(2021) 09 SEBI CK 0097

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 423, 424, 425, 426, 427, 545 Of 2020, 55, 547 Of 2021, Appeal No. 507, 508, 509, 514, 515, 545, 552, 600, 607, 611, 612 Of 2019, 30, 67, 68 Of 2020

Rajendra Aggarwal And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 17-09-2021

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 : (2021) 09 SEBI CK 0097

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

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer, J

1. Fourteen appeals have been filed against a common order of the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated August 2, 2019 whereby the appellants and other noticees were found guilty of violating Regulations 3 and 4 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 'PFUTP Regulations') and accordingly different penalties were imposed upon each of the appellants.

2. The facts leading to the filing of the present appeals is, that an investigation in the trading of the scrips of Octant Interactive Technologies Ltd. was made wherein it was observed that the promoter entities alongwith connected entities have indulged in circular / reversal trades and also aided in price manipulation between January 2, 2009 to September 9, 2009. Based on the investigation, a show cause notice dated August 23, 2013 was issued alleging that the promoter group entity, Manish Rathi group and Kolkata Group entities executed circular /

reversal trades between them on the exchange as well as off-market with no intention of transfer of beneficial ownership of shares and with intention to operate as a device to create false misleading appearance of trades and fluctuation in the price of the scrip for wrongful gains. It was alleged that the Kolkata group aided and abetted the promoter group and Manish Rathi group in creating artificial volume and price manipulation by transfer of shares of the company to an entity Alliance Intermediaries and Network Pvt. Ltd. (hereinafter referred to as 'Alliance') who, in turn, transferred the shares in off-market to Manish Rathi group entities. Subsequently, a supplementary show cause notice dated October 29, 2014 was issued alleging that the promoter group colluded with Manish Rathi group entities and Kolkata group entities as well as with Alliance to manipulate the price of the scrip of the company.

3. Based on the connection between the noticees and based on the trading pattern, the AO after considering the replies came to the conclusion that reversal / circular trades were done by the noticees buying off-market and selling on market and that the noticees had misused the stock exchange platform to manipulate the price of the stock which was not backed by any fundamentals. The AO further found that the noticees traded amongst themselves to create an artificial volume and enticed other investors to start buying the scrip. The AO further found that the noticees had made false statements alleging that they had purchased the shares through brokers from the stock exchange whereas these scrips were not traded during the relevant period. The AO further found that the contract notes allegedly executed with the brokers were fake contract notes. The AO further found that the promoter group entities colluded with Manish Rathi group entities as well as Kolkata group entities and Alliance to manipulate the price of the scrip of the company and created artificial volumes so that the two promoters Girraj Kishor Agarwal and Tanu Girraj Kishor Agrawal could offload the shares of the company at a manipulated price.

4. Some of the noticees being aggrieved haqve filed the present appeals. They comprise the promoter group as well as from the Manish Rathi group.

5. We have heard Mr. J. M. Bhaglat, Mr. Pulkit Sharma, Ms. Rishika Harish, Ms. Rinku Valanju, Mr. Nirman Sharma, Mr. Ankit Lohia, Mr. Vinay Chouhan, Mr. Kunal Katariya, the learned counsel for the appellants and Mr. Vishal Kanade, the learned counsel for the respondent through video conference.

6. The common ground of all the appellants of the Manish Rathi group is, that they bought shares from the brokers through the stock exchange platform in 2007 / 2008 from the stock exchange platform and allowed the brokers to keep the shares in their pool account with instructions that as and when they required the shares to be sold, they instructed the brokers to transfer the same to their accounts. One of the appellants Shri Rajendra Aggarwal contended that purchases were made from the broker in April 2007 and it was only transferred in its clients account on February 4, 2009 when a legal notice was sent by him. The consistent stand of all the appellants is, that they had purchased it from the

brokers and were not aware of the actual owner and that they had no connection with the promoters or the promoter group entities. It was also contended that the appellants are nowhere connected with the promoter group or with the alleged Manish Rathi group entities and the connection drawn by the AO is erroneous. The appellants further contended that there has been an inordinate delay in the initiation of the proceedings. The alleged trades are of the year 2009 and that the notice was only issued in the year 2013 and, therefore, there was no justification for the delay in the issuance of the show cause notice. In addition to the aforesaid, it was also contended that the hearing in the matter took place in the year 2018 and it took eighteen months for the AO to deliver the order. It was, thus, contended that on account of the inordinate delay, the proceedings and the impugned order should be quashed. It was also urged that the penalty imposed is excessive and the AO has not taken into consideration the proportionality vis-a-vis the extent of the trades executed. It was, thus, contended that the imposition of the penalty is without any application of mind and was arbitrary. In support of their submission reliance was placed in the case of an order of the AO in Kishore V. Gandhi vs. SEBI in which against the same impugned order, the AO had imposed a penalty of Rs. 10 lac. This Tribunal by an order dated December 12, 2019 had remanded the matter pursuant to which a fresh order was passed by the AO on February 26, 2021 in relation to the same trading in the scrip and the AO has imposed a penalty of Rs. 2 lac. It was, thus, contended that the penalty imposed is excessive and should be reduced accordingly.

