BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 10 of 2013

Order Reserved On : 08.10.2013

Date of Decision : 31.10.2013

Manish Mathur
A-703, Vasant Sarita, 90 Feet Road,
Opp HDFC Bank, Thakur Complex,
Kandivali –East,
Mumbai – 400 101. …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. Harish Pandya, Advocate for Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocates for Respondent.

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

Per : A.S. Lamba

1. The present appeal has been preferred by Shri Manish Mathur (hereinafter referred to as 'appellant or 'noticee') before this Tribunal after being aggrieved by order of Adjudicating Officer ('AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI' or 'respondent') appointed under Section 15(I) of SEBI Act, 1992 read with Rule 3 of SEBI

(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to enquire and adjudge under Section 15 HA of SEBI Act, 1992, imposing monetary penalty of ₹ 10 lakh on appellant for violation of provisions of Regulations 4(1) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations'), in respect of appellant dealing in scrip of Asian Star Company Limited (hereinafter referred to as 'ASCL').

FACTS OF THE CASE:-

2. SEBI conducted investigation in trading of scrip of ASCL for period October 10, 2008 to November 20, 2008 (hereinafter referred to as 'investigation period' or 'IP'). Shares of ASCL are listed at Bombay Stock Exchange ('BSE'). It was observed that during investigation period price of scrip went up from ₹ 1,240.00 on October 10, 2008 to ₹ 1,306.15 on November 20, 2008 (18.57% rise in 28 trading days). While during same period Sensex had fallen by 19.73% (i.e. from 10,527.85 to 8,451.01). Subsequent to investigation period price of scrip started falling and closed at ₹ 905 on January 30, 2009.

3. Role of brokers and their clients, who traded in scrip of ASCL on BSE, was scrutinized and investigations revealed that certain entities connected to each other had allegedly indulged in circular / reversal synchronized trading, in such a manner that led to creation of artificial volume in scrip of ASCL.

4. It was alleged that one of the connected entities viz., Manish Mathur acted as link between connected entities, who orchestrated manipulation in scrip of ASCL. Appellant was also alleged to be connected to group of connected entities who orchestrated manipulation and financed their transactions for trading in scrip of ASCL. It was therefore alleged that noticee violated Regulation 4(1) and 4(2)(e) of PFUTP Regulations and consequently appellant is liable for monetary penalty under Section 15HA of SEBI Act, 1992.

5. Show cause notice No. EAD-6/BM/VS/27345/2010 dated November 23, 2010 ('SCN' for short) was issued to appellant under rule 4 of Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15HA of SEBI Act for alleged violation specified in said SCN. Appellant vide reply dated December 8, 2010 denied allegations contained in SCN and inter alia submitted that:

a) Appellant is a B.Com graduate and also did his diploma in sales and marketing. He was Chief of Operations and was also looking after sales and marketing fields of Triveni Management Consultancy Services ('Triveni').

b) That for act of some unscrupulous persons, if at all, appellant who is not even remotely concerned with said synchronized deals, cannot be held responsible unless active participation of appellant is substantiated by concrete material or instances or particulars, and opportunity of fair hearing and submissions.

6. Appellant appeared in person for personal hearing. During personal hearing, appellant submitted that his responsibility as CEO in broking firm

Triveni was to bring in retail clients and institutional business. It was observed from bank statement of his wife Seema Mathur that she paid Mr. Sunil Mehta, total of ₹ 3,00,000 on three different days and appellant was asked to state for what purpose the amount was given. In reply he stated that amount was given to Sunil Mehta as loan for making his pay-in obligation. With regard to query on source of income of Seema Mathur, appellant submitted that she was remisier with Triveni and income used to come from same, apart from that she used to do trading through broker Triveni. Trading account of Seema Mathur was used to be operated by appellant. It was further observed from bank statement of appellant with HDFC that huge amount has been received in that account on October 22 and 23, 2008, and he was, therefore, asked to give details as to from whom amount was received and purpose of receiving the amount and how same was repaid. He was also asked to provide documents in repayment of amount and source from where repayment was made. Details submitted by appellant show that his father, and not appellant, received friendly loans from Jitendra Jain and Sunil Mehta amounting to ₹ 7.5 lakh during investigation period and this amount was repaid on installments during March 2009 to January 7, 2011, i.e. much later than IP.

