

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 18/01/2017

Appeal No.320 of 2014

M/s. Quantum Global Securities
and Leasing Company Ltd.
A-89, 2nd floor, Lajpat Nagar-II,
New Delhi – 110 024.

... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A,
G-Block, Bandra-Kurla Complex,
Bandra (East),
Mumbai – 400 051.

... Respondent

Mr. G.K. Mishra, Advocate a/w Mr. B.L. Aggarwal for Appellants.

Mr. Kumar Desai a/w Mr. Anubhav Ghosh, Advocates i/b The Law
Point for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per : Justice J.P. Devadhar (Oral)

1. Appellant is aggrieved by the order passed by the Adjudicating Officer ("AO" for short) of Securities and Exchange Board of India ("SEBI" for short) on 22nd July, 2014. By that order, penalty of Rs.60 lac is imposed on the appellant under Section 15HA of the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) for violating the provisions contained in the SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("PFUTP Regulations" for short) and Rs.15 lac under

Section 15HB of the SEBI Act for violating the Code of Conduct for Stock Brokers specified under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 ("Brokers Regulations" for short).

2. Appellant is a registered stock broker and by the impugned order penalty is imposed because, the appellant is found to have indulged in synchronized trades, circular trades and reversal trades in the scrip of M/s. Gangotri Textiles Ltd. ("Gangotri" for short) during the investigation period with the entities who had contributed towards Last Traded Price (LTP) variation in the scrip of Gangotri.

3. Counsel for the appellant fairly stated that the appellant does not dispute the findings recorded by the AO that the appellant had indulged in synchronized trades, circular trades and reversal trades in the scrip of Gangotri. However, it is contended that there were no malafide intention to violate the SEBI Act and the regulations framed thereunder and therefore, the penalty imposed against the appellant is wholly unjustified.

4. Arguments advanced by Counsel for the appellant that the penalty imposed is exorbitant, unreasonable and excessive can be summarized as follows:-

- (a) It is submitted that various entities involved in the present case had repeatedly indulged in such violations, whereas, the appellant has committed such violation only once and,

therefore, the AO ought to have taken a lenient view and ought not to have imposed penalty against the appellant.

- (b) The AO failed to take into consideration various mitigating factors set out under Section 15J of SEBI Act before imposing penalty on the appellant.
- (c) The annual turnover of the appellant for last several years has been around Rs.5 lac per year and hence imposing penalty of Rs.75 lac in the facts of present case is wholly unjustified.
- (d) In para 32 of the impugned order the AO has recorded a finding that the appellant's contribution towards LTP was not much. In view of the aforesaid finding recorded in the impugned order, the AO could not have held that the appellant has aided and abetted other entities in committing LTP variation in the scrip of Gangotri during the investigation period. Thus, the findings recorded in para 32 being mutually inconsistent, the impugned order deserves to be quashed and set aside.
- (e) In any event, it is submitted that the trades executed by the appellant being insignificant, it is a fit case for not imposing penalty. Alternatively, it is submitted that after considering all mitigating factors, nominal penalty which this Tribunal deems fit and proper may be imposed on the appellant.

5. We see no merit in the above contentions.

6. At the outset, it is relevant to note that the appellant as a registered stock broker ought to have ensured that the trades were executed in accordance with the SEBI Act and the regulations framed thereunder. Instead, the appellant has not only indulged in reversal trades but has also indulged in synchronized trades and circular trades with the entities who had indulged in LTP variation in the scrip of Gangotri. Indulging in synchronized trades, circular trades and reversal trades constitute fraudulent and unfair trade practice under the PFUTP Regulations and penalty imposable for such violations under Section 15HA of the SEBI Act is up to Rs.25 crore or three times the amount of profits made out of those such practices, whichever is higher. Thus, in the facts of present case, as against the penalty of Rs.25 crore imposable for violating PFUTP Regulations, the AO after considering all mitigating factors has imposed penalty of Rs.60 lac which cannot be said to be unreasonable or excessive.

7. Similarly, failure on part of the appellant to adhere to the standards required to be maintained by a registered stock broker and indulging in synchronized trades, circular trades and reversal trades constitutes serious violation of Brokers Regulations and for such violation, penalty imposable under Section 15HB of the SEBI Act is up to Rs.1 crore. However, after considering all mitigating factors, the AO, as against the imposable penalty of Rs.1 crore, has imposed penalty of Rs.15 lac which cannot be said to be unreasonable or harsh.

8. Argument of the appellant that various entities involved in the present case have indulged in such violations repeatedly does not make any difference to the case of the appellant. As noted earlier, the appellant as a registered stock broker ought to have acted as a role model for others. In the present case, the appellant has not only violated PFUTP Regulations, but has also violated Brokers Regulations. In any event, it is an admitted fact that penalty of Rs.1 crore has been imposed on Shri Purshottam Khandelwal and individual penalty of Rs.80 lac has been imposed on Cosmo Corporate Services Ltd and Ishita Finstock Ltd., respectively who are the other entities involved in the present case. Therefore, the argument of the appellant that compared to other entities involved in the present case, penalty imposed against the appellant is excessive and exorbitant cannot be accepted.

9. Argument of the appellant that the AO has failed to consider the mitigating factors set out in Section 15J of the SEBI Act is also without any merit. As noted earlier, as against the penalty of Rs.25 crore imposable under Section 15HA of the SEBI Act, the AO after considering all mitigating factors has imposed penalty of Rs.60 lac and as against penalty of Rs.1 Crore imposable under Section 15HB of the SEBI Act, AO after considering all mitigating factors has imposed penalty of Rs.15 lac. Therefore, the argument of the appellant that the AO has failed to consider the mitigating factors cannot be accepted.

10. Fact that the annual turnover of the appellant for several years has been around Rs.5 lacs cannot be a ground to impose nominal penalty against the appellant. Imposition of penalty under Section 15HA and Section 15HB of SEBI Act is based on the violations set out therein and not on the basis of annual turnover. Having committed serious violations under the PFUTP Regulations and Brokers Regulations, the appellant is not justified in contending that the penalty imposed is excessively harsh or exorbitant especially when penalty of Rs.60 lac has been imposed as against the penalty of Rs.25 crore imposable under Section 15HA of the SEBI Act and penalty of Rs.15 lac has been imposed as against penalty of Rs.1 crore imposable under Section 15HB of the SEBI Act.

11. Argument of the appellant that having recorded in para 32 of the impugned order that the contribution of the appellant towards LTP was not much, the AO ought not to have held that the appellant has aided and abetted in LTP variation is also without any merit. What is held in para 32 of the impugned order is, that even though the appellant has not directly indulged in LTP variations, since the appellant has indulged in synchronized trades and circular trades with those entities who had also indulged in LTP variations, it is apparent that the appellant had aided and abetted other entities in committing LTP variations. In our opinion, in the facts of present case, the AO was justified in arriving at the aforesaid conclusions, because, all the trades in question were executed for manipulating the price of Gangotri scrip.

12. For the aforesaid reasons, we see no merit in the appeal. Accordingly the appeal is dismissed with no order as to costs. SEBI is directed to recover the penalty imposed under the impugned order with interest as is permissible under the SEBI Act.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

18/01/2017

Prepared & compared by-ddg