
(2020) 03 SEBI CK 0018

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 205, 206, 207 208, 209, 210, 211, 212, 305, 346, 356, 438 Of 2019

Hemant Sheth And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3(a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(g)
Securities And Exchange Board Of India Act, 1992 — Section 11B, 11(4)(b), 12A(a), 12A(b), 12A(c)

Citation : (2020) 03 SEBI CK 0018

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

Bench : Full Bench

Advocate : Dr. S.K. Jain, Vikas Bengani,, Kumar Desai, Chirag Bhavsar, Eram Quraishi, Nirman Sharma, Harsh Kesharia, Pulkit Sharma, Anant Upadhyay

Final Decision : Disposed Of

Judgement

Dr. C.K.G. Nair, Member

1. These 12 appeals have been filed to challenge the order of the Whole Time Member (WTM for short) of the Securities and Exchange

Board of India (SEBI for short) dated January 31, 2019. By the said order 5 entities have been restrained from accessing or dealing in the

securities market directly or indirectly for a period of 5 7 years. Further 11 entities, who have already undergone a debarment of more than 5

years from the date of the interim order dated May 10, 2013, have been directed to disgorge an amount of Rs. 3,05,99,174/- jointly and severally along

with the 5 entities who have now been restrained vide the impugned order, along

with interest @ 12% p.a. from December 17, 2012 till the date of payment.

2. Appeal No. 205 of 2019 is filed by four appellants, namely, Hemant Sheth, Prem Parikh, Ankit Sanchaniya and Shree Shagun Financial Services.

Remaining 11 appeals, except Appeal No. 356 of 2019 by Ashika Stock Broking Ltd., are also filed by different entities covered by the impugned

order. Appeal No. 356 of 2019 is filed by a broker who claims to be prejudiced by the impugned order though directly not a party to the matter. Two

of the entities against whom directions have been passed in the impugned order, namely, Oliwonders Financial Services Pvt. Ltd. (â??Oliwondersâ??

for short) and Neevan Capital Markets Pvt. Ltd. (â??Neevanâ?? for short) are no more â??aliveâ?? since their names have been struck off from

the list of companies by the Registrar of Companies (RoC) In short, 11 appeals are filed by 14 of the entities against whom the impugned order is

passed and one appeal is filed by an entity which is not directly impacted by the order. Since the impugned order is common all these appeals are

heard together and decided by this common decision.

3. Common facts relating to these appeals are the following: SEBI conducted an examination relating to trading in the scrips of Polytex India Limited

(â??Polytexâ?? for short), for the period 13.04.2012 â?? 17.12.2012; KGN Enterprises Limited (â??KGNâ?? for short) for the period 27.12.2011 to

17.12.2012 and Gemstone Investments Limited (â??Gemstoneâ?? for short) for the period 18.04.2012 to 17.12.2012, all companies listed with the

BSE Limited (â??BSEâ?? for short). Pursuant to the said examination an ad-interim ex-parte order was passed by SEBI on May 10, 2013 whereby

11 entities were restrained from accessing and dealing in the securities market directly or indirectly till further directions for alleged violations of

provisions of section 12A(a),(b) and (c) of the Securities and Exchange Board of India Act, 1992 (â??SEBI Actâ?? for short) and regulations 3(a),

(b),(c) and (d) and 4(1), 4(2)(a),(b),(e) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market)

Regulations, 2003 (â??PFUTP Regulationsâ?? for short).

4. On January 7, 2014 SEBI confirmed the ad-interim ex-parte order and thereby the interim directions passed against the 11 entities. On March 30,

2015 an investigation report on the matter was submitted by the Investigating

Officer. On August 20, 2015 an impounding order was passed by SEBI against 16 entities including the 11 against whom interim and confirmatory orders were issued. On August 26, 2016 an addendum to the investigation report was also submitted.

