BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

Appeal No.32/2002

In the matter of:

LKP Securities Ltd Appellant

Vs.

The Securities and Exchange Board of India Respondent

Appearance:

Shri Shyam Divan

Advocate

Shri V. M. Singh

Advocate

Shri Amith Narayan,

Advocate,

Shri Suneet S. Barve

Advocate for Appellant

Shri Kumar Desai

Advocate

Shri Daya Gupta

Advocate

Shri Sandeep Deore

Jt. Legal Adviser, SEBI for Respondent

(Appeal arising out of the order dated 12.6.2002 made by the Chairman, Securities and Exchange Board of India)

ORDER

Market witnessed abnormal price and volume movement in the shares of Amara Raja Batteries Ltd (ARBL) traded on Bombay Stock exchange (BSE)and National Stock Exchange (NSE), in February –

March, 2001. The Respondent received complaints alleging market manipulation/ irregularities in the trading of ARBL's shares. In that context the Respondent ordered investigation to ascertain the role played by various persons/intermediaries, and violations, if any, of the regulatory provisions by them. The investigation is stated to have revealed that Shri Harinarayan Bajaj and his son Shri Rahul Bajaj were the dominant traders in the ARBL's shares during the period August 2000 to March 2001, that some of the members of BSE and NSE had aided and abetted Shri Harinarayan Bajaj in creating a false market in ARBL's scrips and also that they had failed to exercise due care and skill in their dealings. The Appellant was one of the members whose involvement in the matter was subjected to investigation. In the light of the information collected during the course of investigation, the Respondent decided to conduct a detailed enquiry into the role and conduct of the Appellant in trading in the scrip. Accordingly an enquiry officer was appointed on 18.6.2001 to enquire into the affairs of the Appellant in its dealings in the scrip of ARBL and the possible violations of the rules, bye laws and regulations of BSE, provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (the 1995 Regulations) and the Securities and Exchange Board of India (Stock-brokers and Sub-brokers) Regulations, 1992 (the 1992 Regulations). The enquiry officer on concluding the enquiry came to the conclusion that the Appellant had failed to exercise due care and skill in its dealings with Shri Bajaj as required by clause A(2) of the code of conduct prescribed for the stock-brokers in the 1992 Regulations. He recommended 15 days'suspension of the certificate of registration granted to the Appellant. The Respondent communicated the findings of the enquiry officer to the Appellant and asked to show cause as to why the penalty as recommended by the enquiry officer should not be imposed against it. The Appellant responded to the same by filing written explanation and making oral submissions before the Chairman of the Respondent.(the Chairman) The Chairman adjudicated the show cause notice. Vide his order dated 12.6.2002 the certificate of registration granted to the Appellant was suspended for a period of 15 days from 27.6. 2002.

Claiming to be aggrieved by the said order, the Appellant has preferred the present appeal praying to set aside the order and also to stay the operation of the order pending disposal of the appeal. The prayer for stay of the order pending disposal of the appeal was allowed after hearing counsel for the parties.

Shri Shyam Divan, learned Counsel appearing for the Appellant briefly stated the facts leading to the filing of the present appeal. He stated that the Appellant is one of the group companies of the well established LPK Group, that the Group has a net worth of Rs.150 million and an annual turn over around Rs.62 billion, that the Group has established and maintained the highest standards in relation to its business, that in recognition of the high quality standards maintained by the Group, it has been awarded ISO 9002 registration. It employs approximately 100 highly qualified professionals in addition to staff strength of 412 people with offices spread out in 29 cities in India, that the Appellant alone has offices at 15 locations in 9 cities in India and employ 50 people, that its turn over stood at Rs.55176 crores in the wholesale debt market segment of NSE for the year ended 31.3.2001, that ever since the Appellant commenced business in 1994, it has had an unblemished business record and on no previous occasion has any regulatory authority found the Appellant guilty of any contravention. He also referred to the extent of business it was doing and stated the names of the institutional clients being serviced, to show its credibility status and the damage that would cause to the Appellant in case the baseless allegations made by the Respondent are allowed to be sustained. Learned Counsel submitted that the Respondent has not established any charge, warranting imposition of such a severe penalty of suspension of certificate of registration, that the certificate of registration granted to the Appellant has been suspended for 15 days holding that the Appellant had not exercised due care and skill in its dealing with Shri Harinarayan Bajaj in the scrip of ARBL. In this context learned Counsel referred to the abnormal price and volume movement in ARBL's scrip during the period as mentioned in the impugned order and stated that the Respondent itself has held Shri Harinarayan Bajaj and his son Shri Rahul Bajaj responsible for creation of false market and there is not even a whisper that the Appellant had indulged in market manipulation. Shri Divan submitted that based on the investigation stated to have been carried out by the Respondent, the Appellant was called upon to show cause in respect of the following charges:

> I(a) by virtue of its dealings in the scrip of ARBL on behalf of Shri Harinarayan Bajaj the Appellant has failed to exercise due skill and care in its dealings .

a. the Appellant traded in the shares of ARBL beyond its own financial capacity.

b. the Appellant allowed the client to take position beyond the client's financial position.

> and, therefore, violated regulation 7, Schedule II of the 1992 Regulations.
>
> II the Appellant aided and abetted Shri Harinarayan Bajaj and his family members in creating a false market in the ARBL's scrip violating the

provisions of regulation 4 of the 1995 Regulations.

Learned Counsel submitted that the Appellant has been exonerated of the charge of trading beyond its own financial capacity and aiding and abetting Shri Harinarayan Bajaj in creating false market, but has been penalised holding that the Appellant did not exercise due skill and care in its dealings with Shri Bajaj.

Shri Divan submitted that it is not the Respondent's case that the Appellant has violated any of the substantive provisions of the Act, rules or regulations. According to him failure to exercise due skill and diligence can not survive independent of any offence and the Respondent has not put forth any evidence in support of its finding holding the Appellant guilty of violating any of the provisions of the Regulations.

Learned Counsel submitted that LKP Shares and Securities Ltd. (LKPSS) is a sister concern of the Appellant, that the Respondent had investigated the role of the said company also in the context of the market behaviour in the scrip of ARBL during the same period and in identical circumstances found the said company not guilty of any offence warranting suspension of its registration and the company was rightly acquitted with a warning. In this context Shri Divan referred to the show cause notices issued to the Appellant and the said company, their replies and the order passed by the Chairman, all annexed to the appeal. . He submitted that both the cases were enquired by the same enquiry officer and the show causes notices in both the cases were also adjudicated by the Chairman but in the case of the Appellant an entirely different stand was taken, despite the Appellant having brought to the notice of the Chairman the stand taken by the Respondent in the case of LKPSS. He submitted that the Chairman seems to have missed this important point as there is no mention in the order on the submission made by the Appellant and as to why the said submission was not acceptable and for what reason the Appellant was treated harshly in the same set of facts in which LKPSS was let off.

