BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved on: 18.2.2014
Date of Decision: 6.3.2014

Appeal No.7 of 2013

Jitendra Harjivandas Securities Pvt. Ltd.
416, Stock Exchange Towers, 4th Floor,
Dalal Street, Fort, Mumbai – 400 001. …… Appellant

Versus

The Securities and Exchange Board of India
SEBI Bhawan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051. …… Respondent

Mr. Arif Doctor, Advocate for the Appellant.

Dr. Poornima Advani, Advocate with Ms. Virakthi Hegde, Advocate for the Respondent.

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

Per : A S Lamba, Member

1. The present appeal has been preferred by M/s. Jitendra Harjivandas Securities Pvt. Ltd. (Appellant for short) against Securities and Exchange Board of India (SEBI for short) for imposition of penalty of Rs.10,00,000/- for violation of Regulation 4(2)(a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations for short) and clause A(1), (2), (3) and (4) of Code of Conduct prescribed for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (Brokers Regulations for short); in the matter of M/s. Betala Global Securities Ltd. (hereinafter referred to as BGSL), for aiding

and abetting entities belonging to Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular and synchronized trades by providing a platform of such trade which le d to manipulation of price and creation of artificial demand for scrip of BGSL as also a false appearance of trading in scrip of BGSL and failed to show high standards of integrity, promptitude and fairness as well as failed to act with due skill, care and diligence in conduct of his business, during investigation period May 02, 2003 to November 21, 2003 (IP for short).

2. Fact of case in brief are that during IP, price of scrip of BGSL increased form Rs.34.05 to Rs.120 (rise of 4254%) and a total of 1,54,18,430 shares were traded. A group connected to each other, namely Mahesh Mistry, Dharmendra S. Thapa, Pravin Kumar Jain, Suman Saini, Jalaj I Batra, Nicholas N. Gomes, Piyust Shah, Dimple Shah, Harish Kapadia, Vinod Khetan, M/s. Shir Sai Shraddha Leasing and Hire Purcahse Finance Pvt. Ltd., M/s. Arihant Securities and M/s. Shinar Trading Pvt. Ltd., Rupa V. Shah, Narendra Gantram Anita Khetanm Vijay Amrutlal Rathod (16 in all); traded in shares of BGSL through various trading Members, but mostly through Appellant and Action Financial Services (India) Ltd.

3. Show cause notice dated June 25, 2012 was issued to Appellant informing Appellant of Mahesh Mistry Group employing manipulative and deceptive traded and Appellant's aiding and abetting such activities and seeking his explanation for same. Appellant did not reply to show cause notice but was provided an opportunity of personal hearing, in interest of natural justice. Appellant appearing before Adjudicating Officer submitted that it was not aware of any synchronised trading between its clients and counterparties and it was not involved in manipulation of price and creation of artificial demand in scrip of BGSL and that payments received by it were in good faith and not with any other intention.

4. For establishing connection between various entities of Mahesh Mistry Group, Adjudicating Officer has stated that Pravin Jain acted as introducer to Appellant for Dharmendra Thapa, Jalaj Batra, Piyush Shah, Dimple Shah (wife of Piyush Shah), Suman Saini, Harish Kapadia, Nicholas Gonres, Vinod Khetan. Dharmendra Thapa is director of Shinar Trading Co. and Dharmendra Thapa and Suman Saini are directors of Sai Shraddha Leasing and Hire Purchase Finance Pvt. Ltd., Pravin jain singed KYC of Arihant Securities Ltd, Anita Khaitan is wife of Vinod Khaitan and that Mahesh Mistri, Suman Saini, Shri Sai Shraddha Leasing and Hire Purchase Finance Pvt. Ltd. and M/s. Arihant Securities Ltd. have common address.

5. Investigations and show cause notice brought out that one entity of Mahesh Mistry Group, namely, Piyush Shah was working as a remisier with Appellant during IP, but this was denied by Appelant, but with respect to allegation that Piyush Shah introduced some other entities of Mahesh Mistri Group to Appellant and traded on their behalf in lieu of some brokerage and commission but Appellant did not deny or proved otherwise.

6. Price of scrip of BGSL increased from Rs. 34.05 on May 02, 2003 to Rs. 120 on November 13, 2003, reflecting price rise of around 254% and thereafter BGSL scrip closed at 109.25 at end of investigation period, i.e. on November 21, 2003. BGSL had meagre income and incurred losses in all quarters of Financial Year 2002-03 and during first two quarters of financial year 2003-04 BGSL incurred losses. Besides, there are no major announcements or news items relating to BGSL during investigation period, and abnormal increase in price of BGSL scrip was not backed by any change in fundamentals and as such BGSL scrip price rise, was artificial and was designed to create false market.

