BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 13.08.2013
Date of Decision: 04.09.2013

Appeal No. 27 of 2013

1. Vibha Sharma
2. Jitendra Kumar Sharma
A-23, Central Apartments,
Dayal Das Road,
Vile Parle East,
Mumbai – 400057. …… Appellants

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. Somasekhar Sundaresan, Advocate with Mr. Ravichandra S. Hegde, Mr. Abishek Venkataraman, Ms. Arti Raghavan, Advocates for the Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Pratham V. Masurekar, Advocates for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : A. S. Lamba

1. This is an appeal filed by Appellants – Vibha Sharma and Jitendra Kumar Sharma against Securities and Exchange Board of India before Securities Appellate Tribunal after being aggrieved by order dated December 19, 2012 passed by adjudicating officer appointed by Respondent under Section 15I(2) of Securities and Exchange Board of India Act, 1992 read with Rule 5(1) of Securities and Exchange

Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995; due to contravention of Regulations 3(a), (b), (c) and (d) and Regulation 4(1) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("PFUTP Regulations").

2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the trading activity of Smt. Vibha Sharma (Appellant no. 1) and Shri Sanjay Kashiram More, following a report from National Stock Exchange (NSE), to ascertain any instances of contravention of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 during period from December 1, 2009 to March 31, 2010.

3. Investigation revealed that Shri Jitendra Kumar Sharma (Appellant no. 2) is husband of Appellant no. 1 and has been equity dealer for Central Bank of India (CBI) since May 8, 2008. He used to place orders for CBI with brokers namely Kaviraj Securities P. Ltd. (Kaviraj) and Trustline Securities Ltd. (Trustline). Appellant no. 1 has a trading account with the broker, Eureka Stock & Share Broking Services Ltd. (Eureka). It was further observed that during period under investigation, on 16 days trades were executed in account of Appellant no. 1 in such a way that net quantity at end of day was zero (day traded). On 14 out of the said 16 days, sell trades of Noticee no. 1 matched 100% with that of buy trades of CBI. The Appellant no. 1 had earned positive square off difference in all trades with CBI as counter party. Noticee no. 1 traded for ₹ 35,63,000/- on 14 scrip days whereas, in the remaining 26 days during the investigation period her trading was ₹ 8,48,000/- only. Before placing orders for CBI, shares were purchased in account of Noticee no. 1 and sold to match the orders of CBI, thereby, earning undue profits at cost of CBI and its customers.

4. In view of above, SEBI vide order dated April 16, 2012 appointed Mr. P. K. Kuriachen as Adjudicating Officer (AO) under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudicating Rules') and to inquire into and adjudge under Section 15HA of SEBI Act, 1992 for alleged violation of provisions of Regulation 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations by Appellants.

5. The AO issued a common notice dated June 27, 2012 (hereinafter referred to as 'SCN') to the appellants in terms of Rule 4 of Adjudication Rules requiring to show cause as to why an inquiry should not be held against them for alleged violations as mentioned above.

6. SCNs were sent to Appellants by Registered Post Acknowledgment Due and same were duly delivered. Appellants vide letters dated July 12, 2012 and July 30, 2012 submitted their replied, in which they denied all allegations made against them and requested for certain documents relied on in proceedings so as to enable them to file further submissions before AO. AO provided all documents, as available, to Appellants as requested. Further, in interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of Adjudication Rules, vide letters dated September 6, 2012 granted an opportunity of personal hearing to Noticees on September 14, 2012. Appellant no. 2 alongwith their legal representative appeared before AO and made oral submissions. In the said hearing, Appellants requested for an opportunity of inspection of documents and make additional written submissions. Accordingly, an opportunity of inspection was granted to them on October 12, 2012. Upon completion of inspection, Appellants made additional written submissions vide their letters dated October 18, 2012 and November 19, 2012.

