BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Hearing : 12.05.2023
Date of Decision : 10.11.2023

Appeal No. 406 of 2021

Immix Trade Pvt. Ltd.
Machchhi, Machhi, Betul,
Madhya Pradesh - 460225. …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. Pesi Modi, Senior Advocate with Ms. Kalpana Desai, Mr. Vinay Chauhan, Ms. Almira Lasrado, Advocates i/b Vis Legis Law Practice for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Akash Chandra, Mr. Abhiraj Arora, Mr. Deepanshu Agarwal, Mr. Shourya Tanay, Advocates i/b. ELP for the Respondent.

With
Appeal No. 407 of 2021

Betul Minerals & Construction Pvt. Ltd.
Kothi Bazar, Betul Distt. Betul,
MP 460001. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 408 of 2021

Betul Oils & Feeds Pvt. Ltd.
85, Floor-6, Plot No. 85, E, Maker
Tower, G. D. Somani Marg, World Trade
Centre, Cuffe Parade, Mumbai - 400 005. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Akash Chandra, Mr. Abhiraj Arora, Mr. Deepanshu Agarwal, Mr. Shourya Tanay, Advocates i/b. ELP for the Respondent.

With
Appeal No. 409 of 2021

Sunmate Trade Pvt. Ltd.
85, Floor-6, Plot No. 85, E, Maker Tower,
G. D. Somani Marg, World Trade Centre,
Cuffe Parade, Mumbai - 400 005. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 410 of 2021

Shreyans Credit & Capital Pvt. Ltd.
Kothi Bazar, Betul District- Betul,
Madhya Pradesh 460 001. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 411 of 2021

Uni24 Techno Solutions Pvt. Ltd.
C- 207/8, Floor-2, Tower C, Ashok
Tower, Opp. M. G. Hospital, Parel,
Mumbai- 400 012. …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. Pandit Kasar, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 412 of 2021

Navinya Multitrade Pvt. Ltd.
C- 207/8, Floor-2, Tower C, Ashok
Tower, Opp. M. G. Hospital, Parel,

Mumbai - 400 012. …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. Pandit Kasar, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 433 of 2022

Immix Trade Pvt. Ltd.
C- 207/8, Floor-2, Plot – 63/74, Tower C,
Ashok Tower, Dr. SS Rao Road,
Opp. M. G. Hospital, Parel,
Mumbai - 400 012. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Akash Chandra, Mr. Abhiraj Arora, Mr. Deepanshu Agarwal, Mr. Shourya Tanay, Advocates i/b. ELP for the Respondent.

With
Appeal No. 434 of 2022

Uni24 Techno Solutions Pvt. Ltd.
C- 207/8, Floor-2, Plot – 63/74, Tower C,
Ashok Tower, Opp. M. G. Hospital, Parel,
Mumbai - 400 012. …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. Pandit Kasar, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 435 of 2022

Betul Minerals & Construction Pvt. Ltd.
Kothi Bazar, Betul District- Betul,
Madhya Pradesh - 460 001. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 436 of 2022

Betul Feeds & Oils Pvt. Ltd.
Kothi Bazar, Betul District- Betul,
Madhya Pradesh - 460 001. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law

Practice for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Akash Chandra, Mr. Abhiraj Arora, Mr. Deepanshu Agarwal, Mr. Shourya Tanay, Advocates i/b. ELP for the Respondent.

With
Appeal No. 437 of 2022

Shreyans Credit & Capital Pvt. Ltd.
Kothi Bazar, Betul District- Betul,
Madhya Pradesh - 460 001. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 438 of 2022

Moebius Trade Pvt. Ltd.
85, Floor-6, Plot No. 85, Maker Tower,
G D Somani Marg, World Trade Centre,
Mumbai – 400 005. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate i/b Vis Legis Law Practice for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Appeal No. 439 of 2022

Sunmate Trade Pvt. Ltd.
Floor-4, Plot No. 17, Western India House,
P. M. Road, Fort, Mumbai – 400 012. …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. Vinay Chauhan, Advocate with Ms. Almira Lasrado, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

With
Misc. Application No. 721 of 2022
And
Appeal No. 440 of 2022

Navinya Multitrade Pvt. Ltd.
C- 207/8, Floor-2, Plot – 63/74, Tower C,
Ashok Tower, Opp. M. G. Hospital, Parel,
Mumbai - 400 012. …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. Pandit Kasar, Advocate for the Appellant.

Mr. Suraj Chaudhary, Advocate with Mr. Abhiraj Arora, Mr. Shourya Tanay, Advocates i/b ELP for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. 15 appeals have been filed against the order of the Whole Time Member (hereinafter referred to as 'WTM') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') dated March 19, 2021 and order of the Adjudicating Officer (hereinafter referred to as 'AO') dated April 29, 2022. Since the issue is common and is based on the same investigation, all these appeals are being taken up together.

Appeal No. 406 of 2021 has been filed by Immix Trade Pvt. Ltd. & Ors. noticee nos. 1 against the order of the WTM dated March 19, 2021. Similarly, Navinya Multitrade Pvt. Ltd. noticee nos. 2 has filed appeal nos. 412 of 2021 against the order of the WTM. Uni24 Techno Solutions Pvt. Ltd. noticee nos. 3 has filed appeal nos. 411 of 2021 against the order of the WTM. Sunmate Trade Pvt. Ltd. noticee nos. 4 (hereinafter referred to as 'Sunmate') has filed appeal nos. 409 of 2021 against the order of the WTM. Shreyans Credit & Capital

Pvt. Ltd. noticee nos. 5 (hereinafter referred to as ‘Shreyans’) has filed appeal nos. 410 of 2021 against the order of the WTM. Betul Oils & Feeds Pvt. Ltd. has filed appeal nos. 408 of 2021 being noticee nos. 6 against the order of the WTM and Betul Minerals & Construction Pvt. Ltd. noticee nos. 7 has filed appeal nos. 407 of 2021 against the order of the WTM.

Similarly, eight appeals have been filed against the order of the AO dated April 29, 2022 noticee nos. 1 has filed appeal nos. 433 of 2022, noticee nos. 2 has filed appeal nos. 440 of 2022, noticee nos. 3 has filed appeal nos. 434 of 2022, noticee nos. 4 has filed appeal nos. 439 of 2022, noticee nos. 5 has filed appeal nos. 437 of 2022, noticee nos. 6 has filed appeal nos. 466 of 2022, noticee nos. 7 has filed appeal nos. 435 of 2022 and last Moebius Trade Pvt. Ltd. (hereinafter referred to as ‘Moebius’) has filed appeal nos. 438 of 2022.

