

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date of Decision: 25.02.2016

Appeal No. 13 of 2016

Guinness Securities Limited
Guinness House, 18,
Deshapriya Park Road,
Kolkata- 700 026

...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. Janak Dwarkadas, Senior Advocate with Mr. Joby Mathew,
Mr. Deepak Dhane and Mr. Ramesh Goggawat, Advocates for the
Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 11 of 2016

Achintya Securities Pvt. Ltd.
7/118-E, First Floor,
Swaroop Nagar,
Kanpur- 208 002

...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. P.N. Modi, Senior Advocate with Mr. Neville Lashkari, Advocate i/b
Mr. Prakash Shah, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 12 of 2016

Basan Equity Broking Ltd.
3-6-196/197, Prime Plaza,
2nd Floor, Himayat Nagar Road,
Above KFC
Hyderabad- 500 029

...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. Prakash Shah, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 14 of 2016

Abans Securities Private Limited
36/37/38A, 3rd Floor,
227, Nariman Bhavan,
Backbay Reclamation, Nariman Point
Mumbai- 400 021

...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. Somasekhar Sundaresan, Advocate with Mr. Joby Mathew,
Mr. Deepak Dhane and Mr. Ramesh Goggawat, Advocates for the
Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 15 of 2016

R. K. StockHolding Private Limited
A-7, Block B1, Mohan Co-operative
Industrial Estate, Mathura Road,
New Delhi- 110 044

...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

Mrs. Poonam Gadkari, Advocate i/b Juris Matrix Advocates & Solicitors
for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 16 of 2016

Skung Tradelink Ltd.
Shop No. 63/2, 3rd Floor,
RN Chambers, The Mall Road,
Kanpur,
Uttar Pradesh- 208 001

...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. Amit Dey, Advocate with Mr. Ankit Lohia, Advocate i/b
Mindspright Legal for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

WITH
Appeal No. 17 of 2016

Sunstar Securities
56/33 Site-4, Sahibabad Industrial Area,
Ghaziabad,
Uttar Pradesh- 201 010

...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. Amit Dey, Advocate with Mr. Ankit Lohia, Advocate i/b
Mindspright Legal for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

AND
Appeal No. 18 of 2016

MSB E-Trade Securities Ltd.
C-619, Ground Floor,
Saraswati Vihar,
Pitampura,
Delhi- 110 034

...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. Prakash Shah, Advocate for the Appellant.

Mr. J. P. Sen, Senior Advocate with Mr. Anubhav Ghosh, Advocate i/b
The Law Point for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. Appellants in all these appeals are aggrieved by the ex-parte ad-interim order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on 17.02.2016. By the said order 22 stock brokers including the appellants herein are restrained with effect from 17.02.2016 from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, except as a stock broker for their existing clients in the cash segment. The said 22 stock brokers including the appellants herein are also restrained from accepting registration of any new client. Since the order impugned in all these appeals is a common order, all these appeals

are heard together primarily to consider the plea as to whether the impugned order which is passed ex-parte deserves to be stayed forthwith or not.

2. Appellants are members of Bombay Stock Exchange Ltd. (“BSE” for short)/ National Stock Exchange of India (“NSE” for short) and are duly registered with SEBI as Stock Brokers.

3. Facts relevant for the purpose of these appeals as set out in the impugned order are as follows:-

- a) As a part of ongoing surveillance, SEBI came across several instances wherein it was noticed that a set of entities were consistently seen incurring trading loss by executing reversal trades in options on individual stocks (‘stock options’ for convenience) in the Equity Derivative Segment. Hence, examination of trades in the stock options segment was carried out for the period from 01.04.2014 to 31.03.2015.
- b) On receipt of examination report, the WTM of SEBI deemed it fit to pass an ex-parte ad-interim order on 20.08.2015 whereby 59 clients who on account of reversal trades executed during the period from 01.04.2014 to 31.03.2015 had made loss or profit of more than ₹ 5 crore were restrained from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further

directions. In that order it was held that repeated sale of illiquid stock options by the loss making entities to a set of entities at a price far lower than the theoretical price/intrinsic value and subsequent reversal trades with the same set of entities within a short span of time with a significant difference in buy and sell value of stock options, in itself, exhibits abnormal market behavior and defies economic rationality, especially when there is absolutely no corresponding change in the underlying price of the scrip. It was further held that the acts of the aforesaid 59 loss making entities/ profit making entities prima facie show a scheme, plan, device and artifice on their part for some ulterior motive and the said non-genuine and deceptive transactions are, prima facie covered under the expression ‘fraud’/ ‘fraudulent’ as defined under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP” Regulations” for short). Accordingly, pending further investigation, the said 59 clients who had executed non-genuine trades were restrained from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, till further order.

