

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Misc. Application No. 17 of 2011**

**And**

**Appeal No. 28 of 2011**

**Date of decision: 6.6.2011**

M/s. Harish Chandra Gutt & Co. Pvt. Ltd.  
45/47, Mumbai Samachar Marg,  
Mumbai- 400 001.

.....Appellant

Versus

Bombay Stock Exchange Ltd.  
Floor 25, P.J. Towers,  
Dalal Street,  
Mumbai- 400 001.

..... Respondent

Mr. Pravin Pillay, Advocate for the Appellant.

Mr. P. N. Modi, Advocate with Mr. Faraz Alam Sagar, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer  
S.S.N. Moorthy, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

This appeal is directed against the order dated February 10, 2011 passed by the Disciplinary Action Committee (for short the Committee) of the Bombay Stock Exchange Limited, Mumbai (hereinafter called BSE) suspending the trading rights of the appellant till such time it redresses the complaints filed by 'Colgate-Palmolive (India) Gratuity Fund Workmen' and 'Colgate-Palmolive (India) Gratuity Fund for Non-Workmen' to their satisfaction. Both these Funds shall collectively be referred to hereinafter as the Funds. Facts giving rise to this appeal lie in a narrow compass and these may first be stated.

2. One Arvind B. Bhiday was carrying on his business of stock broking as a sole proprietor under the name and style of M/s Harish Chandra Gutt & Co. Pvt. Ltd. He was registered as a stock broker with the Securities and Exchange Board of India (for short the Board). He was a member of BSE and also a member of Over the Counter Exchange of India (for short OTC). Some time in the year 1997, he formed a private

limited company under the name and style of M/s. Harish Chandra Gutt & Co. Pvt. Ltd. in which he held 80.65% of the shares and the remaining shareholding was in the name of his wife, mother, brother and HUF. Having formed this company, Arvind B. Bhiday transferred his membership of BSE in the name of the company and the company came to be registered as a stock broker with the Board as is clear from the certificate of registration dated December 31, 1997 which is on the record. He, however, continued to be a member of OTC in his individual capacity as a sole proprietor of M/s Harish Chandra Gutt & Co. It is pertinent to mention that both the proprietorship concern and the Pvt. Ltd. Co. which have identical names function from the same premises having a common address. The Funds being Gratuity Funds for Workmen and Non-Workmen, monies therefrom could be invested in securities in terms of the pattern of investments prescribed by the Central Government from time to time. It appears that the Funds were the clients of Arvind B. Bhiday and he told them in the year 2003 that he had purchased Central Government and State Loan Securities on their behalf and wanted the Funds to pay him the price of those securities. It is common case of the parties that the Funds made a payment of about ₹ 2.40 crores to Arvind B. Bhiday towards the purchase price of the securities allegedly purchased by him on their behalf. It later transpired that Arvind B. Bhiday had not made any purchases on behalf of the Funds even though he issued contract notes to them. As a matter of fact, he played a fraud on the Funds as is clear from the subsequent events that followed. The contract notes that he issued to the Funds were in the name of his proprietorship concern that were signed by someone on behalf of the proprietor and the proprietorship firm was shown therein as a member of BSE which in fact it was not. As already pointed out, the proprietorship firm was only a member of OTC. The contract notes are dated May 23, 2003 and the money was received by Arvind B. Bhiday through cheque payments on May 26, 2003. The contract notes in the printed format clearly state that they were being issued subject to the Rules, Bye-laws and Regulations and Usages of BSE. The printed format further states that the disputes arising between the parties were subject to the Rules, Bye-laws and Regulations of BSE. Even though Arvind B. Bhiday had issued the contract note(s) he had not purchased any securities on behalf of the Funds and there is correspondence on the record by which he kept seeking time from the Funds to give physical delivery of

the securities allegedly purchased by him. Eventually, when he was unable to deliver the securities and was unable to refund the amount received from the Funds, that the latter filed a complaint in writing to BSE complaining that he had misappropriated the Funds and that action be taken in accordance with law. It is pertinent to mention that when the Funds claimed the securities or the return of money from Arvind B. Bhiday, he confessed by his letter of February 25, 2004 that he had misappropriated the amounts received from the Funds and that he had not purchased any security on their behalf. This is what he stated in his letter of February 25, 2004:-

“With an extremely heavy (sic) heart and being ashamed of myself I am writing this letter to you requesting you to help me. I received in my office two cheques for Rs. 10623958 and Rs. 6974479 in May 2003 from the trustees of the above scheme to purchase government securities. I also issued contracts to you. Instead of purchasing the securities, I misappropriated payments received from you to pay off of my debts. I am sorry for my mistake and letting you down. This fact is now known to you and you are all furious with me. You have every right to be so.

