(2022) 05 SEBI CK 0027

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 525 Of 2020

BDS Share Brokers Pvt. Ltd — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2), 4(2)(a), 4(2)(e), 4(2)(g)

Citation : (2022) 05 SEBI CK 0027

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

Bench : Division Bench

Advocate : Nithish Bangera, Varada Bhide, Akshay Kolse Patil, Nidhi Singh, Binjal Samani, Aditi Palnitkar, Moksha Kothari, Vidhii Partners

Final Decision : Allowed

Judgement

M. T. Joshi, J

1. Aggrieved by the order of the learned Adjudicating Officer (hereinafter referred to as 'AO') of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 7 lacs for violation of the provision of Regulations 3(a), (b), (c), (d) and 4(1), 4(2),(a), (e) and (g) 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 'PFUTP Regulations'), the present appeal is preferred.

2. In short, the allegation against the present appellant is, that in the trading of the stocks of Nagpur Power and Industries Ltd. (hereinafter referred to as 'the company'), during patch 1, 3 and 5 of the investigation period the present appellant indulged in self-trades and also manipulated the price of the stock by making non-genuine trades like buying the shares in miniscule quantity for a higher price though large sale orders were pending. The appellant denied the charges. However, the impugned order came to be passed. Hence the present

appeal.

3. We have heard Mr. Nithish Bangera, Practicing Company Secretary for the appellant and Mr. Akshay Kolse Patil, the learned counsel with Ms. Nidhi Singh, Palnitkar, Ms. Moksha Kothari, Respondent. Ms. Binjal Samani, Ms. Aditi the learned counsel for the for the Respondent.

4. Table - 1 of the impugned order would show that the respondent SEBI had received joint examination report from Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Limited (NSE) in which certain observations were made that a group of 11 related entities have entered into bulk deals amongst themselves regarding 17 scrips including the scrip of the present company. On the basis of this joint examination report, SEBI conducted the investigation to find out as to whether any violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') or any regulations was made. During investigations, it was found that 11 entities were not connected with each other. In 16 scrips, the appellant's role was not found to be manipulative. However, so far as the trades in the shares of the present company are concerned, the investigation showed that the appellant had indulged into the trades violating the provisions as quoted above.

5. The investigation period is from December 15, 2011 to January 8, 2015. It was divided into five patches. According to SEBI, in patch 2 and patch 4, there was fall in the price of the shares of the company, while in patch 1, 3 and 5, there was a rise in the price. The table - 1 of the impugned order is as under :-

Table – 1

Period

Dates

Open

High

Low

Close

Total Vol/ Avg.

Vol.

Pre Investigation Period

15/09/2011-

14/12/2011

Price

34.8

37.5

(08/11/2011)

29.05

(01/12/2011)

33.85

52299/902

Vol

134

14041

05/10/2011

1

(2 – Days)

3578

Patch 1 (Rise)

15/12/2011-

13/11/2012

Price

36.3

54.90

(12/11/2012)

26.75

(06/02/2012)

54.15

2892997 /

13210

Vol.

18

385645

(14/09/2014)

1

(3 – Days)

919

Patch 2 (Fall)

15/11/2012-

10/10/2013

Price

52.95

55.5

(22/11/2012)

23.8

(26/07/2013)

24.25

120489 /

826

Vol.

1021

13999

(21/03/2013)

1

(15 – Days)

100

Patch 3 (Rise)

11/10/2013-

12/12/2013

Price

23.05

41.75

(12/12/2013)

23.05

(11/10/2013)

41.75

10423/359

Vol.

105

2838

(18/11/2013)

1

(2 – Days)

3

Patch 4 (Fall)

(Dec 13-15,

2013; no

trading at the exchange)

16/12/2013-

06/05/2014

Price

41.50

41.50 (16/12/2013)

23.8 (03/03/2014)

25.65

80252 /

1294

Vol.

1

10481

(28/03/2014)

1

(7 – Days)

442

Patch 5 (Rise)

07/05/2014-

09/10/2014

Price

26.75

46.00

(16/09/2014)

24.1

(09/05/2014)

38.25

195104 /

1991

Vol.

