BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Hearing: 28.02.2014
Date of Decision: 21.03.2014

Appeal No. 28 of 2014

Saumil Bhavnagari
601, Parshwa Towers,
132 ft. Ring Road Satellite,
Ahmedabad – 380 015. …… 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. Vinay Chauhan, Advocate with Mr. Prashant Ingle, Advocate for the Appellant.

Mr. Kumar Desai, Advocate for the Respondent.

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

Per : Jog Singh

The present appeal is directed against the impugned order dated June 28, 2013 passed by learned adjudicating officer under Section 15I of SEBI Act, 1992 (for short SEBI Act) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 for violation of Regulations 4(1) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short FUTP Regulations).

2. Brief facts leading to the present case are that SEBI found that the price of the scrip of Aditya International Ltd., hereinafter referred to as AIL, rose

abnormally between December 2003 and June 2004. Accordingly, investigation was conducted by the competent authority and it was, *interalia*, found that the appellant, namely, Saumil Bhavnagari and VS Intermediaries, of which Saumil Bhavnagari is the proprietor, bought 2,05,051 shares and sold about 23,000 shares. During the investigation period, it was noted that the price of the scrip rose from ₹ 65/- on December 4, 2003 to ₹ 307/- on February 3, 2004 within less than a period of two months. Such a sharp rise in the price of the scrip was mostly attributed to singular trades with negligible volumes. The price of the scrip thereafter fell to ₹ 25.70 on June 1, 2004 inspite of high volumes as compared to the earlier patch.

3. During December 2003 and June 2004, the appellant traded as a buying client in 85 trades out of a total number of 175 trades executed during the said period. Out of these 85 trades, the appellant, in many cases, placed orders at a higher price than a Last Traded Price (LTP) that too as first trade of the day. Such trades were found to lead to an artificial rise in the price of the scrip with a view to misguide the general public. Accordingly, a show cause notice dated December 16, 2009 in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 was issued to the appellant calling upon him to show cause as to why inquiry should not be held against him and penalty be not imposed under Section 15HA of the SEBI Act for violation of Regulation 4(1) and 4(2)(e) of the FUTP Regulations.

4. Appellant filed its reply on March 23, 2011 after obtaining relevant documents from the respondent and denied the charges. The appellant submitted that in view of the improved performance of the company as reflected in the financial result for the year ending in 2004, the appellant traded in the said scrip of AIL purely on business considerations. There was no

malafide intention of manipulating the scrip and that it was the conscious decision of the appellant to invest in the scrip. The appellant further submitted that he not only placed orders above the LTP, but also on certain occasions placed orders below the last traded price.

5. After considering the material brought on record before the learned adjudicating officer as well as after affording due opportunity of hearing to the appellant, he came to the conclusion that the appellant was guilty of manipulating the price of the scrip and imposed a monetary penalty of ₹ 5 lac under Section 15HA of the SEBI Act for violation of Regulation 4(1) and 4(2)(e) of the FUTP Regulations. These regulations are reproduced hereinbelow for the sake of convenience :-

> "4(1). Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities."
>
> "4(2)(e) any act or omission amounting to manipulation of the price of a security."

6. We have heard both the learned counsel for the parties at length and perused the pleadings and other material brought to our notice. At the outset, we note that trading in the scrip of AIL by the appellant on various occasions as mentioned in the show cause notice dated December 16, 2009 and impugned order dated June 28, 2013 has not been denied. Therefore, the only issue which comes for our consideration is whether the appellant adopted a manipulative scheme or modus operandi which led to a sharp hike in the price of the scrip within a short span of 30 to 40 days and then plummeting of the price to about ₹ 25 during the next three to four months. The adjudicating officer has thoroughly analyzed the trading data as set out in the relevant trades

and order logs. These were attached to the show cause notice and relevant extracts have also been brought before us alongwith the appeal.

7. A perusal of said documents establishes that the appellant had executed about 85 trades in December 2003 and June 2004 by placing orders higher than the LTP. It clearly points out that although the scrip was available at a lower price, the appellant bought them at a higher price only with a view to give false representation to the general public about the rise in price of the scrip of AIL. This was repeatedly done by the appellant by placing orders for nominal number of shares sometimes as the first trade order of the day. Such trades undoubtedly have a potential of raising the price of the scrip by sending a wrong signal to the gullible investors about the activity or price hike in the scrip of the company. It is relevant to note that out of 85 trades, most of the trades placed are above the LTP and some of the trades placed by appellant were below the LTP. This was done evidently with ulterior motives, because, if shares were available for a lesser price, there was no reason to place orders at a price higher than the LTP and if orders at prices higher than LTP were placed on account of the financial status of the company then there was no reason to place some orders below the LTP.

