(2021) 10 SEBI CK 0033

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 71 Of 2021

Krishna Kumar Periwal APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 06-10-2021

Acts Referred:
Securities And Exchange Board Of India Act, 1992 — Section 11, 11B

Citation : (2021) 10 SEBI CK 0033

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

Bench : Division Bench

Advocate : Pulkit Sharma, Aditya Bhansali, Nirali Sunil Mehta, Shyam Mehta, Nishit Dhruva, Hridhay Khurana, Yash Garach

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order of the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated November 20, 2020 debarring the appellant from accessing the securities market for a period of two years.

2. A show cause notice dated September 21, 2018 was issued calling upon the appellant and 20 other noticees to show cause as to why suitable direction under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') should not be issued against them. The show cause notice alleged that the appellant alongwith other connected entities were acting in concert and were part of a scheme and enticed to off-load a large number of shares of the company known as Timbor Home Ltd. in the secondary market by planning unsolicited misleading advice recommending purchase of shares of the company thereby inducing unsuspected gullible investors to purchase the scrip of the company. The modus operandi was that prior to sending bulk SMS, the connected entities bought small quantity of shares in each

transaction which contributed to the increase in the price of the scrip. Around the same time, the promoters of the company transferred the shares to other connected entities through off-market. Subsequently, some of the connected entities circulated bulk SMS from July 25, 2014 to July 28, 2014 containing unsolicited advice recommending purchase of shares of the company. Thereafter, 17 connected entities and two promoters off-loaded their shares of the company on platform of the stock exchange. It was also alleged that connected entities have traded among themselves and thereby created an impression of artificial volume generation which led to gullible investors to invest in the scrip of the company.

3. In the light of the aforesaid modus operandi, it was alleged in the show cause notice that the noticees devised a scheme and artifice to dump shares from July 25, 2014 onwards in a pre-planned scheme, namely, by sending unsolicited bulk messages to investors and inducing them to buy the scrip.

4. After considering their replies and after hearing the parties, the WTM came to the conclusion that a fraud had been committed by the appellants and other entities. In so far as the appellant is concerned, a finding was given that the appellant received the shares from the promoter Abhijeet Dwarkadas Daga, noticee No. 14 as a gift and thereafter offloaded the shares of the company. Accordingly, the WTM instead of passing an order of disgorgement against the appellant only passed an order debarring him from accessing the securities market for a period of two years.

5. We have heard Mr. Pulkit Sharma, the learned counsel with Mr. Aditya Bhansali, the learned counsel and Ms. Nirali Sunil Mehta, Practicing Company Secretary for the appellant and Mr. Shyam Mehta, the learned senior counsel with Mr. Nishit Dhruva, Mr. Hridhay Khurana, Mr. Yash Garach, the learned counsel for the respondent through video conference.

6. The contention of the learned counsel for the appellant is, that the modus operandi clearly indicated that the alleged noticees including the appellant had acted in concert, planting misleading SMS to gullible investors which is alleged to be a fraud under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). It was contended that the scrips were transferred off-market prior to July 25, 2014, the bulk messages were sent from July 25, 2014 till August 2, 2014. It was contended that the appellant was nowhere in the picture at that time and that he received the shares only in August 2014 and had sold it in September 2014. Thus, it was contended that he was never part of the scheme as the entire modus operandi occurred prior to August 2014 before the appellant purchased the shares. It was further alleged that the WTM has proceeded on the basis that he had received the shares off-market as a gift whereas the appellant had purchased the shares and had made the payments to noticee No. 14 through banking channel which is reflected in the bank statement of the appellant's account. Proof of the bank

statement etc. was supplied by the appellant in its reply on October 9, 2018, but for the reasons best known to the WTM, this was not considered and the appellant has been found guilty of the violation.

7. Having heard the learned counsel for the appellant, we found that the arguments in the first flush appears to be attractive but after a closer scrutiny, we find that the arguments cannot be allowed to stand. Whereas the appellant may be correct in contending that he was not a part of the modus operandi as he had acquired the shares only in August 2014 and could not be part of the conspiracy of sending unsolicited messages to gullible investors, however, the same has no affect in so far as the transactions made by the appellant is concerned. The contention that the appellant had paid the consideration to noticee No. 14 for the purchase of the scrip is not correct in the way it has been alleged by the appellant. We find that the Delivery Instruction Slip (DIS) through which the shares were transferred contained an endorsement that it was a gift given to the appellant by noticee No. 14. Further, we find from the bank statement given by the appellant that the payments were made to noticee No. 14 as and when he sold the shares through stock exchange platform. Thus, we are of the opinion that the appellant received shares from the promoter noticee No. 14 to sell the same on his behalf on the stock exchange platform. As and when he sold the shares he paid the money to the noticee No. 14. Thus, it is a clear case where the appellant was acting on behalf of the noticee no. 14. In this regard, we find that the appellant has received 2,00,000 (Two Lacs) shares through off-market transfer from noticee No. 14 on August 29, 2014. Between September 1, 2014 to September 18, 2014, the appellant had sold the shares on Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange of India Ltd. (NSE) platform. A perusal of the bank statement indicates that the appellant had transferred the amount to noticee No. 14 on September 9, 2014, September 15, 2014, September 17, 2014 and September 20, 2014. It is clear that no consideration was paid by the appellant at the time of the off-market transfer by noticee No. 14 to him and the payments were made only when the appellant sold the shares on the stock exchange platform.

8. We are, therefore, satisfied that the impugned order does not suffer from any error of law. The appeal lacks merit and is dismissed with no order as to costs.

9. 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.