

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 08.10.2013

Date of Decision : 31.10.2013

Appeal No. 43 of 2013

M/s. Triveni Management Consultancy Services Ltd.
Bandra Liberty Co-Op. Society Ltd.,
1st Floor, 98-B, Hill Road, Bandra (West),
Mumbai – 400 050.

..... 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. L. S. Shetty, Advocate with Mr. U. R. Naik, Ms. Manjiri Joshi, Advocates
for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Pratham V.
Masurekar, Advocates for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
A. S. Lamba, Member

Per : A. S. Lamba

This is an appeal filed by M/s. Triveni Management Consultancy Services Ltd. (hereinafter referred to as “Triveni”) against Securities and Exchange Board of India (hereinafter referred to as “SEBI”) before Securities Appellate Tribunal (SAT) in terms of Section 15T of Securities and Exchange Board of India Act, 1992 (for short SEBI Act) against impugned order passed by Adjudicating Officer of SEBI dated January 9, 2013, for violation/contravention of provisions of Regulations 4(1), 4(2)(a), (b), (e) and (n) of Securities and Exchange Board of India (Prohibition of Fraudulent and

Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short PFUTP Regulations) and clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II read with Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (for short Broker’s Regulations).

2. SEBI conducted investigation into alleged irregularity in trading in shares of (i) Allcargo Global Logistics Ltd. (Allcargo), (ii) Asian Star Company Ltd. (Asian), (iii) KSL & Industries Ltd. (KSL), (iv) Mavens Biotech Ltd. ((Mavens), (v) Panoramic Universal Ltd. (Panaromic), (vi) Rasi Electrodes Ltd. (RASI), (vii) Sat Industries Ltd. (Sat), (viii) Ushdev International Ltd. (Ushdev), (ix) KBS Capital Management Ltd. (KBS), (x) Lotus Eye Care Hospitals Ltd. (Lotus), (xi) MVL Limited(MVL) and (xii) Anil Products Ltd. (Anil) on Bombay Stock Exchange Ltd. (BSE), during period from March 1, 2009 to December 15, 2009.

3. During investigation period, there was huge change in price of scrip. Volume of trade and change in price of each of aforesaid companies on BSE is mentioned below :-

Scrip	Price			Volume	
	Open	Close	% Change	Avg Daily	Total
Allcargo	705.00	827.75	17.41	9868	1351918
Asian	822.00	1,529.05	86.02	24165	3286387
KSL	131.80	68.30	-48.18	28188	3833571
Mavens	62.90	105.75	68.12	61992	8430943
Panaromic	210.00	219.10	4.33	19849	2699494
Rasi	16.10	19.65	22.05	3160	398173
SAT	14.50	33.90	133.79	25068	3409253
Ushdev	44.00	145.15	229.89	52621	7156466
Anil	112.00	131.50	17.41	18293	2103729
KBS	23.00	24.40	6.09	25980	2675955
Lotus	33.45	34.60	3.44	72837	8157759
MVL#	111.25	60.00(300)	46.07 (209.98)	347114	39918054

4. Investigations, prima facie, revealed that a group of persons viz, Jitendra Jain, Usha Mehta, Sunil Kumar Mehta, Anjana Mehta, Renu Madhusudhan Paliwal, Rashmi R. Gandhi, Ramesh Gandhi, Hemlata Ramesh Hankare, Manish Mathur, Seema Mathur, Ajay Roongta, Bharat Jain, Suresh Hanswal, Hasmukh Valchand Jain, Naresh V. Rajawat, Pawanben Valchand Jain, Reeta Naresh Rajawat, Kumal Dileep Kothari, Sweta Bharat Kothari, Neela Khicha, Shobha Dilip Kothari, Kamlesh P. Jain, Hitesh Mahendra Jain, Bhavesh Kothari, Namita Khicha, Vinay Kothari, Pradeep Kothari, Sitanshu Nanawati, Devendra Kumar Rai, Rakesh H. Jain, Bhavesh Jain, Meena Rajawat, Shaikh Soalli, Jainuddin, Alpesh R. Shah, Anil Rajmal Shah and Praveen Gate are related/connected/linked to each other and they together form a group (hereinafter collectively referred to as “Mehta Group”).

