
(2019) 12 SEBI CK 0006

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 253, 258 Of 2018, Miscellaneous Application No. 580 Of 2019

M/s Blue Peacock Securities Pvt. Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3 (a), 3(b), 3(c), 3(d), 4(1), 4(2)(a)

Securities And Exchange Board Of India Act, 1992 — Section 15HA

Citation : (2019) 12 SEBI CK 0006

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member; M. T. Joshi, J

Bench : Full Bench

Advocate : Vinay Chauhan, K.C. Jacob, Anubhav Ghosh, Rashi Dalmia, Akshata Timmapur

Final Decision : Dismissed

Judgement

Dr. C.K.G. Nair, Member

1. Appellants in these appeals are aggrieved by a pair of orders passed by the Adjudicating Officer (AO for convenience) of Securities and

Exchange Board of India (SEBI for convenience), both dated December 14, 2017, whereby penalty of Rs. 25 lakhs in Appeal No. 253 of 2018

and Rs. 20 lakhs in Appeal No. 258 of 2018 was imposed by the AO of SEBI under Section 15HA of the SEBI Act for violation of Regulations 3 (a),

(b), (c), (d) and 4 (1) & (2) (a) of PFUTP Regulations. Since the issues raised in these appeals are similar, by consent of parties, both the appeals are

heard and decided together by this common decision.

2. The basic question raised in these appeals is whether a particular trading strategy adopted by a day trader can be treated as market manipulation

under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations,

2003 (â??PFUTP Regulationsâ? for convenience). The impugned orders say so in respect of the strategy adopted by the appellants; hence the appeals.

3. The basic facts relating to Appeal No. 253 of 2018 as given in the impugned order are as follows:-

Pursuant to some alerts from NSE regarding the dealings of Yes Investments (Proprietor: Mr. Bhatia) and Blue Peacock in which Mr. Bhatia is one

of the directors, SEBI conducted an investigation, into the trading and possible violation of the provisions of the Securities and Exchange Board of

India Act 1992 (hereinafter referred to as the â??SEBI Act 1992â??) and various Rules and Regulations made there under. The period of

investigation was from July 01, 2009 to December 31, 2010.

During the investigation, it was observed that the Noticee, trading through Religare Securities Ltd., was continuously placing and deleting orders and

then taking reverse position in the cash market. Investigation further revealed from the trade and order data of NSE in respect of 31 scrips that on 25

scrip days the noticee placed orders at a price variation from last traded price while doing activity on the opposite side. Investigation further revealed

that the during the time slot wherein majority of the selling was done by the noticee, itâ??s concentration was significant to market net and gross in

the respective scrips. On analyzing the noticeeâ??s contribution to the market pending quantity it was observed that when major selling transactions

were executed the noticee's concentration to market pending orders was significant on buy side. It was further noted during the investigation that the

buy orders placed by the noticee (which were placed significantly below the market prices and subsequently deleted) were with fully disclosed

quantities whereas the sell orders were placed at partially disclosed quantities.

â??Further, it was alleged in the SCN that the noticee:-

i) created a false impression of artificial demand in the scrips by placing buy orders with large quantities below the market price,

ii) by selling the shares in the market at the time when its large buy orders at

below the prevailing market price were pending and subsequently cancelling these buy orders prior to conducting majority of the buying activity, acted in fraudulent manner,

iii) was involved in BAIT and SWITCH activity i.e. noticee entered buy/sell orders lower/higher than the market price, fully disclosed the orders but actually transacted on the opposite side in the market, across various scrip and for several days, and

iv) manipulated the order book by giving false impression in the market about the demand and supply of various scrips during the investigation period and thereby misled the investors.â??

4. Along with a related appeal (Appeal No. 420 of 2014) an appeal filed in this matter (i.e. Appeal No. 421 of 2014) was also remanded back to SEBI

vide this Tribunalâ??s order dated March 22, 2016. Subsequently, after issuing another show cause notice and following due process the impugned order has been passed on December 14, 2017.

