

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved On: 06.04.2018

Date of Decision : 18.04.2018

Misc. Application No. 254 of 2017

And

Appeal No. 265 of 2017

Mr. Ashlesh Shah

16, Vasupujyakrupa Society,

Ambawali,

Ahmedabad- 380 015

...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. J. J. Bhatt, Advocate with Ms. Rinku Valanju, Advocate i/b R. V.
Legal for the Appellant.

Mr. Mustafa Doctor, Senior Advocate with Mr. Tomu Francis and
Mr. Vivek Shah, Advocates for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar (Oral)

1. This appeal is filed to challenge the order passed by the Whole Time Member ("WTM" for short) of Securities and Exchange Board of India ("SEBI" for short) on 05.09.2017. By the said order three persons including the appellant are prohibited from buying, selling or dealing in the securities market for the period as more particularly set out therein. Out of the three persons set out in the impugned order, only the appellant has chosen to file appeal against the impugned order dated 05.09.2017.

2. Facts relevant for the present appeal are as follows:-

- a) SEBI conducted investigation in respect of trading in the scrip of Rotam Commercials Limited (“RCL” for convenience) for the period from 20.01.2010 to 17.05.2010. Investigation revealed that during the said period the price of RCL scrip increased from ₹ 82.15 (opening price) on 20.01.2010 to ₹ 153 on 12.04.2010 and closed at ₹ 69.90 on 17.05.2010.
- b) Investigation further revealed that the promoter/promoter group entities of RCL and their connected entities (collectively known as ‘Malani group’) wanted to liquidate their holdings and exit from RCL. As the scrip of RCL was an illiquid scrip, the modus operandi adopted was that RCL transferred funds to another connected/ related group (commonly referred to as ‘Krupa Soni group’) consisting of Ms. Krupa Soni, Mr. Sanjay Soni, J M Soni Consultancy, Mr. Krunal Gopaldas Rana, Mr. Dhirenkumar Dharmdas Agarwal and Mr. Ashlesh Shah (Appellant herein) who purchased 2,49,966 shares (26.04% of the total capital) and sold 2,10,343 shares (21.91% of the total capital) during the period of investigation.
- c) On the basis of above information gathered during the course of investigation, show cause notice was issued

to several entities including the appellant to show cause as to why action should not be taken for violating the provisions contained in the Securities Contracts (Regulation) Act, 1956, Securities and Exchange Board of India Act, 1992 and the regulations framed thereunder.

- d) On receiving reply from the noticees to the show cause notice including the appellant, the WTM of SEBI passed an order on 01.10.2014 thereby prohibiting all the noticees including the appellant from buying, selling or dealing in the securities market, in any manner whatsoever for a period of 5 years.
- e) On appeal filed by the appellant, this Tribunal vide order dated 10.10.2014 set aside the order of WTM of SEBI dated 01.10.2014 qua the appellant and remanded the matter for fresh decision on merits.
- f) Accordingly, fresh order was passed by the WTM of SEBI against the appellant on 11.06.2015. By the said order the appellant was once again prohibited from buying, selling or dealing in the securities market for a period of 5 years.
- g) On appeal filed by the appellant, this Tribunal vide order dated 08.12.2016 set aside the order passed by

the WTM of SEBI on 11.06.2015 basically on ground that in case of other group entities with whom the appellant was allegedly connected, fresh order on remand was yet to be passed and therefore, it would be just and proper that the WTM of SEBI passes a composite order against all the group entities including the appellant.

- h) Accordingly, the WTM of SEBI passed the impugned order on 05.09.2017, whereby three persons including the appellant are prohibited from buying, selling or dealing in the securities market for the period as more particularly set out in the impugned order.
- i) Challenging the said order dated 05.09.2017 the appellant has filed the present appeal.

3. Basic charge upheld in the impugned order is that the appellant and two other persons belonging to the Krupa Soni group had created artificial trading interest in the illiquid scrip of RCL so as to enable the Malani group (promoter group) to exit the company in violation of the securities laws.

