from buying, selling and dealing in securities in any manner for a period of six months. As regards the remaining noticees, i.e., VCL and its other directors and promoters, SEBI restrained them from accessing the securities market and prohibited them from buying, selling and dealing in securities in any manner for a period of two years.

5. Aggrieved by this order, VCL and its promoters and directors filed Appeal Nos. 61, 65 and 81 of 2008 before the Securities Appellate Tribunal, Mumbai (for brevity, 'the Tribunal'). By common order dated 28.08.2008, the Tribunal allowed their appeals. The Tribunal held that the impugned order passed by SEBI failed to deal with the issues properly and set aside the order dated 20.02.2008. The matter was remanded to enable SEBI to issue fresh show-cause notices, afford an opportunity of hearing to the noticees and to pass an order in accordance with law.

6. Parallelly, one Ram Kishori Gupta and her husband, Harishchandra Gupta, who allegedly purchased shares of VCL on the basis of the misleading advertisements, separately filed Appeal No. 207 of 2012 before the Tribunal. They had purchased 1,71,773 shares of VCL from the Bombay Stock Exchange between 23.05.2002 and 25.06.2002. They claimed to have suffered huge losses and approached the forum constituted under the Consumer Protection Act, 1986, for redressal of their grievance. However, by order dated 17.01.2010, the National Consumer Disputes Redressal Commission, New Delhi, held that their complaint would not fall within the purview of the Consumer Protection Act, 1986, and left it open to them to approach SEBI. They, thereupon, preferred a petition on 21.08.2010 to SEBI, which was forwarded to the Bombay Stock Exchange, under letter dated 13.09.2010. However, SEBI finally declined their request for grant of compensation. In the meanwhile, as the order dated 20.02.2008 passed by SEBI had been set aside by the Tribunal on 28.08.2008, SEBI was again seized of the matter upon

remand. They, therefore, sought a direction to SEBI to pay them compensation of ₹51,53,190/-, at the rate of ₹30/- per share. Alternatively, they sought such compensation after deducting ₹4,41,767/-, being the proceeds of the shares sold by them in May/June, 2005, at the average price of ₹2.37 per share.

7. This appeal was disposed of by the Tribunal, *vide* order dated 30.04.2013. The Tribunal found that there was no directive or mandate in any of the measures under Section 11(2) of the Act of 1992, empowering SEBI to undertake the task of considering and granting compensation to investors for the losses that they may have suffered due to misleading or fraudulent advertisements by a company. The Tribunal, therefore, concluded that the prayer of the appellants for a direction to SEBI to grant them compensation of ₹51,53,190/- was totally misconceived and rejected the same. The Tribunal further observed that this aspect needed to be looked into by a Civil Court of competent jurisdiction and not by SEBI under the Act of 1992. The Tribunal directed SEBI to look into the appellants' complaint as to the alleged misleading and fraudulent advertisements issued by VCL. The outcome of such investigation was directed to be conveyed to the appellants on completion thereof. The Tribunal further directed that, in case SEBI found VCL guilty of playing fraud on investors, it could consider directing the concerned entity or VCL to refund the actual amount spent by the appellants on purchasing the shares in question with appropriate interest and as per law.

8. Review Application No. 8 of 2013 was moved by SEBI in Appeal No. 207 of 2012 filed by the aforestated two investors. This review petition was

disposed of by the Tribunal on 19.12.2013. Therein, the Tribunal clarified as follows:

> 'Similarly, we also clarify that while observing that consideration and imposition of penalties or the direction to a company to refund an amount collected by that company against the law is different matter and falls within the domain of SEBI, we have directed only consideration of such an issue, if any, as per the provisions of law and only if the circumstances so require. To this extent, the abovesaid order of this Tribunal dated April 30, 2013 in appeal no. 207 of 2012 stands clarified.'

