

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 112 of 2011

Date of Decision : 11.08.2011

Kajal P. Shah
1st Floor, 37 Gayatri Society,
Sukhabag Road,
Palanpur – 385001, Gujarat.

...Appellant

Versus

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 with Mr. Ankit Lohia and Ms. Akshaya Bhansali,
Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mobin Shaikh, 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 deserves to succeed on the short ground that the allegations in the show cause notice issued to the appellant initiating adjudication proceedings against her are self contradictory. In paragraph 3 of the show cause notice dated May 21, 2008 it is stated that as many as 42 entities were involved in the manipulation of the scrip of Mega Corporation Ltd. (for short the company). The names of these entities are mentioned in Annexure 1 to the show cause notice. The name of the appellant is among these entities. It is further stated in paragraph 3 that out of the 42 entities, 33 entities were allegedly found to be connected inter se. Their names and linkages have been mentioned in Annexure 2 to the show cause notice. The name of the appellant does not figure in this annexure. It is, thus, clear that the allegation in the show cause notice is that the appellant manipulated the scrip but she was not a connected entity referred to in Annexure 2. In paragraph 11 of the show cause notice, it is alleged that the appellant being a part of the connected entities, had

contravened 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). A bald statement has been made in this para that the appellant is a connected entity without indicating as to how she is connected with any other entity. If we go by the annexures the appellant is not a connected entity but allegation in paragraph 11 makes her a connected entity. The show cause notice does not allege anywhere as to how the appellant was connected with the other entities. In view of this contradiction, the show cause notice must fail.

2. The appellant is alleged to have violated Regulation 4 of the Regulations which prohibits a person from indulging in a fraudulent or an unfair trade practice in securities. Admittedly, on April 15, 2005 the appellant had purchased 5 lacs shares of the company from one Santosh Jagtap through the price and order mechanism of the Bombay Stock Exchange (BSE). The purchase order was executed in three different trades on the same day. Another 11,000 shares were purchased by her on September 1, 2005 from one Ramdas Krishsagar and this purchase was also through the exchange mechanism. The appellant then sold 2,90,160 shares to one Fine Line Mercantile Co. (P) Ltd. in an off market transaction and the balance 2,20,840 shares were sold by her to different entities on BSE. It is alleged that Fine Line Mercantile Co. (P) Ltd. which purchased the shares from the appellant in an off market transaction is one of the connected entities mentioned in Annexure 2 to the show cause notice. From this it has been inferred that the appellant was also a connected entity and a part of the group that manipulated the scrip. We are unable to understand this logic. How can the appellant be part of the connected entities when her name does not figure in Annexure 2 and merely because she sold 2,90,160 shares to Fine Line Mercantile Co. (P) Ltd. in an off market transaction does not mean that she was indulging in manipulating the scrip. There is not a whisper in the show cause notice as to how the appellant was connected with Fine Line Mercantile Co. (P) Ltd. Of course, the appellant executed an off market transaction when she sold the shares but off market transactions are not illegal and nothing has been stated in the show cause notice as to how that transaction was illegal violating the trading norms of the exchange. We further find from the show cause notice that the appellant is alleged to

have sold 56,100 shares to some of the connected entities whose names figure in Annexure 2. It is common case of the parties that these shares were traded on market through the price and order matching mechanism of BSE and there is no allegation that the buy and sell orders were either synchronized or matched or that there was a prior understanding between the buyer and the seller. Merely because 56,100 shares were picked up by the so-called connected entities through the market mechanism does not mean that the appellant was part of the manipulative group or that she was in any way connected with those entities. There is no allegation of any connection between the appellant and the purchasers. In this view of the matter, we are of the view that the charge of manipulation levelled against the appellant is not only contradictory but the respondent has also miserably failed to establish the same even on its own showing.

3. Before concluding, we may mention that the appellant had filed a detailed reply to the show cause notice denying each and every allegation levelled against her. Surprisingly, the adjudicating officer in the impugned order has not dealt with any of the pleas taken by the appellant in her reply though he refers to the reply in the impugned order. It is obvious that he did not apply his mind to the material on record and recorded his findings on mere conjectures without establishing any link between the appellant and the so-called connected entities.

In the result, the appeal is allowed and the impugned order imposing a monetary penalty of ₹ 2 lacs on the appellant set aside. She will have her costs from the respondent which are assessed at ₹ 50,000/-.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

11.08.2011

Prepared and compared by:
msb