

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 182 of 2011

Date of Decision : 15.11.2011

M/s. Mahesh Kothari Share & Stock
Brokers Pvt. Ltd.
54, Bombay Mutual Chambers,
Ambalal Doshi Marg,
Fort, Mumbai – 400 023.

...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. Sean Wassoodew, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh,
Advocates for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
P.K. Malhotra, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

The short question that arises in this appeal is whether the appellant complied with the summons issued to it under section 11C of the Securities and Exchange Board of India Act, 1992 (for short the Act). During the course of the investigations the Securities and Exchange Board of India (for short the Board) has the power to require any person associated with the securities market to furnish such information or produce such books, registers or records as may be considered necessary if such information or production of records is relevant or necessary for the purpose of the investigations. In the case before us, the Board observed spurt in the price and trading volumes in the shares of Alka Securities Ltd. (for short Alka). It undertook detailed investigations in respect of dealings in the scrip of Alka during the period from September, 2008 to July, 2009. It was observed during the course of the investigations that the appellant herein which is a sister concern of Alka and a registered stock broker had dealt in the shares of Alka during the period of investigations. The investigating officer by his summons dated February 10, 2010

called upon the appellant to furnish information on matters enumerated in the annexure thereto. Information was sought from the appellant on the following points-

“Details Required for the period September 01, 2008 to July 31, 2009

1. Date of account opening of M/s Aidos Trade Ltd. (Aidos) with Mahesh Kothari Shares and Stock brokers Pvt Ltd. (MKSL)
2. Date of Account opening of M/s Alka Securities Ltd with MKSL
3. Please mention the UCC of Alka, Aidos
4. Details of First trade of Alka, Aidos, BO1000 (Scrip, qty, date, exchange, etc.)
5. Details of Quarterly statement sent to BO1000, Alka & Aidos and Proof of Delivery
6. Details of Contract notes sent to the BO1000, Alka & Aidos and Proof of Delivery
7. Details of Collateral statement sent to the BO1000, Alka & Aidos and Proof of Delivery
8. Cheque details of payments received/paid from/to BO1000/Aidos/Alka by MKSL in the following format

Sl. No.	Client name	Client code	Cheque no.	Date	a/c no., Bank details	In-favour of	Issued by	Amount (Rs.)	Remarks

9. Shares received/paid from/to BO1000/Aidos/Alka by MKSL in the following format

Sl. No.	Client name	Client code	Scrip Name	Date	Settlement	Exchange	Received from the BOID	Name	Transferred to the BOID	Name	Quantity	Remarks

10. Aidos had received money Rs. 36,61,197 from Mahesh Kothari on December 05, 2008. The corresponding entry is not figuring in the client ledger. Explain.
11. Client ledger of BO1000, Alka, Aidos (in excel format)
12. List of Bank account maintained by MKSL in the following format

Sl. No.	Account no.	Bank name	A/c opened on	A/c closed date if any	Purpose of the account	Remarks

13. List of De-mat account maintained by MKSL

Sl. No.	BOID	DP Name	A/c opened on	A/c closed date if any	Purpose of the account	Remarks

While furnishing information to the investigating officer, the appellant appears to have made efforts not to disclose any information regarding Alka and it was Alka's scrip that was being investigated. We have on record the reply furnished by the appellant. It has furnished some details in regard to Aidos Trade Ltd. but no

information has been furnished regarding Alka. The adjudicating officer in paragraph 19 of the impugned order has pointed out the details of the information which the appellant failed to furnish in regard to Alka and we are in agreement with him that the appellant deliberately withheld the information asked for and thereby hampered the investigations. It must be remembered that all persons associated with the securities market are required to cooperate with the market regulator in the matter of investigations which it undertakes in terms of Section 11C of the Act. If such persons are allowed to withhold information from the regulator, the latter will not be able to carry out the duties enjoined on it by the Act. Non-cooperation with the market regulator in this regard has, therefore, to be viewed seriously. We do not know what else would have emerged had the appellant furnished the required information to the investigating officer. In this view of the matter, we find no ground to interfere with the impugned order holding the appellant guilty for violating Section 11C of the Act. Since the appellant failed to furnish the information asked for, the adjudicating officer was justified in imposing a monetary penalty under section 15A(a) of the Act which provides for a penalty of one lakh rupees for each day during which the failure to furnish information continues or ` 1 crore whichever is less. In the case before us, the adjudicating officer has levied a penalty of ` 10 lakhs only and has already taken a lenient view in the matter.

In the result, the appeal fails and the same is dismissed. No costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

15.11.2011

Prepared and compared by:
msb