

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 16 of 2010

Date of decision: 1.3.2011

1) Jatin Manubhai Shah
2) Varshaben Shah
3) Manubhai Shah
1606, Dallspole,
Near Hanuman Dada Mandir,
Rasik Chowk, Astodia Chakala,
Ahmedabad – 380001.

.....Appellants

Versus

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

..... Respondent

Mr. Zal Andhyarujina, Advocate for Appellants.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the
Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S. S. N. Moorthy, Member

Per : Justice N. K. Sodhi, Presiding Officer (Oral)

This appeal is directed against a common order dated November 9, 2009 passed by the adjudicating officer imposing a monetary penalty of ` 10 lacs on appellant no. 1 and a penalty of ` 5 lacs on each of the other two appellants for violating 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 regulations). All the three appellants are alleged to have colluded with other entities to create volumes in the scrip of Oasis Media Matrix Ltd. (for short the company) and they are said to have off-loaded their shares in the market in off market transactions. The purchasers in turn are alleged to have sold the shares in the market. On the basis of these allegations, the

Securities and Exchange Board of India (for short the Board) was prima-facie of the view that the appellants had violated regulation 4 of the regulations. Three separate show cause notices were issued to the appellants alleging violation of regulation 4. The learned counsel appearing for the Board at the outset has very fairly stated that the charge against appellant no. 2 (Varshaben Shah) is not made out and that she has been absolved of the same charge by the whole time member of the Board in separate proceedings initiated against her under Section 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act). On the statement of the learned counsel for the respondent, the impugned order qua her shall be set aside. In view of this statement, it is not necessary for us to deal with the case of appellant no. 2.

2. This brings us to the case of appellants no. 1 and 3. They were both issued show cause notices dated August 16, 2007. It is stated in para 5 of both the show cause notices that the scrip of the company was infrequently traded and that trading started mainly from April 2002 and the volumes increased thereafter. The Board carried out investigations in the scrip of the company and it transpired that the scrip was traded for 50 days on the Bombay Stock Exchange during the investigation period when there was spurt in volumes and price. Investigations further revealed that the price of the scrip went up from ` 1.85 on June 12, 2003 to ` 3 on June 30, 2005 and thereafter due to selling pressure, the price came down to ` 0.45 in August 2003. It was observed that during the period of investigation, the promoters of the company, persons acting in concert with them and entities connected to the company had off-loaded their holdings. Having said all this in paragraph 5, a specific charge was sought to be levelled against appellant no. 1 in paragraph 6 of the show cause notice issued to him and this is what is said against him:-

“6. It is alleged that, you colluded with other entities to create volume in the scrip and offload the shares in the market. Further, you were holding shares in the company along with your family

members and were found connected to the promoter/director of the company hence summons were issued to you and your family members. You appeared for yourself and on behalf of your sister Prerna Shah, brother-in-law Pinesh Shah and father Manubhai Shah and recorded the statement (Copy enclosed as Annexure "III"). You have accepted in your statement that you are a good friend of Hitesh Patel, who is the promoter of the company and at the time of public issue of the company your friends and many other investors invested in the company as per his advice. Further, you are also known to the director of OMML, Shri Chanderkant Mehta. It was also observed from the distribution schedule (Copy enclosed as Annexure "IV") of the company that you were holding 5,63,000 (1.81%) shares of the company OMML. In this regard you were asked about the source of acquisition of these shares. In reply to this you stated that after 1996 market got crashed and your friends to whom you had advised to invest in the public issue of OMML could not get the return on their investments so they approached you and asked for their money back. You have further stated that you went to private financiers, borrowed money and pledged the shares. Subsequently, you borrowed money from your relatives to pay off the loan of the financiers and got back the shares which you got transferred in his name and his family members. From an analysis of their demat account (Copy enclosed as Annexure "V") it is observed that you and your family members have all transferred shares in off market to some common clients during the investigation period. These clients have in turn sold shares in the market. It is observed from the statement recorded and available details and documents that are well connected to the promoters/directors and PACs' of OMML. Also it is further alleged that you and your family members sold shares in the off market to known clients which were offloaded in the market and thus helped in creating artificial volume in the market."

In the show cause notice issued to appellant no. 3 the allegation made against him is also contained in paragraph 6 and it is alleged that he colluded with appellant no. 1 and other company connected entities to help create artificial volume and manipulated the market. The precise charge against appellant no. 3 reads as under:-

"6. It is observed from the investigation report that you were holding 5,36,000 shares (1.72% of the equity capital) of OMML. Shri Jatin Shah appeared on your behalf to record the statement (Copy enclosed as Annexure "III"). It is also observed from the demat statement (Copy enclosed as Annexure "IV") that you have transferred 5,00,000 shares in off market transaction to Shri. Ramesh Jain (other noticee) which were eventually offloaded in the market and thus it is alleged that such transaction helped in creating artificial volume in the market. At the time of recording the statement Shri. Jain submitted (Copy enclosed as Annexure "V") that he bought 47,81,552 shares on spot transaction from Manubhai Shah father of Jatin Shah which were transferred in his demat account and after selling the shares in the market he made payment of Rs.27,75,000 to you. It was also observed from Shri. Ramesh Jain's demat account no. 16818645 maintained with

HDFC Bank Limited that Ramesh Jain had received shares in the off market from several entities who are either connected to the company or a shareholder of the company and not from Manubhai Shah. On enquiring Shri. Jain further submitted that he purchased shares from you and on your instruction shares were credited to his demat account from different demat accounts. The details of shares received and disposed by Shri. Ramesh K. Jain is enclosed as Annexure “VI”. In light of the aforesaid it is alleged that you colluded with Shri. Jatin Shah and other company connected entities to help create artificial volume and manipulated the market.”

