

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision : 06.06.2017

Appeal No. 131 of 2017

Integrated Master Securities Private Limited
303, 3rd Floor, New Delhi House,
27, Barakhamba Road,
New Delhi – 110 001.

.....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. J.J. Bhatt, Senior Advocate with Mr. Saurabh Bachhawat, Mr. Amit B. Dey and Ms. Nirali Mehta, Advocates i/b Mindspright Legal for the Appellant.

Mr. J.P. Cama, Senior Advocate with Mr. Shantanu Mitra and Mr. Anubhav Ghosh, Advocates i/b Desai and Diwanji for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Dr. C.K.G. Nair, Member (Oral)

1. The appellant is aggrieved by the impugned order dated May 15, 2017 passed by the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short). By the said order the appellant, as a stock broker, has been prohibited from accepting fresh clients for a period of two months from the date of the order.

2. Facts relevant to the matter are the following:-

- (a) The appellant is a private limited company incorporated under the Companies Act, 1956 and has been functioning as a stock broker since 1993.

- (b) SEBI conducted an investigation relating to buying, selling and dealing in the shares of Gangotri Textiles Limited ('Gangotri' for short) during April 07, 2006 to May 31, 2006. Based on the price / volume movement in the scrip of Gangotri, it was observed that a group of related entities namely 'Vishvas Group' was actively involved in voluminous trading of the scrip of Gangotri, which impacted its price. Accordingly, a Designated Authority was appointed by SEBI on November 8, 2013 who submitted the Investigation Report on July 31, 2014. In the investigation report, inter alia, it was observed that two clients of the appellant, namely, Cosmo Corporate Services Limited ('Cosmo' for short) and Master Finlease Limited ('Master' for short) traded in the scrip of Gangotri in substantive volumes in Bombay Stock Exchange ('BSE for short) and National Stock Exchange of India Ltd. ('NSE' for short) through the appellant as a broker. This violated SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) and provisions relating to the Code of Conduct for Stock Brokers under SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992.

(c) The impugned order has held that evidence relating to the appellant as a stock broker of Cosmo and Master as an active party to market manipulation by the Vishvas Group has not been adequate. In fact, para 21 of the impugned order categorically states that the appellant does not appear to be part of the group indulging in manipulative transactions in connivance with its clients. The impugned order also stated that the delay in the proceedings may have caused prejudice to the appellant since the violations pertain to the year 2006 and show cause notice was issued only in 2014. However, relying on the order of the Hon'ble Supreme Court in the case of Securities and Exchange Board of India vs Kishore R. Ajmera reported in 2016 SCC OnLine SC 179, the impugned order has held that the substantive volumes of transactions for its clients executed by the appellant should have alerted the appellant as a broker. Failure of which is tantamount to negligence and therefore violative of the Code of Conduct. Thus, though the impugned order exonerates the appellant from violation of the provisions of PFUTP Regulations, it is held that the appellant has violated the provisions of the Code of Conduct as given in Schedule-II of the SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992 and therefore prohibited the appellant from admitting fresh clients for a period of two months from the date of the impugned order.

3. Shri J.J. Bhatt, Senior Counsel for the appellant argued that the appellant is not part of the so-called Vishvas Group; the impugned order has exonerated the appellant from PFUTP violations; the appellant is not aware of any cross-connection between his clients and other members of the so-

called Vishvas Group; the trade executed by the appellant for his two clients were not substantial even as percentage of the total trading of the Vishvas Group (Master contributed 0.73% and 0.39% of shares bought and sold on BSE, respectively and 0.52% and 0.32% of shares bought and sold on NSE, respectively. Cosmo contributed 8.57% and 6.80% of shares bought and sold on BSE, respectively and 10.35% and 13.11% of shares bought and sold on NSE, respectively). It was further argued that in respect of another broker in the Vishvas Group, namely, Shri Parasram Holdings Private Limited ('Parasram Holdings' for short) whose client also traded in similar range (6.58% to 7.27% of shares bought and sold on BSE), SEBI let off the broker with only a warning vide its order dated May 16, 2017. Accordingly, the learned Senior Counsel argued that the appellant is not party to the fraud nor violated any provisions of PFUTP Regulations and the volume of trade conducted by his clients is similar to that of the client of other brokers in the Vishvas Group and as such the punishment is too harsh and disproportionate. Since May 15, 2017, the date of the impugned order, the appellant is not admitting / taking up any fresh clients. On a specific question from the Bench as to whether there is any other punishment on the appellant prior to or subsequent to the impugned order, it was stated in the negative by both the counsel.

4. Mr. J.P. Cama, Learned Senior Counsel for the respondent SEBI stated that the magnitude of the offence in the case of Parasram Holdings and in respect of the appellant herein are different in terms of the number of clients, number of synchronized trades executed by the client(s) of both the brokers, the volume of transactions of the client(s) and the contribution to price change. These are much higher in the case of the present appellant. It was further stated that while in the case of Parasram Holdings only a warning was given, there are other matters belonging to the same Vishvas

Group wherein the brokers involved were given serious punishments. In respect of two matters higher punishments of 4 months and 6 months prohibition on accepting fresh clients and in one matter 6 months suspension of certificate of registration were ordered. Accordingly, in the present matter punishment of 2 months suspension of accepting fresh clients is proportionate to the offence. It was also argued by counsel for the respondent that this Tribunal has upheld the order of SEBI whereby both the clients of the appellant herein, namely, Cosmo and Master were found to be guilty of circular / synchronized trading and thereby violated the provisions of PFUTP Regulations.

5. We agree with the findings recorded in the impugned order that there has been lack of due care and attention on part of the appellant. As a broker the appellant should have taken due care and diligence while executing the orders of its clients including possibilities of the clients indulging in manipulative practices. However, as stated in the impugned order there is no evidence to show that the appellant himself was party to any of the manipulative practices and as such has not violated the PFUTP Regulations. Therefore, the relevant question is what should be the punishment on the appellant in not discharging his functions with due diligence and care. From the orders produced on record by both the sides it is clear that varying punishments had been ordered in respect of similar offences. In some cases the accused are let off with a warning; in some other cases they are restrained from accepting fresh clients for a period ranging from one month to six months and in some extreme cases, particularly, where the brokers were involved in self trades on proprietary account, suspension of the license for six months were ordered. We also note that the magnitude of trade involved in cases where the accused were let off with warning was rather limited compared to the magnitude of trading in the present matter.

It is also an admitted fact that the appellant herein has not been found to have committed any such violations in all these years. Taking all these factors into account while upholding the impugned order on merit, we limit the period of restraint imposed on the appellant in admitting fresh clients to one month from the date of the impugned order, i.e. upto and including June 14, 2017.

6. Appeal is disposed of in the aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

06.06.2017
Prepared and compared by:
msb