# National Stock Exchange of India

## Circular

| Department: Investigation | |
|---|---|
| Download Ref No: NSE/INVG/56557 | Date: April 28, 2023 |
| Circular Ref. No: 116/2023 | |

To All NSE Members,

**Sub**: **SAT Order in the matter of Sulabh Engineers & Services Limited**

This is with reference to NSE circular no. NSE/INVG/45585 dated September 03, 2020 referring to SEBI Order no. WTM/MB/IVD/ID4/8865/2020-21 dated September 03, 2020 and NSE circular no. NSE/INVG/52188 dated May 04, 2022 referring to Hon'ble Securities Appellate Tribunal Order dated April 29, 2022 and NSE Circular no. NSE/INVG/55399 dated January 27, 2023 referring to SEBI Order no. QJA/AA/IVD/ID4/23144/2022-23 dated January 27, 2023.

SAT now vide its Order dated April 25, 2023 has inter alia stated that the impugned order passed by the Chief General Manager insofar as it relates to the following entities is quashed.

| Sr. no. | Name | PAN |
|---|---|---|
| 1 | Arung Kumar HUF | AAIHA4621B |
| 2 | Ashok Kumar Maheshwari | AARPM1903H |
| 3 | Mahabir Pershad HUF | AAEHM5783L |
| 4 | Mahak Maheshwari | AKKPM2866N |
| 5 | Manish Maheshwari | AGRPM7399D |
| 6 | Manish Sharma | BATPS3099D |
| 7 | Manoj Agarwal | ABBPA2306H |
| 8 | Narender Kumar | AARPS2630M |
| 9 | Narender Kumar HUF | AAEHN5960N |
| 10 | Sajan Kumar Agarwal | AAKPA5957G |
| 11 | Sanjay Kapoor | AGCPK3754D |
| 12 | Sanjay Kumar HUF | AAQHS9987L |
| 13 | Sanjeev Sanghvi | ABTPS2464C |

NSE

India@75 A guiding light, shining bright

## National Stock Exchange of India

| Sr. no. | Name | PAN |
|---|---|---|
| 14 | Sapna Kapoor | ACQPK3632A |
| 15 | Seema Kapoor | AERPK1243A |
| 16 | Sunil Kapoor | AGCPK3755C |
| 17 | Vinay Kumar Agarwal | ACAPA3335N |

The order comes into force with immediate effect.

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page at the below mentioned link:

https://www.nseindia.com/regulations/member-sebi-debarred-entities

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. Rajkumar Jain (Extension: 23457), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

**For and on behalf of**
**National Stock Exchange of India Limited**

**Anand Jangir**
**Manager**

NSE

India@75 A guiding light, shining bright

# National Stock Exchange of India

**ANNEXURE:** SAT Order in the matter of Sulabh Engineers & Services Limited

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Date of Decision: 25.4.2023**

**Appeal No.331 of 2023**

Manoj Agarwal
14/72 Gopal Vihar,
Civil Lines, Kanpur-208001. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Abishek Venkatraman. Advocate with Mr. Viswajit P. Deb, Advocate i/b. Mr. Vikas Bengani for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.332 of 2023**

Manish Sharma
4/276-I, Vasant Enclave,
Parvati Bagla Road,
Nawabganj, Kanpur,
Uttar Pradesh-208002. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,

G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.333 of 2023**

1. Narender Kumar
2. Mahabir Pershad HUF
3. Sanjay Kumar HUF
4. Arung Kumar HUF
5. Narender Kumar HUF
   D-151, East of Kailash,
   South Delhi, Delhi-110065. ...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Ashim Sood, Advocate with Mr. Ekansh Gupta, Advocate i/b. Mr. Vikas Bengani for the Appellant.

