BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 23.10.2013
Date of Decision : 19.11.2013

Appeal No. 44 of 2013

1. Smt. Kaushalaya Devi Jhunjhunwala
   10/4, Alipore Part Place,
   Kolkata- 700 027

2. Smt. Sangita Jhunjhunwala
   10/4, Alipore Part Place,
   Kolkata- 700 027

3. Smt. Suruchi Jhunjhunwala
   10/4, Alipore Part Place,
   Kolkata- 700 027 …Appellants

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. Ravichandra S. Hegde, Advocate with Mr. Abishek Venkatraman, Advocate for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Dr. Mrs. Poornima Advani, Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

AND

Appeal No. 77 of 2013

Harrington Commercial Pvt. Ltd.
Raksha Financiers Pvt. Ltd.
Hawks Financiers Pvt. Ltd.
Pingle Marketing Pvt. Ltd.
Hi-Fi Tradecom Pvt. Ltd.
Now known as
Octal Suppliers Private Limited
R. N. 15B, 15th Floor,
Everest House, Chowringee Road,
Kolkata, West Bengal …Appellants

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. Deepak Dhane, Advocate for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

AND

Appeal No. 78 of 2013

Sangita Securities Pvt. Ltd.
1A, Grant Lane, 2nd Floor,
P.S.- Bow Bazar, Kolkata
(West Bengal) …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. Neville Lashkari, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

AND

Appeal No. 79 of 2013

Rajkamal Marketing Private Limited
1A, Grant Lane, Room No. 118,
Kolkata 700 012 …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. R. R. Bhansal, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

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

Per : Justice J.P. Devadhar

1. By consent all these appeals are heard together and disposed of by this common judgement.

2. Appellants in all these appeals are aggrieved by common order passed by Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on December 31, 2012 wherein various penalties have been imposed upon each appellant on ground that they have violated Section 15HA/15A(a) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short).

3. Investigation carried out by SEBI in respect of alleged irregularities in the trading of shares of REI Agro Limited ("REIAL" for short) during the period from August 09, 2004 to September 16, 2005 ("investigation period") revealed wide fluctuations in price and volume of REIAL shares at Bombay Stock Exchange ("BSE" for short) and National Stock Exchange ("NSE" for short). At BSE, REIAL scrip moved from ₹100.20 on August 09, 2004 to ₹212 on September 13, 2005 and closed at ₹198.85 on September 16, 2005. At NSE, shares of REIAL when listed on October 11, 2004, opened at ₹ 98.80, moved to ₹ 211 on September 13, 2005 and then closed at ₹198.25 on September 16, 2005.

4. Investigation revealed that all three appellants in Appeal no. 44 of 2013, namely, Smt. Kaushalya Devi Jhunjhunwala, Smt. Sangita Jhunjhunwala and Smt. Suruchi Jhunjhunwala who were promoters of REIAL had traded in shares of REIAL during the investigation period with appellants in Appeal No. 77 of 2013, Appeal No. 78 of 2013 and Appeal No. 79 of 2013 along with Right Fiscal Management Private Limited as also Mr. Ramesh Mor and Smt. Sangita Mor (together referred to as "Harrington Group" for convenience). According to SEBI those trades which were substantially synchronized trades, created artificial volume and also influenced price of REIAL scrip. Apart from above, according to SEBI, Hi-Fi Tradecom Pvt. Ltd., (one of the appellant in Appeal No. 77 of 2013) had failed to comply with summons issued to it.

5. On a show cause notice issued by Adjudicating Officer appointed by SEBI on December 8, 2009, appellants showed cause and thereafter by impugned order dated December 31, 2012, the Adjudicating Officer of SEBI rejected contentions of appellants and imposed penalty upon each appellants. Challenging impugned order dated December 31, 2012 appellants have filed these appeals.

6. Counsel for appellants in Appeal No. 44 of 2013 submitted that appellant's therein had sold 80,450 shares of REIAL over a period of 10 days from February 8, 2005 to February 18, 2005 in an investigation period of 11 months. Total volumes of trading in REIAL scrip during investigation period was approximately 1.6 crore shares as against 80,450 shares traded by appellants. Thus, trades of appellants in Appeal No. 44 of

2013 were negligible and constituted 0.48% of the total volume of trading in REIAL scrip. Sale trades of appellants genuinely involved change of beneficial ownership of REIAL shares and there is no charge of price manipulation against appellants in Appeal No. 44 of 2013.