7. The Appellants, inter alia, submitted that : The Appellant no. 2 has been employed with Bank since 1991 and has served the bank in various capacities

including Branch Manager, Forex Dealer and Equity Dealer. In the capacity of an Equity Dealer his work includes – preparation of technical charts for consideration of Chief Dealer and promptly placing of orders for purchase and sale of shares with bank's broker, in accordance with instructions of Chief Dealer. He was always acting under control, instructions and supervision of Chief dealer and was not involved with decision making mechanism. Dealing room of Bank is located at its Central Office at the 5th Floor of Chandermukhi Building at Nariman Point is fitted with all necessary security features, has dedicated voice recorded telephone lines through which dealers like him place orders with brokers. Mobile phones are not permitted to be used in dealing room and hence, he did not carry his mobile to office while working as equity dealer for the Bank. Chief dealer or Investment Committee of the Bank take decision regarding script, quantity and price to be invested / traded on a day-to-day basis and such decisions are taken at beginning of trading day / session and executed during the day.

8. Appellant no. 1 traded in shares of various companies since April 2007 i.e. much before Appellant no. 2 became equity dealer for the bank. In interest of transparency, from time to time Appellant no. 2 has kept bank well informed regarding his wife's intention to trade, opening of her trading and demat accounts with Eureka, with FRR shares, her intention to obtain registration as a sub-broker, etc. Appellant no. 1 receives research reports from various stock brokers/analysts and trades on basis of such reports and on her perceptions. She tries to place orders for shares at price near to LTP, and follow normal market mantra of "buy low sell high". As a day trader, her profit target is generally low and in order to make good profit, she trades in high volumes. Appellant no. 1 short lists scrips on basis of TV channels, articles given in newspapers, research reports of experts, opinion/advise/technical calls from her brokers and other publicly available material/information.

9. Matching of some of orders placed by Noticee no. 1 on 14 out of 40 days with that of CBI was a mere coincidence. Noticee no. 1 traded in many scrips in which CBI did not trade during period from April 2007 to March 31, 2010 and that during period April 2007 to March 2012 only 10 scrips matched coincidentally with those of CBI. In case of PRISMCEM and NIITLTD, orders placed by Bank did not match with orders of Noticee no. 1.

10. Further, they have availed opportunity of inspection granted to them on October 12, 2012 but not all documents and records as requested by them were provided and that there is no document, record or evidence on record to show that Appellant no. 2 had communicated details of orders to be placed by CBI to Appellant no. 1 before placing orders with brokers and/or that Appellant no. 1 had traded on basis of same. Telephone lines in dealing room were recorded, at all times to ensure that there remains no scope for any manipulation/malpractices, etc.

11. Appellant no. 1 is wife of Appellant no. 2 and has been trading in the securities market since April 2007. The Appellant no.1's trading strategy is akin to a day trader. Trading in a manner such that all positions are squared off before close of market.

12. Appellant no. 2, at relevant time, was an equity dealer employed by Central Bank of India ("Central Bank"), an ISO 27001:2005 Certified PSB with distinction of complying International Standard for securities capabilities and worked as equity dealer of Central Bank from June 16, 2008 to June 1, 2011.

13. Appellant no. 1 had been trading in securities market considerably prior to Appellant no. 2's appointment as an equity dealer for Central Bank. Copy of Office Order No: CO: ITB: 2008-09, dated June 16, 2008, spelling out main duties and responsibilities of Equity dealer are :

(i) Preparation of Technical chart for the scrips/shares selected and choose by Chief Dealer – Treasury for his consideration.

(ii) Promptly placing buy/sell orders for scrips/shares as per instructions/directions of Chief Dealer- Treasury.

14. Appellant no. 2, as responsible employee of Central Bank had in fact disclosed and informed Central Bank vide his letters dated April 25, 2007, March 28, 2012 and June 2, 2012 about his wife, Appellant no. 1 being a day trader. Central Bank was also informed that she had opened a trading and demat account with Eureka Stock and Share Broking ("Eureka") and FRR Shares and that she also intended to register as sub-broker.

