(2020) 03 SEBI CK 0020

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 261 Of 2018

Nirmal N. Kotecha APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

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

Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 — Regulation 3(3)

Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12A(c)

Citation : (2020) 03 SEBI CK 0020

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

Bench : Full Bench

Advocate : Gaurav Joshi, Raksita Poddar, Aditya Bhansali,, Jitendra Sharda, Shikhar Sthapak, Nirali Mehta, Rafique Dada, Abhiraj Arora, Vivek Shah, Misbah Dada

Final Decision : Dismissed

Judgement

Total no. shares Sold as on December 22, 2008 before

10:30 am (A)",654101,,

,BSE,NSE,"GROSS ACROSS BOTH

EXCHANGES

BUY QTY BY AK,"4,59,084","93,909","5,52,993

SELL QTY BY AK,"4,21,974","1,31,019","55,29,93

NET ATY BY AK,37110,-37110,0

GROSS QTY BY AK,"8,81,058","2,24,928","11,05,986

% contribution of each

exchange",79.66%,20.34%,100%

19. Mr. Amol Kokane was cross-examined by the respondent on October 10, 2013. During this cross-examination, he stated that in fact deceased",,,

Sandeep Gavhane had caused the said account to be opened in which the transactions of crore of rupees were done as detailed (supra). As already,,,

pointed out, Mr. Amol Kokane had already resiled from the statement implicating the appellant in the transaction during his second statement recorded",,,

by SEBI. During this cross-examination however, it was not challenged that deceased Sandeep Gavhane (since deceased) was getting a salary of Rs.",,,

12,000/- per month from the appellant out of which a major expenses i.e. rent of Rs. 4,000/- per month.",,,

20. Thus, the fact that the mobile number of Mr. Amol Kokane was being used by the appellant, the fact that the said Mr. Amol Kokaneâ??s",,,

brother-in-law Mr. Sandeep Gavhane was working with the appellant, said Mr. Sandeep Gavhane did not have any wherewithal for transacting into",,,

the shares of the PSTL worth crore of rupees would clearly show that the account of Mr. Amol Kokane was used as front by the appellant for,,,

carrying transactions in the shares of the PSTL. Though the appellant relied on the statement of Mr. Darshan Desai, the trading member that he (Mr.",,,

Darshan Desai) transacted in the account of Mr. Amol Kokane on the instruction of Mr. Sandeep Gavhane, it is noteworthy that the trading in the",,,

account continued even after the death of Mr. Sandeep Gavhane. The defense of the appellant as supported by his share broker in this regard cannot,,,

be accepted for the reasons detailed (supra).,,,

21. The details of the synchronized and reversal trades with various entities are detailed by the WTM from paragraph No. 4.26 (7) to (27) of the,,,

impugned order. These details would show that from the account of Mr. Amol Kokane synchronized trades were made in PSTL continuously within a,,,

short period ranging from minutes to a day, with various entities and between themselves as detailed in the impugned order. The connection of all",,,

these entities in one or the other way with the appellants is also brought out in detail. For example, the appellant had advanced interest free loan of Rs.",,,

25 lacs to the wife of one of the director of Inventure Growth and Securities Ltd. This company had thereafter indulged in circular and reversal,,,

trading of PSTL shares. Similarly, the appellant was in touch with Radha Krishna Garg, almost on a day to day basis, as revealed from call data",,,

record of their mobile numbers. This Mr. Garg was an employee of one DKG Securities Pvt. Ltd. - an entity involved in circular and reversal trades,,,

of PSTL shares.,,,

22. Besides the trades through Mr. Amol Kokaneâ??s account, the appellant has also entered into self trades on October 24, 2008 and October 27,",,,

2008 of 1,25,568 and 1,92,985 shares of PSTL respectively. This was the respective contribution of 47.75% and 66.25% to the market quantity. The",,,

appellant explained that as he wanted to shift his position from one broker to another, the same resulted into inadvertent self trades. The learned WTM",,,

however, rightly observed that transfer of position from one broker to another could have been done more easily by giving suitable direction to the",,,

depository without misusing the stock exchange mechanism, thereby creating a false impression of transfer of beneficial ownership and increasing the",,,

volume in the trades. The explanation provided by the appellant is not plausible.,,,

23. Besides this, there were admittedly, cross trading of substantive shares of PSTL, between the appellant and Mr. P. S. Saminathan, without any",,,

fund transfer. The appellant gave an explanation that it was not sale and purchase of the shares but was in the nature of a loan transaction as detailed,,,

in his statement. However, this transaction also gave a misleading impression of trading in the market. The exact statement dated January 29, 2009 of",,,

the appellant would amplify the fact which is as under :-,,,

â??Q. 6. How many shares of PSTL did you sell to Shri P. S. Saminathan ?,,,

A. 6. I sold 13.70 lakh shares to Shri P. S. Saminathan in June 2008. The sale was made through the common broker Keynote Capitals Ltd. I,,,

also sold around 3 lakh shares of Shri P. S. Saminathan on November 19, 2008 through the broker JM Financial.",,,

Q. 7. Did you receive the consideration for the aforesaid sell transactions ?,,,

A. 7. I had sold the shares to Shri P. S. Saminathan and as per the agreement with him, I had transferred the sale proceeds back to him. I",,,

instructed my broker Keynote Capital, vide my letter dated June 26, 2008, to transfer the credit in my account of Rs. 34 crores received",,,

towards the sell of the shares, to the account of Shri P. S. Saminathan. As per the agreement, Shri P. S. Saminathan had to pay that money",,,

to me within six months. I am submitting the said loan agreement and the letter to the broker Keynote Capitals Ltd. for your consideration.,,,

Shri Saminathan has not made any payment to me for the same till date though the last date for the said payment was December 31, 2008, as",,,

per the agreement. I have sent a legal notice to Shri P. S. Saminathan and also initiated arbitration proceedings against him.,,,

I have received the payment for the sale of shares to Shri P. S. Saminathan done through J. M. Financial in November 2008.,,,

Q. 8. Please comment on the disclosure made by Shri P. S. Saminathan under regulation 3(3) of SEBI (SAST) Regulations, 1997 to buy",,,

shares from you at a price of Rs. 200 on November 28, 2008. Whether you felt the announcement was genuine as the market price",,,

prevailing at that point of time was less than 100 and Shri P. S. Saminathan had agrees to pay Rs. 200 to you when he had not paid any,,,

money for his earlier acquisition from you.,,,

A. 8. I was happy to see the announcement made by Shri P. S. Saminathan at huge premium to the market price. The same he had offered me,,,

orally.â??,,,

24. Considering all the material on record, therefore, the impugned order of the WTM cannot be faulted with. In the result, the following order :-",,,

ORDER,,,

25. The appeal is hereby dismissed without any order as to costs.,,,