Shri Divan referred to the impugned order and submitted that the order is very cryptic and does not deal with the written and oral submissions made by the Appellant in the enquiry proceeding before the Chairman. In this context he referred to the decision of this Tribunal in M. J. Patel V Securities and Exchange Board of India ((2002) 38 SCL 889 (SAT)) wherein the Tribunal had citing the relevant regulations held that the suspension or cancellation order should be a speaking order. Learned Counsel submitted that the impugned order has not disclosed the material based on which the Respondent has come to the conclusion holding the Appellant guilty warranting imposition of penalty.

Shri Divan referred to the impugned order and submitted that it has been stated therein that "Shri Harinarayan Bajaj and his son Rahul Bajaj were primarily responsible for creating a false market in the scrip of ARBL…" and the Appellant was not found to have done anything in the said process. He further submitted that in the order, the Respondent has stated that "the broker member (the Appellant) was responsible for not exercising due care and skill as mandated by the 1992 Regulations" and that "the broker member had not followed prudential risk management norms by allowing the client to take big exposure". He submitted that the Respondent has not prescribed and published any such prudential norms but left it to the subjective decision of the concerned broker, that therefore, the Respondent can not hold that the Appellant did not follow the prudential norms without ascertaining the norms adopted by the Appellant. He submitted that the finding recorded in the order that the client had defaulted huge amount to the broker member and "the broker member had allowed the client to take exposure beyond the clients financial capacity" is not based on any evidence, further the observation by the Respondent that "the conduct of the broker member in its dealing with Shri Harinarayan Bajaj in the scrip of ARBL is detrimental to the interest of the investors and the safety of securities market" is not borne out of what is mentioned in the order.

Shri Divan referred to the 'relevant period ' during which the market for ARBL's shares was stated to have been manipulated and also various dates such as the date of appointment of enquiry officer etc., ultimately resulting in the issuance of the impugned order on 12.6.2002. He submitted that the order has referred to the first week of October, 2000 as the base and 8.3.2001 as the peak during which ARBL's shares registered price rise – from Rs.91 to Rs.320. Shri Divan submitted that the Appellant was not there trading to raise the price, that it came to the picture only for a short duration in mid February 2001 to first half of March 2001. He submitted that Shri Bajaj was introduced to the Appellant in mid February 2001 and it was not that as a result of the Appellant transacting in a very small quantity of shares of ARBL for Shri Bajaj the share prices went up, that the transaction covered only 7 days and the quantity involved in the transactions was very small, compared to the total transaction in the shares of ARBL at that point of time, that the fact that the Appellant was not aware of Shri Bajaj's design has been stated by the enquiry officer as could be seen from his observation that "LKPSL had done only few transaction for Shri Harinarayan Bajaj. They were primarily squared off transactions except one transaction in Settlement No.N 10 when the shares could not be sold because of downward circuits. There was no indication of price manipulation at the time LKPSL executed the trade for Mr. Harinarayan Bajaj.

LKPSL or its Directors have not traded in the scrip of ARBL. From the material available it is not possible to draw any inference that LKPSL had the intention to artificially raise or depress the price. There is no proof that LKPSL was aware of Mr. Bajaj dealing with other brokers nor had the information that Mr. Bajaj is indulging in creating a false market in the scrip of ARBL. What LKPSL did was a normal broking transaction as a stock broker. LKPSL had not gained anything except brokerage. In view of this, it can not be held that LKPSL has aided and abetted Mr. Harinarayan Bajaj and his family in creating a false market in the scrip of ARBL. Therefore, I find that LKPSL is not guilty of violating Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation 1995."

Learned Counsel submitted that some time in September, 2000, the Appellant opened a new branch at Ghatkopar, Bombay and since its opening the branch manager Shri Nirav Kapadia was making efforts to expand the business operations of the said branch, that there is nothing special, as suggested by the Respondent's counsel in transacting business from the Ghatkopar branch.

Shri Divan narrated the sequence of events, that in February, 2001, Shri Harinarayan Bajaj was introduced to the Appellant through its Ghatkopar Branch, by one Shri Vipul Shah who was known to the Appellant through one of its employees, that on 13.2.2001 Shri Vipul Shah visited the office of the Appellant at Veena Chambers, Fort and during this visit, Shri Shah was introduced to Shri Janak Mehta, Director of both the Appellant and LKPSS, that Shri. Nirav Kapadia, the Ghatkopar Branch Manager, was also present at the meeting, that in the meeting, various discussions took place and it was agreed that Shri Bajaj would give a 10% margin in respect of his trading activities consistent with the prevailing market norms applied by the Appellant and other brokers relating to the margin money collected from individual investors. On 13.2.2001, Shri Nirav Kapadia visited the office of Shri Bajaj at Fort, Mumbai to verify, inter alia, the authenticity of the address and he filed a client visit report in respect of the visits and a copy thereof was produced before the Chairman of the Respondent in the enquiry proceedings, that thereafter, on 15.2.2001 Shri Bajaj executed a customer enrolment form and a member-client agreement with the Appellant and also furnished photocopies of his voter identity card and his passport. He referred to the copy of the customer enrolment form and the said agreement together with its enclosures filed with the appeal. Shri Divan submitted that simultaneously, Shri Bajaj who also desired to trade in shares on BSE, filed in a customer enrolment form and executed a broker-client agreement with LKPSS, that in these documents, Shri Bajaj indicated that he was already registered with another member / borker namely, Mukesh Babu Securities Ltd., under client Code No. H1119 of BSE. He referred to the copy of the customer enrolment form and agreement in respect of LKPSS, both dated 15.2.2001 filed along with the appeal He submitted that Shri Bajaj had agreed that he would maintain a 10% margin in respect of his trading activity within the trading limit of Rs.50 lakhs to start with and then up to a maximum limit of Rs. 2 crores and had also agreed to deposit the requisite margin money before undertaking any trade, that Shri Bajaj thereafter deposited the margin money of Rs.4 lakhs with the Appellant's sister concern, LKPSS after which the first orders were executed by the Appellant, that on 16.2.2001, the Appellant purchased 25000 shares of ARBL at the rate of Rs.261.60 per shares for Shri Bajaj and thereafter the Appellant transacted business for Shri Bajaj on only 8 occasions / trading days, that the Appellant ensured that the margin deposited by Shri Bajaj was at all times 10% or more of his total exposure, and accordingly, commensurate with the increased trading activity of Shri Bajaj, larger amounts as and by way of margin were required to be deposited by the Appellant, and were in fact deposited by Shri Bajaj with the Appellant / LKPSS. Learned Counsel referred to the contract notes issued by the Appellant and LKPSS in respect of the transactions with Shri Bajaj filed along with the appeal. The ledger account of Shri Harinarayan Bajaj as appearing in the books of the Appellant and LKPSS showing, inter alia, the deposits received from time to time filed with the appeal was also referred to by the learned Counsel.

