

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 07.02.2018

Appeal No. 223 of 2017

Abhay Raj Rampher Shukla
Kailesh Nagar, Road No. 28,
Near Shiv Mandir,
Wagle Estate,
Thane (W)-400 604

...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. Saurabh Bachhawat, Advocate i/b Mr. Manoj Jain, CA for the Appellant.

Mr. Vivek Shah, Advocate i/b ELP for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on May 16, 2017. By the said order penalty of ₹ 1 lac is imposed on the appellant under Section 15HA of SEBI Act, 1992 for violating regulation 4(1), 4(2)(a) and 4(2)(e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short).

2. SEBI noticed that the appellant had traded in the scrip of Millenium Cybertech Limited (“MCL” for convenience) through the stock broker M/s Vijay Bhagwandas & Co. during the period from July 01, 2005 to September 30, 2005 and had executed off-market transaction to the extent of 2,70,000 shares with several entities which included transactions with Rajendra Adukia, Ramasudhakaran Menon etc. Since the said transactions were found to be fraudulent transactions, show cause notice was issued calling upon the appellant to show cause as to why action should not be taken against the appellant for violating the PFUTP Regulations.

3. Initially by an ex-parte order dated October 28, 2010 penalty of ₹ 1 lac was levied on the appellant which was set aside by this Tribunal on February 10, 2015 with a direction to serve the show cause notice to the appellant and pass fresh order after hearing the appellant. Accordingly, the show cause notice was served on the appellant.

4. Appellant in his reply to the show cause notice denied the allegations made in the show cause notice. Thereafter, an opportunity of hearing was given to the appellant and by the impugned order dated May 16, 2017 penalty of ₹1 lac has been imposed under Section 15HA of SEBI Act.

5. Mr. Bachhawat, learned counsel appearing on behalf of the appellant submitted that the impugned order which goes beyond the allegation made in the show cause notice and takes note of the facts

recorded beyond the investigation period is ex-facie bad in law. He submitted that the findings recorded in the impugned order that the appellant had aided and abetted promoter of MCL in offloading their shares in the market and that the appellant had colluded with promoters and other directors in creating artificial volume and influencing price of the scrip is baseless and without any evidence on record. He submitted that the AO has erroneously referred to the sale obligation of Ramasudhakaran Menon, met by the appellant which was not an issue raised in the show cause notice. Counsel for the appellant submitted that in the absence of any trade and order log furnished to the appellant, the AO was not justified in holding that the appellant has violated regulation 4(1), 4(2)(a) and 4(2)(e) of the SEBI PFUTP Regulations, 2003. Accordingly, it is submitted that the impugned order deserves to be quashed and set aside.

6. We see no merit in the above contentions.

7. Admittedly, the show cause notice issued to the appellant refers to the trades executed by the appellant in the scrip of MCL through the stock broker on market and also the trades executed by the appellant in the scrip of MCL off-market.

8. Finding of fact recorded in para 11 & 12 of the impugned order is that although the appellant himself had traded for limited number of share on market, the appellant had aided and abetted other manipulators

by entering into off-market trades with them and even met the pay-in obligation of shares sold by those manipulators in the market trades.

9. It is neither the case of the appellant that the persons to whom he had sold the shares of MCL in off-market had not indulged in manipulative trades nor it is the case of the appellant that he had not met the pay-in obligation of the shares sold by the manipulators in the market trades.

10. Fact that the trades executed by the appellant on market were not responsible for increase in price or liquidity of the scrip of MCL, would not absolve the appellant from facing penal consequences for aiding and abetting the manipulators who had indulged in manipulating the price of the MCL scrip. Apart from selling the shares of MCL in off-market to the manipulators, the appellant has met the pay-in obligation of those manipulators in respect of their on market trades. In such a case, the inference drawn by the AO that the appellant had aided and abetted the manipulators who had created a misleading appearance of trading in the scrip of MCL and manipulated the price of MCL scrip in gross violation of PFUTP Regulations cannot be faulted.

11. Penalty imposable for such violations under Section 15HA of SEBI Act is up to ₹ 25 crore. However, after taking into consideration all the mitigating factors the AO has imposed penalty of ₹ 1 lac which cannot be said to be excessive or harsh.

12. In the result, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

07.02.2018
Prepared & Compared By: PK