

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 25.02.2022

Date of Decision : 13.05.2022

**Misc. Application No. 102 of 2021
(Stay Application)**

And

Appeal No. 494 of 2020

MBL & Company Ltd.
M-15, M Block Market,
1st Floor, Greater Kailash,
New Delhi – 110048.

..... Appellant

Versus

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

... Respondent

Mr. Prakash Shah, Advocate with Mr. Kushal Shah, Chartered
Accountant i/b Prakash Shah & Associates for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Mr. Shourya
Tanay, Ms. Anshu Mehta, Advocates i/b ELP for the Respondent.

With

Appeal No. 4 of 2021

MBL & Company Ltd.

M-15, M Block Market,
1st Floor, Greater Kailash,
New Delhi – 110048.

..... Appellant

Versus

Securities & 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. Neville Lashkari,
Mr. Prakash Shah, Advocates i/b Prakash Shah & Associates for the
Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Abhiraj Arora,
Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Mr. Shourya
Tanay, Ms. Anshu Mehta, Advocates i/b ELP for the Respondent.

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

Per : Justice M. T. Joshi, Judicial Member

1. Aggrieved by the two different orders based on same set of facts dated February 28, 2020 passed by the learned Whole Time Member (hereinafter referred to as ‘WTM’) and order dated March 17, 2020 passed by the learned Adjudicating Officer (hereinafter referred to as ‘AO’) of the respondent Securities and Exchange

Board of India (hereinafter referred to as 'SEBI'), the present appeals are preferred.

2. The learned WTM had restrained the appellant from buying, selling or otherwise dealing in the securities, in its proprietary account, directly or indirectly for a period of four years from the date of the order. The learned AO imposed a penalty of Rs. 10 lacs and Rs. 5 lacs on two counts, therefore, the present appeals are preferred.

3. The appellant was charged of violating Section 12A(a), (b), (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (e) and (g) of the 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'). The appellant being the stock broker was also penalized for violations of the provisions of Clause A(2) of the Code of Conduct for Stock Brokers specified in Schedule II read with Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Stockbrokers Regulations').

4. Noting that there were abnormal trades in the scrip of Gujarat NRE Coke Ltd. (hereinafter referred to as 'the company'), investigation was carried by SEBI for the period from December 15, 2011 to October 9, 2014. In the investigation, *inter-alia*, the respondent SEBI found that the appellant while trading in the scrip of the company in its own proprietary trading, has indulged into self-trades resulting into the contribution to the artificial rise of price i.e. positive Last Traded Price (LTP). Therefore, after hearing the appellant, the impugned orders were passed. Hence the present appeals.

5. We have heard Mr. P. N. Modi, the learned senior counsel with Mr. Neville Lashkari, Mr. Prakash Shah, the learned counsel and Mr. Kushal Shah, Chartered Accountant for the appellant and Mr. Shyam Mehta, the learned senior counsel with Mr. Abhiraj Arora, Mr. Karthik Narayan, Mr. Harshvardhan Nankani, Mr. Shourya Tanay, Ms. Anshu Mehta, the learned counsel for the respondent.

6. The trading details of the appellant are recorded by the learned WTM in the impugned order in paragraph no. 23 as under :-

“23.1. At NSE, during the period from December 15, 2011 to February 24, 2012 (50 days), total trades executed by MBL as buyer were 63,924 for 87,46,016 shares of GNCL. On these 50 days, out of 63,924 MBL trades, MBL had entered into 5,041 self-trades for 34,535 shares of GNCL.

23.2. By these 5,041 self-trades, MBL had contributed Rs. 289.35/- towards positive LTP i.e. 12.64% of total market positive LTP.

23.3. Out of 5,041 self-trades, 4,327 self-trades for 11,828 shares were executed through the same terminal ID / user ID.

23.4. Few instances of such self-trades of MBL that contributed the LTP are as under :”

Sr. No.	Date	Order Type	Order No.	Order Time (LM)	Order Qty	Trade Time	Trade Qty.	Trade Price	Diff. in LTP (in Rs.)
1	08/02/2012	Sell	2012020800038329	09:15:08.0000000	5000	09:15:12	1	24.00	0.55
		Buy	2012020800042902	09:15:11.0000000	1				
2	24/01/2012	Sell	2012012400040557	09:15:32.0000000	2000	09:15:36	1	22.10	0.25
		Buy	2012012400054569	09:15:36.0000000	1				
3	16/12/2011	Sell	2011121600122349	09:19:36.0000000	2000	09:19:36	1	16.65	0.15
		Buy	2011121600122421	09:19:36.0000000	1				
4	23/12/2011	Sell	2011122300046781	09:15:34.0000000	1000	09:15:35	1	16.50	0.15
		Buy	2011122300047164	09:15:35.0000000	1				
5	23/12/2011	Sell	2011122300049878	09:15:41.0000000	1000	09:15:47	1	16.45	0.15
		Buy	2011122300052139	09:15:47.0000000	1				

7. On the basis of this trading pattern, the respondent SEBI had alleged that the modus operandi of the appellant was to place huge sell orders for higher price than the last LTP and thereafter to make a

self-trade of one share only for that higher price, thus, establishing a new higher LTP as detailed in the last column of the table reproduced above. This trading pattern was found to be non-genuine and manipulative thereby creating artificial increase in the price of the scrip of the company.

