Sebi Vs. Mehta and Ajmera

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SooperKanoon Citation : sooperkanoon.com/58532

Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Feb-12-2007

Judge : G Anantharaman

Appellant : Sebi

Respondent : Mehta and Ajmera

Judgement :

G. Anantharaman, Member 1.1 The shares of DSQ Industries Ltd. (hereinafter referred to as DSQ), are inter alia listed on the Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE). DSQ Industries Ltd. is group concern of Shri Dinesh Dalmia, main promoter of DSQ Software Ltd. It was observed that during the period January 2000 to March 2000, the price of the shares of DSQ went up from Rs. 97/- to Rs. 428/-. It was also noticed that in most of the trading sessions during the said above period the price of the shares of DSQ was in the upper circuit filter compared to the previous day's closure.

1.2 Inter alia, in the above facts and circumstances, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation to look into the alleged manipulation in the shares of DSQ and to look into the possible violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and

Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations,1992 (hereinafter referred to as the Broker Regulations).

1.3 Shri Girish S Mehta & Shri. Himanshu Ajmera holds certificates of registration as stock brokers bearing Nos. INB030451228 and INB030451326 with trade name M/s Mehta& Ajmera (hereinafter referred to as the Broker). The investigation conducted by SEBI revealed that the Broker had entered into number of cross deals/synchronized deals in the shares of DSQ on various dates on behalf of its clients as mentioned below: A. Synchronized deals executed on January 06, 2000: The Broker had sold 5,14,000 shares of DSQ to Titan Stock Broking Pvt. Ltd. on January 06, 2000 in a synchronized manner. The client of the Broker was M/s Greenfield Investments Ltd., an Overseas Corporate Body (OCB). The said Greenfiled Investments Ltd. was holding 47.87% of the capital of DSQ as on September 28, 2000 and its address was that of DSQ and DSQ Holdings (associate of DSQ). The details of the said transactions are mentioned below: Trade Date *TSBPL- Titan Stock Broking Pvt. Ltd. B. Cross Deals executed by the Broker on March 14, 2000, March 15, 2000 and March 16, 2000 i) Cross deal for a total of 2,50,000 shares of DSQ on March 14, 2000 (at Rs 428/- per share) on behalf of its clients, Square D Textiles & Exports Ltd. (buyer) and M/s Greenfield Investments Ltd.(seller).

ii) Cross deal for a total of 3,50,000 shares of DSQ on March 15, 2000 (at Rs. 425/- per share) on behalf of its clients, Square D Textiles & Exports Ltd. (buyer) and M/s Greenfield Investments Ltd.(seller).

iii) Cross deal for a total of 2,50,000 shares of DSQ on March 16, 2000 (at Rs. 424/- per share) on behalf of its clients, Pilliar Pattiyar Textiles Ltd. (buyer) and M/s Greenfield Investments Ltd. (seller).

1.4 It was observed that among the aforesaid clients of the Broker, Square D Textiles & Exports Ltd. and Pilliar Pattiyar Textiles Ltd. belonged to the promoter group entity / associates of DSQ.1.5 It has been alleged that by transacting for the group companies of the promoters of DSQ and executing cross deals on their behalf, the Broker had indulged in the creation of artificial market in the shares of DSQ by giving misleading appearance of trading. In the facts and circumstances it has been alleged that the Broker had prima facie violated the provisions of Regulation 4 (b) and (c) of the FUTP Regulations.

2. APPOINTMENT OF ENQUIRY OFFICER 2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide order dated July 24, 2003 under Regulation 5(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into the aforesaid alleged violations of the provisions of the FUTP Regulations.

Accordingly, a show cause notice was issued to the Broker. The details of the transactions executed by the Broker in the shares of DSQ during the said period were also communicated to the Broker. The Broker submitted its reply in response to the aforesaid show cause notice and also made submissions before the Enquiry Officer.

