BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Misc. Application No.123 of 2014
And
Appeal No.272 of 2014

Date of decision : 19/12/2014

ISF Securities Limited
5A/4B, Ansari Road,
Darya Ganj,
New Delhi – 110 002. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, "G" Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051. … Respondent

Mr. Prakash Shah, Advocate with Mr. Vinod Jain, Chartered Accountant and Mr. Sunil Khemka, Director for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody, Advocate i/b K. Ashar & Co. for the Respondent.

CORAM : A. S. Lamba, Member

Per : A.S. Lamba

Misc. Application No.123 of 2014

Misc. Application No. 123 of 2014 received on 25th July, 2014 was also considered during hearing of the case on 3rd December, 2014 and order reserved. In view of the fact that Appeal has already been heard and order reserved, there is no case for stay of penalty of Rs.11 lac levied in terms of

adjudication Order No.AK/AO-89/2014 dated June 5, 2014 since the same has become infructuous and is not allowed.

Appeal No.272 of 2014

Original "show cause notice" (SCN) was issued on November 12, 2012 in the instant case under Rule 4(1) of Securities and Exchange Board of India (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 read with Section 15-I of Securities and Exchange Board of India, 1992, to M/s. ISF Securities Ltd. (ISF), to inquire and adjudge alleged violations of Regulations 3(a), (d), 4(1), 4(2)(a) and (g) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Act) Regulations, 2003 (PFUTP Regulations) and clause A(1), (3),(4) and (5) of the Code of Conduct for Stock Brokers as laid down in Schedule II under Regulation 7 of SEBI Stock Brokers and Sub-Brokers Regulation, 1992 (Stock Brokers Regulations) by ISL.

2. Main dealings of Appellant as alleged in Original SCN are:

- During April 1, 2009 to October 31, 2009 (IP), price of Exedy India Limited (EIL) scrip increased from Rs.22.70 to Rs.119.60 (rise of 43%) and 14,27,128 shares of EIL scrip were traded – with average of 10,267 shares per day.
- During price rise, you being registered brokers and were major clients with your concentration at around 35%. You have significant concentration in LTP variation and setting new price high. You received shares through other entities and off-loaded the same in cash market during price rise. You have matched trades for 1,22,350 shares

which comprise more than 50% of your respective buy quantity and more than 35% of respective sell quantity.

- Vishwas Securities Ltd. (VSL), while dealing through trading member SIC Stocks and Services Pvt. Ltd. (922) and ISL while dealing on its own account had traded amongst yourselves for 135504 (8.65% of market volume), of which order for trades in respect of 82872 shares (5.29% of market volume) were synchronized i.e. (buy and sell order were placed within a minute of each other). Out of 179 days, you traded amongst yourselves for 43 days of which on 6 trading days trade amongst yourselves accounted for more than 30% of days volume.
- You were having the top purchase and sell concentration during the period VSL and ISL contributing 15.32% & 14.94% and 18.52% & 21.26% of purchases and sales respectively.
- You have synchronized your trades i.e. where the buy and sell order quantity and rate were identical and orders for these transactions were placed within time gap of one minute among yourselves. For details of synchronized trades a table is provided, which details Gross Buy Qty (431873), Gross Sell Qty (567611), traded quantity between two entities (135504), self traded qty (at 13154), synchronized quantity (26889), % of Syn trade of total gross trade of two entities (at 19.84%), % of Syn traded qty of Mkt. Volume (1.88%), sum of LTP at Syn. Trade (1.7), Sum NHP at Syn trade (0.15). Details of self trades, executed by ISL and VSL, wherein the same client appeared on both buy and sell side of trade are furnished separately for ISL and for VSL.

