BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 225 of 2011

Date of decision: 20.12.2012

Sandeep Jain
2,CH 15, Hiran Magari,
Sector No. 5,
Udaipur,
Rajasthan 313002 ……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. Rajeev Kumar, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

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

Per : P. K. Malhotra

This appeal has been filed against the order dated November 22, 2011 passed by the adjudicating officer of the Securities and Exchange Board of India (the Board) against the appellant holding him guilty of violating the provisions of Regulations 3, 4(1) and 4(2)(a), (b), (e) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short the FUTP regulations) and imposing a penalty of ₹ 8 lacs under Section 15HA of the Securities and Exchange Board of India Act, 1992 (the Act).

2. The facts of the case, in brief, are that the appellant, an individual, is an investor and a trader in the share market. The Board conducted investigations into buying, selling and dealing in the scrip of Asian Star Company Ltd. (the company) for the period October 10, 2008 to November 20, 2008 and noticed wide variation in the price of the scrip. The role of the brokers and their clients, who traded in the scrip of the company on the Bombay Stock Exchange, was scrutinized and it was observed that certain entities, connected to each other, had indulged in circular/reversal/synchronized trades in a manner which lead of creation of artificial volume in the scrip. The appellant was identified as one of the persons who traded in the scrip and was alleged to be involved in manipulative trades.

3. A show cause notice dated November 23, 2010 was issued to him giving the details of the trades and observing that the appellant and other clients who traded in the shares of the company and executed synchronized/reversal trades were Jitendra Manilal Jain, Suresh Hanswal, Pradesh Nimawat, Sunil Kumar Mehta, Usha Mehta, Bharat C. Jain, Arun Manohar Sakpal, Narendra Sanghi, Meen Been Elastomers, Dilip Rathore, Bhanwar Lal Paliwal, Alpensh G. Dand, Manisha Mardia, Rajnish Jain. These persons were found linked with each other through Sunil Mehta, Ajay Roongta, Manish Mathur and were together named by the Board as “Mehta group”. Their relationship with each other was explained and the details of trading done by the Mehta group were also provided in the show cause notice and the impugned order. It was alleged that the group had dealt in synchronized and structured trades which amounts to significant percentage of total market value. It was also alleged that 87.33 per cent of the total market volume and 72.33 per cent of the total number of trades were contributed by synchronized trading and 44.95 per cent of the total market volume and 85.51 per cent of the total number of trades were contributed by structured trades. The details of the trading done by the appellant through Swastika Investment Mart Ltd., a market intermediary, were also provided to the appellant. It was noted that the appellant had lent his name and allowed trading in his account. The appellant’s account was operated by Pradesh Nimawat and Suresh Hanswal who were the entities trading in the shares of the company. It was, therefore, alleged

that the appellant, in connivance with Swastika, Pradesh and Suresh, entered into these fraudulent transactions which affected the price of the shares leading to market manipulation.

4. The appellant filed its reply to the show cause notice denying the charges and stating that Pradesh and Suresh have misused his name and account. He never authorised the trading entered into by them on his behalf through broker Swastika Investment Mart Ltd. The appellant has also filed FIR against Swastika Investment Mart Ltd., Pradesh and Suresh as he never authorised them to enter trades on his behalf. It was further submitted that he does not have knowledge of English language and has not understood the proceedings properly. The appellant had responded to the show cause notice in Hindi. After giving an opportunity of hearing, the adjudicating officer of the Board did not agree with the submissions made by the appellant and held him guilty of violating the FUTP Regulations as stated above. Hence this appeal.

5. When this appeal was posted for hearing, learned counsel for the appellant raised a preliminary objection with regard to the appeal being heard by this Bench in the absence of a regular Presiding Officer. It was adjourned on a number of occasions as a **Writ Petition No. 5847 of 2012** was filed by the appellant before the High Court of Judicature at Bombay. The Hon'ble High Court, by its order dated November 26, 2012, has since dismissed the Writ Petition holding that there is no impediment to the petitioner's appeal being heard by the Appellate Tribunal which presently consist of two Members, one to whom is authorised to preside over the sittings of Appellate Tribunal. The Hon'ble High Court also clarified that the Court has not gone into merits of the challenge to the adjudication order. We, therefore, now proceed to dispose of the appeal after hearing learned counsel for the parties.