7. Counsel for appellants in Appeal No. 44 of 2013 further submitted that in the impugned order appellants are held guilty of creating artificial volume on following grounds:

a) Out of 80,450 shares sold by appellants, 80,310 shares were purchased by Harrington Group through synchronized trades.

b) Entities comprising of Harrington Group are indirectly related to appellants.

c) Fraudulent and manipulative trades of Harrington Group enabled appellants to offload shares of REIAL held by appellants.

8. Counsel for appellants further submitted that aforesaid findings of Adjudicating Officer are untenable for the following reasons:

a) Synchronized trades even among related entities are not per se illegal unless they are shown to have interfered with the price and orders matching mechanism of the stock exchanges. In support of above contention reliance is placed on decision of this Tribunal dated November 16, 2006 in Appeal No. 127 of 2004 (M.J. Patel Shares & Stock Brokers Ltd. vs. SEBI)

b) There is no evidence on record to show that sell orders of appellants created artificial volumes. Since the only charge against appellants that their trades created artificial volumes stands unsubstantiated, impugned order is liable to be set aside.

c) Mere fact that certain entities in the Harrington Group were related indirectly to the appellants, does not absolve respondents of its burden to establish that the trades of appellants in fact created artificial volumes.

9. Counsel for appellants further submitted that total volume of trades in the quarter in which appellants in Appeal No. 44 of 2013 sold shares of REIAL was far less than the total volume of trades in REIAL shares in the previous quarter. Thus, volume of trades in REIAL shares had decreased during the period when sell trades of appellants were executed and therefore, findings that appellant's trades have contributed to the creation of artificial volumes in the REIAL scrip is contrary to facts on record. On the basis of a chart showing intraday movement of price in REIAL shares, counsel for appellants submitted that appellant's trades had negligible impact on the price of REIAL scrip and that is why no charge of price manipulation has been framed against appellants. Thus, no evidence has been adduced in the impugned order to substantiate serious charge of market manipulation under provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations,

2003 ("FUTP Regulations" for short). Assuming that Harrington Group may have manipulated price of REIAL scrip, appellants cannot be penalized unless it is established by cogent evidence that appellant's trades created artificial volume in REIAL scrip. Since SEBI has failed to establish the charges levelled against appellants, the impugned order is liable to be quashed and set aside. Without prejudice to above contentions, it is submitted by counsel for appellants in Appeal No. 44 of 2013 that monetary penalty imposed upon appellants is grossly disproportionate to the alleged violations especially keeping in mind the miniscule quantities traded by appellants which admittedly had no impact on the price or volume of trading.

10. Counsel for appellants in Appeal No. 77 of 2013, 78 of 2013 and 79 of 2013 while adopting arguments advanced by counsel for appellants in Appeal No. 44 of 2013 submitted that appellants therein were traders and short term investors who sought to make profits from the price movement in REIAL scrip and such trades were not prohibited in law. Therefore, appellants could not be held guilty of violating provisions of FUTP Regulations. In any event, it is contended that in case of Sangita Securities Pvt. Ltd. (Appeal No. 78 of 2013) there is no synchronized trade involved and hence imposition of penalty of Sangita Securities Pvt. Ltd., is unjustified. Lastly it is contended that since Right Fiscal Management Pvt. Ltd. which according to SEBI was part of Harrington Group has been let off with penalty of ₹ 2 lac, appellants being part of alleged Harrington Group, heavy penalty ought not to have been imposed upon appellants.