5. On December 30, 2016 a common Show Cause Notice (SCN) was issued to all these 16 entities under Section 11B read with Section 11(4)(b) of

the SEBI Act for violations relating to trading in the scrips of Polytex, KGN and Gemstone. The said SCN divided the noticees into two categories,

namely, "trading noticees" and "financing noticees". It was also alleged in the SCN, based on the bank statements of the noticees, that the

trading noticees have received funds from financing noticees which were directly transferred to the stock brokers against the pay-in obligations of the

trading noticees. It was further alleged that the suspected entities executed synchronized trades, reversal trades and self trades amongst themselves

which resulted in creation of artificial volumes and contributed to positive Last Traded Price (LTP) in the three scrips and made unlawful gain while

dealing in the scrips of Polytex which is liable to be disgorged.

6. Thereafter, after providing an opportunity of hearing, replies and written submissions, etc. on various dates to various appellants / noticees the

impugned order was passed on January 31, 2019. Aggrieved by the same these 12 appeals have been filed.

Appeal No. 205 of 2019:-

7. Appellants No. 1, 2 and 3 in this appeal were investors and Appellant No. 4 is a partnership firm where Appellant No. 1, Hemant Sheth and

Bhavesh Pabari (Appellant in Appeal No. 438 of 2019) are the partners. The ad-interim ex-parte order passed by SEBI on May 10, 2013 against 11

entities included Appellant No. 4, namely, Shree Shagun Financial Services thereby preventing Appellant No. 4 from accessing securities market

directly or indirectly.

8. It is the contention of the learned Authorised Representative Dr. S.K. Jain appearing on behalf of the these appellants that SEBI did not provide the

complete documents while issuing the SCN; data provided as annexure to SCN as KYC documents were either not legible nor having the same details

as stated in the SCN. Accordingly, it was contended that by not providing all the documents the appellants were prejudiced and natural justice

suffered.

9. It was further contended by the Authorized Representative that two of the entities against whom directions have been passed in the impugned

order, namely, Oliwonders and Neevan are extinct as they have been deleted from the list of companies by the RoC. As such, no order could have

been passed against extinct entities, particularly, when a joint and several liability of disgorgement has been fastened on the appellants along with such

extinct entities. Further, since Appellant Nos. 1, 2 and 3 did not trade nor made any profits a joint and several liabilities for disgorgement against them

is untenable.

10. Further, it was contended by the learned representative for the appellants that when the ad-interim ex-parte order did not find any violations by the

appellants herein, except Appellant No. 4, a direction of 7 years debarment against Appellants Nos. 1, 2 and

3 should not have been ordered that too after such a long period of the alleged violations and after all the 11 entities who were debarred by the ad-

interim ex-parte order have been let off from any further restraint, though subject to payment of the disgorged amount. It is also contended by the

Authorized Representative that the impugned order travels beyond the SCN by adding sub- regulation 4(2)(b) in the alleged list of violations when the

show cause notice did not contain any such allegations.

11. It was further contended by the learned Authorized Representative of the appellants that appellants have never traded in the scrips but only

financed some of the investors who traded in the scrip and the said financing was in the normal course of business and there was no illegality on the

same. There was no co-relation between financing and trading and no such co-relation has been established in the impugned order. Moreover, there is

considerable variation in the data provided and detailed data in respect of calculations of profit and loss were not provided, particularly, in respect of

two entities despite requesting for the same. Hence, how the illegal gain has been calculated and an amount for Rs. 3,05,99,174/- has been arrived at

is not clear.

12. Further it was contended that though in the scrip of KGN investigation was made no further action was taken and accordingly the impugned order

is selective in its approach in finally taking only the scrip in which the entities

have allegedly made profits. Such an approach, it was contended, would lead to over estimation of profits as in the scrips other than that of Polytex the noticees have made losses as given in a table at Page 281 of the appeal memo which shows that 9 of the trading entities made a combined losses of Rs. 66 lakh (approximately). The appellants also claim that these figures have been worked out from the trade and order logs data provided by SEBI. It was further contended that the appellants brokers had won arbitral awards against them because of non-payment of dues which also show that losses had been incurred in the course of trading by the trading noticees. Further it was contended that the promoters of the companies whose shares were alleged to be manipulated for increasing its price did not sell their holding and hence for whose benefit or what is the motive behind such alleged manipulation is not proved in the impugned order.

