WTM/MPB/EFD-DRA 4/ 34 /2019

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
ORDER
Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In Re: PFUTP Norms

In respect of:

S. No.	Name of the Entities	PAN
1	Mr. Rajesh Pravin Bhanushali	AABPB2744H

In the matter of Crazy Infotech Ltd.

---

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) vide an Order dated February 10, 2015, *ex-parte* qua Mr. Rajesh Pravin Bhanushali **(**hereinafter referred to as **" the Notice**e**"**) *inter alia,* prohibited him from accessing the securities market and further prohibited him from buying, selling or dealing in securities market, directly or indirectly, for a period of two years. The Noticee was found to have entered into self-trades (during various periods between August 2005 to August 2007) in the scrip of Crazy Infotech Ltd (hereinafter referred to as **"Crazy Infotech")**, thereby violating the provisions of Regulation 3 (a), 4(1), 4(2) (a), & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations, 2003")**.

2. Aggrieved by the said Order, the Noticee filed an appeal before the Hon'ble Securities Appellate Tribunal **("SAT")** on the ground that the Noticee was not served with the notice of hearing at the correct address. The Hon'ble SAT, vide Order dated June 16, 2016 quashed the aforesaid Order passed by SEBI qua the Noticee and restored the matter back to SEBI for fresh decision on merits and in accordance with law.

3. The aforesaid final order dated February 10, 2015 which was set aside qua the Noticee was passed pursuant to the Show Cause Notice dated November 07, 2012 (hereinafter referred to as "**SCN**") issued to the Noticee. I note that the said SCN *inter alia* alleges the following:

3.1 The Noticee bought 2, 47,264 shares and sold 1,28,983 shares in the market during the period from August 18, 2006 to December 31, 2007 and in most of the cases the counter parties were connected group entities.

3.2 The Noticee received 5900 shares and transferred 108000 shares in off-market from/to other connected group entities.

3.3 Some of the trades executed by the Noticee in the market and off-market were in the nature of reversal of trades;

3.4 The Noticee had indulged in synchronized trades;

3.5 As per the Last Traded Price analysis of the trades executed by the Noticee, the trades of the Noticee impacted the price rise in the scrip

3.6 The Noticee was allegedly involved in self-trades for 7,578 shares through the Brokers viz., M/s Adroit Financial Services and M/s Ami Stock and Share Brokers.

4. In compliance with the aforesaid SAT Order, SEBI granted an opportunity of personal hearing on merits of the SCN to the Noticee on September 06, 2016. During the personal hearing, Mr. Vikas Bengani, Authorised Representative ("AR") appeared on behalf of the Noticee and *inter alia* submitted that the transactions alleged in the SCN were not executed by the Noticee and that the brokers have committed fraud in Noticee's DP account. The Noticee was advised to submit details of action, if any, taken by him against the brokers. The Noticee was also asked to provide reasons, if no action was initiated against the brokers. The Noticee was given time till September 16, 2016 to file his reply.

5. The Noticee, vide his reply dated September 16, 2016 *inter alia* submitted the following:

a. "The Noticee has first came to know on 11-02-2015 when the Noticee's share trading account and demat account were freezed by Order dated 10-02- 2015 passed by the Ld. Whole Time Member. The Noticee immediately approached SEBI and informed that the Noticee had never traded in the scrip of Crazy Infotech Limited.

b. *The Noticee had first time came to know on 11-02-2015 that SEBI had initiated 11 B Proceeding against the Noticee and issued Show Cause Notice and Notice of Hearing to the Noticee. Since the address mentioned in the Show Cause Notice and Notice of Hearing was not the Noticee's address, hence, the Noticee was not aware about any proceeding going on against the Noticee.*

c. *The address mentioned in the Show Cause Notice dated 07-11-2012 i.e. S/ 13 Hazari Bagh, Station Road, Vikhroli West, Mumbai-400079 did not belong to the Noticee. The Noticee first time came to know about the said address when SEBI passed the Order dated 10-02-2015. The Noticee was using only one address i.e. 225/3157/1, Tagore Nagar, Vikhroli (East), Mumbai - 400083. The said address is also declared in the Noticee's passport and other documents.*

d. *The Noticee has never opened any trading account with brokers namely M/s Adroit Financial Services, M/s Ami Stock and Share Broker and M/s AKG Stock Broker Pvt. Limited. The Noticee has only two shares trading account with M/s Bakshu Securities & Brokers Pvt. Limited (Account No. OR2) and M/s Bonanza Portfolio (Account No. MM630R9). However, the Noticee has never executed any trade in the scrip of Crazy Infotech Limited.*

