BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 20 of 2012

Date of decision: 30.03.2012

Mayrose Capfin Private Limited
26, Krishna Niwas,
498, Kalbadevi Road,
Mumbai – 400 002. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A, 'G' Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051. … Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Deepak Dhane, Advocate for the Appellant.
Dr. Mrs. Poornima Advani, Advocate for the Respondent.

Coram : P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : P. K. Malhotra, Member

This appeal has been filed by the appellant against the order dated December 26, 2011 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) holding the appellant guilty of violating regulations 4(a), (b), (c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with regulations 4(1), 4(2) (a), (b), (e), and (g) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 and restraining the appellant, along with five other entities, from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities, directly or indirectly, for a period of one year.

2. The facts of the case, in brief, are that the appellant is stated to be a trader/jobber and a short term investor in securities market trading through Nirmal Bang Securities

Private Limited, a stock broker registered with the Board. In or around 2001, the appellant traded in several scrips including the scrip of Sun Infoways Limited (for short the company) on the Bombay Stock Exchange Ltd. The Board carried out investigations into the irregularities in the trading of the scrip of the company during the period from February 5, 2001 to May 2, 2001 and observed that some brokers had executed circular/synchronized trades on behalf of their clients and the said trades generated artificial volumes in the scrip of the company through circular trades which were synchronized in terms of order, price, time and quantity. The appellant is alleged to have traded in the scrip of the company through its broker for 18 days out of which trades on 12 days were circular/reverse. A show-cause notice dated October 7, 2008 was issued to the appellant along with 13 other entities asking them to show-cause as to why suitable direction should not be issued against them under Sections 11 and 11B of the Act. The appellant filed reply dated September 21, 2010 and denied the allegations. The appellant also made a preliminary submission stating that it had not been provided with a complete copy of investigation report and complete trade and order logs and that it had been provided only with extract thereof. The appellant requested that it may be provided with complete investigation report and complete trade and order logs along with documents such as KYC forms executed by counterparty clients and other documents and records which have been relied upon by the Board. An opportunity of personal hearing was granted to the appellant along with other entities whereafter the whole time member passed the impugned order on December 26, 2011 restraining the appellant from accessing the securities market as stated above. It is against this order that the present appeal has been filed.

3. We have heard learned counsel for the parties who have taken us through the records of the case. It was strenuously argued by the learned counsel for the appellant that it did not have a proper opportunity to defend itself because the Board has not provided copy of the investigation report and complete trade and order logs. It was also submitted that all trades were done in the ordinary course of business and on the anonymous and automated trading system of the stock exchange through a registered

stock broker. The orders were placed with the stock broker and the appellant was not aware of the identity of counterparty broker or client. The trading in the scrip of the company was in the short term and therefore the appellant did not have large delivery positions. It was further contended that since the appellant is not related or connected to counterparty clients or brokers, its trades ought to be considered separately and if they are so considered, its trades constitute only a miniscule portion of the total trades alleged to be irregular and therefore are not capable of creating artificial market. Learned counsel for the appellant also drew our attention to the findings recorded by the whole time member in para 25 of the impugned order where he has given example of reversal trade in respect of trading done between the appellant and Adinath Propcon Pvt. Ltd. (one of the noticee) and stated that this finding is not borne out of the extract of trade/order logs made available to the appellant. In fact, according to the learned counsel for the appellant, this was not a reversal trade and the Mayrose was only a seller and Adinath Propcon was the buyer. The learned counsel for the appellant, therefore, stated that the whole time member has not applied his mind to the facts of the case and has come to the conclusions which are not supported by the material available on record. He, therefore, strenuously argued that the order needs to be set aside on the ground of violation of principles of natural justice for not providing the relevant material or alternatively needs to be sent back for fresh consideration in accordance with law and the material available on the record.

4. Learned counsel for the respondent Board submitted that there has been no violation of principles of natural justice as relevant extract of the trade/order logs were provided to the appellant along with show cause notice at Annexure-8 and another chart–Annexure 3A giving details of brokers and clients who are either connected to the company or connected to its directors/promoters. It was further submitted by her that the two transactions mentioned in para 25 of the impugned order are only illustrative and in so far as transaction between the appellant and Adinath Propcon is concerned, it is in fact a synchronized trade and not a reversal trade. However, this omission on the part of the whole time member does not vitiate the order. After giving the illustration,

the whole time member has recorded a definite finding that the appellant traded through its broker for 18 days and executed reversal/circular trades on 12 days for a total of 39,100 shares which amount to 4.28% of the market traded quantity. These trades were executed with related entities, 31 buy orders and 32 sell orders placed by the appellant resulted in 178 buy trades and 192 sell trades and these trades were circular/reversal in nature. According to the whole time member, during the investigation period, circular trading accounted for 68.47% of the appellant trading in the scrip. His findings are supported with annexure 3A of the show-cause notice which indicates the interconnection between the parties and annexure-8 of the show cause notice which is extract of the trade/order logs of the appellant.

5. After hearing learned counsel for the parties and perusing the record, we are of the view that the order does not call for any interference by this Tribunal. Admittedly, investigation in this case was carried out in the scrip of the company for the investigation period from February 5, 2001 to May, 2001. This investigation was confined not only to the appellant but involved 13 other entities also. What has been provided to the appellant along with the show cause notice is the chart indicating the interconnection between the parties and also extract of the trades which were executed by it through its brokers. The interconnection between the parties has not been denied by the appellant. The only submission made in this regard is that it is erroneous and unjust to ascribe fraudulent and manipulative intent to its trades based on such relations. We are of the view that interconnection between the parties is only one of the factors which has been considered by the Board while arriving at its finding which is supported by other material collected by it during the course of investigation, more particularly the trade logs/order logs. Although the whole time member has not specifically dealt with the request of the appellant with regard to complete copy of the investigation report or the complete trade and order log, we are of the considered view that no prejudice has been caused to the appellant on this count as the extract of the relevant trade logs and order logs pertaining to the appellant was made available which was enough for him to

defend himself or to make proper representation against the proposed action. No other document has been pointed out by the appellant which might have been relied upon by the whole time member in arriving at its finding and copy of which has not been made available to the appellant. The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count. After giving the two illustrations in para 25 of the impugned order regarding reversal/synchronized trades, the whole time member has given the details of the trading done by the appellant supported with the extract of the trade/order logs. These trades are not denied by the appellant. A large number of reverse trades are by themselves reflective of the manipulation meant for increasing volumes on the screen of the trading system. There is no change of beneficial ownership in the traded scrip. Since the transactions were found between the connected parties, we cannot look into the trades of the appellant in isolation. Out of 18 days of trading, reversal of trades on 12 days in respect of 39,100 shares resulting in 178 buy trades and 192 sell trades cannot be a coincidence. We, therefore, cannot find any fault with the findings arrived at by the whole time member of the Board.

In the result, the appeal stands dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

30.03.2012
Prepared and compared by-ddg