5. Appellant in Appeal No. 253 of 2018 M/s Blue Peacock Securities Pvt. Ltd. is a private limited company. Appellant in Appeal No. 258 of 2018 M/s

Yes Investments is a sole proprietorship firm. Both these entities are managed by one Mr. Vishal Bhatia. It is the stand of the appellants that they are

day traders; trade in large quantities particularly in blue chip companies with large beta factor (meaning high intra-day volatility); have not violated

provisions of any securities laws; traded only within the price band or quantity limits permitted and, therefore, the strategy employed by the appellants

is not violative of any securities laws including the PFUTP Regulations, 2003 which is alleged to have been violated.

6. The learned Counsel Shri Vinay Chauhan appearing on behalf of the appellants, taking Appeal No. 253 of 2018 as the lead matter contended as

follows:-

a) The appellant being a day trader have been trading for a long period of time in large quantities of shares. For instance in 2009-2010, the appellant

had a turnover of more than Rs. 25000 crores and in 2010-2011 about Rs. 17000 crores. As such the appellant has the financial wherewithal to trade

in large quantities.

b) Further the scrip wise analysis given in the appeal memorandum shows that these are all blue chip companies, as part of NIFTY or SENSEX or

other indices and as such no individual investor/ trader can manipulate the price of such scrips given the high liquidity in these scrips. Moreover,

despite placing very high volume of trades appellantsâ?? volume to total market volume is generally in the range of 0.2% to about 3% only.

c) Further the volatility of prices in respect of these scrips on the dates of the impugned trades were in the range of 4% to 55% and even the pre-

trade volatility on a weekly average basis was also in the range of 4% to 51%. Therefore, the allegation in the impugned order that the appellant could

manipulate the volume or price of such scrip is completely unrealistic and untenable.

7. The learned counsel further submits that while the Show Cause Notice alleged that the appellant have traded in 1937 scrip days across 499 unique

scrip days, the impugned order cherry-picked a few days out of it in respect of a few scrips and alleged that the appellant has violated the PFUTP

Regulations. Moreover, in order to arrive at this violation the impugned order holds that the appellant has placed huge buy orders below Last Traded

Price (â??LTPâ?) taking a 4% band in an arbitrary manner because the applicable band for such blue chip scrips is 20% as the normal rule while for

those scrips which are in the futures and options segment (â??F&Oâ?) there is no such price band. Therefore, out of the 180 days of trading

analysed by the AO, 25 days was arbitrarily taken out of which again 8 days was picked up for charging. Similarly, when the appellant was trading

throughout the day but certain time windows have been also arbitrarily taken by the AO to prove that the appellant has violated provisions of PFUTP

Regulations. It was further contented that despite trading in large volumes the appellant had incurred losses as well on some days clearly indicating

that it is a trading strategy being followed by the appellant rather than any market manipulation strategy. Even though the allegation is that the

appellant placed huge buy orders without the objective of fructifying such orders and in order to show artificial depth to the market, about 17% of such

buy orders have in fact fructified. It was also contended that for the same pattern of trading, on which another adjudication order was passed by

SEBI, Mr. Vishal Bhatia, the manager of the appellant (and the sole proprietor of the appellant in Appeal No. 258 of 2018) was exonerated from any

wrong doing and the strategy was not found to be violative of any PFUTP Regulations.

8. Learned Counsel Shri Anubhav Ghosh appearing for respondent SEBI submits that the impugned order has rightly held that the appellant had indulging what is called a "Bait and Switch" approach and created artificial demand in various scrips. He further contended that by placing huge volumes of buy orders much below LTP, the appellant had manipulated the order book which would fall squarely under Sub-Section 3(d) of the PFUTP Regulations, because, the pattern of trading adopted by the appellant is deceptive since he was not a serious buyer. Rather, after placing huge buy orders in the early trading hours the appellant would sell in the market at a higher price and later on cancel the remaining buy orders. The inflated buy orders placed at much below the LTP were not insignificant quantities even while factoring in the fact that the scrips were highly liquid. The appellant repeated such a trade strategy to apply a Bait and Switch approach. Therefore, what is held in the impugned order that the appellant has violated provisions of PFUTP Regulations cannot be faulted. Since it is a repeated pattern adopted by the appellant on multiple days and on multiple scrips penalty has been imposed under Section 15HA of the SEBI Act. Order relied on by the appellant's counsel whereby the manager of the appellant, Mr. Bhatia was exonerated was a case of only one day's trading and, therefore, the AO gave benefit of doubt to the appellant. The impugned order itself in paragraph 30 deals with this case.