Mr. Pradeep Sancheti, Senior Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.334 of 2023**

Sajan Kumar Agarwal
F-1, Yog Galaxy,
15/82, Lathhe Wali Kothi,
Civil Lines, Kanpur-208001. ...Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.335 of 2023**

Sanjeev Sanghvi
79/08, Latouche Road,
Kanpur-208001. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.336 of 2023**

1. Ashok Kumar Maheshwari
2. Manish Maheshwari
3. Mahak Maheshwari
   13/5, Bungalow No.16,
   Ganga Chhavi Enclave,
   Civil Lines, Kanpur-208001. ...Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,

Bandra (E), Mumbai-51. …Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.337 of 2023**

Vinay Kumar Agarwal
A-7, Armstrong Avenue,
Bidhan Nagar Sec 2-B,
Durgapur, Bardhhaman,
West Bengal-713212. ...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51. …Respondent

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates i/b. Vidhii Partners for the Respondent.

**With**
**Appeal No.338 of 2023**

1. Seema Kapoor
2. Sanjay Kapoor
3. Sapna Kapoor
4. Sunil Kapoor
   117K/13, Plot No.32,
   Block-E, Anand Cottagem
   Moti Vihar Gutaiya, Sarvodaya Nagar,
   Hans Nagar, Kanpu-208005. ...Appellants

Versus

Securities and Exchange Board of India …Respondent

SEBI Bhavan, Plot No.C4-A,
G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-51.

Mr. Vikas Bengani, Advocate for the Appellant.

Ms. Nidhi Singh, Advocate with Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, 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 (Oral)

1. The appellants have filed the present appeal challenging the order of the Chief General Manager, Securities and Exchange Board of India dated 27th January, 2023 and the corrigendum dated 8th February, 2023 passed by the Chief General Manager restraining the appellants from accessing the securities market for a specified period.

2. The facts leading to the filing of the present appeal is, that a common show cause notice dated 31st July, 2017 was issued in the matter of Sulabh Engineers and Services Ltd. The show cause notice that was issued

pursuant to the investigation report alleged that the appellants had off market transactions with connected group entities and had benefited by selling the shares. It was alleged that the appellants had indulged in price manipulation and had violated Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003. The Whole Time Member (hereinafter referred to as 'WTM') after considering the material evidence on record passed an order dated 3rd September, 2020 finding the appellant to be guilty of the alleged violations and, accordingly, restrained the appellants from accessing the securities market for specified period.

3. The appellants filed an appeal before this Tribunal which was allowed by order dated 29th April, 2022 and the order of the WTM was set aside and the matter was

remanded for passing a fresh order in accordance with the observations made in the order.

4. In the meanwhile, parallel proceedings were initiated under Section 15I of the Securities and Exchange Board of India Act, 1992 by the Adjudicating Officer (hereinafter referred to as 'AO') arising out of the same investigation and of the same trades for the same cause of action. The AO passed an order dated 30th August, 2022 in respect of 145 noticees including the appellants holding that the appellants' trades were not manipulative and had not contributed to positive LTP and, therefore, charges levelled against the appellants were dropped.

5. The order of the AO was brought to the knowledge of the Chief General Manger. The Chief General Manager after noting the AO's order in paragraph nos.164 and 165 held that the decision of the AO will not affect the present proceedings and proceeded to pass the order. The Chief General Manager after

finding that the appellants had violated the SEBI laws issued an order prohibiting them from accessing the securities market for specified periods.

6. We have heard Mr. Abishek Venkatraman. Advocate assisted by Mr. Viswajit P. Deb, Advocate for the appellant in Appeal no.331 of 2023; Mr. Ashim Sood, Advocate assisted by Mr. Ekansh Gupta, Advocate for the appellant in Appeal no.333 of 2023 and Mr. Vikas Bengani in Appeal nos.332, 334, 335, 336, 337 and 338 of 2023 and Mr. Pradeep Sancheti, Senior Advocate assisted by Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Purvi Jain, Ms. Hubab Sayyed and Mr. Raghav Taneja, Advocates for the Respondent.

