

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 15.12.2017

Appeal No. 326 of 2016

Mayank Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

**WITH
Appeal No. 327 of 2016**

Umang Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

**WITH
Appeal No. 328 of 2016**

Madan Mohan Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

WITH
Appeal No. 329 of 2016

Neha Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

WITH
Appeal No. 330 of 2016

Bina Devi Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

WITH
Appeal No. 331 of 2016

Rajkumari Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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

AND
Appeal No. 332 of 2016

Nikunj Dhanuka
131, Maker Tower B,
Cuffe Parade,
Mumbai- 400 005

...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 Ms. Akanksha A, Mr. Nirav Merchant, Mr. Archit Jayakar, Mr. Rahil Jhaveri and Mr. A. Agrawal, Advocates i/b Jayakar & Partner for the Appellant in Appeal Nos. 326 of 2016 to 332 of 2016.

Mr. Kumar Desai, Advocate with Mr. Tomu Francis and Mr. Vivek Shah, Advocates for the Respondent in Appeal Nos. 326 of 2016 to 332 of 2016.

CORAM: Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. Pending investigation, whether the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) by ex-parte order dated 08.05.2015 and confirmatory order dated 22.08.2016 is justified in restraining the appellants from accessing the securities market and restraining the appellants from buying, selling or dealing in securities, either directly or indirectly, in any manner, till further directions, is the common question raised in all these appeals. Hence all these appeals are heard together and disposed of by this common decision.

2. Admittedly, SEBI on completion of investigation has issued a show cause notice to the appellants on 06.12.2017. Since the investigation is complete and show cause notice is already issued to the appellants, in our opinion, it would be just and proper for the appellants to agitate all the grounds raised in the respective appeals before the WTM of SEBI. Accordingly, we permit the appellants to raise all their contentions in reply to the show cause notice, so that an appropriate order could be passed by the WTM of SEBI.

3. Counsel for the appellants, however, insisted that this Tribunal must consider their argument that the impugned orders are liable to be quashed and set aside in view of the Information Memorandum dated 29.12.2016 which was duly approved by the Board on 14.01.2017. Hence, leaving all other contentions to be urged before SEBI, we propose to dispose of these appeals by considering the only issue relating to the applicability of the Information Memorandum dated 29.12.2016 to the case of the appellants.

4. SEBI commenced investigation on receiving references from the office of Director of Income Tax (“DIT”), Kolkata, Ahmedabad, Delhi, Chandigarh and internal alerts to the effect that the stock exchange mechanism is being misused for evading tax. On the basis of preliminary investigation, SEBI passed ex-parte orders in several cases and in some cases confirmatory orders were passed after giving an opportunity of hearing. The entities against whom proceeding were initiated were firstly, listed Companies/ Directors/ Promoter Group. Secondly, beneficiaries such as preferential allottees etc., for whom the scheme was

devised to book the illegitimate gains. Thirdly, Last Traded Price (LTP) contributors who allegedly manipulated the price of the scrip and fourthly exit providers who were the entities who provided exit to the beneficiaries through the stock exchanges.

5. Appellants are alleged to be promoter related persons of a listed company known as Pine Animation Ltd. whose shares during the investigation period were acquired by the appellants in off market for ₹ 96,30,000/- (approximately) and sold the said shares on market at ₹ 8,49.31.265.20 and thereby made profit of ₹ 7,53,01,205.20. On 08.05.2015 the WTM of SEBI had passed an ex-parte order against Pine Animation Ltd., its directors, promoters, promoter related entities including the appellants, preferential allottees, exit providers and LTP contributors. Thereafter, confirmatory order was passed on 22.08.2016, thereby confirming and continuing the ex-parte order until further orders. It is relevant to note that similar orders were also passed against various other companies and the entities connected with those companies. The said orders were inter alia challenged by the appellants by filing appeals before this Tribunal.

6. During the pendency of the above appeals, officials investigating the misuse of stock exchange platform as also the WTM and the then Chairman of SEBI held a meeting and the decisions taken in the said meeting were reduced in the form of an Information Memorandum on 29.12.2016 and the same was approved by the Board in the meeting held on 14.01.2017.

7. Appellants contend that in view of para 7.1 of the Information Memorandum dated 29.12.2016 the proceedings initiated against the appellants who are alleged to be the promoter related entities and not the entities involved in price manipulation are liable to be dropped. Para 7.1 of the Information Memorandum reads as under:-

“7.1 Cases where price manipulation could be established by SEBI:

7.1.1 SEBI will initiate enforcement proceedings such as IIB proceedings under Chapter IV and Adjudication proceedings under Chapter VIA of the SEBI Act, 1992, against the following:

- entities involved in price manipulation, i.e. LTP contributors.*
- the listed companies and its Whole Time Directors (during the investigation period) if connection/relationship is established between the entities involved in price manipulation and company/Whole Time Directors.*

7.1.2 SEBI will refer the findings of the investigation along with the details, if any, of beneficiaries (sellers), exit providers (buyers) and their trades to DIT, for necessary action at their end.”