2.2 The Enquiry Officer conducted the enquiry in terms of the provisions of the Enquiry Regulations and, vide his report dated July 16, 2004 recommended for the imposition of the penalty of suspension of the certificate of registration of the Broker for a period of four months. The Enquiry Officer had inter alia observed in his report that the Broker had violated Regulation 4(b) and (c) of the FUTP Regulations.

3. SHOW CAUSE NOTICE, REPLY AND HEARING 3.1 Based upon the recommendation of the Enquiry Officer, a notice dated July 27, 2004 was issued to the Broker under Regulation 13(2) of the Enquiry Regulations asking him to show cause as to why the penalty as considered appropriate should not be imposed upon him. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice.

3.2 The Broker vide letter dated September 23, 2004 requested SEBI to permit it to file the reply by October 10, 2004. The Broker vide letter dated November 10, 2004 inter alia stated that the Enquiry Officer had observed that there was a total contradiction of facts while giving the statements during SEBI investigations and while giving reply to the show cause notice dated November 28, 2003. The Broker further stated that there was no contradiction between the said statements and the reply. The Broker urged that no opportunity was provided to the Broker to deal with the said alleged contradictions. The Broker clarified that it had never stated that the same person had placed the orders for both buy and sell transactions. The Broker claimed that except the normal brokerage it was not benefited from the aforesaid transactions executed by it. The Broker denied that it had aided and abetted Shri Dalmia/ Shri Sharma in their manipulative operations as observed by the Enquiry Officer.

3.3 The Broker contended that the cross deals executed on March 14 to 16, 2000 were made on the online terminals of CSE at the then prevailing market prices. The Broker claimed that it had no proprietary position in the shares of DSQ. The Broker also stated that as its clients were different legal entities and that the trades were executed on the online trading terminals of CSE, it could not be construed that execution of the trades was an act to create false or misleading appearance of trading on the securities market. The Broker further urged that it had not violated Regulation 4(b) and (c) of FUTP Regulations and that the transactions were executed in good faith. The Broker clarified that the shares were duly delivered by the clients and therefore, the trades were genuine.

3.4 The Broker was further granted an opportunity of hearing on February 3, 2005. However, the Broker vide letter dated February 1, 2005 requested SEBI to extend the said date of hearing. Accordingly, another opportunity of hearing was given to the Broker by SEBI on March 22, 2005. The Broker appeared before me and made submissions on the lines of its aforesaid reply. The Broker was advised to file its written submissions. Vide letter dated March 24, 2005, Shri Himanshu Ajmera (one of the partners of the Broker) submitted that M/s Mehta and Ajmera was no longer in existence and that it had stopped trading at CSE from February 15, 2001. He had stated that SEBI had issued a new registration certificate in his name, being a partner of the aforesaid firm. He further clarified that the dissolved firm was suspended by SEBI for one year vide order dated March 4, 2004 and if the recommended suspension is ordered in the present matter then the goodwill of the two partners will again suffer. He claimed that they were not aware of any manipulative intentions of the clients and that they did not gain anything from the said transactions except the normal brokerage.

4. CONSIDERATON OF ISSUES AND FINDINGS: 4.1 I considered the investigation report, the enquiry report and the show cause notice issued to the Broker. It is observed that the Enquiry Officer had given a benefit of doubt for the synchronized transactions executed in the shares of DSQ between the Broker and Titan Stock Broking Pvt. Ltd. (member CSE) on January 6, 2000.

