

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision : 04.03.2016**

**Appeal No. 4 of 2016**

1. Mr. Nilesh Kapadia
2. Kalpana Kapadia

Oberoi Park view, Tower B,  
Flat No. 306, Thakur Village,  
Nr. Thakur Cinema, Kandivali (E),  
Mumbai – 400 101.

...Appellants

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai – 400 051.

...Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for the Appellant.

Mr. J.P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

**WITH**  
**Appeal No. 5 of 2016**

1. Rajiv Sanghvi
2. Rajiv Sanghvi-HUF
3. Sanjay Sanghvi
4. Sonal Sanghvi

Neelam,  
Plot #5, 1<sup>st</sup> Lane,  
Hindu Colony, Dadar (E),  
Mumbai 400 014.

...Appellants

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai – 400 051.

...Respondent

Mr. P.N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Joby Mathew and Mr. Deepak Dhane, Advocates for the Appellant.

Mr. J.P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b The Law Point for the Respondent.

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

Per : J.P. Devadhar (Oral)

1. Appellants in these two appeals are aggrieved by the ex-parte ad-interim order passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) on January 15, 2016. By the said order, appellants in Appeal No. 4 of 2016 are held to have made undue profits amounting to Rs. 47,24,293/- during the period from November 2001 to September 2011 and it is held that interest @ 12% per annum payable on the said amount would be Rs. 71,21,345/-. Similarly, by the said order dated January 15, 2016 it is held that the appellants in Appeal No. 5 of 2016 along with Dipti Mehta have made undue profits of Rs. 1,05,02,417/- during the period from November 2001 to September 2011 and interest @ 12% per annum payable on the said amount would be Rs. 1,12,11,866/-. By the impugned ex-parte ad-interim order, the WTM of SEBI has sought to impound the aforesaid undue profit with interest u/s. 11(4)(d) of the Securities and Exchange Board of Act, 1992 and direct the banks and depositories not to make any debits in the bank accounts and demat accounts held jointly or severally by the appellants, without the permission of SEBI. By the said order appellants are also directed not to dispose of or alienate any of their assets / properties / securities, till such time the aforesaid amounts with interest are credited to an escrow account created specifically for the purpose in a Nationalized Bank. Challenging the aforesaid order the present appeals are filed.

2. Counsel for the appellants submit that neither the quantum of alleged undue profits set out in the impugned order are true nor SEBI is justified in seeking to recover the said amount with interest @ 12% per annum by

passing an ex-parte ad-interim order. However, without prejudice to their right to contend that the amounts claimed in the impugned order are without any merit, with a view to seek immediate release of bank accounts and demat accounts, it is submitted that the appellants be permitted to sell the securities lying in the respective demat account of the appellants and on deposit of the amount of Rs. 47,24,293 and Rs. 1,05,02,417 respectively in the escrow account, attachment levied on various accounts be directed to be lifted forthwith. As regards the interest claimed in the impugned order, it is submitted that without establishing undue profits by passing a final order SEBI is not justified in claiming interest on undue profits allegedly determined on prima facie basis by passing an ex-parte order.

3. Counsel for SEBI while agreeing with the suggestion made by the appellants for selling the securities lying in the respective accounts of the appellants, submitted, that in the interest of justice, the appellants be directed to deposit the undue profits with interest as stated in paragraph 6 of the affidavit by the appellants on February 15, 2016.

4. As the investigation is still in progress, the actual amount of undue profits if any, made by the appellants can be determined only on completion of investigation and therefore, in our opinion, it would not be just and proper on part of SEBI to demand interest on undue profits quantified in the impugned ex-parte order on prima facie basis. Accordingly, we permit the appellants to sell the securities lying in their respective demat accounts so as to enable them to deposit only the amount of undue profits set out in the impugned order and not the interest amount. Counsel on both sides agree that the orders passed by SEBI on June 17, 2010 and July 24, 2014 against the appellants shall not come in the way of the appellants in selling the securities lying in their respective demat accounts in implementation of our present order.

5. On the appellants depositing the quantum of undue profits in the manner set out in the impugned order, SEBI shall defreeze all the accounts of the appellants and intimate the same to the concerned authorities forthwith.

6. It is made clear that the amounts to be deposited by the appellants in the respective escrow account shall be without prejudice to the contentions of the appellants that they have not made any undue profit. All contentions on both sides are kept on.

7. Both the appeals are disposed of in the above terms with no order as to costs.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

Sd/-  
Jog Singh  
Member

04.03.2016

Prepared and compared by:  
MSB/RHN