BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 229 of 2012

Date of decision: 28.06.2013

Kamlesh Baheti, HUF
Gallant House, 3rd Floor, 12/18,
V. P. Road, Girgaon,
Mumbai – 400 004. …… 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. Vinay Chouhan, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Akhilesh Singh, Advocate for the Respondent.

CORAM : Jog Singh, Member & Presiding Officer (*Offg.*)
A. S. Lamba, Member

Per : Jog Singh

1. The appellant is challenging impugned order dated May 11, 2012, passed by the respondent, restraining him from accessing the securities market and prohibiting him from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of two years under Sections 19, 11(4) & 11B of SEBI Act, 1992 read with Regulations 3(a), 3(b), 3(C), 3(d) and 4(1) and 4(2)(a), (b) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations).

2. The appellant claims to be the Karta of a Hindu Undivided Family. He has been regularly trading in the securities market in various scrips for the last almost 10 years or so. He also claims to have an impeccable track record in terms of compliance with the rules, regulations and other norms governing the securities market.

3. The appellant submits that he was holding 20,000 shares of Alka Securities Limited (ASL) i.e. the company in question in physical form. He requested his depository (DP) for dematerialization on May 31, 2008 and the said shares were credited to his demat account on June 20, 2008. In September 2008, Dena Bank initiated some recovery proceedings against the defaulting company i.e. ASL. Accordingly, Dena Bank made an offer to sell certain quantity of shares of ASL as part and parcel of their recovery process. The applicant also applied for acquiring 20,000 shares alongwith a pay order of Rs. 32,000 at the rate of Rs. 1.60 per share on October 3, 2008. Pursuant thereto, Dena Bank, by way of an off market transfer, transferred said 20,000 shares of ASL through an Inter DP transfer to the appellant's demat account. This appears to have been done on January 19, 2009.

4. On February 26, 2009 the appellant sold 20,000 shares of ASL in the normal course of business. The appellant submits that these shares were acquired by him prior to the investigation period. This was done by the applicant through its broker. The broker completed the pay-in obligation against the said sale by transferring the shares of ASL in question from the demat account of the appellant to the broker's own pool account on February 27, 2009. This transaction was completed through the clearing facility provided by the Bombay Stock Exchange.

5. On July 28, 2009 the respondent passed an ex-parte order under the relevant provisions of the SEBI Act and prohibited the appellant alongwith others, from buying, selling or dealing in the securities of ASL till further orders. The said interim order was later confirmed on October 30, 2009. SEBI found violation of certain regulations of FUTP Regulations which suggested certain trading activity on the part of the appellant alongwith others with the intention of creating artificial volumes so as to give the market players a false impression regarding liquidity in the scrip.

6. A show cause notice dated December 27, 2010 was issued by the respondent to various persons including the appellant for his role as a conduit in the scheme of manipulation of the shares of ASL. The appellant on January 19, 2009 had received 20,000 shares of ASL in his demat account no. 1204470000013256, which had been transferred to his said demat account form the demat account no. IN30038610193653 of a promoter, Ms. Dimple M. Kothari. The appellant is alleged to have received shares form the promoters without consideration, and after having received the transfer of shares from the promoter had further transferred the same to entities which were identified as persons who had manipulated the price and volume of shares of ASL. However, the appellant denied the allegations contained therein. The impugned order dated May 11, 2012 came to be passed against the applicant and some other persons after completing legal formalities as required by law.

7. The case of the appellant is that he is an innocent person regularly trading in the capital market in various scrips. He was already holding 20,000 shares of ASL in physical form as way back as in May 2008 i.e. much prior to the investigation period and, therefore, his transaction was bonafide and not

in connivance with the others as alleged by the respondent. He further submits that he purchased 20,000 shares from Dena Bank in an open offer. Therefore, there is no question of any synchronization or structured trades.

8. On the other hand, the case of the respondent is that the appellant alongwith other entities acted in connivance with ASL and its promoters by perpetrating a scheme to finally off-load the shares on unsuspecting investors, thereby violating various provisions of FUTP Regulations, 2003 enumerated in the beginning of this order itself. The respondent contends that the trading activity of the promoters and others, including the appellant clearly proves circular trading with the sole intention of creating artificial volume in the scrip of ASL.

