

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 20.12.2017

Appeal No. 155 of 2016

Jignesh Shah
18, Dhoot Papeshwar Building,
3rd Floor, Mangalwadi,
Mumbai- 400 004 ...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

Ms. Akansha Jain, Practicing Company Secretary i/b Amit R. Dadhhech
and Associates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Rohan Agrawal, Advocate i/b
MDP & Partners 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 Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on January 15, 2016. By the said order 10 entities including the appellant have been restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner whatsoever, for a period of three years from January 15, 2016.

2. Except the appellant none of the parties who are restrained by the impugned order dated January 15, 2016 have chosen to file appeal against the said order.

3. SEBI conducted investigation in the scrip of IQMS Software Limited (“Company” for convenience) for the period from November 14, 2000 to December 15, 2000. Based on the investigation report, show cause notice was issued to the appellant and other entities alleging that they had indulged in pre-meditated reversal trades in the scrip of the company which resulted in the increase in price of the scrip from ₹ 19 to ₹ 41.80 during the investigation period. It was alleged in the show cause notice that the noticees had acted in concert with each other to create a false market or misleading appearance of trading and that their transactions were not genuine but were done with the intention not to effect transfer of beneficial ownership but to operate as a device to inflate or cause fluctuation in the market price of the scrip. Accordingly, all entities mentioned in the show cause notice including the appellant were called upon to show cause as to why action should not be taken against them for violating the provisions contained in the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (“PFUTP” Regulations, 1995” for short) read with regulation 13(2) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP” Regulations, 2003” for short).

4. Appellant filed his reply to the show cause notice and also availed the personal hearing offered to him.

5. By the impugned order, the WTM of SEBI has rejected the contention raised by the appellant and has inter alia restrained the appellant from accessing the securities market for three years. Challenging the impugned order the appellant has filed the present appeal.

6. Basic argument advanced by counsel for the appellant is that the appellant has traded in the shares of the company in the ordinary course of business and that he was not connected to any of the parties set out in the impugned order. It is submitted that merely because in some of the trades counter parties happened to be the same parties it could not be alleged that the appellant had indulged in reversal trades. In support of the aforesaid contention reliance is placed on the decision of this Tribunal in case of HB Stockholdings Limited v/s SEBI (Appeal No. 114 of 2012 decided on 27.08.2013) and decision of this Tribunal in case of S.P.J. Stock Brokers Pvt. Ltd. v/s SEBI (Appeal No. 52 of 2013 decided on 04.09.2013). It is also contended that the investigation carried out by SEBI was basically against the allottees under the Initial Public Offering (IPO) and the appellant being not an IPO allottee, the WTM of SEBI is not justified in passing the impugned order against the appellant.

7. We see no merit in the above contentions.

8. Findings recorded in para 14 of the impugned order which sets out the reversal trades executed by the appellant has been succinctly summarized by SEBI in its additional affidavit as follows:-

- a) On 15th November 2000 between 11.30.19 am to 11.32.54 am, appellant bought 2000 shares of the company through Networth Stock Broking Limited (“Networth”) from a known counter party Darshan P. Desai who sold through broker Geojit Securities (“Geojit”), through 11 trades. On the same day at 2.50.23 pm, the appellant sold the said 2000 shares of the company through the broker Networth to the same known counter party Darshan P. Desai who bought the same through the broker Geojit, through 10 trades. In short, the appellant bought 2000 shares in the morning from Darshan P. Desai and sold the same back to Darshan P. Desai in the afternoon and thereby the appellant and Darshan P. Desai executed reversal trades for 2000 shares.
- b) On the same day i.e. 15th November 2000, the appellant between 11.52.20 am to 11.57.30 am bought 3000 shares of the company through Networth from a known counter party Sai Investcorp who sold through broker Bipin R. Vora, through 10 trades. On the same day, at 1.12.04 pm, the appellant sold 2000 shares out of the said 3000 shares of the company through broker

Networth to Sai Investcorp who bought through broker Bipin R. Vora, through 7 trades. In short, the appellant bought 3000 shares in the morning from Sai Investcorp and sold 2000 shares out of the said 3000 shares back to Sai Investcorp in the afternoon and thereby executed reversal trades of 2000 shares.

