

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 219 of 2012**

**Date of decision: 08.02.2013**

1. Victor Fernandes  
B-604 Gill-Haze Apts, Lourdes Colony  
Orlem, Malad West, Mumbai – 400064.
2. Sangeeta Fernandes  
B-604 Gill-Haze Apts, Lourdes Colony  
Orlem, Malad West, Mumbai – 400064.                      ...Appellants

Versus

1. National Stock Exchange of India Limited  
Exchange Plaza, Plot no. C/1,  
G Block, Bandra-Kurla Complex,  
Bandra (E), Mumbai – 400 051.
2. ICICI Securities Limited  
ICICI Centre, H.T. Parekh Marg,  
Churchgate, Mumbai – 400 020.
3. RBS Equities (India) Limited  
5<sup>th</sup> Floor, 4 North Avenue,  
Maker Maxity, Bandra-Kurla Complex,  
Bandra (East), Mumbai – 400 051.
4. Network18 Media & Investments Limited  
503, 504 and 507, 5<sup>th</sup> floor,  
Mercantile House, 15, Kasturba Gandhi Marg,  
New Delhi – 110 001.
5. TV18 Broadcast Limited  
503, 504 and 507, 5<sup>th</sup> floor,  
Mercantile House, 15, Kasturba Gandhi Marg,  
New Delhi – 110 001.
6. Mr Raghav Bahl  
E-36, Sector – 30,  
Noida – 201 301 Uttar Pradesh.
7. Mr Manoj Mohanka  
9, Lovelock Place,  
4<sup>th</sup> Floor, Flat No 4C,  
Kolkata 700 019, West Bengal.
8. Mr Hari Bhartia  
2 Amrita Shergill Marg,  
New Delhi 110 003 Delhi.

9. Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C4-A, 'G' Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai – 400 051.
10. BSE Limited  
Phiroze Jeejeebhoy Towers, Dalal Street,  
Mumbai – 400 001.
11. Board of Directors,  
Network 18 Media & Investments Limited  
503, 504 and 507, 5<sup>th</sup> floor,  
Mercantile House, 15, Kasturba Gandhi Marg,  
New Delhi – 110 001.
12. Independent Media Trust  
c/o Digital Content Private Limited  
Empire Complex, 1<sup>st</sup> Floor,  
414, Senapati Bapat Marg,  
Lower Parel, Mumbai – 400 013.
13. Digital Content Private Limited  
Empire Complex, 1<sup>st</sup> Floor,  
414, Senapati Bapat Marg,  
Lower Parel, Mumbai – 400 013.
14. RRB Mediasoft Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.
15. RB Mediasoft Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.
16. RB Media Holdings Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.
17. Watermark Infratech Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.
18. Colourful Media Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.
19. Adventure Marketing Private Limited  
403, Prabhat Kiran,  
17, Rajendra Place,  
New Delhi – 110 008.



2. The appellants are investors and shareholders of Network 18 Media and Investments Limited. They are aggrieved by the decision of the National Stock Exchange of India Ltd. (NSE), in granting listing and trading approval of the equity shares issued by respondent no. 4 pursuant to its rights issue which closed for subscription on October 4, 2012. The grievance of the appellants is that they had made multiple representations to various entities entrusted with the responsibility of protecting interest of shareholders and investors, complaining about violation of various rules and regulations by respondents no. 4 and 5 relating to the said rights issue. However, the concerned entities have failed to take action necessary to protect the interest of investors. This is what the appellants contend in para 4(ao) of the appeal:-

“4(ao). Since February 2012, VF has written a total of thirty five letters to SEBI, NSE, BSE, ICICI, RBS, MM and HB, bringing to their attention the issues plaguing Network 18 and TV18 and relating to, inter alia, serious corporate governance failures, inadequate and misleading disclosures and rampant non-compliance with various regulations governing the capital markets (refer Enclosure F-11 for a Schedule of Documents sent to/available with each of these Respondents). No action has been taken by any of these entities to resolve the prejudice, harm and loss caused and continually being caused to the Appellants as well as other investors. Besides one inadequate reply each sent by NSE and SEBI to VF which demonstrated that these entities had not independently evaluated the issues placed before them, SEBI, NSE and BSE have failed to take the necessary actions arising from the issues placed before them by VF, SEBI, NSE and BSE have failed to protect the interests of investors.”