On a consideration of the material collected during the course of the investigations and the enquiry conducted by the adjudicating officer, he came to the conclusion that the charge of violating regulation 4 of the regulations stood established against the appellants and, therefore, by the impugned order he imposed monetary penalties upon them as stated in the opening part of this order. Hence this appeal.

3. We will first deal with the case of appellant no. 1. Para 6 of the show cause notice issued to him has been reproduced above. We are of the view that the allegations as contained therein and taking them on their face value do not make out a charge of violation of regulation 4 of the regulations. It is pertinent to mention here that regulation 4 prohibits a person from indulging in fraudulent or unfair trade practice in securities. It also prohibits from indulging in an act which creates false or misleading appearance of trading in the securities market and further prohibits from dealing in a security not intended to effect transfer of beneficial ownership. When we read the charge levelled against the first appellant as contained in para 6 reproduced above, he is alleged to have “colluded with other entities to create volumes in the scrip and off-load the shares in the market”. This allegation is as vague as it could be. The show cause notice does not tell the appellant as to who were the entities with whom he colluded to create volumes in the scrip. The fact that he off-loaded his shares in the market is not in dispute and that by itself is not an irregularity. The first appellant and his family members were holding shares in the company and it is alleged that he was connected to the promoters of the company. Holding shares and being connected

to the promoters of the company is again not an irregularity much less an illegality. It is further pointed out in para 6 of the show cause notice that the statement of the first appellant was recorded during the course of the investigations and he was asked as to how he was holding 5,63,000 shares of the company. He had furnished an explanation which, too, has been referred to in this para of the show cause notice. Having noticed his explanation, the last few lines of the paragraph point out that the first appellant and his family members had transferred their shares in off-market transactions to some common clients and that these clients, in turn, sold the shares in the market. From this fact alone, it is alleged that he and his family members helped in creating artificial volumes in the market. We cannot understand how this follows. The first appellant and his family members did sell the shares in the market in off market transactions which is one of the permissible modes. The purchasers have further sold the shares in the market. It is not alleged that the further sales were in any way illegal and even if they were, those sellers and purchasers would be accountable for the same. We have carefully gone through the allegations contained in para 6 of the show cause notice and find that no case has been made out against the appellant. We cannot but hold that the show cause notice was vague and did not make out any case of violation of regulation 4 of the regulations. At this stage it would be appropriate to refer to the observations of the Supreme Court in *Canara Bank & Ors. Vs. Debasis Das & Ors.* (2003) 4 SCC 557. This is what the learned Judges have laid down:-

“The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is

after all an approved rule of fair play. The concept has gained significance and shades with time.” (emphasis supplied)

Now we come to the show cause notice issued to the third appellant. The charge against him is also contained in para 6 thereof which has been reproduced hereinabove. We are clearly of the view that the allegations made in this para of the show cause notice also do not make out a case of violation of regulation 4 of the regulations against him. The first charge mentioned in this para of the show cause notice is that the third appellant had sold 5,00,000 shares in an off market transaction to one Ramesh Jain against whom also proceedings have been initiated which shares he eventually offloaded in the market. From this fact it is alleged that the transaction helped in creating artificial volumes in the market. We do not think so. Off market transactions are permissible in law and it is not alleged that the transaction by the third appellant was illegal. Ramesh Jain who purchased the shares from this appellant had further sold them in the market. We do not think that both these transactions even if taken together constitute any wrong doing. The other charge in para 6 of the show cause notice is that Ramesh Jain purchased 47,81,552 shares from the third appellant in spot transaction and payment was made to the third appellant only after Ramesh Jain sold those shares in the market. We see nothing wrong in this. It is not alleged that the spot transaction was illegal. The demat account of Ramesh Jain shows that he had received shares in off market transactions from several entities who are connected to the company and not from the third appellant. An enquiry was made from Ramesh Jain who stated that the shares had been credited from his demat account on the instructions of the third appellant. On the basis of these facts, paragraph 6 of the show cause notice goes on to state that “in light of the aforesaid it is alleged that you colluded with Shri Jatin Shah and other company connected entities to help create artificial volume and manipulated the market”. We fail to understand how the facts stated in para 6 lead to the conclusion that the third appellant colluded with Jatin Shah who is the first appellant before us. We have already dealt with the case of the first appellant in the earlier part of our order and had found that the show cause notice issued to him did not make out any case against

him. If no case had been made against him, we fail to understand how the third appellant could have colluded with the first appellant. For all these reasons, we are of the view that the charge levelled against the third appellant must also fail on the ground that it is vague and that the allegations made in paragraph 6 do not lead us to conclude that regulation 4 had been violated.

4. The observations made by the Supreme Court in Canara Bank's case (supra) apply with full force to the case of both the appellants herein.

In the result, the appeal is allowed and the impugned order set aside leaving the parties to bear their own costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

1.3.2011
Prepared & Compared by
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