BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Hearing : 03.10.2013
Date of Decision : 10.10.2013

Appeal No.95 of 2013

Kapil Chatrabhuj Bhuptani
A 7, 2nd Floor, Hari Darshan CHS
Pendse Nagar, Road No.4,
V.P. Road, Dombivali (East)
Thane – 421 201. …… 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. J.J. Bhatt, Advocate with Ms. Urmila Thakar, Mr. Nimit Gandhi, Advocates for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Ajay Khaire, Advocate for the Respondent.

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

Per : Jog Singh

1. The appellant has filed the present appeal impugning order dated February 28, 2013 passed by the respondent imposing a monetary penalty of Rs.4 lakh under section 15HA of the Securities and Exchange Board of India Act, 1992.

2. The impugned order is passed pursuant to an enquiry held by the Adjudicating Officer under Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer)

Rules, 1995 while investigating certain trading and dealing in the equity shares of Era Constructions (India) Ltd., now known as Era Infra Engineering Ltd. (ECIL). The total investigation period is of about eight months i.e. from March 17, 2004 to November 12, 2004. The appellant is however stated to have traded for a short period of about two months between May 19, 2004 to July 23, 2004 and on September 23, 2004. The appellant's trading volume is stated to be 0.89 percent of the total traded volume.

3. The case of the respondent is that the appellant had significantly traded, along with a group of its clients and few brokers, in the scrip of ECIL on the Bombay Stock Exchange (BSE) at least on 64 days out of total 170 days investigated. The names of about 25 such brokers and clients have been given in para 3 of show cause notice dated May 22, 2009. Another charge leveled against the appellant by the respondent is that the trading pattern of said brokers and clients shows that the appellant seems to be involved allegedly in synchronized trading.

4. The appellant is thus stated to have contributed significantly to the creation of volumes in trading during the investigation period in question. After the adjudication proceedings were concluded he was subjected to a penalty of Rs.4 lakhs by the impugned order dated February 28, 2013.

5. The case of the appellant is that he had traded for an insignificant volume of 0.89 percent on his own and without any collusion with any members of the group of brokers or other clients. The appellant also contends that a copy of the order log was not supplied to him despite requests made by him to the Adjudicating Officer from time to time. Similarly one of the contentions of the appellant is that there is an undue and unexplained delay of about 6 years in initiating disciplinary proceedings against the appellant which took another couple of years to be completed. Such a delay has caused prejudice to the case of the appellant in as

much as relevant documents have come to be destroyed in the meanwhile by stock exchanges etc.

6. We have heard both the learned counsel for the parties at length and we have perused the show cause notice, impugned order and pleadings minutely. In the entire impugned order nowhere is it provided by the respondent on the basis of any cogent or convincing or even circumstantial evidence that the appellant was involved with the group of brokers or other clients in manipulating the scrip or creating volumes in the said scrip with a view to destabilize the equilibrium of the market. During the arguments also a specific query was put to the respondent as to whether there is any finding regarding any connection between the appellant and the other members of the group of brokers and clients in the impugned order. The answer was fairly negative.

7. Therefore in our considered opinion simple trading by the appellant in a particular scrip without any proved nexus between trades with the other so called group of brokers and clients is not per se punishable. Undoubtedly, the appellant has traded in the scrip for about 64 days which is admittedly minor, comprising only 0.89 percent of the total trades in the scrip but in absence of some satisfactory evidence, the appellant cannot be held guilty of violation of Regulations 4(1) and 4(2)(a) and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Such an insignificant percentage of the total trading executed during the period of investigation in this case does not seem to indicate any prior meeting of minds as alleged by the respondent.

8. Next, we may also look into the contentions of the respondent that the objectional trades undertaken by the appellant were synchronized with certain other trades within a period of one month or so. In this regard the law is by now well settled that synchronized trades per se are not illegal. In a recent judgement of this

Tribunal dated September 4, 2013 in Appeal no. 52 of 2013 (SPJ Stock Brokers Pvt. Ltd. vs. Securities and Exchange Board of India) this Tribunal has taken a similar view. Paras 12, 13, 14 and 18 are relevant and are reproduced here-in-below.

> "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.
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> 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.
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> 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 cognet and convincing or at least 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.
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> 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."

9. The same view has also been taken by this Tribunal in the case of Appeal no.114 of 2012 HB Stockholdings Limited vs. Securities and Exchange Board of India dated August 27, 2013. Paras 17, and 18 are relevant and are reproduced here-in-below.

> "17. Further, it is not disputed by the Respondent that delivery of shares was taken and payments were duly made by the Appellants for the trades in question as required by law. **It may be noted that synchronization of trades is not per se illegal. It is objectionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties**. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants. In this connection, we may also pertinently note that
> the mere factum of one or two Appellants sharing common address or one of the Appellants being the promoter of the other group at some point in time are not in themselves sufficient to bring home the residual charge against the Appellants. There has to be sufficient evidence on record to clearly prove connivance on the part of the Appellants with a counter party to prove the charge in question against the Appellants. In the absence of any such evidence and unambiguous findings by the learned WTM to this effect, we have no option but to quash the impugned order in question.
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> 18. Next, the Appellants have brought on record certain circulars and extracts from the Joint Parliamentary Report presented to the Parliament on December 19, 2002 which, inter alia, clearly state that:-
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> > "SEBI has also stated that in second interim report of December 2001 that Ketan Parekh entities purchased GTB shares from bulk sellers and the promoters of GTB in late 1999. The phenomenon of synchronized trading which was widely prevalent in the market was also found in the above transactions. SEBI has since confirmed that synchronized deals are ipso facto not illegal. SEBI has also confirmed that in the screen based trading that is prevalent in the stock exchanges, now, the buyer or the broker will not be aware of the identity of the seller or the broker."
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> This fact is not denied by the Respondent. ……"

10. We reiterate once again that when it comes to synchronized trading, it is an accepted and by now well settled position that such trading in itself would not

tantamount to any wrongdoing. It is objectionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties which may with or without an element of mens rea as such.

In view of the above said discussion of law and fact, we are inclined to set aside the impugned order and allow the appeal. Ordered accordingly. No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

10.10.2013
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