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National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53529	Date: September 02, 2022
Circular Ref. No: 120/2022	

To All NSE Members

Sub: **SAT order in the matter of Hemant Ghai, Shyam Mohini Ghai & Jaya Hemant Ghai**

This is with reference to NSE Circular No. NSE/INVG/47007 dated January 13, 2021 in respect of SEBI order no. WTM/MPB/ISD/166/2021 dated January 13, 2021, & NSE Circular No. NSE/INVG/49486 dated September 02, 2021 in respect of SEBI order no. WTM/MB/ISD/13305/2021-22 dated September 02, 2021 wherein SEBI had restrained below entities from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever till further directions.

Sl. No.	Name of the Entity	PAN
1	Hemant Ghai	AHMPG0327K
2	Shyam Mohini Ghai	AHSPG1017G
3	Jaya Hemant Ghai	ADWPT5210G

The Hon'ble SAT now vide its order dated August 25, 2022 has stated that the interim directions restraining the appellants from buying, selling or dealing in securities either directly or indirectly, in any manner whatsoever is set aside.

The detailed order is available on SAT website (http://www.sat.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Abhishek Goenka (Extension: 23449), Mr. Atish Agarwal (Extension: 26026)

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National Stock Exchange of India

Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Atish Agarwal
Senior Manager

National Stock Exchange of India

Annexure
SAT Order in the matter of Mr. Hemant Ghai, Shyam Mohini Ghai & Jaya Hemant Ghai

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 23.8.2022
Date of Decision: 25.8.2022

Appeal No.475 of 2022

Mr. Hemant Ghai
Flat No.1401, Tiara Tower,
Central Avenue Road, Santacruz West,
Mumbai – 400 054. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot C-4A, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051. …Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Ravichandra S. Hegde, Mr. Abhineet Sharma, Ms. Parinaz Bharucha, Mr. Samyak Pati, and Mr. Vishal Khanavkar, Advocates i/b. Parinam Law Associates for the Appellant.

Mr. T.N. Subramaniam, Advocate with Mr. Ravishekhar Pandey and Ms. Samreen Fatima, Advocates i/b. The Law Point for the Respondent.

With
Appeal No.476 of 2022

1. Ms. Jaya Hemant Ghai
   Flat No.1401, Tiara Tower,
   Central Avenue Road,

Santacruz West, Mumbai – 400 054.

2. Ms. Shyam Mohini Ghai
Flat No.1401, Tiara Tower,
Central Avenue Road,
Santacruz West, Mumbai – 400 054. ...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot C-4A, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai – 400 051. …Respondent

Mr. Mustafa Doctor, Senior Advocate with Mr. Ravichandra S. Hegde, Mr. Abhineet Sharma, Ms. Parinaz Bharucha, Mr. Samyak Pati, and Mr. Vishal Khanavkar, Advocates i/b. Parinam Law Associates for the Appellant.

Mr. T.N. Subramaniam, Advocate with Mr. Ravishekhar Pandey and Ms. Samreen Fatima, Advocates i/b. The Law Point for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per: Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 22nd July, 2022 passed by the Whole Time Member (‘WTM’ for short) disposing of the show

cause notice dated 24th February, 2022 with a direction to Securities and Exchange Board of India (hereinafter referred to as 'SEBI') to reinvestigate the matter within six months. By the said order, the WTM directed that the deposit of Rs.2,95,18,680/- toward alleged unlawful gain will remain in an escrow account and that the interim order restraining the appellants from buying, selling or dealing in securities, either directly or indirectly, and that the appellant Mr. Hemant Ghai was directed to cease and desist, directly or indirectly, any activity related to giving investment advice, sell or buy recommendations, publishing of research reports etc., related to the securities market would continue during the reinvestigation period.

2. The facts in brief is, that SEBI conducted a preliminary examination of the trades executed by Mrs. Jaya Hemant Ghai and Mrs. Shyam Mohini Ghai, the appellants which revealed violations under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and the

Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as ‘PFUTP Regulations, 2003’). The preliminary examination revealed that Mr. Hemant Ghai was buying shares of various companies in the name of his wife Mrs. Jaya Hemant Ghai and mother Mrs. Shyam Mohini Ghai on the previous day. Mr. Hemant Ghai was a financial adviser and was hosting/cohosting various shows on the T.V. channel and he would make recommendation on the next day before the start of the stock exchange recommending those very stocks which he had purchased the previous day. As a result of his recommendations on T.V. show, fluctuations in those very scrips were noticed in which Mr. Hemant Ghai made a recommendation. As a result of this movement of the trades by other investors Mr. Hemant Ghai off loaded the shares which he had purchased in the name of his wife and mother under the BTST trades, which means, Buy Today Sell Tomorrow and made unlawful gains. It was, thus, observed that the trades executed in the name of the wife and mother was prima facie in violation of the SEBI Act and PFUTP Regulations. The investigation revealed that unlawful gain amounting to Rs.2,95,18,680 was earned during this period.

3. Accordingly, an ex-parte ad-interim impounding order dated 13th January, 2021 was passed by the WTM restraining the appellants from buying, selling or dealing in securities. The appellant Mr. Hemant Ghai was restrained from giving any investment advice directly or indirectly. The appellants were further directed to deposit the unlawful gain of Rs.2,95,18,680 in an escrow account.

