BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 163 of 2012

Date of Decision: 10.09.2012

Mr. Jagdish R. Jani
Shriram Vihar, Block No. 23 Rokadia Lane,
Near Gokul Hotel, Borivali (W),
Mumbai- 400 092 ……Appellant

Versus

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

Dr. Mr. S. K. Jain, Practicing Company Secretary 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 & Presiding Officer *(Offg.)*
S.S.N. Moorthy, Member

Per : S.S.N. Moorthy.

The appellant is a trader in securities. The present appeal is directed against imposition of a penalty of ₹ 4 lacs by the adjudicating officer. The appellant was found guilty of violating the Provisions of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Practices relating to Securities Market) Regulations, 2003 (hereinafter called FUTP Regulations). The adjudicating officer found that the appellant, by way of circular/fictitious trades in the scrip of Flawless Diamond (India) Limited (FDIL), created false and misleading appearance of trading by indulging in collusive activities with a few entities who traded in the scrip along with the appellant.

1. The Securities and Exchange Board of India (the Board) conducted investigation in the scrip of FDIL for the period June 2006 to February 2007. During the period of

investigation the price of the scrip registered an increase from ₹ 13.55 to ₹ 129.80. The abnormal increase in price acted as an alert for conducting investigation in the case and this resulted in identification of a group of entities, including the appellant, who indulged in synchronization of trades and circular dealings for artificially jacking up the price of the scrip. A show cause notice was issued to the appellant on June 30, 2011 to show cause why an enquiry should not be held and if found guilty penalty should not be imposed for violation of FUTP Regulations. The appellant went in for consent proceedings before the Board which were rejected. Subsequently, after perusal of necessary documents, the appellant filed a detailed reply to the show cause notice denying the allegations. A personal hearing was afforded to the appellant before finalization of proceedings. During the personal hearing the fact of circular trading was admitted by the appellant's authorised representative and a request was made for a sympathetic consideration of the case. The adjudicating officer, after due consideration of the facts of the case and the conduct of the appellant, imposed a penalty of ₹ 4 lacs as mentioned above.

2. We have heard Dr. S.K. Jain, Company Secretary for the appellant and Dr. Mrs. Poornima Advani, learned counsel for the respondent Board who took us through the records of the case.

3. After a careful consideration of the facts on record and the submissions made by the appellant before the adjudicating officer we are of the view that the only issue to be resolved in this case is the quantum of penalty, since the fact of circular trading has been admitted. It is necessary to highlight the admission made by the appellant's authorised representative before the adjudicating officer on March 20, 2012. The relevant admission runs as under:

> "I accept the charge that Noticee had indulged in circular trading with other members of the group which resulted in volume build-up. I request the AO to take a lenient view in the matter."

4. The learned representative appearing for the appellant submitted that the alleged increase in price during the period when appellant traded was not phenomenal as compared to the previous and subsequent periods when the appellant did not trade and this would mitigate the seriousness of the guilt. According to him major price rise occurred before October 19, 2006 during which period the appellant did not involve in the trades. It is pointed out that the appellant traded during the period October 19, 2006 to January 3, 2007. The price increase during the above mentioned period is stated to be from ₹ 43.95 to ₹ 58.85 with variations in between. According to the appellant the price behavior during the above period was very moderate and reasonable. The price rise during the other parts of the investigation period was of a high order. So, according to the appellant, the impact of the price rise on account of circular trades during the period when the appellant traded was minimum and he should not be penalized taking into account the mischief which took place during the investigation period as a whole. It is also submitted that the price rise in the scrip during the above period from ₹ 43.95 to ₹ 58.85 was on account of corporate announcements. The learned representative of the appellant drew our attention to the adjudication orders passed in the case of Dinesh K. Pandey and Hiren Kirit Gandhi who were also involved in the same manipulation. According to him, they were imposed a penalty of ₹ 1 lac each whereas in identical circumstances a penalty of ₹ 4 lacs has been foisted on the appellant and this goes against the doctrine of proportionality.

5. The learned counsel appearing for the Board defended the order of the adjudicating officer and submitted that the conduct of the appellant does not show any ground for leniency in the quantum of penalty. It is submitted that all the entities in the group acted in tandem in the manipulation of the scrip and the quantum of shares traded by the appellant is substantially high. Connection among the entities of the group has been established and this is not disputed by the appellant. Once it is established that the entities of the group acted in concert there is no need to further subdivide the period of investigation so as to give a separate treatment to the trades of the appellant. The company lacks strong fundamentals and the attempt of the appellant was to create

artificial price rise through circular trading which is highly manipulative. It is also submitted by the learned counsel for the Board that the adjudicating officer has very ably distinguished the case of Dinesh K. Pandey in the adjudication order itself and so the plea of the appellant for reduction of penalty on this count is not tenable.

6. While imposing a penalty for violation of FUTP Regulations it is necessary to take into account the volume of trades, period of trades and the extent of the appellant's participation in the manipulation. Even though the manipulation has been done by the group as a whole the contribution of each entity in the group may vary depending upon the factors mentioned hereinabove. Viewed from this angle, the period during which the appellant traded in the scrip and the consequent price rise during the period has to be given due regard. During the hearing of the appeal the learned representative of the appellant has produced before us a chart showing the price behavior of the scrip during the period when the appellant traded. The same chart is made the basis for the contentions in the grounds of appeal. It is not disputed that the appellant's trades spread over a period from October 19, 2006 to January 3, 2007. During this period, as per the chart furnished by the appellant, the price of the scrip rose from ₹ 43.95 to ₹ 58.85. The price rise prior to and subsequent to the above period is substantially of a high order. In fact, in June 2006 the price of the scrip was only ₹ 13.55. In February 2007 i.e. at the end of the investigation period, the scrip was at a high of ₹ 129.80. So there is some merit in the contention of the appellant that the price rise during the period of his trades was rather moderate as compared to the remaining period of investigation. We are unable to accept the submission of the appellant that this price rise was on account of corporate announcements. On the other hand, the price behavior of the scrip establishes a steady upward curve during the investigation period. The adjudication order in the case of Dinesh K Pandey, relied on by the learned representative of the appellant may not be of much help to the appellant because the facts of the case have been clearly distinguished by the adjudicating officer in the impugned order. So is the case with the adjudication order in the case of Hiren Kirit Gandhi also. The quantity of shares traded in both these cases is substantially of a lower order. The appellant had traded in 202540

shares amounting to 3.52% of the total market volume during the investigation period. The circular transactions amounted to 151084 shares. As observed above, the appellant's contribution to the price rise was confined to only a portion of the investigation period and the price rise during that period was not abnormally high. This fact requires consideration while evaluating the gravity of the wrong doing and quantum of penalty. Taking into account the facts of the case and having regard to the role of the appellant in the overall scheme of manipulation we hold that a penalty of ₹ 2 lacs would meet the ends of justice. Accordingly, the penalty is reduced to ₹ 2 lacs and the appeal partly allowed. No order as to costs.

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

Sd/-
S.S.N. Moorthy
Member

10.09.2012
Prepared & Compared By: Pk