
(2022) 01 SEBI CK 0019

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 46 Of 2020

Nirshilp Commodities And Trading P. Ltd And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 04-01-2022

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), 4(b), 4(e), 4(g)
Securities And Exchange Board Of India (Stock Brokers And Subbrokers) Regulations, 1992 — Regulation 7, 9

Citation : (2022) 01 SEBI CK 0019

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

Bench : Division Bench

Advocate : Abishek Venkataraman, Saachi Purohit, Aayushi Sharma, Kumar Desai, Nidhi Singh, Deepti Mohan, Binjal Samani, Aditi Palnitkar, Moksha Kothari, Vidhii Partners

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the decision of the learned Adjudicating Officer of the respondent Securities and Exchange Board of India (hereinafter referred to as the "SEBI") dated 31st January, 2019 imposing penalty of Rs.7,50,000 on appellant no.1 for violation of the provisions of Regulations 3(a), (b), (c)

and (d), 4(1), 4(2)(a), (b), (e) and (g) 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 the "PFUTP Regulations, 2003") and Rs.8,00,000/- on appellant no.2 on two counts

i.e. Rs.5,00,000/- for violation of the same provision and Rs.3,00,000/- for violation of Clause A2 of the Code of Conduct for stock brokers as

specified under Schedule II read with Regulation 7 / 9 (w.e.f. September 27, 2013, regulation 7 becomes regulation 9) of the Securities and Exchange

Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, present appeal is preferred.

2. Appellant no.2 was stock broker of the appellant no.1 during the relevant period. The connection between the two sharing common registered address, having common Managing Director is an admitted fact.

3. The investigation in the scrip of Denso India Ltd. (hereinafter referred to as Denso/the Company?) for the period between 15th December,

2011 to 28th October, 2013 was carried by SEBI. It was found that during the period the price of the scrip rose from Rs.47.5/- to Rs.142.7/-. The

investigation revealed that the entities trading in the scrip had contributed to the Last Trading Price (LTP) at different time during the investigation

period. SEBI analysed the trading of top 10 contributors to the LTP. It was found that on the platform of BSE Ltd. the appellant was the first among

the top 10 contributors of LTP (refer table below para no.2 of the impugned order). SEBI alleged that the appellant no.1 had consistently undertook

buy trades above the LTP. It had matched trades to the sell orders above LTP. There were considerable number of self-trades made by the appellant.

It has repeatedly placed buy orders above prevailing sell orders with negligible buy order quantity. The self-trades were also in negligible quantity but

for substantial time. Most of the trades were for a lot of one share only. Therefore, upon hearing the appellants the impugned order was passed.

Aggrieved by the said order the present appeal is preferred.

4. Heard Mr. Abishek Venkataraman, Advocate assisted by Ms. Saachi Purohit, Advocate for the appellant and Mr. Kumar Desai, Advocate assisted

by Ms. Nidhi Singh, Ms. Deepti Mohan, Ms. Binjal Samani, Ms. Aditi Palnitkar and Ms. Moksha Kothari, Advocates for the Respondent.

5. The various tables placed in the impugned order by the learned AO would show that in 650 instances the appellant no.1 through appellant no.2 has

placed buy orders above the prevailing sell order rate. In 341 instances it has matched buy orders with sell orders placed above the LTP. It has

executed 170 self-trades for 176 shares from the same terminal of the appellant no.2 which accounted for 4.46% of the total market positive LTP. By

repeatedly placing buy orders above prevailing sell orders the appellant no.2 has

contributed to 8.17% of the total market positive LTP. On the platform of BSE the appellant no.1 has traded in 56030 shares in lot of one share while on the platform of NSE he has executed trades for 56095

shares in similar fashion. It was found that it had a concentration of 61% and 70%, respectively, in the trades at BSE and NSE during the relevant period. Volume contribution was merely 1.28% at BSE and 1.5% at NSE.

