BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 27.08.2013
Date of Decision: 30.09.2013

Appeal No. 67 of 2013

Vidhya Finvest Limited
135, 2nd Floor, B.R.B. Basu Road,
Kolkata – 700 014. …… Appellant

Versus

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. 70 of 2013

Mr. Sanwarmal Agarwal
14-D, Regency Park, Eden Woods,
Smt. G.A. Marg, Pokhran Road No.2,
Thane (W), Mumbai – 400607. …… Appellant

Versus

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. 71 of 2013

Mr. Shankarlal Agarwal
14-D, Regency Park, Eden Woods,
Smt. G.A. Marg, Pokhran Road No.2,
Thane (W), Mumbai – 400607. …… Appellant

Versus

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

Mr. Paras Parekh, Advocate for the Appellant in all the Appeals.

Mr. Prateek Seksaria, Advocate with Mr. Tomu Francis, Advocate for the Respondent in all the Appeals.

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

Per : A S Lamba

1. Three appeals before this Tribunal i.e. nos.70 of 2013, 71 of 2013 and 67 of 2013 with appellants Sanwarmal Aggarwal, Shankarlal Aggarwal and Vidhya Finvest Ltd. respectively; deal with same facts and subject matter and hence, with consent of three appellants and common respondent (SEBI), these three were taken up together, with Appeal no.70 of 2013 being leading case.

2. SEBI conducted an investigation into trading in scrip of GEE Ltd. (hereinafter referred to as 'GEE') during period from April 28, 2009 to August 31, 2009 (hereinafter referred to as 'Investigation Period'). The scrip of company is listed in Bombay Stock Exchange Ltd and promoters of company and entities connected/related to promoters were found to be dealing in scrip.

3. The appellant being aggrieved by order dated January 31, 2013 passed by adjudicating officer of Respondent ("Impugned Order") has preferred the present appeal before SAT. Impugned order passed by Respondent, appointed under Section 15I of Securities and Exchange Board of India Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (Referred to as "Rules") to inquire and adjudge under section 15HA of SEBI Act, 1992 (SEBI Act), had imposed penalty of Rs.6 lakh on appellant for violation of provisions of Regulations 3(a), (b), (c), (d) of Regulation 4(1), 4(2), (a), (b) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 on appellant in respect of his dealings in scrip of GEE Ltd. during the investigation period.

4. The present case deals with alleged manipulations of securities market by appellant, his group and other group, by purchase/sale of scrip of GEE (of which appellant and his group were promoters), by placing orders for purchase of large number of shares of scrip GEE, at prices lower than Last Traded Price (LTP) of the scrip and since there were practically no sellers at price at which purchase orders were placed, these purchase orders were not executed; but since these purchase orders in large quantities were in system throughout the day; these purchase orders created purchase pressure in the market and pushed price of scrip upwards and during IP, price of scrip went up by total of Rs.23.15 on account of trades by this group and appellant was responsible for Rs.7.95 increase of total increase of price of scrip during IP.

5. GEE was incorporated on November 24, 1960 and is engaged in business of manufacturing and dealing in consumable welding electrodes. Open, High, Low and Close price of scrip during period of investigation was as under:

Particulars	**Price (**Rs**.)**	**Date**
Open	36.80	28/04/2009
High	79.00	05/06/2009
Low	34.50	28/04/2009
Close	58.65	31/08/2009

6. During investigation period, price of GEE scrip rose by Rs. 42.20 in 26 trading days with an average daily volume of 7,290 shares. Prior to period of investigation, scrip of GEE traded in range of Rs. 28.35 and Rs.39.00 with average daily volume of 3,182 shares. GEE scrip was transferred to Trade-to-Trade segment w.e.f June 12, 2009 and the circuit filters were revised as follows:

Circuit Filters (w.e.f.)	**Revised From (%)**	**To (%)**
05/06/2009	20	10
12/06/2009	10	5

7. Show Cause Notice dated April 27, 2011 was issued to appellant in terms of provisions of Rule 4 of the Rules, requiring him to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under Section 15HA of the SEBI Act, 1992 for alleged violation of provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of PFUTP Regulations.

