

N.E. Electronics Ltd. Vs. Securities and Exchange Board of India

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

Decided On : Nov-11-2008

Judge : Coram: Justice N.K. Sodhi, Presiding Officer, Utpal Bhattacharya, Member

Appeal No. : Appeal No.53 of 2008

Appellant : N.E. Electronics Ltd.

Respondent : Securities and Exchange Board of India

Advocate for Pet/Ap. : Mr. Shyam Mehta Advocate with Mr. Ajay Fernandis and Ms. Akshaya Purohit, Advocates for the Appellant. Mr. Kumar Desai Advocate with Ms. Foram Shah Advocate for the Respondent.

Judgement :

Justice N.K. Sodhi, Presiding Officer

This order will dispose of three Appeals no. 53, 89 and 93 of 2008 in which common questions of law and fact are involved and they arise out of a common order dated February 25, 2008 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) restraining, among others, the three appellants from accessing the securities market and also prohibiting them from buying, selling or otherwise dealing or associating with the securities market for a period of two years. Since arguments were advanced in Appeal no. 53 of

2008, the facts are being taken from this case. However, reference to the other two appellants shall be made wherever necessary.

2. The Board observed that during the months of June and July, 2002 several advertisements appeared in various newspapers in respect of some companies. The advertisements were unusual and an attempt had been made to project a bright and rosy picture of the company's future growth and announcements were made which could impact the share price of those companies. ETP Corporation Ltd. (for short ETP) which is a listed company is one of those which had issued a large number of advertisements during the period from 26.6.2002 to 10.7.2002 informing the general

public about its proposal to issue bonus shares, allotment of shares to foreign institutional investors and focusing on pharma and biotech business. Since the shares of ETP were thinly traded in the market and the advertisements issued by it were unusual and it appeared that they were meant to attract investors' interest, the Board carried out investigations into its affairs particularly in regard to the advertisements issued by its board of directors. Both the parties are agreed that the advertisements were not accurate and could be described as misleading. Investigations revealed that five major shareholders of ETP including the three appellants before us had transferred prior to the advertisements large quantities of shares to three entities, namely, Parklight Securities Ltd. (Parklight), Dhaval Shah and Mukesh Choksi with the intention to off-load the shares in the market after the advertisements had created an artificial demand for the shares. On the conclusion of the investigations, the Board initiated proceedings against several entities including the three appellants with a view to issue directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter called the Act and the regulations respectively). A common notice was issued to as many as 15 entities including the three appellants calling upon them to show cause why directions be not issued to them under section 11B of the Act for violating Regulations 3, 4(b), 5 and 6(a) of the regulations. The appellants filed their respective replies denying all the allegations. N.E. Electronics Limited (NE)

the appellant had been allotted 20 lac shares of Rs.10 each in a preferential allotment in the year, 2000. Similarly, Conrad Telefilms Ltd. (Conrad) and Ispat Sheets Ltd. (Ispat) which are the appellants in the two connected appeals had also been allotted 12.5 lac and 10 lac shares respectively in the same preferential allotment. It is alleged that prior to the issuance of advertisements, the five major shareholders of ETP including the three appellants transferred their shares in large quantities through conduits such as Parklight, Dhaval Shah and Mukesh Choksi so that those could be off-loaded in the market after interest of the investors had been created in the shares. The appellants are also alleged to have transferred their shareholding to these three entities as a part of a co-ordinated scheme meant to mislead investors. All the entities to whom notices had been issued are alleged to have acted together and indulged in the creation of artificial trading interests in the shares of ETP. They were also alleged to have played a fraud on the shareholders. This is the precise charge that has been levied against the appellants and some others. As already observed, the appellants have denied the allegations and the stand of NE is that it transferred the shares in the name of Parklight for obtaining a loan and that a sum of Rs.10 lacs had been received in this regard. The other two appellants have also taken a similar stand and they transferred their shares not only to Parklight but also to Dhaval Shah and Mukesh Choksi.

