

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7001 OF 2021**

SECURITIES AND EXCHANGE BOARD OF INDIA APPELLANT

VERSUS

FAWN TRADING CO. PVT. LTD. & ORS. RESPONDENTS

WITH

CIVIL APPEAL No. 1668 OF 2022

O R D E R

We are inclined to dispose of the present appeals in terms of the decision of this Court in "*Securities and Exchange Board of India vs Shri Sunil Krishna Khaitan & Ors.*", [2022 SCC OnLine SC 862], and in particular paragraphs 87 and 94, which read as under:

"87. There is, as noticed and held below, some merit in the contention of the Board that the Appellate Tribunal could not have imposed penalty under Section 15-H when proceedings under the said Section had not been invoked by the Board and there is no order passed by the adjudicating authority imposing penalty under Section 15-H of the Act. However, the effect of the argument raised by the Board would be that the order passed by the Whole Time Member under Regulation 44 giving directions would be quashed and set aside. The respondents would have, therefore, escaped without having to pay any penalty for violation of Regulation 11(1) of the Takeover Regulations 1997. It is in this factual background we have to decide the present appeals. As noticed above, the respondents have not filed appeals or cross objections challenging the penalty imposed by the Appellate Tribunal for violation of Regulation 11(1) of the Takeover Regulations 1997.

XX

XX

XX

Signature Not Verified
Digitally signed by
BABITA PANDEY
Date: 2022.09.29
18:03:46 IST
Reason: 

94. Thus, the Appellate Tribunal in Appeal No. 23 of 2013 in the case of Sunil Krishna Khaitan, could not have substituted the penalty imposed by the Board under Regulation 44 with that of penalty under Section 15-H. An appropriate view, in our opinion, would be that when the Appellate Tribunal

holds that the order passed by the Whole Time member on violation of Regulations 10, 11 and 12 is sustainable, but the directions given in the order under Regulation 44 are not sustainable, it should leave it open to the Board to initiate proceedings and pass an order under Chapter VI-A of the Act."

Accordingly, the impugned orders are partly set aside insofar as the Appellate Tribunal has directed that only proceedings under Section 15-H of the Securities and Exchange Board of India Act, 1992 can be taken, and we observe that it will be open to the Securities and Exchange Board of India to take proceedings in accordance with law. However, we deem it appropriate to clarify that we agree with the Appellate Tribunal that the direction to issue open offer does not arise in view of the facts of the present case. Further, it is agreed that the regulations applicable would be the extant regulations at the time of violation.

Recording the aforesaid, the appeals preferred by the Securities and Exchange Board of India and also M/s. Fawn Trading Co. Pvt. Ltd. and others are disposed of.

Pending application(s), if any, stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(J.K. MAHESHWARI)

NEW DELHI;
SEPTEMBER 26, 2022.

ITEM NO.58

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7001/2021

SECURITIES AND EXCHANGE BOARD OF INDIA

Appellant(s)

VERSUS

FAWN TRADING CO. PVT. LTD. & ORS.

Respondent(s)

(IA No. 152283/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA No. 152282/2021 - STAY APPLICATION)

WITH

C.A. No. 1668/2022 (XVII)

(IA No.29398/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 26-09-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For parties

Mr. Chander Uday Singh, Sr. Adv.
Mr. Abhishek Singh, AOR
Mr. Dhaval Mehrotra, AOR
Mr. Sudhanshu Sikka, Adv.
Mr. Gopal Jain, Sr. Adv.
Mr. Lakshmeesh S. Kamath, AOR
Ms. Samriti Ahuja, Adv.
M/S. K Ashar & Co., AOR

Mr. Lakshmeesh S. Kamath, AOR

Mr. Gopal Jain, Sr. Adv.
Mr. Lakshmeesh S. Kamath, AOR
Ms. Samriti Ahuja, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(Signed order is placed on the file)