7. Allegations against the appellant are that he was a link between the connected entities of the Mehta Group who were trading within themselves in manipulative manner to create artificial volume in the scrip. The noticee orchestrated manipulation in the scrip by directly dealing in the accounts of clients in connivance with his close friend Sunil Mehta.

8. In view of the above it is alleged that appellant violated the provisions of Regulation 4(1) and 4(2)(e) of PFUTP Regulations.

CONSIDERATION OF ISSUES AND FINDINGS BY ADJUDICATING OFFICER:-

9. The issues that arise for consideration in present case are:

a) Whether noticee was a link between the clients of the Mehta Group and orchestrated alleged manipulation in the scrip and violated Regulation 4(1) and 4(2)(e) of PFUTP Regulations?

b) Does the violation, if any, on the part of noticee attract monetary penalty under Section 15HA of the SEBI Act?

c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

10. Findings in connection with role of appellant on violations as alleged in the case, by AO, are the following:

a) Price of scrip opened at ₹ 1,240.00 on October 10, 2008 while it closed at ₹ 1,101.55 on same day. Closing price of scrip on November 20, 2008 was ₹ 1306.15 (close to close 18.57% rise in 28 trading days). During same period Sensex had fallen by 19.73% (from 10,527.85 to 8,451.01). The total traded quantity for entire investigation period on BSE was 1974219 shares. Subsequent to investigation period price of scrip started falling and closed at ₹ 905 on January 30, 2009.

b) Neither price sensitive news / announcement existed during IP which might have supported price increase. Financial results of the company do not justify price rise in scrip of ASL. Since on October 16, 2008 company declared results of quarter ending September 30, 2008 which showed that net profit has declined from ₹ 110.659 million to ₹ 106.439 million than same quarter of previous year.

c) From trade and order log analysis it is noted that clients who traded in shares of ASCL executed synchronized / structured trades with entities viz: Suresh Hanswal, Jitendra Jain, Sandeep Jain, Pradesh Nimawat, Sunil Mehta, Usha Mehta, Bharat C. Jain, Arun Manohar Sakpal, Narendra Sanghi, Meen Been Elastomers, Dilip Rathore, Bhanwar Lal Paliwal, Alpesh G Dand, Manisha Mardia, Rajnish Jain. These entities were found to be linked with each other through Noticee, Sunil Mehta, Ajay Roongta and together form a group which is henceforth referred as 'Mehta Group'. The relationship is elaborated below:

i) Noticee was close friend of Sunil Mehta and also knew Pradesh and Ajay Roongta.

ii) There were fund flows between Sunil Mehta on one hand and Seema Mathur and Gopal Lal Mathur, wife and father of noticee respectively, on the other hand.

iii) Ajay Roongta submitted that Sunil Mehta was introduced to him by noticee.

iv) Noticee received loan from Jitendra Jain and was thus known to him.

v) Noticee was the CEO of the broker Triveni through whom Bharat C Jain, Meen Been, Dilip Rathod, Bhanwarlal Paliwal executed trades in the scrip of ASCL during the investigation period and these traders were in the nature of synchronized / structured, circular trades.

vi) Sunil Mehta entered into bank account transaction with Suresh, Jitendra, Gopal Lal Mathur, Seema Mathur (wife of noticee, Chief Operating Officer of the broker Triveni) and Triveni (while there was no pay in obligation at the relevant time as per the ledger statements with them).

vii) Jitendra entered into bank account transactions with Sunil Mehta, Usha Mehta, Anjana Mehta (wife of Sunil Mehta), Gopal Lal Mathur (father of noticee). He also entered huge bank account transactions with Triveni when he had no pay in / out obligation at the relevant time.

