
(2020) 02 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : ?Appeal No. 8, 9 Of 2020

Vasudev Ramchandra Kamat And Others

APPELLANT

Vs

Securities And Exchange Board Of India

RESPONDENT

Date of Decision : 25-02-2020

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 : (2020) 02 SEBI CK 0001

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Dr. C. K. G. Nair, Member

Bench : Division Bench

Advocate : Vikas Bengani, Abhiraj Arora

Final Decision : ?Allowed

Judgement

Tarun Agarwala, Presiding Officer

1. The appellant being aggrieved by the order of the Adjudicating Officer (â?? AOâ?? for short) of the Securities and Exchange Board of India

(â??SEBIâ?? for short) has filed the present appeal. Even though two separate orders have been passed by the AO against the appellant, the issue

involved and the violation of law being the same, we are proceeding to decide both the appeals by a common order. For facility, the fact stated in

Appeal No. 8 of 2020 is being taken into consideration.

2. The appellant received a show cause notice dated October 8, 2013 in which it was alleged that the appellant along with connected group entities

had traded in the scrip of LGS Global Limited (now known as â??Ybrant Digital Limitedâ??) and indulged in trading themselves by way of executing

synchronized trades resulting in no change of beneficial ownership and consequently violated Regulation 3 and 4 of the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (â??PFUTP Regulationsâ?? for short). After considering the

replies of the appellant and other entities and after considering the material evidence on record the AO passed an order dated September 23, 2014

imposing a penalty of Rs. 5 lakh upon the appellant. The appellant filed an appeal No. 1 of 2015 before this Tribunal which was allowed and the order

of the AO insofar as the appellant was concerned was set aside and restored to the file of the AO for a fresh decision on merits in accordance with

law. For facility, the entire order of this Tribunal dated January 20, 2016 is extracted hereunder:-

â??1. Appellants in all these appeals are aggrieved by the common order passed by the Adjudicating Officer of Securities and Exchange Board of

India (â??SEBIâ?? for short) on September 23, 2014.

2. In view of the fact that the findings recorded in paragraph 37 and paragraph 43 of the impugned order are mutually contradictory and also in view

of the fact that there is grievance relating to the quantum of penalty imposed qua the volume of fictitious trade, Counsel for SEBI fairly states that the

impugned order may be quashed and set aside qua the appellants herein and the matter be restored to the file of the Adjudicating Officer of SEBI for

fresh decision on merits and in accordance with law. Counsel for the appellants do not have any objection.

3. Accordingly, the impugned order dated September 23, 2014 is quashed and set aside qua the appellants herein and restored to the file of the

Adjudicating Officer for fresh decision on merits and in accordance with law.

4. All the appeals are disposed of in the above terms with no order as to costs.â??

3. A perusal of the order of this Tribunal indicates that the order of AO was set aside insofar as the appellant was concerned and was restored to the

file of the AO for a fresh decision on merits in accordance with law.

4. After remand no proceedings were initiated and after three long years a fresh show cause notice dated August 1, 2019 was issued by the AO

alleging that the appellant being part of the group entities had indulged in trading within the group resulting in no change of beneficial ownership and

thereby created artificial volume in the scrip of the company which gave a false and misleading appearance in the trading in the scrip. Based on the

aforesaid charge, replies were sought and after considering the matter the AO

passed the impugned order dated November 22, 2019 imposing a penalty of Rs. 1 lakh. The AO being aggrieved by the aforesaid order has filed the present appeal.

5. Having heard the learned counsel for the parties, we find that the impugned order cannot be sustained. When the matter was remanded by this

Tribunal a specific direction was issued that the matter is restored to the file of the AO and the AO was required to decide the matter afresh on

merits. It means that the AO was required to decide the matter afresh pursuant to the show cause notice dated October 8, 2013. The AO was

required to deal with the charges leveled against the appellant under the said show cause notice dated October 8, 2013. It was not open to the AO to

issue a fresh show cause notice incorporating a new charge. Consequently, on this short ground the impugned orders cannot be sustained and are

quashed. Both the Appeals are allowed. No order as to costs.