(2021) 10 SEBI CK 0163

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 505, 506 Of 2019, 137, 138 Of 2021

JMD Ventures Limited And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 29-10-2021

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 : (2021) 10 SEBI CK 0163

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

Bench : Division Bench

Advocate : Vinay Chauhan, K.C. Jacob, Shyam Mehta, Abhiraj Arora, Rashi Dalmia, Karthik Narayan, Harshvardhan Nankani, Neha Sonawane, Yash Abhay Kullarwar

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Four appeals have been filed against two orders, one against the order of the Whole Time Member ("WTM" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) whereby appellants have been restrained from accessing the securities market for a period of two years and the other is the order of the Adjudicating Officer ("AO" for convenience) whereby a penalty has been imposed for violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience). Since the issue is common, all the four appeals are being taken up together.

2. The facts leading to the filing of the present appeal is, that the investigation was conducted by SEBI in the scrip of JMD Telefilms Industries Limited. It was found that Jitendra Kumar Pratihast and Johar Pal Singh had sold shares in small quantities at a higher price thereby contributing to positive LTP in Patch-1 and that Jitendra Kumar Pratihast also sold shares in large quantities as compared to

the number of shares held by him in Patch-2 and thereby caused a decrease in the price of the scrip which was found to be violative of Regulations 3 and 4 of the PFUTP Regulations. Accordingly, a show cause notice was issued to all the entities including the appellants to show cause why appropriate orders should not be passed for violating Regulations 3 and 4 of the PFUTP Regulations as the transactions were manipulative and non-genuine trades and that the pattern of trades were clearly manipulative with the intention to artificially raise or depress the price thereby inducing the investors to buy/ sell their stocks.

3. Based on the replies, the WTM passed an order holding that the Company and its Directors were not involved in the execution of the trades executed by Jitendra Kumar Pratihast but found that the Company and its Directors were connected with the other entity, Johar Pal Singh and, therefore, found the Company and its Directors to be guilty of Regulations 3 and 4 of the PFUTP Regulations. The WTM also found the two entities Jitendra Kumar Pratihast and Johar Pal Singh indulging in manipulative and non-genuine trades which was violative of Regulations 3 and 4 of the PFUTP Regulations and accordingly restrained the appellants and the other entities from accessing the securities market for a period of two years. Similarly, the AO also found them guilty and accordingly passed an order of penalty.

4. The Company JMD and its Directors have filed two separate appeals, one against the WTM order and the other against the order of the AO. Jitendra Kumar Pratihast has also filed two appeals, one against the order of the WTM and other against the order of the AO. Johar Pal Singh has died.

5. We have heard Shri Vinay Chauhan, the learned counsel and Ms. Neha Sonawane, the learned counsel for the Appellants and Shri Shyam Mehta, the learned senior counsel for the respondent.

6. In so far as the appellant-Company JMD and its Directors Jagdish Prasad Purohit and Kailash Prasad Purohit are concerned, they have not indulged in execution of any trades of the Company but have been found guilty on account of connection with Johar Pal Singh. The finding is, that Johar Pal Singh was a Director of Prime Capital Market Pvt. Ltd. from December 16, 2005 to May 16, 2008 during which time one of the Directors of the Company namely, Jagdish Prasad Purohit was also a Director. Further, Jagdish Prasad Purohit was a Managing Direction in Unisys Softwares and Holding Industries Limited in which Johar Pal Singh was also a Director. Further, Johar Pal Singh joined JMD as a Director post-investigation on December 11, 2014. On the basis of this connection the WTM and the AO came to a conclusion that the market manipulation was done as a scheme which could only happen if the Company and its Director were involved and that this circumstantial evidence of connection leads to a preponderance of probability of the involvement of the Company and its Directors in the manipulation of the price done by Johar Pal Singh.

7. In our view, the finding of manipulation in the price of the scrip and

involvement of the Company and its Directors through Johar Pal Singh on the basis of the aforesaid connection is farfetched and is based on surmises and conjectures. In our view, the connection so pointed out in the impugned order may lead to a suspicion but cannot lead to a conclusion that there was a scheme adopted by the Company to manipulate the scrip. We find that the connection so pointed out in the impugned order is scanty and is indirect which cannot lead to a conclusion of meeting of minds for the purpose of hatching a scheme nor can it lead to a preponderance of probability that the Company and its Directors were involved in the manipulation of the scrip.

8. Admittedly, no trades were done by the Company and its Directors. Thus, no benefit was derived either by the Company or by its Directors. Further, it does not make any sense for the Company and its Directors to hatch a scheme in order to depress the price of the scrip of its Company through the trades allegedly done by Jitendra Kumar Pratihast in Patch-2. In addition to the aforesaid, we find from the trades executed by Johar Pal Singh which is depicted in paragraphs 12.12 and 12.13 of the WTM's order that the total trades executed by Johar Pal Singh, was 1205 out of which only 30 shares in 4 trades were found to be above LTP. This in our opinion is too miniscule to make an impact on the volume of trades.

9. Thus, we are of the opinion, that the appellant-Company JMD and its Directors cannot be held to be part of the scheme for manipulating its scrip nor can it lead to an inference that they had violated Regulations 3 and 4 of the PFUTP Regulations.

10. In so for as Appeal Nos. 137 and 138 of 2021 Jitendra Kumar Pratihast are concerned, the pattern of his trades in selling small quantities above LTP on a regular basis increased the price of the scrip which induced the investors to sell their stocks. We also find that the trades executed in Patch-2 were also manipulative. The appellant held only 7 shares and continuously sold shares for the entire day and by 11 trades was able to contribute 100 negative LTP with the trade quantity of 682 shares. This trading pattern was also held to be manipulative by WTM as well as by the AO. We are in the agreement with the said findings and do not find any reason to differ. We thus hold that the pattern of trading of Jitendra Kumar Pratihast is clearly manipulative and violative of the Regulations 3 and 4 of the PFUTP Regulations.

11. In the light of the aforesaid, the impugned order of the WTM and the AO in so far as Appeal Nos. 505 and 506 of 2019 are concerned filed by the Company JMD cannot be sustained and quashed. The appeals are allowed with no order as to costs. In so far as Appeal Nos. 137 and 138 of 2021 of Jitendra Kumar Pratihast are concerned, the appeals fail and are dismissed.

12. The present matters were 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.