BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 104 of 2012

Date of decision: 03.07.2012

Mr. Bhavesh Pabari
196/A, Tara House, Dr. Viegas Street
X lane No. 8, First Floor, Flat no. 16,
Chira Bazaar,
Mumbai – 400 002. … 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, Advocate with Mr. Pratham Masurekar, Ms. Pragati Shetty, Advocates for the Appellant.
Mr. Prateek Seksaria, Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra

This appeal has been filed under Section 15T of the Securities and Exchange Board of India Act, 1992 (the Act) against the order dated March 10, 2011 passed by the adjudicating officer of the Securities and Exchange Board of India (the Board) imposing a consolidated penalty of ₹ 12 lacs on the appellant under Section 15HA and Section 15A(b) of the Act. The appellant has been found guilty of violating provisions of regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 (for short the FUTP regulations), regulation 7 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) and

regulation 13 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short the insider trading regulations).

2. The appellant is said to be an investor carrying on trading and investment in equity shares of different companies through its brokers. The Board carried out investigations into the trading of the scrip of Gemstone Investments Limited (the company) for the period August 2006 to August 2008. It was noticed by the Board that the promoter group of the company, which was holding 69.65 per cent of the total share capital of the company during the quarter ending June 30, 2006 had reduced its shareholding in the company to a meagre 1.22 per cent by the quarter ending June 30, 2006. A group of persons named as Narendra Ganatra group, of which the appellant was also a member, is said to have connived with the promoter group and helped them to off-load their stakes in the company at a higher price by indulging in circular and synchronized trades and also by entering into reversal of trades thereby creating artificial volumes and misleading appearance of trading in the scrip which resulted in the increase of price of the scrip. A show cause notice was issued to the appellant on June 8, 2010 and the allegation therein was summarised as under:-

> "16. …… it is alleged that the Noticee, acting in collusion with other entities of Narendra Ganatra Group and with the Promoters/directors of the Company, indulged into circular and synchronized trades in the scrip and also entered into reversal of trades and thereby created artificial volume and misleading appearance of trading in the scrip and raised its price, which induced investors to deal in the shares of GIL and enabled promoters/company related entities to off lead their stakes in the Company.
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> 17. It is alleged that the Noticee, who belonged to the Narendra Ganatra Group entities, acting in combination and with prior understanding with the other group entities and with the promoters/directors of the Company, traded in the scrip in circular/synchronized and reversal manner with the intention to create false and misleading appearance of trading in the market and to artificially raise the price of the scrip in order to enable promoters/directors of GIL to off-load their stake in the Company at higher prices which were not genuine."

In spite of a number of opportunities afforded to the appellant to make submissions on the show cause notice and to appear before the adjudicating officer for personal hearing, the appellant did not furnish any information and the adjudicating officer, after considering the material available on record, held the appellant guilty of following counts :-

> "39. ……. the Noticee acted in collusion with others and created artificial volumes in the market and also influenced the price of the scrip by placing and executing large numbers of buy orders at a price higher than the last traded price, by way of abovementioned manipulative trades and by indulging into such unfair trade practices. Therefore, based on the abovementioned facts and circumstances of the case I arrive at the conclusion that the Noticee has violated the provisions of Regulations 4(1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations ……."
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> 40 to 42 ……
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> "43. …… the Noticee crossed the shareholding/voting rights in the Company beyond the threshold of 5% /10% on at least two occasions. On crossing the said bench mark, on each occasion, the Noticee was required to disclose the aggregate of his shareholding/voting rights to the Company and to the Stock Exchange, where its shares were listed, in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations. I found that the Noticee failed to do so and therefore, he has contravened/violated the provisions of the regulation 7(1) read with regulation 7(2) of the SAST Regulations."
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> "44. Further on crossing the benchmark of 5% shareholding in GIL, the Noticee was also under as obligation to make disclosure to the Company in accordance with the provisions of regulation 13(1) of the PIT Regulations. Thereafter, as has been detailed above, on acquisition of 1,69,800 shares (i.e. 5.55% of the paid up capital) on 15/02//2007 his shareholding increased to 12.55% and on his disposing of 2,70,000 shares on 21/02/2007 his shareholding was reduced to 4.79%. Therefore, on each of these occasions the requirement of regulations 13(3) and (5) were triggered and the Noticee was under obligation to make the required disclosures under the said PIT regulations, which he has failed to do. Therefore, I hold him guilty of violation/contravention of regulation 13(1) and 13(3) read with regulation 13(5) of the PIT Regulations."