4.2 I note that on January 6, 2000 the Broker had sold 5,14,000 shares of DSQ in 53 small trade quantities of 100/ 3,900 / 9,900/ 10,000 shares which were bought by Titan Stock Broking Pvt. Ltd (member CSE) through the aforesaid synchronized deals. In view of the above, I am of the prima facie view that benefit of doubt should not have been given for the said transactions as it amounted to a substantial number of shares that too continuously within the time gap of approximately eight minutes. Accordingly, a notice dated September 12, 2006 was issued to the Broker asking it to show cause as to why a penalty of suspension of the certificate of registration for a period of six months should not be imposed on it. The Broker acknowledged the said notice on September 15, 2006 and vide letter dated September 29, 2006 it had requested a further time of four weeks to file its reply to the said notice. SEBI vide letter dated October 13, 2006 advised the Broker to file its reply on or before October 20, 2006 and the said letter was forwarded to the Broker through CSE. However, CSE vide letter dated October 20, 2006 informed SEBI that it was unable to deliver copy of the said letter as the Broker could not be contacted.

4.3 I observe that sufficient opportunities were provided to the Broker to file its reply to the show cause notice dated September 12, 2006.

However, the Broker failed to file any reply as advised by SEBI. In the facts and circumstances I proceed further in the matter on the basis of the investigation report, the enquiry report, the show cause notices dated July 27, 2004 and September 12, 2006, the reply of the Broker dated November 10, 2004 and other materials available on record.

4.4 The Broker had not disputed the transactions executed by it in the shares of DSQ on January 6, 2000, March 14, 2000, March 15, 2000 and March 16, 2000. Out of the aforesaid transactions, the trades made by the Broker on January 6, 2000 were synchronized deals between the Broker and Titan Stock Broking Pvt. Ltd. while the other trades were cross deals.

4.5 On a perusal of the transactions executed by the Broker on January 6, 2000, it can be seen that within a short time difference of eight minutes (between 2:59:07 pm and 3:07:12 pm), 5,14,000 shares of DSQ were traded in a synchronized manner between the Broker and Titan Stock Broking Pvt. Ltd. In the aforesaid transactions the Broker was placing sell orders on behalf of Greenfield Investment (OCB) which was holding 47.87% of the capital of DSQ as on September 28, 2000. The address of Greenfield Investments was nothing but the former address of DSQ and DSQ holdings Ltd. (associate of DSQ). I note from the statement dated April 10, 2003 given by Shri Himanshu Ajmera, Partner of the Broker to SEBI that the buying and selling orders were given by Shri Dinesh Dalmia and one Shri Ashok Sharma. He admitted that the entities on behalf of which the Broker had traded belonged to the DSQ group and that the payment of the said transactions were received and made as per the request of Shri Dalmia. The relevant extracts of the said statements is reproduced below for the sake of easy reference: 3. From the pattern of the order it appears that there is an apparent synchronization of buy as well as sell orders in terms of the order quantity, order price, order time. Keeping in view of the synchronized order placing in terms of order time, quantity and price, were there trades predetermined and pre structured. Your comments please.

Ans. I never knew about any synchronized structuring of these trades. The buying and selling orders were verbally given over telephone by Mr. Dinesh Dalmia and one Mr. Ashok Sharma. The names of the clients were later communicated to us. The details of these clients were never known to us while trading. We never knew that M/s Greenfield Investments Ltd. was an OCB. We took all these entitles as DSQ Group. The payment of these transactions were received and made as per the request of Mr. Dalmia.

7. When did you come to know that M/s Greenfield Investment is an OCB and who placed orders on its behalf.

Ans. We came to know that Greenfield was an OCB when we received the client registration form. The form did not have any details except the address of the company. At the time of trading we never knew that Greenfield was an OCB as the name gives an impression that it is a company incorporated in India. The orders were placed by Mr.

Dalmia or Mr. Sharma. However, one Mr. Bharat Kumar's name appears in our records as the contact person in the company.

4.6 From the above statements of Shri Himanshu Ajmera, it can be seen that the Broker was aware that its clients belonged to DSQ group. It is also clear that the orders were placed by Shri Dalmia or Shri Ashok.

