

Sebi Vs. E-star Infotech Ltd. and ors.

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

Decided On : Feb-13-2008

Judge : V Chopra

Appellant : Sebi

Respondent : E-star Infotech Ltd. and ors.

Judgement :

1. The company, E-Star Infotech Ltd. issued an advertisement in various financial newspapers in the month of June-July 2002 pertaining to a meeting of its Board of directors to be held on July 03, 2002 inter-alia, to consider bonus issue of shares. Later the company on July 04, 2002 informed the stock exchanges that the Board of directors had deferred the proposals for bonus issue of shares till July 20, 2002, when the Board of directors recommended the capitalisation of General Reserve to the extent of Rs.200 lacs. However, the proposal for bonus issue has not been implemented.

2. It was observed during the month of June and July 2002 that several advertisements appeared in various newspapers in respect of some companies and majority of these advertisements were issued by one advertisement agency viz., Garima Communications, Ahmedabad. It was noticed that through such unusual advertisements an attempt was being made to project a bright and rosy picture of company's future growth by making announcements that Board of Directors of the company were about to consider issues like buy-back of shares

and issue of bonus shares etc. Preliminary scrutiny into the matter revealed that shares of such companies were thinly traded. It may be mentioned that such advertisements were not required by law and the companies were voluntarily publishing them. As a result of this publication, there was unusual price and volume movement in the shares of the companies around the time of the issuance of such advertisements. The purpose of such advertisements was alleged to be aimed at attracting investors interest in illiquid scrips and to induce them to trade in such scrips. In view of these facts, SEBI conducted investigation in such matters including the issues arising out of advertisements issued by E-Star Infotech Ltd. 3. At the time of impugned advertisements of E-Star Infotech Ltd, Shri Mahesh Thanvi, Shri Aga Rasool Mirrkushal, Shri B.R.Sharma Shri Vijay B.Sheth Shri M.M. Thitte and Shri Arvind Thanvi were the directors of the company (the company and its directors are hereinafter collectively referred to as 'the Noticees' and singularly by their individual name).

They had knowingly published information for proposals which they have not implemented as observed in the course of investigation thereby allegedly violating provisions of Regulations 5(1) and 6 (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995.

4. Accordingly, Show Cause Notices dated June 14, 2006 were issued to the Noticees under Section 11B of SEBI Act, 1992 read with Regulation 11 and 13 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 to show cause as to why directions including debarring them from accessing the capital market and trading in securities should not be issued against them.

5. The company through its Managing Director, Shri Mahesh Thanvi filed reply vide letter dated July 23, 2007 stating that the company never authorised Garima Communications to publish the impugned advertisement.

As regards the contradictory statement of Shri Mahesh Thanvi regarding his awareness of the advertisement pointed out in the show cause notice, he clarified that he had not noticed the advertisement on the date of publication, but later came to know about the same upon receipt of a letter from Ahmedabad Stock

Exchange around July 10, 2002. In this regard, he informed that adjudication proceeding was initiated against him for alleged contradictory statement before Investigating Officer and the Adjudicating Officer had dropped the proceedings vide order dated May 25, 2005. He further stated that the increase in price/volume was natural reaction of the market and the promoters/directors have no relationship with the entities who have offloaded the shares.

6. Opportunities of personal hearing, before me was provided to all the Noticees on November 12, 2007. The company vide its letter dated November 2, 2007 requested that the reply dated July 23, 2007 filed by the company through its Managing Director Shri Mahesh Thanvi may be treated as the reply of all the Noticees. Shri Mahesh Thanvi further requested to adjourn the hearing any time after December 12, 2007.

Accordingly, the date of hearing was fixed on December 14, 2007 which was attended by Shri Mahesh Thanvi on behalf of all the Noticees when he reiterated that they have no role in the advertisement. Vide letter dated December 17, 2007, he had also furnished balance sheet and Profit and Loss statement for the year ended March 2002 and March 2007.

7. I have carefully examined the investigation report, show cause notices, replies thereof and other materials on record 8. The company published advertisements in the prominent business newspapers of Hindi and English from June 26, 2002 to July 1, 2002 regarding proposed board meeting of its directors to discuss inter-alia bonus issue of equity shares by the company. As per the advertisements, the directors of the company would be meeting on July 3, 2002 to review the operations and take strategic decisions about the future. The main agenda shown in the advertisements were given hereunder: o To approve the proposal of Tata Economic Consultancy Services (TECS), Division of TATA Sons Ltd. for formulating a Business Development Strategy and eventual involvement as a Marketing Partner for the company's product offerings o The proposal to allow Foreign Institutional Investors (FII) to hold Company's equity.

9. The heading of the advertisements was "bonus shares to existing equity holders" which was given in bigger and bold font. The advertisements were

showing graphics of the progress of Indian Software Industry inter-alia other favourable statements about the company.

