BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 23 of 2012

Date of Decision : 12.4.2012

Shivam Investments
(Prop. Mrs. Sushma Kapur)
801, International Trade Tower,
Nehru Place, New Delhi – 110 019. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051. ..…Respondent

Mr. Sunil Kumar, Chartered Accountant for the Appellant.

Dr. Mrs. Poornima Advani, Advocate with Mr. Ajay Khaire and Ms. Rachita Romani, Advocates for the Respondent.

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

Per : S.S.N. Moorthy, Member

This order will dispose of three Appeals no.23, 24 and 26 of 2012.

2. These appeals are against imposition of penalty for violating the provisions of Regulations 3 and 4 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) and for violating the provisions of Code of Conduct of Stock Brokers contained in Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (for short 'Stock Broker regulation). The adjudicating officer imposed penalties as under in respect of the above mentioned violations.

1. Shivam Investments - ₹ 50,000 for FUTP violation. (Appeal no. 23 of 2012)

2. Pee Dee Kapur Stock and Securities Ltd. - ₹ 1 lac for FUTP violation and ₹ 75,000 for violation of Code of Conduct. (Appeal No. 26 of 2012)

3. APM Financial Consultants P. Ltd. - ₹ 75,000/- for FUTP violation and ₹ 50,000/- for violation of Code of Conduct. (Appeal No. 24 of 2012)

3. The cause of action for the proceedings and consequent penalty arose from an investigation conducted in the trading in the scrip of Radico Khaitan Limited (RKL) by Securities and Exchange Board of India (for short the Board). The investigation revealed the involvement of, among others, Pee Dee Kapur Stock and Securities Ltd (PDKSS), Shivam Investments (SI) and APM Financial Consultants Pvt. Ltd. (APMFC) in the manipulation of the scrip. The above three entities were found to be connected to each other by way of common address, common contact number, association through companies of which the individuals are directors etc. The appellants were found to be involved in the manipulation of the scrip of RKL by way of self trades and cross trades. When there was a decline in the price of the scrip of RKL first trades were undertaken by PDKSS, the broker, on behalf of SI and another connected company DPK Stock and Securities (DPKSS). The modus operandi was to undertake first trades at a figure higher than the last traded price in smaller quantities of shares. It was noticed that, on most of the occasions, the counter party buyer and seller brokers were from the same group with SI on the one side and DPKSS on the other. Prima facie, it appeared that the trading pattern was an attempt to prop up the falling share price of RKL when the company was considering issuance of preference shares to financial institutions. The adjudicating officer inferred that the appellants were involved in the manipulation of the scrip through self trades and cross trades for creating artificial volumes and jack up the price of the scrip and so a show cause notice to the above effect was issued on November 24, 2009. It was also inferred by the adjudicating officer that PDKSS and APMFC were involved in violation of the Code of Conduct for stock brokers by way of using two client codes. The appellant filed replies to the show cause notice denying the allegations.

4. We have heard the learned representative of the appellant and the learned counsel for the Board who took us through the records of the case. According to the appellant's learned representative there is no abnormality in the trades in as much as the impugned trades consisted of only 0.01 per cent of the trades in the entire market. It is argued that the adjudicating officer has ignored the appellant's trades on the Bombay Stock Exchange and if they were also taken into account the traded volume would be a miniscule portion as compared to the total market volume. It is very strenuously argued that there was no deliberate attempt to create artificial volumes or influence the market by propping up the price of the scrip in a manipulative manner. The matching of trades is represented to be incidental and not borne out of any meeting of minds. The appellant's learned representative submitted that any allegation of fraud cannot be sustained in the present case as there was no impact on the market and the charge regarding price manipulation has been dropped by the adjudicating officer himself. In short, the appellant's learned representative contended that manipulation of market or perpetration of fraud cannot be upheld in the absence of price manipulation and so the appellant should be absolved of penal consequences.

5. The learned counsel for the Board argued that manipulation of market through cross trades and self trades is hit by the definition of fraud as appearing in Regulation 2(1)(c) of FUTP Regulations. It is observed that manipulation of trades is writ large in the self trades and cross trades indulged in by the appellants. The absence of price manipulation is not material to the wrong doing committed by the appellants. With a reference to the trade logs which are annexed to the show cause notice it is pointed out that the appellants have attempted to register the trades in such a way that there was rise in volume on a day to day basis and this undoubtedly called for penal action. According to the learned counsel for the Board, the inter se connection of the appellants and the connected entities is very clearly set out in the impugned order and the appellants have indulged in the manipulation of trades through the connected entities. With regard to the volume of trades and the trades executed on the BSE it is observed that the appellants' trades on the NSE clearly established manipulation and the comparison with over

all trades in both the exchanges is not relevant in as much as the wrong doing in the trades in NSE stands established.

