
(2022) 02 SEBI CK 0034

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No. 369 Of 2020, 547, 999 Of 2021, Appeal No. 360, 361 Of 2020, 630 Of 2021

Ravindra Kumar Grover And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To The Securities Market) Regulations, 2003 — Regulation 3, 4

Citation : (2022) 02 SEBI CK 0034

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

Bench : Division Bench

Advocate : Prakash Shah, Pradeep Sancheti, Manish Chhangani, Ravi Shekar Pandey, Samreen Fatima, Vinay Chauhan, K. C. Jacob, Kushal Shah, Ketan Rupani

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeals have been filed against the order dated June 5, 2020 passed by the Whole Time Member (hereinafter referred to as

W.T.M.) of Securities and Exchange Board of India (hereinafter referred to as SEBI) wherein the appellants have been restrained

from accessing the securities market for a period of three years and further their demat accounts have been frozen for the same period. All the

appeals are against a common order and are being taken up together. For facility, the facts stated in the appeal of Greencrest Financial Services Ltd.

& Ors. are being taken into consideration.

2. The facts leading to the filing of the present appeals is, that the company Greencrest Financial Services Ltd. is a non-banking financial company

(NBFC) registered with Reserve Bank of India and is in the business of investing in shares of various companies and also listed on Bombay Stock

Exchange Ltd. (BSE). On September 14, 2012, the company made the first preferential allotment to 43 non-promoters and allotted 1,92,50,000 shares

on preferential basis at the rate of Rs. 12/- per share aggregating to a value of Rs. 23.10 crores. On February 11, 2013, the company made a second

preferential allotment wherein the company allotted 1,23,00,000 shares on preferential basis again at the rate of Rs. 12 per share aggregating to a

value of Rs. 14.76 crores. This second preferential allotment was made to 45 non-promoters. During patch â?" 1 of the investigation period, this scrip

opened at Rs. 7.26 and the price increased to Rs. 264.3 and in the patch â?" 2, the price increased from Rs. 269/- to Rs. 698/-.

3. On December 26, 2017, the show cause notice was issued alleging that the company had made two preferential allotments to 88 non-promoters

entities and subsequent to their allotment, noticees no. 1 to 11 had manipulated the price of the scrip during patch â?" 1. It was alleged that noticees

no. 1 to 11 were provided funds and shares by noticees no. 15 to 17 and that noticees no. 15 to 17 were directly or indirectly connected with the

company. It was also alleged that the company had returned the preferential allotment money indirectly to noticees no. 18 to 20 through Global

Infratech and Finance Ltd. (hereinafter referred to as â??Globalâ??). The show cause notice also alleged that noticees no. 18 to 20 who were the

preferential allottees sold their shares on manipulated high price. The show cause notice, thus, alleged that the company and its directors were part of

the orchestrated scheme and conspired to manipulate the price of the scrip to benefit the preferential allottees.

4. The company filed its reply and denied that the company or its directors were part of the conspiracy or manipulated the price of the scrip to benefit

the preferential allottees. The company also denied the connection with noticees no. 15 to 17 contending it was farfetched, flimsy and that such

connection cannot form a basis for drawing an adverse inference against the company. The company also contended that it had no role to play in the

manipulation of the price or volume of the scrip in the trades done by noticees no. 1 to 11 and that there is no connection between the company and its

directors with noticees no. 1 to 11. The company vehemently denied that the allotment application money was returned to the preferential allottees,

noticees no. 18 to 20 and the fund transaction shown in the show cause notice between the company and the noticees no. 16 and 17 was done in the normal course of business transaction which was duly supported by necessary documents. The company denied any connection with noticee no. 15.

5. Noticee no. 1 who is the buyer, in the instant case, contended that her husband used to trade who died prior to the issuance of the show cause notice and, therefore, she is unable to make any submission with regard to the trades executed on her behalf. It was also contended that there is no connection of noticee no. 1 with the counter parties / sellers, namely, noticees no. 3 to 11 and that the trades executed by noticee no. 1 was in the usual course of business. It was also contended that after the death of her husband and in view of the impugned order, her demat accounts have been frozen as a result of which she is facing financial hardship. Noticee no. 18 who is a preferential allottee contended that noticees applied for preferential allotment and paid due consideration. The contention that the company returned the application money was patently erroneous and was not based on any cogent evidence. Further, noticee no. 18, in the normal course of business had taken a loan from Global which had nothing to do with the funds given by the company to Global. The noticee denied that it had any connection with the company or with the manipulation of the price in the scrip.

6. The WTM after considering the material evidence on record came to the conclusion that noticees no. 1 to 11 had manipulated the price of the scrip of the company by indulging in repeatedly abnormal and artificial trading. Further, noticees no. 1 and 2 were provided funds by noticees no. 16 and 17 who were connected directly or indirectly with the company. Further, noticees no. 3 to 11 were the sellers / counter parties, to the trades executed by noticees no. 1 and 2 and, thus, noticees no. 3 to 11 had received the shares of the company from noticee no. 15 through off-market. A finding has also been given that noticee no. 15 is also connected to the company. The WTM also came to the conclusion that the company had funded noticees no. 16 to 17 who, in turn, had funded noticee no. 18 and noticee no. 1 and, therefore, came to the conclusion that the company and its directors had orchestrated the scheme to manipulate the price of the scrip thereby violating the Regulations 3 and 4 of the Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations).