2. By the impugned order, the WTM has directed the noticees to disgorge the unlawful gain alongwith interest at the rate of 12% p.a. as per the amount specified in paragraph nos. 73 of the impugned order. The AO has further directed to pay a penalty of Rs. 25 lakh to be paid jointly and severally by all the noticees.

3. For facility, the facts stipulated in the appeal of Immix Trade Pvt. Ltd. & Ors. in Appeal nos. 406 of 2021 is being taken into consideration.

4. Alerts were received regarding "marking the close" in the scrip of Ruchi Soya on September 27, 2012 at National Stock Exchange of India Ltd. (hereinafter referred to as 'NSE'). Based on these alerts and the trading pattern in the scrip of Ruchi Soya in the cash segment on September 27, 2012, an investigation was taken up by SEBI wherein it was observed that there was a significant movement in the price of the scrip during last half an hour of trading. It was observed that nine entities, namely, the appellants were found to be trading heavily in the scrip in the cash segment and were also holding significant long positions in the futures of the scrip as on the expiry day. It was observed that seven out of nine entities had a direct impact on the closing price of the scrip.

5. Based on the preliminary investigation, SEBI passed an ex-parte ad-interim order dated February 15, 2013 restraining the nine entities from accessing the securities market and further restraining the seven entities from buying, selling or dealing in the securities market, in any manner, whatsoever till further directions.

Subsequently, by an order of December 6, 2013, the ad-interim order was revoked observing that the matter required detailed investigation in the issue of the alleged "marking the close".

6. Thereafter, a detailed investigation was carried out and upon completion of the investigation an impounding order dated June 7, 2016 was passed against the noticees for disgorging the losses of Rs. 5.67 crores avoided by them through their manipulative trades in the cash market which resulted in a higher futures price of Ruchi Soya. Simultaneously, adjudication proceedings for imposition of penalty under Section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') was also initiated for violation of the SEBI Act and 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'). By the impounding order, the noticees were directed to disgorge unlawful gains of Rs. 8.30 crores which included interest. This impounding order was challenged by the noticees before this Tribunal which was allowed by an order dated September 14, 2016. The impounding order was set aside and the WTM was directed to decide the matter afresh. Subsequently, on

misc. application filed by SEBI, this Tribunal directed SEBI to issue comprehensive show cause notice and decide the matter in accordance with law.

7. Based on the aforesaid direction, a show cause notice was issued on May 2, 2013 calling upon the noticees as to why directions should not be issued against them under Section 11B of the SEBI Act to disgorge the ill-gotten gains collectively amounting of Rs. 5.67 crore for violation of the provisions of the SEBI Act and PFUTP Regulations.

8. The show cause notice alleged that the appellants including Vision Millennium Exports Pvt. Ltd. (hereinafter referred to as 'Vision') and Moebius were connected to each other and acted as a group in concert in trading in the scrip of Ruchi Soya. The show cause notice further alleged that noticees nos. 1, 4 and 5 alongwith Moebius acted as buyers and were aided by Vision and that noticees nos. 2 and 3 acted as sellers and contributed to the price rise in the scrip of Ruchi Soya during the last 30 minutes of trading at NSE cash market on September 27, 2012 by placing buy orders at a higher price when sell orders for the requisite quantity were available at a lower price. The show cause notice alleged that as a result of the

higher price established by noticee nos. 1 to 5, Vision and Moebius in the half an hour in the cash market, the noticees were able to establish a higher settlement price in the scrip in question in the futures market which was expiring of September 27, 2012.

9. The show cause notice alleged that the Last Traded Price (LTP) at 15:00 hrs. in the cash market was Rs. 70.65 and due to manipulative trades made by the noticees, the settlement price was established at Rs 78.65 crore. It was alleged that noticee nos. 1 to 7 holding long positions in Ruchi Soya at NSE in futures market expiring on September 27, 2012 benefited from the price rise in the cash market which was as a result of the manipulative trades of noticee nos. 1 to 5 Vision and Moebius. It was alleged that as a result of the manipulative trades noticee nos. 1 to 7 have reduced their losses on future contracts by Rs. 5.76 crore by manipulating the price of the shares in the cash market and consequential manipulation in the settlement price of futures contract of Ruchi Soya. The show cause notice alleged that the settlement price in the futures contract is decided on the average price of the scrip in the cash market during the last half an hour of trading on the expiry date.

10. The show cause notice further alleged that even though noticee nos. 6 and 7 did not trade in the cash market, nonetheless, they were holding long positions in the scrip of Ruchi Soya and were connected with other noticees. These two noticees benefited from the price rise contributed by the other group noticees and, thus, were also liable to disgorge avoidable losses.

11. The noticees denied the connection so alleged in the show cause notice and further contended that the fund transfers from Vision was in the normal course of business. The noticees denied the allegation of having a common telephone number. The noticees further contended that the trades executed by them as buyers or as sellers was done in the normal course of the trading activities and there was no intention to manipulate the price in the future segment.

12. The WTM after considering the material evidence on record and the replies submitted by the noticees came to the conclusion that the noticees were connected through fund transfers, common address and common directors. The WTM further came to the conclusion that the trading done by noticee nos. 1 to 5, Vision and Moebius, during the last half an hour of trading on September 27, 2012 in the cash market established a higher price in the scrip of Ruchi Soya

which was done in a fraudulent manner and as a result of increase in the price artificially, a higher settlement price for future contract was established which was fraudulent and violative of Regulations 3 and 4 of the PFUTP Regulations. The WTM further found that as a result of establishing a higher settlement price, the appellants avoided the losses to the tune of Rs. 5.76 crore which otherwise would have been Rs. 11.48 crore and due to manipulation, the loss has been reduced to Rs. 5.72 crore. The WTM accordingly directed the noticees to disgorge the losses avoided as per the amounts depicted against their names in paragraph nos. 73 of the impugned order alongwith interest at the rate of 12% p.a. from September 27, 2012 till the date of actual payment.

13. The WTM found that even though noticee nos. 6 and 7 had not traded in the cash segment but since they were connected to noticee nos. 1 to 5 Vision and Moebius they benefited from the price manipulation done by them. Since noticee nos. 6 and 7 benefited from the fraudulent activities of the connected group entities, noticee nos. 6 and 7 were also part of the artifices to manipulate the price of the scrip of Ruchi Soya and were also liable to disgorge the unlawful gain / loss avoided.

