
(2023) 08 SEBI CK 0068

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 603, 604, 605 Of 2021

Shivdarshan Sales Private Limited And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 3(a), 3(b), 3(c), 3(d), 4, 4(1), 4(2)(a), 4(2)(e)
Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12A(c)

Citation : (2023) 08 SEBI CK 0068

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Ravi Prakash, Nikita Vijay, Sumit Rai, Nidhi Singh, Deepti Mohan, Nishin Shrikhande, Hubab Sayyed, Harish Ballani, Nidhi Faganiya, Komal Shah, Vidhii Partners

Final Decision : Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. Three appeals have been filed by eight (8) noticees against a common order dated February 26, 2021 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty of Rs. 10 lakhs each for violation of Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for convenience).

2. The facts leading to the filing of the appeals are that investigation in the scrip of PMC Fincorp Limited ("the Company" for convenience) was made for the period March 29, 2012 to March 31, 2015 pursuant to a specific reference received by SEBI on October 26, 2018. The investigation was completed on June 2020 and the show cause notice was issued on July 21, 2020. The show cause

notice dated July 21, 2020 was issued to 62 entities. However, for inexplicable reasons the AO has passed separate orders against these 62 entities bunching them in several groups. The impugned order has been passed against 8 such noticees.

3. The summary of the charge is as under:-

"a. From the LTP analysis, it is alleged that during patch 1, 26 Noticees namely, Noticee No.1 to 5, 14, 15, 17, 21, 25, 26, 27, 28, 32, 34, 35, 36, 37, 42, 44 to 49 and 58, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and thereby it is alleged that the Noticees have violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

b. From the LTP analysis, it is alleged that during patch 2, 15 Noticees namely, Noticee No. 1 to 6, 21, 25, 31, 36, 41, 43, 45, 47 and 48, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and thereby it is alleged that the Noticees have violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

c. From the LTP analysis, it is alleged that during patch 3, 34 Noticees namely, Noticee No.1 to 11, 16, 17, 18, 21, 22, 23, 24, 34, 36, 37, 38, 39, 40, 43, 44, 45, 46, 47, 48, 53, 54, 55 and 56, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and thereby it is alleged that the Noticees have violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

d. From the LTP analysis, it is alleged that during patch 4, 33 Noticees namely, Noticee No.1 to 5, 7 to 10, 12, 13, 16, 19, 20, 22, 29, 30, 31, 33, 34, 35, 36, 38, 39, 41, 43, 45, 46, 47, 50 to 52 and 57, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip by contributing to the price rise and thereby it is alleged that the Noticees have violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

e. From the NHP analysis, it was observed that during patch 1, 13 Noticees namely, Noticee No. 1 to 6, 14, 15, 32, 34, 36, 44 and 45, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip by contributing to the NHP and thereby it is alleged that the Noticees violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

f. From the NLP analysis, it was observed that during patch 2, 10 Noticees namely, Noticee No. 1 to 6, 21, 36, 43 and 45, by trading among themselves created misleading appearance of trading and manipulated the price of the scrip

by contributing to the NLP and thereby it is alleged that the Noticees violated Section 12A(a),(b),(c) of SEBI Act, 1992 r/w Regulation 3(a),(b),(c),(d) and Regulation 4(1), 4(2) (a), (e) of PFUTP Regulations.

g. Noticee No. 60 / Raj Kumar Modi (who was authorized signatory of bank accounts of Noticee No. 59 / PMC, Noticee No. 61 / Prabhat and Noticee No. 62/ RRP), Noticee No. 61 / Prabhat and Noticee No. 62 / RRP had aided trades of six Noticees namely Noticee No. 1 to 5 and 10 by transferring funds received from Noticee No. 59 / PMC to aforesaid six Noticees, who in turn transferred aforesaid funds to their respective brokers. Thus, Noticee No. 1 to 5, 10, 59 to 62 indulged in fraudulent and unfair trade practices while dealing in securities of Noticee No. 59/ PMC and thereby it is alleged that the Noticees violated Section 12A(a), (b), (c) of SEBI Act, 1992 r/w Regulations 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.”

4. Noticees no. 1 to 5 in the show cause notice are noticees no. 1 to 5 in the impugned order and noticees no. 7,8 and 9 in the show cause notice are noticees no. 6 to 8 in the impugned order.

5. The facts which were pertinent to the AO for disposal of the show cause notice was that there was an unusual rise in the price of the scrip in question. The 8 noticees in question together accounted for 45.76% of the total quantity during the investigation period of three years. These 8 noticees were net buyers and purchased even when the price was continuously rising from Rs. 315/- per share in 2012 to more than Rs. 2500/-in December 2014. The continuous buying by these 8 noticees increased their shareholding to 52.50% which was more than the promoter shareholding of 16% and in this way the 8 noticees held around 52.5% of the public shareholding by December 2014.

6. The AO after considering the material evidence on record and after considering the replies and after giving an opportunity of hearing found that noticees no. 1 to 5 were connected with the Company and promoters of the Company through loans given to them. The AO further found that there were fund transfers between noticees no. 1 to 5 and noticees no. 6 to 8 and, therefore, there was a connection between noticees no. 1 to 5 and 6 to 8.

