

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Date of order reserved : 27/01/2015

Date of decision : 27/02/2015

Appeal No.367 of 2014

Vasantlal Mohanlal Vora

201, Vasant Cottage, Second Kasturba Road,
Borivali (E), Mumbai – 400 066.

... 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. Ravi Ramaiya, Chartered Accountant for the Appellant

Mr. Kumar Desai, Advocate with Mr. Tomu Francis, Advocate
for the Respondent.

WITH

Appeal No.384 of 2014

Arcadia Share & Stock Brokers Pvt. Ltd.

328 Ninad, 1st Floor, Bldg. No. 7,
Service Road, Nr. Bhavishya Nidhi Bhavan,
Bandra (E), Mumbai – 400 051.

... 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. Prakash Shah, Advocate for the Appellant

Mr. Kumar Desai, Advocate with Mr. Tomu Francis, Advocate
for the Respondent.

CORAM : A. S. Lamba, Member

Per : A.S. Lamba

1. Appellant No.1 (Shri Vasantlal Mohanlal Vora) being aggrieved by order no. EAD-2/DSR/VVK/R6/199-200/2014 dated August 27, 2014 and subjected to a penalty of Rs.5,00,000/- under Section 15HA for violation of provisions of Regulation 3(a), (b), (c), (d) and 4(1), 4(2)(a), 4(2)(b) and 4(2)(g) of Securities and Exchange Board of India (Prevention of Fraudulent and Unfair Trade Practices) Regulations, 2003 (PFUTP Regulations), has preferred this appeal before this Tribunal against the Impugned Order. Appellant No.2 (Arcadia Shares & Stock Brokers Private Limited) has preferred appeal before this Tribunal against same order of Adjudication Officer, Securities and Exchange Board of India, referred to above, for imposition of penalty of Rs.3,00,000 under Section 15HA of Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) for violation of provisions of Regulations 3(a) (b), (c), (d) and 4(1), 4(2)(a), of PFUTP Regulations and imposition of penalty of Rs.2,00,000 for violation of clauses A(1), A(3), A(4) and A(5) of Code of Conduct as specified in Schedule II under Regulation 7 of Brokers Regulations. Since the two appeals are arising of common adjudication order and are connected matters, Appeal No.367 of 2014 preferred by Appellant No.1 and Appeal No.384 of 2014 preferred by Appellant No.2, were heard together and are being disposed of by this common order, with consent of two Appellants and Respondent.

2. Pursuant to an investigation carried out by Respondent (SEBI) during investigation period from January 1, 2009 to March, 2012 (IP) into irregularities in trading in scrip of Veritas (India) Limited (VIL), it was observed by Respondent, that Appellant No.1 had self traded on 6 instances and traded for 11 shares (wrongly stated as 12 in SCN and Impugned Order) during September 22, 2010 to March 30, 2012 and on 4 instances, he placed order near to last traded price (LTP), while in other 2 instances, he placed order above LTP and out of these 6 instances of self-trades, Appellant No.1 had placed order through Appellant No.2 for two trades, who acted as broker and counter-party broker for Appellant No.1.

3. The table in para 4, shows % of Trade Volume of Appellant No.1 compared to total trading volume in market as 4.88%, but since total volume of Appellant No.1's trade was 1206 (680+526) and total volume of trade of market was 11628, hence this percentage is 10.37%. In para 5, it is stated that Appellant No.1 was one of the top contributor in increase in LTP as well as decrease in LTP and by placing orders above LTP in 20 trades, increased price of VIL scrip by Rs.650.50 and by placing orders below LTP in 28 trades, decreased price by Rs.306.25; thus contributed Rs.344.25 to net LTP increase. Further, it is stated that Appellant No.1's self-trade in 6 instances and traded for 12 shares (actual number is 11) during September 22, 2010 to March 30, 2012 and in 4 instances, out of 6, orders were placed near to LTP and in other two instances order were placed above LTP and in 2 instances, out of six, Arcadia Share & Stock Brokers Pvt. Ltd. was the broker and counter-party broker. It is also stated in SCN – para 6 – that Appellant No.1, established new high price during I.P. in 87 trades and contributed Rs.435.45 to overall

new high price (% of Appellant contribution to new price high in market at 12.02%) and established new price low in 50 trades and contributed Rs.193.15 to overall new low price (% of Appellant's contribution to new low price in market at 15.08%) and finally executed 375 trades for purchase of 680 shares and sale of 526 shares of VIL scrip during I.P.