13. Appellant No. 1, 2 and 3 were not part of the ad-interim ex-parte / confirmatory order or the investigation report. Their names got added, based on an internal note approved by the WTM which is but not provided to the appellants. Moreover, the appellants request to merge two parallel proceedings in the scrip of Polytex was not given any consideration and if the same was merged into one investigation it would be clearly shown that the price and volumes in the scrips were high even otherwise than during the alleged period of manipulation. It was also contended that several of the appellants are still holding part of the scrips.

Appeal No. 438 of 2019:-

14. We have heard Shri Vikas Bengani, the learned counsel for the appellants. He contended that the appellant Bhavesh Pabari is also a financing noticee being partner of Shree Shagun Financial Services along Hemant Sheth which allegedly funded Rs. 157.14 crore to the trading noticees. The income of the appellant disclosed through the KYC documents with the broker DDAV Securities Pvt. Ltd. was in the range of Rs. 1 â" 5 lakh. The learned counsel submits that appellant here also takes the same stand taken by the appellant in Appeal No. 205 of 2019.

Appeal No. 206 of 2019, 207 of 2019, 208 of 2019, 209 of 2019, 210 of 2019, 211 of 2019, 212 of 2019, 305 of 2019 and 346 of 2019:-

15. We have heard the learned counsel for the appellants Shri Nirman Sharma, Shri Vikas Bengani and Shri Harsh Kesharia. They contended that all

these 9 appeals have been filed by entities who are classified as trading noticees, all of whom traded in the scrip of Polytex. All of them were involved

in reversal trade while excepting Janak Chimanlal Dave (Appellant in Appeal No. 206 of 2019) Jatin Shah (Appellant in Appeal No. 211 of 2019) and

Bhupesh Harischandra Rathod (Appellant in Appeal No. 305 of 2019) others were involved in synchronized trading as well. Further, Kishan Balaram

Shigvan (Appellant in Appeal No. 209 of 2019) and Jinal Apurval Rawal (Appellant in Appeal No. 212 of 2019) engaged in self trades as well.

Therefore, by indulging in reversal trade / synchronized trade / self trade they have contributed to positive LTP in the scrip of Polytex during the investigation period.

16. It is the submission of the learned counsel for the appellants that the individual replies filed by the appellants were not considered; they suffered

considerable loss (for instance, Rs. 1.67 crore in the case of Appeal No. 211 of 2019). Though some of the entities made positive profit, the net

position is a loss of Rs. 66 lakh and a calculation to this effect has been handed over to the Bench during the course of hearing stating that the same is

compiled from the trade logs given by SEBI to the appellant but subsequent to the proceedings. The said table also states that in respect of 7 out of 9

entities the net LTP contribution is negative.

17. In Appeal No. 206 of 2019 filed by Janak Dave, the learned counsel for the appellant contended that the appellant is charged with only reversal

trades but the same charge is absurd since the reversal trade has been calculated for the entire investigation period in terms of total buys and sells

which is not how reversal trade is defined. For a trade to be considered as reversal trade, the learned counsel for the appellants contended, both the

buy and sell part of the trade have to take place within a few minutes or atleast within the same trading day itself which is not the case in the instant

matter. The appellant traded on a number of days during the investigation period, some of them were buy trades and some of them were sell trades

and at the end of the period the total quantity purchased was 591428 and the total quantity sold was 560947 which SEBI is considering as reversal

trade which is absolutely not correct according to standard interpretation of reversal trade. It is over a period of 8 months that the appellant traded.

Further, it was contended that detailed calculation regarding disgorgement is not

given; even the calculation given after the hearing was only in respect of 7 out of 9 entities. These appellants also contended that if the two investigations periods in the scrip of Polytex were merged the fact that the appellant made considerable losses and the fact that the appellants contribution to LTP was negative would have emerged.