5. Triveni Management Consultancy Services Ltd. (hereinafter referred to as the appellant) is alleged to have traded/dealt in shares of Allcargo, Asian, KSL, Lotus, MVL, Panaromic, Ushdev, Sat and KBS on behalf of its clients namely; Bharat Jain, Suresh Hanswal and Meena Rajawat (Mehta Group entities who were clients of the appellant) and executed several transactions, which were in the nature of synchronized/structured/circular trades etc. and allegedly created artificial volumes in said scrips. Said clients had allegedly executed such manipulative trades through and with assistance of appellant.

6. SEBI, therefore, initiated adjudication proceedings under SEBI Act, inter alia, against appellant, to inquire into and adjudge alleged violations of provisions of Regulations 4(1), 4(2)(a), (b), (e) and (n) of PFUTP Regulations and clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II read with Regulation 7 of the Broker’s Regulations.

7. Show cause notice dated February 14, 2012 (hereinafter referred to as “SCN”) was issued to appellant under Rule 4(1) of Rules to show cause as to why an inquiry be not held and penalty be not imposed on them under Section 15HA and 15HB of SEBI Act for alleged violation of provisions of Regulations 4(1) 4(1), 4(2)(a), (b), (e) and (n) of PFUTP Regulations and clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II read with Regulation 7 of Broker’s Regulations.

8. It is alleged that appellant, on behalf of its clients namely; Bharat Jain, Suresh Hanswal and Meena Rajawat had traded/dealt in shares of Allcargo, Asian, KSL, Lotus, MVL, Panaromic, Ushdev, Sat and KBS and executed several transactions, which were in nature of synchronized/structured/circular trades etc. and allegedly created artificial volumes in said scrips. Said clients had allegedly executed such manipulative trades through and with assistance of appellant and it is alleged that appellant, in collusion with others, has indulged into fraudulent, manipulative and unfair trading and dealings in scrip of aforesaid five companies in violation/contravention the provisions of 4(1), 4(2)(a), (b), (e) and (n) of PFUTP Regulations and clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II read with Regulation 7 of Broker’s Regulations.

9. Appellant submitted in its reply to SCN vide letter dated September 11, 2012. In order to conduct inquiry an opportunity of hearing was granted to appellant on September 17, 2012 and authorized representative of appellant appeared on said date and submitted that they are not party to trades, in any manner, not connected with clients, counterparty brokers or the companies. Appellant then submitted reply dated October 25, 2012 wherein it was submitted that there was no mechanism at brokers end to trace out and prevent

synchronized trades and that merely because a broker trades or executed transactions, it cannot be assumed that the broker was aware of the malafide intentions of client.

10. It is held by adjudicating officer from Enclosure II to the SCN that Mehta group entities mentioned in para 9 above, are connected to each other one way or the other by way of family relationships, common address/telephone number, common introducer, trading accounts opened and operated on their behalf by Mr. Sunil Mehta, money transfers and cash deposits between them etc. Appellant executed trades on behalf of its clients namely; Bharat Jain, Suresh Hanswal and Meena Rajawat belonging to Mehta group entities. These entities had traded/dealt in shares of Allcargo, Asian, KSL, Lotus, MVL, Panaromic, Ushdev, Sat and KBS through the Noticee. Relevant details of transactions done by appellant on behalf of its said clients in various scrips are as mentioned below :-

