

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

**Order Reserved on : 04.07.2023
14.07.2023**

Date of Decision : 18.08.2023

Appeal No. 568 of 2023

Econo Broking Pvt. Ltd.
(Erstwhile Bansal Finstock Pvt. Ltd.)
Office No. 201 to 202, 2nd Floor,
Dalal Street Commercial Co-op Society Ltd.,
Block No. 53, Building No. 53,
GIFT City, Gandhinagar,
Gujarat – 382 355.

...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. Pesi Modi, Senior Advocate with Mr. Rushin Kapadia,
Mr. Anil Shah, Ms. Kritika A. Nahate and Ms. Mamta Chaoji,
Advocates i/b. Juris Matrix Partners LLP for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody,
Mr. Arnav Misra and Mr. Harshvardhan Melanta, Advocates
i/b. M/s. K. Ashar & Co. for the Respondent.

AND
Misc. Application No. 867 of 2023
And
Appeal No. 577 of 2023

Mauria Udyog Limited
Sohna Rd., Opp BPCL Oil Filling Station,
Sector 55,
Faridabad,
Haryana – 121 015.

...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. Shyam Mehta, Advocate with Mr. Rushin Kapadia,
Ms. Rinku Valanju and Mr. Amit Kumar, Advocates i/b. R V
Legal for the Appellant.

Mr. Gaurav Joshi, Senior Advocate with Mr. Mihir Mody,
Ms. Shilpa Joshi, Mr. Arnav Misra and Mr. Harshvardhan
Melanta, Advocates i/b. K. Ashar & Co. for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. Two appeals have been filed against a common order dated June 19, 2023. Both the appeals were heard on different dates and orders were reserved. Since a common order was passed we are also passing a common order.

2. The appellants have challenged the *ex parte ad interim* order cum show cause notice dated June 19, 2023 issued by the Whole Time Member ('WTM' for short) of the Securities and Exchange Board of India ('SEBI' for short) directing the appellants to deposit Rs. 136.40 crores jointly and severally along with 226 noticees plus interest @ 12% per annum and has further restrained the appellants from accessing the securities market during pendency of the proceedings. As a result of this interim order the bank accounts and the demat accounts have been frozen.

3. We have heard Shri Pesi Modi, the learned senior counsel with Shri Rushin Kapadia, Shri Anil Shah, Ms. Kritika A. Nahate and Ms. Mamta Chaoji, the learned counsel for the appellant in Appeal no. 568 of 2023, Shri Shyam Mehta, the learned senior counsel with Shri Rushin Kapadia, Ms. Rinku Valanju and Shri Amit Kumar, the learned counsel for the appellant in Appeal no. 577 of 2023 and Shri Gaurav Joshi, the learned senior counsel with Shri Mihir Mody, Ms. Shilpa Joshi, Shri Arnav Misra and Shri Harshvardhan Melanta, the learned counsel for the respondent in both the appeals.

4. The contention of the appellants is, that there was no urgency in the issuance of the *ex parte ad interim* order cum show cause notice at this stage inasmuch as the impugned trades are of the year 2017 to 2020. There was no tearing hurry for the respondent to pass such a draconian order. In support of their submissions the learned counsel has placed reliance upon various decisions of this Tribunal in the matters of ***Affluence Fincon Services Pvt. Ltd. and Ors. vs SEBI (Appeal no. 269 of 2020 decided on September 07, 2020)***, ***Dr. Udayant Malhoutra vs. SEBI (Appeal no. 145 of 2020 decided on June 27, 2020)***, ***Cameo Corporate Services Limited vs. SEBI (Appeal no. 566 of 2019 decided on November 26, 2019)***, ***North End Foods Marketing Pvt. Ltd. vs SEBI (Appeal no. 80 of 2019 decided on March 12, 2019)*** and ***Mahavir Singh N Chauhan vs SEBI (Appeal no. 393 of 2018 decided on October 18, 2019)***.

