BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 24.01.2014
Date of Decision: 31.01.2014

Misc. Application No. 123 of 2013
And
Appeal No. 189 of 2013

Scope Vyapar Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Misc. Application No. 124 of 2013
And
Appeal No. 190 of 2013

Sankalp Vincom Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Misc. Application No. 125 of 2013
And
Appeal No. 191 of 2013

Anushree Trade Link Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Misc. Application No. 126 of 2013
And
Appeal No. 192 of 2013

Signet Vinimay Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Misc. Application No. 127 of 2013
And
Appeal No. 193 of 2013

Swarn Ganga Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Misc. Application No. 128 of 2013
And
Appeal No. 194 of 2013

Runicha Merchant Pvt. Ltd.
23/1, Principal Khudiram Bose Road,
Kolkata – 700 006. ……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

Appeal No. 94 of 2013

D. M. Trading Pvt. Ltd.
5, Old Court House Street, 2nd Floor,
Kolkata – 700 001. ……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

Appeal No. 107 of 2013

M/s. J V Stock Broking Pvt. Ltd.
is a company incorporated under the
Companies Act, 1956 having registered
office 121, Padam Tower II, 14/113, Civil
Lines, Kanpur – 208 001. ……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

Appeal No. 108 of 2013

M/s. BNK Investment Services Pvt. Ltd.
is a company incorporated under the
Companies Act, 1956 having registered
office 43-A, Cantonment Road, Hussainganj,
Lucknow – 226 001. ……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. Joby Mathew, Advocate for the Appellants in Appeal nos. 189 to 194 of 2013.

Mr. S. K. Jain, Advocate for the Appellant in Appeal no. 94 of 2013.
Mr. Ankur Kumar, Advocate for the Appellants in Appeal nos. 107 and 108 of 2013.
Mr. Kumar Desai, Advocate with 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

In this bunch of nine appeals, the appellants have challenged same impugned order dated March 6, 2013 by which the respondent has imposed a penalty of ₹ 25 lac on the appellant in appeal no. 189 of 2013 namely, Scope Vyapar Pvt. Ltd. and penalty of ₹ 3 lac on each of the remaining appellants for violation of various provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereinafter referred to as FUTP Regulations, read with the relevant provisions of SEBI Act, 1992.

2. Appeal Nos. 189, 190, 191, 192, 193 and 194 of 2013 have been filed on October 28, 2013 i.e. after expiry of the statutory period of 45 days. Accordingly, six miscellaneous applications no. 123, 124, 125, 126, 127 and 128 of 2013 have been moved by these six appellants for condonation of the delay in approaching this Tribunal. We have heard the learned counsel for the parties on the question of delay and gone through the grounds taken by the appellants in each miscellaneous application for condonation of delay. We are inclined to allow the miscellaneous applications and we order accordingly.

3. Briefly stated the facts of the case are that SEBI conducted an investigation into certain irregularities in the trading in the shares of Rich Universe Networking Ltd. ("RUNL") for possible violations of the provisions of SEBI Act, 1992 and FUTP Regulations, 2003 for the period from February 1, 2010 to September 24, 2010. It was noticed that during the investigation period the price of the scrip rose from ₹ 56.75 to ₹ 119.90 with high fluctuations in the volume. A group of 21 entities was found to be connected with each other and these entities entered into off-market transactions of the scrip of RUNL in large quantities on one hand and executed reversal/circular/synchronized trades among themselves in the market. This led to creation of artificial volume and misleading appearance of trading in the said scrip. They were found to have executed synchronized trades at incrementally higher prices to create higher price rise in the shares of RUNL. These 21 entities are as under :-

