

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Order Reserved on: 05.05.2021

Date of Decision : 08.06.2021

Appeal No. 102 of 2020

1. Umang Dhanuka
131 Maker Tower 'B'
Cuffe Parade,
Mumbai – 400 005.
2. Madan Mohan Dhanuka
131 Maker Tower 'B'
Cuffe Parade,
Mumbai – 400 005.
3. Mayank Dhanuka
401, Raheja Centre,
214, Nariman Point,
Mumbai – 400 021.
4. Neha Dhanuka
131 Maker Tower 'B'
Cuffe Parade,
Mumbai – 400 005.
5. Nikunj Dhanuka
401/404, Raheja Centre,
214, Nariman Point,
Mumbai – 400 021.
6. Rajkumari Dhanuka
401/404, Raheja Centre,
214, Nariman Point,
Mumbai – 400 021.
7. Bina Devi Dhanuka
401/404, Raheja Centre,
214, Nariman Point,
Mumbai – 400 021.

..... Appellants

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. P.N. Modi, Senior Advocate with Mr. Sumit Agrawal,
Mr. Amit Agrawal, Ms. Kalpana Desai and Ms. G.S.
Sreenidhi, Advocate i/b. Regstreet Law Advisors for
Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent.

WITH
Appeal No. 44 of 2020

Rishikumar Rajanarayan Bagla (HUF)
Gut No. 40, Golwadi,
Paithan Road,
Aurangabad,
Maharashtra – 431 001.

..... 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. P.N. Modi, Senior Advocate with Mr. Kunal Katariya,
Mr. Ravi Vijay Ramaiya, Chartered Accountants and
Mr. Sahebrao Wamanrao Buktare, Advocates i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora, Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b. ELP for the Respondent.

WITH
Appeal No. 85 of 2020

Devesh Valecha
Valecha's, AH-27, Bapat Square,
Sukhliya,
Indore – 452 010. 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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

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

WITH
Appeal No. 178 of 2020

1. Hitesh N. Kawa
1801, Heena Elegance,
Opp. Bhatia High School,
Sai Bab Nagar, Borivali (West),
Mumbai – 400 092.
2. Roopal H. Kawa
1801, Heena Elegance,
Opp. Bhatia High School,
Sai Bab Nagar, Borivali (West),
Mumbai – 400 092. Appellants

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. Kunal Katariya, Advocate with Mr. Ravi Vijay Ramaiya,
Chartered Accountant and Mr. Sahebrao Wamanrao Buktare,
Advocate i/b. Shah & Ramaiya Chartered Accountants for the
Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent

WITH
Appeal No. 179 of 2020

Gajakarna Trading Private Limited
A-503, Vrajdharm, Ram Baug Lane,
Poiser, Borivali (West),
Mumbai – 400 092.

..... 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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

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

WITH
Appeal No. 180 of 2020

1. Nimesh S. Joshi
B-1204, Vrindavan CHSL,
Rambaug Lane,
Off S.V. Road, Borivali (West),
Mumbai – 400 092.

2. Rashmi N. Joshi
B-1204, Vrindavan CHSL,
Rambaug Lane,
Off S.V. Road, Borivali (West),
Mumbai – 400 092.

..... Appellants

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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellants.

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

WITH
Appeal No. 181 of 2020

Mahaganapati Financial Services Pvt. Ltd.
B/63, Pushpa Park,
56, S.V. Road,
Borivali (West),
Mumbai – 400 092.

..... 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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

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

WITH
Appeal No. 235 of 2020

Poonam P. Jain
C-09, Solus, No. 2, 9th Floor,
JC Road, 1st Cross,
Bangalore – 560 027.

..... 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

Ms. Aishwarya Shubhangi, Advocate for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent.

WITH
Appeal No. 246 of 2020

Ganesh Laxman Wagh
Samruddhi, P.No. 130,
Gandhi Nagar,
Aurangabad – 431 001.

..... 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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

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

WITH
Appeal No. 247 of 2020

Seema Ganesh Wagh
Samruddhi, P.No. 130,
Gandhi Nagar,
Aurangabad – 431 001.

..... 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. Ravi Vijay Ramaiya, Chartered Accountant and
Mr. Sahebrao Wamanrao Buktare, Advocate i/b. Shah &
Ramaiya Chartered Accountants for the Appellant.

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

WITH
Misc. Application No. 263 of 2020
And
Appeal No. 571 of 2020

Madanlal Jain
63, Narpat Nagar, Pal Road,
Jodhpur,
Rajasthan – 342 008. 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. Vinay Chauhan, Advocate with Mr. K.C. Jacob,
Advocate i/b. Corporate Law Chambers India for the
Appellant

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent.

