

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 137 of 2006

Date of decision : 10.1.2008

Mathew Easow Appellant

Versus

The Adjudicating Officer,
Securities and Exchange Board of India Respondent

Mr. Somasekhar Sundaresan Advocate with Mr. Joby Mathew Advocate and
Mr. Karan Bharihoke Advocate for the Appellant.

Dr. Poornima Advani Advocate with Ms. Sejal Shah Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Mathew Easow (Mathew) is the appellant before us in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act). He claims to be a well known Chartered Accountant and a Financial Analyst and is currently the chairman of Mathew Easow Research Securities Limited (for short Research), a company whose shares are listed on the Bombay Stock Exchange Limited and the Calcutta Stock Exchange Association. He also claims to be a committee member of Calcutta Chamber of Commerce and states that he is regularly interviewed on CNBC, BBC, NDTV, Sahara TV and other television channels as a Stock Analyst on topics and issues relating to corporate affairs and the securities market. He contributes by way of e-mails to the website www.moneycontrol.com (for short the website), promoted and maintained by the owners of CNBC TV channel. He further claims that his articles are published in the Economic Times, Business Standard and The Hindu Business Line. According to him, he is a frequent guest lecturer at The Institute of Chartered

Accountants, The Institute of Chartered Financial Analysts, Birla Institute of Futuristic Studies etc.

Mathew Easow Fiscal Limited (for short Fiscal) is a trading company which generates income from trading in securities. It is a stock broker registered with the Securities and Exchange Board of India (hereinafter called the Board). However, Fiscal has not been functioning as a stock broker since the inception and Mathew holds about 79% of the shares of Fiscal. Fiscal is also a sub-broker registered with the Board and acts as a sub-broker of Eureka Stock and Share Broking Services Ltd- a member of the National Stock Exchange of India Ltd.

Television Eighteen India Limited (TV18) as the owner of CNBC TV channel had engaged Mathew as an exclusive panelist for stock market coverage on its television channels, websites etc. It was agreed between the parties that Mathew shall not appear on any non-TV18 group television channels, websites during the period of his association with TV18. To begin with, he was paid a consideration of Rs.50,000 per month which has been subsequently enhanced. TV18 has complete freedom and authority to air/use the views/opinions of Mathew in any manner it deems fit and it also reserves the right not to air/display any coverage. It is common case of the parties that Mathew sent six e-mails which are now in issue on the website on 31.8.2005, 12.9.2005, 13.9.2005, 14.9.2005, 17.9.2005 and 19.9.2005 making his investment recommendations for purchase and sale of shares of four companies namely, Kalpana Industries Ltd., CESC Ltd., Ahlcon Parenterals (India) Ltd. and Albert David Ltd. for the benefit of the investors in general. It is not in dispute that the website is accessible to all and sundry. What these e-mails / recommendations mean is the question that arises for our consideration in this appeal and the learned counsel for the parties were agreed that the interpretation given to the e-mail dated 31.8.2005 in regard to the scrip of Albert David shall hold good for other e-mails as well. It is this e-mail which was discussed at length during the course of arguments and we shall deal with it a little later.

The Board noticed that representatives of some of the regulated entities were offering investment advice/tips regarding purchase and sale of shares/securities through the media without specific disclosures or disclosing stock specific position taken by such persons. As a part of its on going analysis, the recommendations made over a period of six months from June, 2005 to December, 2005 by Mathew who is the chairman of Research and holds a substantial controlling stake in Fiscal were examined. The Board also collected from the stock exchanges the trade data which revealed that Research and Fiscal through Mathew had dealt in the shares of the companies in regard to which he had made investment recommendations. When the trading pattern of Mathew through his associate companies was compared with the investment recommendations made by him through the aforesaid e-mails, the Board found that Mathew took an opposite trading position to what he recommended to the investors at large and that he started selling his stocks after giving an opposite advice to the market. In view of this, the Board initiated against Mathew and his associate companies cease and desist proceedings under section 11D of the Act. By a detailed ad-interim ex-parte order passed on 19.1.2006, Mathew was directed to cease and desist from giving any recommendations about any investment in securities market in any public media “which amounts to violation of Regulation 4(2) (f) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003” (for short FUTP Regulations). Similar directions had been issued against Fiscal and Research as well. Regulation 4(1) of these Regulations prohibits every person from indulging in a fraudulent or an unfair trade practice in securities. Regulation 4(2) (f) provides that “Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following namely..... publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities.” In the ex-parte order the Board

recorded firm findings against Mathew in the following words though these were described as preliminary findings in the beginning of paragraph 2 of the order:-

