
(2020) 03 SEBI CK 0016

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 418, 469, 471, 472, 473, 578 Of 2019, 93 Of 2020,
Miscellaneous Application No. 510, 541, 542, 624, 632 Of 2019

Jigna Vipul Vora And Others

APPELLANT

Vs

Securities And Exchange Board Of India And Others?

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)(g)
Securities And Exchange Board Of India (Prohibition Of Insider Trading) Regulations, 1992 — Regulation 13(1)
Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 — Regulation 29(1)
Securities and Exchange Board of India Act, 1992 — Section 15HA

Citation : (2020) 03 SEBI CK 0016

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

Bench : Full Bench

Advocate : Anubhav Ghosh, Rinku Valanju, Harsh Kesharia, Vikas Bengani

Final Decision : Dismissed

Judgement

Dr. C. K. G. Nair, Member

1. These 7 appeals have been filed to challenge the order of the Adjudicating Officer (hereinafter referred to as "AO") of Securities and

Exchange Board of India (hereinafter referred to as "SEBI") dated May 22, 2019. By the said order a penalty of Rs. 18 lacs has been imposed

jointly and severally upon 12 noticees for violation of Regulations 3 (a), (b), (c), (d) and 4(1), 4(2)(a) and 4(2)(g) of Securities and Exchange Board of

India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP")

Regulationsâ??). In addition, on one of the noticees an additional penalty of Rs. 2 lacs has been imposed for violation of provisions of Securities and

Exchange Board of India (Prohibition of Insider Trading), 1992 (hereinafter referred to as â??PIT Regulationsâ??) and Securities and Exchange

Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as â??SAST Regulationsâ??).

2. The basic facts relating to the matters are the following :-

1. SEBI conducted an investigation regarding the trading activities in the scrip of Finalysis Credit and Guarantee Company Ltd. (â??FCGCLâ?? for short).

2. It was observed that 42 entities have violated various provisions of the PFUTP Regulations and one noticee (Noticee No. 42) in addition, violated

certain provisions of PIT Regulations as well as SAST Regulations as detailed in the impugned order.

3. Accordingly, a show cause notice was issued to 42 noticees which, inter-alia, alleged that the noticees were responsible for the abnormal price rise

in the scrip of FCGCL between March 28, 2012 to February 6, 2013 from Rs. 40.20 to Rs. 182.10 and increased trading activities in terms of volumes

as well in the scrip.

4. It was also alleged that the noticees were connected entities in terms of KYC connections and off-market share transactions based connection as

detailed on page Nos. 5-6 of the impugned order.

3. Further, it was alleged that these 42 entities were part of a larger group of 181 entities who were allegedly involved in the fraudulent trading

activities in the scrip of FCGCL. However, adjudication proceedings have been initiated against 37 noticees (Noticee Nos. 5 to 41), for creation of

artificial volumes based on a criteria of more than 0.75% contribution to the artificial volume per entity and creation of artificial volume for two or

more days and 5 other noticee Nos. 1 to 4 and 42 who were connected entities through off-market transfer of shares. Further, based on the said cut

off, 144 entities as given in table 5 of the impugned order at pages 10-20 therein were let off with an administrative warning.

4. Thereafter, it is alleged that all the present noticees i.e. from 1 to 42 have collectively traded amongst themselves and created artificial volume of

39,14,301 shares constituting 23.05% of the market volume through a

combination of off-market and on market transactions in the scrip during the investigation period, and, therefore, violated the stated provisions of the PFUTP Regulations. In addition, Noticee No. 42 had crossed holding of more than 5% of the total paid up capital of the company which was liable to be disclosed under Regulation 13(1) of the PIT Regulations as well as under Regulation 29(1) of the SAST Regulations within two working days of crossing the shareholding above 5% level which was not done. Similarly, when he reduced his holding by more than 2% also it was liable to be disclosed under these provisions which were not done. Hence charge of violation of the PIT and SAST Regulations also against noticee No. 42, in addition to violation of the PFUTP Regulations.

5. Therefore, the factual matrix of the entire matter shows that there was a large group of 181 plus 5 entities involved in the manipulation. Out of these, 144 entities were let off with an administrative warning and further investigation was conducted in respect of 42 entities out of which finally penalty has been imposed on 12 of them. In order to further filter the entities who have violated the stated provisions, so as to impose penalty, the AO has imposed the further condition of individual contribution to the total artificial volume of more than 1.78% and trading on two or more days. By this reasoning / condition, noticees Nos. 12 to 41 have been let off without imposing any monetary penalty and monetary penalty has been imposed only on noticee Nos. 1 to 11 and 42 under Section 15HA of the Securities and Exchange Board of India Act, 1992 thereby imposing a total penalty of Rs. 18 lacs jointly and severally upon these 12 noticees.

6. We have heard the learned counsel appearing on behalf of the various appellants and the basic contentions raised by these learned counsel are the following :-

a) The investigation period in the matter was during 2010-11 and a show cause notice was issued after 6 years, on September 25, 2017.

b) 181 entities were initially identified as connected to the alleged manipulation out of which 144 were let off with an administrative warning based on an artificial criteria of less than 0.75% of the volume of artificial trading.

c) Thereafter, in the impugned order 30 entities have been let off on a completely arbitrary criteria of less than 1.78% of the total artificial volume and

two days of trading and these 30 entities were let off even without an

administrative warning. Therefore, there are serious anomalies in the entire process of passing orders against the appellants.

d) Since each appellant is not connected to any other appellant or atleast to most of the appellants, it is practically impossible to pay the penalty on a joint and several basis even assuming that the penalty is sustainable.

7. We have also heard Mr. Anubhav Ghosh, the learned counsel for the respondent SEBI who tried to convince us that the criteria adopted by the AO

is sound as entities who traded in low volumes and on a single day were though let off in terms of penalty they are not exonerated from the charge;

rather the finding in the impugned order itself is that they were parties to the violations but because of the low magnitude of their violations no penalty

has been imposed. Therefore, not imposing a penalty is not tantamount to leaving them scot-free.

8. We are unable to appreciate the rationale provided in the impugned order. A group of entities have been found to be involved in violating provisions

of PFUTP Regulations; all of them were individually and collectively responsible for the fraudulent and manipulative activities and thereby creation of

artificial volumes and jacking up of the price of the scrip as per the findings. In this context, 144 entities were let off with an administrative warning

based on a criteria of less than 0.75% per entity share in the artificial volume. Thereafter, subsequent to the adjudication 30 entities were let off even

without an administrative warning based on a criteria of less than 1.78 % per entity share of the artificial volume. There is a huge contradiction on this

differential punishment / treatment. Further, we do not find any logic in adopting the cut off of 1.78% of the artificial volume in deciding to let off

people who traded below that level without even a warning and in imposing a monetary penalty on entities who traded even slightly above that level.

Test of reasonable classification has to be based on legally sound footings; not based on some arbitrary numbers particularly while imposing a penalty

on a segment of the group who are party to the violations. In the instant case, we find that this logic of intelligible differentia is lacking.

9. On the other hand, given the magnitude of artificial trading in the scrip, including the off-market transactions by a few entities, the issues involved in

the matter are serious and needs a thorough examination. Similarly, given the contention of the appellants that all of them are not connected to each

other or even known to each other a joint and several liability of penalty also needs to be relooked given the practical implementation problem.

10. Given the above reasons, we quash the impugned order and allow the appeals, but remand the matter back to the file of the AO of SEBI. The AO

shall pass a fresh order in accordance with law within a period of six months from the date of this order. No orders on costs. Consequently, all Misc.

Applications have become infructuous and are also dismissed as such.