WITH
Misc. Application No. 264 of 2020
And
Appeal No. 572 of 2020

Moolchand Jain
63, Narpat Nagar, Pal Road,
Jodhpur,
Rajasthan – 342 008. 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. Vinay Chauhan, Advocate with Mr. K.C. Jacob,
Advocate i/b. Corporate Law Chambers India for the
Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent.

WITH
Misc. Application No. 265 of 2020
And
Appeal No. 573 of 2020

Mukeshkumar Jain
63, Narpat Nagar, Pal Road,
Jodhpur,
Rajasthan – 342 008.

..... 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. Vinay Chauhan, Advocate with Mr. K.C. Jacob,
Advocate i/b. Corporate Law Chambers India for the
Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
ELP for the Respondent.

WITH
Misc. Application No. 267 of 2020
And
Appeal No. 575 of 2020

Vikas Jain
 63, Narpat Nagar, Pal Road,
 Jodhpur,
 Rajasthan – 342 008. 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. Vinay Chauhan, Advocate with Mr. K.C. Jacob,
 Advocate i/b. Corporate Law Chambers India for the
 Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
 Ms. Rashi Dalmia and Mr. Karthik Narayan, Advocates i/b.
 ELP for the Respondent.

AND
Appeal No. 581 of 2020

Narayan Balkrishan Toshniwal
 302, Janki Niwas, Modi Patel Road,
 Bhayander West,
 Thane – 401 101. 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. Jaikishan Lakhwani, Advocate i/b. J. L. Legal Advisors
for the Appellant.

Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Ms. Rashi Dalmia and 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. This group of appeals is against a common order dated November 18, 2019 passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) restraining the appellants and the six entities from accessing the securities market for a period of five years and further freezing the shares and mutual funds units lying in their demat accounts for the same period. For facility, the facts in the appeal of Umang Dhanuka & Ors.(Dhanuka Family), Appeal No. 102 of 2020 is being taken into consideration. In some of the appeals there is a delay in the filing of the appeals and, accordingly, separate applications for condoning the delay have been filed. For the reasons stated in the applications, the delay in the filing of the

appeals are condoned. Miscellaneous Applications are allowed.

2. In this group of appeals, we have divided the appeals in two categories. The entities in the first set of appeals being, Appeals Nos. 102, 44, 85, 235, 246, 247, 571, 572, 573, 575 and 581 of 2020 are herein called the ‘appellants’. The entities in the second set of appeals being, Appeals Nos. 178, 179, 180 and 181 are herein called ‘six entities’.

3. The facts leading to the filing of the present appeals are, that the trading in the scrip of Pine Animation Limited (‘PAL’ or ‘the Company’ for short) was suspended by the Bombay Stock Exchange Limited (‘BSE’ for short) on November 9, 1998. It was revoked on June 22, 2012. On December 13, 2012, the Company made a preferential allotment of 1,50,00,000 shares of Rs. 10/- each to 49 entities with a lock in period of one year. The Company made a second preferential allotment of 97,00,000 shares at the rate of Rs. 10/- per share to 49 entities on March 15, 2013. In December 2012, the appellant Umang Dhanuka purchased 96,000 shares for Rs. 6 lakh at the rate of Rs. 6.25 per share through off market from one entity known as Gajakarna Trading Private Limited (hereinafter referred to as ‘six

entities'). On March 28, 2013 trading in the shares of the Company resumed on the BSE platform on a new discovered price of Rs. 441/- per share. On May 17, 2013, the shares of the Company was split in the ratio of 1:10. Thus, the appellant Umang Dhanuka's 96,000 shares having a face value of Rs. 10/- per share became 9,60,000 shares of face value of Rs. 1/- each. The paid up capital of the Company stood at Rs. 27.70 crores. Between March 2014 to October 2014, the appellants sold off their holdings in the market by selling them on the BSE platform.

4. In the same fashion, the other appellants in Appeal No. 102, 44, 85, 235, 246, 247, 571, 572, 573, 575 and 581 of 2020 also purchased shares through off market from the six entities upon a consideration and thereafter sold the same and made profits.

5. During the period March 28, 2013 to January 30, 2015 the price of the shares rose from Rs. 441/- to Rs. 1006/- and eventually came down to Rs. 38.85 per share on January 30, 2015. Between March 22, 2013 to June 19, 2013 the price increased from Rs. 472/- to Rs. 1000/-. Between June 20, 2013 to December 16, 2013 the price hovered from Rs. 1006/-

to Rs. 910/- per share and from July 10, 2014 to January 2, 2015 the price went down from Rs. 707.50 to Rs. 388.50 and as on January 30, 2015 the prices came down to Rs. 38.85/-.