Scrip	Client	No. of Str Trades (buy & sell)	No. of Str Buy Orders	No. of Str Sell Orders	Gross Structured Trade Quantity (buy & sell)	Gr Str Trd qty as % of Gross Mkt Vol
Allcargo	Bharat Jain	6	3	3	20	0.0007
	Suresh Hanswal	31	20	9	5346	0.1977
	Total	37	23	12	5366	0.1985
Asian	Bharat Jain	277	125	144	65137	0.9910
	Suresh Hanswal	41	14	24	5462	0.0831
	Total	318	139	168	70599	1.0741
KBS	Meena Rajawat	140	60	29	103765	1.9388
KSL	Bharat Jain	97	47	49	66660	0.8694
	Suresh Hanswal	31	18	10	16820	0.2194
	Total	128	65	59	83480	1.0888
LOTUS	Meena Rajawat	60	33	14	100346	0.6150
MVL	Meena Rajawat	950	607	123	2417231	3.0277
Panaromic	Suresh Hanswal	21	9	12	9336	0.1729
SAT	Bharat Jain	62	35	26	25332	0.3715
	Suresh Hanswal	53	25	26	17332	0.2542
	Total	115	60	52	42664	0.6257
Ushdev	Bharat Jain	61	0	58	77339	0.5403
	Suresh Hanswal	13	0	11	13500	0.0943
	Total	74	0	69	90839	0.6347

11. From Enclosure III to SCN that appellant on behalf of its said clients executed several transactions, in nature of synchronized/structured/circular trades etc. consistently which were possible only with assistance of appellant. Such trades created artificial volumes in said scrips. Mehta group entities have placed synchronized/structured orders at extremely small intervals of time so as not to give change to other market players to match or review their orders. While in process of creating artificial volume Mehta group entities were instrumental in maintaining or artificially increasing price of scrips. Appellant has only submitted that it was not aware of malafide intentions of its clients and has not refuted or denied any of said transactions in its reply dated October 25, 2012 to SCN.

12. From Enclosure V to SCN that Himmat Rajawat, husband of one of clients of Noticee namely, Meena Rajawat, in his statements made on behalf of Meena Rajawat, had stated that they received a telemarketing call from the appellant regarding opening of trading account. The person was called at his shop for opening of account, who promised that no money shall be required for trading. He also promised that trading will be done by appellant and profit, if any, will be given to them. Thereafter, they signed forms and provided their photographs and were also informed them that Mr. Manish Mathur, COO of appellant has floated such kind of scheme. I also find from ledger statement of Meena Rajawat that trading in her account was started without any margin payment initial deposit and she had never paid any money to appellant, but she has received ₹ 1.6 lakh in her account. Appellant had failed to deny or reply to said statements in its reply dated October 25, 2012 to SCN other than submit that admitted relation between Mr. Manish Mathur, who is now no longer an employee of the company, with Mr. Sunil Mehta cannot bind appellant.

13. Client Suresh Hanswal was an Udaipur based client of appellant and also an associate of Sunil Mehta. Suresh Hanswal was himself a remisier/branch operator of the stock broker Arcadia at Udaipur and also a terminal operator of stock broker Ramniklal at Udaipur. It is alleged that since he was a terminal operator of one stock broker and remisier/branch operator of another broker at Udaipur, there was no need for him, while being at Udaipur, to trade through a third stock broker of Mumbai (i.e. appellant) and, prima facie, suggest his manipulative intent and collusion with appellant.

14. Further, from Enclosure VI to SCN that no details except name and address of client (Suresh Hanswal) were appearing in client registration form/agreement papers, which were essential for KYS. Although, signature of client was taken on various pages of agreement/client enrollment form, such forms were left blank at many places and required details were missing. Appellant neither denied nor replied to allegations with regard to Mr. Suresh Hanswal.

15. Appellant has submitted that there is no finding in SCN to establish that there was some understanding between parties to trade to synchronize their orders in malafide manner. This Tribunal in **Ketan Parekh vs. Securities and Exchange Board of India (Appeal No. 2 of 2004 dated 14.07.2006)** held that “Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction/trade on stock exchange has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available”. Further, the Hon’ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216**

(SC) held that “once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow”. In view of the above, we find that such manipulative trades executed on behalf of few selected clients cannot take place in so many scrips, continuously for such a long period without active assistance or indulgence of stock broker (i.e. appellant).

