

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 02.01.2020

Date of Decision : 17.03.2020

Appeal No. 179 of 2018

1. Rajesh Jayantilal Shah
2. Nirmal Rohitbhai Shah
3. Binaben Shaileshkumar Shah
4. Ritaben Rohitkumar Shah
5. Manishaben Rajeshkumar Shah
6. Devang R Shah
7. Sachin Jayantilal Shah
8. Namitaben Sachinkumar Shah
9. Jinny Nirmal Shah

All residing at
Green Chowk, Dharangdhara
Gujarat- 363 310

...Appellants

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. R. S. Loona, Advocate with Ms. Aparna Wagle and
Mr. Yash Garach, Advocates i/b Alliance Law for Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Abhiraj Arora
and Mr. Vivek Shah, Advocates i/b ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per: Justice M. T. Joshi

1. Aggrieved by the decision of the learned Whole Time
Member (“WTM” for convenience) of the Securities and

Exchange Board of India (“SEBI” for convenience) directing the present appellants to disgorge an amount of ₹ 22,69,461/- along with interest at the rate of 12% per annum from December 22, 2008 onwards the present appeal is preferred.

2. The record would show that the respondent SEBI had earlier issued a temporary prohibitory order against the present appellants and two other deceased noticees namely Shailesh Jayantilal Shah and Jayantilal Ratilal Shah restraining them from buying, selling or dealing in the securities market. In the final order, however, the said interim order came to be revoked as a period of around 9 years had passed since the date of passing the temporary prohibitory order. However, the disgorgement order is passed as detailed above finding that the present appellants along with the deceased noticees in collusion with one Mr. Nirmal Kotecha had made wrongful gain by selling the shares of Pyramid Saimira Theater Limited (“PSTL” for convenience) on December 22, 2008 after accumulating the shares of PSTL between December 17 to 19, 2008.

3. The appellants and the deceased noticees were exonerated by the WTM from the charges of Last Traded Price (“LTP”) manipulation on several dates. Further, though one of the appellant-Rajesh Jayantilal Shah was found manipulating the

market volume on December 05, 2008 no direction regarding the same is issued by the WTM.

The order would show that one Nirmal Kotecha, an investor in the shares of PSTL has caused to publish a false media report on December 20 and 21, 2008 that on December 19, 2008 SEBI had issued a direction to Mr. P. S. Saminathan, one of the promoters of PSTL to make an open offer for violating creeping acquisition norms, at a price not less than ₹ 250/- per share of PSTL. In the circumstances, when the stock markets opened on Monday morning i.e. on December 22, 2008 the prices of the shares of PSTL rose. At around 10:30 am the same day i.e. December 22, 2008, however, Mr. Saminathan informed Bombay Stock Exchange Limited ("BSE" for convenience) and National Stock Exchange limited ("NSE" for convenience) that no such order or letter has been received by him. During the investigation of SEBI it was found that said Nirmal Kotecha along with 20 other entities was also involved in the manipulation in the prices of PSTL even for a period preceding the publication of the news items. Out of those 20 entities present proceedings was against the 11 entities named as Shah Group Entities.

The present appellants challenged the prohibitory order before this Tribunal vide Appeal No. 132 of 2017 decided on June 30, 2017. This Tribunal disposed of the said appeal with a

direction to the respondent SEBI to pass final order within a period of 6 months from the date of the order. The learned counsel for the appellants during oral submissions placed before us a copy of another order passed in the same appeal by this Tribunal in Misc. Application No. 335 of 2017 dated December 21, 2017 which would show that the time of passing the final order was extended for a period of 3 months. Thereafter the temporary prohibitory order however was revoked vide the impugned order.

4. The charges levelled by the respondent SEBI in the show cause notice and the reply filed by the appellants would admittedly show that the appellants along with the deceased noticees were connected with Nirmal Kotecha. Nirmal Kotecha was a registered client of JM Financials through its sub-broker Shailesh Jayantilal Shah i.e. deceased noticee. They always used to be connected with each other through their conversation on mobile between Nirmal Kotecha and deceased Jayantilal Shah and Appellant No. 2 Nirmal Shah. Further said Nirmal Kotecha had paid a sum of ₹ 10 lakhs to Man Viral Constructions Limited i.e. Group Entity of the present appellant. According to the appellants the said amount was received for advance payment for booking of a flat of the said entity and after cancellation of the booking, the amount was returned to Nirmal Kotecha. Further an amount of ₹ 10 lakh was advanced

by Nirmal Kotecha's wife (Viral Doshi) to deceased Shailesh Shah on September 25, 2008 without any interest. The appellants explained that since Devang Shah, (Appellant No. 6) a nephew of Shailesh Shah got admission in the University of Exeter, UK, for deferring the expenses, the loan was advanced. However, vide letter dated August 29, 2016 the appellants explained that out of the said amount an amount of ₹ 2,67,584/- was utilized for the purposes of business of deceased noticee-Shailesh Shah. Thus, whatever may be explanation it is an admitted fact that the present appellants were closely connected with said Nirmal Kotecha.

