

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 21.08.2020

Date of Decision : 26.08.2020

**Misc. Application No. 206 of 2020
(Urgent Hearing)**

And

**Misc. Application No. 207 of 2020
(Stay Application)**

And

Appeal No. 222 of 2020

Rajesh Jivan Patel
C-7, Malwani Vedshree CHS Ltd.,
Plot No. 95, RSC Road No. 16,
MHADA Colony, Near Gate – 8,
Malad (W),
Mumbai – 400 095.

...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. Sharan Jagtiani, Senior Advocate with Ms. Surbhi Agarwal,
Mr. Aditya Bhansali and Ms. Rakshita Poddar, Advocates i/b
Mindspright Legal for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora, Advocate
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 Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the impugned order dated March 26, 2020 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) restraining the appellant and other noticees from accessing the securities market for a period of six months and further freezing the mutual funds and other securities of the appellant.

2. The facts leading to the filing of the present appeal is, that there is a company called Vishvjyoti Trading Limited ('Vishvjyoti' for short), which is listed on the BSE Stock Exchange ('BSE' for short). The scrip of this company was suspended for trading from February 17, 2003 on account of non-submission of quarterly reports which suspension was revoked on March 1, 2012. The first trade appears to have been carried out on April 5, 2013 and the second trade was carried out on May 31, 2013.

3. SEBI conducted an investigation into the trading activities of certain entities in the scrip of this company for the period March 1, 2012 to January 6, 2015 in order to ascertain whether any violation of the SEBI Act, 1992 or the SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) had occurred or not. The investigation was divided into two patches. Patch – 1 which is called the 'price rise' patch was for the period March 1, 2012 to March 18, 2014 and Patch – 2 which is called the 'price fall' was for the period March 19, 2014 to January 6, 2015. The present dispute relates to the Patch – 1 period.

4. Based on the investigation report, a show cause notice dated September 14, 2017 was issued to the appellant and other entities. In this show cause notice it was alleged that in 130 out of 134 trading days, only one trade per day was carried out even though there was no connection with the counter-parties. The sellers including the appellant on the sell side contributed more than 5% of the Last Trade Price ('LTP' for short) and that there were certain connection with other entities. It was alleged that the dealer of the appellant Mr. Shailesh Ghansham Parab was a director in Page 3 Media Limited and Bombay Talkies Media Limited in which Mr. Yuvraj Shetty was also a director and this Mr. Yuvraj Shetty was a director in Vishvjyoti and, thus, there was a connection between Mr. Shailesh Parab and the company and the trades of the appellant was carried out through Mr.

Shailesh Parab and through M/s. Mittal Share Brokers Private Limited who was the sub-broker of the trades of the appellant. It was also alleged that Mr. Shailesh Parab was also a director in M/s. Mittal Share Brokers Private Limited.

5. The show cause notice further alleged that the appellant bought 10,000 shares of the company through off-market transaction from one Mr. Ketan Chandrakant Wadhwan on April 27, 2013 and thereafter through Mr. Shailesh Parab converted these physical shares into demat mode on May 13, 2013. It was further alleged that there was a demand of 100/500/1000 shares on the stock exchange but the appellant only sold miniscule 10 to 15 shares and, in this fashion, sold 971 shares over a period of time at the higher circuit price. It was further alleged that the trading pattern indicated that the appellant was not a genuine seller and that he had no bonafide intention of selling the scrips and was only instrumental in establishing a higher price above the LTP. The show cause notice further alleged that the appellant was acting in concert and in collusion with Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited in a fraudulently manner and was indulging with other sellers in manipulating the price. The show cause notice further alleged that Mr. Shailesh Parab and M/s. Mittal Share Brokers

Private Limited were indulging in price manipulation in collusion with the appellant and other sellers and therefore violated Regulation 3 and 4 of the PFUTP Regulations.