- During IP, price of scrip moved from Rs.22.50 to a high of Rs.119.60, through first trades as well as inter-day price movement. Details of ISL and VSL's contribution in new price established, show that ISL traded 9441 shares of EIL in 14 trades and contributed Rs.9.1 to NHP (New High Price), whereas VSL traded 6703 shares of EIL in 14 trades and contributed Rs.20.2 to NHP.
- Details of ISL's and VSL's trades which resulted in last traded price (LTP) influence are furnished which shows that ISL traded 313,206 shares in 777 trades, which resulted in price increase in scrip of EIL of Rs.66.45 and VSL traded 2,18,667 shares of EIL in 996 trades, which resulted in price increase of Rs.114.86. Out of these trades, 444 trades involving 1,35,504 are between the two entities, viz. ISL and VSL, which resulted in increased of Rs.51.25 in LTP.

Allegations against ISL are mentioned in SCN as:

- During IP, ISL entered into self trades for 7,534 shares, thereby creating artificial/fictitious volumes in scrip of EIL; which was average 10,267 during IP, 6053 average before IP and 437 average after IP.
- Your dealings in scrip of EIL during IP are fraudulent, created artificial volume, false and misleading appearance of trading.

3. Based on original SCN and some other information as contained in paras 13 to 20 of then impugned order dated March 12, 2013, Ld. Adjudicating Officer concluded that ISL and VSL created artificial volume and price increase in EIL scrip and induced gullible investors to trade in scrip and managed to off-load large quantities of shares at artificially higher prices

and thus violated Regulations 3(a), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations and clauses A(1), (3),(4) and (5) of Code of Conduct as specified under Schedule II under Regulation 7 of Stock Brokers Regulations, after agreeing to contention of ISL to some extent only that self-trades executed by them are insignificant and negligible vis-à-vis total trading in the scrip and that few trades in isolation may not lead to the conclusion that they are fraudulent and manipulative trades, but, given the above circumstances, facts of the instant case and the nature of trades executed by the noticees, the contention of ISL that such trades are mere coincidences or for reasons stated above are not acceptable.

4. It is to be noted that Ld. A.O. had held Appellant violative of relevant provisions of PFUTP and Brokers Regulations, as stated above, based on noticees (Appellant and VSL) creating artificial volume and price increase, by executing trades amongst themselves; thus ruling out this violation based on creation of artificial volumes by self trade by Appellant and VSL.

5. In view of above, it is not very clear whether Ld. A.O. was satisfied with contention of ISL regarding self-trades or not, which was apparently rejected, yet he did not find Appellant violative of PFUTP and Broker's Regulations based on self-trades, but on basis of noticees trades among themselves, which created artificial volume and price increase.

6. It may be also mentioned that price increase in scrip of EIL, not only created by noticees by trading amongst themselves but by trading with others also. From first table in para 27 titled "LTP comparison with market shows that ISL executed 777 trades and VSL executed 996 which resulted in increase

of net positive LTP increase of Rs.66.45 and Rs.114.35 for ISL and VSL; whereas only 444 (out of 1773 trades for both ISL and VSL) of these trades were between ISL and VSL, hence conclusion of Ld. A.O. that Noticees by executing trades amongst themselves created artificial volume and price increase in EIL scrip, is only partial appreciation of facts of the matter.

7. Hence, Ld. A.O.'s order dated March 12, 2013 is based on non appreciation of facts in totality and is ambiguous since it is not clear whether he accepted the Appellant's contentions regarding self-trades or not, and is also based on facts, which were not stated in Original SCN. These facts are brought to notice of Respondents for taking action as considered appropriate.

8. However, the order of Ld. A.O. dated March 12, 2013 was set aside by this Tribunal since it was based on some facts in paras 13 to 20 of order, not mentioned in original SCN and Respondent was directed to issue a comprehensive supplementary SCN to Appellant, hear the Appellant and pass final order.

9. A Comprehensive Supplementary Show-Cause Notice (CS SCN) was, accordingly, issued to Appellant vide letter of Ld. A.O. dated December 17, 2013. This CS SCN takes notice of original SCN dated November 12, 2012 and states that original SCN alleged that "During the IP, you entered into self-trades for 7534 shares by trading in your account, wherein, you appeared on both buy and sell sides of the trades, thereby creating artificial/fictitious volume in the scrip of EIL. It is also observed in CS SCN that volume traded before IP (6503 shares) and after IP (437 shares) was much lower than the volume traded during IP (10,267 shares).