15. It was also stated by learned counsel for appellants that trade between Appellant no. 1 and Central Bank matched for 14 days only, out of total investigation period of 40 days and this is an inadequate sample size to arrive at conclusive results. Respondent should have extended the investigation period suitably and found the matching of trade during this extended period to prove the change of machining conclusively.

16. Learned counsel also stated that Respondent should have tried to obtain call details of Appellant no. 2's cell phone to prove if any communication took place between the two Appellants during investigation period, since these calls were not made available to Appellant no. 2, on plea that call details were not maintained by operators of cell phones for more than six months.

17. Similarly, learned counsel also stated that since recording of landline telephones in dealing was not available during investigation period, due to non-recording of conversation in dealing room over telephone at the relevant period, Respondent should have studies conversation of landlines of dealing room, after investigation perused, when this practice was started, to find if any conversation between two appellants existed.

18. Learned counsel for Appellants also stated that front running charge by Appellant no. 1 cannot be applicable in view of change in law on the subject and as at present only intermediaries can be changed as such, as has been held by Hon'ble SAT on their judgment in **Dipak Patel vs. Adjudicating Officer** case and accordingly, an investor, such as Appellate no. 1 cannot be held to be front-runner.

19. Learned senior counsel for Respondent stated his arguments from front running by Appellant no. 1, stated that she was in possession of information of purchases to be made by CBI, through Appellant no. 2 – who also happens to be the dealer for CBI in matters of sale and purchase of equity, on behalf of CBI. Facts of the case show front running, since she had purchased only one scrip on 14 days when her sale offer matched with purchase order of CBI of these days and these sales and purchases were more or less synchronized so far as timing and price was concerned. However, it may be pointed out that time of sale by Appellant no. 1 and time of purchase by CBI synchronized to within one hour of each other for 10 out of 14 trades and form 1 hour to 3 hour 31 minutes for another 4 trades. Similarly, quantity of shares offered for sale by Appellant no. 1 was always less than quantity of purchase by CBI and in fact it was quite a few times the sale by Appellant no. 1, in all cases.

20. Time difference of 3 hours 33 minutes 10 seconds is found in case of sale/purchase of scrip of Federal Bank when Appellant no. 1 purchased 10,000 shares of Federal Bank at 11:19:56 at ₹ 238 and placed these for sale straight away for entire quantity at 11.30 at ₹ 238, when last traded price of scrip was 236.55 and CBI placed order for purchase of 1,00,000 shares of same scrip at 15:03:01 at ₹ 239. The trade was struck at 15:19:52 which resulted in sale of entire quantity of shares offered by Appellant no. 1, which were purchased by CBI. It appears that Appellant no. 1 was sure that Federal Bank scrip offered by her for sale will be picked up during the course of the day at the price offered by her, even though the price of scrip had in fact fallen since the time she bought (₹ 238) to the time she offered the entire quantity of same for

sale (₹ 236.25) to the time when CBI put purchase order at ₹ 239/-, when LTP of scrip was ₹ 235.55.

21. Similarities are found in all 14 scrips offered for sale by Appellant no. 1 for 14 days, which resulted in purchase of these scrips, in full quantity by CBI, at price higher than price at which appellate had bought the scrip and price offered by CBI was, in fact higher than Last Traded Price (LTP) of the scrip on all these days. However, differences in some aspects do appear in matter of placement of time, which differs from 6 minutes 39 seconds to 3 hours 33 minutes and 10 seconds, but these differences occur due to peculiarities of different cases and may be depending on timing of approvals obtained by CBI, placement of cases for approval of Chief dealer or approval committee etc. Hence, it may not be desirable to go into these aspects but take trade of Appellant no. 1 and CBI matching to 100% of all these 14 cases, since trade resulted in purchase of entire quantity of scrip offered by Appellant no. 1. and at price demanded by her, was purchased by CBI.