6. Before the WTM, the appellant contended that the copies of documents asked for was not supplied thereby violating the principles of natural justice, since no proper reply could be given in the absence of necessary documents. It was further contended that the appellant purchased the shares through off-market transactions and since the price was increasing the appellant sold some shares. It was also contended that the appellant was not responsible for increase in the price in as much as the buy orders were already placed before the appellant placed its sell orders and that there was a difference in time between the buy orders and the sell orders which ranged from 10 minutes to 5.41 hours. The appellant contended that he had no role to play in the contribution to positive LTP nor was there any collusion between the buyer and seller. It was specifically stated that there was no meeting of minds, there was no price manipulation and there was no fraud played by the appellant and that the show cause notice was only based on surmises and conjectures.

7. The WTM after considering the reply framed two issues, namely, (i) whether the sellers (including the appellant) sold miniscule quantity of shares with a manipulative intent to increase the price and (ii) whether Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited acted in collusion with the sellers (including the appellant) to indulge in price manipulation.

8. The WTM after considering the replies, arguments and material evidence on record held that by not providing the order logs did not inhibit the sellers in any manner for the purpose of filing the response / reply. The WTM further held that there was no delay in the initiation of the proceedings.

9. The WTM further held that there was no need to give a finding as to whether the sellers were connected with each other or not, in as much as, the trading pattern of the appellant and other sellers indicate that the trades made by them were not genuine on the ground that the shares were bought through off-market, were bought at the same time and that the sellers held tradable shares and that the sellers traded these shares in miniscule quantities and sold on the circuit price and together the appellant and other sellers pumped up the price collectively

and thus, on a preponderance of probability, the appellant along with others were connected to each other.

10. The WTM further found that the fact that there was no connection between the buyer and the seller was immaterial, in as much as, the appellant was unilaterally manipulating the price thereby committing a fraud. The WTM thus concluded that on a preponderance of probability, the appellant and other sellers were connected to each other. The WTM also held that the trades carried out by the appellant and other sellers was with the sole purpose of raising the price of the scrip.

11. The WTM also came to a conclusion that Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited had no role to play in the manipulation of the price nor had any connection with the company.

12. On the aforesaid findings, the WTM passed the impugned order debarring the appellant for a period of six months for violating Regulations 3 and 4 of the PFUTP Regulations.

13. We have heard Shri Sharan Jagtiani, the learned senior counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent.

14. The learned senior counsel for the appellant urged that there was a specific charge of being connected with other sellers. There was also a specific charge that there was a collusion of the appellant along with other sellers with Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited with regard to the manipulation of the price. There was also a specific charge that there was a connection between Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited with the Company and were thus responsible for manipulation in the movement of the price of the scrip. The WTM has given a specific finding that there was no connection of the appellant with other sellers nor was there any price manipulation or collusion by Mr. Shailesh Parab and sub-broker with the company and that they were not involved in the manipulation of the price. It was, thus, urged that in view of the specific finding given by the WTM in this regard the entire charge against the appellant falls and that no order of penalty could be passed. In this regard the learned senior counsel for the appellant placed reliance on a decision by this Tribunal in the matter of *M/s. Nishith M. Shah HUF vs. Securities and Exchange Board of India (Appeal No. 97 of 2019 decided on January 16, 2020)*.

15. On the other hand, Shri Kumar Desai, the learned counsel for the respondent contended that there is an inter-connection between the sellers and from the trading pattern it becomes clear that they were acting in concert and manipulating the price of the scrip. It was contended that even though there was no direct connection but on a preponderance of probability there is an indirect connection which has been specified by the WTM in the impugned order and which does not suffer from any error. It was also contended that the appellant along with other sellers were controlling the market volume of the price as was totally responsible for the increase in the price through fraudulent means. In support of his submissions, the learned counsel placed reliance on the decision of this of this Tribunal in the matter of *Jayprakash Bohra vs. Securities and Exchange Board of India (Appeal No. 162 of 2019 decided on November 5, 2019)*, *Mrs. Kalpana Dharmesh Chheda & Anr. vs Securities and Exchange Board of India & Anr. (Appeal No. 454 of 2019 decided on February 25, 2020)* and *Shri Lakhi Prasad Kheradi vs Securities and Exchange Board of India (Appeal No. 232 of 2017 decided on June 21. 2018)*.

