BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 20.12.2019

Date of Decision : 29.01.2020

Appeal No. 26 of 2019

Labhu Gohil
804, B-Wing, Ambika Nagar,
J.N. Road, Opp. Titan Showroom,
Mulund (W),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 27 of 2019

Sweta Ramesh Rabadiya
Matrubhumi Society,
Babu Jagjivan,
Ram Dindayal Upadhyay Marg,
Mulund (West), …Appellant
Mumbai – 400 080.

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. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 28 of 2019

Deepak Narshibhai Javiya
401, Jagruti Hsg,
Vithal Nagar,
S.L. Road, Mulund (W),
Mumbai – 400 080. …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. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 29 of 2019

Nila Deepak Javiya
401, Jagruti Hsg,
Vithal Nagar,
S.L. Road, Mulund (W),
Mumbai – 400 080. …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. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 56 of 2019

Premila Someshwar Joshi
Shiv Shankar Estate,
Opp. Saraswat Wadi,
Zaver Road, Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 57 of 2019

Sneha Chavda
5, Joshi Chawl,
Zaver Road,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH

Appeal No. 64 of 2019

Walbai Barot
42, Hansraj Meghji Laddha Chawl,
Zaver Road, Near Saraswat Wadi,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH

Appeal No. 65 of 2019

Neela R Padhiyar
H-140, Akharben Chawl,
Anna Nagar, Mahadeo Desai Road,
Kandivali (East),
Mumbai – 400 101. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 66 of 2019

Indira B Bhalla
21, Adenwala CHS,
P.K. Road,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 67 of 2019

Chetan Vasant Ganatra
28, Kamal Kunj,
Zaver Road,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 175 of 2019

Vasant Ganatra (HUF)
28, Kamal Kunj,
Zaver Road,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH
Appeal No. 176 of 2019

Taraban Vasant Ganatra
28, Kamal Kunj,
Zaver Road,
Mulund (West),
Mumbai – 400 080. …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. Nishant Upadhyay, Advocate with Mr. Chintan Sheth, CA i/b Chintan Sheth & Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates i/b MDP & Partners for the Respondent.

WITH

Appeal No. 177 of 2019

Ajit Vinod Tank
4, Parmanand Terrace,
Near Cama Lane,
Kirol Road,
Ghatkopar (West),
Mumbai – 400 086. …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. Nishant Upadhyay, Advocate with Mr. Vijay Tiwari, PCS for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Nishit Dhruva, Mr. Chirag Bhavsar and Ms. Eram Quraishi, Advocates 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, Member

1. These 13 appeals have been filed challenging the order of the Adjudicating Officer ('AO' for short) of Securities and

Exchange Board of India ('SEBI' for short) dated November 30, 2017. By the said order 16 entities are found to have violated the provisions of Regulations 3(a), (b), (c) and (d) and Regulation 4(1), 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Therefore, varying amount of monetary penalties in the range of Rs. 5 lakh to Rs. 10 lakh have been imposed on them under Section 15HA of the SEBI Act, 1992.

2. Basic facts relating to the matter are the following. Based on certain suspicious trading in the scrip of M/s. Aarya Global Shares and Securities Ltd. ('Aarya' for short) SEBI conducted an investigation relating to the trading in the scrip of Aarya for the period from May 21, 2010 to December 31, 2011. Further, the said period of investigation was divided into three phases / patches: May 21, 2010 to September 22, 2010 (P-1), September 23, 2010 to June 16 2011 (P-2) and June 17, 2011 to December 30, 2011 (P-3). Shares of Aarya were traded in BSE Limited ('BSE' for short) at the relevant time. During the investigation it was observed that 16 noticees connected to one another, traded among themselves and contributed to positive Last Traded Price Variation (LTPV) and to New High Price (NHP) and

consequently violated the stated provisions of the PFUTP Regulations.