“The above instances clearly indicate that Mathew Easow took an opposite trading position to what he recommended to the investors at large and he also started selling the stock after giving an opposite advice to the market.”

Again in paragraphs 3.1 and 3.2, the Board concluded as under:-

“3.1 I see from the above analysis a clear and definite pattern in the trading by Mathew Easow in certain shares and his investment recommendations in those shares. While Mathew Easow has been advising the market to buy a stock, he himself has taken contrary positions. This indicates an obvious attempt to mislead the investors through investment recommendations, in a striking posture of ambivalence coupled with interest.

3.2 It is apparent that Mathew Easow is purveying information to the public which he himself does not appear to believe to be true. The only possible ulterior motive for Mathew Easow to employ such an artifice appears to be to make unfair gain for himself at the cost of lay investors. The act of Mathew Easow and his associate entities thus is in violation of Regulation 4(2) (f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ...”

Entities/persons against whom ex-parte directions had been issued were given an opportunity to file their objections, if any, to the order within 15 days there from and the order appears to have been treated as a show cause notice. This opportunity was afforded to provide Mathew and others a post decisional hearing in terms of the proviso to section 11(4) of the Act. Mathew and his associate companies filed their replies on February 14, 2006 and the whole time member of the Board heard them personally on April 18, 2006. After hearing Mathew and the two companies, the order was reserved.

While cease and desist proceedings were pending against Mathew and his associate companies, the Board simultaneously initiated adjudication proceedings only against Mathew for the violation of Regulation 4(2) (f) of the FUTP Regulations and appointed an adjudicating officer on 13.2.2006. The adjudicating officer issued a notice dated April 28, 2006 after the order in the cease and desist proceedings had been reserved by the whole time member of the Board, calling upon Mathew to show cause why a monetary penalty be not imposed on him under

section 15 HA of the Act for violating Regulation 4(2) (f) of the FUTP Regulations. Reference in the notice was made to the findings in the ex-parte order dated 19.1.2006 (cease and desist order) and also to the recommendations made by Mathew on the website and also to the trade data gathered from the exchanges and it was alleged that he took an opposite trading position to what he recommended to the investors at large and that he started selling the stocks through his associate companies after giving an opposite advice to the market. It was further alleged that he attempted to mislead investors through his investment recommendations in as much as he did not believe the information given by him to the public to be true and thereby violated Regulation 4(2) (f) of the FUTP Regulations. No other charge has been levelled in this show cause notice. What is prominently borne out from the show cause notice is that not only the allegations made therein are identical to the allegations made in the ex-parte order dated 19.1.2006 passed by the whole time member of the Board but even the language used in the two is the same. It appears that the adjudicating officer picked up certain portions of the ex-parte order and those formed part of the show cause notice. Mathew filed a detailed reply dated 25.5.2006 controverting the allegations made against him. At the outset, he objected to the initiation of adjudication proceedings on the same set of allegations for which cease and desist proceedings were pending before the whole time member of the Board. He stated that this amounted to double jeopardy which was in violation of his fundamental right under Article 20 of the Constitution of India and, therefore, requested that the adjudication proceedings be kept in abeyance until the proceedings were concluded before the whole time member. He did not dispute that he traded through Research and Fiscal in the scrips of those companies in regard to which he had made his investment recommendations on the website through e-mails. He, however, seriously disputed that his trades were contrary to his recommendations. It was specifically pleaded in the reply that Mathew had not only made a strong recommendation for buying a scrip with a short term target but he also mentioned the short term resistance targets which, according to him, are meant for routine profit

taking levels by selling the scrips as and when those targets are met. He had also mentioned the different support levels in case the price of the scrips were to go down recommending the sale of the scrips. It is Mathew's case that he sold a part of his portfolio only when those resistance levels had reached with a view to book profits which is in accordance with the recommendations made by him in the e-mails. He submitted a detailed research/technical rationale which formed the basis of his investment recommendations in regard to the four scrips referred to earlier.