6. Noticing the sharp rise in the trading volume and price in the scrip of the Company, SEBI conducted an investigation in the trading in the scrip of the Company and, based on the investigation, SEBI passed an *ex parte ad interim* order dated May 8, 2015 against 178 entities. The 178 entities were categorized as under:-

- (i) The Company;
- (ii) The directors and promoters of the Company;
- (iii) The promoter related entities.
- (iv) The preferential allottees;
- (v) The exit providers;
- (vi) The LTP contributors;

7. It was observed in the *ex parte ad interim* order that the *modus operandi* was first to allot preferential shares, then stock split, then pump up the price, then provide an exit to the preferential allottees at a higher price. It was observed that after the second preferential allotment on March 15, 2013 there was a sharp increase in the price of the shares of the

Company and that prior to the preferential allotment there was no trading activity. It was found on the basis of investigation that the increase in the trading volume occurred after lock in period expired of the preferential allottees. It was further found that there were two sets of entities; one group was primarily involved in pushing up the price when the shares were under the lock in period and the second group was acting as buyers in patch-2 in order to provide an exit opportunity to the preferential allottees.

8. The WTM *prima facie* found that the entire *modus operandi* of allotting shares on a preferential basis was a scheme devised to provide ill gotten gains to the preferential allottees and promoter related entities. Further, the *modus operandi* of pumping the shares artificially and then dumping the shares demonstrate the *mala fide* intention of the Company and this mechanism was used to deceive the authorities by laundering black money and making it tax free. The WTM further found that it can reasonably be inferred that the preferential allottees along with promoter related entities were acting in concert with the exit providers who have misused the Stock Exchange to generate a fictitious Long

Term Capital Gains (LTCG) so as to convert their unaccounted income into accounted one with no payment of taxes as LTCG was exempt from payment of tax.

9. The WTM *prima facie* found all the appellants to be promoter related entities as they had bought the shares from the six entities, ie, noticees nos. 20 to 25 who in turn had bought the shares from the promoters and therefore they were connected with the Company. In addition to the aforesaid, insofar as the appellants Dhanuka Family is concerned it was *prima facie* found that the appellants were connected with the Company as the Company had given a loan to one entity Bihariji Constructions (India) Limited ('Bihariji' for short) which is non-banking financing company (NBFC) and is one of the six entities. The connection was drawn from the fact that the Company had given a loan to this entity Bihariji in which some of the Dhanuka Family members were directors, namely, noticee nos. 59, 46 and 70.

10. The *ex parte ad interim* order consequently restrained 178 entities from accessing the securities market as it *prima facie* found that noticees acted in concert to generate LTCG in order to convert unaccounted income into accounted income

with nil payment of tax as LTCG was exempt from tax. The appellants in the interim order was categorized as “promoter related entities” as they had bought the shares from the six entities who in turn had bought the shares from the original promoters.

11. The WTM thereafter passed a confirmatory order dated August 22, 2016 against 122 entities including the appellants confirming the directions passed in the *ex parte ad interim* order with certain relaxations. Separate orders against other entities were passed by the WTM on June 2, 2016, July 5, 2016 and January 26, 2017. In the confirmatory order, the WTM held that the Company was involved in the *modus operandi* for the benefit of the preferential allottees, exit providers and promoter related entities and it seems that the transfer of the shares of the promoters to the promoter related entities was under a prior arrangement. The WTM, however, found that Bihariji and its directors (who were the appellants in appeal no. 102 of 2020) have not been classified as promoters related entities on the basis of the loan transactions between the Company and the Bihariji Constructions.

12. Thereafter, the WTM passed a revocation order dated September 19, 2017 against 114 entities. These 114 entities were identified as preferential allottees, exit providers and LTP contributors. The WTM discharged these noticees from the *ad interim* orders on the ground that these preferential allottees had no connection with the Company or its promoters or promoter related entities nor had any role in the price manipulation and therefore there was no violation committed by these entities with regard to the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short), Securities Contracts (Regulation) Act, 1956 ('SCRA' for short) and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short).