- c) After passing the ex-parte ad-interim order against 59 clients on 20.08.2015, SEBI undertook preliminary examination of the stock brokers through whom the loss making entities and profit making entities were executing reversal trades during the period from 01.04.2014 to 30.09.2015.
- d) The examination conducted by SEBI revealed (one) that significant proportion of the turnover done by the 22 stock brokers, (including the appellants herein) is attributed to the reversal transactions in stock option segment carried out by them on behalf of their clients (two) with reference to the total number of trades executed by the 22 stock brokers for their clients, there are not many trades which are not part of reversal trades (three) for majority of the 22 trading members, the reversal transactions resulted in consistent trading profit (in terms of number of instances) for one set of clients and consistent trading loss (in terms of number of instances) for another set of clients (four) majority of 22 stock brokers reversed significant proportion of the trades within minutes of entering the original trade and the very same trades resulted in significant profit for one set of entities and significant loss to another set of entities. (Five) in majority of instances, the client and the counterparty orders forming part of reversal trades were entered

within few seconds of each other. (Six) the 22 stock brokers through reversal trades have generated a total loss to the tune of ₹ 1272.8 crore and total profit to the tune of ₹ 1303.1 crore to their clients.

4. On the basis of aforesaid facts, the WTM of SEBI arrived at a prima facie conclusion that the 22 stock brokers had connived with their clients to a scheme or device so as to make loss or profit as desired by their clients. Since the 22 stock brokers (including the appellants) have, prima-facie, facilitated their clients to use and employ a pre-meditated manipulative device or contrivance while dealing in securities market and indulged in non-genuine and deceptive transactions, it is held by the WTM of SEBI that the act of these 22 stock brokers is, prima facie covered by the expression ‘fraud’/‘fraudulent’ as defined under the PFUTP Regulations and accordingly pending further investigation, the 22 stock brokers (including the appellants) have been restrained from buying, selling or dealing in the securities market, either directly or indirectly, in any manner, except as a stock broker for their existing clients in the cash segment. By the impugned order, the concerned stock exchanges have been directed to conduct a focussed inspection of the 22 stock brokers, take corrective, if any, action and submit a report to SEBI within 6 months from 17.02.2016.

5. Mr. Dwarkadas, Mr. Modi learned Senior Advocates, Mr. Sundaresan, Mr. Ankit Lohia, Mrs. Gadkari and Mr. Prakash Shah learned Advocates appearing on behalf of their respective clients submitted that the ex-parte order passed by the WTM of SEBI without

giving an opportunity of hearing to the appellants is in gross violation of the principles of natural justice and has caused grave prejudiced to the appellants and hence the impugned order must be quashed and set aside. It is submitted that the clients of the appellants who have executed non-genuine trades through the appellants have neither been restrained from buying, selling or dealing in the securities market nor the said trades have been cancelled. Moreover, the alleged non-genuine trades which are not disclosed to the appellants even in the impugned order constitute a very small percentage of the total turnover and, in any event, the said trades do not establish that the appellants were privy to the alleged non-genuine trades executed by the clients. Accordingly, it is submitted that the impugned order be quashed and set aside.

6. Mr. Sen, learned Senior Advocate appearing on behalf of SEBI, on the other hand, submitted that in view of the findings recorded in para 20 of the impugned order, the prima facie view of the WTM of SEBI that the 22 stock brokers (including the appellants) have connived with their clients in executing the non-genuine trades can not be faulted. 22 stock brokers through their reversal trades have generated a total loss to the tune of ₹ 1272.8 crore and total profit to the tune of ₹ 1303.1 crore to their clients which prima facie establishes that the 22 stock brokers had connived with their clients in executing the non-genuine trades. Accordingly, counsel for SEBI submitted that there is no merit in these appeals and the appellants are not entitled to any relief in these appeals.

7. We have carefully considered rival submissions.

8. At the outset, it may be noted that it is not the case of the appellants that under section 11(1), 11(4) and 11(B) of SEBI Act, SEBI can not pass ex-parte ad-interim order. What is contended by the appellants is that in the facts of present case, the WTM of SEBI is not justified in passing the ex-parte ad-interim order against the appellants on 17.02.2016.

9. We see merit in the above contentions of the appellants for the following reasons:-

- a) By ex-parte ad-interim order dated 20.08.2015 the WTM of SEBI had passed restraint order against 59 clients who were found to have executed non-genuine trades in the stock options segment during the period from 01.04.2014 to 31.03.2015. The said 59 clients had traded through 18 stock brokers (including some of the appellants herein). In the said ex-parte order dated 20.08.2015, it was held that 59 clients had devised a fraudulent plan to execute non-genuine trades and nothing was imputed against the 18 stock brokers through whom 59 clients had traded. Accordingly, the said 18 stock brokers (including some of the appellants herein) carried on trading activities in accordance with law even after the ex-parte ad-interim order was passed against the 59 clients on 20.08.2015. Therefore, the WTM of SEBI having recorded in the order dated 20.08.2015 that

only 59 clients had devised a fraudulent plan to execute non-genuine trades, could not have arrived at a conclusion that the stock brokers (including some of the appellants herein) were parties to the fraudulent transactions merely because large number of reversal trades were executed by the said clients through the 18 stock brokers (including the appellants).