22. Learned senior counsel for Respondent stated that this is clear case by fraud on market and other investors and manipulation of market by Appellant no. 1, suitably aided and advised by Appellant no. 2 since only Appellant no. 1 was in know of scrip, in advance of other investors, to be taken up for purchase by Central Bank, through Appellant no. 2 and Appellant no. 1 were also in know an advance the price at which CBI will be purchase same scrip and hence Appellant no. 1 was in a position to purchase same scrip at considerably lesser price (at more or less LTP) and offer the same for sale at price atmost matching the price at which CBI was to buy the scrip, after sometimes selling the scrip to some extent in market at LTP but keeping all or significant proportion of same to be offered for sale at considerably higher price than LTP of that time and most significantly not bothering to sell the same at or nearby at LTP but continued to offer the scrip at higher price than LTP, when for sometime the same was not sold at her sell order rate, since Appellant no. 1 was sure than same will

be picked up by CBI within the same day. This clearly shows Appellant no. 1 had access to some information, in advance, on which she relied and, this information was not in possession of other investors in the market and hence was able to obtain undue gains from her trade with CBI, and this is a clear case of insider trading, which may not qualify her for front runner, since by definition front running, at present, can be done by intermediaries only, but is a clear case of fraud on other investors in the market and manipulation of market.

23. Learned senior counsel for Respondent also submitted that insider trading regulations and fraud definition have been developed for purpose of ensuring level play field for all players. Investors/players in market who have recourse to privileged or special information, which is not in public domain, uses this information, practices fraud on other investors and on market and affects integrity of markets and other investors are put at a loss. Appellant no. 1 buys scrips at low price (LTP) and knows that CBI will purchase same scrip at higher price, pretending to be faceless in trading screen of NSE/BSE, but is not faceless since she is in possession of privileged information and uses the same and commits fraud on other investors.

24. Learned senior counsel for Respondent also defined front running as a specie of insider trading and as covered under Section 3 of Unfair Trade Practices Regulations. In the instant case, Appellant no. 2 has price sensitive information, is aware that there will be movement in price of a scrip based on this information and communicates this information to Appellant no. 1 who acts on same and hence it is a clear case of insider trading.

25. Learned senior counsel for Respondent further stated that Appellant no. 2 is dealer of CBI, while Appellant is a day trader and on 14 days when trade of Appellant no. 1 and CBI matched cannot be a matter of coincidence since Appellant no. 1 brought only one scrip on all these 14 days, which was purchased at LTP or nearby and scrip was offered for sale at substantially higher price that LTP at that point of time and

subsequent to this, CBI placed orders for purchase of same scrip at price almost matching price for sale of Appellant no. 1, which is again higher than LTP. and consequently, trade is finalized between Appellant no. 1, resulting in positive squaring off trade of Appellant no. 1 on all these 14 days.

26. Learned senior counsel for Respondent also submitted that this cannot be coincidence since more than 1200 scrips are traded on NSE everyday and Appellant no. 1 selects only one scrip on each of these 14 days, which is also brought by CBI on the same day, with price and time matching, though volume purchased by CBI is much larger than offered by Appellant no. 1 and cover the quantity offered by Appellant no. 1. Regarding quantity not matching, through this argument was not advanced by learned counsel for Respondent, but on perusal of orders for sale/purchase, price and timings etc., it is reasonable to conclude that quantity ordered for buy by CBI, has to be substantially higher compared to what is offered by Appellant no. 1, since price in both sale/purchase is substantially higher than LTP and hence all offers for sale for the quantities mentioned therein, what are at prices lower than price of sale, offered by Appellant no. 1, will be matched and trade concluded for these and thereafter, if some purchase order of CBI is still pending, same will be matched with sale offer of Appellant no. 1. Hence there cannot be exact match of quantity of sale by Appellant no. 1 and purchase by CBI and sale offer quantity of Appellant no. 1, has to be considerably less than what is being purchased by CBI.