6. The appellant submitted that he is a regular trader. The scrip was liquid. The trades were executed through automated trading system i.e algo

trading with no manual intervention as is clear from the certificate of the Chartered Accountant annexed by the appellant to the reply to show cause

notice. It submitted that its trading strategy is and was that of an arbitrageur and intra-day trader. The automated system is programmed to track

price difference on the platform of NSE and BSE. The system itself places orders on the platform of BSE depending on the bid price and ask price on

the BSE and NSE or vis-a-versa. The respondent SEBI had also investigated the trades of the appellant in another case wherein similar trading

pattern was adopted. The defence of the appellant was the same and the respondent SEBI had exonerated it in the said case.

7. As regards the placing of order for a price more than LTP it submitted that in fact limit orders were placed and within that range the trades were

executed. In five instances, the trades were executed at a price lesser than the buy order rate. Arbitrage trades are perfectly legal which defence was

accepted by the WTM in his order dated 5th February, 2019 in the case of trading by the appellant in the scrip of Winsome Yarns Ltd. and exonerated

the appellant. In this case, however, he is unnecessarily penalised. There is no case of collusion with anybody. In the case of Nishith M. Shah, HUF

appeal no.97 of 2019 dated 16th January, 2020 this Tribunal had held that in absence of any collusion between the buyer and seller the sale of shares

in miniscule cannot be held to be manipulative. The decision squarely applies to the present case. In the impugned order, the learned WTM has not

examined the corresponding trades executed by the appellant on the NSE platform while holding that the appellant had placed order below LTP on the

platform of BSE. As regard the self-trades, it was submitted that those were inadvertent. Some of them were either at LTP or lower than the LTP.

Only 155 trades were above the LTP. Corresponding trades would show that the

trade were arbitrage trades. It was further submitted that self-trades are not per se illegal. The self-trades had resulted from algo facility and as such the appeal deserves to be allowed. The appellant besides the case of Nishith Shah relied on the judgements delivered by this Tribunal in the case of Crosseas Capital Services Pvt. Ltd. appeal no.330 of 2017 dated 26th February, 2019, M/s. Nishti M. Shah, HUF, Harinarayan G. Bajaj, Rahul H. Bajaj vs. SEBI Appeal no.117 of 2003 order dated 10th October, 2007.

8. On the other hand learned counsel for the respondent relied on the case of Shreenath Finstock P. Ltd. appeal no.186 of 2020 order dated 22nd March, 2020.

9. Upon hearing both the sides, in our view the appeal is liable to be dismissed for the following reasons.

10. It is not in dispute that the price of the scrip of the Company rose from Rs.47.5/- to Rs.142.7/- within a period of 10 months as detailed in the impugned order. The appellant was top contributor to this rise as detailed in the table in the impugned order. Though the appellant has taken a plea of algo trading, why the algo caused self-trades in considerable number is not explained by the appellant no.1. He merely submits that the algo has done so. Further, the trading pattern of the appellant taken generally would also show that the appellant traded in miniscule quantity raising the number of trades.

11. We had gone through the order of the learned WTM in another case dated 5th February, 2019 where under the appellant was exonerated. The reading of the reasoning forwarded by the learned WTM in that case would show that the appellant was buying and selling in scrip intraday and squaring off his position in the scrip. WTM observed that sometimes the miniscule quantity of the shares depends on the host of market forces at play. In the said case, however, there was no case of self-trades and above all the trades were lesser than the trades found in the present case.

12. As regards the applicability of the reasoning adopted by this Tribunal in various cases cited by the appellant and the respondent, the reading of the same would show that after analysis of bundle of facts in each of the particular cases the decisions were taken in the set of the particular fact.

Whether a particular entity has manipulated while trading is essentially a question of fact and, therefore, considering the facts as appreciated supra in

our view on preponderance of probability the appellant was rightly found guilty by the learned Adjudicating Officer.

13. In the result, the following order:

ORDER

14. The appeal fails and is hereby dismissed without any order as to costs.

15. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor

a certified copy of this order could be issued by the registry. In these circumstances, 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. Parties will act on production of a digitally

signed copy sent by fax and/or email.