

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

IN THE MATTER OF FRONT RUNNING BY ASHOK MAHESHWARI AND OTHERS

IN RESPECT OF

	NOTICEE	PAN
1	Darshan Bakul Shah	AZJPS6156K
2	Khusboo Darshan Shah	BEZPS1084L
3	Darshan Bakul Shah (HUF)	AUSPS6111J
4	Benzer Department Stores Pvt. Ltd.	AAACB4252E
5	Mihir Dhirajalal Savla	AQRPS0359K

Background

1. SEBI passed an Interim Order cum Show Cause Notice dated April 26, 2024 (Interim Order), against eight persons/entities for their alleged role in front running the order of a *Big Client*. Vide the Interim Order, SEBI, *inter alia*, directed that:

- I. The Noticees are restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders. It is clarified that the restraint imposed above shall be operative only against the Proprietary Trades of Noticee no. 2 and Noticee no. 7 and is not applicable on the trading of their clients.*
- II. If the Noticees have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out /square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The Noticees are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*
- III. The Noticee no. 1 is hereby restrained from associating himself with any intermediary registered with SEBI, in any capacity till further orders.*

- IV. *An amount of INR 1,30,15,856.95 being the total unlawful gain earned from the alleged front running activities is impounded, jointly and severally in manner provided under Table no. 29.*
 - V. *Noticees mentioned in Table no. 29 above are directed to credit/deposit jointly/severally the aforesaid amount of unlawful gains to an interest bearing Escrow Account created specifically for the purpose in a Nationalized Bank within 15 days from the date of service of this order. The above Noticees shall create Escrow Account(s) with Lien in favour of SEBI and the amount kept therein shall not be released without permission from SEBI.*
 - VI. *Banks where the Noticees are holding bank accounts are directed that no debits shall be made, without permission of SEBI, in respect of the bank accounts held jointly or severally by the Noticees, except for the purposes of transfer of funds to the Escrow Account. Further, the Depositories are also directed that no debit shall be made, without permission of SEBI, in respect of the demat accounts held by the aforesaid persons. However, credits, if any, in to the accounts may be allowed. Banks and the Depositories are directed to ensure that all the aforesaid directions are strictly enforced. Further, debits in the bank accounts may also be allowed for amounts available in the account in excess of the amount to be impounded. Banks are allowed to debit the accounts for the purpose of complying with this Order.*
 - VII. *The Registrar and Transfer Agents are directed to ensure that, they neither permit any transfer nor redemption of securities, including Mutual Funds units, held by the Noticees.”*
2. Out of the aforesaid eight entities/person, five (Darshan Bakul Shah, Khusboo Darshan Shah, Darshan Bakul Shah (HUF), Benzer Department Stores Pvt. Ltd. and Mihir Dhirajalal Savla) filed an application before SEBI seeking certain relaxation in the directions issued qua them in the Interim Order.
 3. The entities/persons who filed applications were granted an opportunity of personal hearing on July 09, 2024. The authorised representative for Benzer Department Stores Pvt. Ltd. and Mr. Mihir Dhirajalal Savla, however, sought an adjournment of the hearing stating that they are in the process of filing an appeal against the Interim Order before the Hon’ble Securities Appellate Tribunal (SAT).

4. On the date of the hearing, only Ms. Rinku Valanju, Advocate, representing Darshan Bakul Shah, Khusboo Darshan Shah and Darshan Bakul Shah (HUF) entered appearance. The said entities/persons also filed written submissions. The summary of oral and written submissions made on Noticee's behalf is given below:
- a) It was submitted that they were not liable to pay the alleged unlawful gain pocketed by Ashok Maheshwari (Noticee 1 of the Interim Order). It was contended that the Interim Order records a finding that Ashok Maheshwari received a share of the alleged profits. Therefore, the onus for impounding the share of profits received by Ashok Maheshwari may not be fastened on them.
- b) They sought to rely on order of the Hon'ble SAT in the matter of Mahavirsingh N. Chauhan and Anr. vs. SEBI, wherein it was held that
"20. In the end the contention that the liability to disgorge the amount cannot be made joint and several under Regulation 11B of the SEBI Act has same force...
21. From the aforesaid, it is clear that a person can be directed to disgorge amount equivalent to the wrongful gain made by him. By such contravention, the liability to disgorge the amount is individual and not collective. Thus, we are of the opinion that the direction of the WTM directing the appellants to pay the amount jointly and severally is against the provisions of Section 11B and to that extent, it cannot be sustained."
- c) Reliance was also sought to be placed on the Order passed by the Hon'ble SAT in the matter of Suraj Govind Prajapati vs. SEBI. It was submitted that in the said case, Hon'ble SAT directed SEBI to allow parties access to bank accounts and securities impounded by way of an Interim Order on payment of their respective share of the ill-gotten profits *prima facie* identified in the Interim Order.
5. It is noted that Benzer Department Stores Pvt. Ltd. and Mr. Mihir Dhirajalal Savla have since approached the Hon'ble SAT against the Interim Order. I am,

