BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Date of Decision: 11.03.2014

Appeal No. 160 of 2013

Paresh Pramodrai Vadodaria
No. 20, Angh Udyogshala,
Pase Kalubha Road,
Bhavnagar,
Gujarat -364 001 …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. Prakash Shah, Advocate with Mr. Prabhakar Kengar, Advocate for the Appellant.

Dr. Mrs. Poornima Advani, Advocate with Ms. Virakthi S. Hegde, Advocate for the Respondent.

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

Per: Justice J.P. Devadhar (Oral)

1. On conclusion of hearing of above appeal on March 11, 2014 we had pronounced in the open Court that for the reasons to be recorded separately we allow the appeal with no order as to costs. Accordingly, we record our reasons for allowing the appeal.

2. This appeal is filed to challenge order of Adjudicating Officer ("AO" for short) dated June 28, 2013 whereby aggregate penalty of ₹ 2 lac has

been imposed upon appellant under Section 15A(a) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act" for short) for allegedly violating provisions of Section 11C(3) and Section 11C(5) of the SEBI Act.

3. Appellant at the material time was associated with the securities market as an employee of Master Capital Services Limited, a stock broker.

4. On August 27, 2011 Bombay Stock Exchange ("BSE" for short) received fax message from Bodal Chemicals Ltd. ("BCL" for convenience) wherein it was stated that meeting of the Board of Directors of the Company would be held on August 29, 2011 to consider and approve the bonus issue. The above fax message had an undated press release issued by BCL along with a forwarding letter stating that the Company was selling its plant for ₹ 640 crores to Kiri Dyes Ltd. and that CRISIL has awarded a GVC level 3 to BCL.

5. When the above information was displayed on BSE website, BCL denied to have issued any fax message.

6. Preliminary investigation revealed that the total market capital of BCL was only ₹ 203 crores as on August 26, 2011 and there was no such rating given by CRISIL. Thus, it was clear that the information furnished to BSE on August 27, 2011 was false and misleading.

7. With a view to identify persons who had issued misleading/fraudulent announcement in the name of BCL, SEBI conducted investigation relating

to trades in the shares of BCL during the period from June 21, 2011 to August 29, 2011 (Investigation period).

8. On noticing that Hemaliben Bimalkumar Mehta, Charuben Jitendrarai Mehta and Bhavana Gautambhai Vaghasiya, (‘three clients’ for convenience) were the three major clients who traded in the shares of BCL during the investigation period interalia through Master Capital Services Ltd., SEBI, by its order dated August 30, 2011 debarred the aforesaid three clients from buying, selling or dealing in the securities market pending further investigation.

9. During the course of investigation, SEBI claims to have issued three summonses to the appellant, an employee of Master Capital Services Limited on September 16, 2011, January 16, 2012 and April 9, 2012 respectively, since the aforesaid three clients had traded in the shares of BCL through him. By those summonses appellant was called upon to appear in person and produce details on the internal procedures for the dealings on behalf of the clients and the Code of Conduct Regulations formulated by the stock broker namely, Master Capital Services Limited.

10. On receipt of first summons dated September 16, 2011 appellant addressed a letter on September 21, 2011 stating that due to personal reasons he will not be able to appear on September 22, 2011 and requested for a date after a week. Appellant contends that he has not received any summons thereafter. SEBI relied upon the signature on the

acknowledgment card in support of their contention that summons dated January 16, 2012 has been duly served upon the appellant.

11. Initially by our order dated January 23, 2014 we had asked the registry to obtain opinion of a hand writing expert on the disputed signature.

12. Since the registry has reported that the Central Government agency for examination of documents is situated at Hyderabad, we deemed it proper first to consider the question as to whether, SEBI is justified in imposing penalty upon appellant assuming that the summons in question was duly served upon the appellant and if so, thereafter seek opinion of hand writing expert from Hyderabad in relation to the disputed signature.

