

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Date : 06.05.2019

Appeal No. 183 of 2019

GKN Securities & 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 appellants were charged that they were direct beneficiary of preferential treatment by National Stock Exchange of India Ltd. ('NSE' for short), since NSE allowed the appellants to continue to use the Sampark line even after knowing that Sampark did not have the requisite license to provide such connectivity as well as that the conduct of NSE and the appellants points towards collusion in order to provide benefit to the appellants and that the appellants continued to avail the services of the Sampark line till September 10, 2015 in



spite of knowing that Sampark did not have the requisite license and therefore violated Clause A(1), A(2), A(3) and A(5) of the Code of Conduct specified under Regulation 9 of the SEBI (Stock Broker and Sub Broker) Regulations, 1992 and Regulations 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ('PFUTP Regulations' for short) read with Section 12A(c) of the SEBI Act, 1992. The charge having been proved, the Whole Time Member ('WTM' for short) of Securities and Exchange Board of India ('SEBI' for short) imposed a penalty of disgorgement of Rs. 4.9 crore along with interest at the rate of 12% p.a. and further directing the appellant no. 1 not to accept, induct, enroll any new client for a period of one year and further not to undertake any trading on any Stock Exchange recognized by SEBI on proprietary account for a period of two years. The other appellants were restrained from holding any position, either directly or indirectly with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI for a period of two years.

2. The Show Cause Notices revolved around point to point connectivity installed by the appellant between the colocation facility ('colo facility') of NSE and the colo centre at BSE



during the period May 7, 2015 to September 10, 2015 by engaging an unauthorized service provider i.e. Sampark in violation of NSE's circular.

3. Before us it was urged that the penalty imposed is based on surmises and conjectures. It was contended that even assuming without admitting that the objective of having a point to point connectivity was in order to receive large quantity of data at a faster speed which enabled the appellants to gain faster access to the market data than other brokers was immaterial since no finding has been given of any advantage being taken by the appellants in terms of trade volumes or profits on the basis of accessing large volume of data at a faster speed in comparison to the data accessed by other brokers. It was urged that in the absence of any finding that the appellants has profited from this transmission of large quantity of data at a higher speed than the other brokers, the penalty of disgorgement was wholly unwarranted. It was also contended that E&Y report categorically reported that they are not in a position to find out as to whether the appellants had gained any advantage from the dark cable. It was further contended that under the Regulations, disgorgement is to the extent of profits earned whereas in the instant case the disgorgement has been made on the gross



income which is wholly unwarranted. It was further contended that the income of the appellants has been shown in its income tax returns was from various sources and was not confined to the proprietary trading on the NSE / BSE platform and therefore the amount of penalty imposed towards disgorgement was wholly arbitrary. It was also urged that the volume of trades made by the appellants prior to the installation of the dark fibre line by Sampark and after its installation remained the same and no benefit was made by the appellants. Thus imposition of penalty of disgorgement and restraining the appellants from accepting new clients for a period of one year and restraining them from undertaking any trade on proprietary account is arbitrary and excessive.



4. On the other hand, the learned senior counsel for the respondent contended that time was the essence in algo trading and by utilizing the dark fibre line provided by an unauthorized vendor Sampark gave material advantage to the appellants compared to other brokers who could not utilize this facility. It was contended that in spite of knowing that Sampark was the unauthorized vendor the appellants continued to avail the dark fibre connectivity from Sampark which conferred the latency advantage to the appellants. It was also urged that the ability to

access the market data faster than the others was by itself violative of the Regulations and it was not necessary to go into the question as to whether the appellants took any advantage of the high market data accessed by them.

5. 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.

6. 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. 2.5 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.



Sd/-
Justice Tarun Agarwala
Presiding Officer

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SECTION OFFICER
SECURITIES APPELLATE TRIBUNAL
MUMBAI

06 MAY 2019

Sd/-
Justice M.T. Joshi
Judicial Member

06.05.2019

Prepared and compared by:msb

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