5. It was also urged that there is no *prima facie* case against the appellants. The appellants have not carried out any trades in question and therefore the question of playing a fraud on the market or on the investors does not arise. The only allegation against the appellant Econo Broking Pvt. Ltd. ('Econo' for short) is, that the appellant has enabled Mr. Hanif Shekh to take the profits of the alleged fraudulent scheme by acting as a

conduit, i.e. by receiving money from the sellers of the tainted shares in the 5 scrips and passing on the same to other parties connected to Mr. Hanif Shekh. It was urged that Econo has not acted as a conduit and the fund transactions which is alleged in the *ex parte ad interim* order cum show cause notice with Noticee no. 5, Noticee nos. 220 to 224 and Noticee no. 100 and 106 were in the usual course of business and had nothing to do with the proceeds of the trades in the 5 scrips in question. It was also urged that the alleged connection indicated in the impugned order with Mr. Hanif Shekh and his mother and Late father was irrelevant and the appellant has done nothing wrong and that his business cannot be allowed to be shut down merely on the basis of the alleged connection. It was also urged that the order of impounding and directing the appellant along with other noticees to deposit jointly and severally was wholly erroneous inasmuch that there is no allegation that Econo has made any unlawful gains and therefore the question of directing the Econo to deposit the money was patently erroneous. It was urged that the impugned order has nowhere identified as to what unlawful gains was received by the appellant and therefore the direction of impounding and deposit to be made jointly and severally with the other noticees does not arise.

6. The appellant Mauria Udyog Limited ('Mauria' for short) contended that it is not known as to how the respondent has calculated the unlawful gain in the absence of any detailed investigation. It was contended that the appellant Mauria has nothing to do with the alleged trades and the alleged profits made as depicted in Table 12 had nothing to do with the appellant. Further, allegations that the appellant had transferred the proceeds to the ultimate beneficiaries is patently erroneous. It was contended that the alleged proceeds alleged proceeds never came into corpus to the appellant Mauria.

7. Before we deal with the submissions of the appellants it is essential to narrate in brief the background and the facts of the case led to the filing of the present appeals. The appellant Econo is a broker and contends that it has 48671 registered clients and over 100 employees. SEBI noticed a sharp rise in the price and volumes in 5 scrips, namely, Mauria Udyog Ltd. 7NR Retail Ltd., Darjeeling Ropeway Company Ltd., GBL Industries Ltd and Vishal Fabrics Ltd. Accordingly, an investigation was launched and it was observed certain strong commonalities in the trading pattern. One such common feature was that the buy recommendations in the 5 scrips were widely circulated through circulation of SMS. In addition certain websites were also used

for recommending buying in the scrips in question. It was noticed that there was pre-SMS circulation phase during which the scrips which did not have any significant corporate announcement or did not have very sound fundamentals witnessed substantial movement in the price of the scrip. The second phase kicked in with post circulation of bulk SMS with buy recommendations during which the trade volumes and price of the scrips rose further.

8. The investigation revealed that there was three set of entities involved in the entire matter. The first set of entities were those who were seen to be instrumental in artificially influencing the price and volume in the scrips during the pre-SMS period. These entities were nomenclated as ‘PV Influencers’. These PV Influencers were found to be connected with each other and were acting in concert as a coherent group during the pre-SMS period with the sole purpose of increasing the price and volume in the 5 scrips. The second set of entities were ‘Off loaders’ who were also the entities connected with each other and with the Company and made substantial profits by dumping their shares of the Companies by taking advantage of the abnormal price rise in these scrips during the post-SMS circulation. The investigation further revealed that the master

mind behind the successful implementation and execution of the entire fraudulent operation was the ‘SMS Sender’ who was identified as Mr. Hanif Shekh who apart from being instrumental in orchestrating the entire scheme along with his connected entities had also sent the bulk SMS with the buy recommendations and also made use of certain websites for making buy recommendations in these scrips in question which in turn influenced and lured investors to trade in the 5 scrips.

9. The investigation further revealed that PV Influencers was connected to each other and had traded among themselves during the pre-SMS period in a concerted manner to increase the price in the scrips in question. The trades created artificial volume and price. Once the momentum was generated bulk SMS was issued strongly recommending buy recommendations which was initiated by the master mind Mr. Hanif Shekh. At this stage the collaborators entered the scene and who were found to be connected to each other to multiple fund transaction, common phone numbers etc. These collaborators traded among themselves mostly intra trades increasing volume inspite of incurring losses. The trading pattern was found to be manipulative. Through these collaborators the momentum in the scrips in question which had no financial fundamentals caught

the eyes of the unsuspecting investors through bulk SMS and, at this stage, the Off loaders who were connected to the promoters of the Company of the scrips in question and with connected entities of Mr. Hanif Shekh started off-loading their shares and made profits. The investigation and also show cause notice revealed that these Off loaders was only a façade to hide the ultimate beneficiaries. The investigation further revealed that these off-loaders received shares off-market purportedly from the promoters of the Company and were thus front entities of the promoters.

