

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 209 of 2012

Date of decision: 19.11.2012

1. Grishma Securities Private Limited
92/04, Nirbhay Niwas,
Bhaudaji Cross Road,
10#, Matunga,
Mumbai – 400 019.
2. Mihir Ghelani
92/04, Nirbhay Niwas,
Bhaudaji Cross Road,
10#, Matunga,
Mumbai – 400 019.
3. Ketan Shah
92/04, Nirbhay Niwas,
Bhaudaji Cross Road,
10#, Matunga,
Mumbai – 400 019.
4. Chandrika H. Gandhi
92/04, Nirbhay Niwas,
Bhaudaji Cross Road,
10#, Matunga,
Mumbai – 400 019.
5. Chhabil C. Shah
92/04, Nirbhay Niwas,
Bhaudaji Cross Road,
10#, Matunga,
Mumbai – 400 019.

.....Appellants

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. Abhishek Venkatraman,
Advocate for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mobin Shaikh, Advocate for the
Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra

This appeal is filed by the appellants against the ad-interim ex-parte order dated December 28, 2011, passed by the whole time member of the Securities and Exchange Board of India (the Board) *inter alia*, prohibiting the appellants from buying, selling or dealing in any securities, in any manner, whatsoever, till further orders. Appellant no. 1 is a company registered with the Board as a stock broker since February 2000. Appellant no. 2 is the CEO and Compliance Officer and appellant nos. 3 to 5 are directors of the appellant company.

2. The Board carried out investigations into the Initial Public Offering (IPO) of Tijaria Polypipes Ltd. (the company) and *prima-facie* found that certain individuals traded in the shares of the company on first day of listing i.e. October 14, 2011 and provided an exit to both qualified institutional buyers and retail investors who were allotted shares in the IPO. According to initial investigations carried out by the Board, these buyers in the IPO were creating artificial volumes in the scrip of the company to attract genuine investors. It is also alleged that the individuals who provided an exit to the qualified institutional buyers and retail allottees include Jivraj Bachubhai Zala (Zala), Lopa Saumil Bhavnagari (Lopa) and Chetan Dave (Dave) and the appellant company acted as brokers through whom Zala and Dave entered trades in the shares of the company and had links with Lopa who allegedly traded in the shares of the company. The appellants allowed Zala to trade in the shares of the company on October 14, 2011 without meeting margin requirements, funded Zala's margin obligations from funds and securities belonging to other clients, falsified its client ledger etc. Pending investigations, the Board passed the impugned order against various entities including the appellants. The said order was also a show cause notice to the appellants and they were afforded opportunity to file their objections, if any, and were also afforded opportunity of personal hearing.

3. The appellants availed of this opportunity and filed their written submissions also. The grievance of the appellants in the appeal is that inspite of their replies and personal hearing, the Board failed to pass any further order and under the garb of ex-parte ad-interim order, the appellants are out of their business for almost ten months. It is submitted that the appellants are suffering grave and irreparable harm and prejudice on account of the wrongful and unjustified continuation of the impugned order and inability of the appellants to continue their business in the securities market is causing serious commercial and reputational harm and prejudice to the appellants. It is further submitted that there is nothing in the impugned order or the proceedings, initiated to even remotely suggest that the working of the appellants is to the detriment of the market. It is, therefore, prayed that the directions in the impugned order against the appellants be set aside.

4. During pendency of the appeal, the whole time member of the Board has passed order dated November 5, 2012 under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (the Act) confirming the directions issued vide ad-interim ex-parte order dated December 28, 2011 against the appellants. Learned counsel for the appellants has placed on record copy of the order dated November 5, 2012 and also two more orders, one dated November 2, 2012 in respect of some other brokers and entities who dealt in the scrip and against whom the directions issued vide the ad-interim ex-parte order dated December 28, 2011 was revoked and another dated November 5, 2012 under which directions in the ex-parte ad-interim order against Lopa has been confirmed.