13. Section 11C of SEBI Act contemplates investigation by SEBI, firstly where the transactions are carried out in a manner which is detrimental to the investors or the securities market and secondly, where there are suspected violations of specific rules, regulations or directions.

14. In the present case, investigation was instituted with a view to find out as to whether the three clients as also their stock broker were involved in forwarding misleading and fraudulent announcement in the name of BCL to the stock exchange.

15. Admittedly, by order dated November 29, 2012 Whole Time Member ("WTM" for short) of SEBI has dropped proceedings against three clients where in it is, interalia, recorded thus:

> *7. The investigation in the matter has been completed. I note from the findings of the said investigation that the facsimile messages received by BSE were non-genuine. However, the persons who had engineered such false disclosures could not be identified as the facsimile messages were sent from a public telephone operated at a stationery shop. Further, no connection or relation could be established between the Company and the persons who sold large quantities of shares of the Company on August 29, 2011. The trading pattern also does not establish any manipulative or circular/synchronised trades between the entities related to the Company or between the aforesaid three clients or with entities connected with them. I, therefore, drop the charges against Hemaliben Bimalkumar Mehta, Charuben Jitendrarai Mehta and Bhavana Gautambhai Vaghasiya, for lack of evidence. In view of the same, while no further action is called for against the aforesaid three persons, the directions issued against them vide the Interim Order needs to be revoked.*
>
> *(emphasis supplied)*

16. In para 8 of the affidavit in reply filed by SEBI it is stated that since Master Capital Services Limited has furnished requisite documents, no action has been taken against Master Capital Services Limited. At the material time appellant was an employee/dealer of Master Capital Services Limited and had carried out trades on behalf of aforesaid three clients. Since documents sought from the appellant by SEBI under the summonses were relating to the details on the internal procedures for the dealings on behalf of the clients and Code of Conduct Regulations formulated by Master Capital Services Limited, it is evident from the affidavit in reply filed by SEBI that requisite documents for the purpose of investigation were received by SEBI directly from Master Capital Services Limited. Therefore, it cannot be said that the investigation was hampered on account of appellant not furnishing requisite documents, because, requisite

documents have been in fact obtained by SEBI from the employer of the appellant that is, Master Capital Services Limited.

17. Question then to be considered is, whether appellant has deliberately or otherwise failed to appear in person in response to the summons issued to him.

18. As noted earlier, on receipt of the first summons, appellant did reply to SEBI by addressing a letter seeking time. Although SEBI claims to have sent summonses on January 16, 2012 and April 9, 2012 respectively, it is matter of record that appellant ceased to be an employee of Master Capital Services Limited with effect from February 2012.

19. Moreover, it is relevant to note that on receipt of show cause notice issued by AO on January 16, 2013, appellant did appear before AO and denied charges levelled against him and further stated that in view of his ceasing to be an employee of Master Capital Services Limited with effect from February 2012, requisite documents may be obtained from Master Capital Services Limited. As noted earlier, SEBI has in fact received requisite documents from Master Capital Services Limited directly.

20. In these circumstances, without going into the question as to whether there is any merit in the contention of appellant that he had not received disputed summons, we deem it proper to give benefit of doubt to the appellant and hold that in the facts of present case imposition of penalty for non compliance of summons is unwarranted especially when WTM of SEBI on completion of investigation has passed an order specifically

recording therein that the trading pattern in the trades in question do not establish any manipulative or circular/synchronised trades between the entities related to BCL or between the three clients whose trades were investigated or with entities connected with them, which obviously includes the appellant. We make it clear that but for the decision of WTM of SEBI dated November 29, 2012 in holding that the trading pattern in the trades in question by the three clients or entities connected with them were not manipulative in nature, we would not have given benefit of doubt to the appellant.