viii) Sunil Mehta is the son of Usha Mehta and shares same phone number (9322123257) as well as joint bank account (HDFC Kandivali Bank account No. 01821000063096) with Usha Mehta.

ix) Usha Mehta, Sunil Mehta and Jitendra were introduced to Arcadia by Suresh and Pradesh.

x) Jitendra has provided email id and phone number (9322123257) of Sunil Mehta in the KYC with Emkay Global and address (Evershine Millenium Park, EMP 47, Flat no. 1804, Thakur Village, Kandivali (E), Mumbai, Maharashtra, 400 101) and phone number (9322123256) of Sunil Mehta in the KYC with BP Equity. Further Sunil Mehta has submitted that trading account of Jitendra was being jointly operated by him and Jitendra.

xi) Suresh and Pradesh were partners in their firm Siddhi Shares and share the same office in Udaipur and they are known to each other for 7-8 years and are friends.

xii) Jitendra is friend of Suresh.

xiii) Suresh is friend of Sunil Mehta and has dealt in the scrip of his advice.

xiv) Sandeep was introduced to Swastika by Jitendra and the address of Jitendra mentioned in the KYC of Sandeep

with Swastika is same as that of office of Suresh and Pradesh.

xv) Arun Sakpal used to work in the same branch of Bakliwal where Ajay Roongta was branch manager. Ajay Roongta has accepted that he had provided funds to Arun Sakpal.

xvi) Narendra Sanghi has submitted that he is friend of Ajay Roongta. Further, Ajay has transferred funds to Narendra which was utilized by Narendra towards his pay in obligations.

xvii) Rajnish Jain has submitted that he knows Sunil Mehta through Ajay Roongta. Rajnish was introduced to Bakliwal by Ajay.

xviii) Sunil Mehta has accepted that he knows Arun Sakpal.

xix) Financial transactions were observed between Ajay Roongta, Sunil Mehta and Triveni. Ajay has accepted his relationship with the aforesaid entities before the investigation authority.

xx) For pay in obligation of Sandeep cheques from the account of Suresh and Pradesh were deposited.

xxi) Bhanwar Lal Paliwal has submitted that it was Sunil Mehta who opened his account with Triveni.

xxii) Alpesh Dand has submitted that Triveni was dealing in his account and he had allowed them to deal in the scrip (while Triveni suggested them to deal in the scrip) under the overall limit of ₹ 150000/-.

xxiii) Manisha Mardia submitted that Triveni suggested her to invest in the scrip. She decided the overall exposure limits and the actual buy and sell was done by Triveni on their own terminal.

xxiv) Pradesh has provided email Id of Sunil Mehta in the KYC with First Global. He has stated before the IA that his account with First Global was opened by his friend Sunil Mehta with his consent. He has also stated that he had borrowed funds from Sunil Mehta for the purpose of trading. Further Pradesh was introduced to Bakliwal by Sunil Mehta and the address mentioned in the KYC is same as that of Sunil Mehta.

11. It can be seen from the above that entities including appellant interconnected with each other.

12. Mehta Group was found to be entering into transactions which were in nature of reversal of trade / circular trade. Most of these transactions were in synchronized trades (less than one minute difference between buy and

sell orders) and structured trades (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching). AO noted that large numbers of synchronized trades were being entered into mostly by few brokers trading for their clients on almost every traded day during IP and that out of total 6953 number of synchronized deals and contribution of the brokers were as follows:- Triveni contributed 1903 deals while BP Equities, Swastika, Emkay Global, India Infoline, contributed 1224, 1396, 1058 and 325 deals respectively. Out of these synchronized deals, large number of deals were also structured (i.e. not only time of buy and sell order was within 1 minute but the order price and quantity was also matching).

13. It is noted that group has dealt in synchronized and structured trades which amounted to significant percentage of total market volume both in terms of quantity traded as well as number of trades. Daily net trade has remained insignificant. When most of trading was being contributed in synchronized trades by Mehta Group, price of the scrip was going up while Sensex was going down. AO noted that 87.83% of the total market volume and 72.33% of the total number of trades were contributed by synchronized trading and 44.95% of the total market volume and 30.65% of the total number of trades were contributed by structured trades.

