BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 85 of 2011

Date of decision: 26.07.2012

M/s Marwadi Shares and Finance Limited
"Marwadi Financial Plaza", Nana Mava
Road, off. 150 ft. Ring Road,
Rajkot 360 005. … 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. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh, Advocate for the Appellant.

Mr. Darius Khambatta, Advocate General with Mr. Kumar Desai, Mr. Mihir Mody, Mr. Mobin Shaikh, Advocates for the Respondent.

CORAM : P. K. Malhotra, Member & Presiding Officer (*Offg.*)
S. S. N. Moorthy, Member

Per : P. K. Malhotra

This appeal has been filed against the order dated February 28, 2011 passed by the adjudicating officer of the Securities and Exchange Board of India (the Board) holding the appellant guilty of violating the provisions of para 8, 9 and 2.2 of the Board's circular dated January 18, 2006 (January circular) read with para 4 sub-clause (c) of Suspicious Transactions Report mentioned under para 6 of Board's circular dated March 20, 2006 (March circular) and imposing a penalty of ₹ 25,000/- under Section 15HB of the Securities and Exchange Board of India Act, 1992 (the Sebi Act).

2. The appellant is a part of the Marwadi Group of Companies engaged in the business of providing various financial services. It is registered as a member of the National Stock Exchange (NSE), Bombay Stock Exchange (BSE), MCX

Stock Exchange Ltd. (MCX) and United Stock Exchang of India Ltd. (USE). It is also registered with the Board as a stock broker. The appellant had executed trades in the scrip of Rajoo Engineers Ltd. (the company) on behalf of three members of the Nathani family i.e. Mr. Shahin Nathani, Ms. Najmabanu Nathani and Ms. Hasnain Nathani. It is alleged that the transactions of the Nathani family were fictitious in nature and these suspicious transactions did not have any economic rationale. The Board had issued circulars in January 2006 and March 2006 whereby the market intermediaries are required to furnish details of the suspicious transactions to designated authority and also required to maintain record of such transactions. The Board observed that the appellant traded in the scrip of the company on behalf of Nathani group entities for a period of 101 trading days during the period July 11, 2007 to December 3, 2007. The appellant purchased 16,043 shares and sold 16,044 shares during the investigations period on behalf of the Nathani group entities. A total of 266 trades involving 4113 shares were entered amongst Nathani group entities out of which 200 trades involving 318 shares were alleged to be fictitious, the buy client and sell client being the same. Out of these 200 fictitious trades, 197 trades were executed with traded quantity of one share each. The transactions of Nathani group entities were considered suspicious by the Board. Since these transactions were not reported by the appellant to the designated authority i.e. the Financial Intellegence Unit (FIU), established under the Prevention of Money Laundering Act, 2002 (PMLA), the Board issued show cause notice dated July 2, 2010 giving details of the transactions and alleged that by not reporting the said transactions to FIU, the appellant had violated the provisions of para 8, 9 and 2.2 of the January 2006 circular and para 4 sub-clause (c) of suspicious transactions report mentioned under para 6 of the March 2006 circular. The appellant was called upon to show cause as to why enquiry should not be held against it and penalty imposed under Section 15HB of the Sebi Act. The appellant replied to the show cause notice denying the allegations. After considering the reply furnished by the appellant and affording it opportunity of hearing, the adjudicating officer held the appellant

guilty of violating the said two circulars and imposed a penalty of ₹ 25,000/- under Section 15HB of the Sebi Act. Hence this appeal.

3. We have heard Mr. Somasekhar Sundaresan, learned counsel for the appellant and Mr. Darius Khambatta, learned Advocate General on behalf of the respondent Board. The two circulars which are alleged to have been violated by the appellant were issued by the Board to all the intermediaries prescribing guidelines of money laundering standards and obligations of intermediaries in terms of rules notified thereunder. While notifying the requirements which are required to be complied with by the intermediaries under section 12 of the PMLA, the Board also stated that the two circulars under reference are being issued in exercise of the powers conferred under Section 11(1) of the Sebi Act to protect the interest of investors in securities and to promote the development of and to regulate the securities market. The intermediaries were also advised to go through the provisions of PMLA and rules made thereunder and take all steps considered necessary to ensure compliance with the requirements of Section 12 thereof which reads as under:-

> "12. Banking companies, financial institutions and intermediaries to maintain records.- (1) Every banking company, financial institution and intermediary shall -.
>
> (a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
>
> (b) furnish information of transaction referred to in clause (a) to the Director within such time as may be prescribed;
>
> (c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed:
>
> Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2) (a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intemediary, as the case may be;

(b) the records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the to clients and the banking company or financial institution or intermediary, as the case may be."

