(2021) 03 SEBI CK 0213

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 186, 187, 188 Of 2020

Shreenath Finstock Private Limited And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 22-03-2021

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), (d), 4(1), 4(2)(a), 4(e)

Securities And Exchange Board Of India Act, 1992 — Section 12A(a), 12A(b), 12A(c)

Citation : (2021) 03 SEBI CK 0213

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

Bench : Full Bench

Advocate : Ankit Lohia, Deepak Dhane, Vishal Kanade, Nidhi Singh, Kinjal Bhatt, Hersh Choudhary, Vidhi Law Partners, Deepak Dhane, Vishal Kanade, Nidhi Singh, Kinjal Bhatt, Hersh Choudhary

Final Decision : Dismissed

Judgement

Dr. C.K.G. Nair, Member

1. These three appeals have been filed to challenge the order of the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) dated April 27, 2020. By the said order a penalty of Rs. 15 lakhs on Shreenath Finstock Private Limited ('Shreenath' for short) and Rs. 10 lakhs each has been imposed on Gedalia Multitrading Private Limited ('Gedalia' for short) and Bhavin Sureshbhai Thakkar ('Bhavin' for short) respectively for violation of provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 and Regulation 3(a), (b), (c), (d), 4(1), (2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Since all the three appeals emanate from the same impugned order and facts are similar, all relating to trading in the scrip of Nutraplus India Ltd. ('Nutraplus' for short) during the same investigation period, all appeals have

been heard together and decided by this common order taking Shreenath as the lead matter.

2. SEBI conducted an investigation relating to trading in the scrip of Nutraplus for the period January 1, 2015 to July 27, 2017. Based on a prima-facie finding that the three appellants herein had been instrumental in raising the price of the scrip of Nutraplus through manipulative trading and therefore violating provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 and stated PFUTP Regulations adjudication proceedings were initiated and a show cause notice issued on February 14, 2020. The investigation period was divided into four patches / phases as follows:-

Patch - 1 :

January 1, 2015 to February 3, 2016 (Price rise patch) (pre-split)

Patch - 2 :

February 4, 2016 to February 23, 2017 (Price fall patch) (pre-split)

Patch - 3 :

February 27, 2017 to March 29, 2017 (Price fall patch) (post-split)

Patch - 4 :

March 30, 2017 to July 27, 2017 (Price rise patch) (post-split)

3. Investigation revealed that during Patch-1 price of the scrip had risen from Rs. 64.45 on January 1, 2015 to Rs. 472.10 on February 3, 2016. Details relating to this patch are given in the table at page 3 of the impugned order. Similarly, the detailed trading done by 10 top clients during this patch are given in the table at page 5 of the impugned order. This table shows that Shreenath, Gedalia and Bhavin bought 12.3%, 6.45% and 3.83% of the total trading in the scrip of Nutraplus and the same parties sold 12.3%, 6.24% and 3.70% during the period. Therefore, the appellants were the top three traders on both the buy side and sell side during this period.

4. Connection between the appellants between themselves and also with some other entities are explained in the table at page 6 of the impugned order which indicates that appellants were connected with each other and other entities through directorship of appellants / connected companies common contact number, common e-mail id and common address.

5. It is on record that during Patch - 1, the appellant Shreenath bought 4497shares trading in just one share each generating more than 25% market positive LTP. Similar buy order of one share each on 2446 instances was done by Bhavin. These entities contributed 44.75% of the total new high price during Patch -1, details of which are given in the table at page 11 of the impugned order. Similarly, during Patch-4, post-split price rise period Shreenath and Gedalia placed large number of orders of one share each (1765 and 872 orders)

and generated substantial positive LTP. It is also held that the appellants also facilitated exit of three preferential allottees of Nutraplus.