1. Scope Vyapar Pvt. Ltd.
2. Signet Vinimay Pvt. Ltd.
3. Sankalp Vicom Pvt. Ltd.
4. Runicha Mercahnts Pvt. Ltd.
5. Anushree Trade Link Pvt. Ltd.
6. Swaranganga Trading Pvt. Ltd.
7. Shurbhi
8. Anushikha Investments Pvt. Ltd.
9. Vibgyor Financial Services Pvt. Ltd.
10. Amrits Sales Promotion Pvt. Ltd.
11. Sakhi Barter Pvt. Ltd.
12. Vinod Agarwal
13. Vikash Viniyog Pvt. Ltd.
14. Pawan Bhimsaria
15. BNK Investment Services Pvt. Ltd.
16. D M Trading Pvt. Ltd.
17. Norflox Vincom Pvt. Ltd.
18. Swagatam Marketing Pvt. Ltd.
19. J. V. Stock Broking Pvt. Ltd.
20. Rohini Mercantiles Pvt. Ltd.
21. Mangalchand Property & Investment Pvt. Ltd.

4. From records, it is noted that Noticees no. 1 to 6; 15, 16 and 19 have approached this Tribunal (i.e. 9 Noticees in all in the present 9 appeals). Noticee nos. 7, 9, 10, 11, 12, 14, 18 and 21 (i.e. 8 Noticees in all) have already paid the penalty of ₹ 3 lac each imposed on them by the same impugned order dated March 6, 2013. Noticees no. 8, 13 and 17 have neither approached this Tribunal in appeal, nor have they paid the penalty imposed on them by the said impugned order. Law will, therefore, take its own course in respect of these three Noticees.

5. On the basis of investigation, a prima-facie case of violation of FUTP Regulations, 2003 and provisions of SEBI Act, 1992 was found by the respondent and as such a common show cause notice dated June 19, 2012 (SCN) was issued to the twenty one Noticees under Rule 4(1) of the SEBI (Procedure for Holding Enquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (for short Adjudication Rules, 1995) for alleged violation of provisions of Regulations 3(a) to (d), 4(1) and 4(2)(a) and (g) of the FUTP Regulations, 2003. The learned Adjudicating Officer (AO) sought reply from each of the appellants and also granted an opportunity of personal hearing to them during the enquiry. Majority of the Noticees filed written reply before the learned AO and some of them also availed of the opportunity of personal hearing granted to them. On the basis of material brought on record during the enquiry by the parties and after analyzing the replies submitted by the Noticees, except noticee nos. 8 and 20, the learned AO came to the conclusion that the charges against the Noticees stood proved and imposed a monetary penalty of ₹ 25 lac on Noticee no. 1 because of its lead role in the entire scheme of manipulation and a penalty of ₹ 3 lac on each of the remaining 20 entities i.e. Noticees

no. 2 to 21 for their supportive role under Sections 15-I and 15-HA read with Rule 5 of the Adjudication Rules, 1995.

6. The case of the appellant nos. 1 to 6 in appeal no. 189 to 194 of 2013, as projected by the learned counsel Shri Joby Mathew, is mainly that it had traded in the scrip of RUNL in the ordinary course of business and at the relevant time, it was in need of temporary funding so it had borrowed funds from various entities including noticee nos. 7 to 21. Entities/Noticees nos. 1 to 6 are, admittedly, connected/related but connection of Noticees 1 to 6 qua Noticees 7 to 21 is disputed. For the purpose of funding, it had to transfer shares of RUNL in off-market transactions to the said entities. According to the appellants this aspect has been totally ignored by the respondent while passing the impugned order in question. It is further argued by Shri Joby Mathew on behalf of these six appellants that merely because the appellant no. 1 and its group entities had transferred some shares of RUNL by way of off-market transactions to other entities, it cannot be concluded that they are all related to the appellant; or that they are forming a group. It is also contended that off-market transactions do not affect the price and volume of the shares. Moreover, the transactions by the appellants and its group entities did result in delivery, therefore, the finding that there was no meaningful change in ownership by the respondent in the impugned order is without any basis.