11. We find it difficult to accept aforesaid arguments advanced on behalf of appellants.

12. As rightly contended by counsel for respondent, REIAL is a company promoted interalia by Smt. Kaushalaya Devi Jhunjhunwala, Smt. Sangita Jhunjhunwala and Smt. Suruchi Jhunjhunwala (appellants in Appeal No. 44 of 2013) in which two sons of Smt. Kaushalaya Devi Jhunjhunwala namely, Shri Sanjay Jhunjhunwala is the Chairman and Shri Sandip Jhunjhunwala is the Managing Director of REIAL. These two sons of Smt. Kaushalaya Devi Jhunjhunwala were also directors Hi-Fi Tradecom Pvt. Ltd. (appellant in Appeal No. 77 of 2013) alongwith Mr. Krishna Kumar Jujodia ("Jujodia" for short). Jujodia was also a director of Rajkamal Marketing Pvt. Ltd. (appellant in Appeal No. 79 of 2013), Raksha Financiers Pvt. Ltd. and Hawks Financiers Pvt. Ltd. (appellants in Appeal No. 77 of 2013). Similarly, Smt. Sangita Jhunjhunwala and Smt. Suruchi Jhunjhunwala (appellants in Appeal No. 44 of 2013) were directors of Sangita Securities Pvt. Ltd. (appellant in Appeal No. 78 of 2013) & Pingle Marketing Pvt. Ltd. (appellant in Appeal No. 77 of 2013). Thus connection between appellants in all these appeals are clearly established in the adjudication order. Apart from above, it is on record that almost all appellants have common address which clearly shows that appellants in all these appeals are closely connected.

13. Argument of appellants that synchronized trades are not per se illegal and that there is no material to suggest that the alleged

synchronized trades did not create artificial volumes is unsustainable in view of following finding of facts recorded in impugned order:

> **"20.** I find from the records that the Harrington group entities have traded significantly in the scrip of REIAL during the investigation period. They traded through multiple brokers and altogether bought 36,24,155 shares (17,50,560 shares at NSE and 18,73,595 shares at BSE) and sold 80,77,145 shares (38,12,872 shares at NSE and 42,64,273 at BSE) which accounted for 13.99% and 31.17% of total volume recorded at both the exchanges viz. 2,59,09,165. A summary of their trading volume as available in records is as follows:

Client Name	**NSE**				**BSE**			
	Buy Qty	**(%)**	**Sell Qty**	**(%)**	**Buy Qty**	**(%)**	**Sell Qty**	**(%)**
Harrington	544275	3.48	742446	4.75	645811	6.29	710886	6.92
Hawk	146526	0.94	130214	0.83	128714	1.25	366599	3.57
Hi-Fi	451693	2.89	978689	6.26	443361	4.32	1136691	11.07
Raksha	108359	0.69	110209	0.70	306653	2.99	316287	3.08
Pingle	118194	0.76	814933	5.21	47188	0.46	629815	6.13
Sangita Sec.	0	0.00	532185	3.40	0	0.00	605000	5.89
Right Fiscal	64500	0.41	64500	0.41	40705	0.40	40705	0.40
Rajkamal	50986	0.00	187500	1.20	0	0.00	173500	1.69
Sangita Mor	65054	0.42	0	0.00	88430	0.86	92075	0.90
Ramesh Mor	201027	1.29	252196	1.61	172733	1.68	192715	1.88
Total	**1750560**	**10.87**	**3812872**	**24.38**	**1873595**	**18.25**	**4264273**	**41.53**

> **21.** I find from Annexure 5 & 6 of the SCN and the table below that the Harrington Group entities had traded for a large volume among themselves. At BSE, the Harrington Group entities traded 14,08,753 shares among themselves which accounted for 13.72% of the total volume recorded at BSE in which 4,64,481shares were traded through synchronized orders which accounted to 32.92% of their trading amongst themselves and 4.52% of the total volume recorded at BSE. At NSE, they traded 12,11,220 shares amongst themselves which accounted for 7.74% of total market volume at NSE in which 8,44,664 shares were traded through synchronized orders which accounted for 69.73% of their trading amongst themselves and 5.40% of the market volume on NSE. The records reveal that there were many instances where the Noticees buy order had matched with their own sell orders i.e. they bought from and sold to themselves. An extract of trades of the Harrington Group entities within

themselves at NSE, as provided in the records, is given below:

