

(2021) 01 SEBI CK 0010

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 378 Of 2020

Kaushik Rajnikant Mehta

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 07-01-2021

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) 01 SEBI CK 0010

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

Bench : Full Bench

Advocate : Vikas Bengani, Suraj Chaudhary, Nidhi Singh, Kinjal Bhatt, Vidhii Partners

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated March 20, 2020 passed by the Adjudicating Officer (AO for short) of Securities

and Exchange Board of India (SEBI for short) imposing a penalty of Rs. 5 lakh for violation of Regulation 3 and 4 of SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations for short).

2. The facts leading to the filing of the present appeal is, that a show cause notice was issued on November 20, 2013 alleging that the appellant along

with other connected entities indulged in synchronized trading which showed that there was no change of ownership and the trades only created

artificial volume in the scrip thereby giving a misleading appearance of trades. It was alleged that these synchronized trades in the scrip of Well Pack

Papers & Containers Ltd. was deliberately manipulated with the sole purpose of increasing the price of the scrip. It was also alleged that the buy

orders were placed at higher rates and within a few minutes of the placing of the trades the sell orders matched and thereby the trades were not only

manipulative but fraudulent.

3. The AO after considering the evidence on record passed an order on February 16, 2015 finding the appellant guilty of the charges leveled and

imposed a penalty of Rs. 6 lakh. An appeal was filed by the appellant which was allowed by this Tribunal by an order dated March 14, 2016. The

order of the AO was set aside and the matter was remanded to the AO to pass a fresh order in the light of the observation made in the order.

4. Thereafter the impugned order records that nothing was done immediately and SEBI took its own sweet time in appointing an AO on March 17,

2018, that is, after more than two years to decide the matter afresh. The record further indicates that nothing was done by this AO and a new AO

was appointed on March 18, 2019 who after nine months fixed a date of hearing in December 2019 and thereafter the impugned order was passed on

March 20, 2020.

5. The impugned order holds that the appellant had indulged in synchronized trading with other connected entities creating artificial volume in the scrip.

The trades executed by the appellant were fraudulent and manipulative leading to an artificial increase in the price and therefore violative of

Regulation 3 and 4 of PFUTP Regulations. The AO considering the facts and circumstances and the factors contained in 15J imposed a penalty of

Rs. 5 lakh.

6. We have heard Mr. Vikas Bengani, the learned counsel for the appellant and Mr. Suraj Chaudhary assisted by Ms. Nidhi Singh and Ms. Kinjal

Bhatt, the learned counsel for the respondent through video conference.

7. Before the Tribunal the ground urged is, that there has been an inordinate delay in the disposal of the matter. The trades which are alleged to be

synchronized trades were executed in the year 2008-2010 and the impugned order has been passed after a period of 10 years. Such delay has caused

prejudice. It was also contended that the Tribunal by an order of March 14, 2016 had remanded the matter to AO to decide the matter afresh but it

took more than three and half years for the AO to redecide the matter. Such

delay pursuant to the remand order has caused prejudice and, on this ground of inordinate delay, the impugned order is liable to be quashed.

8. It was also contended that the relevant extract of the investigation report and the complete trade and order logs were not provided which is violative of the principles of the natural justice. It was also alleged that the AO has travelled beyond the show cause notice in as much as that there was no charge with regard to increase in artificial volume of the scrip. It was also contended that there is no connection with the other entities, namely, the Walmiki Shah group and the finding that the appellant was connected with them on the basis of an off market transaction was wholly erroneous and in any case insufficient.

9. On the other hand, the respondent urged that the order of the AO does not suffer from any manifest error of law and that no prejudice was caused to the appellant on account of the delay in the completion of the proceedings. It was contended that the delay has not caused any harm or detriment to the interest of the appellant and therefore on this ground the order cannot be set aside. It was contended that the evidence on record clearly indicated that the appellant was connected to the Walmiki Shah group on the basis of off market transaction. It was also contended that the evidence clearly indicated synchronized trades between the appellant and the entities without any intention of change of ownership. The trades executed by the appellants created not only artificial volume in the scrip but also led to the increase in the price. It was contended that the buy orders were placed at a higher price and within a minute the trades were executed which shows that there was a common intention of mind.

10. Having heard the learned counsel for the parties and having perused the record we are not satisfied with the contention raised by the appellant with regard to non-availability of the investigation report or the trade and order logs. We are of the opinion that bald assertion has been made without providing any relevant evidence on the subject in question. Nothing has been brought on record to show as to how the investigation report or the complete trade and order logs was required for the purpose of the case. We also find from a perusal of a show cause notice as well as from the impugned order that AO has not travelled beyond the show cause notice. The show cause notice is very clear and covers artificial volume of the

trading which is implicit as well as explicit.

11. Insofar as the allegation of connection with the Walmiki Shah group is concerned we are satisfied that the appellant was connected with this

Walmiki Shah group. We find that the appellant made an off market transaction with Vipul Hiralal Shah who is one of the entities of the Walmiki Shah

group and therefore the finding that the appellant is connected with the Walmiki Shah group does not suffer from any error.

12. Insofar as inordinate delay is concerned we find that after the remand from the Tribunal by an order of March 14, 2016, the respondent took no

steps to decide the matter afresh. When no steps were taken for more than two years it leads to a presumption that the matter had been set at rest

and that the respondent does not wish to pursue the matter any further. We are also of the opinion that when there is undue delay in the disposal of

the case it causes a prejudice to the person who is being prosecuted against. Once a show cause notice has been initiated it is incumbent upon the

authority to decide the matter at the earliest. Delaying the proceedings does not benefit the respondent or the appellant. In fact, the delay in our

opinion causes a lot of prejudice to the appellant. Every person has a right to arrange its affairs in a suitable manner. When there is a delay in initiating

the proceedings or there is undue delay in the disposal of the case, the uncertainty creeps in which causes prejudice. In the instant case, we find that

the Tribunal remanded the matter on March 14, 2016. No steps were taken by the respondent for more than three years and it is only on March 18,

2019 that an AO was appointed who took another nine months to issue a notice for hearing. This inordinate delay in the disposal of the matter

pursuant to a remand order is a mitigating factor to be considered while deciding the quantum of penalty under 15J of the Act. Considering this factor,

we are of the opinion that on account of the undue delay in the disposal of the matter the imposition of penalty of Rs. 5 lakh becomes arbitrary and

excessive and is liable to be reduced.

13. Considering the aforesaid, we affirm the order of the AO holding that the appellant had violated Regulation 3 and 4 of PFUTP Regulations. We,

however, reduce the penalty from Rs. 5 lakh to Rs. 2.5 lakh to be paid by the appellant within four weeks from today. The appeal is partly allowed

with no order as to costs.

14. 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.