

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 21 of 2012**

**Date of Decision: 23.4.2012**

Systematix Shares & Stocks (India) Limited  
2<sup>nd</sup> Floor, J.K. Somani Building,  
British Hotel Lane, Bombay Samachar Marg,  
Fort, Mumbai – 400 001.

.....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. R. S. Loona, Advocate with Mr. Abhishek Borgikar, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mihir Mody and Mr. Mobin Shaikh,  
Advocates for the Respondent.

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

Per : S.S.N. Moorthy, Member

This order will dispose of two Appeals no.21 of 2012 and 212 of 2011. This is passed on the basis of the facts found in the adjudication order in the case of the appellant, Systematix Shares & Stocks (India) Limited. However, they apply broadly to the facts of the other appellant, Kalpataru Multipliers Ltd., also in which case the same charges are levelled regarding the trading in the same scrip during the same investigation period and the penalty levied is also identical.

2. The appellant is member broker of the Bombay Stock Exchange (BSE). The present appeal has been filed against imposition of a penalty of ` 3 lacs under section 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (for short the Act). The penalty under section 15HA of ` 2 lacs was imposed since the appellant was found to have violated regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (FUTP Regulations). Penalty under section 15 HB of ` 1 lac was imposed for breaching the code of

conduct prescribed under Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Broker's Regulation).

3. The background of the case is broadly the following. Securities and Exchange Board of India (for short the Board) conducted investigation in the affairs, trading and dealings in the shares of Oregon Commercial Limited (the company) during the period November 21, 2008 to June 08, 2009. Investigation revealed that the appellant, alongwith a few other stock brokers, placed buy orders on behalf of some of their clients at prices significantly above the last traded price and thereby artificially propped up the price of the scrip for a few days during the investigation period. A show cause notice was issued to the appellants on May 9, 2011 alleging that the price of the scrip was artificially jacked up by the appellants alongwith a few other stock brokers by placing buy orders in respect of the scrip proximate to the upper circuit filter price and thereby assisted the clients to artificially inflate the price of the scrip. It was alleged that the price of the scrip was thus inflated from ` 50 to ` 874 and because of the involvement of the appellant the price rose to the extent of ` 733.30. The charge was that a systematic and well thought out plan was put in operation by trading in the scrip at the rate of a minimum number of shares per day at a price above the last traded price and these fictitious/self trades resulted in inflating the price of the scrip and creating artificial market. The adjudicating officer took the view that the appellant as a broker had knowingly assisted in the artificial inflation of the price of the scrip and thereby it was guilty of violating regulations 3 and 4 of FUTP Regulations. It was also inferred by the adjudicating officer that the appellant had violated clauses 1 and 2 of Schedule II of the code of conduct under regulation 7 of the Broker's Regulations in exercising due care, skill and diligence. In response to the show cause notice the appellant sought several documents from the adjudicating officer which were provided to the appellant to the extent relied upon by the adjudicating officer in framing the show cause notice. After the provision of the documents sought for by the appellant opportunities were given for hearing and after due consideration of the facts the adjudicating officer concluded that the appellant was guilty of violating the provisions of regulations 3 and 4 of the FUTP Regulations and Schedule II of the code of conduct for brokers.

4. The appellants' learned counsel stoutly opposed the imposition of penalty. It was submitted by him that the appellant, being a broker, had no nexus with the promoters of the company and the alleged transactions were conducted as per the directions of the client and no malafide could be attributed. The volume of trade relating to the appellants' clients was

represented to be negligible as compared to the total volume and the appellants' trades could not be clubbed with that of other entities. According to him, placing orders above the last traded price is no offence and the appellant has not obtained any undue advantage. On the other hand, the appellant had earned only a very meager amount of ` 53.47 as brokerage. It is argued that there is no charge of FUTP violations against the promoters and hence the action against the appellant is totally unjust. With reference to the clients with whom the appellant had transactions, it is submitted that charge has been leveled against only 3 clients and this cannot be regarded as aiding and abetting the process of artificial market volumes. The appellants' learned counsel would lay emphasis on the fact that the trading related to only 19 shares during a period of 14 trading days and no connection has been established between the appellant and the promoters. The trading was only in respect of one share per day above the last traded price and in respect of this insignificant transaction the appellant cannot be regarded to have provided active assistance in the manipulation of the scrip. Prompt action was taken against Ravindra Singhai, one of the clients/employees, when malpractice was brought to the notice of the appellant and this would reinforce the fact that the appellant was not in any way aiding or abetting fraudulent transactions. With regard to the maintenance of integrity and due diligence the appellant's learned counsel maintained that a prompt and effective surveillance system for checking illegal action was in place and the mistakes in respect of very minor and insignificant transactions would have gone unnoticed, not because of negligence, but because of sheer negligible volume. According to him, the appellant had put in place all necessary safeguards as directed by the BSE and he cannot be held guilty of negligence.

5. Learned senior counsel appearing for the Board submitted that the appellant and the clients were engaged in a well thought out strategy in dealing in a minimum number of shares and on many occasion one share per day resulting in systematic inflation of the price of the scrip. According to him, this is a serious offence since the wrong doers have resorted to a very crude and subtle strategy which would normally have gone unnoticed. It is argued that suspicion is writ large in the trading pattern of the appellant and this implies collusion with the clients and lack of due diligence. With reference to the nature of the scrip it is pointed out that it continued to be illiquid and there was no prospect of any investor attraction or rise of value of the scrip. So a deliberate attempt was made to create artificial price rise and this resulted in jacking up the price to a level of ` 874 at the close of the investigation period. According to

the learned senior counsel for the Board the adjudicating officer has taken a proper and reasonable stand in imposing the impugned penalties.

