
(2023) 06 SEBI CK 0001

In the Securities Appellate Tribunal Mumbai

Case No : Appeal No. 518, 519, 580, 658 Of 2021, 87, 131, 481 Of 2022, 327 Of 2023, Miscellaneous Application No. 74, 75, 442, 765, 781 Of 2022

Vipul Amratlal Doshi And Others

APPELLANT

Vs

Securities & Exchange Board Of India

RESPONDENT

Date of Decision : 05-06-2023

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 Contracts (Regulation) Act, 1956 — Section 21, 23A(a), 23E
Securities And Exchange Board Of India Act, 1992 — Section 12A

Citation : (2023) 06 SEBI CK 0001

Hon'ble Judges : Tarun Agarwala, Presiding Officer; Meera Swarup, Technical Member

Bench : Division Bench

Advocate : Vikas Bengani, Sumit Rai, Abhiraj Arora, Shourya Tanay, Misbah Dada, Deepanshu Agarwal, Manoj Kumar Mishra, Anant Upadhyay, Payal Upadhyay, Saurabh Bhachhawat, Shantibhushan Nirmal, Sneha Ramnathan, B. K. Rai, Dinesh Prakash Guchiya

Final Decision : Dismissed

Judgement

Tarun Agarwala, Presiding Officer

1. All these appeals are against a common order dated May 17, 2021 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing penalties on 12 out of 21 noticees. Out of these 12 noticees, 8 of them have filed the present appeals, namely, noticee nos. 1, 4, 7, 8, 9, 11, 13 and 15.

2. The facts leading to the filing of the present appeal is, that Kamalakshi Finance Corporation Ltd. now known as Gromo Trade & Consultancy Ltd. (hereinafter referred to as 'Gromo') is a listed company since April 26, 1976. The trading was suspended with effect from December 21, 2004 and the suspension was revoked on April 17, 2012. Thereafter, the company on November 9, 2013

issued 82,90,000 equity shares to 42 entities through preferential allotment at the rate of Rs. 12/- per share. Again, on February 17, 2014, the company issued 1,48,50,000 equity shares through preferential allotment to 49 entities at the rate of Rs. 13/- per share and again on June 24, 2014, 52,00,000 equity shares were allotted to 46 entities through preferential allotment at the rate of Rs. 25 per share. Thus, a total of 2,83,40,000 equity shares were allotted through preferential allotment to 137 entities.

3. The record indicates that trading in the scrip started on January 15, 2014 and between January 15, 2014 to December 26, 2014, the price of the scrip rose from Rs. 10.20 per share to Rs. 489/-i.e. to say that there was an increase by 48 times. This sharp rise in the price of the scrip was not supported by any fundamental financials.

Accordingly, an investigation was conducted which lead to the issuance of an ex-parte ad-interim order dated February 20, 2015 and consequently, the preferential allottees could not off-load their shares. Subsequently, a show cause notice dated May 30, 2018 was issued alleging that the company Gromo, its directors and promoters i. e. noticee nos. 1, 2 and 3 were part of the manipulative scheme and were in connivance with group of entities called the Kamalakshi group which included the appellants except noticee nos. 15 who together indulged in price manipulation of the scrip and thereby created false and misleading appearance of trading. The show cause notice also alleged that noticee nos. 15 had by himself indulged in price manipulation by repeatedly placing buy orders at negligible quantities at a higher price than the Last Traded Price (hereinafter referred to as 'LTP') causing an increase in the price of the scrip and misleading appearance of trading. The show cause notice alleged that the Kamalakshi group entities by trading among themselves had contributed to gross market positive LTP by Rs. 101.35 and such increase in the price of the scrip was manipulative. The show cause notice also alleged that Pradeep Dhanuka noticee nos. 4 was the central figure who was known to the company and who had received funds from the company and also knew the Kamalakshi group and the scheme was devised through which Dhanuka was placing orders through other entities, namely, noticee nos. 7 and 8 by placing sell orders in miniscule quantities which allowed the buyers to buy above the LTP and, thus, the increase in the price of the scrip was not only manipulative but also fraudulent.

4. It was also alleged that the company Gromo had not utilized the proceeds from the preferential allotment of shares either for capital expenditure or for long-term working capital requirements and had not submitted the requisite information as required under Clause 43 of the Listing Agreement. The show cause notice, thus, alleged the violation of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations') and Section 21 of the Securities Contracts (Regulation) Act,

1956 (hereinafter referred to as 'SCRA') read with Clause 43 of the Listing Agreement.