On a consideration of the reply filed by Mathew and the recommendations made by him on the website through e-mails and having regard to the trade data collected from the Stock Exchanges, the adjudicating officer came to the conclusion that Mathew had given "buy" recommendations in the case of all the aforementioned four scrips in the month of September 2005 and he himself sold those scrips in the same month which was contrary to his recommendations. He further observed that the resistance and support levels mentioned by Mathew in his recommendations were meant only for "intraday traders" and not for the investors. He also found that no resistance level had been mentioned between the maximum expected price for the day and the short term target price fixed for the scrip. He recorded his findings in para 4.6 of the impugned order which reads as under :

"It was observed that the Resistance levels given by Mr. Mathew Easow in all the four scrips were meant for "intraday trades" and not for the investors. Further, the resistance level and support level given were generally 3-4% of the previous day's closing price. For example, in the case of 'Albert David', on 01/09/2005, the short term target was given as Rs.200 and the resistance level given was from Rs.145 to Rs.149 and support level was from Rs.140 to Rs.135 when the previous day's closing price was Rs.139.65. It was to be noted that there was no resistance level given between Rs.149 and the target price of Rs.200. This substantiates that the resistance and support level were given only for the intraday trades and not for the investors. However, the trading pattern of Mr. Mathew Easow did not suggest that he is an intraday trader. Therefore, Mr. Mathew Easow's submission that he was selling whenever the target is reached is not admissible as these levels were recommended only for the intraday traders. Further, the resistance levels were given with a quote saying "BUY ABOVE" whereas at these levels Mr. Mathew Easow was selling. In fact, in the scrip of Ahlocln, the resistance was seems to arisen due to MER'S selling instead of market selling."

In view of the above, the adjudicating officer concluded that Mathew misled the investors through his investment recommendations and purveyed the said information to the public which he himself did not believe to be true. Mathew was held guilty of violating Regulation 4(2)(f) of the FUTP Regulations and was liable for the imposition of monetary penalty under section 15HA of the Act. In order to determine the quantum of penalty, the adjudicating officer considered the factors referred to in section 15J of the Act and concluded that there were no quantifiable figures available on the record which could show the amount of disproportionate gain or unfair advantage made by Mathew or the amount of loss caused to the investors as a result of the default. Since Research and Fiscal had earned a profit of Rs.6,70,115 on the sale of the scrips of the four companies, the adjudicating officer by his order dated September 26, 2006 imposed a monetary penalty of Rs.20 lacs on Mathew. It is against this order that the present appeal has been filed.

To complete the narration of facts, it is necessary to mention that after the adjudicating officer had passed the impugned order, the whole time member who had earlier reserved his orders in the cease and desist proceedings on 18.4.2006 pronounced the same on November 7, 2006 and taking note of the impugned order disposed of those proceedings as under:

“7. I further hold that the subsequent trading behaviour of the associated companies of Mathew Easow after making the recommendation, in the above said four scrips clearly comes within the prohibitive ambit of Regulation 4(2)(f) of FUTP Regulations, since Mathew Easow who is a person dealing in securities had published information to the public which he did not believe to be true in the course of dealing in securities.

8. Further I have noted that the Adjudicating Officer vide his order dated September 26, 2006 imposed a penalty of Rs.20,00,000 on Shri Mathew Easow for the same violation, which will act as a deterrent and therefore, there is no need to continue the directions passed under section 11D vide the interim order dated January 19, 2006.

9. In view of the above, in exercise of the powers delegated to me in terms of Section 19 of the Securities and Exchange Board of India Act 1992 I, hereby dispose off the matter, as above.”

This order is not the subject matter of the present appeal but it has some bearing on the contentions raised before us on behalf of Mathew and it is for this reason that a reference is being made to this order.

