
(2021) 08 SEBI CK 0095

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 116, 150, 170, 172, 190, 191, 192, 193, 194, 195, 196, 197, 219, 284 Of 2019, 130 Of 2020, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664 Of 2021, Appeal

Baldevsinh Vijaysinh Zala And Others APPELLANT
Vs
Securities And Exchange Board Of India RESPONDENT

Date of Decision : 12-08-2021

Acts Referred:

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

Citation : (2021) 08 SEBI CK 0095

Hon'ble Judges : Tarun Agarwala, Presiding Officer; M. T. Joshi, J

Bench : Division Bench

Advocate : J. J. Bhatt, Rinku Valanju, Pratham Masurekar, Hetal Joshi, Aditya Shah, Pradeep Sancheti, Abhiraj Arora, Rashi Dalmia, Karthik Narayan, Nikhil S. Udeshi, Shailesh Kumar, Sumit Rai, Etc.

Final Decision : Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. For the reasons stated in the applications, the delay in the filing of the appeals are condoned. All the misc. application for condonation of delay are allowed.

2. There are two sets of appeals. The first set of appeals is against the order dated 31st December, 2018 passed by the Whole Time Member

(WTM for short) whereby the noticees were held to have made unlawful gains of Rs.1,60,76,904 and were therefore directed to disgorge the

said amount alongwith simple interest @12% per annum. The second set is against the order of the Adjudicating Officer (AO for short) dated

24th January, 2020 whereby penalty has been imposed for violation of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'SEBI Regulations').

Since the facts and the issues are common, all these appeals are being decided together. For facility, the facts stated in appeal no.150 of 2019 are being taken into consideration.

3. Investigation was conducted in the trading activities of certain entities in the scrip of Sarang Chemicals Ltd. wherein it was found that eight crores

shares were traded in the scrip of the Company during the period from 3rd January, 2011 to 8th June, 2011. Pursuant to the investigation, a show

cause notice dated 19th May, 2016 was issued to 13 out of 21 entities alleging that the group traded amongst themselves which created artificial

volumes and misleading appearance in trading in the scrip of the Company thereby increasing the price of the scrip from Rs.0.31/- to Rs.0.90/-. Not

only that, these 13 entities offloaded their shares at an increased price and made an unlawful gain of Rs.1.60 crores.

4. It was alleged that the noticees nos.1 to 5 were instrumental in creating artificial volume and misleading appearance of trading and manipulated the

price of the scrip and offloaded the shares at increased price and thereby violated Regulations 3 and 4 of the SEBI Regulations. Similarly, noticee

nos.6 to 10 were instrumental in price manipulation and were offloading the shares at increased prices. Further, noticee nos.11 to 13 were charged

with offloading the shares at increased prices thereby making unlawful gains. All the appellants who were noticees before the WTM's order filed

their replies contending that there was an inordinate delay in the issuance of the show cause notice. It was contended that the trades were executed in

the year 2011 and that the show cause notice was issued after five years in the year 2016 and, therefore, no disgorgement can be made at this belated

stage. It was further contended that the purchases were made by the appellants as a prudent investor on account of announcement being made by the

Company on its website with regard to its expansion plans. It was further contended that there is no connection with the group of entities and that all

the noticees were acting in their individual capacity on a standalone basis. It was further alleged that they had purchased and sold the shares in the

year 2009, 2010 and 2011. Further, the scrip of the Company was in a group wherein the price is controlled by the Stock Exchange and,

therefore, there cannot be any manipulation in the price of the scrip by the noticees. It was also contended that the charge of disgorgement was

wholly unwarranted.

5. After considering the material evidence on record, the WTM held that due to various procedures involved in the investigation and a large number of

entities being involved as well as the complexity of connections there was no inordinate delay in the issuance of the show cause notice. The WTM in

para 17.1 found that 21 group entities including the appellants were connected with each other. The WTM further found that the noticees traded

amongst themselves which resulted in the creation of artificial volume and misleading appearance of trading in the scrip. In para 18.6, the WTM noted

that one of the noticee Mr. Baldevsinh Vijaysinh Zala who is also an appellant before us was shown to have traded with another noticee Mr.

Ashwinbhai Prabhudas Ruparel and, therefore, came to a conclusion that all the noticees were trading amongst themselves. In para 21, the WTM

came to the conclusion that 16 entities traded amongst themselves and contributed to a positive impact in the price of the scrip. The WTM further

found that the opening price on the first day of the investigation would be taken as the purchase price and, accordingly, held that the appellants had

made unlawful gains of Rs.1.60 crores which they are liable to disgorge at the rate of 12% per annum.

6. The appellants being aggrieved have filed the present appeals.

7. We have heard Mr. J.J. Bhatt, Advocate assisted by Ms. Rinku Valanju, Mr. Pratham Masurekar, Ms. Hetal Joshi, Mr. Aditya Shah, Mr. Nikhil S.

Udeshi and Mr. Shailesh Kumar, Advocates for the appellants and Mr. Pradeep Sancheti, Senior Advocate assisted by Mr. Abhiraj Arora, Ms. Rashi

Dalmia, Mr. Karthik Narayan and Mr. Sumit Rai, Advocates for the respondent at length.

