

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of decision: 20/04/2016

**Misc. Application No.84 of 2015
And
Appeal No.131 of 2015**

M/s. Krishna Enterprises
No.98A, Old No.134,
Gandhi Salai, Valanchery,
Chennai – 600 042.

... Appellant

Versus

Securities and Exchange Board of India
having its registered office at
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

... Respondent

**WITH
Misc. Application No.85 of 2015
And
Appeal No.132 of 2015**

M/s. Rajesh Service Centre
No.62A, Mathiazhagan Street,
Nehru Nagar, Velachery,
Chennai – 600 042.

... Appellant

Versus

Securities and Exchange Board of India
having its registered office at
SEBI Bhavan, Plot No.C4-A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.

... Respondent

Mr. Anant Upadhyay, Advocate for Appellants.

Dr. Mrs. Poornima Advani a/w Ms. Amrita Joshi, Advocates i/b The Law
Point for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per : Justice J.P. Devadhar (Oral)

Misc. Application No. 84 of 2015 in Appeal No.131 of 2015 and Misc. Application No.85 of 2015 in Appeal No.132 of 2015:

By these two Misc. Applications, each appellant is seeking condonation of 119 days delay in filing these Appeals. For the reasons stated in the respective Misc. Applications, the delay is condoned. Both Misc. Applications are disposed of accordingly.

Appeal Nos. 131 & 132 of 2015:

1. Appellants in these two appeals are aggrieved by the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 26th November 2013 under Section 15I of the SEBI Act, whereby penalty of Rs.10 lac under Section 15HA of SEBI Act is imposed on each of the appellant for violating Section 12A(b) and (c) of the SEBI Act and a penalty of Rs.10 lac under Section 15HA of SEBI Act is imposed on each of the appellant for violating Regulation 3(c) & (d) of the SEBI (Prevention of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short).

2. On perusal of the impugned order it is seen that the appellants are held guilty of aiding and abetting Edserv Softsystems Ltd. (“ESL” for short) in siphoning off its ‘Initial Public Offer’ (“IPO” for short) proceeds and thereby cause loss to the investors who were already the shareholders of ESL or who applied and were allotted shares under the IPO. The impugned order

records that it is not established that the appellants were the actual beneficiary of the siphoned amount. However, penalty is imposed on ground that the appellants in collusion, acted as channel to transfer the siphoned off IPO proceeds to other layers.

3. Contention of the appellants is that they had received the amount from ESL for establishing Heal Laboratories/Head Office and supply of computers/accessories and based on the invoices and valuers report [referred to in para 12(vi) & (vii) of the impugned order] the appellants had contended before the AO that the amount received by them from ESL was utilized for the purpose for which it was received and therefore, the allegation that the appellants acted as a channel for ESL to siphon off its IPO proceeds is devoid of any merit.

4. Fact that ESL has Heal Laboratories/Head Office is not in dispute. Assuming that there is some discrepancy in the invoices and valuers report submitted by the appellants, without establishing that the Heal Laboratories/Head Office etc. were set up by a person other than the appellants, the AO could not have rejected the claim of the appellants that they had established the Heal Laboratories/Head Office for ESL and arrive at a conclusion that the appellants had received amounts from ESL for transferring the siphoned off IPO amount to other layers. Moreover, there is nothing on record to suggest that ESL has been held to be guilty of siphoning off the IPO proceeds, because, it is only if ESL is held guilty of siphoning off IPO proceeds, the question of considering the question as to whether the appellants had colluded with ESL arises. In these circumstances, we had called upon Counsel for SEBI to take instructions in that behalf.