4. In view of above, it is stated in para 8 of SCN that, Appellant No.1 due to his self trades and resultant monetary profit gained, has violated Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of PFUTP Regulations.

5. In reference to gain from self trades, it is not clear how Appellant No.1 gained from self trades, since sale and buy price are the same. This aspect of allegation cannot be appreciated. Moreover, how acts of self trades have resulted in violation of regulations of SEBI (PFUTP) Regulations, 2003 and SEBI Act, 1992, has not been explained. Self-trades are the acts that violate provisions of SEBI (PFUTP) Regulations, 2003 and SEBI Act, 1992, but how these Regulations and Act can be imputed to acts of self-trades of Appellant No.1 has to be explained explicitly; which is not done in SCN.

6. In SCN against Appellant No.2 – which is the same as against Appellant No.1 – except in para 9 of SCN to Appellant No.2, it is stated that Appellant no.2 acted as stock broker and counter-party broker in executing self-trades for your client and helped your client in making illegal gains. What gains are made in self trade is not apparent. Since sale and buy price is the same, since one client is on buy as well as sale side; but since same broker placed orders for sale as well for buy for client and hence executed self-trades

for Appellant No.1 is not in dispute, but how acts of Appellant No.1 are violative of some regulations of SEBI (PFUTP) Regulations, some sections of SEBI Act, 1992 and some regulations of SEBI (Broker & Sub-Brokers) Regulations, has not been explained in this SCN.

7. Hence only allegation that is justifiably made against Appellant No.2 in SCN is of self-trade. As a matter of fact, Ld. A.O. does not follow up allegation of “mandatory profit gained by Appellant No.2” in Impugned Order – though does not give it up explicitly.

8. In the SCN to Appellant No.2, only reference to his role in “irregularities in trading of VIL”, is mentioned as incidental to 2 self trades of Appellant No.1, where Appellant No.2 was broker and counter-party broker. Except for this last two lines of para 5, no other role/act of Appellant No.2 is specified/stated and there is no linkage imputed to these acts to violations of SEBI Act, 1992, PFUTP Regulations or Code of Conduct of Brokers.

9. In the common adjudication order No. EAD-2/DSR/VVK/RG/199-200/2014 dated August 27, 2014 for Appellant Nos. 1 and 2, no further material/fact/applicable law/ has been added, except submission of Appellant No.1 – that he is a retired person, small investor, buying and selling multiple scrips, dealing purely on delivery basis, etc. have been stated and some more submissions like during his trading in PIL price was Rs.830/- per share and that market volume was 11,628 shares and his volume as % of total trade was 5% and he incurred loss of Rs.33,180/- while trading in VIL and that of Appellant No.2 who submitted that his relation with Appellant No.1 was of client broker, earned brokerage only, 2 self trades occurred through him, for

his clients for 5 shares and there was considerable difference in timing of placing buy and sell orders, that self trades occurred at market price, self trader's buy/sell orders were placed from two different terminals and second dealer placing buy/sell order for Appellant No.1 was not aware of existing pending sell/buy order of Appellant No.1, while placing orders. Appellant No.2 has also submitted that 2 self trades of Appellant No.1 took place from trading terminal of its sub-broker and orders in trading system are placed after viewing, informing and considering best available buy and sell order in existing trading terminal, and at no time, orders were put higher than best available prices and incident of self trading was coincidence and not outcome of any design.

10. Ld. A.O. has stated thereafter that Appellant No.1 was a small time investor trading through various brokers, dealt in VIL scrip – which was illiquid had executed 6 self trades involving 11 shares of VIL, which are fictitious and hence participated in manipulative and fraudulent trading practices in scrip of VIL. Out of said 6 instances of self trades in 2 instances, Appellant No.1 had traded through Appellant No.2.

