(2023) 06 SEBI CK 0036

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 924, 925, 926, 927 Of 2022, 29, 30, 31 Of 2023, Miscellaneous Application No. 1326, 1362, 1364 Of 2022, 54, 55 Of 2023

Lata Bejgam And Others — APPELLANT

Vs

Securities And Exchange Board Of India? — RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 12A

Citation : (2023) 06 SEBI CK 0036

Hon'ble Judges : Tarun Agarwala, Presiding Officer;Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Abishek Venkataraman, KRCV Seshachalam, Sabeena Mahadik, Pankaj Uttaradhi, Mangesh Avhale, Sagar Hate, Pradeep Sancheti, Ravishekhar Pandey, Rasika Ghate, Shefali Shankar, Gaurav Bhardwa, Gaurav Bhardwaj

Final Decision : Dismissed/Disposed Of

Judgement

Tarun Agarwala, Presiding Officer

1. Seven noticees out of 26 noticees have challenged a common order dated September 16, 2022 passed by the Adjudicating Officer (‘AO’ for short) of the Securities and Exchange Board of India (hereinafter referred to as ‘SEBI”) imposing penalties for violating the provisions of Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the ‘SEBI Act’) read with Regulations 3 and 4 of 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’). The penalties imposed upon noticee at Sr. No. 2 of the impugned order is Rs. 2.14 crore, noticee at Sr. No. 3 is Rs. 76 lakh, noticee at Sr. No. 5 is Rs. 19 lakh, noticee at Sr. No. 6 is Rs. 30 lakh and noticees at Sr. No. 22, 23 and 24 is Rs. 8

lakh to be paid jointly and severally.

2. The show cause notice alleged that on January 28, 2015 and January 29, 2015 Rs. 189.40 lakh was transferred by noticee at Sr. No. 11, namely, Vishwanath Projects Limited through different entities to noticees at Sr. No. 2 to 8 who subscribed and were allotted preferential shares of noticee at Sr. No. 1 Abhishek Infraventures Limited. Further, the Company, noticee at Sr. No. 1 returned Rs. 2.23 crore back to noticee at Sr. No. 11 without any valid reason and therefore there was no genuine capital infusion in the Company to the tune of Rs. 189.40 lakh and, thus, entire process was fraudulent and violative of Section 12A of SEBI Act and Regulation 3 and 4 of the PFUTP Regulations.

3. The AO after considering the material evidence on record found that the allotment of preferential shares to the appellants was totally fraudulent and accordingly directed them to disgorge the unlawful gains which they made when they sold the preferential shares at a higher price. The AO found that noticee at Sr. No. 22, 23 and 24 through their structured trades were buying and selling within a span of few minutes thereby creating misleading appearance of trading, increasing volumes artificially and had also increased LTP. Such trading pattern was found to be violative of Regulation 3 and 4 of the PFUTP Regulations and accordingly these noticees were also penalized.

4. We have heard Shri Abishek Venkataraman, the learned counsel with Shri KRCV Seshachalam, Ms. Sabeena Mahadik, Shri Pankaj Uttaradhi, Shri Mangesh Avhale, Shri Sagar Hate, Shri Gaurav Bhardwaj and Shri Ashutosh Shukla, the learned counsel for the appellant in respective appeals and Shri Pradeep Sancheti, the learned senior counsel with Shri Ravishekhar Pandey, Ms. Rasika Ghate and Ms. Shefali Shankar, the learned counsel for the respondent in respective appeals.

5. The contention of noticees at Sr. No. 2, 3, 5 and 6 is that they had received funds from noticee at Sr. No. 11 which is the Company owned by noticee at Sr. No. 2 and is not connected with the Company or its promoters and therefore receiving funds from noticee at Sr. No. 11 is not illegal. Such funds received from noticee at Sr. No. 11 was utilized for subscribing to the preferential shares being issued by noticee at Sr. No. 2. It was contended that neither noticees at Sr. No. 2, 3, 5 and 6 nor noticee at Sr. No. 11 were connected to the Company or to its promoters and therefore the usage of money given by noticee at Sr. No. 11 is not fraudulent nor misleading nor violative of any provisions of Regulations 3 and 4 of the PFUTP Regulations. It was also urged that noticee at Sr. No. 2 had a common address with one of the promoters of the noticee at Sr. No. 1, namely, noticee at Sr. No. 16 which cannot lead to a conclusion that noticee at Sr. No. 2 was connected with one of the promoters of the Company and therefore was part of the scheme of conspiracy. It was urged that the appellants having sold the shares at a higher price cannot lead to a conclusion that the sale made by them were fraudulent or manipulative. It was contended that preferential allottees had no connection with the noticees at Sr. No. 22, 23, and 24 and therefore they

cannot be penalized only on the ground of selling the shares at a higher price nor can they be held part of an orchestrated scheme. In support of his submissions the learned counsel placed reliance upon a decision of this Tribunal in Praveen Kurele vs SEBI and other connected appeals, Appeal no. 319 of 2020 decided on April 29, 2020.