10. It was also alleged that the Off loaders transferred the proceeds to the promoter related companies or to Mr. Hanif Shekh related companies / forex Companies which thereafter converted it into cash. Once the off-loaders had exited the scrip profits were transferred from their accounts to the accounts of the ultimate beneficiaries who were none other than the SMS sender and his connected entities and also the promoters of the Companies and their connected entities. The show cause notice further finds that the funds so transferred were undertaken via several conduits so as to maintain the anonymity of the ultimate beneficiaries and also to avoid regulatory detections.

11. Thus, the investigation report and the impugned *ex parte ad interim* order cum show cause notice reveals that the master mind of this entire fraudulent scheme was devised by Mr. Hanif Shekh with his accomplices and promoters whereby firstly price and volume were manipulated by certain group of entities causing price rise in the scrip which did not commensurate with the financial conditions of the Company. After price and volume were maintained at certain level the retail investors fell prey to the price growth in the scrip and at that stage SMS was circulated with strong buy recommendations. The moment the retail investor entered the market and started buying the scrips the Off loaders / related entities connected to Mr. Hanif Shekh and to the promoters of the Company started selling their shares and earned substantial profits in these scrips.

12. The investigation reveals that Mr. Hanif Shaikh was the person responsible for sending SMS and creating websites. Certain entities were found to be related connected to Mr. Hanif Shekh. Mr. Hanif Shekh operated the scheme with the help of accomplices which mentioned in the investigation report. Considering the aforesaid investigation report the WTM *prima facie* found the charges to be serious warranting immediate action and accordingly the directions were issued impounding

the unlawful gains and directing the 226 noticees to deposit the unlawful gains jointly severally to the tune of Rs. 136.40 crores. The noticees were also restrained from accessing the securities market during the pendency of the proceedings.

13. It was urged by the learned senior counsel for the appellants that if an opportunity was provided the appellant would have justified and given proof that the *prima facie* findings arrived at by the respondent was wholly incorrect and that the appellants had nothing to do with the alleged scheme orchestrated by Mr. Hanif Shekh. It was urged that the impugned order is not only arbitrary but is also punitive and therefore the order should be set aside and the appeal should be allowed.

14. On the other hand, the learned senior counsel for the respondent contended that the charges are serious and based on the investigation report the ex parte ad interim order cum show cause notice was passed. It was urged that there was no delay on the part of the respondent in passing the impugned order and even though the transaction may relate to the period 2017 – 2019 nonetheless pursuant to the investigation the charges were found to be serious warranting immediate action and therefore the impugned order was passed in order to prevent the

appellants and other noticees from infiltrating the market. It was urged that the appellant Econo was controlled and managed by Mr. Hanif Shekh and its connected entities and continuation of the appellant as broking firm would seriously hamper the securities market. The appellant Econo has been found to be a conduit and the investigation report clearly indicates that large amount of money was being transferred to other entities which ultimately found way to the beneficiaries of Mr. Hanif Shekh and to forex companies connected to Mr. Hanif Shaikh. It was also contended that the investigation report clearly indicates that the appellant Mauria was financing the employees to trade. Further, the Off loaders transferred its profits to the promoters of the appellant Company and to its connected entities. It was also urged that the Company and its promoters were found to be guilty in money laundering by the Supreme Court in the matter of Amrapali Group and consequently in the light of the *prima facie* finding given in the investigation report an immediate order was required to be passed to prevent the appellant Mauria from further infiltrating the market.

15. Having heard the learned counsel for the parties at some length, we find that the power to pass *ex-parte ad interim* order, pending investigation, flows from Section 11 and 11B of the

SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section (2) of Section 11 of the Act. SEBI has power to pass an interim order and such interim order can also be passed *ex parte* in order to prevent further possible mischief of tampering with the securities market. If during the course of investigation, it is found *prima-facie*, that the person is violating the securities laws or is siphoning of the funds of the listed company to the detriment of its shareholders, it would be obligatory for SEBI to pass an interim order or for that matter an *ex parte ad interim* order in order to safeguard the interests of the investors and to maintain the integrity of the market.

16. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. However, at times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks

no delay. Thus, pre-decisional hearing is not always necessary when *ex-parte ad-interim* orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing.

17. In **Anand Rathi and Others vs Securities and Exchange Board of India, 2002 (1) Mh.L.J. 522** a Division Bench of the Bombay High Court while interpreting the provisions of Section 11 and 11B of the SEBI Act held:-

*“31. It is thus clearly seen that pre decisional natural justice is not always necessary when ad-interim orders are made pending investigation or enquiry, unless so provided by the statute and rules of natural justice would be satisfied if the affected party is given post decisional hearing. It is not that natural justice is not attracted when the orders of suspension or like orders of interim nature are made. The distinction is that it is not always necessary to grant prior opportunity of hearing when ad-interim orders are made and principles of natural justice will be satisfied if post decisional hearing is given if demanded. In this regard the following observations of **Chinnappa Reddy J. in Liberty Oil Mills** case are pertinent : (SCC page 490 para 20).*

"We have referred to these four cases only to illustrate how ex parte interim orders may be made pending a final adjudication. We however, take care to say that we do not mean to suggest that natural justice is not attracted when orders of suspension or like orders of an interim nature are made. Some orders of that nature, intended to prevent further mischief of

one kind, may themselves be productive of greater mischief of another kind. An interim order of stay or suspension which has the effect of preventing a person, however temporarily say, from pursuing his profession or line of business, may have substantial serious and even disastrous consequences to him and may expose him to grave risk and hazard. Therefore, we say that there must be observed some modicum of residual, core natural justice sufficient to enable the affected person to make an adequate representation (These considerations may not, however, apply to cases of liquor licensing which involve the grant of a privilege and are not a matter of right; See **Chingleput Bottlers v. Majestic Bottling Company**. That may be and in some cases it can only be after an initial ex parte interim order is made."

32. Thus, it is a settled position that while ex parte interim orders may always be made without a pre decisional opportunity or without the order itself providing for a post decisional opportunity, the principles of natural justice which are never excluded will be satisfied if a post decisional opportunity is given, if demanded. In the present case the order of 12-3-2001 itself provided a post decisional hearing on 21-3-2001. The same was availed of by the petitioners. At the post-decisional hearing, full opportunity was given to them to produce evidence and documents and the ex parte order was confirmed only after considering the submissions made by them. In these circumstances, the plea of Dr. Singhvi that there was violation of principles of natural justice, cannot be accepted."

18. In **Gautam Thapar & Ors. vs Securities and Exchange Board of India**, Appeal no. 413 of 2019 decided on October 1, 2019 this Tribunal held:-

*“14. There is no doubt that an ex-parte ad-interim order can be passed only when there is an urgency. In **Liberty Oil Mills & Ors. vs. Union of India & Ors.** AIR (1984) SC 1271, the Supreme Court held that the urgency must be infused by a host of circumstances and further held that the regulatory agency must move quickly in order to curb further mischief and take action immediately in order to instill and restore confidence in the capital market. There is no doubt that only under emergent circumstances and spelling out a case of urgency that an ad interim ex parte orders can be passed. Such exercise of regulatory measures in the form of ad-interim ex-parte orders can only be done upon the existence of circumstances warranting such a drastic measure.*

15. Applying the aforesaid test, we find that considering the allegations spelled out in the ex-parte ad-interim order which we need not refer on merits at this stage, we find that upon the examination of the evidence, a prima facie opinion was correctly arrived at by the WTM based on objective facts indicating diversion of funds from a listed Company which was not in the interest of its shareholders. It was thus extremely necessary that an action on urgent basis was required to stop further defalcation/ diversion/ siphoning of the funds of the Company and to protect the interest of the investors and its shareholders and to instill confidence in the securities market. Such measures if not taken while the iron was hot would defeat the regulatory measures that has been provided to SEBI under the SEBI Act. We are of the opinion that, in the instant case, there was ample evidence to show urgency and, considering the material that has been brought on record, the matter being serious, warranted an inference by the regulator. Whether such transactions indicated in the ex-parte ad-interim order was dully authorized or not by the RAC or whether such transactions were approved by a resolution of the Board of Directors is a matter to

be considered on merit by the appropriate authority and it is not appropriate for this Tribunal to consider such documents at this stage as consideration of these documents may prejudice not only the investigation but also the parties.”