16. Therefore, it is established beyond doubt as per adjudicating officer that appellant had aided/abetted its clients in executing fraudulent and manipulative trades which created artificial volumes and influenced price of the aforesaid scrips. Appellant also failed to carry out its business with due care, diligence and skill while trading for its said clients. Appellant has, therefore, violated/contravened the provisions of Regulation 4(1), 4(2)(a), (b), (e) and (n) of PFUTP Regulations and clauses A(1), (2), (3), (4) and (5) of the Code of Conduct specified under Schedule II read with Regulation 7 of Broker’s Regulations. Since violation of statutory regulations by appellant has been established and adjudicating officer holds that appellant is liable for monetary penalty under Section 15HA and 15HB of the SEBI Act.

17. Adjudicating officer is of the view that scrips of Allcargo, Asian, KSL, Mavens, Panaromic, Rasi, SAT, Ushdev, Anil, KBS, Lotus and MVL had undergone huge change in price during investigation period and volume of trade and change in price of these scrips can be seen from table in para 3 (supra).

18. It may be mentioned that period of investigation was nine months and fifteen days (from March 1, 2009 to December 15, 2009) and price of scrips, in

question, had changed from (-)48.18% in case of KSL to (+)229.89% in case of Ushdev. Price change in case of Allcargo (17.41%), Panaromic (4.33%), Rasi (22.05%), Anil (17.41%), KBS (6.09%), and Lotus (3.44%) i.e. in six scrips out of total twelve scrips were normal and not unusual and in one case the price change was negative i.e. KSL (-48.18%). This leaves us with five scrips only, where price increase was abnormal.

19. Nothing has been mentioned in case of six scrips in which price increase was nominal or normal or nothing worth noting and in case of one scrip (i.e. KSL), where price had fallen, no explanation has been furnished. Hence, dealing with all twelve scrips in same manner and saying that there was huge change in price of scrips, is not appropriate way of dealing with the matter. Similarly, statement of adjudicating officer that there was huge change in price of scrips is ambiguous, since it can be positive or negative change. Adjudicating officer seems to be concerned with price increases due to artificial volumes which were created, but since there was negative change in one scrip, adjudicating officer choose to state huge change in price of scrips.

20. Similarly, the word “huge change” also does not apply, since at least in six scrips the price change was nominal, normal or nothing worth noticeable, but again in his eagerness to make the issue by, normal/nominal changes in six out of twelve scrips and negative change in one has not be dealt separately, but “huge change” has been chosen to discrete change in price of all twelve scrips under study, during investigation period. This is again misleading and not an appropriate way of dealing with the matter.

21. It would have been better for adjudicating officer to realize reality and deal with same and take up case of only five scrips out of twelve scrips, where price change was significant. “In lighter vein” it may be mentioned that once

SEBI takes up any investigation and SCN is issued, it may be taken for granted that punishment/penalty must follow.

22. Coming back to case of five scrips, in which price increase was significant, it has not been mentioned that there were no cases, such as good results, more business, good acquisition, good change in management etc., for increase/decrease in price of scrip. Hence again, it may assume in absence of positive announcement/result that business of these five companies was normal and hence no case for being increase in price of these five scrips existed. This again, is an assumption and not a good way for dealing with the matter.

23. Appellant has been charged with colluding with some parties of Mehta Group and helping these entities to manipulative twelve scrips in question, during investigation period, and facilitating these entities in executing reversal/circular/synchronized/structured trades amongst themselves, thereby creating artificial volumes and also manipulating (increasing) prices of scrips, in question and also luring gullible investors into trading in these scrips and, thus, making them suffer losses. To prove this, table in para 3 (supra), may be referred to again.

24. From this table, it may be noted that nine scrips, not twelve, are furnished. Out of these nine scrips Allcargo, KBS, Lotus, Panaromic i.e. four scrips have not undergone any huge change (increase) in price of scrip, during investigation period. While KSL has suffered change (decline) in price of scrip and hence should not have been part of this table.

25. In any case, the allegation that appellant manipulated these scrips by helping his clients, namely, Bharat Jain, Suresh Hanswal and Meena Rajawat

in executing trades in nine scrips mentioned in the table, which created false volume etc., needs to be looked into more details.