302

14707

(23/05/2014)

2

(2 – Days)

770

Post Investigation period

10/10/2014-

08/01/2015

Price

39.50

45

(31/12/2014)

28.55

(09/12/2014)

35.4

95082 /

1794

Vol

1950

29516

(21/10/2014)

1

(23/10/2014)

668

6. During patch 1 period, the appellant was first amongst the top 10 Last Traded Price (LTP) contributors. In 352 trades, it had bought a quantity of one share each. In 168 trades, it had bought the quantity ranging between 2-10 shares. Market percentage was 57.05% and 27.22% respectively. It had contributed to positive LTP of Rs. 442.75 and Rs. 156.60 respectively.

7. So far as the patch 3 investigation period is concerned, again the appellant was first of top 10 LTP contributors. In this patch, it is alleged that the present appellant alongwith one Ms. Vibha Garg, traded 66 shares in 14 and 16 trades respectively and contributed positive LTP of Rs. 29.45 which was 59.68% of the total market positive LTP. All these trades except one trade was done for 1-5 trades. Ms. Vibha’s trades however were not found manipulative. In patch 5 of the investigation period, the appellant was third in top 10 LTP contributors. In 74 trades for 2392 shares, it had contributed positive LTP of Rs. 47.75 which was 8.98% of the total market positive LTP.

8. The appellant submitted before the learned AO that in the investigation only the purchase side had been considered for analysis. However sale of the shares has not been considered. In fact, it had net sold 2272 shares. Being a net seller, it could not have increased the price of the shares of the company. The investigation itself found that the appellant had no connection either with bulk traders or with the company. The appellant is the company which was trading in the scrips of various companies in a large quantity of shares. Sometimes it carried the jobbing in the shares. It had purchased / sold the shares at higher / lower than the purchase price and thus incurred profit or loss. The appellant has given the table of its trades during all these patches which would show that the appellant has traded in more than 120 plus company’s shares in all the patches. There are many instances where the appellant has placed buy orders of small quantity in various trades of various company’s’ shares. The example of the same was also given in the reply which is reproduced at table 11 by the learned AO. The analysis of all the trades was also given. The appellant has also given an analysis of movement of the price of the shares in comparison to the BSE Sensex to show that the market during the period was bullish and moving upward. Therefore, submitting that it had no intention to manipulate in the price but to take advantage of the movement of the price, it wanted that it be exonerated.

9. The learned AO however observed that though the market would be bullish, the price of a particular scrip of the company depends on several factors. Further, the appellant was a part of top 10 buy clients and sell clients group in the scrip of the company (the appellant was simply one of the traders in top 10 traders and was not admittedly part of any group). Further, the learned AO remarked that the trading strategy of the present appellant in placing buy order for 1-10 shares as found in the investigation though large sell orders were on the platform cannot be a mere co-incidence. Therefore, the finding that the trading pattern is manipulative, the impugned order came to be passed.

10. Having heard both the sides, in our view, the impugned order cannot be sustained. The appellant has given all the details of sell as well as buy orders in the scrip of the present case as well as in the large number of other scrips in which it had traded during all the five patches. Table 10 of the impugned order reproduced the trading of the appellant as under :-

Table 10

Investigation Period	Number of total scrips traded
Patch 1	429
Patch 2	224
Patch 3	121
Patch 4	277
Patch 5	429

11. The learned AO has in paragraph no. 14 found that the appellant was amongst the top 10 buy as well as sell clients. The investigation however blames the appellant only for buying the shares in which buy orders were placed in miniscule quantity. Other trades of the appellant are not scrutinized though the appellant has given the details of the same.

12. Though there is no doubt that on preponderance of probability merely on trading pattern of the trades can be found to be non-genuine or manipulative, in the present case, we find that the trading pattern of the appellant is not enough to conclude that the appellant had indulged into manipulative trading practices.

Large number of companies in which it had traded would indicate that the appellant is a regular jobber cum dealer in the large number of scrips. Further, it was admittedly net seller during all the patches as shown by it. Therefore, merely blaming the appellant for buying in small quantity without anything further, in the background of the above situation would show that the order of the learned AO is merely based on suspicion or surmises. Benefit of doubt would have to be given to the appellant. In the result, the following order :-

ORDER

13. The appeal is hereby allowed without any order as to costs. The impugned order dated September 9, 2020 is hereby quashed and set aside.

14. 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.