



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

By Registered Post A.D.

DEPUTY GENERAL MANAGER &
ADJUDICATING OFFICER

SEBI/HO/DEPA-II/DEPA-II_CRD/P/OW/2022/0000043674/1
August 18, 2022

SHYAMAL KISHORE AGRAWAL [PAN: AFVPA3127Q]

4 Pipeline Cholurpalya, Vijaynagar
Bangalore,
Karnataka – 560040
Mobile No. 3364500481

**Sub: Adjudication Proceedings in the matter of dealings in Illiquid Stock
Options (ISO) at BSE**

PART - A

1. A Show Cause Notice (**SCN**) was earlier issued to you in the matter of dealings in Illiquid Stock Options (ISO) at BSE (Copy placed at **Annexure 1**). The said Adjudication Proceedings are pending before me, to inquire into and adjudge the violations of provisions of Regulations 3(a),(b),(c),(d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Markets) Regulations, 2003 (**PFUTP Regulations**) and determine whether penalty under Section 15HA of the Securities and Exchange Board of India Act, 1992 (**SEBI Act**) is liable to be imposed. Section 15HA of SEBI Act reads as under:

“Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty –five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”
(Emphasis Supplied)





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PART - B

2. Meanwhile, SEBI has framed the SEBI Settlement Scheme, 2022 pursuant to the Order dated May 13, 2022 passed by the Hon'ble Securities Appellate Tribunal (**Annexure 2**), wherein the following directions were issued to SEBI:

*"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.**" (Emphasis Supplied)*

3. In compliance with the above directions of the Hon'ble Securities Appellate Tribunal, SEBI has introduced a onetime settlement scheme called the SEBI Settlement Scheme, 2022, in terms of Regulation 26 of the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 in the matter of Illiquid Stock Options. The said scheme proposes payment of Settlement Amount as per the details given below:

S No	Number of Contracts*	Settlement Amount (Rs.)
1	1-5	1,00,000/-
2	6-50	2,00,000/-
3	51 and above	5,00,000/- base amount + 10,000 per contract

* You may refer to the relevant Annexure/table of the SCN which contains a summary of the contracts you entered to determine the applicable slab for settlement.

4. The period of the SEBI Settlement Scheme, 2022 will commence on August 22, 2022 and will close on November 21, 2022, so as to provide an opportunity for settlement to the entities who have executed reversal trades in the stock options segment of BSE during the period April 01, 2014 to September 30, 2015, against whom enforcement proceedings have been initiated and are pending. In case you wish to avail the benefit of the said Scheme, you may access the details of





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the said Scheme, which would be available on the website of SEBI i.e. www.sebi.gov.in, during the said period.

5. Necessary application for settlement may be filed within the validity period of the scheme and payment of the settlement amount shall be made online. Additionally, for any clarification in regard to settlement scheme, you may refer to the FAQs at SEBI website or send email to scheme2022@sebi.gov.in.
6. In case you do not wish to avail of the facility under the SEBI Settlement Scheme, 2022, the adjudication proceedings initiated vide SCN shall stand automatically revived and the proceedings shall continue, from the stage at which the said proceedings were kept pending. In such case, you are advised to file your reply within 30 days of receipt of this Intimation, if not filed earlier.


DEEPAI DIXIT
ADJUDICATING OFFICER

Enclosures: 1) Annexure 1 – Copy of Show Cause Notice
2) Annexure 2 - Copy of SAT judgment dated May 13, 2022



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Securities and Exchange
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By Registered Post A.D.

