BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 30.08.2023

Date of Decision : 05.09.2023

Appeal No. 938 of 2022

Sanjay Kumar
D-151, East of Kailash,
Sriniwaspuri, S.O. South Delhi
Delhi – 110 065. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. P.N. Modi, Senior Advocate with Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 939 of 2022

Surendra Kumar Gupta
51/40, Goldiee House,
Nayaganj,
Kanpur – 208 001. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 940 of 2022

Pranveer Singh
117/H1/314 Model Town,
Pandu Nagar,
Kanpur – 208 005. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 941 of 2022

Geeta Mishra
312 Lkhanpur Housing Society,
Vikas Nagar, K P University,
Kalyanpur, Kanpur Nagar,
Uttar Pradesh – 208 024. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 942 of 2022

Praveen Kumar Mishra
312 Lkhanpur Housing Society,
Vikas Nagar, K P University,
Kalyanpur, Kanpur Nagar,
Uttar Pradesh – 208 024. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 943 of 2022

Divya Agarwal
14/72, Gopal Vihar,
Civil Lines,
Kanpur – 208 001. ….Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH

Appeal No. 1037 of 2022

1. Sandhya Agarwal
   3 /98, Hanumant Kripa,
   Vishnupuri, Nawabganj,
   Kanpur - 208002,
   Uttar Pradesh

2. Manish Agarwal
   3/98, Hanumant Kripa,
   Vishnupuri, Nawabganj,
   Kanpur - 208002,
   Uttar Pradesh.

3. Ruchi Agarwal
   3/98, Hanumant Kripa,
   Vishnupuri, Nawabganj,
   Kanpur - 208002,
   Uttar Pradesh.

4. Krishana Agarwal
   3/98, Hanumant Kripa,
   Vishnupuri, Nawabganj,
   Kanpur - 208002,
   Uttar Pradesh. ….Appellants

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Asim Sood, Advocate with Mr. Ekansh Gupta, Mr. Yahya Batatawala, Advocate i/b Mr. Yahya Batatawala, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 1038 of 2022

Sulabh Engineers and Services Ltd.
206, 2nd Floor, Apollo Complex-
Premises Cooperative Society Ltd.,
R.K. Singh Marg,
Parsi Panchayat Road,
Andheri (East),
Mumbai – 400 069. ….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. Abhishek Venkataraman, Advocate with Mr. Yahya Batatawala, Advocate i/b Mr. Yahya Batatawala, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms.Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 1039 of 2022

1. Raghuvansh Agrofarms Ltd.
   361, Vill. Gaur Pathak, The.
   Bhognipur, Ramabai Nagar,
   Kanpur Dehat – 209111, U.P.

2. Litmus Traders Limited
   (Formerly known as Litmus
   Investments Limited)
   117/10, C-Block, Sarvodaya Nagar, ….Appellants
   Kanpur – 208005 U.P.

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. Ashim Sood, Advocate with Mr. Ekansh Gupta, Advocate i/b Ms. Akansha Jain, PCS for the Appellants.

Mr. Vishal Kanade, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms.Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 1040 of 2022

Manish Kumar Garg
S/o Late Jagdish Prasad Garg,
Flat No. 501, Srishti Kalpana Apartment,
4/276 G, Parvati Bagla Road,
Kanpur Nagar,
Uttar Pradesh – 208 002. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms.Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 1041 of 2022

Manoj Kumar Agarwal
53/07, Sri Niketan,
Naya Ganj,
Kanpur – 208 001,
Uttar Pradesh. ….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. Abhiraj Arora, Advocate with Mr. Yahya Batatawala, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms.Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 1042 of 2022

Deepa Mittal
2A/220, Azad Nagar,
Near Zoo Kanpur,
Nawabganj, Kanpur,
Uttar Pradesh – 208 002. ….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. Abhiraj Arora, Advocate i/b Ms. Uma Chatterjee, Advocate for the Appellant.

