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**(2020) 02 SEBI CK 0036**

**In the Securities Appellate Tribunal Mumbai**

**Case No :** ?Appeal No. 164, 165, 166 Of 2019, Miscellaneous Application No. 224 Of 2019

Shailesh Shah And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

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**Date of Decision :** 07-02-2020

**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(2)(g)  
Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12A(c), 15HA

**Citation :** (2020) 02 SEBI CK 0036

**Hon'ble Judges :** Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member

**Bench :** Division Bench

**Advocate :** ?Mugdha Modi, Karan Bhosale, Chirag Bhavsar, Eram Quraishi, Harshad Vyas

**Final Decision :** Partly Allowed/Dismissed

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**Judgement**

Dr. C.K.G. Nair, Member

Misc. Application No. 224 of 2019:-

1. For the reasons stated in the application, the delay in filing Appeal No. 166 of 2019 is condoned. The Misc. Application No. 224 of 2019 is allowed.

Appeal Nos. 164 of 2019, 165 of 2019 and 166 of 2019:-

1. These three appeals have been filed to challenge the order of the Adjudicating Officer (â??AOâ?? for short) of Securities and Exchange Board of

India (â??SEBIâ?? for short) dated January 31, 2019. By the said order the appellants have been held to have violated various provisions of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 (â??PFUTP Regulations, 2003â?? for short)

and therefore penalties of Rs. 20 lakh each on the appellant Devang Vyas in Appeal No. 165 of 2019 and Rajiv Gandhi in Appeal No. 166 of 2019 and

Rs. 10 lakh on appellant Shailesh Shah in Appeal No. 164 of 2019 has been imposed. Since all three appeals challenge the same impugned order, with

consent of the parties, these appeals are heard together taking Appeal No. 165 of 2019 as the lead matter and dispose of by a common decision.

2. Facts relevant to the appeals are the following. SEBI conducted an investigation relating to trading in the scrip of M/s. Le Waterina Hotels and

Resorts Ltd. (â??Le Waterinaâ?? for short), a Company listed at Bombay Stock Exchange Limited (â??BSEâ?? for short), for the period from

October 1, 2010 to March 5, 2012. Consequently, a show cause notice dated September 28, 2017 was issued to 16 entities who were found to be

connected / related entities for alleged violations of the provisions of Section 12A(a),(b),(c) of SEBI Act, 1992 read with Regulations 3(a),(b),(c),

(d),4(1),4(2)(a) and (g) of PFUTP Regulations, 2003. Further, consequent to a share split in the ratio of 1:10 on July 4, 2011 the number of shares of

the Company increased from 66,62,840 to 6,66,28,400. During the investigation, it was noted that 16 entities who are related / connected have indulged

in a scheme of trading which involved certain off-market transactions as well as subsequent on-market transactions and indulged in large scale

manipulation of the volumes in the scrip of Le Waterina and thereby violated the stated provisions of PFUTP Regulations 2003. For instance, it was

observed that promoter related entities Anila Jalan (mother of Sanjay Jalan) and Rinku Jalan (wife of Sanjay Jalan) had transferred shares to various

entities through off-market transactions. These entities as well as some other entities who received shares from Devang Vyas (appellant in Appeal

No. 165 of 2019) and Farah Devang Vyas through off-market transfers traded in the scrip during the investigation period were connected entities as

explained in paragraph 29 of the impugned order. Though 16 of these entities were found to be connected / related the impugned order is issued

against only 12 of them since the other four, namely, Sanjay Jalan, Anila Jalan, Rinku Jalan and Kamal Kothari have filed settlement applications and

in the case of Kamal Kothari by a settlement order dated March 28, 2018 the proceedings were disposed off. Therefore, though the impugned order

gives the connection between all these entities directions have been passed only in respect of 12 entities specified therein.

3. Learned counsel Ms. Mugdha Modi appearing on behalf of the appellants submits that appellant in Appeal No. 165 of 2019, Devang Vyas, was only

an employee of M/s. Guinness Securities Ltd., a brokerage, whose Managing Director was Kamal Kothari. He was on this job from August 2009 and

sometime in August 2010 he discontinued the job informally. Further, though the appellant has made some trades in the scrip of Le Waterina and

recommended the scrip for trading to some other clients he never made any money out of it nor violated any securities laws. Recommendation on the

scrip was done on the instructions of his employer Kamal Kothari.

