

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 40 of 2011

Date of Decision: 19.7.2011

Ashish M. Ganatra
1, Shyam Kunj,
86, Walkeshwar Road,
Mumbai – 400006.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Mumbai – 400 051.

..... Respondent

Mr. Rajeev Kumar, Advocate for the Appellant.

Dr. (Mrs.) Poornima Advani, Advocate with Ms. Amrita Joshi and Mr. Ajay Khaire,
Advocates for the Respondent.

CORAM : P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : S.S.N. Moorthy, Member

The appellant Shri Ashish M. Ganatra is an investor and trader in the securities market. The present appeal is directed against imposition of a penalty of ₹ 1 lac under section 15 HA of the Securities and Exchange Board of India Act 1992 read with Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short the FUTP Regulations). The adjudicating officer held that the appellant acted in collusion with other group entities of Ganatra group in manipulating the price and volumes of the scrip Gemstone Investments Limited and indulged in circular /manipulative trades.

2. The brief facts of the case are the following. The Securities and Exchange Board of India (for short the Board) conducted investigations into the dealings in the scrip of Gemstone Investments Limited (GIL) for the period August 2006 to August 2008. During investigations, it was noticed that the CMD of GIL and a set of connected persons, including the appellant, had traded in the scrip of GIL and also indulged in off market transactions. A common notice was issued to the 14 entities of the group alleging manipulation of the scrip in concert with the group entities and circular trades in the scrip among the various group entities. The appellant off loaded 45000 shares of GIL in the

market and it was contended during investigations that he was not acting in concert with the other entities of the group and that he was engaging himself in normal market dealings in off-loading the shares in the market and he had no knowledge about the buyers and their inter se connection in the Ganatra group. In short, the appellant argued that the sale of 45000 shares of GIL was in the nature of normal market transaction. The reply furnished by the appellant was not accepted by the adjudicating officer and he found the appellant guilty of violating the FUTP Regulations. Accordingly a penalty of ₹ 1 lac, as mentioned above, was levied.

3. The contentions raised in the appeal briefly are that (1) The appellant was not related to or in any way connected with Ganatra group and the findings of the adjudicating officer are without any basis or evidence and (2) The appellant did not engage himself in any kind of manipulative/circular transaction as alleged as he was off-loading his shares in the market as a normal investor.

4. We have heard the learned counsel for the parties. The facts of the case, as briefly stated above, remain undisputed. The learned counsel for the Board submitted that the appellant is closely connected with Narendra Ganatra group and the movement of shares as evidenced from the trade log would satisfy his connection with the Ganatra group. It was pointed out that Shri Bhavesh Pabari, one of the persons in the Ganatra group, transferred 15000 shares to the appellant in off market transactions out of which 6800 shares came back to Shri Bhavesh Pabari through market transactions the very next day. Similarly, Shri Bhavesh Pabari transferred another lot of 15000 shares to the appellant which came back to the former on the same day, 5000 shares directly and 10,000 shares through Shri Kishore Chauhan, another entity in the Ganatra group. Another transaction took place on July 26, 2007 which was also in the same pattern. In short, the learned counsel for the Board would argue that transfer of shares from Shri Bhavesh Pabari to the appellant and back to Shri Bhavesh Pabari is a calculated and conscious attempt on the part of the appellant and this would establish a clear case of circular trade.

5. On a verification of the records it is seen that the Board discovered drastic fluctuations in the price of the scrip of GIL and started investigations. The promoter group of GIL off-loaded substantial amount of shares which were cornered by Ganatra group. The Ganatra group consisted of 17 persons as per the show cause notice and the

appellant was included as one among the group. The adjudicating officer held that the nature of transactions indulged in by the appellant would indicate that the appellant is a related/connected entity of the Ganatra group. Shri Bhavesh Pabari, with whom the appellant is said to have had financial dealings from 1994, owed some amount to the appellant. He was unable to repay the dues and after protracted dialogues Shri Bhavesh Pabari promised to transfer 45000 shares of GIL to the appellant which was agreed to. The shares were transferred to the appellant in off market dealings. It is argued by the counsel for the Board that there was no evidence regarding the financial dealings between Shri Bhavesh Pabari and the appellant and the latter could not produce any documentary or other proof in support of the amount due to him from the former. Be that as it may, it is not necessary to consider the genesis of the loan transaction and the repayment details since it is not relevant to the issue at hand. However, the fact remains that Shri Bhavesh Pabari transferred 45000 shares of GIL to the appellant in off market dealings.

6. In the show cause notice it is alleged that the appellant was acting in collusion with other entities of Ganatra group and with the promoters/directors of the company and indulged in circular/synchronized trades in the scrip of GIL. The thrust of the allegation is that the appellant was acting in collusion and with prior understanding with other group entities of Ganatra group and effecting circular and synchronized trades.

