IN THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

DATED THIS THE 28TH DAY OF JULY 2025

CORAM : Justice P. S. Dinesh Kumar, Presiding Officer
Ms. Meera Swarup, Technical Member
Dr. Dheeraj Bhatnagar, Technical Member

Appeal No. 368 of 2021

Between

AKG Securities and Consultancy Ltd.
6th Floor, Parmesh Corporate Tower,
13, Karkardooma Commercial Complex
Delhi – 110 092. …. Appellant

By Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Mr. Prakash Shah, Advocates i/b Prakash Shah and Associates for the Appellant.

And

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

By Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Ms. Nidhi Faganiya, Mr. Nishin Shrikhande and Mr. Harish Ballani, Advocates i/b Vidhii Partners for the Respondent.

With
Appeal No. 371 of 2021

Between

Vihit Investment
M-6, Jolly Plaza,
Athavagate,
Surat – 395 003. …. Appellant

By Mr. Kushal Shah, Authorized Representative i/b Ketan Rupani & Co. for the Appellant.

And

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

By Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Ms. Nidhi Faganiya, Mr. Nishin Shrikhande and Mr. Harish Ballani, Advocates i/b Vidhii Partners for the Respondent.

With
Appeal No. 497 of 2021

Between

Mohd. Faisal
C-1 79 C-1, 80 80a Phatak Shekh Salim
Near Nomani Clinic, Varanasi
Uttar Pradesh – 201 012. …. Appellant

By Mr. Kunal Katariya, Advocate with Ms. Ashmita Garodia, Mr. Sahebrao Wamanrao Buktare, Advocates and Mr. Shardul Shah, CA i/b Shah & Ramaiya Chartered Accountants for the Appellant.

And

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

By Mr. Shiraz Rustomjee, Senior Advocate with Ms. Nidhi Singh, Ms. Komal Shah, Mr. Prateek Pai, Ms. Nidhi Faganiya, Mr. Nishin Shrikhande and Mr. Harish Ballani, Advocates i/b Vidhii Partners for the Respondent.

THESE APPEALS ARE FILED UNDER SECTION 15T OF SEBI ACT, 1992 TO SET ASIDE COMMON ORDER DATED MAY 5, 2021 (EX-A) PASSED BY WTM, SEBI.

THESE APPEALS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON MARCH 28, 2025, COMING ON FOR PRONOUCEMENT OF ORDER THIS 28TH DAY OF JULY 2025, THE TRIBUNAL MADE THE FOLLOWING:

O R D E R

[Per: Dr. Dheeraj Bhatnagar, Technical Member]

These appeals are directed against a common impugned order dated May 5, 2021 passed by the learned WTM[1] of SEBI[2] holding the appellants acting in concert, guilty of manipulating the price in the scrip of Biocon[3] (in Cash segment) and making wrongful gains by establishing higher settlement price in its futures segment. Appellants were charged for violation of Section 12A (a) of SEBI Act[4] and Regulation 3(b), 4(1), 4(2) (a) & (e) of the PFUTP Regulations[5].

[1] WTM- Whole Time Member
[2] SEBI- Securities & Exchange Board of India
[3] Biocon- Biocon Limited
[4] SEBI Act- Securities and Exchange Board of India Act, 1992
[5] PFUTP Regulations- Securities & Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003

2. Brief facts of the case are as under :-

(i) SEBI conducted an investigation in the trading activities of appellants and other entities to ascertain whether there was any manipulation in the price of Biocon in cash market on June 29, 2017 during 15.00.00 hrs. to 15.30.00 hrs. (Investigation Period).

(ii) The investigation by SEBI indicated that the noticee Nos. 2, 3 and 4 (who are the appellants in this case) and noticee no.6, were already holding long positions in F&O segment. Allegedly, noticee Nos. 1 to 5 (noticee Nos.1 and noticee Nos. 5 did not file appeal) acted as a group to manipulate the price of Biocon in cash segment, on June 29, 2017 in the last 40 minutes of trading hours. While LTP in cash segment of Biocon at 2:50 p.m. was at Rs. 327-328/-, the buy and sell orders placed by noticee Nos. 1 to 5 during the 40 minutes period were in the range of Rs. 334-334.10 much above the LTP.

The investigation indicated that since the transactions by the noticees contributed 66.11% to the trading volume

during the last 30 minutes i.e. 15:00:00hrs to 15:30:00hrs, it had the effect of raising LTP in cash segment. As a result, settlement price in the F&O segment was determined at Rs. 332.15 on June 29, 2017, which was the expiry date for the F&O segment. Allegedly, due to this price manipulation, noticee Nos. 2, 3 and 4, who were holding long positions in Futures in Biocon, made the following profits in the Futures segment on expiry:

	AKG Securities	**Vihit Investment**	**Mohd. Faisal**
Profit made in F&O segment on June 29, 2017	Rs. 1.28 lakhs	Rs. 15.37 lakhs	Rs. 9.32 lakhs

(iii) Based on certain similarities noted in their trading behaviour, SEBI held that these noticees had acted as a group, e.g. the noticee No. 2, 3, 4 and 5 had traded in exactly 2 lakh shares each and such trading was done during the period 14:39hrs to 14:51hrs. only. Further, between Noticee No. 2 and Noticee No. 1, it was alleged that a '*connection'* existed, based on a loan payment/repayment between them in July, 2019.