Mr. Vishal Kanade, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms.Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 416 of 2023

Sanjay Kumar
D-151, East of Kailash,
Sriniwaspuri, S.O. South Delhi
Delhi – 110 065. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 417 of 2023

Pranveer Singh
117/H1/314 Model Town,
Pandu Nagar,
Kanpur – 208 005. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH
Appeal No. 418 of 2023

Geeta Mishra
312 Lkhanpur Housing Society,
Vikas Nagar, K P University,
Kalyanpur, Kanpur Nagar,
Uttar Pradesh – 208 024. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH

Appeal No. 419 of 2023

Praveen Kumar Mishra
312 Lkhanpur Housing Society,
Vikas Nagar, K P University,
Kalyanpur, Kanpur Nagar,
Uttar Pradesh – 208 024. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

WITH

Appeal No. 420 of 2023

Divya Agarwal
14/72, Gopal Vihar,
Civil Lines,
Kanpur – 208 001. ….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. Kunal Katariya, Advocate i/b Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Sumit Rai, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Hubab Sayyed, Mr. Harish Ballani, Ms. Nidhi Faganiya, Ms. Komal Shah, Advocates i/b Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. 17 appeals have been filed by 21 noticees against the orders dated August 30, 2022 passed by the Adjudicating Officer ('AO' for short) and January 27, 2023 passed by the Chief General Manager ('CGM' for short) of the Securities and Exchange Board of India ('SEBI' for short). The AO by an order dated August 30, 2022 has imposed penalties of various amounts. The CGM by its order dated January 27, 2023 has debarred five noticees for a period of 3 years from accessing the securities market. Since the issues are common, all the appeals are being decided together. For facility, the facts stated in the appeal of Sanjay Kumar in Appeal no. 416 of 2023 are being taken into consideration.

2. The scrip in question is of Sulabh Engineers and Services Ltd. ('Sulabh' for short). An investigation was conducted by SEBI to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP

Regulations' for short). The investigation was against 471 entities and pursuant to the investigation report a show cause notice dated July 31, 2017 was issued against 150 entities to show cause why suitable directions under Section 11 and 11B of the SEBI Act should not be issued for violating Regulation 3 and 4 of the PFUTP Regulations.

3. The WTM by its order of September 3, 2020 exonerated 46 entities but found that 104 noticees had violated Regulation 3 and 4 of the PFUTP Regulations and accordingly appropriate orders were passed against them restraining them from accessing the securities market for different periods. Out of these 104 noticees, 52 noticees filed appeals which were clubbed and heard together in Appeal no. 319 of 2020 and other connected appeals decided on April 29, 2022. This Tribunal divided the said appellants in the aforesaid appeals into three sets as depicted in paragraph 26 which is extracted hereunder:-

> *"26. For facility, the appellants before this Tribunal have been divided into three sets, namely, 1st set who are promoter directors, non-executive directors and other promoters including the Company. 2nd set are the price manipulators and noticees connected to the Company or Subodh Agarwal and the 3rd set are the preferential allottees including notice nos. 128, 130, 140 and 141."*

4. The Tribunal after considering the matter in paragraph 39 found that the first set of appellants were guilty of violations of Regulation 3 and 4 of the PFUTP Regulations except the noticee Santosh Kumar Agarwal. This Tribunal upheld the findings of the WTM against the second set of noticees who were the price manipulators. The noticees of the second set were price manipulators who traded either on the buy side or on the sale side in various patches and were also connected not only to Subodh Agarwal but also to the Company. The third set of the noticees in the aforesaid appeals were 32 preferential allottees except 4 noticees who had purchased shares through off-market. This Tribunal in its order of April 29, 2022 held that the case of the preferential allottees and the 4 noticees who purchased off-market is required to be considered afresh. This Tribunal held that WTM is required to consider-

(i) Whether the trades executed by the preferential allottees and 4 noticees were similar to the trades executed by 31 preferential allottees who were exonerated;

(ii) If the circumstances are similar then these preferential allottees were required to be given the

same benefit as given to the 31 preferential allottees;

(iii) In the event the trades executed by the preferential allottees contributed to positive LTP or if the trades were found to be manipulative or they were part of the orchestrated scheme and created an impact in which case appropriate orders would be passed by the WTM. For facility, paragraph 57 to 61 of our order dated April 29, 2022 is extracted hereunder:-