8. It was alleged on basis of findings of Investigation Report (hereinafter referred to as 'IR') that during investigation period Agarwal Group comprising of appellant (Executive Director as well as promoter of GEE), Shri. S.L. Agarwal (Managing Director as well as promoter of GEE) hereinafter referred to as 'SLA') and Vidya Finvest Ltd. (promoter of GEE) (hereinafter referred to as 'VFL') along with Sanganeria Group, comprising of introducer of all three entities i.e. Basant Kumar Sanganeria (BKS), Basant Kumar Sanganeria's HUF (BKS HUF), Basant Kumar Sanganeria's wife Ms. Sunita Sanganeria (SS) and Basant Kumar Sanganeria's mother Ms. Gayatri Devi Sanganeria (GDS) acted as group (hereinafter referred to as main group) and dealt majorly in GEE scrip during period of investigation.

9. It was alleged on basis of IR that Last Traded Price (LTP) analysis of GEE scrip shows that net LTP of scrip went up by total of Rs.21.90 during investigation period and if net LTP variation by main group is taken then net LTP increased by Rs.23.15 on account of trades by main group. In view of same, it was alleged that almost entire upward price variation was caused by main group. Further it was also observed that appellant contributed Rs.7.95 LTP increase and was trying to push price upwards of shares of GEE.

10. It was observed that during investigation period there were total valid buy orders for 20,27,348 shares & total valid sell orders for 16,78,752 shares. On analyzing valid buy orders placed by trading members it was observed that trading member SPFL Securities Ltd. placed valid buy orders for total of 11,99,836 shares for main group which were 59.18% of total valid buy orders.

11. It was observed that during investigation period main group bought 2,16,885 shares (1,76,630 shares by Agarwal Group + 40,255 shares by Sanganeria Group) and sold 41,695 shares (2156 shares by Agarwal Group + 39,539 shares by Sanganeria Group). Of these appellant bought 13,319 shares and sold 200 shares contributing Rs.7.95 to LTP increase.

12. It was alleged, based on investigation, that large quantity orders were placed by main group during May and June 2009 i.e. during investigation period but all these orders were not reflected in trade log. i.e. the orders expired after trading day without execution. It was alleged that most of orders were placed early in morning and lay in system throughout the day without execution. Further in most cases entire quantity was revealed in market, and it was alleged that orders were placed much below prevailing market price and hence could not get executed.

13. Therefore it was alleged that main group was trying to create artificial buying depth in market and appellant as part of group had indulged in manipulative, fraudulent and unfair trade practices while dealing in scrip of GEE. In view of same, it was alleged that appellant had violated provisions of Regulation 3(a), (b), (c),(d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of PFUTP Regulations.

14. Summary of submissions of the appellant in respect of show cause notice are:

a. There is no commonality or coordination in relation to trading undertaken by Agarwal Group and Sangneria Group during relevant period. There was no common objective or purpose, whether of acquisition of shares or voting rights or control, and also of any price fixation. If appellant and main group were purchasers it would not be their interests to push price up. In any case, it is evident that proceedings initiated against Sangneria Group in relation to their

trading in scrip of the Company during the Investigation Period, have been dropped.

b. SEBI had introduced an amendment to provisions of Regulation 11(2) of the Takeover Regulations on October 27, 2008 allowing consolidation of holding through creeping acquisition upto 5% ("Amendment which applied to persons holding 55% and above but below 75% shareholding in target company). Such acquisition and consolidation of shareholding applied only to purchases made through open market and not to acquisitions via bulk/block/negotiated deal or through preferential allotment. It is submitted that Agarwal Group, being part of promoter group of the Company, wanted to consolidate its shareholding in the Company in line with the Amendment. Purchases by members of Agarwal Group were pursuant to this decision to consolidate their shareholding in the Company. It is submitted that minor number of shares were sold from time to time at current market price and purchases were made from time to time in compliance with legal requirements in this regard.

c. It is pertinent to note that trading by Agarwal Group ought not to be consolidated with trading by Sanganeria Group. As stated above and trading by Agarwal Group was independent of the trading by Sangneria Group, a fact that has already been established. It is submitted therefore that amount of shares traded by Agarwal Group ought not be consolidated with amount of trades executed by Sangneria Group.

d. It is denied that upward price variation was caused by the group. The trading by Agarwal Group was not as a group with Sanganeria Group. The trading by Agarwal group was with a view to consolidating their shareholding in the Company pursuant to the Amendment. It is denied

that Agarwal Group was seeking to push price of the scrip of Company upwards. If there was an increase in price of scrip of Company, it could only be incidental and cannot be surmised to be objective of such trading. The Agarwal Group did not intend for price to rise. There is no advantage or benefit that Agarwal Group (or any other person) has attained on account of the trading by Agarwal Group and neither has anyone suffered any disadvantage or prejudice on account of such rise in price.