14. On similar lines, the AO also came to the same conclusion and accordingly imposed a penalty of Rs. 25 lakh on nine entities to be paid jointly and severally.

15. We have heard Mr. Pesi Modi, the learned senior counsel with Ms. Kalpana Desai, Mr. Vinay Chauhan Ms. Almira Lasrado, and Mr. Pandit Kasar, the learned counsel for the appellants and Mr. Gaurav Joshi, the learned senior counsel with Mr. Suraj Choudhary, Mr. Akash Chandra, Mr. Abhiraj Arora, Mr. Deepanshu Agarwal, Mr. Shourya Tanay, the learned counsel for the respondent.

16. Before us, the learned senior counsel for noticee nos. 1 Immix Trade Pvt. Ltd. contended that there was an inordinate delay in the issuance of the show cause noticee. It was issued after five years from the date of the impugned transactions and there was a delay in the passing of the impugned order which was passed on March 19, 2021 after nine years from the date of the impugned transactions and such delay has caused prejudice to the appellants. It was urged that, on this short ground, the impugned orders are liable to be set aside.

17. It was also contended that the finding that the appellant was connected with the other noticees on the basis of some fund transfers

with Vision and Moebius on the basis of common telephone numbers is *per se* erroneous. The funds were received from Vision in the ordinary course of business long before the impugned orders. The trades which were carried out on September 27, 2012 were not based on these fund transfers nor it is alleged in the show cause notice that the funds transfers were used for the purpose of trading in the scrip of Ruchi Soya.

18. It was contended that the noticees were in the business of investing in the trading in the securities market and there were numerous research reports in 2011-12 which had recommended buying the scrip of Ruchi Soya even at the price over Rs. 100/- per share and that research report predicted that the shares would rise to Rs. 150-175 per share. It was alleged that the noticees believed in these research reports and believing that the price in the scrip would rise took long positions in futures contract. These futures were in fact rolled over by the noticees from time to time as the price was not reaching the desired level and the noticees continued to maintain the long positions since it was convinced that the said scrip will perform in the future. It was also stated that NSE announced in July 2012

that the scrip would be removed from the derivatives segment with effect from September 27, 2012.

19. It was also contended that the sell orders placed by noticee nos. 1 were not with the intention to increase the price of the scrip nor was there any pre-meditated plan to increase the price in collusion with the other noticees nor as the appellant contributed to the price rise by establishing an artificial higher price for the scrip in the cash segment. It was urged that the noticee nos. 1 had traded in the ordinary course in the scrip of Ruchi Soya wherein the noticees had bought and sold shares and took delivery of the shares also which factor have not been considered. It was urged that an adverse influence has been drawn against noticee nos. 1 for placing the sell orders at exactly the same price as was modified by the buy orders with the connected entities. It was urged that noticees were not aware of the counter parties nor had control over them. Further, the fluctuation in the price usually happens on the expiry date which is not unusual, coupled with the fact that the NSE had announced in July 2012 that the scrip in question would be removed from the derivatives segment with effect from September 27, 2012. It was urged that since the futures contracts was expiring on September 27,

2012 and would not be rolled over, it became necessary for the appellant to trade in the cash segment in the said scrip.

20. It was also urged that the impugned order and the show cause notice both alleged that the cash market notional losses was Rs. 4.66 crore as against the futures loss reduction of Rs. 5.76 crore. It was contended that the computation of the price impact of the alleged manipulative trades by deducting the trades of the alleged group cannot be accepted since Vision and Moebius were not noticees. It was contended that the calculation of the avoidance of loss was not properly done and the same was liable to be set aside.

21. It was also urged that the impugned order was contrary to the revocation order. The WTM nor the AO has considered the revocation order and, therefore, the impugned order cannot be sustained.

22. Similar contentions were raised by the other noticees.

23. On the other hand, the learned senior counsel for the respondent reiterated the findings given in the impugned orders contending that these findings are based on an appreciation of evidence which required no interference. It was contended that the

trades made by the noticees in the last half an hour in the cash segment was done deliberately to increase the price so that the settlement price in the futures market is affected, as a result of which the losses that were being incurred by the noticees were reduced. Such transactions were clearly violative of Regulations 3 and 4 of the PFUTP Regulations.

24. On the issue of delay, we are of the opinion that there is no inordinate delay in the initiation of the proceedings or in the disposal of the proceedings by the WTM or by the AO. Based on the alerts received regarding the "marking the close" in the scrip of Ruchi Soya on September 27, 2012 and based on the findings of preliminary examination, an ad-interim ex-parte order was passed on February 15, 2013. This order was revoked on December 6, 2013 on the ground that a detailed investigation was required to be carried out on the issue of the alleged "marking the close". After completion of the investigation, an impounding order dated June 7, 2013 was passed against the noticees for disgorging loss of Rs. 5.76 crore avoided by them through their manipulative trades in the cash market. This impounding order was set aside by an order of this Tribunal dated September 14, 2016 and the WTM was directed to pass a fresh order

afresh in the light of the observations made thereunder. Subsequently, on an application filed by SEBI, this Tribunal by an order dated March 9, 2017 directed SEBI to issue a comprehensive show cause notice based on which a show cause notice was issued by the WTM on May 2, 2017 and the impugned order was passed by the WTM on March 19, 2021 and April 29, 2022 by the AO. We also find that the proceeding before the WTM and the AO was adjourned on account of practical difficulties due to Covid-19 pandemic from March 2020 onwards.

25. Thus, in our view, the impugned order has been passed within a reasonable period and there is no undue delay in the issuance of the show cause notice or in the disposal of the proceedings. We also find that replies were submitted by the appellants almost after seven months from the date of receipt of show cause notice and several adjournments were also taken by the noticees. Thus, we are of the opinion that there is no inordinate delay either in the issuance of the show cause notice or in the disposal of the proceedings by the WTM or by the AO.

