

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 1 of 2008**

**Date of decision : 27.8.2008**

Moneygrowth Investment and Consultants Pvt. Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. P.N. Modi Advocate with Ms. Depika Vijay Advocate for the Appellant.

Mr. J.J. Bhatt Senior Advocate with Dr. Mrs. Poornima Advani Advocate and Ms. Sejal Shah Advocate for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer

Arun Bhargava, Member

Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

This case is yet another instance where the show cause notice does not disclose any cause of action much less the violation of the provisions alleged to have been violated by the appellant. This apart, there are no findings recorded against the appellant in regard to some of the violations alleged in the show cause notice.

2. The appellant, a trading and investment company, received a notice dated 24.9.2004 from the Securities and Exchange Board of India (for short the Board) under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 calling upon it to show cause why suitable directions under the Act and the Regulations be not issued to it. It is alleged that the appellant while trading in the scrip of Shonkh Technologies International Ltd. (for short STIL) had created artificial and misleading appearance of trading in the said scrip and thereby artificially raised the price of that scrip. It is further alleged that the appellant had acted as an unregistered broker, inter alia, violating the provisions of the Act. The show cause notice mentioned that the directions could include prohibiting the appellant from dealing in securities for a specific period or prohibiting it from accessing the capital market for a specified period and/or any other direction as deemed fit and proper. The show cause notice stated that the Board had conducted investigations into the trading of the scrip of STIL which was listed on the Bombay Stock Exchange (BSE) and the Delhi Stock Exchange (DSE) and whose shares underwent a sharp increase in price on both the exchanges from Rs. 70 on BSE and Rs. 300 on DSE to Rs. 460 during the period between August and September 2000. Charges that were levelled against the appellant are contained in paragraphs 1.4, 2.1, 2.2 and 2.3 of the show cause notice which are reproduced below for facility of reference.

“1.4 In the course of the investigations, it was noticed that you were trading in the scrip of STIL on the BSE. You are a client based in Delhi having its registered office at E-18, Model Town. Delhi. One of your directors is Mr. Pawan Gupta. It was observed in the course of investigation that Mr. Pawan Gupta is also a director of M/s. Padmini Financial Services Limited along with Mr. Vivek Nagpal and Ms. Aarti Nagpal. In the course of the investigations, it has been observed from the documents submitted by Global Trust Bank that Mr. Vivek Nagpal is the person in control of Shonkh Technologies International Limited.

2.1 In the course of the investigation, it was also noticed that you have traded in the scrip of STIL during the period August – September 2000. It was noticed that on August 9, 2000, August 28, 2000 and September 20, 2000, you had sold 50 shares through the broker M/s Nirmal Bang Securities Private Limited. Further, Shri S.K. Gupta, who appears as a client through the trading member, M/s ARJ Securities Private Limited from August 22, 2000 to August 25, 2000 selling 50 shares each on these days, in his statement dated March 22, 2003 stated that the transactions in his name were done by Shri Pawan Gupta, Director of M/s Money Growth Financial Services. From the above, it is seen that you have traded in the scrip of STIL in lots of 50 shares each.

2.2 In the course of the investigations, it was seen that you had placed sell orders for 50 shares each in the scrip of STIL on BSE on a regular basis. The orders were placed through the trading member M/s Nirmal Bang Securities Private Limited through their sub-broker M/s Bang Equities Private Limited. As per the details furnished by you, the orders were placed on behalf of your clients, namely, Mr. Rahul Ahuja, Mr. Rajesh Bhatala, M/s Dadusons and M/s Goyal Associates. Thus, you acted as a sub-broker but it was observed that you are not registered as a sub-broker with SEBI. Further, your clients could not be contacted at the address provided by you.

2.3 Further, in your statement dated March 26, 2004 you have informed that one of your directors Shri Pawan Gupta is also a director of M/s Padmini Financial Services Limited, Member, NSE alongwith Shri Vivek Nagpal and Mrs. Aarti Nagpal. Hence, it is alleged that you have acted as front entities to influence the price of the scrip of STIL by selling 50 shares on 3 days during the period from August 9, 2000 to September 20, 2000 and your director Shri Pawan Gupta sold 50 shares of the scrip STIL on 4 days (who sold these shares on Shri S.K. Gupta's name) during the period from August 22, 2000 to August 25, 2000.”

In view of the above charges, the appellant was alleged to have violated Rule 3 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules 1992 and Regulation 4(b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations 1995 (for short the Regulations). Regulation 4(b) prohibits a person from indulging in any act which is calculated to create a false or misleading appearance of trading on the securities market.

