
(2023) 08 SEBI CK 0062

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 513, 514, 515, 556, 636 Of 2021, 855 Of 2022

Anoop Jain And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 24-08-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B

Citation : (2023) 08 SEBI CK 0062

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : P.N. Modi, Neville Lashkari, Prakash Shah, Sumit Rai, Manish Chhangani, Samreen Fatima, Sumit Yadav, Abhay Chauhan, Vinay Chauhan, Saachi Purohit

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Four appeals have filed against the order dated July 16, 2021 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) whereby the appellants have been restrained from accessing the securities market for a period of six months. Two appeals have been filed against the order dated July 29, 2022 passed by the Adjudicating Officer ('AO' for short) of the SEBI imposing penalties. Since the facts and issues raised therein are common, consequently all the six appeals are being decided together. For facility, the facts stated in the appeal of Anoop Jain (Appeal no. 513 of 2021) are being taken into consideration.

2. SEBI conducted an investigation for the period June 25, 2012 to September 04, 2014 in the matter relating to buying, selling or dealing in the scrip of Global Infratech and Finance Ltd. ('Global / Company' for short). Based on the

investigation report it was observed that the Noticees were part of the manipulative scheme to make a preferential allotment and manipulate the price to benefit the connected preferential allottees, promoters of the company and promoter related entities.

3. Accordingly, a show cause notice dated March 01, 2018 was issued to 46 entities to show cause why suitable directions under Section 11 and 11B of the SEBI Act, 1992 should not be issued for alleged violations of Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Similar show cause notice was also issued by the AO to show cause why penalties should not be imposed.

4. The show cause notice alleged that the company Global, Noticee no. 8 along with its directors Noticee nos. 9 to 12 made two preferential allotments on January 19, 2012 to 49 entities and again on June 12, 2012 to 44 entities. The trading in the scrip commenced from June 25, 2012. The price opened at Rs. 7.99 on June 25, 2012 and increased to Rs. 57.20 on December 12, 2012 when the shares were split in the ratio of 1:10 with effect from December 13, 2012. Thereafter, the price rose to Rs. 93.15 on November 26, 2013 and soon thereafter price of the scrip declined and closed at Rs. 10.77 on September 04, 2014. It was alleged that the financials of the Company were poor and there were negligible profits in the financial year 2013-14 and 2014-15 and despite the poor fundamentals the price of the scrip rose and increased manifold.

5. The show cause notice alleges that Noticee nos. 1 to 7 were connected to the Company and were major LTP contributors as sellers and sold shares above LTP in miniscule quantities and manipulated the price of the scrip to rise from Rs. 7.99 to Rs. 93.15. The allegation against the Company and its directors Noticee nos. 8 to 12 was that the preferential allotment was made to benefit the preferential allottees and that the Company and its directors were part of the manipulative scheme to manipulate the price through entities Noticee nos. 1 to 7 who were connected to the companies and its promoters so that the benefit is given to the promoters, promoter related entities and connected preferential allottees. The show cause notice alleged that through this manipulative scheme the promoters Noticee nos. 13 to 36 and relatives of the promoters Noticee nos. 37 to 41 benefited from this manipulative scheme.

6. The charge against Noticee nos. 42 to 46 were that they were preferential allottees and were connected to the Company and have sold their shares at inflated price and booked substantial profits. The preferential allottees were part of the manipulative scheme and therefore have violated Regulation 3 and 4 of the PFUTP Regulations.

7. The appellants before us are Noticee nos. 42 to 46, namely, the preferential allottees. The WTM after considering the material evidence on record have exonerated Noticee nos. 13 to 41 who were alleged to be promoters and relatives

of the promoters and who were alleged to have sold shares at the inflated price and booked substantial profits. The WTM found Noticee nos. 42 to 46, namely, appellants to be connected to the Company through fund transaction and presumed that these Noticees are part of the manipulative scheme and have therefore illegally earned substantial profits by selling shares at inflated price. The WTM accordingly restrained them from accessing the securities market for limited period and the AO in turn has imposed penalty.

