BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 28.08.2013
Date of Decision: 10.09.2013

Appeal No. 53 of 2012

Hemant Sheth
115/117, Bhuleshwar Road,
Near Kabutar Khana,
Mumbai – 400 002. …… Appellant

Versus

Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

AND

Appeal No. 71 of 2012

Bhavesh Pabari
196/A, Tara House,
Dr. Vaigas Street Cavel X Lane, No. 8,
1st Floor, Flat No. 16, Chira Bazaar,
Mumbai – 400 002. …… Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhawan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

AND

Appeal No. 72 of 2012

M/s Shree Radhe
196/A, Tara House,
Dr. Vaigas Street, Cavel X Lane, No. 8,
1st Floor, Flat No. 16, Chira Bazaar,
Mumbai – 400 002. …… Appellant

Versus

The Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhawan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Ms. Urmila Thakar, Advocates for the Appellants.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Advocate for the Respondent.

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

Per : Justice J. P. Devadhar

By consent, these three appeals are heard together and disposed of by this common decision.

2. Appeal no. 53 of 2012 is filed to challenge adjudication order dated December 30, 2011 by which penalty of ` 20 lac is imposed upon appellant therein under Section 15HA of the Securities and Exchange Board of India Act, 1992 ('SEBI Act' for short). Appeal No. 71 of 2012 and 72 of 2012 are filed to challenge adjudication orders both dated December 30, 2011 by which penalty of ` 20 lac under Section 15HA and penalty of ` 10 lac under Section 15A(a) of the SEBI Act is imposed upon each appellants.

3. For sake of convenience, facts in appeal no. 53 of 2012 are set out hereinbelow. Counsel for parties agree that decision in appeal no. 53 of 2012 would apply to Appeal No. 71 of 2012 and 72 of 2012 in so far as they relate to imposing penalty of ` 20 lac under Section 15HA of SEBI Act on appellants therein.

4. On noticing that during the period from April 10, 2006 to September 8, 2006 major clients including appellants herein were connected and had executed self, reversal and synchronized trades in the scrip of Gulshan Polyols Limited, erstwhile Gulshan Sugars & Chemicals Limited (GPL for short), Securities and Exchange Board of India (SEBI for short) conducted investigation during the period commencing from January 12, 2006 to December 29, 2006 (Investigation period for convenience).

5. On completion of investigation, show cause notice was issued to appellant in Appeal no. 53 of 2012 on January 17, 2011 calling upon him to show cause as to why inquiry should not be held and penalty should not be imposed for violating provision of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('FUTP Regulations' for short). Reply to said show cause notice was filed by appellant, wherein all allegations made in the show cause notice were denied. On issuance of supplementary show cause notice dated July 20, 2011, additional reply was filed on July 26, 2011 denying all allegations made in the supplementary show cause notice. Thereafter, personal hearing was granted, wherein appellant reiterated that all transactions were genuine and there was no violation of any regulations framed by SEBI.

6. By adjudication order dated December 30, 2011 all contentions of appellant in Appeal no. 53 of 2012 were rejected and penalty of ` 20 lac was imposed upon appellant under Section 15HA of the SEBI Act for violating Regulations 4(2)(a), (b) and (g) of the FUTP Regulations. Challenging that order dated December 30, 2011, present appeal is filed.

7. Mr. Bhatt, learned counsel appearing on behalf of appellants submitted soft copies of trade and order logs pertaining to investigation period were made available

to appellant on December 15, 2011 and comments thereon were called by December 26, 2011. Since soft copies furnished by SEBI could not be opened for considerable time, appellant could not offer comments by December 26, 2011. Instead of granting time and instead of furnishing entire copies of trade logs so as to give reasonable opportunity to deal with contents of soft copies as also on trade and order logs, impugned order has been passed hastily on December 30, 2011 in gross violation of principles of natural justice.