3. The appellant filed on 29.4.2006 a detailed reply to the show cause notice in which it categorically denied every allegation made against it and pointed out that only three trades of fifty shares each in the months of August and September 2000 which they had undertaken, could under no circumstances, be taken to have contributed to the rise in the price of the STIL shares. It denied any continued connection between Pawan Gupta, one of its directors and Vivek Nagpal and Aarti Nagpal who, according to the show cause notice, were in control of STIL. The appellant also denied that it had ever traded on behalf of any other person and clarified that the four so called clients named in paragraph 2.2 of the show cause notice were actually entities from whom it had purchased shares and then sold the same and, therefore, it had never acted as a sub-broker nor violated any provision of the Stock Broker and Sub-Broker Rules, 1992. The appellant pointed out in its reply that its director Mr. Pawan Gupta had clearly denied executing any trade for Mr. S. K. Gupta, as alleged in the show cause notice. On a consideration of the material on the record and the reply filed by the appellant, the whole-time member of the Board came to the conclusion that the appellant had violated the provisions of Regulation 4(b) of the Regulations and by his order dated October 16, 2007 restrained, among others, the appellant from accessing the securities market for a period of five years. It is against this order that the present appeal has been filed.

4. We have heard Mr. P.N. Modi Advocate for the appellant and Shri J. J. Bhatt senior Advocate on behalf of the Board. The impugned order is against as many as 26 entities including the present appellant and they have all been awarded the same severe penalty of denial of access to the securities market and prohibition from buying, selling or dealing in securities either directly or indirectly for a period of 5 years. At the outset, we may refer to the vast difference in the price of the scrip of STIL on BSE and DSE that has been mentioned in the very first paragraph of the impugned order. The shares of STIL were listed on DSE on August 11, 2000 and were allowed to be traded w.e.f. August 16, 2000 and on the first trading day it opened at Rs.300/-. The price on BSE was Rs.70/- on August 9, 2000. This vast difference in price is not only surprising but is also unusual. We were informed during the course of the hearing that STIL was an unlisted company and on 14.7.2000 it merged in a listed company called Shreejee Yatayat Limited which was already listed on BSE. After the merger, the merged company changed its name to STIL and got itself listed on DSE in August 2000. However, for reasons which are not clear, even after the change in name of the merged company to STIL and its listing on DSE under that name, the scrip continued to be traded on BSE under its old name of Shreejee Yatayat. This, according to Mr. Modi, could be the reason for the huge difference in the price of the scrip on the two exchanges viz. BSE and DSE. This factual clarification which was given by the learned counsel for the appellant was not controverted by the representatives of the Board who were present in court. There is nothing on the record to indicate as to when the name of the scrip of Shreejee Yatayat was changed to STIL on BSE.

5. The main charge of manipulation of the price of the scrip of STIL is sought to be established by the Board on the basis of only three trades executed by the appellant on 9.8.2000, 28.8.2000 and 20.9.2000 on BSE. Each of the trades was a sale of 50 shares and while the price on 9.8.2000 was Rs. 75.55 per share, it increased to Rs. 175.50 per share on 28.8.2000 and further to Rs. 366.40 per share on 20.9.2000. All these sales were at prices already determined through the price-order matching mechanism of the stock exchange and no trade executed at such a price could be said to be manipulative in nature unless there is a charge of circular or synchronized trading. A mere look at the show cause notice would make it clear that there is absolutely no charge of that nature against the appellant and, in any case, for establishing any such manipulation through circular or synchronized trading, the counterparties to the impugned transactions have to be looked at. Though the Board had full knowledge about the counterparties to the three impugned sale trades executed by the appellant, it chose neither to disclose their names nor to investigate them further. Moreover, when we look at the relevant order and trade logs it is clear that on days other than those on which the appellant traded there were others who were trading as a result whereof the price of the scrip went up. The appellant cannot be held responsible for that price rise. Again, it is clear from the order log that when the appellant put in its sell order on the three dates mentioned hereinabove there were already pending buy orders in the system which were very close to the upper circuit limit. In view of the pending buy orders, the system of the exchange would ensure that any fresh sell order would be executed only at the pending buy order prices. We say so because the system ensures the best available price to the seller which necessarily has to be the highest pending order. In these circumstances, if the sell orders of the appellant were executed at prices very close to the upper circuit limit of the scrip, no fault can be found with the appellant. We are, therefore, satisfied that the charge of manipulation cannot, by any stretch of imagination, be said to have been established.

