

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 211 of 2012

Date of Decision : 03.12.2012

Anita Dalal
13, Ganga Vihar, B Wing,
1st Floor, C Road,
55-Marine Drive,
Mumbai – 400 020.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan,
Plot No.C4-A, G Block, BKC,
Bandra (E), Mumbai – 400051.

...Respondent

Mr. Gaurav Joshi, Advocate with Mr. Rajesh Khandelwal and Ms. Mamta Pati,
Advocates for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Advocate for the
Respondent.

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

Per : S.S.N. Moorthy

The appellant is an individual investor and also a trader in the securities market. The present appeal is directed against an order passed by the whole time member of the Securities and Exchange Board of India (the Board) on September 25, 2012 by which the appellant was restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities directly or indirectly or being associated with the securities market in any manner for a period of 18 months. The whole time member passed the impugned order in exercise of the powers conferred upon him by the provisions of Section 19 read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (the Act) and Regulation 11 of the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (FUTP regulations). The Board detected synchronized trades while investigating the dealings in the scrips of Temptation Foods Limited, Bang Overseas Limited (Bang), Confidence Petroleum India Ltd. (Confidence), Cals Refineries Limited (Cals) and Shree Precoated Steels Limited. It was found that a group of connected clients indulged in synchronized trades in the scrips mentioned above contributing to artificial volumes therein. The appellant was found to be connected with the client group which indulged in inflation of volumes in the scrip. A show cause notice was issued to the appellant on July 26, 2011 alleging that the appellant was involved in creating artificial volumes in the scrips of Bang, Confidence and Cals through synchronized / reversal / self trades and so there was violation of the provisions of Regulation 3 and 4 of the FUTP regulations. The appellant replied to the show cause notice denying all the allegations. However, the whole time member of the Board after providing an opportunity of personal hearing to the appellant, passed an order on September 25, 2012 imposing restraint in market operations of the appellant for a period of 18 months as mentioned above.

2. We have heard Shri Gaurav Joshi, learned counsel for the appellant and Shri Shiraz Rustomjee, learned senior counsel for the Board who took us through the records of the case.

3. The appellant's learned counsel submitted that the appellant cannot be held guilty of synchronization and matching of trades since the appellant was acting as per normal business standards and there was no knowledge about the manipulation indulged in by the connected group who dealt in the same scrip. When the appellant traded in the scrips which were traded by a specific group of entities who indulged in creation of artificial volumes it was but natural that the appellant's trades also got matched though the appellant had no role in it. It is submitted that the appellant acted through her husband Shri C.J. Dalal, who happens to be a broker for the connected group of entities, and this cannot be taken as a ground for clubbing her with the connected entities. There is no allegation of benami trades on behalf of her husband

and in such a scenario she cannot be held to have acted in collusion with the connected group involved in the dealings. The appellant is stated to be a regular trader in various scrips and her percentage of transactions in the impugned scrips is insignificant i.e. about less than 3 per cent. If overall trades of the appellant had been taken into account she could not have been held guilty of manipulation of volumes. According to the appellant, there is no default in pay out and delivery in her transactions and she has not derived any undue profit by way of inflation of volumes. With reference to the trade logs it is submitted that there is a vast difference between the quantity of shares transacted and that which got matched. Special emphasis is laid by the appellant on this aspect to point out that the matching of quantities is a crucial factor in trade manipulation and in the present case there is a vast difference between the quantity traded and the quantity matched. The appellant questions the pick and choose attitude of the whole time member as against the consideration of the trades as a whole which would have revealed the fact that the appellant's volume of transactions was too insignificant to be matched. There was no financial connection among the parties and the whole time member has not brought on record the necessary factors to prove close connection of the appellant with the entities in question to establish a case of meeting of minds. It is also contended by the appellant that the allegation of self trade cannot be sustained since it related to only shifting of position from one broker to another which has been explained by way of an additional affidavit during the hearing of the appeal. A reference was made to the case of Lalkar Securities P. Ltd. in which an order has been passed by the whole time member (WTM/RKA/ID-4/47/2012 dated October 9, 2012) in which the appellant was let off with a warning and it is argued that the appellant's case is also similar in nature.

4. The learned senior counsel appearing for the Board submitted that trades have taken place in the impugned scrips through a group of connected entities like Maruti Group and Maniar Group through reversal, self trades and off market transactions and the trades of the appellant also substantially fell in the same category and hence the theory of mere coincidence cannot be accepted. It is the case of the Board that reversal, self trades and matching trades have taken place in the dealings of the

appellant and the percentage of transactions highlighted by the appellant cannot be considered to be relevant. There cannot be cases of perfect synchronization of time, quantity and volume. The appellant has contributed in the creation of artificial volumes in the scrips when the connected group traded in a manipulative manner. The appellant has acted through her husband who is the central broker in the transactions and the dealings have shown a common pattern in matching of volume, time and quantity. Self trades, according to the Board's learned senior counsel, are by nature reprehensible and the explanation offered by the appellant is totally unacceptable. The explanation given by the appellant in the affidavit filed during the hearing of the appeal is stated to be an after thought and even therein the appellant could not explain the self trades involving 500 shares. With specific reference to the trades in the scrip of Bang, it is submitted that major portion of buy trades of the appellant are with the counter parties and they got matched. There is no infirmity in considering the appellant's trades in the impugned scrips alone vis-à-vis her whole traders since they have contributed to artificial volumes in this case. So, according to the learned senior counsel for the Board, there is meeting of minds between the appellant and the connected entities in the transactions under consideration and the appellant has contributed to the manipulative activity of the group through her matched trades.

