

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 20.01.2016

Appeal No. 2 of 2015

Gaurang Ajit Sheth
115/117, Bhuleshwar Road,
3rd Floor, Kabutar Khana,
Mumbai- 400 002

...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. Nirman Sharma, Advocate i/b Dharam & Co. for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Shruti Chiniwar, Advocate i/b K.
Ashar & Co. for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. Appellant is aggrieved by the order passed by the Adjudicating Officer (“AO” for short) of Securities and Exchange Board of India (“SEBI” for short) on 23.09.2014. By the said order the appellant is held guilty of violating the provisions contained in the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP” Regulations” for short) and accordingly penalty of ₹ 5 lac is imposed against the appellant under Section 15HA of the Securities and Exchange Board of India Act, 1992 (“SEBI Act” for short).

2. Impugned order is a common order passed against 16 persons and the broker (Arcadia Share & Stock Brokers Pvt. Ltd.) on the footing that the said persons constituted Pabari-Parikh Group and the said group including the appellant indulged in certain off market transfers, synchronized trades and self trades in the shares of LGS Global Ltd. now known as Ybrant Digital Limited (“LGS” for convenience) in violation of PFUTP Regulations.

3. Appellant is duly qualified in the financial management studies and has been carrying on the share trading activity since last several years.

4. SEBI investigated the trading activities in the scrip of LGS during the period from 10.02.2009 to 07.05.2010 and by interim order dated 02.02.2011 SEBI restrained several persons/ entities from accessing the securities market and prohibited them from buying, selling or dealing in securities in any manner till further orders. The said order was confirmed on 08.07.2011. No allegation was made against the appellant in any of the above orders.

5. However, a show cause notice was issued to the appellant on 08.10.2013. In para 3 of the show cause notice it was alleged that the appellant herein was connected with the Pabari-Parikh Group consisting of sixteen persons. In para 6 of the said show cause notice it was alleged that the said group including the appellant indulged in certain off market transfers as per the list annexed thereto. The list annexed to the show cause notice, however, did not set out any off market transfers by the

appellant. In the show cause notice it was further alleged that the aforesaid off market transfers among the group establish the connection between the group persons including the appellant.

6. In para 5 of the said show cause notice it was also alleged that the appellant (Gaurang Ajit Sheth) and Noticee No. 8 (Hemant Madhusudan Sheth) having common address and common telephone number were members of the Pabari-Parikh Group and both of them were directors of Rajnandi Yarns Pvt. Ltd.

7. In his reply to the show cause notice dated 11.08.2014, appellant clearly stated in para 3 as follows:-

“I am not staying with Hemant Sheth or sharing common telephone number. I fail to understand how the aforesaid details are being ascertained by SEBI during Investigation. It is pertinent to mention that all correspondence by SEBI of Gaurang Sheth is sent at 115/117, Bhuleshwar Road, 3rd floor, Kabutar Khana Mumbai- 400 002 which is not the address of Hemant Sheth. The allegation that we share a common address and telephone number with sl no. 22 i.e. Hemant M Sheth is wrong itself as my address an (sic) is 115/117, Bhuleshwar Road, 3rd Floor, Kabutar Khana Mumbai- 400 002 and telephone number is 22405859 (zerex copy of telephone bill enclosed for your ready reference) and Mr. Hemant Sheth whose address is 2nd Floor Manekchand Panachand 115/117 Bhuleshwar Road,

Mumbai- 400 002 and telephone no. 22406890 (zerox copy of telephone bill enclosed for ready reference). So the allegation regarding common address and telephone number does not arise. Further the records with the SEBI also show that Gaurang Ajit Sheth address: 115/117 Bhuleshwar Road, 3rd Floor, Kabutar Khana, Mumbai- 400 002 (page no. 2 of SCN) and Shri Hemant M Sheth Flat No. 29, 2nd Floor, 115/117 Bhuleshwar Road Near Kabutar Khana, Mumbai- 400 002 (page no. 1 of SCN).”