10. Thereafter various tables giving instances of self trade by Appellant are furnished and narrations and order log are furnished as to how the self trades were executed, finally alleged that Appellant had created artificial volume on EIL scrip by executing aforesaid self trades and thus violated Regulations 3(a), (d), 4(1), 4(2)(a) and (g) of PFUTP Regulations and clauses A(1), (3),(4) and (5) of Code of Conduct as specified under Schedule II under Regulation 7 of Stock Brokers Regulations.

11. At this stage, it may be mentioned that para 13 to 20 of Ld.A.O. order dated March 12, 2013, dealt with Business of EIL, shareholding pattern of EIL, profits of EIL during quarters ending from March 31, 2009 to December 31, 2009, financial results of EIL for years ending March 2008, March, 2009, March, 2010 EIL corporate announcements and their result on price of EIL's scrip, price volume data of EIL scrip on BSE during IP, before IP and after IP and finally comparison of EIL stock with BSE auto index during IP.

12. As stated in para above, CS SCN is regarding self-trades of Appellant but this CS SCN was to be on basis of para 13 to 20 of Ld. A.O. order dated March 12, 2013, which contained what is stated in para above. Hence, it is not understood why CS SCN is based on self-trades only and not what is contained in paras 13-20 of Ld.A.O.'s order dated March 12, 2013.

13. Coming back to order of this Tribunal dated October 28, 2013 it is quite clear from same that order of Ld. A.O. dated March 12, 2013 was set aside since, basis of material set out at paragraphs 13 to 20 of the order, was neither referred to in SCN is supplied to Appellant during adjudicating proceedings. Further order of Tribunal to the effect that 'similarly trade and order logs

relating to trades in shares of Exedy India Limited have not been furnished to Appellant though repeatedly demanded by Appellant", was in context of SIL representing before this Tribunal that trade and order logs have not been supplied to SIL and hence in that context it was ordered by this Tribunal that Respondent be permitted to issue CS SCN enclosing herewith all documents which Respondent wants to rely upon, so that orders could be passed on merits after hearing Appellant.

14. Hence, CS SCN was to be in context of basis of material set out at paragraph 13 to 20, which were neither referred to in SCN nor supplied to Appellant during earlier adjudication proceedings. This CS SCN was also to be enclosed with all documents which Respondent wanted to rely upon.

15. During the hearing of the matter on December 3, 2014, Authorized Representative (AR) of Appellant submitted the following:

- Appointment order of Ld. A.O. dated November, 08, 2013 suffers from illegality and is required to be set aside.
- Hon'ble SAT had limited scope of supplementary SCN only to providing additional documents to Appellant with reference to paragraphs 13 to 20 of order of Ld. A.O. dated March 12, 2013.
- Supplementary SCN dated December 17, 2013 has expanded the charges and added further allegations and facts and therefore suffers from major legal infirmity.

16. Regarding the first submission of Appellant, dealing with appointment of Ld.A.O. vide order of Ld. W.T.M. dated November 08, 2013; Perusal of

para 11.1.1(a) to (e) of Impugned Order leave no doubt about validity of appointment of Ld. A.O. and needs not be gone into any further.

17. Regarding second submission of Appellant about order of Hon'ble SAT limiting scope of CS SCN and expanding charges in CS SCN, Ld. A.O. has stated as in paras 11.2.1(a) & (b) of impugned order, to the effect that after quashing of Ld.A.O. order dated March 12, 2013 SEBI was permitted to issue CS SCN, enclosing all documents which it wants to rely upon, but since order dated March 12, 2013 was quashed and set aside, question of providing additional documents with reference to certain para of Ld. A.O. order dated March 12, 2013 does not arise and that Appellant is entitled to receive copies of all documents that Ld. A.O. intends to rely upon. Hence, second submission cannot be accepted.

18. Regarding third submission, it is observed that original SCN and order of Ld.A.O. dated March 12, 2013 based on this SCN, had alleged self-trades by Appellant with other noticee of SCN and CS SCN also contains allegations of self-trades by Appellant, though these have been explained in details in CS SCN, yet basic details of self-trades in SCN and subsequent CS SCN remain same, hence explanation of self-trades in CS SCN, does not expand the charges and accordingly contention of Appellant, in this context, not accepted.