13. Eventually, a show cause notice dated December 6, 2017 was issued to 80 noticees. These noticees were categorized as under:-

- (i) Noticee nos. 1 to 8 were the Company and its directors;

- (ii) Noticee no. 9 was alleged to be the kingpin/mastermind and price manipulator in the entire fraudulent scheme and was connected with the Company directors and promoters;
- (iii) Noticee nos. 10,11,75,77 to 80 were alleged to be price manipulators and directly connected with Company;
- (iv) Noticee nos. 12 to 14 were preferential allottees who had a close nexus with the Company;
- (v) Noticee nos. 15 and 16 were promoter Companies of the Company;
- (vi) Noticee nos. 17 to 19 were the directors of the promoter Company;
- (vii) Noticee nos. 20 to 25 were the Intermediary entities (six entities) who facilitated off market transfers to 49 entities and were closely connected with the Company.

(viii) Noticee nos. 26 to 74 are off market transferees/ beneficiaries who purchased off market shares from noticee nos. 20 to 25 (six entities) and sold the shares on the Stock Exchange platform (the appellants have been categorized under this category).

14. The show cause notice alleged that the appellants were party to the alleged fraudulent scheme; that the appellants purchased the shares despite weak fundamentals of the company and that the appellants sold the shares when the price had been manipulated thereby reaped huge profits. It was further alleged that on March 31, 2013, the original promoters were not holding the shares and had off loaded its holdings to the six entities and, as per the forensic auditor's report, the Company was being operated by noticee no. 9, Shri Jagdish Prasad Purohit who was the main person to discover the price at Rs. 441/- per share on the BSE platform. It was alleged that the Company and its directors were part of the manipulative scheme and that all the appellants had violated Section 12A(a),(b) and (c) of the SEBI Act read with regulation 3 and 4 PFUTP Regulations. Insofar as the

appellants Dhanuka Family are concerned, the additional ground was that they were party to the alleged fraudulent scheme on account of loan transfer. It was contended that the Dhanuka Family had purchased the shares from Gajakarna, who is one of the six entities, who in turn had purchased the same from the original promoters of the Company (notice no. 15to 19) and therefore the Dhanuka Family were connected to the Company on account of the loan transaction between the Company and the Bihariji Constructions in which some of the Dhanuka Family members were the directors.

15. The WTM after considering the replies of all the noticees and, after considering the material evidence on record, found that the trading in the shares of the Company had been suspended by the BSE for many years and that the Company's performance and prospectus were very poor. The WTM held that even though the suspension of the shares was revoked no legitimate investor would ever think of investing in the shares of the Company on account of weak fundamentals. It was further found that the Company made two large fraudulent preferential allotment of shares to the preferential allottees and thereafter the market price was

manipulated and the price was increased by LTP contributors. Further, purchasers, namely, the exit providers were then set up to give the preferential allottees an exit opportunity of huge profits. The WTM further gave a finding that the annual reports / accounts of the Company had been falsified by the Company and its directors in order to show fictitious shares and profits in order to portray exponential increase in the revenue. The WTM came to a conclusion that this was done deliberately to justify the market increase by the LTP contributors and to attract or induce the investors. The WTM further found that the promoters of the Company had off loaded their own shareholdings off market to the six entities who then sold the shares to 62 entities including the appellants who were located in all parts of the country and that 49 of these 62 entities had sold off their shares or part thereof when prices were inflated and thus made huge profits. The WTM on this basis concluded that the appellants had violated the PFUTP Regulations.

16. The WTM further found that noticee no. 9 was *de facto* controlling the Company and was part of the manipulation in the price of the scrip along with the Company and its

directors. The WTM also found that noticee no. 9 was instrumental in determining the opening price at Rs. 441/- per share and that the proceeds of the preferential allotments were transferred to notice no, 9 and to Companies managed by him. The WTM further found that noticee nos. 15 to 19 who were the promoter entities who had transferred their holdings to the six noticees between January 5, 2013 to February 9, 2013. The WTM exonerated these entities holding that there was no nexus with the other entities and that they had no nexus with the price manipulation of the scrip and that their role was limited to the extent of transferring their shares to the six entities.

17. The WTM further found that there was a nexus between noticee no. 2 who was a promoter and director of the Company with the six entities. It was found that the Company was operating from a flat which belonged to one of the six entities (notice no. 23) in Mumbai. The WTM found that acquisition of shares by the six entities on the basis of a loan taken by noticee nos. 15 to 19 was not based on any cogent evidence and was thus disbelieved. The WTM held that loan given to strangers with whom six entities had no business

activities without taking any collateral security was not a *bona fide* transaction.

