BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 52 of 2013

Order Reserved On : 26.08.2013

Date of Decision : 04.09.2013

S.P.J. Stock Brokers Pvt. Ltd.
608, P.J. Towers, 6th Floor,
Dalal Street, Fort,
Mumbai – 400 023. …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. Ankit Lohia, Advocate with Mr. Shubhadip Choudhari, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : Justice J.P. Devadhar

1. This appeal is filed to challenge adjudication order dated February 8, 2013 whereby penalty of Rs. 15 lac for violating Regulations 4(1), 4(2) (a), (b), (e), (g) and (n) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) and Rs. 5 lac for violation of clauses A(1), A(2), A(3), A(4) and A(5) of the Code of Conduct specified in Schedule II under Regulation 7 of SEBI

(Stock-Brokers and Sub-Brokers) Regulations, 1992 (‘Broker Regulations’ for short) has been imposed against appellant.

2. Appellant is a private limited company incorporated under the provisions of Companies Act, 1956 and is primarily engaged in the business of stock broking and investment.

3. On noticing that in the scrip of Adani Exports Ltd. there were huge spurt in volumes and wide fluctuations in price during the period from July 9, 2004 to January 14, 2005 (‘first period’ for short) and August 8, 2005 to September 9, 2005 (‘second period’ for short) Securities and Exchange Board of India (‘SEBI’ for short) had initiated investigation to look into reasons for price-volume fluctuations. Fluctuation in price noticed during the first period (pre split) was ranging from Rs. 481 to Rs. 756 and ranging from (past split) Rs. 64.35 to Rs. 74.20 during the second period.

4. On completion of investigation by show cause notice dated June 23, 2008 appellant was called upon to show cause as to why enquiry should not be held and penalty not imposed under section 15HA and 15HB of SEBI Act, 1992 for the alleged violations of PFUTP Regulations and Broker Regulations.

5. In its reply to said show cause notice, appellant denied allegations made in the show cause notice. Thereafter personal hearing was also granted to appellant.

6. By impugned order dated February 8, 2013, contention of appellant was rejected and penalty of Rs. 15 lac was imposed for violating Regulations 4(1), 4(2) (a),(b), (e), (g) and (n) of PFUTP Regulations and Rs. 5 lac for violating

clauses A(1), A(2), A(3), A(4) and A(5) of Broker Regulations. Hence, present appeal is filed to challenge order dated February 8, 2013.

7. Mr. Lohia, learned counsel appearing on behalf of appellant submitted that nothing has been brought on record to establish relationship or understanding between appellant, any other broker or their client associated with any transaction in respect of scrip of Adani Exports Ltd. He submitted that trading in large volumes in a scrip or huge fluctuation in volume or price in a scrip does not by itself lead to any violation. Similarly, while carrying out jobbing transactions if by coincidence some trades match, it cannot be inferred that all those trades were manipulated. By relying on decision of this Tribunal in case of KSL and Industries Ltd. vs. SEBI in Appeal no. 9 of 2003 decided on September 30, 2003, counsel for appellant submitted that in the absence of any evidence on record to show that trades in question were executed with ulterior motives, penalty should not be imposed solely on the ground that most of the trades were found to be synchronized.

8. Mr. Seksaria, learned counsel appearing on behalf of respondent, on other hand submitted that it is a matter of record that appellant was trading in huge volumes, out of which synchronized trades for 77,99,480 shares of Adani Exports Ltd. were executed by appellant with one group during first period and synchronized trades for 15,93,280 shares of Adani Exports Ltd. were executed with same group during second period, since buy and sell orders were placed within one minute. Though orders placed by appellant used to be identical in terms of price and quantity and used to be placed with negligible price difference, those trades were carried out with a view to create artificial volumes and consequently create artificial demand in the scrip.

9. It is further contended on behalf of respondent that appellant has also not disputed matching of trades. Therefore, admission of appellant coupled with fact that for almost all trades of appellant, counterparties were belonging to one group clearly shows that there was an understanding between noticee and members of that group. The appellant had entered orders with precise timing, quantity and price. Such preciseness could not be achieved unless there is an understanding between appellant and counterparties.

10. Relying on decision of this Tribunal in Appeal no. 2 of 2004 (Ketan Parekh vs. SEBI) decided on July 14, 2006 it is contended on behalf of respondent, that whether a transaction has been executed with intention to manipulate the market or defeat its mechanism, depends upon intention of parties which could be inferred from attending circumstances such as nature of transaction executed, frequency with which such transactions are undertaken, value of the transactions, whether there is real change of beneficial ownership, conditions then prevailing in the market etc. Reliance is also placed on decision of Bombay High Court reported in (2004) 51 SCL 307 (BOM.) (SEBI vs. Cabot International Capital Corporation), decision of this Tribunal in Appeal no. 171 of 2011 (Sparkline Mercantile Co. Pvt. Ltd. vs. SEBI) decided on January 16, 2012 and Appeal no. 162 of 2012 (Shraddha Stock Broking Pvt. Ltd. vs. SEBI) decided on December 3, 2012 in support of contention that mens rea is not essential element for imposing penalty under SEBI Act and once appellant is found to be guilty of violating regulatory framework, appellant cannot claim exoneration on ground that no action has been initiated by SEBI against another person who has been found guilty for violating the Regulations.