**DEPUTY GENERAL MANAGER &
ADJUDICATING OFFICER**

SEBI/HO/DEPA-II/DEPA-II_CRD/P/OW/2021/0000038412/1

December 29, 2021

Shyamal Kishore Agarwal [PAN: AFVPA3127Q]

4 Pipeline, Cholutpalya, Vijaynagar

Bangalore

Karnataka-560040

Mob: 3364500481

Subject: Adjudication Proceedings in respect of Shyamal Kishore Agarwal in the matter of dealings in Illiquid Stock Options at BSE: Show Cause Notice under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995

1. Securities and Exchange Board of India (hereinafter, referred to as "SEBI") has initiated adjudication proceedings in respect of **Shyamal Kishore Agarwal** (hereinafter, referred to as "Noticee"), bearing PAN – AFVPA3127Q, for allegedly violating Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trading Practices related to Securities Markets) Regulations, 2003 (hereinafter, referred to as "PFUTP Regulations, 2003"), in the matter of trading in illiquid stock options on the Bombay Stock Exchange Ltd. ("BSE").
2. The undersigned was appointed as Adjudicating Officer vide order dated September 20, 2021, to enquire into and adjudge under Section 15 HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "SEBI Act"), the alleged violations by the Noticee. A copy of the communiqué dated September 27, 2021 appointing the undersigned as Adjudicating Officer is placed at **Annexure A**.



सेबी भवन, प्लॉट नं. सी 4-ए, "जी" ब्लॉक, बान्द्रा-कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व), मुंबई - 400 051
दूरभाष : 2644 9950 / 4045 9950 (आई वी आर एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in

SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra-Kurla Complex, Bandra (E), Mumbai - 400 051
Tel.: 2644 9950 / 4045 9950 (IVRS), 2644 9000 / 4045 9000 Fax : 2644 9019 to 2644 9022 Web : www.sebi.gov.in



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3. As part of ongoing surveillance, SEBI came across large scale reversal of trades in Stock Options segment of the BSE. Subsequently, SEBI conducted an investigation into the trading activity in illiquid Stock Options at BSE (hereinafter, referred to as "investigation") for the period between April 01, 2014 to September 30, 2015 (hereinafter referred to as "Investigation Period").
4. Pursuant to investigation, it was observed that during the investigation period, a total of 2,91,744 trades comprising 81.41% of all the trades executed in BSE Stock Options segment were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract. The reversal trades involved squaring off transactions, but with significant difference in the sell value and buy value of the transactions. The aforesaid reversal trades allegedly resulted into generation of artificial volumes.
5. The Noticee was one of the entities which indulged in reversal trades which allegedly created false and misleading appearance of trading, generating artificial volumes in the Stock Options Segment of BSE during the investigation period. The Noticee is alleged to have engaged in two such trades in one unique contract on February 24, 2015, which led to generation of alleged artificial volume of 2,96,000 units. These trades of the Noticee involved reversal with the same counterparty on the same day, but at different prices. Details of all the trades of Noticee in the Stock Options segment of BSE including details of all the reversal trades of the Noticee in the Stock Options Segment of BSE during investigation period are given in **Annexure B**.
6. The trades entered by the Noticee were reversed on the same day with same counterparty at a noticable price difference without any basis for significant change in the contract price which indicates that these trades are artificial and are non- genuine in nature.
7. A summary of dealings of Noticee in one Stock Options contract in which the said Noticee allegedly executed reversal trades during the investigation period, is as follows:-





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Summary of dealings in contracts wherein the Noticee executed reversal trades

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	JISL15MAR85.00CEW1	0.2	1,48,000	2.3	1,48,000	100%	3.91%

Note: "Unit" refers to lot size in contract multiplied by number of contracts traded.

8. The abovementioned reversal trade and volumes are illustrated through the dealings of Noticee in the contract viz, "JISL15MAR85.00CEW1" during the investigation period, as follows: -

(a) During the investigation period, two trades for 2,96,000 units were executed by the Noticee in the said contract on 24/02/2015.

(b) While dealing in the said contract on 24/02/2015, at 10:10:45.059778 hrs the Noticee entered into a sell trade with counterparty Tejpal Ambalal Shah for 1,48,000 units at Rs. 2.3 per unit. At 10:30:07.734764 hrs the Noticee entered into a buy trade with the same counterparty, for 1,48,000 units at Rs. 0.2 per unit.