(iv) On March 2, 2020, SEBI issued a Show Cause Notice (SCN) to the appellants alleging violation of various provisions of SEBI Act and the PFUTP Regulations. Replies to SCN were duly filed by all the appellants. Following this, the Ld. WTM passed the impugned order on May 5, 2021, by which following directions under Sections 11B(1), 11B(2), 11(4) and Section 11(4A) read with Section 19 of the SEBI Act were issued and penalty under Section 15HA of SEBI Act was levied:-

Directions	**AKG Securities**	**Vihit Investment**	**Mohd. Faisal**
Amount to be disgorged (with interest from June 29, 2017) *(In Rs Lakhs)*	1.28	15.37	9.32
Penalty u/s 15HA *(In Rs Lakhs)*	10	10	10
Restrain from securities market and prohibition from buying, selling or dealing in securities.	2 years	2 years	2 years

3. Before us, only 3 Noticees namely M/s AKG Securities and Consultancy Ltd. (Noticee No. 4), M/s Vihit Investment (Noticee No.

2) and Mohd. Faisal (Noticee No. 3) have filed the appeal (Numbered respectively as Appellant No. 1, 2 and 3).

3.1 M/s AKG Securities and Consultancy Ltd. (AKG) is a public limited company involved in buying, selling and dealing in stocks and commodities as a jobber, arbitrager and day trader. AKG was represented by Mr. P. N. Modi, learned senior advocate.

3.2 M/s Vihit Investment, a partnership firm involved in the business of trading, jobbing, arbitrage and investment, was represented by Mr. Kushal Shah, authorized representative.

3.3 Mr. Mohd. Faisal, an individual investor and a trader based at Varanasi (UP) was represented by Mr. Kunal Katariya, Ld. advocate.

3.4 Mr. Shiraz Rustomjee, learned senior advocate represented the respondent SEBI. Detailed submissions were filed by them.

AKG Securities (Noticee No. 4)

4. On behalf of Noticee no. 4 (AKG Securities), Mr. P. N. Modi, learned senior advocate made detailed submissions, as under:-

4.1 Mr. Modi submitted that the respondent's finding is based on noticing alleged similarity in trading behavior of Noticees. He adverted that in the absence of any *connection,* trading pattern alone is not sufficient. Mr. Modi submitted that the appellant's transactions in Biocon are independent of and not *connected* with the transactions of other noticees. He submitted that in the Para 13 to 16 of the impugned order establishing *connection* amongst various noticees, appellant's name is not mentioned. He was aggrieved that even though no *connection* was established between the appellant and other noticees, it was impugned that the appellant traded as a group along with other co-noticees. Mr. Modi submitted that in order to establish the charge of price manipulation, the element of collusion between the buyer and seller is a sine qua non. To support his contentions, he referred to the order of this Tribunal in the matter of ***Vikas Ganeshmal Bengani vs. Whole Time Member SEBI***[6]**.**

4.2 Relying upon the decision of decision of the Hon'ble Apex Court in ***Balram Garg vs. Securities and Exchange Board of India***[7] and of this Tribunal in ***Bharat Natwarlal Patel vs. SEBI***[8]**,** he

[6] Appeal No. 225 of 2009
[7] (2022) 9 SCC 425
[8] Appeal No. 399 of 2023

submitted that merely trading pattern cannot be the circumstantial evidence to support the charge of price manipulation.

4.3 On facts, contending that there was no *connection* of appellant with other noticees, Mr. Modi submitted that the appellant did not have any financial transactions with other co-noticees during April 2017 to March 2018. In this regard, a certificate dated September 15, 2020 issued by M/s. Yogesh Arya & Co. was furnished by the appellant during the proceedings before SEBI. Similarly, our attention was drawn to another certificate dated September 15, 2020 issued by M/s. A. K. Friends & Co., certifying that other noticees were never directors/shareholders of the Appellant Company.

4.4 Regarding the allegation of similarity in trading pattern, Ld. Senior advocate submitted that in order to successfully conclude, trades of the appellant during the inspection period were bound to match with the trades of other noticees during the same time. Even the impugned order records that during the investigation period, no one else was trading other than noticees and pleaded that this however, does not establish any conspiracy amongst the various

noticees. To support this, he relied upon the order of this Tribunal in the case of ***Mr. Babubhai Desai and Ors. Vs SEBI***[9]**.**

4.5 Mr. Modi further submitted that the role, involvement and participation of Appellant was distinct from other noticees. It was submitted that total long position of all the noticees in Biocon is 10,58,400 shares out of which appellant's long position is merely in 27,000 shares, which is meagre 2.55%. Further, the alleged square off gains made by all the noticees (including appellant) alleged to be is Rs. 50.10 lakhs, out of which square-off gain by the appellant is alleged to be Rs. 1.28 lakhs (which was computed at Rs 4,000 in the SCN). He submitted that appellant is a significant player and on June 29, 2017 itself, it had traded in 172 other scrips as well with its turnover exceeding **Rs. 143 Crores.** It was submitted that the appellant is a public limited company, engaged in trading in the securities market for past 20 years, which has never faced any adverse order by the SEBI. He was aggrieved that despite its unblemished track record, the appellant was held guilty of making petty profit of Rs. 1.28 lakhs (Rs 4,000 in the SCN), through acting in group with other co-noticees.