26. With regard to the connection, we find that noticee nos. 1, 2, 3 and 5 have not denied the funds which they have received from

Vision. These entities have only stated that they received the funds in the normal course of business. We find that the only contention raised that these funds were received much before the impugned transaction on September 27, 2012 and, that in any case, these funds were not utilized for the purpose of trading. We, however, note that for the purpose of finding as to whether the noticees were connected to each other, we find that all the noticees nos. 1, 2, 3 and 5 received funds from Vision and, therefore, there was a connection. The contention that they received the funds in the normal course of business was not believed by the WTM and the AO and we find that such finding needs no interference. In this regard, we find that noticees have not provided any details of their business activities in pursuance of which funds have been transferred. A perusal of the bank statement of Vision which is 'Annexure A' to the show cause notice indicates that Vision had five transactions with noticee nos. 1 totaling a debit of Rs. 2,14,45,000/- and total credit of Rs. 1.60 crore. Vision further had ten transactions with noticee nos. 6, two transactions with noticee nos. 7 and one transaction each with noticee nos. 2 and 3. We find from a perusal of the bank statement that the funds transaction between Vison and the noticees were of high denominations. Further, the frequency and high amounts of fund

transfers points a close relation between them. Thus, the contention that these transfers were in the normal course of business without any supporting documents is untenable. We also find that noticee nos. 3, 4, 6 and 7 had a common director Shri Nilay Kumar Daga which is not disputed. We also find that these noticees who have filed the appeals before this Tribunal has been signed by the same director. In view of the aforesaid, we are of the opinion that the appellants alongwith Vision and Moebius were connected with each other.

27. Before we consider the trades executed by the noticees, we must explain as to what "marking the close" means. This phrase has been used in the show cause notice. The scheme of "marking the close" was devised by the noticees who were holding long positions in Ruchi Soya for the purpose of reducing their losses arising out of long positions. The manipulative devise applied by the appellants in the present matter is referred to "marking the close". This phrase is a globally recognized manipulative technique of purchasing a security at the very end of the trading day often within minutes of the close of trading at the significantly higher price than securities current traded price. The purpose is to raise the securities closing price. This makes it appear to be of higher value than it actually is.

28. The impugned order refers to the settlement price. Settlement price of futures contract is decided based on volume awaited average price of the scrip in the cash market during the last half an hour of trading on the expiry date.

29. With regard to the trades executed by noticee nos. 1 to 5, we find that the trading by the appellants was done in connivance with the other noticees.

30. The trade details of the group entities during the investigation period i.e. 15:00:00 hrs. to 15:30:00 hrs. on September 27, 2012 are as follows :

Sr. No.	**Group Entity**	**Total buy qty**	**% of total buy qty to total traded vol**	**Total Sell qty**	**% of total sell to**	**Group Entity**	**Total buy qty**	**% of total buy qty to total traded vol**
1.	Aventis Biofeeds	2900000	21.85%	0	0	754217	5.68%	26.01%
2.	Moebius Credit	2000000	15.07%	0	0	245689	1.85%	12.28%
3.	Navinya Multitrade	1130315	8.52%	420000	3.16%	0	0	0
4.	Shreyans Credit	600000	4.52%	0	0	61763	0.47%	10.29%
5.	Sunmate Trade	700000	5.27%	0	0	133078	1.00%	19.01%
6.	Uni24 Techno	450000	3.39%	370197	2.79%		0	0
7.	Vision Millenium	398830	3.01%	420000	3.16%		0	0
	Susp, Entities Total	**81,79,145**	**61.63%**	**12,10,197**	**9.12%**	**11,94,747**	**9.00%**	**14.61%**
	Market	**1,32,72,015**	**100.00%**	**1,32,72,015**	**100.00%**			

31. As seen in the above table, noticee nos. 1 to 5 (including the appellants), Vision and Moebius had traded in the scrip of Ruchi Soya during the investigation period, i.e. last half hour of trading on September 27, 2012. They bought a total quantity of 81,79,145 shares of Ruchi Soya constituting 61.63% of the total traded volume in the scrip and sold a total quantity of 12,10,197 shares of Ruchi Soya constituting 9.12% of the total traded volume in the scrip during the investigation period. This indicates that their trades were concentrated on the buy side.

32. The group entities bought a net quantity of 69,68,948 shares of Ruchi Soya during the investigation period and these buy trades had a net LTP impact of Rs. 55.55 on the scrip of Ruchi Soya.

33. The group entities contributed 18.31% of the market positive LTP. The buy trades noticee nos. 1, 4, 5 and Moebius contributed to market positive LTP and also had the highest positive net LTP contribution.

34. The group entities also appeared in the list of top 10 clients (in gross buy volume basis), during the investigation period in the

NSE cash market, which showed that their trade behavior was tilted towards buy trades.

35. The particulars of the buy trade volume of the 7 group entities with respect to the market traded volume at NSE on September 27, 2012, is as follows :-

	Market Traded Vol.	***Group Entities Buy Volume***	***% of Group Entities Buy Vol. to Market Vol.***	***% of Group Entities Buy Vol. to Group Entities Total Buy Vol.***
Sep 27, 2012	*1,57,92,103*	*85,54,767*	*54.17%*	*100%*
Last 30 min of trading on Sep. 27, 2012 (15:00 to 15:30)	*1,32,72,015*	*81,79,145*	*61.63%*	*95.61%*
Last 3 min of trading on Sep. 27, 2012 (15:27 to 15:30)	*80,26,387*	*63,96,987*	*79.69%*	*74.77%*

36. As seen in the above table, the buy trades of the seven group entities in Ruchi Soya were concentrated in the last 30 minutes (especially last 3 minutes) of trading on September 27, 2012 and they contributed 61.63% and 79.69% to the market traded volume of Ruchi Soya in the last 30 minutes and last 3 minutes of trading on September 27, 2012, respectively.

37. The details of individual contribution of the 7 group entities to the change in the price of the scrip by entering into buy transactions are shown in the table at paragraph no. 29 of the impugned order. Of 14,003 trades of the 7 group entities in the scrip of Ruchi Soya during the investigation period, 3534 trades of these entities were buy transactions. These 7 group entities contributed Rs. 62.95 to positive LTP in the scrip of Ruchi Soya during the investigation period and Rs. 7.4 to negative LTP. 3,005 trades of these 7 Group Entities were executed at LTP. The net LTP impact of the buy trades of these 7 group entities in the scrip of Ruchi Soya during the investigation period was Rs. 55.55.

38. During the Investigation Period, i.e. the last half an hour of trading in the cash market of NSE on September 27, 2012, Noticee nos. 1, 4 and 5 modified the bid price of their buy orders for the scrip of Ruchi Soya to a higher price when the required quantity was available at lesser price in the system and thereby contributed to price rise in the scrip of Ruchi Soya in the cash market.