6. The arguments appears to be attractive, namely, that the appellants had received money from an entity who is noticee at Sr. No. 11 and who was not connected to the Company nor to the promoters and therefore receiving money from a third party was not violative for the purpose of subscribing to the allotment of preferential shares. To this extent, the submissions appears to be attractive but on a closer scrutiny we find that the matter does not end here and the trail of funds given by entity at Sr. No. 11 to the appellants, namely, noticees at Sr. No. 2, 3, 5 and

6 who in turn subscribed to the allotment of shares by noticee at Sr. No. 1 and thereafter noticee at Sr. No. 1 i.e. the Company refunds the money back to noticee at Sr. No. 11. The evidence on record indicates that noticee at Sr. No. 11 had transferred funds of Rs. 189.40 lakh to noticees at Sr. No. 2 to 8 who in turn applied for preferential allotment of shares from the Company at Sr. No. 1 on 28th and 29th January, 2015. Subsequently, the Company at Sr. No. 1 returned Rs. 223 lakhs which includes Rs. 189.40 lakh directly to noticee at Sr. No. 11. No valid reasons were given nor any documentary evidence was given as to why the aforesaid amount was returned back to noticee at Sr. No. 11. This leads to an irresistible inference being drawn that the Company at Sr. No. 1 employed a scheme to show raising of funds by allotment of preferential shares to the extent of Rs. 1.89 crore to noticees at Sr. No. 2 to 8 through funds obtained from noticee at Sr. No. 11 and the same was returned subsequently by the Company to noticee at Sr. No. 11. This routing of funds indicates that the scheme for allotting shares was without genuine capital infusion and hence violative of Section 12A of SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

7. In Shri Bakul Ramniklal Parekh vs SEBI, Appeal no. 527 of 2019 decided on April 7, 2021 this Tribunal held:-

“7. Having heard the learned counsel for the parties and having perused the records we find that the Company had transferred its funds to the preferential allottees to enable them to subscribe to the Company’s shares. This fact has not been disputed and, the only contention raised was that it was an advance. Some of the appellants contended that it was a loan and according to appellant no. 7 it was an advance towards professional fees to be adjusted in future. We are of the opinion that when a Company raises its capital, issuance of shares is considered as capital infusion and an ordinary investors perceives it as a capital infusion which is essential for strengthening the Company’s financial fundamentals. When a preferential allotment is made by a listed Company it gives an impression that genuine capital infusion is being brought into the Company. When the Company uses its own funds and distributes it to the allottees for the purpose of subscribing to the shares, it deceives the genuine investors and in fact falsely leads them to invest in the shares of the Company. Thus, we are of the opinion that the Company along with the management and allottees receiving such funds from the Company were perpetuating a fraud on the ordinary investing public who were deceived to invest in in the securities of the Company.

8. We accordingly find that when preferential allotment of shares by a listed Company is financed by the Company itself it gives a false impression that there was infusion of funds to its capital through preferential allotment. The action on the part of the Company, its management and the allottees including the appellants in particular have made fraudulent acts which is an unfair device, to deceive the investors. Such acts, omissions and concealment is prohibited under Section 12A of the SEBI Act read with Regulation 3 and 4 of the PFUTP Regulations. In view of the aforesaid admitted facts, the loan was given as an advance towards future professional fees cannot be accepted. We find from the perusal of the record that the appellants have been changing its stand at every stage."

8. Similarly, in Girraj Kishor Agrawal vs SEBI, Appeal no. 662 of 2021 and other companion appeals deicded on November 15, 2021 this Tribunal held:-

"4. Having heard the learned counsel for the parties, we find that the contention of the appellants that they had issued a loan to the Noticee 16 in the normal course of business cannot be accepted. The trail of funds as depicted in the impugned order clearly indicates that the Company transferred funds to Noticee 16 who in turn transferred the funds to Noticee 17 and Noticee 17 thereafter transferred 15,50,000/- to the 3 allottees who used these monies to get the allotment of the preferential shares. We find that the 3 allottees had no funds on their own and the funds given through Noticee 17 was utilized for the purpose of allotment of the equity shares. We are, therefore, of the opinion that the Company was funding its own preferential issue and the appellant Company misled the investors and shareholders regarding raising of funds through preferential issue. We find that the Company routed its own funds through Noticee 16 and 17 to inflate its share capital as well as the shareholding of Noticee 4, 5 and 6. Such routing of funds is a fraud on the securities market. We also find that two of the appellants before us Girraj Kishor Agrawal and Tanu Girraj Kishor Agrawal were Managing Director and Director of the appellant Company were also Directors in Noticee 16 Company. Thus, we do not find any manifest error in the impugned order passed by the AO."