14. Analysis of trade and order log reveals that entities belonging to Mehta Group traded among themselves from October 10, 2008 to November 20, 2008 and executed synchronized / structured and reversal trades during this period. AO noted that synchronized and structured trades executed by Mehta Group were significant to total volume of Mehta Group. It is noted that Mehta Group executed synchronized and structured trades where there

was exact matching of price and time and in some cases quantity. For executing these trades Mehta Group entities placed 5075 buy orders and 4649 sell orders which resulted into 5881 buy trades and 5881 sell trades. These trades of Mehta Group not only created artificial volume but also influenced price of the scrip of ASCL as price during this period went up from ₹ 1,240.00 to ₹ 1,306.15. AO observed that there was no positive corporate announcement to justify price rise in scrip further BSE Sensex during this period was also going down. It there can therefore be concluded that manipulative trading of clients belonging to Mehta Group created artificial volume and price rise in ASCL scrip.

15. Noticee was CEO of Triveni and his responsibility in broking firm was to bring in retail clients and institutional business. Triveni is observed to be major broker, having maximum concentration in gross purchase at 26.25% and traded for main clients of Mehta Group viz: Bharat Chandmal Jain, Meen Been Elastomers, Dilip Rathod, Bhanwar Lal Paliwal. These clients executed synchronized / structured, circular trades through above broker of which noticee was CEO. Further this observed from statement given by noticee that from account of his wife Seema Mathur fund was transferred to Sunil Mehta to meet his pay-in-obligation during the investigation period. Sunil was major operator who was creating artificial volume in scrip by placing order in his own account as well as in accounts of other connected persons and was also found to be financing transactions of other entities of Mehta Group. Investigation observed that Sunil Mehta was also found to be soliciting clients from Triveni. From submissions made by noticee it is noted that he was friendly with Sunil Mehta since last 9-10 years. It is also seen that accounts operated by Sunil Mehta and accounts in which Triveni was placing orders were counterparties with synchronized /

structured trades for many days. This would have not been possible unless noticee, CEO of Triveni, would have aided Sunil Mehta in whole game plan.

16. It is noted that ₹ 2,50,000/- was paid in account of Gopal Lal Mathur, father of noticee, vide cheque number 953054 dated October 22, 2008 from account of Jitendra Jain. Further, Sunil Mehta paid ₹ 1,60,000/- vide cheque number 918738 dated October 23, 2008 to account of Gopal Lal Mathur. Appellant in his reply has submitted that he had operated accounts of Gopal Lal Mathur and got friendly loans from clients of Triveni i.e. Sunil Mehta and Jitendra Jain. However, appellant failed to submit documentation showing that any loan amount given by aforesaid entities. Further, during personal hearing appellant submitted that ₹ 3,00,000 was paid to Sunil Mehta on three different occasions for meeting his pay-in obligation but later in his reply dated February 28, 2011 denied the same. It may be mentioned that appellant has not provided any documentary evidence before AO, establishing his position that it was in fact a loan as also exact recorded purpose of loan, if it was in fact a loan. It is apparent from submissions of appellant that he has not denied having provided either finance or loan accommodation to Sunil Mehta through his wife's account. Thus, it can be concluded that appellant was providing finance to Sunil Mehta. What appellant is now contesting is merely for what purpose loan has been provided. In fact in these proceedings stress was laid on appellant to provide evidence in support of his stand. However, documentary evidence was not provided. In absence of any evidence from the noticee, AO is to take a view based on information available.

