(2021) 12 SEBI CK 0095

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 426, 573, 574, 659 Of 2021

Suryapratap Gupta HUF And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 24-12-2021

Acts Referred:

Securities And Exchange Board Of India (Prohibition Of Fraudulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003 — Regulation 3, 4
Securities And Exchange Board Of India Act, 1992 — Section 15HA

Citation : (2021) 12 SEBI CK 0095

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

Bench : Division Bench

Advocate : Saurabh Bachhawat, Yashvi Panchal, Vishal Kanade, Chirag Shah, Akash Jain, Rishab Jain, Daksha, Zain Mookhi, Himanshu Agarwal

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. These four appeals have been filed against the order dated March 31, 2021 passed by the Adjudicating Officer ('AO' for short) of the Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs. 5 lakh on each of the appellants. All the appeals are filed against a common order and are being taken up together.

2. Investigation in the scrip of Partani Appliances Limited ('PAL / the Company' for short) revealed that there was a large scale manipulation in the price of the scrip of the Company by a large number of entities. The investigation report identified three groups which was formed on the basis of connection. Group 1 consisting of 34 entities, Group 2 consisting of 13 entities and Group 3 consisting of 3 entities. The appellants are in Group 1 category. The alleged connections of the appellants were with the directors and promoters of the Company from whom they received physical shares from the promoters of the Company. Base

3. d on the investigation, a show cause notice dated September 22, 2017 was issued which ultimately led to the passing of the order by the Whole Time Member ('WTM' for short) holding that the 7 noticees including the present appellants had violated Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

4. Against the said order three noticees, namely, Girish Kumar Agarwal, Girish Kumar Agarwal & Sons (HUF) and Sankalp Garg filed Appeal no. 55 of 2019 which was dismissed by a judgment of this Tribunal dated March 25, 2021. This Tribunal found that the connection drawn by the WTM between the said appellants with the promoters was correct and also found that the said appellants had manipulated the price of the scrip of the Company by selling miniscule quantities for higher prices, thus, raising the price of the share of the Company by selling miniscule quantities despite buy orders in large quantities being pending on the Stock Exchange platform.

5. We also find that the present appellants Suryapratap Gupta (HUF), Global Enterprise, Shakira Shaikh and Sajjan Kedia did not file any appeal against the order of WTM dated November 28, 2018. Thus, the findings against these persons who are now the present appellants have become final and binding upon them.

6. On the same charge, a show cause notice dated December 13, 2017 was issued by the AO to show cause as to why penalties should not be imposed for violating Regulation 3 and 4 of the PFUTP Regulations. The AO after considering the matter has passed the impugned order dated March 31, 2021 holding that the appellants had violated the provisions of Regulations 3 and 4 of the PFUTP Regulations and these appellants were liable to pay penalty of Rs. 5 lakh each.

7. In Appeal no. 426 of 2021, 574 of 2021 and 659 of 2021 in the matters of Suryapratap Gupta HUF, Shakira Shaikh and Sajjan Kedia respectively, the only argument urged was that few trades were made by the appellants which were miniscule and that the penalty of Rs. 5 lakh is excessive and harsh. It was urged that the quantum of penalty should be reconsidered and reduced by this Tribunal.

8. In this regard we find that the penalties have been imposed under Section 15 HA of the SEBI Act for violating Regulation 3 and 4 of the PFUTP Regulations. Regulation 15HA of the SEBI Act reads as under:-

"15HA. Penalty for fraudulent and unfair trade practices.-If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

9. A perusal of the aforesaid provision indicates that the minimum penalty under this provision is Rs. 5 lakh and maximum penalty is Rs. 25 crore. In the instant

case, the AO imposed a minimum penalty of Rs. 5 lakh which in the given circumstances was appropriate. Consequently, we do see any reason to modify the quantum of penalty.

10. Insofar as Appeal no. 573 of 2021 Global Enterprise is concerned a submission was made that there is an error on the face of the record and consequently the order was liable to be set aside insofar as the appellant is concerned. It was contended that the charge against the appellant was that they have sold miniscule quantities of five shares and 250 shares whereas the contract notes indicates that the appellant had sold large quantities of shares and therefore the charge of selling miniscule quantities for the purpose of raising the price does not stand and the appellant could not be charged on this basis.

11. The argument appears to be attractive but we find that the charge as per the show cause notice was that the appellant received shares through off-market from the promoters of the Company. This fact is not disputed. We also find that the large number of shares were traded by the appellant but the impugned trades in question was found to be manipulative with the sole purpose of increasing the price as the appellant had traded 5 shares and 250 shares above LTP with the purpose of increasing the price and volume of trading when large orders were pending on the Stock Exchange platform. Thus, we do not find any error in the conclusion drawn by the AO. The penalty imposed is appropriate.

12. In view of the aforesaid, we do not find any error in the impugned order. All the appeals fail and are 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.