9. In our opinion, the aforesaid decision is squarely applicable. The trail of funds starting from noticee at Sr. No. 11 to noticee at Sr. No. 2, 3, 5 and 6 and then to the Company and eventually the same amount goes back to the entity at Sr. No. 11 indicates that the Company was funding its own preferential issue and consequently the Company misled the investors and the shareholders regarding raising of funds through preferential issue. When a Company raises its capital, issuance of shares is considered as capital infusion and an ordinary investors

perceives it as a capital infusion which is essential for strengthening the Company’s financial fundamentals. Allotment of preferential shares gives an impression that there is genuine capital infusion being brought into Company but when Company uses its own funds for allotment of shares to preferential holders it deceives the genuine investors and falsely leads them to invest in the shares of the Company. Such routing of funds and allotment of shares through this scheme is a fraud on the securities market.

10. Thus, we find that the appellants being noticees at Sr. No. 2, 3, 5 and 6 of the impugned order are guilty of violating Section 12A of the SEBI Act and Regulation 3 and 4 of the PFUTP Regulations. The AO has rightly directed the said noticee to disgorge the unlawful gains made by them while allotting the shares in the open market.

11. The appellants at Sr. No. 22, 23 and 24 of the impugned order contends that they are not connected either to noticee at Sr. No. 2 to 8 who have sold their shares in the open market and made profits nor are they connected to the Company or its promoters nor are they connected to any of the entities in the impugned order and therefore contends that in the absence of any connection the said appellants cannot be penalized because of certain trades which they executed inter se between them which trades were not abnormal nor irrational nor were the structured trades. It was, thus, contended that the said appellants are innocent and have unnecessarily being caught in the middle of the nefarious scheme hatched by the Company, its promoters and the preferential allottees.

12. Having heard the learned counsel we find that admittedly there is no connection whatsoever between the appellants at Sr. No. 22, 23 and 24 with other noticees including the Company and its promoters. However, in view of the findings given by the AO in paragraph 71 to 78 we are of the opinion that the said appellants are not entitled for any relief. We find that admittedly appellants at Sr. No. 22, 23 and 24 are inter se connected which they do not dispute. We also find that the appellants at Sr. No. 23 and 24 did not appear before the AO nor filed any reply and therefore they have disputed the charges leveled against them.

13. We find that these appellants have carried out structured trades meaning thereby that the buy order and sell orders were placed within a time gap of one minute which is akin to synchronized trades. This structured trades have increased the LTP thereby creating a misleading appearance of the trading in the scrip without any intention of change in the ownership. The evidence on record further indicates that these appellants squared off their entire position on every single day and did not hold any shares at the end of the day. These appellants were acting in concert and regularly placing their trades in sync with each other with no intention of holding the shares. The AO has further given a finding that the appellants were also involved in reversal trades wherein trades were reversed with the same counterparties on the same day. This also created artificial volume of trading in the market. We also find that buy order and sell

orders were executed within a gap of few seconds. Reversal orders were also placed almost at the same time.

14. In Sangeeta Kailash Purohit vs SEBI, Appeal no. 624 of 2022 decided on May 19, 2023 and other companion appeals this Tribunal held:-

"14. The contention that there was no manipulation or structured trade is patently erroneous in as much as we find that the trading pattern of the buyers and the sellers was that they traded in close proximity of time inter-se between them. The buy and sell orders were placed within a short time interval varying from 1 minute to 2,3 or 4 minutes. In our view, such trading pattern as found by the AO cannot occur by accident or by coincidence. The trading pattern leads to an inference that there was a meeting of minds with a pre-determined plan and, therefore, there was a collusion between the parties. Such trades executed, in our opinion, are not genuine and were done with a fraudulent intent to create artificial volume in the scrip."

15. The said decision is squarely applicable in the instant case. We find that on the analysis of the trading pattern of the appellants at Sr. No. 22, 23 and 24 it is evident that the price of the scrip was manipulated. Such trading pattern cannot occur by accident or by coincidence and therefore we are of the opinion that there was intent to manipulate the price of the scrip.

16. Consequently, for the reasons stated aforesaid, we do not find any error in the impugned order. All the appeals fail and are dismissed with no order as to costs. All miscellaneous applications are disposed of.

17. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

