(2021) 04 SEBI CK 0023

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 376 Of 2018

Tarunkumar Brahmbhatt And Others — APPELLANT

Vs

Securities And Exchange Board Of India — RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

Securities & 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 15J

Citation : (2021) 04 SEBI CK 0023

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

Bench : Division Bench

Advocate : Rinku Valanju, Sumit Yadav, Aditya Shah, Vishal Kanade, Anubhav Ghosh, Ravishekhar Pandey

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. The present appeal has been filed by the appellants against the order dated June 22, 2018 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities & Exchange Board of India (hereinafter referred to as 'SEBI') whereby a penalty of Rs. 5 lacs each has been imposed for violation of Regulations 3 and 4 of the Securities & Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). The finding is that the appellants during the period June 19, 2008 to March 20, 2009 made misleading appearance of trading in the scrip of BGIL Films and Technologies Ltd. (hereinafter referred to as 'BGIL') thereby manipulating the price of the scrip by indulging in synchronized trading which contributed to a new high price.

2. A show cause notice was issued to the appellants alleging that 22 entities alongwith the appellants were connected with each other on the basis of common address, telephone nos., family members and off-market transfers. The 22

entities were identified as Brahmbhatt Group which indicated that the two entities brought 21,98,073 shares of the scrip which amounted to 51.82% of the total volume of shares and sold 19,07,165 shares amounting to 44.96% of the total volume. It was also urged that 1.80 lac shares of BGIL was transferred by a key managerial person of BGIL to the appellants and other Brahmbhatt group and that the appellants were amongst the top 10 buyers and sellers.

3. In spite of opportunity being given, no reply was filed by the appellants and consequently, the allegations made in the show cause notice remained unrebutted. The AO after considering the material evidence on record found that the connection of the 22 entities were established and that they have acquired 1.80 lac shares from a key managerial person of the company. The AO after analyzing the trade records found that the appellants were indulging in synchronized trades which resulted in price manipulation and created misleading appearance of trades and contributed to a new LTP, namely, a new high price of the scrip.

4. The AO further found that 80,027 synchronized trades were made by appellant No. 1 on 23 trades on 7 days both as a seller and as a buyer and the appellant No. 2 executed 1,03,165 synchronized trades on 25 trades on 9 trading days.

5. The AO also found that the trades executed by the appellant No. 1 created a positive LTP of Rs. 32.05 as a buyer and as a seller and that the appellant No. 2 by synchronized trades created a positive LTP of Rs. 74.30 both as a buyer and as a seller.

6. The AO also came to the conclusion on the basis of examination of trades that the appellants had also executed self-trades thereby creating artificial volumes giving false and misleading appearance of trades in the scrip of the company. The appellant No. 1 had executed 23,596 self trades and the appellant No. 2 executed 8,947 self trades.

7. We have heard Ms. Rinku Valanju, the learned counsel for the appellants and Mr. Vishal Kanade, the learned counsel for the respondent through video conference.

8. The only argument raised by the learned counsel for the appellants is that the trades executed by the appellants were miniscule which had no impact in the scrip of the company and, therefore, the finding that there has been a manipulation and high positive LTP is erroneous. It was also contended that the transactions were included in the year 2008-09 whereas the show cause notice was issued in the year 2017 and consequently, on the ground of undue delay the proceedings should be quashed.

9. Having heard the learned counsel for the parties, we find that there is no dispute in so far as the findings given by the AO is concerned. The appellants have not questioned such findings. The contention that only miniscule trades were executed which had no impact in the market is patently erroneous. We

have perused the impugned order and find from the analysis of the trades executed by the appellants that high volume of synchronized trades were being made by the appellants which resulted in price manipulation, misleading appearance of trading and that it also contributed to a new high price. In addition to the above, the appellants also executed self-trades which were high in volume. Thus, the contention that the appellants only did miniscule trades which had no impact on the market is patently erroneous and cannot be accepted.

10. On the question of delay, there is no doubt that the transactions took place in 2008-09 and that the show cause notice was issued in the year 2017. There is a delay in the issuance of the show cause notice. But this delay has been validly explained by the respondent. We find that the appellants had acquired shares offline and investigating the offline shares took a considerable period of time. Further, synchronized trades with 22 entities also involved a detailed and time consuming investigation which became another factor for the delay in the issuance of the show cause notice. Considering the aforesaid, we are satisfied that there was no undue delay or laxity on the part of the respondent in the issuance of the show cause notice. We are further of the opinion that the delay in the issuance of the show cause notice could be a mitigating factor for considering the quantum of penalty under Section 15J of the Securities and Exchange Board of India Act, 1992. Considering the delay, we are of the opinion that in the absence of any reply being filed by the appellants, the imposition of penalty is justified and commensurate with the alleged violation of Regulations 3 and 4 of the PFUTP Regulations.

11. Consequently, we do not find any manifest error in the impugned order. The appeal fails and is dismissed with no order as to costs.

12. 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.