We have heard the learned counsel for the parties. It was strenuously argued on behalf of Mathew that the findings recorded by the adjudicating officer in the impugned order are not only perverse but they are based on a misunderstanding of the recommendations made by him. Learned counsel for Mathew contended that the recommendations made in the e-mails were not only 'buy' recommendations and that the resistance and support levels mentioned therein recommended to the investors that they could sell the scrips as and when the resistance levels were met to book profits and again when the support levels would reach in the case of a falling scrip. Mr. Somasekhar learned counsel for Mathew forcefully argued that the adjudicating officer was not justified in recording a finding that when Mathew had sold a part of the portfolio through his associate companies, he acted contrary to his own recommendations. His grievance is that the adjudicating officer has not at all dealt with the research/technical rationale furnished by Mathew which formed the basis of his investment recommendations. He contends that if the adjudicating officer had examined this rationale, he would have understood what the recommendations meant and would not have concluded that they were only "buy" recommendations. Dr. Poornima Advani learned counsel for the respondent was equally emphatic in her submissions that the recommendations made by Mathew were only 'buy' recommendations for the investors and that the resistance and support levels mentioned in the e-mails were only meant for intraday traders. She contended that since Mathew and his associate companies did not execute intraday trades, those recommendations were not attracted to the trades executed by Mathew. She was very forceful in submitting that on the one hand Mathew had recommended the investors in general to buy the scrips of the four companies in regard to which he made his recommendations and on the other hand he sold substantial part of his portfolio through his associate companies thereby acting contrary to his own

recommendations. She strenuously urged that the adjudicating officer in these circumstances was justified in holding that Mathew did not believe his own recommendations to be true and thereby he violated the provisions of Regulation 4(2)(f) of the FUTP Regulations. She emphatically urged that the impugned order be upheld in the light of the findings recorded therein.

From the rival contentions of the parties, the short question that arises for our consideration is as to what is the meaning of the recommendations made by Mathew and whether he acted contrary to his own recommendations. If he did, then obviously he did not believe his recommendations to be true and could be said to have misled the investors thereby violating Regulation 4(2)(f) of the FUTP Regulations.

Before we deal with the e-mails containing the recommendations made by Mathew, it is necessary to understand who are intraday traders and are they in any way different from short term/long term traders. A day trader is a trader who buys and sells financial instruments like stocks, options, futures, derivatives etc. within the same trading day such that all positions will usually be closed before the market close of the trading day. This trading style is called day trading and depending on one's trading strategy, it may range from several to even a hundred trades a day. In other words, day trading refers to the practice of buying and selling the financial instruments within the same trading day so that all positions will usually be closed before the market close of the trading day. Intraday trading is only a practice or a style of trading and intraday traders are not a class by themselves. They are no different from short term/long term traders and in fact they have much in common. A trader is a trader and his objective is to make profit out of trading in securities whether he executes intraday trades or trades on short term/long term basis and that depends on his trading strategy and financial and risk taking capacity. It is true that there are exclusive intraday traders in the market who do not execute other trades but they are not barred from doing so. Similarly, short term/ long term traders are not barred from executing intraday trades. There is no compartmentalization between this class of traders nor is any such compartmentalization recognized either by the

Board or by the market. When a recommendation/prediction for a short term/ long term trader is made by an analyst, what he predicts is the price of the scrip which, according to his analysis would be prevalent after a short term/long term duration whatever that duration be. Such a prediction would not be relevant for a day trader since he will concentrate on the price movement of the scrip only during the course of that day when he is trading. On the other hand, when a recommendation/ prediction is made for an intraday trader, what is predicted is the price movement of the scrip during the course of that day. It could move upwards as well as downwards and every trader including a short term/ long term trader could take advantage of that price movement even though he may not be an intraday trader. This is how the market works.

