

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 11.05.2022

Date of Decision : 13.05.2022

Appeal No. 191 of 2022

Shubham Singhal
Radha Bagh Colony,
Chomu, Jaipur,
Rajasthan – 303 802.

..... 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. Ashish Sharma, Advocate i/b Jain Sharma & Co.
Chartered Accountants for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta,
Mr. Shourya Tanay and Mr. Harshvardhan Nankani,
Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 192 of 2022

Goodfaith Infra Ventures Private Limited
48, Dobson Road,
Howrah – 711 101.

..... 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. Samyak Gangwal, Advocate with Mr. Krishnesh Bapat,
Advocate for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Abhiraj Arora,
Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan
Nankani, Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 193 of 2022

Kala Patodia
2UG, 31/41, Binova Bhawe Road,
Kolkata – 700 038. 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. Mani Shankar Chattopadhyaya, Advocate for the
Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta,
Mr. Shourya Tanay and Mr. Harshvardhan Nankani,
Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 194 of 2022

Sudhir Kumar Saha
244, Lake Town,
Block – A,
Kolkata – 700 089. 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. Varun Nathani, Advocate with Mr. Sukrut Mhatre,
Advocate for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta,
Mr. Shourya Tanay and Mr. Harshvardhan Nankani,
Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 195 of 2022

Sudhir Kumar Agarwal HUF
A-75, Gandhi Nagar,
Moradabad,
Uttar Pradesh – 244 001.

..... 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

Mr. Shadad M. Khan, Advocate for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta,
Mr. Shourya Tanay and Mr. Harshvardhan Nankani,
Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 196 of 2022

Aaina Engineering Pvt. Ltd.
9, India Exchange Place,
3rd 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

Mr. Rajiv Kumar Choudhary, Advocate with Mr. Kailash Dhanuka, Advocate for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

**WITH
Appeal No. 206 of 2022**

Rajendra Kumar Agrawal
HB 30 Salt Lake Block,
HB Premises TO END WORD 17,
Salt Lake S N 24PGS,
Kolkata,
West Bengal – 700 106. 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. Ram Awatar Dhoot, CA i/b R. A. Dhoot & Co. Chartered Accountants for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

**WITH
Appeal No. 207 of 2022**

Rajeev Gupta HUF
R/o G-69, Ashok Vihar,
Phase – I,
New Delhi – 110 052. 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. Mukesh Mohan Goyal, Advocate i/b RG Laws for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

WITH
Appeal No. 208 of 2022

Seema Agarwal
FD 356 Salt Lake City,
Sector III, Kolkata,
West Bengal – 700 091.

..... 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. Ram Awatar Dhoot, CA i/b R. A. Dhoot & Co. Chartered Accountants for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

AND
Appeal No. 209 of 2022

Rajendra Kumar Agrawal HUF
HB 30 Salt Lake Block,
HB Premises TO END WORD 17,
Salt Lake S N 24PGS,
Kolkata,
West Bengal – 700 106.

..... 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. Ram Awatar Dhoot, CA i/b R. A. Dhoot & Co. Chartered Accountants for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Even though separate orders have been passed, the issue is common, and accordingly all these appeals are being taken up together.

2. The appeals have been filed against various orders passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing penalty under Section 15HA of SEBI Act, 1992 for violation of Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

3. After hearing various counsels for the appellants we find that the controversy involved in the present appeals is squarely covered by the decision of this Tribunal in *Global*

Earth Properties and Developers Pvt. Ltd. vs. SEBI, Appeal No. 212 of 2020 decided on September 14, 2020.

