(2020) 10 SEBI CK 0128

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.326, 327, 328, 336, 413 Of 2018

Bhavesh Pabari And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 07-10-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices) Regulations, 2003 — Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2), 4(2)(a), 4(2)(e), 4(2)(g)
Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 13(3)
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 7(1A), 11(2)

Citation : (2020) 10 SEBI CK 0128

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

Bench : Division Bench

Advocate : Saurabh Bachhawat, Vikas Bengani, Vishal Kanade, Anubhav Ghosh, Ravishekhar Pandey, Gaurav Joshi, Rishika Harish, Aditya Bhansali, Jitendra Sharda, Rakshita Poddar, Suyash Bhandari, Nirali Mehta, Vishal Kanade, Anubhav Ghosh, Ravishekhar Pandey, Etc.

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Appellants Bhavesh Pabari, Hemant Madhusudan Sheth and Ankit Rajendra Sanchaniya are aggrieved by the order of the Adjudicating Officer dated May 18, 2018 where under each of them is directed to pay a

penalty of Rs.10 lakh each for violation of the provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2) (a), (e) and (g) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices)

Regulations, 2003 (hereinafter referred to as â??PFUTP Regulations?). Appellant Anil T Jain is directed to pay a penalty of Rs.1 crore jointly and severally with appellant Chunnilal Jain A. and Mrs. Nisha Rakesh Jain

for violation of Regulation 13(3) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations 1992) and Regulation 7(1A) of Securities and

Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST Regulations 1997), Regulation 11(2) of SAST Regulations 1997 alongwith violations of

SEBI PFUTP Regulations, 2003 as like that of other appellants.

2. The reading of the order of the adjudicating officer would show that appellant Anil Jain was the promoter of Refex Refrigerant Limited (hereinafter referred to as â??RFL?). Appellant Chunnilal Jain and Mrs. Nisha

Rakesh Jain are his near relatives. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigation into the trading in the scrip of RFL for the period from August 01, 2008 to December

31, 2008. During the investigation it was found that 23 connected and related entities entered into synchronised, reversal and self-trades and, appellant Anil Jain and rest of his related appellants were involved in

manipulation of share price. Therefore, show cause notices were issued to those 23 entities.

According to SEBI there were two groups one called as the Bhavesh Pabari group and another called as Samir Group on the basis of connection between them. On the basis of the replies of the entities the adjudicating

officer inferred that one Mr. Paras Chaplot may be a connecting entity between these groups as well as appellant Mr. Anil T. Jain, Mr. Chunnilal Jain and Mrs. Nisha Rakesh Jain.

3. Out of these 23 entities presently before us appellant Bhavesh, Hemant and Ankit are from the alleged Bhavesh Pabari group, while appellant Anil, Chunnilal and Mrs. Nisha Jain (hereinafter referred as Jains) forms

the group of promoter and promoter related entities of RFL. The price of RFL at the time of issue was Rs.65 per share in July, 2007 and Rs.69 at the time of listing on August 20, 2007. It was an illiquid stock.

Investigation was for a period August 1, 2008 to December 31, 2008. The price of the scrip rose to Rs.265 on August 1, 2008 (start of first patch of investigation). It went to Rs.310 (all time higher price) on September 2,

2008 (end of first patch).

4. In the second patch on September 4, 2008 the price of the scrip started falling and touched a low of Rs.31 as on December 31, 2008 (End of second patch)

Order records that though the appellant as well as other

group entities have tried to manipulate the share prices in the second patch also, due to the global financial crisis upon fall of the Lehman Brothers on 15th September, during the relevant period, the price could not be

stabilised despite the manipulative efforts of the appellants and other group entities. During the invesigation period Jains had purchased 1,15,510 shares at the average price of Rs.53.80 and sold 1,60,962 shares for

average price of Rs.286.50. Further, appellant Anil Jain had pledged shares during the period at inflated price of the shares. Therefore, in order to raise the prices of the shares in order to ensure no further placing of

shares is required due to fall of prices, in the second patch on September 16, 2008 he transferred off market 5,00,000 shares to another noticee DNG Mercantile Ltd. (hereinafter referred to as â??DNG?) who in turn

transferred the same on the very same day to one Yaminiben Pandya. Within a period of 5 weeks those shares were transferred through various entities to the members of the groups in the manner as depicted in the

graph as below.

5. These shares were also later on traded in manipulative manner. Further, though appellant Anil Jain was the promoter of RFL he did not disclose the transfer of more than 2% shares as required by SAST Regulations,

1997 and, therefore, the penalty was imposed.

6. Heard Mr. Saurabh Bachhawat, Advocate for the Appellant in Appeal nos. 326,327 and 328 of 2020 and Mr. Gaurav Joshi, Senior Advocate with Ms. Rishika Harish, Mr. Aditya Bhansali, Mr. Jitendra Sharda, Ms.