3. We have heard the learned counsel for the parties. The fact that the appellants held large number of shares of ETP is not in dispute. It is common ground between

the parties that these shares were unlisted. It is also the case of the appellants that they transferred the shares to the three entities referred to in the show cause notice. NE transferred its shareholding to Parklight and the other two appellants to all the three entities. We are unable to uphold the plea of the appellant that it had taken loan from Parklight and that the shares had been transferred by way of security. If that were so, a pledge would have been created for which a separate procedure has been prescribed under the Depositories Act, 1996 and the regulations framed thereunder. Admittedly, that procedure has not been followed

and no pledge has been created. This apart, there is no document on the record to evidence a loan as alleged by the appellants. NE, admittedly, received Rs.10 lacs when the shares were transferred. The price of the share had fallen considerably and the amount received had to be the sale consideration. In the absence of any material, the mere ipse dixit of the appellant cannot be accepted and it has to be held that it was an outright sale effected by NE in favour of Parklight. The plea that NE took loan from Parklight is obviously false and an afterthought which has been taken only to deny the charge of having traded in the shares which were, admittedly, unlisted. Further, Parklight is a registered stock broker and a broker is not expected to advance loans. We cannot, therefore, agree with the learned counsel for the appellant that NE had taken a loan from Parklight but the shares have admittedly been transferred for which NE received a sum of Rs.10 lacs. Similarly, Conrad and Ispat transferred shares in the name of Parklight, Dhaval Shah and Mukesh Choksi. We have on record the demat account statements of Parklight, Dhaval Shah and Mukesh Choksi on which reliance has been placed by the Board. When we look at the demat account statements we find that Dhaval Shah and Mukesh Choksi further sold the shares in the market and there is an outflow from the account. The shares were unlisted though dematerialized and could not be traded in the market. It is pertinent to mention that prior to March 2001 unlisted shares could be dematerialized and since dematerialized shares are fungible like currency notes, there was always a danger of unlisted shares being traded in the market alongwith the listed ones. In order to check such malpractice which could lead to bad delivery, the Board issued a circular on March 8, 2001 directing all stock exchanges to amend the listing agreements with the companies requiring them to obtain 'in-principle' approval for listing from the exchange before issuing further shares or securities. However, Dhaval Shah and Mukesh Choksi off-loaded their shares and duped the lay investors. In the case of Parklight, the demat statement shows that there was a balance of 50,000 shares in its account as on 17.6.2002 and thereafter there was inflow of shares from the appellants. Parklight also off-loaded 36800 shares in the market. It is difficult to infer

from this statement whether listed or unlisted shares were traded. However, keeping

in view the conduct of NE that it took a false plea from the beginning that it had taken a loan from Parklight and the fact that it had close links with the other major shareholders of ETP who had similar dealings with the three entities as noticed by the Board in para 26 of the impugned order we are inclined to hold that NE along with other two appellants were a party to the game plan and that they off-loaded their shares to the aforesaid entities who in turn traded unlisted shares in the market. This indeed is a grave market irregularity jeopardizing the interests of the lay investors. The learned counsel for the appellant strenuously contended that the demat statements of the three entities referred to pertain to a very short period and are not complete to depict the true picture. It is true that the demat statement of Parklight is for the period from 17.6.2002 to 18.7.2002 and in case of Mukesh Choksi the same is for the period from 22.6.2002 to 19.7.2002 and in the case of Dhaval Shah also it is for the period from 22.6.2002 to 22.7.2002 but we cannot accept the plea of the appellants that these statements were incomplete. If that were so, it was open to them to have demanded a complete copy of the statement for the period that they wanted but no such demand was made at any stage of the proceedings nor has any such grievance been made in the memorandum of appeal.

In the result, we find no merit in the appeals and they stand dismissed with no order as to costs.

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