We may now deal with the recommendations made by Mathew in the e-mails sent by him on the website. As already observed, the e-mail dated 31.8.2005 pertaining to the scrip of Albert David Ltd. was discussed at length during the course of the arguments and we will deal with this e-mail which reads as under :

“E-mail dated 31/08/2005 (time sent 6:52 PM)
Sub : DAILY TECHNICALS FOR 01-09-05

From : mathew@giascl01.vsnl.net.in
<mathew@giascl01.vsnl.net.in>; To vidya kumara swamy
<reports@moneycontrol.com>; money control
<research@moneycontrol.com>

BEST TRADING PICKS

ALL RATES MENTIONED ARE BASED ON NSE/BSE
CAPITAL MARKETS CLOSING RATES AND NOT FUTURES
RATES.

(1) ALBERT DAVID (139.65) LISTED ON BSE
Strong Recommendation for Buying
Short Term Target is 200

For intraday traders:
Buy above 143 R1-145, R2-146, R3- 149
Sell below 137 S1-135, S2-133, S3-130”

It is clear from the e-mail that it was sent on 31.8.2005 at 6.52 pm, that is, after the close of the trading hours on that day. The closing price of the scrip (Albert David)

on 31.8.2005 was Rs.139.65. It is further clear that Mathew had made a technical analysis of the scrip for 1.9.2005. According to his analysis, the short term target of the scrip was Rs.200 and keeping in view the prevailing price of the scrip on the day of the e-mail, he strongly recommended short term traders to buy. Having made this recommendation, he goes on to predict the price of the scrip on the following day for the benefit of the day traders. No one can be certain as to whether the price of a scrip on a particular day would go up or down. He, therefore, recommends the intraday traders to watch the movement of the price and if it touches Rs.143 the trend, according to him, would be upwards and if it touches Rs.137, the trend would be downwards. If the trend is upwards, he recommends to them to buy the scrip above Rs.143. He has then mentioned the resistance levels at Rs.145, Rs.146 & Rs.149. The three resistance levels referred to in the recommendation mean that when the scrip is going upwards it will meet a resistance at Rs.145 and once that level is breached the share is likely to go up further to Rs.146 when the price will meet the next resistance level. If that level is also breached, then the scrip is likely to go upto Rs.149 during the course of the day (1.9.2005). The resistance levels referred to in the e-mail refer to the selling pressure which would be generated as a result of the rising price. When the price rises, investors tend to book profits by selling a part or whole of their holdings. It is, thus, clear that the buy recommendation made by Mathew in the very nature of things inheres in it the recommendation to sell if the trader wishes to book profits at certain levels as referred to in the e-mail. This is the recommendation which Mathew made if the movement of the price of the scrip was upwards. It could well have been downwards. In that event also, he recommends to the day traders to watch till the price reaches Rs.137. He recommends to them to sell the scrip below Rs.137 to reduce their losses because, according to him, the price then would further move downwards. In case the price of the scrip was falling, he predicted three support levels at Rs.135, Rs.133 & Rs.130. When the price falls, investors sometime tend to purchase that scrip and the buying pressure gives a support to the falling price.

According to Mathew, the support level would be at Rs.135 and thereafter at Rs.133 and according to him the price during the course of the day could go down upto Rs.130. This recommendation/prediction would have different meanings for different day traders depending upon their strategy, financial and risk taking capacity. Some may like to reduce their losses by selling the scrip when it goes below Rs.137. Others who may have more risk taking capacity may like to wait till it reaches Rs.135 and so on because the ultimate prediction about the scrip is that it could touch Rs.200 which is the short term target. These buy and sell recommendations no doubt have been made for the day traders but, as already observed, Mathew has predicted the price movement of the scrip during the course of the day both if it were to go upwards or downwards and it is open to every trader whether he be a day trader or a short term/long term trader, to take advantage of that price movement. In other words, when the price is moving upwards it is open to a short term trader who may have acquired the scrip at a lower price to book profits during the course of the day and he need not wait for the price to go upto Rs.200 which has been predicted as a short term target. He need not be a day trader. Similarly, the bears in the market could take advantage of the falling price and according to their strategy they may buy when Mathew had recommended sell. It would follow that his sell recommendation inheres in it a buy recommendation as well. Learned counsel for the parties were agreed that all the e-mails were alike and that the interpretation given to the aforesaid e-mail of 31.8.2005 regarding the scrip of Albert David would hold good for the other e-mails as well. We have, therefore, no hesitation in holding that all the recommendations made by Mathew through the e-mails in question were not only 'buy' recommendations but they also included the recommendations to sell the scrips as and when the short term resistance targets were met to enable the trader/ investor to book routine profits which is his sole objective.