e. *The Noticee is holding only one demat account with M/s Stock Holding Corporation of India Limited account number 13108135 from last 12years. The Noticee had bank accounts with HDFC Bank Ltd opened in the year 2000 account number 0118100013596, Saraswat Co-op Bank opened in 1988 account number 5886 and Axis Bank opened in 2002 & 2009 (salary account and now closed) doesn't remember the account numbers.*

f. *It was also submitted before the Ld. Whole Time Member that that Noticee's name had been misused by somebody else to open shares trading account and demat account. The Noticee was never involved in any manipulative trading. The Noticee volume of transactions in the shares is very low.*

g. *It was further submitted that the Noticee was staying in UAE since 2011.*

h. *During the course of hearing it was asked by the Ld. Whole Time Member to my Authorized Representative that after knowing that the Noticee name were misused by someone, why the Noticee had not made any Police Complaint ?*

i. *It is humbly submitted that the Noticee is settled in UAE and when he first time came to know about misuse of his name, he first preferred to file an Appeal before the Hon'ble Securities Appellate Tribunal. The Noticee did not want to lodge Police Complaint as the Noticee is living abroad and could not handle with Police from there. It is not possible for the Noticee to come to India and help the Police in Investigation if the Noticee would have lodged Police Complaint. It is further submitted that the transactions in the scrip of Crazy Infotech Limited belongs to the year 2007. Since the above said matter is about 8 - 9 years old and it also requires help of those brokers who had opened my forged and fake trading and demat accounts, it was advised to me that no Broker would help me since the matter is very old and no law compel them to keep records pertain to year 2007- 2008.*

j. *The Noticee's Authorized Representative was further asked that when the Noticee came to know about the 11B Proceeding. It is humbly submitted that the Noticee had first time came to know only on 11-02-2015 when the SEBI had freezed Noticee's share trading and demat accounts.*

k. *It is also humbly submitted that in Para 4.5.6 of the Order dated 10-02-2015, the Ld. Whole Time member has specifically mentioned that "SCNs, however do not specifically explain the connection/relation amongst all the Noticees and the counterparties of their trades, which are alleged to be reversed and synchronized. Moreover, the connection amongst certain Noticees alone cannot be a decisive factor to determine the collusion amongst all the 823 connected entities including the Noticees herein as the SCNs do not contain specific data indicating the specific role/contribution of the Noticees to the volume and price generated through the alleged reversals/circular and synchronized trades in the scrip."*

l. *It is humbly submitted that since the Noticee had never traded in the scrip of Crazy Infotech Limited then the alleged PFUTP Regulations do not apply on the Noticee for the same. The Noticee had not opened any share trading and demat account with the alleged brokers. The Noticee was totally unaware about the said proceeding and came to know first time in 2015. Therefore, it is Noticee's humble submission that no adverse Order should be passed against the Noticee.*

m. *The Noticee is trying to get his shares trading and demat accounts transactions details pertaining to year 2007-2008. The Noticee will provide the same to SEBI, if the Notice would get the copy of the same from his brokers and depository. The Noticee was not*

provided the copies of shares trading account opening form and demat account opening form. If SEBI provides the same, the Noticee can further prove that the signatures of the Noticee on the said account opening forms are forged and fabricated by providing report of handwriting expert."

12 Considering the request of the Noticee, SEBI was instructed to provide the copies of KYC and account opening forms filed with his Brokers (as alleged by SEBI) to prove his contentions of forgery. However, the same is not yet furnished. In view of the same, SEBI vide letter dated February 22, 2017 advised the Noticee to furnish the Bank Statements of all the Bank Accounts of the Noticee. However, the said letter addressed to the Noticee at "403, Mihir Co-Op. Housing Society, Plot No.18, Sector 6, Airoli, Navi Mumbai", was returned undelivered. Subsequently, on November 12, 2018 the same was served to the Noticee through hand delivery. In response, to the same, the Noticee vide e-mail dated November 14, 2018 acknowledged the receipt of the same. Vide e-mail dated November 19, 2018, the Noticee furnished the Bank Statements of his HDFC Bank Account for the period 2005-2007.

Hearing and Submissions:

13 Thereafter, vide hearing notice dated December 14, 2018, another opportunity of hearing on merits of the SCN was granted to the Noticee on February 05, 2019. The same was served to the Noticee through hand delivery as well as e-mail.

