

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 42 of 2011

Date of decision: 9.9.2011

Dinesh R. Vijla
D/1, Gokul, Evershine Nagar,
Malad (West), Mumbai – 400 064.

... Appellant

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

Dinesh R. Vijla, Appellant in person.

Mr. Advait Sethna, 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 order can conveniently dispose of three Appeals no. 42, 43 and 51 of 2011 all of which have arisen out of the same set of facts. Dinesh R. Vijla and Abhijit Todi (referred to hereinafter as Vijla and Todi respectively) are persons who claim to be day traders and traded in the scrip of Hit Kit Global Solutions Limited (for short the company). Shri Hari Hira Stock Broking Pvt. Ltd. (for short the broker) was the common broker when Vijla and Todi executed trades in the scrip of the company (through their respective brokers). Vijla and Todi were served with separate show cause notices alleging that they executed synchronized/matched trades in the scrip of the company in connivance with Eaugu Udhyog Limited (promoter) which is a major promoter of the company. It was alleged that the promoter off-loaded the shares of the company in the market and made good profits and that Vijla and Todi had purchased them who thereafter

executed synchronized trades between them through the broker. Adjudication proceedings were initiated against Vijla, Todi and the broker. The charge against the broker is that it aided and abetted Vijla and Todi in executing the matched trades in the scrip of the company. All the three noticees filed their separate replies denying the allegations levelled against them and on a consideration of the material collected during the course of the investigations and the enquiry conducted by the adjudicating officer she concluded that Vijla and Todi executed synchronized and matched trades through the stock exchange mechanism and that the broker had aided and abetted the execution of those trades being the common broker. By two separate orders dated December 30, 2010 in the case of Vijla and Todi and order dated January 19, 2011 in the case of the broker the adjudicating officer found them guilty of the charges levelled against them. A sum of ₹ 6 lacs each is the monetary penalty imposed on Vijla and Todi and a sum of ₹ 2.5 lacs on the broker. The three appeals are directed against these orders.

2. We have heard Vijla and Todi in person and Mr. Prakash Shah Advocate on behalf of the broker and Mr. Advait Sethna Advocate for the respondent Board who have taken us through the impugned orders and the record. We have on record the details of the trades executed between Vijla and Todi and this is what they reveal. On December 16, 2004 Vijla purchased 25000 shares of the company from Todi. The buy order was put into the system by the broker on behalf of Vijla and by another broker on behalf of Todi. The time, price and order are the same. The buy order was placed at 10:58:17 hrs. and the sell order had been put into the system one second earlier. The price at which both the orders were put into the system was ₹ 1.9 per share, the face value of which was ₹ 2. This order resulted in several trades which matched between Vijla and Todi. These trades though emerging from the same order are not the only trades executed between two of them. We find on December 21, 2004, Vijla again purchased 10,000 shares and his buy order again matched with sell order of Todi. This happened on December 23, 2004 as well. Such matching of trades on the trading system of the stock exchanges cannot happen unless there is manipulation.

When we look at the time at which the buy orders were put in and also the time of the sell orders we find they are the same. Again, the orders were put for the same quantity and at the same price. All this cannot be a coincidence. Parties inform us that the scrip of the company is highly liquid. This being so, it is all the more unlikely that the trades would match between the same parties. Buy and sell orders match on the trading system on the basis of price, time, priority and the trading system being anonymous, trading cannot normally happen between the same parties unless there is manipulation. In the instant case, the manipulation is writ large. When we see the time of the buy and sell orders the quantity and the rate, we find they are all the same. It is obvious that the trades were matched and synchronized through the brokers. Surprisingly, the Board has not proceeded against the broker of Todi. There is no apparent reason on the record to show why his broker was let off. Be that as it may, that would not imply that the three appellants are not guilty of the charge levelled against them.

3. A penalty of ₹ 6 lacs has been imposed on Vijla and Todi on the ground that they executed the matched/synchronized trades in connivance with the promoters. We have seen the chart which was sent to the appellants alongwith their show cause notices showing their so called connection with the promoter of the company. Taking the chart at its face value, we do not find any connection between these two appellants and the promoter. Todi is said to be connected with the promoter because he purchased shares from a company called Penta Electronis and Foods Pvt. Ltd. which, in turn, has purchased them from the promoter in off-market transactions. Off-market transactions per se are not illegal and the connection referred to in the chart does not really link Todi with the promoter. The details of those off-market transactions are not on the record. As regards Dinesh Vijla, the chart does not show any connection whatsoever with the promoter and we wonder how the adjudicating officer recorded a finding to that effect. Having carefully gone through the chart, we are satisfied that it does not link Vijla and Todi with the promoter and we cannot uphold the finding of the adjudicating officer in this regard. However, as already observed, Vijla and Todi

executed synchronized/matched trades. Having regard to the frequency of the matched/synchronized trades, we reduce the penalty imposed on Vijla and Todi to ₹ 2.5 lacs each. The impugned orders stand modified accordingly. In the case of the broker, we find no ground to interfere with the quantum of penalty.

For the reasons recorded above, the appeals stand disposed of as above with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

9.9.2011
Prepared & Compared by
ptm