4. The learned counsel for the appellants tried to distinguish the said decision of this Tribunal on various grounds, namely, that the provisions of Section 15HA of SEBI Act is not applicable in view of the fact that appellant is not responsible for carrying out these transactions on an anonymous platform in as much as it was the broker who was responsible and who should have also been impleaded as a party and consequently the proceedings should be dismissed for non-joinder of necessary parties. Some of the appellants also contended that the investigation report was not supplied and in view of the latest decision of the Supreme Court in the matter of ***T. Takano vs Securities and Exchange Board of India & Anr. (Civil Appeal Nos. 487 - 488 of 2022) decided on February 18, 2022*** the impugned order should be set aside and the respondent should be directed to supply the investigation report before proceeding further. It was also urged that the penalty imposed is excessive and arbitrary and does not commensurate with the violation. It was contended that only one or two trades were made for which a heavy penalty has been imposed and that the factors contained under

Section 15J has not been taken into consideration while adjudging the quantum of penalty. It was also urged that some of the AOs have exonerated certain entities and persons for the similar offence on the ground that the alleged trades were miniscule and did not create an impact. One of the appellants contended that the presumption drawn by the AO was wholly erroneous and against the directions given by the Supreme Court in the case of *Securities and Exchange Board of India vs Kishore R. Ajmera* [(2016) 6 SCC 368] and in the case of *Balram Garg vs Securities and Exchange Board of India in Civil Appeal No. 7054 of 2021 decided recently on April 19, 2022*.

5. Having heard the learned counsel for the parties at some length, we find that the admitted position in all these appeals is, that appellants have not disputed the execution and subsequent reversal of trades as alleged in the show cause notice. We find that the execution of trades in an illiquid market with such precision in order placement indicates a prior meeting of minds with a view to execute reversal trades at predetermined price. We also find that there is a significant price difference between the sell price and the buy price within minutes and sometimes within seconds. This indicates

that the impugned transactions were manipulative and was a deceptive device to create a desired loss and/or profit. Such transactions were fraudulent and, therefore, violative of Regulation 3 and 4 of the PFUTP Regulations. Thus, it is not necessary for this Tribunal to delve into the assertions raised by the appellants. All the appeals fail and are dismissed in the light of the decision of this Tribunal in the matter of ***Global Earth Properties and Developers Pvt. Ltd. (supra)***.

6. However, before parting we would like to say that a large numbers of appeals are being filed on the same issue on a daily basis. We find that SEBI had made an investigation which revealed that thousands of entities were indulging in reversal trades which were found to be non-genuine trades and a misuse of the Stock Exchange platform. SEBI accordingly initiated penalty proceedings in a large number of matters in which penalties were imposed, against which large number of appeals were filed which were decided by this Tribunal in ***Global Earth Properties and Developers Pvt. Ltd. (supra)***.

7. We are informed that SEBI has initiated proceedings against 14720 entities which are pending before various AOs which have clogged up their dockets.

8. In the past when appeals against these kind of orders being passed we had directed SEBI by our order dated October 14, 2019 that SEBI should explore and come out with some mechanism or a scheme such as a Lok Adalat so that parties could settle the matter. Based on the directions given by this Tribunal, SEBI came out with a settlement scheme in August 2020 which was framed under the SEBI (Settlement Proceedings) Regulations, 2018 ('Settlement Regulations, 2018' for short). This scheme came to an end in December 2020. This scheme was not successful for two reasons, namely, that the terms of settlement perhaps were onerous, stringent and unviable and further the scheme was issued during the peak of the Covid pandemic.

9. We find that as on date more than 14,000 matters are pending before various AOs. Their dockets are exploding and the disposal of these matters will take atleast a couple of years. As a result, all the AOs are over worked, their dockets are clogged and serious matters are given a back seat.

10. We also find that in a large number of cases the AOs have exonerated the noticees or have imposed lesser penalty based on which, appeals are being filed before this Tribunal seeking reduction in the quantum of penalty.

11. In this regard the penalty which is being imposed is under 15HA of the SEBI Act which prescribes a minimum penalty of Rs. 5 lakh. This provision was amended on September 8, 2014 by Act No. 27 of 2014. Most of the trades in this illiquid stock option matters are during the period 2014-15. We find that where transaction were executed prior to September 8, 2014 the AOs have imposed a penalty of Rs. 1 lakh and on similar trades executed after September 8, 2014 a penalty of Rs. 5 lakh have been imposed. Thus, on the same set of violation two quantum of penalties are being imposed, Rs. 1 lakh and / or Rs. 5 lakh or more as the case may be. This has created an anomalous situation and is a bit unfair.