27. Learned senior counsel for Respondent presented that exact matching of trades of Appellant no. 1 and CBI on 14 days was not a coincidence but a result of meeting of mind, which is borne out by events and since SEBI case is based on preponderance of probability, it is clear this probability of communication of acts of CBI being communicated to Appellant no. 1 and her acting on that basis is much more than probability of coincidence of timing and pricing on all 14 days of trade, resulting in positive squaring off of trade in favour of Appellant no. 1. Appellant no. 2 says that

he is only a dealer in CBI, entrusted with duties and responsibilities of preparation of technical charts for scrips/shares selected and chosen by Chief Dealer/Treasury for his consideration and promptly placing buy/sell orders for scrips/shares as per information/documents of Chief Dealer/Treasury. This may be true, but as dealer he is responsible for preparation of technical charts for scirps/shares selected and chosen by Chief Dealer/Treasury for his consideration and he was definitely in know of which scrip/share is likely to purchase on what day and at what time and at what price and in case Chief Dealer/Treasury was not making much changes to these charts prepared by dealer, he could be almost certain as to what will be purchased during the day and at what price. This point, as a matter of fact, could have been investigated further by Respondents, to add more weightage to preponderance of probability, in their favour.

28. Regarding examination of voice recording for the period for which it is available, learned senior counsel was of opinion that since voice recording for the period of investigation was not available, no useful purpose will be served, if conversation, as available in examined.

29. Regarding presentation that Appellants traded on basis of research and other information etc., learned senior counsel was of the view that this is not the case since matching of orders of 14 days, out of 40, matched to the extent of 100%. It happened on 14 days and cannot be on basis of independent research etc., but Appellant no. 1's trading was based on insider information, otherwise matching to this extent was not at all probable and hence impossible.

30. Concluding his arguments, learned senior counsel for Respondent stated that fraud is conclusively proved an instance case for which Regulations 3(a), (b), (c) and (d) 4(1) of PFUTP Regulation to apply.

31. Appellants also submitted case of **Dipak Patel vs. SEBI decided by SAT in appeal no. 216 of 2011, dated November 9, 2012** and in case of **Sujit Karkera vs.**

SEBI in appeal no. 167 of 2012 dated December 17, 2012 on which it has been held that front running is prohibited only in case of intermediaries as per Regulation 4(2)(g) of PFUTP Regulations. This has been made use of in present case, to the extent applicable.

32. Paras 11 to 13 of Dipak Patel's case are relevant and reproduced hereinbelow:-

> *"11. Learned senior counsel for the respondent Board has also placed on record certain definitions of 'front running' as it is commonly understood. As per the Major Law Lexicon by P Ramanatha Aiyar (4th Edition 2010), 'front running' is defined as under:*
>
> > *"Front running. Buying or selling securities ahead of a large order so as to benefit from the subsequent price move.*
> >
> > *This denotes persons dealing in the market, knowing that a large transaction will take place in the near future and that parties are likely to move in their favour.*
> >
> > *The illegal private trading by a broker or market-maker who has prior knowledge of a forthcoming large movement in prices. (Investment)"*
>
> *The Black's Law Dictionary (Ninth Edition) defines the term 'front running' as under:*
>
> > *"front-running, n. Securities. A broker's or analyst's use of nonpublic information to acquire securities or enter into options or futures contracts for his or her own benefit, knowing that when the information becomes public, the price of the securities will change in a predictable manner. This practice is illegal. Front-running can occur in many ways. For example, a broker or analyst who works for a brokerage firm may buy shares in a company that the firm is about to recommend as a strong buy or in which the firm is planning to buy a large block of shares."*
>
> *It will thus be seen that if a person trades in stocks or other investments having knowledge of the upcoming transaction by a third party which is likely to affect the market price of the investment, the person can be said to be doing front running. Examined in the above perspective, is clear that the appellants were doing front running in relation to the trades of the Passport. The Board, while dealing with the matter, has used the word "customised front running". We are unable to agree with learned counsel for the appellants that the Board has given up the charge of front running in the impugned order. Simply because the term front running is not used in the show cause notice, it does not mean that the charge has been given up. The conduct of the appellants as described in the show cause notice and as finally attributed to them in the impugned order, is the same. What we have to see is whether such front running is barred by the regulatory framework. Our attention was drawn to Regulation 4(2)(q) of the FUTP regulations which reads as under:*

*"**4.Prohibition of manipulative, fraudulent and unfair trade practices***

(1) ……

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud an may include all or any of the following, namely :-

(a) to (p) ……..

