

**(2020) 12 SEBI CK 0150**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** Appeal No.522 Of 2020

Dr. Shivinder Mohan Singh

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

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**Date of Decision :** 24-12-2020

**Acts Referred:**

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(b), 3(c), 4(1), 4(2)(f), 4(2)(r), 11  
Securities And Exchange Board Of India Act, 1992 — Section 11(4), 11(4)(d), 11B, 12A(a), 12A(b), 12A(c), 19

**Citation :** (2020) 12 SEBI CK 0150

**Hon'ble Judges :** Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

**Bench :** Full Bench

**Advocate :** Ashim Sood, Rhythm Buaria, Arman Pratap Singh, Abhishek Singh, Swati Sutar, Dhruv, Shivinder Mohan Singh, Shiraz Rustomjee, Shreya Parikh, Abhiraj Arora

**Final Decision :** Dismissed

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**Judgement**

Tarun Agarwala, Presiding Officer

1. The appellant has filed the present appeal questioning the confirmatory order dated September 11, 2019 passed by the Whole Time Member

(â??WTMâ? for convenience) of the Securities and Exchange Board of India (â??SEBIâ? for convenience) under Sections 11(1), 11(4) and 11B of

the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices

relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ? for convenience) in the matter of Religare Enterprises Limited

(â??RELâ? for convenience) and its subsidiary Religare Finvest Limited (â??RFLâ?

for convenience) which is an unlisted company. By the said

impugned order the WTM confirmed the ex-parte interim order dated March 14, 2019.

2. On March 14, 2019 an ex-parte interim order was passed against the appellant/ common noticee no. 25 and 24 other entities. The directions are extracted hereunder:-

â??Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ?) passed an ad-interim ex-parte order dated March 14, 2019 read

with corrigendum dated April 18, 2019 (together referred to as â??the Interim Orderâ?) in the matter of Religare Enterprises Ltd. against Religare

Enterprises Ltd. (REL), Religare Finvest Ltd. (RFL), OSPL Infradeal Pvt. Ltd. (OSPL), Bharat Road Network Ltd. (BRNL), Platinum Infrastructure

Pvt. Ltd., Ad Advertising Pvt. Ltd., Artifice Properties Pvt. Ltd., Best Health Management Pvt. Ltd. (Best), Devera Developers Pvt. Ltd. (Devera),

Vitoba Realtors Pvt. Ltd. (Vitoba), Fern Healthcare Pvt. Ltd. (Fern), Modland Wears Pvt. Ltd. (Modland), Rosestar Marketing Pvt. Ltd., Star

Artworks Pvt. Ltd., Tripoli Investment & Trading Co., Volga Management and Consultancy Pvt. Ltd., Zolton Properties Pvt. Ltd., Religare Comtrade

Ltd., RHC Holding Pvt. Ltd. (RHC Holding), Ranchem Pvt. Ltd. (Ranchem), ANR Securities, Shivi Holdings Pvt. Ltd., Malav Holdings Pvt. Ltd.,

Malvinder Mohan Singh and Shivinder Mohan Singh (collectively referred to as â??the Noticeesâ?) for the alleged prima facie violation of the

provisions of Section 12A(a),(b) & (c) of the SEBI Act, 1992 and Regulations 3(b), (c) & (d), 4(1) and 4(2) (f) & (r) of the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations, 2003) and various provisions of SEBI

(Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and the Listing Agreement. Vide the Interim Order, the

following directions were issued against the Noticees:

i. REL and RFL (i.e. Noticee nos. 1 & 2) shall initiate steps to recall all the loans, amounting to Rs.2315.09 Crores (approx.) , as specified in the

Interim Order, extended, either directly or indirectly, to the Noticee nos. 3 to 25 (viz. OSPL Infradeal Private Limited, Bharat Road Network Limited,

Platinum Infrastructure Pvt. Ltd, Ad Advertising Pvt. Ltd, Artifice Properties Pvt. Ltd, Best Health Management Pvt. Ltd, Devera Developers Pvt.

Ltd, Vitoba Realtors Pvt. Ltd, Fern Healthcare Pvt. Ltd, Modland Wears Pvt. Ltd, Rosestar Marketing Pvt. Ltd, Star Artworks Pvt. Ltd, Tripoli

Investment & Trading Co, Volga Management and Consultancy Pvt. Ltd, Zolton Properties Pvt. Ltd, Religare Comtrade Limited, RHC Holding Pvt

Ltd , Ranchem Pvt. Ltd, ANR Securities, Shivi Holdings Pvt. Ltd, Malav Holdings Pvt. Ltd, Shri Malvinder Mohan Singh and Shri Shivinder Mohan

Singh), along with due interest, within three months of the date of the order.

ii. The Noticee nos. 3 to 25 shall, pending completion of the investigation and till further orders, not dispose of or alienate any of their assets or divert

any funds, except for meeting expenses of day-to-day business operations, without the prior permission of SEBI.

iii. The Noticee nos. 24 and 25 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of

REL and RFL, in any manner whatsoever, till further directions.â??

3. The aforesaid ad-interim order was passed based on complaints received by SEBI with regard to diversion of funds by the Directors and Promoters

of the company. A Forensic Auditor was appointed and based on the preliminary reports the aforesaid ex-parte ad-interim order was passed.