8. The WTM has found that the 13 entities are connected with each other on the basis of being introduced by one Mr. Paresh Doshi and through

common address/telephone numbers, etc. The basis of connection has been given in paragraphs no.17.1, 17.2, 17.3, 17.4 and 17.5. The connection

drawn in our opinion is patently vague and erroneous and does not inspire

confidence. Something more is required to be done in the order to prove that these 13 entities were working as a group. For example if A is connected to B and C is connected to D and D is connected to F it does not mean that A to F are all connected with each other or A is connected to D or A is connected to E or A is connected to C. Thus, something more is required to be shown other than common address, telephone numbers etc. which in the instant case is also lacking inter se between the parties. In this regard, the learned senior counsel for the respondent fairly conceded that the findings of connection given by the WTM is very sketchy but submitted that connection can be drawn from the trading pattern which will show that the 13 entities were trading amongst themselves and, therefore, there was a pre meeting of minds and on preponderance of probability one could infer connection inter se between the noticees. This submission on inter se connection on the basis of trading pattern is also erroneous for the reasons stated hereunder.

9. The contention before us by the parties is the same as that contended before the WTM, namely, that there was no inter se connection between the group; that they made independent trades and there was no price manipulation nor were they involved in creating artificial volume and misleading appearance in trading in the scrip nor were part of the price manipulation of the scrip, if any.

10. We find from a perusal of the show cause notice and the impugned order that the basic charge leveled against the 13 noticees/appellants is, that 13 out of 21 entities, as a group, traded amongst themselves which created artificial volume and misleading appearance in trading in the scrip which resulted in the increase in the price of the scrip from Rs.0.31/- to Rs.0.90/-. We find that there is no evidence in the impugned order to show that noticee nos.1 to 13 traded amongst themselves which resulted in the creation of artificial volume and misleading appearance in the scrip. The WTM in para 18.6 of the impugned order has indicated one instance where trades of Mr. Baldevsinh Vijaysinh Zala matched with Mr. Ashwinbhai Prabhudas Ruparel.

One instance of such trade cannot prove the charge of the 13 entities trading amongst themselves. In this regard, we have also perused the show

cause notice and we find from table 3 of the show cause notice that it depicts certain entities trading inter se amongst themselves. Majority of these entities named in Table 3 except 2 of them are not noticees in the present proceedings. Therefore, in order to prove the charge against the appellants/noticees there must be sufficient material to show that these entities were trading amongst themselves. Except for the aforesaid instance of one trade, we do not find any evidence to show that the 13 noticees/appellants were trading amongst themselves on a continuous basis during the investigation period. In the absence of any evidence we are of the opinion that the charge of the 13 noticees/appellants trading amongst themselves cannot be proved. As a result, the creation of artificial volume, misleading appearance in the trading in the scrip and increase in the price of the scrip automatically fails and cannot be sustained.

11. In the light of the aforesaid, the findings on disgorgement also cannot be sustained. We may further point out that in the instant case the calculation as to how the amount of Rs.1.60 crores was arrived at has not been depicted in the impugned order. We are of the opinion that the WTM was required to calculate the amount of disgorgement against each of the entities. Further, the purchase price of Rs.0.31/- which has been taken up as the opening price on the first date of investigation period cannot be taken into consideration especially when individual entities purchase and sale price are known on which the gain or loss averted can be calculated. Further, disgorgement has to be calculated individually of every noticee and not collectively.

12. We also find that the WTM has considered the question of delay in a very vague manner. No details have been specified. Merely by alleging that various procedures were involved in the completion of the investigation is vague. Further, a specific assertion was made by the appellants that the scrip was in a group and that the price of the scrip was controlled by the Stock Exchange and, thus, there cannot be any manipulation in the price of the scrip. This aspect has been noticed by the WTM but has not been dealt with in the impugned order. Similarly, the plea that there was no meeting of minds and/or the purchase of the scrip was made bonafidely in view of the announcement made by the Company on the stock exchange website has also not been taken into consideration. In our view, the WTM was

required to consider these aspects of the matter.

13. In view of the aforesaid, the impugned order of the WTM cannot be sustained.

14. In so far as the AO's order is concerned we find that notices were issued to 22 noticees and penalty has been imposed to 21 noticees. 13 of

those noticees have filed the present appeal. The charge is the same and upon a perusal of the impugned order of the AO we find that most of the

paragraphs are copy and cut paste from the order passed by the WTM. The findings are more or less similar on the issues involved. Consequently, on

the same ground as dealt above the order of the AO also cannot be sustained in so far as the appellants are concerned.

15. In view of the aforesaid, the impugned order of the WTM and AO in so far as the appellants are concerned are quashed. The appeals are

allowed. The matter is remitted to the authority concerned to pass a fresh order in the light of the observations made above after giving an opportunity

of hearing. All the misc. application for exemption to file certified copy of the order and for stay are accordingly disposed of.

16. 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.