Buy Client Name	**Sell Client Name**	**NSE**					
		No. of Buy Order	**No. of Sell Order**	**No. of Trade**	**Traded Qty**	**Synchronized Qty**	**%**
Harrington	Harrington	11	12	12	12329	11548	93.67
	Hawk	28	42	42	27413	11800	43.05
	Hi-Fi	91	132	132	177127	150788	85.13
	Pingle	15	15	15	29122	19030	65.35
	Rajkamal	3	9	9	66357	0	0
	Raksha	9	9	9	29361	29351	99.97
	Ramesh Mor	73	70	82	39824	29093	73.05
	Right	7	6	7	20000	15000	75
Total		**237**	**295**	**308**	**401533**	**266610**	**66.4**
Hawk	Harrington	7	5	7	10490	10310	98.28
	Hawk	1	2	2	500	500	100
	Hi-Fi	7	7	7	24600	24600	100
	Pingle	2	1	2	8000	8000	100
	Rajkamal	2	2	2	10000	10000	100
	Raksha	3	3	3	7499	7499	100
	Ramesh Mor	10	10	12	13659	6159	45.09
	Right	1	1	1	4500	4500	100
Total		**33**	**31**	**36**	**79248**	**71568**	**90.31**
Hi-Fi	Harrington	122	181	200	195299	136960	70.13
	Hawk	22	26	28	24756	13322	53.81
	Hi-Fi	2	3	3	7000	6500	92.86
	Pingle	4	5	5	2671	2671	100
	Rajkamal	1	1	1	5000	5000	100
	Raksha	9	10	10	20960	12060	57.54
	Ramesh Mor	41	50	59	24629	20302	82.43
	Right	9	8	9	23600	15200	64.41
	Sangita Securities	1	1	1	15000	0	0
Total		**211**	**285**	**316**	**318915**	**212015**	**66.48**
Pingle	Harrington	60	42	65	31388	28565	91.01
	Hawk	3	3	3	20000	20000	100
	Hi-Fi	8	7	9	8264	8163	98.78
	Pingle	1	1	1	10	10	100
	Ramesh Mor	73	61	100	19247	15317	79.58
Total		**145**	**114**	**178**	**78909**	**72055**	**91.31**
Rajkamal	Harrington	24	42	59	20617	9	0.04
	Hawk	3	4	4	5154	3700	71.79
	Hi-Fi	2	2	2	10000	10000	100
	Raksha	14	8	15	7308	3744	51.23
	Right	8	4	8	5600	0	0
Total		**51**	**60**	**88**	**48679**	**17453**	**35.85**
Raksha	Harrington	18	17	19	39987	34437	86.12
	Hawk	6	6	6	12430	7930	63.8
	Hi-Fi	14	8	14	15956	13526	84.77
	Raksha	3	3	3	10000	10000	100
	Ramesh Mor	6	6	6	1411	1303	92.35
	Sangita Securities	1	1	1	1415	0	0
Total		**48**	**41**	**49**	**81199**	**67196**	**82.75**
Ramesh Mor	Harrington	57	50	177	31240	20036	64.14
	Hawk	7	6	24	2661	125	4.7
	Hi-Fi	63	54	139	32611	21485	65.88
	Pingle	35	32	101	11044	9798	88.72
	Raksha	4	4	4	6850	4290	62.63
	Ramesh Mor	18	16	32	2250	1101	48.93
	Sangita Securities	1	1	1	290	0	0
Total		**185**	**163**	**478**	**86946**	**56835**	**65.37**

Right	Harrington	10	30	30	27500	20050	72.91
	Hawk	3	9	18	10000	101	1.01
	Hi-Fi	5	20	20	20000	12000	60
	Pingle	1	1	1	4500	4500	100
	Raksha	1	1	1	2500	0	0
Total		**20**	**61**	**70**	**64500**	**36651**	**56.82**
Sangita Mor	Harrington	14	17	24	31348	26712	85.21
	Hawk	9	13	13	6210	6150	99.03
	Hi-Fi	7	7	7	12054	9990	82.88
	Raksha	4	4	13	1239	1239	100
	Ramesh Mor	2	2	2	440	440	100
Total		**36**	**43**	**59**	**51291**	**44531**	**86.82**
Grand Total		**966**	**1093**	**1582**	**1211220**	**844914**	**69.76**

> **22.** I further find that for a large number of trades executed within the Harrington Group, which are mentioned in Annexure 5 & 6, the difference in the buy and sell order time was only a few seconds to few minutes. Thus, it is clear that the Noticees had synchronized their orders to execute trades within the group. The same created false and misleading appearance of trading in the scrip and generated artificial volume. Further, I find from details of the trades of the Harrington Group entities at NSE and BSE provided in Annexure 7 & 8 of the SCN that they had executed trades at incremental prices. The difference between the buy quote and the previous traded price ranged between Re. 1 to ₹ 8.90. 332 such incremental trades were executed by the Noticees at NSE, out of which 132 trades were executed within the group. Similarly, 371 incremental trades were executed by the Noticees. Therefore, I find that such trades definitely increased the price of the scrip in an artificial manner."