In view of the above findings, by his order dated March 10, 2011, the adjudicating officer imposed a penalty of ₹ 10 lacs on the appellant under Section 15HA of the Act for violating/contravening the provisions of the FUTP regulations and ₹ 2

lacs under Section 15A(b) of the Act for violating the provisions of the takeover code and insider regulations. Hence this appeal.

3. We have heard learned counsel for the parties who have taken us through the records. Mr. J. J. Bhatt, learned counsel for the appellant submitted before us that the appellant had not indulged in any fraudulent and unfair trade practices while dealing in the scrip of the company. All the transactions were carried out through the exchange mechanism during trading hours and were delivery based. There was real and effective transfer of beneficial ownership. The transactions of the appellant are individual transactions and have nothing to do with the transactions entered into by the Ganatra group entities. The appellant is not connected to other entities as observed by the adjudicating officer in the impugned order. It was further submitted by him that this Tribunal had earlier passed two orders in Appeal No. 192 of 2010 and Appeal No. 47 of 2011 whereby the promoter group entities of the company and Mr. Narendra Ganatra have been exonerated of the charge of violating the FUTP regulations. The facts of the appellant's case are identical and following the earlier orders of the Tribunal the appellant should also be exonerated of the charge under FUTP regulations.

4. Mr. Prateek Seksaria, learned counsel for the respondent Board, distinguished the orders passed by this Tribunal earlier and also brought our attention to the role played by the appellant in executing the synchronized trades. He has drawn our attention to the relevant findings arrived at by the adjudicating officer against the appellant and submitted that the impugned order has been passed after following the due process of law and is supported with sufficient material on record and hence does not call for any interference by this Tribunal.

5. Having heard the learned counsel for the parties and after perusing the record, we are inclined to agree with the learned counsel for the Board that the impugned order does not call for any interference by this Tribunal. The order passed by this Tribunal on February 21, 2011 in Appeal No. 192 of 2010 in the

case of Premchand Shah vs. Adjudicating Officer, SEBI, was against the promoter group entities and it was held by this Tribunal that the promoter group and the Ganatra Group cannot be held to have connived to increase the price of the scrip. We find that in the case in hand, the allegation in the show cause notice was that the appellant who belonged to the Narendra Ganatra group, acting in combination and with prior understanding with the other group entities and with the promoters/directors of the company, traded in the scrip in circular/synchronized and reversal manner in order to enable promoters/directors of the company to off-load their stakes at a higher price. However, after examining the material available on record, the adjudicating officer has not held the appellant guilty of conniving with the promoters/directors of the company. There are no findings recorded to this effect. The appellant has been held guilty only of conniving with the other group entities who were dealing in the scrip in circular/synchronized manner. Therefore, the order passed by this Tribunal in Appeal No. 192 of 2010 is of no help to the appellant. Similarly, the order dated July 29, 2011 passed by this Tribunal in Appeal No. 47 of 2011 is also of no help to the appellant because the trades of the appellant in that case were not considered significant and in the absence of any evidence on record regarding manipulation of trades or raising the price of the scrip, the appellant in that case was given the benefit of doubt. When a large number of entities are involved and allegation is of fraud and manipulating the securities market, case of each entity is to be viewed with reference to its role in manipulating the trades and its role in executing synchronized/circular/reversal trades. We find that in the case in hand, the adjudicating officer has recorded a categorical finding with regard to the connection of the appellant with other entities of the Narendra Ganatra group and the relevant portion of the order reads as under :-

> "16. It has been alleged in the SCN that the Noticee is connected/related to Narendra Ganatra Group entities and in collusion with them; he executed the alleged manipulative trades and thereby, artificially increased the price and volumes of the scrip. Now, as regards the links/relation of the Noticee with the above said entities with whom the transactions were allegedly found to have been done, it is observed from the available records i.e. **Annexure II** attached with the SCN, that the address of the

