BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved : 6.1.2020
Date of Decision : 28.1.2020

Misc. Application No.274 of 2019
And
Misc. Application No.275 of 2019
And
Appeal No.219 of 2019

Sapna Dilip Bombaywala
439, Hasam Premji Building,
2nd Floor, Kalbadevi Road,
Mumbai – 400 002. ….. Appellant

Versus

Whole Time Member
Securities and Exchange Board of India
SEBI Bhavan, C-4A, G- Block,
Bandra-Kurla Complex,
Bandra (East), Mumbai – 51. …… Respondent

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju, Advocate i/b. R.V. Legal for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Vivek Shah and Mr. Ahbhiraj Arora, Advocates i/b.ELP for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M.T. Joshi, Judicial Member

Per : Justice Tarun Agarwala

1. The present appeal has been filed against the order dated 12th February, 2019 passed by the Whole Time Member restraining the appellant from accessing the securities market for a period of 6 years and further prohibiting the appellant from buying, selling or otherwise dealing in securities directly or indirectly for a period of 6 years.

2. The charge leveled against the appellant is, that it had contributed to the positive last traded price (LTP) as a seller and that the trades made by the appellant were not genuine which resulted in manipulation in the price of the scrip known as Jolly Plastic Industries Ltd. thereby creating misleading appearance of trading in the scrip of the Company.

3. The Whole Time Member held that miniscule shares were being sold by the appellant when there was demand for more shares and the appellant had a substantial holding in that share and thus the motive was to increase the price of the scrip. The Whole Time Member further found that selling miniscule shares indicates that the appellant was not a genuine trader. The Whole Time Member took note of the decision of the Supreme Court in SEBI vs. Kishore R. Ajmera (2016) 6 SCC 368 holding that the trading pattern of

the appellant created a misleading appearance which amounted to manipulation in the price of the scrip and were therefore violative of Regulations 3 and 4 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

4. Having heard the learned counsel for the parties we are of the opinion that controversy involved in the present case is squarely covered by the decision of this Tribunal in Appeal no.97 of 2019 Nishith M. Shah HUF vs. SEBI decided on 16th January, 2020.

5. In addition to the reasons given in the said judgement, we are of the opinion that against the charge of raising price artificially one has to establish the element of collusion between the buyer and the seller which in the instant case is absent. On a query raised by us we were informed that only one buyer had been prosecuted but we had been further informed that the said buyer did not purchase it from the appellant. Thus, there is no connection between the appellant as a seller with any buyer. In the absence of element of

collusion between the buyer and the seller the charge cannot be established.

6. Consequently, for the reasons stated in Appeal no.97 of 2019, Nishith M. Shah HUF vs. SEBI decided on 16th January, 2020 the impugned order cannot be sustained and is quashed. The appeal is allowed. Misc. Applications are accordingly disposed of.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M.T. Joshi
Judicial Member

28.1.2020
Prepared and compared by
RHN