(2020) 01 SEBI CK 0022

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.2 Of 2020

Manish Suresh Joshi — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 13-01-2020

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 : (2020) 01 SEBI CK 0022

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

Bench : Division Bench

Advocate : Vikas Bengani, Anubhav Ghosh, Ravishekhar Pandey

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order passed by the Adjudicating Officer (hereinafter referred to as â??AOâ??) of Securities and

Exchange Board of India (hereinafter referred to as â??SEBIâ??) dated November 29, 2019 imposing a penalty of Rs. 1 lac upon the appellant for

violation of Regulations 3 and 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 (hereinafter referred to as â??PFUTP Regulationsâ??).

2. The facts leading to the filing of the present appeal is, that SEBI noticed a sharp increase in the price of the shares from Rs. 41.00 to Rs. 122.65

during the period from May 29, 2009 to April 30, 2010 of the then company known as Spectacle Industries Ltd. Pursuant to an investigation, a show

cause notice was issued and, after considering the reply, an order of penalty dated September 26, 2014 was passed against the appellant. The said order was challenged by the appellant which was allowed by an order of the Tribunal dated March 8, 2016. The AOâ??s order was set aside and the

matter was remitted to the AO for fresh consideration.

3. Pursuant to the remand, a fresh show cause notice dated August 5, 2019 was issued by the AO. The charge that the appellant indulged in

synchronized trades was dropped and only the charge relating to creating artificial volume in the scrip of the company remained. The AO by an order

dated November 29, 2019 found that the charges levelled against the appellant stood proved and accordingly imposed a penalty of Rs. 1 lac. The

appellant, being aggrieved by the said order, has filed the present appeal.

4. The finding that the appellant was guilty of fraudulent and unfair trade practices under Regulations 3 and 4 of the PFUTP Regulations was based

on the sole finding that the appellant is connected with one Narendra Prabodh Ganatra who, in turn, was connected to the Pabari-Parikh Group of 28

entities (PPG Entities). The AO on the basis of this connection has given a finding that the appellant was connected with the PPG entities and,

therefore, were connected with each other and traded heavily in the scrip of the company. The AO also found that the appellant was guilty of

connivance with the counter party and applying the decision of the Honâ??ble Supreme Court in the case of Securities and Exchange Board of India

vs Kishore R. Ajmera [(2016) 6 SCC 368] decided on February 23, 2016 found him guilty on the preponderance of probability.

5. Having heard the learned counsel for the parties and having perused the record, we find that proceedings in the case of Narendra Prabodh Ganatra

was dropped by an order of AO dated November 29, 2019 wherein the AO after considering the evidence on record and considering the total volume

contribution made by Ganatra held that the trades made by Ganatra did not contribute to the price increase and, therefore, exonerated him from the

charge of violation of Regulations 3 and 4 of the PFUTP Regulations.

6. The decision of the AO in Ganatra case has not been disputed by the respondent. However, an attempt was made to justify the case on the ground

that the volume of trade made by Ganatra was miniscule compared to the volume of trade made by the appellant. Be that as it may. We are of the

view that in view of exoneration of Ganatra of the charge of violation of PFUTP Regulations, the connection with the PPG Entities gets broken. Once the link in the chain is broken, there was no other connection between the appellant with that of the PPG Entities. The only link through which the

appellant was found guilty was that the appellant was connected with Ganatra who, in turn, was connected with the 28 entities of PP Group. Once the

Ganatra link is broken, there was no evidence to show that the appellant was in any way connected directly or indirectly with the PPG Entities.

7. In the light of the aforesaid, the charge of connivance of the appellant with the counter party, namely, PPG Entities cannot be proved. The

principles involved in the Ajmera case cannot be made applicable to the facts and circumstances of the present case. Consequently, the impugned

order cannot be sustained and is quashed. The appeal is allowed.