4. It was further contended by the learned counsel for the appellant that a trading account in the name of the appellant was unlawfully opened by

Kamal Kothari without the appellant's permission and large scale trading was done using this fabricated account. When the appellant came to

know of this he made complaints to the BSE as well as to Mumbai Police. Moreover, appellant won an arbitration award against M/s. Guinness

Securities Ltd. for the losses incurred on account of unauthorized trading.

5. It was further contended that the impugned order is defective in several ways. Despite the fact that a common Show Cause Notice (SCN) was

issued to 16 entities, order has been passed only against 12 of them, and the brain behind the entire issue, Kamal Kothari was allowed to go lightly with

a consent application and three other noticees also have been allowed the consent route. However, the impugned order continues to rely on the

violations made by those parties in order to press charges against the appellants. Similarly, out of several entities allegedly connected as given in the

impugned order, orders have been passed only against 12 entities. For instance, an investor Man Mohan Damani whose trades constitutes 21.5% of

the total volume of the alleged manipulative transactions has not been found guilty at all while the appellant with a volume of only 4.98% of the total

transactions have been found guilty. It was also contended that though the impugned order has taken pains in elaborating on the volume of trades

matched between the suspected entities how such volume manipulation has impacted prices has not been explained and if prices were not

affected the allegation of volume manipulation cannot stand on its legs.

6. Further, it was contended that the impugned order does not deal with the issue of the appellant winning the arbitral award nor the fact that the

appellant had complained against Kamal Kothari for the illegal trading in his unauthorized account and therefore while imposing a penalty of Rs. 20

lakh against the appellant no benefit of the said transactions, which was not the fault of the appellant, was given to him. Further, several entities who

are in similar position in terms of the alleged violation have been imposed only lighter penalty of Rs. 5 lakh while the appellant has been charged with a

heavy penalty of Rs. 20 lakh.

7. As regards Appeal No. 164 of 2019 it was contended by the learned counsel for the appellant that the appellant had only done 39 trades which was

matched with two counterparties only; one Mr. Paresh C. Doshi and another Mr. Himmatlal Lakhani. The appellant is not connected to those entities.

Further, the appellant is only an individual businessman who invests in the share market and executes trades only on the exchange system. Given this

background of the appellant and despite giving detailed explanation to the SCN the AO has failed to take into account the submissions and passed the

impugned order and imposed a heavy penalty of Rs. 10 lakh despite the fact that the appellant has lost heavily on account of the activities of Kamal

Kothari.

8. As regards Appeal No. 166 of 2019 the learned counsel for the appellant submitted that the appellant was also an employee of M/s. Guinness

Securities Ltd. and was acting on the instructions of Kamal Kothari and accordingly purchased the scrip as well as recommended the scrip to other

investors. Accordingly, the appellant was only a pawn in the hands of Kamal Kothari. Further, when Kamal Kothari was selling the shares suddenly

and thereby the prices were falling, appellant had incurred heavy losses. Accordingly, imposition of a heavy penalty of Rs. 20 lakh against the

appellant mainly arising from the wrong doing of Kamal Kothari is too harsh and disproportionate punishment and without considering the submissions

made by the appellant before the AO.

9. The learned counsel Shri Karan Bhosale appearing for the respondent SEBI submits that the connection between various parties is well established

as detailed in the impugned order at pages 16 & 18. It is also an admitted position that the appellant Devang Vyas and Rajiv Gandhi were employees

of M/s. Guinness Securities Ltd. and were actively trading in the scrip of Le Waterina as well as recommending the scrip to others. The third appellant

Shailesh Shah was involved in the entire process as he received shares off-market from Farah Devang Vyas in addition to trading on-market on a

number of occasions where the counter parties were also part of the related group entities even if the submission of Shailesh Shah that the counter

parties were not directly connected to him is considered.

10. Further, it was contended that the statements made by the appellants before the investigating authorities have clearly established their role and

connection in the entire manipulative episode in the scrip of Le Waterina. For instance, appellant Devang Vyas in his statement dated August 26, 2014

and September 1, 2014 stated that "I have placed orders in my, Farah Vyas and Rajiv Gandhi's account with M/s. Rikhav Securities and

Kantilal Chaganlal Securities". Similarly, Rajiv Gandhi made the statement before the investigating authority on August 7, 2015 that "Mr. Devang

Vyas used to instruct me to buy shares". Therefore, though these appellants claim to be pawn in the hands of Kamal Kothari they are not innocent

pawn but abetting participants in the scheme of manipulation.