[9] Appeal No. 81 of 2014

4.6 With regard to the finding in the impugned order that appellant had put *buy* orders at 14:39 hrs at a high price of Rs. 334/-, while the LTP[10] was prevailing in the range of Rs. 327.60 to Rs. 327.80, he submitted that the buying/selling decisions of the appellant are based on recommendations of appellant's trading software. Based on the same, the appellant instructed broker's dealer one **Navkar Share & Stock Brokers Pvt. Ltd**. to place *sell* order at Rs. 334.10 and *'stop-loss'* buy order at Rs. 332/-. He submitted that by mistake, the broker's dealer placed the *'stop-loss'* buy order at Rs. 334 instead of Rs. 332/-. The said broker's dealer has admitted the mistake in writing. In his view, not much is to be read into the '*stop-loss'* buy order at Rs. 334/- inadvertently placed by the broker's dealer instead of Rs 332/-. However, despite it, the appellant could make profit of Rs. 14,152/-. The Ld. WTM submitted that, it is in no way establishes that the appellant was '*connected'* with others.

4.7 Contesting the findings of the Ld. WTM that the appellant despite having sufficient time of 40 minutes did not try to rectify the mistake and filed no claim against the broker, Mr. Modi submitted

[10] LTP- Last Traded Price

that such minor mistakes do often happen considering the mammoth turnover of the appellant. Considering its minor impact, appellant did not make claim against the broker however, the same does not imply that appellant was acting as a group with other noticees. Mr. Modi submitted that the fact that despite a higher price of Rs. 334/-, the *buy* order remained unexecuted for 40 minutes, rather proves that the appellant was in no way intentionally matching trades with anyone, and that, no one was willing to sell the scrip for 40 minutes.

4.8 Refuting the allegation that appellant along with other noticees manipulated prices in cash segment to inflate settlement price in 'Futures' segment, Mr. Modi adverted that appellant's cash market trades were transacted long before its futures trades and hence prices in futures had already adjusted for the cash market trades. He pointed out that appellant's cash market buy orders were placed at 14:39 hrs. while sell orders were made at 14:40 hrs. In contrast, the futures buy trades were placed subsequently during 15:22 hrs. to 15:30 hrs. for 25,200 shares. This was also recorded in the impugned order.

4.9 Learned senior advocate submitted that the basis for computation of profits in 'Futures' market adopted in the impugned order, which is different from the Show Cause Notice is untenable.

He drew our attention to Table No. 22, 23 and 25 (at para 43, 44 and 47, respectively) of the impugned order and pointed out that as per the SCN, the futures square off profit made by the appellant was shown at Rs. 4,000/-, whereas the impugned order shows square-off gains at Rs. 1.28 lakhs. He also pleaded that no opportunity was given to the appellant to respond to the new computation.

4.10 With respect to the directions for disgorgement and debarment of the appellant from securities market for a period of 2 years, Mr. Modi submitted that the directions are disproportionate and excessively harsh and considering appellant's unblemished trading in the securities market for the past 20 years, was not called for.

M/s Vihit Investment (Noticee number 2)

5. Mr. Kushal Shah, Ld. authorised representative questioned the basis of the alleged '*connection'* held between the appellant and noticee No. 1 (Mr. Sunil Gangwal). He submitted that the said *connection* was alleged on two grounds. Firstly, that Mr. Mohit Mehta, the partner of appellant firm and noticee No. 1 were known to each other and secondly, there were loan transactions between appellant and noticee No. 1 in July, 2019.

5.1 Contesting these findings, he submitted that the appellant's partner Mr. Mohit Mehta was introduced to noticee No. 1 by one Mr. Ankur Babaria around May 18, 2018, much later than the alleged transactions in 2017. With respect to the second allegation of fund transfers between the appellant and Mr. Sunil Gangwal (noticee No. 1), he submitted that the appellant received an amount of Rs. 1.4 Crores from Noticee No. 1 on July 22, 2019, which was repaid in two installments of Rs. 70 lakhs each on July 24, 2019 and July 26, 2019 with interest. Subsequently, appellant had further extended a loan of Rs. 94 Lakhs to Mr. Sunil Gangwal on October 9, 2019, which too was repaid in the same month with interest. He submitted that undisputedly, these financial transactions of 2019 are much later than the alleged trading and, therefore, based on the same no *connection* can be established between appellant & noticee No. 1 in 2017.

5.2 Mr. Kushal Shah submitted that these facts were acknowledged by the Ld. WTM in Para 14 of the impugned order. Further, M/s B. M. Shah & Co. Chartered Accountants vide certificate dated November 23, 2020 have certified that during April 1, 2016 to July 20, 2019, appellant did not have 'business relationship' with Mr. Sunil Gangwal (Noticee No.1). Mr. Shah submitted that the appellant

had traded independently for jobbing/arbitrage and not as part of a single group with other noticees. The impugned order does not bring out how the subsequent *connection* links to the trade of the appellant.