5. At the last hearing, we had also brought it to the notice of the Counsel for SEBI that the impugned order imposing penalty under Section 15HA of SEBI Act is in conflict with various other orders passed by the AOs of SEBI under Section 15HA of SEBI Act. It was brought to the notice of Counsel for SEBI that in the present case, the AO has found the violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) of PFUTP Regulations are two independent violations and accordingly imposed penalty under Section 15HA for two violations separately whereas, in several other cases, for example in the case of *Kejas Parmar vs. SEBI* *(Appeal No. 419 of 2014), the AO of SEBI has held that where there is violation under Section 12A(b)&(c) and also violation under regulation 3(c)&(d) of PFUTP Regulations, then both the provisions have to be read together and in such a case common penalty is imposable under Section 15HA of SEBI Act. In view of conflicting orders passed by the AOs of SEBI, we called upon the Counsel for SEBI to take instructions and accordingly adjourned the matter.

6. Today, when the matter was called out, Counsel for SEBI fairly stated that there are several orders passed by the AOs of SEBI wherein violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) of PFUTP Regulations have been read together and penalty under Section 15HA of SEBI Act have been imposed on the footing that both violations constitute as one offence. Thus, it is conceded by SEBI that the order impugned in these appeals, wherein the AO has considered the violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) as two independent offences and accordingly imposed two independent penalties, is in conflict with other orders passed by AOs of SEBI. In spite of the fact that the impugned order is in conflict with orders passed by other AOs of SEBI, for example order passed

in *Appeal No. 419 of 2014, Counsel for SEBI submitted that she has instructions to defend the order impugned in the present appeal. In other words, SEBI is arguing before us that the orders passed by the AOs of SEBI even if they are mutually contradictory must be upheld by this Tribunal.

7. We are surprised by the attitude adopted by SEBI. Under the SEBI Act, it is the duty of SEBI to ensure that the orders passed by the AOs promote the development of the securities market and are in the interests of the securities market. If the orders passed by the AO are not in public interest, then under Section 15I(3), SEBI is empowered to review the orders passed by the AO. Passing conflicting orders would not promote the development of the securities market and would not be in the interests of the securities market. Therefore, by defending the conflicting orders passed by the AOs, SEBI is neither promoting the development of the securities market nor acting in the interests of the securities market. On the contrary, by defending the conflicting orders, SEBI is encouraging the AOs to pass conflicting orders which are detrimental to the interests of the securities market. It does not lie in the mouth of SEBI to argue in one breath that one AO is justified in holding that violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) constitute an offence and in another breath to argue that another AO is also justified in holding that violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) of PFUTP Regulations constitute two independent offences and accordingly penalty has to be imposed under Section 15HA of SEBI Act.

8. It is relevant to note that under Section 15HA of SEBI Act the AO is empowered to impose penalty up to Rs.25 crore. In such a case, treating

violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) as one offence or two independent offence depending on the sweet will of the AO would be hazardous to the securities market. Therefore, the conduct of SEBI in supporting the orders passed by its AOs which are mutually contradictory in nature and give leverage to the AOs to impose penalty as it suits them, clearly shows that SEBI is blindly supporting the orders passed by its AOs in spite of the fact that the said orders are detrimental to the interests of the securities market. Such a conduct on part of SEBI is disgraceful to say the least.

9. Since SEBI is not in a position to take a definite stand on the question as to whether violation of Section 12A(b)&(c) and violation of regulation 3(c)&(d) of PFUTP Regulations constitute one offence or two offence, we set aside the impugned order and remand the matters to the file of AO for fresh decision on merits and in accordance with law as has been done in *Appeal No.419 of 2014. On remand, we hope that at least the AOs of SEBI ensure that the fresh order to be passed is in the interests of the securities market.

10. Both appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C.K.G. Nair
Member

*Amended pursuant to order dated 26.04.2016.

20/04/2016

Prepared & compared by-ddg

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CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Justice J.P. Devadhar (Oral)

ORDER:

It is brought to our notice that in paragraphs 5, 6 and 9 of our order dated 20/04/2016 passed in the above Appeals, the Appeal Number in case of Kejas Parmar is inadvertently typed as “Appeal No. 188 of 2014” instead of “Appeal No. 419 of 2014”.

The inadvertent error be corrected accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

26.04.2016
Prepared & Compared By: PK