"57. The 3rd set of appellants are 32 noticees, namely, noticee no. 123 Manoj Agarwal Appeal no. 399 of 2020, noticee no. 124 Praveen Kurele Appeal no. 319 of 2020, noticee no. 125 Vinay Kumar Agarwal Appeal no. 501 of 2020, noticee no. 126 Som Prakash Goenka Appeal no. 323 of 2020, noticee no. 127 Naveen Kurele Appeal no. 319 of 2020, noticee no. 128 Mridula Agrawal Appeal no. 477 of 2021, noticee no. 129 Narender Kumar Appeal no. 400 of 2020, noticee no. 130 Manisha Sharma Appeal no. 435 of 2020, noticee no. 131 Seema Kapoor Appeal no. 480 of 2020, noticee no. 132 Sanjeev Sanghi Appeal no. 364 of 2020, noticee no. 133 Mahabir Persad HUF Appeal no. 400 of 2020, noticee no. 134 Deepak Kumar Agarwal Appeal no. 453 of 2020, noticee no. 135 Sanjay Kapoor Appeal no. 480 of 2020, noticee no. 136 Sapna Kapoor Appeal no. 480 of 2020, noticee no. 137 Sunil Kapoor Appeal no. 480 of 2020, noticee no. 138 Ashok Kumar Maheshwari Appeal no. 398 of 2020, noticee no. 139 Vivek Karwa Appeal no. 375 of 2020,

noticee no. 140 Roopchandra Kumar (appeal not filed), noticee no. 141 Sabreen (appeal not filed), noticee no. 142 Sanjay Kumar HUF Appeal no. 400 of 2020, noticee no. 143 Arun Kumar HUF Appeal no. 400 of 2020, noticee no. 144 Raj Kumar Appeal no. 131 of 2021, noticee no. 145 Manish Maheshwari Appeal no. 398 of 2020, noticee no. 146 Mahak Maheshwari Appeal no. 398 of 2020, noticee no. 147 Sajan Kumar Agarwal Appeal no. 374 of 2020, noticee no. 148 Narender Kumar HUF Appeal no. 400 of 2020, noticee no. 149 Shubham Agarwal Appeal no. 437 of 2020 and noticee no. 150 Ashish Agarwal Appeal no. 437 of 2020, Surendra Kumar Gupta, noticee no. 8, Appeal no. 324 of 2020, Divya Agarwal, noticee no. 2, Appeal no. 401 of 2020, Praveen Kumar Mishra, noticee no. 7, Appeal no. 376 of 2020, Geeta Mishra, noticee no. 3, Appeal no. 376 of 2020, Sanjay Kumar, noticee no. 5, Appeal no. 377 of 2020, Pranveer Singh, noticee no. 6, Appeal no. 365 of 2020. Majority of the appellants in this set are preferential allottees except noticee nos. 128, 130, 140 and 141 who have purchased shares through off market from an entity who is connected to Subodh Agarwal and therefore connected with the Company. The common submission in this group is that there is no allegation of price manipulation against the appellants. The show cause notice does not allege that the appellants have indulged in price manipulation of the scrip. The only contention is, that they were allottees under the preferential allotment and therefore were connected to the Company. Insofar as the four other noticees are concerned they had purchased shares through off market transactions and therefore the allegation is that they were connected to the Company. Basic allegations against these appellants are that they are beneficiaries of the price manipulation having sold their shares at a time when the price of this scrip was higher. Further contention of the appellants is that there is no material to establish connection

between the appellants and related parties who have alleged to play an individual role in the price manipulation and that an adverse inference has been drawn on the basis of surmises and conjectures on the sole ground that being preferential allottees or buying shares off market indicates that there is a connection between the parties. It was submitted that apart from the fact of purchasing off market by some of the appellants and other being preferential allottees there is no other evidence to show any other connection between the appellants and the Company and its directors. There is also no evidence to show that the appellants had indulged in price manipulation. It was further contended that 31 preferential allottees have already been exonerated who had sold shares amounting to Rs. 132 crore and therefore if such preferential allottees who were also connected to the Company and its promoter director there is no reason why a different treatment was being meted out to the appellants. It was urged that the appellants had only sold the shares and earned profits and by selling shares no fraud is made out under Regulation 4(b) of the PFUTP Regulations. It was also contended that sales made by the appellants were traded / executed in the open market and that the appellants had no control over the price discovery and that the price was determined as per the market demand and supply mechanism. Further, the appellants only sold a small portion of the total shareholding and still hold a substantial portion. It was contended that if the appellants had any thought of price manipulation it would have off loaded the entire shares. It was urged that action of the respondent was wholly arbitrary as well as discriminatory.