7. 1,54,18,430 shares were traded during investigation period in scrip of BGSL, and Mahesh Mistry Group bought 1,03,98,371 shares and sold 1,06,81,517

shares. Adjudicating Officer found from Annexure IV to SCN that number of shares on buy side and on sell side of circular trades of Mahesh Mistry Group, were same i.e. 73,86,363 shares. Appellant bought 41,77,352 and sold 8,16,195 shares for Mahesh Mistry Group during IP and out of total quantity bought and sold by Appellant, 24,19,859 shares and 4,26,383 shares respectively were involved in circular trades.

8. Adjudicating Officer found from last traded price analysis (hereinafter referred to as 'LTP Analysis') that out of total 1,54,18,430 shares of the company which were traded during IP, 10.04% of total volumes traded in the scrip was at price different from LTP. Price range of such trades fluctuated from Rs. (-) 11.20 to Rs. 9.60 and that total price rise due to such price difference, as coming out in LTP Analysis, has been calculated to be Rs.77 during investigation period.

9. Out of total volume traded in scrip of BGSL during IP, 1,81,055 shares, amounting to 53.06% of total traded quantity, were traded in 3,61,216 trades with time difference of less than 60 seconds between placing of buy order and placing of sell order.

10. Adjudicating Officer found from Annexure VII to SCN that Appellant executed of synchronized trades on several instances wherein price difference is greater than Rs.2 and time difference is less than 60 seconds with counter party broker M/s Action Financial Services Limited and both Trading Members traded behalf of Mahesh Mistry Group entities. Trading pattern reveals proximity in inputting of orders in such a way that there is almost perfect matching in all trades, with all three parameters, viz, quantity, price and most importantly time required to conclude trades, which clearly indicates synchronization in logging of orders. The matching of these trades through the Appellant between entities of Mahesh Mistry Group was not one or two solitary incidents but instead a large number of synchronized trades got matched regularly during investigation period. It is

Adjudicating Officer's considered belief that frequency of such trades ensured consistent matching of orders purely for purpose of projection of volumes in shares of BGSL in a way that was not market determined volumes, and was possibly to induced other persons to invest in scrip of BGSL. This results in artificial appearance of trading at stock exchange and also of artificial appearance of discovery of price, thus having potential of misguiding general investors. Besides such transactions relating to scrip of BGSL were carried out without intention of change of ownership of such security, since in most of trades, counter party clients were the members of Mahesh Mistry Group.

11. Adjudicating Officer finds that Appellant submitted before Investigating Authority that it got a call from Surveillance Department of BSE in November 2003, informing about some fictitious and non genuine trades in scrip of BGSL after which Appellant stopped all transactions of those clients of Appellant who were introduced by Shri Piyush Shah. Further, after Appellant's enquiry into dealings, Appellant found that main persons who were dealing in the scrip of BGSL or making payments were Shri Piyush Shah, Shri Pravin Kumar Jain and Shri Jalaj Batra on behalf of Shri Mahesh Mistry, Shri Harish Kapadia and Smt. Dimple Shah, all of them being members of the Mahesh Mistry Group.

12. Appellant did not deny that it had multiple average credit balance ranging from Rs.50-80 lakhs in account of Shri Mahesh Mistry for a long period (July to October, 2003) as said entities belonging to Mahesh Mistry Group were the bulk purchasers and afterwards all of a sudden Appelant had a debit balance of Rs.60,80,440.91 including outstanding brokerage of about Rs.27 lakhs as on November 18, 2003 in the account. Also, the entities belonging to Mahesh Mistry Group asked Appellant to purchase shares of the company in different client name and simultaneously the entities belonging to Mahesh Mistry Group sold shares of BGSL. To recover its dues Appellant had entered into an arrangement with entities

of Mahesh Mistry Group whereby the entities of Mahesh Mistry Group sold shares of the company in the market from one side and bought from another side. Further, the said arrangement was entered into because of the fact that on account of sales made by Mahesh Mistry Group, the Appellant received the credit from the exchange and thus was able to secure its money.