10. The advertisements were published through an Ahmedabad based advertising "Garima Communications". Following details were submitted by the said advertisement agency: Times Of India(All Editions), Maharashtra Times (Mumbai Edition) and Nav Bharat Times (Mumbai+Delhi) 11. According to the statement of Shri Dinesh Singh of Garima Communications, Shri Mahesh Thanvi, Director of the company had placed orders for the said advertisements. He further stated that the matter had been supplied by the company and the lay out / design for advertisement was prepared by Garima Communications. Shri Dinesh Singh also produced bills raised against the company and copy of the ledger account for the said advertisements. The company paid amount towards the bill through cash and the details thereof submitted by the advertising agency are given hereunder: 12. The statement of Shri Mahesh Thanvi was recorded on September 30, 2002 and March 16, 2004 by the Investigating Authority. He stated that the Board of Directors had discussed about the bonus issue and matters as stated in paragraph no 8 during the first week of June 2002 and the same was informed to the stock exchanges. Shri Thanvi stated that they had informed an advertisement agency Shark Enterprises on June 25, 2002 to publish advertisements on June 26, 2002 in this regard. Shri Mahesh Thanvi further stated that the idea to place the advertisements was dropped after the refusal by Shark Enterprises to get the advertisement published in the newspapers on the ground that one day time was not sufficient for them to make arrangements for publication.

13. I have also observed that the adjudication proceeding was initiated against Shri Mahesh Thanvi for giving contradicting statements on September 30, 2002 and March 16, 2004. In his statement dated September 30, 2002 he stated that he has seen the advertisement in the newspapers on June 27, 2002 but had thought that Shark Enterprises might have released the advertisement. However, in his statement dated March 16, 2004, Shri Mahesh Thanvi had taken a contradictory stand that he had not seen the advertisement on June 27, 2002 and came to know about the advertisement when the company received a letter from Ahmedabad Stock Exchange around July 10, 2002. The Adjudicating Officer in paragraph no

15 of his order dated May 25, 2005 observed that the above two statements of Shri Mahesh Thanvi are contradictory to each other. In paragraph no 19 of the said order, Adjudicating Officer further observed that Shri Mahesh Thanvi was aware of the advertisement and the issue to be decided is whether he himself published any misleading advertisement and if he had not, whether he had taken any action against the entity/ individual who were responsible for misusing his company's name. I have observed that the Noticees in fact had not taken any action and also did not file complaint against anybody before police in the matter of alleged fraud committed by using the company's name. It can therefore be reasonably concluded that the Noticees were behind the issue of advertisement and their plea that they have no role in the impugned advertisements in the newspapers are only an afterthought.

14. It is also a fact that the advertisement was published in the newspapers. Further the advertising agency Garima Communications informed that they have received a letter approving the advertisement from Shri Mahesh Thanvi who took a stand before the Investigating Authority that his signatures were forged. As stated in the paragraph above, he has not produced any evidence to show that he had filed any complaint of forgery before any of the concerned authority. Hence, it can be believed that he had authorised the advertising agency to publish the impugned advertisement. On the other hand, it is very difficult to believe the story of the Noticees that they had not published any advertisement through Garima Communications who would not take steps to issue the advertisement on its own without any motive since the beneficiaries from this whole episode were the entities who offloaded the shares of the company during the relevant period.

15. Further, it is an admitted fact that the company had informed the proposal for bonus issue and other matters to BSE. The dissemination of information through the stock exchanges is equally important as if it was published through the newspapers. Normally, the stock exchanges publish all the corporate news of the companies for the benefit of investors. I further observe that the proposal for bonus issue and other matters informed by the company to BSE was appearing on the website of BSE mentioning the date June 25, 2002. Thereafter, the Board of directors of the company had deferred the proposal of bonus issues of shares and

this was informed to the stock exchanges on July 04, 2002.

16. I have noted that the Noticees did not act on the proposal of the bonus issue even the lapse of 6 months from the date of the Board of Directors meeting July 3, 2002 as per Clause 15.1.7 of SEBI (DIP) Guidelines 2000 which reads ...A company which announces its bonus issue after the approval of the Board of Directors must implement the proposal within a period of six months from the date of such approval and shall not have the option of changing the decision.

17. I further observe that the Noticees who released expensive advertisements regarding the bonus issue did not give effect to the proposal for 6 months and even thereafter never implemented and thus indulged in blatant violation of the guidelines inviting non approval of the same from the stock exchanges. This reinforces the belief that the Noticees were not interested in going ahead with the proposal for bonus issue in the first place. The advertisements as such were made with intent to attract investor interest in illiquid stock and to facilitate offloading of the shares held by major shareholders.