Rakshita Poddar, Mr. Suyash Bhandari, Advocates and Ms. Nirali Mehta, Practicing Company Secretary for the Appellant in Appeal no.336 of 2018 and Ms. Poonam D. Gadkari, Advocate for the Appellant in Appeal

no.413 of 2018 and Mr. Vishal Kanade, Advocate with Mr. Anubhav Ghosh and Mr. Ravishekhar Pandey, Advocate for the Respondent.

7. Number of submissions were advanced before us by each of the appellants separately. Mr. Saurabh Bachhawat, learned counsel for appellants Bhavesh, Hemant and Ankit submitted that there was no group as such

as alleged by respondent SEBI. These appellants in usual course of their trading had traded in the scrip. There is very miniscule percentage of reversal trades. Further reversal trades in themselves are not illegal. So far

as synchronised trades are concerned it was submitted by Mr. Bachhawat that the quantity of sell orders and buy orders did not match and even the time gap is remarkable. Mr. Bachhawat further submitted that while

the alleged transactions are of the year 2008, the show cause notices were issued on November 16, 2017 after an inordinate delay and, therefore, according to Mr. Bacchawat on this sole ground the impugned order

deserves to be quashed as regard to them.

8. Mr. Gaurav Joshi, learned counsel for Jains submitted that neither in the investigation nor in the impugned order any connection of Jains with any of the so called two groups is found. Appellant Anil had traded in the

shares in the normal course. Appellant Anil had sold 5000 shares in off market transaction to DNG. No connection between the appellant Anil and DNG is found. Though there is an allegation that in order to see that

appellant Anil would not be required to pledge additional shares, share prices were being manipulated the price of the share fell and the appellant was required to pledge additional shares. He further submitted that while

appellant was holding 34,00,000 shares he had pledged only 1,00,000 shares and, therefore, the allegation did not hold any water. In the circumstances, he submitted that the allegation in this regard fails.

As regards the non-disclosure under the SAST Regulations he submitted that in fact, the appellant has made disclosure as required by PIT Regulations to BSE Ltd. though the same was not pleaded during the

proceedings before SEBI. He filed one screenshot to that effect and submitted that the appeal be allowed. As regards Mr. Chunnilal Jain and Mrs. Nisha Jain he submitted that except the fact that they are related to

Anil Jain there is nothing on record to rope in them, merely because they have sold some shares. He therefore wanted that the appeals be allowed.

Mr. Vishal Kanade learned Counsel for the respondent SEBI took us through the material on record. He further submitted that plea of delay with any prejudice caused to them in defending the proceeding was never

raised by the parties before SEBI. He therefore submitted that the appeals be dismissed.

9. So far as appellant Mr. Bhavesh, Mr. Hemant and Mr. Ankit are concerned, the connection between themselves is shown vide the connection table detailed at paragraph 29, of the impugned order. It would show that

appellant Bhavesh and appellant Ankit during the relevant period shared a common telephone number. Bhavesh had transferred shares in off market transaction to appellant Hemant. Appellant Bhavesh and Hemant

during the relevant period were common directors of M/s. Rajnandi Yarns Pvt.

Ltd. Bhavesh has also transferred shares of RFL to appellant Hemant. Similarly, appellant Ankit has also transferred shares in off market

to appellant Hemant. The dealings of these appellants in the shares during the investigation period along with group members has been analysed by the adjudicating officer.

Appellant Hemant and appellant Ankit were amongst the top 10 clients in gross buy and sell quantity. Appellant Hemant?s gross buy quantity was 3.97% and gross sell quantity was 4.12% of the market volume of the

days. Appellant Ankit?s gross buy quantity was 3.03% while gross sell quantity was 3.33%. During this period, appellant Bhavesh?s gross buy quantity was 1.22% and gross sell quantity was 1.72%.

10. So far as synchronised trades of the shares of RFL are concerned on 12th August, 2008 five trades between appellant Hemant and noticee no.15 Kishorebhai matched within 0 second to 3 seconds as detailed in

paragraph no 77 of the impugned order. Kishorebhai was connected to the appellant Bhavesh. Both had a joint bank account in Axis Bank, fort, Mumbai branch which account no. is given in the connection table referred

supra. Connection between appellant Bhavesh and appellant Hemant is already noted supra. There were 5 synchronised trades between them on that day.

Besides this, numerous synchronised trades of the shares of RFL between appellant Ankit, appellant Bhavesh, appellant Hemant and other entities are detailed in para no.79 of the impugned order. The adjudicating

officer therefore drawn the conclusion that these appellants along with other entities had created an artificial volume by indulging in synchronised trades.

11. So far as reversal of trades are concerned, amongst group entities, paragraph no 81 of the impugned order shows that there were reversal of trades between appellant Ankit and noticee Rameshbhai on 7th August,

2008, appellant Hemant and Ankit on 11th August, 2008, between Hemant and another noticee Amar, appellant Ankit and appellant Hemant on 12th August, 2008, between appellant Bhavesh and Ankit on 14th August,

2008, between appellant Ankit and one Prem on 14th August, 2008. Further, on 25th August, 2008 and 27th August 2008, appellant Ankit had reversal trades with one noticee Amar. On 2nd September, 2008 there were

many reversal trades between appellant Ankit and noticee Amar, as well between Appellant Hemant And this Amar. On 11th September, 2008 (during second patch of investigation) reversal trade for 49500 shares of

RFL was between appellant Ankit and Bhavesh.

12. So far as self trades are concerned in paragraph no. 83 of the impugned order the adjudicating officer has detailed numerous self-trades of appellant Hemant and of Ankit. Those were for 5 days and 9 days

respectively and value of the same is between Rs.3,61,24254 to Rs. 4,20,04558.

13. So far as contribution toward Last Traded price analysis (LTP analysis) is concerned, the table at paragraph no. 88 and onwards would show that appellant Ankit has contributed to the positive LTP of Rs.43.15 in

buy and sell collectively. Appellant Hemant contributed to 10.65 to the positive LTP. Group wise the adjudicating officer found that the 14 entities contributed significant amount of 152.10 positive LTP i.e. 8% of the

market positive LTP. The adjudicating officer finally took the group transactions into consideration and also dealing with the transactions of appellant Anil Jain in para 93 observed as under:-

â??I note that total connected group entities had altogether purchased 95,90,026 shares and sold 1,04,71,563 shares constituting 47.73% and 52.12% on buy and sell side respectively of the total traded quantity of

2,00,90,685 shares during the IP which is substantial. Further I also note these entities have also entered into synchronised, reversal of trades, self-trades and also contributed to LTP. And I conclude that the consolidated

dealings of the connected entities in both off-market and market have facilitated Anil T Jain, Promoter and Managing Director to offload shares in the market at the highest market price and also facilitated in maintain the

price of the script which enabled to get favourable price for the shares pledged by the promoters.â??

14. So far as dealings of Jains are concerned, besides purchase and sell of shares in the market, the graph as quoted above would show that appellant Anil Jain has off market transferred 500000 shares on 16th

September, 2008 to DNG. The appellant explained to the adjudicating officer that he has transferred those shares without receipt of any price on the spot and had agreed to receive it in equal monthly instalment of Rs.1

crore. In this regard upon query from the A.O. merely one email purported to have send by one Mr. Kamal Aggarwal to DNG was supplied as an evidence of this agreement. While Appellant Anil resides at Chennai,

DNG is situated at Ahemadabad. DNG on the other hand explained that those shares were received by it off market due to mistake and, therefore, â??on the direction of the person who has transferred those sharesâ?,

DNG had transferred the same to Yaminiben Pandya - the another noticee. Yaminiben Pandya in her reply to the SEBI however submitted that she was totally unaware of this transaction.

Her son Hardik Pandya was working as a clerk in the office of Paras Chaplot. She as well as Hardik were directed by him to open account. Those accounts were managed and operated by the said Mr. Chaplot. When

she came to know of all facts her son Hardik filed a police complaint against Mr. Paras Chaplot. Even the Income Tax authorities were informed.

15. Mr. Gaurav Joshi, learned senior counsel for appellant Anil Jain submitted that legal notices were issued to DNG when the consideration of shares was not paid. Upon query from the Tribunal he however submitted

that besides issuing legal notice no further steps were taken by appellant Anil in this regard. To note DNG did not file any appeal though a penalty of Rs.2 lakhs was imposed upon it by the adjudicating officer under the

present common order.

16. The off market transfer of 500000 shares by appellant Anil Jain ultimately landed with appellant Bhavesh, appellant Hemant and their group members. Further these three appellants Bhavesh, Hemant and Ankit were

in both patches of investigation found to be indulging in volume manipulation by contributing to positive LTP, self trades, synchronised and reversal trade. Besides this, one noticee Anand Marathe on 4th September 2008

directly transferred 42 shares in the account of Appellant Anil Jain. This Anand had substantive fund movement between his bank account and bank account of another noticee Amar Walmiki. This Amar Walmiki had

off market share transfer transaction with the Appellant Bhavesh Pabari. All these facts are borne out by the connection table found in the impugned order. In view of direct transfer of share by Anand Marathe in the

account of Appellant Anil Jain, A.O. inferred that Anand has knowledge of his account number. Taking into consideration all the above facts, the adjudicating officer inferred that appellant Anil had connection with this

group .

