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(2021) 04 SEBI CK 0141

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 322, 467, 453, 455 Of 2019, Miscellaneous Application No.573, 575 Of 2019

Tarunkumar Brahmbhatt And Others APPELLANT

Vs

Securities And Exchange Board Of India RESPONDENT

Date of Decision : 28-04-2021

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), 4, 4(1), 4(2)(a), 4(2)(e)

Citation : (2021) 04 SEBI CK 0141

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

Bench : Division Bench

Advocate : Rinku Valanju, Pratham Masurekar, Aditya Shah, Kumar Desai, Mihir Mody, Arnav Misra, K. Ashar

Final Decision : Partly Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. For the reasons stated in the misc. applications, the delay in the filing of the appeals are condoned. The misc. applications are allowed.

2. These appeals are against a common order dated March 29, 2019 whereby the Adjudicating Officer (â??AOâ? for convenience) of the Securities

and Exchange Board of India (â??SEBIâ? for convenience) has imposed penalties upon the appellants for violation of regulations 3 and 4 of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ? for convenience)

and are accordingly being decided together.

3. Certain complaints were received by SEBI with regard to the circulation of SMS recommending buying of shares of Shree Hanuman Sugar and

Industries Limited. SEBI conducted an investigation for the period March 12, 2014 to December 31, 2014 and, based on the investigation report, show

cause notices were issued to 18 entities including the appellants. The impugned order has however being passed against 9 entities including the

appellants.

4. The show cause notice indicates that there were 70 suspected entities who were connected with each other and who were involved in the purchase

and sale of the scrip in question. The show cause notice also alleged synchronized trades, self trades and allegations under the SEBI (Prohibition of

Insider Trading) Regulations, 1992 (â??PIT Regulations, 1992â? for convenience). However, in so far as the appellants are concerned, the charge as

depicted in paragraph 39 of the show cause notice has been considered in paragraph 2 of the impugned order which is extracted hereunder:-

â??2. While examining the shareholding pattern of SHIL, it was observed that certain suspected entities, who had received shares from the promoter

and promoter related entities through off-market, contributed for price rise in the scrip of SHIL during March 12 - April 04, 2014 and during June 10 -

27, 2014. Noticees had placed buy orders at higher prices than the Last Traded Price (hereinafter referred to as LTP) and impacted the price of the

scrip by contributing significantly to the price rise. It was, therefore, alleged in the SCN that the Noticees had violated the provisions of Regulations

3(a), (b), (c), & (d), 4(1), 4(2)(a) & (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

(hereinafter referred to as PFUTP Regulations 2003).â??

5. The charge against the appellants is very clear, namely, that they received shares from the promoter and promoter related entities through off-

market and manipulated the price of the scrip by repeatedly placing buy orders at a higher price than the Last Traded Price (â??LTPâ?) and

therefore such trades were violative of regulations 3 and 4 of the PFUTP Regulations.

6. The appellants denied the charge and contended that they had nothing to do with the company or its promoters or promoter related companies and

that they have traded in the stock market on their own volition without any ill will or motive. The AO did not believe their stand and found that the

pattern of their trading by placing buy orders above the LTP raised the price of the shares of the scrip which were manipulative in nature. In this

regard, the AO in order to establish the charge of manipulation examined the basis of connection, order placement time, volume of trades, LTP, New

High Price (â??NHPâ?), first trades and contribution and gains made. The AO after analyzing the aforesaid exhaustively came to the conclusion that

the appellants not only placed buy orders above the LTP but also traded with each other and their trading pattern indicates that they sold shares and

offloaded the shares to the gullible investors. The AO also came to the conclusion that the appellantâ??s trades were synchronized and there were

matching sell orders. The AO while fixing the quantum of penalty also took into consideration the sale of shares made by the appellants and the

offloading of these shares to gullible investors as a criteria for imposing penalty.

7. We have heard Ms. Rinku Valanju, the learned counsel for the appellants and Shri Kumar Desai, the learned counsel for the respondent at length.

