

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 04.01.2022**

**Date of Decision : 30.03.2022**

**Appeal No. 321 of 2021**

Shree Sudarshan Castings Pvt. Ltd.  
9/12, Lal Bazaar Street,  
Block-E, 2<sup>nd</sup> Floor,  
Kolkata – 700 001.

..... 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

Ms. Aishwarya Shubhangi, Advocate i/b Triad Law  
Chambers for the Appellant.

Mr. Akash Rebello, Advocate with Ms. Nidhi Singh,  
Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha  
Kothari, Advocates i/b Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer  
Justice M.T. Joshi, Judicial Member

Per : Justice M.T. Joshi, Judicial Member

1. Aggrieved by the decision of the Learned Adjudicating  
Officer ('AO' for short) of the respondent Securities and

Exchange Board of India ('SEBI' for short) dated February 3, 2021 imposing a penalty of Rs. 10 lakh under Section 23H of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as 'SCRA') on the appellant, the present appeal is filed.

2. In short, the charge against the appellant is that, in violation of the provisions of Section 16 of SCRA read with SEBI Notification G.S.R. 219(E) dated March 2, 2000, Section 13 and Section 18 of SCRA had sold vide off market transaction 2,20,000 shares for a consideration of Rs. 3,13,29,250/- in the month of October and November 2010 without obtaining said consideration against the provisions of Section 2(i) of SCRA and thus committed violation.

3. The appellant prayed before the Learned AO that the shares were transferred on credit in the normal course of business. It had no other relationship with the transferee i.e. Chetan Dogra Group except a business transaction. The said group did not make payment as per the agreed terms and conditions. Therefore, a complaint was preferred with the Chief Metropolitan Magistrate, Kolkata against the said

group. The appellant is victim and therefore it wanted that it be discharged from the proceedings.

4. The Learned AO did not agree and passed the impugned order. Hence the present appeal.

5. Heard Ms. Aishwarya Shubhangi, the learned counsel for the appellant and Shri Akash Rebello, the learned counsel for the respondent.

6. The learned counsel for the appellant submitted that the appellant is a victim of the fraud played upon it by Chetan Dogra Group. It was submitted that there was a verbal agreement between the parties with regard to the payment of consideration later on. The appellant had no malafide intention in entering the transaction and it had filed a complaint before the Chief Metropolitan Magistrate, Kolkata. The learned counsel for the appellant relied number of cases decided by different AO's which would show that as evidence of formal contract or speculation in respect of all market transactions the parties wherein were let off. It was further submitted that in the case of *Vipul Mohan Joshi vs Securities and Exchange Board of India (Appeal no. 105 of 2019*

*decided on November 7, 2019*) finds that in the case of manipulative trading no evidence of collusion proved. The appellant therein was exonerated of the charge by this Tribunal.

7. On the other hand, the learned counsel for the respondent submits that it is an admitted fact that the present appellant against the provisions of Section 2(i) of the SCRA in violation of the SEBI Notification detailed (*supra*) entered into spot delivery contract. Therefore, relying on the decision in the case of *SEBI vs Opee Stock-Link Ltd. (2016) 14 SCC 134* it was submitted that the appeal cannot be allowed.

8. It was further submitted that the case of *Vipul Mohan Joshi (supra)* was a case under SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) wherein the charge was that the appellant therein had fraudulently entered into off market transactions. In the present case, the violation of SCARA is the factor.

9. Additionally, it was submitted that no details of filing of complaint with the Chief Metropolitan Magistrate, Kolkata were forwarded. However, vide rejoinder affidavit the appellant filled some documents in appeal which would show that certain FIR was filed on July 21, 2011 and ultimately charge sheet was filed in the court of Chief Metropolitan Magistrate Kolkata on May 18, 2014.

10. Section 2(i) of the SCRA provides that ‘spot delivery contract’ means a contract which provides for the actual delivery of securities and the payment of a price therefore either on the same day of the contract or on the next day. There is no denial that this provision is not followed. In order to prevent undesirable speculation in the securities vide the notification prohibited off market transaction in any manner other than provided by spot delivery contract as permitted by SCRA and SEBI Act, 1992.

11. In the case of ***SEBI vs Opee Stock-Link Ltd. (supra)*** the Supreme Court of India in paragraph 22 held as under:-

*“22. Considering the facts and circumstances of the present case, the transfer of shares did not comply with the requirements of the provision of either Section 13 or Section 2(i) of SCRA. Therefore, the off-market trading indulged in by the Respondent*

*was rightly held to be per se illegal by the Whole-Time Member.”*

12. In view of this clear unequivocal declaration by the Supreme Court of India there is no need to consider orders passed by different AO's.

13. The appeal, therefore, fails.

14. The learned counsel for the appellant submitted that the disproportionate penalty of Rs. 10 lakh is imposed. However, considering that large number of shares transferred by the appellant, in suspicious manner, vide off market transaction in violation of the provisions, no interference in the quantum of penalty is required. In the circumstances of the case, the following order:-

### **ORDER**

15. The appeal is hereby dismissed with no order as to costs.

16. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order.

Certified copy of this order is also available from the Registry  
on payment of usual charges.

Justice Tarun Agarwala  
Presiding Officer

Justice M.T. Joshi  
Judicial Member

30.03.2022  
msb