58. There is no doubt that private placements of shares are rarely given to unknown entities and consequently it can be safely presumed that preferential allottees are known the Company. One could easily club the

preferential allottees in the premeditated scheme to benefit them from the price manipulation which was launched by the promoter directors. However, we find that out of 66 preferential entities 31 preferential entities have been exonerated by the WTM. No reasons have been given as to why these preferential allottees who were exonerated had sold shares worth Rs. 132 crore. In the instant case, there is no finding that these preferential allottees had increased the price of the scrip or contributed to positive LTP. Further, there is no finding that these preferential allottees had any connection with the counter parties. Thus, merely because the appellants reaped in huge profits by selling the shares cannot make them part and parcel of the fraudulent scheme hatched by the Company and the new promoters including Subodh Agarwal.

59. Some of the preferential allottees, namely, noticee no. 2, 3, 5, 6, 7 and 8 are also alleged to have received some shares from another entity in which Subodh Agarwal was a director and on that basis these preferential allottees have been booked. In our opinion, merely because these preferential allottees also received some shares from another entity in which Subodh Agarwal was a director does not make their trades tainted unless it is shown that they also traded for the purpose of increasing the price of the scrip. Merely by selling the shares does not manipulate the price of the scrip or become a part of the fraudulent scheme. Similarly the connection drawn for noticee nos. 128, 130, 140 and 141 is too remote and cannot lead to a conclusion that these noticees are also part of the fraudulent scheme.

60. Considering the aforesaid, we are of the opinion that the case of these preferential allottees and the four noticees is required to be considered afresh. The WTM is required to go into the trades executed by these preferential

alottees and is required to consider as to whether the trades executed by these preferential allottees and the four noticees are similar to the trades executed by the 31 preferential entities who were exonerated. If the circumstances are similar then in our opinion these preferential allottees are required to be given similar benefit that was given to the 31 preferential allottees. In the event trades have been executed by the preferential allottees which contributed to positive LTP or if it is found that the trades were manipulative and were part of the orchestrated scheme and created an impact in which case appropriate orders would be passed.

61. In view of the aforesaid, Appeal no. 356 of 2021 filed by Santosh Kumar Agarwal is allowed. The impugned order insofar as it relates to this appellant is quashed. Appeal nos. 399 of 2020 filed by Manoj Agarwal, 319 of 2020 filed by Praveen Kurele and Naveen Kurele, 501 of 2020 filed by Vinay Kumar Agarwal, 323 of 2020 filed by Som Prakash Goenka, 477 of 2021 filed by Mridula Agrawal, 400 of 2020 filed by Narender Kumar, Mahabir Pershad HUF, Sanjay Kumar HUF, Arun Kumar HUF and Narender Kumar HUF, 435 of 2020 filed by Manisha Sharma, 364 of 2020 filed by Sanjeev Sanghi, 453 of 2020 filed by Deepak Kumar Agarwal, 480 of 2020 filed by Seema Kapoor, Sanjay Kapoor, Sapna Kapoor and Sunil Kapoor, 398 of 2020 filed by Ashok Kumar Maheshwari, Manish Maheshwari and Mahak Maheshwari, 375 of 2020 filed by Vivek Karwa, 131 of 2021 filed by Raj Kumar, 374 of 2020 filed by Sajan Kumar Agarwal, 437 of 2020 filed by Shubham Agarwal and Ashish Agarwal, 324 of 2020 filed by Surendra Kumar Gupta, 401 of 2020 filed by Divya Agarwal, 376 of 2020 filed Geeta Mishra and Praveen Kumar Mishra, 377 of 2020 filed by Sanjay Kumar and 365 of 2020 filed by Pranveer Singh are allowed. The impugned order insofar

> *as it relates to these appellants is quashed. The matter is remitted to the WTM to re-decide the matter insofar as these appellants are concerned in the light of the observation made above after giving them an opportunity of hearing. All other appeals are dismissed. The miscellaneous applications are disposed of. In the circumstances of the case, parties shall bear their own costs."*

5. Pursuant to our direction as extracted above, the CGM reconsidered the matter and found appellants, namely, Divya Agarwal, Appeal no. 943 of 2022 (noticee no. 2), Geeta Mishra, Appeal no. 418 of 2023 (noticee no. 3), Sanjay Kumar, Appeal no. 416 of 2023 (noticee no. 5), Pranveer Singh, Appeal no. 417 of 2023 (noticee no. 6) and Praveen Kumar Mishra, Appeal no. 419 of 2023 (noticee no. 7) to be guilty of manipulating the trades in collusion with Subodh Kumar and further holding that these appellants had contributed to the positive LTP and were part of the orchestrated scheme and therefore their case is different to the other preferential allottees. The CGM accordingly debarred them from accessing the securities market for specified periods.

