

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 52 of 2011

Date of Decision: 28.6.2011

Mr. Lokesh Kapoor
Juhu Samdeep, Juhu Versova Link Road,
Andheri (W), Mumbai – 400 072.

..... Appellant

Versus

Adjudicating Officer
Securities and Exchange Board of India
SEBI Bhavan, C-4A, G Block,
Bandra Kurla Complex, Mumbai – 400 051.

..... Respondent

Mr. Zal Andhyarujina, Advocate with Ms. Prachi Pande, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, 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)

Unfortunately, this is a second round of litigation between the parties and the errors pointed out in the first round do not seem to have been rectified. The appellant before us is a trader in the securities market and he is said to have executed trades in the scrip of Mega Corporation Ltd. (referred to hereinafter as the company). The Securities and Exchange Board of India (for short the Board) carried out investigations in the scrip of the company and noticed that during the period from January 25, 2005 to September 16, 2005 the price of the scrip moved from ₹ 5.25 to ₹ 41.10. Investigations further revealed there was a sudden spurt in the volumes as well. Board found that as many as 42 entities including the appellant traded in the scrip of the company and manipulated the price and volumes. Adjudication proceedings were initiated against all the 42 entities. While issuing notice to the appellant the supporting documents pertaining to some others had been furnished to him and he was found guilty of violating Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (for short the Regulations) which prohibits a person from indulging in fraudulent and unfair trade practices in securities. The adjudicating officer imposed a penalty of ₹ 5 lacs on him. Feeling aggrieved by that

order, the appellant filed Appeal no.244 of 2009 before this Tribunal. The appellant had pleaded that the data furnished to him to substantiate the charge levelled against him was erroneous and did not establish that he had executed manipulative trades as alleged. It was also the appellant's grievance that supporting documents pertaining to other entities had been furnished to him. Without going into the other contentions raised on behalf of the appellant, this Tribunal set aside the order of the adjudicating officer solely on the ground that the supporting documents furnished to the appellant did not pertain to him. The case was remanded and the adjudicating officer was directed to complete the proceedings expeditiously.

2. After remand the adjudicating officer served the appellant with a fresh show cause notice dated December 16, 2010 alleging that he had violated the provisions of Regulation 4 of the Regulations. The gravamen of the charge levelled against the appellant is contained in paragraph 12 of the show cause notice which reads as under:-

“12. It thus appears that you along with the said connected entities as reflected in Annexure 1 have allegedly manipulated the scrip of MCL by entering into transactions that are not genuine resulting in the creation of a misleading appearance of trading in the scrip of MCL and artificial volumes, thereby contravening the various provisions of the PFUTP Regulations.”

Although the charge contained in the show cause notice is generic in nature yet the details of the trades executed by him and other entities that formed the group were furnished to him alongwith the show cause notice. Annexure 6 to the show cause notice contains the details of trades of all the 42 entities which are said to have created a misleading appearance of trading in the scrip. Annexures B and C to the show cause notice contain the details of the trades executed by the appellant. The appellant filed his detailed reply denying all the allegations. He pointed out in the reply that the data furnished to him alongwith the show cause notice had the same mistakes/errors which existed in the earlier data that was furnished to him in the first round of proceedings. Without taking note of the objections raised by the appellant and on the basis of the material collected by him the adjudicating officer by his order dated January 7, 2011 has again found the appellant guilty of violating Regulation 4 of the Regulations and has imposed a penalty of ₹ 5 lacs on him. It is this order which is now under challenge in this appeal.

3. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. We are clearly of the view that the data furnished to the appellant was erroneous and did not furnish the correct details of the trades executed by him and that the impugned order deserves to be set aside on the ground of non application of mind. As already noticed above, the appellant alongwith the connected entities is said to have manipulated the scrip of the company by executing non genuine trades resulting in creation of misleading appearance of trading in the scrip. These trades are further said to have created artificial volumes. The adjudicating officer noted the errors and discrepancies pointed out by the appellant and made the following observations in paragraph 15 of the impugned order:-

“I have noted the errors and discrepancies pointed out in the annexures to the SCN. I have noted that the rise in certain names and figures were due to typographical or spacing problems, respectively. The discrepancy in that data as provided in the two sets of Annexures was due to the fact that the Annexures A to E contained exclusive figures pertaining to the Noticee for the entire period of investigation.”

These observations do not carry us anywhere because the adjudicating officer has not dealt with them. When we look at the data furnished to the appellant it becomes obvious that the errors therein are so patent and grave that we cannot hold that the charge stands established. For instance, the appellant purchased 200 shares of the company on May 23, 2005 at the rate of ₹ 38.90 per share. The trade is shown to have been completed at 10:22:44 hours. The details of the buy order and the broker are mentioned. The name of the appellant is also mentioned as the buyer. These shares were sold by one Umesh Choukikar. The seller had put in his sell order at 10:23:03 hours and the quantity of shares sought to be sold is shown as zero. This data is on the face of it erroneous. How could the trade get executed even before the sell order was put into the system. Besides, the sell quantity was zero. There is a similar error in another trade executed by the appellant on the same day with the same seller. When the learned counsel for the respondent was confronted with this data he pointed out that the correct details of the trades executed by the appellant were furnished to him in Annexures B and C. We have perused these annexures as well and taken note of the details of the trades. The same mistakes appear there. In those annexures as well the trades have been shown to have been executed even before the sell order was put into the system. A serious charge like execution of fraudulent trades cannot be established on the basis of this inaccurate data.

The adjudicating officer did not apply his mind to this material aspect of the case. These inaccuracies in the data furnished to the appellant go to the root of the matter and we are satisfied that he was not provided with sufficient opportunity to meet the case as set up against him in the show cause notice.

4. At this stage, the learned counsel appearing for the Board contends that the case be remanded again so that correct data could be furnished to the appellant. In the circumstances of this case, we are not inclined to accept this course of action. The errors now pointed out were there in the data that was furnished to the appellant alongwith the first show cause notice. In spite of the errors being pointed out in the earlier proceedings, no effort was made to furnish the correct data which could establish the charge. The appellant has already faced two enquiries by the adjudicating officer and the sword of Damocles has remained hanging on him since the year 2005. This would have had some effect in case he had done some mischief.

In the result, the appeal is allowed and the impugned order set aside with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

28.6.2011

Prepared and compared by
RHN

