BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 07.09.2020
Date of Decision : 20.11.2020

Appeal No. 189 of 2020

BP Comtrade Pvt. Ltd.
24/26, Cama Bldg.,
1st Floor, Dalal Street,
Fort, Mumbai – 400023. ….. 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

With
Appeal No. 190 of 2020

BP Fintrade Pvt. Ltd.
3, Mint Road,
3rd Floor, Room No. 45,
Fort, Mumbai – 400 001. ….. 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

With
Appeal No. 191 of 2020

BP Comtrade Pvt. Ltd.
24/26, Cama Bldg.,
1st Floor, Dalal Street,
Fort, Mumbai – 400023. ….. 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

With
Appeal No. 192 of 2020

BP Fintrade Pvt. Ltd.
3, Mint Road,
3rd Floor, Room No. 45,
Fort, Mumbai – 400 001. ….. 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 with Mr. Sahebrao Buktare, Advocate i/b Shah & Ramaiya Chartered Accountants for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate 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 : Dr. C. K. G. Nair, Member

1. These four appeals are filed challenging the order dated May 28, 2020 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 debarred for a period of four weeks and order dated May 5, 2020 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of SEBI whereby a joint and several penalty of Rs. 5 lacs have been imposed on the appellants. Appeal No. 189 and 190 of 2020 challenges the WTM order and Appeal Nos. 191 and 192 of 2020 challenges the order of the AO. Since the issues in all the 4 appeals are common, by consent of parties, they are heard together and is disposed of by this common order.

2. The matter relating to all the appeals emanates from trading in the scrip of M/s. Blue Blends (India) Ltd. (hereinafter referred to as the company / Blue Blends). SEBI conducted an investigation into trading in the scrip of this company during the period September 1, 2015 to April 1, 2016. However, the relevant period in respect of these appeals is from February 2, 2016 to April 1, 2016. It is the case of

respondent SEBI through the impugned orders that during these two months period, the appellants herein have unilaterally manipulated the price of the scrip of Blue Blends by employing / adopting a strategy of trading called 'Advancing the Bid'. According to this strategy, a person on one side of the trade places orders above or below the last traded price (LTP) resulting in an adverse impact on the market but the collusion / connection between the person concerned and the opposite party/ counter party is not established.

3. It is on record that the price of the scrip of Blue Blends increased from Rs. 15.65 on September 1, 2015 to Rs. 115 on February 1, 2016. Similarly, in phase II of the investigation period from February 2, 2016 to April 1, 2016 the prices fell from Rs. 110 to Rs. 82.50. Further, it is held in the impugned order that the appellants contributed Rs. 30.30 to the decline in price during the relevant period.

4. It is the stand of the learned authorized representative Shri Ravi Ramaiya appearing on behalf of the appellants that the appellants are big traders/jobbers dealing in several hundred scrips worth several crores; they are not related / connected entities; were trading in the scrip of Blue Bends even prior to the investigation period; executed genuine trades in both phase I and phase II of the investigation period without any intention to manipulate the price/market; during both phases some trades of the appellants impacted LTP negatively;

appellants trades resulted in both positive and negative LTP but SEBI cherry picked some trades only to show negative impact; appellants followed a strategy called "momentum trading" i.e. being a big trader taking advantage of the movement in prices by placing large number of orders; on connection between the appellants SEBI never sought any explanation from the broker who filed the KYC forms which are used to conclude connection between the appellants; the volumes of trades of the appellants (even if they are combined) are not substantial as a percentage of the total market volume because the scrip was a liquid one; no meeting of the mind has been established and no other party has been debarred from the market. The authorized representative also produced on record to show a few instances of the appellants' trades which fall in both the territories i.e. impacting LTP positively and negatively. Therefore, the authorized representative submitted that the totality of the picture has to be taken to arrive at the conclusion and if such a picture is taken rather than cherry picking as done in the impugned order, it would be clear that the appellants were only doing trading in the normal course of business. The authorized representative also relied on the orders of ***WTM of SEBI in Jayendra Chandulal Sheth***, in support of his stand that selling in miniscule quantity below the LTP itself does not prove manipulation. He also relied on a number of orders of this tribunal to canvas that the penalty imposed on the appellants herein is disproportionate.

5. Shri Kumar Desai, the learned counsel for the respondent SEBI, on the other hand, submitted that the strategy employed by the appellants in manipulating the market/price of the scrip is a unique one called ‘Advancing the Bid’ which is found to be manipulative not only in the Indian jurisdiction but also in foreign jurisdictions like the European Union (EU). He also submitted the relevant regulations in the EU and examples of such market manipulation as found in the documents of the Technical Committee of the International Organization of Securities Commissions (IOSCO). It was further contended by the learned counsel for the respondent that in such kind of unilateral price manipulation, establishing connection with the counter-party is difficult as well as not needed because the trades themselves are manipulative. For instance, the appellants sold the shares of Blue Blends in small quantities below the LTP on 166 occasions and thereby manipulated the price downwards. Selling below the LTP and that too on a large number of occasions is contrary to the normal market behavior and therefore, it stands on its own legs as violative of the stated provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

6. The learned counsel for the respondent SEBI also sought to establish the connection between the appellants, BP Fintrade and BP

Comtrade, through common e-mail ID, common mobile number etc. as obtained from the broker. He further submitted that even without the connection being established the trading pattern / strategy of the appellants itself was violative of PFUTP Regulations. It was further contended that the submissions of the appellants that they were following 'momentum strategy' also cannot be accepted since by their strategy the appellants themselves were creating the momentum. It is a clear case of impacting the market in the scrip both in terms of volumes and prices and, therefore, violative of stated provisions of PFUTP Regulations.

