BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 336 of 2017

Shri Nagad Sarvar
1/4025, Behind Old Civil Hospital
Chawk Bazaar,
Surat- 395 001   …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. Nagad Sarwar, Appellant in Person.

Mr. Vishal Kanade, Advocate with Mr. Chirag Bhavsar, Advocate i/b MDP & 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

1.   This appeal has been filed challenging the order of the Adjudicating Officer ("AO" for short) of the Securities and Exchange Board of India ("SEBI" for short) dated November 27, 2015. By the said order a penalty of ₹ 16 lakhs has been imposed on the appellant under Section 15 HA of the Securities

and Exchange Board of India Act, 1992 ("SEBI Act" for short) for violation of Regulation 3 and Regulation 4(2) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short).

2.   SEBI conducted an examination relating to trading in the scrip of Vamshi Rubber Limited ("VRL" for short) during the period January 01, 2011 to June 30, 2011. The shares of VRL were traded on 124 days on BSE Limited during this examination period. The impugned order records that the appellant had indulging in wash trades/ self trades on multiple days during the examination period. The total number of shares of VRL bought and sold by the appellant during this period comes to 19727 shares. Trading was in small quantities of shares in the range of 2 shares to 2000 shares on the buy side and 1 to 2016 shares on the sell side during these days. It is also stated in the impugned order that these quantities though appear small, are substantive percentage of the overall volumes in the scrip given its relative illiquid nature as given in the show cause notice. In conclusion, it is noted in the impugned order that the appellant had executed 187 self trades involving 19727 shares in 47 days and thereby violated Regulation 4(2)(g) of the PFUTP

Regulations. For facility, Regulation 4(2)(g) is extracted hereunder:-

> *"4. Prohibition of manipulative, fraudulent and unfair trade practices*
>
> *(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:-*
>
> *(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;"*

3. Appellant, appearing in person submitted that he is a small investor who used to invest in small quantities as a day trader; traded in the VRL without having any knowledge or intention to violate any laws; his buying and selling small quantities were on different days or after substantive time on the same day in the open market. The appellant also states that he incurred losses also on several occasions. Further, the appellant strongly pitched for appropriate amount of compensation for issuing a highly arbitrarily order devoid of any merit by SEBI and thereby causing both financial and mental agony to the appellant.

4.   The learned counsel Shri Vishal Kanade appearing on behalf of the respondent SEBI on the other hand contended that self trades or wash trades are trades without any change in beneficial ownership and as such when the same entity is indulging in such trades on a repetitive basis it is clearly violation of PFUTP Regulations and hence the penalty imposed on the appellant is just and fair. The learned counsel for the respondent also relied on the judgment of this Tribunal in the matter of *Angel Broking Private Limited vs. SEBI (Appeal No. 25 of 2013 decided on 22.10.2013)* to emphasise that if violation is established penalty must follow.

5.   We have gone through the documents produced before us and taken note of the submissions made by both the parties. We note that, on many of the days the appellant has bought and sold the shares and on some of those days the quantities bought and sold also matched. However, there were also several days on which there was only either a buy trade or a sell trade.

6.   Generally, only when trades placed by the same party are matched within a short period of time it can be categorized as self trades. Here, it is on record that the appellant did not do multiple trades on the same day. There are a few days when

both buy and sell orders of the same quantity were placed. Even on those days when perfect matching is noticed there is nothing on record to show that those trades were entered within a short time interval. In the absence of which, we are constrained to accept the submission of the appellant that being a day trader, on some days, he was placing orders in both the directions with substantive time gap. It is also claimed by the appellant that on some of the days he actually did take delivery and therefore the beneficial ownership also got changed. The impugned order does not indicate the timing of the alleged trades nor it goes into change in beneficial ownership nor does it bring out any element relating to how it adversely affected the market. Even though preponderance of probability is sufficient to prove PFUTP violations still fraudulent and unfair trade has to be established with some degree of confidence. Given the absence of such findings and given the undisputed fact that the appellant was a day trader we are constrained to give benefit of doubt to the appellant. However, given the facts and circumstances of the matter, we do not find any reason to award cost to the appellant though the appellant has made a high pitched demand for exemplary costs.

7.   In the result, the appeal is allowed and the impugned order is quashed. No orders on costs

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

Sd/-
Justice M. T. Joshi
Judicial Member

06.08.2019
Prepared & Compared By: PK