4. Reasons on the basis of which the WTM of SEBI has arrived at the aforesaid conclusion may be summarized thus:-

- a) Prior to the investigation period (i.e. between 01.10.2009 to 19.01.2010) the liquidity in the scrip of RCL being very low, the RCL scrip was an illiquid scrip.
- b) During the investigation period (i.e. between 20.01.2010 to 17.05.2010) price of RCL scrip rose from ₹ 77.75 per share to ₹ 153/- on 12.04.2010 and then closed at ₹ 69.90 on 17.05.2010. The total traded quantity during the investigation period was for 9,36,115 shares in 79 trading days with average daily traded quantity being 11,850 shares.
- c) Post investigation period (i.e. between 18.05.2010 to 30.09.2010) the average daily traded quantity in the RCL scrip was for 18921 shares and during the post investigation period while the sensex moved up by the 19.17%, the RCL scrip closed at ₹ 29.65 on 30.09.2010 and thereafter on 13.09.2011 the RCL scrip closed at ₹ 18.95 per share.
- d) During the investigation period Krupa Soni group had purchased 2,49,966 shares (approximately 26.70% of the total traded quantity) for ₹ 3.09 crore and had sold 2,10,343 shares (approximately 22.47% of the total traded quantity) for ₹ 2.66 crore with the gross

quantity traded by the group being approximately 24.59% of the market gross.

- e) During the investigation period the promoter group (Malani group) exited RCL by selling 2,47,125 shares at a value of ₹ 2.58 crore.
- f) Krupa Soni group entities were the counter parties for approximately 28.19% of all the sales effected by Malani group of entities during the investigation period.
- g) RCL had funded Krupa Soni group by transferring ₹ 42 lac to J. M. Soni Consultancy (Prop. Sanjay Soni) during the period April-May 2010.
- h) As per the KYC records, appellant belonging to the Krupa Soni group had introduced Krunal G. Rana (another member of Krupa Soni group) to the broker for opening trading account. On 24.02.2010, the appellant had received ₹ 2.75 lac from J.M. Soni Consultancy (Prop. Sanjay Soni) and on 06.04.2010 the appellant had bought 7700 shares of RCL at ₹ 149.86 per share and sold 7000 shares on 13.04.2010 at ₹ 146.22 per share and further sold 420 shares on 16.04.2010.

- i) Even in the past appellant has been found guilty of violating the securities laws.

5. It is the case of the appellant that neither the appellant belonged to Krupa Soni group nor the appellant's trade could be said to have created artificial momentum in the illiquid scrip of RCL and therefore the impugned order deserves to be quashed and set aside.

6. No doubt that during the entire investigation period Krupa Soni group had purchased 2,49,966 shares of RCL valued at ₹ 3.09 crore and had sold 2,10,343 shares of RCL, valued at ₹ 2.66 crore. However, the appellant placed buy order only once and bought 7700 shares of RCL on 06.04.2010 at a cost of ₹ 11.53 lac. There is nothing on record to suggest that Malani group entities were the counter parties to the buy order placed by the appellant.

7. In the impugned order, the WTM of SEBI has set out a list of top ten buyers and top ten sellers in the RCL scrip during the investigation period. In that list the name of the appellant does not appear.

8. However, the appellant is held to belong to Krupa Soni group and is held to have created artificial momentum in the illiquid RCL scrip, because, firstly appellant had introduced Krunal G. Rana (belonging to the Krupa Soni group) to MTL Share and Stock Brokers Ltd. for opening a trading account and Krunal G. Rana had heavily traded in the RCL scrip during the investigation period. Secondly, RCL transferred funds to J.M. Soni Consultancy (Prop. Sanjay Soni) and J. M. Soni Consultancy in

turn made several payments to Krunal G. Rana and also paid ₹ 2.75 lac to the appellant on 24.02.2010. Thereafter on 06.04.2010 appellant had purchased 7700 shares of RCL and sold 7000 shares on 13.04.2010 and 420 shares on 16.04.2010. Since the Malani group (promoter group) had liquidated their shareholding in RCL during the investigation period and Krupa Soni group entities were counter parties to most of the trades of Malani group it is held that the appellant belonging to the Krupa Soni group was also responsible for creating momentum in the illiquid scrip and, thereby facilitate the exit of the promoters of RCL.

