BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 207 of 2011

Date of Decision: 23.1.2012

Nrupesh C. Shah
235, Doshiwala Pole,
Kalupur, Ahmedabad – 380 001. …… Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Mumbai – 400 051. …… Respondent

Mr. Deepak R. Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh, Advocates for the Respondent.

CORAM : P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : S.S.N. Moorthy, Member

The present appeal has been filed against the adjudication order of the Securities and Exchange Board of India (for short the Board) by which a penalty of ₹ 5 lacs was imposed on the appellant. The appellant is engaged in the business of trading in shares. The Board conducted investigations in the buying, selling and dealing in the shares of M/s. Adani Exports Ltd. (AEL) for the periods July 09, 2004 to January 14, 2005 and August 01, 2005 to September 5, 2005. It was observed that the price of the scrip registered wide fluctuations during the above periods. During investigation it was found that the appellant had traded substantially in the scrip of AEL through M/s. Grishma Securities P. Ltd. during the first investigation period. The trades resulted in synchronized dealings with other entities on the Bombay Stock Exchange and created artificial volumes in the scrip of AEL. The appellant was directed to show cause why penalty should not be levied for unlawful trading as found during investigation. The appellant appeared in person before the adjudicating officer but sought time for filing a detailed reply to the show cause notice. He did not file any reply within the time granted but sought further time for filing reply to the show cause notice. However, subsequently, no reply was filed by him to the show cause notice. The adjudicating officer proceeded to

consider the issues as appearing in the investigation report and the material available on record. After due consideration of the relevant issues the adjudicating officer found the appellant guilty of unfair trade practices and imposed a penalty of ₹ 5 lacs under section 15HA of the Securities and Exchange Board of India Act 1992 (for short the Act).

2. The appellant's learned counsel would fairly admit that there has been synchronization of trades during the period July 09, 2004 to January 14, 2005. However the main thrust of his argument is that penalty has been imposed without regard to the factors outlined in section 15J of the Act and to the stand taken by the adjudicating officer in cases of similar kind where manipulation was noticed in the scrip in the case of a few other individuals. According to the appellant's learned counsel, the three factors mentioned in section 15J should have a strict correlation to the quantum of penalty which is not so in the present case. With reference to adjudication orders in the cases of Ms. Rina Shah, Shri Haresh Posnak, Shri Ankit Vairana, Shri Mangeram S. Sharma in whose cases the quantum of penalty levied was only ₹ 1 lakh, the appellant's learned counsel put up a strong plea for reduction in the quantum of penalty.

3. The learned counsel appearing for the Board pointed out that the alleged fraudulent transactions in the appellant's case related to only one counter party and so the appellant had knowingly contributed to the fraud and this has weighed with the adjudicating officer in determining the quantum of penalty. It was also argued by him that the quantum of penalty was determined by the adjudicating officer having regard to the large volumes of trades in comparison to the cases cited by the appellant's learned counsel and the action of the adjudicating officer was well within the power conferred under section 15I of the Act.

4. We have considered the rival submissions. There is no denying the fact that the appellant had executed trades which did not result in transfer of beneficial ownership but merely created artificial volume in the scrip of AEL. It is to be noted that the appellant failed to furnish any reply to the show cause notice even though he had sought extension of time on his own. The adjudicating officer has proceeded on the basis of the material available on record and this cannot be faulted. The gravity of the manipulative trades has been well brought out by the adjudicating officer in the impugned order. The crux of the transaction reads as under:

> "I have carefully examined the allegations against the Noticee and the material available on record. I find from the Investigation Report (IR) that the Noticee had traded for a huge volume of shares in AEL during the period under investigation. I find from trade and order logs contained in Annexure 5 of the IR that during the period from July 28, 2004 to January 14, 2005 the Noticee (client code-S043) had executed a large number reversal trades. Almost all his trades were with a single counterparty client, namely Shri Saumil Bhavnagari (Client Code-087V001), on BSE. Throughout the said period, the Noticee was continuously buying from and selling to the same counterparty client thereby reversing his trades without change of beneficial ownership. It is seen that the time difference between the buy and sell order for each of the trades between the Noticee and the said counterparty client was less than 60 seconds. Similarly, I further observe from Annexure 8 of the IR that during the period from October 15, 2004 to January 14, 2005 the Noticee had also executed a large number of reversal trades in similar fashion with another client, V & S Intermediaries (Client Code-V501), which was a proprietary firm of Shri Saumil Bhavnagari, for a huge volume of shares on the NSE. The Noticee and the said client had acted as the counterparty client for each other's trades and had created a huge volume i.e. they purchased from and sold to each other thereby reversing their trades between themselves. Further, the time difference between the buy order and the sell order for all such trades was less than 60 seconds. I find that the Noticee has created a huge volume in the scrip by trading in the abovementioned fashion."

The gravity assumes larger proportion when it is noticed that all the transactions were with one counter party. This would suggest that the appellant was knowingly transacting with the counter party and the object was nothing but to inflate the volumes. The volume of transactions and nature of the counter party have been taken into due consideration by the adjudicating officer in fixing the quantum of penalty.

5. The appellant's learned counsel laid much thrust on the provisions of section 15J of the Act. The relevant provision reads as under:

> **"15J.Factors to be taken into account by the adjudicating officer.-**
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> While adjudging quantum of penalty under section 15 I, the adjudicating officer shall have due regard to the following factors, namely:
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> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
> (b) the amount of loss caused to an investor or group of investors as a result of the default;
> (c) the repetitive nature of the default."

In the present case, penalty has been imposed under section 15HA of the Act for indulging in fraudulent and unfair trade practices. Section 15I confers power on the adjudicating officer to impose such penalty as he thinks fit in accordance with the provisions of the Act. Section 15J lays down a few guiding factors for determining the quantum of penalty. These factors are laid down to provide certain basic parameters for

deciding the quantum of penalty. It cannot be inferred that the three factors mentioned in section 15J should be straight jacketed and the penalty should be strictly proportionate to the three factors. The adjudicating officer has to consider the totality of circumstances in a given case in adjudging the quantum of penalty. However, the three factors laid down in section 15J are to be given appropriate consideration so as to avoid arbitrariness. So the argument of the appellant's learned counsel with regard to the provisions of section 15J and their non applicability to the facts of the case may not help the appellant in any manner. As observed above, the adjudicating officer appears to have acted in due regard to the provisions of section 15J as well as other attendant circumstances of the case.

6. The argument of the appellant's learned counsel that the quantum of penalty in the present case should be the same as in the case of Ms. Rina Shah, Shri Haresh Posnak, Shri Ankit Vairana, Shri Mangeram S. Sharma cannot also be accepted since in the facts of the case, the volumes and number of transactions are much higher. In other words, the contribution of the appellant to synchronise the trades to inflate volumes is of a much higher order.

This Tribunal had decided another matter relating to same investigation period in the scrip of AEL in the case Mahesh H. Bissa vs. Securities and Exchange Board of India [Appeal no.202 of 2011 decided on 5.1.2012]. The facts of the present case and conduct of the appellant are almost similar to those in the appeal mentioned above. Having regard to the facts of the case and the totality of circumstances we are of the view that ends of justice would be met if a penalty of ₹ 2.5 lacs is imposed in the present case also. In view of the above, we reduce the penalty to ₹ 2.5 lacs. We order accordingly. The appeal is disposed of as above with no order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

23.1.2012
Prepared and compared by
RHN