

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 07.11.2019

Appeal No. 105 of 2019

Vipul Mohan Joshi

House No. 41, Dattani Apartment,

5/B Shivaji Road,

Kandivali (West),

Mumbai – 400 067.

..... 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. Harsh Kesharia, Advocate with Mr. Vikas Bengani,
Advocate for the Appellant.

Mr. Kevic Setalvad, Senior Advocate with Mr. Abhiraj Arora
and Mr. Vivek Shah, Advocates i/b ELP 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 (Oral)

1. This appeal has been preferred against the order of the
Whole Time Member ('WTM' for short) of Securities and
Exchange Board of India ('SEBI' for short) dated January 31,
2019 whereby the appellant has been restrained from

accessing the securities market directly or indirectly for a period of three years.

2. The appellant is the promoter director of a Company, namely, Shreekrishna Biotech Ltd. ('SBL' for short). SEBI conducted an investigation into trading in the scrip of SBL from November 1, 2012 to July 31, 2015. The investigation, among others, noted that trading in the shares of SBL was suspended from November 22, 1995 till November 19, 2012. Further, on November 20, 2012 the scrip opened for trading at Rs. 10.83. By December 18, 2014, through just 201 trades, the price of the scrip increased to Rs. 337.15. The investigation could not find any fundamental reasons relating to the Company for such a substantial increase in the price of the scrip. It was also revealed in the investigation that the Company SBL made a preferential allotment of 80 lakh equity shares on January 27, 2014 @ Rs. 20 per share through a conversion of warrants. Further, it was noticed that on May 23, 2014 the appellant transferred thousand shares of SBL off market to two people – 300 shares to Chintan A Kapadia and 700 shares to Henal H Shah. It was also revealed in this investigation that Chintan A Kapadia further transferred the shares to some more people and all of them together were instrumental in raising the price of the scrip of SBL to the

extent of Rs. 265.80 through positive LTP which resulted in the abnormal increase in the price of the scrip from Rs. 10.83 to Rs. 337.15.

3. Accordingly, a common show cause notice was issued on July 24, 2017 to nine noticees, including the appellant, alleging that they are connected / related entities and by acting in a concerted manner, they have manipulated the price of the shares of SBL by repeatedly placing sell orders in very small quantities at prices above the LTP. It was also alleged that by their action they contributed to the artificial increase in the price of the scrip and thereby violated Regulation 3(a),(b),(c),(d),4(2)(d) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

4. The specific finding against the appellant is only to the extent that he transferred thousand shares of SBL off market to two persons; 300 to Chintan A Kapadia and 700 to Henal H Shah.

5. The learned counsel Shri Harsh Kesharia, appearing on behalf of the appellant submits that the appellant has admitted that he knew Chintan A Kapadia and Henal H Shah for several years and hence sold the shares of SBL to them off

market on May 23, 2014. He received a consideration also for the same in cash which was deposited in his bank account which is on record. There was nothing illegal in this entire transaction as off market transactions are perfectly legal. It was also contended that the appellant had no control thereafter as to what Chintan A Kapadia and Henal H Shah would do with those shares bought from him. They would have traded as they wished; there may be others as well who further traded in the scrip. The appellant had no role in any of those transactions nor knew any of those entities other than Chintan A Kapadia and Henal H Shah. It was also contended that appellant had not only sold thousand shares to these entities off market but had also sold 1 lakh shares to one Rajendra Jain HUF for which the consideration was received directly into his bank account. However, in the case of the transaction relating to thousand shares to Chintan A Kapadia and Henal H Shah because the consideration was received in cash SEBI is doubting the veracity of the same and attributing the responsibility of further transfers / transactions made by other noticees on to the appellant. It was also submitted that the sale consideration of these 300 + 700 shares was only Rs. 25,000/- and the amount involved in either of the transaction was less than Rs. 20,000/- which was the limit

allowed for the cash transaction and contended that the appellant had not committed violation of any law in his entire dealings. To support his submissions the learned counsel for the appellant placed reliance upon a decision of this Tribunal in the matter of *Jatin Manubhai Shah & Ors. vs Securities and Exchange Board of India in Appeal No. 16 of 2010 decided on March 1, 2011* and contended that off market transactions are not illegal and if such transactions are made by one party to others what others do with those shares is not within the control of the appellant..

6. We have also heard learned senior counsel Shri Kevic Setalvad appearing on behalf of respondent SEBI and perused the records. We note from the show cause notice as well as from the impugned order that beyond what is explicitly stated that the appellant had transferred thousand shares (300 + 700) off market to two other entities there is nothing on record to show anything further to link the appellant to subsequent transactions in the scrip made by other entities. The fact that the appellant knew Chintan A Kapadia and Henal H Shah as well as that the appellant transferred thousand shares to them are admitted facts. It is also on record that the appellant had deposited certain amount of money in his bank account on

May 26, 2014 soon after the off market transactions though the amount deposited is higher than the admitted value of the transactions. We also note that off market transactions was not a violation of any Regulation and the stated cash transactions is also within the limits allowed. Given these facts which are admitted and in the absence of any further evidence either linking the appellant to other entities who traded further in the market in a manipulative manner or in the form of some cash flow between the appellant and those entities or any other reliable evidence indicating the connection between them, we find it difficult to uphold the impugned order purely on a suspicion that the appellant might have some connection with those entities involved in market manipulation. Though the respondent SEBI relied upon the judgment of the Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India vs Kishroe R. Ajmera, (2016) 6 SCC 368* in support of their contention that only circumstantial evidence or preponderance of probability is sufficient to establish connection in such matters, we are of the considered view that there is absolutely no evidence, including circumstantial evidence, to bring the appellant within the ambit of the PFUTP Regulations. Since the appellant is a promoter director and transferred some shares

off market to two other entities in a scrip which was subsequently found to have been manipulated by a group of entities is sufficient to raise suspicion against all the parties involved but such a suspicion alone is not proof enough to prove violation of PFUTP Regulations by the appellant. Here the ratio of the order of this Tribunal in *Jatin Manubhai Shah (supra)* relied on by the appellant squarely applies. Therefore, given the facts and circumstances of the matter the appellant deserves benefit of doubt since the available evidence does not prove connivance or collusion or fraud by the appellant and thereby violation of PFUTP Regulations.

7. For the reasons stated aforesaid the impugned order cannot be sustained insofar as the appellant is concerned. The order is quashed insofar as it relates to the appellant. No orders on costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M.T. Joshi
Judicial Member

07.11.2019

Prepared and compared by:msb