5. We have considered the rival submissions. The trades of the appellant in the scrips of Bang, Confidence and Cals remain undisputed. The appellant acted through Shri C.J. Dalal, her husband, who is a broker. The appellant is the director of Krishvi Securities Pvt. Ltd. Major counter party clients in the dealings in the scrip of Bang were Maruti and Maniar Group. They also traded through broker Shri C.J. Dalal, appellant's husband. The trades of the appellant convincingly demonstrate that the appellant has indulged herself in synchronized / reversal transactions. We cannot accept the theory of coincidence in the backdrop of the trade logs which show the transactions of the appellant in a synchronized manner. The appellant has consistently indulged herself in synchronized and reversal trades on various dates. On March 10, 2008, 5000 shares got matched in its transaction with the counter party client. It is true that the order quantity was 92,596. But similar matching has taken place

repeatedly on several dates during 2008. This cannot be brushed aside as casual or coincidental. The contention of the appellant that there is a vast difference between the quantity order and the quantity matched cannot be taken as a ground to prove the innocence of the appellant. In market manipulation perfect synchronization and exact matching of trades may not be available. In the present case matching / reversal, though of different quantities, has taken place consistently over a period of time. This has happened because the transactions were put through a central broker Shri C.J. Dalal, appellant's husband. We cannot agree with the submission that the appellant's trades were insignificant compared to the market volume. It is not a case of a few shares getting matched on one or two occasions. It is a process of continuous, periodical and conscious matching in several trades over a period of time. The whole time member has stated in the order that he has taken into consideration only the appellant's transactions related to the dealings in the impugned scrips. He has also stated that the appellant was not found to be part of the group indulging in manipulative transactions when the initial interim order was passed in the group of cases. However, this cannot mitigate the gravity of the manipulation to which the appellant is found to be a party. The appellant's consistent participation in the synchronized trades along with the group entities has surely contributed to the creation of artificial volumes. The argument of the learned counsel that the appellant's role in the scheme of manipulation has to be viewed in the background of her overall trades does not merit consideration. The relationship of the parties, the continuous and consistent matching of trades and the transactions in the same scrips by all the group entities through a central broker would amply illustrate the game plan of the entities involved.

6. It has been held by this Tribunal in the case of M/s. Galaxy Broking Ltd. vs. Securities and Exchange Board of India (Appeal no. 3 of 2010 dated January 29, 2010) that reverse trades happen on the trading system when the client and broker are in league with each other. In the case of GIR Marketing & Trading Co. Pvt. Ltd. vs. Securities and Exchange Board of India (Appeal no. 113 of 2011 decided on August 5, 2011) it has been held by this Tribunal that "cross deals per se are not illegal but

the common broker executing the buy and sell orders is not expected to match those orders by putting in orders for the same quantity, at the same price and at the same time”. In the present case also, the trades got matched because they were operated through a common broker and the trades got matched / reversed in a consistent manner over a period of time.

7. The appellant has been found guilty of self trade as well. Self trades admittedly are illegal. This Tribunal has held in several cases that self trades call for punitive action since they are illegal in nature. In *M/s. Jayantilal Khandwala & Sons Pvt. Ltd. vs. Securities and Exchange Board of India* (Appeal no. 24 of 2011 decided on June 8, 2011) this Tribunal has held that “one cannot buy and sell shares from himself. Such transactions are obviously fictitious and meant only to create false volumes on the trading screen of the exchange”. The appellant has executed self trades in the shares of Bang and Confidence. There has been no convincing explanation for the self trades in the reply to the show cause notice. However, during the hearing of the appeal, an affidavit was filed stating that the self trades were for shifting of position from one broker account to another broker account. Again we cannot accept this contention. The appellant has not clarified as to why this has been put through in the form of purchase and sale instead of through proper book entries. In the affidavit, while dealing with self trades of 28,968 shares the appellant would give credit for the so-called transfer entries to the impugned shares except 500 shares. This means that the self trades in respect of 500 shares remain admitted.

8. It is not necessary to consider the issue of extra benefits accruing from volume manipulation since it is evident that the appellant has indulged herself in manipulative activity which is prohibited in FUTP regulations.

9. In view of the discussion above, we uphold the finding arrived at by the whole time member that the appellant has violated Regulations 3 and 4 of the FUTP regulations.

10. The appellant's learned counsel also submitted that the restraint from market operations imposed on the appellant for a period of 18 months is highly excessive and disproportionate. According to him, the contribution of the appellant, if any, to the manipulative game plan was insignificant. It is also submitted that the appellant is a regular trader in various scrips and the volume of trade in the impugned scrips is not of a high order as compared to dealings in other scrips and the debarment for 18 months has not taken into account the nature and circumstances of the dealings. The learned senior counsel appearing for the Board, on the other hand, made a reference to the order of the whole time member (WTM/RKA/IVD/ID-4/39/2012 dated September 25, 2012) in which some entities have been debarred for a period upto four years in the transactions in the impugned scrips.

11. On a consideration of the facts and circumstances of the present case, we find that there is merit in the argument of the appellant's learned counsel. In the impugned order it is stated by the whole time member himself that the contribution of the appellant to the total artificial volume created in the scrips appears to be relatively less. He has taken into account contribution to the artificial volume in absolute terms and the overall manipulative strategy of the appellant. Considering these factors we are of the view that restraint from market operations for a period of 18 months is excessive. Having regard to the facts of the case, we reduce the period of restraint to three months from the date of the impugned order.

Appeal is partly allowed. No costs.

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

Sd/-
S.S.N. Moorthy
Member

03.12.2012

Prepared and compared by:

msb