5. The AO after considering the material evidence on record held in paragraph no. 123 that there is insufficient material on record to hold that noticee nos. 1, 2 and 3 i.e. the company, its directors and promoters had connived with the Kamalakshi group entities who had indulged in price manipulation of the scrip or created false and misleading appearance in the trading of the scrip. The AO further held that 12 noticees including the appellants were guilty in manipulating the price of the scrip through their trades and had created false and misleading appearance of trading which was violative of Regulations 3 and 4 of the PFUTP Regulations read with Section 12A of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'). The AO also held that the company did not make the requisite disclosures under Clause 43 of the Listing Agreement and, therefore, violated the said provisions. The AO accordingly imposed penalties of different amounts upon the noticees.

6. We have heard Mr. Vikas Bengani, Mr. Manoj Kumar Mishra, Mr. Anant Upadhyay, Ms. Payal Upadhyay, Mr. Saurabh Bhachhawat, Mr. Shantibhushan Nirmal, Ms. Sneha Ramnathan, Mr. B. K. Rai, Mr. Dinesh Prakash Guchiya, the learned counsel for the appellants and Mr. Sumit Rai, the learned counsel with Mr. Abhiraj Arora, Mr. Shourya Tanay, Ms. Misbah Dada, Mr. Deepanshu Agarwal, the learned counsel for the respondent.

7. The company Gromo, noticee nos. 1 has been penalized with a sum of Rs. 5 lakh under Section 23E of the SCRA for violation of Clause 43 of the Listing Agreement. The object of the three preferential issues as depicted in the special resolution passed in the Extra-Ordinary General Meeting (hereinafter referred to as 'EGM') of the company was to utilize the additional funds for capital expenditure including the acquisition of companies / business, funding long-term working capital requirements, etc. The company disclosed to its shareholders that the purpose of the funds raising through preferential allotments would be met for the following requirements, namely :-

- "a) Capital expenditure including acquisition of company/business
- b) Funding long term working capital requirements
- c) Marketing
- d) Setting up of offices abroad and
- e) For other approved corporate purposes."

8. The AO after considering the material evidence of record came to the conclusion that necessary disclosure was not made and, therefore, there was violation of Clause 43 of the Listing Agreement.

9. The contention of the company is, that the usage of the funds was subsequently ratified by the EGM on September 29, 2017 and, therefore, there

has been no material deviation between the purpose stated in the special resolution and the actual utilization of the funds pursuant to the ratification. In support of their submission, the learned counsel placed reliance upon a decision of this Tribunal in Terrascope Ventures Ltd. vs. SEBI decided on June 2, 2022 in Appeal No. 116 of 2021 and other companion appeals wherein this Tribunal held as under :-

"12. Once the utilization of the proceeds have been ratified by the shareholders of the Company, the acts and deeds done by the Company becomes valid and authorized and therefore there was no variation of the utilization of the proceeds. The show cause notice alleging variation in the utilization of the proceeds is, thus, erroneous."

10. In our view, the decision cited by the learned counsel for the appellant is not applicable. The issue here is with regard to utilization / non-utilization which has not been reported under Clause 43 of the Listing Agreement. The variation in the utilization of the proceeds through ratification is a different matter which is not the consideration in issue in as much as, the relevant issue is, whether adequate disclosure was made under Clause 43 of the Listing Agreement at that relevant time. We are further of the opinion that SEBI had passed an ex-parte ad-interim order on February 20, 2015, as a result of which the preferential allottees could not off-load their shares on the stock exchange platform and, thus, there was a halt on a pump and dump scheme so initiated by the company. The ratification made in 2017 much after the passing of the ad-interim order was purely an afterthought.

11. Violation of the Listing Agreement attracts penalty under Section 23A(a) of the SCRA wherein a penalty from Rs. 1 lakh to Rs. 1 crore can be imposed. Penalty has been imposed under Section 23E which has no relevance to the violation of the Listing Agreement as has been held in Suzlon Energy Ltd. & Anr. vs. SEBI Appeal No. 201 of 2018 decided on May 3, 2021. The penalty imposed under Section 23E could be up to a maximum of Rs. 25 crore.

12. Considering the aforesaid, we are of the opinion that the penalty under Section 23E of the SCRA could not be imposed and could only be imposed under Section 23A(a) of the SCRA. In the given circumstances, penalty of Rs. 5 lakh which has been imposed under Section 23E should be read as a penalty imposed under Section 23A(a) of the SCRA. The quantum of penalty imposed in the given circumstances is just and proper and does not require any modification.