(q) an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract."

12. It is an admitted position on both sides that the aforesaid clause applies only to intermediaries and not to other persons trading in the securities market. Reference was made to the earlier FUTP regulations i.e. Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 wherein Regulation 6 prohibits front running by any person and reads as under:

*"**Prohibition of unfair trade practice relating to securities.***

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

(b) on his own behalf or on behalf of any person, knowingly buy, sell or otherwise deal in securities, pending the execution of any order of his client relating to the same security for purchase, sale or other dealings in respect of securities.

Nothing contained in this clause shall apply where according to the clients instruction, the transaction for the client is to be effected only under specified conditions or in specified circumstances;

(c) intentionally and in contravention of any law for the time being in force delays the transfer of securities in the name of the transferee or the deapatch of securities or connected documents to any transferee;

(d) indulge in falsification of the books, accounts and records (whether maintained manually or in computer or in any other form);

(e) when acting as an agent, execute a transaction with a client at a price other than the price at which the transaction was executed by him, whether on a stock exchange or otherwise, or at a price other than the price at which it was off set against the transaction of another client."

13. We are inclined to agree with learned counsel for the appellants that the 1995 Regulations prohibited front running by any person dealing in the securities market and a departure has been made in the Regulations of 2003 whereby front running has been prohibited only by intermediaries. The cases cited by the learned senior counsel for the Board and referred to above also relate to front running by intermediaries and not by other traders in the market. In the absence of any specific provision in the Act, rules or regulations prohibiting front running by a person other than an intermediary, we are of the view that the appellants cannot be held guilty of the charges levelled against them. There is no denying the fact that when the appellants placed their order, these were screen based and at the prevalent market price. Admittedly Passport was the major counter party for trading in the market and was placing huge orders and hence possibility of order of traders placing orders for smaller quantities matching with orders of Passport cannot be ruled out. Therefore, it cannot be said that they have manipulated the market. The alleged fraud on the part of Dipak may be a fraud against its employer for which the employer has taken necessary action. In the absence of any specific provision in law, it cannot be said that a fraud has been played on the market or market has been manipulated by the appellants when all transactions were screen based at the prevalent market price.

We are of the considered view that in the facts and circumstances of the present case, the Board has erred in holding the appellants guilty of violating regulation 3 of the FUTP regulations. We, therefore, set aside the impugned orders and allow the appeals with no order as to costs."

33. A minute perusal of the judgment of Dipak Patel makes it evident that act of front running is always considered injurious be it an intermediary or any other person for that reasons. We would like to give a liberal interpretation to the concept of front running and would hold that any person, who is connected with the capital market, and indulges in front running is guilty of a fraudulent market practice as such liable to be punished as per law by the respondent. The definition of front running, therefore, cannot be put in a straight-jacket formula.

34. The learned adjudicating officer has applied Regulation 3(a), (b), (c) (d) and 4(1) of PFUTP Regulations to the instance case, which read as under :-

Prohibition of certain dealings in securities

"**3**. 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 rule sand the regulations made thereunder."

"**4. Prohibition of manipulative, fraudulent and unfair trade practices**

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities."