When the Broker was executing the aforesaid synchronized transactions, the shares of DSQ were illiquid. The Broker stated in its reply dated November 10, 2004 that there were no contradictions in the statements given during the investigation and in its reply to the show cause notice. However, in the attendant circumstances, including the volume of the trades executed by the Broker on behalf of the associates of DSQ and that too within a few minutes can not be said to be a matter of coincidence. I note that the proximity in putting the orders at the same time, price and for the same quantity, resulted in the matching of the aforesaid transactions, with all the ingredients i.e. quantity, price and the time, required to conclude the trades.

4.7 A mere denial or self serving assertion cannot displace the presumption of fact arising from inferences drawn from a mass of factual details which are incontrovertible. The circumstances are telltale and the presumption based upon them should prevail, more so where intentions are shrouded in secrecy or within the special or peculiar knowledge of persons concerned. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation which could not simply be the handiwork of the clients of the Broker (who were none other than the associates of

DSQ), alone could reasonably lead to conclusion that the Broker was also responsible in varying measures.

The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in "Law of Evidence", the presumption of innocence is no doubt presumptio juris; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man's estimate as to the probabilities of the case. Black's Law Dictionary defines 'aid and abet' as to assist or facilitate the commission of a crime or to promote its accomplishment. As per Law Lexicon (P. Ramanatha Aiyar's) 'Aid and Abet' is that kind of connection with the commission of a crime which at common law, rendered the person guilty as a principal in the second degree. It consisted in being present at the time and place and doing some act to render aid to the actual perpetrator of the crime though without taking a direct share in its commission. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted words or gestures or by his silence or non interference or he may encourage intentionally by expressions, gestures or actions intended to signify approval. In the later case he aids and abets.

4.8 In addition to the above synchronized deals, the Broker had executed cross deals in the shares of DSQ on March 14, 15 and 16, 2000.

The series of trades in the form of cross deals, considering its numbers, quantity and its time of execution etc. will only lead to the finding that all the deals were done with the purpose of manipulating the price / volume in the shares of DSQ and thereby the securities market to the detriment of the genuine investors. The cross deals were executed from the same terminal and almost at the same time.

4.9 note that the shares of DSQ were illiquid at that time when the Broker was executing transactions on behalf of its clients. The fact that trades were executed by the associated of DSQ on a large volume in the shares of DSQ at CSE, which was illiquid at the time of such trades, should have alerted the Broker that something was amiss.

Instead of exercising caution, the Broker had executed large number of trades and thereby instrumental in creating artificial volumes in the scrip of DSQ at CSE. In addition to the above the clients of the Broker belonged to DSQ group.

4.10 Manipulation is often predicated upon the extent to which the market was dominated by the person. Manipulation connotes a deceptive conduct designed to deceive or defraud investors by controlling or artificially affecting the price of securities. At its core, manipulation is the interference with free forces of supply and demand.

By impeding the natural interplay of market forces, the manipulator misleads the investor by masking the true value of the stock. Through interference with the market, a manipulator may affect a price increase by artificially either constricting supply or increasing demand.

4.11 There is no scale to measure manipulative transactions. Proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gleaned from patterns of behavior, from apparent irregularities, and from trading data. When all of these are considered together, they can emerge as ingredients in a manipulative scheme designed to tamper with free market forces. Some evidences of manipulation are price leadership, domination and control of the market, collapse of market after ceasing of activity, reduction in the floating supply of the security, accumulating inventory of shares, etc.

4.12 I would also like reproduce the following relevant observation of the Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to SAT) in the matter of Nirmal Bang Securities (P) Ltd. v. SEBI: BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities.

Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases.

Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of Regulation 4 of the FUTP Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of Regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit.

4.13 The clients of the Broker had indulged in fictitious trades in buying and selling the shares of the same company i.e. DSQ and the said trades were executed primarily with a view to artificially increase the trading volumes in the shares of DSQ. This has to be viewed in the context of the fact that the clients were associates of DSQ. Artificial increase in the volumes of the shares of a company has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about these transactions and its nature. In the above facts and circumstances, it is fairly established that the trades of the Broker in the shares of DSQ were done for the purpose of creating false and misleading appearance of trading in the shares of DSQ and for the purpose of manipulating the price of the shares of DSQ. The Broker failed to exercise due diligence which was expected from a prudent stock broker who had a duty not only towards its client but also to towards the securities market. On the other hand he continued to execute such trades. The said concerted level of activity is only compatible with the purposes of manipulating the securities market on the part of the Broker.