13. Noticee Nos. 4 Pradeep Dhanuka has been found to be a central figure in the manipulation of the price of the scrip and in creating artificial volume of trading and thereby misleading the investors. The charge against Pradeep Dhanuka is, that he was a director in M/s. Rupak Developers P. Ltd. and M/s. VRP Financial Services P. Ltd. which companies received funds from Gromo and these companies in which Pradeep Dhanuka was a director has also transferred funds to the Kamalakshi group entities. It has come on record that Pradeep Dhanuka

was an employer of noticee nos. 7 and 8 and that he was placing orders from their trading accounts.

14. The contention of Pradeep Dhanuka before the AO and before us is the same that he is not a beneficiary of the trades executed by him and that he was employed by one Girraj Agrawal and that he was executing the trades on his behalf. The said noticee denied that he was connected with the company Gromo, its directors and promoters and was also not connected with the Kamalakshi group. The said appellant contended that he was only placing orders and was not manipulating the price of the scrip.

15. Having heard the learned counsel and upon a perusal of the impugned order, we find that Gromo transferred funds to companies in which Pradeep Dhanuka noticee nos. 4 was a director and, therefore, he was connected to the company. It has also come on record and which are admitted by the said noticee that he had placed orders from the demat account of noticee nos. 6, 7 and 8 and that he was placing sell orders in small quantities. We find it strange as to why sell orders were being placed in small quantities despite the fact that large buy orders were pending. We also find that the appellant / noticee nos. 4 was also connected to the Kamalakshi group entities through off-market transfers and, therefore, it can safely be construed that funds were received by Pradeep Dhanuka from the company and also transferred funds to Kamalakshi group entities. The buyers who were connected to Pradeep Dhanuka were placing orders above LTP and Pradeep Dhanuka was selling shares in small quantities. This trading pattern resulted in the increase in the price of the scrip and created an artificial volume which, in turn, misled the public. Such trading pattern was manipulative and fraudulent and violative of Regulations 3 and 4 of the PFUTP Regulations. Thus, no relief can be granted to noticee nos. 4.

16. The contention of the noticee nos. 7 and 8 is, that they were employees of Pradeep Dhanuka who took signatures on pieces of paper and misused their signatures. Whereas noticee nos. 7 has categorically stated that she was not aware of any demat account being opened nor was aware of any transaction and submitted that her signatures were misused and on the other hand, noticee nos. 8 admits that he was receiving Rs. 2,000/- per month for use of his demat account. Both the noticees however contended that the trades were negligible and they were only sellers and had no connection with the company and, therefore, the penalty is excessive and arbitrary.

17. The AO has penalized noticee nos. 7 and 8 on the ground that they were name lenders. Having perused the record and submissions made by the counsel, we find that in so far as noticee nos. 8 is concerned, we find that the finding of the AO that he was the name lender was correct and justified. In *Rahul H. Shah vs. SEBI Appeal No. 83 of 2012* decided on May 11, 2012, this Tribunal held that name lending is a fraudulent activity and is required to be curbed in order to maintain the sanctity of the securities market. Consequently, there was no error in the imposition of the penalty upon noticee nos. 8. However, a specific stand

was taken by noticee nos. 7 to the effect that she was an employee of Pradeep Dhanuka who took signatures on pieces of paper and that the appellant was not aware of any of the transaction. This statement has not been disbelieved by the AO nor any finding has been given to the contrary. There is no finding that she was aware of transaction being carried out in her demat account. Thus, we are satisfied that in the instant case, the said noticee cannot be labeled as a name lender, especially in the absence of any evidence to that effect. Until and unless there is a finding that the appellant was aware that her demat account was being used or she had knowingly allowed Pradeep Dhanuka to trade from her trading account, the appellant cannot be penalized.

18. Noticee nos. 9 and 13 are husband and wife and they had purchased shares of the company. Their contention is that they had no connection with Dhanuka or with the promoters or with the company Gromo. Similar is the case of the noticee nos. 11 who contended that he had no connection with the company directors or the promoters nor was part of the Kamalakshi group nor was connected to Pradeep Dhanuka. The said noticee further contended that he was not involved in any manipulation in the price of the scrip nor colluded with any entity.

19. These appellants have denied their connection alleging that they cannot be considered as a part of the Kamalakshi group. We find that these noticees have been found to be directly or indirectly connected to a common link, namely, Pradeep Dhanuka. Based on the trading activity, it leads to an irresistible presumption of meeting of minds outside the anonymous online screen based trading. Pradeep Dhanuka was the seller, trading through trading accounts of noticee nos. 7 and 8. The Kamalakshi group is connected to Pradeep Dhanuka and its entities by way of off-market transfers in other scrips.

