

LEGAL UPDATES

SAT: SEBI POST FINAL ORDER INITIALIZED DISGORGEMENT PROCEEDINGS; MISUSE OF PROCESS; BARRED BY RES JUDICATA

An appeal was filed in SAT. The appeal was brought in response to a common decision issued by the Whole Time Member (WTM) of the Securities and Exchange Board of India (SEBI), which ordered the appellants to forfeit illegal earnings worth Rs. 4,55,91,232 along with interest at a rate of Rs. 10% annually. The WTM further stipulated that the appellants would be prohibited from purchasing, selling, or dealing in securities for a term of five years if the sum was not paid within the allotted time frame of 45 days. The bench comprised Justice Tarun Agarwala, Presiding Officer and Justice M.T. Joshi, Judicial Member. The appellants argued that the principles of res judicata precluded the use of the challenged ruling. The appellants were prohibited from using the securities market for a predetermined length of time after the WTM issued a show-cause notice that resulted in a final order. Because this decision was already final, the WTM could not issue another order under Sec.s 11 and 11B of the SEBI Act requiring the appellants to return any unlawful proceeds for the same cause of action. The respondent, on the other hand, argued that there was no evidence of res judicata in the particulars and events of the current case and that Sec. 15U of the SEBI Act specifically provides that the Securities Appellate Tribunal shall not be restrained by the procedure established by the Code of Civil Procedure, 1908, negating the need for the principles of res judicata to apply in this particular instance. The impugned order, it was further argued, was rendered in harmony with the guidance from time to time provided by this Tribunal. In light of this, the respondent conducted additional research into the appellants' illegal gains. The tribunal commented that the respondent's following actions, including notices and proceedings for the disgorgement of claimed illegal gains made by the appellants, clearly abused the legal system. It stated that no new legal action for the same offence under Sec.s 11 or 11B of the SEBI Act may be brought, and no additional orders may be made therein. The issuing of a new SCN that resulted in the impugned order, according to SAT, was totally illegitimate and the impugned order is prohibited by the rules of res judicata and therefore cannot be maintained. The SEBI's argument that the Code of Civil Procedure

(CPC) is not relevant and, as a result, the principle of res judicata will not pertain was rejected. The Tribunal explained that Sec. 15-U(1) of the SEBI Act gives the Tribunal broad authority to establish procedures that are not covered by the CPC and that the Tribunal will be directed by the principles of natural justice, and it held that the principle of res judicata is completely relevant in the current case. SAT concluded that since the new initiation of the process resulted in an impugned order was an abuse of Court Procedure, Appellants are qualified for costs. SAT imposed a penalty on SEBI of paying Rs. 2 lakhs to each Appellant. SAT quashed the SEBI order.