18. The WTM further came to a conclusion that the six entities acted as conduits in the scheme of manipulation in the price of the scrip and indulged in a pre-designed plan to manipulate the share price in order to benefit the ultimate buyers, namely, the appellants. The WTM came to a conclusion that the complicity of the appellants in the fraudulent scheme could be judged by the fact that in spite of the fundamentals of the Company being poor the appellants purchased the shares at a low price knowing with the understanding that the shares could be sold at a later point of time at a relatively higher price. The WTM came to a conclusion that the purchase decision by the appellants could not be called a prudent decision of a genuine investor and that the onwards transfer of shares by the six entities was part of a scheme / pre-planned arrangement with a definite assurance to the appellants that they would be able to sell the shares at a higher rate. Insofar as appellants Dhanuka Family was concerned the WTM found that on account of loan taken by Bihariji there was a direct connection and close proximity with the Company.

19. On the aforesaid basis the impugned order passed by the WTM restraining the appellants and the six entities from accessing the securities market.

20. We have heard Shri P.N. Modi, the learned senior counsel, Shri Ravi Ramaiya, Chartered Accountant, Shri Kunal Katariya, Shri Vinay Chauhan, Shri Jaikishan Lakhwani and Ms. Aishwarya Shubhangi, the learned counsel for the appellants and Shri Shyam Mehta, the learned senior counsel and Shri Abhiraj Arora, the learned counsel for the respondent at length.

21. The contention of the appellants was that the Company and its directors were the master mind / price manipulator along with noticee nos. 9, 10, 11, 75, 77 to 80 and the intermediary entities, ie, the six notices (notices no. 20 to 25). The *modus operandi* was first to allot the shares to the preferential allottees then split the shares, then pump up the price and then provide an exit to the preferential allottees when the prices are high. The appellants do not fit in this category. Further, based on the said *modus operandi*, the preferential allottees made huge profits which is not disputed

but these preferential allottees, LTP contributors and exit providers have been let off. It was thus contended that the main perpetrators to the alleged fraud, scheme, artifice, device was for the benefit of the preferential allottees who have been let off and, on the other hand, on the same charge, the appellants have been penalized which is wholly discriminatory. It was, thus, urged that since the preferential allottees and others had been exonerated by the revocation order of September 19, 2017, the proceedings against the appellant should have been dropped. It was further contended that in an identical matter in the case of Mishka Finance and Trading Limited, the role of the entities in the said case was identical to the role of the appellants, namely, that parties had bought shares off market and sold the same at a high price were exonerated on the ground that there was no evidence to prove that they had manipulated the price. It was urged that the case of Mishka Finance and Trading Limited which was decided by the WTM by its order of December 5, 2017, being identical, the appellants should have been given the similar relief.

22. It was further contended that the appellants had no links with the Company or promoters or directors of the Company and that the appellants were *bona fide* purchasers. It was urged that the foundation of the impugned order is, that the trading in the shares of the Company had been suspended by BSE for many years whose performance and prospectus were so poor that no legitimate investor would even invest in the shares and therefore the appellants must have been assured fraudulent profits. It was urged that this finding is patently erroneous and is based on surmises and conjectures. The finding that the appellants have violated regulations 3 and 4 of the PFUTP Regulations merely on the basis of preponderance of probabilities is erroneous. It was further urged that the manipulation of price was done by noticee nos. 9, 10 and 11 in connivance with Company and its directors and other promoter related entities. In the absence of any charge of collusion, the appellants would not be booked for violation under regulations 3 & 4 of the PFUTP Regulations.

23. The appellants urged that the finding that the investments made by the appellants cannot be termed as a regular investment made in the ordinary course of business on

the ground that the Company had weak fundamentals and the trading had been suspended for 14 years is purely conjectural and cannot be a ground for implicating the appellants nor can it lead to a conclusion that the purchase of shares by the appellants was pursuant to a pre-decided scheme with assurance of a profitable exit. It was also urged that the finding that the appellants have close proximity with the Company on the ground that the appellants (Dhanuka Family) were directors of Bihariji (one of the six entities) is incorrect. It was contended that Bihariji Constructions is a non-banking financial company and in its usual course of business took loans from the Company on a high rate of interest which was paid back to the Company along with interest after deducting TDS. These transactions were looked into by the forensic auditor appointed by SEBI who found that the transactions between Bihariji and the Company were in the usual course of business. Thus, it was urged that the business connection of Bihariji with the Company cannot be stretched to prove that the appellants (Dhanuka Family) was part of the manipulative scheme in order to gain benefit by selling the shares at a higher price. It was urged that in the absence of any direct connection between the appellants and the Company and its

promoters and directors the WTM committed an error in charging the appellants on the basis of preponderance of probabilities and surrounding circumstances.