14 On February 05, 2019, the Noticee appeared in person and made *inter alia* the following submissions:

a) That the Noticee has relied upon his earlier submission dated September 16, 2016.
b) That he has not traded in the scrip of Crazy Infotech Limited. The account mentioned in the order does not belong to him.
c) That he has never opened any trading account with Brokers viz., Adroit Financial Services, Ami Stock and Share Broker and AKG Stock Broker Pvt. Ltd. They have misused his documents such as PAN and Driving License. However, the address used by them was different. The Noticee has submitted copy of PAN, Driving License and Passport.

d) That he had only two trading accounts, one with M/s Bakshu Securites & Brokers Private Limited and another with M/s Bonanza Portfolio.

e) That he is holding one demat account with M/s Stock Holding Corporation of India Limited for the past 12 years and submitted the copy of his transaction statement.

f) That he has Bank accounts with HDFC Bank Ltd, Saraswat Co-operative Bank and Axis Bank.

g) During the investigation period he was residing at "*225/3157/1, Tagore Nagar, Vikhroli (East) Mumbai*".

h) From 1992 onwards, he was actively involved in buying and selling shares in small quantities.

i) There is no trading since 2013, all the existing securities are lying with M/s Stock Holding.

15 The Noticee was granted time up to February 12, 2019 to file the additional written submissions along with Bank Statements of all his Bank Accounts.

16 During the hearing, the Noticee has submitted an additional reply to the SCN vide which he has submitted the following:

a) "Even assuming not accepting that I had executed self-trade in the scrip of Crazy Infotech Limited, SEBI has changed his own stand in last few months. SEBI had recently come out with Policy decision dated 16-05- 2017 on Self-Trades which states inter alia,

b) "...it is observed that intention is a sine quo non for establishing manipulation in case of self-trades and accidental/ unintentional self-trades are not covered under the said regulations. Accordingly, mere occurrence of self- trades should not be considered as per se illegal in the absence of any other additional evidence to prove manipulation or intent to defraud as is done in cases of synchronised trades. Therefore, in all matters of self-trade, an assessment has to be made regarding whether the said trade was intentional or unintentional on the basis of supporting evidence and the manipulation caused by indulging in self-trades should be clearly brought out.

c) The quasi-judicial authority may assess on the basis on SCN/ Investigation report whether any manipulation is arising out of self-trade or any intention to enter into self-trade is evident from the material on record. If the manipulation or intent can be established the

same may be proceeded with as approved. However, if no intention or manipulation is evident from the case and the only charge is mere occurrence of self-trades, then the entity may be exonerated by the quasi-judicial authority. Further, while assessing the manipulative intent, the volume transacted may also be considered in addition to the other factors."

d) I earnestly request you to please consider my submissions and dispose-off the SCN without passing any adverse order against me. Without prejudice to my right and contention, I reserve my right to make additional written submissions to the SCN after the date of the scheduled hearing".

17 Vide e-mail dated February 12, 2019 the Noticee has furnished the transaction statement from his broker M/s Bakshu Securites & Brokers Private Limited. Vide the said e-mail, he has also stated that Bank statements with respect to his accounts in Saraswat Co-Operative Bank and Axis Bank could not be arranged till date. Although an opportunity of hearing was granted to the Noticee to submit his contentions on merits with respect to all the allegations contained in the SCN, however, the Noticee has confined his submissions with respect to the alleged self-trades and disputed that he never traded in the scrip of Crazy Infotech Ltd which in effect disputes the other allegations as well.

Findings:

18 I have considered material available on record such as SCN, reply to the SCN along with the additional submissions (both written and oral) made during the personal hearings. In light of the same, I shall now proceed to deal with the issues that arise for consideration.

i. Whether the Noticee has executed the alleged reversal/circular trades, synchronized/ structured trades and self-trades in the scrip of Crazy Infotech Limited from his own trading account?

ii. If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?

iii. If answer to issue No. (ii) is in affirmative, what directions, if any should be issued against the Noticee?

19 ***Issue No.1***: The SCN alleges that the Noticee had indulged in reversal of trades (market as well as off-market transaction), synchronized/structured/circular trading and self-trades for several days during the investigation period, thereby creating artificial volume and price rise in the scrip of Crazy Infotech.

20 I note that the allegations against the Noticee in the matter are based on his alleged trades executed from the trading account with Brokers viz., M/s Adroit Financial Services, M/s Ami Stock and Share Brokers and AKG Stock Broker Pvt. Ltd. In this regard, I note that the Noticee has disputed the very existence of such trading accounts with these Brokers and also contended that he had never traded in the scrip of Crazy Infotech Ltd. The Noticee has also submitted that he had only two trading accounts, one with M/s Bakshu Securites & Brokers Private Limited and another with M/s Bonanza Portfolio and one demat account with M/s Stock Holding Corporation of India Limited. He also stated that his PAN and driving license was misused and forged by these Brokers to execute trades in his name.

