$~14

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7247/2015

GAJENDRA NAGPAL ..... Petitioner

Through: Mr. Nishant Ahlawat and Mr. Abhik Kumar, Advs.

Versus

SECURITIES & EXCHANGE BOARD OF INDIA & ORS ..... Respondents

Through: Mr. Neeraj Malhotra, Mr. Rupal Luthra and Ms. Sakshi Sachdev, Advs. for R-1/SEBI.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

% **18.03.2016**

1. The petition impugns the *ex parte* order dated 8th December, 2014 of the respondent No.1 Securities and Exchange Board of India (SEBI) in exercise of powers under Section 19 read with Sections 11(1), 11(4), 11B and 11D of the SEBI Act, 1992 restraining the petitioner as well as respondent No.3 Unicon Capital Services Pvt. Ltd. (UCSPL), Mr. Ram Mohan Gupta, Mr. Pawan Dhanuka and Mr. Pritam Pandya from accessing the securities market and from buying, selling or dealing in securities market either directly or indirectly or from being associated with the securities market in any manner whatsoever. As per the said order, the petitioner and the said Mr. Ram Mohan Gupta, Mr. Pawan Dhanuka and Mr. Pritam Pandya were Directors / officers of the respondent No.3 UCSPL.

2. It is the contention of the counsel for the petitioner that the petitioner though earlier was a Director of the respondent No.3 UCSPL, had ceased to be a Director prior to the incidents on account whereof the order has been passed.

3. On enquiry, it is informed that the petitioner has been participating in the proceedings before the SEBI in pursuance to the impugned order but no final order has been passed till now. It is stated that the final hearing to the petitioner was given as far back as on 30th June, 2015.

4. The counsel for the respondents No.1&2 SEBI states that the petition is not maintainable, as the remedy of appeal to Securities Appellate Tribunal is available to the petitioner against the impugned order. It is further stated that such an opportunity would also be available to the petitioner against the final order to be passed by SEBI and which is going to be passed expeditiously.

5. I am of the view that since more than one year and three months have lapsed since the *ex-parte* impugned order, the respondents No.1&2 SEBI cannot defer passing of the final order indefinitely. Moreover, even if passing of the final order against the others is taking time, certainly the final order at least qua the petitioner can be passed.

6. The petition is thus disposed of with the following directions:

(I) The respondents No.1&2 SEBI to pass the final order in pursuance to the *ex-parte* order dated 8th December, 2014 on or before 13th May, 2016. Liberty is also given to the respondents No.1&2 SEBI to, if for any reason unable to pass final order against all the persons against whom *ex parte* order was passed, pass the final order at least qua the petitioner;

(II) If no final order is made as aforesaid, the *ex-parte* order dated 8th December, 2014 impugned in this petition insofar as against the petitioner shall stand vacated;

(III) In the event of the final order being against the petitioner, the petitioner shall be entitled to the remedy in accordance with law.

A copy of this order be given dasti under the signatures of the Court Master to the counsel for the respondents No.1&2 SEBI for communication for compliance.

RAJIV SAHAI ENDLAW, J.

MARCH 18, 2016
bs..