16. Having heard the learned counsel for the parties, we are of the opinion that the impugned order in so far as the appellant is

concerned cannot be sustained, in as much as, the case is squarely covered by a decision of this Tribunal in the matter of M/s. Nishith M. Shah HUF (supra). The decisions cited by the respondent are distinguishable on facts. We are further constrained to observe that in the instant case the WTM has travelled beyond the specific charges framed in the show cause notice and, on this short ground, the impugned order also cannot be sustained.

17. The show cause notice gave a specific charge against the appellant and other sellers, namely, that they sold miniscule shares and increased the LTP. Another specific charge was that they were acting in concert with the sellers and indulged in the manipulation of the price of scrip in collusion with Mr. Shailesh Parab and M/s. Mitta Share Brokers Private Limited. When a specific finding has been given by the WTM that the appellant was not connected with other sellers, the question of acting in concert with other sellers therefore does not arise. We also find that there is no finding of any connection between the appellant as a seller with the buyer. We also find that there is a time difference between the buy orders and the sell orders. The increase in price of the shares is not at the instance of the appellant. In fact, the price has been fixed by the buyer which

price was accepted by the appellant when he sold his shares. We are, thus, of the opinion that the manipulation in price was done by the buyer who was responsible for the increase in the LTP.

18. In M/s. Nishith M. Shah HUF (supra) the Tribunal held as follows:-

“We are of the opinion that the impugned order cannot be sustained for the following reasons:-

- (a) The investigative reports nor the WTM or the AO found any connection between the buyer and the seller. We also find that neither in the investigative report nor in the impugned order any connection has been found between the appellant with the promoters / directors of the Company. Thus, no causal connection has been established.*
- (b) The investigative report finds that no adverse inference can be drawn against the buyer merely because the buyer had placed buy orders above LTP. On this basis, the buyer was exonerated from the charge of manipulation in the price of the scrip when admittedly the buyer was placing buy orders above the LTP.*
- (c) Buy orders were placed at 9.15 hrs and sell orders were placed during the course of the day but not immediately after the buy orders nor the sell orders of the appellants were placed before the buy orders.*
- (d) There is no finding that the appellant has indulged in fraudulent or unfair trade practices in securities.*
- (e) Selling miniscule amount of shares by itself is not illegal nor manipulative nor violative*

of Regulation 3 and 4 of the PFUTP Regulations unless collusion with others is found.

- (f) *Allegation that the appellant has contributed to the LTP cannot be upheld in the absence of any collusion with the buyer or promoter / director of the Company. One has to establish a connection between a buyer and with the seller in order to infer a manipulation in the price of the scrip.*
- (g) *The authorities have misread and misapplied the decision of the Supreme Court in Ajmera's case (supra). In this regard Paragraph 27 of the judgment is extracted here under:-*

“27. Let us apply the aforesaid test to the facts of the present cases before us wherein admittedly there is no direct evidence forthcoming. The first relevant fact that has to be taken note of is that the scrips in which trading had been done were of illiquid scrips meaning thereby that such scrips though listed in the Bombay Stock Exchange were not a matter of everyday buy and sell transactions. While it is correct that trading in such illiquid scrips is per se not impermissible, yet, voluminous trading over a period of time in such scrips is a fact that should attract the attention of a vigilant trader engaged / engaging in such trades. The above would stand fortified by the note of caution issued by the Bombay Stock Exchange in the form of a notice/memorandum alerting its members with regard to the necessity of exercising care and caution in case of high volume of trading in illiquid scrips, as already noted.”

In order to apply the aforesaid test, the facts of the present case is, that there is no direct evidence of collusion between the appellant as a seller with that of the buyer. There is no finding that the appellant

was known to the directors or promoters of the Company.