39. Noticee nos. 1 placed buy orders for 30 lakh shares (6 buy orders of 5 lakhs each) of Ruchi Soya from 14:27:30 hrs. to 14:33:27 hrs. on September 27, 2012 at a price of Rs. 64-65 which was below

the LTP of Rs. 71, at that time. Noticee nos. 1 thereafter revised the bid price to Rs. 88/- and the quantity to 29 lakh shares from 15:28:05 hrs. to 15:28:51 hrs.

40. The details of the buy orders noticee nos. 1 at modified time are detailed in the Table at paragraph 37 of the impugned order where it can be seen that the Aventis (Noticee No. 1) modified the bid price of orders (at Sr. No. 1 and 2 of the Table) to Rs. 88/- when the LTP was Rs. 72.1 / 73.5 and the required quantity was available at lesser price itself. The subsequent trades of noticee nos. 1 further increased the LTP of the scrip. The orders were modified to higher prices and the trades were executed mainly during the last 3 minutes of the trading on September 27, 2012. These trades contributed to positive LTP of the scrip of Ruchi Soya and net LTP of the scrip from Rs.72.1 to Rs. 85.3.

41. Sunmate (Noticee no. 4) also placed buy orders for 7 lakh shares of Ruchi Soya from 14:57:36 hrs. to 14:58:33 hrs. on September 27, 2012 at Rs. 63/- which was below the LTP of Rs. 71. Thereafter, Sunmate revised the bid price to Rs. 88/- from 15:29:32 hrs to 15:29:53 hrs. The revised price was much higher than the LTP and the required quantity was available at lesser price. The orders

were modified to higher prices and the trades were executed mainly during the last 3 minutes of the trading on September 27, 2012. The trades of Sunmate contributed to positive LTP from Rs. 85/- to Rs. 87.1 and also increased the net LTP of the scrip.

42. Shreyans also placed buy orders for 6 lakh shares of Ruchi Soya from 14:55:44 hrs. to 14:59:30 hrs. on September 27, 2012 at Rs. 63/- which was below the LTP of Rs. 71/-. Thereafter, Shreyans in a manner similar to Aventis and Sunmate, revised the bid price to Rs. 88/-, an amount above the LTP which was at Rs. 85 - 85.5 from 15:29:29 hrs. to 15:29:55 hrs. The trades of Shreyans contributed to positive LTP and Net LTP of the scrip.

43. Mobeius had also modified the bid price of orders to Rs. 88/- when the LTP was Rs. 76.5 - 82 and the required quantity was available at lesser price itself and with subsequent trades thereby increased the LTP of the scrip. The orders were modified to higher prices and the trades were executed mainly during the last 3 minutes in a manner similar to the above trades done by the Noticees. The said trades of Mobeius are relevant because they are part of the securities fraud of ‘marking the close’, and the AO has imposed penalty against all persons involved in the securities, including the

appellant(s), Vision and Mobeius, but since Vision and Mobeius did not hold any long positions, no disgorgement has been directed against them.

44. Future positions taken by the appellants were admittedly, rolled over positions from earlier future positions. Further, while keeping the earlier future positions open, four of the group entities, acquired ‘further’ future positions on the last date of the expiry of the futures contract which leads to an irresistible conclusion that they intended for the price to rise on the last date of the expiry of the futures contract. We find that there was no reasonable explanation for the appellants to buy shares of Ruchi Soya in the cash market on the last trading day and in the last half an hour except wanting to influence the settlement price for the futures contracts of Ruchi Soya expiring on September 27, 2012.

45. The appellants have not provided any cogent explanation as to why it did not start accumulating shares of Ruchi Soya in the cash market from July 2012 itself when it was aware that the future contracts in the scrip will not be traded from September 27, 2012 onwards and why it only bought in the last half an hour of trading on

September 27, 2012 and that too at a price much higher than the LTP, when the sell orders were available for lesser price.

46. The appellants have also not explained why they were increasing long position in the futures of Ruchi Soya on the last day, i.e. September 27, 2012 if the objective was to accumulate shares in the cash market due to the closing of the futures contract given the very claim of the Appellants that they were converting positions from futures to cash market.

47. In the light of the abovementioned, the argument put forward by the appellants regarding converting of positions from futures to cash market is baseless and devoid of any merit.

48. The appellants have contended that they placed the buy orders at a higher price than the prevailing market price in order to get sellers for the requisite high volume of shares it desired to purchase. This argument of the appellants is not only baseless and devoid of any merit but is also factually incorrect. As can be seen from the Table at paragraph nos. 37 of the impugned order, adequate sell orders were available at a lower price for the requisite quantity of

shares for which buy orders were placed by the appellants at a higher price.

49. The natural trade behavior of a buyer in the market will be to acquire shares at the lowest possible price. However, in the present case the noticees were placing buy orders at a much higher price of Rs. 88/- whereas sellers were available in the system willing to sell at lower prices and the quantity offered by the sellers were also sufficient. Therefore, the only possible reason for placing such buy orders was for influencing the settlement price for the futures contracts of Ruchi Soya expiring on September 27, 2012, by artificially increasing the LTP of the scrip of Ruchi Soya.

50. The appellants have contended that only a small percentage of the buy trades were with the group entities and the majority of trades took place with other investors in the market, therefore, the trading with the group entities was not deliberate. In this regard, we find that the charge against the appellants is that they not only participated in fraudulent trades by placing buy orders at a price higher than LTP but also executed the transactions with other members of the group entities.

51. The charge against the appellants is, that they, in connivance with the other group entities, placed buy trades at prices above LTP whereas sufficient quantity of shares were available at a lesser price and the same was done to increase the price of scrip of Ruchi Soya with large volumes as the volume weighted average price of Ruchi Soya for the last half an hour on September 27, 2012 which formed the basis of settlement price for futures contracts of Ruchi Soya in F&O market where noticees (including the Appellant) had large long positions and increase in settlement price for Ruchi Soya futures would help them in reducing losses, which it did.

52. Therefore, the mere fact that the trades of noticees amongst themselves were purportedly less as compared to trades executed with other sellers does not take away the manipulative and fraudulent character of their trades, particularly, when it had an impact on the price of the scrip and contributed to a higher market LTP, in the shares of Ruchi Soya during the investigation period. Had Aventis and Sunmate not placed buy orders at a price much higher than LTP, other sellers would not have joined the fray and the higher artificial price would not have been established.

