BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 9.1.2014
Date of Decision: 24.1.2014

Appeal No.32 of 2013

Smt. Krupa Sanjay Soni
Shri Sanjay Soni
36, Malay Banglow, Near Anurag Banglow,
Behind Sarshawati V. Mandir School,
Science City Road, Sola, Ahmedabad – 380 060. …… Appellant

Versus

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

Mr. J.J. Bhatt, Advocate with Ms. Rinku Valanju and Mr. Nimit Gandhi, Advocates for the Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Advocate for the Respondent.

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

Per : Jog Singh

1. The present appeal has been preferred by the two Appellants challenging the impugned order dated September 14, 2012 passed by the Respondent, imposing a penalty of Rs.30 lakh on each of them under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) for violation of Regulations 3(a), (b), (c) and (d); 4(1), 4(2)(a) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade

Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations).

2. Briefly stated, the facts of the case are that the Respondent conducted an investigation in respect of the trading activity of Appellant no.1 along with Appellant no.2 and a few others in the scrip of Shree Global Tradefin Ltd., (for short "SGTL") with a view to examine possible violation of the provisions of the SEBI Act and the PFUTP Regulations framed thereunder.

3. The investigation pointed out that the scrip had opened at Rs.325 on March 23, 2009 and closed at Rs.428.25 on November 20, 2009 (period of investigation). There was, thus, an increase in price of about 31.77 percent in 163 trading days. The Appellants alongwith few others formed a "group" and this Krupa Soni Group had the highest concentration of trading in the scrip of "SGTL" during the investigation period. They have allegedly dealt in the scrip of "SGTL" in a fraudulent and manipulative manner during the period in question, thereby creating a false and misleading appearance of trading, artificial volume and price manipulation in the scrip.

4. In addition to the two Appellants, the "group" stated to include consisted of J M Soni Consultancy, Shri Paresh Chauhan, Shri Krunal Rana, Shri Dharmendra Soni, Shri Dilipkumar Soni, Shri Jayeshkumar Soni, Shri Janakray Soni, Shri Dharmesh Soni, Shri Bhargav Patel, Shri Bhargav Vyas, Shri Kalpesh Chauhan, Shri Ashlesh Shah and Shri Dhiren Kumar Agarwal.

5. After the investigation was over, the Respondent appointed an Adjudicating Officer (A.O.) under section 15I of the SEBI Act, read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to enquire and adjudge under section 15HA

of the SEBI Act, the alleged violation of various provisions of PFUTP Regulations. Accordingly, a show cause notice dated April 20, 2012 was issued to the Appellants seeking an explanation as to why action should not be taken against them for deliberately indulging and executing synchronized trades and self trades which allegedly created false and misleading appearance of trading in the shares of SGTL.

6. Despite service of show cause notice dated April 20, 2012 the Appellants did not file any reply before the learned AO. In the interest of justice and as per the provisions contained in the Adjudication Rules, 1995, the learned AO vide his letter dated August 13, 2012 granted an opportunity of personal hearing to the Appellants to be held on August 22, 2012. The Appellants did not avail of the said opportunity. The learned AO proceeded ex-parte against the Appellants and passed the impugned order.

7. It was found that the Appellants dealt in the scrip of SGTL along with other entities of the Krupa Soni Group, namely, J M Soni Consultancy, Shri Paresh Chauhan, Shri Krunal Rana, Shri Dharmendra Soni, Shri Dilipkumar Soni, Shri Jayeshkumar Soni, Shri Janakray Soni, Shri Dharmesh Soni, Shri Bhargav Patel, Shri Bhargav Vyas, Kalpesh Chauhan, Shri Ashlesh Shah and Shri Dhiren Kumar Agarwal. These entities are connected to each other by way of common addresses, phone numbers, e-mail IDs etc.

8. The learned AO then proceeded to analyse the trading details of the Appellants and their group members in the scrip during the investigation period and the same have been dealt with in paragraph 14 of the impugned order. On the basis of the said tradings, the learned AO found that during the investigation period the said “Group” accounted for approximately 42.86% of the total market gross quantity of trades.

