(2020) 02 SEBI CK 0019

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 104, 225, 347, 503 Of 2019, Miscellaneous Application No. 555 Of 2019, 12 Of 2020

Jayeshkumar Narottamdas Gandhi And Others — APPELLANT

Vs

Securities & Exchange Board Of India — RESPONDENT

Date of Decision : 21-02-2020

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

Citation : (2020) 02 SEBI CK 0019

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

Bench : Full Bench

Advocate : Vinay Chauhan, K. C. Jacob, Geet Shikhar, Kumar Desai, Abhiraj Arora, Vivek Shah, Sagar Dhanvant Jajal, Kevic Setalvad, Anubhav Ghosh, Rashi Dalmia

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellants have filed Appeal No. 225 of 2019 against the order dated January 31, 2019 passed by the Whole Time Member (hereinafter

referred to as â??WTMâ??) prohibiting the appellants from accessing the securities market for a period of four years and further restraining them

from buying, selling or otherwise dealing in securities directly or indirectly for a period of four years. The appellants have also filed another Appeal

No. 503 of 2019 challenging the order of the Adjudicating Officer (hereinafter referred to as â??AOâ??) dated June 24, 2019 wherein a penalty of

Rs. 6 lacs has been imposed for violation of Regulations 3 and 4 of 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??). In Appeal No. 104 of 2019

and in Appeal No. 347 of 2019, the WTM found that by selling miniscule quantity of shares, the appellants had manipulated the price of the scrip

which was violative of Regulations 3 and 4 of the PFUTP Regulations and consequently, prohibited the said appellants from accessing the securities

market for a period of four years, etc.

2. Since all the appeals are against the same violation of PFUTP Regulations and for similar transactions, the said appeals are being decided together.

For facility, the facts stated in Appeal No. 225 of 2019 are taken into consideration. For the reasons stated in the Misc. Application No. 555 of 2019

and Misc. Application No. 12 of 2020, the delay in filing the Appeal No. 503 of 2019 is condoned. The said Misc. Applications are allowed.

3. The charges levelled against the appellants are that it had contributed to the positive LTP as a seller and that the trades made by the appellants

resulted in the manipulation in the price of the scrip. Another question which necessarily arises for consideration is, whether the appellants as a seller

alone can be charged for increasing the LTP in the absence of the buyer.

4. The WTM and the AO while passing the impugned orders found that miniscule shares have been sold by the appellants when there was a demand

for more shares and that the appellants had a substantive holding in that scrip. Further finding was that a prudent investor would have sold the entire

shares at the first opportunity especially when the price quoted by the purchaser was above the LTP and, thus, there was no reason to sell miniscule

amount of shares unless the motive was to increase the price of the scrip. The authorities found that the trading pattern of the appellants in selling the

scrip was not genuine and were aimed in manipulating the price thereby violating Regulations 3 and 4 of the PFUTP Regulations.

5. We find that the controversy involved in the present appeals is squarely covered by the decision of this Tribunal in M/s. Nishith M. Shah HUF vs.

SEBI in Appeal No. 97 of 2019 and other companion appeal decided on January 16, 2020, wherein this Tribunal has held that if trading in miniscule

amount leads to an increase in the price of the scrips one can presume or infer that the trading is manipulative but such trading cannot happen

unilaterally and that there must be evidence to show collusion between the buyer and the seller.

6. In the instant case, we find that the investigation report itself indicates that there is no connection between the appellants, with the buyer, promoter

or with the company. In the absence of any connection between the seller and the buyer, the appellants could not be charged with manipulating the

scrips nor the trading pattern of the appellants could infer manipulating the price of the scrip. Further, unless the buyer is charged with violation of

PFUTP Regulations, the seller alone cannot be charged of collusion in manipulation of the price of scrip.

7. In the light of the aforesaid, the impugned orders cannot be sustained and are quashed. The appeals are allowed with no order as to costs.