5.2.1 Learned advocate also submitted that in the absence of any *connection,* a similar trading pattern alone cannot be the circumstantial evidences to support the charge for trade manipulation. Reliance was placed upon the Judgment of the Hon'ble Supreme Court in the matter of ***Balram Garg vs. SEBI***[11]**.**

5.3 He submitted that the appellant took decision to trade in the scrip of Biocon based on the following news item on Pharma stocks in the popular investment website *"Money Control"*:

> *"Top picks of Citi in the Pharmaceutical space includes Aurobindo Pharma, Cipla and Biocon, However, the risk to base business is highest for Sun Pharma and Glenmark and lowest for Aurobindo Pharma".*

5.3.1 He submitted that the rationale for trading in the scrip of Biocon by the appellant was high liquidity and his intention was to

[11] (2022) 9 SCC 425

make small profits. The appellant's explanation in the matter has been recorded in Para 27(v) of the impugned order, as under: -

> *"Further, Noticee No. 2 has submitted that they believed that there would be high liquidity in the scrip of Biocon Ltd. during June 29, 2017 and they thought that they can safely make profits while trading in Biocon Ltd. by availing benefits of marginal spread between available buy and sell quotes.*
>
> *The Noticee has submitted that their sole intention was intra-day trading to earn profits and hence, in case they would have placed the buy price between 327.80 and 334.05 there would have been a high probability for the buy order to get executed and the sale order not to get executed since the sale order was placed at 334.10 and there would have been a major variation in the buy and sale order price which would have inter alia led to delivery of shares which was not the purpose for which the transaction was executed."*

5.4 On facts, Ld. advocate drew our attention to the findings recorded in Para 27 of the impugned order that the appellant had put in *sell* orders for 2 lakh shares at a price of Rs. 334.10 between 14:42 hrs. to 14:45 hrs even though the LTP[12] was around Rs. 327.80-Rs. 328/-. Further, appellant placed *buy* order for 2 lakh shares at Rs. 334.05 at 14:46 hrs., when the LTP was Rs. 328.25.

[12] LTP- Last Traded Price

Mr. Shah submitted that both the *buy* and *sell* orders in cash segment were actually got executed around 15:22 hrs and since despite the higher price offer, Appellants' buy orders remained unexecuted for 35-40 minutes, shows that appellant was not intentionally matching trades with anyone.

5.4.1 He also contended that the SCN states that none of the appellant's trades have contributed either positively or negatively in the LTP. Furthermore, there is no allegation of self-trade or reversal trades against the appellant.

5.4.2 Ld. Advocate for the appellant submitted that the allegation against the Appellant for placing an order at an unrealistic price in contravention of NSE[13] Circular dated February 22, 2005 is not sustainable as the *Sell* order price of Rs. 334.10 and *buy* order price at Rs. 334.05 are not far-away prices as stipulated under the said NSE Circular. In this regard, he submitted that post-issue of bonus shares by Biocon, the scrip was trading in the range of Rs. 319.25 (as on June 28, 2017) to Rs. 348 (as on June 16, 2017). Further, on daily basis, the difference between High Price and Low price was in the range of

[13] NSE- National Stock Exchange of India Ltd.

Rs. 5.95 (June 30, 2017) to Rs. 13.00 (June 27, 2017) and hence, the sell price of the appellant above LTP by Rs 6.00 per share and buy price above Rs 5.80 above LTP at the relevant time was within the range of volatility of Biocon during the investigation period.

5.4.3 Mr. Shah also contended that the SCN itself states that none of the appellant's trades have contributed either positively or negatively in the LTP. Furthermore, there is no allegation of self-trade or reversal trades against the appellant. He also drew our attention to the fact that the NSE itself had examined the aforesaid transactions and in this regard made communication with broker viz. Arham[14], who, in turn, asked for explanation from the appellant. Appellant replied to Arham vide letter dated October 12, 2017. Thereafter, no communication was received from NSE which implies that the NSE did not draw any adverse inferences on the impugned trades by the appellant.

5.5 With respect to the allegation of having made profits in 'Futures' Market segment by manipulating the price in 'Cash' segment, it was submitted that the appellant's 'cash market' buy

[14] Arham Share Consultants Pvt. Ltd.

orders were placed between 14:42 hrs. to 14:45 hrs., and sell orders were placed at 14:46 hrs. In contrast, the 'futures' buy trade for 3,24,000 shares was placed subsequently between 15:00 hrs. and 15:22 hrs. Mr. Shah submitted that evidently appellant's 'cash market' trades were placed long before the 'Futures' trades and, thus, the prices in futures segment had already got adjusted for the 'cash market' trades and hence the allegation is baseless.

5.5.1 He further submitted that the appellant's buy trades (long position) in F&O segment were executed between around 15:00 hrs. to 15:22 hrs. for 3,24,000 shares in the price range of Rs. 328.50 to 329.95, valued at around Rs. 1066.28 lakhs. The said position was not squared off on that day i.e. the expiry date. Thus, later on expiry, appellant earned profit of Rs. 9.87 lakhs calculated at the settlement price of Rs. 332.15. Mr. Shah adverted that it is a normal market practice to place buy order in F&O segment, when shares in futures are available at a price lower than the price prevailing in cash segment, more particularly on the expiry day. Price of Biocon scrip in F&O segment at around 15:15 hrs. on June 29, 2017 was much lower than the underlying price in cash segment. Thus, appellant preferred

to take a calculated risk by putting buy order in F&O segment and had no intention of price manipulation as alleged.