6. On the same facts, the AO also issued a show cause notice and by order dated August 30, 2022 found the noticees guilty and accordingly imposed penalty.

7. We have heard Shri P.N. Modi, the learned senior counsel, Shri Kunal Katariya, Shri Vikas Bengani, Shri Asim Sood, Shri Abhishek Venkataraman and Shri Abhiraj Arora, Shri Ekansh Gupta, Shri Yahya Batatawala, the learned counsel for the appellant in respective appeals and Shri Sumit Rai, Shri Vishal Kanade with Ms. Nidhi Singh, Ms. Deepti Mohan, Shri Nishin Shrikhande, Ms. Hubab Sayyed, Shri Harish Ballani, Ms. Nidhi Faganiya and Ms. Komal Shah, the learned counsel for the respondent.

8. In Appeal no. 938 of 2022, Appeal no. 940 of 2022, Appeal no. 941 of 2022, Appeal no. 942 of 2022 and Appeal no. 943 of 2022 the findings given by the CGM in debarring the noticees from accessing the securities market is based on three factors, namely –

(a) that the appellants were connected with the Company and therefore they were part of the orchestrated scheme.

(b) the trades of the appellants matched with the counterparties as depicted in Table 15 and

(c) the appellants have indulged in positive LTP contribution.

9. In this regard we find from a perusal of Table 35 in paragraph 162 of the impugned order that the CGM has provided the details of the 31 preferential allottees who were exonerated. A perusal of Sr. No. 18 to 31 of this Table 35 shows that the trades of these preferential allottees also matched with the connected entities ranging from 19.06 % to 100%. Thus, on this ground there is no distinction between the appellants and these preferential allottees who were exonerated.

10. The CGM in paragraph 41 held that as per Table 5 the appellants while executing the trades had contributed to positive LTP as sellers. In the case of Sanjay Kumar the LTP contribution was 1.90 percent. Other appellants also made similar positive LTP contribution. In this regard, we find that the exonerated preferential allottees had contributed higher LTP and thus if those preferential allottees were exonerated in spite of contributing to positive LTP, there is no valid reason in distinguishing the appellants.

11. The CGM has found the 5 appellants to be connected with the Company which is correct but then we also find that 31 preferential allottees who were exonerated were also connected to the Company therefore there is no distinguishing factor insofar as the present appellants being indicted on the ground being connected to the Company.

12. It was urged by learned counsel for the respondent SEBI that case of 5 preferential allottees are different and distinct from the exonerated preferential allottees. A specific allegation was made in the show cause notice that these preferential allottees had traded with Subodh Agarwal and were part of the orchestrated scheme and therefore the case of these 5 entities stands on a different footing. In this regard, the learned counsel has placed reliance on various paragraph of the show cause notice as well as order of this Tribunal dated April 29, 2022.

13. We have perused the allegations made against these preferential allottees in the show cause notice and the same has been dealt with by us in our earlier order. The first set of appellants in our earlier order were found to be price manipulators who were connected to the Company or to Subodh Agarwal and the violations committed by them was

affirmed by us. However, the case of the appellants, namely, the preferential allottees were placed in the second set which was dealt by us in detail in paragraph 57 to 61. In paragraph 59 we have held that merely because some preferential allottees have received some shares from another entity in which Subodh Agarwal was a director does not make their trades tainted unless it was shown that they had traded for the purpose of increasing the price of the scrip. We further held that merely by selling the shares does not manipulate the price of the scrip or becomes part of the fraudulent scheme. We found that the connection drawn was too remote and could not lead these noticees to be part of the fraudulent scheme.

14. Considering the aforesaid, we are not impressed by the submissions of the learned counsel for the respondent that the case of the 5 appellants are distinguishable with the preferential allottees. We do not find that these preferential allottees were part of the price manipulation or had increased the price by selling their shares.

15. Thus, in our view and in view of our directions given in paragraph 60 of our earlier order dated April 29, 2022, the circumstances are similar and therefore these 5 appellants are

required to be given similar treatment / benefit as given to the 31 exonerated preferential allottees.

16. In the light of the aforesaid we are of the opinion that these 5 appellants who were the preferential allottees are required to be given similar treatment as given to the 31 preferential allottees who were exonerated earlier by the WTM. Consequently, the directions passed by the CGM in the order dated January 27, 2023 cannot be sustained.