Learned Counsel stated that on 9.3.2001 the overall exposure of Shri Bajaj to the Appellant and LKPSS was to the tune of Rs.1.74 crores against which the Appellant / LKPSS held margin money of Rs.21 lacs and additionally, about Rs.20 lacs of profit of Shri Bajaj had been retained by the Appellant as security and as such the aggregate margin available to the Appellant was approximately 23% of the total exposure. In normal circumstances, the 23% margin would have been more than an adequate safeguard and security against any fluctuation in the market that it was only because of a complete melt-down in the prices of the ARBL scrip the Appellant was not able to liquidate the shares and recover its dues. The price of ARBL shares on 5.3.2001 was Rs.310/-. The Appellant sold 85,000 shares at Rs.310/- and insisted on buying only 55,000 shares i.e. 30,000 shares less at a price of Rs.315.80 in order to reduce exposure. The price of the ARBL share was approximately Rs.316/- at 2.00 p.m. on February 9.3.2001 when BSE closed early to accommodate the Badla transactions, that the closing price on NSE which was open till 4.00 p.m. was at lower circuit of 16% and was Rs.266/-, that on Monday 12.3.2001 BSE opened after adjusting downwards the price of the shares of ARBL and went immediately into another downward circuit of 16%. The share went into continuous downwards filters and the circuit first time opened on 16.3.2001 after hitting daily downward circuits. The Appellant / LKPSS even during these times sold 22,929 shares and on 16.3.2001 sold further 16990 shares at Rs.110.60 per share, that the

Appellant took all care to reduce the exposure and outstanding positions of Shri Bajaj, that in fact on the first day the scrip hit the lower circuit on NSE, the Appellant instructed Shri Bajaj to either give further margin or to liquidate the outstanding positions. Learned Counsel stated that the share price of ARBL crashed and hit 6 continuous lower circuits on the 9th, 12th, 13th, 14th, 15th and 16th March, 2001 and the share price went from a high of Rs.316/- on 8.3.2001 to a low of Rs.111.60 on 19.3.2001, that during this period the Appellant monitored the situation closely and took the requisite steps to call on Shri Bajaj to provide additional margins and when he failed to do so the Appellant and its sister concern not only sold ARBL shares to reduce the outstanding purchase position, but also sent a letter to Shri Bajaj informing him that they were selling 55,000 shares of ARBL since he was not furnishing additional margins, that on 13.3.2001 the Appellant sold 18,338 shares (out of 55,000 shares) of ARBL standing to the account of Shri Bajaj and requested him to pay the difference, that on 14th March, 2001, the Appellant wrote a letter to the Inspection Department of NSE bringing to its notice the impermissible activities relating to the price manipulation suspected to have been engineered by Shri Bajaj in respect of the shares of ARBL. Learned counsel submitted that the bona fides of the Appellant are thus evidenced by its action.

Shri Divan submitted that the observation by the enquiry officer that "Due skill and care' as used in Clause A(2) of Schedule II of the 1992 Regulation would mean, at least, such care and skill as a man of ordinary prudence and caution could exercise under similar situation" is not correct that the due diligence is required to be done not as an ordinary person, but as a stock broker and that the Appellant was not found wanting in this regard as it had acted diligently by collecting even more margin, verifying the clients details deputing its own representative etc. In this context he referred to the observation made by the enquiry officer that "it should be noted that there are no quantitative restrictions laid down with regard to each trade and the same is left to prudential risk management of the Stock Brokers within the framework of law" and submitted that having said that the prudential risk management is left to the broker, the enquiry officer in the same breath stated that "such a huge exposure to Bajajs is certainly not indicative of any prudential risk management norms adopted by LKPSL" discarding the Appellant's submission that it had taken adequate care and skill in its dealing with Shri Bajaj.

Shri Divan submitted that the Appellant was alert and vigilant as is evident from its conduct that market collapse as admitted by the Respondent also was not the Appellant's creation, that for seven days it was a "falling market" for ARBL scrips and as a result the Appellant could not sell quickly the shares of ARBL. He submitted, in the normal course, 23% margin available with it was a sufficient safeguard, but the crisis that developed was of unexpected magnitude and the Appellant could do nothing in the scenario.

Learned Counsel submitted that statutory provisions are required to be strictly construed, while imposing penalties. In this context he referred to the Hon'ble Supreme Court's observation in Supreme Court Bar Association V. Union of India and Anr. (1998) 4 SCC 409 that:

"Since the suspension or revocation of license of an advocate has not only civil consequences but also penal consequences the punishment being in the nature of penalty the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the charge is established against the advocate in the manner prescribed by the Act and the Rules framed under". He submitted that the punishment of suspending the registration granted to the Appellant by the Respondent can be imposed, as observed by the Apex Court, after the charge is established against it in the manner prescribed by the Act and the Regulations, that the Respondent has not followed the said requirement. Learned Counsel submitted that the charge has not been established and therefore, no penalty should have been imposed. He also referred to regulation 29 and submitted that as per sub regulation (2) thereto "the Board after considering the reply to the show cause notice, if received, shall as soon as possible, but not later than thirty days from the receipt of the reply, if any, pass such orders as it deems fit", that thus this requirement was not complied with. The show cause notice dated 4.3.2002 issued by the Respondent was replied by the Appellant on 22.3.2002, that despite the requirement of passing the order as soon as possible, but not later than 30 days from the receipt of the reply, the impugned order was made only on 12.6.2002 i.e. beyond the mandatory period and that on this ground itself the order deserves to be set aside.

Learned counsel submitted that "due diligence" is required to be exercised qua somebody, that even the failure to do so, can not be a cause to impose penalty, unless it is established that as a result of such failure somebody has been adversely affected. He submitted that as a result of the alleged failure to exercise due diligence, the client did not suffer, the stock exchange did not suffer and even the counter party did not suffer. Learned Counsel further submitted that penalty can not be imposed without adequate justification and cited Hon'ble Supreme Court decision in Hindustan Steel V. State of Orissa (AIR 1970 SC 253) that "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceeding and penalty will not be ordinarily imposed unless the party obliged

either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute." He submitted that it is not the Respondent's case that the Appellant defied the legal requirement deliberately or was guilty of conduct contumacious or dishonest.