9. While so, pursuant to the remand by the Tribunal, fresh show-cause notices dated 06.07.2012 and 12.07.2012 were issued by SEBI. The noticees therein, including VCL, were 24 entities in all. Thereafter, through a WTM, SEBI passed order dated 31.07.2014 in exercise of power under Sections 11 and 11B of the Act of 1992, read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, and Regulation 44 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In effect, SEBI found therein that VCL had spread misleading information to the public. It was opined that some of the promoters and directors were involved in allotting shares to 15 companies, which were connected to VCL, and these 15 companies were provided funds by VCL, which then sold the shares in the open market. The WTM, in exercise of power conferred by Section 19 read with Sections 11 and 11B of the Act of 1992 and the Regulations, cited *supra*, restrained the 24 noticees from accessing the

securities market and prohibited 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 periods specified against each of them. The WTM further directed that the preferentially allotted shares of VCL, lying in the demat accounts of the allottees, shall remain frozen and VCL was not to give effect to the transfer of any shares acquired and held by the allottees in the preferential allotment dated 14.12.1999. The WTM also restrained the preferential allottees from exercising voting rights or other rights attached to the shares acquired and held by them in such preferential allotment.

10. After the passing of this order, Ram Kishori Gupta and Harishchandra Gupta filed Miscellaneous Application No. 145 of 2014 in Appeal No. 207 of 2012. Their grievance therein was that, while passing order dated 31.07.2014, SEBI had failed to comply with the directions given in the Tribunal's order dated 30.04.2013 in their Appeal No. 207 of 2012. Thereupon, the learned counsel appearing for SEBI informed the Tribunal that SEBI would pass an additional order dealing with the directions set out in the order dated 30.04.2013 passed by the Tribunal. The Tribunal, *vide* order dated 17.11.2014, permitted SEBI to do so within a time frame, after giving a personal hearing to Ram Kishori Gupta and Harishchandra Gupta.

11. In consequence, a WTM of SEBI passed order dated 16.12.2014. Therein, he noted the grievance of Ram Kishori Gupta and Harishchandra Gupta to the effect that they had invested ₹18,25,041/- in the purchase of VCL's shares, believing its false advertisements, and suffered a loss of ₹13,83,274/-.

He also took note of their prayer to direct VCL to refund the actual amount spent by them on purchasing the shares in question along with appropriate interest and penalties. He found merit in their argument that SEBI was under a mandate to protect the interest of investors and should, therefore, take appropriate measures to exercise such mandate. He also opined that no person could be allowed unjust enrichment by way of wrongful gain made on account of fraudulent, manipulative and unfair trade practices, but noted that, in the instant case, the ill-gotten gains, if any, made by the entities mentioned in the order dated 31.07.2014 had not been quantified during the investigation and, therefore, the same was not considered in the said order. He concluded that this was a fit case to examine the feasibility of quantifying the ill-gotten gains, if any, and disgorgement of the same and, thereafter, consider restitution to the complainants in accordance with the provisions of the Act of 1992 and the Regulations framed thereunder. He noted that, insofar as the relief of compensation was concerned, it could only be given through the process of disgorgement, if justified by the facts and circumstances of the case. He, accordingly, directed the Investigation Department of SEBI to examine the feasibility of quantifying the ill-gotten gains, if any, and issue requisite notice(s) for disgorgement of the same within a time frame. Lastly, in such an event, he directed SEBI to consider restitution in the case of the complainants in accordance with the provisions of the Act of 1992 and the Regulations framed thereunder. This order was purportedly passed in exercise of power under Sections 11, 11B and 19 of the Act of the 1992.

