

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 26 of 2011

Date of Decision: 16.6.2011

Chirag Tanna
003, Umang, B- Wing,
Mathuradas Road Extn.,
Kandivali West, Mumbai – 400 067.

..... Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai.

..... Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Joby Mathew, Mr. Neerav Merchant and Mr. Shantibhushan Nirmal, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

The appellant is a trader and claims to be a short term investor in the securities market. He was served with a show cause notice dated July 25, 2008 alleging that in collusion with certain brokers and clients he had executed circular trades which resulted in the creation of artificial volumes and also manipulated the price of the scrip of Jindal Drilling & Industries Limited. Adjudication proceedings were initiated against him and the impugned order passed by the adjudicating officer holds that the appellant did not indulge in any circular trading. It has, however, been found that the appellant in collusion with certain other clients/investors had traded in the scrip in a collusive manner thereby creating artificial volumes and manipulating the price of the scrip. By order dated November 26, 2010 he has been imposed a monetary penalty of ₹ 25 lacs for violating Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. It is against this order that the present appeal has been filed.

2. Learned counsel for the parties have been heard. We have on record the trade and order logs from which it has been pointed out by the learned counsel for the respondent Board that the appellant had executed self trades i.e. trades in which he was both the buyer and the seller. Such trades are, admittedly, fictitious and create artificial volumes in the traded scrip. What we find is that there is no such charge laid in the show cause notice which we have carefully gone through. The learned counsel for the appellant is right in contending that the appellant will be prejudiced if we record a finding in this regard without there being a foundation laid in the show cause notice. Rules of natural justice require that the enquiry conducted by the adjudicating officer should not only be fair but the charge levelled against the delinquent must be precise, clear and unambiguous so that he is able to meet the same. The learned counsel for the respondent has pointed out a chart from the show cause notice from which he wants us to infer that self trades have been alleged. We have seen that chart in para 6 of the show cause notice and it is difficult to infer without further details that the appellant had executed self trades. However, the trade and order logs to which reference has been made by the learned counsel for the respondent do prima facie support the contention but we cannot accept the same in the absence of such a charge in the show cause notice. In this view of the matter, we cannot but set aside the impugned order which we hereby do and remand the case to the adjudicating officer for holding fresh proceedings against the appellant after serving a proper show cause notice on him. It is made clear that we have not expressed any view on any of the issues raised in the appeal which shall remain open. The trades that have been called in question were executed sometime in the year 2005 and, therefore, we direct the Board to conclude the proceedings expeditiously. No costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

16.6.2011

Prepared and compared by
RHN

