

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 29.11.2021

Date of Decision: 15.12.2021

Appeal No. 331 of 2020

M/s. Adamina Traders Private Limited
B2-04/Mascots, 7th & 8th Floor, Times Square,
Plot No. C, Bearing CTS No. 349 & 349-1,
Western Express Highway,
Next to Sai Service,
Andheri (E),
Mumbai- 400 069

...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. Rinku Valanju, Advocate with Mr. Pratham Masurekar and
Mr. Sumit Yadav, Advocates i/b R V Legal for the Appellant.

Mr. Suraj Surjit Choudhary, Advocate with Mr. Abhishek Khare
and Mr. Sharvil Kala, Advocates i/b Khare Legal Chambers for
the Respondent.

AND

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...Respondent

Ms. Rinku Valanju, Advocate with Mr. Pratham Masurekar, Mr. Aditya Shah and Mr. Amit Dubey, Advocates i/b R V Legal for the Appellant.

Mr. Suraj Surjit Choudhary, Advocate with Mr. Abhishek Khare and Mr. Sharvil Kala, Advocates i/b Khare Legal Chambers for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member

Per: Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against the order of the Whole Time Member (“WTM” for convenience) of the Securities and Exchange Board of India (“SEBI” for convenience) dated January 08, 2020 and order dated May 27, 2020 passed by the Adjudicating Officer (“AO” for convenience). Since the issue involved is common in both the appeals, the same are being decided together.

2. By the order of January 08, 2020 passed by the WTM, the appellant has been debarred from accessing the securities market for a period of three years for manipulating the price of

the scrip of Secunderabad Healthcare Ltd. being violative of Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for convenience). The AO by an order dated May 27, 2020 has imposed a penalty of Rs. 10 lakhs for the same violation.

3. The facts leading to the filing of the present appeal is, that a show cause notice alleged manipulation in the price of the scrip of Secunderabad Healthcare Ltd. being violative of Regulations 3 and 4 of the PFUTP Regulations. After considering the replies and the material evidence on record the WTM and the AO found that the appellant was repeatedly placing buy orders of miniscule quantity above Last Traded Price (“LTP”) though large sell orders were pending on the system and that 176 trades on 57 days executed by the appellant contributed to positive LTP of Rs. 50.23 which worked out to Rs. 26.34% of the total market positive LTP.

4. We have heard Ms. Rinku Valanju, the learned counsel for the appellants and Mr. Suraj Surjit Choudhary, the learned counsel for the respondent.

5. The contention of the appellant is, that the entire investigation was faulty and the LTP contribution was negligible which should have been ignored. It was contended that sell orders were already in existence when buy orders were placed and therefore the appellant was not responsible for the increase in the positive LTP as the increase in the LTP was only on account of the price given by the seller. It was further contended that there was no connection of the appellant with the counter parties and, therefore, in the absence of any connection, the appellant cannot be found guilty of violating Regulations 3 and 4 of the PFUTP Regulations. In support of this contention the appellant has relied upon the decision of this Tribunal in ***M/s Nishith M. Shah HUF vs. SEBI in Appeal No. 97 of 2019 decided on 16.01.2020.*** It was also contended that there is an inordinate delay and that the entire order log was not provided which was violative of the principles of natural justice.

6. Having heard the learned counsel for the parties, we find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected.

Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside.

7. With regard to non-supply of the entire order log, we are of the opinion that no plausible explanation was given as to why the entire order log was required. We find that the order log relating to the relevant trades executed by the appellant was duly supplied. Thus, in our opinion, there is no violation of the principles of natural justice.

8. It was contended that out of 6519 trades only 554 trades were found to the positive LTP and, therefore, these figures indicates that there was no intention on the part of the appellant to manipulate the price since the remaining trades were either negative LTP or zero LTP. Further, there was a huge difference between the buy time and the sell time and consequently the LTP in 176 trades was very negligible which cannot lead to a conclusion that the appellant indulged in manipulation of price. We are unable to accept this argument as we find from the trading pattern of the appellant that on most occasions the appellant was placing buy orders of miniscule quantity ranging from 1 to 10 shares above LTP though large orders were pending in the system. The WTM has categorically found that

out of 176 trades, in a large numbers trades, only one share was purchased. These miniscule trades of one share per day led to increase price of the scrip by Rs. 50.23 which amounted to Rs. 26.34% of the total market positive LTP.

9. Thus, in the instant case, the pattern of trading, namely, placing buy orders in small quantities which led to increase in the price of the scrip was clearly fraudulent and manipulation of the price of the scrip which was violative of Regulations 3 and 4 of the PFUTP Regulations. Thus, the finding given by the WTM does not suffer from any error of law. The decision of this Tribunal in the case of M/s Nishith M. Shah is, thus, not applicable in the facts and circumstances of the present case and is clearly distinguishable.

10. In Appeal No. 366 of 2020, which is against the order of the AO dated May 27, 2020, we find that the show cause notice was sent at two addresses namely at the Navi Mumbai address and another show cause notice was sent at another an address at Mumbai. Whereas the show cause notice returned undelivered at the first address, it was delivered at the second address. We also find that the appellant appeared and requested for certain documents which remained pending and, it transpires, that a

notice was sent by the AO fixing January 19, 2020 for hearing which notice was never served as alleged by the appellant.

11. The fact that the notice of hearing dated January 17, 2020 was never served upon the appellant is admitted by the respondent.

12. In view of the aforesaid, we are of the opinion that the order of the AO is violative of Article 14 of the Constitution of India. Since no opportunity of hearing was given to the appellant the impugned order passed by the AO cannot be sustained and is quashed.

13. In view of the aforesaid, Appeal No. 331 of 2020 against the order of the WTM dated January 08, 2020 does not suffer from any error of law and is dismissed with no order as to costs. Appeal No. 366 of 2020 which is against of the AO dated May 27, 2020 is quashed. The appeal is allowed. The matter is remitted to the AO to decide the matter afresh within six months after giving an opportunity of hearing to the appellant. In this regard the appellant will appear before the AO on December 28, 2021 and the AO will proceed thereafter in accordance with law. In the circumstances of the case, parties shall bear their own costs.

14. The present matters were 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

15.12.2021
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