

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 44 of 2010

Date of Decision : 6.5.2010

M/s. Alka India Limited
E-211, Crystal Plaza,
New Link Road,
Andheri (W), Mumbai.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai.

..... Respondent

Mr. Ravi Ramaiya, Chartered Accountant for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Daya Gupta, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
Samar Ray, Member

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

This order will dispose of a bunch of four Appeals no. 44 of 2010 and 275 to 277 of 2009 all of which involve common questions of law and fact. M/s. Alka India Limited (hereinafter referred to as the company) is the appellant in Appeal no. 44 of 2010 and the appellants in the other three appeals are its promoters/directors. The company has been debarred from accessing the securities market for a period of six months whereas monetary penalties have been imposed on its promoters/directors on charges which are identical.

2. The shares of the company are listed on the Bombay Stock Exchange and some other exchanges as well. It is alleged that the company made announcements to the public which were misleading in material particulars and this in turn led to the increase in the price of its scrip in the market and when this happened, the promoters/directors and other associated entities off-loaded their shares thereby unduly enriching themselves. This is, in a nutshell, the case set up against the

company and its promoters. It is not in dispute that the company declared its financial results for the quarters ending June 30, 2003 and September 30, 2003 and information in this regard was furnished to the stock exchanges on August 2, 2003 and October 6, 2003 respectively. It is also not in issue that the financial results were not accurate and that the company had inflated its profits to the tune of 33 percent by not making any provision for tax payment. For the quarterly results ending June 2003, there was no provision for tax payment whereas in the unaudited results for the quarter ending September 2003 the provision made was far less than what it ought to be. Apart from inflated profits, the company had also appended some notes to the quarterly financial results by which it made corporate announcements to the public which were price sensitive in nature. This is what the company said in the notes appended to the financial results for the quarter ending June 2003

- “a. The company expects to export textile products above Rs 500 million in next three years
- b. The company has export orders worth Rs 94.10 million in hand
- c. Board of Directors decided to double the installed capacity with in next two years by internal accrual and term loans”

and for the quarter ending September 2003, following notes had been appended to the unaudited results:-

- “a. Looking to the constant flow of high value export enquiries, the company expects export business to touch Rs. 100 crore mark in the next financial year.
- b. Board expects textiles demand to be increased along with margins for at least next three years. Board is confident of improving profit quarter after quarter for next three years.
- c. The company has started to export Terry towels and garments in Gulf countries. Tie up with J-Mark for export of garments in USA, UK and other European countries.
- d. The company has doubled the production capacity by acquisition of two units.”

These unaudited financial results of the company were given wide publicity in different newspapers as required by law. Some of these announcements made in the form of notes to the financial results were misleading while some were exaggerated.

For instance, the company has not acquired two new units to double its production capacity. It had only entered into some understanding with existing spinning units to use their production units. It is obvious that note (d) to the financial results of September 2003 was misleading and is also price sensitive. The company also informed the public regarding export orders in hand in the form of a note which was appended to the accounts for June 2003. These were published on August 2, 2003 when most of these orders were to be executed before July 31, 2003. This information given to the public is again misleading because it did not inform the public whether the orders had been executed or not. With the public announcement of these financial results, the price of the scrip of the company started rising from the very next day of their publication. The face value of the share of the company is Re.1. The closing price of the scrip on August 1, 2003 (Friday) was Rs.0.89 and on August 4, 2003 the share of the company opened at Rs.1.06. It reached a high of Rs.2.82 on August 12, 2003 and closed at Rs.2.19 on August 13, 2003. It is common case of the parties that one Vikramsingh J. Rajput sold 95,25,000 shares between August 6 and August 12, 2003 after acquiring 30 lac shares from Panchariya Textile Industries Limited (for short the textile company) in off market transactions. The whole time member has found that the textile company is an associate of the appellant. This fact is disputed by the learned authorised representative of the appellant. The learned counsel for the Board has placed before us copies of a number of delivery instruction slips by which the shares were transferred by the textile company to different persons/entities including Vikramsingh J. Rajput. All these delivery instruction slips have been signed by Arun Panchariya, a promoter of the company and an appellant in Appeal no. 276 of 2009. All these delivery instruction slips were signed on August 12 and August 13, 2003 and Arun Panchariya signed on behalf of the textile company after the transaction was complete i.e. when the shares had been transferred. These instruction slips have a note thereon that the transaction had been confirmed with Arun Panchariya. These delivery instruction slips clearly indicate a close link between the Panchariya group which is the promoter group of the company with the textile company. It would,