26. It is seen that total volume traded by clients of appellant i.e. Gross Structured Trade Quantity (Buy and Sell) as percentage of total volume of scrip, during investigation period, which is available in table in para 10 (supra), i.e. 0.1985% for Allcargo, 1.0741% for Asian, 1.9388% for KBS, 1.0888% for KSL, 0.6150% for Lotus, 3.0277% for MVL, 0.1729% for Panaromic, 0.6257% for SAT and 0.6347% for Ushdev.

27. From above, it is seen that appellant traded on behalf of his clients, in nine scrips, volume of which was varying from 0.6150% in case of KSL and 3.0277% for MCL. What is the significance of such miniscule trading by appellant on behalf of its clients in nine scrips and what manipulation this miniscule volume will have an volume and consequently, one price, cannot be readily appreciated by this Tribunal, nor learned adjudicating officer has made any attempt to do so to elaborate on this matter.

28. In the circumstances and in context of above, it will be in fitness of things to understand the explanation furnished by appellant regarding his role in helping his clients to execute circular/reversal/synchronized/structured trades in twelve scrips, being dealt with in present appeal.

29. The first explanation of appellant is that there is no mechanism at his or any broker's end to trace out and thereby prevent synchronized trades and that merely because a trade or an executed transaction is manipulative or synchronized or structured. It cannot be assumed that broker was aware of malafide intention of client. Appellant has also admitted that CEO of his broking firm, namely, Manish Mathur was having relations with Sunil Mehta,

but this relationship of Manish Mathur and Sunil Mehta cannot bind appellant, especially when Manish Mathur has been removed from services of Triveni, when facts of his being associated with Sunil Mehta and Mehta Group and manipulations in scrip of ASCL came to notice of appellant.

30. The explanations, as in above paras, complied with what has been stated earlier an analysis of finding of adjudicating officer regarding not all scrips investigated, showed huge change in price during investigation period and that no attempt was made to include other possibilities of leading to increase in price of five scrips has been made and conclusion that synchronized, structured, circular, reversal trades, leading to increase in volume of scrips and, thus, increase in price of scrips, being the only reason is not conclusive. Similarly, the role of appellant in manipulation of five scrips, by executing trades on behalf of his clients, is not conclusive proof of appellant's manipulation in five scrips under investigation. Since volume of these five scrips, which was executed by appellant on behalf of his clients, was miniscule which cannot lead to manipulation of volume, whether the trades of his clients in these scrips were synchronized or structured.

31. However, from perusal of adjudicating officer findings and their analysis, it is seen that appellant was negligent in overseeing activities of his employees, who were deeply involved in manipulation of volumes of scrips, under investigation, he was not careful in obtaining full requisite disclosures of his client, Shri Suresh Hanswal in KYC. Since no details except name and address of client (Suresh Hanswal) were appearing in client registration form/agreement papers and that he allowed Shri Suresh Hanswal to trade as his client, who himself was remisier/branch operator of stock broker, Arcadia at Udaipur and also a terminal operator of stock broker, Ramniklal at Udaipur.

32. Hence, this Tribunal is of the view that appellant had not been found to have violated/contravened provisions of 4(1), 4(2)(a), (b), (e) and (n) of PFUTP Regulations but since appellant has failed to carry out its business with due care, diligence and skill while trading for its said clients, appellant had violated/contravened the Code of Conduct specified under clauses A(1), (2), (3), (4) and (5) under Schedule II of Regulation 7 of Brokers' Regulations and hence penalty of ₹ 50,000/- (Rupees Fifty Thousand only) is upheld on appellant for violation of Broker's Regulations.

In view of above, impugned order is partially set aside so far as violation of PFUTP Regulations by appellant is concerned, but since appellant has not carried out his responsibilities under Broker's Regulations with care and due diligence, he is held to have violated Broker's Regulations and penalty of ₹ 50,000/- on appellant for such violation is upheld. No costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
A. S. Lamba
Member

31.10.2013
Prepared & Comparedby
PTM