5. Learned counsel for the appellants strenuously argued before us that while confirming the ex-parte ad-interim order dated December 28, 2011, the whole time member has failed to consider the submissions made before him and the order is discriminatory, in as much as, he has revoked the interim order against other brokers who had dealt in the scrip of the company but the same is continued against the appellants without any justification. It was further submitted by him

that by now, the appellants are already out of the market for eleven months and there is no justification to continue with the interim order. The Board may continue with its investigation but, in the facts of the case, the interim order needs to be vacated.

6. Learned senior counsel for the Board supported the order passed by the Board and submitted that while passing the order dated November 5, 2012, the whole time member of the Board has duly considered the submissions made by the appellants. The case of the appellants stands on a different footing as compared to the case of other brokers against whom interim order has been revoked. The investigation in the matter is already over and the Board is likely to issue show cause notice to the appellants within next two weeks. Keeping in view the role played by the appellants in manipulating the IPO of the company, the restraint must continue against the appellants and there is no justification to intervene in the proceedings initiated by the Board.

7. We have given our thoughtful consideration to the arguments advanced by counsel on both sides and also perused the documents placed on record. We have also taken note of the fact that investigation in the matter is already over and the Board is likely to issue show cause notice to the appellants within next two weeks. Therefore, we are not inclined to interfere with the continuation of the proceedings by the Board against the appellants. In so far as continuation of interim order against the appellants is concerned, what we have to see is whether a *prima-facie* case for continuing the interim order against the appellants is made out. Perusal of the order dated November 5, 2012 passed by the whole time member shows that he has considered the submissions made by the appellants. A *prima-facie* view is also expressed as to why those reasons are not acceptable when the proceedings are still continuing. After dealing with the submissions, the whole time member has given reasons in paragraph 14 of the order as to why interim order already issued need to be continued which are reproduced below for ease of reference :-

“14. I note that Grishma had allowed Mr. Jivraj Zala to trade heavily in the scrip, on the day of listing, allowing him to take huge exposures and incurring heavy losses to the tune of ₹ 9.95 crore, without collecting margins, despite the fact that he was a “walk-in-client” and his annual income was only around ₹ 5 lakh. The said client had allegedly provided exit to certain retail allottees and QIBs and the losses incurred by him was partly offset through funds from TPL received through layered fund transfers. His client ledger was allegedly manipulated to indicate that he had sufficient funds to trade, whereas funds were actually received much later after the trading day. Grishma had allegedly utilized the funds/securities of other clients for making the margin payments of Mr. Jivraj Zala towards his trades. The *interim order* had mentioned that Grishma’s client, Mr. Jivraj Zala had indulged in structured trades/trade reversals with Ms. Lopa. The submissions of Grishma, its directors and CEO do not give any plausible reasoning/explanation for their actions, at this stage. I also note that investigation in the matter has been completed and appropriate action as deemed appropriate, in accordance with law, would be initiated against Grishma, its directors and the CEO. In the light of above facts and circumstances, I am therefore of the considered view that no intervention is called for, at this stage, in either vacating the *interim* directions or modifying it, with respect to Grishma, its directors and CEO.”

8. We are of the view that the whole time member has passed the order dated November 5, 2012 after considering the submissions made by the appellants and has recorded sufficient reasons for continuation of the impugned order. Simply because interim order has been revoked against other brokers, it cannot be a ground for revoking the interim order against the appellants. It depends on the role played by them in manipulation of the scrip of the company. It is not in dispute that Section 11/11B of the Act empowers the Board to restrain any person from accessing the securities market and prohibit any person associated with the securities market to buy, sell or deal in securities either pending investigation or enquiry or on completion of such investigation or enquiry in the interest of investors or securities market. The appellant company has acted as broker to Zala and Dave in the trading of the scrip of the company done on October 14, 2011 which has allegedly manipulated the market and induced gullible investors to invest in the shares of the company. This conduct is under investigation. After considering the response received from the appellants the whole time member of the Board has come to the *prima-facie* conclusion that appellants have failed to act in accordance with the provision of the regulations in its dealings with its clients.

The investigation is over and the Board is likely to issue a show cause notice within next two weeks. The whole time member has brought on record sufficient justification for continuation of interim order against the appellants. We are convinced that no case for intervention by the Tribunal at this stage is made out.

In the result, the appeal fails and the same is dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

19.11.2012
Prepared & Compared by
ptm