BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 15.06.2022

Misc. Application No. 1236 of 2021
And
Appeal No. 702 of 2021

M/s. Agarwal Holdings
7/1, Lord Sinha Road,
4th Floor, Room No. 404, Kolkata,
West Bengal – 700 071. …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. Poonam Gadkari, Advocate with Mr. Anil Shah, Advocate i/b Juris Matrix Partners LLP Advocates & Solicitors for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Manish Chhangani, Advocate i/b The Law Point for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Justice M. T. Joshi, Judicial Member
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer (Oral)

1. The present appeal has been filed against the order dated September 20, 2021 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') whereby a penalty of Rs. 16 lacs has been imposed upon the appellant alongwith seven other noticees to be paid jointly and severally for violating Section 12A(a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(a), (b) 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').

2. The appellant alongwith seven other noticees were issued show cause notice dated May 18, 2021 to show cause as to why an inquiry should not be held against them and penalty should not be imposed under provisions of Section 15HA of the SEBI Act. The allegation made in the show cause notice was that the appellant and other noticees as a group created false or misleading appearance of trading in the scrip or entered into a transaction in the scrip without the intention of performing it and without the intention of change of ownership of securities by repetitive synchronized trades and / or

reversal trades. The AO after considering the material evidence on record and after considering the submissions of the appellant and the other noticees found that the trading pattern of the appellant and other noticees indicated synchronized trades whereby sell orders were placed within a time gap of few minutes at the same rate and the quantum was same or similar. The AO further found that by entering into synchronized trades, the appellant and other noticees had created a misleading appearance in the trading of the scrip and generated artificial volume in the scrip. The AO further found that the appellant and other noticees had also entered into reversal trades which contributed 75.76% of the total market volume which was significant and this reversal of trades were carried out on several occasions.

3. Having heard Ms. Poonam Gadkari, the learned counsel with Mr. Anil Shah, the learned counsel for the appellant and Mr. Suraj Chaudhary, the learned counsel with Mr. Manish Chhangani, the learned counsel for the respondent, we find that the evidence which has come forward clearly indicates that the pattern of the trading of the appellant with the other noticees indicated synchronised trades which created a misleading appearance of trading in the scrip and generated artificial volume. The buy and sell orders, the volume

created thereof and proximity of time between the buy orders and sell orders shows an intention of the appellant to play the market for the purpose of increasing the volume and create artificial picture. Similarly, we found that no justification has been given with regard to the reversal trades. Consequently, we find that the violation against the appellant stands proved.

4. It was urged that the direction of the AO to pay the penalty amount jointly and severally was wholly erroneous, since the appellant alongwith other noticees did not act in concert. In this regard, we find that the only connection shown of the appellant with other noticees has been indicated in paragraph no. 21 of the impugned order wherein the appellant has been shown to be connected with noticee no. 4, Invorex Vincom Pvt. Ltd. through off-market transfer. There is nothing to indicate the appellant's connection with other noticees. Since eight noticees have been found to have violated provisions of the Section 12A read with Regulations 3 and 4 of the PFUTP Regulations and in the absence of any finding as to why all the noticees should be liable to pay jointly and severally, we are of the opinion that the direction of the AO to pay the penalty amount jointly and severally is harsh and arbitrary and without any reasons.

5. For the reasons stated aforesaid, the violation is affirmed against the appellant. However, the direction to pay the amount jointly and severally is modified to the extent that the appellant will pay its share of penalty which is Rs. 2 lacs within two weeks from today. The appeal is accordingly disposed of.

6. 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

Ms. Meera Swarup
Technical Member

15.06.2022
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