3. Thereafter, vide order dated May 8, 2015 an Adjudicating Officer was appointed following the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and subsequently, because of transfer of personnel, a new AO was appointed vide order dated May 18, 2017. A common show cause notice dated May 10, 2016 was issued to all the noticees by the first AO. The said show cause notice was delivered to all the noticees, except noticees no. 7,8 and 14, though noticees 7 and 8 also replied to the show cause notice. Thereafter personal hearing was granted on September 7, 2017 by the second AO which was availed by some of the noticees through their authorized representative while some of the noticees sought adjournment. Therefore, a second opportunity of hearing was granted on November 9, 2017 during which also some more noticees were represented by authorized representatives. After taking into account the replies filed by the noticees and the statements made by the authorized representatives the order impugned in these appeals was passed on November 30, 2017.

4. Shri Nishant Upadhyay, the learned counsel for the appellant raised a preliminary objection to the impugned order because of

substantial delay in the proceedings. It was contended that though the period of investigation relate to May 2010 to December 2011 the show cause notice was issued only on May 10, 2016 and no reason is given either in the show cause notice or in the impugned order for such considerable delay. Therefore, it was contended that this Tribunal's order in respect of ***Ashok Shivlal Rupani & Ors. vs. SEBI (Appeal No. 417 of 2018 decided on August 22, 2019)*** is squarely applicable in the instant proceedings as the delay in these matters are of a similar nature of about 7 years.

5. Shri Nishant Upadhyay, the learned counsel for the appellant further submits that SEBI carried out a malicious investigation in these matters. The investigation period of 20 months was divided into three phases / patches; the impugned order covers only the first patch because the continued rise in the price and volume of the scrip during Patch – 2 and Patch – 3 itself would have nullified SEBI's finding against the appellant with respect to Patch – 1. Further, the entire relationship between the entities (appellants) is sought to be proved through a cell phone number but how a mere cell phone number can prove such relationship is unexplained in the impugned order. Similarly, the impact of the stock split and the continued increase in the price and volumes in the scrip are also not considered in the impugned order and therefore the

impugned order is unsustainable as no evidence against the appellant has been brought on record to prove the alleged violation of the stated provisions of PFUTP Regulations.

6. Learned counsel for the appellant further sought to distinguish the role of each of the appellant in terms of their contribution to LTP and NHP using appellant-wise details on these parameters. It was contended that individual contribution of each appellant is very negligible, very often Rs. 3 to Rs. 5; in many cases no contribution to NHP; the number of trades involved is very small – all in single digits – and in any case there is no finding for the Patch – 2 and Patch – 3 of the investigation period. In any case, it was contended that for every scrip there will be LTP, NHP and a first trade and therefore these are no conclusive evidence relating to price, volume or any other manipulation as the appellants had been just trading in the scrip like any other investors as the appellants found the scrip to be beneficial for investment. Further, the fact that some of the appellants are related and staying together is not a ground to hold the appellants guilty of violating PFUTP Regulations as held in Tribunal's order ***Narendra Ganatra vs SEBI (Appeal No. 47 of 2011 decided on July 29, 2011)***. It was further contended that it was in public domain that the Company had published a few price

sensitive information during Patch – 1 of the investigation period. The company's announcement to start new business on April 16, 2010; stocks split on July 27, 2010; acquisition of controlling stake in the Company by M/s. Kuvan International Fashions Ltd. on September 8, 2010 etc were all in public domain.