6. It is the contention of the learned counsel Shri Ankit Lohia and Shri Deepak Dhane appearing on behalf of the appellants in different appeals that the appellants were jobbers / regular traders; did their trades in the normal course of business; not traded when volumes were high; matching of some trades between the appellants and the three preferential allottees was just a coincidence as in an anonymous trading system trades have to match between certain parties and one of the noticees, namely, ARG Management Solutions Private Limited ('ARG' for short), which had also substantial number of trades and positive LTP contribution and whose director was a preferential allottee, was exonerated. It was further contended that appellant had been trading in the scrip from February 2015 and continues to trade in the scrip even now. Similarly, appellants also trade in a number of other scrips in a similar fashion. There is no synchronized trading or circular trading. There had been trades with positive LTP, negative LTP and no LTP but only positive LTP has been selectively taken by SEBI to charge the appellant. However, if both negative and positive LTP are taken into account net positive LTP is only marginal, it was contended. Connection of Ostwal to Nutraplus as director in a related company of Nutraplus, named CMI Ltd. was more than one year subsequent to the preferential allotment. It was also contended by the learned counsel for the appellants that the impugned order considers only two preferential allotment while a third preferential allotment was also done on December 8, 2015 at a premium of Rs. 224/- which implies that the company was fundamentally strong and therefore the allegation of artificial price raise against the appellants is not correct. It was further contended that there is no finding of any collusion or nexus between appellant and preferential allottees. Moreover, preferential allottees were also buyers not only sellers. The learned counsel also relied the order of SEBI dated March 20, 2020 on ARG wherein SEBI exonerated ARG despite having trading pattern similar to the appellants.

7. The learned counsel Shri Vishal Kanade appearing for the respondent SEBI, on the other hand, contended that the connection between the appellants and some other entities is clearly established in terms of directorship and connection to Nutraplus as Mr. Kishor Ostwal was an additional director of Nutraplus during September 2016 to May 2017, part of the investigation period. Even if it is admitted that the said appointment was subsequent to the preferential allotment it shows the basic connection between the parties and in a case of manipulative trading only preponderance of probabilities can be established most of the time. Similar connection between Shreenath and Gedalia was also established in terms of directorship, common address and common mobile number etc. Similarly, it was contended by the learned counsel for SEBI that the pattern of trading conducted by the appellants i.e. a large number of single share buy and sell, clearly establishes its manipulative nature even as regular traders or jobbers a genuine party does not put buy / sell order for one share on thousands of occasions when the system was showing much larger number of orders on the

other side. As regards exit option to only three preferential allottees it was contended that the nature of the matching trades between the preferential allottees and the appellants indicate that there is a meeting of minds and the submission of the appellant that they did not provide any exit option to the rest of the preferential allottees has no merit. Therefore, it is the stand of the learned counsel for SEBI that the impugned order clearly brings out the complete details; how the price of the scrip of Nutraplus was raised in Patch-1 and Patch-4 and how the appellants by placing large number of single share orders manipulated the price and created positive LTP including new high price on a large number of trades. Therefore, there is no doubt that the appellants had violated Section 12A(a), (b), (c) of SEBI Act, 1992 and PFUTP Regulations as stated in the impugned order. As regards the comparison between ARG (supra) order and the impugned order the learned counsel submitted that in the case of ARG no link could be established with any other entity which means ARG was trading on its own in the normal course of business unlike the appellants who were connected and clearly manipulating the prices and helping the exit of some of the preferential allottees.

8. Having heard the learned counsel for the parties and having perused the documents placed before us we are of the considered view that the pattern of trading conducted by the appellants clearly establishes an attempt to manipulate the price of the scrip of Nutraplus. While it can be argued that no law prevents a trader from placing orders for one share, placing such orders thousands of times repeatedly, as in the instant case, is clearly manipulative in nature. A few such trades occasionally may not fall within the ambit of such manipulation as under Section 12A(a), (b), (c) of SEBI Act, 1992 and the PFUTP Regulations. But by no stretch of imagination we can extend that benefit of doubt to the appellants herein who have indulged in such single share trades a large number of times (4497, 2446 and 1765 etc) times during a limited period. Therefore, irrespective of the connection by the appellants and others or providing exit to only three preferential allottees etc. partly only these appeals do not have any merit. Nor these issues are very relevant when it is clear that the pattern of trading conducted by the appellants were clearly of manipulative nature squarely falling under the provisions of the PFUTP Regulations. Therefore, we have no doubt that the impugned order does not suffer from any deficiencies in this regard.

9. The comparison made by the appellants between the impugned order and order in ARG also does not come to the aid of the appellants since we are told that in ARG the trading pattern is distinguishable and no connections in the matter of ARG with any other counter party or other entities involved in the matter could be established. Only because substantial quantity of trading has been done by an entity or a director of that entity was a preferential allottee itself cannot be a ground for charging the entity with violation unless violations falling under the regulations can be established.

10. In the result, all the three appeals fail and are dismissed with no order as to

costs.

11. 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.