(2021) 06 SEBI CK 0229

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 321 Of 2018

Suresh Mehta APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 29-06-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 3(a), 3(b), 3(c), 3(d), 3.5.3, 4, 4(1), 4(2)(a), 4(2)(e), 4(2)(g)

Citation : (2021) 06 SEBI CK 0229

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

Bench : Division Bench

Advocate : Prachi Pandya, Kumar Desai, Mihir Mody, Arnav Misra, K. Ashar

Final Decision : Dismissed

Judgement

M.T. Joshi, J

1. Aggrieved by the direction of the Adjudicating Officer of respondent Securities and Exchange Board

of India (hereinafter referred to as â??SEBIâ??) dated 6thFebruary, 2018directing the appellant to a penalty of Rs.27,94,557 for violation of

Regulations 3(a) to (d) and 4(1), 4(2)(a), (e) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade

Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as â??PFUTP Regulationsâ??) the present appeal is preferred.

2. Respondent SEBI had charged the appellant for manipulating the price and volume of the scrip of Indian Overseas Bank on two dates that is 26th

December, 2013 and 28th November, 2013. It was alleged that on 26th December, 2013 the appellant indulged into executing self-trades in the scrip trading in the last half an hour in cash segment to manipulate the settlement price of the scrip in the Future & Options Contracts (hereinafter referred

as F & O) to make profit in F & O segment. It was also alleged that the appellant indulged in order book manipulation by first placing and then

deleting orders on 26th December, 2013 as well as on 28th November, 2013 in the last 30 minutes of the trading hour to manipulate price of the

settlement of the F & O contract in the scrip.

3. The trading activity of the appellant is an admitted fact. The issue is of interpretation of those acts i.e. as to whether the trading activities were the

regular market strategy adopted by the appellant being a long time trader or as to whether those were in the nature of manipulation of the price of the

scrip.

4. The appellantâ??s submission was not accepted and the learned AO penalised the appellant. Hence the present appeal.

5. Heard Ms. Prachi Pandya, Advocate for the Appellant and Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Arnav Misra, Advocates

for the Respondent.

6. On 26th December, 2013 the appellant had caused self-trades for 21,31,440 shares forming 44.64% of the market volume traded during the said last

trading half an hour of the trading. Out of the total trading of the appellant during the last half an hour these self-trades were 66.81% of the

appellantâ??s buy quantity and 79.86% of the appellantâ??s sell quantity.

7. The appellant before the AO as well as before us submitted that since the year 1995 he was personally dealing in the capital market. His main

strategy is mainly that of an arbitrageur and an intraday trader. He submitted that so far as the self-trades are concerned in the morning session of the

trading hours he raised buy/long position in the derivative of the scrip to the extent of 5,16,000 units. To hedge the said long position he had short sold

5,01,179 shares of the same scrip. In cash segment he purchased 563 shares of the Indian Overseas Bank. In the circumstances the appellant had

short sold position of 5,01,196. During these hours he had sold 44,000 units in derivatives. Because of this the appellant was facing a loss of

Rs.5,161.704. Between 2 pm to 3 pm this loss increased by 415008.50. In view of this he was required to increase his buy/long position to 10,40,000

units. To hedge this long position the appellant further short sold additional

20,240 shares. In the result by 3 p.m. the appellant had short sold 5,21,999

shares. Because of the purchase of 563 shares in the morning his net short sold position was 5,21,436.

8. In view of this trade before 3 p.m., the appellant from 3 p.m. to 3.22 p.m. bought 1,60,000 units of the shares. In the result his long position in the

derivative came to 12,00,000. In order to square of the shares he had to short sell before end of the trading session. Therefore, the appellant was

required to purchase 5,21,436 shares between 3 p.m. to 3.30 p.m. As the appellant was facing loss as detailed supra he was required to buy the shares

at lower value and sell at higher price to mitigate the loss. Therefore, between 3 p.m. to 3.22 p.m. he purchased 31,90,537 and sold 26,69,101 shares.

It is probable that is the said process some of his buy and sell trades might have matched. Thus, the self-trades were accidental and not intentional.

9. The impugned order as well as the submissions of the learned counsel for the respondent however would show that the self-trades were made

during the last 30 minutes of the trading hours which determines the price of the shares in derivatives. The learned counsel adverted our attention to

the admitted data on record. It would show that within few seconds these self-trades had occurred which resulted in an increase in price as the

appellant used to place the sell order for higher than last traded price and himself used to buy the same. The attention of the Tribunal is adverted to the

table in this regard as found in the impugned order. Thus, the appellant had painted a picture of huge demand in the scrip for a higher price. It was

further pointed out that by carrying such exercise the appellant had in fact added to his loss in cash segment but at the same time increased the price

and volume in the same which had favourably affected the settlement price of the shares in F & O Segment.

10. Upon hearing both the sides, in our view, the self-trades were not accidental. Deliberate attempt to place the sell orders for higher price and then

to buy the same himself in large quantities had definitely affected the settlement price in F & O segment and the appellant had manipulated the price

with this exercise.

11. The learned AO put a table in this regard in the impugned order and analysed the same in para no.45. It would show that the appellant had taken

fresh position only on 26rd December, 2013 to the extent of 12,00,000 shares at the price of Rs.50.93. Thus, if on 26th December, 2013 the price

closed above Rs.50.93 the appellant would have made a profit in F & O segment. However, the appellant executed self-trades in large volumes at the

prices above last traded price in the last half an hour of the expiry of the F & O contract on 26th December, 2013 thus, attempting to manipulate the

closing price above Rs.50.93.

12. As regards the order book manipulation i.e. placing deletion of orders, the charge is that the appellant in high volume used to place the buy orders

on the exchange platform on the above two dates during the last half an hour and used to delete the same within few seconds, thus, creating an

impression that there was increased volatility in the market. As regards this, the appellantâ??s explanation is that by deleting the orders the appellant

was checking his limits every hour. Further, National Stock Exchangeâ??s F & O Regulation 3.5.3 permits modification and cancellation of orders if

the trade has not already taken place.

13. Details of the orders placed and deleted by the appellant are set out in the tables in the impugned orders. It would also show that large buy and sell

orders were placed and deleted within seconds which has naturally created an impression in the market about the demand and supply in the scrip. For

example on November 28, 2013 during last half an hour of trading he placed and deleted buy 9 orders for 9 lacs shares and 4 sell orders for 4 lacs

shares. The appellantâ??s submission that he was required to check the position is in fact against the fact as detailed supra.

14. Merely because the regulation permit that a trader or investor can modify or cancel the order, it does not mean that the appellant who according to

himself is a seasoned trader would use the exchange platform like a video game playing with the joystick as much as he could. In fact all these

continuous activities of the appellant as detailed supra had derailed the market equilibrium by creating a false impression.

The appellant had relied on the ratio of SEBI vrs Rakhi Trading Private Limited (2018) 13 Supremem Court Cases 753, which in fact underlines that

any non-genuine trade would amount to manipulation within the Regulation 3 and 4 of PFTUP Regulations.

15. In the result, the following order.

The appeal is hereby dismissed without any order as to costs.

16. 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.