(c) The Noticee's two trades while dealing in the above said contract during the investigation period allegedly generated artificial volume 2,96,000 units, which made up 3.91% of total market volume in the said contract during this period.

9. In view of the foregoing, it is alleged that Noticee, by indulging in execution of non-genuine reversal of trades in Stock Options with same entities on the same day, created false and misleading appearance of trading in stock options and therefore allegedly violated Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations, 2003.

10. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15HA of the SEBI Act.





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11. You are, therefore, called upon to show cause as to why an inquiry should not be held against you in terms of Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with section 15 I of the SEBI Act, and why penalty should not be imposed section 15HA of the SEBI Act.
12. Your reply, if any, should reach the undersigned or through email at deepalid@sebi.gov.in and kalyanih@sebi.gov.in within 14 days from the date of receipt of this Notice, failing which it shall be presumed that you have no reply to submit and the matter would be further proceeded with on the basis of the evidence available on record in terms of sub-rule (7) of Rule (4) of the Adjudication Rules. You may also indicate whether you desire a personal hearing in the matter.
13. Further, you are required to keep the undersigned informed about the change in your correspondence address, if any, till the conclusion of the proceedings. You are also required to submit a photocopy of your PAN card and contact details viz. Telephone numbers / Fax numbers / e-mail IDs and details of contact persons for records.

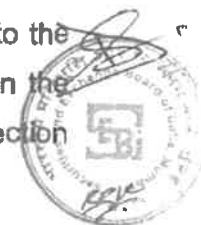

DEEPAI DIXIT
ADJUDICATING OFFICER

Enclosures: Documents relied upon are as follows: -

Annexure	Copy of relevant documents enclosed with this SCN	No. of pages
A	Communique dated September 27, 2021 appointing Adjudicating Officer	3
B	Details of all the trades of Noticee in Stock Options segment of BSE including details of all the reversal trades of the Noticee in Stock Options Segment of BSE during investigation period	1
C	Summary of dealings of Noticee in one Stock Options contract in which Noticee allegedly executed reversal trades during the investigation period	1

SECURITIES AND EXCHANGE BOARD OF INDIA
Order communicating appointment of Adjudicating Officer

1. Whereas, Securities and Exchange Board of India (SEBI) has conducted examination into the trading in options on individual stocks listed on Bombay Stock Exchange for possible violation of the provisions of the securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under.
2. Whereas, the Competent Authority is *prima facie* of the view that there are grounds to adjudicate upon the alleged violations of provisions of Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(a) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 by certain entities.
3. The Competent Authority has, therefore, in exercise of the powers conferred under Section 19 of the SEBI Act read with Section 15 I(1) of the SEBI Act and Rule 3 of securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("hereinafter referred as the 'SEBI Rules') read with section 19 of the SEBI Act, vide Order dated September 20, 2021, appointed certain Division Chiefs as Adjudicating Officers to enquire into and adjudge under Section 15HA SEBI Act, the alleged violations by the entities.
4. The list of the entities against whom adjudication is approved and the names of the respective Adjudicating Officers who are appointed to adjudicate against these entities is enclosed as **Annexure**.
5. The said proceedings of appointment are hereby being communicated to the Adjudicating Officers who shall conduct the Adjudication Proceedings in the manner specified under Rule 4 of the of the SEBI Rules read with sub-section (1) and (2) of Section 15 I of SEBI Act.



6. The Adjudicating Officers shall enquire into and adjudicate upon the alleged violation as stated above and if the Adjudicating Officers are satisfied that the entities have become liable for penalty, may impose penalty, as they think fit, in terms of Rule 5 of the SEBI Rules and provisions of Sections 15HA of the SEBI Act.

Dated at Mumbai, this 27th day September 2021.



