

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on: 08.01.2020

Date of Decision : 16.01.2020

Appeal No. 97 of 2019

M/s Nishith M. Shah HUF

801, Satguru Tower,

F.P. No. 162,

Central and North Avenue Junction,

Santacruz (West),

Mumbai – 400 054.

..... 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. Saurabh Bachhawat, Advocate i/b Mr. Vikas Bengani,
Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and
Mr. Vivek Shah, Advocate i/b ELP for the Respondent.

AND

Appeal No. 544 of 2019

M/s Nishith M. Shah HUF

801, Satguru Tower,

F.P. No. 162,

Central and North Avenue Junction,

Santacruz (West),

Mumbai – 400 054.

..... Appellant

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... Respondent

Mr. Saurabh Bachhawat, Advocate i/b Mr. Vikas Bengani,
Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Abhiraj Arora and
Mr. Vivek Shah, Advocate 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 appellant has filed Appeal No. 97 of 2019 against the order dated January 8, 2019 passed by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI') restraining the appellant from accessing the securities market for a period of two years and further prohibiting the appellant from buying, selling or otherwise dealing in the securities directly or indirectly for a period of two years. The appellant has also filed another Appeal No. 544 of 2019 questioning the order of the Adjudicating Officer ('AO' for short) dated June 25, 2019 whereby a penalty of Rs. 2 lakh was imposed for violation of Regulation 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short). Since both the appeals are against the same violation of the PFUTP

Regulations and for the same transaction in question, the same are being decided together.

2. For facility, the facts stated in Appeal No. 97 of 2019 are taken into consideration. The charge leveled against the appellant is, that it had contributed to the positive Last Traded Price (LTP) as the seller and that the trades made by the appellant resulted in the manipulation in the price of the scrip of Shree Shaleen Textiles Limited ('Company' for short) thereby creating misleading appearance of trading in the scrips of the said Company.

3. The WTM while issuing an order of debarment found that miniscule shares were being sold by the appellant when there was a demand for more shares and the appellant had a substantive holding in that share. The WTM further held that a prudent investor would have sold the entire shares at the very first opportunity especially when the price quoted by the purchaser was above the LTP and thus there was no reason to sell miniscule amount of shares unless the motive was to increase the price of the scrip. In this view, the WTM held that selling miniscule shares indicate that the appellant was not a genuine trader. The WTM taking note of the decision of

the Supreme Court in *Securities and Exchange Board of India vs Kishore R. Ajmera (2016) 6 SCC 366* held that the trading pattern of the appellant had a misleading appearance amounting to manipulation in the price of the share scrips and were therefore violative of Regulation 3 and 4 of the PFUTP Regulations. On the same analogy, the AO, by a separate order passed an order imposing a penalty of Rs. 2 lakh.

4. We have heard Shri Saurabh Bachhawat, the learned counsel for the appellant and Shri Kumar Desai, the learned counsel for the respondent SEBI at some length. We are of the opinion that the impugned order cannot be sustained for the following reasons:-

- (a) The investigative reports nor the WTM or the AO found any connection between the buyer and the seller. We also find that neither in the investigative report nor in the impugned order any connection has been found between the appellant with the promoters / directors of the Company. Thus, no causal connection has been established.
- (b) The investigative report finds that no adverse inference can be drawn against the buyer merely

because the buyer had placed buy orders above LTP. On this basis, the buyer was exonerated from the charge of manipulation in the price of the scrip when admittedly the buyer was placing buy orders above the LTP.

- (c) Buy orders were placed at 9.15 hrs and sell orders were placed during the course of the day but not immediately after the buy orders nor the sell orders of the appellants were placed before the buy orders.
- (d) There is no finding that the appellant has indulged in fraudulent or unfair trade practices in securities.
- (e) Selling miniscule amount of shares by itself is not illegal nor manipulative nor violative of Regulation 3 and 4 of the PFUTP Regulations unless collusion with others is found.
- (f) Allegation that the appellant has contributed to the LTP cannot be upheld in the absence of any collusion with the buyer or promoter / director of the Company. One has to establish a connection

between a buyer and with the seller in order to infer a manipulation in the price of the scrip.

- (g) The authorities have misread and misapplied the decision of the Supreme Court in Ajmera's case (supra). In this regard Paragraph 27 of the judgment is extracted here under:-

“27. Let us apply the aforesaid test to the facts of the present cases before us wherein admittedly there is no direct evidence forthcoming. The first relevant fact that has to be taken note of is that the scrips in which trading had been done were of illiquid scrips meaning thereby that such scrips though listed in the Bombay Stock Exchange were not a matter of everyday buy and sell transactions. While it is correct that trading in such illiquid scrips is per se not impermissible, yet, voluminous trading over a period of time in such scrips is a fact that should attract the attention of a vigilant trader engaged / engaging in such trades. The above would stand fortified by the note of caution issued by the Bombay Stock Exchange in the form of a notice/memorandum alerting its members with regard to the necessity of exercising care and caution in case of high volume of trading in illiquid scrips, as already noted.”

In order to apply the aforesaid test, the facts of the present case is, that there is no direct evidence of collusion between the appellant as a seller with that of the buyer. There is no finding that the appellant was known to the directors or promoters of the Company.

Since no direct evidence is forthcoming we have to see the indirect connection which is that the appellant was selling small quantities of scrips. Trading in small quantities in scrips is *per se* not impermissible as held in Ajmera's case (*supra*). If trading in miniscule amount leads to an increase in the price of the scrips one can presume or infer that the trading is manipulative but such trading cannot happen unilaterally. There must be evidence to show collusion between the buyer and the seller. In the instant case there is none. The principle of preponderance of probability cannot be exercised in the absence of any connection between the seller and the buyer.

- (h) The charge that the appellant had contributed to the LTP as a seller which resulted in the manipulation in the price of the scrips cannot be sustained in the light of the glaring fact that the same charge against the buyer had been dropped.

(i) In *Jagruti Securities Limited vs Securities and Exchange Board of India* (Appeal No. 102 of 2006 decided on October 27, 2008) and in *Vikas Ganeshmal Bengani vs Whole Time Member, SEBI* (Appeal No. 225 of 2009 decided on February 25, 2010) the Tribunal held that the charge of raising price artificially has to be established and the element of collusion between the buyer and the seller is a *sine quo non*. We are in the entire agreement with the aforesaid decisions and reiterate that in the absence of any finding of collusion between the buyer and the seller the charge contributing to the LTP cannot be sustained.

5. In the light of the aforesaid, the impugned orders cannot be sustained and are quashed. The appeals are allowed with no orders as to costs.

Sd/-
Justice Tarun Agarwala
Presiding Officer

Sd/-
Justice M.T. Joshi
Judicial Member

16.01.2020

Prepared and compared by:msb