24. On the other hand, the stand of the respondent was that the appellants, namely, noticee nos. 26 to 74 were beneficiaries of a fraudulent scheme and that they were not *bona fide* purchasers of the shares of the Company. It was urged that the appellants had acquired the shares knowing fully well that they would be earning profits on their investments on the basis of a fraudulent scheme which involved manipulation in the price of the scrip of the Company. It was contended that the appellants bought shares from the six entities who were closely associated with the Company and that these six entities were also *de facto* controlling and managing the Company. It was contended that these six entities acquired the shares from the promoters entities in physical form through off market transaction and thereafter sold it to the appellants which can only happen if the appellants knew these six entities. It was also urged that the appellants had close proximity with the six entities because they purchased the physical shares at a lower price

than the face value. It was also contended that the appellants had an advantage over the preferential allottees as there was no lock in period of the shares which they have purchased. It was urged that since the Company was making losses and had weak financial fundamentals, a well known investor would not have purchased the shares and the fact that the appellants had purchased the shares gives rise to a preponderance of probabilities that the appellants knew that they would earn huge profits from the purchase of these shares. It was contended that insofar as the Dhanuka family is concerned there was a direct connection with the Company through an NBFC which is controlled by the Dhanuka family, namely, Bihariji wherein it has come on record that the Company had advanced loans to Bihariji and therefore the link / close proximity with the Company stands established.

25. Having heard the learned senior counsel for the parties at some length we find that the entire basis for holding the appellants guilty of Section 12A(a),(b) and (c) of the SEBI Act read with Regulation 3 and 4 PFUTP Regulations is, that a prudent investor would not have purchased the shares of a Company which had weak fundamentals and financials and

that no one in their right mind would buy the shares unless there was a pre-existing arrangement of reaping in huge profits. In our view, this reasoning is patently erroneous and cannot be sustained for the following reasons.

26. In the first instance we must not forget that the entire investigation, the interim orders, confirmatory orders, revocation orders that led to the issuance of the show cause notice against the appellants was based on the modus operandi initiated by the Company, its promoters, promoter related entities, directors and noticee nos. 9 to 11 and the six entities, was first to allot the shares to the preferential allottees then split the shares and thereafter pump the price and then provide an exit to the preferential allottees at a higher price. The record indicates that the discovered price was Rs. 441/- per share of a Company which had weak fundamentals. No eyebrows has been raised by the respondent and this price was found to be perfectly valid. The record also indicates that the prices started rising after trading resumed and from Rs. 441/- it rose to Rs. 100/- to Rs. 1000/- per share. Then the stocks was split in the ratio 1:10. Thereafter, the LTP contributors came in patch-2 where they

started manipulating the price by buying at a higher price and then the exit providers came in to provide an exit to the preferential allottees at a higher price. We find from a perusal of the record that the preferential allottees gained the most of more than Rs. 430 crore but what we find is that the WTM has exonerated, by a cryptic order, the preferential allottees, exit providers and the LTP contributors from the charge of Section 12A(a),(b) and (c) of the SEBI Act read with Regulation 3 and 4 PFUTP Regulations on the ground that they had no role to play in the price manipulation. We are of the opinion that the appellants stands on a better footing than that of the preferential allottees and if the preferential allottees have been let off on the ground that they have not manipulated the price nor had any role to play in the price manipulation, then all the more reasons to hold for the appellants that they had no role to play in the manipulation of the price and are therefore liable to be exonerated.

27. If the preferential allottees who have made huge profits have been let off there is no reason why the appellants should not be let off. The WTM however, has taken an exception on the fact that the appellants had made huge profits. We are of

the opinion that it is not a crime to make huge profits unless you show that the profits were made by manipulating the price in collusion and with fraudulent intent with other entities such as the Company and its directors and promoter related entities which in the instant case is lacking.

28. We are of the opinion that the role of the preferential allottees, exit providers and LTP contributors were far more serious than the role of the appellants. The role of the appellants in the instant case is, that they had purchased the shares off market from the six entities who in turn have purchased it from the promoter Company. Whereas, the preferential allottees have been let off, the appellants have been penalized only on the ground of being in proximity with the Company and its directors which finding is perverse in as much as we find that there is no direct connection of the appellants with the Company, its promoters, promoter company or noticees nos. 9 to 11, 75, 77 to 80 who were the main manipulators and the kingpin in the entire scheme.

29. The six entities are not promoter related entities. They have acquired the shares from the promoter Company but they do not become the promoters. The fact that they were *de*

facto controlling the Company is not a relevant issue as it still does not make them promoters of the Company. Thus, merely because the appellants had purchased the shares through off market from the six entities does not and cannot lead to a conclusion that the appellants are connected with the Company or with noticee no. 9 or with promoter related entities or its directors. The finding that appellants were in close proximity or had a connection with the Company, directors etc. is patently erroneous.

