(2022) 02 SEBI CK 0100

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 546 Of 2019

Suresh Pukhraj Jain APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 14-02-2022

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 : (2022) 02 SEBI CK 0100

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

Bench : Division Bench

Advocate : V. M. Singh, Kumar Desai, Manish Chhangani, Ravi Shekar Pandey, Samreen Fatima

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated July 24, 2019 passed by the Adjudicating Officer ("AO" for convenience) of the Securities and Exchange Board of India ("SEBI" for convenience) imposing a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) 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 present appeal is, that the company in question Sand Plast (India) Limited was earlier declared a sick company by the Board of Industrial and Financial Reconstruction ("BIFR") in November 2002. Pursuant to the approval of rehabilitation scheme by BIFR, the shares of the company were relisted on the Bombay Stock Exchange ("BSE") for trading w.e.f. June 03, 2009. Pursuant to the relisting of the shares there were a rise in the price of the shares of the company from June 04, 2009 to June 09, 2009 and thereafter there was a continuous fall in the price of the scrip. Investigation conducted by SEBI led to price manipulation, synchronized trades and creation of

artificial volumes which led to the issuance of the show cause notice.

3. The show cause notice was issued against several entities and the appellant in question was noticee no. 3 against whom it was alleged that he created artificial volumes in the scrip of the company and repeatedly established the opening price, at a price higher than the previous day's closing price, on a majority of the days in June 2009. Such activities of the appellant were alleged to be violative of Regulations 3 and 4 of the PFUTP Regulations. Allegations against the company relating to price sensitive announcements about its proposed rights issues were also part of the show cause notice for which we are not concerned.

4. The AO after considering the reply of the appellant found that the allegations levelled against the appellant was correct and that the appellant had indulged not only in synchronized trades with another noticee, namely, M/s. Upturn Securities Pvt. Ltd. ("Upturn" for convenience) (noticee no. 2.) but also created artificial volume thereby increasing not only the price in the scrip but mislead the investors. Accordingly a penalty of Rs. 25 lakhs was imposed.

5. We have heard Shri V.M. Singh, the learned counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent.

6. The contention of the appellant before us is, that synchronized trades by itself was not illegal. The appellant had only sold the shares after the relisting of the shares of the company and sold at the market price and, therefore, committed no illegality. Further, the imposition of penalty was disproportionate and did not commensurate with the profits, if any, which the appellant made.

7. Having heard the learned counsel for the parties, we find that the appellant at some stage acquired the shares of Sand Plast i.e. the company for a sum of Rs. 1 crore. We find that when the shares were relisted on the stock exchange Mrs. Kanta Suresh Jain, wife of the appellant sold the shares for the first time on June 04, 2009 with 200 shares at a price of Rs. 25/-. Investigation has found that Mrs. Kanta Suresh Jain did not own any shares of the company and, therefore, the act of selling the shares on the stock exchange was a fraud. Since the shares could not be delivered it was put to auction which was eventually sold @ Rs. 30.35 per share. However, by this act the base price of Rs. 25/- per share came into existence.

8. We find that thereafter 6,23,900 shares were sold by the appellant at a price range of Rs. 21.5 to 28.9 and in many instances the appellant also established opening price higher than the previous day's closing price. These facts are not disputed. We find that the sale of the shares by the appellant matched with the counterparty, namely, noticee no. 2 Upturn. A chart has been given by the AO in the impugned order which indicates that the trades executed by the appellant matched with the trades of Upturn which is in the nature of synchronized deals on account of the time difference between buy and sale order which ranged from less than one minute to a little more than five minutes. We are satisfied that these are synchronized trades.

9. Synchronized trades by itself is not illegal but in the instant case, we find that Upturn, noticee no. 2 is connected with the appellant. The appellant was authorised signatory in Upturn and, thus, it can safely be said that the appellant was managing the trades not only on his behalf but also on behalf of Upturn. This obviously was a fraud played by the appellant with the investors in the securities market.

10. A finding has been given that on most of the days the appellant was placing a price higher than the previous day's closing price which immediately matched with the counterparty Upturn thereby a new high price was being created. We also find that the appellant received a consideration of Rs. 1,52,36,580/- towards the sale of 6,23,900 shares. Thus, recovered his initial investment of Rs. 1 crore.

11. In view of the aforesaid, we are of the opinion that the trades executed by the appellant are synchronized trades with noticee no. 2. It was a clear case of violation of Regulations 3 and 4 of the PFUTP Regulations. We, thus, do not find any manifest error in the order passed by the AO. The quantum of penalty in the given facts does not require any interference as we think it is just and proper.

12. For the reasons stated aforesaid, we do not find any merit in the appeal and is dismissed with no order as to costs.

13. 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.