12. Significantly, the aforestated order dated 16.12.2014 failed to take into account the earlier order dated 30.04.2013 passed by the Tribunal in Appeal No. 207 of 2012, which categorically negated the prayer of Ram Kishori Gupta and Harishchandra Gupta to direct SEBI to grant them compensation. Therein, the Tribunal had clearly recorded that there is no mandate in law requiring SEBI to compensate an investor who suffered loss on account of trading in shares, as it would be in the nature of a claim for damages and would require to be looked into by a Civil Court of competent jurisdiction. It was only if VCL was found guilty of playing fraud on investors, that SEBI was required to consider directing the concerned entity or VCL to refund the amount spent by Ram Kishori Gupta and Harishchandra Gupta on the purchase of their shares along with appropriate interest. The clarificatory order dated 19.12.2013 passed by the Tribunal thereafter in the review application filed by SEBI puts it beyond the realm of doubt that SEBI was to 'consider' directing VCL to refund the amount collected by it in violation of law, only if the circumstances so required. In effect, SEBI's WTM, while passing the order dated 16.12.2014, virtually reviewed the earlier orders dated 30.04.2013 and 19.12.2013 passed by the Tribunal in Appeal No. 207 of 2012.

13. However, acting upon the directions in the order dated 16.12.2014, the Investigation Department of SEBI conducted an enquiry and addressed Report dated 15.06.2015 to Ram Kishori Gupta and Harishchandra Gupta. Therein, it stated that, though VCL had published misleading advertisements, neither the promoter group nor the preferential allottees had made any gain out of it and,

in the absence thereof, disgorgement was not possible. In consequence, it concluded that, in the absence of any disgorgement, SEBI could not order refund of their monies. Stating so, the Investigation Team ended by requesting Ram Kishori Gupta and Harishchandra Gupta to inform SEBI if they wished to avail a personal hearing in the matter before the WTM.

14. Aggrieved by the Report dated 15.06.2015, Ram Kishori Gupta and Harishchandra Gupta again approached the Tribunal by way of Appeal No. 189 of 2015. However, on 27.08.2015, this appeal was disposed of by the Tribunal as withdrawn, noting that the appellants were afforded an opportunity of hearing before a WTM of SEBI in connection with the Report dated 15.06.2015. The WTM of SEBI was, accordingly, directed to pass appropriate orders on merits, after hearing the appellants, as expeditiously as possible.

15. Pursuant thereto, a WTM of SEBI, after giving due opportunity of hearing to all concerned, passed order dated 01.04.2016. Therein, noting the claim of Ram Kishori Gupta and Harishchandra Gupta that they had suffered a loss of ₹51,53,190/-, the WTM opined that SEBI had failed to consider the observations in the order dated 16.12.2014 and failed to calculate the losses caused by the promoters/directors/concerned entities, as mentioned in the earlier order dated 31.07.2014. He, accordingly, reviewed the entire matter in the light of the order dated 31.07.2014 and the investigation into the subject issue and opined that the acts of fraud, highlighted in the order dated 31.07.2014, threatened market integrity and the orderly development of the market, calling for regulatory intervention to protect the interest of investors. He

further opined that these entities could not be allowed to unjustly enrich themselves at the cost of investors. He noted that SEBI, while determining the ill-gotten gains in the scrip of VCL, proceeded on a hypothesis different from the findings in the order dated 31.07.2014 passed earlier and, in view of the above, as the ill-gotten gains were still to be arrived at, he opined that it would be appropriate to direct SEBI to look into the exact figure of ill-gotten gains by VCL, its promoters/directors/preferential allottees, Master Finlease Pvt. Ltd. (MFL), an entity owned by Vijay Jhindal, a director of VCL, and others. Thereafter, SEBI was directed to initiate disgorgement proceedings against those who perpetrated fraud on the investors. He further directed that it would be appropriate that the claims of Ram Kishori Gupta and Harishchandra Gupta be taken on record and be considered in accordance with the provisions of the Act of 1992 and the Regulations framed thereunder on disgorgement of the ill-gotten gains.