35. Main findings of learned adjudicating officer are that Appellants are husband and wife and out of 40 days of trading days, under investigation, Appellant no. 1 has traded for single scrip on 14 days, when her trading matched 100% with trading in same scrip by CBI, resulting in net positive square off for Appellant no. 1 on all these days, resulting in profit to extent of ₹ 7,15, 857 on trading volume of ₹ 35,63,000/-; by placing sale orders for these scrips by Appellant no. 1 at prices significantly higher than Last Traded Price (LTP) of the scrip but equal to or slightly below the buy order placed of CBI, which was also significantly higher than LTP, but more or less matched with sale order price of Appellant no. 1, who was a day trader i.e. she squared off her position at end of the day, and that Appellant no. 2 was a dealer on behalf of CBI, who was definitely in possession of information on trading to be done by CBI on purchase/sale of scrips by informing Appellant no. 1 about name of scrip, sale price, volume, likely time of placing purchase order, etc., so that Appellant no. 1 could suitably buy the same scrip in morning and put sale order for same, sometime before purchase order by CBI is to be placed. This cannot be mere coincidence since Appellant no. 1 placed orders for one scrip only on these 14 days and made handsome profits on each of these days by placing sale order at significantly higher price than

LTP of scrip, which were matched by purchase order by CBI, which also placed at significantly higher price than LTP, but matched sale price of Appellant no. 1 and this cannot be a mere coincidence nor result of research or other such activities undertaken by Appellant no. 1 but a clear case of fraud to other investors, who were not privy of such information as Appellant no. 1 and manipulation of market and hence clear violation of 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003 and hence imposition of penalty of ₹ 25 lac jointly and severally on Appellant nos. 1 and 2 is justified and is commensurate with committed by Appellants, since undue profit of ₹ 7,15,854/- was earned by Appellant no. 1, during those 14 days.

36. In view of above, the Tribunal is of the opinion that :

(1) Appellants were related as husband and wife and since wife was a day trader and husband is dealer in securities for Central Bank of India, there was exchange of information between them and Appellant no. 1 traded on basis of this information (by whatsoever means it was communicated) and made handsome profits by manipulating sale price of one scrip only on each and every of these 14 days, out of 40 days of investigation period, and was suitably supported, in this activity by Appellant no. 2.

(2) Advance information of definite trade by CBI at manipulated price of particular scrip was available to Appellant no. 1 and on basis of this information she traded in security market and secured undue profits, which was to disadvantageous to other investors, since they were not privy to this privileged information and resulted in manipulation of securities in market.

(3) This is not a case of mere coincidence as submitted by learned senior counsel for appellants, in sense that Appellant no. 1 was working on basis of her studies, research reports, types by broker, reports of commercial channels of TVs etc. or on basis of mantra of trading, namely, “buy cheap

sell costly", since matching of trade at significantly higher price than LTP, timing, quantity of sale/purchase matched to extent of 100% on all 14 days, out 40 days of investigation period.

(4) Perfect matching of trade of Appellant no. 1 and CBI on 14 days, out of 40 days of investigation period of 40 days, in statistically very significant and hence study for larger number of days to see matching, was not required.

(5) No useful purpose will be served by listening to recordings of telephonic conversation of dealing room for the period when the same is available, though not pertaining to days of investigation period. Since practice of recording telephonic conversation was introduced subsequent to investigation period and the same is not available for investigation period.

(6) Appellant nos. 1 and 2 have not been implicated in the case on basis of being mere husband and wife and on basis of their relation, but on basis that Appellant no. 1 was privy to inside privileged information, not in public domain, since she was wife of Appellant no. 2, who was dealer in securities on behalf of CBI; is borne out of facts and circumstances of the case; since investigation has brought about significant facts of the case where trading on basis of privileged information by Appellant no. 1 has been sufficiently proved beyond reasonable doubt, based on preponderance of probability against Appellants acting in concert with each other for committing fraud on investors and manipulation of securities market and not on basis of premise that matching of trade to 100% on 14 days out of 40 days of investigation period was mere coincidence.

(7) Hence, charges against Appellants have been sufficiently proved, on basis of above, and Appellants have violated Regulations 3(a), (b), (c), (d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices

Relating to Securities Market) Regulations, 2003 (PFUTP Regulations) and that penalty of ₹ 25 lac on Appellants to be paid jointly and severally is justified, in view of above violations and undue gain of ₹ 7,15,854/- earned by Appellant no. 1.

37. In view of above, the appeal is dismissed without any order to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

04.09.2013
PTM