therefore, follow that the whole time member was right in holding that the textile company was an associate company and had links with the promoters of the company and that the shares were off loaded through its associate company during the period when the price of the scrip had gone up as a result of the publication of the misleading financial results. The learned authorised representative of the appellant contends that the Panchariya group (promoter of the company) had sold their stake in the textile company in the year 2002 and had nothing to do with that company thereafter. The aforesaid delivery instruction slips clearly disprove the assertion made by the appellant in this regard. When this issue cropped up during the course of the hearing yesterday, the learned authorised representative sought time to verify whether the instruction slips had been signed by Arun Panchariya one of the appellants before us. He has placed before us a letter from Satish Panchariya who is said to be the authorised representative of the Panchariya group and is an appellant in Appeal no. 277 of 2009 in which it is stated that Arun Panchariya is out of the country and that Satish Panchariya had a talk with him on telephone. It is also stated in the letter that the signatures appearing on the delivery instruction slips appear to be those of Arun Panchariya and that those could be from a set of pre-signed documents that were handed over to the acquirers of the textile company. It is also admitted that Arun Panchariya was a director in the textile company but they do not know as to when he has ceased to be so. The plea now sought to be raised by the appellant who are trying to distance themselves from the textile company cannot be accepted because transactions were executed and shares transferred even in the year 2003 when Arun Panchariya signed the delivery instruction slips on behalf of the textile company and the trades were subsequently confirmed with him. If the Panchariya group had sold their stake in the textile company in the year 2002, as is now sought to be made out, then the delivery instruction slips could not have been signed by Arun Panchariya on behalf of that company in the year 2003. We are, therefore, satisfied that the textile company was an associate company and, in any case, it was connected with the appellant company and the shares were admittedly off-loaded on the instructions of Arun Panchariya. At this stage, we may take note

of an order dated November 3, 2009 passed by the adjudicating officer on which reliance is sought to be placed by the appellants and they contend that it has been found therein that the textile company had no connection with the Panchariya group. We have gone through this order and do not find that it supports what is now sought to be argued. That was a case initiated against the textile company for non compliance of summons issued by the respondent Board and it was absolved on the ground that the summons had been served on a wrong address. It was contended before the adjudicating officer that the textile company had changed its name to Asian Granito on November 25, 2002 and the registered office had shifted to another place in October 2002 and the adjudicating officer found that the summons had been served on the earlier address. There is no finding recorded in the order that the Panchariyas were not connected or had no link with the textile company. If one were to go by the submissions made by the textile company before the adjudicating officer, it had changed its name in July 2000 and we wonder how it continued to trade in its earlier name till the year 2004 and continued to have its demat account operated in that name by the same authorised signatory. It is, thus, clear that what is now sought to be contended before us by the appellants is not borne out from the record. From what we have said above, it is clear that the misleading announcements showing inflated profits had been made by the company and the price of the scrip went up and the promoters of the company off-loaded their shares through different entities including the textile company and Vikramsingh J. Rajput in off market transactions. The charge against the company is, thus, established. It is, indeed, a serious irregularity in as much as it manipulated the price of its own scrip thereby enabling the promoters to sell their shares. It is admitted that during the investigation period which ranged from August 14, 2003 to March 26, 2004, the promoters (Panchariya group) sold more than 2.69 crore shares in the market. Apart from the promoters, other connected entities of the company had sold still larger number of shares thereby making undue gains for themselves. Since the charge against the company stands established, the whole time member was right in

debarring it from accessing the securities market for a period of six months. No fault can, thus, be found with the impugned order in Appeal no. 44 of 2010.

