(2021) 06 SEBI CK 0043

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 556 Of 2019

GGF Mercantile Pvt. Ltd — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 09-06-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulations 3(a), 3(b), 3(c), 3(d) and 4(1), 4(2)(a), 4(2)(e)
Securities And Exchange Board Of India Act, 1992 — Section 15H

Citation : (2021) 06 SEBI CK 0043

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

Bench : Division Bench

Advocate : Vikas Bengani, Kumar Desai, Mihir Mody, Arnav Misra, Mayur Jaisingh

Judgement

M.T. Joshi, J

1. Aggrieved by the order of the Adjudicating Officer of respondent Securities and Exchange Board of India (hereinafter referred to as â??SEBIâ??)

dated 30th August, 2019 imposing penalty or Rs.3 lakhs for violation of Regulations 3(a), (b), (c) and (d) and 4(1), 4(2)(a) and (e) 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 â??PFUTP Regulationsâ??) under the power exercised under section 15H of the Securities and Exchange Board of India Act, 1992

(hereinafter referred to as â??SEBI Actâ??) the original noticee no.3 has preferred the present appeal.

2. It was alleged that the appellant with 80 entities had indulged into manipulation of the price in the scrip of R.M. Mohite Textiles Ltd. (hereinafter

referred to as the Company) for the period between October 1, 2010 to April 29,

2011. The present proceedings were initiated against five entities of

which appellant was noticee no.4. The allegations are that all these group entities within the same period had fraudulently cause the spurt in the price

of the scrip of the Company from Rs.255 on October 1, 2010 to Rs.380 up to February 4, 2011. Thereafter, the price of the scrip started decreasing

and reached the low of Rs.123.15 which finally closed to Rs.220.35 on April 29, 2011.

So far as the appellant is concerned the allegation is that the appellant had connection with noticee no.1 Bharatkumar Baldevbhai Parmar as the

appellant had earlier purchased certain shares form him of one unrelated Company in off market transaction. This Bharatkumar- noticee no.1 was

connected to other noticees like the Tushar Patel, Heena Patel. The allegation against the present appellant futher is that it has caused increase in the

Last Traded Price (LTP). The table below paragraph 5(e) of the impugned order would show that the present appellant had contributed positive LTP

variation for Rs.117.55 that is 2.41% of the total LTP contribution.The appellant filed reply to the show cause notice vide letter dated 13th April, 2018.

The appellant denied that it had any connection with noticee no.1 Bharatkumar or any off market transactions were carried out by it. It was pointed

out that the details of the said off market transactions were not provided to it. So far as its trade in the scrip of the present Company is concerned it

was submitted that the alleged contribution of positive LTP of 2.41% by the appellant is not significant. It was submitted that the trade and order log

itself would show that the scrip was very volatile during the period of investigation. The net impact of the appellantâ??s trade during the period of

investigation was not substantive. During the investigation period the appellant has purchased 1,13,981 shares. The demand in the scrip compelled the

increase in the price of the shares. The demand of the shares was not only from the appellant but also several entities including purported connected

entity placed huge buy orders. Further, the allegations are that the appellant had executed only one single trade with the purported entity which

contributed to Rs.2.50 to the positive LTP. While there is no connection with Tushar Patel, the respondent SEBI has alleged that the appellant is

connected with noticee no.1 Bharatkumar as it has purchased some shares from him in off market transactions of one unrelated Company. The appellant has sought details of the said off market transactions. However, the details were was not given. Appellant has denied that it was connected

with noticee no.1. The only allegation against the appellant is that while being connected with the notice no.1 it has contributed to the positive LTP and

one first trade with the another entity. Mr.VikasBengani, learned counsel for the appellant submitted that the entire trade log would show that the

appellant had also contributed to the negative LTP but the same is not considered. He further submitted that there was delay in issuing notice and

starting proceedings against the appellant. We, however, find that no such plea was taken before the learned Adjudicating Officer.

3. The learned counsel for the respondent submitted on the other hand submitted that the appellant was already connected with noticee no.1 Bharat

Kumar as it had purchased shares of one Well pack Papers Containers Ltd. in off market transactions fromhim during the period 1st January, 2010 to

30th June, 2010. Further, the contribution to the positive LTP by the appellant coupled with one first trade with another notice would show that the

appellant had in collusion with other noticees and other group entities manipulated the price of the shares.

4. In our view however the order cannot be sustained.

In absence of establishment of connection either with Bharat Kumar or with the Company and its promoters the appellantâ??s miniscule contribution

to the positive LTP and one first trade with another noticee would not lead to conclude on preponderance of probability that the appellant had

manipulated the price of the scrip. No fundamentals of the Company are placed on record to show that the price increase was not justified. In the

circumstances, we find that the impugned order is not justified in the facts and circumstances of the case. Hence the following order.

5. The appeal is hereby allowed. The impugned order to the extent passed against the present appellant is hereby set aside. In the circumstances of

the case there will be no order as to costs.

6. 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.