8. Counsel for appellants further submitted that as there were differences in quantity and price between buy orders and sell orders placed by appellant, it could not be said that trades in question were synchronized. In any event, synchronized trade, if any, itself being small, it could not be said that those trades were executed with a view to create artificial volume. It is further contended on behalf of appellants that adjudicating officer has failed to establish any commercial linkage between appellants and connected parties who traded in GPL scrip. It is contended that appellants were separate and as independent persons they were having independent dealings in several scrips including GPL scrip. Fact that appellant did not trade from January 2006 to April 2006 shows that there was no collaboration of any kind with anyone. Trading through multiple brokers could not be held against appellants because trading through multiple brokers is not prohibited under any Regulation framed by SEBI.

9. Counsel for appellants further submitted that adjudicating officer failed to appreciate that during relevant period, appellant had bought and sold same quantity of shares, namely, 11,43,702 shares which was only 5.04% of market volume and that too spread over about five months with prices ranging from ` 55/- to ` 77/- as against price rise from ` 44.70 to ` 103.40 during the investigation period.

Therefore, price rise in scrip of GPL from ` 44.70 to ` 103.40 during investigation period could not be attributed to appellant.

10. Relying on decision of this Tribunal in **Appeal No. 7 of 2009 (M/s. Dhanlaxmi Cotex Ltd. vs. SEBI) decided on July 8, 2009,** counsel for appellant submitted that without furnishing complete copy of trade and order logs, adjudicating officer ought not to have held that appellant had executed synchronized and structured trade with Bhavesh Pabari and Mr. Niraj Sanghvi. In any event, counsel for appellant submitted that penalty imposed upon appellant is wholly arbitrary, especially when appellant has not received disproportionate gain or unfair advantages and has not caused any loss to an investor or group of investors.

11. Mr. Rustomjee, learned senior advocate appearing on behalf of respondent took us through facts and figures set out in impugned order to demonstrate that there is no infirmity in the impugned order. Relying on decisions of this Tribunal in **Appeal No. 24 of 2011 (M/s. Jayantilal Khandwala & Sons Pvt. Ltd. vs. SEBI) decided on June 8, 2011, Appeal No. 211 of 2012 (Anita Dalal vs. SEBI) decided on December 3, 2012 and Appeal No. 76 of 2012 (H. J. Securities Pvt. Ltd. vs. SEBI) decided on May 11, 2012,** counsel for respondent submitted that when a trader executes self trade in a scrip at a price higher than market price, it becomes evident that such trades have been executed with a view to increase price of scrip fictitiously and arbitrarily. Fact that there were some differences between quantity ordered and quantity matched, it cannot be said that there was no synchronization, because, it is well established that in market manipulation, perfect synchronization and exact matching of trades would not be available and in such a case, periodical and conscious matching in several trades over a period of time could be considered as synchronized trade. Accordingly, counsel for respondent submitted that since all

allegations in show cause notice stand proved, all appeals filed by appellant are liable to be dismissed.

12. We have carefully considered rival submissions.

13. Fact that appellants in these three appeals were commercially connected has been succinctly brought out by adjudicating officer in para 15(b) and (c) of the impugned order in Appeal No. 53 of 2012. Though connection between appellants interse is denied by appellants, none of the facts set out in para 15(b) and (c) on the basis of which finding is recorded that there is connection between appellants interse and connection with Mr. Niraj Sanghvi have been disputed by appellants. Admittedly, Bhavesh Pabari (Appellant in Appeal No. 71 of 2012) is proprietor of M/s. Shree Radhe (Appellant in Appeal No. 72 of 2012). Moreover, as per KYC documents, Hemant Sheth (Appellant in Appeal No. 53 of 2012) and Bhavesh Pabari (Appellant in Appeal No. 71 of 2012) were introduced to Jain Sahakari Bank by a common introducer viz. Bhupesh H. Rathod on March 29, 2006. It is a matter of record that appellants claim to have traded interse on recommendation of Niraj Sanghvi. Thus, facts set out in para 15(b) and (c) of impugned order being not disputed, findings that appellants were connected interse and were connected with Mr. Niraj Sanghvi cannot be faulted.