6. The fact that the appellant executed only three very minor trades (sell orders) on three different days during the entire period of investigation spanning about 50 days is not in dispute. As a matter of fact, the show cause notice itself says so. Having regard to the number of trades, the quantity of shares traded and the time gap between the three trades, we are of the view that these miniscule trades by themselves were not capable of affecting the price. What was strenuously argued by the learned senior counsel for the Board is that the sell orders on each of the three days were put in the system on behalf of the appellant at the fag end of the trading session at a price which was the upper circuit limit and the object was to conclude a trade so that the price of the scrip could be established. This, according to the learned senior counsel, would enable the manipulators to raise the price further on the following day by putting in orders at a still higher price within the circuit limit. He took us through the order logs and trade logs in support of his plea. We are unable to accept this contention. Since there were only three odd trades spread over a span of time, it cannot be said with certainty that there was a definite pattern resorted to by the appellant. Be that as it may, there is nothing on the record to show that the appellant had specified the time to its broker at which the sell order was to be fed into the system. Admittedly, the trades were executed through a broker. It is possible, as it usually happens, a trader tells his broker to sell the shares without specifying the time and it is upto the broker to feed the order in the system so as to procure the best available price. If the Board wanted to draw an inference against the appellant in this regard, it was essential that the appellant should have been confronted with this fact at some stage of the proceedings if not in the show cause notice. This fact was never put to the appellant. It may have had an explanation. We cannot

say at this stage that it had no explanation. Moreover, the whole-time member has not drawn any such inference in the impugned order.

7. Mr. J.J. Bhatt learned senior counsel for the Board took us through the statements of Mr. Pawan Gupta and Mr. S.K. Gupta recorded during the course of the investigations. Mr. Pawan Gupta is one of the directors of the appellant company and is also a director in Padmini Financial Services Limited where Vivek Nagpal and Aarti Nagpal are also the directors. Mr. S. K. Gupta is also said to have executed a few trades in the scrip of STIL on the dates referred to in the show cause notice. In his statement he said that those trades were also executed by Mr. Pawan Gupta in the name of the former and that he (S.K. Gupta) did not execute any trade. The insinuation is that Pawan Gupta the director of the appellant had executed more than three trades with a view to manipulate the price of the scrip of STIL. Having made this statement, S.K. Gupta subsequently filed an affidavit on 3.5.2006 and retracted his earlier statement. In view of this affidavit we are clearly of the view that the testimony of S.K. Gupta cannot be relied upon and, may be, it is for this reason that the whole-time member has not recorded any finding in this regard in the impugned order. We cannot rely upon the statement of S.K.Gupta and hold that the appellant was instrumental in manipulating the price of the scrip.

8. Now let us examine the show cause notice. As already observed, it does not disclose any cause of action except that it alleges violation of Regulation 4(b) of the Regulations. How the appellant has violated this Regulation is not clear from the contents of the notice. We have carefully gone through the show cause notice and that does not make us wiser. The charge of acting as a sub-broker has been made out but there is no finding to that effect in the impugned order. The explanation furnished by the appellant is that persons whose names appear in para 2.2 are those from whom it purchased the shares before selling them and that it did not act as a sub-broker for them. It is obvious that the explanation has been accepted. What wrong the appellant has done when it sold 50 shares on three different days, is not clear from the notice. Similarly, the charge that the appellant acted as a front entity to influence the price of the scrip of STIL as levelled in para 2.3 is equally untenable and there appears to be no basis for such a charge. At this stage it would be relevant to refer to the oft quoted observations of the Supreme Court in **Canara Bank v. Debasis Das** 2003 (4) SCC 557. This is what the learned judges have observed in para 15 of the judgment:

“The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. **The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet.** Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vacate, interrogate and adjudicate”. In the celebrated case of Cooper v. Wandsworth

Board of Works the principle was thus stated: (ER p.420)

“(E)ven God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?”

Since then the principle has been chiseled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.” (emphasis supplied)

These observations apply with full force to the facts of this case.

For the reasons recorded above, the impugned order cannot be sustained. Accordingly, the appeal is allowed and the impugned order set aside with no order as to costs.

Sd/-

Justice N.K. Sodhi

Presiding Officer

Sd/-

Arun Bhargava

Member

Sd/-

Utpal Bhattacharya Member

27.8.2008

ddg/-