

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 12.02.2020

Date of Decision : 21.02.2020

Appeal No. 225 of 2019

1. Jayeshkumar Narottamdas Gandhi
2. Bharati Jayesh Gandhi
3. Deval Jayesh Gandhi

B/403, 7 Star Apartments,
Jairaj Nagar, Borivali (West),
Mumbai - 400 094.

..... Appellants

Versus

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

... Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b
Mr. Geet Shikhar for the Appellants.

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

With

Misc. Application No. 555 of 2019

And

Misc. Application No. 12 of 2020

And

Appeal No. 503 of 2019

1. Jayeshkumar Narottamdas Gandhi
2. Bharati Jayesh Gandhi
3. Deval Jayesh Gandhi

B/403, 7 Star Apartments,
Jairaj Nagar, Borivali (West),
Mumbai - 400 094.

..... Appellants

Versus

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

... Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b
Mr. Geet Shikhar for the Appellants.

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

With
Appeal No. 104 of 2019

1. Shri Sagar Dhanvant Jajal
2. Smt. Chandrika Dhanvant Jajal

C/301, Parshva Nagar,
Building No. 2, Jain Mandir Road,
Bhayandar (West),
Thane - 401101.

..... Appellants

Versus

Securities & Exchange Board of India

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

... Respondent

Mr. Sagar Dhanvant Jajal, Appellant in Person.

Mr. Kevic Setalvad, Senior Advocate with Mr. Anubhav Ghosh,
Ms. Rashi Dalmia, Advocates i/b The Law Point for the Respondent.

**With
Appeal No. 347 of 2019**

1. Jayeshkumar Narottamdas Gandhi
2. Bharati Jayesh Gandhi
3. Deval Jayesh Gandhi

B/403, 7 Star Apartments,
Jairaj Nagar, Borivali (West),
Mumbai - 400 094.

..... Appellants

Versus

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

... Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Advocate i/b
Mr. Geet Shikhar for the Appellants.

Mr. Kevic Setalvad, Senior Advocate with Mr. Anubhav Ghosh,
Ms. Rashi Dalmia, Advocates i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Dr. C. K. G. Nair, Member
Justice M. T. Joshi, Judicial Member

Per : Justice Tarun Agarwala, Presiding Officer

1. The appellants have filed Appeal No. 225 of 2019 against the order dated January 31, 2019 passed by the Whole Time Member (hereinafter referred to as 'WTM') prohibiting the appellants from accessing the securities market for a period of four years and further restraining them from buying, selling or otherwise dealing in securities directly or indirectly for a period of four years. The appellants have also filed another Appeal No. 503 of 2019 challenging the order of the Adjudicating Officer (hereinafter referred to as 'AO') dated June 24, 2019 wherein a penalty of Rs. 6 lacs has been imposed for violation of 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'). In Appeal No. 104 of 2019 and in Appeal No. 347 of 2019, the WTM found that by selling miniscule quantity of shares, the appellants had manipulated the price of the scrip which was violative of Regulations 3 and 4 of the PFUTP Regulations and consequently, prohibited the

said appellants from accessing the securities market for a period of four years, etc.

2. Since all the appeals are against the same violation of PFUTP Regulations and for similar transactions, the said appeals are being decided together. For facility, the facts stated in Appeal No. 225 of 2019 are taken into consideration. For the reasons stated in the Misc. Application No. 555 of 2019 and Misc. Application No. 12 of 2020, the delay in filing the Appeal No. 503 of 2019 is condoned. The said Misc. Applications are allowed.

3. The charges levelled against the appellants are that it had contributed to the positive LTP as a seller and that the trades made by the appellants resulted in the manipulation in the price of the scrip. Another question which necessarily arises for consideration is, whether the appellants as a seller alone can be charged for increasing the LTP in the absence of the buyer.

4. The WTM and the AO while passing the impugned orders found that miniscule shares have been sold by the appellants when there was a demand for more shares and that the appellants had a substantive holding in that scrip. Further finding was that a prudent

investor would have sold the entire shares at the 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. The authorities found that the trading pattern of the appellants in selling the scrip was not genuine and were aimed in manipulating the price thereby violating Regulations 3 and 4 of the PFUTP Regulations.

5. We find that the controversy involved in the present appeals is squarely covered by the decision of this Tribunal in M/s. Nishith M. Shah HUF vs. SEBI in Appeal No. 97 of 2019 and other companion appeal decided on January 16, 2020, wherein this Tribunal has held that 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 and that there must be evidence to show collusion between the buyer and the seller.

6. In the instant case, we find that the investigation report itself indicates that there is no connection between the appellants, with the buyer, promoter or with the company. In the absence of any connection between the seller and the buyer, the appellants could not be charged with manipulating the scrips nor the trading pattern of the

appellants could infer manipulating the price of the scrip. Further, unless the buyer is charged with violation of PFUTP Regulations, the seller alone cannot be charged of collusion in manipulation of the price of scrip.

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

Sd/-
Justice Tarun Agarwala
Presiding Officer

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

Sd/-
Justice M. T. Joshi
Judicial Member

21.02.2020
Prepared & Compared by
PTM