(2022) 07 SEBI CK 0039

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.5 Of 2020

Maheshwari Financial Services Ltd — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 18-07-2022

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 : (2022) 07 SEBI CK 0039

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

Bench : Full Bench

Advocate : Kunal Kataria, Ankur Loona, Aparna Wagle, Sonakshi Sahay, Shyam Mehta, Mihir Mody, Arnav Misra, Mayur Jaisingh,, K. Ashar

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 22nd November, 2019 passed by the Adjudicating Officer ("AO" for short) imposing a penalty of Rs.20 lakhs for violating 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").

2. The facts leading to the filing of the present appeal is, that the Company Aplaya Creations Ltd., issued preferential allotment of 67,30,000 shares on 2nd May, 2013 at the rate of Rs.15 per share to 47 entities other than the promoters. These preferential shares were locked till 1st May, 2014. The Company issued another preferential allotment for 73,80,000 shares on 13th September, 2013 in which one promoter Westfield Apparels Pvt. Ltd. was allotted 12,00,000 shares and 46 other entities were allotted 61,80,000 shares. All these shares were locked till 14th October, 2014.

3. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the scrip and, finding irregularities, issued a show cause notice dated 17th October, 2017. The broad allegation in the show cause notice was that Westfield Apparels Pvt. Ltd. (promoter), the appellant (the noticee no.4) and Vermuri Finvest Pvt. Ltd. (noticee no.5) had the same registered office and that Mr. Manoj Kumar Sharma was the common Director. Westfield Apparels Pvt. Ltd. had purchased the shares from an ex-promoter Mr. Sanjay Salunkhe and that the appellant along with noticee no.5 had also purchased 3500 shares each from the same ex-promoter around the same time when Westfield Apparels Pvt. Ltd. had acquired the shares. The show cause notice also alleged that the appellant along with noticee no.5 were the major sellers to the top 6 net buy LTP contributors and that the appellant along with noticee no.5 had traded from 17th April, 2014 to 13th October, 2014 contributing 99.10% in 112 trades out of which 12 trades contributed positive LTP of Rs.203.85/-.

4. The Adjudicating Officer after considering the replies and after considering the material evidence on record found that the appellant along with Westfield Apparels Pvt. Ltd. and noticee no.5 had played a fraud and manipulated the price of the scrip raising the price of the scrip from Rs.18 to Rs.222.85 in Patch I.

5. The Adjudicating Officer found that the appellant was placing small quantities of sell orders when buy orders of large quantity was available and that the primary object of the appellant was to inflate the price and provide an exit to the preferential allottees. The Adjudicating Officer found that the pattern of trading was not only fraudulent but was manipulative with the sole purpose of increasing the price of the scrip. The AO further found that there were 18 buyers and 2 sellers which included the appellant and that all these entities were acting in tandem with the sole purpose of increasing the price with the ultimate purpose to give benefit to the promoters of the Company, preferential allottees and other connected entities. The Adjudicating Officer further came to the conclusion that the period of manipulation in Patch I from 17th April, 2014 to 13th October, 2014 was based on intelligible differentia which cannot be extended till 13th October, 2014 as contended and urged by the appellant. The Adjudicating Officer accordingly imposed the penalty.

6. We have heard Mr. Kunal Kataria, Advocate assited by Mr. Ankur Loona, Ms. Aparna Wagle, Ms. Sonakshi Sahay, Advocates for the appellant and Mr. Shyam Mehta, Senior Advocate assisted by Mr. Mihir Mody, Mr. Arnav Misra and Mr. Mayur Jaisingh, Advocates for the respondent.

7. One of the ground urged by the learned counsel for the appellant is that the Patch I period ranging from 17th April, 2014 to 13th October, 2014 has been incorrectly chosen and that the period, if any, should be extended till 13th October, 2014. It was urged that the appellants have also executed large number of trades from 14th October, 2014 onwards which period should have been included. It was urged that if the period after 14th October, 2014 is included then

the finding that the appellant only executed miniscule trades of one or two shares could not be arrived at as the appellant executed transactions in large number of shares after 14th October, 2014.

8. In our opinion, this contention is patently baseless. The primary reason for fixing the period of Patch I to 13th October, 2014 is, that the shares of the preferential allottees were locked till 13th October, 2014. Prior to this date there was hardly any trading and even though large quantities of buy orders were pending the appellant was only making trades of one or two shares with the sole purpose of increasing the price of the scrip of the Company. By selling one or two shares on regular/repeated basis above the LTP led to the increase in the price from Rs.18 to Rs.222.85 in Patch I. The lock-in period came to an end on 13th October, 2014 after which preferential allottees started selling in large quantities. The appellant also traded in large quantities and off-loaded its shares. The Adjudicating Officer was right in thus taking the period upto 13th October, 2014 as Patch I period for the purpose of considering the miniscule sell orders being placed by the appellant on a regular basis despite there being large buy orders.

9. We also find that the appellant along with noticee no.5 were sharing common address and were operating under one roof. The appellant along with noticee no.5 were the major sellers to the 18 buyers. The pattern of trading indicated in the impugned order makes it apparently clear that the sole purpose of selling in small quantity was with the primary object of inflating the price for the benefit of others. Such trading was clearly fraudulent and violative being violative of Regulations 3 and 4 of the PFUTP Regulations.

10. A feeble attempt was made urging that there was no connection of the appellant with noticee no.5 or with Westfield Apparels Pvt. Ltd. and that there was a Chinese wall between them. This contention is patently erroneous as we find that the registered office of all the three entities was the same and all three were operating under one roof in a flat. The connection between the appellant with the noticee no.5 and the promoter has correctly been drawn by the Adjudicating Officer and we do not find any fault in the conclusion arrived by the Adjudicating Officer.

11. In view of the aforesaid, we do not find any error in the impugned order. The appeal fails and is dismissed accordingly.

12. 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.