17. The AO on the same facts in its order of August 30, 2022 has also found these appellants to be guilty of the PFUTP Regulations and accordingly imposed penalties.

18. Since we have been exonerated these 5 appellants against the order of the CGM we are of the opinion that the findings against these 5 appellants against the order of the AO cannot be sustained.

19. In the matter of the appellant Mr. Surendra Kumar Gupta in Appeal no. 939 of 2022 this Tribunal in our earlier order of April 29, 2022 found him to be a preferential allottee and had remanded the matter to the WTM / CGM to decide the matter afresh in the light of the observation made therein. In paragraph 172 and 175 the CGM in its order dated January

27, 2023 exonerated Mr. Surendra Kumar Gupta on the ground that he was not connected to Company and found that the charge of violation of Regulation 3 and 4 of the PFUTP Regulations was not established. The AO by its order dated August 30, 2022 however, found him guilty and imposed the penalty.

20. We are of the opinion that SEBI as a regulator is required to take a consistent stand and if the CGM who is a higher authority under the SEBI Act finds that the appellant has not violated Regulations 3 and 4 of the PFUTP Regulations then on this short ground the findings given by the AO cannot be sustained and thus on this short ground the order of the AO insofar as it relates to the appellant Mr. Surendra Kumar Gupta cannot be sustained.

21. Appeal no. 1037 of 2022 (Sandhya Agarwal & three others), Appeal no. 1038 of 2022 (Sulabh Engineers and Services Ltd.), Appeal no. 1039 of 2022 (Raghuvansh Agrofarms Ltd. & Anr.), Appeal no. 1040 of 2022 (Manish Kumar Garg), Appeal no. 1041 of 2022 (Manoj Kumar Agarwal) and 1042 of 2022 (Deepa Mittal) have been filed against the order of the AO dated August 30, 2022 imposing penalties of different amounts.

22. In this regard, we find that they were also found guilty by the WTM in its order of September 3, 2020 for violating Regulation 3 and 4 of PFUTP Regulations. Accordingly the WTM had debarred these appellants from accessing the securities market for specified periods. Against the order of the WTM dated September 3, 2020 appeals were filed which were clubbed and this Tribunal by its order dated April 29, 2022 affirmed the findings of the WTM and dismissed their appeals. The findings given by this Tribunal are from paragraph 32 to 56 of our order dated April 29, 2022. These appellants preferred Civil Appeal before the Supreme Court of India which were dismissed and the order of this Tribunal was affirmed except the appeal of Raghuvansh Agrofarms Ltd. which appeal is pending but there is no interim order passed by the Supreme Court.

23. In this light of the aforesaid, we are of the view that on the same issue we have affirmed the violations committed by these appellants and on which the AO has also arrived at the same reasoning. We, therefore, do not find any reason to interfere in the findings given by the AO which is similar to that of the findings given by the WTM which has been affirmed by this Tribunal in our order dated April 29, 2022.

24. The only question, thus, raised is with regard to the quantum of penalty. In the appeal of Manish Kumar Garg it was argued that identical placed noticees were imposed Rs. One lakh whereas in the case of the appellant Manish Kumar Garg, a penalty of Rs. 5 lakh has been imposed which is disproportionate. Further 28 entities connected to Subodh Agarwal were imposed a penalty of Rs. 1 lakh whereas the appellant has been penalized on the ground that he had contributed to positive LTP.

25. In appeal of Sandhya Agarwal and Ors. a penalty of Rs. 20 lakh has been imposed and the ground urged is that the penalty is excessive.

26. In appeal of Manoj Kumar Agarwal and Deepak Mittal similar grounds were raised and in support of their contention the decision of this Tribunal in ***Zenith Steel Pipes and Industries Ltd., Appeal no. 554 of 2021 decided on February 21, 2023*** on the issue of proportionality was relied upon. Similarly in the appeal of Sulabh Engineers and Services Ltd. (Appeal no. 1038 of 2022) a penalty of Rs. 20 lakh was imposed contending that the penalty of Rs. 20 lakh was

excessive. Reliance of paragraph 18 of Zenith Steel Pipes and Industries Ltd. was relied upon.