4. The appellants appeared before the WTM and contested the matter. The WTM issued a confirmatory order dated 2nd September, 2021.

5. During the investigation period it was found that unlawful gains were more than Rs.2,95,18,680. Accordingly, another ex-parte order dated 3rd

February, 2022 was passed further impounding a sum of Rs.3,90,67,921 and directing the appellants to deposit the said amount in an escrow account. This order of 3rd February, 2022 was challenged by the appellants which was allowed by this Tribunal by an order dated 30th March, 2022. This Tribunal held that no reason whatsoever was given by the WTM for passing an impounding order for deposit of further sum of Rs.3,90,67,921. This Tribunal further was of the opinion that when a show cause notice has already been issued there was no reason to pass an ex-parte ad-interim order and that such orders could be passed after giving an opportunity of hearing. This Tribunal, accordingly, directed the WTM to hear and dispose of the matter within six months from the date of filing a reply by the appellants and the order would be passed within two months thereafter.

6. Pursuant to the aforesaid order, the WTM has passed the impugned order on 22nd July, 2022 directing SEBI to reinvestigate the matter.

7. We have heard Mr. Mustafa Doctor, Senior Advocate assisted by Mr. Ravichandra S. Hegde, Mr. Abhineet Sharma, Ms. Parinaz Bharucha, Mr. Samyak Pati, and Mr. Vishal Khanavkar, Advocates for the appellants and Mr. T.N. Subramaniam, Advocate assisted by Mr. Ravishekhar Pandey and Ms. Samreen Fatima, Advocates for the Respondent.

8. The appellant is basically aggrieved by the continuation of the ad-interim order dated 13th January, 2021. The WTM while considering the allegations made in the show cause notice have dealt in detail and has given reasons which have been culled out in paragraph nos. 22.1 to 22.7 as to why an order cannot be passed as the investigation is incomplete. The WTM concluded that there would be a miscarriage of justice and, therefore, SEBI is required to reinvestigate and dwell deeper and examine in detail each and every aspect of the matter starting from the process of collection of information about a particular impugned scrip by the research team for being included

in the ‘to be recommended list’, etc. The WTM on the basis of the material evidence on record found it to be a fit case for reinvestigation.

9. While directing reinvestigation, the WTM disposed of the show cause notice dated 24th February, 2022 but allowed the continuation of the interim order.

10. In our view, no reasons whatsoever has been given in the impugned order as to why the ex-parte ad-interim order dated 13th January, 2021 should be allowed to continue.

11. In our order dated 30th March, 2022 in appeal no.111 and 110 of 2022 we had categorically observed that the restraint order cannot continue indefinitely.

12. We may note that whether the appellants have violated SEBI laws or not is yet to be adjudicated. A show cause notice was issued based on the investigation conducted by SEBI. The WTM in the impugned order has held that there is no sufficient evidence and the matter requires reinvestigation for the reasons stated in the impugned order. Therefore, in our

view, the restraint order cannot continue indefinitely merely on prima facie basis, otherwise, it would become arbitrary and in violation of the appellants' fundamental right to trade and do business under Article 19(1)(g) of the Constitution.

13. By the interim order of 13th January, 2021 the appellants were restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner, whatsoever and the appellant Mr. Hemant Ghai was directed to cease and desist, directly or indirectly, any activity related to giving investment advice, sell or buy recommendations, publishing of research reports etc., related to the securities market. These directions were issued in paragraphs 59.1 and 59.3 of the ex-parte ad-interim order dated 13th January, 2021.

14. Since the appellants have been restrained from dealing in the securities market since 13th January, 2021 and more than 18 months have elapsed and according to the WTM fresh investigation is required for which a

timeline of six months has been given, we are of the opinion that the interim directions dated 13th January, 2021 as confirmed on 2nd September, 2021 and the directions given in the impugned order requires modification.

15. Considering the facts and circumstances of the present case and the fact that reinvestigation has already been ordered by the WTM which is likely to take time, we issue the following directions.

a. The amount of Rs.2,95,18,680 shall remain in the escrow account during the pendency of the investigation. In the event, the investigation exceeds beyond the timeline given in the impugned order dated 22nd July, 2022 it would be open to the appellants to move an appropriate application/appeal for reconsideration of this direction.

b. The interim directions restraining the appellants from buying, selling or dealing in securities either directly or indirectly, in any manner whatsoever is set aside.

c. The directions issued against the appellants to cease and desist, directly or indirectly, any activity related to giving investment advice, sell or buy recommendations, publishing of research reports etc., related to the securities market is also set aside.

d. Any restrictions placed by the respondent on any bank account and/or demat account of the appellants shall be lifted forthwith.

e. If the appellants are found to have violated any provisions of the SEBI laws, it would be open to the respondent to pass an ad-interim order.

16. The impugned orders are modified accordingly and the appeals are partly allowed to that extent. In the circumstances of the case, parties shall bear their own costs.

17. 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

Justice M.T. Joshi
Judicial Member

Ms. Meera Swarup
Technical Member

25.8.2022
RHN