Learned Counsel further submitted that the Respondent has imposed penalty of suspension totally ignoring the gravity of the charge leveled against the Appellant. In this context he referred to the profile of the Appellant and the size of its activities and the stigma the impugned order has cast on the Appellant and referred to the letters received by it from some of its institutional clients like National Securities Depository Ltd., (NSDL) PNB Gilts Ltd etc.. conveying their reaction in the context of the Respondent's order. He submitted that such a penalty of suspension of the Appellant's registration certificate should not have been imposed, for a trivial matter of no consequence, even if it is admitted for argument sake that there was a failure as alleged. He submitted that suspension of registration certificate even for a day is disastrous for the reputation and goodwill built over by the Group over the years, that the penalty can not be disproportionate to the omission or commission by the Appellant and referred to the Hon'ble Supreme Court's decision in Ex-Naik Sardar Singh V. Union of India (1991) 3 SCC 212 that "the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution". Learned Counsel submitted that in the light of the principle laid down by the Court the harsh punishment of suspension of business for an unestablished trivial charge can not be sustained. He referred to this Tribunal's decision in M.J. Patel V. SEBI (2002) 38 SCL 889, "that suspension or cancellation of the certificate granted to carry on broking business is not a matter which could be treated lightly. In the absence of sufficient justification supported with reasonable evidence, such a penal action cannot be sustained.". He also referred to the Hon'ble Supreme Court in the Institute of Chartered Accountants of India V. L. K. Ratna (1986) 4 SCC 533 and this Tribunal's observation in D. A. Gadgil V. (SEBI (2002) 27 SCL 138 in this regard.

Learned Counsel, referring to the submissions of the learned Counsel appearing for the Respondent that client registration forms were not filled up properly and that adequate margin was not collected, submitted that the learned Counsel can not rewrite the impugned order, that the order is to be defended as it is. He submitted that there is no reference to any such deficiency as now raised by the Counsel, in the order or even in the reply filed by Respondent. In this context he referred to M S Gill V. The Chief Election Commission (1978) 1 SCC 405 at p 417) wherein the Hon'ble Supreme Court had held that "when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and can not be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out … Orders are not like old wine becoming better as they grow older". Shri Divan submitted that the Respondent's counsel can not adduce new grounds, and new facts which are not in the show cause notice and in the order, at this stage of the proceedings.

Shri Kumar Desai, learned Counsel appearing for the Respondent submitted that the Respondent has rightly imposed the penalty of suspension of the certificate of registration as the charges against the Appellant have been established.

Shri Desai submitted that based on the investigation carried out by the Investigating Officer appointed by the Respondent, the Appellant was asked to explain its conduct with reference to four charges referred to in the show cause notice issued to it. The enquiry officer after enquiry found the Appellant guilty of two charges holding that (i) by virtue of its trading in the scrip of ARBL on behalf of Shri Harinarayan Bajaj, the Appellant failed to exercise due skill and care in its dealings, (ii) allowed Shri Bajaj to take positions beyond the client's financial position. The other two charges i.e. (a) the Appellant traded in the scrip of ARBL beyond its own financial capacity and (b) the Appellant aided and abetted Shri Bajaj in creating a false and misleading market in the scrip of ARBL, were dropped.

Shri Desai submitted that a broker before taking up any business for a client is required to know the client's identity, credibility and background and certain procedures for the purpose have been specified in this regard by the Respondent.

Shri Desai submitted that the fact that the Appellant had not made any effort to know the client fully well has been established. In this context he referred to the observation in the order that "LKPS had taken the

prescribed client registration Form and also executed member-client agreement with Shri Harinarayan Bajaj but the client registration form was found wanting in details pertaining to annual income and market value of portfolio of the client", that it has also been stated that no documentary evidence was produced before the enquiry officer to establish the Appellant's version that its branch manager had visited the client's premises. Shri Desai submitted that the very reason for transacting the business for Shri Bajaj through the Appellant's Ghatkopar branch, despite the fact that Shri Bajaj was residing in South Bombay is also a pointer. He also referred to the copy of the Customer Enrolment Form filed by the Appellant along with the appeal and stated that there is no details about the introducing party, customer code etc. and also referred to the format of the form specified by SEBI for the purpose and submitted that the information required to be furnished at each item in the said format are of considerable relevance as the same enables the broker to know the credibility of the client. According to Shri Desai, if Shri Vipul Shah was the introducer, as claimed by the Appellant, his name should have been disclosed in the form. In this context he referred to the Appellant's version in ground E (i) in the appeal that "the Appellant required Mr. Vipul Shah who was placing orders and delivering payment/correspondence on behalf of Mr. Bajaj to meet its director Mr. Janak Mehta at the Appellant's head office." and submitted that this statement suggests that Shri Vipul Shah, the introducer, was involved in the transaction.

Shri Desai submitted that the margin money was collected by the Appellant's sister concern LKPSS that the Appellant and LKPSS are distinct legal entities and as such the margin money collected by LKPSS can not be considered as margin money collected by the Appellant, that there is no evidence on record to show that the Appellant had collected requisite margin by itself, that on the contrary the evidence suggest that the Appellant was trading on the basis of the margin money collected by its sister concern LKPSS, which is not permissible.

Shri Desai submitted that when a person fails to exercise due skill and care without knowing his clients' exposure capacity, he is putting the system in jeopardy. According to Shri Desai margin collection by itself is not sufficient, that margin payment is the obligation of the broker and the broker in turn collects the amount from his client, that the broker is required to know the financial capability of his client before he undertakes business on the client's behalf.

Shri Desai submitted that by the Appellant's own version as per the order, the Appellant knew that Shailesh Bajaj was a defaulter in BSE, that the said Shailesh Bajaj is the son of Shri Harinarayan Bajaj, that a large broking firm like the Appellant can not be unaware of the said fact, but still it decided to transact business with Shri Harinarayan Bajaj.

Learned Counsel submitted that the Appellant's version that it was unaware of the other brokers with whom Shri Bajaj was trading is difficult to believe, as could be seen from the Appellant's own letter dated 14.3.2001 addressed to NSE wherein it was stated that "As of today atleast 15-20 brokers have fallen to victim of such foul play. We are one of them. It appears that same buyer on our side has sold these shares through other set of brokers. The client has defaulted for pay-in at all the buyer brokers office." According to Shri Desai the Appellant's knowledge of 15-20 brokers involvement can not be an altogether new finding of which it was claiming unaware while transacting with Shri Bajaj.

Shri Desai submitted that the charge that the Appellant by virtue of its trading in the scrip of ARBL on behalf of Shri Harinarayan Bajaj had failed to exercise due skill and care is revealed from the fact that the Appellant had not made proper documentation disclosing the relevant facts relating to Shri Bajaj and his capacity to meet the financial commitments on such huge exposure.

Learned Counsel submitted that in terms of regulation 26(1)(ii) the Respondent is empowered to impose penalty of suspension of registration on a stock broker who do not follow the code of conduct prescribed in Schedule II to the 1992 Regulations, that in Schedule II it has been inter alia stated that "A stock broker shall act with due skill care and diligence in the conduct of all his business" and that according to regulation 7 "the stock broker holding certificate shall at all times abide by the code of conduct as specified in Schedule II.". He submitted that thus it is clear that observance of the requirements of the code of conduct is a requirement of the regulation and the failure to observe the same could visit with the penalty of suspension of certificate of registration provided in the Regulations. The argument that the Appellant is doing large scale business or that the 15 days' suspension is not justified because of the Appellant's standing is unacceptable as the penalty is relatable to the offence committed and not to the size and measure of activities of the offender. With reference to the authority cited by the Appellant (Ex-Naik Sardar Sigh) regarding the proportionality of the punishment Shri Desai submitted that the same has no relevance to the instant case as the proportionality theory is not with reference to the size of the party who committed the offence. He submitted that the penalty imposed by the Respondent is quite reasonable, that suspension is only for 15 days and not for an unduly long period that in any case since the charges have been proved the nature of penalty to be imposed need be left to the authority concerned as long as it is not excessive, that the Tribunal at this stage will not be justified in interfering

with the decision taken by the concerned authority in this regard.

With reference to the Appellant's contention that the impugned order was issued beyond the 30 days time prescribed in regulation 29, Shri Desai submitted that the Appellant answered the show cause notice dated 4.3.2002 vide its letter dated 22.3.2002, and thereafter made oral submissions on 13.5.2002 and the impugned order was issued on 12.6.2002, i.e. within 30 days of the hearing In this context Shri Desai relied on this Tribunal's order in Doogar & Associates v. SEBI (2001) 32 SCL 9 (SAT) holding that oral submissions are also to be treated as replies and that since the order was issued within 30 days of the completion of the oral submissions, it can not be said that the order was issued beyond the time limit prescribed in the regulation.

Referring to the Hindustan Steel case (supra) relied on by the Appellant, Shri Desai submitted that imposition of penalty depends on the facts and circumstances of each case, and the facts and circumstances warranting imposition of penalty in the instant case are at variance with facts and circumstances in the Hindustan Steel and as such the ratio of the said case has no application to the present case. With reference to the reliance placed on the decision in Supreme Court Bar Association (Supra) relied on by the Appellant, Shri Desai submitted that the said decision does not prevent the concerned authority from imposing penalty, that the requirement stipulated therein is that penalty could be imposed after the charge is established in a manner prescribed by law that in the instant case the charges have been established after conducting proper enquiry as per the 1992 Regulations. Shri Desai submitted that the Tribunal's decision in Gadgil (supra) and M. J. Patel (supra) are based on entirely different factual background and hence of no support to the Appellant.

Shri Desai submitted that the argument that the Appelant and LKPSS are similarly placed on facts but discriminatory view was taken by the Respondent is incorrect as the factual position leading to imposition of penalty in both the cases are not identical as claimed by the Appellant. He stated that the clear distinction – major distinction – is that the Appellant did not collect sufficient margin from the client whereas LKPSS had collected the requisite margin and hedged the risk to some extent and after taking into consideration all the relevant aspects it was decided that a warning will do in the case of LKPSS.

I have carefully considered the pleadings and the submissions made by the counsel for the parties and the material on record, and my views are as follows:

The impugned order is in the context of the market behaviour in terms of price and volume, witnessed in trading in the shares of ARBL, particularly in February – March, 2001. It is seen that the price of the scrip which was hovering around Rs.91/- in the 1st week of October 2000, reached Rs.205/- on January 1, 2001 and further touched a high of Rs.320/- on March 8, 2001. But the same crashed to Rs.78.50 by March 19, 2001. Further the volumes traded in the scrips around 50,000 – 60,000 shares per day went up to the extent of 10-15 lacs shares per day in January – March, 2001. The Respondent's investigation prima facie revealed one Shri Harinarayan Bajaj and his son Shri Rahul Bajaj were the predominant traders in the scrip of ARBL during the period August 2000 to March, 2001 and held them responsible for the creation of false market. The investigation carried out by the Respondent indicated that various members of both NSE and BSE had aided and abetted Shri Harinarayan Bajaj in creating a false market, in the scrip of ARBL and they were also found to have not exercised due skill and care in their dealings. The Appellant was one among those brokers who were investigated in the said context. Though after the investigation and enquiry, the Appellant was absolved of the charge of aiding and abetting Bajajs, it was found wanting in exercising due skill and care in its dealings, as required in terms of Clause A(2) of the Code of Conduct prescribed in the 1992 Regulations.

The finding of the Respondent is confined to the following paragraphs:

> "I have perused the enquiry report, the reply filed by the broker member and the submissions made on behalf of the broker member at the time of personal hearing. I find from the said records that Shri Harinarayan Bajaj and his son Rahul Bajaj were primarily responsible for creating a false market in the scrip of ' ARBL' and because of their transactions the volumes in the scrip also went up to around 8-15 lakhs share per day in the month of Feb & first week of March 2001 from 50,000-60,000 shares per day in Oct. 2000.
>
> In this regard, I have carefully examined the explanation given by the broker member however, I find that the broker member was responsible for not exercising due care and skill as mandated by SEBI (Stock Brokers and Sub Brokers) Regulation 1992. The broker member had given a very high exposure to its first time client Shri Harinarayan Bajaj when the market price of the scrip was ruling at 52 weeks high. This establishes that the broker member had not followed prudential risk management norms by allowing the client to take

big exposure. Ultimately, the client had defaulted a huge amount to the broker member. The broker member had allowed the client to take exposure beyond the client's financial capacity. In view of the said facts, I am of the opinion that the conduct of the broker member in its dealings with Shri Harinarayan Bajaj in the scrip of 'ARBL' is detrimental to the interest of the investors and the safety of the securities market.

The submissions made by the broker member that he has not violated the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and the provisions of SEBI (Stock brokers and sub brokers) Regulations, 1992 are not satisfactory.

In view of the above, I accept the recommendations of the Enquiry Officer and therefore under the provisions conferred upon me under Section 4(3) of SEBI Act, 1992 and Regulation 29(3) of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992, I hereby suspend the certificate of registration granted to LKP Securities Ltd., Member (INB 230720030). National Stock Exchange, for a period of 15 days w.e.f. 27th June, 2002."

It is noticed that the Respondent found "the submissions made by the broker member that he has not violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and the provisions of SEBI (Stock brokers and sub brokers) Regulations, 1992" not satisfactory. On a perusal of the show cause notice and the enquiry report it is seen that the Appellant was not called upon to explain its conduct with reference to violation of the provisions of the 1995 Regulations. In this context the observation made by the enquiry officer in the following paragraph is considered relevant:

"LKPSL had done only few transactions for Shri Harinarayan Bajaj. They are primarily squared off transactions except one transaction in Settlement No.N 10 when the shares could not be sold because of downward circuits. There was no indication of price manipulation at the time LKPSL executed the trade for Mr. Harinarayan Bajaj. LKPSL or its Directors have not traded in the scrip of ARBL. From the material available it is not possible to draw any inference that LKPSL had the intention to artificially raise or depress the price. There is no proof that LKPSL was aware of Mr. Bajaj dealing with other brokers nor had the information that Mr. Bajaj is indulging in creating a false market in the scrip of ARBL. What LKPSL did was a normal broking transaction as a stock broker. LKPSL had not gained anything except brokerage. In view of this, it can not be held that LKPSL has aided and abetted Mr. Harinarayan Bajaj and his family in creating a false market in the scrip of ARBL. Therefore, I find that LKPSL is not guilty of violating Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation 1995."

He had in his recommendation also clearly stated that:

"On the basis of finding given on Allegation / Charge I, I find that the conduct of LKPSL in its dealings with Shri Harinarayan Bajaj in the scrip of ARBL warrants imposition of penalty of suspension of registration, in terms of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. I, therefore, in terms of Regulation 28(7) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 recommend that the Certificate of Registration granted to LKPSL as a stock broker may be suspended for a period of 15 days."

The Allegation / Charge I referred above as per his report is :

"1(a) LKPSL by virtue of its trading in the scrip of ARBL on behalf of Shri Harinarayan Bajaj has failed to exercise due skill and care in its dealings;

(b) LKPSL has allowed the client to take position which is beyond clients financial position;

(c)LKPSL has traded in the scrip of ARBL beyond its own financial capability;

and therefore, violated the Code of Conduct under Regulation 7, Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992."

Since the enquiry report is the basis of the charges and the Appellant was required to answer only those charges which the enquiry officer had upheld, it is not clear from the order as to the basis on which the observations that the Appellant's submissions that it has not violated the provisions of the SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation 1995, are not satisfactory, has been made. It is true that violation of the said Regulation was also enquired into by the enquiry officer, but the fact that his finding absolving the Appellant of the said charge appears to have lost sight of. In the operative portion of the impugned order following the above cited para it has been stated that "In view of the above, I accept the recommendations of the Enquiry Officer and therefore under the provisions conferred upon me under Section 4(3) of SEBI Act, 1992 and Regulation 29(3) of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992, I hereby suspend the certificate of registration granted to LKP Securities Ltd., Member (INB 230720030). National Stock Exchange, for a period of 15 days w.e.f. 27th June, 2002." Charge of market manipulation by violating the provisions of the 1995 Regulation is a serious one and the Respondent viewing that the Appellant had violated the provisions of the said Regulations, appears to have weighed against the Appellant, inviting the penalty of suspension of certificate of registration, as against warning issued to LKPSS, a case in which there was no charge of violation of the provisions of 1995 Regulations. If the Appellant was to be proceeded against for violating the provisions of the 1995 Regulations, in the light of the clean chit given by the enquiry officer and the enquiry report being the document relied on by the Respondent, it was necessary for the Respondent to level the said charge specifically and state the facts in support and thereby give the Appellants an opportunity to answer the said charge.

Shri Desai's inference that the Appellant knew other brokers dealing for Bajaj can not be accepted in the light of the clear finding of the enquiry officer referred to above that "There is no proof that LKPSL was aware of Mr. Bajaj dealing with other brokers nor had the information that Mr. Bajaj is indulging in creating a false market with scrip of ARBL."

With reference to the Allegation / Charge I referred to in the enquiry report it is noticed that the compliance of the Code of Conduct enumerated in Schedule II of the 1992 Regulations is a requirement of Regulation 7 and therefore, it is not necessary to prove any other offence as canvassed by Shri Divan. Violation of the Code of Conduct itself is a violation of the regulation and if the violation is established, it could be a ground to suspend the certificate of registration under regulation 26(1)(ii). According to regulation 7 "the Stockbroker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II". Clause A(2) referred to in the order is on "Exercise of due skill and care" which requires: "a stockbroker shall act with due skill care and diligence in the conduct of all his business".

On a perusal of the impugned order and the material before me, it appears that the market collapse in the case of ARBL shares was in the context of mega size trading allegedly done for one client – Bajajs - by several brokers. Gigantic size of the transaction effected for the said client has been stated in the order. It appears that there were several players. It is seen from the material on record that the Appellant started dealing in the scrip of ARBL from mid February 2001 to the first part of March 2001 and that there were only very few transactions during the period As per the information furnished by the Appellant in its reply to the show cause notice the Appellant transacted with Shri Bajaj for a limited period of about 7 days only. The factual position has been explained as follows in the enquiry report:

> "It is an admitted fact that LKPSL had executed trades in the scrip of ARBL, for Mr. Harinarayan Bajaj amounting to a total volume of 2,50,000 shares (purchases) and 1,95,000 shares (sales) with a Nil delivery of shares, in Settlement Nos. N 07 to N 10 in NSE. This enabled Shri Bajaj to build up positions in the market in the scrip of ARBL. However, this should be viewed in light of the fact that there was no evidence to establish LKPSL aware Shri Bajaj's dealings with other stock brokers. In settlement no.N 10, it had purchased 55,000 shares for Shri Bajaj . LKPSL sold 18,338 shares on March 13, 2001 at Rs.188/- and balance shares of 36,662 were received by it in the pay-out.
>
> LKPSL had taken the prescribed client registration application form and also executed member – client agreement with Shri Harinarayan Bajaj. It had collected the required margins from Shri Bajaj.. However, it is observed from the client registration form that the details pertaining to Annual income and market value of portfolio of the client are not reflected in the application. LKPSL should have incorporated the said details, otherwise, client registration becomes only a formality rather than an exercise of due skill and care in introducing a client to the market.
>
> It is to be noted that Shri Bajaj had a debit balance of Rs.1.25 crores at the end of Settlement No. N 10 with LKPSL. Hence LKPSL had suffered a huge loss in their dealings with Shri Bajaj in the scrip of ARBL. LKPSL had admitted that they knew Shri Shailesh Bajaj was declared as a defaulter in BSE. However, they were not aware that he is the son of Shri Harinarayan Bajaj.

As revealed in the hearing held on 17.10.2001, during the period from February 2001 to March 2001, the entire volume of trades executed by LKPSL was for Shri Harinarayan Bajaj. In addition they have also traded in the scrip of ARBL for small individual clients also. This shows that LKPSL had given high exposure to Shri Harinarayan Bajaj by executing trades with buy positions ranging from 25,000 to 85,000 shares per settlement. It should be noted that there are no quantitative restrictions laid down with regard to execution of each trade and the same is left to the prudential risk management norms of the Stock Broker within the framework of law. Such a huge exposure to Shri Bajaj is certainly not indicative of any prudential risk management norms adopted by LKPSL. LKPSL indicated that there is an exposure cap of Rs.2 crores for individual clients subject to collection of margin, though no logical explanation was given on how the cap of Rs. 2 crores was fixed. In any case, LKPSL had given the maximum exposure to Shri Bajaj even as per its standards and that too at a time when the market price of the scrip was ruling at 52 weeks' high. Ultimately, LKPSL had to loose heavily out of the dealings with Shri Bajaj. It is significant to note that LKPSL had no dealings with Shri Bajaj in the past. Therefore, there is no convincing defense from LKPSL that how it had given such a high exposure to Shri Bajaj. This vindicates/exposes the weakness of LKPSL's argument that it had taken adequate care and skill in its dealings with the client.

With regard to the allegation that the member has allowed the client to take position beyond the clients' financial position, LKPSL during the oral hearing submitted that it had inquired about the residential premises at Marine Drive owned by Shri Harinarayan Bajaj . Their branch manager also visited Shri Bajaj's official premises at Commerce House, Fort. However, no documentary evidence was produced to me in support of the above. In view of the fact that LKPSL had given a high exposure to Shri Bajaj when the scrip was traded at 52 weeks' high as explained above. Therefore, it is clear that LKPSL had allowed the client to take exposure beyond the clients financial capability. With regard to the allegation that LKPSL had traded in the scrip of ARBL beyond its own financial capability, LKPSL submitted that its networth as of March 2001 is approximately Rs. 3 crores. Further, LKPSL had not defaulted to NSE arising out of its dealings with Shri Bajaj. In view of the same the said allegation may not sustain.

From the aforesaid it is clear that LKPSL had failed to exercise due care and skill in his dealings with Shri Bajaj in ARBL, as mandated by the said clause A(2) of the Code of Conduct. I, therefore, find that LKPSL is guilty of violating Clause A (2) of Schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations 1992." (emphasis supplied)

From the finding of the enquiry officer quoted above it could be seen that the enquiry officer had observed that the Appellant had given high exposure to Shri Bajaj by executing trades with buy positions ranging from 25,000 to 85,000 shares per settlement and that there was no convincing defense from the Appellant that how it had given such a high exposure to Shri Bajaj. In this context it may be noted that the total volume of the trade in ARBL's shares transacted in the month of February and first week of March 2001 was around 8-15 lakhs shares per day, that a few transactions of shares effected by the Appellant can not be regarded as to have created any serious impact on the market considering the total volume of turnover in that scrip, much less creating a false and misleading market as alleged. In this context the observation made by the enquiry officer in his report, which the Respondent has accepted, is worth noting. According to the enquiry officer the Appellant had done only few transactions for Bajaj, that they were primarily squared of transactions except one transaction, in settlement No.N 10 where the shares could not be sold because of downward circuits, that there was no indication of price manipulation at the time the Appellant executed the trade for Bajaj, that the Appellant or its directors did not trade in the scrip of ARBL, that . What LKPSL did was normal broking transaction as a stock broker." The clean chit of the conduct of the Appellant has to be kept in mind while considering the charges levelled against it by the Respondent. It is not the Respondent's case that the Appellant had acted in concert with other brokers.

The Respondent's argument that the Appellant had not verified the financial position of Bajaj, that it should have asked for the details of the annual income and market value of port folio etc. are not that serious to charge the Appellant for failure to exercise due skill and care, in the context that Bajaj was introduced as a client by one of the business associates of the Appellant. It is seen that the Appellant had made available to the Respondent the copy of the client registration form and the concerned agreement copy in the enquiry proceedings, which the Respondent seems to have ignored. The argument that the Bajaj's financial capability was unknown to the Appellant remains unsupported, that on the contrary, the Appellant had submitted that they had collected margin of Rs,10 lacs and also Bajaj's account was credited by a further amount of about Rs.13 lacs which were retained by it as further margin. The

Appellant's statement that it was holding 23% margin as against the normal requirement of retaining 10% margin remains undisputed. In this context the following explanation given by the Appellant to the Respondent in its reply to the show cause notice is also to be noted.

> "The learned Enquiry Officer had taken the debit of Mr. Bajaj as Rs.1.25 crores and has not taken credit for the sale of 36,000 shares, which were in our possession after taking the credit, debit remains Rs.86 lakhs only and not Rs.1.25 crores. This is inspite of unprecedented downfall in the share price for 6 continuous downward circuits. It may be noted that till the day the first downward circuit hit on 9th March, 2001, in fact, our exposure risk was covered more than 100% taking into account the shares and margins. Hence our gross exposure level, in the normal course of business was within the comfortable limits. All the time it was only due to the unprecedented events and the 6 continuous downward circuit we faced situation where we were unable to cover the loss. However, it must be pointed out that we have voluntarily, on our own, informed SEBI about our dealings with Mr. Bajaj on 20th March, 2001. It may also be pointed out that gross exposure position of 55,000 shares remains only of 29,000 shares as we were able to dispose of about 18,000 shares in the normal course and more than 7000 shares inspite of downward circuit. It may be further pointed out that after dealings with Mr. Bajaj with other brokers was made known to all the brokers, other brokers who have dealt on behalf of Mr. Bajaj were not able to dispose off any substantial shares while we have been able to dispose off substantial shares reducing the gross exposure risk which also goes to show that extra care and due diligence which our office undertook in the course of prudential risk management.
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> Our turn over during the period for which we have dealt with Mr. Bajaj is about Rs.545 crores while the turnover of the transaction undertaken for Mr. Bajaj during the same period is Rs.13 crores, which amounts to a meager 2.38% only. The share prices have reasonably attained high levels and therefore even though quantity of trading of shares has remained same. Gross turn over has gone up. We have dealing on behalf of our clients for many other scrips like Infosys, Wipro, Digital, Reliance etc. where the gross turn over of the said shares will be much more than the shares of ARBL and the gross turn over of a client would be much more than the gross turn over of Mr. Bajaj. Keeping all these in view we have kept the market capitalisation of Rs.2 crores for gross exposure limit of any one client, that too subject to sufficient margin with us in the form of cash or shares or both. This policy decision was taken particularly on the basis of the Stock Exchange norms in giving exposure limits to the brokers. Hence, our gross exposure limit of Rs.2 crores per client in our humble submission is justified. In the case of Mr. Bajaj, our office in normal routine course had reduced the gross exposure limits from 10 times of margin to about 5 times of margins received or held on behalf of Mr. Bajaj. Hence in our humble submission due care and diligence was exercised by our office in the normal course of business also.
>
> The learned Enquiry Officer has held that we had no transactions in the past with Mr. Bajaj. It is our humble submission that we had opened a new branch at Ghatkopar to cater to various investors. Therefore, more or less all the clients were enrolled for the first time and with most of them we had no past dealings. Therefore, there was nothing abnormal our having accepted Mr. Bajaj as a constituent without having any dealing in the past. Same set of norms was applicable to all other clients at Ghatkopar branch. As far as finding of the learned Enquiry Officer that purchases were made on 52 week high, it may be pointed that the market had moved upward in the pre-budget period and in fact there were 10 more scrips prices in which had moved upward in the 52 week high region. Since the prices of ARBL were rising steadily upward, it has been on 52 week high band, therefore, all the transactions or dealings in the shares of ARBL in past 2/ 3 months were generally in the price band of 52 week high continuously. We also enclose list of the companies whose prices were moved in the price band on 52 week high, therefore the said factor should not have weighed on the mind of learned Enquiry Officer.

None of these submissions have been specifically dealt with in the order, except making a bald statement that "I have carefully examined the explanation given buy the broker member, I find that the broker member was responsible for not exercising due care and skill as mandated by SEBI (Stock Broker and Sub Brokers) Regulations, 1992". In this connection the following observation made by this Tribunal in its order dated July 8, 2002(Subsequent to the impugned order) in M J Patel is considered very relevant..

> "Suspension or cancellation of the certificate granted to carry on broking business is not a matter which could be treated lightly. In the absence of sufficient justification supported

with reasonable evidence, such a penal action cannot be sustained. In this connection one should not ignore the requirements of sub regulation 4 of regulation 29. As per the said regulation "every order passed under sub regulation (3) shall be self contained and give reasons for the conclusions stated therein including justification of the penalty imposed by that order". It is also to be noted that in terms of regulation 32 a person aggrieved by the order of the Board is entitled to prefer an appeal to the Tribunal. The regulation requires a speaking order to be passed by the Board. A non speaking order would certainly negate the Appellate remedy available to the person aggrieved by the order. It is seen from the order that the Respondent has not even mentioned in the order the particular regulation, which the Appellant has violated."

The following observation made by the Hon'ble Supreme Court in HVPNL V MAHAVIR (2001) 10 SCC 659 is also to be noted in this context:

> "In a number of cases coming up in appeal in this Court, we find that the State Consumer Disputes Redressal Commission, Haryana at Chandigarh is passing a standard order in the following terms:
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> "We have heard the Law Officer of HVPN – appellant and have also perused the impugned order. We do not find any legal infirmity in the detailed and well-reasoned order passed by District forum. Kaithal. Accordingly, we uphold the impugned order and dismiss the appeal."
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> "We may point out that while dealing with a first appeal, this is not the way to dispose of the matter. The appellate forum is bound to refer to the pleadings of the case, the submissions of the counsel, necessary points for consideration, discuss the evidence and dispose of the matter by giving valid reasons. It is very easy to dispose of any appeal in this fashion and the higher courts would not know whether learned State Commission had applied its mind to the case. We hope that such orders will not be passed by the State Consumer Disputes Redressal Commission, Haryana at Chandigarh in future."

Though the said observations are with reference to orders in first appeal, the requirement set in there is equally – perhaps more – applicable to the original orders also. An order should speak for itself.

Shri Divan's argument that the impugned order is timebarred in terms of regulation 29(3) is not acceptable as the order was passed within 30 days from the date of hearing and that the date of hearing could be treated the date for reckoning 30 days has already been held by this Tribunal in Doogar Associates (supra).

I agree with Shri Divan that new grounds on new set of facts can not be raised in the appeal proceedings, going beyond the order under challenge. He has rightly cited M. S. Gill.(supra) Therefore Shri Desai's argument that there was not sufficient margin, that Appellant can not be said to be unaware of the other brokers' dealings for Bajaj, that several particulars were not disclosed in the form etc. can not be accepted at this stage of the proceedings. I do not find any thing wrong in Shri Vipul Shah, who the Appellant claims is its business associate, introducing the client, that in one way an introduction from a known business associate could be more trustworthy than an introduction from an unknown person. Similarly, transacting the business through the Ghatkopar branch of the Appellant by itself does not indicate anything unusual to suspect the bona fides of the Appellant. The enquiry officer has come to the conclusion mainly on the ground that (1) in the client registration form the details pertaining to Annual income and market value of portfolio of the client was not reflected (2) Shri Bajaj was given high exposure by executing trades with buy positions ranging from 25,000 to 85,000 shares per settlement with an exposure capital of Rs.2 crores (3) Shri Bajaj was allowed to take exposure beyond his financial capacity. But it is evident from the material on record that Shri Bajaj was introduced to the Appellant by known source and that the Appellant's representative had made spot visit and verified the client detail. In these circumstances, in my view, omission to fill up few columns remain as pure technical lapse and it can not be considered as failure to exercise diligence and care. It was the case with LKPSS also, but the said omission was not considered as a failure to exercise due skill and care in the case of LKPSS. With reference to the other two grounds referred to above, it is seen that the Appellant had clearly explained the position in its reply to the show cause notice from the Respondent, an extract of which has been provided in the preceding portion of this order. The impugned order has not made any observation on the said submissions. The Respondent has admitted that it has not set any prudential norms and as such the Appellant allowing Bajaj to trade taking adequate margin and putting the cap at Rs.2 crores based on its judgement can not be said to be a failure to exercise due skill and care. I find the submission made by the Appellant in this regard, especially in the absence of any specific rebuttal of the same by the Respondent, convincing and acceptable. In these circumstances I am not inclined to agreement with the conclusion

arrived in the impugned order that the Appellant had failed to comply with the requirement of regulation 7 read with Clause A(2) in Schedule warranting imposition of penalty. In view of the same, I do not consider it necessary to go into the various authorities cited by the learned counsel, on the principles governing imposition of penalty, proportionality etc.

The Respondent, for the reasons stated above, has failed to establish the charges and, therefore, the order can not be sustained.

Appeal allowed.

Place : Mumbai
Date : November 22, 2002

Sd/-
(C.ACHUTHAN)
PRESIDING OFFICER