
(2023) 01 SEBI CK 0003

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 212 Of 2022, Miscellaneous Application No. 553 Of 2022

Nimish Pankajkumar Shah

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 03-01-2023

Acts Referred:

Securities Contracts (Regulation) Act, 1956 — Section 2(i), 13, 16, 18

Citation : (2023) 01 SEBI CK 0003

Hon'ble Judges : M. T. Joshi, J;Meera Swarup Technical Member

Bench : Division Bench

Advocate : Shailja Patel, Rohan Mahadik, Suraj Chaudhary, Nishit Dhruva, Shefali Shankar, Meghna Arvind

Final Decision : Dismissed

Judgement

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M.T. Joshi, J

1. There is a delay in the filing of the appeal. For the reasons stated in the application, the delay is condoned. The application is allowed.

2. Aggrieved by the order dated July 6, 2021 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) directing the appellant to pay a penalty of Rs. 1,80,000/- for violation of Section 2(i) of Securities Contracts (Regulation) Act, 1956 ('SCRA' for short) read with Section 16, Section 13, Section 18 of SCRA read with SEBI Notification No. LAD-NRO/GN/2013-14/26/6667 dated October 03, 2013 the present appeal is filed.

3. The respondent SEBI conducted an investigation for a period between April 01, 2014 to may 30, 2015 for the trading in the scrip of Timbor Home Ltd. (hereinafter referred to as the 'Company') and found that the transfer of shares made off market violated the above provisions. It was further alleged that these off market transactions between the connected entities as detailed by pictorial

representation in paragraph 2 of the impugned order ultimately led to providing false information regarding the Company and off loading those shares for a higher price through the Stock Exchange platform defrauding the gullible investors.

4. We have heard Ms. Shailja Patel, the learned counsel for the appellant and Shri Suraj Chaudhary, the learned counsel for the respondent.

5. Insofar as the issue of defrauding the investors is concerned this Tribunal had occasion to deal with the case of the present appellant in Appeal no. 261 of 2022 and Appeal no. 262 of 2022 decided on June 3, 2022. In those appeals this Tribunal has confirmed the finding of the Learned Whole Time Member as well as the AO of the respondent SEBI that the present appellant in concert with other entities had indulged into violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and the appeals had been dismissed.

6. In the present case, the allegation regarding off market transfers in violation of the provisions as detailed above, the appellant admitted before the SEBI that he had done all these transactions on behalf of Mr. Anant Maloo the promoter of the Company and the appellant is also the director of the same. The transactions were done to secure a loan for the Company after receipt of those shares without any consideration. The appellant transferred those shares to other entities as detailed in the impugned order without any consideration. The violation of the regulations is therefore an admitted fact. The learned counsel submitted that the penalty is already paid, however, since appellant was deceived by Mr. Anant Maloo against whom he had filed FIR, the quantum of penalty is excessive.

7. Upon hearing both the sides, in our view, the appellant was the responsible director of the Company. The alleged loan agreement was never produced on record to show as a part of that agreement the shares were transferred. On the other hand, the decision of this Tribunal in the appeals as stated hereinabove would show that the intention was to defraud the gullible investors. In that view of the matter no case is made out for interference in the impugned order.

8. The appeal is, therefore, dismissed with no order as to costs.

9. 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.