16. Consequential to the above order dated 01.04.2016, SEBI issued show-cause notice dated 19.01.2018 to the 24 entities/noticees named in the earlier order dated 31.07.2014. They were called upon to show cause as to why appropriate directions for disgorgement of their ill-gotten gains should not be issued against them under Section 11B of the Act of 1992. SEBI then passed order dated 28.09.2018. This order was passed in exercise of power under Sections 11 and 11B of the Act of 1992. Thereby, Noticee Nos. 1,2,3,5 and 7 to 24, being VCL, its directors and other entities, were held jointly and severally liable to disgorge their unlawful gains of ₹4,55,91,232/-. They were also

directed to pay interest thereon @ 10% per annum from 01.08.2002 till the date of payment. The disgorgement was to be made, with applicable interest, within 45 days from the date of receipt of the order and if they failed to do so, they were restrained from buying, selling or dealing in the securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of 5 years. Insofar as the issue of restitution is concerned, SEBI's WTM noted the decision in the earlier order dated 30.04.2013 passed by the Tribunal and held that restitution of the losses suffered by Ram Kishori Gupta and Harishchandra Gupta was outside the scope of SEBI. Referring to the observation of the Tribunal therein that SEBI may pass a direction to compensate their losses either against VCL or the entity concerned, the WTM opined that such a direction was not feasible for a variety of reasons. The fraud committed had not only affected Ram Kishori Gupta and Harishchandra Gupta but also a large number of investors who had traded during the relevant time; and the shares held by the complainants were not directly issued to them by VCL but were purchased by them in the secondary market and it would be unfair to only compensate them selectively, as there would be many others who suffered similar losses by trading in the scrip. Lastly, the complainants could not deny the fact that investment in the securities market carried inherent risks, which an investor would be expected to factor in. Considering these circumstances in totality, the WTM deemed it appropriate not to issue any direction regarding restitution in favour of Ram Kishori Gupta and Harishchandra Gupta.

17. Several appeals came to be filed before the Tribunal against the aforestated order dated 28.09.2018 passed by the WTM of SEBI. Ram Kishori Gupta and Harishchandra Gupta filed Appeal No. 44 of 2019, aggrieved by the denial of restitution, while Appeal Nos. 318 of 2019, 321 of 2019, 444 of 2019 and 442 of 2021 were filed by VCL and others against the direction for disgorgement. Surprisingly, the Tribunal chose to separate the appeals and did not adjudicate them jointly. Appeal No. 44 of 2019, filed by Ram Kishori Gupta and Harishchandra Gupta, was independently disposed of by the Tribunal, *vide* order dated 02.08.2019, and Appeal Nos. 318 of 2019, 321 of 2019, 444 of 2019 and 442 of 2021, filed in relation to disgorgement, were disposed of separately over two years thereafter, by common order dated 20.12.2021.

18. By the order dated 02.08.2019, the Tribunal disagreed with the reasoning of the WTM of SEBI in his order dated 28.09.2018 and opined that, the spirit of the order dated 30.04.2013 was to the effect that Ram Kishori Gupta and Harishchandra Gupta deserved to be compensated in case VCL was found to have violated securities laws. As such violation by VCL had been conclusively proved by the order dated 28.09.2018, the Tribunal directed SEBI to compensate them to the extent of ₹18,25,041/-, being the amount that they had invested in the shares of VCL in the year 2002. The Tribunal directed that no interest had to be paid thereon as they had to bear part of the risk of investing in the securities market. SEBI was directed to pay this compensation, either from the amount disgorged from VCL and the connected entities or from its Investor Protection and Education Fund, within a time frame.

Challenging the above order dated 02.08.2019 passed by the Tribunal in Appeal No. 44 of 2019, SEBI filed Civil Appeal No. 7941 of 2019 before this Court. While issuing notice therein on 18.10.2019, this Court stayed the operation and implementation of the impugned judgment dated 02.08.2019. Aggrieved by the denial of interest therein on the amount directed to be refunded to them, Ram Kishori Gupta and Harishchandra Gupta filed Civil Appeal (Diary) No. 42829 of 2019.