13. It was alleged in SCN that client Mahesh H. Mistry, got registered on June 23, 2003 and the bank account mentioned by him was 13634 (Bank of India, Stock Exchange Branch). However, transactions from this account number i.e. 13634 were noticed from June 04, 2003 onwards (for the credit of Rs.3,32,010 on behalf of Dimple P. Shah) in trading member's account number 10301 (BoI, Stock Exchange Branch). Further, on June 16 & 17, 2003 a total of Rs.13,12,600 was credited in the member's account number 10283 (Bank of India, Stock Exchange Branch), which was transferred from the client's account number i.e. 13634. On inquiry, it was said that there was a collective consortium of group of people who were making payments and deliveries on a common basis on behalf of each other for their liability. It has been observed that account statement showing flow of money in account no. 10283 from Mahesh Mistry account appears to be on account of trades executed by Dimple Shah. Adjudicating Officer found that Appellant merely disputed allegation, without substantiating any corroborative evidences to the contrary.

14. Therefore, taking into account submissions of Appellant before Investigating Authority Adjudicating Officer find that there was consortium of people, all belonging to Mahesh Mistry Group, who were making payments and deliveries on a common basis on behalf of each other for their liability to Appellant, which also reinforce finding that Mahesh Mistry Group was acting in concert while trading in the scrip of BGSL, during investigation period.

15. Adjudicating Officer is of the view that it cannot be a mere coincidence that every time, broker acted in complete ignorance and on behalf of its client, as claimed by Appellant. Appellant by participating in trading in this manner was involved in the execution of circular and synchronized trades which created artificial liquidity in the scrip and played a role in manipulation of trading. In Adjudicating Officer's view, Appellant through said artificial trades which were inherently non-genuine, interfered with market equilibrium and thereby affected manipulation of price and volume of the said scrip. Adjudicating Officer did not feel that it is necessary to prove that investors had, in fact got induced and bought and/ or sold on the basis of these trades.

16. Similar views were expressed by this Tribunal in its order dated 14.7.2006 in Ketan Parekh Vs. SEBI wherein it had observed that *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by price of stocks and if that is being manipulated person doing so is necessarily influencing decision of buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations"*

17. Adjudicating Officer also noted submission of Appellant that it was not aware of any synchronized trading between its clients and the counterparty. In this connection, this Tribunal in *Ketan Parekh Vs. Securities & Exchange Board of India* (Appeal No. 2 of 2004) held that in order to find out 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 available. In *Nirmal Bang Securities Pvt. Ltd Vs Chairman, SEBI,* Appeal No. 54-57/2002, dated October 31, 2003, this Tribunal observed that where there are too many transactions over a period of time giving an impression that these were all synchronized, the argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable.

18. This Tribunal in *Triumph International Finance Ltd. Vs Securities and Exchange Board of India* (Appeal No. 35 of 2002), observed as follows: -

"*The question that arises for consideration is – could it be said that the appellant was innocent and whether such large number of trades could have matched on the screen without the knowledge and active involvement of the appellant as a broker. The answer has to be in the negative. It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and matches the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. In the trades now in question the buyer, the seller and CSFB as the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and*

sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted."

19. Further, in present case, trades were in nature of circular and synchronized transactions with same set of clients on both sides, trading through same set of brokers. Furthermore, when a client reveals a clear and set pattern/behavior in a particular scrip, such as, execution of a large number of trades, on the same day, in the same scrip, consistently throughout the period and with the same set of brokers, then same is indicative of a concerted level of activity and an element of intent while executing said deals, precipitated due to mutual understanding. Acts of entities speak of their intentions. In case an entity is alleged to have manipulated the market or distorted the market equilibrium in violation of PFUTP Regulations and their acts are corroborated up to certain extent by investigation findings, then underlying intention of said entity is brought out. Furthermore, price manipulation does not only involve only manipulation in prices of the scrip but also includes building up of volumes.

20. In view of the above, Adjudicating Officer concludes that Appellant aided and abetted entities belonging to Mahesh Mistry Group in employing manipulative and deceptive devices of trading such as circular and synchronized trades by providing a platform for such trades which led to manipulation of price and creation of artificial demand for scrip of BGSL as also a false appearance of trading in BGSL.

21. Further, Appellant, as a stock broker, has failed to show high standards of integrity, promptitude and fairness as well as failed to act with due skill, care and

diligence in conduct of his business. Appellant as a stock broker has indulged in manipulative and fraudulent transactions and created a false market of shares of BGSL, by acting in concert with entities of Mahesh Mistry Group.