30. There is another aspect. The six entities had purchased the shares from a promoter Company, namely, noticees 15 to 19 and thereafter the six entities sold it to the appellants. Whereas the notices no. 15 to 19 have been exonerated by the impugned order, the appellants have been booked for having a close proximity with the Company. We find that the appellants have not purchased the shares from the Company.

31. The basic charge and investigation was one of LTCG. This charge has been dropped altogether which was part of the *modus operandi* of the whole scheme. The initial charge against the appellants was that they were “promoter related entities” and this charge has also been dropped. The

appellants have been restrained from accessing the securities market on the ground that the Company had weak fundamentals and on the ground that no one in their right mind would invest in the shares of the Company and since the appellants invested less than the face value of the shares it led to an irresistible inference based on the preponderance of probabilities that the appellants had purchased the shares with this pre-arranged scheme that they would reap in huge profits when the price of the scrip rises. In our opinion this finding is perverse. We are of the opinion that the respondent are adopting dual standards. The issue of weak fundamentals would equally apply to the preferential allottees who were allotted the shares at rate of Rs. 10/- per share but these preferential allottees have been let off. Therefore the standard of weak fundamentals cannot be applied in the case of the appellants especially when on the same footing the preferential allottees have been let off. We are of the opinion that it is business prudence to purchase at a lesser price and sell it at a higher price when the market is up thereby earning profits. Making profits in our opinion cannot be termed illegal or manipulative or fraudulent or violative of the PFUTP Regulations.

32. We also are of the confirmed opinion that the appellants are not connected with the Company or its promoters through the six entities. The appellants are located in all parts of the country and the appellants had purchased the shares through agents and brokers. There is no evidence of any direct connection with the six entities and, in any case, there is not even an iota of evidence of the appellants being connected with the Company, its directors, promoter related entities and noticee nos. 9 to 11, etc. The finding that the appellants are closely associated with the Company is patently erroneous.

33. On the other hand, the preferential allotments are given to a chosen few by the Company and its directors especially to their preferred persons who are known and closely associated with the Company or its directors. Such preferential allottees who are not strangers and who are closely associated with the Company because of the preferential allotment have been let off and, on the other hand, the appellants who were strangers and who have no direct connection with the Company and its promoter entities etc have been unnecessarily charged.

34. We are also find that the WTM has given a categorical finding that noticee no. 9 was the master mind who manipulated the price with Company and its directors and intermediaries for the benefit of the preferential allottees. These preferential allottees have been let off. We find that there is no direct connection of the appellants with noticee no. 9. There is no involvement of collusion or price manipulation of the appellants and thus there cannot be any violation of regulations 3 & 4 of the PFUTP Regulations.

35. We also find that in an identical matter in the case of Mishka Finance and Trading Limited, the parties in that case were exonerated who had bought the shares off market and sold the same at a high price. These parties were exonerated on the ground that there was no evidence that they had manipulated the prices. We had perused the order of the WTM dated October 5, 2017 in the case of Mishka Finance and Trading Limited and we find that the facts and the pattern are identical to the facts of the present case. Whereas the noticees in Mishka Finance and Trading Limited have been let off the appellants having an identical role in the trading pattern have been wrongly booked.

36. The finding that the investments made by the appellants cannot be termed as a regular investment made in the ordinary course of business or trading as the Company had weak fundamentals and financials is based on surmises and conjectures and cannot be a ground to charge the appellants. The finding that the appellants had purchased the shares pursuant to a pre-decided scheme with an assurance of a profitable exit at a manipulated price is purely based on surmises and conjectures without any corroborative evidence. This finding cannot be based on a preponderance of probabilities especially in the absence of reasonable explanation as to why would anyone give the appellants an assurance of a profitable exit at manipulated price. Further, there is nothing on record to suggest as to who had given such an assurance to the appellants. Nothing has come on record to indicate that the six entities had sold the shares for some ulterior purpose. The six entities did not know these appellants directly and unless there was some intention of parting with the profits the charge of selling the shares with huge profits under a pre-decided scheme is farfetched.

37. Insofar as the Dhanuka Family is concerned we are satisfied that the finding that the said appellants were in close proximity with the Company is based on surmises and conjectures. It has come on record that there was business dealings between the Company and one of the six entities, namely, Bihariji in which loans were taken from the Company at a higher rate of interest. The forensic auditor's report appointed by SEBI has clearly given a finding that the loans taken by Bihariji was in the usual course of business and that there was nothing wrong in the said transactions. Based on this forensic auditor's report the charge of the Dhanuka family being promoter related entities was dropped. Further, having a business connection with the Company does not mean that there were part of the scheme of manipulating the price or they were part of some collusion which in any case is not the finding given by the WTM. The only charge is that being connected through this loan transaction the Dhanuka family is guilty of violation of regulations 3 & 4 of the PFUTP Regulations which is perverse.