- b) It is interesting to note that all the 18 stock brokers who had executed trades on behalf of 59 clients are not restrained by the impugned order dated 17.02.2016. It is only 11 stock brokers out of 18 stock brokers are sought to be restrained by the impugned order. Thus, in respect of 7 stock brokers whose clients by executing reversal trades in the stock options segment had made profits exceeding ₹ 5 crore are permitted to carry on trade without any restraint order. The Calcutta Stock Exchange Ltd. is one such stock broker (Trading Member) whose client viz. Umang Nemani was restrained by ex-parte ad-interim order dated 20.08.2015. However, the Calcutta Stock Exchange Ltd. has not been restrained by either of the orders. In such a case, if SEBI considers that the stock broker viz. the Calcutta Stock Exchange Ltd. need not be restrained on account of its client viz. Umang Nemani making unlawful gains by resorting to non-genuine trades, then there is no reason to restrain

the appellants for the acts of their clients, that too by passing ex-parte ad-interim order on 17.02.2016.

There is no intelligible criteria employed while passing the ex-parte ad-interim order on 17.02.2016.

c) Argument of SEBI that by the ex-parte ad-interim order dated 20.08.2015 only the clients who had made profits or loss exceeding ₹ 5 crore under the reversal trades carried out during the period from 01.04.2014 to 31.03.2015 were considered and the role of stock brokers has been examined thereafter by enhancing the examination period from 01.04.2014 till 30.09.2015 is not convincing, because, firstly, as noted earlier all stock brokers whose 59 clients were investigated and restrained from entering the securities market by ex-parte order dated 20.08.2015, have not been restrained from entering the securities market by impugned order dated 17.02.2016, even though the trades executed by those stock brokers on behalf of their clients resulted in loss or profit exceeding ₹ 5 crore.

d) Secondly, as per Table-2 set out in the impugned order, in all 12584 clients had traded through 22 stock brokers (including some of the appellants herein) during the period from 01.04.2014 till 30.09.2015 and out of 12584 clients, 11228 clients of the 22 stock

brokers did reversal trades in the stock options segment whereby abnormal trading profit has been caused to one set of clients and abnormal loss has been caused to another set of clients. If 11228 clients of 22 stock brokers (including some of the appellants herein) have indulged in abnormal trades which are detrimental to the interests of the securities market then the WTM of SEBI ought to have passed restraint order against those clients first and then proceed against the stock brokers to find out as to whether they were parties to the objectional trades carried out by the clients. In the present case, we are informed that investigation against the 11228 clients (of 22 stock brokers) who are supposed to have indulged in objectional trades are in progress and on completion of investigation appropriate action would be taken against those clients. If SEBI finds it difficult to take action against 11228 clients who are alleged to have indulged in non-genuine trades without carrying out further investigation, then, by applying the same yard stick, SEBI could not have passed ex-parte order against the stock brokers when the investigation is still in progress.

- e) In the impugned order, the 22 stock brokers (including the appellants herein) are prima facie found guilty of colluding with their clients in executing fraudulent

trades mainly on the ground that the percentage of reversal trades carried out by the stock brokers on behalf of their clients range between 60% to 100% and in majority of instances, the clients and the counterparty orders forming part of reversal trades were entered within few seconds of each other. As noted earlier, if the WTM of SEBI finds it difficult to take a prima facie view that the 11228 clients have indulged in trades which are fraudulent in nature and accordingly deems it fit not to take any action against those clients, then, in respect of the very same trades, the WTM of SEBI could not have formed a contrary view and proceed to pass ex-parte order against the stock brokers who have traded on behalf of the clients.

- f) If the prima facie view is that the trades of the 11228 clients were not genuine, then to take action against 22 stock brokers but not against the 11228 clients amounts to applying double standard i.e. one standard for the stock brokers and another standard for clients, which is not proper.
- g) Taking a prima facie view, only against the stock brokers that the trades in question are not genuine would amounts to promoting execution of non-genuine trades, because, the said 11228 clients would

be emboldened to execute such trades through some other stock broker which would be detrimental to the interests of the securities market. Moreover, while permitting the appellants to trade in the cash segment, prohibiting the appellants from accepting registration of any new client is also illogical because, there is no basis to presume that the new clients would be indulging in non-genuine trades.

10. For all the aforesaid reasons we find it difficult to sustain the ex-parte ad-interim order passed by the WTM of SEBI against the appellants. No doubt that the appeals were heard at the stage of admission only for grant of interim relief. However, as we are inclined to grant interim relief, nothing would be left there after in the appeals once the interim relief is granted. In this view of the matter, we dispose of the appeals by holding that the WTM of SEBI was not justified in passing the ex-parte ad-interim order against the appellants on the basis of the trades, the genuineness of which qua the 11228 clients who had executed those trades are still under investigation and the WTM of SEBI has deemed it fit not to take any action against those 11228 clients.

11. In the result, we quash and set aside the impugned ex-parte ad-interim order dated 17.02.2016 qua the appellants herein.

12. We make it clear that we have not expressed any opinion on the merits of the case. All contentions on both sides are kept open.

13. We make it further clear, that quashing the impugned order qua the appellants would not come in the way of SEBI to initiate proceedings against them in accordance with law and pass orders as it deems fit.

14. All the appeals are disposed of in the above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

25.02.2016
Prepared & Compared By: PK