7. The appellant denied his role in the alleged fraudulent transactions contending that he had no connection with the Ganatra group and all that he did was to enter into transactions with Shri Bhavesh Pabari with whom he had dealings as early as 1994. In the reply to the show cause notice the appellant stated that the dealings with Shri Bhavesh Pabari in the year 2007 related to only the transaction in 45000 shares of GIL which were given to him in lieu of repayment of loan by Shri Bhavesh Pabari.

8. On a consideration of the facts on record we find that the appellant cannot be absolved of the wrong doing of circular/synchronized trade in the scrip of GIL. It may be true that the appellant received the shares of GIL in lieu of payment due from Shri Bhavesh Pabari. However, the transactions in shares on July 11, 2007, July 17, 2007, July 26, 2007 and July 27, 2007 exhibit a pattern by which they have been traded in a circular fashion. The adjudicating officer has dealt with the issue in detail in his order. On July 11, 2007 Shri Bhavesh Pabari transferred 15000 shares to the appellant out of

which 6800 shares were sold back to Shri Bhavesh Pabari himself on the very next day. On July 17, 2007 the appellant received 15000 shares from Shri Bhavesh Pabari out of which 5000 shares were sold to the latter on the same day. 10,000 shares were sold to Shri Kishore Chauhan of Ganatra group who in turn sold them to Shri Bhavesh Pabari. The entire transaction took place on the same day. On July 26, 2007 another lot of 15000 shares were transferred to the appellant by Shri Bhavesh Pabari out of which 2000 shares were sold to the latter the very next day. 13000 shares were sold to Shri Kishore Chauhan of Ganatra group on July 27, 2007. The above transactions bear testimony to the manipulative trades indulged in by the appellant. The only argument advanced by the appellant is that he traded the shares in market and he was not aware of the beneficiaries and he just received the consideration for the sales. A perusal of the trade logs would show that the appellant was not acting in tune with the normal market movements with the objective of making maximum profits out of the shares in his possession. The timing of the trades and the entities with whom the appellant dealt would illustrate that it was a pre-meditated move for creation of artificial price and volumes which calls for necessary legal action from the Board. The adjudicating officer has concluded that the appellant was indulging in circular/manipulative transactions. His observations are noteworthy.

“Here, I cannot ignore the fact that immediately after receiving the shares from Bhavesh Pabari, the very next day the Noticee sold 6,800 shares back to him and further out of the abovementioned four trading days, when the Noticee had sold the shares, on as many as three days the counter party to his sale transaction was Bhavesh Pabari and further that on all the above said instances of his sale transactions the counterparty buyers were the entities belonging to the Narendra Ganatra Group.”

.....

“(c) Out of the 4 trading days when the Noticee sold the shares received from Bhavesh Pabari, on three days one of the counter parties buying the shares was Bhavesh Pabari. For the remaining sale trades of the Noticee (i.e. where Bhavesh Pabari was not the counterparty) it were other entities of the Narendra Gnatra Group only, who purchased the shares.

I cannot accept it by any logic that when the Noticee has sold the shares on limited four trading days, how on those days on almost all the occasions the counterparty to his sale transaction i.e. the buyer is either the same person from whom he has received the shares in off market or a person belonging to the Narendra Gantra Group, particularly when there were other buyers and sellers also present in the market.”

9. The appellant may not be related/connected with the Ganatra group by way of family relation or corporate business dealings. To this extent, he cannot be regarded as an integral part of the Ganatra group. However, the trades executed by him amply

demonstrate that he was in league with a few entities operating as part of Ganatra group. At any rate, circular trade is a mischievous market practice and it deserves to be curbed. In as much as the trade logs and conduct of the assessee establish circular trade the plea of ignorance or of genuine market transactions advanced by the appellant cannot be accepted. The penalty imposed in this case is only ₹ 1 lac. Taking into account the facts and circumstances of the case we cannot consider this to be excessive or unreasonable.

10. Another argument advanced by the learned counsel for the appellant during the hearing of the case, though not taken up in the grounds of appeal, is that the trade logs furnished to the appellant are not duly authenticated and so they lack evidentiary value. We do not find any merit in this argument. It is an established fact that trade logs are system generated and there is no human intervention. It is not necessary to further authenticate the system generated documents. It has been the practice to accept computer generated trade logs as correct and legally tenable. So this argument also does not merit any consideration.

In the result, the levy of penalty of ₹ 1 lac is confirmed and appeal dismissed. No order as to costs.

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

19.7.2011
Prepared and compared by
RHN