11. The learned counsel for the SEBI further submitted that though appellant Devang Vyas now submits before this Appellate Tribunal that the trading

account with M/s. Guinness Securities Ltd. was opened without his knowledge, such a stand was never taken before the AO. Further, regarding the

submission that no action has been taken against Man Mohan Damani, learned counsel submitted that though Mr. Damani was the largest single

trader in terms of volume during the pre-stock split period no connection could be established between him and other suspected entities and hence no

action was taken against Mr. Damani. However, both Devang Vyas and Rajiv Gandhi were involved during pre-stock split as well as post-stock split

period contributing substantial percentage to both gross volume of sell and buy. Shailesh Shah was an active trader in the scrip with substantial number

of trades and many of them matching with suspected entities during the post-split period. In any case since Shailesh Shah was only party to the trades

and therefore contributed to volume manipulation and not amongst those who induced others to trade in the scrip, a lower penalty of Rs. 10 lakh has

been imposed against him while in respect of the other two appellants an amount

of Rs. 20 lakh each has been imposed. As regards the contention that there was no analysis of price rise or price change on account of manipulative trading activities of the appellants and others it was submitted by the learned counsel for SEBI that it is more a case of volume manipulation than of price manipulation. However, even if the impugned order has not dealt with the price effect the same is given in the SCN which shows that prices moved from Rs. 35 to 144 during the pre-split period and between Rs. 5.33 to Rs. 15.45 during post-split period mostly on account of the increased trading activities and the scheme of manipulation implemented by the appellants and other noticees against whom orders have been passed.

12. Having heard the learned counsel for the parties and after perusing the records relating to all the three appeals, we are of the view that the entire episode is a case of circular trading caused by a group of entities in order to manipulate the market in the scrip of Le Waterina. There is sufficient evidence that this group of entities, including the appellants, converted the scrip of Le Waterina into a highly traded one from a lightly traded scrip and thereby imposing heavy cost on the unsuspecting investors in the market. Therefore, we have no doubt that it is a clear case of market manipulation as defined under the relevant provisions of SEBI Act and the PFUTP Regulations 2003, which we reproduce for convenience herein:-

â??SEBI ACT, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectlyâ?

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock

exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations

made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be

listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with

the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions

of this Act or the rules or the regulations made thereunder;

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to

any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed

or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

Chapter II of PFUTP Regulations, 2003

## PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

### 3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange,

any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there

under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be

listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with

any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the

provisions of the Act or the rules and the regulations made there under.

### 4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the

following, namely:â?

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or moneyâ??s worth for inducing such

person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such

security;â??

13. The contention of the learned counsel for the appellants that there is no price manipulation nor even any analysis of the changes in price and

therefore no violation of PFUTP Regulations has no merit since volume manipulation is also a PFUTP violation, particularly, as stated under

Regulation 4(2)(a). Further, the contention that appellants were mere pawn in the hands of Kamal Kothari, the MD of the broker M/s. Guinness

Securities Ltd. does not have any merit since they were not only senior officials and accomplices as evidenced from their roles and functions and/or in

terms of the role in recommending the scrip to other entities. Therefore, the finding in the impugned order that they were enablers in perpetuating the

violations cannot be faulted.

14. Penalty of Rs. 20 lakh each on two appellants (Devang Vyas and Rajiv Gandhi) and Rs. 10 lakh on Shailesh Shah have been imposed under

Section 15HA of SEBI Act which provides for a penalty of not less than Rs. 5 lakh but which may extend to Rs. 25 crore or the three times an

amount of profits made, whichever is higher. Accordingly, the penalty amount imposed cannot be considered as harsh or disproportionate. However,

at the same time, we note that Devang Vyas appellant in Appeal No. 165 of 2019 had won an arbitral award on part of his alleged trades which has

not been dealt with properly by the AO of SEBI. When the appellant had won an award against the broker for certain disputed trades and thereby

compensated for the said fact had to be considered in the order. Since this fact has not been dealt with in the impugned order, we are not able to

decipher whether this benefit was given to the appellant while calculating the amount of penalty. In the absence of which and in the interest of justice,

the penalty amount imposed on Devang Vyas, appellant in Appeal No. 165 of 2019, needs to be reduced.

15. In the result, while upholding the impugned order on merits we reduce the amount of penalty imposed on Devang Vyas from Rs. 20 lakh to Rs. 15

lakh. The amounts of penalty imposed on the appellants Rajiv Gandhi and Shailesh Shah at Rs. 20 lakh and Rs. 10 lakh respectively is retained.

Therefore, Appeal No. 165 of 2019 is partly allowed and Appeal Nos. 164 of 2019 and 166 of 2019 are dismissed, with no orders on costs. Appellants

are directed to pay the amounts of penalty within four weeks from the date of this order.