Subsequently, after considering the matter and the objection raised by the parties the WTM confirmed the ex-parte interim order by the impugned

order and passed the following directions:-

29. In view of the foregoing, in order to protect the interest of the investors and the integrity of the securities market, I, in exercise of the powers

conferred upon me by virtue of section 19 read with sections 11(1), 11(4)(d) and 11B of the SEBI Act, 1992, hereby confirm the directions issued vide

the Interim Order, subject to modifications as specified hereunder:

(i) REL and RFL (i.e. Noticee nos. 1 & 2) shall continue with the steps to recall the loans, amounting to Rs.2065.09 Crores (approx.), extended, either

directly or indirectly, to the Noticee nos. 5 to 17 and 19 to 25 (viz. Platinum Infrastructure Pvt. Ltd, Ad Advertising Pvt. Ltd, Artifice Properties Pvt.

Ltd, Best Health Management Pvt. Ltd, Devera Developers Pvt. Ltd, Vitoba Realtors Pvt. Ltd, Fern Healthcare Pvt. Ltd, Modland Wears Pvt. Ltd,

Rosestar Marketing Pvt. Ltd, Star Artworks Pvt. Ltd, Tripoli Investment & Trading Co, Volga Management and Consultancy Pvt. Ltd, Zolton

Properties Pvt. Ltd, RHC Holding Pvt Ltd , Ranchem Pvt. Ltd , ANR Securities,

Shivi Holdings Pvt. Ltd, Malav Holdings Pvt. Ltd, Shri Malvinder

Mohan Singh and Shri Shivinder Mohan Singh), along with due interest.

(ii) The Noticee nos. 5 to 17 and 19 to 25 shall, pending completion of the investigation and till further orders, not dispose of or alienate any of their

assets or divert any funds, except for meeting expenses of day-to-day business operations, without the prior permission of SEBI.

(iii) The directions contained in para 10(ii) of the Interim Order in respect of the Noticee no. 4 (Bharat Road Network Limited) and the Noticee no. 18

(Religare Comtrade Limited) stand revoked.

(iv) The Noticee nos. 24 and 25 (viz. Shri Malvinder Mohan Singh and Shri Shivinder Mohan Singh) shall not associate themselves with the affairs of

REL and RFL, in any manner whatsoever, till further directions.â??

4. By a separate order dated December 21, 2020 we have condoned the delay on account of the fact that the appellant was arrested on October 10,

2019 and is still in custody. Thus, considering the said fact the delay in filing the appeal was condoned.

5. The facts leading to the filing of the appeal is, that SEBI received complaints regarding financial mismanagement and diversion of funds in REL, a

subsidiary of REL which is a listed company by the promoters/ group companies of REL. The appellant is a Director /Promoter in the company and

contended that he had no role to play in the entire diversion of funds and have accused other noticees who have orchestrated the alleged diversion.

The appellant has accused his brother Malvinder Mohan Singh for diversion of funds.

6. The WTM after considering the forensic report and the evidence with regard to the diversion of funds and considering the fact that a detailed

investigation was still in progress and which would revealed the layers of the fraud committed by the various entities and the specific role which each

entity have played, the interim order was confirmed.

7. We have heard the learned counsel for the parties at some length. The learned counsel for the appellant basically contended that the direction

contained in the ex-parte ad-interim order which was eventually confirmed directing REL and RFL to take steps to recall loans, amounting to Rs.

2065.09 Crores is illegal and that such direction cannot be passed under Sections 11B or 11(4) of the order. It was contended that admittedly the

investigation is going on and, therefore, it was not appropriate for the WTM to pass an order for the recovery of the alleged loan without having it

finally adjudicated. It was contended that a final order for recovery of the impugned order cannot be passed at an ad-interim stage and, in any case,

such orders was not permissible under Sections 11B or 11(4) of the Act.

8. It was contended that the aforesaid direction was in the nature of disgorgement which could not be made at this stage since the investigation was still in progress. It was contended that such order which has the element of finality could only be passed after a complete inquiry which admittedly in the instant case has not been completed.

9. It was contended that the impugned order is manifestly illegal, unreasonable, unconscionable and arbitrary since it was passed without adherence to

the principle of natural justice. It was contended that the impugned order passed on the basis of material which was not disclosed to the appellant and

has been passed without applying its mind. It was contended that ex-parte order could not have been passed without notice to the appellant and it was

contended that an ex-parte order could only be passed if compelling circumstances existed which in the instant case was non-existent.

10. Having heard the learned counsel for the appellant, we find that the appellant did not challenge the ex-parte interim order dated March 14, 2019.

Nothing prevented him from filing an appeal. The appellant was arrested much later on October 10, 2019 after passing of the confirmatory order. The

said orders have been continuing against the appellant and there is no reason why the said order should not continue till the completion of the

proceedings.

11. We have been informed that a show cause notice has been issued to the appellant on November 17, 2020 directing the appellant to file his

objection, if any. In our view, once a show cause notice has been issued it would be appropriate that the appellant contest the matter before the WTM

and file his objection. At this belated stage it is not appropriate to dwell into the contention raised by the appellant that such interim orders cannot be

passed either under Section 11B or under Section 11(4) especially when such orders have been continuing since March 14, 2019.

12. We also find that the appellant was a Director and Promoter in REL/ RFL when the alleged diversion of funds took place. Thus, at this stage the

contention of the appellant that he has nothing to do with the diversion of funds cannot be accepted in principle at this stage. It is, however, open to the

appellant to contest the matter before the WTM and prove by filing cogent evidence that he has nothing to do with the alleged diversion of funds.

13. In the light of the aforesaid, we are not inclined to interfere in the impugned orders at this belated stage. The appeal fails and is dismissed with a

direction that the WTM will decide the matter within six months (6 months) from the date the appellant files his objection/ reply to the show cause

notice. In the circumstances of the case, parties shall bear their own costs.

14. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the Registry. In these circumstances, this order will be digitally signed by the Private Secretary on

behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally

signed copy sent by fax and/or email.