

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Order Reserved On: 03.11.2020**

**Date of Decision : 19.11.2020**

**Misc. Application No. 403 of 2020**

**And**

**Appeal No. 402 of 2020**

Rajesh Kumar

R/o 9/76, Baghichi Galli,  
Block No. 9, Vishwas Nagar,  
Shahdara,  
Delhi-110 032

...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. Amit Gupta, Advocate with Ms. Kapila Mahendroo,  
Advocate for the Appellant.

Mr. Suraj Chaudhary, 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: Justice Tarun Agarwala, Presiding Officer

**Misc. Application No. 403 of 2020**

For the reasons stated in the application, the delay in filing  
the appeal is condoned. The Misc. Application is allowed.

**Appeal No. 402 of 2020**

1. The present appeal has been filed against the order dated June 25, 2020 passed by the Adjudicating Officer (“AO” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) imposing a penalty of Rs. 5 lakhs for violation of regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience).

2. The brief facts leading to the filing of the appeal is, that the investigation in the scrip of Cupid Trades & Finance Limited was carried out for the period January 06, 2010 to December 31, 2014. This investigation was divided into six patches. The appellants’ trade are in patch three. The allegation in the show cause notice is, that the appellant executed buy trades and contributed to negative Last Trade Price (“negative LTP” for convenience) which were violative of regulation 3 and 4 of the PFUTP Regulations. The AO, after considering the material evidence on record found that out of 8 trades executed by the appellant 6 trades of one share each contributed to a negative LTP of Rs. 7.15. The AO further

found that even though the appellant was a miniscule buyer nonetheless, the pattern and methodology adopted by the appellant in buying one share when more sell orders were there in the market indicates the intention of the appellant to bring the price down. The AO accordingly imposed a penalty of Rs. 5 lakhs. The Appellant being aggrieved has filed the present appeal.

3. We have heard Mr. Amit Gupta, learned counsel along with Ms. Kapila Mahendroo, advocate for the appellant and Mr. Suraj Chaudhary, learned counsel along with Ms. Nidhi Singh and Ms. Kinjal Bhatt, advocates for the respondent through video conference.

4. The learned counsel for the appellant contended that the impugned order is violative of the principles of natural justice since no proper opportunity was given to the appellant to contest the matter at the time of hearing. It was also urged that the appellant is only a miniscule buyer and execution of 6/8 trades does not indicate any pattern or any methodology nor indicates any manipulation or collusion or execution of the trades which are fraudulent and violative of the regulation 3 and 4 of the PFUTP Regulations. It was also contended that the

trades executed by the appellant does not show any negative LTP as is clear from the chart which is shown in the impugned order at page 61 of the appeal paper book.

5. On the other hand, the contention of the learned counsel for the respondent was that even though the appellant may have executed miniscule trades, nonetheless, the pattern and the methodology indicates the intention of the appellant to bring the price down and, therefore the appellant was not a genuine trader and the trades executed were violative of the PFUTP Regulations.

6. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in the present appeal is squarely covered by a decision of this Tribunal in ***M/s Nishith M. Shah HUF vs. SEBI (Appeal No. 97 of 2019 decided on January 16, 2020)***. The Tribunal in the aforesaid matter held:-

*“4. We have heard Shri Saurabh Bachhawat, the learned counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent SEBI at some length. 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.”*

7. In the instant case, we find that there is no finding of any connection of the appellant with other noticees or with the seller from whom the appellant had purchased the scrip. There is also no finding that the appellant had any connection with the promoters/ directors of the company. We are further of the opinion that no adverse inference can be drawn merely by

purchasing of one share unless a collusion is shown between the buyer and the seller which in the instant case is lacking. We also find that the intention of the appellant was to bring the price of the scrip down is not based on any sound reasoning in as much as it is seller who had placed the price below the LTP which indicates that it was the seller who was trying to bring the price down. No action has been taken against the seller and, therefore, holding the appellant guilty for violation of the PFUTP Regulations is totally misconceived. In our view, the appellant being a miniscule buyer, the trading pattern and methodology cannot be culled out from 6/8 trades which he made unless collusion is shown with the other noticees or the seller or with the directors and the promoters of the company. In any case the trades executed by the appellant amounts to 0.01% of the total shares(48,519)traded and thus such miniscule trading will have no impact either on the pattern or the methodology.

8. In the light of the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed at the admission stage itself without calling for a reply. In the circumstances of the case, there shall be no order as to costs.

9. 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

19.11.2020  
PK