

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 21.02.2019

Date of Decision : 13.03.2019

Appeal No. 63 of 2018

Mr. R.S. Agarwal
25A, Ballygunje Road,
Kolkata – 700 019
West Bengal

..... 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. Somasekhar Sundaresan, Advocate with Mr. Abishek Venkatraman, Mr. Joby Mathew, Mr. Ramesh Gogawat, Advocates i/b Joby Mathew & Associates for the Appellant.

Mr. Karan Bhosale, Advocate with Mr. Mihir Mody, Mr. Nishant Upadhyay, Advocates i/b K. Ashar & Co. for the Respondent.

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

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

1. Whether a reported statement of the Chairman of a Company regarding his interest to acquire another Company is sufficient to invoke the provisions of Securities and

Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations, 2003' for short) is the question raised in this appeal. Since vide order dated December 27, 2017 the Adjudicating Officer ('AO' for short) of Securities and Exchange Board of India ('SEBI' for short) has answered this question affirmatively and imposed a penalty of Rs. 8 lakh on the appellant, this appeal has been filed challenging the said order.

2. During an investigation SEBI observed that the Chairman of Emami Ltd. Shri R.S. Agarwal (appellant herein) reportedly told a Times of India journalist that he is interested in acquiring the Company Amrutanjan Helathcare Ltd. ('Amrutanjan' for short). The news report dated April 3, 2010 stated the following reportedly quoting the appellant:-

“Yes we are interested to buy Amrutanjan. Our group is looking for acquisition in the pharma and FMCG sectors. But, we do not know who is buying into that company.”

3. A Show Cause Notice (SCN) dated June 7, 2016 was issued to the appellant directing to show cause why an enquiry should not be held and penalty be not imposed under Section 15HA of the SEBI Act, 1992 for the alleged violation of SEBI Act, 1992 and PFUTP Regulations of 2003. During

the investigation the appellant vide letter dated June 25, 2015 clarified to SEBI that he only expressed his desire for acquisition in the Pharma or FMCG sectors including Amrutanjan as the same would contribute organically and inorganically to the growth and expansion of his company's business. It is also on record that on April 5, 2010 soon after the newspaper report dated April 3, 2010 (April 3 and April 4, 2010 was Saturday and Sunday respectively and hence market closed), the National Stock Exchange of India Limited ('NSE' for short) sought clarification from both the Companies – Emami and Amrutanjan on the reported statement of the Chairman of Emami Ltd. Emami replied to NSE as follows:-

“Our group is interested in acquisition opportunities for Pharma and FMCG business in India and abroad for inorganic growth of the company. In the stated media report, our Chairman has only expressed his desire to acquire any FMCG or Pharma business / company including Amrutanjan within the financial and operational resources of the company. We, however, do not hold any shares in that company”.

Amrutanjan's reply to the clarifications sought by NSE was as follows:-

“the said news item is false and without basis. The promoters of the company have no intention to sell out and the promoters do not foresee any reason to dilute their stake and exit from the company”.

4. It is on record that on April 5, 2010 at 13:49 pm NSE reproduced the clarification provided by Amrutanjan on the website of NSE for public information.

5. Subsequently, during the investigation SEBI also found that the reported statement made by the Chairman of Emami Ltd. regarding his reported interest in acquiring Amrutanjan was not with the approval of the Board of Directors of his Company, Emami Ltd. It was also held in the impugned order that the statement impacted the price and volumes in the scrip of Amrutanjan to a considerable extent and hence violated sub section (c) of Section 12(A) of the SEBI Act read with Regulation 3(d) of PFUTP Regulations, 2003 and hence the appellant is liable to be penalized under section 15HA of SEBI Act. For convenience the relevant provisions of SEBI Act, 1992 and PFUTP Regulations, 2003 are reproduced below:-

“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)

(b)

(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)
 - (b)
 - (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:-*
 - (e) *any act or omission amounting to manipulation of the price of a security;*
 - (r) *planting false or misleading news which may induce sale or purchase of securities.”*

“Fraud” as defined in PFUTP Regulations, 2003 is as follows:-

“Definitions

- 2.(1)(c) *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there*

is any wrongful gain or avoidance of any loss, and shall also include—

- (1) *a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) *a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) *an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) *a promise made without any intention of performing it;*
- (5) *a representation made in a reckless and careless manner whether it be true or false;*
- (6) *any such act or omission as any other law specifically declares to be fraudulent;*
- (7) *deceptive behavior by a person depriving another of informed consent or full participation;*
- (8) *a false statement made without reasonable ground for believing it to be true;*
- (9) *the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

And “fraudulent” shall be construed accordingly;

Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

- (a) *the economic policy of the Government;*
- (b) *the economic situation of the country;*
- (c) *trends in the securities market;*
- (d) *any other matter of a like nature;*

whether such comments are made in public or in private;

6. In order to strengthen the arguments in the impugned order that the reported statement made by the appellant did impact the market of Amrutanjan both in terms of the price of its scrip as well as in terms of volumes, an analysis of the market position in BSE as well in NSE from February 17, 2010 till April 19, 2010 in terms of open price, high price, low price, close price and total quantity traded was made. The conclusion was that there had been increase in both volume and price post April 3, 2010 as compared to the period prior to April 3, 2010. Specific comparison has been made between two trading days April 1, 2010 and April 5, 2010, the last traded day and the first traded day before and after the press report with the intermittent dates being holidays for market.

