(2021) 03 SEBI CK 0240

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 55 Of 2019

Girish Kumar Agarwal And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 25-03-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Unfair Trade Practices Relating To The Securities Market) Regulations, 2015 — Regulations 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(e)
Securities Contracts (Regulation) Act, 1956 — Section 2(i)

Citation : (2021) 03 SEBI CK 0240

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Dr. C.K.G. Nair, Member;M.T. Joshi, J

Bench : Full Bench

Advocate : Rishika Harish, Rakshita Poddar, Suraj Chaudhary, Abhiraj Arora, Rashi Dalmia, Karthik Narayan

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the impugned order dated 20th November, 2018 restraining each of the appellants for a period of four years, from accessing the securities market, in any manner, by the Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as "SEBI") the present appeal is preferred.

2. It is alleged by respondent SEBI that the present appellants have violated the provisions of Regulations 3(a), 3(b), 3(c), 3(d) and 4(1), 4(2)(a) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Unfair Trade Practices relating to the Securities Market) Regulations, 2015 (hereinafter referred to as "PFUTP Regulations).

3. In short the allegations are that the present appellant had indulged into manipulating the share prices of Partani Appliances Ltd. (hereinafter referred to as "PAL/the Company"). The defence of the appellants that they did not indulge

into the malpractices and that their trading in the shares was in the natural course of the business was not accepted. Hence the appeal.

4. Heard Ms. Rishika Harish, Advocate assisted by Ms. Rakshita Poddar, Advocate for the Appellants and Mr. Suraj Chaudhary, Advocate assisted by Mr. Abhiraj Arora, Ms. Rashi Dalmia, Mr. Karthik Narayan, Advocates for the Respondent.

5. Respondent SEBI received a list from Income Tax Department wherein it was alleged that price manipulation to generate bogus long term capital was committed as regards securities of various companies including the present PAL. Accordingly, SEBI conducted investigation for alleged manipulation in the price of the scrip of PAL.

6. Upon investigation it was found that for a period between 20th October, 2014 to 31st March, 2015 manipulation in price of PAL was committed by 31 entities. These entities were grouped into three groups by respondent SEBI. The present appellant and four other entities were put into group one. Generally against all these entities it was alleged that they had purchased the shares of PAL in off market transactions from the promoter or promoter group entities of PAL and, thereafter, sold on the platform of the stock exchange in very miniscule quantities for higher prices thus raising the price of the share of the Company.

7. Shares of the PAL were listed earlier on Ahmedabad Stock Exchange upon it"s incorporation in 1985. However, there was no trading in the scrip after 2001. Thereafter, on 16th October, 2014 the scrip was listed on the platform of BSE Ltd. However, with effect from 14th September, 2015 the trading in the same was suspended as a surveillance measure. SEBI found that the price of the scrip opened at Rs.47.45 on 20th October, 2014. It was the lowest during the investigation period. By 19th December, 2014 it reached high of Rs.172.3. There was net increase in the Last Traded Price (LTP) of Rs.124.5 and market positive LTP of Rs.133.05.

8. Out of the seven entities in the this common proceedings of SEBI, so far as the present three appellants are concerned, it is found that each of them have purchased shares of the PAL from one of the promoter of PAL, namely, Mrs. Margareta Alvares and, thereafter, sold the shares on the stock exchange platform in miniscule quantity of 2 to 5 shares each. The shares were sold for higher price, in this miniscule quantities, despite buy orders in large quantities for same higher price were pending on the platform. The details of the sale are given in para no.6(iv) of the impugned order. The table annexed to the same gives the detailed idea of above trades thereby increasing the LTP of the same in allegedely manipulative manner.

9. The appellant replied that they had not purchased the shares in off market from Mrs. Margareta Alvares but from one entity by the name of Pavanaj Mercantile Pvt. Ltd. (hereinafter referred to as PMPL). They had also placed copies of supporting bank statements showing payments made to PMPL and also copies of the bill as procured from PMPL. They also claim that there was

significant time gap between the time when the buy orders were placed and the sell orders were punched in. Therefore, according to them there was no collusion in jacking up the prices but the trading was done in normal course of the business. Regarding miniscule sale they contended that it was also normal business practice.