19. Two years later, by the order dated 20.12.2021, the Tribunal disposed of the other appeals. Therein, the Tribunal noted the contention of VCL and the other appellants that the disgorgement order dated 28.09.2018 was barred by the principle of *res judicata*. This argument was founded on the premise that the show-cause notices dated 06.07.2012 and 12.07.2012 had already culminated in the final order dated 31.07.2014, whereby they had been barred from accessing the securities market for specified periods and, as this order had attained finality, there was no cause for the SEBI to pass a fresh order for disgorgement pursuant to the very same notices under the very same provisions, i.e., Sections 11 and 11B of the Act of 1992. The Tribunal then noted its earlier order dated 30.04.2013, passed in the context of the prayer of Ram Kishori Gupta and Harishchandra Gupta, and observed that no direction had been issued to SEBI therein to consider the feasibility of quantifying ill-gotten gains or to initiate proceedings for disgorgement against the appellants and the other entities. *Ergo*, the Tribunal concluded that the direction, in SEBI's order dated 16.12.2014, to the Investigation Department, to examine the feasibility

of quantifying ill-gotten gains and to issue requisite notices for disgorgement, was wholly without jurisdiction. The Tribunal, accordingly, agreed with the appellants that no fresh proceedings on the same cause of action could have been initiated under Sections 11 and 11B of the Act of 1992 after the order dated 31.07.2014 attained finality. The order dated 28.09.2018 was, therefore, held to be barred by the principle of *res judicata*.

20. The Tribunal also rejected the contention of SEBI that the principle of *res judicata* in Section 11 of the Code of Civil Procedure, 1908, would not apply to proceedings initiated under the Act of 1992 and held that the finality attaching to a judgment would be imperative and great sanctity needed to be attached thereto. In consequence, the Tribunal held that it would not be permissible for SEBI to disturb such finality by passing a fresh order on the very same cause of action. The principle of *res judicata* was, therefore, held to be fully applicable in the instant case, notwithstanding Section 15U(1) of the Act of 1992, which left it open to the Tribunal to be guided by the principles of natural justice and to regulate its own procedure, as it was not bound by the procedure laid down by the Code of Civil Procedure, 1908. The appeals were, accordingly, allowed with costs of ₹2,00,000/- to be paid to each of the appellants.

The common judgment dated 20.12.2021 passed by the Tribunal was assailed by SEBI, by way of Civil Appeal Nos. 1649-1652 of 2022.

21. At this stage, we may note that the Act of 1992 was promulgated for establishment of a Board 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. Section 3 thereof deals with the establishment of SEBI, a body corporate having perpetual succession and a common seal. Section 4 details the composition of SEBI and provides that it shall consist of a Chairman, two members from the concerned Ministry, one member from the Reserve Bank, and five other members, of whom at least three shall be whole-time members, all to be appointed by the Central Government. The powers and functions of SEBI are set out in Chapter IV of the Act of 1992, comprising Sections 11, 11A, 11AA, 11B, 11C and 11D. Section 11(1) provides that it shall be the duty of SEBI to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market, by such measures as it thinks fit. Section 11(2) details such measures under clauses (a) to (m). Section 11(4) details some more measures that can be taken by SEBI, either pending investigation or enquiry or on completion of such investigation or enquiry. Section 11A of the Act of 1992 empowers SEBI to specify, by way of Regulations, the matters relating to issue of capital, transfer of securities and others matters incidental thereto; and the manner in which such matters shall be disclosed by companies. SEBI is also empowered under Section 11A(b), by general or special orders, to prohibit any company from issuing a prospectus, offer document or advertisements soliciting money from public for the issue of securities; and specify the conditions subject to which the prospectus, offer document or advertisement, if not prohibited, may be issued. Section 11B of the Act of 1992 empowers SEBI to issue directions and levy penalty. It presently reads as under:

'11B. Power to issue directions and levy penalty – (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry the Board is satisfied that it is necessary-

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person,

it may issue such directions -

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.