5. In this background, it was found by respondent SEBI that between December 17 to 19, 2008 the present appellants bought shares of PSTL in the following manner:-

| Sr. No. | Name | No. of shares during on Dec 17-19, 2008 |
|---------|-----------------------------|---|
| 1. | RAJESH JAYANTILAL SHAH | 49,216 |
| 2. | SHAILESH JAYANTILAL SHAH | 8,336 |
| 3. | NIRMAL ROHITBHAI SHAH | 24,723 |
| 4. | DEVANG R SHAH | 30,044 |
| 5. | RITABEN ROHITKUMAR SHAH | 22,000 |
| 6. | JAYANTILAL RATILAL SHAH | 5,000 |
| 7. | BINABEN SHAILESHKUMAR SHAH | 10,002 |
| 8. | NAMITABEN SACHINKUMAR SHAH | 3,500 |
| 9. | SACHIN JAYANTILAL SHAH | 10,000 |
| 10. | MANISHABEN RAJESHKUMAR SHAH | 5,000 |
| 11. | JINNY NIRMAL SHAH | 2,500 |
| | Total | 1,70,321 |

All these shares along with additional 200 shares were sold by the appellants on December 22, 2008. According to respondent SEBI the appellants along with deceased noticees had made wrongful gain of ₹ 24,39,602.91 from these transactions in the following manner:-

| Sr. No. | Name | No. of Shares Bought on Dec 17-19, 2008 | Buy rate | Sale rate | Difference in Buy and Sell rate | Undue Profit made (Rs.) |
|---------|-------------------------------------|---|----------|-----------|---------------------------------|-------------------------|
| 1. | RAJESH JAYANTILAL SHAH | 49,216 | 63.34 | 82.52 | 19.18 | 943,851.96 |
| 2. | SHAILESH JAYANTILAL SHAH (Deceased) | 8,336 | 69.67 | 80.98 | 11.31 | 94,261.81 |
| 3. | NIRMAL ROHITBHAI SHAH | 24,723 | 63.25 | 79.09 | 15.84 | 391,518.03 |
| 4. | DEVANG R SHAH | 30,044 | 65.59 | 77.52 | 11.93 | 358,548.39 |
| 5. | RITABEN ROHITKUMAR SHAH | 22,000 | 73.30 | 79.45 | 6.15 | 135,400.00 |
| 6. | JAYANTILAL RATILAL SHAH(Deceased) | 5,000 | 61.00 | 76.18 | 15.18 | 75,879.72 |
| 7. | BINABEN SHAILESHKUMAR SHAH | 10,002 | 61.25 | 75.92 | 14.67 | 146,692.11 |
| 8. | NAMITABEN SACHINKUMAR SHAH | 3,500 | 60.63 | 75.71 | 15.08 | 52,776.79 |
| 9. | SACHIN JAYANTILAL SHAH | 10,000 | 61.05 | 77.30 | 16.25 | 162,500.00 |
| 10. | MANISHABEN RAJESHKUMAR SHAH | 5,000 | 63.07 | 78.70 | 15.63 | 78,174.10 |
| 11. | JINNY NIRMAL SHAH | 2,500 | 75.00 | 70.46 | -4.54 | - |
| | Total | 1,70,521 | | | | 24,39,602.91 |

The appellants explained that they had a normal business relations with Nirmal Kotecha; they had nothing to do with publication some forged letter. They were regularly buying and selling the shares of PSTL and therefore they should be exonerated from the charges.

6. The WTM however found that while earlier the appellants have traded in the scrip of PSTL in miniscule quantity or on December 16, 2008 on day trading basis, particularly from December 17 to 19, 2008 they had accumulated large amount of shares as detailed (supra). Further, taking into consideration the fact that Nirmal Kotecha was in regular contact with the members of present Shah family and more particularly the trading pattern of the appellants to accumulate the shares before December 22, 2008 and off-load the same on December 22, 2008 at 10.30 am, WTM held that it would clearly show that the present appellants along with the deceased noticees had in violation of Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience) made the wrongful gain. Hence the order.

