

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 25.02.2019

Date of Decision : 15.03.2019

Appeal No. 156 of 2018

Manish Arvindbhai Waghela
G/4, Rambuzarat Yadav Chawl,
Ovripara, Ambawadi, S.V. Road,
Dahisar (East),
Mumbai – 400 068.

..... Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

..... Respondent

Mr. Bankim Mehta, Advocate for the Appellant.

Mr. Karan Bhosale, Advocate with Mr. Kaushal Parsekar,
Advocate i/b Legasis Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the order of the
Adjudicating Officer ('AO' for short) of the Securities and

Exchange Board of India ('SEBI' for short) dated February 28, 2018. By the said order a penalty of Rs. 5 lakh has been imposed on the appellant under Section 15HA of the SEBI Act, 1992 for violating provisions of Sections 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and 4(1), 4(2) (a) and (g) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUPT Regulations of 2003' for short).

2. SEBI conducted an investigation into possible violation of provisions of SEBI Act, Rules and Regulations relating to trading in the scrip of M/s. Karma Industries Limited for the period July 12, 2010 to January 9, 2012. A Show Cause Notice (SCN) was issued to 23 entities on July 31, 2015 for allegedly entering into synchronized trades / reversal trades / self trades as applicable which resulted in creation of artificial volumes and thereby violating certain provisions of the SEBI Act and the relevant PFUTP Regulations, 2003. These entities were found to be connected to each other based on their KYC documents / common telephone number / common addresses / common introducer etc. as spelt out in detail at page 3 of the impugned order. The appellant was found to be connected

with several entities who entered into reversal of trades and circular trade amongst themselves. On July 7, 2011 the appellant entered into three reversal of trades to the tune of 18100, 10,000 and 5000 shares respectively. This trade was also found to be in the nature of circular trade as there was no change in the beneficial ownership but led only to creation of artificial volume. Hence, the charge of violating provisions of Sections 12A(a),(b),(c) of the SEBI Act read with Regulation 3 (a), (b), (c), (d) and 4(1), 4(2) (a) and (g) of PFUPT Regulations, 2003.

3. After taking into account various submissions made by the appellant in response to the show cause notice and after affording an opportunity of personal hearing the impugned order was passed on February 28, 2018 holding the appellant guilty of violating the aforesaid provisions of SEBI Act and PFUTP Regulations, 2003. For convenience the relevant Sections are reproduced here:-

“SEBI Act, 1992

Section 12-A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control – No person shall directly or indirectly –

- (a) *use or employ, in connection with the issue, purchase or sale of any securities listed or*

proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

“PFUTP Regulations, 2003

Prohibition of certain dealings in securities

- 3. *No person shall directly or indirectly—*
 - (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
 - (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;*
 - (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
 - (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or*

the rules and the regulations made there under.

4. *Prohibition of manipulative, fraudulent and unfair trade practices*

(1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;*

(g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;”*

4. Learned counsel for the appellant Shri Bankim Mehta argued that the appellant was in no way associated with or part of the so-called connected entities in the matter. It was contended that a broker M/s. Kunvarji Finstock Pvt. Ltd. forged the KYC documents of the appellant though the appellant did not open any account with this broker. Though PAN Card belongs to the appellant neither the e-mail nor the phone number as given in the KYC documents belong to him and he never traded with this broker M/s. Kunvarji Finstock Pvt. Ltd. Instead the appellant had a demat account with another broker M/s. BMA Wealth Creators Ltd. which was

opened on March 10, 2012, much after the impugned trade, allegedly done on July 7, 2011. The appellant further submitted that a cheque for Rs. 15,000/- received by him from M/s. Kunvarji Finstock Pvt. Ltd. was returned by him since he had no link with M/s. Kunvarji Finstock Pvt. Ltd.

5. The appellant also submitted that upon receipt of the impugned order dated February 28, 2018 he initiated to file police complaint / FIR against M/s. Kunvarji Finstock Pvt. Ltd., Inani Securities Ltd. and Corporation Bank, Fort Branch for forging his documents, signatures and opening demat/trading/bank account. No evidence to this effect has been submitted by the appellant.

6. We have also heard Shri Karan Bhosale, learned counsel for the respondent and perused documents produced before us. It is noted that given the submission of forging the documents etc. made by the appellant the AO had summoned the broker M/s. Kunvarji Finstock Pvt. Ltd. who submitted all the KYC documents of the appellant. These documents included copies of his PAN Card, photograph, ration card and bank account details all of which would not have been available to the broker unless the appellant had given the same to the broker. Similarly, the mobile number, which is

claimed as not belonging to the appellant, was found to be a common number with one Bakul Chaitalia and Multiplex Trading Company Ltd. who/which are part of the connected group entities. There are also evidences relating payment to the appellant through the Corporation Bank account available with M/s. Kunvarji Finstock Pvt. Ltd. in the name of the appellant and it was further noticed that as per CDSL record three demat accounts of the appellant were noted with three different depository participants as given below:-

Sl. No.	Depository Participant	Bank Details	Nominee Details
1	Kunvarji Finstock	Corporation Bank (A/c. No. 29504)	NA
2	BMA Wealth Creators Ltd.	Bank of India (A/c. No. 016510110000783)	NA
3	INANI Securities Ltd.	Corporation Bank (A/c. No. 29504)	Mrs. Leela Arvind Waghela

The above details clearly show that the appellant is not truthful regarding his statement that he had only one demat account with M/s. BMA Wealth Creators Ltd., Sr. No. 2 in the above table. It is further stated in the impugned order that as far as demat account at Sr. No. 3 in the above table is concerned the nominee is the mother of the appellant, which is also not disputed.

7. Given the above facts and the appellant now submitting that a police complaint has been made three years after

receiving the SCN dated July 31, 2015 and the police complaint reportedly made in 2018 (and that too without any documentary evidence), we find that the same is an afterthought and cannot be relied upon. Misusing the e-mail id, mobile number and bank account etc. and trading in securities market using the same is a serious issue. In such matters one is expected to take immediate action soon after knowing the same and that too through a SCN issued by SEBI on July 31, 2015 and that too after replying to SEBI on August 22, 2015.

8. Accordingly, we find no merit in the submissions of the appellant and the appeal is dismissed. No order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

15.03.2019

Prepared and compared by:msb