19. Case laws cited by Appellant and Respondent are listed as:

Appellant:

- State of Punjab Vs. CBI & Ors. (SLP (Criminal) No.792 of 2008) – The operative portion reads "Thus, even where chagesheet or

challan has been filed by the police under Section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C. In instant case, CS SCN was ordered by this Tribunal, in view of objection of Appellant that some parts of impugned order dated 12th March, 2013 were not based on SCN, and hence CS SCN was to take care of portions of order, not covered by SCN, with consent of both the parties and was in continuation of earlier proceedings.

- HB Stockholdings Limited vs. SEBI, Appeal No.114 of 2012, decided by SAT on 27/08/2013 – Appellant had entered into structural/synchronized trades in a scrip with a view to increase volumes artificially and price of the scrip. Appellants were also aggrieved due to non-supply of some documents, which were denied by Respondent as not relied upon. The alleged objectionable trading was carried out by group of members and one Appellants and group members also committed two or three self trades. Regarding self trades, it was held that these are hardly two or three and number of shares is also insignificant and since the order was quashed in view of inordinate delay and peculiar facts of the case, no adverse view was taken of self-trades. Hence facts of this case are distinguishable from present appeal.
- Adjudication Order No.EAD-2/AD/143/2013 dated February 14, 2013 against JMP Securities Pvt. Ltd. Adjudication Order No.EAD-2/DSR/KM/108-115/2014 dated April 30, 2014 against

BP Fintrade Pvt. Ltd. & Others. Adjudication Order No.EAD-2/DSR/RG/118/2014 dated April 30, 2014 against Adroit Financial Services Pvt. Ltd. In these three adjudication orders, there was no allegation against Noticees that it had indulged in price manipulation except that aforesaid self trades resulted in creation of artificial volumes and these self trades could automatically match and corroborative evidence available on record are insufficient to substantiate that trades executed are fraudulent or manipulative. This case is distinguishable from present one since in present case self-trades have been executed fraudulently to create artificial volume.

Respondent

- Jayantilal Khandwala and Sons Pvt. Ltd. vs. SEBI in Appeal No.63 of 2007 decided by SAT on 23/11/2010. Allegation in this are placing orders of buy or sell by a group to manipulate price of a scrip, but does not deal with self-trades.
- In Anita Dalal vs. SEBI, Appeal No.211 of 2012 decided on 3/12/2012 by SAT. It was held that "there has been no convincing explanation for self trades in the reply to SCN and charge of violation of PFUTP Regulations was upheld.
- In Angel Broking Pvt. Ltd. vs. SEBI, Appeal No. 46 of 2014 decided on 01/10/2014, SAT upheld the decision of Respondent that self-trades, executed by Appellant were not due to jobbing/arbitrage and were undertaken to increase volume and

hence volatility in scrip and number of volume of self-trades being less is no mitigating factor.

20. Now coming to impugned order dated June 05, 2014, which is based comprehensive supplementary SCN and Appellant has been found violative of Regulations 3(a), (d), 4(1), 4(2)(a) & (g) of PFUTP Regulations and Regulation 7 read with Clauses A(1), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of SEBI Stock Brokers Regulations, the self-trades carried out by Appellant. It is seen that Ld.A.O. dealt with self-trades of Appellant in most comprehensive, objective and analytical manner, demolishing all defenses and submissions of Appellant and hence this Tribunal has no hesitation in accepting that Appellant violated Regulations 3(a), (d), 4(1), 4(2)(a) & (g) of PFUTP Regulations and Regulation 7 read with Clauses A(1), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II of Brokers Regulations, due to Appellant executing self-trades to create false and misleading appearance of trading and to interfere with the integrity of securities market and failed to carry out business with due skill, care and due diligence.

21. In view of above, the appeal is dismissed, with no order as to costs.

Sd/-
A.S. Lamba
Member

19/12/2014
Prepared & compared by ddg