11. By trading in a fictitious manner, Appellant No.1 had contributed 5% of total market volume traded during relevant period. As market volume was very less and scrip was illiquid, even a single share traded in a manipulative manner will have an impact on market and therefore, A.O. did not find merit in Appellant No.1's submissions and held that Appellant had created false volume by indulging and executing such fraudulent and fictitious trades.

12. In first part of para 21 of I.O., Ld. A.O. has held Appellant No.1 violative of Regulation 3(a), (b), (c), (d) and Regulation 4(1), 4(2)(a), 4(2)(b), 4(2)(e) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003, by holding that Appellant No.1 indulged in self trades in the scrip of VIL and executed 6 self-trades for 11 shares, which were fictitious in nature and thereby did participate in manipulative trade practices in the scrip of VIL, and that out of these 6 self-trades, 2 were executed through Appellant No.2. The second part of para 21 deals in total trades of Appellant No.1 in VIL scrip during IP and contributed 5% of total market volume (as stated earlier it was 10.37%), but has analyzed this total trading of Appellant No.1, by terming the same trading as in a fictitious manner and did manipulate the market, though it was meagre. Here total trading by Appellant No.1 in VIL scrip during I.P. was not meagre – but 10.37% of market volume, but this total trading is being analyzed from point of view of few (6) instances of self-trade, which were meagre compared to total trading-involving 375 trades and 1206 shares of VIL and hence the two trades – self trades and total trades – have been mixed up by Ld. A.O. However, total trades of Appellant No.1 including trades at above/below LTP – resulting in net increase positive increase of LTP – and trades of Appellant establishing new high and new, have not been held manipulative by Ld. A.O. in SCN and as a matter Appellant No.1 has not been held violative of market manipulation due to his total trading.

13. Appellant No.1 is thus held violative of market manipulation due to his self trades, which was the allegation in SCN, and here the same is upheld thus rejecting Applicant No.1's submissions that these were meagre by

stating that these self trades were fraudulent and fictitious and created artificial volumes in the scrip.

14. But in the next para 22, Ld. A.O. states that it is difficult to conclude that the two Appellants by executing self-trades had contributed in establishing a new high and low price in scrip of VIL, as the orders were punched at the relevant market price and the same cannot be concluded as price manipulation. Here again Ld. A.O. is intermingling self trades and total trades, since self trades were at market price but manipulated market volume – which is an allegation held against Appellant No.1, but his total trading contributed to establishing new high/low, but here it is stated execution of self-trades contributed to establishing new high and low price – but it is also admitted by Ld. A.O. that self-trades were at market price.

15. Similarly, it is not explained as to how Appellant No.2 is held violative of some provisions of Regulations of SEBI (PFUTP) Regulations, 2003 and some clauses of Schedule II under Regulation 7 of SEBI (Brokers and Sub-Brokers) Regulations, when Appellant No.2's submissions regarding occurrence of 2 self-trades where he was broker and counter-party broker as a coincidence and not due to any intention of market manipulation, have not been considered and dealt with.

16. Hence, it is seen that Ld. A.O. did not include relevant allegations of market manipulation of Appellant No.1 due to his total trades and self-trades in SCN appropriately and thereafter not dealing with only sustainable allegations of self-trade of Appellant No.1 – partly executed by Appellant No.2 – by sound and logical reasoning in I.O. and also not dealt

appropriately with submissions of Appellant No.2 for his execution of self trades of Appellant No.1 and hence the impugned order is quashed and set aside, but since, it is evident, that Appellant No.1 did indulge in manipulative trades by executing 375 trades, involving 1206 shares in scrip of VIL and contributed to increase/decrease in LTP and also played crucial role in establishing new high/low in the same scrip and also executed six self-trades, two of these being executed by Appellant No.2 as broker and counter-party broker – and hence it will not in interest of justice to discharge the two Appellants from alleged violations as stated against them, due to improper handling of entire adjudication proceedings by Ld.A.O. and hence the case is remanded back to Respondent and Respondent-SEBI, may start fresh adjudicating proceeding, by issuing SCNs to two Appellants, but fresh adjudicating proceedings will be entrusted to some other adjudication officer, who may be found suitable in dealing with the matter.

Sd/-
A.S. Lamba
Member

27/02/2015

Prepared & compared by-ddg