20. Vipul Doshi (noticee nos. 11) had off market transfers with Romy Realty Pvt. Ltd. (of which wife of Mr. Pradeep Dhanuka was a director). An attempt was made post initiation of investigation to deny this connection by contending that the off-market transfer was done "inadvertently". Such contention was rightly rejected as an afterthought.

21. Mr. Vijay Tibrewal (noticee nos. 9) and Kavita Tibrewal (noticee nos. 13), being husband and wife were shown to be connected with Mr. Pradeep Dhanuka indirectly. They were shown to have off-market transfer with an individual who, in turn, was shown to be connected with a company which had common directors with company where Mr. Dhanuka was a director. Mr. and Mrs. Tibrewal had no explanation to offer in relation to this indirect connection and concocted an obvious false story of having received the shares from a stranger in a local train.

22. In Praveen Kurele and Anr. vs. SEBI in Appeal No. 319 of 2020 decided on April 29, 2022, this Tribunal held :-

"54. It is well settled principle that two entities who are transferring shares in off market can be considered as connected entities. For the purpose of establishing

a connection, it is irrelevant whether off market transaction is of the underlying scrip or of any other scrip for. The rationale is that the mere fact the appellants have transacted in off market are thus connected with each other. The entities who have an off market transfer have a common link and they know each other to enter into an off market transaction.”

23. Thus, Pradeep Dhanuka being the central figure was known to the company and was also connected with these noticees nos. 9, 11 and 13.

24. The evidence clearly indicates that these buyers, namely, noticee nos. 9, 11 and 13 were placing small quantities above LTP and Pradeep Dhanuka was matching his trades by selling the resultant trades increasing the price of the scrip which, in our opinion, considering the trading pattern was manipulative and fraudulent. On one hand, Pradeep Dhanuka was selling small quantities repeatedly in illiquid stocks and executed trades with connected buyers who were placing orders above LTP. Noticee nos. 9, 11 and 13, on the other hand, were placing buy orders above LTP with connected sellers, namely, Pradeep Dhanuka and its entities.

25. Thus, the trading pattern between Pradeep Dhanuka and noticee nos. 9, 11 and 13 being repetitive established the intention to manipulate the price and increase the volume. Such trading was totally fraudulent and violative of Regulations 3 and 4 of the PFUTP Regulations.

26. Noticee nos. 15, M/s. Ram Bhopal Agarwal Sons HUF has been charged for manipulating the price of the scrip by placing small quantities above LTP. The AO found that his trades contributed to LTP and that he was repeatedly placing buy orders in small quantities.

27. The contention of noticee nos. 15 was that he had no connection with the company Gromo and with Pradeep Dhanuka and that he had only purchased 94 shares on the stock exchange platform and had no connection with any of the counter party.

28. Having heard the learned counsel for the parties, we find admittedly that noticee nos. 15 was an unconnected buyer and had no connection with the company, its directors or promoters or with the central figure Pradeep Dhanuka and its entities. In the absence of any evidence showing connection with the counter party, we are of the opinion that merely because the said noticee had placed buy orders above LTP will not lead to a conclusion that the appellant was manipulating the price and indulging in fraudulent trades. At best it can only raise a suspicion. The finding against the appellant that the said noticee can be penalized on his trading pattern is erroneous in the absence of no connection with the counter party. The decision in the case of M/s. Nishith M. Shah HUF vs. SEBI Appeal No. 97 of 2019 dated January 16, 2020 is squarely applicable.

29. In view of the aforesaid, the appeal of noticee nos. 1 Appeal No. 658 of 2021, appeal of noticee nos. 4 being Appeal No. 87 of 2022, Appeal of noticee

Nos. 8 being Appeal No. 481 of 2022, Appeal No. 518 of 2021 of noticee nos. 9, Appeal No. 496 of 2021 of noticee Nos. 11, Appeal No. 519 of 2021 of noticee Nos. 13 are dismissed with no order as to costs.

30. Appeal of noticee nos. 7 being Appeal No. 131 of 2022 and Appeal No. 580 of 2021 of noticee nos. 15 are allowed. The impugned orders in so far as it relates to these noticees are quashed.

31. In the circumstances of the case, parties shall bear their own costs.

32. 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. Certified copy of this order is also available from the Registry on payment of usual charges.