(2020) 12 SEBI CK 0151

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No.516, 517, 518 Of 2020

Saroj Devi Kothari And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 24-12-2020

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 : (2020) 12 SEBI CK 0151

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

Bench : Full Bench

Advocate : Monil Punjabi, Himanshu Agarwal, Shivam Deshmukh, Nidhi Singh, Kinjal Bhatt, Hersh Choudhary, Vidhii Partners

Judgement

Tarun Agarwala, Presiding Officer

1. The three appeals have been filed against a common order passed by the Adjudicating Officer (â??AOâ?? for short) imposing a penalty of Rs.5

lakhs on each of the appellants. The issues involved are the same and consequently the three appeals are being decided together. For facility the facts

in the appeal of Rajendra Kumar Kothari is being taken into consideration.

2. PSIT Infrastructure and Services Ltd. made a preferential allotment of 1,10,00,000 shares at the rate of Rs.10/- per share on 23rd July, 2012 to 49

non-promoter entities. The appellants were the preferential allottees totaling 1200 shares. The said shares were listed on the BSE platform for trading

with effect from 13th August, 2013.

3. According to the appellants they were in need of money and, accordingly, handed over their shares to a broker for sale and placed their signature

on blank transfer forms.

4. It transpires that these shares were sold through off market to 22 entities in small lots of 50 shares over a period of three weeks and soon thereafter

these 22 entities started selling miniscule quantity on the stock market thereby increasing the price of the scrip. Securities and Exchange Board of

India (hereinafter referred to as â??SEBIâ??) noticing the abnormal movement in the price of the scrip during the period May, 2012 to March, 2015

conducted an investigation and found that the price rose from Rs.50 to Rs.466.95. Accordingly two show cause notices were issued, one by the

Whole Time Member (â??WTMâ?? for short) and the other by the AO. After considering the reply, the WTM passed an order dated 5th June, 2020

restraining the appellants from accessing the securities market for a period of six months. The AO by the impugned order of 31st July, 2020 has

imposed a penalty of Rs.5 lakhs each on the appellants and Rs.1 lakh on 22 entities. The appellants being aggrieved by the imposition of penalty by the

AO have filed the present appeal.

5. The finding of the AO is, that the 22 entities/ noticees received the shares from the appellants through off market and thereafter started selling in

the market and sold it off within four months. The AO found that there were large buy orders inspite of which the 22 entities sold miniscule quantities

thereby creating artificial volume and increasing the price of the scrip. The AO found that the strategy adopted by 22 entities was part of large

scheme which had a manipulative intent to increase the price and that the sales made by the 22 entities had a positive LTP by 86.56%.

6. Considering the aforesaid, the Adjudicating Officer found that the trades executed by the 22 entities had a manipulative intent to increase the price

which was fraudulent and collusive and had a structured scheme of collusion between the noticees and, therefore, was violative of 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

and, accordingly levied a penalty of Rs.1 lakh on 22 entities and Rs.5 lakhs on the appellants.

7. The AO also found that there was no direct connection between the appellants and the noticees but the circumstances and the conduct determined

the connection in as much as all the shares were brought by the 22 noticees through the appellant and sold in small quantities and even though the

sales was made within the circuit price but collectively the sales made by the 22 entities pushed up the price of the scrip. The AO also found that

these shares were illiquid when the shares were sold by the appellants to the 22 entities. The AO also found that these shares sold by the appellants to

the 22 entities were roughly sold at the prevailing market price.

8. In the light of the aforesaid, we have heard Mr. Monil Punjabi, Advocate assisted by Mr. Himanshu Agarwal, Advocate for the Appellants and Ms.

Nidhi Singh, Advocate assisted by Ms. Kinjal Bhatt and Mr. Hersh Choudhary, Advocates for the Respondent.

9. The learned counsel for the appellant submitted that he is not questioning the findings passed by the AO and is only confining his submissions on the

proportionality of the penalty imposed on the appellants. The contention raised is, that the appellants alongwith 22 other noticees were found to be part

of a scheme for making an artificial demand and price rise of the scrip and all of them have been found guilty of the same charge, the 22 noticees

have only been penalized Rs.1 lakh each whereas the appellants on the other hand have been penalized Rs.5 lakh each which is wholly arbitrary and is

not based on any cogent or sound reasons.

10. In this regard, we find from the impugned order that the only role assigned to the appellants were that they sold their 1200 shares off market

through a broker to the 22 entities. It has come on record that the price at which the appellants had sold was roughly at the market price. There is no

finding that the appellants by selling their 1200 shares had increased the price of the scrip or created an artificial demand. The AO finds that there

was a demand for sale of shares in the market but for reasons best known the appellants chose to sell the shares through off market which created a

suspicion.

11. Be that as it may, even if the preponderance of probability is taken into consideration that there was some indirect connection between the

appellants and the 22 entities the appellants cannot be burdened with the charge of price manipulation or fraud or inducement to the investors. Even on

preponderance of probability the appellants had no further role to play in the subsequent sale of the shares in miniscule quantities by the 22 entities. In

the absence of any finding that the appellants had something to gain by selling of the shares in small quantities and in the absence of any finding that

the appellants were in some way connected with other preferential allottees or with the promoters of the company the imposition of penalty of Rs.5

lakhs on the appellants in not justified.

12. We are of the opinion that the charge of manipulation in the price or the increase in positive LTP or the creation of artificial volume has been

proved against the 22 entities. Such charges are absent in so far as the appellants are concerned. Their only role was to sell their 1200 shares to the

22 entities through off market and that too at the prevailing market price.

13. In the light of the aforesaid, we do not find any justification by the AO in imposing a penalty of Rs.5 lakhs upon the appellants. We consequently

allow the appeals in part and while affirming the order against the appellants we reduce the penalty from Rs.5 lakhs to Rs.1 lakh each to be paid by

the appellants. In the circumstances of the case parties shall bear their own costs.

14. 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.