therefore, only considering the applications made by Darshan Bakul Shah, Khusboo Darshan Shah and Darshan Bakul Shah (HUF) (collectively hereinafter referred to as Noticees for the purpose of this Order) in this Order.

Consideration

6. It is noted from the *prima facie* findings recorded in the Interim Order that Ashok Maheshwari, was who was a trader at a broking firm referred to in the Order as ABC Securities Ltd., was passing on information regarding trades being placed by a *Big Client* to Darshan Bakul Shah. The Order notes that Darshan Bakul Shah and connected entities were *prima facie* noted to be taking positions in the market based on the information shared by Ashok Maheshwari. The amounts directed to be impounded by the Noticees vide the Interim Order is captured in the Table below-

Sr. No.	Profit earned by Noticee	Amount of profit (INR)	Entities jointly and severally liable for impounding of wrongful gains
1.	Darshan Bakul Shah	4,82,125.00	Darshan Bakul Shah and Ashok Maheshwari
2.	Khusboo Darshan Shah	24,86,789.00	Khusboo Darshan Shah, Darshan Bakul Shah and Ashok Maheshwari
3.	Darshan Bakul Shah (HUF)	31,56,509.00	Darshan Bakul Shah (HUF), Darshan Bakul Shah and Ashok Maheshwari
Total		61,25,423	

7. It can be noted from the Table above that as per the *prima facie* findings in the Interim Order, the ill-gotten gains collectively made by the Noticees, by engaging in the scheme laid out in the Order, has been calculated as INR 61,25,423. The limited prayer made by Noticees before me is to exclude the share of alleged profits received by Ashok Maheshwari from the amount collectively directed to be impounded by them.
8. It can also be noted from the Table that the direction to impound the gains cast on Khusboo Darshan Shah and Darshan Bakul Shah (HUF) had not only been

imposed on the said Noticees and but also jointly and severally on Ashok Maheshwari and Darshan Bakul Shah as it was *prima facie* noted that they were the source of the material non-public information based on which the said Noticees had undertaken their trades. Similarly, in the case of impounding directed against Darshan Bakul Shah, Ashok Maheshwari was made jointly and severally liable for the same reason.

9. The Noticees have, however, contended that as a share of the profits was paid out to Ashok Maheshwari in cash, the onus of impounding the entire ill-gotten gains should not be imposed on them. It was, therefore, submitted that the onus should be placed on Ashok Maheshwari to pay 50% of the ill-gotten gains alleged to have been made by Darshan Bakul Shah and 33% of the ill-gotten gains alleged by have been made by Khusboo Darshan Shah and Darshan Bakul Shah (HUF).
10. In this respect, it noted that the Interim Order records a *prima facie* finding based on the statement of Darshan Bakul Shah that a share of the profits was paid out to Ashok Maheshwari. Darshan Bakul Shah in his statement dated December 22, 2022, before SEBI had deposed that he had made a gross profit of INR 70 Lakh (approx.) and after deducting expenses, he paid INR 25 Lakh (approx.) to Ashok Maheshwari through non-banking channels (in cash).
11. Further, the Orders of the Hon'ble Tribunal cited by the Noticees, in my considered opinion, would not be applicable in the present matter as the gains directed to be impounded were a result of trades which were carried out in the account of the Noticees. The prayer of the Noticees and the *prima facie* finding recorded in the Interim Order based on the statement of Darshan Bakul Shah that a share of the proceeds was shared with Ashok Maheshwari will be a subject matter for consideration when the present matter is taken up for consideration on merits.
12. Given the same, the prayer for permitting the Noticees to impound only a portion of the amount directed to be jointly and severally impounded cannot be permitted at this stage.

Directions

13. In view of the above, I dispose of the applications filed by the Darshan Bakul Shah, Khusboo Darshan Shah, Darshan Bakul Shah (HUF), Benzer Department Stores Pvt. Ltd. and Mihir Dhirajalal Savla without issuing of any directions.
14. This Order shall come into force with immediate effect.

Place: Mumbai
Date: August 06, 2024

ASHWANI BHATIA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA