(2020) 02 SEBI CK 0023

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 414, 415, 416, 428, 429, 430, 431 Of 2018, 200, 309 Of 2019

Dhirajbhai V. Sanghvi HUF APPELLANT

Vs

Securities & Exchange Board Of India RESPONDENT

Date of Decision : 19-02-2020

Acts Referred:

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

Citation : (2020) 02 SEBI CK 0023

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

Bench : Division Bench

Advocate : Vinay Chauhan, K. C. Jacob, Kumar Desai, Abhiraj Arora, Vivek Shah, Rohit Mangsule, J. P. Sen, Rohit Mangsule, Dhwani Shah

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Investigation was conducted by Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??) in the group of Kavveri Telecom

Products Ltd. (hereinafter referred to as â??Kavveriâ??) for the period June 1, 2010 to December 31, 2010 wherein it was observed that a group of

9 entities were connected with each other and were involved in trading among themselves in the scrip of Kavveri. Based on the investigation report, a

show cause notice dated July 27, 2015 was issued to all the 9 entities. The Adjudicating Officer (hereinafter referred to as â??AOâ??) has passed a

separate order against two such entities and another order against the seven entities imposing penalties for violation of Regulations 3 and 4 of

Securities and Exchange Board of India (Prohibition of Unfair and Fraudulent Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as â??PFUTP Regulationsâ??) by executing synchronized and reversal trades, contributing in creation of artificial volume and

indulging in price rise in the scrip. All the entities have filed the appeals against the orders of the AO which have been clubbed together and are being

decided by a common order, since the issue involved is the same and has resulted from a common show cause notice.

2. For facility, against the order of AO dated June 29, 2018, two Appeals No. 431 of 2018 and 309 of 2019 have been filed by M/s. Vishu Enterprises

and M/s. Antala Real Broking & Impex Pvt. Ltd. respectively. The charge against them was that these appellants executed synchronized and reversal

trades with other members of the group and thereby contributed in creation of artificial volume and indulged in price rise by entering buy/sell orders at

a higher price than the Last Traded Price (LTP), etc.

3. The AO also passed another order dated June 29, 2018 against the other seven noticees imposing penalties against which Appeal Nos. 414, 415,

416, 428, 429, 430, 431 of 2018 and 200 of 2019 have been filed. These appellants have been charged for executing synchronized and reversal trades

with other members of the group thereby contributing in creation of artificial volume.

4. We have heard Shri J. P. Sen, the learned senior counsel alongwith Shri Vinay Chauhan, Shri K. C. Jacob, Shri Rohan Mangsule, Ms. Dhwani

Shah, the learned counsel for the appellants and Shri Kumar Desai, the learned counsel alongwith Shri Abhiraj Arora, Shri Vivek Shah for the

respondent.

5. The points urged are that the appellants were connected entities and were acting in concert is perverse which no reasonable person would arrive at

such a finding based on the material evidence on record. The increase in the price of the scrip was not on account of trading by the appellants but was

on account of the performance of the company, when they made various corporate announcements over a period of time which factor has not been

considered. The finding that the appellants had executed reversal trades is against the concept of reversal trades and the finding that the appellants

had executed synchronized trades was misconceived in as much as there is no connection of the appellants with other entities. In addition to the

above, it was urged that the impugned orders suffer from violation of the principles of natural justice. It was contended that the AO has relied upon

order logs, trade logs and investigation report which was not part of the show cause notice nor such investigation report, trade logs were supplied. It

was, thus, urged that reliance on such documents for which no opportunity was given to the appellants was in violation of the principles of natural

justice. In support of the submission, the learned counsel for the appellants has placed reliance upon a decision of this Tribunal in Appeal No. 281 of

2009 Mr. Vikas Gourihar Narnavar vs. AO, SEBI decided on June 15, 2010, in which it was held that the relevant portions of the investigation report

and trade logs as referred to in the show cause notice which depicted the role played by the said appellant having not being furnished alongwith the

show cause notice was violative of the principles of natural justice.

6. On the other hand, the learned counsel for the respondent Mr. Desai, fairly conceded that the details of the trade logs, order logs and the

investigation report was not supplied to the appellants and the same having being considered by the AO was thus in violation of the principles of the

natural justice. The learned counsel fairly conceded that the impugned order may be set aside on this ground and the matters may be remitted to the

AO for fresh consideration.

7. In the light of the aforesaid, without going into the veracity of the submissions made by the learned counsel for the appellants as to whether the

appellants were connected persons or whether there were actual synchronized trades or reversal trades, the appeals are being allowed on the short

ground of violation of the principles of natural justice. We find that the AO has considered the trade logs, order logs and the investigation report in

coming to the conclusion that the appellants had indulged in synchronized and reversal trades. This Tribunal in Ketan Parekh vs. SEBI Appeal No. 2

of 2004 decided on July 14, 2006 held that the nature of transaction executed, the frequency of the transactions are undertaken, the value of the

transactions, whether they involved circular trading and whether there is a change in the beneficial ownership, the condition which have prevailing in

the market are some of the factors which goes to show the intention of the parties. These factors can only be considered and found if trade logs, order

logs and the investigation report are supplied to the appellants and a finding is given on that aspect. The summary of the trade logs as indicated in the show cause notice will not give a finding by itself on synchronized trades, reversal trades, etc. Thus, on this short ground that there has been a

violation of the principles of the natural justice by not supplying the relevant documents, the impugned orders cannot be sustained and on this short

ground the impugned orders passed by the AO are set aside.

8. The appeals are allowed and the matters are remitted back to the AO to decide the matters afresh after supplying the relevant material, namely,

trade logs, order logs, investigation report, etc. The AO shall pass a fresh order after giving an opportunity of hearing to the appellants. It is also made

clear that all the points raised by the appellants are left open and if raised before the AO the same would also be considered and decided in

accordance with law. In the circumstances of the case, there shall be no order as to costs.