17. Mr. Vishal Kanade, learned counsel for the respondent SEBI submits that admittedly there was no financial addition of strength or rise in profit of RFL during the relevant period. On the other hand the submissions of

appellant Anil Jain himself as noted by the A.O. in pargraph 18 of the impugned order shows that net profit fell steeply by 77.26% in the year 2008-2009. The record however would show that during the first patch of the

investigation its share prices rose phenomenally. The manipulation in the same is proved by the record as detailed supra. There was a price manipulation, volume manipulation by synchronized trades, reversal trades, self-

trades, LTP contribution etc., within two groups. The connection between present Bhavesh Pabari group with appellant Anil Jain is reasonably clear from the record as detailed supra.

As regards the delay in launching the proceedings he submits the impugned order would show that the group members have opened numerous bank accounts, demat accounts. There was fund movement between these

accounts on numerous occasions. At least 23 people were found involved in the activity after scanning of multitude of trades of numerous entities during investigation. This naturally had taken time to unearth the

manipulative activities. He further submits that the plea of delay is taken only during the appeal by appellants Bhavesh, Hemant and Ankit. Further, there is nothing on record to show that the delay has anyway caused

prejudice to any of the appellant in defending the show cause notice.

18. As regards appellants Anil Jain, Chunilal Jain and Mrs. Nisha Jain he submits that appellant Anil Jain was Managing Director of RFL. Admittedly rest of the appellants are his near relatives and all of them share a

common residential address that is 151/152, (i.e. Old 151 New 152) Habibullah Road, T. Nagar, Chennai â?" 600017. The record would show that these appellants had bought the shares during the investigation period

and sold them immediately as detailed in the impugned order. Additionally, appellant Anil Jain in a dubious manner had transferred 5 lakh shares off market to DNG situated at Ahmedabad and did not even pursue for

realization of the proceeds of the same. His connection with the other group members is reasonably brought on record. In the circumstance, he submitted that no interference in the order is warranted.

19. Taking into consideration all the facts on record, we do not find any substance in any of the appeal. So far as the case of appellant Anil Jain is concerned he was the Managing Director of RFL. His own reply to the

show cause notice would show that there was decline in the profit of RFL during the relevant period. During the investigation period he had purchased 82,510 shares at an average rate of Rs.26.81 and sold those shares

at an average price of Rs.287.44 (table A para 101of the impugned order). In the process, he earned a profit of Rs.2,15,04,581.30. So far as appellant Chunilal is concerned he earned a profit of Rs.4,16,856. Appellant

Nisha earned 11,92,198. Only during the appeal, appellant Anil Jain came with a case that he had made disclosure of off market transfer of 5,00,000 shares to the company. He himself was the Managing Director of

RFL. One screenshot to that effect was placed on record. In the circumstances, the same cannot be relied. Further admittedly no disclosure was made as required by the relevant provisions of SAST Regulations, 1997.

The connection between the Jains, the fact that the RFL was illiquid stock and that there was no correlation between the performance of RFL and the movement of share price, the connection between Bhavesh Pabari

group and the appellant Anil Jain having established on preponderance of probability, the fact that the Jains share a common residential address would show that no interference in the reasoning of the adjudication officer

is warranted.

Appellants Anil Jain, Chunilal Jain and Nisha Jain were jointly and severally directed to pay a penalty of Rs.1 crore by the A.O. on the ground that it would not be possible to ascertain the disproportionate gain or unfair

advantage made by them. Taking into consideration the facts and figures as detailed supra we do not find that the penalty imposed is disproportionate.

20. As regards, the appeals of Bhavesh, Hemant and Ankit, the artificial trades carried by them as detailed supra along with the fact that the off market transfer of 5,00,000 shares by appellant Anil Jain ultimately landed

with them and other group members as detailed earlier would establish that they in collusion with appellant Anil Jain had carried all these activities. The defense of delay is an afterthought and without any supporting

reason like the prejudice in defending the case before the adjudicating officer. In the circumstances, the reliance placed by them on the decisions of Ashok Rupani vs. SEBI Appeal no.417 of 2018 decided by this tribunal

on 20th October, 2019 and other decisions as referred in the said judgment are not applicable in the present case.

21. We are also not equally impressed by the submissions of Mr. Bachhawat learned counsel for the appellant Bhavesh that the transactions of appellant were miniscule. We have already found that appellant Bhavesh

was involved in self-trade, reversal trade and in contribution to the LTP. In the circumstances, the reliance placed by Mr. Bachhawat in the ratio of Ketan Parekh vs. SEBI Appeal no.2 of 2004 dated 14th July, 2006

wherein in para no.11 it is observed â??total volume of the trade are to be taken into consideration to find out as to whether the entity has really played any significant role in increasing the volumes artificiallyâ? would

not be applicable. A circular dated 16th May, 2017 issued by respondent SEBI that miniscule volume of the trade carried by an entity requires to be considered has no application for the above reasons.

22. In the circumstances the following order:

All the appeals are hereby dismissed without any order as to costs.

