

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.189/2004

Date of Decision 07.03.2006

In the matter of:

J. B. Shares & Stocks Limited.

Appellant – Represented by Mr. Sean
Vassoodew, Sr. Advocate

Versus

The Securities and Exchange Board of
India

Respondent – Represented by Mr.
Dipen Merchant, Sr. Advocate with
Mr. Ravi Hegde, Advocate for the
Respondent.

Coram:

Justice N. K. Sodhi, Presiding Officer
C. Bhattacharya, Member
R. N. Bhardwaj, Member

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

Challenge in this appeal is to the order dated August 19, 2004 passed by the Securities and Exchange Board of India (for short “the Board”) under regulation 13(4) of the Securities and Exchange Board of India(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002 (hereinafter called “the Regulations”) imposing a penalty of suspension of the certificate of registration of the appellant for one year. The Board has found that the appellant as a sub broker had failed to produce some of its books of accounts and records which it is required to maintain and that it had failed

to exercise the required standard of integrity promptitude and fairness while conducting its business transactions.

The appellant is a registered sub broker with the Board carrying on its business and trading activities on the Bombay Stock Exchange through M/s. Indo Shares and Fintrade Ltd., which is a member of the exchange. Shri Jasmine Shah is one of the directors of the appellant company.

On a complaint made by Shri Jasmine Shah alleging price manipulation in the shares of M/s. Vakrangee Softwares Ltd., (for short 'VSL') by Shri Harshad Mehta in connivance with some other entities, the Board conducted investigations into the trading of the shares of VSL. It found that the price of the scrip had increased from Rs.10/- in September, 1999 to Rs.152/- by the end of December, 1999 and subsequently to Rs.597/- by March, 2000. The investigating officer did not find that the appellant had any role to play in the price manipulation of the scrip of VSL. In spite of a detailed investigation report, the Board was of the view that it was in the interest of the securities market and in public interest to enquire into the affairs of the appellant as a sub broker while dealing in the scrip of VSL and for "possible violations" of the provisions of some of the regulations. Accordingly a show cause notice dated October 31, 2001 was issued and one Shri P. Sri Sairam was appointed the enquiry officer to conduct the enquiry relating to the alleged contraventions of the provisions mentioned in the order. It appears that Shri P. Sri Sairam could not conduct the enquiry and thereafter Shri G S. Reddy was appointed the enquiry officer. This officer served the appellant with a notice to show cause why action should not be taken against it in terms of the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 (for short Broker and sub-

Broker Regulations) failing which he(the enquiry officer)would proceed as if the appellant had no explanation to offer. Along with the show cause notice the appellant had been served with a charge sheet prepared by the Executive Director of the Board which reads as under:

“ Whereas:

- i. Securities and Exchange Board of India had ordered investigation into the alleged violation of provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the securities market) Regulations, 1995 and the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 in respect to dealings in the scrip of M/s. Vakrangee Software Ltd. The investigation has been completed and the report submitted to the Board.
- ii. The Board is satisfied after examining the findings of the investigation that it is in the interest of the securities market and in the public interest to enquire into the affairs of:

M/s. JB Shares and Stock Limited
(Sub-Broker – M/s. Indo Shares and Fintrade Ltd., Member,
The Stock Exchange, Mumbai)
in dealings in the scrip of M/s. Vakrangee Software Ltd. And possible violation of the provisions of inter-alia following Regulations by the said member.

- a) Provisions of the Securities and Exchange Board of India Act, 1992, SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992.
- b) Provisions SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the securities market) Regulations, 1995.

In terms of Sub-Regulation (1) of Regulation 28 of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992, Shri G. S. Reddy, Adjudicating and Enquiry Officer, has been appointed as an Enquiry Officer to enquire into the contravention aforesaid by the following Stock Brokers namely.:-

M/s. JB Shares and Stock Limited
(Sub-Broker – M/s. Indo Shares and Fintrade Ltd., Member, The Stock Exchange, Mumbai)”

A reading of the aforesaid charge sheet would show that what was alleged against the appellant was that it had violated the provisions of the Securities and Exchange Board of India Act, 1992(for short “the Act”), the Broker and Sub-Broker Regulations and also the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995. An omnibus charge was leveled against the appellant without mentioning the specific allegations or the specific regulations which the appellant had violated. A reply was filed on behalf of the appellant and it was pleaded therein that the charge leveled against it was vague and unless specific allegations were made it would not be possible for it to furnish its detailed reply. After conducting a detailed enquiry the Board came to conclusion that the appellant as a sub broker had violated the code of conduct prescribed for sub brokers and that it had failed to produce some of the records in its possession. The appellant was found to have violated the code of conduct specified in Schedule II to the Broker and Sub-Broker Regulations and its certificate of registration was ordered to be suspended for a period of one year. It is against this order that the present appeal has been filed.

We have heard the learned counsel for the parties. It is not necessary to go into the merits of the submissions made by the learned counsel for the appellant because we are inclined to accept his contention that the charge sheet served by the Board was vague and that the appellant was not afforded proper opportunity to file its reply. The charge sheet has already been reproduced in the earlier part of the order. We are satisfied that it does not meet the requirements of Regulation 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by the Adjudicating Officer) Regulations, 2002 which

provides that where it is proposed to hold an enquiry against an intermediary the Board shall issue to the said intermediary a notice stating therein the contravention of the relevant regulations alleged to have been committed by the intermediary. As already observed the charge sheet served upon the appellant was as vague as it could be. It was alleged that the appellant violated the provisions of the Act. Which provision of the Act had been violated was not specified. Again the Broker and Sub-Broker Regulations were alleged to have been violated and no provision of any regulation was mentioned which had been violated nor the details of any violation were specified. It was a general charge sheet with a view to hold a roving enquiry into the conduct of the appellant and that is why the charge sheet referred to the "possible violations" of the Act and various Regulations without specifying them. The Board was not sure as to what wrong the appellant had committed. This is not permitted under the regulations. The charge should have been specific. The appellant should have been informed of the precise violations which it had committed before it could be called upon to show cause. Since the charge was vague, the appellant was deprived of filing an appropriate reply to the charge sheet. It appears that when the investigations were initially ordered the Board thought that the appellant was associated with Harshad Mehta and that he was amongst the players who manipulated the scrip of VSL. The investigations revealed that the appellant had no role to play in the manipulation of the scrip. Even though the investigating officer did not attribute any role to the appellant, yet the Board proceeded against it (the appellant) and framed an omnibus charge and found that it had failed to produce some records and that it had violated its code of conduct. It appears that the Board was bent upon taking some action thinking that the appellant was an associate of

Harshad Mehta forgetting that the investigations were started on the complaint of the appellant. In this view of the matter we have no hesitation in setting aside the impugned order solely on the ground that the charge sheet issued was vague.

In the result, the appeal is allowed, the impugned order dated August 19, 2004 set aside leaving the parties to bear their own costs.

Sd/-

**Justice N. K. Sodhi
Presiding Officer**

Sd/-

**C. Bhattacharya
Member**

Sd/-

**R. N. Bhardwaj
Member**

07/03/2006.

Smn/07/03