8. We see no merit in the above contentions.

9. Information Memorandum dated 29.12.2016 which was approved by the Board on 14.01.2017 contained the enforcement policy relating to the entities allegedly involved in misusing the stock exchange platform for evading tax. The Information Memorandum nowhere records that the proceedings already initiated against the entities would be dropped. In

fact, Clause 7.1 of the Information Memorandum refers to the proceedings to be initiated and does not refer to the proceedings already initiated. Therefore, argument of the appellants that in view of the Information Memorandum dated 29.12.2016, proceedings initiated against the appellants are liable to be quashed cannot be sustained.

10. Accepting the argument that under the Information Memorandum dated 29.12.2016 action can be taken only against the price manipulators and not against other entities such as promoter related entities/beneficiaries would amount to conferring undue benefits to the beneficiaries who are found to be connected with the entities misusing the stock exchange platform. It is impossible to hold that the policy decision recorded in the Information Memorandum dated 29.12.2016 was intended to confer benefits to the beneficiaries who were found to be connected with the entities misusing to stock exchange platform.

11. It is open to the appellants who are alleged to be promoter related entities/beneficiaries to demonstrate that they are neither promoter related entities nor they are connected to the entities who are found to have indulged in misusing the stock exchange platform and that the profits made by the appellants were in the ordinary course of business. Without establishing the above, it is not open to the appellants to contend that in view of the Information Memorandum, the proceedings initiated against the appellants are liable to be dropped.

12. The show cause notice issued to the appellants on 06.12.2017 specifically records on the basis of the facts set out therein that the

appellants along with others were part of a fraudulent scheme under which the price of the scrip was manipulated by the company related entities and entities that received the shares from the promoters. Thus, in the facts of these cases, where the appellants are prima facie found to be connected with the fraud committed by misusing the stock exchange platform, it is impossible to accept the argument of the appellants that the proceedings initiated against them are liable to be quashed on the basis of the Information Memorandum dated 29.12.2016.

13. Fact that Clause 7.1 of the Information Memorandum dated 29.12.2016 records that SEBI would proceed against the entities involved in price manipulation i.e. LTP contributors and the listed companies and its Whole Time Directors (if connection between them is established) cannot be construed to mean that other entities who are also found to be connected with the entities committing fraud are liable to be exonerated. Clause 7.1 of the Information Memorandum has to be read harmoniously so as to hold that all entities including the beneficiaries who are found to be connected with the entities committing fraud would be proceeded against.

14. Argument of the appellants that the Information Memorandum was binding on SEBI and any deviation there from would be arbitrary/discriminatory and violative of the principles of promissory estoppel is without any merit. As noted earlier, neither the Information Memorandum contemplates dropping the proceedings already initiated nor does it seek to exonerate the beneficiaries who are found to be connected with the persons who have misused the stock exchange platform.

15. Relying on various decisions of the Apex Court and other courts, counsel for the appellants submitted that in view of the Information Memorandum dated 29.12.2016, the appellants had legitimate expectation that proceedings against them would be dropped. It is contended that contrary to the legitimate expectation and in breach of the principles of promissory estoppel, SEBI has purported to issue show cause notice to the appellants. In our opinion, this argument is wholly misconceived. None of the decisions relied upon by counsel for the appellants lay down any proposition of law that a beneficiary found to be connected with persons committing fraud on securities market could be saved by applying the principles of promissory estoppels/ legitimate expectation. Thus, none of the decisions relied on by counsel for appellants have any relevance to the facts of these cases.

16. Admittedly, the Information Memorandum was not in existence when the appellants acquired in off market and sold on market the shares of Pine Animation Ltd. and made profits to the tune of ₹ 7.53 crore. In such a case, where the trades in question were not executed on the promise allegedly contained in the Information Memorandum, the appellants are not justified in contending that they had legitimate expectation that on the basis of the Information Memorandum, the proceedings initiated against them were liable to be dropped.

17. Argument of the appellants that their case is similar to the case of the parties against whom no proceedings have been initiated or the proceedings have been dropped is also without any merit. As stated

earlier, it is open to the appellants to demonstrate before the WTM of SEBI that their case is similar to the cases against whom no proceedings have been initiated or the proceedings have been dropped. In that case the WTM of SEBI would pass appropriate order. However, the appellants cannot seek to by-pass the normal procedure required to be followed by referring to the principles of promissory estoppel / legitimate expectation which are not at all the applicable to these cases.

18. For all the aforesaid reasons, we see no merit in all these appeals and the same are hereby dismissed with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

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

15.12.2017
Prepared & Compared By: PK