Now when we look at the impugned order and the findings recorded by the adjudicating officer, we find that he has held that the resistance and support levels mentioned by Mathew in regard to the four scrips were meant only for intraday

traders and not for investors/traders like Mathew. He has understood the recommendations of Mathew to mean only 'buy' recommendations for the short term investors. He compared the trade data gathered from the exchanges with the trading pattern of Mathew and found that Mathew took an opposite trading position to what he recommended to the investors at large and that he started selling the stocks through his associate companies after giving an opposite advice to the market. Since Mathew, according to the adjudicating officer, acted contrary to his own recommendations when he sold the scrips, it was held that he did not believe the information that he was purveying to the public to be true and thereby violated Regulation 4(2)(f) of the FUTP Regulations. We cannot uphold any of these findings which are based on a complete misreading of the recommendations made through the e-mails. We have analysed above the e-mail dated 31.8.2005 pertaining to the scrip of Albert David and found that the recommendation made therein was not only a buy recommendation and that a sell recommendation was inherent in it. It is true that the resistance and support levels mentioned in the e-mails were meant only for intraday traders but that does not mean that short term/long term traders/investors could not take advantage of those levels/price movement. It was open to them to sell their stocks and book routine level profits which most of the traders do when the price is rising and this is how the market functions. We are amazed that the adjudicating officer could not understand this basic concept. Unfortunately, the adjudicating officer did not apply his mind to the merits of the recommendations made by Mathew. He did not even make an attempt to understand what the recommendations meant. Mathew had furnished a detailed research/ technical rationale which formed the basis of his investment recommendations. Had the adjudicating officer examined this rationale he would have understood that the recommendations made in the e-mails had in them an inherent sell recommendation as well. We would have appreciated if he had examined the rationale in detail and then come to the conclusion that Mathew was trying to mislead the investors by giving information to the public which he did not believe to be true. All that he has said in the impugned

order is that the recommendations made by Mathew were buy recommendations for short term traders and Mathew being one of them could not have taken an opposite position in trading. He has failed to appreciate that the benefit of the resistance and support levels referred to in the e-mails could be taken by other investors as well even though the recommendations purport to be for intraday traders only. We cannot agree with the adjudicating officer that Mathew took an opposite trading position to what he recommended to the investors at large or that he misled the investors through his investment recommendations. His specific stand before the adjudicating officer was that he sold only a part of the portfolio and not the whole of it and that too when the recommended target levels had reached. The adjudicating officer has not examined this aspect of the matter at all nor has he recorded a finding to the contrary. All that he says is that Mathew made a buy recommendation for a short term trader and he himself sold the scrips. We have already pointed out the hollowness of this finding. We agree with Shri. Somasekhar that if Mathew wanted to act contrary to his own recommendations, he would have sold his entire portfolio which he did not. He only sold a part of it to book profits when the recommended resistance targets were met which traders/investors normally do. This was in consonance with his recommendations and not opposite to what he recommended. Further, Mathew through Research had purchased 14500 shares of Albert David on 31.8.2005, the date on which he sent the e-mail in question. Having purchased the shares himself, he also recommended to the investors at large to purchase those shares. Was he purveying information to the public which he did not believe to be true and could he be said to be acting contrary to his own recommendations. The answer has to be in the negative. Again, while dealing with the aforesaid e-mail, the adjudicating officer recorded in the impugned order that "It was to be noted that there was no resistance level given between Rs.149 and the target price of Rs.200." We have not been able to understand this observation. It makes no sense to us and only exhibits total lack of understanding in the matter. The price of Rs.149 predicted by Mathew was the maximum which, according to him, the scrip could touch on

