

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 06.05.2019

Appeal No. 184 of 2019

OPG Securities Pvt. Ltd. & Ors.

...Appellants

Versus

Securities and Exchange Board of India

...Respondent

Mr. Gaurav Joshi, Senior Advocate with Mr. Ravichandra Hegde, Mr. Robin Shah, Mr. Ashish Venugopal, Ms. Mitravinda Chunduru and Ms. Ankita Roy, Advocates i/b Parinam Law Associates for Appellants.

Mr. Mustafa Doctor, Senior Advocate with Mrs. Dr. Poornima Advani and Mr. Anubhav Ghosh, Advocates i/b The Law Point for the Respondent.

ORDER:

1. The appellant is a trading member of National Stock Exchange of India Ltd. ('NSE' for short) and BSE Limited ('BSE' for short) in Cash, Futures and Options and Currency Derivates segments. Based on the investigations since 2015 and seven reports, a Show Cause Notice (SCN) was issued alleging that the appellants had violated Section 12A(a), (c) of SEBI Act, 1992 read with Regulation 3(a), (d) and Regulation 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) and also violated the Code of Conduct of



SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. As many as six charges were levied; the Whole Time Member ('WTM' for short) of SEBI after considering the matter exonerated the appellants on several charges. However, the WTM found the appellants guilty on the charge that the appellants by connecting to the secondary server almost on a daily basis without any valid reasons gained unfair advantage over other trading members and thus gained materially by being the first logger.

2. It was contended that there was no bar on connecting to any server either primary or secondary and, in any case, the appellants did not materially gained by use of the second server.

It was urged that the ISB report categorically found that there was no higher profits from the secondary server. It was urged that almost 93 trading members were connected with the second server and whereas the appellants alone has been singled out, no action has been taken by the respondent against other trading members. It was also urged that in proceedings taken against NSE, a finding has been arrived at that there was no defined policy or procedure for use of the second server. It was thus urged that the finding given by the WTM that the appellant violated the guidelines and manipulated the market is based on



surmises and conjectures. It was urged that the imposition of disgorgement was based on gross income and not on profits. It was also urged that the Pasumorthy Report submitted by the appellants which analyzed the actual trade done by the appellants on the second server was rejected summarily on whimsical grounds.

3. On the other hand, the learned senior counsel contended that time was the essence in algo trading and by utilizing the second server, the appellants gained material advantage and became the first logger and thus made huge profits. It was contended that several warnings were issued directing the appellants to switch off the secondary server which they did not, and consequently a penalty was imposed.

4. Having heard the learned senior counsel for the parties, we find that prima facie the contentions raised requires consideration which cannot be decided at the admission stage and requires a reply and detailed hearing. The fact whether the appellants had benefited and / or made profits from the large quantity of data that was transmitted at a faster speed and therefore had faster access to the market data compared to other brokers is a question which requires determination. Further, the disgorgement made against the appellants on gross income or



net income is also required to be considered. We further find that investigations have been going on since 2015 and stopping the business activity of the appellants with immediate effect by the impugned order prima facie appears to be unjustified.

5. We are therefore of the opinion that balance of convenience requires that an interim order be passed. We accordingly direct the respondent to file a reply within six weeks. Three weeks thereafter is allowed to the appellants to file a rejoinder. The matter would be listed for admission and for final disposal on July 22, 2019. In the meantime, the effect and operation of the impugned order insofar as it relates to the appellants shall remain stayed provided the appellants deposit a sum of Rs. 7.5 crore before the respondent on or before May 20, 2019 which amount shall be kept in an interest bearing account by the respondent and would be subject to the result of the appeal. If the amount is not deposited within the stipulated period the interim order will stand vacated automatically.



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SECTION OFFICER - COURT OFFICER
SECURITIES APPELLATE TRIBUNAL
MUMBAI

06.05.2019

Prepared and compared by:msb

[Signature]

Sd/-

Justice Tarun Agarwala
Presiding Officer

Sd/-

Justice M.T. Joshi
Judicial Member

06 MAY 2019