(emphasis supplied)

8. Even though the appellant had specifically denied the allegations made in the show cause notice and specifically asserted that even the letters addressed by SEBI belie the allegation of SEBI that both the appellant and Hemant Madhusudan Sheth have common address, the AO failed to consider the said submissions raised by the appellant and by merely recording the alleged connection set out in the show cause notice concluded in para 16 of the impugned order, that the Noticee No. 1 to 16 (which included the appellant and Hemant Sheth) were all connected to each other in one way or the other. In para 17 of the impugned order the AO further recorded that the Pabari-Parikh Group i.e. Noticee No. 1 to 16 (including the appellant) had indulged in certain off market transfers and that the said off market transfers among the group confirmed the relationship/connection between the said group.

9. As rightly contended by the counsel for the appellant, the AO has recorded the above findings mechanically and without application of mind, because, if the AO had applied his mind to the reply filed by the appellant, then he would have definitely dealt with the argument of the appellant that even the records of SEBI do not show that the appellant and Hemant Madhusudan Sheth do not have common address and common telephone number as alleged in the show cause notice. Moreover, when the appellant had placed on record the correct address and telephone number of the appellant which is different from the address and telephone number of Hemant Madhusudan Sheth, the AO was duty bound to deal with the said arguments in the impugned order. Failure on part of AO to deal with the arguments advanced by the appellant raised in the reply to the show cause notice and arriving at a conclusion which runs counter to the said reply filed by the appellant has led to miscarriage of justice because, on account of the alleged common address and common telephone number which is unsubstantiated, it is held that the appellant belongs to Pabari-Parikh Group which indulged in violation of the regulation framed by SEBI.

10. Apart from the above, alleging in the show cause notice that the appellant had indulged in off market transfers was improper, because the chart annexed to the show cause notice did not refer to any off market transfer by the appellant. In any event, when the appellant had specifically denied to have indulged in off market transfers, the AO could not have brushed aside the reply of the appellant and mechanically hold that the appellant has indulged in off market transfers.

11. Counsel for SEBI, however, contended that since the decision of AO that the appellant and Hemant Sheth had common address and common telephone number is based on the KYC records and since the appellant had not disputed the KYC records, no fault can be found with the decision of AO. With reference to the findings relating to the off market transfers, counsel for SEBI submitted that since the chart annexed to the show cause notice did not contain any off market transfer, it must be held that including the name of the appellant in the list of persons who had indulged in off market transfers was an inadvertent error or typographical error and hence could be ignored and the impugned order could be upheld by reducing the penalty to the extent deemed fit and proper.

12. We see no merit in the above contentions. It is relevant to note that in the present case, the show cause notice was issued by the same AO who has passed the impugned order. Very fact that the AO had sent the show cause notices to the appellant and Hemant Sheth at their respective independent addresses clearly belies the contention of SEBI that as per the KYC records both had common address and common telephone numbers. If there was any discrepancy in the records of SEBI and KYC records, the appellant ought to have been confronted with the same. In any event, when the appellant in his reply to the show cause notice had clearly doubted the correctness of the documents gathered during the course of investigation and further furnished two independent addresses and two independent telephone numbers and

contended that the said addresses and telephone numbers are also to be found in the records of SEBI, the AO was duty bound to verify the same before confirming the allegations leveled against the appellant. It could be that the particulars furnished by the appellant to the authorities under the KYC norms and to the SEBI were mutually contradictory. However, without dealing with the said inconsistency, if any, in the impugned order, the AO could not have confirmed the allegations leveled against the appellant. It was preposterous on part of AO to hold that the appellant belonged to the Pabari-Parikh Group on the basis of unsubstantiated facts especially when the appellant doubted the sanctity of the facts allegedly gathered by SEBI during the course of investigation.