8. In this connection, it may also be worthwhile to note that the investigation report clearly reveals that better financial status of the company was revealed at the end of the financial year, whereas many trades undertaken by appellant were in December 2003 i.e. much prior to the disclosure of the financial status by the company. Therefore, plea advanced by the appellant that he traded on account of financial status of the company is an afterthought and is hereby repelled.

9. Reliance placed by learned counsel for appellant Shri Vinay Chouhan on the judgment of this Tribunal in the case of **M/s. Rajesh N. Jhaveri vs. SEBI (Appeal No. 34 of 2013 decided on September 13, 2013),** is of no help to the appellant. In para 25(vi) of the aforesaid judgment, it is specifically recorded that there is no record / material placed to prove observations of adjudicating officer that shares of AIL were available in the market at lower prices. In the absence of any material to support the findings recorded by adjudicating officer, this Tribunal deemed it fit to allow the appeal filed by Rajesh Jhaveri. In the present case, from the annexures to the investigation report which are at pages 72 to 80 of the paper book filed by appellant, it is demonstrated before us that prior to the trades placed by appellant there were trades executed in the shares of AIL at a lower price and, thus, it is established that there were buyers and sellers of AIL shares in the market. Therefore, reliance placed on decision of this Tribunal in case of Rajesh Jhaveri (supra) is misplaced as the said decision does not support the case of the present appellant.

10. For ascertaining whether the scheme adopted by the appellant is legally permissible or not, it is necessary to analyze the trading data as set out in the trade and order logs. A perusal of pages 78, 79 and 80 of the paper book makes it evident that it is the appellant who has traded with Code No. 872 by placing repeated orders with a nominal increase of 5 paisa or so on numerous occasions. Some of the examples of trades undertaken by the appellant are highly revealing and produced hereunder for easy reference :

1. On December 10, 2003, he purchased 50 shares at ₹ 72 which was lower than the LTP by ₹ 0.10. Thereafter, 10 trades of 500 shares, each were executed at the rate of ₹ 76.80 per share by some other persons. The last 2 trades of the day were executed

by the appellant for 50 shares each at ₹ 76.90 and ₹ 81 i.e. ₹ 0.10 and ₹ 4.10 above LTP. From the aforesaid, it is, therefore, clear that the appellant is responsible for increase in the price of the scrip of AIL by ₹ 4.10 on December 10, 2003 by executing the last two trades of ₹ 50 each. Therefore, appellant by executing small volume trades is responsible for substantial increase in the price.

2. On December 22, 2003 and December 23, 2003, he executed trades of 45 shares and 50 shares respectively at the price of ₹ 135.25 and ₹ 141 per share i.e. ₹ 5.75 above LTP and ₹ 5.75 above LTP respectively. It may be noted that those were the only trades of the day.

3. On January 15, 2004, he executed 44 trades of 10 shares each with the same seller but at a periodic rise in price, ₹ 0.5, i.e. the first trades were executed at ₹ 220.25 and then the price was raised to ₹ 220.30, ₹ 220.35, ₹ 220.40 and ₹ 220.45.

11. As noted above, the appellant executed trades during the period December 2003 to January 2004 whereas AIL's annual results came out only after March 2004, and the December 2003 quarterly results were published only on January 2004 as has been noticed by the adjudicating officer in paragraph 21 of the impugned order. From the nature of the trading, it is clear that the appellant has sought to create a misleading impression that a large number of persons were trading in the scrip. This lends support to the finding of the adjudicating officer in paragraph 20 of the impugned order. *"… but by purchasing shares at the higher price in LTP in most of the trades, the noticee*

had given a wrong impression about the liquidity of the scrip in the market. It must not be forgotten that every trade establishes the price of the scrip and the noticee's trading at higher than LTP resulted in the price of the scrip going up and were done with a view to set the price at a desired level and thereby influencing the innocent/gullible investors. By purchasing at a higher price in most of his trades, the noticee had given the wrong impression about the price of the scrip in the market."

12. It is an accepted state of affairs that in cases of manipulation of the volume and / or price of a particular scrip, it is usually an arduous task to obtain direct evidence. However, the analysis of the trade and order logs as undertaken hereinabove, establishes the malafide intention of the appellant.

Therefore, in view of the above factual position, we do not find any merit in the appeal and the same is dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

21.03.2014
Prepared & Compared By
PTM