7. The question which arises for consideration is that once an AO after making an enquiry and after adjudicating the matter quashes the proceedings is it open to SEBI to adjudicate the same issue on the same facts under Section 11B and contend that the order of

the AO was erroneous or can ignore the order of the AO.

8. The learned senior counsel for the respondent fairly conceded that on this issue the controversy involved is squarely covered by a decision of this Tribunal in ***Nirmal Kotecha vs. SEBI, Appeal No.580 of 2019 decided on 8th June, 2021***. This Tribunal in Nirmal Kotecha's case (supra) held:

> *"9. No doubt, the provisions of Sections 11B and 15I are different and distinct. The powers exercised by the Board under Chapter IV under Sections 11 and 11B are powers prescribed under the Act. The directions issued under Section 11B after due investigation under Section 11C are remedial in nature. On the other hand, under Section 15I under Chapter VI-A, a mechanism has been provided to an AO to impose penalties for various violations if committed under the Act or Regulations framed therein.*
>
> *10. Directions under Section 11B of the Act can be issued if the Board is satisfied that it is necessary in the interest of the investors or orderly development of the securities market or where the affairs are being conducted in a manner which is detrimental to the interests of the investors or the securities market. Such directions so issued are remedial in nature. On the other hand, Section 15I of the Act gives power to the AO to penalize a person under Sections 15A, 15B,*

*15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB of the Act in the event the person contravenes the provisions of the Act and the Regulations framed therein.*

*11. There is no doubt that under the Act separate proceedings can be initiated, one under Section 11, 11B and the other under Section 15I of the Act……………*

*13. In our opinion, once an issue, on the same facts and between the same parties has been determined, it gives rise to an issue estoppel. It operates not only in the same proceedings but also in subsequent proceedings.*

*14. In Hope Plantations Ltd. (Supra) the Supreme Court held that principles of estoppel and res judicata are based on public policy and justice and that the doctrine of res judicata is often treated as a branch of law of estoppel. The Supreme Court held:-*

> *"Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are "cause of action estoppel" and "issue estoppel". These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance*

*arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice."*

*15. In **Gopal Prasad Sinha vs. State of Bihar (1970) 2 SCC 905**, the Supreme Court held that the basic principle underlying the rule of issue estoppel is that the same issue of fact and law must have been determined in the previous litigation.*

*16. Thus, an estoppel which has come to be known as "issue estoppel" may arise where a plea of res judicata could not be established because the cause of action was not the same. In order to apply the doctrine of res judicata it is an essential requirement that the actual issues in the two proceedings are identical.*

*17. In this regard the question which arises further is, whether it was the same issue of fact which was determined in the earlier case, namely, the proceedings before the AO, and our answer* *is, yes. This finding is based on a perusal of the order of the AO in which the same transactions was considered on the same facts as well as the Policy of SEBI. Further, the violation of the provision of the Act was also the same and the same law was also taken into taken consideration by the AO. Further, the same facts and law considered by the AO is not disputed by the respondent.*

*18. In the light of the aforesaid, when the earlier proceedings is identical on facts and law with the present proceedings and the subject matter/ issue involved is the same, in such a case, we are of the opinion that the bar is absolute in relation to all points decided. The principle of issue estoppel is fully applicable in the instant case."*

9. In view of the aforesaid, we are of the opinion that the authorities of SEBI are required to take a consistent view for the purpose of orderly development of the securities market and quasi-judicial authorities are required to maintain a discipline and ensure that divergent opinion on the same issue are not taken. If the order of the AO was incorrect it could have been reviewed under Section 15I of the SEBI Act but it was not open to another authority of SEBI to take a different opinion on the same issue, on the same cause

of action and between the same parties. The principles of judicial discipline require taking a consistent view in the matter regarding a noticee.

10. For the reasons stated aforesaid, the impugned order passed by the Chief General Manager insofar as it relates to the appellants is quashed. The appeals are allowed.

11. 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

25.4.2023
RHN