

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 5.10.2020

**Misc. Application No.335 of 2020
And
Misc. Application No.249 of 2020
And
Appeal No.253 of 2020**

Indivar Traders Private Limited
Office No.8, 5th Floor, BLOCK-A,
Aidun Building, 1ST, Dhobi Taloa Lane,
Mumbai – 400002.

...Appellant

Versus

Whole Time Member
Securities and Exchange Board of India
SEBI Bhavan, C4-A, G Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400051.

...Respondent

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

Mr. Anubhav Ghosh, Advocate with Mr. Ravishekhar
Pandey, Advocate i/b. The Law Point for the Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. The present appeal has been filed against the order dated 30th July, 2020 passed by the Whole Time Member restraining the appellant from accessing the securities market for a period of six months. By the same order, the securities of the appellant in its demat account has also been frozen for the same period.
2. The facts leading to the filing of the appeal is, that an investigation was conducted in the scrip of Aadhaar Ventures India Ltd, (hereinafter referred to as 'AVIL') for the period from 1st January, 2009 to 24th April, 2015. It was noticed that the price was artificially raised fraudulently through a trading pattern which was manipulative. The Whole Time Member (WTM) after considering the evidence found that 983 trades were executed by 13 entities in patch one and that the appellant acted as one of the 9 counter parties in 49 trades involving miniscule quantity of shares in each trade which resulted in positive contribution to the LTP of the scrip. The whole time member found that the trading pattern indicated a potential to artificially

induce innocent investors to invest in the scrip and that the entities were taking turns on different trading days to raise the price of the scrip during the investigation period by matching the prices of the pending sell orders with the buy orders.

3. The appellant is a trader and investor in the capital market. A show cause notice dated 3rd January, 2019 was issued to show cause as to why an order under section 11 and 11B of the Securities and Exchange Board of India Act, 1992 should not be passed for violation of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'). In spite of service of notice the appellant did not appear and consequently the matter proceeded ex-parte and the WTM found that the appellant was a counter party seller which resulted in positive LTP in the scrips which was manipulative and

fraudulent and violative of Regulations 3 and 4 of the PFTUP Regulations.

4. We have heard Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Ms. Hiral Shah, Advocate for the Appellant and Mr. Anubhav Ghosh, Advocate with Mr. Ravishekhar Pandey, Advocate for the Respondent through video conference.
5. The learned counsel for the appellant contended that no notice was ever served upon the appellant and, therefore, on this short ground the impugned order is liable to be set aside. In this regard, we find that the summons were served through affixation. This aspect has not been denied, namely, that there was no affixation or that the summons was affixed at the wrong address. We also find that at the time when the affixation was made the appellant was doing business from the same place and subsequently shifted to another place. In the light of the aforesaid, we are of the opinion that the appellant was duly served but

chose not to appear for reasons best known to the appellant.

6. On merits, we find that out of 983 trades that were executed by 13 entities in patch one. The appellant was only a party to one trade which resulted in the positive LTP of 25 paise. From a perusal of the record, we find that the appellant was only a seller and had executed one trade which was purchased by one Gajpal. There is no finding that appellant had any connection with the buyer or that it was premeditated. On the other hand, the whole time member has shown that the appellant is connected with some of the other noticees through common email, address etc.
7. In the light of the aforesaid that the appellant had only executed one trade out of 983 trades, we are of the opinion that the penalty of debarring the appellant for six months is wholly unwarranted and cannot be sustained.
8. The finding that 13 entities were acting as a homogenous group and were connected to each other

and had executed the trades in a premeditated manner with a sole purpose of manipulating the price is not applicable in so far as the appellant is concerned. The finding that other notices were taking turns on different trading days with a premeditated motive to raise the LTP of the scrip is not applicable in the appellant's case as he had only executed one trade whereas the other 13 entities were executing several trades on various days in a premeditated manner. Thus, clubbing the single trade of the appellant with the trades executed by other 13 noticees on the ground that he is connected to them is per se erroneous and baseless.

9. We find that there is no finding to the effect that the appellant was trading either on the buy side or on the sell side with the other noticees. Thus, having common email or address with some of them is redundant in the absence of any trades being executed between them.
10. We also find that there is no finding that the appellant had any connection with the buyer, namely,

Gajpal. In the absence of any connection, no collusion could be proved with regard to price manipulation or artificially increasing the price or its volume.

11. We are also of the opinion that the analogy drawn by the WTM from the decision of the Supreme Court in *SEBI vs. Kishore R. Ajmera (2016) 6 SCC 366* holding that the trading pattern of the appellant had a misleading appearance amounting to manipulation in the price of the share and is therefore violative of Regulations 3 and 4 of the PFUTP Regulations is patently misplaced in as much as there was no trading pattern of the appellant since he had executed one single trade. The Supreme Court itself has held that selling miniscule quantity of shares does not mean to manipulation by itself unless collusion with other are found and proved. In the instant case, there is no direct evidence of collusion or fraud between the appellant as a seller with that of buyer or with the other noticees in the impugned order. Therefore, application of

preponderance of probability cannot be applied in the instant case.

12. We are also of the opinion that the appellant has not contributed to the LTP on the basis on one trade executed on the sell side unless connection was established with the buyer which in the instance case is lacking. We find that no proceedings have been initiated against the buyer who had placed orders above the LTP and was thus responsible in the increase in the price of the scrip. Thus, we are of the opinion that the appellant has not indulged in fraudulent or unfair trade practices in securities. In the absence of any connection being found between the buyer and the seller and between the appellant and other entities the finding of a trading pattern being premeditated to manipulate the price is patently erroneous. The WTM has misapplied the decision of the Supreme Court in Ajmera's case in so far as the appellant is concerned.
13. In the light of the aforesaid, the impugned order cannot be sustained and is quashed in so far as it

relates to the appellant. The appeal is allowed. In the circumstances there shall be no order as to costs. Misc. Application nos.335 and 249 of 2020 are disposed of.

14. 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 Presiding Officer 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

Justice M.T. Joshi
Judicial Member

5.10.2020

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