Mr. Mohd. Faisal (Noticee No. 3)

6. Mr. Kunal Katariya, Ld. Advocate for Mr. Mohd. Faisal submitted that the impugned order failed to establish any '*connection'* between the appellant and other noticees. In this regard, he submitted that it ignores the law laid down by this Hon'ble Tribunal in several judgements. In the case of ***Nishith M Shah HUF vs. SEBI***[15]**,** this Tribunal held that in order to prove that the trading was manipulative; the SCN ought to establish a '*connection'* between the buyer and seller. In holding so, Tribunal followed its decisions in the case of ***Jagruti Securities Limited vs. Securities and Exchange Board of India***[16] and in ***Vikas Ganeshmal Bengani vs. WTM, SEBI***[17] and upheld the principle that for sustaining allegations of price manipulation, the 'sine qua non' is the '*connection'* between the buyer and seller.

[15] Appeal No. 97 of 2019 decided on 16 January 2020
[16] Appeal No. 106 of 2002 decided on October 27, 2008
[17] Appeal No. 225 of 2009 decided on February 25, 2010

6.1 The Ld. Adv. submitted that the appellant resides in Varanasi whereas the other noticees are based out of different cities. Though the appellant's trades are alleged to have matched with noticee No. 1 and noticee No. 6, there is no evidence that the Appellant is *connected* with them.

6.2 Mr. Katariya also submitted that the impugned order fails to appreciate clear findings in para 8 of the SCN that the appellant's trade did not affect the LTP[18] or create any new NHP[19]. Thus, the entire Impugned order proceeds on surmises and conjectures and without any cogent evidence on record.

6.3 He further submitted that the appellants' orders in cash segment were entered much before the appellant had created any position in the derivatives segment. Drawing our attention to Para 9 (VII) of SCN, he submitted that the appellant had placed sell order in Cash Market Segment at a price of Rs. 334 at 14.51 hrs. However, since the appellant is an intra-day trader, he also placed a *stop-loss* order to buy these shares at a 334.10 at 14.52 hrs. The '*stop-loss'* order was

[18] LTP- Last Traded Price
[19] NHP- New High Price

to ensure that the loss of the appellant from the trade can be restricted to only 10 paisa per share.

6.4. With regard to position in derivative segment, he submitted that out of the total long position of 1,96,200 shares, appellant squared off total 1,09,800 shares before the end of the trading session, which comprised of 56% of the total position held by him. If the appellant had entered into manipulative trades in the cash segment to get a better settlement price in futures, he would have kept position for all the shares open till the end of the day instead of squaring off 56% of his F&O positions. More importantly, when the appellant placed orders in cash segment, he was having no holdings in the Futures segment. Therefore, the allegation of trading in cash segment to manipulate the settlement price in F&O segment is not established.

6.5 Explaining the rationale of appellant's trading, Mr. Katariya submitted that the idea of the appellant was to try and see if a sell order could be executed at Rs. 334 and in case the prices fell from Rs. 334, the appellant would have made profit. However, the appellant had a limited risk appetite and had the prices continued to rise above Rs. 334 in the session, the appellant would have incurred a substantial loss. Therefore, the appellant placed a *stop-loss* order at

Rs. 334.10 so that in case the trading strategy fails, the appellant's loss is capped. The fact that the appellant was anticipating a price rise after the price of Rs. 334 and at the same time, in the derivatives segment, the appellant was counting on the momentum and started taking long positions as the prices were rising. Since the appellant was getting a price difference of Rs. 0.85 per share in the Futures market from his last long position, the appellant decided to square off the position to the extent possible and squared off 56% of the appellant's long positions.

6.6 He further submitted that the Ld. WTM failed to appreciate that the buy order placed by the appellant was not a normal limit order but a "*stop loss*" buy order. He submitted that a person always places a sell order and a "*stop loss*" buy order at the same time and not both legs of the order at the same time, especially when the intention is to go short. If both the legs of the order are placed at the same time, it will result in immediate trigger of buy order and the sell order may never get executed.

6.7 With respect to allegation that the trades of appellant matched with the noticee nos. 1 and 5, Mr. Katariya submitted that in a screen-based trading system, one does not get the knowledge of who the

counter-party to the trade is. In fact, both *sell* and *stop loss* buy orders were placed by the appellant much before the trades took place and, therefore, the counter party could never have been known. A scheme for matching orders can be done only with synchronized trades and not 'limit' orders placed much before the other party would place the order. He also submitted that the scrip concerned in the matter is Biocon Ltd. which it is highly liquid and frequently traded scrip and there is no guarantee that a known party will match the transaction.

6.8 Learned advocate also refuted the findings that the appellant acted as a group with other notices. He submitted that it is a common knowledge that when certain parties have high volume while trading in particular scrip, the probability of their trades matching with each other is also high. This does not necessarily show existence of any conspiracy.

