

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 18.05.2021

Date of Decision : 14.06.2021

Appeal No. 180 of 2021

1. Abhishek Bhutra
2. Geeta Devi Bhutra

48, Moulana Abdul Kalam Azad Road,
Howrah Municipal Corporation,
Golabari, Howrah AC Market,
West Bengal – 711 101.

..... Appellants

Versus

Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondent

Dr. S. K. Jain, Practicing Company Secretary i/b Mr. Vikas Bengani,
Advocate for the Appellants.

Mr. Suraj Choudhary, Advocate with Mr. Abhiraj Arora, Ms. Rashi
Dalmia, Mr. Karthik Narayan, Advocates i/b ELP for the
Respondent.

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

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have challenged the order dated January 27, 2021 passed by the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') whereby the appellants have been restrained from accessing the securities market for a period of six months for violating Regulations 3 and 4 of 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').

2. The facts leading to the filing of the present appeal are, that SEBI conducted an investigation into the trading activities in the scrip of Surabhi Chemicals and Investments Ltd., now known as Superspace Infrastructure Ltd. for the period August 1, 2012 to January 6, 2015. On the basis of investigation report, a show cause notice dated April 4, 2018 was issued to nine entities including the appellants alleging that they were connected with each other and despite available pending buy orders of large quantities, the appellants sold small quantities in the trading system above the LTP and thereby manipulated the price of the scrip. In so far as the appellants are concerned, it was alleged in the show cause notice that the appellants had executed 59 trades and out of 22 trades, 15 trades

were above LTP and contributed to Rs. 4.98 paisa. It was alleged that the trading pattern of all the other noticees indicated that there was a scheme to trade in small quantities and at the same time the enhancing of the price of the scrip was manipulative and, therefore, violative of Regulations 3 and 4 of the PFUTP Regulations.

3. The contention of the appellants was that they have traded in the normal course of business and there was no connection with any of the noticees or with the company or its promoters and directors. The price of the scrip rose on account of corporate announcement which were made by the company during the investigation period which impacted the price and that the price did not increase on account of the trading activities of the appellants. It was further contended that the sell orders were placed at buy price which were already pending in the system. It was further alleged that counter parties have not been made noticees and in the absence of the counter party, there can be no collusion or can the appellant be charged for manipulating the price. It was also contended that the sales made by the appellants were miniscule compared to the total number of shares traded and, thus, there can be no manipulation in the price of the scrip. It was lastly urged that there has been an inordinate delay in the issuance of the show cause notice. Whereas the trades were executed in the year 2012-13 the show cause notice was issued after

an inordinate delay of five years and, therefore, the proceedings should be quashed on this ground itself.

4. The WTM after considering the evidence on record and after giving an opportunity of hearing to the parties, passed the impugned order holding in paragraph No. 21 of the impugned order that the noticees “enjoyed close inter se connection”. This finding was based on the basis of common UCC address and common UCC phone numbers. The WTM further found that the sales made by the appellants were violative of Regulations 3 and 4 of the PFUTP Regulations on the basis of the trading pattern and making a miniscule sales when large buy orders were pending in the system. The WTM came to the conclusion that the trading pattern of all the noticees indicated price manipulation as it contributed to positive LTP.

5. We have heard Dr. S. K. Jain, Practicing Company Secretary for the appellants and Mr. Suraj Choudhary, the learned counsel for the respondent through video conference.

6. Having heard the learned counsel for the parties, we are of the considered opinion that the findings given by the WTM is patently perverse in so far as it relates to the appellants that the appellants are connected with the other noticees. The connection between the

noticees has been culled out in Table 6 of paragraph 21 of the impugned order. For facility, Table 6 is extracted hereunder :-

“Table-6: Connection details of Noticee nos. 4 to 9

<i>Noticee Group</i>	<i>Basis of Connection</i>
<i>Noticee no. 4 and 6</i>	<ul style="list-style-type: none"> • <i>Common UCC address and Common UCC Phone Number</i>
<i>Noticee no. 5 and 8</i>	<ul style="list-style-type: none"> • <i>Common UCC Phone Number and Common Directorship</i>
<i>Noticee no. 7 and 9</i>	<ul style="list-style-type: none"> • <i>Common UCC address and Common UCC Phone Number</i>