22. In view of aforesaid observations and findings, Adjudicating Officer concluded that allegations of violation of provisions of Regulations 4 (2) (a) & (e) of PFUTP Regulations, 2003 and clause A (1),(2),(3) and (4) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations, 1992 by the Appellant, stand established, which makes it liable for penalty under Sections 15HA and 15HB of the SEBI Act.

23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow*".

24. Since violation of statutory obligation Regulations 4 (2) (a) & (e) of the PFUTP Regulations, 2003 and clause A (1),(2),(3) and (4) of Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of Broker Regulations, 1992 by Appellant stands established, Adjudicating Officer held that Appellant is liable for monetary penalty under section 15HA and 15HB of SEBI Act.

25. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act.

26. Adjudicating Officer is of the view that from the material available on record that it is difficult to quantify any gain or unfair advantage accrued to Appellant or extent of loss suffered by investors as a result of default of Appellant or to ascertain whether defaults are repetitive in nature.

27. In view of the above, after considering all the facts and circumstances of case and exercising powers conferred upon Adjudicating Officer under Section 5-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, Adjudicating Officer imposed total penalty of Rs.10,00,000/- on Appellant (i.e. penalty of Rs.5,00,000/- under Section 15HA of SEBI Act for violation of Regulation 4(2)(a) and (e) of PFUTP Regulation and penalty of Rs.5,00,000/- under Section 15HB of the SEBI Act for violation of Schedule II of Regulation 7 of Broker's regulations.

28. Counsel for Appellant submitted case laws, the first being between Kasat Securities (P) Ltd. vs. SEBI in Appeal no. 27 of 2006 dated June 20, 2006. In this case Appellant was penalised by Respondents for self-trade undertaken by one of the clients of Appellant, but Appellant stated that since self-trade took place by following mechanism of exchange, where buyer and seller are not known and works on basis of anonymity of other party, merely because both buy and sell trades were on behalf of same client with a gap of 4 minutes, the Appellant as broker has no mechanism of knowing but it was a self trade, since he is not supposed to ask the client the purpose of trade, irrespective of fact that Appellant happened to know the client personally and Respondent cannot hold Appellant to be in know of self-trade of his client, only on basis of fact that Appellant knew the client personally and he must have known about the self-trade also. This conclusion of Respondent did not find favour with SAT since gap exists between knowing a client and knowing of his self-trade, which had not been filled by Respondent before holding Appellant guilty of aiding and abetting under PFUTP Regulations.

29. This case is clearly distinguishable from present one, since Appellant allowed members of Mahesh Mistry group to trade based on common account through his remisier, when one member was meeting liability of another; Appellant making payments to one member of group who was not his client and

most importantly allow the members to transact shares of BGSL, when there was no balance or negative balance in account of these clients maintained with him. Clearly Appellant know what these Manish Mistry group entities were doing, since he allowed his clients, who were members of Mahesh Mistry Group, to place orders, which were synchronized trades or self trades.

30. In Appeal no.5/2012 between Network Stock Broking Ltd. vs. SEBI decided on 19.06.2012, it was held that clients of Appellant had indulged in circular trades, but since Appellant as broker had facilitated happening of circular trades between his client, is no proof of the fact that he was in know of manipulations carried out by his clients, merely because he was the broker and earning his commission; conclusion of SEBI that this fact is enough to hold Appellant violative of PFUTP Regulations is not enough since gap in his knowing of manipulations in trade and his being acting as brokers exists, which has not being filled and hence SAT set the order of Respondent aside. This is also distinguishable from present case due to reasons stated in earlier case.

31. Next case cited by learned counsel for Appellant is adjudication order no. EAD-2/AO/142/2013 of Mrs. Dimple Shah decided by SEBI on January 23, 2013 in the matter of BGSL, where penalty of Rs.2,00,000/- has been imposed on Mrs. Dimple Shah has been stated by learned counsel for Appellant that Mrs. Shah has been imposed penalty of Rs.2 lakh when she indulged in manipulative trades and violated PFTUP Regulations, whereas his client (Appellant) has been fined Rs.10 lakh, when it was only the broker.

32. In this content it may be stated that Mrs. Shah purchased 0.35% of total market volume and sold 0.05% of total market volume whereas Appellant facilitated trading of much larger volumes and hence Rs.10 lakh penalty on Appellant is justified.