6.9 Mr. Katariya contended that the basis of calculation of the unlawful gains made is erroneous. He submitted that the same has been calculated taking the entire buy position in the derivatives segment whereas, admittedly the appellant had squared off 56% of the position before expiry. He further submitted that even for the sake of argument, if it is assumed that the trades of appellant and other

noticees were manipulative, the closing price ought to have been derived by considering trades by other traders and by ignoring trades of 6 Noticees and not by merely taking the rate available at 15:00 hrs. He submitted that if such a calculation method was adopted, the closing price would have still been Rs. 330.30 and the price difference would have been only Rs. 1.85 i.e. (Rs. 332.15 - Rs. 330.30). However, the SCN and the impugned order arrive at a price of Rs. 327.45, which was the price at 15:00:00.

6.10 He further submitted that the allegation in the impugned order that the appellant has made profit and also averted loss while transacting the trades is unsustainable. On one hand, it is alleged that the positions were created in the F&O Segment after the manipulation in the cash segment and at the same time the respondent seeks to charge the appellant with making gains and avoiding loss. He submitted that the total alleged gain for the balance 86,400 shares in the derivative segment would come to Rs. 1, 59, 840 only as against the directed disgorgement of Rs. 9.32 lakhs.

7. In response, Mr. Shiraz Rustomjee, learned senior advocate appearing for the respondent SEBI made detailed submissions.

7.1 Refuting the arguments of the appellants regarding absence of *connection,* Mr. Rustomjee contended that the *connection* between noticees acting as a single group with the common intention of manipulating the market cannot be established not only through financial transactions but also through attending circumstances including similarities in the trading pattern and the manner of placing buy and sell orders. To support his contention, he referred to the findings in para 16 of the Impugned order which reads as under:-

> *"16. The aforesaid connection amongst the Noticees is not the allegation itself, the connection coupled with their trading behaviour during the investigation period in the scrip of Biocon Ltd., forms the basis of the allegation in the SCN."*

The Ld. Senior advocate adverted upon the distinct trading pattern of the notices, based on the finding that the noticees heavily traded in the scrip of Biocon during last half an hour on June 29, 2017 i.e. from 15:00:00 hrs. to 15:30:00 hrs. and contributed 66.11% to the total trading volume during the inspection period. He also pointed out that the noticees did not trade at all in Biocon before 15:00:00 hrs. on that day. Further, the trades of the appellants matched with other co-noticees in terms of Volume, Price Range and time of placing buy and

sell order, which is sufficient to prove that the appellants acted as a group. In this regard, reliance was placed upon the Judgment of Hon'ble Apex Court in the case of ***SEBI Vs Rakhi Trading Private Limited***[20] .

7.2 Mr. Rustomjee submitted that the Noticee No. 1 i.e. Gangwal Sunil Kumar is connected with the Appellant (Noticee No. 2) and Minesh Jormalbhai Mehta (Noticee No. 6) through financial transactions by way of loan. He further submitted that both parties have already admitted of the loan transactions. Mr. Rustomjee, however conceded before us that there are no evidences on record establishing *connection* amongst other appellants.

7.3 The Ld. senior advocate submitted that during the inspection period, the appellant No.1 along with other noticees no. 2, 3 and 5 had placed matching buy and sell orders of exactly 2,00,000 shares each at around the same time i.e. at 14:39 hrs. to 14:51 hrs. with negligible time-gap between buy and sell orders. He submitted that when these synchronized transactions are considered in the background of the fact that the Appellant No. 1 and Noticees Nos. 2, 3 and 6 were

[20] (2018) 13 SCC 753

holding long positions in the future segment of Biocon (which was to expire on June 29, 2017), the *'connection'* amongst noticees can be easily derived.

7.4 With respect to the wrongful gain made by the appellant No.1 in the futures segment of the scrip of Biocon, the Ld. senior Adv. Submitted that LTP[21] of Biocon in the cash segment at 15:00:00 hrs, on June 29, 2017 was Rs. 327.40, however due to manipulation in the cash segment by the noticees during 15:00 hrs. to 15:30 hrs., the LTP in cash segment was raised by Rs. 4.75 per share, due to which, the settlement price in the futures market of Biocon rose to Rs. 332.15. As a result, the appellant No.1 along with Noticees 2, 3 & 6 made a collective profit of Rs. 26.41 lakhs in the futures segment.

7.5 With regards to respective contentions of the appellants regarding the amount of disgorgement Mr. Rustomjee, submitted that if the Noticees had not manipulated the settlement price, or squared-off their respective positions on expiry on June, 29, 2017, they would have incurred aggregate losses of Rs. 23.69 Lakhs. However, due to price manipulation, they made gains of Rs 26.41 lakhs. In view of

[21]LTP- Last Traded Price

this, noticees Nos. 2, 3, 4 and 6 have collectively made wrongful gains of Rs. 50.10 lakhs, which is rightly ordered to be disgorged.

Specific Trading patterns of different appellants

8. Mr. Rustomjee submitted that the contentions of the appellant No.1 (M/s AKG Securities) that placing buy order at a price of Rs 334/- in cash segment was a punching mistake by its broker, is an afterthought. He submitted that appellant had placed four *buy* orders of 50,000 shares for Rs. 334/-, and there was a difference of 40 minutes between placement of the buy order and actual trade execution. Therefore, if the orders were placed wrongly, appellant could have easily rectified the mistake. However, the appellant instead of correcting the mistake, modified the buy order price from Rs. 334.10 to Rs. 334.05.