18. I have also examined the price and volume movement of the shares prior to and after the publication of the aforesaid advertisement. I find that the company's equity shares were listed on February 16, 2001 on BSE and unusual price movement pattern was observed on BSE in the trading of equity shares of the company around the issuance of the advertisement during the period June 2002 to July 2002.

19. It was observed that in time slot 1 (The 24 days time period prior to issuance of advertisement) the average prices and volume in the scrip were Rs. 3.66 and 411172 shares respectively. The average volume increased to more than 4 times during time slot 2 (the period between the advertisement and board meeting) compared to time slot 1 without substantial increase in the price of the scrip. During time slot 2, the investors got attracted and the started buying the scrip. Since, the intention of the related entities was to offload maximum shares, they stated selling which created huge volume. When the related entities offloaded the shares successfully in the market, there was no demand for the shares and as such in time slot 3, the prices and volume of the shares fell down substantially.

This would show that the innocent investors were unable to sell the shares and they must have suffered loss.

20. On analysing trading details for the period June 1, 2002 to July 31, 2002 brokers Parklight Investment Pvt. Ltd. and Harikishan Hiralal were short-listed on the basis of their net sales positions of 1 crore or more shares in the market. Parklight Investment Pvt. Ltd had a substantial trading concentration prior to and after the issuance of the advertisements and had an average trading concentration of over 51% during the period June/July 2002 with settlement-wise trading concentration ranging from 2.3% to 94.97% during June 3, 2002 to July 11, 2002.

21. Further, it was also observed that, Deep Stockbroking (Director-Nilesh J Shah, also an employee of Parklight Investment Pvt.

Ltd) dealing through Parklight Investment Pvt. Ltd and Vasant Bissa (client of Parklight Investment Pvt. Ltd) dealing through Harikishan Hiralal had traded actively in the scrip during April-May 2002.

22. Advertisements on bonus issue by the company had appeared in June/July 2002. It was observed that Rajesh Patel (5.72%) and Kirti Patel (4.55%) were among the top shareholders in the company. Further, as per company records, Parklight Investment Pvt. Ltd (5.8%) and Parklight Securities Ltd (2.55%) had also substantial holdings as on June 30, 2002. I have observed that Kirti Patel was a major shareholder in Parklight Investment Pvt. Ltd and Rajesh Patel was a major shareholder in Parklight Investment Pvt. Ltd. and Parklight Securities Ltd. (another Parklight Group company).

23. From the telephone details of Shri Mahesh Thanvi, it was observed that there were calls made to Parklight Group of entities suggesting thereby that Shri Mahesh Thanvi was working in collusion with "Partkligh Group". Further, he stated before the investigating authority that he was authorised to give statement on behalf of Basanti Thanvi and Govardhan Thanvi who were related to him and sought some time to provide details of reduction of shareholding of Basanti Thanvi from around 7.48% on May 31, 2002 to around 0.28% on June 30, 2002.

Till date, he has not furnished such details. The trading details indicated that "Parklight Group" and entities related with the Parklight Group offloaded the shares into the market, which suggests that the company published the advertisement to help "Parklight Group" and related entities to facilitate them to offload shares into the market.

24. The announcement of bonus issue and rosy picture about the company in normal circumstances would indicate confidence on the part of management of the company and it has to be taken as good news for shareholders. This obviously would have induced the investors to buy shares. It can therefore be inferred that the motive behind the above advertisement was to deceive the investors by way of disseminating/issuing of false statement. The process of announcing bonus issue and its subsequent withdrawal must have resulted in a pecuniary loss to the investors who were influenced to purchase shares on the basis of the advertisement.

25. On analysing all aspects of the matter as also submission / statement made by the directors, I find that Noticees had committed fraud on its shareholders by issuing misleading advertisement. During the period of advertisement, volume increased which would have induced the innocent investors to invest in the scrip. The action on the part of Noticees to lure innocent investors by publishing misleading statement/advertisement tantamounts to defrauding them as it was aimed at manipulating the price and volume in trading of the scrip. All such actions can be termed as frauds under Regulation 2(c) of PFUTP Regulations. They have accordingly violated the provisions of Regulation 5(1) and 6(a) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995.

26. Therefore, taking into consideration facts and circumstances of the case and in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11B of Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I hereby restrain the Noticees viz. E-Star Infotech Ltd (PAN No. AAACE6619G), Shri Mahesh Thanvi (PAN No.

AABPT8911G), Shri Aga Rasool Mirkhosai, Shri B. R. Sharma (PAN No. AAGPS6634L), Shri Vijay B. Sheth (PAN No. ADHPS4259B), Shri M.M. Thitte, and Arvind Thanvi from buying, selling and dealing or accessing the securities market in any manner for a period of two years.

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