7. The learned counsel for the respondent SEBI also relied on the decisions of this Tribunal as well as the Hon'ble Supreme Court in ***Kalpana Dharmesh Chheda & Anr. vs. SEBI (Appeal No. 454 of 2019, decided on February 25, 2020), Shri Lakhi Prasad Kheradi vs. SEBI (Appeal No. 232 of 2017, decided on June 21, 2018), Giriraj Kumar Gupta HUF vs. SEBI (Appeal No. 420 of 2019, decided on February 25, 2020), Jayprakash Bohra vs. SEBI (Appeal No. 162 of 2019, decided on November 5, 2019), Saumil Bhavnagari vs. SEBI (Appeal No. 28 of 2014, decided on March 21, 2014), Shailesh Jain vs. SEBI (Appeal No. 15 of 2012, decided on May 1, 2012), Systematix Shares & Stocks (India) Limited vs. SEBI (Appeal No. 21 of 2012, decided on April 23, 2012), SEBI vs. Kanhaiyalal Baldevbhai Patel [(2017) 15 SCC 1], SEBI vs. Kishore R. Ajmera***

[(2016) 6 SCC 368], N. Narayanan vs. Adjudicating Officer, SEBI [(2013) 12 SCC 152], SEBI vs. Rakhi Trading Private Limited [(2018) 13 SCC 753].

8. Summary of the analysis of trades carried out by the connected entities as sellers during the relevant period is as follows :-

Seller Name	All trades			LTP Diff. > 0			LTP Diff. < 0			LTP Diff. = 0		% of negative LTP to Total Market negative LTP
	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of LTP (Rs.)	Sum of Qty.	No. of trades	Sum of Qty.	No. of trades	
BP FINTRADE PRIVATE LIMITED	-21.05	106263	476	104.65	7055	131	-125.70	25984	109	73224	236	6.89
BP COMTRADE PVT LTD	-12.85	32723	224	44.75	6860	71	-57.60	8264	57	17599	96	3.16
Group Total	-33.90	138986	700	149.4	13915	202	-183.30	34248	166	90823	332	10.05
Market Total	-30.30	2774140	8337	1794.85	466853	2147	-1825.15	966983	2337	1340304	3853	100.00

9. The above table taken from the impugned WTM Order clearly brings out the pattern of trading done by the appellants where in through 166 trades [109 by BP Fintrade and 57 by BP Comtrade] a gross LTP difference of Rs. 183.30 and a net LTP difference of Rs 33.90 had been generated.

10. Having heard the learned counsel / authorized representative for the parties at reasonable length and having perused the documents

placed before us, we are of the considered view that the nature / pattern of trading adopted by the appellants is not in the nature of what a rational investor would do. A large number of sell orders were placed repeatedly on several trading dates at less than the LTP; it is illogical. Therefore, the contention of the appellants that it was following momentum trading has no meaning as by placing a large number of orders below the LTP the appellants themselves were creating a momentum. Of course we notice that a number of orders of the appellants were placed on or marginally above LTP, but that is the rational behaviour expected from a seller and no fault can be found for SEBI in not considering such trades as violative of the PFUTP Regulations. Appellants submission of a small list of trades in which they impacted LTP both positively and negatively on a few days also does not help the appellants since the overwhelming evidence is clearly towards placing sell orders below the LTP. When such trades are done on a large number of occasions, such as 166 times, one cannot but come to the conclusion that such trades are manipulative in nature. Given such large number of instances of trades in these appeals, judgments relied on by the appellants are distinguishable.

11. Further, it is also on record that in 124 out of 166 times sell orders were placed in single digits of 1, 2, 3 etc shares, which defies the submission of the appellants that they were placing orders below the LTP because only if sell orders are placed a bit below the LTP large

quantities could be sold in a falling market. Therefore, clearly the strategy of trading [momentum trading] adopted by the appellants was creating its own momentum inimical to the interest of the securities market. Even if it affected only about 10 % of the market volume in the scrip of Blue Blends, as contended by the appellants, it is no consolation since influencing 10% of the market by 2 entities is a significant deviation from market equilibrium. Therefore, dehors the connectivity issue itself the appellants are in violation of the PFUTP regulations by the very nature of their trading strategy and trading pattern.

12. Mitigating factors are inbuilt in the given punishments. 4 weeks restrain from the securities market as directed by the WTM and Rs. 5 lakhs joint and several penalty imposed by the AO are not harsh or disproportionate in the given facts and circumstances for us to interfere with the impugned orders. However, if the appellants so desire they may pay Rs.2.5 lakh each.

13. For the aforesaid reasons, all 4 appeals fail and are dismissed with no orders on costs. Appellants are directed to pay the penalty within 30 days from the date of this Order.

14. 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 Presiding Officer 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.

TARUN AGARWAL

Digitally signed by TARUN AGARWAL
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Justice Tarun Agarwala
Presiding Officer

Dr. C. K. G. Nair
Member

Justice M. T. Joshi
Judicial Member

20.11.2020
PTM