IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 379 of 2004

Date of decision : 31.7.2007

1. East West Polyart Ltd.
2. Mahesh Patel
3. Chandrakant Patel …… Appellants

Versus

Securities and Exchange Board of India …… Respondent

Mr. Kamal Khata Advocate for the Appellants
Mr. Kumar Desai Advocate with Mr. Santosh Thakur Advocate for the Respondent

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

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

This order will dispose of seven connected Appeals nos. 362, 374, 379, 381, 389, 390 and 403 of 2004 which arise out of a similar set of facts. The main arguments were addressed in Appeal no. 379 of 2004 and, therefore, the facts are taken from this case. There is a slight difference in the case of Global Finance vs. Securities and Exchange Board of India (Appeal no. 362 of 2004) and that difference shall be noticed in the course of our order. Learned counsel for the parties are agreed that our order in Appeal no. 379 of 2004 (East West Polyart Ltd & Ors. vs. Securities and Exchange Board of India) will govern the other appeals as well.

Khandwala Finance Ltd. (KFL) at the National Stock Exchange (NSE) and Jayantilal Khandwal and Sons Ltd. (JKSL) on the Bombay Stock Exchange (BSE). Appellant no.1 had also dealt through M/s. Porecha Global Securities Ltd. (PGSL) on the BSE. It further transpired that five companies namely, East West Polyart Ltd.(EWPL)–appellant no.1, Ideal Petro Products Ltd. (IPPL), Satellite Management Services Pvt. Ltd.(SMSL), Shree Rama Polysynth Pvt. Ltd. (SRPL) and Shree Developers Pvt. Ltd. (SDPL) were the common clients of the aforesaid brokers which traded in the scrip of SRMTL. These clients were also said to be the associate entities of SRMTL. M/s. Global Finance (GF) is alleged to have played the role of a conduit for the movement of funds to enable the aforesaid companies to deal/trade in the shares of SRMTL and the charge levelled against this sole proprietary concern is limited to the providing of funds to the companies. After the investigations were complete, the five companies and GF were issued show cause notices alleging that while trading in the scrip of SRMTL they had manipulated the price upwards whereafter the shares were off loaded which, according to the Board, was in violation of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short FUTP Regulations). As already noticed above, the charge against GF was that it had provided funds to the other companies to enable them to manipulate/rig the market. Detailed replies were filed to the show cause notices denying the allegations levelled therein. An inquiry was conducted under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) read with the FUTP Regulations. The appellants were afforded an opportunity

no.1 had traded in the scrip of SRMTL through KFL, JKSL and also through PGSL and that it placed buy orders at prices substantially higher than the prevailing prices/last traded price which orders influenced the price of the scrip both on the BSE and NSE. After referring to the different trades executed by the aforesaid companies through their respective brokers, the Board concluded that the appellants herein had manipulated the market by inflating the price of the scrip and after the price had gone up, the shares were offloaded in matching transactions in a synchronized manner through the stock exchanges. The Board also observed in the impugned order that funds for trading appeared to have come from SRMTL through GF which acted as a conduit to enable the five aforesaid companies to trade in the scrip. In view of these findings the Board held that FUTP Regulations stood violated and, therefore, in terms of sections 11 and 11B of the Act read with the aforesaid regulations, the appellants, herein were restrained from accessing the securities market and were prohibited from buying, selling or dealing in securities directly or in directly for a period of three years. Similar but separate orders were passed in the case of other companies which have been impugned before us in the connected appeals. Since GF had acted as a conduit and provided funds to enable the companies to manipulate the scrip of SRMTL, it has been debarred from accessing the capital market for a period of five years. It is against these orders that the present appeals under section 15T of the Act, have been filed.

We have heard the learned counsel for the parties at length. The gravamen of the charge levelled against the appellants is that they traded in the scrip of SRMTL and thereby manipulated the price upwards. The fact that

they manipulated the price of the scrip upwards and that they offloaded the shares thereafter. During the course of the inquiry the appellants were confronted with the trades executed by them. It was specifically put to them that they traded in the scrip on the NSE on 26.7.2000 at 13:53:25 hours. The price of the scrip then prevailing in the market was Rs.72.5 and they placed a buy order at Rs.75.50 at 13:54:48 hours. Similarly on the BSE they traded in the scrip on 17.7.2000 at 11:26:57 hours. The price of the scrip then prevailing was Rs.74.80, whereas they placed a buy order at Rs.80 at 11:28:26 hours. Several trades of similar nature were put to them during the course of the inquiry which were not disputed. It is, thus, clear from the aforesaid sample which we have picked up that shares at a lower price than the last traded price were available in the market and yet the appellants placed the buy orders at a price higher than the last traded price. The purchase order of the appellant at Rs. 75.50 had swept the orders ranging from Rs. 72.35 to Rs. 75.50 on the NSE. Similarly, on the BSE the purchase order of Rs.80 had swept the pending orders from Rs. 74.80 to Rs.80 upwards. In percentage terms, the price shot up by 6% by a single trade. It has to be borne in mind that every trade executed on the screen of the exchange establishes the price of the scrip. It is not understandable as to why the appellants purchased shares at a higher price when they were available at a price lower than the last traded price. Large number of trades in this manner were executed for which no explanation was furnished by the appellants during the course of the investigations and inquiry. In the normal course of events a buyer will want to purchase any share at the lowest available price and as a seller would like to sell at the highest possible price.