8. We have heard Shri P.N. Modi, the learned senior counsel, Shri Vinay Chauhan, Shri Prakash Shah, Ms. Saachi Purohit, Shri Neville Lashkari, the learned counsel and Shri Kushal Shah, CA for the appellants and Shri Sumit Rai, the learned counsel with Shri Manish Chhangani, Ms. Samreen Fatima, Shri Sumit Yadav and Shri Abhay Chauhan, the learned counsel for the respondent.

9. The WTM in paragraph 12 of the impugned order finds that Noticee nos. 42, 43 and 44 are connected to each other being husband and wife and Karta in the HUF firm and that Noticee no. 42 is a director in Gulshan Investment Co. Ltd. ('Gulshan' for short) and Pneumatic Leasing Services Pvt. Ltd. ('Pneumatic' for short) and that these two entities, namely, Gulshan and Pneumatic had fund transaction with the Company, namely, Noticee no. 8 and therefore came to the conclusion that Noticee nos. 42, 43 and 44 are connected to the Company and thereby connected to the entities involved in the price manipulation, namely, Noticee nos. 1 to 7.

10. With regard to Noticee nos. 45 and 46 the WTM found that they were connected to each other and that Noticee no. 45 is the director in M/s. ATR Ware Housing Pvt. Ltd. which had fund transaction with the Company Noticee no. 8 and therefore Noticee nos. 45 and 46 are connected to the Company and thereby connected to the entities involved in price manipulation i.e. Noticee nos. 1 to 7. Based on the aforesaid connection the WTM has come to the conclusion that the appellants were involved in the price manipulation in the scrip of the Company and sold the shares at inflated price.

11. In our opinion this finding is patently perverse. Ample evidence has been filed by the appellants to show that the fund transaction with Global was a business transaction in the usual course of business and had nothing to do with the purchase of the preferential allotment of shares or with the price manipulation. The WTM has acknowledged that there is no allegation in the show cause notice against the appellants alleging that the funds received from the Company was utilized for allotment of preferential shares.

12. We find that there is evidence to the effect that the loan was taken in the normal course of business and the same has been duly repaid with interest. In this regard documents in the nature of TDS certificates, ledger entries were produced which has not been considered. We have perused these documents and we are satisfied that the fund transfers from Global to the companies in which the appellants were directors were loans taken in the normal course of business

and the same was duly repaid along with interest. We are further of the opinion that the fund transfers by Global to the appellants companies were not used for the purpose of allotment of shares.

13. We also find that the business transaction of Noticee nos. 45 and 46 with Global was much after the allotment of shares and therefore this aspect has not been considered by the WTM.

14. The finding that since the appellants had business connection with the Company and therefore the appellants were connected to Noticee nos. 1 to 7 who were involved in price manipulation is patently erroneous and based on surmises and conjectures. There is no finding that there was a meeting of minds between the appellants with Noticee nos. 1 to 7. There is no finding nor there is any allegation that there was any collusion of the appellants with Noticee nos. 1 to 7 with regard to the alleged scheme and in manipulating the price.

15. We also find it strange that the Company had issued preferential allotment to 93 allottees and notice has only been issued to only to some of the allottees. No proceedings whatsoever was initiated against the remaining preferential allottees. These preferential allottees were also connected to the Company but for reason best known, proceedings were not initiated against the remaining preferential allottees.

16. In *Umang Dhanuka & Ors vs SEBI* in Appeal no. 102 of 2020 and other connected appeals decided on June 08, 2021 this Tribunal held:-

"Further, having a business connection with the Company does not mean that there were part of the scheme of manipulating the price or they were part of some collusion which in any case is not the finding given by the WTM. The only charge is that being connected through this loan transaction the Dhanuka family is guilty of violation of regulations 3 & 4 of the PFUTP Regulations which is perverse."

17. In our opinion the aforesaid decision is squarely applicable in the instant case.

18. In view of the aforesaid, the impugned order passed by the WTM cannot be sustained and is quashed. For the same reason the order of the AO also cannot be sustained and is quashed. All the appeals are allowed with no order as to costs.

19. 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.