

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 15.02.2016

Appeal No. 81 of 2014

Mr. Babubhai Desai
Rabari Vasahat,
Nava Vadaj,
Ahmedabad : 380 016.

..... 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. 82 of 2014**

Mr. Govindkumar Varma
D-176, Padmavati Society,
Nikol Road, Naroda,
Ahmedabad : 382 330.

..... 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. 83 of 2014**

Mr. Sunitadevi Nanwal
D-176, Padmavati Society,
Nikol Road, Naroda,
Ahmedabad : 382 330.

..... 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. 84 of 2014

Mr. Sajjankumar Nanwal
D-176, Padmavati Society,
Nikol Road, Naroda,
Ahmedabad : 382 330.

..... 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. 85 of 2014**

M/s. Vishu Enterprise
D-176, Padmavati Society,
Nikol Road, Naroda,
Ahmedabad : 382 330.

..... 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. 86 of 2014**

Mr. Sagar Sanghvi
A-14, Trirthbhumi Apartments,
Law Garden, Ellisbridge,
Ahmedabad : 380006.

..... 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. 87 of 2014**

Dhirajlal Sanghvi HUF
A-14, Trirthbhumi Apartments,
Law Garden, Ellisbridge,
Ahmedabad : 380006.

..... 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. 88 of 2014**

Ashik Sanghvi
A-14, Trirthbhumi Apartments,
Law Garden, Ellisbridge,
Ahmedabad : 380006.

..... 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. 89 of 2014**

Sanghvi Fincap Ltd.
B-54, Dhaval Avenue,
Behind Associated Petrol Pump,
C. G. Road,
Ahmedabad : 380 006.

..... 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. 90 of 2014**

Rameshbhai Vaghjibhai Shah
19, Pancharatna Society,
Taluka – Visnagar, Mehsana.

..... 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. Gaurav Joshi, Senior Advocate with Mr. Saurabh Pakle, Advocate i/b Mr. Deepak R. Shah for the Appellants in Appeal Nos. 81, 86 to 88 of 2014.

Mr. Deepak R. Shah, Advocate for the Appellants in Appeal Nos. 82 to 85, 89 and 90 of 2014.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody, Mr. Saurabh Bachhawat, Mr. Harekrishna Ashar, Advocates i/b K. Ashar & Co. for the Respondent.

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

Per : Jog Singh, Member (Oral)

1. In this bunch of ten appeals, the appellants have challenged order dated January 20, 2014 by which a consolidated monetary penalty of ₹ 5 crore has been imposed on the appellants by the learned adjudicating officer under Section 15HA of the Securities Exchange Board of India Act, 1992 (for short 'SEBI Act'). The appellants are alleged to have violated Section 12A(a), (b) and (c) of the SEBI Act read with Regulations 3(a), (b), (c) (d); 4(1) and 4(2)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 [in short 'PFUTP Regulations'].

2. Briefly stated, the facts of the case are that the Respondent conducted an investigation in respect of trading activities of an alleged Sanghvi Group in the matter of scrips of four companies, namely; Nakoda Textiles India Limited (NTIL), Gayatri Projects Limited (GPL); Nandan Exim Limited (NEL) and Trimurthi Drugs and Pharmaceuticals Limited (TDPL) for a

period ranging between July 10, 2009 to January 19, 2010, hereinafter referred to as the 'Investigating Period'. By a show cause notice dated May 15, 2013, all the appellants, who were termed as Sanghvi Group by the respondent, allegedly indulged in fictitious and artificial trading activities such as Self trades, Intra-trades, Multiple First Trades and even Synchronized Trades. The respondent, thus, charged the said alleged Sanghvi Group for contributing in the increase in price of the four scrips. Some of the groups within the alleged Sanghvi Group are stated to have contributed to artificial volume in certain scrips whereas some of the appellants have been charged with the violation of the above mentioned various PFUTP Regulations and the corresponding provision of the SEBI Act. Yet some of the appellants have been alleged to have created New High Price (NHP) in the process of their trading activity in the four scrips in question. Certain charts in the tabular form have been incorporated in the show cause notice itself by the respondent to bring home the charge against the appellants and relied upon in the impugned order. The appellants seem to have presented almost identical, and rather stereotyped, replies before the learned adjudicating officer denying the charges. The appellants have not categorically admitted or denied the existence of alleged Sanghvi Group, whose members are alleged to have acted in connivance with each other in the matter. While denying the charges in question, the appellants did submit before the learned adjudicating officer in the said replies that the price movements in the four scrips was dependent upon various factors such as market condition, performance of the company, trend of the market and sentiments of the investors. The appellants also pointed out that the trades which were undertaken by them were purely based on commercial considerations and there was no intention to hike the price or manipulate the market in any manner. Learned

adjudicating officer did not find the reply satisfactory and passed the impugned order imposing the monetary penalty of ₹ 5 crore on the appellants under Section 15HA of the SEBI Act to be paid jointly and severally.

3. Since the dispute emanates from the common show cause notice issued to all the appellants and common order dated January 28, 2014 is passed in penalizing the appellants jointly and severally, the appeals are heard together with the consent of the parties. We have taken the facts of Appeal No. 81 of 2014 (Babubhai Desai Vs. SEBI) as the lead case with the consent of the parties, although, the learned senior counsel for the respondent, Shri Rustomjee, pointed out certain differing facts in respect of certain appellants involved in these ten appeals.

4. We have heard the learned senior counsel, Shri Gaurav Joshi, who appeared with Shri Deepak R. Shah, learned counsel, and Shri Rustomjee, learned senior counsel for the respondent, who appeared with Ms. Shruti Chinivar, learned counsel.