3. At the outset, Shri Sooli Cooper, learned senior counsel appearing on behalf of respondent no. 3, raised objection with regard to maintainability of the appeal. He has drawn my attention to para 3 of the appeal where it is stated that the appellants are aggrieved by the decision of NSE to grant listing and trading approval to the equity shares issued by respondent no. 4. However, there is no prayer in the appeal for setting aside or quashing the circular dated October 15, 2012 issued by NSE granting the listing permission. The appellants had participated in and subscribed to the rights issue and having obtained shares thereunder, cannot challenge the order which make those vary shares tradeable in the stock market. According to learned senior counsel, the appellants cannot have any grievance against the order that

permits the shares they have subscribed to, to be traded and listed in the stock market. The appellants grievance neither arise nor flow from the impugned order. The grievance of the appellants, according to the learned senior counsel, is related to corporate governance, manner of functioning of respondent no. 4 and alleged acquisition of control by certain other entities. None of these are matters having anything to do with the grant of listing of rights issue in accordance with laid down norms. Learned senior counsel further contended that the nature of reliefs claimed by the appellants go beyond the jurisdiction of this Tribunal. To illustrate, he stated that the appellants have sought restriction on respondent no. 3 from carrying on business in any intermediary role in the capital market and debarring the merchant banker from accessing the capital market. According to him, none of these reliefs are relatable to the impugned order. The other reliefs sought for in the appeal also do not emanate from the impugned order. On the contrary, the appellants, in their rejoinder, have specifically stated that the appellants have not made any prayer for cancellation of the rights issue. If that be so, the appeal is not maintainable under Section 23L of the Securities Contracts (Regulation) Act, 1956 (for short the Act), since the appellants cannot be termed as 'person aggrieved' under the said provision.

4. Arguments advanced by Shri Sooli Cooper, learned senior counsel were also adopted by learned counsel appearing on behalf of respondent no. 2, 4 to 11, 14 to 19, 21 & 22.

5. Appellant no. 1 who appears in persons for himself as well as for appellant no. 2, vehemently argued that the appeal filed by the appellants fall within the ambit of Section 23L of the Act. According to him, the issuer has not complied with the provision of equity listing agreement. According to the appellants, respondent no. 1 knowingly violated the securities laws and it has not independently examined the issues brought to its notice by the appellants. The appellants letter dated February 15, 2012 list the violations of multiple securities laws including terms and conditions of the listing agreement and these allegations have not been considered. It was,

therefore, contended that the appeal is maintainable and the Tribunal should hear the appeal on merits and grant the prayers as prayed for.

6. I have considered the rival submissions and perused the documents available on record. Sub-section (1) of Section 23L of the Act *inter alia* provides that any person aggrieved by the order or decision of the recognized stock exchange may prefer an appeal before the Securities Appellate Tribunal. The case of the appellants is that they are aggrieved by the decision of NSE to grant listing and trading approval to the equity shares issued by respondent no. 4 under the rights issue. Surprisingly, the appellants have not made any prayer for setting aside or cancellation of the permission granted by NSE for listing of the said rights issue. How can the appellants be said to be aggrieved when the appellants have participated and have been benefited from the said rights issue and no prayer is made for setting aside or cancellation of the said rights issue. Learned senior counsel for respondent no. 3 as well as counsel representing the other respondents have rightly relied upon the decision of the Apex Court in the case of **Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmad & Ors. [AIR (1976) SC 578]** which lays down the test to determine whether the person is aggrieved or not. The relevant extract from the said Supreme Court judgment reads as under:-

“Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest recognized by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person “against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words “person aggrieved” is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?”

7. This has been followed by this Tribunal in a large number of orders including in the case of **Bharatbhai Baldev Shah & Ors. vs. SEBI & Ors. (Appeal no. 142 of 2008 decided on October 6, 2009)**. The appellants have failed to show how the listing permission granted by NSE by the impugned circular has affected their legal rights or caused legal wrong or injury to the appellants. The appellants' grievance does not flow from the impugned circular of NSE. I also noticed that it is not a case where the various representations addressed by the appellants to the Securities and Exchange Board of India or to the intermediaries with regard to said issue were not considered. It is a matter of record that said representations were examined and appropriate response given to the appellants. In case the appellants were not satisfied with the response/reply received by them to their representations, it may have been a cause of grievance and the appellants could have availed appropriate remedy against those responses. In the garb of challenging the circular dated October 15, 2012 of NSE granting listing permission of rights issue of respondent no. 4, the appellants are in effect challenging decision of some of the respondents on its various representations which were duly considered and response sent to the appellants. The appellants are now seeking multiple reliefs against various respondents which are in the nature of a direction not covered within the scope of Section 23L of the Act.

I am, therefore, of the considered view that the appeal filed under Section 23L of the Act against the circular dated October 15, 2012 of NSE is not maintainable. Since the appeal is being dismissed as 'not maintainable', it is not necessary to go into the merits of the case. No costs.

Sd/-  
P. K. Malhotra  
Member &  
Presiding Officer (*Offg.*)

08.02.2013  
Prepared & Compared by  
ptm