We have heard Shri R. S. Loona, Advocate for the appellants and Shri Kevic Setalvad, Senior Advocate for the respondent.

7. The learned counsel for the appellants submitted that while an ex-parte ad interim order was passed by respondent SEBI on April 23, 2009 it took around 5 years for issuing show cause notice i.e. on January 16, 2014. Thereafter, also no action was taken by respondent SEBI and therefore the appellants had

to approach this Tribunal as detailed (supra) wherein from time to time respondent SEBI was directed to pass the final order. He therefore submitted that this fact itself would show that for the delay, the impugned order should be quashed. On facts, he submitted that there are no allegations of synchronization or reversal of trades. The appellants had clearly admitted the business relations with Nirmal Kotecha. The show cause notice would show that the Appellant No. 1 Rajesh Jayantilal Shah used to trade in PSTL's shares regularly right from June 10, 2008 onwards. He further submitted that the impugned order itself would show that on November 16, 2008 the appellants had sold some shares however, purchase of the shares of PSTL only between December 17-19, 2008 is taken into consideration. Further, the appellants have sold some shares after 10.30 am i.e. after the market was stabilized. The same is however not excluded from disgorgement. In the circumstances he wanted the appeal be allowed.

8. The learned counsel for the respondent on the other hand, on the basis of the material placed before us states that no inference in the order is warranted.

Upon hearing both the s the appeal deserves to be dismissed for the following reasons:-

Though the learned counsel for the appellants submitted that there is a delay in the proceeding, the documents filed by the appellants themselves would show that before the WTM they were pressing time and again for more documents from the respondents before filing reply to the show cause notice. Even though a compact disk was supplied to them the demand continued which ultimately led to filing of reply belatedly. Though the practice of keeping temporary prohibitory order continuing for a long period cannot be accepted, it is to be noted that ultimately the said order is revoked. Therefore, the issue does not survive.

9. The WTM had taken into consideration the earlier dealing of the appellants in the scrip of PSTL wherein the appellants were charged for last traded price manipulation. The appellants and deceased noticees were exonerated from the charges and only charge remained for trading of the appellants and deceased noticees for a period from December 17 to 22, 2008. The trading of period of December 16 is also taken into consideration by the WTM. However, finding that there was sudden increase in purchase of the shares of PSTL by the appellants and the deceased noticees during December 17-19, 2008 as detailed (supra) and off-loading of all those shares on

December 22 before 10:30 am as detailed (supra), the order was passed.

10. It is an admitted fact that Nirmal Kotecha had close relations with the appellants. Many business transactions as well as gratuitous transactions of advancing interest free loan between them is an admitted fact. Out of interest free loan granted by Nirmal Kotecha to the appellants, admittedly appellants utilized some portion for the business purpose. Admittedly, they always had telephonic conversation. Admittedly, the appellants form a family group as further explained in the paragraph 1 of the synopsis itself. The appellants had pleaded before the WTM that the proceedings against them be kept in abeyance till the proceedings against Nirmal Kotecha would come to an end i.e. appeal filed by Nirmal Kotecha in this Tribunal is decided. Judicial notice can be taken that the appeal filed by Nirmal Kotecha, i.e. Appeal No. 261 of 2018 is finally dismissed by this Tribunal on merit on 02.03.2020 holding him guilty of causing false media report causing the rise in the price of the scrip as detailed in the above table.

In the circumstances, the findings recorded by the learned WTM needs no interference.

11. The learned counsel for the appellants has placed on record a number of decisions rendered by this Tribunal, wherein on fact this Tribunal has held that the delay in proceeding has caused prejudice to the noticees therein. In other cases relied by the appellants, on facts fraudulent or unfair trading was not found. To put the record straight the following judgements were relied by the appellants:- *Sanjay Gupta vs SEBI (Appeal No. 89 of 2019 decided on June 04, 2019)*, *Kapil Chatrabhuj Bhuptani vs. SEBI (Appeal No. 95 of 2013 decided on October 10, 2013)*, *KSL & Industries Ltd. vs SEBI (Appeal No. 9 of 2003 decided on September 30, 2003 etc.* However, finding that the facts are different in the present case, the ratio of any of the judgments would not be applicable in the present appeal.

12. In the result, the following order:-

ORDER

13. The appeal is hereby dismissed without any order as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member