12. Section 15JB of the SEBI Act provides for settlement of administrative and civil proceedings. For facility, the said provision is extracted here under:-

Settlement of administrative and civil proceedings.

“15JB. (1) Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act. (4) No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.”

13. The said provision starts with a non-obstante clause, namely, *“notwithstanding anything contained in any other law for the time being in force”*. Where any proceedings have been initiated under the SEBI Act, any person may file an application for settlement of the proceedings. Section 15JB(3) provides that settlement proceedings would be conducted in accordance with the procedure specified in the Regulations. Chapter II provides the procedure for filing ‘Application for Settlement’, Chapter III provides the ‘Scope of Settlement, Chapter IV provides the ‘Terms of Settlement’, Chapter V provides the constitution of a High Powered Advisory Committee which recommends the terms of settlement and Chapter VI provides the ‘Procedure for Settlement’. The procedure envisaged under the settlement rules is thus complicated and at times the terms of settlement becomes stringent.

14. The settlement scheme that was issued in August 2020 under Chapter VI of the aforesaid Settlement Regulations, 2018 did not generate interest to these small time noticees who had executed few trades for small gains as the proposed settlement terms were found to be stringent, onerous and unviable and that could be one of the reason why many noticees did not opt under that scheme.

15. We, however, find that the respondent could still initiate another scheme under Clause 26 of the Settlement Regulations, 2018. For facility, the said provision is extracted here under:-

Settlement of Schemes.

“26. Notwithstanding anything contained in these regulations, the Board may specify the procedure and terms of settlement of specified proceedings under a settlement scheme for any class of persons involved in respect of any similar specified defaults.

Explanation.- A settlement order issued under a Settlement scheme shall be deemed to be a settlement order under these regulations.”

16. The aforesaid provision also starts with a non-obstante clause, namely, *“notwithstanding anything contained in these regulations”* that is to say, notwithstanding the procedure provided under Chapter II, III, IV, V and VI the Board could specify the procedure and terms of settlement of specified

proceedings under a settlement scheme for any class or persons involved in respect of any similar specified defaults. 'Specified proceedings' has been defined under Section 2(f) of the Settlement Regulations, 2018, namely, the proceedings that have been initiated by SEBI under the SEBI Act, Securities Contracts (Regulation) Act, 1956 or Depositories Act, 1996 as the case may be. 14,000 odd cases have been initiated under the illiquid stock option matters wherein similar kind of transaction have been executed and similar violation is proposed against all these noticees under Regulation 3 and 4 of the PFUTP Regulations. These 14,000 entities form a class of persons and are involved for similar defaults. Therefore, in our opinion, the Board can specify a procedure and terms of settlement for these classes of persons under Clause 26 of the Settlement Regulations, 2018.

17. We are, thus, of the opinion that SEBI should reconsider and seriously give a thought in coming out with a fresh scheme under Clause 26 of the Settlement Regulations, 2018. Such scheme can be a onetime scheme for this class of person. The terms of settlement should be attractive so that it could attract the noticees / entities to come forward and settle the matter which will ameliorate the harassment of penalty

proceedings to the noticees and at the same time would help to clear the backlog of these pending matters before various AOs.

18. While considering the scheme SEBI should take into consideration the provision of Section 15HA of SEBI Act prior to the amendment made by Act No. 27 of 2014 with effect from September 8, 2014. We find that various AOs have imposed a sum of Rs. 1 lakh for similar trades which were executed prior to September 8, 2014 and Rs. 5 lakh have been imposed for similar trades after the amendment of September 8, 2014.

19. SEBI should also take into consideration that only a few trades were executed for small gains and some of the AOs have exonerated these noticees on the ground that such miniscule trades did not create any impact.

20. We also request SEBI that while framing a scheme under the Settlement Regulations, 2018 it may also take into consideration the reduction of the quantum of penalty imposed in matters decided so far.

21. We direct the Registrar of this Tribunal to send a certified copy of this order to the Chairperson of SEBI within a week for necessary information and action.

22. 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

Ms. Meera Swarup
Technical Member

13.05.2022
msb