

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 24.09.2020

Date of Decision : 19.11.2020

Appeal No. 164 of 2020

M/s. Amrapali Capital and Finance Services Ltd.
19/20/21, 3rd Floor, Narayan Chambers,
Behind Patang Hotel, Ashram Road,
Ahmedabad, Gujrat - 380009. ...Appellant

Versus

National Stock Exchange of India Limited
Exchange Plaza, Plot No. C/1, G – Block,
Bandra Kurla Complex,
Bandra (East),
Mumbai – 400 051. ...Respondent

Mr. Prakash Shah, Advocate with Mr. Kushal Shah, Chartered Accountant i/b Prakash Shah and Associates and Mr. Nirav Basher, Compliance Officer of the Appellant.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Vikram Trivedi, Mr. Rashid Boatwalla and Mr. Pruthvi Dhinoja, Advocates i/b Manilal Kher Ambalal & Co. for the Respondent.

CORAM: Justice Tarun Agarwala, Presiding Officer
Dr. C.K.G. Nair, Member
Justice M.T. Joshi, Judicial Member

Per: Dr. C.K.G. Nair, Member

1. This appeal has been filed challenging the order of the Member and Core Settlement Guarantee Fund Committee ('MCSGFC' for short) of National Stock Exchange of India Limited ('NSE' for short) dated February 28, 2020. By the said order a monetary penalty of Rs. 1,01,67,582/-, which is 15% of the value of profit earned by the appellant from the alleged non-genuine trades carried out by the appellant in its proprietary account, has been imposed on the appellant, in addition to warning to desist from such practices in future.

2. The main charge against the appellant, who is a stock broker and a member of NSE, is that the appellant had engaged in synchronized trading with one entity, namely, Affluence Gems Private Limited ('Affluence Gems' for short) and the said trades are in the nature of "fraudulent and unfair practices" under Regulation 4.6.2 (1)(b) of the F&O Regulations.

3. It is the contention of the learned counsel for the appellant Shri Prakash Shah that the appellant executed large volume of transactions during the financial year 2018-19 in the F&O segment of NSE to the tune of Rs. 14,640 crore. Therefore, the alleged non-genuine trades has no meaning, particularly, since the appellant was trading in liquid and frequently trades scrips

only and that too on the stock exchange platform. Therefore, the appellant was not having any knowledge about the identity of the counter party. Moreover, it is the stand of the learned counsel that the complete trade log was not given to the appellant nor the identity of the counter party was revealed nor the counter party in question was called upon to furnish details or to be cross-examined. Moreover, there were only nine scrips in which trades executed by the appellant has significant matching with Affluence Gems and only the summary was provided to the appellant instead of detailed trade data including that of matched quantity with Affluence Gems. Moreover, the charging provisions quoted in the impugned order such as Regulation 4.6.2(3)(f) and paragraph 8(e) and paragraph 8(f) of the impugned order are not contained in the show cause notice (SCN) and therefore the impugned order has traveled beyond the SCN. Therefore, it was contended that the impugned order suffers from serious defects and therefore cannot be sustained.

4. Shri Venkatesh Dhond, the learned senior counsel appearing for respondent NSE, on the other hand, submits that there is sufficient evidence to show that the appellant had indulged in fraudulent and unfair trading practices; the penalty imposed is 15% of the profit made is neither disproportionate or

excessive; all relevant details relating to the trades in question were given to the appellant and not providing the details of the counter party or not questioning the counterparty did not violate the principles of natural justice in the facts of the case.

5. Quoting from the SCN dated February 27, 2019 the learned senior counsel for the respondent submits that the SCN is very clear in directly charging the appellant for indulging in synchronized trading involving artificial prices and large volumes. The SCN further adverts to two parties only and full particulars of the synchronized trades such as date, time, volume and price etc., except the name of the counter party, were annexed to the SCN. Moreover, the appellant never asked for the details of the counter party except in this appeal under consideration which would indicate that the appellant was always aware of the counter party and is now asking for these details as an afterthought.

6. The learned senior counsel for the respondent also relied on the order of this Tribunal in the matter of *Sunita Gupta vs. Securities and Exchange Board of India (Appeal No. 269 of 2018 decided on September 19, 2019)* which held that a large number of synchronized trades, circular trades and reversal

trades in themselves is sufficient to prove violation of PFUTP Regulations irrespective of any connection with the opposite side. The learned senior Counsel also relied on this Tribunal's order dated 21st August 2019, in *Basic Clothing Pvt. Ltd. v. Securities and Exchange Board of India*, Appeal no. 301 of 2019. Further, it was contended that as per Regulation 4.6.2(1)(b) no person shall indulge in market manipulation. The Learned senior counsel also cited the applicable provisions of the byelaws and F&O Regulations in emphasising his contentions.