e. At outset, orders placed by Sangneria Group ought not to be consolidated with orders placed by Agarwal Group. Number of orders placed in system is irrelevant. Orders were placed early in the day at slightly lower prices than prevailing market price. It is apparant the orders would be placed at slightly lower price since buyer would want to purchase shares at the lowest possible price. In event that there were sellers willing to sell at such lower prices, purchase orders would have matched and Agarwal Group would have been able to buy such shares at lower price. However, in light of the fact that there were no sellers for shares at such lower prices, purchase orders did not match and same lapsed at end of the day.

f. Several orders placed by Agarwal Group at prices lower than prevailing market price is demonstrative of fact that Agarwal group did not intend to hike market price of scrip of the Company. Since there were no sellers available for such lower price, Agarwal Group had no option but to buy shares at prevalent market prices.

g. Facts demonstrate that there was no intention on part of Agarwal Group to 'create artificial buying depth in the market'. Further, Agarwal Group did not act as a group to indulge in manipulative,

fraudulent or unfair trade practices while dealing in the scrip of Company.

Main Findings of Adjudicating Officer

15. It was alleged in the SCN that appellant along with VFL and SLA along with introducer of all the three entities i.e. BKS and his HUF acted as a group and dealt majorily in scrip during period of investigation. In this regard, it has been observed by Adjudication Orders dated August 29, 2011, that BKS, BKS HUF, SS and GDS did not act as part of main group comprising of Agarwal Group and therefore proceedings against Sanganeria Group were dropped.

16. It is noted from LTP analysis of scrip of GEE as observed in IR that net LTP went up by a total of Rs.23.15 on account of trades by main group. However, it is observed that appellant alone contributed Rs.7.95 to LTP increase.

17. It is also noted that during investigation period Agarwal Group bought 1,76,630 shares and sold 2,156 shares and of these, noticee bought 3,319 shares and sold 200 shares.

18. It is observed from investigation report that orders were placed by appellant significantly away from prevailing market rate and hence could not get executed. In reference to this, appellant submitted that orders were placed at prices lower than prevailing market price is demonstrative of fact that appellant did not want to hike market price of scrip of the Company. Appellant further submitted that since there were no sellers available for such lower prices and appellant had no option but to buy shares at prevalent market rate.

19. From records it is observed that appellant being part of Agarwal Group contributed to LTP increase of Rs.7.95 and also created artificial buying depth in market by placing orders significantly away from market price and indulged in manipulative, fraudulent and unfair trade practices while dealing in scrip of GEE.

20. Further, it is stated by Adjudicating Officer that Agarwal Group, being part of promoter group of GEE, have stated that they wanted to consolidate its shareholding

in GEE but, it was noticed that Agarwal Group kept selling shares in small quantities which does not gel with submissions of appellant regarding consolidation of shares in GEE.

21. In view of facts and material made available on record, adjudicating officer is inclined to take a view that appellant has violated provisions of Regulation 3(a), (b), (c), (d) and Regulation 4 (1), 4 (2) (a), (b) & (e) of PFUTP Regulations. The text of said provisions is as follows:-

PFUTP Regulations

"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 thereunder**.**

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;
> …..
> (e) any act or omission amounting to manipulation of the price of security;"

22. The aforesaid violation makes the noticee liable to penalty under Section 15HA of the SEBI Act which is reproduced below:

> **SEBI Act**
> **"Penalty for fraudulent and unfair trade practices.**
> **15HA.** If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

23. Having considered the facts and circumstances of the case and after taking into account the factors under section 15J of the SEBI Act, 1992, adjudicating officer found that a penalty of Rs.6,00,000 (Six Lakh Only) on the appellant would be commensurate with the violations committed by the appellant in this case.

Analysis of findings of Learned Adjudicating Officer and of evidence.

24. It may be mentioned that two groups i.e. Agarwal Group and Sanganeria had traded actively in scrip of GEE during IP; but these groups were not trading in the scrip jointly, since Sangenaria group acted as professional traders/jobbers/arbitrage player and had placed orders as intraday transactions, which can be seen and substantiated from day wise market transaction list. Learned adjudicating officer has accepted this contention of Sangenaria Group and held that allegation of market manipulation by this group was not established.

25. However, it is worthwhile to mention some of the submissions of Sanganeria Group and accepted by Adjudicating Officer case no.IVD/GEE/BKS/AO/DRK/AS/EAD-3/280/2009-46/2011 who also happens to be the Adjudicating Officer in present case.