(2) Without prejudice to the provisions contained in sub-section (1), sub-section (4A) of section 11 and section 15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Explanation.- For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.'

However, at the relevant point of time when the show-cause notices were issued by SEBI in the year 2012, Section 11B of the Act of 1992 read thus:

'11B. Power to issue directions – Save as otherwise provided in section 11, if after making or causing to be made an enquiry the Board is satisfied that it is necessary-

(iv) in the interest of investors, or orderly development of securities market; or

(v) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors of securities market; or

(vi) to secure the proper management of any such intermediary or person,

it may issue such directions -

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A,

as may be appropriate in the interests of investors in securities and the securities market.

22. The scheme of Section 11B of the Act of 1992 is that SEBI, in the interest of investors in securities and the securities market, may make or cause to be made an enquiry in that regard and, if it is satisfied that it is necessary to do so, SEBI may issue such directions, be it to a person or a class of persons, referred to in Section 12, or associated with the securities markets or to any company in respect of matters specified in Section 11A, as may be appropriate in the interest of investors in securities and the securities market. The Explanation, which was inserted therein with effect from 18.07.2013, makes it clear for the removal of doubts that the power to issue directions under Section 11B shall include and always be deemed to have included the power to direct disgorgement of an amount equivalent to the wrongful gain made or loss averted by indulging in any transaction or activity in contravention of the provisions of the Act of 1992 or the Regulations made thereunder. Section 11(5) of the Act of 1992, which was also inserted in the statute book with effect from 18.07.2013, provides that disgorgement may be affected pursuant to a

direction issued under Section 11B of the Act of 1992 or the provisions of allied enactments, such as the Securities Contracts (Regulation) Act, 1956, or the Depositories Act, 1996, etc, and the amount disgorged pursuant to such direction shall be credited to the Investor Protection and Education Fund established by SEBI and shall be utilised by it in accordance with the Regulations made under the Act of 1992. Section 19 is titled 'Delegation' and states that SEBI may, by general or special order in writing, delegate to any of its members, officers or any other persons, subject to such conditions as may be specified in the order, such of its powers and functions as it may deem necessary.

23. It is in this statutory context, that the exercise of power by SEBI in the case on hand, at different points of time, requires to be examined. The chronology of events, set out hereinbefore, demonstrates that the first show-cause notice issued on 24.05.2005 by SEBI to VCL and others resulted in the order dated 20.02.2008. However, this order was invalidated by the Tribunal on 28.08.2008, requiring SEBI to issue notices afresh and decide the matter again. This remand resulted in the order dated 31.07.2014 passed by SEBI. Notably, this order was passed in exercise of power under Sections 11 and 11B of the Act of 1992 read with relevant Regulations. Conscious of the scope of such power, the WTM of SEBI deemed it sufficient to punish the entities concerned, including VCL, by only directing that they should not access the securities market and stood prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the

securities market, for the periods specified as against each of them. Out of the 24 entities so penalized, Shubha Jhindal was visited with such restraint/ prohibition for one year while the remaining 23 entities had to suffer such punishment for 3 years each. In addition, the preferentially allotted shares of VCL were directed to remain frozen with consequential restraints as regards transfer and exercise of voting rights. Perusal of the said order reflects that the WTM was well aware of the illegal and fraudulent actions of VCL, its promoters, directors and other entities, and the financial implications thereof. Despite the same, no order was passed by him in relation to disgorgement of any ill-gotten gains made by them as a consequence of such transgressions. The Explanation, inserted in Section 11B thereafter, puts it beyond the pale of doubt that the power to direct disgorgement was deemed have always been included in the general power of issuing directions thereunder.