18. In order to canvas his submission that charge of reversal trade will be attracted only when an entity reverses its buy or sell positions with a subsequent sell or buy positions with the same counter party during the same day, the learned counsel for the appellant relied on an order of SEBI in

respect of Shree Waris Piya Steel Company Private Ltd. dated June 18, 2019

19. On the other hand, in contrast, the learned counsel for SEBI Shri Kumar Desai relied on two decisions of this Tribunal on the same issue in the

matter of Anita Dalal vs Securities and Exchange Board of India (Appeal No. 211 of 2012 decided on December 3, 2012) and in the matter of M/s.

Master Finlease Ltd. vs Securities and Exchange Board of India (Appeal No. 334 of 2014 decided on October 21, 2016) and contended that matching

/ reversal trades over a period of time is sufficient to prove PFUTP Regulations.

Appeal No. 356 of 2019:-

20. We have heard Shri Pulkit Sharma, the learned counsel for the appellant. This appeal is filed by Ashika Stock Broking Ltd., a broking entity. There

is no order passed against this entity and hence the learned counsel for the respondent Shri Kumar Desai has contended that the appeal is not

maintainable. Learned counsel appearing for the appellant Shri Pulkit Sharma submitted that the appellant has been prejudiced by the impugned order.

For instance, Jigar Ghogari (Appellant in Appeal No. 207 of 2019) was a client of the appellant and consequent to the restraint imposed on the said

client the appellant could not dispose of the shares belonging to Ghogari which was given as part of security deposits for the trading of Ghogari.

Therefore, on September 15, 2014 the appellant wrote to the WTM of SEBI seeking permission to sell shares belonging to Ghogari which is till date

not granted. This letter is produced on record at pages 69 to 73 of the appeal memo. Subsequently, on different dates the appellant had persuaded

SEBI to give them permission to liquidate the shares in the margin account with correspondence on record of upto February 1, 2019. It was further

contended that only when Jigar Ghogari gave an application on May 29, 2018

SEBI sought details from the appellant about the value of securities

maintained in the account of Ghogari and the outstanding amount due. The appellant replied on July 6, 2018 stating that the (then) current value of the holding of the client was Rs. 29,79,845/- and the ledger balance due from the client including levy of delayed payment charges comes to Rs.

37,00,210/-. Still todate SEBI has not given permission to the appellant to sell the said shares maintained in the margin account of Ghogari.

21. We have been told by the learned counsel for SEBI that no such permission was needed for the appellant to dispose of the shares of Ghogari lying

in the margin account upto the amount of the debit on account of that client and in respect of several other appellants (trading members) are

concerned their brokers had in fact sold the shares in the respective margin accounts and recouped the money due to the respective brokers.

22. Given the facts of the case we are of the considered view that the appellant is an affected party though indirectly and therefore prejudiced and

therefore the appeal is maintainable. Moreover, we are constrained to observe that the attitude of SEBI in not responding to the appellant who is a

regulated entity, when it sought SEBI's permission as a matter of abundant caution, is that of apathy.

23. Learned counsel appearing for SEBI Shri Kumar Desai vehemently contended that the impugned orders passed against the entities is perfectly in

order as the relationship between the entities have been well established through multiple sources which include common telephone number (land line

and mobile), common e-mail id, partnership connections, common directorship etc. as explained in table 2 at pages 8 & 9 of the impugned order and

through financial dealings / fund flows given in table 3 at page 10 of the impugned order and through KYC documents of the trading noticees as

detailed in para 16 at pages 11 & 12 of the impugned order. It is on record that funds to the tune of 157.14 crore has been given to trading noticees

who themselves were low net worth individuals having income disclosed to the tune of Rs. 1 to 5 lakh. It is a matter of concern as well as of strong

evidence value that such large amount of money was given to trading noticees as explained in paragraph 17 to 19 of the impugned order at pages 12

& 13.