7. The above arguments of Shri Joby Mathew, learned counsel have been adopted by Shri S. K. Jain, learned counsel for the appellant in the case of D. M. Trading Pvt. Ltd. (Appeal no. 94 of 2013) as well as by Shri Ankur Kumar, learned counsel for the appellants in appeal nos. 107 and 108 of 2013 i.e. M/s. J V Stock Broking Pvt. Ltd. and M/s. BNK

Investment Services Pvt. Ltd. respectively. Shri S. K. Jain, however, submits that all off-market transactions are not illegal. In this context, Shri Jain submits that since payments were made before delivery, it is purely a case of spot delivery contract as defined under Section 2(i) of the Securities Contracts (Regulations) Act, 1956 (SCRA).

8. Per contra, the learned counsel for the respondent, Shri Kumar Desai, has vehemently argued that the off-market transactions are entered into between the entities who are generally known to each other or related or connected in some manner or the other. The details of transactions which almost remain undisputed do establish that there was reversal of the off-market transactions immediately through synchronized market transactions to the said entities forming the group during the investigation period. This, interalia, resulted in price rise of the shares of RUNL from ₹ 56.75 on February 1, 2010 to ₹ 119.90 on September 2, 2010 and finally closing at ₹ 111.80 on September 24, 2010. Consequently, abnormal volume fluctuations were also witnessed during the investigation period in the said scrip.

9. We have heard the learned counsel for the parties at length and have perused the pleadings and records annexed therewith. At the outset, it may be noted that appellant nos. 1 to 6 had initially denied that they were having any relation or connection among themselves or with other remaining 15 Noticees which formed a group of 21 entities but during the enquiry, it has been categorically found that appellant nos. 1 to 6 have a common address and two common directors. In this backdrop, Shri Joby Mathew, learned counsel for appellant nos. 1 to 6 has admitted the connection among appellant nos. 1 to 6 and, rightly so. As far as remaining appellants and / or

Noticees are concerned, it is not disputed that a large quantity of shares of the same company i.e. RUNL was received by way of off-market transactions by them from appellant nos. 1 to 6. It is also borne out of the records that the remaining appellants and / or Noticees sold shares by way of synchronized trades to appellant nos. 1 to 6, mostly on the same day or immediately thereafter within a few days. Nobody has disputed these transactions either before us or before the learned AO. Such reversal of the off-market transactions in a quick succession through synchronized on-market transactions to the same set of entities in almost similar fashion within a very short span of time clearly points out that all the entities are connected to each other in some way.

10. Not only this, appellant nos. 1 to 6 have specifically pleaded that they wanted to raise some funds, therefore, they transacted with the remaining entities of the group. This plea has been advanced on behalf of the appellant nos. 1 to 6. However, the remaining Noticees and / or appellants have contended that they had not extended any loan or fund to these appellants. The contention of the appellant nos. 1 to 6 that they took a loan from other Noticees and / or appellants is contradictory and clearly vitiated by the specific stand taken by the appellants in Appeal nos. 94, 107 and 108 of 2013. These three appellants have drawn our attention towards bill dated November 18, 2009 which shows that Signet Vinimay Pvt. Ltd., appellant in appeal no. 192 of 2013 (one of the six appellants) had received payment of ₹ 34,49,000/- from D. M. Trading Pvt. Ltd., appellant in appeal no. 94 of 2013, being the cost of 20,000 equity shares of RUNL at the rate of ₹ 172.45 per shares. Therefore, we hold that the story advanced by the

appellant nos. 1 to 6 regarding borrowing of loan from entities no. 7 to 21 is misconceived, untenable on facts and hence rejected.

11. At this stage, we would like to consider the contention raised by Shri S. K. Jain, learned counsel who appeared for the appellant in appeal no. 94 of 2013, namely, D. M. Trading Pvt. Ltd. that it was a case of spot delivery contract. The above-mentioned bill dated November 18, 2009 between Signet Vinimay Pvt. Ltd. and D. M. Trading Pvt. Ltd. reveals that although the bill is dated November 18, 2009, the shares were transferred on February 23, 2010 i.e. after a gap of almost three months. There are umpteen number of such instances in the present appeals. Such a transaction is not envisaged as a spot delivery contract by the provisions of Section 2(i) of the SCRA, 1956. Hon'ble Supreme Court in a recent case, namely, **Bhagwati Developers Pvt. Ltd. vs. Peerless General Finance & Investment Co. Ltd. & Anr. (2013) 9 SCC 584** has categorically held that in the case of a spot delivery contract actual delivery of the securities and consideration in respect thereof should be preferably on the same day or on the next day. Paragraphs 35 and 36 of the said judgment of the Supreme Court are relevant and reproduced hereinbelow for the sake of convenience :-

