

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Date of Decision: 21.04.2017**

**Appeal No. 193 of 2016**

Ms. Sunita Gupta  
E-1, Model Town-II,  
Delhi- 110 009

...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

Mr. Shambhu Nath Singh, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Anubhav Ghosh, Advocate i/b The  
Law Point for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer  
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on April 13, 2016. By the said order the appellant is restrained from accessing the securities market for a period of 3 years under Section 11 and 11B of Securities and Exchange Board of India Act, 1992 (“SEBI Act” for short) for violating regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short).

2. In Para 21 of the impugned order the WTM has recorded thus:-

*“It has been alleged in the SCN that Ms. Sunita Gupta had indulged in synchronized trades and circular trades. Out of the 3,42,246 shares of the Company bought by Ms. Sunita Gupta trades for 1,76,813 shares were synchronized with trades of Mr. Purshottam Khandelwal, Cosmo and the entities of Vishvas Group viz; Mr. Praveen Poddar, Mefcom and ISF. Further, out of 3,42,246 shares sold by her, trades for 74,205 shares were synchronized with trades of Mr. Purshottam Khandelwal, Cosmo and the entities of Vishvas Group viz; Mr. Praveen Poddar, Mefcom and ISF. Further, out of 3,42,246 shares of the Company bought by Ms. Sunita Gupta during the investigation period 2,88,800 shares were involved in circular trading with Mr. Purshottam Khandelwal, Cosmo and the entities of Vishvas Group viz; Mr. Praveen Poddar, Mefcom and ISF and out of the 3,42,246 shares sold by her 288,387 shares were involved in circular trading with Mr. Purshottam Khandelwal, Cosmo, Vishvas and the entities of Vishvas Group viz; Mr. Praveen Poddar, Mefcom and ISF. Her trades had also contributed in LTP/NHP manipulation as described in the SCN. Ms. Sunita Gupta has not given any plausible explanation to these types of trades with connected entities rather she has admitted to have indulged in those trades as sub-broker and has claimed her transactions to be bona fide. Thus, by her own admissions, she has not*

*only admitted her alleged trades but also to be acting as sub-broker which requires registration with SEBI. I, therefore, reject her contentions.”*

3. From the aforesaid findings recorded in the impugned order it is apparent that the appellant had indulged in synchronized trades, circular trades and her trades had also contributed to substantial variation in the Last Traded Price (LTP)/New High Price (NHP) which is prohibited under the PFUTP Regulations.

4. Above findings recorded in the impugned order is not contested by the counsel for the appellant on merits. Only argument advanced by the counsel for the appellant is that once the Adjudicating Officer (“AO” for short) of SEBI for the very same violation has passed an order on July 22, 2014 imposing penalty of Rs. 60 lac, then, the WTM of SEBI could not have initiated parallel proceedings under Section 11, 11(4) and 11B of the SEBI Act and pass the impugned order. Relying on decisions of the Apex Court in case of Kunjan Nair Sivaraman Nair v/s Narayanan Nair & Ors. reported in (2004) 3 SCC 277 and in case of Dr. Subramanian Swamy v/s State of Tamil Nadu & Ors. reported in 2014 (1) Scale 79 it is submitted by counsel for the appellant that once the proceeding initiated by SEBI for alleged violation of PFUTP Regulations has resulted in passing an adverse order by the AO on July 22, 2014, then, for the very same violations initiating second proceedings which has resulted in passing the impugned order, is wholly illegal and contrary to law. It is also submitted by the counsel for the appellant that

restraining a person from accessing the securities market under Section 11(4) of the SEBI Act is penal in nature and therefore, once penalty is imposed by the AO for the PFUTP violations, the WTM, for the same violations, could not have invoked Section 11(4) of SEBI Act and penalize the appellant by restraining her from accessing the securities market for 3 years.

5. We see no merit in the above contentions.

6. Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.

7. Counsel for appellant had placed reliance on decisions of the Apex Court in the case of Kunjan Nair Sivaraman Nair (Supra) & in the case of Dr. Subramanian Swamy (Supra) which have no relevance to the facts of

present case, because, SEBI Act itself contemplates that where a person violates SEBI Act and the regulations made thereunder, then apart from imposing penalty under Chapter VIA, it would be open to the Board to issue such directions as it deems fit under Chapter IV of SEBI Act.

8. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

Sd/-  
Dr. C.K.G. Nair  
Member

21.04.2017  
Prepared & Compared By: PK