53. Noticee nos. 2, 3 and Vision had executed sell trades during the investigation period as detailed in the Table at paragraph nos. 49 of the impugned order of which 98.72% of the sell trades were executed with other group entities including the appellants. The trades among the group entities contributed Rs. 2.3 to LTP which is 0.67% of market positive LTP during the investigation period. Noticee nos. 2, 3 and Vision had placed sell orders of 15 lakhs each at 14:42:11 hrs., 14:41:50 hrs. and 14:48:10 hrs., respectively, with a limit price of Rs. 88/- significantly higher than the LTP of Rs. 71/-. The order quantity of these shares were revised to 10 lakh shares at 15:26:54 hrs., 15:26:42 hrs. and 15:27:11 hrs., respectively. Since, the sell order price was higher than the LTP, the sell orders were not executed. The sell order quantity was modified to 7 lakh shares at 15:28:05 hrs., 15:27:55 hrs. and 15:27:43 hrs. Therefore, when the group entities (Noticees. 1, 4, 5 and Moebius) placed buy orders for the same price i.e. Rs. 88/- beginning 15:28:05 hrs., the orders matched and the trades were executed.

54. Thus, noticee nos. 1 to 5, Moebius and Vision together established a higher trading price of Rs. 88/- in the market by placing matching buy and sell orders and that Vision, noticee nos. 2 and 3 in

collusion with noticee nos. 1, 4, 5 and Moebius (buyers) had set higher market traded price.

55. The appellants have contended that they were not connected to the counter parties / group entities and any trades executed with them were not deliberate. In this regard, we find that the connection between the 9 entities has been clearly demonstrated in the impugned order. Noticee No. 2, 3 and Vision had entered their sell orders at exactly Rs. 88/-, i.e. the same price at which the Noticee nos. 1, 4, 5 and Moebius had placed their modified buy orders during the investigation period. The sell orders by noticee nos. 2, 3 and Vision at Rs. 88 were placed at 14:42:11 hrs., 14:41:50 hrs. and 14:48:10 hrs., respectively, i.e. within 10- 15 minutes before beginning of the last half an hour of trading. In light of the connection between the group entities, the preponderance of probabilities points contrary to the appellants' contention that the trades were a mere coincidence and without any intention.

56. In light of the facts and circumstances of the present case, preponderance of probabilities shows that the noticees (including the appellants), Moebius and Vision executed trades in the shares of Ruchi Soya during the investigation period under a premeditated

plan. Noticee nos. 2, 3 and Vision colluded with noticee nos. 1, 4, 5 and Moebius in contributing to the price rise by establishing artificial higher price for the scrip of Ruchi Soya in the cash market of NSE in a fraudulent manner during the investigation period in order to influence the settlement price of the futures contracts of Ruchi Soya expiring on September 27, 2012.

57. As a result of the higher settlement price established artificially, the noticees who were holding long positions in the futures of Ruchi Soya, avoided losses in the NSE futures market. The calculation of the square off gains / losses earned by the noticees (including the appellants) who were holding long positions in the futures of Ruchi Soya of September 27, 2012 expiry is given in the Table at paragraph nos. 64 of the impugned order.

58. The noticees had suffered square-off losses of Rs. 572.41 lakhs from their long positions in the Ruchi Soya futures expiring on September 27, 2012. The settlement price of Ruchi Soya futures on September 27, 2012 was Rs. 78.65. Since the manipulative trades by the group entities were carried out during the period from 15:00 to 15:30 hrs. on September 27, 2012, the trades during that period were excluded from the calculation of the revised settlement price.

Therefore, the LTP of Ruchi Soya scrip at 15:00:00 i.e. Rs. 70.65 was taken as the revised settlement price as the same reflects the market traded price of the scrip without the impact of manipulative trades of the group entities, on the share price of Ruchi Soya.

59. The actual settlement price of the Ruchi Soya scrip on September 27, 2012 was Rs. 78.65. Hence, it was clear that the group entities impacted the settlement price of the scrip by Rs. 8.00 per share by way of manipulating the traded price of the scrip (i.e. to Rs. 78.65 from Rs. 70.65).

60. Thereafter, a comparison of the square-off gains / losses earned by the long positions of noticees at a price of Rs. 70.65 (revised settlement price, had the manipulation not taken place), against the actual settlement price of Rs. 78.65, was done as detailed in the Table at paragraph nos. 66 of the impugned order. It can be seen in the said Table that if the group entities had not manipulated the settlement price, the noticees would have made square-off losses of Rs. 11.48 crore. Due to the manipulation, the noticees reduced their square-off losses to Rs. 5.72 crore. Therefore, the noticees reduced their losses by Rs. 5,75,68,000/- through the manipulative trades of the group entities which was taken as their ill-gotten gain.

61. Further, the impugned order, merely states that as per the show cause notice, the group entities made notional loss of Rs. 4.66 crore by their cash position in the scrip of Ruchi Soya based on the closing price of cash segment on the day after. Since the avoidance of losses of the group entities in the futures market was approximately, Rs. 5.76 crore compared to the notional loss of Rs. 4.66 crore in the cash market, the group entities made a net gain of Rs. 1.1 crore through their manipulative trades.

62. The appellants have contended that the calculation of ill-gotten gains / avoidance of loss done by the respondent is improper. In this regard, we find that the appellants have calculated the impact of trades in the last half an hour of trading on September 27, 2012 by taking the volume weighted average price of the number of shares which each individual noticee had traded with other noticees as well as others. This method, in our opinion, is incorrect.

63. The entire violations committed in the matter of futures of Ruchi Soya expiring on 27.09.2012 by the nine connected entities of which 7 had long future positions is that 4 entities acting as buyers placed large limit buy orders around 14:30 pm on 27.09.2012 at

much below the LTP as a result of the same, these remained pending till the time the last 30 minutes of the trading time began which was the period relevant for the cash settlement of futures expiring on that day. Further, 4 out of the 9 connected entities had increased their long future positions on 27.09.2012 itself though it was the last date of the futures and the price pattern for that day indicated a falling price throughout the day. Thus, there was a clear belief by the connected parties that they expected the prices to increase on that very day contrary to the trend in the market. Also 3 of the group entities had entered the market with sell orders around the same time around 14:30 pm on 27.09.2013 at much above the LTP at that time as a result the buy orders remained pending till the time the last 30 minutes of the trading time began which was the period relevant for the cash settlement of future expiring on that day. Considering that the prices had been reducing all day, the seller prices were much above LTP. Immediately thereafter, in last 10 minutes before closure of trading on that day the prices of the limit orders were modified by the buyers to around the high price of the sellers even though desired quantity was available at lower prices. Unlike a limit sale order placed at a high price, a limit buy order at a high price will attract,

even the sale orders much below the limit price, in addition to the sale orders by groups.