17. As mentioned in para (i) loans provided by appellant were observed to be utilized for the pay-in obligation of Sunil Mehta and his friends, who were also clients, in scrip of ASCL during investigation period. Thus, loans provided, appellant coincided with pay-in obligation in scrip of ASCL. In fact this payment was made not once but thrice. All this loan and onward obligation settling at exchange has happened during investigation period. Given the above, it is quite unlikely for one to believe stand put forth by appellant that amounts so forwarded were not for pay-in obligations when appellant in one of its submissions itself accepted that it was indeed so and then chose to retract this statement without submitting any supporting documents. These co-incidences in this matter thus work against the favour of appellant and it is held that the submission of noticee that he had given friendly loan to Sunil Mehta and Jitendra Jain is not acceptable and appear to me as an afterthought. Noticee and Sunil Mehta was major connecting link between entities forming part of Mehta Group who were trading within themselves in manipulative manner to create artificial volume in ASCL scrip. As stated above, Triveni is observed to be major broker, having maximum concentration in gross purchase at 26.25% and traded for main clients of Mehta Group. These clients executed synchronized / structured, circular trades through above broker of which appellant was CEO. Conduct of appellant leaves no doubt that though he did not directly deal in the market, but was part of the whole game plan as he acted as link between the Mehta Group entities, and also financed their transactions to orchestrate manipulation in scrip of ASCL.

18. In consideration to the above, AO is of view that facts of present case clearly brings out ominous role played by appellant by acting as link between Mehta Group entities, financing their transactions to orchestrate

manipulation in scrip and thereby connived with Mehta Group clients in manipulating price and volume of scrip of ASCL.

19. As enumerated above acts of appellant helped in creating artificial demand and thereby leading to a false appearance of trading in scrip of ASCL and also causing fluctuations in price of scrip of the company. Any act or conduct of aiding / abetting / participating in manipulating the securities market should itself be considered as an act or conduct of manipulating securities market and therefore a person who aids / abets any wrong doing is equally responsible for such act. Hence in the light of the facts of the case and materials available on record, AO find that noticee has violated the provisions of Regulation 4(1) and 4(2)(e) of PFUTP Regulations.

ANALYSIS OF FINDINGS OF ADJUDICATING OFFICER:-

20. First of all it is seen that appellant has been linked to Mehta Group, primarily since many entities who traded in shares of ASCL, executed synchronized / structured trades with entities viz. Suresh, Jitendra, Sandeep, Pradesh, Sunil, Usha, Bharat, Arun, Narendra, Meen Been, Dilip, Bhanwar, Alpesh, Manisha, Rajnish and these entities were found to be linked with each other through appellant, Sunil Mehta, Ajay Roongta and together form a group which is referred as Mehta Group. The relationship has also been elaborated in so many words in para 10 (supra).

21. Second evidence of connection of appellant with Mehta Group is from the fact that ₹ 2.5 lakh were paid in account of Gopal Lal Mathur on October 22, 2008, father of appellant, from account of Jitendra Jain and

Sunil Mehta paid ₹ 1.6 lakh to Gopal Lal Mathur on October 23, 2008. These amounts were received by Gopal Lal Mathur within IP and Manish Mathur submitted that he operated account of Gopal Lal Mathur and got friendly loans from clients of Triveni viz. Sunil Mehta and Jitendra Jain.

22. Third and the last evidence to prove connection of Manish Mathur with Mehta Group is amount of ₹ 3 lakh transferred from appellant's wife's account (Seema Mathur's account) to account of Sunil Mehta on three different occasions for meeting pay-in obligation of Sunil Mehta during personal hearing, which was later denied by Manish Mathur on February 28, 2011.

23. Regarding the first evidence of linking Manish Mathur to Mehta Group, it is stated that entities who executed synchronized / structured trades in ASCL scrip during IP are linked to each other through appellant, Sunil Mehta and Ajay Roongta. In the paras 10(c)(i) to 10(c)(xxiv) and other narrations of linkages and trades it is seen that Manish Mathur, Seema Mathur and Gopal Lal Mathur are known to Sunil Mehta, since they are friends for long and had received and given money (flow of friends) to each other in some instances; and that Manish Mathur knew Ajay Roongta, since appellant introduced Ajay Roongta and Sunil Mehta. Appellant also knew Jitendra Jain, since appellant's father received money from Jitendra Jain.