9. On perusal of pleadings and hearing the oral submissions, we note that the self trades are fictitious in nature as there is no transfer of actual beneficial ownership of share and because the buyer and seller are the same person. Such trades are injurious to a healthy market and result in the creation of artificial volumes in the scrip. This in turn gives a totally wrong signal to the members of the public who may invest in the hope of making some gains but ultimately land up with losses. The argument advanced by the learned counsel for the Appellant Shri J.J. Bhatt, who appears with Ms. Rinku Valanju that such self trades were executed through several brokers, in no way mitigates the charge of violation of the PFUTP Regulations. This Tribunal has taken a consistent view that a few instances of self trades in themselves would not, ipso facto, amount to an objectionable trades. However, in the case in hand a number of shares have been dealt with by executing self trades, albeit, through several brokers. Details in this regard have been supplied by the learned AO in paragraphs 17 and 18 of the impugned order. Both the Appellants have executed such self trades through various brokers at least on many occasions during the period in question.

10. In addition to the above said, it is noted from the pleadings that there was trading of some shares in a synchronized manner. There was no difference in the buy and sell orders, quantity and price of shares. Such buy and sell orders were placed almost simultaneously within a time gap of less than one minute. These synchronized trades also amounted to 1.99 percent of the total market volume during the period in question. Therefore, we do not find any legal infirmity, as far as FUTP charge is concerned, in the impugned order dated September 14, 2012.

11. A faint suggestion was put forth by Shri J.J. Bhatt, learned counsel for the Appellant that the show cause notice was not directly received by the

Appellant but it was served upon a friend of theirs. This ground, in our considered opinion, is untenable in the facts of the present case. However, in all fairness, we would like to note that Shri J.J. Bhatt has given up this contention during the oral arguments.

12. In the above backdrop and in the facts and circumstances of the case, the only question that needs our consideration is whether the penalty of Rs. 30 lacs on each of the Appellants, who happen to be wife and husband, is justified or not. Shri Bhatt has emphatically argued in this regard that the learned adjudicating officer has enlarged the scope of the show cause notice without any authority and deviated from the allegations contained in SCN. Parties who allegedly formed "group" have totally been spared as no action is taken against any of them to find out the truth. In the absence of any action against the other members of the alleged "group", role of other parties of the said group has not at all been examined by the learned AO. The learned counsel submits that each party's trades etc must have been considered to find out their role and then only the specific role played by the two appellants could have been spelt out and evaluated in the proper perspective. Therefore, the blame of "group volume" cannot be thrust upon and attributed to the appellants. It is further contended that different parties of the alleged group have handled their respective trading accounts through separate brokers and also met their settlement obligations directly without involvement of appellants. The Appellants have not advanced any fund to the members of alleged group. There is no piece of evidence on record to prove that the appellants "controlled" the tradings /demat accounts of the members of the so called "group". The appellants' nexus with the trades of the group entities has not been, therefore, established.

13. We have considered the submissions carefully and in this connection, we pertinently note that the learned AO has himself, while considering the question of imposition of penalty, observed that it was difficult to quantify any gain or unfair advantage which might have accrued to the two Appellants due to the trades in question or any loss to the investors. Moreover, no action has been taken against the persons who acted as a group along with Appellants. In view of this finding in paragraph 25 of the impugned order, we are of the considered opinion that the ends of justice would be duly met by reducing the penalty to Rs.10 lakh on each of the two Appellants in the facts and circumstances of the case.

14. Accordingly, the impugned order in case of each Appellant is upheld with a modification of the penalty to Rs.10 lac per appellant i.e. in all Rs. 20 lac to be paid within a period of two months from the date of receipt of copy of this order failing which the Respondent would be at liberty to recover the same with interest by taking appropriate steps as per law. Ordered accordingly.

The appeal, thus, stands partly allowed. No costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

24.1.2014
Prepared and compared by
RHN