13. Apart from the above, it was improper on part of AO to allege in the show cause notice that the appellant had indulged in off market transfers especially when the chart annexed to the show cause notice did not set out any off market transfers by the appellant. In any event, when the appellant specifically denied to have indulged in off market trades, the AO could not have in a perfunctory manner recorded in para 17 of the impugned order that the noticee no. 1 to 16 (including the appellant) have indulged in off market transfers and that the said off market transfers among the group confirm the relationship/connection between the Pabari-Parikh Group. Alleging that the appellant had indulged in off market trades on the basis of the chart annexed to the show cause notice which did not contain any off market transfers by the appellant, clearly shows that the said show cause notice was issued without application of mind.

In addition to the above, confirming the said allegation in the impugned order, inspite of the appellant bringing it to the notice of AO that the appellant had not indulged in off market transfers, clearly shows height of irresponsibility on part of AO.

14. By no stretch of imagination it can be said that holding the appellant guilty of indulging in off market trades was an inadvertent error or typographical mistake. Even after recording in para 17 of the impugned order that the Pabari-Parikh Group including the appellant have indulged in off market trades, in para 29 of the impugned order, the AO records the submission of the appellant that the appellant has not indulged in off market trades and thereafter, without dealing with the said contention of the appellant, in para 36 of the impugned order the AO has recorded that the relationship of the Noticee No. 1 to 16 (including the appellant) and the off market transfers set out in para 16 & 17 of the impugned order stand established. Therefore, in the facts of present case, it is impossible to accept the argument that the findings recorded in the impugned order holding that the appellant had indulged in off market trades was an inadvertent error or typographical error. On the contrary, holding the appellant guilty of indulging in off market transfers without any basis whatsoever and by ignoring the specific plea of the appellant clearly shows that the impugned order has been passed with a preconceived notion of holding the appellant guilty on some pretext or the other.

15. Once the findings recorded in the impugned order that the appellant belonged to the Pabari-Parikh Group itself is found to be faulty, then it becomes futile to go into the question as to whether the appellant had indulged in synchronized trades with the said group and whether the appellant executed self trades or not as a member of the said group. Whether the penalty of ₹ 5 lac imposed against the appellant is commensurate with the violations allegedly committed by the appellant compared to the violations allegedly committed by the members of Pabari-Parikh Group against whom also penalty of ₹ 5 lac has been imposed on each member, is also a question which needs reconsideration.

16. In these circumstances, we set aside the impugned order qua the appellant and restore the matter for fresh decision on merits and in accordance with law. In the ordinary course we would have restored the matter to the same AO who has passed the impugned order. However, in the present case, since the callous attitude on part of AO is not restricted to the appellant alone and has extended to three other persons referred to in the impugned order and in the appeals filed by those three persons, on noticing that the findings recorded therein are mutually contradictory, counsel for SEBI fairly stated that the impugned order passed against those three appellants be quashed and set aside. Accordingly on *20.01.2016 we have allowed the appeals filed by those three appellants, and set aside the impugned order qua those three appellants with a direction to SEBI to pass fresh order on merits.

17. In these circumstances, since the perfunctory order passed by the AO is not restricted to an isolated case of the appellant alone but extends to three more appellants, in the interest of justice, while setting aside the impugned order qua the appellant, we direct that SEBI may consider entrusting the remanded matters (including the case of three appellants which are remanded on *20.01.2016) to any competent AO other than the AO who passed the impugned order.

18. Appeal is disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

20.01.2016
Prepared & Compared By: PK

*As amended pursuant to order dated 29.01.2016 which reads thus:

ORDER:

It is brought to our notice by Counsel on both sides that in paragraphs 16 and 17 of the order passed in the above Appeal on 20/01/2016, the date of the order in case of three other Appellants is inadvertently typed as “19.01.2016” instead of typing as “20.01.2016”.

The inadvertent error be corrected accordingly.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

29/01/2016
Prepared & Compared By: ddg