14. In para 15(g) of impugned order, adjudicating officer has held that appellant in Appeal No. 53 of 2012 has traded in GPL shares through various brokers and while trading through those brokers, he executed self trade to the extent of 57,455 shares (5 percent of his total traded quantity) from April 18, 2006 to August 25, 2006. Details of self trade given in para 15(g) of impugned order have not been disputed, except by claiming that appellant was entitled to trade through different brokers. Fact that trades could be effected through multiple brokers cannot be a ground to indulge in self trade. Therefore, decision of adjudicating officer that

appellant had indulged in self trade in violation of FUTP Regulations cannot be faulted.

15. In para 15(h) of the impugned order, it is recorded that appellant in Appeal No. 53 of 2012 has entered into reversal trades with appellants in Appeal No. 71 of 2012 and Appeal No. 72 of 2012 from April 18, 2006 to August 25, 2006 and out of total traded quantity (both buy and sell order) of 11,43,702 shares, trades for 7,82,194 (68% of his total traded quantity) were found to be reversal trade. Details of reversal trade including self trade are also set out at para 15(h) which are not disputed. Similarly, details of reversal trade with various other parties are also set out in that para which are again not disputed. Even, facts and figures relating to trades synchronized by price, time and quantity between appellant in Appeal No. 53 of 2012 and appellants in Appeal No. 71 of 2012 and Appeal No. 72 of 2012 are set out in para 15(i), (j), (k) and (l) of the impugned order, which are also not disputed by appellants. Therefore, findings relating to reversal trades and synchronized trades effected by and between appellants interse, recorded in the adjudication order cannot be faulted.

16. It is interesting to note that in para 15(m) of the adjudication order synchronized trades between appellant in Appeal No. 53 of 2012 and Mr. Niraj Sanghvi are set out and it is not in dispute that by adjudication order dated August 30, 2011 penalty of ` 20 lac has been imposed upon the Niraj Sanghvi. Counsel for SEBI has informed us that in compliance of above order dated August 30, 2011, Mr. Niraj Sanghvi has already paid penalty of ` 20 lac.

17. Thus, voluminous evidence on record which are uncontroverted, clearly demonstrate that charges levelled against appellant were justified and grievance of appellant that principles of natural justice have been violated and that prejudice is caused to appellant on account of complete trade and order log not being furnished,

do not merit consideration. Appellants by interse trade have caused price rise in shares of GPL from ` 44.70 to ` 103.40, and, therefore, fact that appellant in Appeal No. 53 of 2012 has contributed for price rise from ` 55/- to ` 77/- would not absolve him from penal consequences.

18. For all reasons set out hereinabove, imposition of ` 20 lac penalty upon appellant for violating provisions of FUTP Regulations cannot be faulted. Accordingly, Appeal No. 53 of 2012 fails and is hereby dismissed. For reasons set out hereinabove, Appeal No. 71 of 2012 and 72 of 2012 in so far as they relate to imposition of penalty of ` 20 lac on each of appellants are also dismissed.

19. Additional challenge in Appeal No. 71 of 2012 and 72 of 2012, relates to imposition of ` 10 lac penalty upon each appellant for violating Section 11C(3) and 11C(5) of SEBI Act. Grievance of appellants is that failure to furnish requisite information was due to circumstances beyond control viz grand mother of Bhavesh Pabari (Appellant in Appeal No. 71 of 2012) who is proprietor of M/s Shree Radhe (Appellant in Appeal No. 72 of 2012) had expired during the relevant period and, therefore, he was in disturbed mind at the material time. Though, explanation given does not inspire confidence in the facts of present case, where penalty of ` 20 lac has already been upheld, in our opinion, it would be just and proper to delete penalty of ` 10 lac imposed upon both appellants.

20. To conclude, for reasons set out hereinabove, Appeal No. 53 of 2012 is dismissed. Appeal No. 71 of 2012 and 72 of 2012 are partially allowed by quashing penalty of ` 10 lac imposed on each appellant and by sustaining penalty of ` 20 lac imposed upon each appellant. All three appellants are directed to pay penalty of ` 20 lac imposed under three orders all dated December 30, 2011 within four weeks from today, if not already paid. If penalty of ` 20 lac is not paid within four weeks from today, by each appellant, then respondent will be at liberty to recover penalty

of ` 20 lac from each appellant with interest at 10% per annum from December 30, 2011 till payment. All three appeals are disposed of in above terms with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

10.09.2013
PTM