The appellant is alleged to have violated the provisions of paragraphs 2.2, 8 and 9 of the Board's circular of January 2006 and para 4(c) of Suspicious Transactions Report under para 6 of Board's circular of March 2006 which read as under:-

January 2006 Circular

"2. Back Ground:

"2.1 …….

"2.2 As per the provisions of the Act, every banking company, financial institution (which includes chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company) and intermediary (which includes a stock broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992) shall have to maintain a record of all the transactions; the nature and value of which has been prescribed in the Rules under the PMLA. Such transactions include:

- All cash transactions of the value of more than Rs 10 lacs or its equivalent in foreign currency.
- All series of cash transactions integrally connected to each other which have been valued below Rs 10 lakhs or its equivalent in foreign currency where such series of transactions take place within one calendar month.
- All suspicious transactions whether or not made in cash and including, inter-alia, credits or debits into from any non monetary account such as d-mat account, security account maintained by the registered intermediary.

It may, however, be clarified that for the purpose of suspicious transactions reporting, apart from 'transactions integrally connected', 'transactions remotely connected or related' should also be considered."

"8. Monitoring of transactions

8.1 Regular monitoring of transactions is vital for ensuring effectiveness of the Anti Money Laundering procedures. This is possible only if the intermediary has an understanding of the normal activity of the client so that they can identify the deviant transactions / activities.

8.2 Intermediary should pay special attention to all complex, unusually large transactions / patterns which appear to have no economic purpose. The intermediary may specify internal threshold limits for each class of client accounts and pay special attention to the transaction which exceeds these limits.

8.3 The intemediary should ensure a record of transaction is preserved and maintained in terms of section 12 of the PMLA 2002 and that transaction of suspicious nature or any other transaction notified under section 12 of the act is reported to the appropriate law authority. Suspicious transactions should also be regularly reported to the higher authorities / head of the department.

8.4 Further the compliance cell of the intermediary should randomly examine a selection of transaction undertaken by clients to comment on their nature i.e. whether they are in the suspicious transactions or not."

"9. Suspicious Transaction Monitoring & Reporting

9.1 Intermediaries should ensure to take appropriate steps to enable suspicious transactions to be recognised and have appropriate procedures for reporting suspicious transactions. A list of circumstances which may be in the nature of suspicious transactions is given below. This list is only illustrative and whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances:

a) Clients whose identity verification seems difficult or clients appears not to cooperate

b) Asset management services for cleints where the source of the funds is not clear or not in keeping with clients apparent standing/business activity;

c) Clients in high-risk jurisdictions or clients introduced by banks or affiliates or other clients based in high risk jurisdictions;

d) Substantial increases in business without apparent cause;

e) Unusually large cash deposits made by an individual or business;

f) Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;

g) Transfer of investment proceeds to apparently unrelated third parties;

h) Unusual transactions by CSCs and businesses undertaken by shell corporation, offshore banks /financial services, businesses reported to be in the nature of export-import of small items.

9.2 Any suspicion transaction should be immediately notified to the Money Laundering Control Officer or any other designated officer within the intermediary. The notification may be done in the form of a detailed report with specific reference to the clients, transactions and the nature/reason of suspicion. However, it should be ensured that there is continuity in dealing with the client as normal until told otherwise and the client should not be told of the report/suspicion. In exceptional circumstances, consent may not be given to continue to operate the account, and transactions may be suspended, in one or more jurisdictions concerned in the transaction, or other action taken."

March 2006 circular

STR= Suspicious Transactions Report Intermediary

"4. Suspicious Transaction Report

The Prevention of Money Laundering Act, 2002 and the Rules notified thereunder require every intermediary to furnish details of suspicious transactions whether or not made in cash. Suspicious transaction means a transaction whether or not made in cash which, to a person acting in good faith-

(a) ……..
(b) ……..

(c) appears to have no economic rationale or bonafide purpose.

Broad categories of reason for suspicion and examples of suspicious transactions for an intermediary are indicated as under:

……
……
……

Nature of Transaction

- …….

