

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Hearing : 05.12.2019**

**Date of Decision : 06.03.2020**

**Appeal No. 420 of 2018**

Haresh Ramchandra Posnak  
Shop No. 8, Pranam Co-operative  
Housing Society Ltd., Chiku Wadi,  
Shimpoli, Borivali (West),  
Mumbai - 400092.

..... Appellant

Versus

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

... Respondent

Mr. Vikas Bengani, Advocate i/b Mr. Harsh Kesharia, Advocate for  
the Appellant.

Mr. Vishal Kanade, Advocate with Mr. Anubhav Ghosh, Advocate  
i/b The Law Point for the Respondent.

CORAM : Dr. C. K. G. Nair, Member  
Justice M. T. Joshi, Judicial Member

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the order of the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated August 31, 2018 imposing a penalty of Rs. 6 lacs for violation of provisions of Regulation 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) 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'), the present appeal has been preferred.

2. The record would show that earlier an ex-parte order was passed against the present appellant by the Respondent SEBI in the same matter imposing a penalty of Rs. 4.5 lacs. The Tribunal vide order dated March 8, 2016 in group of the appeals filed by the present appellant remanded the case to SEBI for passing fresh orders on merit and in accordance with the law in view of the decision of the Hon'ble Apex Court in the case of *SEBI vs. Roofit Industries Ltd. reported in [(2016) 194 Comp. Cas. 186 (S.C)]*.

3. After remand of the matter, it appears that the AO issued fresh show cause notices to the appellant and after hearing the appellant imposed a higher penalty as detailed (supra). Hence the present appeal.

4. The learned counsel for the appellant Shri Vikas Bengani made submission only on the issue of quantum of the penalty. He submitted while in the earlier ex-parte proceedings without hearing the appellant the penalty imposed was Rs. 4.5 lacs, now after the appellant appeared before SEBI and contested the penalty was imposed at Rs. 6 lacs. He further submitted that the investigation in the trading of the shares of M/s. K. Sera Sera Productions Ltd. (hereinafter referred to as 'the company'), was conducted for two patches. The appellant is charged for circular trading only in one patch. The appellant specifically adverted attention of the AO on the quantum of penalty imposed on other persons involved in the matter. However, the same was not considered and the impugned order was passed.

5. Mr. Vishal Kanade, the learned counsel for the respondent submitted that there is no parity between the cases of the so called similar situated entities with the present appellant. Other persons were charged for synchronized trading while the appellant was charged for circular trading and, therefore, he submitted that interference in the quantum is not warranted.

6. Upon hearing both the sides, in our view the order of the AO on the quantum of the penalty cannot be sustained for the following reasons.

7. The appellant has filed at 'Annexure E' to the affidavit in rejoinder a copy of the order of the AO dated September 30, 2010 which would show that in the same scrip 10 entities had indulged into synchronized / circular trades during the period from June 1, 2004 to October 31, 2004. The noticee therein i.e. S. P. J. Stock Brokers Pvt. Ltd. had buy quantity 16,15,507 and sell quantity 16,55,882. The total buy quantity within group was 57,94,907 and sell quantity was 61,67,615. Penalty of Rs. 50,000/- was imposed on the said noticee.

8. So far as the present appeal is concerned, the order of the AO would show that the appellant has indulged into buying and selling of shares ranging from 1500 to 2000 shares and the total trading within the group was 47,387.

9. The submission of the learned counsel for the respondent that nature of trades in the case of S. P. J. Stock Brokers Pvt. Ltd. was synchronized, while in the present case, the appellant indulged into

circular trades is without any merit as the same would not qualitatively affect the nature of the fraudulent and unfair trade within the meaning of PFUTP Regulations.

10. The appellant has adverted the attention of the AO by making the written submissions in detail regarding other cases which is also reproduced by the AO in internal page No. 17 onwards of the impugned order. He has however not dealt with the said issue in his order and simply observed that the act of noticee is repetitive in nature. He further observed that disproportionate gain or unfair advantage is not available on the record and slapped the penalty of Rs. 6 lacs. Similar observations were made by another AO in the case of S. P. J. Stock Brokers Pvt. Ltd. (supra) and the penalty of Rs. 50,000/- was imposed for violation of PFUTP Regulations.

11. Considering all the facts on record, the following order :-

### **ORDER**

1. The appeal is hereby partly allowed.
2. The order of the AO on merits of the case is hereby confirmed.

3. The order to the extent of imposing a monetary penalty of Rs. 6 lacs is hereby set aside. Instead a monetary penalty of Rs. 50,000/- is imposed.
4. The appeal is accordingly disposed of without any order as to costs.

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

Sd/-  
Justice M. T. Joshi  
Judicial Member

06.03.2020  
Prepared & Compared by  
PTM