> "35. The second question, therefore, which falls for our determination is as to whether the contract in question is a spot delivery contract? This expression is defined under Section 2(i) of the SCRA. It reads as follows :
>
> > **"2. Definitions.** – In this Act, unless the context otherwise requires –
> >
> > (i) 'spot delivery contract' means a contract which provides for –
> >
> > (a) actual delivery of securities and the payment of a price therefor either on the same

> day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
>
> (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."

> "36. According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract. When we consider the facts of the present case bearing in mind the definition aforesaid, we find that the contract in question is not a spot delivery contract. True it is that by the letter dated 30-10-1987 written by Tuhin to Bhagwati, he had stated that the formal agreement had been executed between them on 10-11-1986 and as per the agreement he is transferring the entire 3530 shares of Peerless purchased from the loan amount and the transfer is in its repayment. However, the agreement dated 21-11-1994 between Bhagwati and Tuhin which formed part of the compromise decree provides that the sale of shares took place on 30-10-1987 and in consideration thereof Bhagwati paid a sum of Rs. 10 lakhs on 21-11-1994 and further the dividend on the entire shares up to the accounting year 1989-1990 amounting to Rs. 8,64,850 to be retained by Tuhin. In the face of it, the plea of Bhagwati that the payment of Rs. 10 lakhs was made to buy peace, is not fit to be accepted and, in fact, that forms part of the consideration for the sale of shares. Once we take this view, the plea of the appellant that it is a spot delivery contract is fit to be rejected. We agree with the reasoning and conclusion of the Company Law Board and the High Court on this issue."

11. In view of the above discussion of law and facts, we do not find any merit in the case of the appellants and the appeals are liable to be dismissed. The appellants have traded in a huge number of RUNL shares via off-market transactions and transferred the said shares in and on-market transactions by way of reversal/synchronized trades within a short span of

period. Details of such transactions have been duly reflected in paragraph nos. 13 and 14 of the impugned order. Further, the manner and examples in which lacs of shares of RUNL have been transacted in the off-market and transferred to appellant nos. 1 to 6, on the market, have also been vividly displayed in paragraph no. 15 of the impugned order by way of a pictorial presentation of some of the transactions.

12. Lastly, we may also deal with the argument advanced by the learned counsel for the appellants that action against some of the intermediaries was not taken by the respondent. In this connection, we pertinently note that SEBI as Regulator has ample powers and discretion to take a subjective decision in respect of certain entities on the basis of availability of sufficient evidence against them. At the same time, SEBI is also empowered to take a subjective decision, in a given case, not to take or even drop action against certain other entities in the same case if it is satisfied, on the basis of material on record, that there is insufficient, weak or no evidence to finally bring such entities to the book. In such an eventuality, SEBI may decide not to take any action against such entities. This factor, in our considered opinion, would not itself vitiate the proceedings/action taken by SEBI as Regulator against those entities in whose case it found sufficient or strong evidence to punish them as per law after holding enquiry and affording them an opportunity as per law and after complying with natural justice. Similarly, reliance placed by the appellants on an order dated September 25, 2013 passed by the learned whole time member of SEBI in respect of M/s. Mavi Investment Fund Ltd. is pertaining to issuance of Global Depository Receipts (GDRs) as such it is

distinguishable and does not help the appellant's case in as much as no GDR issue is involved in the present nine appeals in hand.

13. In view of the above discussion of law and fact, the appeals are bereft of any merit and are hereby dismissed with no order as to costs. The appellants are directed to deposit the monetary penalty in question within a period of two months failing which the respondent shall be at liberty to recover the same with interest as per law.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

31.01.2014
Prepared & Compared by
PTM