19. The contention of the appellant that the transaction related to 2017-2019 and therefore there was no tearing hurry to pass an *ex parte ad interim* order at this stage is not acceptable. A detailed investigation has been carried out which report indicates the involvement of 226 persons who were found to be part of a fraudulent scheme devised by Mr. Hanif Shekh and its accomplices in which buy recommendations in the scrip of 5 scrips were circulated through SMS and certain websites which resulted in the increase in the price and volume of the scrips during the SMS period. The investigation has revealed, creating artificial price and volume in these scrips to lure the retail investors before circulating SMS and thereafter Off loading the scrips to the unsuspecting investors. In our opinion considering the gravity of the charges leveled in the interim order cum show cause notice read with the investigation report such order was required to be passed in order to prevent the appellants and other noticees from further infiltrating the market.

20. The contention that no *prima facie* case existed in passing the impugned order is wholly erroneous. The impugned order read with the investigation report indicates that a *prima facie* finding was arrived at based on objective facts indicating manipulation in the price of the 5 scrips in question and the diversion of the proceeds to the ultimate beneficiaries. Insofar as appellant Econo is concerned admittedly the said appellant has not traded in the scrip in question but has acted as conduit in transferring the profits to the master mind Mr. Hanif Shekh and its connected entities through layered transactions. Details regarding transfer of the funds finds place in the impugned order cum show cause notice and in the investigation report. We find that large sums of money have been transferred through layered transactions.

21. In addition to the aforesaid, we also find that there is a direction connection of the appellant broking firm with the master mind Mr. Hanif Shekh. We find from the perusal of Table 20 of the impugned order that mother of the master mind Mr. Hanif Shekh was holding 55% shareholding in the appellant Econo. In addition, a close entity of Mr. Hanif Shekh, namely, Sanjay Kotak was the Chief Executive Officer in the appellant Company. Further, Mr. Hanif Shekh's e-mail address shows his

association and connection with the appellant Company. These facts at the moment have not been disputed and the only allegation made is that the connection shown in the impugned order of the appellant Company with Mr. Hanif Shekh is irrelevant. Such contention is unacceptable as in our opinion, the master mind who has controlling stake in the appellant firm has a material bearing to the transfer of the ill-gotten gains to the ultimate beneficiaries.

22. The appellant Mauria's role is related to certain fund transaction in the scrip of its Company and not in respect of any other scrip. The role of the appellant has been clearly specified in the impugned order which shows that certain shares of the Company was off loaded off market to the Off loaders who in turn sold it to the unsuspecting investors when the price rose. Thus proceeds were subsequently transferred to connected entities of the promoters of the appellant as well as to the promoters through layered transaction. It has also been stated in the impugned order that the employees of the appellant Company were involved in trading in high quantities and were *prima facie* funded by the Company. The transfer of the proceeds has been indicated in Table 20 and in Table 12. The alleged profits made by the appellant Company which is

depicted in Table 12 has not been disputed. The only contention raised had an opportunity been provided they would have explained that these are not profits made by the Company from the alleged Off loaders.

23. Be that as it may. We are of the opinion that the charges leveled against the appellants are serious and in the given facts and circumstances of the case the respondent was justified in passing the *ex parte ad interim* order cum show cause notice. We are of the opinion that instead of dealing with the issues raised by the appellants it would be appropriate that the appellants should file an appropriate reply for vacation / modification of the impugned order as in our opinion we do not find any reason to interfere in the impugned order at this stage.

24. We accordingly dispose of the appeals directing the appellants to file a reply / objection to the show cause notice as well as, if advised, file an application for vacation / modification of the *ex parte ad interim* order. If such an application is filed the WTM will fix a date for hearing and would pass appropriate orders on the said application for vacation / modification of the *ex parte ad interim* order within two weeks after giving an opportunity of hearing.

25. It is made clear that all arguments raised before this Tribunal would remain open to the appellants to raise the same before the WTM which would be considered and appropriate orders would be passed by the WTM. We also make it clear that any observation made by this Tribunal in our order is only *prima facie* and will not be utilized by either of the parties. In the circumstances of the case parties shall bear their own costs. The miscellaneous application is disposed of.

26. This order will be digitally signed by the Private Secretary on behalf of the bench and all concerned parties are directed to act on the digitally signed copy of this order. Certified copy of this order is also available from the Registry on payment of usual charges.

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

18.08.2023
msb