24. In any event, it was only owing to Ram Kishori Gupta's and Harishchandra Gupta's complaint that the order dated 31.07.2014 did not take into account the directions in the earlier order dated 30.04.2013 in their Appeal No. 207 of 2012, that the Tribunal passed the order dated 17.11.2014 recording the concession of the learned counsel for SEBI that the WTM would pass an additional order dealing with such directions. This, in turn, led to the passing of a fresh order by SEBI on 16.12.2014, which reopened the exercise undertaken earlier that had culminated in the order dated 31.07.2014. This order completely ignored the negation by the Tribunal, in the earlier order dated 30.04.2013, of the prayer of Ram Kishori Gupta and Harishchandra Gupta

against SEBI. The case then proceeded on a tangent and in a different direction altogether, resulting in the order dated 29.08.2018 passed under Sections 11 and 11B of the Act of 1992, visiting disgorgement and, in the event of their default, fresh and longer restraints/prohibitions upon VCL and the others.

25. When the earlier order dated 31.07.2014, on the same cause of action and based on the very same show-cause notices, remained intact and attained finality, as it was neither challenged nor set aside, the later order dated 29.08.2018 could not have been passed, supplementing it with additional directions. Be it noted that by the time this order came to be passed, the penalties of restraint and prohibition visited upon the 24 entities, under the earlier order dated 31.07.2014, had already been suffered by them. The order had, therefore, worked itself out. While so, 22 out of the 24 entities were again visited with fresh penalties in the form of disgorgement coupled with much longer restraints/prohibitions, in the event of default in payment. Imposition of the penalty of disgorgement was very much within the ambit and scope of SEBI even at the time the initial order dated 31.07.2014 was passed but, in his wisdom, the WTM of SEBI did not choose to resort to it. Once the said order attained finality and was fully given effect to, passing of a fresh order once again, on the very same cause of action, trampled upon and reversed the finality that had already attached to the said order.

26. No doubt, the illegalities committed by VCL and the other entities had financial implications which may have warranted a direction for disgorgement, but once the SEBI did not choose to issue such a direction in the first instance

and was satisfied with lesser penalties in its order dated 31.07.2014, the question of permitting SEBI, without just cause, to revisit the said final order and pass fresh directions does not arise. Doing so would be violative of public policy, which attaches great value and sanctity to the finality of judicial determinations and the principle of *res judicata*.

27. Though it was contended by SEBI that the principle of *res judicata* in Section 11 of the Code of Civil Procedure, 1908, cannot be imported into these proceedings, due to Section 15U(1) of the Act of 1992, we are not persuaded to agree. This provision merely deals with the procedure and powers of the Tribunal and states that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and shall have the power to regulate its own procedure. Significantly, this provision does not cover proceedings before the SEBI and its WTMs under the Act of 1992. Therefore, SEBI cannot claim exemption from the applicability of the principle of *res judicata* thereunder.

28. In ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade and another***[2], a 3-Judge Bench of this Court affirmed that the principle of *res judicata* is based on public policy and justice. It was pointed out that the rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again, even though the determination may be demonstrably wrong. It was held that when proceedings attain finality, parties

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2 (1999) 5 SCC 590

are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action, nor can they litigate any issue which was necessary for decision in the earlier litigation. It was pointed out that Section 11 of the Code of Civil Procedure, 1908, contains provisions of *res judicata* but these are not exhaustive of the general doctrine of *res judicata*. It was observed that the principles of *res judicata* would be equally applicable in proceedings before administrative authorities. Further, in ***Amalgamated Coalfields Ltd. and another vs. Janapada Sabha Chhindwara and others***[3], a Constitution Bench observed that constructive *res judicata* is an artificial form of *res judicata* and it postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action. Affirming this view in ***Devilal Modi vs. State Tax Officer, Ratlam, and others***[4]***,*** a Constitution Bench observed that this view is founded on the same considerations applicable to *res judicata*, because if the doctrine of constructive *res judicata* is not applied, it would be open to a party to take one proceeding after another and urge new grounds every time and that, plainly, would be inconsistent with considerations of public policy. Needless to state, these stellar principles would not only apply to the parties to a dispute but would also bind the adjudicating authorities seized of such dispute, be they judicial, quasi-judicial or administrative.

