

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 113 of 2011

Date of decision: 5.8.2011

GIR Marketing & Trading Co. Pvt. Ltd.
7 Grant Lane, 3rd Floor, Room No 320,
Kolkata- 700 001.

.....Appellant

Versus

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

..... Respondent

Mr. Vinay Chauhan, Advocate with Mr. Anant Upadhyay, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Advocate with Mr. Mihir Mody, 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 will dispose of a group of seven Appeals no. 113 to 119 of 2011 all of which raise common questions of law and are directed against similar but separate orders passed by the adjudicating officer imposing monetary penalties on the appellants. The common charge that has been levelled against the appellants is that they executed matched and synchronized trades in the scrip of Saumya Consultants Limited (for short the company) while trading through a common broker namely, Ahilya Commercials Limited. Apart from the trades being synchronized and matched, the adjudicating officer has found that there were other linkages as well between the appellants as a result of which they traded in the scrip and executed non genuine trades and thereby violated the provisions of the Securities and Exchange Board of India (Prohibition of Unfair Trade Practices relating to Securities Market) Regulations 2003. It is common case of the parties that the appellants traded (bought and sold) in the shares of the

company for about 20 days mainly during the period from July to August 2003 and that there have not been many trades thereafter. We also find from the record that during the period when the appellants traded, they were the only ones trading in the scrip in the market and that there were no other traders. As already observed, the seven appellants had a common broker and, therefore, the trades executed by them were cross deals. Cross deals per se are not illegal but the common broker executing the buy and sell orders is not expected to match those orders by putting in orders for the same quantity, at the same price and at the same time. The learned counsel appearing for the respondent Board has placed before us a chart depicting the trades executed by the appellants on the Calcutta Stock Exchange. We find from the chart that in most of the cases the buy and sell orders had been put into the system for the same price, same quantity and at the same time. In other words, it was the common broker who by manipulation was matching the trades on behalf of the appellants and did not allow the price order mechanism of the exchange to match the trades. Proceedings were initiated against the broker as well and a statement of its representative was recorded. He stated that the buy and sell orders had been placed on the specific instructions of the clients who were the appellants. Having regard to the trading pattern of the appellants and the manner in which the trades had been matched, we are satisfied that the trades executed by them were non genuine which were meant to create artificial volumes in the market. We are also satisfied that the appellants have violated Regulations 3 and 4 of the aforesaid Regulations which prohibit persons from directly or indirectly buying, selling or otherwise dealing in securities in a fraudulent manner. These regulations also prohibit persons from indulging in fraudulent or unfair trade practices in securities. In this view of the matter, no fault can be found with the findings recorded by the adjudicating officer.

2. The learned counsel appearing for the appellants then pointed out that the adjudicating officer in the impugned orders has imposed different amounts of penalty on the appellants when their wrong doing was the same. We have perused the impugned orders and find that a sum of ₹ 3 lacs is the base figure fixed by the adjudicating officer

for executing manipulative trades and thereafter, for reasons which are not very clear, he goes on to increase the penalty amount in the cases of Concrete Credit Limited, Morgan Financial Services Private Limited and Astrols Dealcom Private Limited, the appellants in Appeal no. 116, 118 and 119 of 2011. The adjudicating officer has referred to some offer made by these three appellants offering their shares in an open offer which fact has been seriously disputed by the learned counsel for the appellants. The learned counsel appears to be right because we find no material on the record to show that any such offer had been made by these appellants as referred to by the adjudicating officer. This being so, in the case of these appellants as well, the penalty for executing manipulative trades should be ₹ 3 lacs each. However, Astrols Dealcom Private Limited the appellant in Appeal no. 119 of 2011 has also been found guilty of not responding to the summonses issued to it by the investigating officer during the course of the investigations. For this non compliance, a sum of ₹ 1 lac has been imposed as penalty. The learned counsel for the appellant could not seriously challenge the findings of the adjudicating officer in this regard.

For the reasons recorded above, we find no merit in these appeals and dismiss the same. However, the penalty on each of the appellants shall be ₹ 3 lacs and in the case of Astrols Dealcom Private Limited it shall be ₹ 4 lacs. The impugned orders shall stand modified accordingly. No costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K.Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

5.8.2011
pmb
Prepared & Compared By: Pmb