8.1 With regard to the specific trades carried out by the Appellant No.2 (Noticee No. 2) (M/s Vihit Investment), in cash segment Mr. Rustomjee submitted that the appellant had first placed four *sell* orders for a total of 2,00,000 shares (i.e. 1,00,000, 50,000, 20,000 and 30,000 shares) for Rs. 334.10 (Limit Order) while the LTP was around Rs. 327.80 - Rs. 328 during 14:42:57 hrs. to 14:45:57 hrs.

However, within less than a minute, the appellant placed two *buy* orders of 1,00,000 shares each for Rs. 334.05 (Stop-loss orders) between 14:46:17 hrs. to 14:46:28 hrs., while the LTP was Rs. 328.25. He submitted that in order to generate profit, any prudent investors would have placed *buy* order in the range of Rs. 327.80 and 334.05. However, strangely the appellant placed *buy* order at Rs. 334.05, higher by Rs. 5.80 over the LTP. As a result, the appellant made a miniscule profit of Rs. 10,000/- only.

He further submitted that the sell orders of the appellant matched with Mohd. Faisal (Noticee No. 3) and Paramount Corporation (Noticee No. 5) to the extent of 1 lakh shares each. Further, the buy orders of the Appellant matched with Sunil Kumar Gangwal (Noticee No. 1) to the extent of 99,800 shares, who is '*connected'* with the Appellant. Therefore, it is apparent that the appellant did not place buy orders to make profit but to match the same with other noticees for the purpose of establishing a higher settlement price in the futures segment to benefit from the long position taken by the Appellant.

8.2 Refuting the contentions of the appellant No. 3 (Mr. Mohd. Faisal), that as he had placed the sell orders at the price of Rs. 334 with the anticipation that if the price of the shares reached such level he

would sell the shares and not below that, Mr. Rustomjee submitted that the Ld. WTM correctly observed that the *stop-loss buy order* placed by the Appellant would have gotten activated and entered in the market once the trigger price of the *stop-loss buy* order had reached or surpassed, irrespective of whether the sell order of the Appellant got executed. He further submitted that the Ld. WTM in the impugned order has correctly noted that a stop loss buy order book gets triggered when the last traded price in the normal market reaches or exceeds the trigger price of the order and therefore, the said contention of the Appellant is incorrect, erroneous and untenable.

8.3 Mr. Rustomjee submitted that the Appellant has failed to provide any explanation as to why he placed large sell volume of 2,00,000 shares at a price much higher than the LTP, especially when there were no buyers for such volume at that price in the market and further when the Appellant himself immediately thereafter placed buy orders for a price higher than the sell orders. He submitted that the Ld. WTM has rightly observed that the only outcome of these orders was to influence the settlement price of futures in Biocon. The above becomes even clearer from the fact that the Appellant along with the other Noticees Nos. 2, 4 and 5 had on June 29, 2017 placed matching

buy and sell orders of 2,00,000 shares at around the same time i.e. 14:39 to 14:51 p.m. with negligible time-gap between buy and sell orders.

8.4 With respect to the submission of the appellant no. 3 (Mohd. Faisal) that he had already squared of 56% of his shares in the futures segment between 15:22:14 till 15:30:00 much before closing of trading hours and did not wait for the settlement of entire position, Mr. Rustomjee submitted that against the purchase price of Rs. 331/- the appellant squared off at a price of Rs. 332/-, resulting in profit due to the manipulative trading by the noticees. He further submitted that merely because the Appellant squared off part of his position earlier does not mean that he was not part of the fraudulent scheme.

9. We have carefully considered the facts in the light of rival submissions and the records before us.

9.1 We note that June 29, 2017 was the expiry date for settlement of positions taken in F&O segment and, therefore, the LTP established during 15:00:00 hrs. to 15:30:00 hrs. in the cash segment would have impact on the settlement price in F&O segment. The case of the SEBI is that during the period 14:39 hrs. -15:30 hrs. on that day, appellant

had acted as a group with other noticees and contributed 66.11% to the trading volume in cash segment of Biocon for that period and thereby, manipulated price in the cash segment that led to higher settlement price in Futures segment of Biocon.

9.2 Undisputedly, any transaction carried out in the cash segment of a scrip will have a bearing on its LTP and on the expiry day for Futures, such an LTP set up in the last 30 minutes of trading in cash segment, would impact on the settlement price. In normal course, an individual trader trading independently in an anonymous manner, on successful conclusion of transactions, may have the desired effect. In contrast, synchronized transactions undertaken by buyers and sellers with the purpose of artificially setting up higher LTP are fraudulent in nature. Whether the buyer and the seller are carrying out such coordinated transactions, would however, require establishing *connection* between them and bringing on record instances of communication between them at the relevant time.

9.3 In the instant case, respondent's case is built on observing certain similarities in the trading pattern of noticees, *inter-alia*, trading at a price higher than LTP by Rs. 4.75/- per share (2% higher), in a limited time period relevant for impacting settlement price, and trading

in same quantity. However, there is no material on record to show any *connection,* direct or indirect, amongst the Noticees based on evidences brought on record. Respondent has tried to establish '*connection'* only between the Noticee No. 1 and Noticee No. 2 (appellant no. 2), based on subsequent loan transactions between the two parties in July 2019 and October, 2019. In our considered view, it would be absurd to take into account a subsequent transaction which takes place two years of the date of trade i.e. June 29, 2018 to establish that the two noticees may have acted in concert. There is no evidence regarding any *communication* amongst the noticees during the relevant time period has been brought on record.