8. Before the learned WTM the appellant pleaded as under :-

That the self-trades were non-intentional, non-manipulative and inadvertent. SEBI had already accepted vide circular dated February 8, 2013 that in the electronic trading system self-trades may occur. Therefore, it had asked the stock exchanges to put the system whereby such self-trades would not occur. The appellant carries proprietary trading with activities of jobbing and arbitrage. It's multiple servers are kept at various locations. Therefore, there would be likelihood of self-trade occurring as the trades are carried out through different branches from different locations. The trading pattern of the appellant has not affected the price or volume of the scrip of the company. Therefore, it cannot be alleged that the appellant had violated the provisions of the PFUTP Regulations. In three cases, the AO of the respondent SEBI had closed the proceedings against the appellant wherein similar allegations of self-

trades were made. The volume of the impugned transactions was not very significant. There was no intention to manipulate the price and, therefore, the appellant wanted that the proceedings be dropped.

9. Before the learned AO, the appellant relied on the ratio of the decisions of this Tribunal in the case of *S. P. J. Stockbrokers Pvt. Ltd. vs. SEBI Appeal No. 52 of 2013 decided on September 4, 2013* and *Kapil Chaturabhuj Bhuptni vs. SEBI Appeal No. 95 of 2013 decided on October 10, 2013* as well as some other decisions of the AO wherein in the cases of self-trades the notices therein were absolved.

10. The learned WTM as well as the learned AO further noted that out of 5041 self-trades, 4,327 self-trades for 11,828 shares were executed by the appellant from the same terminal ID and not from any different location. Further, it was also found that the trading was done manually and not electronically and therefore, the issues raised by the appellant regarding inadvertent self-trading when carried electronically i.e. called algo trading would not survive.

11. Before us, the learned counsel for the appellant additionally submitted that the delay in issuing show cause notice after a period of seven and half years from the date of last trades in 2012 itself would be ground to quash the proceedings. In this regard he relied on the ratio of *Ashok Shivlal Rupani & Anr. Appeal No. 417 of 2018 decided on August 22, 2019, Sanjay Jethalal Soni vs. SEBI Appeal No. 102 of 2019 decided on November 14, 2019 and Mr. Bharat J. Patel vs. SEBI Appeal No. 154 of 2020 dated September 8, 2020*. He further submitted that the self-trades as detailed above were only 0.1% of the total market volume spreading over 50 trading days. He relied on the number of orders of the various AOs of SEBI as given in Annexure A to the written notes of arguments as well as in three other cases wherein the appellant itself was noticees, wherein the volume of self-trades at 2.2.9%, etc. was held negligible and the noticees therein were absolved.

12. Upon hearing both the sides, we find that plea on the delay in launching the proceedings is raised by the appellant only during the appeal. It neither pleaded before the respondent SEBI that any delay was caused or that any prejudice had caused to it in defending the proceedings. The cases cited by the appellant, in this regards, therefore, would not be applicable in the present case. As not merely

the delay but the prejudice, if any, caused to the noticee in defending the case due to the delay has to be made out in order to succeed on the ground of delay.

13. As regards the plea that the appellant is having different branches at different locations and, therefore, self-trades are not manipulative, we find majority of the self-trades were from the same terminal carried out manually, therefore, there is no merit in the case of the appellant on this ground.

14. As regards the decisions of the various AO's, we find that those were the cases solely of self-trades wherein some trades matched automatically in view of electronic trading. In the case of *Milkyway Mercantiles Pvt. Ltd.* wherein the AO has absolved the noticee vide order dated March 16, 2017, the self-trades were 2.29% to the market volume. There however 80 traders / jobbers were carrying the business on behalf of the noticee company and, therefore, in view of the small number of self-trades compared to the voluminous business of the noticee company the self-trades to the market volume was not found to be manipulative. In the present case, we find that the pattern of placing comparatively huge sell orders for higher LTP and then one buy order for the higher price,

from the same terminal manually. Those trades have established high LTP. This difference in LTP with pattern of placing high sell orders and then placing a single buy order from the same terminal cannot be accidental but with an intention to increase the LTP. In that view of the matter, reliance of the appellant in various orders of the AO is of no consequence.

15. The learned counsel for the appellant submitted that the learned WTM had restrained the appellant from dealing in the securities for a period of four years. He further submitted that the appellant employ 200 jobbers and traders in various groups. The order would close the business of the appellant, thus, causing loss not only to the appellant but to its employees also. He therefore relied in the case of *Excel Crop Care Limited vs. Competition Commission of India & Anr. [(2017) 8 SCC 47]* and the decision of this Tribunal in the case of *Nirmal Kotecha vs. SEBI Appeal No. 580 of 2019 decided on June 8, 2021*.

16. On the other hand, the learned senior counsel for the respondent submitted that the broking activity of the appellant is not anyway restrained. The order is only as regards the proprietary trades of the appellant.

17. In the case of *Excel Crop Care Ltd. cited (supra)*, the relevant provisions of the Competition Act provided that 10% of the turnover would be the maximum penalty. The Hon'ble Supreme Court held that doctrine of proportionality would suggest that the court should deal in favour of the relevant turnover and not of total turnover. In the case of *Nirmal Kotecha cited (supra)*, in the fact of that case this Tribunal held that considering the self-trades of the appellant, the respondent could have dealt with in the proceedings under Section 15I of the SEBI Act.

18. Considering the facts of the present case that the appellant's clear intention was to manipulate the price of the scrip by first placing huge sell orders for a higher price and then buy a single share from the same terminal, in our view, the order passed by the learned WTM or the penalty imposed by the learned AO needs no interference. In the result, the following order :-

ORDER

19. Both the appeals are hereby dismissed without any order as to costs.

20. 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. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Justice M. T. Joshi
Judicial Member

13.05.2022
PTM