21 One cannot ignore the fact that the alleged fraud and forgery, if committed in the broking and DP account of the Noticee by the said brokers as alleged, if proved, are grave and serious in nature. From the perusal of transaction statement of the demat account of the Noticee for the period of 2005-2007, I note that most of the transactions were executed through the Brokers M/s Bakshu Securites & Brokers Private Limited and another with M/s Bonanza Portfolio and the said statement does not show evidence of any transactions executed through the alleged Brokers viz., Adroit Financial Services, Ami Stock and Share Broker and AKG Stock Broker Pvt. Ltd. In view of the same, the question arises whether the Noticee had opened any trading account with Adroit Financial Services, Ami Stock and Share Broker and AKG Stock Broker Pvt. Ltd or not. In order to determine the said question, it is necessary to confirm the authenticity of Client Registration form of the Noticee allegedly opened with the Brokers viz., Adroit Financial Services, Ami Stock and Share Broker and AKG Stock Broker Pvt. Ltd. In this context, whether any other demat accounts/Bank accounts are in the name of the Noticee, whether there is any fund trail to the Brokers from the Noticee or from anyone else, whether there is any securities trail to the Noticee in any other demat account or to any one else and

other related facts needs to be ascertained. However, I note that there are no material available on record with SEBI to ascertain the same. Further, I note that the Noticee has failed to furnish Bank statements of his Bank Accounts with Saraswat Co-operative Bank and Axis Bank till date, despite given an opportunity to furnish the same. As the case of SEBI exclusively rests on the fact of execution of impugned trades by the Noticee through the alleged Brokers, in the absence of any material available on record to prove that the Noticee himself opened the trading accounts with the alleged Brokers, I am of the view that this is a fit case for re-investigation by SEBI in order to unearth the entire truth and to find out the role of the Noticee in the alleged impugned trades in the nature of *reversal/circular trades, synchronized/ structured trades and self-trades* in the scrip of Crazy Infotech Limited. Therefore, I am not able to render any findings on the issue raised on merits in respect of the present show cause notice.

Issue No. ii: If answer to issue No. (i) is in affirmative, whether the Noticee has violated the provisions of PFUTP Regulations?

22 By virtue of Noticee's circular/synchronized/reversal trading and self- trades in the scrip of Crazy Infotech Ltd, the SCN alleges that the Noticee has violated Regulations 3(a), 4(1), 4(2)(a), (b), (e) and (g) of PFUTP Regulations. The same are reproduced hereunder for reference:

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;...

4. Prohibition of manipulative, fraudulent and unfair trade practices

1. *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
2. *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—*

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;…

(e) any act or omission amounting to manipulation of the price of a security;" entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security"

23 I note that as regards one of the allegations of self-trades in the SCN, the Noticee has contended that SEBI has changed its policy regarding self-trades. The finding on this issue is dependent on the finding of whether the Noticee has traded in the scrip of Crazy Infotech Limited or not. Further, the finding on the issue as to whether the Noticcee has violated the provisions of PFUTP Regulations by virtue of alleged impugned trades of reversal/circular trades, synchronized/ structured trades issue is also dependent on the finding of whether the Noticee has traded in the scrip of Crazy Infotech Ltd. As no finding on merits could be rendered on issue No.1, the issue No.2 cannot be determined on merits.

Issue No. iii : If answer to issue No. (ii) is in affirmative, what directions, if any should be issued against the Noticees?

24 The finding on this issue is dependent on the finding on issue no. 1 and 2. As no finding on merits could be rendered on issue No.1 and 2, the determination on issue no 3 does not arise.

Order:

25 In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B read with Section 19 of the SEBI Act hereby direct SEBI to re-investigate the alleged role of the Noticee/ Adroit Financial Services, Ami Stock and Share Broker and AKG

Stock Broker Pvt. Ltd in the alleged self-trades in the scrip of Crazy Infotech Limited pertaining to the Investigation period.

26 SEBI shall endeavor to complete the investigation as expeditiously as possible and if adverse materials are available pursuant to such investigation, issue a fresh show cause notice in accordance with law. As this order does not render any findings on the allegations made in the Show cause notice dated November 07, 2012, the closure of the proceedings shall not constitute as *res judicata* to further proceedings, if warranted.

27 The SCN dated November 07, 2012 in respect of the Noticee is accordingly disposed of.

-Sd-

Date: March 27, 2019 **MADHABI PURI BUCH**

Place: Mumbai **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA