BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 86 of 2012

Date of decision: 24.08.2012

Balchandra K. Patel
PO Ambli, Ta. Daskroi,
Dist. Ahmedabad 382 487 … Appellant

Versus

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

Mr. Killol V. Shelat, Advocate with Mr. Keval N. Ponkiya, Chartered Accountant for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

Coram : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S.S.N. Moorthy, Member

Per : P. K. Malhotra (Oral)

This order will dispose of 17 appeals bearing nos. 86 to 102 of 2012. Counsel for the parties agree that these appeals arise from a common investigation and same set of facts and can be disposed of by a common order. However, for the sake of convenience, facts are being taken from Appeal no. 86 of 2012.

2. The appeal has been filed against the order dated January 30, 2012 passed by the adjudicating officer of the Securities and Exchange Board of India (for short the Board), holding the appellant guilty of violating the provisions of section 12A (a), (b) and (c) of the Securities and Exchange Board of India Act, 1992 (for short the Act) and regulations 3 (a), (b), (c), (d), 4(1), 4(2)(e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003, and imposing a penalty of Rs. 10 lac.

3. Facts of the case, in brief, are that, M/s. Platinum Corporation Ltd., originally incorporated in the year 1992 in the name of Kanugo Lease and Investment Ltd. (hereinafter referred to as the company), came out with a public issue in the year 1996 for 67 lac shares of Rs.10 each at par aggregating to Rs.6.70 crores. The shares of the company are listed at the Bombay Stock Exchange, Ahmedabad Stock Exchange and Vadodara Stock Exchange. In the year 2003, the company reduced the face value of its shares from Rs.10 to Re.1 per share. It was noticed by the Board that there was a change in the promoters' shareholding and it got reduced from 11.63% to nil during the quarter ending December, 2007. The investigations carried out by the Board revealed that a large number of entities transferred their holdings to the persons who were either the promoters or persons connected to the promoters/directors of the company and after certain corporate announcements made by the company, which never materialized, the price of the scrip went up and the promoters/directors offloaded their holdings in the market. The Board came to the conclusion that various entities connected to the promoter group dumped in the market 3,83,66,814 shares equivalent to 35.85 per cent of the total equity, in a span of 53 trading days having value of 8,54,11,891. The company facilitated the entities connected to the promoter group in offloading its shares by way of pumping positive news in the market so that uninformed investors get induced with the positive news and purchase shares of the company. The investigation also revealed that the appellant transferred 20 lac shares to Meena Ambani on January 5, 2005. The said Meena Ambani, on receipt of the shares from the appellant and another 20 lac shares from one Manoj R. Shah, transferred these shares to Exdon Trading Company Ltd. on August 29, 2005. These shares were ultimately offloaded in the market when the price of the scrip went up. It is a matter of record that shares were transferred by the appellant to Meena Ambani without any consideration. When the appellant was asked to explain about his acquisition of shares off market and its further transfer to Meena Ambani, the appellant's response was that he has just invested in the shares of the company and transferred shares to Meena Ambani and he is not aware about the price of the shares. It was also stated that he has not received any

consideration for transfer of shares to Meena Ambani. Since the explanation was not found satisfactory, a show-cause notice dated July 21, 2011 was issued to him along with other entities. Thereafter an opportunity of a personal hearing was also given. After considering the submissions made by the appellant, the adjudicating officer passed the impugned order holding the appellant guilty and imposing penalty as stated above. It is against this order that the present appeal has been preferred.

4. We have heard learned counsel for the parties who have taken us through the records. The case of the appellant is that he purchased these shares in off market in the year 2001 and got demated in January, 2003. He sold these shares to Meena Ambani on January 5, 2005 but no consideration was received by him. Neither he nor Meena Ambani is a director or the promoter of the company in question. He does not have any trading account. These were only shares in his demat account. The transaction between him and Meena Ambani took place prior to the corporate announcements made by the company and therefore, he was not a party to the game plan of the company. The price rise of the shares was also after the corporate announcements and sale of shares by him to Meena Ambani took place much earlier in period of time.

5. We have looked into the show-cause notice, the reply filed by the appellant, order passed by the adjudicating officer and also considered the submissions made by the learned counsel for the parties. It has been clearly brought out in the show-cause notice as well as in the impugned order that the company had a larger game plan of offloading the shares of the promoter group which was carried out in three stages. In the first stage, the persons who were holding shares on behalf of the promoters or promoter related entities and directors were transferred to the promoter related entities. In the second stage, the corporate announcements, as stated in para 21 of the impugned order were made. When the price of the scrip moved upward, the promoters offloaded their shareholdings in the market thereby making huge profits. In the process, the promoter group sold 92% of the equity capital to the uninformed investors. The 30 persons, including the appellant, who are named in para 74 of the impugned order had

transferred shares to the persons who sold the shares in the market and acted as conduit and facilitated, aided and abetted the promoters and/or persons connected with the promoter group/directors in selling these shares. No explanation whatsoever is forthcoming as to why the appellant transferred 20 lac shares to Meena Ambani without consideration. The finding recorded by the adjudicating officer shows that Meena Ambani is a person related to the promoter group. The submissions of the appellant that he had just invested in the shares of the company and transferred the shares to Meena Ambani and that this was "a deal between far acquaintances" has not been accepted by the adjudicating officer for the reasons enumerated in paras 81 to 83 of the impugned order which are reproduced for ease of reference:

> "81. I don't find the aforesaid submissions of the Noticee satisfactory and also don't find that the same can absolve the Noticee from the violation of law. I also find that the Noticee has not been able to explain his transactions in the given background of the manipulation scheme. The Noticee has transferred shares of the Company to the entities as stated above and it is only because of the numerous entities including the Noticee, that such huge number of shares of the Company have been offloaded in the market at the cost of gullible investors.
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> 82. Though, in isolation, the trades of the Noticee may seem innocuous, however, considering the background of the manipulation scheme elaborated earlier, wherein the Company has made misleading announcements and shares of the Company were offloaded at the cost of innocent investors by persons connected to promoters/directors of the Company, the Noticee's off market transactions clearly reinforces his role of transferring his shareholding to promoters and/or persons connected to promoters/Directors in order to offload the same in the market. Moreover, the Noticee's off market trades in the above circumstances and his submission during the hearing that no consideration was received for transfer of shares to Ms. Meena Ambani and that this was a deal between far acquaintances further strengthens the above findings.
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> 83. In view of the aforesaid, I find that Shri Balchandra K. Patel facilitated the promoters and persons connected to the promoters who sold shares in the market by way of off-market transaction in his demat account by transferring his shareholding to persons connected to promoters which were ultimately offloaded in the market. By transferring shares to the persons who sold shares in the market and acting as conduit, thereby, Shri Balchandra K. Patel facilitated, aided and abetted the promoters and/or persons connected to the promoters/Directors and hence forms part of the conspiracy in fraudulent dumping of shares of PCL in the market."

6. There is no denying the fact that the company made corporate announcements which were never executed and which resulted in the increase of the price of the shares

and during that period the promoter entities offloaded their holdings. It is also a fact that the appellant transferred 20 lac shares to Meena Ambani without consideration and Meena Ambani is one of the related entities to the promoter group and these shares were also offloaded in the market. We are inclined to agree with the view taken by the adjudicating officer that a false impression about the scrip of the company was created in the market by corporate announcements which were not fulfilled, which led to rise in the price of the scrip luring innocent investors to invest in the scrip and gave an opportunity to the promoters to offload their shareholdings. Such an activity is not in the interest of securities market and cannot be permitted. We, therefore, do not find any fault with the conclusions arrived at by the adjudicating officer in the impugned order. We, therefore, uphold the finding.

7. It was thereafter argued by the learned counsel for the appellant that the adjudicating officer, while passing orders against other entities involved in the same transaction, has imposed a penalty of Rs.2 lac only whereas in the case of the appellant, a penalty of Rs.10 lac has been imposed. The transaction is the same and the findings of the adjudicating officer are also the same. In view of this, the order passed against the appellant imposing a higher penalty is discriminatory. In support of his argument, he has placed on record the order dated January 5, 2012 passed by the same adjudicating officer in the case of Manish Ashokbhai and order dated January 11, 2012 in the case of Manoj R. Shah, where in respect of the identical transaction and for the same violation, penalty of Rs.2 lac has been imposed. We have looked into these orders. The order passed by the adjudicating officer has not brought anything on record to indicate why higher penalty of Rs.10 lac is imposed on the appellant whereas penalty of Rs.2 lac only has been imposed in the case of Manoj R. Shah and Manish Ashokbhai. In the absence of any distinguishing feature brought out in the order, we are inclined to agree with the arguments of the learned counsel for the appellant that there should be uniformity in imposing penalty in respect of violations which are identical in nature.

8. While upholding the finding arrived at by the adjudicating officer in the case of the appellant, we reduce the penalty to Rs.2 lac.

9. It was also pointed out by the learned counsel for the appellant that under similar circumstances, penalty of Rs.10 lac has been imposed in all other appeals bearing nos. 87 to 102 of 2012, except in Appeal no. 93 of 2012 where a penalty of Rs. 2 lac has been imposed.

For the reasons stated above, the findings of the adjudicating officer in all these appeals are upheld. However, we reduce the penalty to Rs.2 lacs in Appeals no. 86 to 92 and 94 to 102 of 2012 and uphold the order of penalty of Rs.2 lacs in Appeal no. 93 of 2012. No costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S.S.N. Moorthy
Member

24.8.2012
Prepared & compared by-ddg