64. Thus, the intent was clear i.e. to not only increase the LTP, but also increase the weighted volume by attracting even the sell orders by unsuspecting investors who had no idea that their sales in the cash segment had benefited a fraud in the futures segment. We are of the opinion that merely attracting intra-group trades is not enough to influence the settlement price for futures as the settlement price for the purpose of the futures is weighted to the volume, hence the manipulation was done deliberately by modifying limit buy orders which also attracted other market participants at artificially inflated prices. Thus, fraud was based on the misuse of modified 'limit' buy orders. It is clear from that 7 group entities bought a total quantity of 81,79,145 shares of Ruchi Soya constituting 61.63% of the total traded volume in the scrip and sold a total quantity of 12,10,197 shares of Ruchi Soya constituting 9.12 % of the total traded volume in the scrip during the investigation period i.e. last half hour of trading on September 27, 2012. Thus, the substantial price and volume contribution was a result of limit buy trades matching with the group as well as other sellers who had entered lower price sale

orders, which was the intended effect of the fraud. This enabled 7 entities who had open long positions to reduce their losses in the face of falling prices, by manipulating the weighted price volume and thus the settlement of futures expiring on that date, to the extent of several crores who have been directed to disgorge.

65. Aventis (Noticee No. 1) has calculated the impact of the volume weighted average price of the shares traded amongst group entities to arrive at its figure of Rs 10.45 lakh as ill-gotten gains instead of Rs. 89.92 as calculated by the respondent. The appellants have also contended that the calculation of notional loss of group entities from their cash position based on closing price of Ruchi Soya scrip as on September 28, 2012 i.e. Rs. 74.55 is erroneous since the actual price of sales are available on record. We find that the appellants have calculated the last 30 minutes' average price and subtracted the effect of trades executed between the group entities to come to its calculation of the fair price for the scrip during the investigation period. This method is *per se* erroneous because the contention that the impact of the trades of the group entities on the price of the scrip of Ruchi Soya in the last half an hour of trading in the NSE cash market on September 27, 2012, as was not limited only

to the volume of shares traded amongst the group entities. Noticee nos. 1, 2, 3, 4, 5, Moebius and Vision had contributed to the price rise in the scrip of Ruchi Soya on the NSE cash market by artificially establishing a higher price in the scrip by placing buy orders at an unusually high price when sell orders at lower prices for the requisite quantity was available in the system. As a result of the higher price, the noticees were able to avoid losses in the futures of Ruchi Soya in the NSE futures market. It has nowhere been alleged that the buy orders placed by the members of the group entities in the cash market were only executed with other group entities. During the investigation period only 61.63% of the buy volume of the noticees was with other members of the group entities. Therefore, limiting the calculation of ill-gotten gains to only the volume of shares traded amongst the group would not be correct since the fraudulent trades of the noticees were also executed with entities outside the group. Therefore, the calculation submitted by the Appellants is not tenable.

66. Had the buy orders at unusually high prices not been placed by the noticees, the higher price would not have been established and consequently, the higher settlement price in the futures contract would not have been established. Therefore, irrespective of the

volume traded amongst the group entities, the noticees were responsible for establishing the higher price of the Ruchi Soya scrip in the last half an hour of trading in the NSE cash market on September 27, 2012. Therefore, the LTP of Ruchi Soya scrip at 15:00:00 i.e. Rs. 70.65 would reflect the market traded price of the scrip without the price impact of the manipulative trades of the group entities. Hence, Rs. 5.76 crore as calculated by the respondent as loss avoided does not suffer from any error of law.

67. Further, the group entities by trading amongst themselves and by buying shares of RSIL heavily during the last 30 minutes of trading in the NSE cash market on September 27, 2012, at prices much above the LTP attracted and induced further market participants to buy and sell at such artificially inflated prices and thereby disturbed the normal market equilibrium and price discovery. Therefore, it would be incorrect to determine the settlement price by excluding the trades done by the group entities as we are of the view that the group entities corrupted the entire market mechanism for the last 30 minutes of trading. Hence the price differential is appropriately calculated by taking the price generally prevailing before the manipulative trades started matching i.e. at 15:00 pm.

68. The appellants have further contended that the respondent has not reckoned the losses (either 'notional losses' or 'actual losses') suffered by the appellants on the sale of shares bought by the appellant during the investigation period. This ground raised by the appellant is devoid of any merit and it is submitted that a manipulator cannot be allowed to set off the loss suffered by him in manipulating the market.

69. Further, reliance is placed on the observations made by the Hon'ble Supreme Court of ***United States in the case of Liu v SEC (140 S. Ct. 1936)*** wherein the Hon'ble Supreme Court of US had allowed deduction of only lawful expenses from the amount liable to be disgorged by violators :

> *"Accordingly, courts must deduct legitimate expenses before ordering disgorgement under §78u(d)(5). A rule to the contrary that "make[s] no allowance for the cost and expense of conducting [a] business" would be "inconsistent with the ordinary principles and practice of courts of chancery." Tilghman, 125 U. S., at 145–146; cf. SEC v. Brown, 658 F. 3d 858, 861 (CA8 2011) (declining to deduct even legitimate expenses like payments to innocent third party employees and vendors)."*

70. The appellants themselves contended that they believed in the future prospects of the company and placed genuine buy orders above LTP to get the desired volume of shares. Therefore, the appellants are now contradicting themselves by calling the same as a loss.

71. It is further submitted that allowing a manipulator to set-off the losses suffered by him while causing manipulation or subsequent to the manipulation, from the disgorgement amount, would amount to allowing insurance for losses to manipulator. The intention of law in this regard, as enshrined in explanation to Section 11B of SEBI Act is very clear and unambiguous. Explanation to Section 11B of SEBI Act as inserted vide Securities Laws (Amendment) Act, 2014, clearly provides that :-

> *"Explanation. - For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention."*

72. A reading of the aforesaid explanation shows that the law envisages disgorgement of profit / loss avoidance, made in violation of securities law, without any set-off of any expenses or loss suffered by the violator. Therefore, the contentions of the appellant that calculation of disgorgement amount should also take into consideration the amount of losses suffered by it is untenable.

