

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 25.02.2019

Date of Decision : 15.03.2019

Appeal No. 90 of 2018

Harsh Jayesh Gala
Hermes Apartments, B-Wing,
G-10, Bhatt Lane, Poinsur,
Borivali (West),
Mumbai – 400 092, Maharashtra 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. Janak Bathiya, Advocate with Mr. Harshvardhan Bansal
and Mr. Sadat Sanjari, Advocates i/b Bathiya Legal 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 January 19,

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 17 entities who entered into reversal of trades amongst

themselves. On March 4, 2011 the appellant entered into reversal of trade with one Mr. Kumar D. Mewada, another entity in the connected group by buying 25,000 shares and selling back 24025 shares to the same person. This trade was also found to be in the nature of circular trade as there was no change in the beneficial ownership and led to only 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 January 19, 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. The learned counsel Shri Janak Bathiya who appeared on behalf of the appellant submitted the following. A common introducer is not sufficient to establish connection; no evidence relating to price manipulation is given in the impugned order; the impugned order does not deal with the submissions of the appellant; inspection or copies of trade logs for the relevant period was not given; signature mismatch of common introducer; no relation with any other noticees; infrequent trading; insignificant quantity of trading; several noticees given clean chit; no motive proved; not an illiquid scrip; and online trading is anonymous.

5. We are also told that the appellant was a student of chartered accountancy at the relevant time. Relying on the judgment in the matter of *Mr. V.K. Kaul vs. Securities and Exchange Board of India (Appeal No. 55 of 2012 decided on October 8, 2012)* counsel for the appellant further submitted that even if the standard of proof required in civil and criminal cases is neither the same nor absolute, even in civil matters while considering fraud a higher degree of probability is to be established. Further, relying on the Supreme Court judgment in the matter of *Securities and Exchange Board of India vs. Kishore R. Ajmera (Civil Appeal No. 2818 of 2008 decided on February 23, 2016)* he submitted that several factors like volume of trade, persistence of trade in a particular scrip, proximity of time, nature of transactions such as circular trading etc. are intended to be proved for confirming PFUTP Regulations, 2003.

6. Shri Karan Bhosale, learned counsel for the respondent submits that reversal of trade on March 4, 2011 is a matter on record. The quantity is not a small one particularly in the context of the argument that the appellant was only a student at that time. The submission was that the trade logs was not given is not correct since the same was given along with the

SCN. All available documents show that the appellant was part of a group of entities who indulged in manipulating the scrip of the M/s. Karma Industries Limited at the relevant time. It was further submitted that out of 23 noticees 17 were found to be guilty and penalty orders have been issued against all of them. The amount of penalty ranges between Rs. 5 lakh to Rs. 15 lakh and the penalty imposable under Section 15HA shall not be less than Rs. 5 lakh but which may extend to Rs. 25 crore or three times the amount of profits made out of such practices, whichever is higher. As such taking into account all the mitigating factors only the minimum amount of Rs. 5 lakh imposable under the sub section of 15HA of SEBI Act has been imposed.

7. Counsel for the respondent placed reliance on the Supreme Court Judgment in the matter of *Securities and Exchange Board of India vs Rakhi Trading Private Ltd.* (Civil Appeal No. 1969 of 2011 decided on February 8, 2018) and also on this Tribunal's decision in the matter of *Ketan Parekh vs. Securities and Exchange Board of India* (Appeal No. 2 of 2004 dated July 14, 2006).

8. We find no merit in the submission made by the appellant. There is sufficient evidence through the KYC

documents that the appellant is connected to a group of entities who were found to be manipulating the scrip of M/s. Karma Industries Limited. Further, despite the claim that the appellant is a small investor we note that he bought and sold 227364 shares each of the said Company on seven trading days between March 4 - 17, 2011. These are no insignificant volume to classify the appellant as a small investor. As such, his claim of being small investor has also no merit. It is also an established fact that he has indulged in reversal of trade though on one day, to the tune of 24025 shares in the scrip of M/s. Karma Industries Limited.

9. We cannot interfere with the amount of penalty imposed since the minimum amount of penalty imposable under Section 15HA is Rs. 5 lakh.

10. In the light of the above, we find no merit in the appeal and same is dismissed with 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