BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 228 of 2012

Date of Decision : 26.06.2013

1. Ramkishore Maheshwari
   C/o Crystal Finstock Pvt. Ltd.
   193/1, New Cloth Market,
   Ahmedabad – 380 002.

2. Bhanwarlal Maheshwari,
   C/o Crystal Finestock Pvt. Ltd.
   193/1, New Cloth Market,
   Ahmedabad – 380 002.

3. Nilesh D. Patel
   C/o Crystal Finestock Pvt. Ltd.
   193/1, New Cloth Market,
   Ahmedabad – 380 002.

4. Renu Maheshwari
   C/o Crystal Finestock Pvt. Ltd.
   193/1, New Cloth Market,
   Ahmedabad – 380 002.

5. Nimbaram D. Prajapati
   C/o Crystal Finestock Pvt. Ltd.
   193/1, New Cloth Market,
   Ahmedabad – 380 002 …Appellants

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. J.J. Bhatt, Advocate with Ms. Rinku S. Valanju and Mr. Pratham Masurekar, Advocates for the Appellant.

Mr. Mihir Mody, Advocate for the Respondent.

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

Per : Jog Singh (Oral)

1. This appeal is directed against the common impugned order dated October 25, 2012 passed by the Adjudicating Officer imposing a monetary penalty of Rs. 4 lac on the Appellant No. 1, Rs. 1,50,000/- on the Appellant No. 4 and Rs. 1 lac each on Appellants No. 2,3 and 5, totalling Rs. 8,50,000/- for violating Regulations 4(2)(a),(b) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short FUTP Regulations) in the shares of Popular Estate Management Ltd., hereinafter referred to as the "PEML".

2. The Securities and Exchange Board of India ("SEBI") conducted investigation in respect of trading in the shares of "PEML" during the period from February 9, 2009 to February 24, 2009. Investigations revealed that Appellants' trading through sub-broker Crystal Finstock Pvt. Ltd. of broker Mehta Equities Ltd. had executed trades among themselves. It was observed that the Appellants were related to each other and having one common address. It was also observed that prior to the period of examination, the scrip of "PEML" was under suspension and same was revoked w.e.f. February 4, 2009 and the scrip opened at Rs. 50/- and closed at Rs. 33.01 with a volume of 1303 shares. The Appellants were connected entities and had executed synchronized reversal trades, cross trades executed by Crystal, through its broker "PEML" on behalf of the Appellants. Thus, some of the Appellants incurred loss whereas the other Appellants earned profit. These transactions appear to be in the nature of profit and loss adjustment.

3. A show cause notice was accordingly issued on June 21, 2011 under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 as to why an inquiry should not be held against them and penalty be not imposed for the alleged violations. On a consideration of the documents available on record, oral and written submissions made by the Appellants, the Adjudicating Officer came to the conclusion that the Appellants were guilty of violating the FUTP Regulations. This is how a consolidated penalty of Rs. 8,50,000/- came to be imposed on the Appellants by the impugned order dated October 25, 2012. It is against this order that the present appeal has been filed.

4. We have heard both the learned counsel for the parties and have perused the appeal and documents annexed therewith. Mr. J.J. Bhatt, learned counsel for the Appellants submits that the Appellants are individual intra-day traders who trade through Crystal Finstock Pvt. Ltd. (sub-broker) and they carried out very few trades in their own names in “PEML” scrip to the dates in question i.e. 11, 12 and 13 February, 2009 and thereafter. Similarly, the learned counsel for the Appellants submits that even the alert system of the stock exchange was not in place at that time and the same has been introduced in the recent past. He also submitted that Appellants have not gained from price rise or price fall in the said scrip and has not done any off-market dealing. Lastly, it is submitted by the Appellants that the violation in question was committed by the Appellants merely due to inadvertence and without any intention of manipulating the price in the scrip in question and would not be repeated in future.

5. On the other hand, learned counsel for the Respondent Mr. Mihir Mody submits that the Appellants are family members and they have traded among themselves in manipulating the price in question. Therefore, they should have acted more responsibly in the matter. It is, therefore, contended by Mr. Mihir Mody that there is a proved violation on the part of the Appellants in the matter of FUTP Regulations.

6. After hearing both the learned counsel for the parties, we do not find any good ground to interfere with the impugned order and the same is hereby upheld. However, keeping in view the totality of the facts and circumstances of the case, we are inclined to reduce the penalty imposed on the Appellants to 50% i.e. from Rs. 8,50,000/- to Rs. 4,25,000/- in the interest of justice.

7. With this modification of the impugned order, the appeal stands dismissed. The said amount of penalty shall be paid by the Appellants within a period of two months from the date of receipt of a copy of this order.

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

Sd/-
A.S. Lamba
Member

26.06.2013
Prepared and compared by:
msb