9. Further, it is submitted by Shri Kumar Desai, learned counsel for the respondent, that on February 26, 2009, the appellant sold the said shares through his broker, which the investigation done by SEBI has irrefutably found to have been purchased by JMDE Packaging and Realties Ltd. (19000 shares) and Alpha Graphic India (1000 shares), referred to as two purchasers. SEBI's investigation and the SCN clearly identified the said two purchasers as being the persons who were responsible alongwith others in manipulating the price and volume of the shares of ASL on the BSE. It is pertinent to note that the said two purchasers have neither given any reply to the SCN nor have they availed of the opportunity of personal hearing or put up any defence to the charge of manipulation. The impugned order, therefore, confirms the sale by the appellant of the said shares to the said two purchasers. It is, as such, submitted by SEBI that the charge against the appellant of his being a conduit for transfer of shares from the promoters to the persons held to be manipulating the price of the shares of ASL stands proved.

10. We have heard Shri Vinay Chauhan, learned counsel for the appellant and Shri Kumar Desai with Shri Akhilesh Singh, learned counsel for the respondent at length and also perused the pleadings and documents brought on record. In the impugned order the appellant is held guilty of violating regulations 3(a), 3(b), 3(c), 3(d), and 4(1) and 4(2)(a), (b) and (g) of the SEBI FUTP Regulations, 2003. For ease of reference, the above regulations are extracted below:-

"3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

> (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
>
> (b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;
>
> (c) advancing or agreeing to advance any money to any person thereby inducing any other person to offer to buy any security in any issue only with the intention of securing the minimum subscription to such issue;
>
> (d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;
>
> (e) any act or omission amounting to manipulation of the price of a security;
>
> (f) ……..
>
> (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;
>
> (h) to (r) …….”

11. A perusal of the impugned order dated May 11, 2012 passed by the learned Whole Time Member (WTM) reveals that the shares in question were transferred to the applicant and other noticees from the accounts of promoters and not from Dena Bank. This finding of fact has not been rebutted by the appellant at all. Therefore, it is difficult to accept the contention advanced on behalf of the appellant by Shri Vinay Chouhan, learned counsel of the appellant that he had purchased the shares from Dena Bank. It is a matter of record that on January 19, 2009, 20,000 shares of ASL were transferred to the demat account of the appellant from the account of one Dimple M. Kothari. This is evident from page no. 164 of the appeal itself. No evidence of the payment has been shown by the appellant in this regard. No document is

brought on record to substantiate the story regarding the payment for these 20,000 shares. On the contrary, it is noted that the said quantity of 20,000 shares was transferred from the account of one Dimple M. Kothari, who is admittedly one of the promoters, to the account of the appellant on January 19, 2009. This undeniably falsifies the contention of the appellant that he purchased the said shares in an open auction from Dena Bank. The appeal is, therefore, bereft of any merit and is liable to be dismissed on this ground alone.

12. The Respondent also pointed out that the market price of shares of ASL on October 3, 2008 was Rs. 23.04/- per share and Dena Bank had the option of off-loading the shares of ASL, held by them, on this date in the market itself at the prevailing price, then why would they sell the shares of Dena Bank to the appellant on that day at Rs. 1.60/- per share. Hence, the narration of the appellant that he bought shares of ASL from Dena Bank on October 3, 2008 is not convincing.

13. Lastly, we may refer to the judgment of this Tribunal dated July 16, 2012 passed in Appeal nos. 131 and 132 of 2012 in the case of Piyush P. Avlani vs. SEBI. We have gone through the said case and we find that its facts are totally distinguishable. In that case the appellant, namely Piyush Avlani, was approached by one Mr. Mahesh Kothari Share & Stock Brokers Pvt. Ltd. (MK) for a loan against the shares of ASL. However, the appellant therein had kept the shares of the company in fact in his demat account without any transaction whatsoever in the said shares which were stated to be pledged for the loan in question. The role of the appellant was, therefore, confined to extending loan facility to MK and no more. He was not found to have been engaged at all in any dealing in the shares of the ASL in any manner. He had no role in the circular/manipulative trades highlighted by the learned WTM in

the impugned order for the simple reason that he did not trade in the shares. The role of the appellant in that case was that of a mere financier. He kept the shares of ASL in his demat account only as a security for the loan provided by him to MK. In this background, his appeal was allowed by this Tribunal.

14. In the case in hand the appellant has admittedly received 20,000 shares in his demat account on January 19, 2009 from the account of Ms. Dimple M. Kothari, which is a matter of record and not disputed by the appellant, without any consideration. This fact clearly proves a nexus between the appellant and the promoter group. Thus, the impugned order is factually correct and legally valid.

In view of the above discussion of fact and law, the present appeal is hereby dismissed with no order as to costs.

Sd/-
Jog Singh
Member &
Presiding Officer (*Offg.*)

Sd/-
A. S. Lamba
Member

28.06.2013
Prepared & Compared by
ptm