5. It is, *inter-alia*, contended by Shri Gaurav Joshi, learned senior counsel that there was/is no Sanghvi Group, as alleged in the show cause notice. The appellants cannot be held guilty of the charges merely on the basis of a common telephone number or a common e.mail ID. It is a common feature of joint family staying together to have a common landline or e.mail ID. A common mobile number was undoubtedly provided by some of the appellants to respective brokers and the same belongs to the accountant, who manages records of most of the appellants. An additional affidavit dated April 15, 2014 was filed by the appellants on December 11, 2014 categorically denying the existence of any Sanghvi Group.

6. It is also argued on behalf of the appellants that there was no sale/purchase transaction within the alleged Sanghvi Group. Therefore, synchronization of trades was not possible. In fact, the show cause notice is also silent on this aspect. Therefore, the conclusion arrived at by the learned adjudicating officer in this regard, particularly, in paragraph 12, are without any basis/evidence.

7. The next contention urged by the appellants is that a trading above the Last Traded Price (LTP) is not per-se illegal. There is no specific evidence in respect of each of the appellants in this regard. Some of the appellants have not at all executed a single self-trade, still they are being punished jointly and severally.

8. It is further submitted that some of the appellants have suffered losses while others have made certain profits. This aspect has also been ignored by the learned adjudicating officer in the impugned order. In fact, the argument of the appellants in this regard is that they had no control over the market forces which control the price prevailing at a given point of time. Similarly, the learned senior counsel for the appellants has argued, to bring home the point, that the learned adjudicating officer has not considered the case of each and every appellant individually so as to prove specific charge / role by specific evidence against each one of the appellants. The basis on which certain charts have been relied upon by the learned adjudicating officer while passing the impugned order has not been disclosed. The Inspection Report conducted by the respondent or even the relevant extracts were not supplied to the appellants beforehand. It is, thus, contended by Shri Joshi, learned senior counsel, that the impugned order is liable to be quashed and set aside.

9. On the other hand, Shri Rustomjee, learned senior counsel for the respondent, has contended that various details of the transactions in question have been given in the show cause notice and, therefore, there was no need to provide separate copy of the inspection report to the appellants or its extracts. It is also pointed out that on behalf of the respondent that in the reply to the show cause notice, the appellants did mention about the existence of the Group, i.e., the alleged Sanghvi Group. Therefore, in view of this admission by the appellants, the learned adjudicating officer was not required to deal with this aspect any more. The findings in the impugned order are based on reasons and do not require interference by the Tribunal. Although, there is a reference to the Inspection Report in the show cause notice and reliance was placed by the learned adjudicating officer while passing the impugned order but in the absence of any request by the appellants in this connection, it was not deemed necessary to provide the appellants with a copy thereof.

10. After hearing the learned counsel for the parties at length and perusing the pleadings, we are convinced that the findings in the impugned order are based more on presumption than evidence. The conclusions arrived at in the impugned order are based on certain facts which are partly correct and partly incorrect. No privy or concert is shown to exist in the impugned order, which could prove the charge of acting jointly by the appellants. There has to be unambiguous and clear evidence in respect of the connection sought to be established among the ten appellants by the learned adjudicating officer in the impugned order. The guilt or culpability of each of the appellants has to be analyzed and established separately before holding them guilty of forming an alleged group to manipulate the price or volume in a given case. Mere common landline number or that of

the accountant of the appellants would not by itself convert certain entities into a group or concert who could have jointly traded in a design. It is a serious charge and hence cogent and convincing evidence is required to be brought on record before the said charge could be proved against the appellants.

11. The learned adjudicating officer has also not examined the fact that all the transactions in question which were undertaken by the appellants at the prevailing market price are screen based and delivery was duly effected after making/receiving payments by the appellants. Some of the appellants did make profit whereas others suffered losses. Further, in the show cause notice, admittedly, there is a charge of making profit by the appellants to the tune of ₹ 1.10 crore whereas in the impugned order the same is computed over ₹ 2.25 crore. The reason of such a finding is hardly to be noted in the impugned order. Alternatively, it has been specifically argued by Shri Gaurav Joshi, learned senior counsel, that even if certain charge is proved against some or all the appellants, the question of proportionality of the punishment has not been looked into and a consolidated penalty of ₹ 5 crore is imposed by the learned adjudicating officer, to be paid jointly and severally.

12. Similarly, a copy of the Inspection Report or its relevant portions, though relied upon by the learned adjudicating officer in the process of passing the impugned order has never been supplied to the appellants. This is in violation of the principles of natural justice in as much as it deprives a person to make an effective and proper reply to the show cause notice. All these aspects, discussed hereinabove, are required to be looked into by the learned adjudicating officer before passing the impugned order penalizing the appellants.

13. Therefore, keeping in view the totality of the facts and circumstances of the case and also the fact that the appellants have filed an affidavit before us to the effect that there was no alleged group as Sanghvi Group, we quash and set aside the impugned order and restore the matter to the file of the learned adjudicating officer to be adjudicated afresh after taking on record fresh replies to the show cause notice from the appellants; and in according with law. The respondent may also bring on record the Inspection Report or extracts thereof, in support of its case before the learned adjudicating officer, who will consider the same after supplying a copy thereof to the appellants and pass appropriate orders in the light of the observations and discussions made hereinabove as per law expeditiously and preferably within a period of four months from today.

14. All the appeals are, accordingly, disposed of with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

15.02.2016
Prepared & Compared by
PTM