I was greedy and not think that I will get caught. Unfortunately I have no escape now but I request you to not to take any action against me as I will try to repay the money received from you as soon as I can. I again apologise for my wrong acts. I have completely let you down as your agent but please give me one more opportunity to repay the money to you. I am also sorry for going on telling you the trustee that I will give physical delivery of documents very soon only to buy time from you and to divert your (sic) attention from my acts. I am sorry for misleading you.”

On receipt of the complaint, BSE called upon the appellant to explain its stand and after some Exchange of correspondence between it and BSE a notice was issued to the company to show cause why disciplinary action be not taken against it including suspension and/or withdrawal of its membership rights etc. for the aforesaid misconduct. The appellant company filed its detailed reply stating that the money of the Funds had been misappropriated by Mr. Arvind B. Bhiday in his individual capacity as the sole proprietor of M/s Harish Chandra Gutt & Co. and that the appellant company had not misappropriated the amounts. Another plea taken in the reply is that the amounts claimed by the Funds have now become time barred.

3. On a consideration of the material collected by BSE and taking note of the reply filed by the appellant, the former on lifting the corporate veil found that the appellant company was being controlled by Arvind B. Bhiday who was primarily responsible for misappropriating the Funds and, therefore, the appellant was liable. The trading rights of the appellant have been suspended till such time the grievances of the Funds are redressed to their satisfaction. Hence this appeal.

4. We have heard the learned counsel for the parties and it is their common case that Arvind B. Bhiday misappropriated the amounts received from the Funds. The only argument advanced by the learned counsel for the appellant is that Arvind B. Bhiday was acting in his individual capacity as the sole proprietor of M/s Harish Chandra Gutt & Co. and not on behalf of the appellant company which in law is a different entity. It is argued that the sole proprietorship concern was a member of OTC and it was this exchange which could take action and not BSE. We cannot accept these contentions. Arvind B. Bhiday is the face of the company and was also a member of OTC in his individual capacity where he got his sole proprietorship concern registered. His intentions from the beginning were not honest and he issued contract notes which are misleading. As already pointed out, the caption on the contract note in bold letters has the name of the sole proprietorship firm whereas down below it is printed that the authorised signatory is a member of BSE. The contract note is in a printed form which clearly declares to the investor that the sole proprietorship firm is a member of BSE and that the contract was subject to the Rules, Bye-laws, Regulations and Usages of BSE. It is the admitted case of the parties that the sole proprietorship concern is not a member of BSE and only the appellant company is a member thereof. Arvind B. Bhiday holds more than 80% shares in the appellant company and an application had been made to BSE in the year 2002 that Arvind B. Bhiday, be registered as a designated director of the company. This was not done because the appellant company failed to furnish all the necessary documents required for the purpose. It is however, clear from this fact that Arvind B. Bhiday was a director of the company and being more than 80% shareholder therein was carrying on its day to day activities. It is also on record that in several other cases he issued contract notes on behalf of the appellant company as its

director/authorised signatory. BSE is right in observing that when we lift the corporate veil it is Arvind B. Bhiday who is seen lurking behind the curtain. We are satisfied that while receiving the amounts from the Funds, the contract notes were issued on behalf of the appellant company and that Arvind B. Bhiday was its directing mind. The company played a fraud when Arvind B. Bhiday issued the contract notes on forms which had the name of the proprietorship concern at the top with a declaration that it was a member of BSE. The appellant company was rightly held responsible for the amount misappropriated by Arvind B. Bhiday who happens to be its director.

5. Before concluding, we may refer to another contention raised on behalf of the appellant. It is urged that the amounts which the Funds are claiming have become time barred. In our view, this contention is wholly irrelevant. The plea of limitation may become relevant if the Funds were to institute a suit for the recovery of the amount. That is not the case here. BSE is taking disciplinary action against the appellant company for having misappropriated the moneys received from the Funds and in such a situation the question of limitation is irrelevant.

6. Before parting, we may mention that since February 21, 2011, the case was being adjourned to enable the appellant to settle the matter and pay the amount to the Funds but no payment has been made so far. It appears that the appellant was only gaining time.

For the reasons recorded above, we find no merit in the appeal and the same stands dismissed with costs which are assessed at ₹ 2 lacs.

Sd/-  
Justice N.K.Sodhi  
Presiding Officer

Sd/-  
S.S.N. Moorthy  
Member