21. In the result impugned order dated June 28, 2013 is quashed and set aside. Appeal is allowed in above terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

11.03.2014
Prepared & Compared By: PK

Per : A.S. Lamba

1. This appeal has been filed by Paresh Pramodrai Vadodaria (Appellant) against Securities and Exchange Board of India (SEBI) in matter of adjudication order no. IVD/ID6/BCL-PPV/AO/DRK-VVK/EAD3-373-39/-2013 dated 28th June, 2013; imposing penalty of Rs. 2,00,000/- on the Appellant for violation of provisions of Section 11C(3) and Section 11C(5) of Securities and Exchange Board of India Act, 1992 (SEBI Act).

2. Background of the case is that Bombay Stock Exchange (BSE) received fax message (announcement), purportedly, from Bodal Chemicals Limited (BCL) on 27th August, 2011 informing that the meeting of the Board of Directors of BCL would be held on 29th August, 2011 to consider and approve bonus issue and this fax message also contained information (disclosure) that BCL was selling its plant for Rs. 640 crore to Kiri Dyes Limited and that CRISIL had awarded GVC Level 3 rating to BCL. Since 27th August, 2011 was a holiday, BSE made public the announcement and the disclosure at 8.13 hours and 8.18 hours on 29th August, 2011 respectively. Respondent has now informed SAT through Affidavit-in-Reply to appeal that total market capital of BCL was only Rs. 203 crore at last closing of 26th August, 2011 and there is no such rating category (GVC Level 3) by CRISIL. On 29th August, 2011, BCL at 13.41 hours denied any of these developments or sending any such fax message to BSE on 27th August, 2011.

3. Respondent took up investigation in the matter and on basis of preliminary examination, prohibited three persons, namely, Hemaliben Bimalkumar Mehta, Charuben Jitendrarai Mehta and Bhavana Gautambhai Vaghasiya from buying, selling or dealing in securities market, in any manner whatsoever, till further directions. These three persons (alleged accused) were identified to be amongst top sellers during pre-denial period of trading in scrip of BCL on 29th August, 2011 and had high concentration in this scrip. Hemaliben had dealt through stock broker JM Financial Services Pvt. Ltd., Motilal Oswal Securities Ltd. and Master Capital Services Pvt. Ltd. and Charuben traded through JM Financial Services Pvt. Ltd. and Master Capital Services Ltd.

4. Since Master Capital Services Pvt. Ltd. (MSCL) and Arcadia Share and Stock Brokers Pvt. Ltd. (ASSBL) were major stock brokers for Hemaliben, Charuben and Bhavana for selling BCL shares during relevant time, MSCL and ASSBL were requested to submit certain information. MSCL and ASSBL submitted the requisite information, as per requirement of Respondent and Respondent appears satisfied with same. However, information submitted by MSCL and ASSBL did not suffice to fully analyze trading of alleged accused, since brokers operated through dealers, who were immediate persons responsible for trades and hence summons to various entities, including, Appellant, were issued by Respondent for personal appearance before Respondent to get acquainted with / understand internal procedures concerning the dealings on behalf of clients and code of conduct formulated by stock broker. First summon to Appellant was issued by Respondent on 16th

September, 2011, to which reply was sent by Appellant on 21st September, 2011 and Appellant sought one week time stating he cannot appear on 22nd September, 2011. Thereafter summon was issued to Appellant on 16th January, 2012 by Respondent at same address, on which earlier summon dated 16th September, 201 was sent by speed post. This was received by, someone, who is apparently not Appellant, but it difficult to decipher signatory's identity.

5. Third summon was issued by Respondent to Appellant on 19th April, 2012 at the same address at which first summon dated 16th September, 2011 was issued and this was received apparently by someone on behalf of addressee (i.e. Appellant). It was noted by this Tribunal that someone (name not legible) had received on behalf of Appellant, but name of Appellant as appearing on receipt was almost the same as signatures of Appellant.

6. Hence, with a view to understand if Appellant had signed the receipt himself but showed it being signed by someone else, it was decided by this Tribunal to send this receipt, along with original signatures of Appellant, to an handwriting expert. CID of Government of Maharashtra (GOM) was requested to give its opinion, in the matter, but since CID of GOM deals with cases of GOM only, this Tribunal was requested to send the matter to an Institute, set-up by Government of India, for the purpose.

