(2023) 08 SEBI CK 0002

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 655 Of 2023

Mehul Tulsidas Simaria APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 03-08-2023

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 15HA

Citation : (2023) 08 SEBI CK 0002

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

Bench : Division Bench

Advocate : Vikas Bengani, Sumit Rai, Ravishekhar Pandey, Shefali Shankar, Rasika Ghate, Amarpal Singh Dua

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed challenging the order dated May 31, 2023 passed by the Adjudicating Officer (‘AO’ for short) of the Securities and Exchange Board of India (‘SEBI’ for short) imposing a penalty of Rs. 5 lakh under Section 15HA of the SEBI Act, 1992 for violating Regulation 3 and 4 of the 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 an investigation was conducted in the scrip of Gayatri Sugars Limited based on which a show cause notice dated January 10, 2023 was issued to 16 noticees including the appellant who is arrayed as Noticee no. 4. Inspite of service of the show cause notice, the appellant failed to appear and did not file a reply nor contested the matter. The AO accordingly found the appellant guilty of the charges leveled against him. The AO imposed a penalty of Rs. 5 lakh.

3. The charge leveled against the appellant was that the appellant had deliberately attempted to increase and manipulate the price of the scrip. Since the appellant did not contest the matter inspite of service of the show cause notice, the AO came to the conclusion that the appellant has admitted the charges leveled against him since the charge remained unrebutted. In support of this finding, the AO has relied upon the decisions of this Tribunal in Classic Credit Ltd. vs SEBI (Appeal no. 68 of 2003 decided on December 8, 2006 and in the matter of Sanjay Kumar Tayal & Ors vs SEBI (Appeal no. 68 of 2013 decided on February 11, 2014 and in the matter of Dave Harihar Kirtibhai vs SEBI, Appeal no. 181 of 2014 decided on December 19, 2014.

4. In addition to the aforesaid, the AO found on merits that the appellant made a deliberate attempt to increase and manipulate the price of the scrip as he was not only top LTP contributor with 15.86% contribution to market positive LTP and that he was also placing one share at a time and consequently on the basis of his trading pattern in dealing consistently in small quantities, the AO came to the conclusion that the appellant was deliberately attempting to manipulate the price of the scrip.

5. We have heard Shri Vikas Bengani, the learned counsel for the appellant and Shri Sumit Rai, the learned counsel with Shri Ravishekhar Pandey, Ms. Shefali Shankar, Ms. Rasika Ghate and Shri Amarpal Singh Dua, the learned counsel for the respondent.

6. The contention of the learned counsel for the appellant is, that a perusal of Table 7 and 8 of the impugned order only indicates that the appellant had made miniscule trading which was insufficient to come to a conclusion that the appellant was attempting to increase or manipulate the price of the scrip. It was urged that merely because the appellant was trading in miniscule quantities does not mean that he was indulging in fraudulent trades.

7. In support of his submissions the learned counsel for the appellant placed reliance in the matter of Vipul Amratlal Doshi vs SEBI in Appeal no. 496 of 2021 and other connected appeals decided on June 5, 2023 wherein in paragraphs 26 and 28 this Tribunal found that one of the noticee M/s. Ram Bhopal Agarwal Sons HUF was charged for manipulating the price of the scrip by placing small quantities above LTP. This Tribunal held that such execution of trades in miniscule quantities could only raise a suspicion but could not lead to a conclusion that the appellant was manipulating the price or indulging in fraudulent trades. Similar reliance was made in the case of Mr. Jayendra\ Chandulal Sheth decided on February 27, 2019 by the Whole Time Member and in adjudication order dated January 23, 2018 passed by AO in the matter of Mr. Amit Tilala.

8. Having considered the submissions of the learned counsel for the appellant we find that as per Table 7 of the impugned order the appellant had carried out 215 trades which led to 15.86% to market positive LTP. The Table 7 indicates that the appellant was the top LTP contributor. Further, Table 8 of the impugned order

indicates that out of 215 trades 42 trades were executed with one share and 67 trades executed between 2 to 10 shares. Thus, the trading pattern indicates that the appellant was consistently trading in miniscule quantities with the sole purpose of increasing the price of the scrip. Such consistent trading and deliberately executing one share at a time with the sole purpose of increasing the price amounts to fraudulent trading and manipulating the price of the scrip for vested reasons. Consequently, even though the appellant may not be connected to the Company and / or the other noticees we are of the opinion that the trading pattern of the appellant was sufficient for the AO to hold that there was a deliberate attempt on the part of the appellant to increase and manipulate the price of the scrip. The decisions cited by the learned counsel for the appellant was on its own facts and is not applicable to the facts and circumstances of the case.

9. For the reasons stated aforesaid, the appeal lacks merit and is dismissed with no order as to costs.

10. 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.