14. Aforesaid facts recorded in the impugned order clearly demonstrate that various entities of the Harrington Group have traded in REIAL shares through different brokers on BSE as also NSE in a synchronized manner. Finding of fact recorded in para 23 of the impugned order is that almost all trades mentioned in Annexure 9 to the show cause notice had matched in price and quantity and the time difference was few seconds only. Thus, facts on record show that appellants were connected with each other and that they have traded amongst themselves in a synchronized manner, with some trades within

the group at incremental prices (difference between the buy price offered and LTP ranging between ₹1 to ₹8.90). Aforesaid facts as also self trades effected by appellants in respect of REIAL shares which was an illiquid scrip justify inference drawn by SEBI that trades in question were carried out with a view to create artificial volume in an illiquid REIAL scrip.

15. It may be noted that appellants in Appeal No.44 of 2013 who are promoters of REIAL have sold 80,450 shares of REIAL through stock exchanges during the period from February 8 to 18, 2005. It was only on account of manipulative artificial trades effected by Harrington Group, illiquid shares of REIAL could be sold by promoters of REIAL through stock exchanges. Therefore, decision of Adjudicating Officer that appellants in connivance with each other have resorted to artificial trade in illiquid REIAL scrip to facilitate promoters of REIAL to sell shares of REIAL through stock exchanges cannot be faulted. In other words, decision of SEBI in holding that appellants in all these appeals have acted in concert with common design of manipulating volume of trades in REIAL scrip with a view to facilitate offloading of REIAL shares by appellants in Appeal No. 44 of 2013 who are promoters of REIAL cannot be faulted. Consequently, penalty imposed upon appellants in all these appeals cannot be faulted.

16. Alternative argument of appellants that since penalty of ₹2 lac has been imposed upon Right Fiscal Management Pvt. Ltd., imposition of higher penalty upon appellants is unjustified is also without any

merit, because, in para 17 of the impugned order it is specifically recorded that Right Fiscal Management Pvt. Ltd. is neither related to REIAL through common Promoters nor through common Directors and hence stand on a different footing from other appellants. Since Right Fiscal Management Pvt. Ltd., cannot be compared with appellants before us, we see no reason to entertain alternative argument advanced on behalf of appellants.

17. Additional penalty of ₹ 3 lac has been imposed upon Hi-Fi Tradecom Pvt. Ltd. (appellant in Appeal No. 77 of 2013) for failure to comply with summons issued by the investigating authority. Finding of fact recorded at para 29 of the impugned order is that authorized representative of Hi-Fi Tradecom Pvt. Ltd. had undertaken to submit annual reports for AY 2004-05 and 2005-06, but the same were not furnished and no explanation was given in that behalf. Argument that on account of merger, appellant could not furnish annual reports cannot be accepted, because, having undertaken to furnish annual reports it was obligatory on appellant therein to furnish annual reports for the years in question. Assuming that there was any difficulty in furnishing annual reports, failure to furnish explanation in that behalf to the Adjudicating Officer clearly amounts to not complying with the requirements of the summons. In these circumstances we see no reason to interfere with the additional penalty imposed upon Hi-Fi Tradecom Pvt. Ltd.

18. Reliance was placed by counsel for appellants on a decision of this Tribunal in case of Rakhi Trading Pvt. Ltd. (supra). That decision is

distinguishable on facts, as in that case there was no evidence of market manipulation, whereas, in the present case, evidence on record clearly establish that appellants in Appeal No. 44 of 2013 were connected with Harrington Group and the trades in REIAL Scrip by Harrington Group were intended to create artificial volume so as to facilitate offloading of REIAL shares by appellants in Appeal No. 44 of 2013 who were promoters of REIAL. For the same reason, decision of this Tribunal in Appeal No. 127 of 2004 (M.J. Patel Share & Stock Brokers Ltd. vs. SEBI) decided on 16.11.2006 and decision of this Tribunal in Appeal No. 30 of 2013 (Ramswarup Sarda vs. SEBI) decided on 23.07.2013 are also distinguishable on facts.

19. For aforesaid reasons we see no merit in all these appeals and accordingly all these appeals are dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

19.11.2013
Prepared & Compared By: Pk