- c) On the same day i.e. 15th November 2000, the appellant in the afternoon at 1.11.10 pm sold balance 1000 shares out of the said 3000 shares purchased by him in the morning as stated herein above to a known counter party Darshan P. Desai who bought the same through broker Geojit, through 4 trades. In short, the appellant routed 1000 shares amongst a group of entities known to each other, as stated hereinabove.
- d) On 24th November 2000, the appellant alternatively sold and brought back 2000 shares of the company from known counter parties by executing 40 trades, as stated hereinbelow. On 24th November 2000, the appellant initially sold 2000 shares to known counter parties M/s AD Investments (500 shares, through 5 trades), Darshan P. Desai (500 shares, through 5 trades) and M/s Goldmist Equifin Pvt. Ltd. (1000 shares, through 10 trades) from 10.14 am to 10.43 am and thereafter bought back 2000 shares in the afternoon from known counter parties viz. M/s. Sai

Investcorp (1000 shares, through 10 trades) and M/s. Harvic Management (1000 shares, through 10 trades) between 12.13 pm and 1.27 pm. The appellant thereby rotated the said 2000 shares of the company between known counter parties as stated hereinabove.

e) On 12th December 2000, the appellant initially bought 2000 shares through the broker Networth from known counter party M/s Harvic Management at around 10.07 am, through 10 trades. Thereafter, these trades were reversed by the appellant at around 12.35 pm when the appellant sold 1800 shares to M/s Harvic Management, through 9 trades. The remaining 200 shares were sold by the appellant to unconnected parties. In short, the appellant and the said M/s Harvic Management executed reversal of trades for 1800 shares, as stated hereinabove.

f) Similarly on 29th November 2000 transactions were matched and reversed between the appellant on one side and M/s Harvic Management being the counter party, on the other side. Similarly, on 13th December 2000 transactions were matched and reversed between the appellant on one side and Milan Vora being the counter party on the other side. Thereafter, once again on 15th December 2000 transactions were matched and reversed between the appellant on

one side and Sai Investcorp being the counter party on the other side.

- g) Thus, on numerous occasions there were transactions where the appellant and the same parties were involved in reversal trades. Evidently, all those entities were known to each other and it is apparent that the consistent reversal trades were pre-meditated and synchronized trades executed with an intention to fraudulently influence the volume and price of the scrip of the said company.

9. Aforesaid facts on record, in our opinion, establish beyond any doubt that the appellant had indulged in reversal trades with the connected entities and, therefore, the inference drawn by the WTM of SEBI that the trades in question were not genuine and fraudulent trades executed to create false market or misleading appearance of trading cannot be faulted.

10. Reliance placed by counsel for appellant on the decision of this Tribunal in case of HB Stockholdings Limited (supra) is misplaced. In that case, in respect of trades that took place in the year 2000 show cause notice was issued in the year 2005 and the same was adjudicated in the year 2012. In those circumstances, this Tribunal quashed the order of SEBI on ground of delay. Apex Court in the case of Commissioner of Central Excise v/s Bhagsons Paint Industries reported in 151 ELT 129 (SC) has held that in the absence of any statutory bar contained in the

Central Excise Act, delay in deciding the show cause notice cannot be a ground to set aside the order passed on the show cause notice. Even the SEBI Act does not contain any provision prescribing time limit for disposing of the show cause notice. Moreover, the Apex Court in the case of State v/s R. Vasanthi Stanley reported in AIR 2015 SC 3691 has held that a serious economic offence or the offences that has the potentiality of creating a dent in the financial health of the institution cannot be quashed on the ground that there is delay in the trial. In the present case, the appellant has indulged in reversal trades which are prohibited under the securities laws. Therefore, in view of the aforesaid Apex Court decisions appellant is not justified in seeking relief based on the decision of this Tribunal in the case of HB Stockholdings Limited (*supra*).

11. Reliance placed by counsel for the appellant on the decision of this Tribunal in case of S.P.J. Stock Brokers Pvt. Ltd. v/s SEBI (Appeal No. 52 of 2013 decided on 04.09.2013) is also misplaced. That case related to synchronized trades, whereas, the case in hand relates to reversal trades. Moreover, in that case neither the names of the persons forming the group with whom the appellant therein had traded were disclosed nor their connection was disclosed. In the present case, the impugned order sets out in detail the names of the persons forming the group and the trades executed by them within the time set out therein. Thus, the decision of this Tribunal in case of S.P.J. Stock Brokers Pvt. Ltd. (*Supra*) does not support the case of the appellant and is distinguishable on facts.

12. The Apex Court in the case of SEBI v/s Kishore Ajmera reported in (2016) SCC 368 has held that the proximity of time between the buy and sell orders may not be conclusive in an isolated case, however, if such trades take place over a period of time then such trades could be considered to have been executed by way of fraudulent/ manipulative exercise with prior meeting of minds. In the present case, facts on record clearly reveal that hundreds of reversal trades were executed between a group to which the appellant was a party. In these circumstances, in our opinion, the inference drawn by the WTM of SEBI that the trades executed by the appellant were violative of the PFUTP Regulations cannot be faulted. Consequently, the direction issued against the appellant, restraining him from accessing the securities market for a period of three years from the date of the impugned order cannot be faulted.

13. Apart from the above, in para 5.11 of the Memorandum of Appeal the appellant has stated that since last twelve years he had not carried out a single transaction in the stock market. Thus, it is apparent that the impugned order has not in any way prejudicially affected the appellant.

14. In these circumstances, we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

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