BHAVANA RAVIKUMAR
GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA

Annexure to AO Communique

Sr. No	PAN Number	Entity Name	AO Name
1	AFVPA3127Q	SHYAMAL KISHORE AGARWAL	Deepali Dixit



Annexure B		
TRADE_DATE	24/02/2015	24/02/2015
SCRIPCODE	826278	826278
PANNO	AMNPS1741F	AFVPA3127Q
CLIENTNAME	TEJPAL AMBALAL SHAH	SHYAMAL KISHORE AGRAWAL
CP_PANNO	AFVPA3127Q	AMNPS1741F
CP_CLIENTNAME	SHYAMAL KISHORE AGRAWAL	TEJPAL AMBALAL SHAH
ORDER_NO	1424749546934002011	1424749546934002024
CP_ORDER_NO	1424749546934002006	1424749546934002023
ORDER_TIME	10:10:45.059778	10:30:07.734764
CP_ORDER_TIME	10:07:51.100400	10:30:07.653815
TRADE_TIME	10:10:45.059778	10:30:07.815734
ORDER_LMTIME	10:10:45.059778	10:30:07.815734
CP_ORDER_LMTIME	10:07:51.100400	10:30:07.815701
TRADE_RATE	2.3	0.2
LTP_RATE	0	0
LTP_PERCENT	0	0
TRADE_VALUE	12920400	12609600
ORDER_RATE	2.3	0.2
CP_ORDER_RATE	2.3	0.2
ORDER_LMRATE	2.3	0.2
CP_ORDER_LMRATE	2.3	0.2
TRADED_QTY	148000	148000
ORDER_QTY	2072000	148000
CP_ORDER_QTY	148000	148000
ORDER_AVLQTY	2072000	148000
CP_ORDER_AVLQTY	148000	148000
ORDER_LMQTY	2072000	148000
CP_ORDER_LMQTY	148000	148000
MEMBER_NO	3135	6566
MEMBER_NAME	BEST BULL STOCK TRADING PVT.LTD.	KAYAN SECURITIES PVT. LTD.
OLD_CLIENT		
MODIFIED_CLIENT	BB714	AR250
CP_MEMBER_NO	6566	3135
CP_MEMBER_NAME	KAYAN SECURITIES PVT. LTD.	BEST BULL STOCK TRADING PVT.LTD.
CP_OLD_CLIENT		
CP_MODIFIED_CLIENT	AR250	BB714
TERMINALID	201	902
USER_NAME	JAY KUMAR MANOT	HARSHVARDHAN KAYAN
LOCATION_ADDRESS	MARTIN BURN BUILDING ROOM NO 221 SECOND FLOOR KOLKATA WEST BENGAL 700001	1 R.N. MUKHERJEE ROAD, MARTIN BURN BUILDING, ROOM NO 319. KOLKATA WEST BENGAL 700001
CP_TERMINALID	902	201
CP_USER_NAME	HARSHVARDHAN KAYAN	JAY KUMAR MANOT
CP_LOCATION_ADDRESS	1 R.N. MUKHERJEE ROAD, MARTIN BURN BUILDING, ROOM NO 319. KOLKATA WEST BENGAL 700001	MARTIN BURN BUILDING ROOM NO 221 SECOND FLOOR KOLKATA WEST BENGAL 700001
ORDER_AUD	A	A
CP_ORDER_AUD	A	A
ORDER_TYPE	L	L
CP_ORDER_TYPE	L	L
LOCATIONID	7000010190001001	7000010001001012
CP_LOCATIONID	7000010001001012	7000010190001001
SCRIPNAME	JISL15MAR85.00CEW1	JISL15MAR85.00CEW1
EXPIRY DATE	2015-03-05	2015-03-05
STRIKEPRICE	8500	8500
SERIES	EQD	EQD
MKT_TYPE	N	N



Annexure C

S. No.	PAN Number	Name	Artificial Volume	Non-Genuine Trades	Number of Contracts
1	AFVPA3127Q	SHYAMAL KISHORE AGARWAL	2,96,000	2	1



**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

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