

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing : 18.02.2022

Date of Decision : 09.06.2022

Appeal No. 243 of 2020

1. DPK Stock & Securities
2. Shivam Investments
3. Caps Finstock Services Pvt. Ltd.
4. AJC Securities And Finance Pvt. Ltd.
5. Supreme Lease Finvest Pvt. Ltd.

801, International Trade Tower,
Nehru Place, New Delhi – 1100019.

..... 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

With
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... Respondent

Mr. Devanshu Desai, Advocate for the Appellants.

Mr. Shyam Mehta, Senior Advocate and Mr. Suraj Chaudhary,
Mr. Manish Chhangani, Mr. Ravi Shekar Pandey, Ms. Samreen
Fatima, Advocates i/b The Law Point 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 order of the learned Whole Time Member (hereinafter referred to as 'WTM') of the respondent Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated January 15, 2020 directing to disgorge an amount of Rs. 41,62,572/- from the present appellants, appeal no. 244 of 2020 is preferred. In the same set of facts, the learned Adjudicating Officer (hereinafter referred to as 'AO') of the respondent SEBI vide impugned order dated January 30, 2020 directed the present appellant nos. 1 DPK Stock and

Securities would pay a fine of Rs. 10 lacs and also directed rest of the appellants to pay a penalty of Rs. 5 lacs each.

2. For the sake of convenience, the facts as stated in the order of the learned WTM are being considered.

3. The charges against the appellants are essentially of violation of provisions of Regulations 3(a), (b), (c), (d), 4(1), 4(2)(a), (b), (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'). It is alleged that the present appellants had between July 2, 2005 (investigation period) indulged into creation of artificial volume and manipulation of price in the scrip of Polar Pharma India Ltd. (hereinafter referred to as 'PPIL or the company'). The appellants contended that interim order cum show cause notice was issued after 11 years of the alleged activities i.e. on February 2, 2016. They submitted that there was inordinate delay in commencing the proceedings. In the preliminary as well as the final reply, the appellants submitted that due to the passage of time a risk of loss of evidence or the data got corrupted is there. The appellants, therefore, on this sole ground wanted that the proceedings be dropped.

4. In the final reply, while repeating the defense of delay the appellants further submitted that during the years 2005-06, they had traded in around 90 scrips. The details of the scrip were given at 'Annexure 1' to the reply. Therefore, they clarified that on the basis of newspaper report and rumors the appellants traded in the scrip more particularly finding that pharma sector was witnessing a boom. Further, board of directors of PPIL, decided to issue 3,00,000 equity shares on preferential and private placement basis to Stressed Assets Stabilization Fund. The information regarding negotiated settlement with SASF got materialized and, therefore, on the basis of this information they traded in the scrip. Therefore, they pointed out that out of their trading for 30 days in the shares of the company the trades of six days are impugned. As regards the synchronised trades, it was submitted that there was difference in orders placed and executed on the relevant date. Some inadvertent or accidental synchronised trades may have occurred which cannot be ipso facto called as illegal.

The learned WTM as well as the learned AO did not agree with the submissions, therefore the impugned orders came to be passed. Hence the present appeals.

5. We have heard Mr. Devanshu Desai, the learned counsel for the appellants and Mr. Shyam Mehta, the learned senior counsel and Mr. Suraj Chaudhary, Mr. Manish Chhangani, Mr. Ravi Shekar Pandey, Ms. Samreen Fatima, the learned counsel for the respondent.

6. Appellant nos. 1 DPK Stock and Securities is a proprietary firm of D. K. Kapur (HUF). Appellant nos. 2 Shivam Investments is the proprietary concern of Mr. D. K. Kapur's wife Sushma. All other three appellants are entities owned by Mr. D. K. Kapur and his wife Mrs. Sushma Kapur.

7. In the proceedings before SEBI besides the present five appellants, one Mr. Peeyush Agarwal, another entity named as Omkam and one entity named as Shailja were also noticees. Mr. Peeyush Agarwal is the former director of PPIL, the company in question. He resigned from the company on October 28, 2004. He was the director of Omkam who had given on loan on December 1, 2005 an amount of Rs. 5 lacs to one APM Financial Consultants P. Ltd. in which Mr. D. K. Kapur was the director. Mr. Peeyush Agarwal sold the shares of the company during the investigation period. In view of these connections and the sale of the shares, they were alleged to have participated in the manipulative practices said to have been carried out

by the present appellants. Learned WTM however found that Mr. Peeyush Agarwal merely sold his shares which were in his possession earlier being the director of the company and a grant of loan of Rs. 5 lacs was post-investigation period and, on this ground, the learned WTM absolved these three entities from the proceedings. The learned AO however, had penalized Mr. Peeyush Agarwal for Rs. 20 lacs. He had preferred appeal before this Tribunal. Finding two contradictory orders as regards Mr. Peeyush Agarwal, this Tribunal has remanded the matter back to the learned AO and we are informed that the proceedings against him are also dropped by the learned AO after remand.

