MBL AND COMPANY LIMITED

v.

SECURITIES AND EXCHANGE BOARD OF INDIA

(Civil Appeal Nos. 4262-4263 of 2022)

MAY 26, 2022

[DR DHANANJAYA Y CHANDRACHUD AND BELA M TRIVEDI, JJ.]

Securities and Exchange Board of India Act 1992: ss. 12(A) (a), (b), (c), ss. 15Z, 15HA, 15HB, ss. 11, 11(4), 11B/19 – Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control – On facts, appellant engaged in manipulative trade as a result share price of a company came to be manipulated – Order passed by the Whole Time Member-WTM prohibiting the appellant from carrying on trading in its proprietary account, for a period of four years – Thereafter, the adjudicating officer imposed penalty of Rs 15 lakhs – During the pendency of the proceedings before the tribunal, the appellant was directed to deposit Rs two crores with SEBI, conditional upon which the order passed by the WTM was directed to remain stayed – On appeal, held: WTM while imposing an order of debarment, specifically applied its mind to the impact of manipulation of the price of scrips – Impact of a manipulation cannot be assessed only in terms of the gain caused to the participants themselves, but in terms of the wider consequences of the action on the securities market – In view thereof, the order passed by the WTM cannot be regarded as disproportionate – Moreover, WTM prohibited the appellant from participating in its proprietary account for a specified period, leaving it open to continue operation in their broking account – Thus, the order passed by the WTM not interfered with – Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market Regulations 2003.

Dismissing the appeals, the Court

HELD: 1.1 In the instant case, the Whole Time Member-WTM, while imposing an order of debarment, has specifically applied its mind to the issue as regards the impact of such a manipulation. While dealing with this aspect, the WTM observed

A **that the manipulation of the price of scrips seriously impinges upon other counter parties in the securities market. In other words, the impact of a manipulation which is carried out by a participant in the securities market cannot be assessed only in terms of the gain which has been caused to the participants themselves, but in terms of the wider consequences of the action** B **on the securities market. [Para 12][825-A-C]**

1.2 The securities market deals with the wealth of investors. Any such manipulation is liable to cause serious detriment to investors' wealth. The order which has been passed by the WTM C **cannot be regarded as disproportionate so as to result in the interference of this Court in the exercise of its jurisdiction u/s. 15Z of the Securities and Exchange Board of India Act 1992. Moreover, the WTM has prohibited the appellant from participating in its proprietary account for a specified period, leaving it open to the appellant to continue operation in their** D **broking account. [Para 14][826-B-C]**

Adjudicating Officer, Securities and Exchange Board of India v. Bhavesh Pabari **(2019) 5 SCC 90;** *N. Narayanan v. SEBI* **(2013) 12 SCC 152 : [2013] 6 SCR 391 – referred to.**

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Case Law Reference

(2019) 5 SCC 90	**referred to**	**Para 11**
[2013] 6 SCR 391	**referred to**	**Para 13**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4262-F 4263 of 2022.

From the Judgment and Order dated 13.05.2022 of the Securities Appellate Tribunal, Mumbai in Appeal No. 494 of 2020 and Appeal No. 04 of 2021.

G Dr. Abhishek Manu Singhvi, Anish Dayal, Sr. Advs., Navpreet Singh Ahluwalia, Nidhiram Sharma, Adhish Sharma, Nitin Pandey, Aakash Khattar, Umesh Kumar Khaitan, Advs. for the Appellant.

Pratap Venugopal, Abhishek Baid, Anup Jain, Ashok Kr. Jain, Praneet Das for M/s Expletus Legal, Advs. for the Respondent.

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The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

Factual Background

1. The Whole Time Member[1] of the Securities and Exchange Board of India[2] passed an order on 28 February 2020, in exercise of the jurisdiction under Sections 11, 11(4) and 11B read with Section 19 of the Securities and Exchange Board of India Act 1992[3], restraining the appellant from buying, selling or otherwise dealing in securities in its proprietary account, directly or indirectly, for a period of four years from the date of the order.

2. On 17 March 2020, the adjudicating officer exercised their powers under Section 15 I and imposed a mandatory penalty of rupees fifteen lakhs; Rupees ten lakhs under Section 15HA for violation of the provisions of Sections 12A(a),(b) and (c) of the SEBI Act read with Regulations 3 and 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003[4] and Rupees five 5 lakhs under Section 15 HB of the SEBI Act for violating the Code of Conduct for Stock Brokers read with the SEBI (Stock Brokers and Sub Brokers) Regulations 1992.

3. During the pendency of the proceedings before the Securities Appellate Tribunal[5], the appellant was directed to deposit an amount of rupees two crores with SEBI, conditional upon which the order dated 28 February 2020 passed by the WTM was directed to remain stayed.