6. We have considered the rival submissions. Admittedly, the price of the scrip rose from ` 50 to ` 874 during the investigation period. The appellant was a broker for several clients. The scrip started as a low profile one at the beginning of the investigation period. The price of the scrip periodically went up during the investigation period on account of the trading done by the clients of the appellants by way of a minimum number of shares per day traded above the last traded price. On many days the trades were confined to one share only. According to the appellant, trading at a price above the last traded price is not an offence and he was acting at the behest of the clients. It is true that trading at a price above the last traded price is no offence. However, the pattern of trading in the present case proves that there was a well thought out plan behind the placing of orders by the clients through the appellant. As observed above, the scrip was illiquid and low profile. The financial results of the company had nothing great to be spoken about. The paid up capital of the company was only ` 96 lacs consisting of 9,60,000 shares of ` 10 each. The highest net profit registered by the company was ` 6.5 lacs in March 2009. The value of the scrip at ` 874 achieved in June 2009 is to be gauged against the above background. Obviously, an attempt was made to inflate the share price by trading in single shares above the last traded price over a period of time. The adjudicating officer found that during the investigation period there was more buying interest in the scrip than that of selling which is revealed through the quantum of buy and sell orders. He has established that the trading in minimum number of shares per day was for the purpose of setting a new high price so that it would serve as the opening price in the next day and the process continued over a period of time. Considered in the background of the facts available in the case, the conduct of the appellant cannot be brushed aside as a normal and lawful market practice. It is true that the Board has taken action selectively against a few entities involved in the alleged wrong doing. According to the appellant the Board should have proceeded against all wrong doers and the action against the appellant and a few entities alone is also discriminatory. We cannot subscribe to this view since the Board has set its own benchmark in selecting cases for action and, in any case, the appellant cannot plead himself innocent or his trades as lawful. It is true that very few shares were traded in the process. However this cannot be accepted as "testing the waters" as contended by the appellant. The price rise in the scrip and the well thought out strategy of trading in small numbers prove the

fact that the appellant was actively assisting the clients in the wrong doing. The contention that there was no proprietary trading and the gains to the appellant were in the form of modest brokerage cannot absolve the appellant of the wrong doing in the background of the facts established by the adjudicating officer.

7. The adjudicating officer has brought out the seriousness of the offence in the following observation:

“I am of the view that the nature of transactions itself make it clear that such trades could not have taken place without willful assistance of the Noticee while executing the buy/sale orders. Such transactions/contract for sale and purchase by the same person are *ipso facto* void and illegal as there is no change in beneficial ownership and the undersigned is of the opinion that such transactions can only be executed with a fraudulent motive to artificially increase the traded volume of the scrip or its price or both. The Noticee has accepted it as an unintentional mistake on its part. Since, such mistake has occurred on several occasions and in respect of its one and the same client every time and further that the said client was an employee of the Noticee; based on the said circumstantial facts of the case, I cannot take it as a repeated unintentional mistake. I cannot understand that how without a fraudulent intent a broker can execute such trades repeatedly and later on term it as a genuine mistake or that the client had independently done the trading in his account and it (the Noticee) had no role to play in such fraudulent transactions. I am of the view that being a registered market intermediary the Noticee is always under obligation to exercise due diligence and care and ensure that the trades executed through it on behalf of its clients or otherwise, are genuine trades and are not executed to disturb the market equilibrium and to falsely influence the volumes or price of the scrip.”

8. The appellant was engaged in knowingly assisting its clients in entering into manipulative trades. To illustrate – from March 19, 2009 to April 23, 2009, out of a total of 14 buy orders placed by the appellant 10 were placed before the sell orders were in place in the system. In the case of one of his employees attached to Sagar Branch in Madhya Pradesh, namely, Ravindra Singhai the trades executed on April 17, 20, 22 and 23, 2009 were fictitious/self trades. It is also to be noted that the appellant has filed a police complaint against his own client and employee Ravindra Singhai for manipulation. It has been held in several cases by this Tribunal that self trades are fictitious and reprehensible. Trades, where beneficial ownership is not transferred, are admittedly manipulative in nature. The contention of the appellant that the rationale of a client in placing single share orders cannot be questioned by a broker is not acceptable in the peculiar facts of the case. Such an act may be accidental and bonafide in the normal circumstances. But when a pattern leading to suspicious trades is detected the broker has to be on his guard. The very fact that prompt criminal complaint was filed by the appellant against its own client/employee would suggest that

serious wrong doing was going on. All this would belie the justification of the appellant that proper surveillance system and safeguards were in place to detect any possible malpractice. Admittedly, the trades have not been disputed by the appellant. The attempt before the adjudicating officer was to defend the case on the explanation that the volume of trades was negligible and the appellant was acting at the behest of the client. We cannot accept the above contention when the entire trading pattern is viewed in its proper perspective.

9. In view of the facts considered in detail by the adjudicating officer and our discussion above it is very clear that the appellant's role in the manipulative trade cannot be brushed aside. The only saving grace is that the appellant was not directly or indirectly connected with the promoters in the game plan as found by the adjudicating officer. At the same time, the appellant assisted the clients in framing the subtle pattern of trades which resulted in price manipulation. To this extent, the appellant is guilty of violating regulations 3 and 4 of the FUTP Regulations. However, considering the facts of the case we find that the penalty of ` 2 lacs on this count is on the higher side. Having regard to the facts of the case we reduce the penalty for violation for FUTP Regulations to ` 1 lac.

The facts of the case establish that the appellant has not acted with the required diligence, care and skill in its dealings with the clients. The penalty of ` 1 lac on this count is upheld.

In the result the appeal is partly allowed and penalty reduced to ` 2 lacs. No costs.

Sd/-  
P. K. Malhotra  
Member

Sd/-  
S. S. N. Moorthy  
Member

