

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 05.04.2022**

**Date of Decision : 08.04.2022**

**Appeal No. 137 of 2022**

Arnav Gupta

Minor represented by

Mrs. Chhavi Sawhney Gupta

C-6/7, Krishna Nagar,

Delhi 110 051.

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. Prakash Shah, Advocate with Mr. Kushal Shah, CA i/b  
Prakash Shah & Associates for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta,  
Mr. Shourya Tanay and Mr. Harshvardhan Nankani,  
Advocates i/b ELP for the Respondent (SEBI).

**AND**

**Appeal No. 138 of 2022**

Arnav Gupta

Minor represented by

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C-6/7, Krishna Nagar,

Delhi 110 051.

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No. C-4A, G-Block,

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Mumbai 400 051.

Respondent

Mr. Prakash Shah, Advocate with Mr. Kushal Shah, CA i/b Prakash Shah & Associates for the Appellant.

Mr. Abhiraj Arora, Advocate with Ms. Anshu Mehta, Mr. Shourya Tanay and Mr. Harshvardhan Nankani, Advocates i/b ELP for the Respondent (SEBI).

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 appellant has challenged the order dated October 20, 2021

for short) of the Securities and Exchange Board of India

wherein a penalty of Rs. 10 lakh was imposed for violation of Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating

for short). Since the amount was not paid within the stipulated period, a Recovery Certificate was issued by the Recovery Officer on January 25, 2022 which has also been challenged in a separate appeal.

2. The facts leading to the filing of the present appeals are, that an investigation was conducted by SEBI into the trading activities of certain entities in illiquid stock option on the BSE

platform during the period April 1, 2014 to September 30, 2015. Based on the investigation, a show cause notice dated June 28, 2021 was issued to the appellant. Since the appellant did not appear, the AO passed the impugned ex parte order on October 20, 2021 imposing a penalty of Rs. 10 lakh for violation of Regulation 3 and 4 of the PFUTP Regulations. The Recovery Certificate was issued by the Recovery Officer on January 25, 2022.

3. We have heard Shri Prakash Shah, the learned counsel for the appellant and Shri Abhiraj Arora, the learned counsel for the respondent.

4. The contention of the appellant is, that the appellant is a minor and was born on July 7, 2010 and consequently on the date of the alleged transaction he was 4 years and 9 months. It was contended that in view of Section 11 of the Indian Contract Act a minor has no legal competence to enter into a contract or authorise someone on his behalf to enter into a contract. However, under Section 8 of the Hindu Minority and Guardianship Act, 1956 a natural guardian has a legal competence to enter into a contract on behalf of the minor. It was, thus, urged that proceeding against the appellant cannot be proceeded as he was a minor and that action, if any, can

only be taken against the guardian. In support of his contention the learned counsel for the appellant has placed reliance upon a decision of this Tribunal in the case of *Vatsal Agarwal vs Securities and Exchange Board of India (Appeal no. 114 of 2019 decided on September 4, 2019)*.

5. It was also urged that the show cause notice was never served nor any notice fixing the date of hearing was also served and therefore the impugned order is violative of principles of natural justice and, on this ground the impugned order should also be set aside.

6. Having heard the learned counsel for the parties, we find from a perusal of the PAN card which has been annexed to the memo of appeal that the date of birth of the appellant is recorded as July 7, 2010. Therefore, as on date, the appellant still remains a minor. In *Vatsal Agarwal (supra)* this Tribunal held as under:-

*“5. In our view, the approach adopted by the WTM is patently erroneous and against the provisions of law. Under Section 11 of the Contract Act a minor has no legal competence to enter into a contract or authorize someone on his behalf to enter into a contract. However, under Section 8 of the Hindu Minority and Guardianship Act, 1956, the position is, that a natural guardian has the legal competence to enter into a contract on behalf of a minor if it is for the benefit of the minor. Thus, the natural guardian is competent to enter into a contract on behalf of the minor for the benefit of the estate but such right can in no case bind the minor*

*by a personal covenant. In furtherance of this aspect, it is made clear that the action of the natural guardian if it involves a minor into an obligation of doing certain acts which would amount to a personal covenant by the natural guardian binding the minor, in which case, the agreement, if any, cannot be enforced against the minor and the acts of the natural guardian will not bind the minor.*

9. *From the aforesaid it is apparently clear that the minors at the time of occurrence of the event cannot be subject to any penalty under the SEBI Act and the person who committed the violation can only be proceeded against not only on his own behalf but also on behalf of the minors. The said proposition of law is fully applicable to the instant case which the WTM has totally ignored.*

10. *Section 11 of the Contract Act provides that a person who is competent to contract must be of the age of majority. Admittedly, the appellant was a minor when the alleged violation occurred and consequently he could not have entered into a contract nor could be made responsible for the event. Section 8 of the Hindu Minority and Guardianship Act, 1956 clearly indicates that the natural guardian can enter into a contract and do such acts which are for the benefit of the minor. In the instant case, the action of the guardian has resulted in the triggering of Regulation 11 which carried an obligation to make an open offer. Such obligation was not for the benefit of the minor and, is therefore, a personal covenant of the guardian. Thus, the action of the guardian in the instant case could not bind the minor by a personal covenant as stipulated under Section 8 of the Hindu Minority and Guardianship Act, 1956.”*

7. In view of the aforesaid, the appellant being a minor at the time of occurrence of the event cannot be subjected to any penalty under the SEBI Act, 1992 and the person who committed the violation can only be proceeded against not only on his own behalf but also on behalf of the minors. We further find that the respondent had possession of the PAN

card as is clear from the impugned order and therefore the respondent should have verified the age of the appellant before proceeding further.

8. In view of the aforesaid, it is not necessary for us to go into the question as to whether the appellant was served with the show cause notice or not or whether notice for hearing was given as we are prima facie satisfied that the matter could not be proceeded against the minor.

9. Thus, on this short ground the impugned order cannot be sustained and is quashed, as a result of which, the Recovery Certificate issued in pursuance to the impugned order dated October 20, 2021 also cannot be sustained and is quashed. Both the appeals are allowed with no order as to costs.

10. The matter is remitted to the AO for reconsideration. In this regard the natural guardian and mother Mrs. Chhavi Sawhney Gupta who has filed the present appeal will appear before the AO on April 25, 2022 and produce such documents to show that the appellant Arnav Gupta was a minor. The AO upon making necessary enquiry, if satisfied, that the appellant Arnav Gupta was a minor at the time when the alleged trades were executed will drop the proceedings and pass appropriate

orders accordingly. Thereafter it will be open to the SEBI / AO to issue a fresh show cause notice to the natural guardian of Arnav Gupta or such person responsible for carrying out the trades in question and proceed from there onward in accordance with law.

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

Justice M.T. Joshi  
Judicial Member

Ms. Meera Swarup  
Technical Member

08.04.2022  
msb