

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 01.07.2021

**Misc. Application No. 757 of 2021
And
Appeal No. 440 of 2021**

Vivek Kudva

..... Appellant

Versus

Securities & Exchange Board of India

... Respondent

**With
Misc. Application No. 758 of 2021
And
Appeal No. 441 of 2021**

Roopa Kudva

..... Appellant

Versus

Securities & Exchange Board of India

... Respondent

Mr. Darius Khambata, Senior Counsel and Mr. Mustafa Doctor, Senior Counsel, with Mr. Ranjit Shetty, Mr. Luckyraj Indorkar, Mr. Rahul Dev, Ms. Avina Karnad, Advocates i/b Argus Partners for the Appellants.

Mr. Arvind P. Datar, Senior Advocate with Mr. Pratap Venugopal, Mr. Suraj Chaudhary, Advocates i/b Mr. Atishay Jain, Advocate for the Respondent.

ORDER :

1. Both the appeals are being taken up together as it arises from a common order.

2. One of the appellants Vivek Kudva is a director of the Asset Management Company of the mutual funds and others are members of his immediate family. The charge against the appellants is, that they redeemed their mutual funds units when the schemes were facing significant redemption pressure and eventually those schemes were wound up on April 23, 2020. The Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') in the impugned order has found that the appellants had non public information based on which they redeemed their units between March 20, 2020 to April 8, 2020 prior to the closure of the units on April 23, 2020. The WTM after considering the matter came to the conclusion that even though there was no fraud or inducement made by the appellants, nonetheless, they are guilty of unfair trade practice as stipulated under the PFUTP Regulations. Accordingly, certain directions were issued debarring the appellants from accessing the securities market and were further directed to pay penalty and transfer the redeemed amount in an

escrow account. Such directions has been issued in paragraph No. 56 of the impugned order.

3. Having heard the learned counsel for the parties, we allow the respondent four weeks' time to file a reply. In their reply, they will bring on record as to how many units were redeemed by unit-holders between March 1, 2020 to April 23, 2020 since we find that SEBI had directed a forensic audit and the show cause notice was issued on the basis of this forensic audit report. Let a reply in rejoinder be filed within four weeks thereafter. The matters would be listed alongwith Appeal No. 443 of 2021 (Franklin Templeton Asset Management (India) Pvt. Ltd. vs. SEBI) on August 30, 2021.

4. Considering the facts and circumstances that have been brought on record, we direct that direction No. (i) of paragraph No. 56 of the impugned order shall remain stayed during the pendency of the appeal. In so far as the direction to keep the redemption amount in an escrow account, the said direction will continue. In so far as the penalty amount is concerned, we direct that the appellants shall deposit 50% of the penalty amount within three weeks from today. Balance amount shall not be recovered by the respondent during the pendency of the appeals.

5. Parties will take instructions from the Registrar 48 hrs. before the date fixed in order to find out as to whether the appeal would be heard through video conference or through physical hearing.

6. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the Registry. In these circumstances, 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. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

01.07.2021
PTM