24. On the argument of reversal trade where the appellant in Appeal No. 206 of

2019 contended that there was no reversal trade as the impugned order takes into account a period of 8 months buy & sell position to calculate reversal trades and the same is not reversal trade as it is normally understood, the learned counsel for respondent SEBI contended that reversal of trade or position over a period of time also fall in the similar category of violation. In order to press home this argument he relied on Shree Waris Piya Steel Company Private Ltd. (supra) and stating that para 29 and table 9 there under at page 20 of the impugned order show that the number of trades were large in number and the reversal quantity more or less matches perfectly in most of the cases. In addition, he stated that there are a number of self trades as well by some appellants. On the submission of not supplying all the documents the learned counsel for the respondent SEBI fairly submits that some of the documents were given after the closing arguments and details regarding disgorgement in respect of two entities were not given to the parties though full inspection of all the documents were given. It was also contended by the learned counsel that incurring losses by some of the appellants does not mean no manipulation as held in the case of M/s. Master finlease Ltd. (supra) and the buy & sell position may not be always matching while trading in the market as held in Anita Dalal (supra).

25. Having heard the learned counsel for the parties in great detail and after perusing the various documents produced before us we are of the view that the appellants in 11 of the 12 appeals (except Appeal No. 356 of 2019) have violated the provisions of SEBI Act and PFUTP Regulations.

26. In respect of these 11 appeals we are of the considered view that violations have been established through connection, fund transfers, the nature and magnitude of trading, contribution to LTP etc. However, it is an admitted fact that document relating to two entities regarding the detailed calculation of the disgorgement amount were not provided to the appellants and even other documents were provided through multiple tranches and some after the proceedings.

27. We also note that the interpretation of reversal trade is different from its standard /normal interpretation. Even if the contention (and the ratio of those two judgments relied upon by SEBI M/s. Master finlease Ltd. (supra) and Anita Dalal (supra) are taken on board more details regarding the

date-wise trading pattern of the appellants atleast on sample days is needed. Just aggregates over a period of 8 months are insufficient to prove the same.

28. We do not find any merits in the contentions of the appellants in Appeal No. 205 of 2019 and 438 of 2019 that they were only financiers and not

traded in the scrip during the relevant time and hence not committed any violations. The impugned order clearly explains the connection between these

appellants and trading entities (appellants in other appeals) and the amount of money transferred by the financing appellants to the trading appellants.

Shree Shagun Financial Services have funded Rs. 157.14 crore to the trading noticees. Therefore, the finding in the impugned order that these

financing appellants have adopted the scheme of funding other trading entities to indirectly access the securities market because of the restrained

imposed on them vide the interim order dated February 2, 2011 cannot be faulted. Moreover, the amount of funds transferred to the trading entities

who have very low income as per their own statements is so glaring and conclusive in proving the creation of a manipulative and fraudulent scheme of

trading in the scrips concerned.

29. The submissions that orders could not have been passed against two entities, namely, Oliwonders and Neevan, which are struck off from the

register particularly when a joint and several liability has been imposed on the appellants has no merit as it is an established fact that the trading entities

have received considerable amount of money from these two entities also [Rs. 5.16 crore from Oliwonders and Rs. 0.63 crore from Neevan) and

there have been evidence of return fund flow as well. Moreover, Prem Parikh and Ankit Sanchaniya (two of the appellants in Appeal No. 205 of

2019) are the directors of Oliwonders and Prem Parikh and Bhavesh Pabari (Appellant in Appeal No. 205 of 2019 and Appeal No. 438 of 2019

respectively) are the directors of Neevan. Striking down of the names of these two companies by the Registrar for non-compliance of the provisions

of the Companies Act, 2013 does not alleviate the statutory liabilities of these two entities.

30. The submission of the appellants regarding merger of the two investigation period in respect of Polytex rather than parallel proceedings does not

have any merit in view of the fact that the number of entities and number of

scrips involved in one period is distinct from the number of entities and number of scrips in the other. While the impugned order herein deals with three scrips and 16 entities, the proceedings vide show cause notice dated February 26, 2016 is in respect of only one scrip (Polytex) and 10 entities. Therefore, we do not find any deficiency in SEBI proceedings with another investigation in one of the scrips involved in this impugned order for another distinct period.