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3 AIR 1964 SC 1013
4 AIR 1965 SC 1150

29. In the light of these edicts, it is not open to SEBI to claim that it could pass multiple final orders on the same cause of action. Having undertaken the exercise pursuant to its show-cause notices issued in 2012, SEBI passed the order dated 31.07.2014, in exercise of power under Section 11B of the Act of 1992, with certain directions which attained finality and were given full effect to. That being so, SEBI could not have reopened the entire exercise without just cause so as to pass a fresh order under Section 11B, once again, 4 years later.

30. In this regard, we may also note the unconscionable delay on the part of SEBI. Though the WTM of SEBI passed the order on 01.04.2016, requiring an examination afresh and initiation of disgorgement proceedings, it was only on 19.01.2018 that SEBI got around to issuing a show-cause notice proposing disgorgement and then passed an order seven months later. This laidback and indolent approach on the part of SEBI in dealing with the matter needs mention as it does not augur well for a statutory body enjoined with the duty of protecting investors and regulating the securities market which, by its very nature, is volatile, to drag its feet and indulge in unwarranted and unjustified delays.

31. Viewed thus, we are of the opinion that the entire exercise undertaken by SEBI after the passing of the final order dated 31.07.2014, resulting in the disgorgement order dated 28.09.2018, was unsustainable in law. Further, as the compensation claim of Ram Kishori Gupta and Harishchandra Gupta against SEBI stood decided by the Tribunal's order dated 30.04.2013, which also attained finality, it was not open to them to reopen the same and seek to pin such liability upon SEBI once again. The directions in that regard by the

WTMs of SEBI in the orders dated 16.12.2014 and 01.04.2016, culminating in the direction for restitution by the Tribunal in its judgment dated 02.08.2019 in Appeal No. 44 of 2019, cannot be sustained. It was not for the Tribunal to interpret its earlier order dated 30.04.2013 and give it a different colour, contrary to its plain meaning. Finally, it has been contented before us by SEBI that as only 4 entities, including VCL, out of 22 entities, filed appeals against the disgorgement order dated 28.09.2018, the said order cannot be invalidated against those who had not chosen to file any appeal. We are informed that some of the individuals concerned have expired while most of the corporate entities have become defunct. In any event, as the order suffers from an inherent lack of jurisdiction, being barred by the principle of *res judicata*/ constructive *res judicata*, this argument cannot stand.

32. However, given the fact that VCL and the other entities, who were the appellants before the Tribunal, were held to have indulged in fraudulent acts and transactions and were not innocent or guileless, by any stretch of imagination, the direction of the Tribunal practically rewarding them with costs of ₹2,00,000/- each was entirely unjustified on facts.

33. On the above analysis, Civil Appeal 7941 of 2019 is allowed and the judgment dated 02.08.2019 passed by the Securities Appellate Tribunal, Mumbai, in Appeal No. 44 of 2019 is set aside. In consequence, Civil Appeal (Diary) No. 42829 of 2019 which seeks additional benefits, pursuant to the aforestated judgment dated 02.08.2019 passed in Appeal No. 44 of 2019, must necessarily fail and the said appeal is dismissed. Lastly, as we find that the

Tribunal was fully justified in setting aside the disgorgement order dated 29.08.2018, SEBI's attack against the Tribunal's judgment dated 20.12.2021, on that score, is held to be devoid of merit. However, as noted hereinabove, the direction of the Tribunal therein, mulcting SEBI with exorbitant costs payable to the appellants, is completely unsustainable and the same is, accordingly, set aside. Civil Appeal Nos.1649-1652 of 2022 are allowed to that extent.

Parties shall bear their own costs.

....., J.
Sanjay Kumar

....., J.
K.V. Viswanathan

April 7, 2025
New Delhi.