

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 22.10.2020

Date of Decision : 04.01.2021

Appeal No. 357 of 2020

Tanuj Khandelwal
212, Saket Colony,
Makarwali Road,
Vaishali Nagar,
Ajmer,
Rajasthan – 305 001.

...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. Vikas Bengani, 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

1. The present appeal has been filed against the order dated
August 31, 2020 passed by the Adjudicating Officer ('AO' for

short) of Securities and Exchange Board of India ('SEBI' for short) imposing a penalty of Rs. 8 lakh for violation of Regulation 3 and 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

2. We have heard Mr. Vikas Bengani, the learned counsel for the appellant and Mr. Suraj Chaudhary assisted by Ms. Nidhi Singh and Ms. Kinjal Bhatt, the learned counsel for the respondent through video conference.

3. A show cause notice was issued in the trading of the scrip of Malabar Trading Company Ltd. ('MTCL' for short). It was alleged that the appellant had contributed to more than 5% of the total market positive LTP through 63 trades for a total quantity of 4304 shares during patch-1. It was further alleged that the appellant placed sell orders in the range of 1 to 500 shares when the respective buy order quantity was in the range of 100 to 3400 shares especially when more shares were available, in spite of which the appellant on most of the dates traded only on one share. It was, thus, alleged that the appellant was manipulating the share price and created misleading

appearance of trading in the scrip by such trades thereby violating Regulation 3 and 4 of PFUTP Regulations.

4. The AO after giving an opportunity of hearing and after considering the material evidence on record found that the appellant was guilty of the allegations made in the show cause notice. The AO found that the appellant had no bonafide intention to sell when sufficient buy orders were available and despite having adequate holdings in the scrip of MTCL sold only one share per transactions which resulted in creation of positive LTP and thus created false misleading appearance of trading in the securities market. The AO, thus, held that such trading pattern amounts to manipulation of the price of the scrip.

5. The learned counsel for the appellant vehemently contended 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. Securities and Exchange Board of India (Appeal No. 97 of 2019 decided on January 16, 2020)* and also *Rajesh Marchya (HUF) vs. Securities and Exchange Board of India (Appeal No. 496 of 2019 decided on February 7, 2020)* which are related to the trading in the same scrip, namely, MTCL.

6. The learned counsel for the appellant also placed reliance on the order passed by AO in the matter of *Mr. Jayant Indulal Sethna dated April 26, 2018*.

7. Having heard the learned counsel for the appellant and upon perusal of the impugned order we are of the opinion that the case of the appellant is distinguishable and consequently the decision in *M/s. Nishith M. Shah HUF (supra)*, *Rajesh Marchya (supra)* and *Mr. Jayant Indulal Sethna (supra)* cases are not applicable and are distinguishable on facts. We find that except on three occasions the appellant only sold one share at a time on a daily basis. This trading pattern created misleading appearance with intention to manipulate the market if not the price. Thus, even if there is no connection with the buyer the trading pattern shows a concerted effort to manipulate the market and therefore we are of the opinion that the appellant was not acting as a genuine seller. We also find that the appellant had no bonafide intention to sell because inspite of sufficient buy orders being placed with abundant quantity being available in the market the appellant was only placing sell orders of one share at a time. This clearly shows his intention of manipulating the market for vested reasons.

8. Consequently, we are of the opinion that the finding of the AO that the appellant had violated the provisions of Regulation 3 and 4 of PFUTP Regulations does not suffer from any error of law.

9. We are, however, of the opinion that in the given circumstances when the appellant was only selling miniscule quantity the penalty of Rs. 8 lakh is harsh and excessive and does not commensurate with the alleged violations. Given the surrounding circumstances we are of the opinion that the penalty of Rs. 1 lakh in the given circumstances shall be just and sufficient.

10. In view of the aforesaid, the appeal is partly allowed. The impugned order is affirmed with the modification that the penalty of Rs. 8 lakh is reduced to Rs. 1 lakh which shall be paid by the appellant within four weeks from today.

11. 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 Private Secretary 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

04.01.2021
msb