11. We have carefully considered rival submissions.

12. Penalty under impugned order is imposed upon appellant solely on ground that almost all trades in shares of Adani Exports Ltd. effected by appellant during investigation were found to be synchronized and those trades were with only one group. It is well established by various decisions by this Tribunal that synchronized trade is per se not illegal. Synchronized transaction would be illegal if it is executed with a view to manipulate the market, is dubious in nature and is executed with a view to avoid regulatory detection, does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting market equilibrium etc.

13. In this case, save and except recording that trades executed by appellant with one group were synchronized, no other particulars are set out in the impugned order. Neither names of persons forming group with whom appellant had traded nor their connection with appellant has been set out in the impugned order. Unless some connection between appellant and counterparties with whom appellant traded is established, it is difficult to hold that trades in question were carried out with a view to manipulate market by creating false volumes resulting in upsetting market equilibrium.

14. Mere fact that buy and sell orders between appellant and one group (with whom no connection is attributed) within a time gap of one minute with negligible or no price difference cannot ipso facto lead to conclusion that the trades in question were executed with a view to manipulate the scrip. In absence of any circumstantial evidence to suggest that synchronized trades were executed for purpose of upsetting market equilibrium or to manipulate

market, it cannot be inferred that appellant was guilty of violating PFUTP Regulations or Broker Regulations.

15. Fact that appellant had stated that while carrying out jobbing transactions some transactions carried out by appellant could have been matching, it cannot be inferred that trades effected by appellant were manipulated. In a screen based trading executed at stock exchanges, it is possible that some persons forming a group in connivance with each other may execute trades in a scrip with a view to create artificial volume in the scrip. However, if there is no direct or circumstantial evidence which is brought on record to suggest that appellant was connected to that group or connived with that group, it would not be proper to hold appellant to be guilty of violating PFUTP Regulations / Broker Regulations merely because trades between that group and appellant were found to be synchronized.

16. Assuming that circumstantial evidence, if any, noticed during investigation might have been inadvertently not referred to in the adjudication order, we called upon counsel for parties to consider as to whether it would be just and proper in the interest of justice to set aside the impugned order and remand the matter for fresh decision. While counsel for appellant on instruction agreed for that course, counsel for respondent on instruction from SEBI informed us that instead of remand, appeal may be decided on basis of material referred in the impugned order. In these circumstances, since there is no basis for holding that trades in question were carried out with a view to create artificial volume in scrip and in absence of any material on record to show that appellant was having any connection with counterparty, it would not be proper to hold appellant is guilty of violating PFUTP Regulations / Broker

Regulations merely because most trades between appellant and counterparty were found to be synchronized.

17. Reliance placed by counsel for respondent on decision of this Tribunal in case of Ketan Parekh (supra) is misplaced. In that case evidence on record clearly demonstrated that appellant therein had indulged in circular trading and therefore he was held guilty. In this case there is no evidence on record to show that synchronized trades were executed with a view to create artificial volume in the scrip and thereby disturb market equilibrium. Therefore, decision of this Tribunal in Ketan Parekh has no relevance to present case. Similarly decision of this Tribunal in case of Sparkline Mercantile Co. Pvt. Ltd. (supra) is also distinguishable on facts as in that case, connection between parties was established whereas, in the present case, there is nothing on record to suggest even remotely that appellant was connected with counterparty with whom trades were executed.

18. Decision of this Tribunal in case of Shraddha Stock Broking Pvt. Ltd.(supra) relied upon by counsel for appellant is also distinguishable, because, appellant in that case was seeking exoneration on ground that no action has been initiated by Board against another person who has been found guilty for violating Regulations, whereas, in the present case, appellant seeks exoneration not on the ground that no action has been taken against another person who has also been found guilty, but, on the ground that trades in question were carried out in ordinary course of business and there is no connection between appellant and the group with which appellant has traded. Once it is held that there is no basis for drawing inference that synchronized trades were effected by appellant with a view to create artificial volume in the scrip and thereby disturb market equilibrium, it would not be proper to hold

that appellant has violated PFUTP Regulations / Broker Regulations and consequently penalty imposed upon appellant cannot be sustained. Decision of Bombay High Court in case of SEBI vs. Cabot International Corporation reported in (2004) 51 SCL 307 (BOM.) is also distinguishable as in that case what is held is that for imposing penalty under SEBI Act mens rea is not essential element, whereas, in this case it is not contended by appellant that mens rea is essential element.

19. For all aforesaid reasons impugned order dated February 8, 2013 is quashed and set aside.

20. Appeal is allowed accordingly with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

04.09.2013
Prepared and compared by:
msb