7. We have heard Mr. Prakash Shah, Mr. Vinay Chouhan and Mr. K. C. Jacob, the learned counsel with Mr. Kushal Shah and Mr. Ketan Rupani, Chartered Accountants for the appellants and Mr. Pradeep Sancheti, the learned senior counsel with Mr. Manish Chhangani, Mr. Ravi Shekar Pandey, Ms. Samreen Fatima, the learned counsel for the respondent through video conference.

8. The show cause notice was issued to 20 noticees and these noticees have been categorized in the following manner, namely, noticees no. 1 and 2 are the buyers, noticees no. 3 to 11 are the sellers / counter parties and noticees no. 12, 13 and 14 are the company and its two directors. Noticee no. 15 is the entity which has transferred shares off-market to the sellers i.e. noticees no. 3 to 11, noticees no. 16 and 17 have funded noticees no. 1 and 2 and noticees no. 18 to 20 are the preferential allottees.

9. Before us, noticees no. 12 to 14 i.e. the company and its two directors have filed appeal no. 361 of 2020 and noticee no. 1 is the buyer who has filed appeal no. 630 of 2021 and noticee no. 18 Ravindra Kumar Grover who is the preferential allottee has filed appeal no. 360 of 2020.

10. The charge against the company and its two directors is, that the company had fund transaction with noticee no. 17 JMD Sounds Ltd. (hereinafter referred to as JMD). Rs. 50 lacs was paid by the company to noticee no. 17 in March 2013 out of which Rs. 17.50 lacs was paid by JMD, noticee no. 17 to noticee no. 1 in February 2014 for trading in the shares of the company. On this basis, a connection has been drawn holding that noticee no. 1 is connected to the company through noticee no. 17 with the ulterior purpose of manipulating price in the scrip of the company and that noticees no. 1 and 17 are tied with the company by a common thread of fund transaction. This finding, in our opinion, is patently erroneous and in fact, perverse. The connection drawn is not only farfetched but cannot lead to a conclusion that there were some scheme hatched by the company and its two directors for the purpose of orchestrating a scheme for manipulating the price of the scrip of the company to benefit the three preferential allottees. We are of the opinion that the finding that the company funded

noticees no. 15 to 17 is too farfetched and even on the preponderance of probability, we cannot come to this conclusion that the company had actually funded noticee no. 1. The finding that the company is tied with noticees no. 1 and 17 by a common thread of fund transaction is patently erroneous for the simple reason that there was a running transaction between the company and noticee no. 17 for which ample proof by way of ledgers wherein several transactions have been recorded have been foled. Further, a sum of Rs. 50 lacs was paid by the company to noticee no. 17 in the ordinary course of business in March 2013. There is nothing to indicate that this fund of Rs. 50 lacs was actually used by noticee no. 17 to fund noticee no. 1 to the tune of Rs. 17.50 lacs. Further, noticee no. 17 had transferred Rs. 17.50 lacs in February 2014, after almost 11 months from the date the amount was transferred by the company to noticee no. 17. We also find that explanation for transfer of Rs. 50 lacs was given by the company, namely, that the company had sold 1,15,000 shares by Sargam Vintrade Pvt. Ltd. for an amount of Rs. 2.30 crores to noticee no. 17 and the sale consideration amount was adjusted against the receipt of noticee no. 17 at the closing of the financial year. As per the ledger, an amount of Rs. 50 lacs was outstanding and was to be paid by the company to noticee no. 17 which the company paid to noticee no. 17 on March 21, 2013. Further, it has come on record that after March 21, 2013, the company had not done any financial transaction with noticee no. 17. Thus, the transfer of Rs. 50 lacs by the company to noticee no. 17 is proved to be a business transaction and was not for the purpose of funding noticee no. 1. This finding arrived at by WTM is, thus, patently erroneous and based on surmises and conjectures. The WTM has not considered the fact that Rs. 50 lacs was paid by the company to noticee no. 17 in March 2013 and there is a huge time gap between the financial transactions between the company and noticee no. 17 and noticee no. 17 with noticee no. 1 which was a transaction made in February 2014. Thus, we are satisfied that there is no nexus between noticee no. 1 with the company through noticee no. 17.

11. The allegation that the company had fund transaction with noticee no. 16 PS IT Infrastructure Services Ltd. (hereinafter referred to as â??PSITâ??) is also based on surmises and conjectures. We find that there is no evidence on record to show that the company had funding

transaction with PSIT. Thus, even if noticee no. 16 has funded noticee no. 2, no adverse inference can be drawn against the company merely because of some indirect and farfetched connection of noticee no. 16 with the company. The finding given in the impugned order on this aspect is, thus, cannot be accepted.