33. Similarly, in the case of Shri Harish Kapadia, one of the clients of Appellant, who indulged in circular trades/self trades with other members of Mahesh Mistry Group trading through the Appellant as broker - has been held violative of PFUTP Regulations, for purchasing 5,87,867 shares and selling 4,95,616 shares of BGSL during IP and also placing orders at higher than LTP and influenced volume and price of scrip and was subjected to a penalty of Rs.1 lakh; whereas the Appellant who was the broker has been subjected to penalty of Rs.10 lakh. Here learned Adjudicating Officer is of the view that Harish Kapadia the Appellant was an individual investor and also a trader in securities market and it was stated by learned counsel for Appellant that his client was acting as per normal business standards and had no knowledge of manipulation indulged in by connected group who dealt in same scrip, whereas learned counsel for Respondent stated that Appellant was part of group of connected clients, which indulged in inflation of volumes in scrip. This Tribunal dismissed the case of Appellant and held that Appellant had violated PFUTP Regulations.

34. First case law submitted by learned counsel for Respondent is Appeal no.171 of 2011 between Sparkline Mercantile Co. Pvt. Ltd. vs. SEBI, wherein it was held that Appellant, in collusion with certain brokers and clients, had executed trades, which was non-genuine/fraudulent transactions resulting in creation of artificial volume and hence manipulation in price of scrip and distorting market equilibrium. It was held that learned Adjudicating Officer (Respondent) has brought enough material on record to prove that entities in this case, are related and with prior arrangement resulted in creation of artificial volume among group entities within a minute of placing the orders; and accordingly findings of Adjudicating Officer was upheld.

35. Second case law cited to by Respondent is Appeal no.24/2007 decided on 05.08.2010 between Sunil Shares and Stock Pvt. Ltd. vs. SEBI before SAT and it

was decided that Appellant alongwith Sanjay Biyani were trading and reversing the trade and that buy and sell orders were put into the system at almost the same point of time, with a difference of a second or two, for the same quantity and same price, which led to synchronized trade with manipulative intent and created artificial volume with no beneficial change of ownership and, hence, Appellant was held violative of PFUTP Regulations and being a broker was also held violative of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

36. Third case law submitted by learned counsel for the Respondent in Appeal no.3 of 2010, decided on 29.1.2010, between Galaxy Broking Ltd. vs. SEBI was decided by SAT. It was held that reverse trades cannot happen on the trading system unless the client and the broker are in league with each other, and, hence, in view of above it was held that no fault can be found with impugned order passed by Adjudicating Officer.

37. In view of findings of learned Adjudicating Officer and case laws dealt above, there is no doubt that Appellant had acted in a manner, which was manipulative of securities market and had through his remisier and three clients of Mahesh Mistry Group had substantive share in purchase/sale i.e. total trading volume in scrip of BGSL during investigation period, was instrumental in placing synchronised trades and self trades on behalf of his clients, he allowed his platform of trading in securities market, for being used by his clients to place orders at above LTP, which gave rise to increase in price of scrip based on false volumes being generated by circular/self/synchronised trades and by allowing one account of his one client being utilised for making payment to diverse members of Mahesh Mistry group, who were not his clients and same account being used by all his clients, who were members of this Mahesh Mistry Group and also allowing trading by his clients (Members of Mahesh Mistry Group), even when balance in trading account of Mahesh Mistry account with Appellant was negative and that he had

entered into understanding with Mahesh Mistry and other clients that when they sell BGSL scrip, market shares, money coming in account of Mahesh Mistry with Appellant will be credited to Appellant and this money will be used by Appellant to off set negative position in this account. Similarly account number of Mahesh Mistry was used for transactions by Appellant, even before Mahesh Mistry become his client, for receiving monies and this account was used for making payments and deliveries on a common basis on behalf of each other of Mahesh Mistry Group, for their liabilities.

38. Accordingly, it is proved that Appellant was aiding and abetting a group of clients in placing circular/self/synchronised trades, which created volumes in an ill-liquid scrip and also placed order at higher than LTP to increase price of BGSL scrip, when there were no good results coming from BGSL or change in fundamental of BGSL to attract investors interest and hence Appellant has rightly been penalised for violation of PFUTP Regulations and SEBI (Stock Brokers and Sub-Brokers) Regulations. Amount of penalty is commensurate with offence and hence no reduction in same is allowed. Appeal does not succeed. No order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A S Lamba
Member

6.3.2014
Prepared and compared by
RHN