8. The finding of the AO in paragraph 48 that the trading pattern of the appellants implies that shares were offloaded in the market to gullible investors

and the finding given in paragraph 49 that the buy/sell orders of the appellants indicate a synchronized pattern even when the counterparty was not

known and the finding given in paragraph 50 that matching sell orders were made by the appellants even though there was a gap of time is beyond the

charges levelled against the appellants in the show cause notice.

9. We are of the opinion, that these findings are extraneous to the show cause notice and cannot be considered. The charge against the appellants is,

that they received shares from promoter related entities through off-market and that they placed buy orders above the LTP thereby increasing the

price of the scrip which was manipulative in nature. There is no charge relating to synchronization or matching sell trades or offloading the shares to

gullible investors. Such findings, therefore, cannot be considered for the purpose of imposition of penalty as it is beyond the charges levelled in the

show cause notice.

10. In so far as the connection of the appellants with promoter entity groups is concerned, ample evidence has come forward that the appellants

received shares from Indian Die-Casting Company Limited and Kolhapur Forge Pvt. Ltd. who were promoter related entities. This fact has not been

disputed by the appellants. Further evidence has come forward that the shares given to the appellants were not based on any consideration and

therefore a finding has been given by the AO that the appellants were connected with promoter related entities of the Company. In our view, this

finding of the AO is based on documentary evidence and its appreciation which we do not find any fault and therefore we affirm that the appellants

were connected with promoter related entities as they received the shares through off-market.

11. From the trades executed by the appellants which has been depicted in detail in the impugned order we notice that the appellants placed buy

orders above the LTP and that some of the trades were the first trades of the day. It is common sense that when an investor buys he would like to

buy a scrip at the lowest possible price and when he wants to sell he would like to get the highest possible price. Why should a person/ investor buy a

share at a higher price than what is available on the stock exchange at a lower price unless there is a motive. In the instant case, the trading pattern of

the appellants clearly indicates that they were placing buy orders above the LTP which led to market contribution to the positive LTP and also created

a new high price(NHP). This trading pattern clearly indicates that increasing the price of the scrip was for the benefit of the promoters and promoter

related entities of the company as they would gain by the rise in the price of the scrip. The fact that the appellants were connected with the promoter

related entities since they received shares through off-market is an indicator that there was some scheme for the benefit of the promoter related

entities. In our view, the trading pattern of the appellants which contributed to the NHP of the scrip of the company was clearly violative of

regulations 3 and 4 of the PFUTP Regulations.

12. The contention of the appellants that there was no manipulation in the price of the scrip and that the transaction was minimal which cannot

influence the market and therefore there cannot be any manipulation is not correct. We find from the record that the appellants individually and

collectively have contributed LTP majorly to the market positive LTP. Due to the LTP contribution by the appellants the price of the scrip increased in

Patch-1 and Patch-2 namely between March 27 to April 04, 2014 and from June 10 to June 27, 2014.

13. In view of the aforesaid, the charge relating to manipulation in the price of

the scrip stands proved against the appellants. However, we find that

the penalty imposed is excessive in as much as the AO has taken into consideration irrelevant consideration, namely, that there were synchronized

trades, there were matching sell orders and that the appellants had sold shares to gullible investors. The factum of offloading of the shares has been

taken into consideration by the AO in paragraph 66 while considering the quantum of penalty to be imposed. We also find that the AO himself in

paragraph 68 of the impugned order finds that the trades executed above LTP were miniscule and did not create artificial volume.

Considering the aforesaid, we are of the opinion that the penalty imposed by the AO is liable to be reduced which we compute at Rs. 1 lakh each.

14. In view of the aforesaid, while affirming the charge of manipulation in the price of scrip by the appellants, we reduce the penalty directing the

appellants to pay a sum of Rs. 1 lakh each within 30 days form today. The appeals are partly allowed with no order as to costs.

15. 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.