27. Having heard the learned counsel for the parties we find that admittedly this Tribunal has affirmed the finding of the WTM having found them to have violated Regulations 3 and 4 of the PFUTP Regulations. This Tribunal gave a specific finding that the appellants along with other noticees devised a scheme so as to manipulate the price of the scrip which was a dormant scrip. The scheme, which involved allotment of shares to connected entities, announcing a stock split, pumping up the share price artificially and eventually providing an exit to other connected entities so that huge profits could be earned were found to be true against the appellants. This Tribunal in its earlier order has specifically considered the role of all the appellants and found the charge of price manipulation to be correct.

28. We also find that the AO in paragraph 106 of its order has found the appellant Manoj Kumar Agarwal (Appeal no. 1041 of 2022) to have earned unlawful profit of Rs. 10,95,45,280/- and Deepa Mittal (Appeal no. 1042 of 2022) to have earned an unlawful profit of Rs. 93,71,250/-. In the same paragraph the appellant Sandhya Agarwal, Ruchi

Agarwal, Krishana Agarwal and Manish Agarwal (Appeal no. 1037 of 2022) have earned unlawful profits amounting to Rs. 3,77,13,755/-, 4,51,51,000, Rs. 5,86,14,534 and Rs. 7,78,03,350 respectively. Similarly Manish Kumar Garg (Appeal no. 1040) earned unlawful profit of Rs. 2,67,12,161/-

29. In the light of the aforesaid, the Supreme Court in ***Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) 5 SCC 90*** held that the Court can only interfere where the quantum of penalty is wholly arbitrary and harsh which no reasonable man would award. In the instant case the penalty has been imposed under Section 15HA of the SEBI Act which provides penalty ranging from Rs. 5 lakh to Rs. 25 crore or three times the profit made out of such practices. Considering the profit made by each of the appellants we are of the opinion that the AO was lenient in imposing the penalty and therefore in our opinion the quantum of penalty is neither harsh nor arbitrary and therefore requires no interference by this Tribunal.

30. In so far as Sulabh Engineers and Services Ltd. (Appeal no. 1038 of 2022) are concerned reliance on paragraph 18 in the decision of Zenith Steel Pipes and Industries Ltd. is

misplaced and distinguishable. In our opinion the imposition of penalty of Rs. 20 lakh in given facts is just and reasonable.

31. Insofar as Raghvansh Agrofarms Ltd. and Litmus Ltd. (Appeal no. 1039 of 2022) are concerned we find that the contention that their arguments were not considered by the AO is patently erroneous. All the arguments were heard and clubbed together and have been decided by the AO. Before us a general ground was raised in the memo of appeal that the arguments raised by the appellants were not considered. Such ground raised in our opinion is general and vague. It is not known which specific arguments relating to which specific violations was raised which was not considered. In the absence of any specific details such contention cannot be considered and is summarily rejected. The contention that they traded only for one day and their contribution to the LTP was miniscule and that two of the counterparties were exonerated, in our opinion no ground to exonerate the said appellants. The findings against the said appellants given by the WTM was affirmed by this Tribunal and consequently we are of the opinion that the order of AO does not suffer from any error.

32. In view of the aforesaid –

(i) Appeal no. 416 of 2023 (Sanjay Kumar), Appeal no. 417 of 2023 (Pranveer Singh), Appeal no. 418 of 2023 (Geeta Mishra), Appeal no. 419 of 2023 (Praveen Kumar Mishra), Appeal no. 420 of 2023 (Divya Agarwal), Appeal no. 938 of 2022 (Sanjay Kumar), Appeal no. 939 of 2022 (Surendra Kumar Gupta), Appeal no. 940 of 2022 (Pranveer Singh), Appeal no. 941 of 2022 (Geeta Mishra), Appeal no. 942 of 2022 (Praveen Kumar Mishra) and Appeal no. 943 of 2022 (Divya Agarwal) are allowed.

(ii) Appeal no. 1037 of 2022 (Sandhya Agarwal & Ors), Appeal no. 1038 of 2022 (Sulabh Engineers and Services Ltd.), Appeal no. 1039 of 2022 (Raghuvansh Agrofarms Ltd. & Anr.), Appeal no. 1040 of 2022 (Manish Kumar Garg), Appeal no. 1041 of 2022 (Manoj Kumar Agarwal) and Appeal no. 1042 of 2022 (Deepa Mittal) are dismissed.

33. In the circumstance of the case parties shall bear their own costs.

58. 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

Ms. Meera Swarup
Technical Member

05.09.2023
msb