- No economic rationale or bonafide purpose”

4. Mr. Somasekhar Sundaresan, learned counsel for the appellant, streneously argued that there are certain fundamental legal issues which are at the core of the present proceedings and it is necessary to deal with these issues at the very threshold. According to him, the respondent lack jurisdiction to initiate any proceedings for alleged violation of any of the provisions of PMLA or of any rules or regulations made thereunder or for that matter the breach of any requirement under any circular issued in furtherance of the PMLA, regardless of the fact that such circular was issued by the respondent. No doubt, PMLA require market intermediaries, registered with the Board, to take certain actions and the Board to issue guidelines and criteria for maintenance of records and reporting of the same, all these requirements are for the purpose of PMLA and the mechanism thereunder. The reporting requirements under the PMLA are also to the FIU, a body under the PMLA and not to the respondent Board. The respondent Board has only a facilitating role at the grass root level to administer PMLA. Simply because a reference has been made in the circulars to Section 11 of the Sebi Act, it will not confer any jurisdiction on the Board to initiate action against the intermediaries for violation of these circulars which are issued in compliance with the requirements of PMLA. The two circulars issued in January 2006 and March 2006 were issued for compliance with the requirements under the PMLA and, therefore, any violation of the provisions of these circulars is also actionable only by an authority under the PMLA and not by the Board under the Sebi Act. Section 13 of the PMLA empowers the director under that Act to impose fine on any banking company, financial institution and intermediary if it fails to comply with the provisions contained in Section 12 thereof. Mr. Somasekhar discussed in detail the provisions of PMLA and argued that the Act was enacted with a view to preventing money laundering and to provide for confiscation of property derived therefrom or involved in money laundering. Chapter III of the Act specifies the manner in which any violation in relation to the PMLA ought to be dealt with.

Chapter VIII thereof makes provisions for appointment of authorities under the Act and the order passed by these authorities are appealable under the provisions of that Act. His argument was that the action initiated for breach of PMLA is appelable before the Tribunal constituted under that Act and violation of any guidelines or orders, rules, regulations issued under the PMLA cannot be a subject matter of the adjudication under the Sebi Act. At the most the duty of the officers under the Sebi Act is only to assist the authorities under PMLA to enforce the provisions of that Act as envisaged by Section 54(h) of the PMLA. The respondent Board, having issued the two circulars in January and March 2006 in relation to PMLA, had dischaged its duty under the PMLA and beyond that it does not have any jurisdiction in relation to the provisions of the PMLA. The role of the respondent Board is restricted to specifying format for reporting by market intermediaries and such role has already been discharged by the respondent Board. Thereafter, if any adjudication is required for violation of the provisions of the circular, it falls within the domain of the authorities under the PMLA and not with the officers under the Sebi Act. In support of his submissions learned counsel for the appellant also relied on the judgement of the Apex Court in the case of **Securities and Exchange Board of India vs. Saikala Associates Ltd. [2009] 91 SCL 443 (SC)** where the Apex Court has held that this Tribunal has been constituted under Section 15K of the Act and is, thus, a creation of the statute and as such the Tribunal has to exercise the jurisdiction, power and authority conferred on it by or under the Act. The Tribunal cannot travel beyond the powers conferred on it under the Act. He has also placed reliance on an order of this Tribunal in the case of **Gold Multifab Ltd. vs. Chairman, SEBI (Appeal no. 115 of 2002 decided on September 19, 2003)** where it was held that for violating the provisions of the Companies Act, it is the competent authority under the Companies Act which has to initiate action and not the Board constituted under the Sebi Act. Therefore, in regard to violation, if any, of the two circulars, it is the authority under PMLA which can initiate action and not the Board under Sebi Act.

5. With regard to the transactions entered into by the appellant on behalf of its clients, it was submitted that there is no allegation that either the appellant or its clients have dealt with any proceeds of crime. The transactions in question are below the monetary threshold limit of ₹ 30 lacs prescribed under the PMLA and, therefore, these trades by themselves would not fall within the ambit of a 'scheduled offence' under the PMLA. In any case, the allegation of the Board in the impugned order is that of not complying with obligation to report 'a suspicious transaction' and going by the definition of the 'suspicious transaction', there is no basis to demonstrate as to how the appellant ought to have formed an opinion that the transaction executed by its clients did not have an economic rationale or bonafide purpose. There is no finding or allegation about the authenticity or legality of funds used by the clients of the appellant and the transactions were much below the monetary threshold limit of ₹ 30 lacs prescribed under the PMLA. Merely because the Board, with the benefit of an integrated market surveillance system, developed suspicion about the trades, it cannot be argued that the appellant, being a stock broker, should have developed suspicion that there was no economic rationale or bonafide purpose of the impugned trades. Learned counsel for the appellant placed reliance on the order passed by this Tribunal in the case of **Networth Stockbroking Ltd. vs. SEBI (Appeal No. 5 of 2012 decided on June 19, 2012)** where this Tribunal has observed that when an entity is charged with fraud, what we have to see is what is the evidence, direct or circumstantial, against it on record to show that either it was a party to the fraud or it knew that other brokers/clients are playing fraud or some mischief leading to commission of fraud thereby violating the provisions of the regulations. According to the learned counsel, this principle applies to the facts of the present case also as there is nothing on record which could have aroused suspicion in the mind of the appellant that the trades executed on behalf of its clients were not for bonafide purpose or had no economic rationale.