38. We are of the view that there is no connection between the appellants and the Company, or its promoters, directors or

promoter entities. The appellants invested their own funds and were not funded by anyone else nor there is any finding that the profits earned by the appellants were shared with anyone else either with the Company or its directors or with noticee no. 9 or with the six entities. We further find that there is no connection rather there is not even a thread of evidence to show any connection between the appellants and the counter party who bought the shares from the appellants.

39. The six entities have also filed Appeal Nos. 178, 179, 180 and 181 of 2020. The contention of these six entities are that they bona fide purchasers of the shares from the promoter Company. It was contended that they had given a loan to the promoter Company and since the promoter Company failed to repay the loan, the shares of the Company was given by the promoter Company to the appellants towards the loan amount. It was, thus, contended that since the promoter Company was unable to pay the loan, the shares of the Company was transferred to them in lieu of the loan and thereafter they engaged one broker who sold these shares to the beneficiaries. It was contended that the six entities had no connection with

the Company, its directors, promoters or the noticee nos. 9 to 11, 75, 77, 79 & 80. No other submission was raised by them.

40. Considering the matter that has been brought on record we find that the WTM rejected the contention of these appellants that the shares were transferred to them by the erstwhile promoter Company against the outstanding loan. We are in complete agreement with the findings given by the WTM in as much as, other than this statement, there is no other evidence to show that the loans were given to the promoter Company. If there is no business connection with the promoter Company and they are strangers then it is but natural that when a loan is given, then collateral security is taken. In the instant case neither there is any loan agreement nor there is any collateral security to show that some loan was given to the promoter Company. On the other hand, we find that the promoter Company has given evidence to the effect that they had sold the shares to these appellants on payment of consideration which is reflected in their books of accounts. This fact, when these six entities were accosted by the WTM, was not disputed nor any other explanation has been offered. We are further of the opinion that the shares transferred by

each of the noticee nos. 20 to 25 were not proportionate to the alleged outstanding loans, if any. Thus, the stand of these six entities that the shares were transferred to them by the erstwhile promoter Company against the outstanding loans cannot be accepted.

41. We also find that these six entities had acquired 30.91% shares of the Company from the erstwhile promoters and paid the sale consideration for the same in February / March-2012. This finding is based on the bank statements and other documentary evidence produced by noticee nos. 15 to 19. Though the share transfer forms are executed on February 9, 2013 but we find that various appellants were given the physical shares from December 2012 onwards. However, we find that from February / March-2012 onwards the six entities were basically controlling the affairs of the Company. The Corporate Office of the Company was changed from Chennai to Mumbai to a premise owned by one of the six entities, namely, noticee no. 23 in and around April 2012. The evidence on record which has come is that the Company was paying rent to noticee no. 23.

42. We further find that two of the six entities, namely, noticee nos. 22 and 23 were parties to emails / correspondence in connection with the appointments of the new directors of the Company and were involved in payment to the RTA and the depository and was involved in the revocation of the suspension and resumption of listing of the shares of the Company and were also involved in the signing of the transfer forms. The evidence also shows that the six entities were also using the email id of the Company for sending mails. All this indicates that the six entities had an active role to play in the management of the affairs of the Company from February / March - 2012 onwards. A direct connection has been established between the six entities and the Company and noticee no. 2. The six entities had also acquired the preferential shares of the promoters and therefore we are also of the opinion that the six entities were closely associated with the Company from February / March – 2012 onwards and throughout the period when the preferential allotments were made. We are, thus, of the opinion that the six entities were closely connected with the Company and its directors and had a role to play in the formulation of the scheme of issuance of preferential allotment, pumping of the

price through LTP contributors and providing an exit mechanism for the preferential allottee. Consequently, in our opinion, the order of the WTM insofar as the six entities are concerned does not suffer from any manifest error of law

43. For the reasons stated aforesaid, Appeal Nos. 102, 44, 85, 235, 246, 247, 571, 572, 573, 575 and 581 of 2020 are allowed. The impugned order insofar as it relates to these appellants is quashed.

Appeal Nos. 178, 179, 180 and 181 of 2020 are dismissed. In the circumstances of the case, there shall be no order as to costs.

44. 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

08.06.2021
msb