7. As per office note dated 12th March, 2014 of this Tribunal, it was decided by Hon'ble Presiding Officer, SAT, that this Tribunal will hear the matter on merits and if on merit, and if SEBI is justified in imposing penalty upon appellant, assuming that summon in question was duly served on appellant, it will be decided to find out if purported signatory on receipt of third summon signed on 9th April, 2012 is Appellant, the matter of referring the matter to hand writing expert will be decided thereafter.

8. Accordingly, the appeal was taken up for hearing by this Tribunal on 11th March, 2014. Appellant was not required / requested to state its version, since on previous occasion, when matter was part heard on 23rd January, 2014, Appellant had already stated that first summon was received by Appellant to which reply was sent asking for time and since no further intimation / summons were received by Appellant, Appellant did not reply or did not appear before Respondent. During previous hearing on 23rd January, 2014, Respondent had stated that second and third summon were sent and were received by someone on behalf of Appellant and hence service of summon, as per SEBI (Manner of Service of Summons and Notices issued by the Board) (Amendment) Regulations, 2007, was complete and since Appellant did not appear, despite three summons, penalty of Rs. 2,00,000/- has been imposed on Appellant, as per SEBI Act on Appellant for non-appearance before Respondent, on summons.

9. When hearing of case resumed on 11th March, 2014, Respondent were asked as to how it was prejudiced by non-appearance by Appellant before Respondent, especially when information as sought by Respondent had been made available previously by MSCL and ASSBL and since case had been closed by Respondent against 'alleged accused' and no action initiated against MSCL and ASSBL.

10. Respondent tried to built-up a case of prejudice caused to Respondent by non-production of records by Appellant or by non-appearance of Appellant before Respondent, by bringing in material which was not in impugned order and was requested by Hon'ble Presiding Officer of this Tribunal to confine itself to contents of Impugned Order. Since, there is no mention of any prejudice caused to Respondent in Impugned Order, Respondent admitted that it was not possible, at this stage, to mention any prejudice, solely based on impugned order.

11. In my opinion, a few crucial points have been missed in the entire proceedings, which are as:

(i) Summons were issued in good faith by Respondent on Appellant, since Appellant's presence could have been relevant for some understanding the proceedings of the case, since Appellant was a dealer of a stock broker and was dealing with client directly and his examination was required by Respondent to analyze trading of alleged accused, including pay-in obligations of securities, etc.

(ii) Why Appellant did not appear, when he received first summons since he asked for one week time, without stating any reason for asking for time.

(iii) Since he "purportedly" did not receive second and third summon, why did he not try to find out next date by sending some communication to Respondent, if it did not receive any further communication / summon from Respondent, or in case his address had changed, intimated to Respondent his changed address.

(iv) How far his plea is acceptable that he did not receive any further communication / summon, after first summon, since second and third summon were received by someone on his behalf and "perhaps" third summon was received by Appellant himself.

(v) When a doubt had arisen in mind of this Tribunal if person receiving third summons on behalf of Appellant was "perhaps" Appellant himself, why opinion of Central Government's Hand Writing expert was not availed off, which would have entailed time, but was essential in interest of justice and would have set the controversy to rest, once forever.

(vi) In case Appellant himself signed on Appellant's behalf it is a clear case of misrepresentation and he has been allowed to go scot-free, despite his committed misrepresentation to a Government of India Authority.

(vii) Now coming to prejudice being caused to Respondent, it is submitted by Respondent in Affidavit-in-Reply that personal appearance was considered necessary to fully analyze the trading of alleged accused, since brokers operated through dealers (Appellant was a dealer of MSCL), who was immediate person for trades. This Affidavit-in-Reply has been admitted by this Tribunal and, hence, is part of case record and may also be relied on.