4.14 The clients of the Broker had indulged in fictitious trades in buying and selling the shares of the same company i.e. DSQ and the said trades were executed primarily with a view to artificially increase the trading volumes in the shares of DSQ. Artificial increase in the volumes of the shares of a company has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about these transactions and its nature. In the above facts and circumstances, it is fairly established that the trades of the Broker in the shares of DSQ were done for the purpose of creating false and misleading appearance of trading in the shares of DSQ and for the purpose of manipulating the price of the shares of DSQ and that the same should be within the knowledge of the Broker, when the anonymity of screen - based trading has been breached by his pervasive presence on both sides.

4.15 In terms of Regulation 4 of the FUTP Regulations, No person shall - (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market; (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions; (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress , or cause fluctuations in the market price of securities.

(e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or money's worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuations in the market price of securities.

4.16 On an examination of the trades executed by the Broker in the shares of DSQ at CSE, as explained above in detail, it can be seen that the trades executed by the Broker were not genuine. Substantial trades executed by the Broker in the attendant circumstances of the present case will only lead to the conclusion that the said trades were made only for the purpose of creating false or misleading appearance of trading on the securities which had resulted in the increase in the price of the shares of DSQ. Therefore, the trades executed by the Broker in the shares of DSQ at CSE can be said to be with an intention of artificially raising the volume and price of the shares of DSQ and thereby inducing the sale or purchase of securities by unsuspecting investors.

4.17 I further note that the trades executed by the Broker in the shares of DSQ as aforesaid created a false appearance of trading and was intended to operate only as a device to inflate, depress, or cause fluctuations in the volume/ price of the shares of DSQ. Once the factum of manipulation is proved, then as observed by SAT in the matter of Ketan Parekh v. SEBI, the investors are affected by the said price difference. The relevant observation made by SAT in this regard is reproduced as below: When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required.

The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged.

4.18 Above all, it has to be seen that all the transactions (in the case of cross deals) were executed at the single terminal of the Broker. The method and manner in which the said cross deals were executed will clearly establish that the same were meant for the purpose of manipulating the price and volumes in the shares of DSQ, against the fundamentals of the functioning of the securities market.

4.19 Having regard to the frequency of the transactions, its volumes, the value of the transactions, the time of its execution and taking into account of the fact that the associate entities of DSQ were involved in cross deals/ synchronized transactions without any actual change of beneficial ownership, it can be undoubtedly held that the transactions made on behalf of the said clients were non genuine, fictitious and circular in nature which were executed to create artificial market in the shares of DSQ.4.20 Therefore, by entering into cross deals and the synchronized transactions as explained in detail above and creating artificial volumes in the shares of DSQ, it is fairly established that the Broker has violated Regulation 4 (b) and (c) of the FUTP Regulations. In view of the facts and circumstances and also the fact that no justifiable explanation has been received from the Broker with respect to its aforesaid transactions made in the shares of DSQ, I find this case as a fit case to impose a higher penalty than that recommended by the Enquiry Officer.

5.1 In view of the forgoing, I, in exercise of the powers conferred vide Regulation 13(4) of (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a major penalty of suspension of the certificate of registration of Shri Girish S Mehta (registration No. INB030451228 with trade name M/s Mehta & Ajmera) and Shri Himanshu Ajmera (registration No. INB030451326 with trade name M/s Mehta & Ajmera), Members, Calcutta Stock Exchange Association Ltd. for a period of six months.

This order shall come into force on the expiry of 21 days from the date of this order.