BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 17.12.2013
Date of Decision : 15.01.2014

Appeal No.45 of 2013

M/s. Octant Industries Ltd.
D. No.A-5, 1st Floor,
Indian Airlines Housing Colony,
Opp. Police Line, Secunderabad – 500003. …… 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. Keyoor Bakshi, Practising Company Secretary for the Appellant.

Mr. Shyam Mehta, Senior Advocate with Mr. Mihir Mody and Mr. Pratham V. Masurekar, Advocate for the Respondent.

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

Per : Jog Singh

1. Challenge in this appeal is to the order dated September 28, 2012 passed by the Adjudicating Officer imposing a monetary penalty of Rs.40,00,000/- (Rupees Forty Lakhs Only) on M/s. Octant Industries Ltd (referred to hereinafter as the Appellant). Pursuant to the amalgamation scheme of M/s. Kushal Software Ltd. presently known as Octant Industries Ltd. with M/s. Axon Infotech Limited (Axon), Bombay Stock Exchange (BSE) suo moto conducted an investigation in the scrip of Axon during the period 17th March,

2006 to 19th September, 2006 for the alleged violation of Regulations 4(1) and 4(2)(e) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations, 2003 for short). Investigation revealed that the Appellant which was proposing to get amalgamated with Axon, along with its various connected entities had dealt in the scrip of Axon and had contributed to the price fall of the scrip of Axon during the period 22nd February, 2006 to 3rd July, 2006 and to the price rise during the period 19th July, 2006 to 12th September, 2006.

2. Based on the observations made by BSE, the Securities and Exchange Board of India (referred to hereinafter as the Board) also conducted an investigation for suspected violation of price manipulation, insider trading, takeover code and technical violations for the period from February 22, 2006 to September 19, 2006. It was alleged that the Appellant had manipulated the price of Axon which distorted market equilibrium of the scrip and thereby violated Regulation 4(1) and 4(2)(e) of PFUTP Regulations, 2003.

3. A show cause notice dated February 5, 2010 under Rule 4 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to the Appellant to show cause as to why an enquiry should not be held against it and why penalty, as prescribed, should not be imposed under section 15HA of the Securities and Exchange Board of India Act, 1992. An opportunity of personal hearing was granted to the Appellant on March 18, 2010 but the Appellant failed to attend the same. Vide letter dated March 23, 2010, another opportunity of hearing on March 29, 2010 was afforded to the Appellant and it was also informed that this is the final opportunity given to it and if the Appellant failed to attend the hearing, the matter shall be proceeded ex-parte

on the basis of the material available on record. By reply dated July 6, 2010 the Appellant denied all the allegations levelled against it. After affording an opportunity of inspection of documents, personal hearing and taking into consideration the material available on record the learned Adjudicating Officer came to the conclusion that the Appellant had violated Regulations 4(1) and 4(2)(e) of PFUTP Regulations and thereby imposed a penalty of Rs.40,00,000 on the Appellant. It is against this order that the present appeal has been filed.

4. We have heard Shri Keyur Bakshi, learned authorized representative for the Appellant and Shri Shyam Mehta, learned senior counsel with Mr. Mihir Mody and Mr. Pratham V. Masurekar, learned counsel for the Respondent. The only ground taken by the Appellant in the Appeal as well as during the oral hearing is that its management has changed through a Scheme of Arrangement as approved by the Hon'ble High Courts of Mumbai and Andhra Pradesh on 26th November, 2010 and 6th October, 2010 respectively. Appellant has annexed a copy of the said Scheme of Arrangement as annexure B in the memorandum of appeal.

5. The said scheme facilitated the amalgamation of three companies namely M/s. Swarnajyothi Agro and Exports Limited, M/s. Vanishekar Green Energy Private Limited and M/s. Indrabathi Energies Limited apart from the demerger of the Appellant. The said Scheme of Arrangement, as approved by the Hon'ble High Courts, also provided for the demerger of the finance business of the Appellant company and vesting the same on Five X Finance and Investment Limited. In the premises, the Appellant contends that the alleged violations proved in the impugned order dated February 4, 2013 were not committed by the present promoters or directors of the Appellant company and therefore prays to set aside the impugned order and to direct SEBI to take

appropriate action against Five X Finance and Investments Limited or the erstwhile promoters of the Appellant company.