(viii) Learned Adjudicating Officer has dealt only with non-appearance of Appellant before it, after duly serving summons on Appellant three times, which is an offence as per SEBI Act. Summon contained sufficient justification for causing appearance of Appellant before AO and it is already submitted by Respondent in Affidavit-in-Reply that presence of Appellant was required to fully analyze trading of alleged accused and since Appellant did not appear before Respondent, despite three summons, prejudice is definitely caused to Respondent, since Appellant's presence

before Respondent was for a specific purpose, already stated above, and was different from information received by Respondent from MSCL and ASSBL.

(ix) Summons from Respondent had been duly served on Appellant three times and each time summons met requirement of law dealing with summons, which requires delivery at known place of residence, irrespective of who receives these summons and at least once summons were acknowledged received by Appellant.

12. However, it may be mentioned that learned Senior Advocate appearing on behalf of Respondent did bring out prejudice caused to Respondent by non-appearance of Appellant before Respondent, despite the same being available on case-record, though not mentioned in Impugned Order.

13. It may also be mentioned that Respondent's investigation in the matter is superficial and does not deals with many issues at depth.

(a) Respondent has not investigated the role of BSE, in hoisting the fax message dated 27th January, 2011 received by BSE from BCL on 29th January, 2011 at 8.13 am and 8.18 am. What mechanism does BSE have to check authenticity of source of information and whether that was gone through,

before hoisting information purportedly received by it on 27th January, 2011 from BCL.

(b) At what level in BSE, the information received by BSE from its various listed companies is approved before it hoisted on BSE website and if this formality was gone through, in view of the fact that 27/28th January, 2011 were holidays and information of fax dated 27th January, 2011 was hoisted at 08.13 and 08.18 hours on January 29, 2011 before opening of BSE on 29th January, 2011.

(c) Does BSE have persons working on BSE website available before opening of stock exchange to hoist information concerning its listed companies and if so why this information not hoisted soon after its receipt on 27th January, 2011 and why it was allowed to rest before hoisting the same on 29th January, 2011, before opening of stock exchange.

(d) There was “most probably” involvement of some “vested” interest working in BSE, who in “collusion” with “undesirable” elements of outside world, work on these matters and allow “coloured, questionable and dubious” information to be hoisted on BSE website, which by its nature, is misleading for investors in security and adversely affect equilibrium in security markets.

(e) Why no probe was held by Respondent in various issues connected with hoisting of information received by Respondent from "BCL" on 27th January, 2011 and why no action was taken by Respondent to take necessary corrective action, to prevent misuse of BSE's website, in future.

(f) In case the case was investigated properly, in depth, it would have been possible to find source / origin of FAX message from "BCL" dated 27th January, 2011 and this information would have led to "alleged accused / rogue brokers", who used the period from opening of trading on BSE on 29th January, 2011 upto receipt of denial of FAX by BCL, to make undue gains to themselves and to cause "undue loss" to gullible investors.

(g) It is a matter of serious concern that alleged accused were let of for want to corroborative evidence, which could have come from investigation regarding hoisting of fake information on BSE website.

14. SAT in case of **Asian Films Production and Distribution Ltd. (Appeal No. 203 of 2010 decided on 19th January, 2011**) has held that:

"Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market

> regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market."

15. In view of above, I am of the view that Appellant has failed to comply with provisions of Section 11C(3) and Section 15C(5) of SEBI Act and uphold imposition of penalty of Rs. 2,00,000/- on Appellant by Respondent under Section 15A(a) of SEBI Act. Further, name of Appellant as appearing on acknowledgement of third summons dated 19th April, 2012, should be sent to appropriate authority of Government of India, for comparing this name of Appellant with actual signatures of Appellant, with a view to determine if Appellant misrepresented that he did not receive third summons, since name of Appellant as written in acknowledgement of summons appears as that of written by Appellant himself. No order as to costs.

Sd/-
A.S. Lamba
Member

11.03.2014
Prepared & Compared By:
msb