6. Learned counsel for the appellant has filed his written submissions challenging the procedure of adjudication followed by the Board and also alleging that the penalty of ₹ 8 lacs has been imposed on the appellant merely on the basis of conjectures and surmises. It has been further submitted that the findings arrived

at by the adjudicating officer are without any evidence and are based on her *ipse dixit*. Learned counsel for the appellant has also submitted that the penalty is highly excessive and grossly disproportionate to the act allegedly done by the appellant. The requirements as laid down under Section 15J of the Act have not been given due consideration by the adjudicating officer while imposing the penalty. In his written submissions, he had referred to certain case laws on the propositions advanced by him.

7. On the other hand, learned counsel for the respondent Board supported the order passed by the adjudicating officer and also placed on record the 'Know Your Client' (KYC) form submitted by the appellant to its broker namely, Swastika Investment Mart Ltd., and also a copy of the letter dated January 27, 2009 submitted to the Board with regard to his trading in the scrip of the company. All these documents are in English and even the signatures of the appellant are in English. It was, therefore, submitted that it is incorrect to say that the appellant does not understand the language of the proceedings. In the letter dated January 27, 2009, the appellant has stated that the trades in the said scrip were entered into in normal market condition and on the basis of price prevailing in the market at the time of trading. It shows that he was aware of the trading being done in his account by Pradesh and Suresh. A copy of the FIR filed by the appellant in Udaipur has also been placed on record. This FIR was filed much after the personal hearing granted to the appellant just to cover his lapse. In case the trades entered into by Pradesh and Suresh on behalf of the appellant were without appellant's authority, the appellant would not have justified the trades in his letter dated January 27, 2009 and would have filed FIR immediately when he came to know about the trades. Filing of FIR on March 10, 2011 is only an afterthought to cover up the default of the appellant.

8. After hearing learned counsel for the parties and perusing the material available on record, we are not inclined to interfere in the order passed by the adjudicating officer. We agree with learned counsel for the respondent Board that the alibi, that appellant does not understand English is not acceptable as he has

given all his information in the KYC form in English and has also signed the said application form in English. His reply dated January 27, 2009 to the show cause notice is also in English where he has admitted the trades and claimed that they were entered in the normal market condition and on the basis of price prevailing in the market at the time of trading. We have also taken note of the fact that the transactions pertain to the year 2008 and the appellant was asked to provide details of his transactions which he justified by his letter dated January 27, 2009. Thereafter, a show cause notice was issued to him on March 20, 2010. A personal hearing was granted on February 8, 2011. Till then he had not filed any complaint with the police authorities. If the transactions entered into on his behalf by Pradesh and Suresh through Swastika Investment Mart Ltd. were not authorised by him, he would not have justified these transactions in his reply to the show cause notice and would have immediately taken corrective measures. Filing of FIR only on March 10, 2011 i.e. much after the personal hearing is only an afterthought and cannot be accepted as a good defense. We are not inclined to agree with learned counsel for the appellant that adjudicating officer has not followed the procedure while conducting the adjudication proceedings. While the propositions as laid down in various cases cited by learned counsel for the appellant are not disputed, the appellant has not been able to demonstrate as to how these principles have been violated in dealing with his case. Perusal of the record shows that the appellant was given a show cause notice which was replied by him. Thereafter, a personal hearing was also granted and after considering the material available on record, the impugned order was passed. It, therefore, cannot not be said that the principles of natural justice were not followed. We are also not inclined to agree with learned counsel for the appellant that the order is based on conjectures and surmises. The adjudicating officer has given details of the transactions as well as the interconnection between the parties in the show cause notice as well as in the impugned order. In such transactions of manipulative trades, it is difficult, nay impossible, to find direct evidence. Findings in such cases are based on circumstantial evidence. We are fully satisfied that the adjudicating officer has placed sufficient material on record to conclude that the transactions were

manipulative in nature. The appellant in its letter dated January 27, 2009 has not denied these transactions. We are also not inclined to agree with the learned counsel for the appellant that either the penalty is excessive or that the adjudicating officer has not taken into account the factors for adjudging the quantum of penalty as stated in Section 15J of the Act. We have read paragraphs 22 and 23 of the impugned order which deal with penalty. Section 15HA of the Act provides that if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of ₹ 25 crore or three times the amounts of profit made out of such practices, whichever is higher. The adjudicating officer has imposed a penalty of ₹ 8 lacs only. We do not find it disproportionate to the allegation established against the appellant.

In view of the foregoing discussion, we have no hesitation in upholding the impugned order passed by the adjudicating officer. The appeal stands dismissed with no order as to costs.

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

Sd/-
S. S. N. Moorthy
Member

20.12.2012
Prepared & Compared by
ptm