73. The contention that the impugned order was contrary to the revocation order and that the authorities did not consider the revocation order is patently erroneous. We are of the opinion that the observation made in the revocation order comes to an end when a show cause notice is issued and a specific charge is framed against the noticees. The revocation order was passed during the continuance of the investigation and after conclusion of the investigation, the show cause notice was issued. Thus, the contention that the impugned order was contrary to the revocation order is misconceived and the arguments so raised in untenable.

74. In view of the aforesaid, we find that noticee nos. 1 and 4 placed buy orders at a price much higher than the prevailing market price in last half an hour in the scrip of Ruchi Soya in NSE cash market segment on September 27, 2012. The trading behavior of

noticee nos. 1 and 4 in placing buy orders at a higher price than the LTP to increase the price of the scrip of Ruchi Soya is clearly fraudulent. Further, the orders were modified to higher price and the trades were executed in the last 2-3 minutes of the trading which contributed towards the price rise of establishing an artificially higher price was clearly fraudulent. Since placing buy orders at a higher LTP was unnecessary since sufficient quantity of shares were available of a lesser price, we are of the opinion that placing buy orders at higher prices above LTP was basically done to increase the price of the scrip as volume, rate, average price of Ruchi Soya for the last half an hour confirming the settlement basic price for the future contract where noticees had held long positions and increased in the settlement price would help them in reducing the losses which they did and which were purely manipulative and violative of Regulations 3 and 4 of the PFUTP Regulations. We are further of the opinion that if noticee nos. 1 and 4 had not placed buy orders higher than LTP, then the artificially price would not have been established. Similarly, the buy orders placed by the noticee nos. 5 on similar lines were also fraudulent. Similarly, noticee nos. 2 and 3 executed self-trades with other group entities, we find that the sell orders were placed on Rs. 88/- which was significantly higher than the LTP of

Rs. 71/-. These sell orders could not be executed and, accordingly, the order was revised / modified at 15:28:05 hrs. which were matched by the buy orders of noticee nos. 4 and 5 who placed buy orders at the same price i.e. Rs. 88/- at 15:28:05 hrs. The orders matched and the trades were executed establishing a higher trading price at Rs. 88/-. These sell orders and buy orders placed by noticee nos. 2 and 3 in collusion with noticee nos. 4 and 5 and Moebius which set a higher market trade price.

75. In view of the aforesaid, we find that noticee nos. 1, 4 and 5 as buyers placed buy orders in the scrip of Ruchi Soya at a higher price than LTP. Both sell orders were available in the system at a lower price in order to increase the price of the scrip with a view to obtain higher settlement price of futures of Ruchi Soya. We also find that noticee nos. 2 and 3 as sellers have colluded with the connected entities i.e. noticee nos. 1, 4 and 5 to increase the price of Ruchi Soya in the cash market with a view to obtain a higher settlement price of future which was expiring on September 27, 2012. Through this manipulation, these noticees have been benefited from their position in the futures of Ruchi Soya. We, therefore, find that the appellants

have violated Section 12A of the SEBI Act and Regulations 3 and 4 of the PFUTP Regulations.

76. The WTM and the AO found that noticee nos. 6 and 7 were connected to noticee nos. 1 to 5 Vision and Moebius and since these noticees nos. 1 to 5 Vision and Moebius have manipulated the price of the scrip in the cash market segment and due to this manipulation the settlement price increased which has benefited noticee nos. 6 and 7 as they were holding long positions in Ruchi Soya futures. The WTM and the AO held that even though noticee nos. 6 and 7 had not traded in the cash segment, they were connected to the other entities who had traded and manipulated the price and since noticee nos. 6 and 7 benefited from the fraudulent activity of the other members of the group entities and reduced their losses, the WTM and the AO found that they were also part of the artifice to manipulate the price of the scrip and, accordingly, directed them to disgorge the amount as specified against their names alongwith interest and also imposed a penalty.

77. In our view, the finding arrived at by the WTM and the AO against noticee nos. 6 and 7 is patently erroneous. It is undisputed that noticee nos. 6 and 7 had not traded in the cash segment during

the last half an hour on September 27, 2012 when the alleged price manipulation had occurred. The show cause notice alleges that the trading behavior of the noticees including the noticees nos. 6 and 7 during the investigation period. This allegation against noticee nos. 6 and 7 is incorrect as they have not traded. We also find that the noticee nos. 6 and 7 were trading independently without acting in concert with the other connected entities. In fact, there is no finding of the appellants trading in tandem or in concert with the other entities. The mere fact that the directors of the noticee nos. 6 and 7 were also directors in the other entities can only lead to a connection. It cannot lead to a finding of being an artifice in the manipulation of the price in the cash segment.

78. We also find that there is no collusion of noticee nos. 6 and 7 with noticee nos. 1 to 5 Vision and Moebius nor there is any finding that these noticees were, in any manner, involved in the trading in the cash segment or facilitated them by providing funds or providing shares, etc.

79. In the absence of any material or any finding of any collusion, then merely based on connection, a sweeping finding that noticee nos. 6 and 7 were part of an artifice to manipulate the price is

unwarranted and is absurd. There is no evidence to demonstrate that the noticee nos. 6 and 7 were aware of any scheme or were connected in furtherance of the scheme or were part of the artifice to manipulate the price. This finding, in our opinion, is based on surmises and conjuncture.

80. In the absence of any element of participation, the charge of collusion or having any fraudulent activity either overt or covert i.e. in terms of planning, execution and assistance cannot be proved as the same is missing. There is no finding that noticee nos. 6 and 7 had a common intention with the other entities to manipulate price in the cash segment.

81. Consequently, the mere fact that the noticee nos. 6 and 7 benefited out of the alleged fraudulent activity of the other entities again does not mean that the noticee nos. 6 and 7 were part of the artifice in manipulating the price. Noticee nos. 6 and 7 were holding long position and on account of the settlement price, their losses were reduced and the same cannot amount to any fraudulent activity in violation of Regulations 3 and 4 of the PFUTP Regulations.

82. Consequently, in view of the aforesaid, we are of the opinion that the direction to disgorge the alleged avoidance of loss by noticee nos. 6 and 7 and penalty imposed by AO cannot be sustained and to that extent the impugned orders cannot be allowed to stand.

83. For the reasons stated aforesaid, the impugned orders passed by the WTM and the AO against Betul Minerals & Construction Pvt. Ltd. and Betul Oil & Feeds Pvt. Ltd. in appeal nos. 407 of 2021, 408 of 2021, 435 of 2022 and 436 of 2022 are set aside in so far as it relates to them. The appeals are allowed. All the other appeals are dismissed with no order as to costs.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

10.11.2023
PTM