7. We have extensively heard Shri Somasekhar Sundaresan, learned Counsel for the appellant and Shri Karan Bhosale, learned Counsel for the respondent SEBI. We have also perused the documents placed before us. We note that “fraud” in securities market is a serious offence as defined in law and as dealt in the PFUTP Regulations. The objective of the PFUTP Regulations is to act as a deterrent against

fraudulent and manipulative behavior and practices in the securities market and to provide exemplary punishment for violations.

8. Now the question before us is whether a reported statement made by the Chairman of a Company about his interest in another Company amounts to fraud or a fraudulent act in the given facts of the case. The impugned order states that there was substantial movement in the price of the scrip of Amrutanjan from first week of March 2010 when the price was hovering in the range of Rs. 550-565 and rose to Rs. 1054 on April 1, 2010. The impugned order further holds that there were no bulk trade in BSE and only a few bulk trades in NSE prior to April 3, 2010. However, subsequent to April 3, 2010 the prices increased to a high of Rs. 1229 and large number of bulk trades were observed on most of the trading days in the first half of April 2010 in both BSE and NSE. Accordingly, the submission of the Counsel for the respondent is that the appellant knowingly violated the PFUTP Regulations and section 12(A)(c) of SEBI Act.

9. We do not find merit in the arguments of the respondent. First of all the statement attributed to the appellant is as reported by a news reporter. There is no

evidence as to the appellant acquiring any shares of Amrutanjan. On the other hand, what is available on record is that no effort in acquisition has been made. Further the appellant has clarified to the Stock Exchange immediately on receiving their communication on April 5, 2010 that it was a general statement relating to his business interest. The statement is further emphasized by the clarification provided by Amrutanjan itself which also stated that “the said news item is false and without basis and the promoters of the Company have no intention to sell out and the promoters do not foresee any reason to dilute their stake and exit from the company”.

10. While dealing with a serious issue of fraud the authorities need to ascertain the motive in the absence of any connecting evidence. There is nothing to prove that the quoted statement in the news report is exactly what is stated by the appellant unless the statement is derived from a written communication issued by the Chairman or by his Company which is not the case here. Further there is no evidence to link to a motive. Neither the appellant nor his Company Emami had / have acquired the shares of Amrutanjan. In any case they were actually interested in acquiring; the Chairman of

the acquiring company would not have talked up the prices of the shares of the acquiring company (Target Company). In the absence of any motive or a scheme or any evidence a reported news item alone is not sufficient to prove a serious charge like fraud. If at all the reported statement is correct it could be an expansive mood of the person. Silence as a sign of wisdom cannot be stretched to a point of total silence in the world of securities market. Substantial movement in the prices etc. of a profitable company with sufficient liquidity cannot be attributed to such a reported statement alone.

11. Before parting with, the limitations of a comparative static analysis as given in the impugned order also needs to be emphasized. The comparison made in the impugned order is by taking the price / volume data of April 1, 2010 and April 5, 2010. However a look at the data for 30th and 31st March, 2010 also give a different picture which is as follows:-

NSE					
Date	Open Price	High Price	Low Price	Close Price	Traded Quantity
30-Mar-10	854.9	989	848.1	949.3	489648
31-Mar-10	950	1054	937.5	1020.5	834070
01-Apr-10	1030.1	1044.95	1001	1024.35	308538
05-Apr-10	1025.1	1229.25	1025.1	1225	887705

BSE					
Date	Open Price	High Price	Low Price	Close Price	Traded Quantity
30-Mar-10	850	981	850	948.8	270742
31-Mar-10	950	1050	946.5	1017.65	393896
01-Apr-10	1043.7	1046	1005	1023.05	144644
05-Apr-10	1040	1227.65	1026.25	1223.95	474050

On April 1 the volumes traded in NSE was 308538 shares and in BSE was 144644 shares which is shown to have increased to 887705 shares in NSE and 474050 in BSE on April 5, 2010. But if we take the volume on March 31, 2010 instead of April 1, 2010 the volume in NSE was 834070 and in BSE 393896. So, the volumes on March 31, 2010 and April 5, 2010 are not much different while when one compares the volume of April 5 with that of April 1 the volumes are quite different. This shows that a two day comparison can be misleading and is not sufficient to establish evidence for a serious offence like fraud.

12. In the light of above reasons, the impugned order cannot be sustained and the same is quashed. Appeal succeeds and is allowed. In the given circumstances no order on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

13.03.2019

Prepared and compared by:msb