6. An analysis of the trade and order logs as reflected in the impugned order and the pleadings clearly shows that:

a) Firstly; during the period under investigation, the buy order quantity exceeded the sell order quantity. Although the price of the scrip decreased during the period February 22, 2006 to July 12, 2006, buy orders for 6,94,712 shares were placed exceeding the sell orders for 5,28,770 shares. For the period from July 13, 2006 to September 19, 2006, when the price increased, the buy order for 3,87,966 shares far exceeded the sell orders for 1,20,847 shares, thereby creating a considerable buying pressure.

b) Secondly; concentration of the members - Pilot Credit Capital Ltd., Anagram Stock Broking Ltd., Anugrah Stock & Broking, Advani Share Broker P. Ltd. (Now Centrum Broking Ltd), Systematix Shares and Stocks (India) Ltd. was observed in placing buy orders. Similarly, concentration of the members - M/s. Anand Rathi Securities P. Ltd. Pilot Credit Capital Ltd., Anagram Stock Broking Ltd, Advani Share Broker P. Ltd. (Now Centrum Broking Ltd), was observed in placing sell orders.

c) Thirdly; Trades were executed for 5,79,082 shares during the entire period of investigation, of which 3,43,010 shares were traded during March 17, 2006 to July 12, 2006 and 1,19,697 shares were traded during July 13, 2006 to September 19, 2006. It is pertinent to note that the scrip was moved to the trade segment w.e.f. July 28, 2006.

d) Fourthly, for the period March 17, 2006 to July 12, 2006, top 5 brokers accounted for 58.89% on gross purchase basis, 65.25% on net purchase basis, 58.81% on gross sale basis and 64.86% on net sale basis. For the period July 13, 2006 to September 19, 2006, top 5 brokers accounted for 75.44% on gross purchase basis, 84.04% on net purchase basis, 79.94% on gross sale basis and 79.37% on net sale basis. Also, for the period from March 17, 2006 to July 12, 2006 buy orders for 5,62,754 shares exceeded the actual number of 3,43,010 shares bought. Similarly, for the period from July 13, 2006 to September 19, 2006 buy orders for 3,87,966 shares far exceeded the actual number of 1,19,697 shares bought.

Thus, it can be seen that during the period July13, 2006 to September 19, 2006, the said group of entities had altogether placed buy orders for 70,207 shares and sell orders for 79,585 shares. During the said period, they bought 32,220 shares and sold 79,535 shares.

e) Fifthly; However, a significant amount of sale took place during July 13, 2006 to July 28, 2006, when they sold 79,310 shares, the price range being Rs.54.00 to Rs.63.70. No buy transaction by the group entities took place during the said period, although valid buy orders for 16,250 shares were placed. Subsequently, during the period from July 29, 2009 to September 19, 2006, the group had placed buy orders for 56,957 shares (Bought 32,220 shares) and sell orders for 225 shares (Sold 225 shares), the total market volume being 38,585 shares. During this period, the share price increased from Rs.66.75 to Rs.149. There were singular trades on 17 days during the said period and the group entities appeared on 7 instances on buy side and on 8 instances on sell

side. There were 61 trades executed in total during the said period and on 32 instances the group entities appeared on buy side and on 14 instances on sell side. Thus, it was observed that the said group of entities had created a buying pressure in the scrip during this period which had contributed to the price rise.

f) Sixthly; the impact of the first trades and the price difference with respect to the last traded price (LTP) can be noted from the following table:

Member Code	Client Code	Client Name	Net Price fall contribution in the period from February 22, 2006 to July 12, 2006	Net Price fall contribution by being on sell side in the period from February 22, 2006 to July 12, 2006	Net Price rise contribution in the period from July 13, 2006 to September 19, 2006	Net Price rise contribution by being on buy side in the period from July 13, 2006 to September 19, 2006
909	8224	Kushal Software Ltd.	-7.35	0	0	0
27	13803001	Kushal Software Ltd.	-10.45	-8.10	62.90	18.50
30	GMDK073	Kushal Software Ltd.	-9.05	-9.05	0	0
		SUB TOTAL	-26.85	-17.05	62.90	18.50
909	8225	Kushagra Software Ltd	-25.85	-3.85	0.35	0.35
30	GMDK069	Kushagra Software Ltd.	-4.75	-7.25	0	0
		SUB TOTAL	-30.60	-11.10	0.35	0.35
909	7242	Handful Investrade P. Ltd	0	0	-1.50	-1.50
27	13803006	Handful Investrade P. Ltd	1.50	1.50	4.90	0
		SUB TOTAL	1.50	1.50	3.40	-1.50
909	6905	Giriraj Agarwal	-7.75	-4.45	0	0
909	6903	Giriraj Agarwal HUF	-39.5	-36.00	0	0
909	11106	Shreeji Herbal	-1.85	-1.85	0	0
446	AGR067	Sheetal Kadam	-2.25	1.25	-6.1	-1.6
328	MMV023	VRP Financial Services P. Ltd.	0	0	-6.6	0

This is how the above entities, who were all related, contributed to a price fall of Rs.107.30 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and a price rise of Rs.53.95 (cumulative price rise with respect to the previous traded price) for the period from July 13, 2006 to September 19, 2006 by being on either sell side or buy side of the

transactions that resulted in the new prices. It may be observed that by creating selling pressure the group could lower the price of the scrip by Rs.67.70 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and contributed to a price rise of Rs.15.75 (cumulative price rise with respect to the previous traded price) by creating buying pressure.

In effect, the group by trading amongst themselves contributed to a price fall of Rs.22.55 (cumulative price fall with respect to the previous traded price) during the period from February 22, 2006 to July 12, 2006 and a price rise of Rs.13.00 (cumulative price rise with respect to the previous traded price) for the period from July 13, 2006 to September 19, 2006.