9.4 We also find merit in the explanation by Mr. Katariya, the Ld. Advocate for the appellant no. 3 (Mohd. Faisal) that transactions on the floor of stock exchanges take place on an anonymous IT platform, on which identity of the person making offer for sale or buy cannot be ascertained with the qualification that this may be possible, only where there is a *connection* between the buyer and the seller during the relevant time. Following the decision of this Tribunal in the case of ***Vikas Ganeshmal Bengani vs. Whole Time Member SEBI***[22]**,** we

[22] Appeal No. 225 of 2009

hold that in the absence of connection between buyer and the seller collusion between them cannot be inferred.

9.5 Respondent has placed emphasis on the fact that the noticees acting as a group, contributed 66.11% to the trading volume in cash segment of Biocon during the relevant time period and thus manipulated price. However, in our considered view, in the absence of any '*connection'* amongst the noticees, this figure is at best an arithmetic derivative. Biocon scrip is highly liquid and noticees could not have control over the trading by other traders during the relevant period. Therefore, the relative trading percentage could have been lower or higher, and in the absence of *connection*, SEBI's contention is untenable.

9.6 Each noticee has given his own rationale for undertaking these transactions. For example, **AKG (Noticee No. 4)** has submitted that being a big investor with regular daily turnover exceeding hundreds of Crores, its investment decisions are based on recommendations of an in-house software, based on which the transactions were undertaken. Similarly, **Vihit Investment (Noticee Nos. 2)** has submitted that the decision to trade in Biocon was based on a news items "Money Control Website". He also submitted that the appellant traded in Biocon due

to its high liquidity and appellant's intention to make small profit during the intra-day trading. **Mohd. Faisal (Noticee Nos. 3)** has submitted that he is a day trader and the rationale for appellant's trading was to try selling in cash segment at Rs. 334/- by placing a limit order so that in case price falls below Rs. 334/-, he would have made profit. In addition, as the appellant had cited his limited risk appetite and considered that if the prices continued to rise above Rs. 334/-, he would have incurred substantial loss. To restrict it, he placed a stop-loss order at Rs. 334.10 to cap his loss to only Rs. 0.10 Paisa. Regarding F&O segment, since the prices in derivative segment, were getting momentum, he started taking long positions and in respect of his last long position, the appellant decided to square-off 56% of appellant's total long positions as he was getting price at Rs. 0.85 paisa per share. None of these arguments of the appellant have been challenged in the impugned order. Moreover, in the absence of establishing any *connection* amongst them, oral rebuttal of these arguments is of no assistance for the respondent.

9.7 In view of the above, in the absence of any formidable *connection inter-se,* appellants' respective explanations for trading in cash segment of Biocon during the relevant period cannot be brushed

aside and it cannot be held that they acted in a group for manipulating the price in the scrip for trading in F&O segment.

9.8 We are also in agreement with the submission of appellants that mere similarity in trading pattern cannot be the basis for holding that the noticees acted in a group in the absence of existence of any '*connection'*. The similarity in number of shares traded (2,00,000) and timing of such trading alone does not give credence to *preponderance of probability* of acting in a group. In any case, any transaction, genuine or otherwise, would be successful only if contra-offers for sale and buy are available in the same time frame, hence matching of price/number in itself, in the absence of fraudulent *connection* is of no relevance. We draw strength from the decision of the Hon'ble Apex Court in ***Balram Garg vs. Securities and Exchange Board of India***[23] and of this Tribunal in ***Bharat Natwarlal Patel vs. SEBI***[24]**,** and following the same hold that merely trading pattern cannot be the circumstantial evidence to support the charge of price manipulation.

9.9 We also note that the LTP which allegedly raised as a result of the impugned transactions was Rs. 4.75 per share which is less than

[23] (2022) 9 SCC 425
[24] Appeal No. 399 of 2023

2% of LTP prior to such transactions. Biocon scrip is highly liquid and as informed by Mr. Kushal Shah, learned authorized representative for the appellant No. 2 that during the period June 27, 2017 to June 30, 2017, the difference between the high price and low price of Biocon was in the range of Rs. 5.95 to Rs. 13/-. In view of the above, the impact on the price caused by the impugned transactions during the inspection period, was not extraordinary and was within the prevailing volatility level of the stock during the period.

Further, Mr. Kunal Katariya, Ld. advocate for Noticee Nos. 3 also submitted that even if the transactions of the noticees are excluded, the LTP as a result of the transaction by other investors during the inspection period would be around Rs. 330/- which is not drastically at a variance from the average LTP taken during the period. We have already held that the connection between the parties is not established and hence it is not necessary to verify arithmetical accuracy of these arguments.

10. In view of the above, the following :-

ORDER

i. The appeals are ***allowed.***

ii. Impugned order dated May 5, 2021 is set aside.

iii. Pending interlocutory application(s), if any, stand disposed of.

iv. No costs.

Justice P. S. Dinesh Kumar
Presiding Officer

Ms. Meera Swarup
Technical Member

Dr. Dheeraj Bhatnagar
Technical Member

28.07.2025
PTM