12. Noticee no. 15 is alleged to have sold shares on off-market to noticees no. 3 to 11. The finding given by the WTM that the company had fund transaction with the noticee called Unisys and noticee no. 15 have received Rs. 25 lacs from Unisys and, therefore, there is a connection. In our opinion, this cannot form a basis of connection or can lead to presumption of any connivance orchestrating a scheme between the company and noticee no. 15 and noticees no. 3 to 11. We find that there is no finding of meeting of minds or intention to orchestrate a scheme between the noticees no. 3 to 11 through noticee no. 15. We also find that there is no finding that noticee no. 15 has any link with the company or its directors nor there is any finding that the shares transferred by notice no. 15 to the sellers were routed through the company or its directors. We also find that there is no direct connection between the company and noticee no. 15 and the alleged connection shown is too farfetched and cannot come to a conclusion that the connection was with the purpose of orchestrating a scheme.

13. With regard to the fund transaction with Global and thereby funding noticee no. 18 or returning his application money, we find that during the relevant period, the company has lent Rs. 8.8 cores to Global on interest. The factum of funding Global by the company is documented in its ledger and bank statement. The WTM came to the conclusion that a sum of Rs. 2 crores lent by the company to Global on September 13, 2012 was an indirect transaction to fund three preferential allottees, namely, noticees no. 18, 19 and 20. The WTM however found that there is no fund trail against noticees no. 19 and 20 and, therefore, exonerated the two noticees. The WTM further found that Rs. 2 crores lent to Global out of which Global transferred Rs. 65 lac to noticee no. 18 which was used for allotment of preferential shares. The WTM, therefore, found a direct fund trail which, in this regard, we find that an amount of Rs. 2 crores was lent to Global on September 13, 2012 which has been admittedly returned alongwith interest during the financial years 2013-14 and 2014-15. Ledgers were placed before the

WTM who disregarded the evidence by holding that self-generated evidence is not sufficient and thereafter came to the conclusion that noticee no. 18 had a very close nexus with the company and the money was received by him through Global and that the receipt of the money from Global amounted to indirect return of the application money and thereby coming to a conclusion that noticee no. 18 was part of the scheme to manipulate the price of the scrip at the market price. Before us, evidence has been filed to show that Rs. 2 crores were paid to Global as inter corporate deposit and was received back alongwith interest after deduction of TDS. The TDS certificate and the auditor's certificate has not been disbelieved by the respondent. Consequently, considering the genuineness of the TDS certificate, it is clear that the appellant had made inter corporate deposit with Global after receiving an allotment money from the first preferential issue. The said money was received back alongwith interest after deduction of TDS. Thus, it cannot be said that the funds given to Global on loan was given for the purpose of funding noticees no. 18, 19 and 20. We further of the opinion that if Global has funded noticees no. 18, 19 and 20, no connection of funding can be seen from the company through this fund transaction. Further, we find that the WTM has exonerated noticees no. 19 to 20 even though they were funded by Global. Thus, we are satisfied that that funding made by Global to noticee no. 18 had no connection with the fund given by the company to the Global. The finding that noticee no. 18 was part of the scheme with the company and its directors to manipulate the price is patently erroneous. We, therefore, hold that the finding that the preferential allotment made by the appellant was not based on any monetary consideration and the that the company had given the allotment of shares without receiving the consideration is patently erroneous.

14. Considering the aforesaid, we find that there is no direct evidence much less plausible evidence to come to the conclusion that the company and its directors had orchestrated a scheme to benefit noticees no. 18 to 20 i.e. the preferential allottees. It is difficult for us to digest that the company would orchestrate a scheme to benefit one preferential allottee out of 88 allottees. In this regard, we also find that the finding against the noticee no. 18 is patently erroneous for the reasons stated aforesaid.

15. In so far as the noticee no. 1 is concerned, we find that there is sufficient

evidence which has come on record to show that there was a meeting of mind between notices no. 1 and 2 with noticees no. 3 to 11 with the intention not only to manipulate the price but to increase volume and thereby create a misleading appearance in the trading of the scrip. Detailed findings have been given by the WTM that no two sellers traded on one particular date and all the trades made by noticees no. 3 to 11 were executed by noticees no. 1 and 2. Thus, on account of the trading pattern and the volume generated thereby misleading the investors, we are satisfied that noticee no. 1 had violated the provisions of Regulations 3 and 4 of the PFUTP Regulations.

16. In the light of the aforesaid, the impugned order in so far as it relates to the appeal no. 361 of 2020 of Greencrest Financial Services Ltd. and Ors.

and appeal no. 360 of 2020 of Ravindra Kumar Grover cannot be sustained and are quashed and the appeals are allowed. In so far as the appeal no.

630 of 2021 of Prem Lata Nahar is concerned, the appeal fails and is dismissed with no order as to costs. In the circumstances of the case, parties shall bear their own costs.

17. 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.