7. We have heard the learned counsel for the parties through video conference and perused the documents placed before us. We note that the respondent investigated the trades executed by the appellant in its proprietary account during February 2019. It came out in the investigation that out of the 130 scrips in which the appellant was trading during the said period trading in 9 scrips of the appellant matched significantly with one counter party i.e. Affluence Gems. Moreover, such trades accounted for more than 60% of the total trading activity of the appellant during the investigation period. Further, appellant's trade in the said nine scrips matched with the Affluence Gems traded to the extent of more than 90% and the said trades resulted in a profit

of Rs. 6.78 crore by the appellant. Details relating to these trades are given in the impugned order and since those trades are not in dispute we do not propose to go into the details.

8. We note the relevant provisions in the F&O Regulations as quoted below for convenience:

“4.6.2 Without prejudice to generality of the provisions contained in the above clause, no person shall indulge in market manipulation, namely:

(1).(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities / derivatives market or, results in reflection of prices of securities / derivatives contracts based on transactions, which are not genuine trade transactions; or...”

Similarly, Regulation 4.6.2.3 (f) and 3.1.17 of the F&O is reproduced as under:

“3. No trading member shall

(f) either take opposite position to an order of a constituent or shall execute opposite orders which he is holding in respect of two constituents except in the manner laid down by the F&O Segment of the Exchange...”

3.1.17 The Trading Member/Participant shall continue to be liable for all trades executed on the system for orders entered on his behalf. Trading

Member/Participant shall be responsible for all the actions of their authorised persons.”

9. On the contention of proportionality and legality of the penalty imposed, NSE vide circular relating to “Abnormal/Non-genuine trades” dated 13 December, 2018, Members/Brokers had been directed to refrain from such trades, also stating the possible actions, including penalty, in failing to comply. Subsequently, Circular bearing no. NSE/INVG/43435 dated 4th February 2020, was issued amplifying the penalty provision which reads as under:-

“the Exchange shall levy a penalty of minimum of 15% upto a maximum of 100% profit earned/loss incurred on the trading members for both profit and loss making abnormal / non-genuine transactions after following the due process and providing necessary opportunity to the trading member for clarification in the matter.”

10. In addition to the aforesaid provisions in the F&O Regulations/Circular, we also note that the appellant is a broker and a public limited company who has been a member of the stock exchange since 1995 and operates in all segments of the stock exchanges and therefore, is fully aware of the laws relating to proprietary trading in addition to trading on behalf of

clients as a broker. The appellant is under obligation to discharge its functions including the proprietary trading functions with utmost care and diligence. Matching of more than 90% of the appellant's trading with one counter party on multiple trading days and that too in liquid stock futures contracts cannot be just chance even though the trading has been done through the anonymous trading platform of the stock exchange, and would indicate some meeting of minds as the ratio of the Apex Court's Judgment in Kishore Ajmera puts forth. Since such matching with one counter party is not disputed and the data relating to the same have been given to the appellant not giving the name of the counter party *per se* has not prejudiced the appellant in any manner. It is immaterial whether the said counter party is A, B or C; the only relevant question is whether a significant proportion of trading by the appellant has matched with one counter party. Appellant's contention that since out of 130 scrips in which it traded and trading in only 9 scrips had any concentration and hence there is no wrong-doing is also devoid of any merit since only trading of scrips in which significant concentration has been found to be violative of the relevant provisions.

11. We further note that as per relevant provision in the NSE Circulars dated 13 December 2018 and 04 February 2020 the exchange is empowered to impose monetary penalty in the range of 15% to 100% of the profit earned by an entity through such non-genuine trades. In the present case only the minimum penalty at the rate of 15% has been imposed; which is in accordance with applicable law and does not suffer from disproportionality or harshness.

12. In the light of the aforesaid reasons appeal lacks merit and is therefore dismissed with no order as to costs.

13. The present matter was heard through video conference due to Covid-19 pandemic. At this stage it is not possible to sign a copy of this order nor a certified copy of this order could be issued by the registry. In these circumstances, this order will be digitally signed by the Presiding Officer on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Parties will act on production of a digitally signed copy sent by fax and/or email.

Justice Tarun Agarwala
Presiding Officer

Dr. C.K.G. Nair
Member

Justice M.T. Joshi
Judicial Member

19.11.2020
msb