24. Other entities of Mehta Group, namely, Bharat, Meen Been, Dilip, Bhanwarlal knew appellant, since appellant was CEO of Triveni and these entities executed trade in scrip of ASCL through Triveni during IP, which were in nature of synchronized / structured, circular trades. This is direct, and indisputable proof of connection of appellant with these entities, since being appellant was CEO of Triveni, and named entities, named above in

this para, entered into synchronized / structured, circular trades in scrip of ASCL during IP through Triveni. Apart from this appellant is and had known Sunil Mehta for long and had also known Jitendra Jain and Ajay Roongta and who had given money to Sunil Mehta through his wife and that father of appellant had received money from Jitendra Jain and Sunil Mehta; which links appellant to other members of Mehta Group, apart from Sunil Mehta, Ajay Roongta and Jitendra Jain.

25. Next, we deal with amounts transferred by Sunil Mehta and Jitendra Jain to account of Gopal Lal Mehta, father of appellant. From details of such transfer in impugned order, it is seen that ₹ 2.5 lakh were received by Gopal Lal Mathur from Jitendra Jain on January 22, 2008 and ₹ 1.15 lakh, ₹ 1.60 and ₹ 2.25 lakh (total ₹ 5.00 lakh) were received by Gopal Lal Mathur from Sunil Mehta, on October 23, 2008.

26. It may be noted that ₹ 5 lakh were received by Gopal Lal Mathur from Sunil Mehta within IP, while ₹ 2.5 lakh were received from Jitendra Jain after IP. Jitendra Jain's amount was repaid by Gopal Lal Mathur from December 2009 to December 2010, from his own account. Regarding amount due of ₹ 5 lakh to Sunil Mehta, the same was re-paid from Axis Bank and HDFC Bank account and from some adjustment from appellant's wife's viz. Seema Mathur account. HDFC account held by Gopal Lal Mathur, while Axis Bank account is in name of Seema Mathur which shows that appellant lives with his father or vice versa and joint family's accounts were utilized in making repayments to amounts to Sunil Mehta. It may be noted that purpose of receiving amount of ₹ 5 lakh by Gopal Lal Mathur was to purchase a car on occasion of his 50th marriage anniversary and in fact a car was purchased by some Mathur on October 23, 2008 (full name of

purchaser is not clear but billing was in name of Mr. Mathur) at cost of ₹ 8.76 lakh. It may also be mentioned that repayment to Sunil Mehta is after receipt of SCN by appellant. Hence, it is a fact that father of appellant, received money from Sunil Mehta and Jitendra Jain, to the extent of ₹ 7.5 lakh, for whatever purpose; but this clearly shows appellant or his relatives were receiving money from entities of Mehta Group, receipt / purpose of which was not documented and which was returned only when SCN had been issued to appellant.

27. Amount of ₹ 3 lakh was transferred to account of Sunil Mehta from account of Seema Mathur (wife of appellant), but date of this transfer is not readily available on three different days as per AO, appellant had stated that this amount was given to Sunil Mehta for making his pay-in obligation during his personal hearing, but same was denied by appellant in his reply on February 28, 2011. It is further stated by AO that no documentary evidence has been provided by appellant, establishing that this ₹ 3 lakh given to Sunil Mehta by Seema Mathur, was a loan. In reality, it is a fact that Seema Mathur has provided ₹ 3 lakh to Sunil Mehta, but whether it is finance or loan accommodation, is not clear. This accommodation of ₹ 3 lakh to Sunil Mehta by Seema Mathur, may be at instance of appellant. Therefore, in the absence of any direct evidence to wholly implicate appellant in the larger conspiracy, we are inclined to give the appellant benefit of doubt as far as the quantum of penalty is concerned. Next, the complete factual backdrop of the matter points out that the appellant had acted at the behest of his employer i.e. the company.

28. Therefore, taking into the totality of facts and circumstances of the matter, we reduce the penalty of ₹ 10 lakh on the appellant to a nominal amount of ₹ 1 lakh for his limited involvement in the matter.

29. With the above said modification of penalty, the appeal is partly allowed. No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

31.10.2013
Prepared and compared by:-
msb