when questioned, he must offer a satisfactory explanation for placing such orders. The appellants had been placing orders at a higher price quite persistently and did not offer any satisfactory explanation. One of the explanations offered was that they saw no abnormality in placing orders at a higher price and that there was nothing wrong in the said purchases. This is hardly an explanation. Such orders are contrary to normal human conduct. The appellants also submitted that - "We have put orders with the brokers to purchase at market price. We were not aware that trading member has swept order book as shown by you." This explanation on the face of it is not correct because the brokers had placed orders at a price higher than the last traded price and they could not have put in such orders without the instructions of their clients. It is not necessary for us to deal with other trades of this nature and on the basis of the aforesaid two examples we are satisfied that the charge of manipulating the price of the scrip upwards stands established. The fact whether the shares were thereafter off loaded by the appellants or not is not relevant for the purpose of the charge of manipulation though the Board in the impugned order has found that the shares had been off loaded by synchronized trades after the price had gone up. A chart showing such trades has been referred to in para 19 of the impugned order and the Board appears to be right in observing that such large number of trades could not match on the screen of the exchange without a prior arrangement with the counter party. If there was such an arrangement, the trades are obviously synchronized. In this view of the matter, we have no hesitation in upholding the findings of the Board in regard to this charge.

took us through the charts relied upon in the impugned order but we are not satisfied from these charts that the funds had actually come from SRMTL. Moreover, this charge was not set out in the show cause notice issued to the appellants. For this reason as well this charge must fail.

This brings us to the case of GF which is said to have acted as a conduit in aiding and abetting the five companies including appellant no.1 in manipulating the scrip of SRMTL. What we need to examine in this case is whether it provided the necessary funds to the companies for manipulating the scrip. During the course of the investigations, the Board had collected information indicating that GF and the five companies were maintaining their bank accounts with the Central Bank of India, Ballard Estate. A perusal of the chart contained in annexure 4 to the show cause notice served on GF read with the break-up attached thereto makes it abundantly clear that funds were coming in as well as going out from the account of GF to the accounts of the five companies and that the account of GF was like a pool account. Whichever company needed funds would draw the money and whichever company received the funds on sale of shares or otherwise would put the money in the account of GF. These charts were served on the five companies as well and they ought to have furnished their explanations for the amounts received and given back by them to GF. Statement of Shri Mahesh Patel, Director of EWPL was recorded during the course of investigations and he was specifically asked about the pay-in and pay-out obligations of his company to which he answered- "In case of finance requirement we normally take from Global Finance Ltd." It is interesting to note that some of the companies paid more to GF than what

Rs.87,22,500/- during the period from 14.6.2000 to 5.9.2000. The appellants admit that these are the loan transactions. They ought to have explained for what purpose the loans were taken. The plea taken by GF in its reply to the show cause notice states that it had in good faith lent monies to various parties and that the end use of the funds was not its lookout at all and it was upto the borrowers to use the funds as they liked. In the light of what has been stated above, this plea of GF cannot be accepted. Going by the statement of Shri Mahesh Patel these were finances which were utilised by the companies for the trading of the shares. It is, thus, clear that GF acted as a conduit for the movement of funds to enable the five companies to deal in the shares of SRMTL. In this view of the matter, we have no hesitation in upholding the finding of the Board against GF.

It was strenuously urged by the learned counsel for the Board that the five companies, GF and SRMTL and their directors were closely connected with each other and that they are controlled by members of the same family. In the light of the findings recorded hereinabove, it is not necessary for us to examine this contention.

We may now deal with Appeal no. 403 of 2004 filed by Asha Patel. She is also alleged to have traded in the scrip of SRMTL and her pattern of trading is the same as that of EWPL. She was also placing buy orders at prices higher than the last traded price thereby manipulating the price of the scrip upwards. The learned counsel for the respondent has taken us through the impugned order in which her trading pattern has been discussed. No one has appeared on her behalf to press this appeal. We are, therefore, left with no option but to

There is something strange in the manner in which she was trading. She did not meet with her pay-in obligations which appear to have been met by the brokers. In other words, her trading transactions were being financed by them. She also did not meet the delivery obligations which too were settled by the brokers. This is not permissible. In this view of the matter, we find no fault with the findings recorded by the Board against her in the impugned order.

No other point has been raised.

In the result, the appeals fail and the same stand dismissed leaving the parties to bear their own costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

31.7.2007
bbn