Since no direct evidence is forthcoming we have to see the indirect connection which is that the appellant was selling small quantities of scrips. Trading in small quantities in scrips is per se not impermissible as held in Ajmera's case (supra). If trading in miniscule amount leads to an increase in the price of the scrips one can presume or infer that the trading is manipulative but such trading cannot happen unilaterally. There must be evidence to show collusion between the buyer and the seller. In the instant case there is none. The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and the buyer.

- (h) *The charge that the appellant had contributed to the LTP as a seller which resulted in the manipulation in the price of the scrips cannot be sustained in the light of the glaring fact that the same charge against the buyer had been dropped.*
- (i) *In Jagruti Securities Limited vs Securities and Exchange Board of India (Appeal No. 102 of 2006 decided on October 27, 2008) and in Vikas Ganeshmal Bengani vs Whole Time Member, SEBI (Appeal No. 225 of 2009 decided on February 25, 2010) the Tribunal held that the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a sine quo non. We are in the entire agreement with the aforesaid decisions and reiterate that in the absence of any finding of collusion between the buyer and the seller the charge contributing to the LTP cannot be sustained."*

19. In the light of the decision in the case of M/s. Nishith M. Shah HUF (supra), we are of the opinion that in the absence of any connection between the appellant and other sellers and in the absence of any connection being found between the appellant with that of the buyer, the charge of collusion, manipulation or fraudulent transaction cannot be proved. It is reiterated that connection between buyer and seller is *sine qua non* for levy of charge of price manipulation which in the instant case is lacking especially when a specific finding has been given by the WTM that the main charge of connection with the company through Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited did not exist. Thus, there cannot be any manipulation nor can the charge be levied solely against the appellant as a seller.

20. The finding of the WTM that the decision in M/s. Nishith M. Shah HUF (supra) is distinguishable as it is only relevant for synchronized or circular trades where a connection between buyer and seller has to be established in order to prove manipulation is patently erroneous, in as much as, in all cases a connection between the buyer and seller is required to be established and which is essential to prove the charge of price

manipulation. We are of the firm opinion that the price manipulation in the instant case cannot be done unilaterally.

21. In view of the finding of the WTM that Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited had no role to play in the manipulation of the price of the scrip of the company and had no connection with the company the charge of manipulation and collusion against the appellant falls through and holding the appellant guilty was patently erroneous.

22. In the light of the aforesaid, the impugned order cannot be sustained and is quashed in so far as the appellant is concerned. The appeal is allowed. All misc. applications are accordingly disposed of. In view of the aforesaid, it is not necessary to go into the question of delay in the initiation of the proceedings. We, however, observe that non supply of the log sheet, was an infringement of the appellant's right to file an appropriate response after considering the entire log sheets. Merely supplying selected portions of the log sheet which suits the respondent amounts to cherry picking and, in our opinion, amounts to violation of the principles of natural justice.

23. Before parting, we are of the view and constrained to observe that the investigation in the present matter was totally

shoddy. No effort was made to investigate the buy side of the transaction nor any effort has been made to analyze it which was necessary to consider the price manipulation in the scrip of the company. Targeting the appellant and other entities for the manipulation in the price was an irresponsible act especially when the investigation report indicated that there were other sellers. We also find from a perusal of the investigation report that there was no connection between the sellers in spite of which a specific charge was framed in the show cause notice that the appellant and other sellers were connected with each other. Such framing of charge which was against the findings given in the investigation report was wholly illegal. The investigation report clearly indicated that Mr. Shailesh Parab and M/s. Mittal Share Brokers Private Limited had indulged in price manipulation of the scrip and had a connection with the company. This aspect should have been deeply investigated.

24. In view of the aforesaid, parties will bear their own costs. In view of disposal of appeal, both the Misc. Application Nos. 206 of 2020 and 207 of 2020 have become infructuous and are disposed of accordingly.

25. 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

26.08.2020
msb