(2021) 06 SEBI CK 0158

In the Securities Appellate Tribunal Mumbai

Case No : Miscellaneous Application No.443, 460, 461, 521, 540, 602 Of 2020, Appeal No.560, 561, 562, 563, 564, 565 Of 2020

Subhash Gangaprasad Gupta And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 21-06-2021

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 : (2021) 06 SEBI CK 0158

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

Bench : Division Bench

Advocate : Jaikishan Lakhwani, Nidhi Singh, Hersh Choudhary, Nipa Paka, Riddhi Pawar, Vidhii Partners

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. Six appeals have been filed against the order dated July 31, 2020 passed by the Adjudicating Officer (â??AOâ?? for short) of the Securities and

Exchange Board of India (â??SEBIâ?? for short) imposing a penalty of Rs. 1 lakh each for violating Regulations 3 and 4 of the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ?? for short). Since all the appeals

are against a common order and the issues are the same, all the appeals are being decided together. In all the appeals there is a delay in the filing of

the appeals and accordingly separate applications for condoning the delay have been filed. For the reasons stated in the applications, the delay in the

filing of the appeals are condoned. Miscellaneous Applications are allowed.

2. The trading of the shares of the PSIT Infrastructure and Services Ltd. (â?? PSITâ?? / â??the Companyâ?? for short) was suspended from 2004

till February 9, 2012. Thereafter the suspension was revoked. On July 23, 2012 the Company issued preferential allotment of 1,10,00,000 shares of Rs.

10/-each to 49 non-promoter entities. Subsequently there was a stock split in the ratio of 1:10 with effect from September 3, 2014.

3. There was an abnormal movement in the price of the scrip on the Bombay Stock Exchange (â??BSEâ?? for short) between May 1, 2012 to July

31, 2015 and consequently an investigation was launched pursuant to which it was revealed that the maximum price rise in the scrip of the Company

occurred between May 1, 2012 to February 11, 2014 when it increased from Rs. 50/- per share to Rs. 466. 95 per share. Investigation further

revealed that the trades made by the sellers contributed to the increase in the LTP by Rs. 462.65 during this price rise period and that these sellers

were connected to each other on the basis of off-market transfer and common addresses. It was found that noticee nos. 1 to 22 received 50 shares

each through off market transfer from noticee nos. 23 to 26. Sold majority of the shares in the market immediately after receiving the shares over a

period of four months from September 2013 onwards contributing to the price rise.

4. Based on the investigation the show cause notice was issued to 26 noticees. Noticee nos. 1 to 22 are those entities who received the shares off

market from noticee nos. 23 to 26. It was alleged that these sellers i.e. noticee nos. 1 to 22 placed orders less than 10 shares though there was a

demand for more shares and by placing miniscule trades the intention was to manipulate and increase the price for the benefit of others. It was alleged

that the sellers contributed 95.89% to the net LTP and 85.56% to the market positive LTP during the period in question. The show cause notice

alleged that the trading in the scrip in question was with a manipulative intent to increase the price of the scrip and therefore was violative of

Regulations 3 and 4 of the PFUTP Regulations.

5. The AO after considering the material evidence on record found the appellants to be guilty of price manipulation. The AO held that the price rise in

the scrip of the shares of the Company was on account of the trading pattern by the sellers selling miniscule shares thereby increasing the LTP. The

AO further found that all the noticees were placing orders in miniscule quantities but on separate days and that the trading of the noticees / sellers

including the appellants never overlapped on any single day. Further, the AO found it strange and noticed that the purchases made by the appellant

were below the market price which raised a red flag that since there was a demand and a price of the shares there was no reason for selling the same

by noticee nos. 23 to 26 at a lower price unless there was some other intention. The AO finding that selling miniscule shares above the LTP lead to

the price increase which was violative of Regulations 3 and 4 of the PFUTP Regulations and accordingly penalized.

6. We have heard Shri Jaikishan Lakhwani, the learned counsel for the appellants and Ms. Nidhi Singh, the learned counsel for the respondent at some

length.

7. The sole contention of the learned counsel for the appellants was that investigation was also made against the counterparties, namely, the buyer and

the investigation found no connection with the seller or with any other entity and therefore exonerated them and did not issue any show cause notice.

It was contended that since there was no connection with the buyer and that the buyer placed the order first thereby increase in price was done at the

behest of the buyer. Consequently, the finding of the AO that sell made by the appellant led to the increase in the price of the scrip was wholly

unwarranted and incorrect. The learned counsel contended that the controversy is squarely covered by a decision of this Tribunal in M/s. Nishith M.

Shah HUF vs Securities and Exchange Board of India (Appeal No. 97 of 2019 decided on January 16, 2020) and in the case of Amaresh Pathak &

Ors. vs. Securities and Exchange Board of India (Appeal No. 332 of 2020 decided on February 16, 2021) wherein it was held that in the absence of

the buyer the seller cannot be faulted nor any collusion of fraud or manipulating the price of the scrip can be charged against the seller.

8. On the other hand, the learned counsel for the respondent contended that even though the buyer was not issued any show cause notice nonetheless

the appellants as a cohesive group were found to be trading in a particular pattern which was violative of Regulations 3 and 4 of the PFUTP

Regulations and therefore the penalty was justified.

9. Having heard the learned counsel for the parties we find that even though the

buyer have not been charged with the price rise nonetheless we are

of the opinion that in the instant case the decision of this Tribunal in the case of M/s. Nishith M. Shah HUF and Amaresh Pathak (supra) is

distinguishable on facts and therefore the principles propounded in the said decisions are not applicable in the instant case. We find from a perusal of

the transactions which has been elucidated in the order of the AO that the appellants who are the sellers in the instant case were placing their orders

on separate days and these orders never overlapped meaning thereby that one appellant was placing order on one particular day and the other noticee

was placing order on another date. Further, majority of the orders were placed by the appellants at the circuit price in the second half of the trading

days. Thus, in our opinion, there was a pattern of trading between the appellants which was clearly manipulative as well as fraudulent. By this scheme

/ device the appellants were consistently being found to be placing small quantities of sell orders which when accepted with the buy orders led to the

increase in the price of the scrip. The trading pattern clearly indicates that there was concerted effort by all the appellants to increase the LTP for

vested reasons. This act, practice on the part of the appellants operates as a fraud or deceit upon any person with any dealing in the securities market.

We are of the opinion that the trading pattern of the appellants was in a coordinated manner and therefore their contention that the transactions was

done in the ordinary course of business and was not intended for any kind of manipulation cannot be accepted.

10. Consequently, we do not find any manifest error in the order of the AO. The appeals 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.