4. The WTM arrived at a finding that the appellant had engaged in manipulative trades as a consequence of which the share price of a company by the name of Gujarat NRE Coke Limited came to be manipulated. Out of 5,041 self-trades between 15 December 2011 and 24 February 2012, it has been noted that 4,327 self-trades for 11,828 shares were executed through the same terminal ID. The specific finding in this regard is contained in paragraph 23.9 of the order of the WTM, which is extracted below:

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[1] "WTM"
[2] "SEBI"
[3] "SEBI Act"
[4] "PFUTP Regulations"
[5] "SAT"

A "23.9. In this regard, I note that out of 5,041 self-trades, 4,327 self-trades for 11,828 shares were executed through the same terminal ID/user ID i.e. buy and sell order was placed by same person/dealers manually. Further, from 5,042 self-trades, the positive LTP contribution was Rs. 289.35 i.e. 12.64% of total market positive LTP. I also note that MBL accepted that single share self-trade was placed by it though according to it, to check the current price of GNCL by impermissible means. Thus, I am of the view that MBL had intentionally, through manual trading, placed the single share self-trade from same terminal to increase the price of GNCL for its own benefit."

C 5. The WTM has also observed as follows:

"24. From the above, I note that during the period December 15, 2011 to February 24, 2012, MBL had continuously placed single share buy order immediately after placing sell order of large quantity at a price higher than the last traded price. These single share order got matched with its own sell order of large quantity resulted into self-trade of 1 share. This single share self-trades had increased the price of shares of GNCL, which benefit MBL. Thus, MBL had artificially manipulated the price of GNCL through single share self-trade. Hence, self-trades executed by MBL are intentional self-trades with an intention to manipulate price of the scrip of GNCL.

25. Considering the order placing pattern and other circumstances mentioned at paragraph 23 and 24 above, I am of the view that self-trades had impact on the price of the shares of GNCL, however, self-trades were so designed to appear that the volume creation is negligible but were in fact motivated by the manipulative intention of creation of false price ascension. Thus, preponderance of probability is that these trades are intentional self-trades. Therefore, I conclude that the impugned self-trades by MBL are intentional and manipulative self-trades.

G 26. MBL contended that in order to check the price of the scrip, MBL placed a single share buy order and these insignificant quantum of trading could not impact either the price or volume of the scrip. In this regard, I note that single share buy order placed by MBL got matched with the already available large sell order of

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MBL at a price higher than the last traded price thereby establishing the higher LTP. Further, such order placement pattern of MBL were observed in large number of MBL self-trades and the same were repetitive in nature. I note that due to such trading pattern, MBL had positive LTP contribution of Rs. 289.35 through 5,041 self-trades. Further, I also note the observation of Hon'ble Securities Appellate Tribunal (SAT) in order dated February 25, 2020 in the matter of Mrs. Kalpana Dharmesh Chheda and others Vs. SEBI that "…. *when the appellants were holding a large number of shares, their selling miniscule quantity of one share each on more than four dozen occasions is nothing but a strategy of manipulation and unfairly benefiting by offloading the entire shareholding after raising the price to considerable levels*…..". Though the said observation of the Hon'ble SAT was rendered in the context of manipulative trading pattern adopted by single share transaction, the same equally holds good in the present factual matrix of the case as well, in respect of manipulative self-trades through single share transaction. Thus, in view of the observation of Hon'ble SAT, I am of the view that manipulation in the scrip can be done by single share order placement method also, which has precisely happened in the present matter, in such a scenario, volume created by such trades/ self-trades in the scrip is irrelevant/immaterial. Thus, considering at the pattern of trading done by MBL and the fact that MBL had derived benefit through that particular scheme or nature of trading, I am of the view that the trading pattern adopted by MBL is of a manipulative and unfair nature and would fall within the ambit of the PFUTP Regulations. Hence, I do not find any merit in the submission of MBL that single share order placement could not impact either the price or volume of the scrip."

6. The above findings have been affirmed in appeal by the SAT, by its impugned order dated 13 May 2022.

Submissions of Counsel

7. In the present case, it has been submitted on behalf of the appellant by Dr Abhishek Manu Singhvi, senior counsel, that:

(i) The appellant had executed trades on fifty days between 15 September 2011 and 9 January 2015;

(ii) The net gain which was involved is an amount of Rs 3.45 per share; and

(iii) Over the entire duration of fifty days when the trades were carried out, the total profit which has been generated would be in the amount of Rs 2.61 lakhs, while the volume of trade represents only 0.04 per cent of the total market value which is spread over the abovementioned trading days;

(iv) In this backdrop, the imposition of the bar from trading for a period of four years is disproportionate and harsh;

(v) The impact of the ban would seriously affect the employees of the appellant. The appellant has 450 employees;

(vi) A stay was in operation from 28 February 2020 and the direction to deposit rupees two crores during the pendency of appeal before the SAT was duly complied with; and

(vii) Whereas the adjudicating officer imposed a penalty of rupees fifteen lakhs, the WTM has proceeded to bar the appellant from carrying on trading in its proprietary account for a period of four years, which is disproportionate.