31. The contention of the appellant that the losses dealing in the scrip of Gemstone / KGN should have been set off with the profits made while dealing in the scrip of Polytex does not have any merit as unlike tax rules where such set off is allowed for normal business profits and losses this is a case of manipulative trade and dealings and manipulations and that too in the nature of fraudulent and unfair trade practices does not deserve such treatment which normal business transactions are entitled to. Further, the nature and magnitude of the violation is such that the prices and volumes particularly in the scrip of Gemstone and Polytex had assumed such proportions as explained in the impugned order. For example, the price of Gemstone increased by 127%; the noticees had bought about 60% the market volume and sold about 46% of the market volume. Tables 4 and 5 of the impugned order explain the synchronized trades of above 21% of the traded quantity among themselves which was 6.32% of the total market volume.

32. Similarly, in the scrip of Polytex during the investigation period the top 10 clients bought 72% of the total volume and sold 73.74% out of which about 70% and 72% were contributed by the noticees. Price in the scrip of Polytex increased from Rs. 136.50 to Rs. 281 clearly attributable to the manipulative trading done by the noticees. Further, the submission that self trades are very insignificant percentage of the total market volume to prove charges is not in tune with the SEBI's own policy that small quantity of self trades happens sometimes automatically has no meaning in the larger context where it is clear that the appellants were trying to manipulate the trade through various means including synchronized and reversed trades.

The submissions that some of the appellants did not indulge in all violations [self trade in the scrip of Polytex was done only by Kishan Balaram

Shigvan (Appellant in Appeal No. 209 of 2019) and Jinal Apurval Rawal

(Appellant in Appeal No. 212 of 2019) while Bhupesh Rathod (Appellant in Appeal No. 305 of 2019) and Janak Dave were (Appellant in Appeal No. 206 of 2019) involved only in reversal trade] also do not have merit in the

given context that all these entities were found to be connected and manipulating the market by various means. In a scheme of manipulative and unfair

trading it is not necessary that every participant should be indulging in every type of trading violation or even in the same / similar magnitude. Once

they are found to be part of a group trying to manipulate the volume or price of the scrip they became party to the violation. Hair splitting arguments

that some traded more than others or on more days or some indulged in synchronized reversal and self trade while others did only one of those types

do not cast away their violations. However, we agree with the contention of Dave that more disaggregated details are needed to prove reversal trade

and in the impugned order only aggregates are given though we do not agree with their submission that reversal trade done on the same trading day

only can be treated as reversal trades.

33. It is an admitted fact and borne out from SEBI's record that detailed calculations regarding profits made by the trading entities in respect of

two entities were not given to the appellants (Page 176 to 178 of the e-mail message on Page 176 of the appeal memo states that gain calculation

shows in respect of 7 entities have been attached while the attachment at Page 177 gives 9 names and the attachment at Page 178 gives 8 names.

Hence, the inconsistency). We also note that there is considerable discrepancy between the profits as calculated by the appellants themselves as well

as SEBI as given in the impugned order though the appellants claim that those calculations are based on the trade logs given by SEBI. In order to

harmonize the appellants deserve to be given details of calculations made by SEBI in respect of all noticees which admittedly is not done in the instant

matter.

34. In the result we pass the following directions:-

(a) Appeal No. 356 of 2019 is allowed and we permit the appellant to liquidate the shares lying in the margin account of Ghogari (Appellant in Appeal

No. 207 of 2019) to the extent of the legally permissible debit amount.

(b) In respect of other 11 appeals while upholding the finding in the impugned

order that the appellants have violated provisions of SEBI Act and

PFUTP Regulations and therefore upholding the direction relating to the restraint imposed on the appellants we remit the matter to SEBI with the

following directions:-

(i) Bring out date-wise details of reversal trades in respect of the trading noticees.

(ii) Bring out details of calculation of profits in respect of all the trading noticees.

(iii) SEBI shall provide (i) and (ii) above to all the appellants and thereafter recalculate the amount of disgorgement against the appellants and pass an

order within three months from the date of this order after giving an opportunity of hearing.

35. All appeals are disposed off with the aforesaid directions. No orders on costs.