9. Coming back to the core question raised in this appeal as to whether the appellants' trading strategy as a day trader is violative of the provisions of PFUTP Regulations; for facility we quote the relevant Regulations below:-

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange,

any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there

under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be

listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with

any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the

provisions of the Act or the rules and the regulations made there under.â??

10. We note that the appellantâ??s strategy is to place large buy orders generally in the early trading sessions. The appellant also would place a

number of sell orders but for much smaller quantities after some time. The buy orders are generally placed below around 4% variation from the LTP

whereas the sell orders would be placed more or less nearer to the LTP. In the process a large number of sell orders would get executed and only a

small/ insignificant part of the buy orders would get executed. Table at page 11 to 14 of the impugned order summarize and analyze the trading done

by the appellant in terms of multiple scrips, number and volume of orders placed, conversion of buy order and sell order etc. for a number of trading

days starting from December 24, 2009 to June 25, 2010.

11. We have also observed the actual trading screen available to an investor in the presence of both parties. This trading screen shows only the top

five buy and sell orders while showing the total quantity of buy and sell available in the system. Therefore, when huge quantities of buy orders are

placed in the system well below the LTP that entire data is not available on the screen but the total quantity of buy orders placed in the system is

available. Therefore, what is held in the impugned order that the appellant placing large buy orders away from the LTP and placing sell orders on the

other side is a deceptive trading strategy adopted by the appellant to show that there is huge pending demand in the system at some distance from the

top five orders. Though, the exact distance (in terms of price) is not available, such an order book, therefore, would lure the investors towards buying

the scrip and, therefore, would help the appellant to sell whatever sell quantities he had placed in the system. Hence the charge of order book

manipulation through a â??Bait and Switchâ?? policy.

12. On the other hand, the appellants contention is that he is playing perfectly within the rules of the game; the buy orders are placed within the circuit

limits, if at all any limit is available (for F&O scrips there is no such limit, and for

other liquid scrips it is 20%); there are no restrictions on the quantity that can be placed and there are no other violations or manipulations which are ascribed.

13. In this context, then the question is whether even if there is no other violation such as LTP violations, quantity limit violations, the strategy as

described above and adopted by the appellants can be termed as deceptive according to Regulation 3(d) of the PFUTP Regulations, 2003. The answer

to this question would require an examination of the volumes. Here, prima facie, we note that the volume of conversion of buy orders is generally in

the range of 10 to 22% whereas conversion of sell orders is in the range of 56 to 100%. Though the appellants's volumes as a percentage to the

total market volume in no case exceeds 10% because of high liquidity in the identified scrips but the very fact that conversion of the buy orders is less

than 1/5th (on the average) of the buy orders placed in the system does have the effect of displaying a larger order book than the actual one. By

implication, if a number of traders adopt a similar strategy such a strategy would be disastrous for the market as the market would be far from being

fair as it is expected to be. Therefore, it would be a tragedy of the commons, a self-defeating strategy and there is a need for regulations to

appropriately capture such violations. The contention of the appellants that they have not violated the circuit filters or the quantity limits etc. are

irrelevant since there are no allegations relating to the same nor any penalties imposed on those grounds.

14. The submission that a lower band of 4%, and some specific dates or time windows were arbitrarily taken though factually correct do not come to

the rescue of the appellants since such a methodology was adopted only for the purpose of analysis. It is the magnitude of the buy orders coupled with

the distance from the LTP that is to be seen together to judge whether there is an element of deception in the strategy adopted by the appellants.

Looking from such a perspective we have no doubt in categorizing the strategy adopted by the appellants as deceptive as given under the PFUTP

Regulations and therefore in holding that the appellants have violated the said regulations.

15. Therefore, given the deceptive nature of the trading strategy adopted by the appellant and considering the potential impact of others adopting

similar trading strategies on market integrity and the need for preserving a fair market, which is the very objective of regulation, we sustain the impugned orders.

16. Therefore both the appeals fail and are dismissed with no costs. Appellants are directed to pay the amount of penalty of Rs. 45 lakhs (Rs. 25 lakhs + Rs. 20 lakhs) within 30 days from the date of this order. Misc. Application No. 580 of 2019 seeking stay of the impugned order has become infructuous and is disposed of as such.