8. Mr Pratap Venugopal, counsel appearing on behalf of SEBI, on the other hand, submitted that the imposition of the ban by the WTM is not relatable to the extent of the gain which has been made by the appellant. The order passed by the WTM, it has been urged, is distinct from the penalty which has been imposed by the adjudicating officer. In the present case, it has been submitted that the trades, as noted in the order of the WTM, were carried out from the same terminal ID and there is also a finding of fact that the trading was done manually and not electronically. Hence, it has been observed that there was an intentional manipulation in the price of the company in question. This court, it has been urged, ought not to interfere with a penalty so long as it is not disproportionate or arbitrary, as the precedents of this court indicate.

Analysis

9. In the present case, the order of the WTM as well as of the SAT notes that the *modus operandi* of the appellant was to place a huge sale order at a price higher than the last traded price of the company and thereafter to make a self-trade of only one share for that higher price, thus, establishing a new higher LTP. This has been depicted in the

following table, which is contained in the order of the WTM and in the impugned order of the SAT:

"Sr. No.	*Date*	*Order Type*	Order No.	Order Time (LM)	Order Qty	Trade Time	Trade Qty.	Trade Price	Diff. In LTM (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*				

10. The WTM found the appellant guilty of violating provisions of Section 12A (a), (b), (c)[6] of the SEBI Act read with Regulations 3 (a), 3(b), 3(c), 3(d), 4(1), 4(2)(a), 4(2) (e) and 4(2)(g)[7] of the PFUTP

[6] **12-A. Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control**.—No person shall directly or indirectly—
(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

[7] **Regulation 3: - Prohibition of certain dealings in securities**
No person shall directly or indirectly-
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive

A Regulations. It is in this backdrop that the WTM has come to the conclusion that the manipulation which was conducted by the appellant has to be analyzed not only from the narrow perspective of the gain which has been caused to the appellant, but, on the breach of the integrity of the securities market.

B 11. In a judgment of a three-Judge Bench of this Court in **Adjudicating Officer, Securities and Exchange Board of India** v **Bhavesh Pabari**[8], it has been observed that:

> "34. This Court, in the exercise of its jurisdiction under Section 15-Z of the SEBI Act, cannot go into the proportionality and
> C quantum of the penalty imposed, unless the same is distinctly disproportionate to the nature of the violation which makes it offensive, tyrannous or intolerable. Penalty by the very nature of the provision is penal. We can interfere only where the quantum is wholly arbitrary and harsh which no reasonable man would award. In the instant case, the factual findings are not denied and,
> D thus, we are not inclined to intermeddle with the quantum of penalty. The penalty imposed is just, fair and reasonable and, thus, upheld."

The above observations make it clear that the imposition of a penalty is subject to interference under Section 15Z of the SEBI Act

E device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities
F which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.
Regulation 4:- Prohibition of manipulative, fraudulent and unfair trade practices
(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.
(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following namely:
G (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
….
(e) any act or omission amounting to manipulation of the price of a security;
….
(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security."

H [8] (2019) 5 SCC 90

only where the quantum is found to be wholly arbitrary and harsh or distinctly disproportionate to the nature of the violation.

12. In the present case, the WTM, while imposing an order of debarment, has specifically applied her mind to the issue as regards the impact of such a manipulation. While dealing with this aspect, the WTM has observed that the manipulation of the price of scrips seriously impinges upon other counter parties in the securities market. In other words, the impact of a manipulation which is carried out by a participant in the securities market cannot be assessed only in terms of the gain which has been caused to the participants themselves, but in terms of the wider consequences of the action on the securities market.

13. In **N. Narayanan** v. **SEBI**[9], this Court observed that Section 12-A of the SEBI Act read with Regulations 3 and 4 of the PFUTP Regulations specifically aim to curb market manipulations which can have an adverse effect on investor confidence and the healthy growth of the securities market. This Court made the following observations:

> "33. Prevention of market abuse and preservation of market integrity is the hallmark of securities law. Section 12-A read with Regulations 3 and 4 of the 2003 Regulations essentially intended to preserve "market integrity" and to prevent "market abuse". The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors' protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. "Market abuse" impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers. The statutory provisions mentioned earlier deal with the situations where a person, who deals in securities, takes advantage of the impact of an action, may be manipulative, on the anticipated impact on the market resulting in the "creation of artificiality". The same can be achieved by inflating the

[9] (2013) 12 SCC 152

A company's revenue, profits, security deposits and receivables, resulting in price rise of the scrip of the company. Investors are then lured to make their "investment decisions" on those manipulated inflated results, using the above devices which will amount to market abuse."

B 14. The securities market deals with the wealth of investors. Any such manipulation is liable to cause serious detriment to investors' wealth. In this backdrop, the order which has been passed by the WTM cannot be regarded as disproportionate so as to result in the interference of this Court in the exercise of its jurisdiction under Section 15Z of the SEBI Act. Moreover, the WTM has prohibited the appellant from participating C in its proprietary account for a specified period, leaving it open to the appellant to continue operation in their broking account.

15. For the above reasons, we are not inclined to accede to the submissions which have been urged on behalf of the appellant. The appeals shall stand dismissed.

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16. Pending application, if any, stands disposed of.

Nidhi Jain Appeals dismissed.