9. It is relevant to note that during the investigation period the RCL scrip rose from ₹ 82.15 up to ₹ 153, whereas, appellant purchased 7700 shares on 06.04.2010 at a cost of ₹ 11.53 lac i.e. @ ₹ 149.86 per share. Thus, on the date on which the appellant bought the shares, the RCL scrip had ceased to be an illiquid scrip and in fact the RCL scrip was virtually at its peak. In such a case, it is difficult to sustain the decision of the WTM that the appellant was also involved in creating artificial momentum in the RCL scrip so as to facilitate the promoters of RCL to exit the company.

10. Decision of the WTM that the appellant belonged to Krupa Soni group deserves acceptance, because, admittedly appellant had introduced Krunal G. Rana to the broker for opening the trading account and admittedly Krunal Rana had traded in the RCL scrip for several days during the investigation period. Moreover, it is an admitted fact that the appellant had several financial dealings with J.M. Soni Consultancy a

sole proprietary concern of Sanjay Soni who had also traded in the shares of RCL on several days during the investigation period. Ms. Krupa Soni is the wife of Sanjay Soni who had also traded in the shares of RCL on several days during the investigation period. Thus, the facts on record clearly show that the appellant belonged to Krupa Soni group.

11. However, mere fact that the appellant belonged Krupa Soni group could not be a ground to hold that the single buy order placed by the appellant on 06.04.2010 to buy 7700 shares of RCL was with a view to create an artificial momentum in the illiquid scrip of RCL. As noted earlier, by 06.04.2010 the RCL scrip had ceased to be an illiquid scrip and in view of heavy trading, the RCL scrip had virtually reached its peak on 06.04.2010. The WTM of SEBI sought to link receipt of ₹ 2.75 lac by the appellant from J.M. Soni Consultancy on 24.02.2010 to the shares of RCL bought by the appellant on 06.04.2010. However, it is relevant to note that the appellant acquired 7700 shares at a cost of ₹ 11.53 lac, whereas, the amount received by the appellant from J. M. Soni Consultancy was only ₹ 2.75 lac. Moreover, the bank statements furnished by the appellant show that during the investigation period, appellant had advanced huge amounts to J.M. Soni Consultancy. When the appellant had advanced huge amounts to J. M. Soni Consultancy during the investigation period, it could not be said that the appellant had received ₹ 2.75 lac from J.M. Soni Consultancy for acquiring shares of RCL and thereby create artificial interest in the illiquid RCL scrip so as to enable the Malani group (promoter group) of RCL to exit the company. Since SEBI has not investigated fund movement from the

appellant to J.M. Soni Consultancy, we find it difficult to uphold the decision of the WTM that funds were transferred from RCL to J.M. Soni Consultancy and from J.M. Soni Consultancy to the appellant for buying the shares of RCL so as to create artificial momentum in the RCL scrip and facilitate the promoters of RCL to exit the company.

12. Apart from the above, the WTM of SEBI has committed an error in holding that even in the past this Tribunal in the case of Krupa Soni v/s SEBI (Appeal No. 32 of 2013 decided on 24.01.2014) has found the appellant guilty of violating the securities laws. In that case SEBI had held that Krupa Soni group had committed violations in the scrip of 'Shree Global Tradefin'. While setting out the names of the persons belonging to the Krupa Soni group this Tribunal had merely recorded that the appellant belonged to Krupa Soni group. Neither in that case, SEBI had issued any show cause notice to the appellant, nor this Tribunal in that case had held that the appellant had violated securities laws in the scrip of 'Shree Global Tradefin'. Therefore, the WTM of SEBI is wholly unjustified in holding that in the past also the appellant has been found to have violated the securities laws.

13. As on date the appellant has already suffered prohibition imposed by the WTM for more than two years. Since we find it difficult to sustain the view taken by the WTM qua the appellant, in the facts of present case we deem it proper to give benefit of doubt to the appellant and accordingly set aside the impugned decision qua the appellant.

14. In the result, appeal is allowed by setting aside the impugned order qua the appellant with no order as to costs. In view of disposal of the appeal, Miscellaneous Application No. 254 of 2017 becomes infructuous and is disposed of accordingly with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G. Nair
Member

18.04.2018
Prepared & Compared By: PK