7. On the other hand, the stand of the respondent is, that the AO has considered in detail the connection inter se between the parties which is based on the evidence and also after considering the trading pattern. It was urged that the appellants had indulged in circular / reversal trading in connivance with each other and created not only artificial volume of trades but impacted the price of the scrip in question.

8. Having heard the learned counsel for the parties, we find that the trading activities of the appellants indicate circular / reversal trades. The appellants admittedly purchased shares off-market and later on reversed it through sell trades to the same entities. Thus, the trading pattern has been amply demonstrated in paragraph Nos. 23, 24 and 25 of the impugned order. The trades that the appellants purchased off-market from the promoter entities and also from Manish Rathi group and later on placed sell orders at a higher price thereby allowing buying entities to also place orders at a higher price thereby increasing the Last Traded Price (LTP). We also find that many trades that were executed were the first trades of the day. The AO in paragraph No. 26 has indicated the price increase of the scrip on the basis of the trades made by the appellants. We do not find any illegality in the findings given by the AO.

9. We also find that the Manish Rathi who is the proprietor of the Altra Clean Operations received Rs. 25 lacs from Alliance and also 10,000 shares off-market.

Manish Rathi also received shares from the promoter group entities and, thereafter indulged in circular / reversal trades in connivance with the appellants thereby creating an artificial volume which impacted the price of the scrip.

10. The aforesaid trading pattern has not been disputed by the appellants. The only stand taken was that they had bought the shares from the broker on the stock exchange platform and not off market in the year 2007-2008 and allowed the brokers to keep their shares in the broker's pool account. It was urged that as and when they required the shares to be sold they instructed the brokers to transfer the same to their accounts. We find it strange that the appellants who are located in all parts of the country followed the same modus operandi, namely, that they purchased shares through a broker and allowed the broker to keep it in its pool account. Further, we find it strange that the broker is located in Mumbai whereas the appellants are located in all parts of the country. Further, the AO has categorically found that the contract notes executed by the broker are fake contract notes and that false statement has been made by these appellants in as much as the scrip of the company was listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') for the first time on August 14, 2008. Prior to it, the scrip was listed on the Inter-connected Stock Exchange of India. The AO has found that no trading activity was being made on this stock exchange since 2003. Thus, the AO came to the conclusion that these trades could not have been purchased from any stock exchange platform and were bought only through off-market. These findings have not been attacked by any of the appellants and consequently we do not see any reason to differ with the findings given by the AO.

11. In this regard, we also observe that no proof was given by any of the appellants with regard to amount paid for the purchase of the shares. In the absence of any evidence, the allegation that the appellants had purchased it through the brokers also appears to be doubtful.

12. The evidence on record clearly shows that the appellants were connected with Manish Rathi group. The connection shown by the AO in paragraph No. 17 has not been disputed before us nor any attempt was made by any of the appellants to indicate that the conclusion drawn by the AO with regard to the connection was incorrect. Consequently, the arguments raised by some of the appellants with regard to the connection in the absence of proof is devoid of any merit.

13. On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the arguments the data of 35 entities was required to be analysed and collated which

took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants.

14. With regard to the appeal of Girraj Kishor Agrawal and Tanu Girraj Kishor Agrawal, the said appellants are the promoters of the company in which the scrip was traded. We find that the appellant Girraj Kishor Agrawal held 1,53,700 shares and sold 1,51,186 shares on four days. Similarly, Tanu Girraj Kishor Agrawal held 95,400 shares and sold off her entire holding within four days. The contention that they only sold the shares when the price was at its peak and, therefore, there was no violation since there was no charge of synchronised, reversal or self-trades against them and, therefore, the penalty imposed was wholly excessive. The submission raised by the appellants is patently erroneous. The trading pattern which has emerged indicates a modus operandi wherein the promoter group, namely, the appellants Girraj Kishor Agrawal and Tanu Girraj Kishor Agrawal alongwith Manish Rathi group and Kolkata group entities purchased sharesoff-market and later reversed through sell trades. The off-market purchases were made from the promoters entities who, in turn, was given to Manish Rathi group and this Manish Rathi group, in turn, again placed sell orders at a higher price allowing buying entities to increase the LTP. We are of the opinion that the appellants Girraj Kishor Agrawal and Tanu Girraj Kishor Agrawal were part of the modus operandi and misused the stock exchange platform to manipulate the price in order to make unlawful gains especially when the company was not backed by any fundamentals.

