(2020) 01 SEBI CK 0007

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.418, 419 Of 2018, 440 Of 2019

Bhagwat Singh Kitawat And Others — APPELLANT

Vs

Securities & Exchange Board Of India — RESPONDENT

Date of Decision : 28-01-2020

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 : (2020) 01 SEBI CK 0007

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Harsh Kesharia, Vishal Kanade, Abhiraj Arora, Vivek Shah, Vikas Bengani

Final Decision : ?Allowed

Judgement

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Tarun Agarwala, Presiding Officer

1. Three appeals have been filed against the order dated August 31, 2018 passed by the Adjudicating Officer (hereinafter referred to as â??AOâ??)

imposing a penalty for violation of Regulations 3 and 4 of Securities and Exchange board of India (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as â??PFUTP Regulations). Since the issues are common, all the

three appeals are being decided together by a common order.

2. A show cause notice was issued leveling a charge that the appellants and other noticees are connected entities and had acted in concert and

indulged in trades contributing to the positive Last Traded Price (LTP) thereby resulting in the price rise of the scrip of Svaraj Trading & Agencies

Ltd. (hereinafter referred to as â??STALâ?? or â??Companyâ??). The AO while considering the issue of manipulation by the appellants and other

noticees with regard to the price of the shares of the company found that there is no collusion of the appellants with the five preferential allottees /

noticees. Inspite of giving this finding, the AO held that since there was an increase in the price of the scrip, the appellants were responsible for such

increase by selling miniscule quantities of the scrip which were violative of Regulations 3 and 4 of the PFUTP Regulations. The AO accordingly,

imposed a penalty upon the appellants. The appellants being aggrieved by the said order have filed the present appeals.

3. The controversy involved in the present appeals is squarely covered by the decision of this Tribunal in M/s. Nishith M. Shah HUF vs. SEBI in

Appeal No. 97 of 2019 and other connected appeal decided on January 16, 2020, wherein this Tribunal held that selling miniscule amount of shares by

itself is not illegal nor manipulative nor violative of Regulations 3 and 4 of the PFUTP Regulations unless collusion with others is found. This Tribunal

in the said judgment also held that the charge of raising the price artificially has to be established and the element of collusion between the buyer and

the seller is a sine quo non. In the instant case, the charge of collusion with other noticees and / or the five preferential allottees has been disbelieved

by the AO itself. Thus, if collusion is not proved, the charge under Regulations 3 and 4 of the PFUTP Regulations cannot be sustained.

4. In the light of the aforesaid decision of the Tribunal, the impugned orders cannot be sustained and are quashed. The appeals are allowed. In the

circumstances of the case, parties shall bear their own costs.