7. The AO further found that all the 8 noticees were net buyers and they bought the shares even when the prices were going high. The AO found that noticees no. 1 to 5 were buyers in Patch-1, 3 and 4 and noticees no. 6 to 8 were net buyers in Patch- 3 and 4 only.

8. The AO also found that the net buy by the noticees no. 1 to 8 contributed significantly to positive Last Traded Price (“LTP”) and also created New High Price (“NHP”).

9. The AO further disbelieved the contention of the appellants that the investments in the Company was being made on account of good prospects and positive news holding that the price earning (“PE”) ratio of the Company was

highly overvalued as compared to three peer Companies.

10. The AO held that the continuous buying of shares at increasing prices created an artificial demand in the scrip of the Company and the fact that the noticees were continuously purchasing even at high prices was only possible if there was some motive behind it. This motive was stated by the AO in paragraph 63, namely, that the noticees provided exit to large shareholders who sold their shares at artificially inflated price and, on this basis, the AO came to the conclusion that the noticees 1 to 8, namely, the appellants created an artificial demand in the scrip of the Company and holding on to these shares was manipulative in nature and consequently violative of Regulations 3 and 4 of the PFUTP Regulations.

11. We have heard Shri Ravi Prakash, the learned counsel for the appellants and Shri Sumit Rai, the learned counsel for the respondent.

12. At the outset, we find that a lot of paragraphs have been utilized by the AO showing connection of the appellants with other entities who were part of the show cause notice but are not part of the impugned order and, therefore, such connection shown are odious and has no relevance to the controversy involved in the present appeals. The allegations such as 26 entities have aided noticees no. 1 to 5 by selling shares to them to increase the price of the scrip but no finding has been given nor the stand of these 26 entities has been made known and, therefore, it is not possible to come to any conclusion regarding such allegations.

13. We, however, find that noticees no. 1 to 5 are connected to the Company and its promoters through loan transactions. We also find that noticees no. 1 to 5 also had also fund transactions with noticees no. 6 to 8 and, therefore, the appellants inter-se are connected through business loan transactions. However, there is nothing on record to suggest that noticees no. 6 to 8 are in any way connected to the Company or the promoters of the said Company. Indirect connection of noticees no. 6 to 8 through noticees no. 1 to 5 with the Company is farfetched and leads us nowhere.

14. Buying shares from the stock exchange platform is no crime. Continuous buying of shares at increased price is also no crime and such action in our opinion does not violate any provisions of the SEBI laws and especially the PFUTP Regulations. The fact that they accounted for 45.76% of the total buy quantity in 3 years or have acquired 52.5% of the total shareholding does not make their purchases illegal or tainted.

15. The finding that the appellants have created positive LTP and NHP is erroneous and based on surmises and conjectures. Nothing has come on record to indicate as to whether the appellants had placed the buy orders above LTP and, therefore, created positive LTP and also created NHP. Until and unless there is a finding that the appellants placed the buy orders higher than the LTP the appellants cannot be labeled with a finding that they have contributed to LTP and NHP.

16. The AO in paragraph 52 and 63 provides the motive for the appellants in creating an artificial demand in the scrip of the Company. The motive given is that the appellants provided an exit to large shareholders who sold their shares at artificially inflated price. This finding in our opinion is not based on any evidence and we are at pains to state that this finding is based on surmises and conjectures. Who are the shareholders who exited is not known? Who are the shareholders who have sold their shares at artificially inflated price is also not known? And, consequently, presuming such motive for the purpose of holding that the appellants have violated PFUTP Regulations is unfair and untenable.

17. There is nothing on record to indicate that the appellants were in collusion with the shareholders of the Company or there was a meeting of minds. The only allegation which we find is some fund transactions between noticees no. 1 to 5 with the Company and its promoters. There is a further charge in paragraph 27 of the impugned order that the funds transferred to noticees no. 1 to 5 by the Company was further transferred by the noticees 1 to 5 to their respective brokers for settlement of their trading in the scrip of the Company. This is a serious charge but we find that there is no discussion or finding given by the AO in this regard. In the absence of any finding, we are of the opinion that the alleged motive for buying scrips at increased prices and holding on to them in order to provide an exit to the existing shareholders of the Company cannot stand the test of scrutiny.

18. In view of the aforesaid, in the absence of any cogent motive being proved, we are of the view, that the action of the appellants in continuously buying the shares at increasing prices and then holding on to these shares may create an artificial demand in the scrip of the Company but that by itself is not violative of any fraudulent activity under Regulation 3 and 4 of the PFUTP Regulations.

19. Consequently, we are of the opinion that the material on record does not establish any violation of Regulations 3 and 4 of the PFUTP Regulations by the appellants through their trading in the scrip of the Company. The impugned order is accordingly quashed. The appeals are allowed with not order as to costs.

20. 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. Certified copy of this order is also available from the Registry on payment of usual charges.