1.9.2005 whereas Rs.200 was the short term target price of the scrip. The two prices had nothing in common and, therefore, there was no question of mentioning the resistance levels between these two prices. We wonder what the adjudicating officer is referring to. When it came to quantifying the monetary penalty, the adjudicating officer took note of the profits made by Research and Fiscal on the sale of the scrips and imposed three times of those profits as penalty on Mathew. Shri. Somasekhar learned counsel for Mathew made a grievance of this and he is right. The adjudicating officer had forgotten that adjudication proceedings had not been initiated against Research and Fiscal. Moreover, section 15HA of the Act provides that if any person indulges in fraudulent and unfair trade practices, he shall be liable to a penalty of Rs.25 crores or three times the amount of profits made out of such practices, whichever is higher. In this case the profits were made by Research and Fiscal and penalty has been levied on Mathew. It is quite anomalous. The shares had, in fact, been sold by Research and Fiscal through Mathew and if penalty was to be imposed for the alleged violation, adjudication proceedings should have been initiated against all the three making them liable jointly and severally.

It appears that the adjudicating officer had before him the ex-parte cease and desist order dated 19.1.2006 passed by the whole time member in which firm findings had been recorded against Mathew and in that order also it had been observed that the recommendations of Mathew were buy recommendations and that he took an opposite trading position when he sold the scrips through his associate companies. The adjudicating officer has simply followed the observations made in the ex-parte order and has chosen to record findings in terms thereof. We wonder whether he conducted the proceedings independently or impartially in the present case. Shri. Somasekhar learned counsel for Mathew pointed out during the course of the hearing that the cease and desist proceedings were pending before the whole time member who had afforded a personal hearing to the parties on 18.4.2006 and reserved his orders. It was thereafter that the adjudicating officer issued the show cause notice on April 28, 2006 in which he made reference to the findings recorded

in the cease and desist order dated 19.1.2006 and concluded the proceedings on September 26, 2006. The learned counsel contended that it was thereafter that the whole time member put an end to the cease and desist proceedings on November 7, 2006 and did not continue with the cease and desist order in view of the penalty imposed by the adjudicating officer which, according to the whole time member, was enough of a deterrent for Mathew. He also pointed out that the adjudicating officer in the instant case was the deputy general manager in the department of surveillance which department is headed by the whole time member who passed the cease and desist order- a fact which was confirmed by learned counsel for the respondent. The insinuation is that the adjudication proceedings were being watched by the whole time member as the adjudicating officer was his subordinate and immediately when the former learnt that a penalty of Rs.20 lacs had been imposed, the ex-parte cease and desist order of 19.1.2006 was discontinued. We need not comment on this aspect and only hope that what is being insinuated is not correct.

The Act enables the Board to initiate parallel proceedings on the same set of facts against a delinquent under the enquiry regulations, under section 11B or under section 11D, as the case may be, on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other. It is not in dispute that orders under the inquiry regulations, directions under section 11B or an order under section 11D are passed by the Board whereas the proceedings under chapter VIA are conducted by an adjudicating officer who is a subordinate officer of the Board and it is he who passes final order. Even though the two sets of proceedings may be independent of each other, we have yet to come across a case where the adjudicating officer has taken a view contrary to the one taken by the whole time member who exercises the delegated authority of the Board. The learned counsel for Mathew forcefully argued that how could a subordinate officer of the Board record findings contrary to those recorded by the Board under the inquiry regulations or under section 11B or under section 11D, as the case may be. May be, he is right but we cannot grant any relief to Mathew on this ground because the law

does permit two sets of parallel proceedings to be carried on. Whether this state of the law should continue is a matter which the law makers have to decide. When the two sets of proceedings are independent of each other as is often argued on behalf of the Board, then the possibility of conflicting views on the same set of facts cannot be ruled out which would not be in public interest. We feel that if only one inquiry is held in such cases and on the basis of that inquiry the same body is given the power to impose penalties under both sets of proceedings, it would not only expedite matters but also avoid conflicting opinions. As already observed, this is a matter for the Parliament to consider.

In view of the aforesaid discussion, we allow the appeal, reverse the findings recorded by the adjudicating officer and set aside the impugned order. The damage caused to the reputation of Mathew cannot be undone. However, he will have his costs which are assessed at Rs.1 lac.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

10.1.2008
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