10. The learned WTM scrutinised the bills, the bank statement and the share transfer forms. The share transfer form showed that the shares were transferred by Mrs. Margareta Alvares and not by PMPL. The appellant had argued that by way of blank transfer forms they had purchased the shares and it is the normal practice in the market to trade on the basis of blank transfer form. The learned WTM however found that this statement is against the provisions of section 2(i) of the Securities Contracts Regulations Act, 1956 which defined "spot delivery contract" as under.

"spot delivery contract" means a contract which provides for-

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

11. The WTM also reasoned that as per the submissions of the appellant the transaction of purchase of the shares was completed only by way of blank transfer form. The bills issued by PMPL produced by the appellants were dated 27th July, 2013. Thus, according to rules the purported transfer of shares should have been completed at the most by 26th July, 2013. As purported payment of consideration is reflected in the copies of the bank statements showing entries dated 25th July, 2013. Further though the appellants claim that they made payments on 25th July 2013, the invoices dated 27th July 2013 do not give details of the same. The WTM further found that PMPL is a company whose name has been struck off from the register of the companies as maintained by Registrar of Companies. The WTM further found that the share transfer form would show the date of execution as 20th August, 2013. This contradiction was also highlighted by the WTM. It was further reasoned that the handwriting and the ink of the transfer form is one and same only. Thus, all these factor according to the WTM indicate that the shares were directly purchased by the appellant from Mrs. Margareta Alvares and not from PMPL.

Lastly, it was also reasoned that in fact the shares sold by Mrs. Margareta Alvares were issued to her by PAL on 5th July, 2013. Thus, if the submission of the appellant that they had purchased those shares on 25th July, 2013 on the strength of blank transfer form is accepted then it would mean that within a short period of 20 days the share transfer form changed the hands though the shares of PAL were infrequently traded and thus not at all in demand. Taking into consideration all these fact the WTM concluded that there was an off market transaction of purchase of shares by the appellant from the promoter of the PAL and, thereafter, the sale of minuscule quantities on the exchange platform was started by the appellant for higher price though large buy orders were pending. Therefore the order was passed.

12. Ms. Rishika Harish, learned counsel for the appellant submits that the copies of the bills as well as the bank statements would show the date of transaction between the appellant and PMPL. Post hearing she filed written submission wherein she relied on the ratio of Howra Trading Co. Ltd ..Vs... Commissioner of Income Tax, Central Calcutta (AIR 1959 SC 775) and other subsequent cases wherin the ratio was relied. It was ruled in the case of Howra Trading that in case of blank share transfer form duly signed by the transferor, certain equities are created between the transferor and the transferee. She therefore submitted that the transaction cannot be branded as illegal and cannot be brused aside. She further submitted that the learned WTM ignored the fact that large buy order for higher prices were pending but no enquiry against the said buyer is made by the respondent. The appellant whose sell order may be in miniscule quantities matched with the buy orders which were already pending in the market. No connection between the buyer and present seller is shown. She, therefore, submitted that the order be set aside.

13. Upon hearing both sides, in our view, the reasoning of the WTM regarding the purchase of shares in off market transaction from one of the promoter of PAL is clearly proved by the documentary evidence. Even if we ignore the reasoning of the learned WTM regarding the legality of the transaction being on the strength of Blank transfer form, the case of the appellant that within 20 days of acquisition of shares by the promoter, the transfer forms changed hands and were sold like a hot cake, and ultimately they purchased those shares on the strength of blank transfer form not from the promoter but other entity is against the clear fact that the shares were highly illiquid i.e. infrequently traded.

The sudden rise of price despite the scrip being highly illiquid as detailed supra would go to show that the appellant had contributed in manipulative manner in increase of the price. Though the connection between the appellant and the buyer is not shown, in the present case, in view of the connection of the appellant with the promoter and sell in miniscule proportion on the exchange platform in unusual manner as detailed supra, clearly would indicate that the present appellant has dealt in the shares in manipulative and fraudulent manner against the provision of the PFUTP Regulations.

14. In view of the above facts the following order. Appeal is hereby dismissed without any order as to costs.

15. 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.