7. Learned counsel Shri Kumar Desai appearing for respondent SEBI, on the other hand, contended that this is a case of a group of entities trading amongst themselves creating LTPs, NHPs and even placing first trade in the scrip on a number of days. One of the noticees (Ms Hasti Pradeep Sheth) at the relevant time was only eight months old and is still a minor. Further, the relationship has been established through multiple factors such as sharing the same address being relatives, sharing a common mobile number, residing in the same area etc. Table 6.2 in the impugned order gives the details of all the LTPs created / contributed by each of the appellant / noticees. It shows that together they added Rs. 117.70 to the LTP by means of just 72 trades. Similarly, appellants / noticees had contributed Rs. 22 NHPs in 11 trades which was 19% of the total market NHP. Further, they contributed 36 first trades out of a market total of 88 such trades. It was further submitted by the learned counsel for the respondent that the appellants did not provide any meaningful replies in their

statement and simply stated that they did not provide any contact number in the KYC forms etc. because it was not a requirement and in any case usage of a phone number is not sufficient to prove any involvement in insider trading. However, during personal hearing also many of the appellants sought adjournment and only authorized representatives of some of them appeared for the same. Effectively, it was contended that the noticees did not given reasonable answers to the queries raised by AO though they were given a number of opportunities. It was also submitted that all the noticees except notice no. 14 furnished more or less same replies such as *"during the time of opening the account that they did not have any contact number, due to which they had left the contact number column empty and the sub-broker or any other person may have filled his/her own number"* or *"common mobile numbers is just a coincidence"*. It was, therefore, argued that the nature of trading conducted by the appellants thereby creating artificial LTP, NHP and creating a high price in the first trade of the day itself are sufficient to prove that they have violated the stated provisions of PFUTP Regulations given the findings / evidence of trading as an inter-connected group. Therefore, the findings in the impugned order as well as the penalty imposed in the range of Rs. 5 lakh to Rs. 10 lakh, after considering the mitigating factors under Section 15J of the SEBI Act, is just and fair.

8. We have heard the learned counsel for the parties and perused the documents placed before us.

9. Given the facts of the matter we do not find merit in the submissions of an inordinate delay in the proceedings since we note that SEBI was doing investigation during the interim and some delay though has happened on account of change in the AO.

10. We note that though the impugned order deals with trading in the name of the minor, no action has been rightly contemplated against the minor. As regards the other noticees / appellants on appeal before us we note that though their relationship through common address, common mobile numbers etc. are matters of record and proved no motive has been attributed to their trading pattern. It is a fact that new LTP, NHP and a few first trades in the scrip have been created / done by these appellants which would prima facie points towards a manipulative effort. At the same time, it is on record that the scrip was progressively doing well during the investigation period with substantial increase in both prices and volumes. No connection with the promoters of the Company or with the Company itself has been attributed to the

appellants. There is no evidence or even any discussion on any fund transfer between the appellants or the appellants with any other entities in the absence of which motive for a collusive or manipulative effort becomes blunt. Moreover, when a group of 16 entities themselves becomes parties to each other's trade in a circular fashion, though to a limited extent, the net amount of profits or losses also become negligible and only to the extent of their trades getting matched with entities outside the group.

11. Just by looking at the trading pattern of the appellants; the LTP, NHP, first trades etc. it may be possible to arrive at a *prima facie* conclusion regarding violation of PFUTP Regulations. However, in the facts and circumstances of the matter, particularly the fact that the scrip involved was reasonably liquid and continued to become more liquid and hence increase in volume and prices and with no evidence of any fund transfer, motive for manipulation etc. we are of the considered view that no penalty can be imposed on the appellants. Without any other evidence, we are constrained to give some weight to the submissions of the appellant that they were trading in the scrip in a normal way because of the scrip itself being attractive through various public announcements supported by the fact of increase in volume of trading and rise in prices. Therefore, given these factors imposing

a penalty becomes too harsh. At the same time since the trading behavior exhibited by these appellants is not normal and is amenable to invoking suspicion of a PFUTP violation, we would warn the appellants from indulging in similar trading practices in future.

12. In the result, the direction imposing penalty by the impugned orders is modified and the appeals are disposed of with warning to the appellants which would meet the ends of justice in these matters. No orders on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-

Dr. C.K.G. Nair
Member

Sd/-

Justice M.T. Joshi
Judicial Member

29.01.2020
Prepared and compared by:msb