> Noticee was same as that of Rajesh Bhanushali, Bharat Thakkar and Narendra Ganatra. It is also observed from available records, that the noticee had fund movement as well as shares movement with Nimesh Ganatra, Prem Parekh, Ankit Sanchaniya, Kishore Chauhan and Rajesh Bhanushali. It is also observed that the Noticee had mainly dealt with Jayesh Kuwadia, Mala Sheth, Rajesh Bhanushali and Ashish Ganatra, in off market transactions. He received about 18,93,005 shares and transferred 23,75,452 shares in off market from/to the said related group entities. Details in regard to such off market deals were provided to the Noticee in **Annexure IX** to the SCN. Further, the Noticee had a joint bank account with Hemant Sheth in Axis Bank Ltd. As admitted by him Bharat Thakkar is his uncle. In regard to the issue of connection/relation of the Noticee with the above said Narendra Ganatra Group entities, I have also noted that the details provided to the Noticee in **Annexures VII to IX** of the SCN are in regard to his alleged indulgence in manipulative trades, mainly with Rajesh Bhanushali, Hemant Sheth, Mala Sheth, Prem Parikh and Kishor Chouhan (Narendra Ganatra Group entities) as counterparties duing the relevant period. The details of relation/connection of the group entities with the Noticees and/or among others members of the group were provided to the Noticee in **Annexure II** of the SCN."

We are inclined to agree with the findings of the adjudicating officer that the entities with whom the appellant is sharing his address, is having bank transactions and also dealing in off market transactions cannot be a stranger and, therefore, the appellant has rightly been held to be a part of the Narendra Ganatra group.

6. On the issue of the appellant having indulged in synchronized, reversal and circular trades, the role of the appellant viz-a-viz the other Narendra Ganatra entities has been discussed in detail in paragraphs 20 to 39 of the impugned order. The trades discussed in these paragraphs and attributed to the appellant have not been disputed. The only defence raised is that the appellant has traded in his individual capacity and not as a part of the group. However, the evidence on record on the basis of which the findings have been arrived at, proves otherwise. In the findings arrived at by the adjudicating officer, the trading in the scrip had been divided into two parts. In the first part, during the period between August 28, 2006 to March 16, 2007, out of 13,03,800 shares sold by the promoter group entities, 9,45,500 shares were bought by the Narendra Ganatra group as counter party. During this phase, the appellant had purchased a total of 2,59,736 shares

out of which 55,200 shares were purchased from Manish Joshi and Hemant Seth, two other entities of Narendra Ganatra group in which buy orders were placed at a price higher than the last traded price. In the second phase of investigation from March 20, 2007 to August 21, 2008, the promoter group entities sold 11,60,380 shares and the Narendra Ganatra group bought 8,96,619 shares as counter party out of which the appellant purchased 5,89,634 shares mostly from Kishor Chauhan, Ankit Sanchaniya, Mala Sheth, Prem Parikh, Bhupesh Rathod and Bharat Thakker, all Narendra Ganatra entities at a price higher than the last traded price. Out of 223 days of trading, on 168 days the appellant entered into circular trades on buy side and out of 221 days of trading, the appellant indulged in circular trading on 149 days. The charts drawn on pages 15, 16, 17, 18 and 19 of the impugned order clearly bring out the case of circular/reverseal trades executed by the group entities where appellant is a party. We agree with the adjudicating officer that matching of a large number of trades between the selected set of persons/entities for a considerable period of time in illiquid scrip cannot be a coincidence. Therefore, the adjudicating officer has rightly concluded that on the basis of the material on record, it is established that the appellant acted in collusion with others and created artificial volumes in the market and also influenced price of the scrip by placing and executing a large number of buy orders at a price higher than the last traded price and indulged in unfair trade practices. Therefore, we have no hesitation in upholding his findings that the appellant violated the provisions of regulation 4(1), 4(2)(a), (b), (e) and (g) of the FUTP regulations.

7. From the data available on record, it is also clear that the appellant acquired 2,06,900 shares of the company on February 9, 2007 which works out of 6.89 per cent of the paid up capital of the company. He further acquired 1,69,800 shares on February 15, 2007 increasing his holding to 12.55 per cent of the paid up capital. The appellant crossed the shareholding of the company beyond the threshold limit of five per cent and ten per cent on these occassions and he was required to disclose the aggregate of the shareholding/voting rights to the

company and to the stock exchange where the shares of the company are listed in terms of regulation 7(1) read with regulation 7(2) of the takeover code. Further, on crossing the limit of 5 per cent shareholding, the appellant was required to make disclosures to the company in accordance with regulation 13(1) of the insider trading regulations. Again, on acquisition of shares increasing his holding to 12.55 per cent and on disposal of shares when his holding was reduced to 4.79 per cent, the appellant was required to make disclosures in accordance with the requirements of regulation 13(3) and (5) of the insider trading regulations. Admittedly, these declarations were not made and the appellant violated the provisions of takeover code as well as the insider trading regulations. No fault can, therefore, be found with regard to the findings arrived at by the adjudicating officer in this regard.

For the reasons stated above, we do not find any merit in the appeal and the same is dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

03.07.2012
Prepared & Compared by
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