

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 15.12.2015

Appeal No. 26 of 2015

Makesworth Projects and Developers Pvt. Ltd. Appellant
1A, Grant Lane, 1st Floor, Kolkata – 700 012.

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. Respondents

**With
Appeal No. 27 of 2015**

Alishan Estates Private Limited
1, R. N. Kukherjee Road, Kolkata – 700 001. ...Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 28 of 2015**

Khusboo Complex Private Limited
1A, Grant Lane, Room No. 114,
Kolkata – 700 012. ...Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 29 of 2015**

Mangalmayee Hirise Private Limited
1A, Grant Lane, Room No. 114,
Kolkata – 700 012. ...Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 30 of 2015**

Shirdhan Jewellery Private Limited
1A, Grant Lane, Kolkata – 700 012. ...Appellant

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 31 of 2015**

1. Konark Commerce & Industries Ltd.
2. Ajay Kumar Agarwal
3. Raj Narayan Pandey
6 & 6/3, Shashi Shekhar Bose Road,
Kolkara – 700 025. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 32 of 2015**

1. Suryamukhi Projects Private Limited
2. Pulak Bagchi
3. Bajrang Sultania
4. Neeraj Kedia
1A, Grant Lane, Kolkata – 700 012. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 33 of 2015**

1. Pushpanjali Hirise Private Limited
2. Umesh Singh
1A, Grant Lane, Room No. 114,
Kolkata – 700 012. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 34 of 2015**

1. Jagarnath Consultants Private Limited
 2. Umesh Singh
1A, Grant Lane, 3rd Floor,
Kolkata – 700 012.
- ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
 2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101.
- ...Respondents

**With
Appeal No. 35 of 2015**

1. Sharadaraj Tradefin Ltd.
 2. Bajrang Kumar Sultania
1, Crooked Lane, Room No. 109,
Kolkata 700 069.
- ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
 2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101.
- ...Respondents

**With
Appeal No. 36 of 2015**

1. Silicon Hotel Private Limited
 2. Pramod Ramdin Sharma
 3. Umesh Singh
156A, Lenin Sarani, 3rd Floor,
Kolkata – 700 013.
- ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 37 of 2015**

1. Growfast Realtors Private Limited
2. Pramod Ramdin Sharma
1A, Grant Lane, 1st Floor, Room No. 114,
Kolkata – 700 012. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 38 of 2015**

1. Sunshine Housecon Ltd.
2. Umesh Singh
1, Crooked Lane, 1st Floor, R. No. 109,
Kolkata – 700 069. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

With

Appeal No. 39 of 2015

1. Blue Print Securities Ltd.
2. Bajrang Kumar Sultania
1, Crooked Lane, R. No. 109, 1st Floor,
Kolkata – 700 069. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

**With
Appeal No. 40 of 2015**

1. Neelkamal Dealcom Private Limited
2. Umesh Singh
3, Saklat Place, Kolkata – 700 072. ...Appellants

Versus

1. Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.
2. Brooks Laboratories Ltd.
Village Kishanpura, Nalagarh Road,
Buddi Nalagarh,
Himachal Pradesh – 174 101. ...Respondents

Mr. Farook Razak, Senior Advocate with Mr. Sohail Haque, Mr. A. K. Upadhyay, Advocates for the Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Advocates i/b K. Ashar & Co. for the Respondent No. 1.

None for the Respondent No. 2.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Jog Singh (Oral)

1. By this bunch of 15 appeals, the appellants seek to challenge a common ex-parte order dated December 31, 2013 passed by the learned adjudicating officer under Sections 15I and 15HA of the Securities and Exchange Board of India Act, 1992 (For short SEBI Act) read with Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (for short adjudicating rules), imposing various monetary penalties on the appellants for violations of Section 12A(a), (b) & (c) of the SEBI Act, 1992, Regulation 3(a) to (d), 4(1), (2)(a) & (e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations 2003 (for short FUTP Regulations)

2. With the consent of parties, all these appeals are taken up for hearing and are being disposed of by this common order by taking Appeal no. 31 of 2015 (Konark Commerce & Industries Ltd. & Ors. Vs. SEBI) as the lead case.

3. The main thrust of the arguments of Shri Farook Razak, learned senior counsel, who appeared on behalf of the appellants, is that the appellants never received copy of the show cause notices in question and that they came to know about the hearing scheduled on December 23, 2013 only on the next day i.e. December 24, 2013. Accordingly, all the appellants barring, three appellants, sent their replies to the learned adjudicating officer. The said replies are stated to have been received by the respondent on December 26, 2013. Thereafter, the impugned order came to be passed without affording any opportunity of personal hearing by the learned adjudicating officer as contemplated in Section 4 of the

Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995. Therefore, the impugned order dated December 31, 2013 is vitiated for want of adherence to the principles of natural justice and provisions of the said Adjudication Rules.

4. Per contra, Shri Shyam Mehta, learned senior counsel who appeared on behalf of the respondent, has vehemently urged that effective steps were taken by the respondent to serve show cause notices on the appellants but they chose not to accept the notice. They even ignored the newspaper advertisements in this regard. After hearing both the learned senior counsel for both the parties at length and after perusing pleadings and impugned order, we note that Appeal No. 57 of 2014, which was decided on June 16, 2014 by this Tribunal, whereby the same ex-parte impugned order dated December 31, 2013 was quashed and set aside qua one Shri Harish Sureka and the matter was remanded to the respondent to decide it afresh after affording a reasonable opportunity of being heard to the appellants including an opportunity of preferred a detailed reply to the show cause notices in question. The said appeal was preferred by Shri Harish Sureka, whose name appears at serial no. 22, internal page no. 18 of the impugned order (running page no. 65 of the Appeal No. 31 of 2015).

5. On a query putforth by this Tribunal to the learned senior counsel, Shri Shyam Mehta, as to whether fresh order has been passed in case of said Harish Sureka or not, Shri Mehta on instruction informed us that due to transfer of the adjudicating officer in the case of Shri Harish Sureka, no final order could be passed till date and the issue is pending before the respondent. In the circumstances, although appellants are guilty of not responding to the notices issued from time to time, in our opinion, since

SEBI is yet to pass fresh order in case of Shri Harish Sureka as directed by this Tribunal, it would be just and proper to set aside the order impugned in all these appeals and direct SEBI to pass fresh order after hearing the appellants and Shri Harish Sureka, subject to payment of costs by the appellants to SEBI.

6. Appellants who are guilty of not responding to the notices issued from time to time, are also guilty of filing a cryptic and monotonous reply without dealing with the issue raised in the show cause notice. In these circumstances, the impugned order is set aside subject to payment of costs of ₹ 10,000/- to be paid by each of the appellants individually to SEBI within two weeks from today. Subject to payment of above costs, appellants are permitted to file detailed reply to the show cause notice and serve the same to SEBI within a period of one month from today. SEBI shall endeavor to dispose of the matters by passing fresh order preferably within a period of six months from today.

7. Ordered accordingly. All these appeals stand allowed as directed hereinabove.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

15.12.2015
Prepared & Compared by
PTM