Next, for the period July 13, 2006 to September 19, 2006 Appellant and related entities entered into first trades on 25 days out of 33 trading days. On 13 instances the group entities appeared on buy side, on 15 instances on sell side and out of the same on 3 instances on both buy and sell sides. Overall, during the said period the group entities traded on 27 days out of 33 trading days. On the 3 instances mentioned, Ms. Sheetal Kadam acted as counter party to the Appellant and this is evident from the following chart which gives trade details:

Trade Date	**Trade Time**	**Buy Member Code**	**Buy Client**	**Sell Member Code**	**Sell Client**	**Quantity**	**Price**
22-Aug-06	10:41:43	27	Kushal Software Ltd	767	01R008	50	96
25-Aug-06	14:30:01	446	Sheetal Kadam	27	Kushal Software Ltd	50	100.05
29-Aug-06	14:12:44	27	Kushal	446	Sheetal	50	105

			Software Ltd		Kadam		
30-Aug-06	13:54:50	27	Kushal Software Ltd	446	Sheetal Kadam	25	109

Moreover, from July 31, 2006 to September 19, 2006, out of 27 trading days on 18 days there were singular trades.

7. The above factual matrix makes it abundantly clear that the scrip was very illiquid with little demand in market. However, the Appellant placed buy orders for 25,797 shares with the buy order price varying from Rs.73.55 to Rs.135. Also, sell orders were placed by Appellant for a mere 200 shares in total with sell order price ranging from Rs.70.2 to Rs.149. The average volume was 12 shares per sell order. Also, on many instances first trades happened in the latter half of the day due to lack of buy as well as sell orders indicating dearth of sellers and buyers. From the shareholding pattern it could be observed that as on June 30, 2006, the total number of shareholders was 111 and it increased to 137 as on September 30, 2006, indicating that it was a closely held scrip and lacked depth. Undoubtedly, the motive of the group was to establish a new higher price even though there was very little demand otherwise. The said group of entities created a buying pressure in the scrip during the period of price rise and also orders placed, trades executed by them influenced the price of the scrip significantly. Moreover, Mr. Dhiren Shukla provided shares to the said group entities through off market transactions/transfers at a very low rate (as submitted by him) enabling them to manipulate in the scrip. The only reason for such manipulation of price of the scrip of AXON was to have a better valuation for the shareholders of erstwhile KUSHAL. It is a different thing that the proposal for amalgamation was rejected by the Internal Committee of BSE.

8. This Tribunal has consistently taken the view that a synchronized transaction is illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Thus, any transaction executed with the intention to defeat the market mechanism, whether negotiated or not, would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be always available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. Further, in the case in hand such a large number of reverse trades could not have taken place through the mechanism of the system. These have obviously been manipulated. Reverse trades are fictitious in nature and are only meant to increase volumes on the screen of the trading system as there is hardly any change of beneficial ownership in the traded shares.

9. In view of the above discussion of law and fact, it is evident that erstwhile Kushal Software Ltd. violated the provisions of Regulation 4(1) and 4(2)(e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and hence penalty has been rightly imposed by the learned Adjudicating Officer.

10. Lastly, we may note that in Appeal no. 90 of 2013, the Scheme of Arrangement as approved by the Hon'ble two High Courts clearly provides that from the appointed date all debts, liabilities, duties, obligations of every kind, nature and description of the transferor companies shall also be deemed to be transferred to the transferee companies. In the presence of such clear directions, the appellants are bound to comply with the same. In fact, sections 391 to 394 of the Companies Act point to one conclusion alone, viz., restructuring of a company or companies can take many forms without being restricted to any one particular point, and the Hon'ble High Courts can interpret the term restructuring within a wide compass. Therefore, we hold that a mere change of name of a company does not wash away the liabilities despite the change of name or that of its promoters or directors. The Appellant, Octant Industries Ltd., is therefore required to discharge its liabilities either by itself or through any other entity, including Five X Finance and Investment Ltd. It is nobody's case that the Respondent did not give an opportunity to Kushal Software Ltd. now known as Octant Industries Limited. It is also noted from the impugned order that it has been passed in respect of eight entities/persons fastening them with equal liability of Rs.12,57,500/- of which, four seem to have complied with it and the other three, namely, Giriraj Kishore Agarwal, M/s. Golden Steel Industries Pvt. Ltd. (formerly known as M/s. Shreeji Herbal Ltd. and M/s. Handful Investrade Pvt. Ltd. (HIPL) have challenged the same before this Tribunal and the same has since been dismissed by this Tribunal.

11. Taking into consideration the totality of the facts and circumstances of the case, and the submissions made by the parties before us, we find that the present appeal is liable to be dismissed and we do hereby order accordingly. The Appellant is granted two months' time to deposit the amount in question

with the respondents in terms of the impugned order dated September 28, 2012 failing which the Respondent would be at liberty to recover the same with interest by taking appropriate steps as per law.

No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

15.01.2014
Prepared and compared by
RHN