15. In appeal No. 515 of 2019 Manju Mutha & Anr., the contention of the appellants is, that they had appeared and filed their initial replies and appointed an authorised representative to appear on their behalf. It was contended that this authorised representative thereafter sought inspection of the documents which was allowed.

Further, intimation was given by the appellants with regard to the change in their residential address but for reasons best known that in spite of the appointing an authorised representative and intimating the change of address, the AO sent the notice of hearing at the old address of the appellants and did not sent any notice or information to the authorised representative. Consequently, the order has been passed ex-parte against the said appellants without giving adequate notice or an opportunity of hearing.

16. In this regard, we find that the respondent admit that no notice was sent to the authorised representative and also admit that notice was sent to the old address but contend that the notice of hearing was also published in the newspaper and, therefore, sufficient notice has been given. In this regard, we are satisfied that proper opportunity of hearing was not provided to the appellants. Once the authorised representative had been appointed, the AO should have given notice to the authorised representative and should have also sent notice, if any, to the correct address of the appellants which, in the instant

case, was not done. Merely publishing the notice in a newspaper does not cure the initial defect in the service of the notice especially when the appellants deny subscribing to those newspapers. Consequently, the impugned order in so far as the appellants in appeal No. 515 of 2019 cannot be sustained.

17. In appeal No. 612 of 2019 filed by Glint Infraprojects Pvt. Ltd., it is contended that one of the noticees Keystone Stock Finance Ltd. (hereinafter referred to as 'Keystone') has been penalized by a sum of Rs. 1 crore which company has been amalgamated with the appellant company on June 17, 2011. It was urged that the company Keystone ceased to exist upon amalgamation in June 2011 and, therefore, no proceedings could be issued against Keystone nor any recovery could be made from the successor in interest, namely, the appellant. In this regard, the respondent has accepted the amalgamation but contended that the appellant is not an aggrieved person as notice was only sent to Keystone and no notice has been sent to the appellant nor any recovery is being made from the successor in interest.

18. In this regard, in Saraswati Industrial Syndicate Ltd. vs. C. I. T. Haryana, H. P., Delhi [AIR 1991 SC 70], the Hon'ble Supreme Court held that when two companies amalgamate and merge into one the transferor company loses its entity as it ceases to have its business. The corporate entity of the transferor ceases its business with effect from the date of amalgamation is made effective. Further, admittedly, the respondent has stated that no recovery is being made from the successor in interest. We are, thus, of the view that since the appellant was not a noticee in these proceedings, the appellant is not an aggrieved person and since no recovery is being made from the successor in interest, the appeal is devoid of any merit.

19. In appeal No. 611 of 2019 Jayesh Sampat & Anr., it was contended that they have filed the appeal as ex-directors of the company Alliance. The only contention raised is that the company was struck off by the Registrar of the companies in September 2015 and, therefore, the impugned order cannot be sustained.

20. In this regard, we are of the opinion that proceedings were initiated against the company and the company also participated through its authorised personnel and merely because the company's name was struck off, the liability does not get wiped out. The contention raised by the appellant is, thus, devoid of any merit.

21. On the issue of quantum of penalty reliance was made in the case of Kishor Gandhi (supra) wherein originally a sum of Rs. 10 lac was imposed as penalty but on remand it has been reduced to Rs. 2 lac. We are of the opinion that in this regard, the AO is required to reconsider the quantum of penalty as prima-facie, we find that the penalty imposed is excessive especially after the fresh decision passed by the AO in the matter of Kishor Gandhi (Supra).

22. In view of the aforesaid, the findings against all the appellants except in appeal No. 515 of 2019 Manju Mutha & Anr., for violating Regulations 3 and 4 of

the PFUTP Regulations with regard to circular / reversal trades are affirmed. The penalty imposed is excessive and cannot be sustained. The matters are remitted to the AO for reconsideration on the quantum of penalty only in the light of the decision in Kishor Gandhi (supra) dated February 26, 2021 and such other judgments as the appellants may rely upon.

23. In view of the aforesaid, the impugned order in appeal No. 515 of 2019 in so far as it relates to the appellants is quashed and the appeal is allowed. All other appeals are partly allowed. The violation is affirmed and the matter is remitted to the AO to pass a fresh order only on the quantum of penalty in the light of the observation made above in accordance with law within a period of six months from today. In the circumstances of the case, parties shall bear their own costs.

24. 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.