3. The other appeals have been filed by the promoters of the company against whom adjudication proceedings had been initiated for the aforesaid wrongs which they committed. The promoters themselves were responsible for the misleading announcements that were made and they subsequently off-loaded their shares. The respondent Board, however, thought fit to initiate adjudication proceedings for imposing monetary penalties on them. A total of Rs. 40 lacs penalty has been imposed on seven members of the Panchariya group who were the promoters of the company all of whom are appellants before us. The adjudicating officer after taking note of the provisions of Section 15J of the Securities and Exchange Board of India Act, 1992 imposed a monetary penalty of Rs.32 lacs on account of misleading announcements and manipulation in the scrip whereas another sum of Rs.2 lacs has been imposed on Satish Panchariya (appellant in Appeal no. 277 of 2009) for non compliance with the summons during the course of the investigations and a sum of Rs.1 lac on Arun Panchariya (appellant in Appeal no. 276 of 2009) also for non compliance with the summons and recorded his reasons as under:-

“43. From the material available on record, I find that the ‘Promoter Group’, as a whole, had a net sale of over 2 crore shares of AIL and realized proceeds over Rs.1 crore. I also find that the promoters/their related entities/PACs/other entities have collectively sold more than 18 crore shares and realized proceeds over Rs.12 crores. The Promoter Group also traded off market amongst one another and with CSL. CSL further traded with other major sellers/buyers in the market. Due to the manipulation that took place in the scrip of AIL, genuine investors were attracted to trade in the shares of AIL. I am of the view that the interest of securities market and of the investors requires that the persons who involve or engage in manipulative, unfair and fraudulent practices are not allowed to unjustly enrich themselves at the cost of genuine investors. Greater the liquidity higher the investors’ attraction towards investing in that scrip. Hence, anyone could have been carried away by the unusual fluctuations in the volume and been induced into investing in the said scrip. The value of the shares of AIL which are left in the hands of the gullible investors who got trapped in the aforesaid sinister game plan, had reduced substantially. These genuine investors had to suffer considerable amount of loss on account of the manipulation. Besides, this kind of activity seriously affects the normal price discovery mechanism of the securities market. Though it may not be possible to ascertain the exact quantum of monetary loss to the investors,

the interest of investors has been jeopardized on account of the grievous act of the Noticee. The entities that indulge in manipulative, fraudulent and deceptive transactions and/or abet carrying out such transactions should be suitably penalized for the said acts of omissions and commissions.”

Since the appellants have been found guilty of making misleading announcements which were price sensitive in nature, we do not propose to interfere with the quantum of penalty imposed by the adjudicating officer on this ground. However, in the case of Satish Panchariya and Arun Panchariya penalty has been imposed on them for non compliance with the summons as well. Having heard the authorised representative of the appellants and the learned counsel for the respondent Board, we are satisfied that these two appellants (Satish Panchariya and Arun Panchariya) had in substance complied with the summons issued to them during the course of the investigations and that this is not a fit case where penalty should be imposed on them for non compliance. Accordingly, the penalty of Rs.2 lacs and Rs.1 lac imposed on Satish Panchariya and Arun Panchariya respectively is set aside. In all other respects, the impugned orders are upheld.

4. Before parting, we cannot resist mentioning about a peculiar feature of this case that came to our notice during the course of the hearing. The company while preparing its quarterly financial results has been appending thereto certain notes by which it disseminated certain non accounting information to the shareholders and the public at large which was price sensitive. As can be seen from the notes to the financial results for the quarters ending June and September 2003, the company informed the shareholders and the public that it had started exporting Terry towels and garments to Gulf countries. Again, the public was informed that the Board of Directors of the company had decided to double the installed production capacity in the next two years by the acquisition of two units. Apart from the fact that this information was misleading, we wonder how such non accounting information could form part of the financial results which every listed company is required to declare. It is axiomatic that notes to the financial results are an integral part thereof and, as we understand, the same are necessary to present a true and fair view of the financial position of the company as on that date. When we pointed out to the authorised

representative of the appellants as to how such non accounting information could form part of the financial results, he stated that it was a common practice among the listed companies to do so. We are not aware of any such practice or convention. However, this is a matter which needs to be looked into by the Board as a market regulator and take a call whether such price sensitive corporate announcements could be made in this manner even if they are not misleading. Having said this, we leave the matter at that.

The appeals are disposed of as above with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

6.5.2010
ptm

Prepared & Compared by
ptm