(i) Main Group (Agarwals) placed orders for purchase of scrip of GEE, at price significantly away from prevailing market rate and hence could not get executed. Sanganeria submitted that he had put most of bids (for purchase), a rupee or two below the current market as it has been his usual practice in almost all the scrips in which he trades. Sanganeria submitted that buy bid are generally placed at well below market price at i.e. 8 percent to 10 percent, because of low depth in the scrip and also for averaging the stocks since many scrips like GEE have very low volume. Sanganeria submitted that he had put buy bid below market price so that if there is any large market sale orders he could get the scrip which will reduce the scrip cost price. Sanganeria also does the same *vice-versa* on sale side also.

(ii) It is noted that from details of trading of Sanganeria in IR that Sanganeria has nil purchase and sale of 86 shares in scrip of GEE during the investigation period.

(iii) Adjudicating Officer has observed, on basis of submissions of Sanganeria that during IP, scrip of GEE witnessed an upward rise and went up by Rs.21.90 and during that period NIFTY had increased from 3350 to 4750 (app.42 percent), the market hit upper circuit limit in month of May and June Quarter results of GEE registered PAT of Rs.40.16 million, as compared to last year annualized profit of Rs.38.87 million.

(iv) Appellant's contention that placing buy bid at below LTP is as per market practice and his own practice, to buy cheap and that volume of buy bid was high to get benefit of any large sale bid so that he could reduce his cost of GEE scrip. It has to borne in mind that placing orders at below LTP, within the range allowed by stock exchanges, is as per market practice and mechanism and cannot be found fault with,

unless it is with connected/associated parties, done for self trading or circular trading to manipulate volume and hence price of scrip. Here, in this case counter-party is not specified hence sale/purchase of GEE scrip was in accordance with market practice and mechanism, price was paid, delivery taken/delivered, etc. and hence allegation of manipulation of scrip GEE by appellant, cannot be sustained, but this has not been accepted by Adjudicating Officer.

(v) In this case, it is also be seen that placing buy bids, below LTP, cannot and did not create buy pressure, since total trade in scrip during IP was very less and no big number of investors rushed to buy GEE scrip. In this context appellant's contention that placing buy bid at below LTP can only bring down price of scrip, is also relevant and cannot be dismissed or countered lightly by holding that it created buy pressure and pushed up price of scrip. This plea of Appellant has not been accepted by Adjudicating Officer.

26. Now returning to present case, the same Adjudicating Officer has not accepted any of the contention of appellant relating to (i) to (v) of above para, which he had accepted in case of Sanganeria Group that Sanganeria places buy bids at Rs.1 to 2 below LTP, which is 8 to 10 percent below market price of scrip, with a view to get benefit of large sale bid in the scrip, but none of his orders for buy bids of GEE scrip, got converted into trades due to low depth in GEE scrip; that Sanganeria had nil purchases and sale of 86 shares in scrip of GEE during IP; scrip of GEE witnessed upward rise in price during IP and during IP NIFTY went up by 42 percent and June Quarter ending results of GEE (during IP), were quite impressive.

27. Learned Adjudicating Officer, in present case before this Tribunal has over looked his own observations/comments/judgement in Sanganeria case, when two cases arose out of common IR, common SCN, based on same facts, but

adjudicated separately by same learned Adjudicating Officer, with a gap of 16 months, when it was amply pointed out to him in present case that Sanganeria Group has already been exonerated of similar charges; and learned Adjudicating Officer has not considered any of his own observations/comments/judgement in Sanganeria case; to hold appellant of violating Rules 3(a), (b), (c), (d) and Regulations and 4(1), 4(2)(a), (b) and (e) of PFUTP Regulations and imposing penalty of Rs.6 lacs on appellant.

28. It is also to be noted that appellant has placed buy bids/bought/sold in scrip of GEE as per market mechanism, as per market rules and regulation and at par with other group Sanganeria has been exonerated. As such there is no rationale/justification for holding appellant guilty of violating SEBI Act and Regulations. This, in our opinion, is totally unjust and unfair.

29. Since contentions of Sanganeria Group for alleged violations of SEBI Act and Regulations, have been accepted, this Tribunal does not find it necessary to deal with all the contentions of appellant separately and accordingly holds that none of the charges of violations of SEBI Act or Regulations are proved against the appellants.

In view of above, impugned order is quashed and appeal is allowed without orders as to cost.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

30.09.2013
RHN