

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved on: 6.8.2020**

**Date of Decision: 25.8.2020**

**Misc. Application No.144 of 2020**  
**(Application for Interim Relief)**

**And**

**Appeal No.159 of 2020**

Mrs. Bharti Goyal  
WZ-140/152, 3<sup>rd</sup> Floor,  
Captain Satish Marg, Rishi Nagar,  
Rani Bagh, Delhi-110034. ... Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
G Block, Bandra Kurla Complex,  
Bandra East, Mumbai – 400051. ...Respondent

Mrs. Bharti Goyal, Appellant-in person.

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

**With**

**Appeal No.160 of 2020**

Mr. Laxmikant Vyas  
906, Vishwadeep Towers,  
Dist Centre Janakpuri,  
New Delhi, India – 110058. ... Appellant

Versus

Securities and Exchange Board of India  
SEBI Bhavan, Plot No.C4-A,  
G Block, Bandra Kurla Complex,  
Bandra East, Mumbai – 400051. ...Respondent  
Ms. Poonam D. Gadkari, Advocate i/b Juris Matrix Partners  
LLP for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Nidhi Singh and Ms. Kinjal Bhatt, Advocates i/b. Vidhii Partners for the Respondent.

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

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

1. These two appeals have been filed challenging the adjudication order of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated 28<sup>th</sup> February, 2020.

By the said order a penalty of Rs.5 lakhs each has been imposed on the Appellants for violation of Regulations 3(a), (b), (c) and (d), 4(1), 4(2)(a) and (e) of 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, 2003') by the Appellants, among others. Since the order impugned in both the appeals is the same and the basic facts relating to the appeals are also similar, we have heard these appeals together and are disposed of by this common decision.

2. The basic facts relating to the appeals are as follows: -

3. A group of 16 entities are held to be responsible for raising the price of the scrip of Mapro Industries Ltd.

(hereinafter referred to as 'Mapro') during the investigation period from July 1, 2014 to November 30, 2014. It is noted that during this period the price of the scrip was raised from Rs.79.15 on July 1, 2014 to a high of Rs.493.40 on November 10, 2014 and thereafter closing at Rs.430 on November 28, 2014. Though only six entities were found to be suspected group entities the scope of the investigation was expanded to another ten entities who were found to be part of the top traders during the investigation period. What is held in the impugned order is that though there is no connection/relationship of these ten entities to the six suspected entities by the very manipulative nature of their trades such as placing buy orders mostly at the beginning of trading hours and substantively above the Last Traded Price (hereinafter referred to as 'LTP') they have manipulated the trading system and disturbed the market equilibrium in the scrip of Mapro. Together these ten entities raised the price of the scrip by Rs.241.95 by trading a total quantity of 1174 shares in 43 trades. It was also held in the impugned order that the contribution of these ten entities was about 69% of the total net LTP which was achieved in 29 trades with a total quantity of just 234 shares.

4. Coming specifically to the two Appellants herein, their relative contribution in terms of trades and raising of LTP etc. are as follows.

**(a) Details of trades by Bharti Goyal**

All Trades				Trades with LTP>0			Trades with LTP>0 and buy orders placed first			
No.of trades	No.of shares	LTP Cont. (in Rs.)	% to Mkt LTP	No.of trades	No.of shares	LTP Cont. (in Rs.)	No.of trades	No.of shares	LTP Cont. (in Rs.)	% to Market net LTP
9	284	28.65	8.13%	4	34	28.65	4	34	28.65	8.13%

From the above table, it was observed that Bharti Goyal purchased 284 shares through 9 trades and her buy trades contributed Rs.28.65 to the LTP in the scrip during investigation period. It was also observed that out of 9 trades, 4 trades contributed to positive LTP and all in such 4 trades, buy orders were placed before the sell orders and all 4 buy orders were first orders in the system. These 4 trades contributed 8.13% of market net LTP. Hence, it has been held that Bharti Goyal manipulated the price of the scrip by continuously placing buy orders in the early hours of trading at a rate higher than LTP.

**(b) Details of trades by Laxmikant Vyas**

All Trades				Trades with LTP>0			Trades with LTP>0 and buy orders placed first			
No.of trades	No.of shares	LTP Cont. (in Rs.)	% to Mkt LTP	No.of trades	No.of shares	LTP Cont. (in Rs.)	No.of trades	No.of shares	LTP Cont. (in Rs.)	% to Market net LTP
7	251	42.20	11.98%	4	105	42.20	3	54	27.2	7.72%

From the above table, it was observed that Laxmikant Vyas purchased 251 shares from 7 trades and his buy orders contributed Rs.42.20. It was also observed that out of 7 trades, 4 trades contributed to positive LTP. Further, out of such 4 trades, buy orders were placed before sell orders in respect of 3 trades which had positive LTP of 72.2% of market net LTP and all 3 trades were first trades of the day. Hence, it has been held that Laxmikant Vyas manipulated the price of the scrip by continuously placing buy orders first at a rate higher than LTP.

5. Ms. Poonam D. Gadkari, learned counsel for the Appellant Mr. L.K. Vyas contended that he is a salaried person occasionally indulging in small trading activities with small amount of money and bought a total of 251 shares of Mapro based on market rumours; bought the shares through ICICI Direct online trading platform and does not have any idea of LTP etc. Ms. Bharti Goyal, appearing in person contends that she invested in the shares of Mapro in the normal course of business as she is a small-time trader though not frequent. Both the Appellants also contended that they have no connection or relationship with any connected/suspected entity and finally lost money in this

investment. On a specific query from the Bench as to why they were placing buy orders at prices higher than the LTP, the learned counsel for the Appellant L.K. Vyas submitted that Mapro was found to be a good investment and since people were not selling the shares they were placing buy orders at a higher price than LTP.

6. On the other hand, learned counsel for the Respondent in Appeal by Vyas (Appeal no.160 of 2020) Shri Kumar Desai contends that placing buy orders well above the LTP is completely irrational as no rational investor would like to buy shares at a price substantially higher than the LTP. Moreover, both the Appellants were placing orders in the trading system early in the day and thereby raising the price unilaterally which is effectively market manipulation. In the process they also impacted the volumes apart from impacting the price of the scrip; and both volume manipulation and price manipulation are PFUTP violations. Shri Kumar Desai further substantiated his contention in terms of the trading data details in the impugned order and summarized in para 4 of this order. The learned counsel further reiterated that though no connection/relationship of these two Appellants with other entities in question could be established the nature

and pattern of their trading itself is found to be foul of the stated provisions of the PFUPT Regulations. Shri Kumar Desai, learned counsel also relied on the ratio of the judgement of the Hon'ble Supreme Court in the matter of ***Kishore R. Ajmera (2016) 6 SCC 368*** and stated that in matters like PFTUP violations many a times hard evidence is not forthcoming and only a preponderance of probability is sufficient to establish violation.

7. Shri Anubhav Ghosh, learned counsel for the Respondent in Appeal no.159 of 2020, while adopting the arguments put forth by Shri Kumar Desai, further emphasized how trading dynamics alone is sufficient to establish PFUTP violations and how deceptive the nature of trading adopted by the Appellants are. Further, in addition to Ajmera (supra), he also relied on the judgment of the Hon'ble Supreme Court in ***SEBI vs. Rakhi Trading (CA No. 1969/2011, order dated February 8, 2018)***.

8. The relevant provisions of the PFUTP Regulations are quoted below:-

**“PFUTP Regulations, 2003**

***3. Prohibition of certain dealings in securities***

*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 thereunder.*

#### ***4. Prohibition of manipulative, fraudulent and unfair trade practice***

*(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;*

.....

*(e) any act or omission amounting to manipulation of the price of a security;*

9. After hearing the learned counsel for the Appellant L.K.

Vyas and Appellant Ms. Bharti Goyal in person and after

perusing the records we are of the considered view that there are missing links in the investigation as brought out in the impugned order. While the trading pattern of both the Appellants; placing the buy orders for generally very small number of shares and the timing of the orders; all point towards possible violation of the provisions of PFUTP Regulations it is also possible that an investor through a thorough observation of the movement of the scrip could be placing orders in the system without any intention to manipulate the market. Since the dividing line is very thin and blurred distinguishing both these categories is a difficult, if not impossible, task. Though the learned counsel shed some light on this 'irrational behaviour' some more analysis of the overall trading in the scrip during the investigation period would have been helpful since no connection have been established between the Appellants and the suspected/connected entities nor with the promoters or directors etc. of Mapro Industries.

10. At the same time trading pattern of the Appellants and their explanation that they were keen to invest in the scrip of Mapro because of its extremely promising nature, [even ignoring that such an explanation is forthcoming for the first

time] also do not enlighten us. Therefore, we have to balance the lack of evidence of meeting of minds and the unconvincing response of the Appellants. That promising nature of the scrip is reflected neither in volume of trading in the scrip of Mapro during the investigation period of almost 8 months nor we have been told there were any major announcement regarding the performance of Mapro Industries during this period. Therefore, the Appellants had to have extraordinarily sharp eagle eyes to pick on an ordinary scrip which was witnessing an artificial price surge and in the process a limited surge in volumes during the investigation period which was primarily found to be handy work of some connected/suspected entities. We are unable to believe that the Appellants herein jumped on to the bandwagon by virtue of their market savviness, particularly when they claim that they are small/occasional investors with limited awareness and meagre funds.

11. The scrip of Mapro was not a miracle scrip, as reflected in its limited trading data given in the impugned order, for the Appellants to place their orders in the early morning itself, mostly just after 9 a.m. at prices higher than LTP by 2 to 4% as if this scrip had to be bought at any cost.

Further, if any investor takes such a stand, and if he/she is so convinced of the performance of the scrip, he/she would buy at least a reasonable quantity rather than placing a buy order for miniscule quantities of 1, 2, 5 or 10 shares etc as done by the appellants.

12. Therefore, in conclusion, we are of the considered view that the nature and pattern of trading of the Appellants are violative of the stated provisions of PFTUP Regulations, 2003 but in the given facts and circumstances of the matter and in the absence of any effort in the impugned order towards connecting the dots in terms of relationship/connection/money transfer/even some interaction between the Appellants and other suspected entities or to the promoters of Mapro we are unable to uphold the penalty imposed on the two Appellants. A warning to the Appellants that repetition of trading of similar nature/pattern as the impugned ones will lead to penal consequences is sufficient to meet the ends of justice.

13. Both the appeals are partly allowed with no order as to costs. Consequently Misc. Application no.144 of 2020 in Appeal No.159 of 2020, seeking interim relief has become infructuous and is also disposed of as such.

14. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala  
Presiding Officer

Dr. C. K. G. Nair  
Member

Justice M.T. Joshi  
Judicial Member

25.8.2020  
RHN