

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF VITAL COMMUNICATIONS LTD.

In respect of Mr Vinay Talwar

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1. SEBI had passed an order dated July 31, 2014 in respect of 24 entities including one Mr. Vinay Talwar. Mr. Vinay Talwar was found to have contravened the provisions of regulation 3, 4, 5 and 6 of the SEBI (Prohibition of fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and was accordingly restrained from accessing the securities market and was further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of three years in terms of the said order.
 2. Aggrieved by the said order, Mr. Vinay Talwar and Mr. J. P. Madaan preferred appeals before Hon'ble Securities Appellate Tribunal (SAT) which were disposed of by Hon'ble SAT vide order dated April 28, 2016 with following directions:

"3. In view of the fact that the appellants are not contesting the impugned decision on merits but are only interested in getting the debarment period reduced, we deem it proper to dispose of the appeals by passing the following order:

(a) Appellants are at liberty to make a representation to SEBI seeking reduction of the debarment for a period lesser than three years, within a period of two weeks from today.

(b) If such a representation is made within a period of two weeks from today, then SEBI shall consider the same on its own merits and pass appropriate order as it deems fit within a period of four weeks from the date of receiving the representation."

3. Mr. Vinay Talwar filed a representation vide letter dated May 5, 2016 received by SEBI on May 9, 2016. In addition, he has also relied upon his submissions in the appeal before the Hon'ble SAT. He has, *inter alia*, made following submissions:
 - (a) Show cause notice in question is related to the period of 1999-2002 which is more than 12 to 14 years old. The show cause notice in January 28, 2014 is issued almost after six years after the show cause notice dated September 17, 2007. The delay defeats justice

and that the inordinate delay caused in order to initiate separate investigation has rendered the impugned award bad and illegal;

- (b) The matter pertains to the year 2002 whereas Mr. Vinay Talwar was forcefully removed as the director of the company on September 6, 2000 by Mr. Vijay Jhindal, Chairman of the company; The company was already been removed from the post of director; The company has provided the information and replies to SEBI in 2002 onwards which is subsequent to the removal of Mr. Vinay Talwar from the company;
 - (c) SEBI vide order dated February 20, 2008 had noted that there is no cogent evidence pointing to the involvement of Mr. Vinay Talwar in the matter;
 - (d) It is evident that all activities that are alleged to have been carried out in as alleged in the SCN were carried out by Mr. Vijay Jindal and his associates for their personal benefit on account of the alleged dealings and Mr. Vinay Talwar had nothing to do with any of it;
 - (e) It is apparent from the material on record that Mr. Vinay Talwar did not obtain any pecuniary benefit on account of the alleged dealings;
 - (f) The order of debarment of three years against Mr. Vinay Talwar is contrary to the principles of parity as the main culprit Mr. Vijay Jindal was also awarded the same period of debarment whereas the role of Mr. Vinay Talwar is negligible in comparison to the role of Mr. Vijay Jhindal;
 - (g) In the order lenient view was taken against Ms. Shubha Jhindal wife of Mr. Vijay Jhindal and she was debarred only for one year keeping in mind the dates when she joined and when the event that resulted in pecuniary benefit took place;
 - (h) Because SEBI's order dated February 20, 2008 referred to a separate proceeding, but the records of the matter clearly reflect that even in the second proceeding no new facts against Mr. Vinay Talwar came to the surface in the order of Ld. Whole time Member to reach a different conclusion vide order dated July 31, 2014.
4. In this case, after the order dated July 31, 2014 was passed, Mr. Vinay Talwar had a remedy provided by law by filing appeal under section 15T of the SEBI Act before the Hon'ble SAT. In terms of said section 15T, any person aggrieved by an order of the Board may prefer an appeal to the Hon'ble SAT. In terms of section 15T(4) of the SEBI Act, Hon'ble SAT may confirm, modify or set aside the order appealed against. In this case, as observed by Hon'ble SAT in its order dated April 28, 2016, while availing this remedy Mr. Vinay Talwar has not contested the order dated July 31, 2014 on merits and he was only interested in reduction of the debarment period. In terms of the said order of Hon'ble SAT, the only question that

remains to be examined is whether the debarment period of three years imposed upon Mr. Vinay Talwar should be reduced in view of the submissions made by him in his representation.

5. I note that in his representation, Mr. Vinay Talwar has made the same submissions which he had made during the proceedings that have culminated in the order dated July 31, 2014. All those submissions have already been dealt within detail in the order dated July 31, 2014. His role in the entire scheme has been clearly brought out in the order dated July 31, 2014. In para. 22 of the order clear findings were given that he did not play any role in the advertisement issued during May, June 2002. However, he was director of the company at the time of the preferential allotment of 72, 00,000 shares to 15 entities on December 14, 1999. It has been established in the said order that the whole scheme of the company, its promoters/directors and the preferential allottees was a ploy to defraud the investors in the securities market. The facts and circumstances particularly those summarised in para. 32 of the said order have led to the finding that the whole scheme of things pertaining to preferential allotment during December 1999 to 15 entities which were connected to the company, its promoters/directors including Mr. Vinay Talwar and subsequent sale were carried out as a device to enable fraudulent gains to the promoters and directors. Mr. Vinay Talwar has been found to be party to the fraudulent preferential allotment which was to cheat the investors. He had knowingly indulged in such fraudulent activities. He had not contested any of these findings. Mr. Vinay Talwar's role has been more particularly described in para. 32 (a) and (h), para. 33, para. 34 read with para. 22 of the order dated July 31, 2014 and I do not consider it necessary to burden this order with same findings again.
6. It is also relevant to mention that the order dated February 20, 2008 had been set aside by Hon'ble SAT vide its order dated August 28, 2008 in the appeals filed by Mr. J. P. Madaan, Mr. Vijay Jhindal and Ms. Shubha Jhindal. While disposing of the said appeals, Hon'ble SAT had not accepted the prayer of those appellants, rather expressed its unhappiness with the SEBI order dated February 20, 2008 and remanded the matter back to SEBI to issue fresh show cause notice(s).
7. Thus, it is noted that all the facts and circumstances submitted in the representation of Mr. Vinay Tawar has already been considered in the order dated July 31, 2014 and none of the findings on merits have been contested or disputed.
8. The only new contention which Mr. Vinay Talwar has put forward in his representation is that the period of debarment against him is contrary to the principles of parity as, according to him, the main culprit Mr. Vijay Jhindal was also awarded same period of debarment and lenient view was taken against his wife, Ms. Shubha Jhindal. In the order dated July 31, 2014 entire facts and circumstances including the delay in disposing of the SCNs as contested by

Mr. Vinay Talwar have been taken into account in the order dated July 31, 2014 while awarding the debarment. Further, the period of debarment have been awarded considering the role and involvement of respective entities as mentioned in para. 37 of the order dated July 31, 2014. It is undisputed fact that during the period of preferential allotment in question, funding thereof by the company, inconsistent and misleading disclosures, etc. Mr. Vinay Talwar was Chairman cum Managing Director of the company. This apart, he was actively involved in the fraudulent scheme as has been detailed in the said order. I, therefore, do not agree with this contention of Mr. Vinay Talwar.

9. The representations of Mr. Vinay Talwar are disposed of accordingly.

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DATE: JUNE 8th, 2016

PLACE: MUMBAI

RAJEEV KUMAR AGARWAL

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA