BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

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Appeal No.04/2002

In the matter of:

M/s. M.J. Patel **Appellant**

Vs.

Securities & Exchange Board of India **Respondent**

Appearance:

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Shri B.L. Sarda

Chartered Accountant

Shri S.C. Mantri

Chartered Accountant **for Appellant**

Shri J. Ranganayakulu

Jt. Legal Advisor, SEBI **for Respondent**

(Appeal arising out the order dated 4.2.2002, made by Shri D.R. Mehta, Chairman, Securities and Exchange Board of India)

ORDER

The present appeal is directed against the Respondent's order dated 4.2.2002 suspending the certificate of registration for acting as stock broker granted to the Appellant, for a period of two months with effect from 18.2.2002. The Appellant had sought interim stay against the operation of the order during the pendency of the appeal. After hearing the parties and taking into consideration all the relevant aspects, operation of the impugned order was temporarily stayed by the Tribunal, pending disposal of the appeal.

The impugned order is a short order spread over on 2 ½ pages. Full text of the order is extracted below:

"ORDER UNDER REGULATIONS 29(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA (STOCK BROKERS AND SUB BROKERS) REGULATIONS, 1992 IN THE PUBLIC ISSUE OF MJP LEASING LTD., AGAINST., M/S. M.J. PATEL, MEMBER, MUMBAI STOCK EXCHANGE

MJP Leasing Ltd. (hereinafter referred to as the company) is a company promoted by M/s. M.J. Patel (hereinafter referred to as the member) and M/s. JR Motishaw & Company, a brokerage firm of Smt. Monica Patel, wife of Shri M J Patel. The company came out with a public issue in the year 1993. It is observed during the investigation conducted by Securities and Exchange Board of India (hereinafter refereed to as SEBI) that the price of the scrip of the company which was hardly traded was kept raising by means of internal trading between M/s. M.J. Patel and M/s. JR Motishaw & Company. The price of the scrip of the company increased from Rs.32.25 on 10.10.95 to Rs.925/- on 2.2.96 (hereinafter referred to as the relevant period). It was also observed during the investigation that majority of the total floating stock of the company was in the possession of Shri M J Patel and when the price shot up to Rs.900/- Shri M J Patel started selling the shares in the name of his family members and also offered the shares in auction.

The investigation submitted by SEBI revealed that the member acted in concert with M/s. J.R. Motishaw & Company & created a false market in the scrip of the company which is detrimental to the interest of the investors and thereby indulged in manipulative and deceptive transactions with a view to distort the market equilibrium for making personal gains. The above acts of the member are in violation of the provisions of SEBI (Stock brokers & Sub brokers) Regulations 1992, (hereinafter referred to as the said Regulations).

An Enquiry Officer was appointed vide Order dated March 21, 1997 and subsequently Denovo enquiry was passed by the Chairman vide the order dated August 31, 1998 to probe into the alleged violations inter-alia of the said Regulations by the member while dealing in the scrip of the company. The Enquiry Officer issued a show cause notice dated September 18, 1998 to the member communicating the detailed charges. The member denied the charges before the Enquiry Officer.

The Enquiry Officer conducted the enquiry by affording fair and reasonable opportunity and the member participated in the enquiry proceedings. Thereafter, the enquiry officer submitted his report wherein he recommended for the suspension of the registration of the member for a period of three months under the said regulations.

SEBI issued a notice dated February 2, 1999 to the Member under Regulation 29 of the said Regulations. A copy of the Enquiry Report was also furnished to the member. The Member, vide reply dated March 15, 1999 denied the charges and stated that he traded in the scrip of the company in low volumes when there was hardly any liquidity in the scrip of the company in the market.

An opportunity of personal hearing was given to the member on January 15 2002 and the Member attended the hearing before the undersigned and made his submissions. At the time of hearing the member reiterated his reply dated March 15, 1999 and requested to drop the proceedings.

I have carefully examined the Enquiry Report, the reply, and other relevant material on record and the submissions made by the member at the time of the personal hearing. It is observed that the member acquired the shares of the company from the market acting in concert with the family members and group concerns to the extent of 85% (approx) of the total subscribed quantity. Since the majority of the shares were held by the member and his group concerns as explained above, there was scarcity in the total scrip of the company which created the price manipulation. Since there was scarcity in the total stock of the company the scrip of the company was hardly traded in the market and the price of the scrip rose from Rs.30 to Rs.900 within a short span of time. Most of the above said transactions were between the member and M/s. Motishaw & Company, a brokerage firm owned by the wife of the member. However, the member submitted that he had transacted in the scrip of the company when the price was in the range of Rs.300/- and thereafter he did not transact in the scrip of the company. It is revealed during the investigation that people who are close to the member transacted heavily in the scrip of the company beyond Rs. 300/- and upto Rs. 900/- . It is further observed that the transactions executed by the member was only for the purpose of artificially raising the price of the scrip knowing fully well that there was scarcity in the scrip of the company.

Taking into account, the above aspects into consideration it has been decided to suspend the registration of the member for a period of 2 months with effect from 18.02.2002.

sd/-
D.R. MEHTA
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

DATE: 4.2.2002
PLACE: MUMBAI"

The Appellant had sought permission vide application filed on 27.2.2002 to amend the appeal. There was no objection from the Respondent's side. Amendments were allowed. The Respondent filed the reply on 15.3.2002. The Respondent also filed an additional reply on 5.4.2002 in the context of the amendments made in the appeal.

Shri B.L. Sarda, Authorised Representative of the Appellant submitted that the Appellant is a proprietary firm of Shri M.J. Patel, engaged in the business of share and stock broking for more than 30 years with unblemished record, that the Respondent's baseless order has caused immense damage to its reputation and business. Learned Representative stated that the Respondent has gone on the assumption that MJP Leasing Ltd (the company) made a public issue in the year 1993 and the market was manipulated thereafter. He submitted that the said wrong assumption is based on inaccurate information as is evident from the

statement in the order that "the company came out with a public issue in the year 1993" and the Appellant cornered 85% of its shares. He also referred to the title of the order which refers to the "Public issue of MJP Leasing Ltd" to strengthen the said belief that the Respondent was guided by incorrect information.

Shri Sarda submitted that the company was promoted by Shri M.J. Patel and his associates in the year 1983, that the company is engaged in leasing, hire purchase and investment activities. He stated that "the promoters together with their friends, relatives and associates" hold nearly 85% of the shareholding in the company for last many years, that it came out with a public issue in the year 1984 and got its shares listed immediately thereafter (February 1984) on the Stock Exchange, Mumbai, that there was no public issue by the Appellant in the year 1993, as stated in the order, that the 85% holding was with them since 1993 and not as a result of any acquisition during the relevant period referred to in the order.

Learned Representative submitted that the Respondent denied certain relevant material information to the Appellant, and thereby failed to comply with the rules of natural justice required to be followed before passing the order. In this context he referred to the Appellant's letter dated 5.2.98 addressed to the Enquiry officer and the subsequent requests made, including the one in the letter dated 15.3.1999 addressed to the Respondent. Shri Sarda stated that the following information / documents were requested to be made available, but not made available:

(i) Copy of the investigation report submitted to the Board as mentioned in para 1 of the order dated 21st March, 1997 issued by the Chairman of Securities and Exchange Board of India appointing Shri P. Sri Sai Ram as the enquiry officer (page 2 of the compilation);

(ii) Details of the provisions violated under various Bye-laws. Rules & Regulations as mentioned in para 2 of the said order of 21st March, 1997 (page 2 of the compilation);

(iii) Complete details of the transactions entered into by the Appellant in the shares of M/s. MJP Leasing Ltd. through the Stock Exchange, Mumbai from 10-10-1995 to 02-02-1996;

(iv) Copy of Inspection report of M/s. M.J. Patel referred to in the show cause notice dated 7th January, 1998. (page 6 of the compilation)

(v) Copies of the inspection Enquiry Reports and statements recorded during the enquiry of all the parties connected to the transactions in the shares of MJP Leasing Ltd. during the period from 10-10-1995 to 02-02-1996 (page 7 of the compilation)

(vi) Copies of the data gathered from the Stock Exchange, Mumbai and preliminary analysis based on the same.

Shri Sarda submitted that as the copies of documents and information as

above, though repeatedly asked for by the Appellant, were not furnished by the Enquiry Officer / the Respondent, and as a result the Appellant was put to great disadvantage in meeting the case made out against it.

In support of the submission that the person who is likely to be affected by an order of an authority, should be given an opportunity to controvert the charge, Shri Sarda cited two decisions of the Hon'ble Supreme Court in - (i) Kishan Chand Chellaram v Commissioner of Income Tax (1980) 125 ITR 713 and (ii) Sona Builders vs. Union of India (2001) 251 ITR 197.

Shri Sarda submitted that the alleged manipulation is linked to a stray transaction taken place involving a negligible quantum of shares between two members in the group. He submitted the number of shares involved in the transaction was 100, the transaction price per share was Rs.32.25 and the date of transaction was 10.10.95. He further submitted that, this transaction did not make any impact on the market as could be seen from the factual position furnished in the appeal that after some time only the price started shooting up and reached a high of Rs.925/- by 2.2.1996. Learned Representative stated that considering the scenario, on 21.3.97, the Respondent appointed an Enquiry officer to enquire into the matter, that the said Enquiry officer issued a show cause notice on 7.1.1998 to the Appellant which was responded to by a detailed reply on 16.6.98, that the Respondent on 31.8.98 appointed another Enquiry officer in place of the earlier officer, that the new Enquiry Officer issued a fresh show cause notice on 18.9.98. Shri Sarda submitted the order appointing the 2nd Enquiry officer did not give any indication that it was issued in supersession of the first order dated 21.3.1997 appointing the first Enquiry officer, that the 2nd appointment of the Enquiry officer was after a time gap of 17 months. Shri Sarda submitted that the Appellant had filed reply to the show cause notice countering each and every allegation with supporting material, but the Enquiry officer in total disregard to the material placed before him, held in his report dated 15.1.99 the Appellant guilty of having violated the provisions of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 and recommended suspension of registration for three months, that in the said context the Respondent, on 2.2.1999 issued a notice to the Appellant conveying the findings of the Enquiry officer and seeking the Appellant's explanation there to, that the Appellant submitted its detailed reply on 15.3.1999 refuting all the charges backed up with factual evidence. Shri Sarda submitted that after a lapse of nearly one year, on 15.2.2000 the Chairman of the Respondent granted a personal hearing to the Appellant and the Appellant made detailed oral submissions before the Chairman on the said date. Learned Representative submitted that though regulation 29 specifically requires the Respondent to pass a final order with in 30 days from the date of hearing, no such order was passed and communicated to the Appellant, that the Appellant as a result believed that the Respondent had closed the matter accepting the Appellant's version. Learned Representative submitted that the Respondent with out any reference to the concluded hearing held on 15.2.2000, vide letter dated 31.12.2001 informed the Appellant that the Chairman had decided to hear the Appellant on 15.1.2002 in the matter, and the Appellant little realising that it was clever ploy to circumvent the requirements of regulation 29(3), earnestly responded to the communication and presented before the Chairman, that the so called hearing did not last even 5 minutes and the impugned order was passed on 4.2.2002 suspending the registration certificate for two months with effect from 18.2.2002. In this context referring to the Respondent's conduct, Learned Representative stated that though the order, was to be effective prospectively after 14 days, reality was different, as the Respondent retained the order with it for 7 days and dispatched the same only on 11.2.2002 which reached the Appellant on 12.2.2002. Learned Representative stated that the alleged charge relates to the year 1995, and the Respondent having slept over the matter for 7 years passed a cryptic order, without any material in support of its conclusion flouting all the basic norms. Shri Sarda submitted that the conduct of the Respondent circumventing the regulations to

cover up its lapse, is un becoming of a regulator. He submitted that the last date of effective hearing be treated as the one held on 15.2.2000 and hold that the order was not passed within one month from the said date, and as such the order is bad in law and be set aside on that ground. Shri Sarda submitted that the Respondent has not given any explanation as to why the order was not passed with in the time frame provided in the Regulations, after the conclusion of the personal hearing on 15.2.2000 and the need to hold an "artificial hearing" on 15.1.2002 after a lapse of nearly 2 years and why the factual position of holding the hearing on 15.2.2000 was blacked out in the order and referred only to the hearing held on 15.1.2002.

Learned Representative referred to the observation in the order that "the price of the scrip of the company which was hardly traded was kept raising by means of internal trading between M/s. M.J. Patel and M/s. Motishaw & Co (Motishaw)" and "the price increased from Rs.32.25 on 10.10.95 to Rs.925/- on 2.2.1996" and stated that the said observation is incorrect. Shri Sarda submitted that the trading between the Appellant and the said Motishaw during the said period was only of 100 shares at the then prevailing price of Rs.32.50 and further that the total trade by Motishaw, (that is purchase and sales put together) during the period was only 300 shares as could be seen from the details furnished in the appeal and therefore it cannot in any way be stated that the price rise was due to the internal trading between the Appellant and Motishaw.

With reference to the Respondent's observation giving an impression that the Appellant acquired approximately 85% of the subscribed equity capital of the company from the market during 1995-96 (relevant period) acting in concert with the family members and group concerns, Shri Sarda submitted that the Appellant with family etc., were holding about 85% in the company's capital since 1993 and hence the conclusion drawn by the Respondent is baseless. He stated that the factual position of holding 85% of the company's capital was not unknown to the Respondent, and still for reasons best known, the Respondent has not gone by the actual factual position.

Learned Representative submitted that the impugned order is not a speaking order, as it does not give the material / facts based on which the conclusions are drawn. He stated that the Respondent has simply stated that the people close to the Appellant transacted heavily in the scrip beyond Rs.300/- and up to Rs.900, disregarding the facts furnished by the Appellant. In this context he referred to the Appellant's letter dated 16.6.98 to the Enquiry officer, forming part of the compilation, and stated that the share of the Appellant in total number of trades and total number of shares traded was negligible compared to the total transaction in the company's shares. He submitted that the Appellant had not bought even a single share when the price of the scrip crossed Rs. 300. He submitted that it was other brokers unconnected with the Appellant who had transacted substantially during the relevant period. In this context to support his contention he referred to the following factual statement furnished in the appeal.

SETT LEM	PRICE RAN-	TOTAL NO.OF	TOTAL QTY.	BROKERWISE TRADE		% OF TRADES / QTY	
				M. J. PATEL	OTHER BROKERS	M. J. PATEL	OTHER BROKERS

ENT NO	GE Rs.	TRADES	TRADED	NO. OF TRADES	BUY	SELL	TOTAL	NO. OF TRADES	QTY	NO. OF TRADES	QTY	NO. OF TRADES	QTY
(A) Price upto Rs.300/-													
16	32.25	1	100	1	-	100	100	NIL	NIL	100	100	-	-
17	-	-	-	-	-	-	-	-	-	-	-	-	-
18	32 to 55	12	1900	2	200	-	200	10	1700	16.67	10.52	83.33	89.48
19	41 to 299	150	15550	19	3350	1050	4400	131	11150	12.67	28.30	87.33	71.70
Total (A)		163	17550	22	3550	1150	4700	141	12850	13.50	26.78	86.50	73.22
(B) Price from Rs.300/- to Rs.925/-													
20	330 to 685	45	4650	8	-	2500	2500	37	2150	17.78	53.00	82.22	4.70
21	500 to 675	47	3950	1	-	100	100	46	3850	2.12	2.53	97.88	97.47
22	650 to 925	40	4300	3	-	150	150	37	4150	7.50	3.48	92.50	96.52
Total (B)		132	12900	12	-	2750	2750	120	10150	9.10	21.32	90.90	78.68
Total (A+B)		295	30450	34	3550	3900	7450	261	23000	11.53	24.47	88.47	75.53

Shri Sarda stated that the Respondent has not contested the factual position stated in the appeal that the reported price hike is attributable entirely to the trading done by other brokers, which the Respondent has failed to take note of. He submitted that the settlement wise analysis of the data stated above, negates the conclusion arrived at by the Respondent, that when the Appellant has not made purchase of a single share either on his own account or for his clients during the period 1.1.96 to 27.2.96 when the price rose from Rs.300 to Rs.925, the Respondent's charge that the Appellant artificially raised the price of the scrip is untenable. He stated that the impugned order is silent as to the identity and the nature of the relationship of those persons who are allegedly associated or close to the Appellant stated to have transacted in the company's shares during the relevant period. In this context he stated that the Appellant had denied more than once that the other brokers viz S/Shri S.I. Agarwal, Kamal Binani, Kalpesh Shah, Mahesh D. Shukla, Haresh and Kantilal referred to by the Enquiry officer are in no way connected or related to the Appellant or acted under the influence of the Appellant. Therefore it was all the more necessary for the Respondent to establish in the order the nexus between the Appellant and those brokers.

Shri Sarda refuted the Respondent's version of the Appellant having made undue gains and also stated that the Appellant /its associates had ample opportunity to participate in the auction and derive gains for themselves before the suspension of the scrip's trade, that they sold only 450 shares in the first auction in settlement No.18, but did not participate in auction for 5050 shares announced by the exchange on 2.2.96. He stated that if the Appellant had participated in the said auction, which the Appellant was free to do, the Appellant would have realised approximately a sum of Rs.47 lakhs, that the very fact that the Appellant refrained from participating in the said auction establish its bonafides.

Shri Sarda submitted that the Appellant has not acted in any manner to warrant suspension of its certificate of registration that the Respondent has failed to make out any case to support the order.

Shri Ranganayakulu, Learned Representative of the Respondent refuted that the Appellant's allegation that copies of certain documents/information were not provided to it. He stated that copies of all the documents relied upon in the order were supplied to the Appellant, that the Enquiry officer vide show cause notice dated 7.1.98 had communicated in detail the relevant findings of the investigation to the Appellant, that a copy of the enquiry report was also forwarded to the Appellant along with the show cause notice issued on 2.2.1999 by the Respondent. He submitted that there was no breach of rules of natural justice as alleged by the Appellant. He denied the Appellant's charge that the order was passed beyond the time limit prescribed in regulation 29(3) as the hearing was concluded on 15.1.2002 and the order was passed on 4.2.2002. He submitted that a personal hearing was granted to the Appellant on 15.1.2002 as the Appellant had submitted a letter at the time of hearing on 15.2.2000.

Shri J. Ranganayakulu, submitted that the company was promoted by Shri M.J. Patel the proprietor of the Appellant firm who is also a member of the Bombay Stock Exchange, along with Motishaw, a brokerage firm of Smt. Monica Patel, wife of Shri M.J. Patel. He stated that since 85% of the shares in the company were held by the Appellant and the group concerns, in the market there was only a very small floating stock of the company, that the scrip was hardly traded in the market, but the price rose from Rs.32 on 10.10.95 to Rs.925/- on 2.2.96. He submitted that the Appellant transacted in the scrip till its price was Rs.300 and its transactions set on motion the upward movement of the price and when the price reached Rs.900, the Appellant started selling the shares in the name of the family members and also offered the shares in auction at the exchange and enriched themselves at the cost of the innocent investors.

Learned Representative submitted that the Appellant acted in concert with Motishaw and created a false market in the scrip of the company and thereby indulged in manipulative and deceptive transactions with a view to distort the market. He submitted that the transactions executed by the Appellant was only for the purpose of artificially raising the price of the scrip knowing fully well that there was scarcity in the scrip of the company, that the persons connected and close to the Appellant transacted heavily in the scrip when the price moved from Rs.300/- to Rs.900/- and gained considerably.

I have carefully considered submissions by the parties, and the material before me.

The Appellant's contention that the impugned order is bad in law, for want of compliance of the

requirements of the principles of natural justice is unfounded. It is evident from the Appellant's own words in its letter dated 15.3.1999 in reply to the show cause notice dated 2nd February, 1999 that a copy of the investigation report was furnished to it. It is noticed from para 5 of the said letter annexed to the appeal that the Appellant had stated "The Enquiry officer has proceeded in his inquiry on the basis of the following statements and findings picked up from the report of the investigation officer of SEBI, which report was sent to me as Annexure II along with letter NO. AED/98 dated 7.1.1998 by Shri P. Sri Sai Ram, and in reply to which, I had sent a long letter....." . It is also evident from the said letter, that the Respondent had furnished a copy of the inquiry report to the Appellant. The details of the provisions violated are found mentioned in the inquiry report which formed part of the show cause notice. The Respondent's action of not positively responding to the Appellant's request for the data which were also in the possession of the Appellant and non furnishing of the material information relating to the transactions carried out by other brokers in the company's shares during the relevant period, cannot be considered as breach of rules of natural justice. There is nothing to show that the Appellant was put to disadvantageous position in defending in the inquiry as a result of non furnishing of the said details. It is also clear that the Appellant was not put in any disadvantageous position as a result of the Respondent appointing a new Enquiry officer. It is seen from the material on record that the Enquiry officer so appointed had started the inquiry de novo following the requisite procedures. The Appellant cannot be blamed if it had believed that the effective hearing was over on 15.2.2000 under regulation 29 and any adverse order having not served on it thereafter with in a reasonable time suggested closure of the matter. The Learned Representative had urged that the order should have been issued on or before 15.3.2000 and that hearing held on 15.1.2002 was only a ploy to circumvent the regulation and the order issued on 4.2.2002 is time barred. The Appellant has annexed a copy of the letter dated 31.12.2001 issued by the Respondent in this regard, which reads as under:

"Dear Sir,

Sub: Show Cause Notice No. IES/MSD/6236/1999 dated February 2, 1999.

The undersigned is directed to inform you that in relation to the captioned matter Chairman SEBI has granted a personal hearing on January 15, 2002 at 11.00 a.m.

You may be present for the same at the aforementioned time in the premises of SEBI at

Mittal Court, 'B' Wing
First Floor,
224, Nariman Point,
Mumbai 400 021

You may note that this is the last opportunity for you to adduce all evidences and clarification in support of your contentions, if any. Your absence at the venue on the said date and time would indicate that you have nothing further to state regarding the captioned matter."

It is true that the letter does not refer to the hearing held about 2 years ago and the submissions made by the Appellant at that time. The impugned order is also silent on this aspect. However I do not consider it necessary to go into further details in this regard to ascertain as to whether the hearing scheduled on 15.1.2002 was to over come the limitation provided in regulation 29, for the reason that the Appellant in its own statement in para 9 of the Memorandum of appeal has stated that "Chairman, Securities and Exchange Board of India granted another personal hearing on 15th January, 2002 which was attended by the Appellant where in he denied all allegations in view of his submission made from time to time before

Securities and Exchange Board of India." This statement of the Appellant is self explanatory and in the light of the same, the allegation that the hearing held on 15.1.2002 was artificial and only a formality, cannot survive. Therefore the time limit provided in regulation 29(3) in the instant case in my view is relatable to the hearing held on 15.1.2002 and not to the hearing held on 15.2.2000. In that view of the matter the impugned order issued on 4.2.2002 cannot be considered as time barred in terms of regulation 29(3).

In the 2 ½ pages order, the Respondent has devoted one para on the charges. The rest of the order is on the history etc of the case. Though the text of the order has been already extracted in the earlier part of the order, it is felt necessary, even at the cost of repeatation, to extract the said para, as the para itself reveals the deficiency clearly. The para reads as under:

> "I have carefully examined the Enquiry Report, the reply and other relevant material on record and the submissions made by the member at the time of the personal hearing. It is observed that the member acquired the shares of the company from the market acting in concert with the family members and group concerns to the extend of 85% (approx.) of the total subscribed quantity. Since the majority of the shares were held by the member and his group concerns as explained above, (?) there was scarcity in the total scrip of the company which created the price manipulation. Since there was scarcity in the total stock of the company the scrip of the company was hardly traded in the market and the price of the scrip rose from Rs.30 to Rs.900/- with in a short span of time. Most of the above said (?) transactions were between the member and M/s. Motishaw & Company, a brokerage firm owned by the wife of the member. However the member submitted that he had transacted in the scrip of the company when the price was in the range of Rs.300/- and thereafter he did not transact in the scrip of the company. It is revealed during the investigation that people who are close to the member transacted heavily in the scrip of the company beyond Rs.300/- and upto Rs.900/- . It is further observed that the transactions executed by the member was only for the purpose of artificially raising the price of the scrip knowing fully well that there was scarcity in the scrip of the company."

On a perusal of the order one is made to believe that market rigging followed the public issue made in 1993. But it is not so. Public issue was made in 1984. The Appellant has stated that its holding along with relatives and associates in the company's capital was around 85% since 1993 and that the Appellant did not create any scarcity in the market as is suggested in the order. The factual position of the Appellants holding of 85% in the company's capital since 1993 remains un rebutted.

The Appellant has demonstrated with data that it had transacted in a small quantity when the price was between Rs.32 and Rs.300 (Settlement Nos. 16 to 19). Out of the total transactions during the said period the percentage in terms of trades and quantity traded in relation to the total transaction, by the Appellant was 13.5% and 26.78% respectively where as the corresponding figure in respect of the transactions effected by other brokers was 86.5% and 73.22% respectively. It is also seen from the data that comparable percentage of transaction by the Appellant when the price was between Rs.300 to Rs.925/- was 9.10% and 21.32% as against 90.90% and 78.68% by other brokers. It is also seen from the data that the Appellant did not buy even a single share when the price was above Rs.300/- and 21.32% shares traded as aforesaid represent only the sale of shares made by the Appellant. It is seen that out of a total quantity of 30450 shares traded during the relevant period the total trade effected by the Appellant was 7450 shares as against 23000 shares traded by other brokers. The Respondent has not contested the figures.

It is noticed from the order that it is silent about the factual position about the role of the Appellant vis-a-vis market behaviour. It is seen from the material on record that the Appellant had contested each and every charge leveled against it by the Respondent based on the enquiry report. Detailed submissions of the Appellant in this regard is available on record. But the Respondent has not dealt with any of those submissions in the order. The order simply states that "I have carefully examined the Enquiry report, the reply, and other relevant material on record and submissions made by the member at the time of personal hearing". Apart from such a general statement, I do not see any discussion of the evidence in support of the charge and for what reasons the Appellant's version was found un acceptable. The order does not even state as to who are the other persons closely involved and in what way they can be considered as associated or related to the Appellant, to hold the Appellant responsible for their action.

The Respondent could not have improved the order adding the factual position in its reply as the reply cannot serve as a substitute for the order. Hon'ble Supreme Court in Mohinder Singh Gill v. Chief Election Commissioner (AIR 1978 SC 851) has made the position clear that "when a statutory functionary makes an order based on certain grounds its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or other wise". Securities Appellate Tribunal (Procedure) Rules provides for filing reply by the Respondent, thereby giving an opportunity to meet the Appellant's contest. However I find the reply filed by the Respondent also equally inadequate, in its contents, to defend the order. It is crystal clear that the scrip price was rigged and pushed up from Rs.32 to Rs.900. But who are all the people responsible for the same have not been clearly brought out in the order with requisite evidence. A simplistic observation with out supporting evidence does not help to hold one guilty of a charge of market manipulation. No doubt, Shri Ranganayakulu did make a valiant attempt to defend the order. But he could not do much to save the order as the order did not provide even the minimum requisite weaponry in facts, for the purpose.

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. One has to draw inference that it is sub clauses 3 and 4 of Clause A of the Code of Conduct in the 1992 Regulations as the order refers to the investigation report submitted by SEBI, which "revealed that the member acted in concert with M/s.J.R. Motishaw & Company and created a false market in the scrip of the company ..... and thereby indulged in manipulative and deceptive transactions..... The above acts of the member are in violation of the provisions of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992." Manipulation and malpractices are referred to in clauses A(3) and (4) of the Code of Conduct for Stock Brokers presented in Schedule II of the Regulations. The order fails to fulfill the requirements of regulation 29(4).

In my view for the reasons stated above the Respondent has failed to establish the charge against the Appellant with reasonable evidence and therefore the penalty of suspension of the certificate of registration

for two months ordered by the Respondent vide its order dated 4.2.2002 cannot be sustained. The order, therefore, deserves to be set aside. Accordingly, the order is set aside.

Appeal is allowed.

(C.ACHUTHAN)

PRESIDING OFFICER

Place: MUMBAI

Date : July 8, 2002