6. We have considered the rival submissions. The allegation as contained in the show cause notice consists of two limbs (1) creation of artificial volumes in the scrip of RKL and (2) significant rise in the share price of the scrip of RKL during the period from July 1, 2006 to August 22, 2006. The adjudicating officer concluded that the appellants indulged in cross trades and self trades with the above objective in mind and to create a false market. However, in the adjudication order, it was concluded that there was no actionable material on record to prove the allegation of price manipulation. In other words, the charge regarding price manipulation was dropped. However, the charge regarding creation of artificial volumes in the scrip of RKL stands established. We do not find any merit in the arguments of the appellants' learned representative that creation of artificial volume through manipulative trades cannot stand by itself without price manipulation. In this respect it is necessary to refer to the definition of fraud as appearing in Regulation 2(1)(c) of FUTP Regulations. It reads as under :

> "fraud includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include:……"

The scope of the term 'fraud' as defined above is wide enough to take in its sweep any act which disturbs the equilibrium of the market. It is not necessary that the fraudulent act should result in price manipulation. There are other several wrong doings envisaged in the definition of fraud as mentioned above. So the contention of the appellant's learned representative that creation of artificial volumes in the market cannot be regarded as a wrong doing is devoid of any substance. In the present case, the adjudicating officer annexed the details of self trades executed by PDKSS on behalf of SI and APMFC. The appellant's learned representative could not adduce any evidence to disprove the self trades. On the other hand, the adjudicating officer has established the case of artificial volumes with the help of

the details of trades listed out in the impugned order. To illustrate– on August 8, 2006 APMFC bought 15000 shares using the client code AP99 and sold exactly the same quantity using different client code AP09. On August 8, 2006 the buying and selling client for 3800 shares was the same entity namely APMFC. Apart from self trades there were also 12 cross trades with PMPL for a total of 8,141 shares. Similar trades took place on August 9, 2006 and August 21, 2006. The adjudicating officer has dealt with the manipulation done by the appellants very succinctly in the following words:

> "it is amply clear that PDKSS and his clients PMPL, SI and APMFC which are inter-related had entered into cross trades amongst each other. I also observe that APMFC had entered into Self-trades during the period under investigation. From the instances of cross trades executed amongst inter-related clients of PDKSS I observe that each of the occasion i.e. APMFC had contributed to 5.56% and 7.1% of total number of shares traded on August 08, 2006 and August 21, 2006 respectively and SI had contributed to 7.90% and 7.81% of total number of shares traded on August 09, 2006 and August 21, 2006 respectively. Further the quantum of self/cross deals by the broker as a percentage of total transactions undertaken by him on these dates is also significant (ranging from 45% to 100%) thus indicating that the broker carried out its trades largely in the nature of self/cross deals and thereby establishing the volume creation done by the broker/clients in the scrip."

The only defence of the appellant's learned representative is that the trades represent only those on the National Stock Exchange of India Limited and they are a small percentage of the total volume traded in the market and there was no adverse impact on the market. We are of the view that in the facts and circumstances of this case, the volume of trades, as contended by the appellant, is not relevant since the wrong doing stands established. The adjudicating officer has brought on record a pattern in the trading registered by the appellant and this points to deliberate manipulation by way of creation of artificial volumes. The argument of the appellant that there was no meeting of minds in the transactions cannot be accepted since the material on record is sufficient to establish the connection among the parties and the pattern of trade which lead to deliberate indulgence in self trades and cross trades.

7. The adjudicating officer has brought on record details of the trades executed by the appellant in which both buy and sell orders are of the same

quantity and at the same price which has led to creation of artificial volume. It has also been noted by him that the parties to the transactions are connected parties and they acted knowing fully well the nature and pattern of the trades. So the argument of the appellant that the matching of trades was incidental cannot be accepted.

8. In view of the discussion above, we are of the view that the adjudicating officer has rightly roped in the provisions of regulations 3 and 4 of FUTP Regulations and held the appellants to be liable to penalty. Since PDKSS, APMFC and SI are closely involved in the manipulative trades, penalty for violation of the provisions of regulations 3 & 4 of FUTP Regulations is upheld.

9. In the case of PDKSS it was observed that it had given its client APMFC two client codes i.e. AP09 and AP99. The adjudicating officer found this to be violative of SEBI circular SMDRP/Policy/CIR-39/2001 dated July 18, 2001. The above circular mandated all brokers to use unique client codes. The use of two client codes for the same client was in violation of the above mandate. It was contended before the adjudicating officer that a second client code was allotted to APMFC for carrying out share transactions in custodian code through IL & FC because settlement obligation of custodian trades are compulsorily required to be settled by custodian directly with NSCCL. It was pointed out before the adjudicating officer that code no.AP09 was exclusively allotted for custodian trades and code no.AP99 for non-custodian trades. The appellant had not furnished any satisfactory explanation for the maintenance of two client codes. The appellant was not in a position to explain why transactions were undertaken through non custodian codes when custodian code has already been allotted. In view of the above violations, penalty was imposed on PDKSS and APMFC under 15HB of the SEBI Act, 1992.

10. The contentions raised before the adjudicating officer are reiterated during appeal proceedings also. It is not in dispute that multiple client codes were allotted to APMFC and they were used for carrying out trades in the scrip of RKL. We cannot accept the stand taken by the appellant that due diligence was exercised in discharging its obligations. The use of two different client codes was

admittedly against the relevant provisions of the SEBI circular and Code of Conduct and the appellant could not bring forth any satisfactory explanation for the same. It is expected of all brokers and sub-brokers to abide by the provisions of the Code of Conduct and the relevant circulars issued by the Board. The adjudicating officer has rightly concluded that PDKSS and APMFC have not exercised due diligence in the conduct of their business in their capacity as broker and sub-broker by allotment of multiple client codes. So, there is violation of clause A(1) and (2) of Code of Conduct for stock brokers as stipulated in Schedule II under regulations 7 and 15 of the Stock Broker Regulations. In view of the above, the imposition of penalty on PDKSS and APMFC has to be upheld.

In the result, the order of the adjudicating officer is upheld and the appeal dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

12.4.2012
Prepared & Compared by
RHN