8. So far as the present appellants are concerned, the facts would show that between July 4, 2005 to September 13, 2005 (investigation period) the price of the scrip of the company increased from Rs. 17.50 to Rs. 65.55 which was an increase of 274.57% in 40 trading days. During these 40 days, the total traded volume of the present appellants was 39.4% gross buy and 24.36% gross sale volume of the entire market. Totally their buy quantity was 11,29,759 shares and sell quantity was 6,98,854 shares. Out of these trades, the present appellants traded within themselves in 4,77,484 shares. The details of

the same are given in the various tables as put in the impugned orders. As pointed out while the appellant nos. 1 and 2 are the proprietary firms of Mr. D. K. Kapur (HUF) and Mr. D. K. Kapur's wife Mrs. Sushma Kapur, all other three entities are the joint entities of these two individuals. In a way, there were partly self-trades and partly synchronised trades. It was alleged that besides volume contribution of the appellants, the price manipulation was also made by them. As a group they had contributed Rs. 104.6 in positive Last Traded Price (LTP). This was 22.01% of the total positive LTP which caused increase in the price from Rs. 17.50 onwards. The total of details of the contribution made by the appellants in price rise is also given in the impugned order. The individual impact on positive LTP is also given in the impugned order

9. The respondent SEBI in the situation concluded that the appellants had no intention to transfer the beneficial ownerships of the shares of PPIL but they as a group devised the scheme to manipulate the price as well as the volume of the trades in the shares of PPIL and, therefore, the impugned order came to be passed.

10. The learned counsel for the appellants emphatically submitted before us that there was delay of 14 years from the date of trades till

the date of passing of the impugned order. This should result in quashing of the proceedings initiated against them. The learned WTM erroneously held that there is no time limit prescribed for initiation of the proceedings and, therefore, he can continue with the same. The learned counsel relied on the ratio of the judgments of this Tribunal in *Mr. Rajiv Bhanot & Ors. vs. SEBI Appeal No. 396 of 2018 decided on July 9, 2021*, *Ashok Shivlal Rupani & Anr. Appeal No. 417 of 2018 decided on August 22, 2019*, *Ashlesh Gunvantbhai Shah Appeal No. 169 of 2019 alongwith connected appeals decided on January 31, 2020*.

11. The learned senior counsel for the respondent, relied on the ratio of, *Bhavesh Pabari vs. SEBI Appeal No. 345 of 2015 decided on March 14, 2016*, *Pooja Vinay Jain vs. SEBI Appeal No. 152 of 2019 decided on March 17, 2020*. He submitted that in the case of *Pooja Vinay Jain (supra)* had held that the delay alone cannot be a ground to set aside the order and the party is required to show as to what prejudice has caused to it by the delay. In the case of *Adjudicating Officer SEBI vs. Bhavesh Pabari [(2019) SCC Online SC 294]*, the Hon'ble Supreme Court has held that though SEBI Act does not prescribe a limitation, the power must be exercised within a reasonable

period and the issue as to whether the time is reasonable would depend upon the facts and circumstances of each case. It was further submitted that the ex-parte order of the impounding of amount was passed by the respondent SEBI on February 2, 2016. However the same was never challenged by the present appellants and this itself, according to the learned counsel would show that no prejudice has caused to the appellants.

12. In the circumstances, it was submitted that the facts of the cases that the present appellants have indulged into volume manipulation, price manipulation in the shares of PPIL, he wanted that the appeal be dismissed.

13. Upon hearing both the sides, in our view, the appeals deserve to be allowed for the following reasons.

14. It is an admitted fact that the show cause notice cum interim order was issued after 11 years and the final orders came to be passed after a period of 14 years from the date of trading by the appellants in the shares of the company. Appellants pleaded that during that period they have traded not only in the scrip of the present company but also in 90 other scrips. List of the same was annexed as Annexure 1 to the

final reply. They pleaded that due to the inordinate lapse of time, there was a risk of loss of evidence and data corruption. According to them, on the basis of the available public information as detailed (supra), they had traded in the scrip. Further, though some of the trades were on the face of it synchronized trades there was gap of considerable time between the two orders placed and in absence of any connection with Mr. Peeyush Agarwal, those trades cannot be *ipso facto* called as illegal.

15. This Tribunal in number of cases has held that inordinate delay in launching the proceedings itself may cause prejudice to a party. In the present case, the appellants claimed that they had traded in the scrip during the relevant period and risk of loss of evidence has occurred. In our view, an inordinate delay in launching the proceedings had caused prejudice to the appellants taking into consideration the totality of the facts as placed above.

16. On merit also, we find that as per SEBI itself, found that the appellants are not connected to Peeyush Agarwal. Further, the appellants pleaded that on the basis of the information available in public domain, they traded in the scrip as detailed (supra).

Considering all these facts, in our view, the appeals deserve to be allowed without any order as to costs. Hence the following order.

ORDER

17. The appeals are hereby allowed without any order as to costs. Impugned orders passed by the WTM dated January 15, 2020 and passed by AO dated January 30, 2020 are hereby quashed and set aside.

18. 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

09.06.2022
PTM