7. Based on the aforesaid table, the WTM has given its findings in paragraph No. 22 of the impugned order which is extracted hereunder :-

“22. I note from the submissions of the Noticee nos. 4 to 9, that none of these Noticees has disputed the aforesaid inter se connection, rather the Noticee no. 4 and 6 have submitted that they share blood relationship of son and mother respectively. Considering the above, I find that material available on record are sufficient to reasonably conclude the Noticee nos. 4 & 6, 5 & 8 and 7 & 9 enjoyed close inter se connection as alleged in the SCN.”

8. This finding given in paragraph 21 is patently perverse. The finding that the appellants have not disputed the aforesaid *inter se*

connection is partly true to the extent that the appellants are *inter se* related being son and mother respectively. But the appellants have vehemently disputed in their reply that they were connected in any way with the other noticees which fact has not been considered. The facts that the appellants are son and mother respectively does not mean that they were automatically connected with the other noticees. No evidence has been found to indicate that the appellants are in any way connected with the other noticees and, thus, the finding given by the WTM that “*all the noticees enjoyed inter se connection*” is patently perverse and cannot be sustained.

9. Once we find that the appellants are nowhere connected with the other noticees then the collective trading pattern of all the noticees including the appellants cannot be taken into consideration nor can be total volume of the trading of the noticees including the appellants can be considered.

10. In so far as the individual trading pattern is concerned, we find from the show cause notice and from the impugned order that the total number of trades executed by the appellants was for 8500 shares against the total traded volume of 29130 shares. Out of these 59 trades, only 15 trades were found to be above LTP which had a volume of 330 shares only. Thus, the LTP contribution pursuant to

330 shares against the total volume of 29130 shares is negligible and cannot impact any price rise.

11. We are further of the opinion that the finding that the appellants had contributed to the LTP in view of the unusual premanipulative trading pattern and, therefore, was violative of Regulations 3 and 4 of the PFUTP Regulations cannot be accepted. In the instant case, there is no charge of collusion. There is no connection with the other notices. If there is no charge of collusion, there is no charge of fraud and if there is no connection with the other notices, then individual trading pattern is to be taken into consideration. We find that miniscule trading was done by the appellants which did not impact the market, Thus there was no unusual premanipulative trading pattern executed by the appellants and consequently, there cannot be any violation of Regulations 3 and 4 of the PFUTP Regulations. In this regard, the WTM has found that the individual contribution of the appellants towards positive LTP was small but found the appellants guilty based on the cumulative impact of the total volume of trades made by the nine noticees. The WTM also found that there was an increase in the price after every corporate announcement made by the company. Thus, we are of the confirmed view that the trades made by the appellants did not make any impact on the price rise and, in any case, in the absence of any

collusion, there was no violation of Regulations 3 and 4 of the PFUTP Regulations.

12. In view of the aforesaid, it is not necessary for us to dwell on the principles propounded in the case of *M/s. Nishith M. Shah HUF vs. SEBI Appeal No. 97 of 2019 dated January 16, 2020*.

13. Reliance made by the respondents in the paragraph No. 44 of the case of *Ajay Aggarwal vs. Union of India & Ors. (1993) 3 SCC 609* is misplaced. In the said decision, it was found that even if the link in the chain was broken, even then the party can be charged and found guilty where each party performs and act without knowledge of the other and the said act aids succeeding parties in accompanying the criminal objective of the conspiracy. The facts are totally distinguishable and is not applicable in the instant case as we have found categorically that the trades made by the appellants were miniscule and did not impact the price of the scrip.

14. In view of the aforesaid, the impugned order cannot be sustained in so far as the appellants are concerned. The impugned order is quashed qua the appellants. The appeal is allowed with no order as to costs.

15. 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 Private Secretary 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

14.06.2021
PTM