

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Order Reserved On: 15.04.2014

Date of Decision: 23.04.2014

Appeal No. 25 of 2014

Ford Brother Capital Service Ltd.

10 Homi Modi Street,

2nd Floor, Fort,

Mumbai

...Appellant

Versus

Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C-4A, G-Block,

Bandra-Kurla Complex, Bandra (East),

Mumbai – 400 051

...Respondent

Mr. Gaurav Joshi, Senior Advocate with Ms. Neeta, Mr. Amit Dey and Ms. Akshaya Bhansali, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Pratham V. Masurekar Advocate for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer

Jog Singh, Member

A.S. Lamba, Member

Per: Justice J.P. Devadhar

1. Whether the Adjudication Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short), by impugned order dated May 14, 2013 is justified in imposing penalty of ₹ 15 lac upon appellant under Section 15A(a), penalty of ₹ 10 lac under Section 15HA and penalty of ₹ 5 lac under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (“SEBI Act” for short) is the question raised in this appeal.

2. Dispute in the present case relates to trading in the scrip of Nandan Exim Limited on the Bombay Stock Exchange (“BSE” for short) during the period from June 13, 2005 to September 30, 2005 and September 20, 2006 to November 23, 2006 (“Investigation Period” for short)

3. Penalty of ₹ 10 lac under Section 15HA of SEBI Act has been imposed on ground that the appellant has violated Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) and Securities and Exchange Board of India (Stock Broker and Sub-Brokers) Regulations, 1992 (“Stock Brokers Regulations” for short) by acting in concert with Mr. Shailesh M. Ved and giving him financial accommodation to execute manipulated trades by creating huge volume and creating artificial buying pressure in the market by putting huge buy orders at a price lesser than the last traded price/market price. It is not in dispute that the penalty imposed on Mr. Shailesh M. Ved for allegedly undertaking manipulative trades by acting in concert with the appellant herein has been set aside by this Tribunal in Appeal No. 63 of 2011 decided on 06.07.2011 and admittedly, that order has attained finality. In these circumstances, penalty of ₹ 10 lac imposed on ground that the appellant allegedly acted in concert with Mr. Shailesh M. Ved with a view to execute manipulated trades in the scrip of Nandan Exim Ltd. during the investigation period cannot be sustained. Hence, penalty of ₹ 10 lac imposed upon appellant under Section 15HA of SEBI Act deserves to be set aside.

4. As regards, penalty of ₹ 5 lac under Section 15HB of the SEBI Act is considered it is relevant to note that in para 34 of the impugned order AO has recorded that during the investigation, appellant was called upon to intimate as to whether they had appointed a Principal Officer and whether the details of transactions with Mr. Shailesh M. Ved, were informed to the Financial Intelligence Unit of India, New Delhi as per SEBI circular dated 20.03.2006 and 18.01.2006. Although, appellant replied that Mr. Rajesh Kothari, was appointed as Principal Officer, when called upon to provide a copy of the appointment letter and documentary evidence regarding payment of salary to the said Principal Officer, appellant by its letter dated November 23, 2009 submitted a copy of letter dated May 20, 2008 addressed to BSE wherein it was stated that Compliance Officer has been appointed. Neither the date on which Compliance Officer was appointed nor particulars of salary paid to him have been furnished.

5. In the impugned order AO has recorded a finding to the effect that appellant did not submit any documentary proof in respect of appointment of Principal Officer and evidence of his salary inspite of issuing summonses. AO has also recorded in the impugned order that the letter addressed by the appellant to BSE was in the year 2008 whereas transaction in question related to the year 2006 and therefore, from the 2008 letter it cannot be said that Compliance Officer was appointed in the year 2006. In these circumstances, inference drawn by AO that at the relevant time appellant had neither appointed any

Principal Officer nor it had reported the transactions in question to the director, Financial Intelligence Unit India, New Delhi in terms of SEBI circular dated 18.01.2006 and 20.03.2006 cannot be faulted. Consequently, it is evident, that appellant has failed to comply with SEBI circular dated 18.01.2006 and 20.03.2006. For such failure, Section 15HB of SEBI Act provides penalty up to ₹ 1 crore whereas, AO has imposed penalty of ₹ 5 lac. It is relevant to note that even before us no material is placed on record to show that at the material time that is during the year 2006 Compliance Officer was in fact appointed by the appellant. In these circumstances, imposition of penalty of ₹ 5 lac as against the penalty of ₹ 1 crore imposable under Section 15HB of SEBI Act cannot be said to be unreasonable or excessive. Consequently, we see no reason to interfere with the order in relation to imposition of penalty of ₹ 5 lac under Section 15HB of SEBI Act.

6. As regards, ₹ 15 lac penalty under Section 15A(a) of SEBI Act for violating Section 11C(2), 11C(3) and 11C(5) of SEBI Act is concerned, it is not in dispute that summonses were issued calling upon appellant to furnish documents specified therein and also to appear in person. Admittedly, none appeared in person before the enquiry officer. Although, it is contended that requisite information set out in the summonses have been furnished, failure to appear in person inspite of receipt of summons clearly amounts to violating the express provisions contained in Section 11C of SEBI Act, 1992. It is apparent that the

appellant failed to appear in person obviously with a view avoid answering pertinent questions relating to appointment of Compliance Officer during the investigation period. Penalty for non compliance of summonses provided under Section 15A(a) of SEBI Act is ₹ 1 lac for each day during which such failure continues or ₹ 1 crore whichever is lower. In the present case, after considering all mitigating factors as against penalty of ₹ 1 crore imposable, AO has imposed penalty of ₹ 15 lac which cannot be said to be unreasonable or excessively harsh.

7. For all the aforesaid reasons, penalty of ₹ 15 lac imposed under Section 15A(a) of SEBI Act and penalty of ₹ 5 lac imposed under Section 15HB of SEBI Act are upheld and penalty of ₹ 10 lac imposed under Section 15HA of SEBI Act is set aside.

8. Appeal is partly allowed in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member