6. Mr. Darius Khambatta, learned Advocate General appearing on behalf of the Board, refuted the arguments advanced by the learned counsel for the appellant and submitted that the January and March 2006 circulars were issued by the Board in exercise of the powers conferred under Section 11(1) of the Sebi Act to protect the interest of investors in securities and to promote development of and to regulate the securities market. The power to issue directions under Section 11(1) of the Sebi Act is of widest possible amplitude. The said power to issue directions must carry with it, by necessary implications, powers and duties incidental and necessary to make the exercise of those powers fully effective including the power to adopt appropriate proceedings against the intermediaries to follow/neglect to comply with the obligations cast on them under the said circulars issued by the Board. In support of his submissions, learned Advocate General drew our attention to the orders passed by this Tribunal in the case of **Sahara India Real Estate Corporation Ltd. vs. SEBI (Appeal no. 131 of 2011 decided on October 18, 2011)** and **Parsoli Corporation Ltd. vs. SEBI (Appeal no. 146 of 2010 decided on August 12, 2011)** where the scope of the powers of the Board under Section 11 of the Sebi Act was discussed in detail. It was submitted that under the said two circulars, intermediaries are required to detect, maintain a record of and give information relating to all suspicious transactions that have no economic value or bonafide purpose to the director FIU. The time and manner in which the record of suspicious transactions is to be maintained and also the manner in which the information is required to be forwarded is also provided in the said circulars. All intermediaries are required to report the suspicious transactions having no economic value or bonafide purpose to the director FIU within the time and in the manner provided in the said circular irrespective of whether or not such suspicious transactions constitute an offence under the provisions of PMLA or various regulations issued by the Board under the Sebi Act. The arguments of the learned Advocate General is that irrespective of the fact whether suspicious transactions constitute an offence under the PMLA or not, all intermediaries are required to report suspicious transactions, as defined

in the said circulars, to the designated authority. The purpose is that the designated authority will collect the data and analyse it to determine whether an offence under PMLA is made out or not. Since money laundering involves proceeds of a variety of crimes, certain specialised bodies like the Income Tax Department, Customs & Central Excise Departments, Police, officers of the Board and the Reserve Bank of India etc. have been delegated the powers to prescribe the manner and mode of information to be submitted by various entities for the purpose of detection of money laundering by the authorities under PMLA. If any intermediary fails to put in place the requisite mechanism for appropriate maintenance and preservance of such records as prescribed by the Board, the Board will still be within its power to initiate adjudication proceedings for violating the standards prescribed under its circulars. This, by no stretch of imagination, means that the Board is exercising adjudication power under the PMLA for enforcing compliance with the circulars issued by it. The Board derives its power under the Sebi Act. Therefore, a distinction has been drawn between offence of money laundering under the PMLA and the violation of any requirement to be complied with and prescribed by an authority like the Board for furnishing of information. The role of the Board as prescribed under Section 54(h) of PMLA is to assist the authorities under that Act. The case of the Board is not that it has authority under the PMLA. The Board is having authority under Section 11 of the Sebi Act to enforce mandate of the circulars issued by it. In support of his submissions, learned Advocate General has also drawn our attention to the clarification sought by the Board from the FIU where the FIU is also stated to be of the view that a regulator can take action against reporting entities for violating the guidelines issued by that regulator under its own powers derived from the relevant Act.

7. Learned Advocate General further submitted that in the instant case the appellant has failed to put in place the prescribed system to maintain information and furnish the same to FIU in the manner prescribed by the Board and, therefore,

the adjudication proceedings were initiated against it under the powers available with the Board under Sebi Act. The suspicious transactions executed by the appellant were large in number and were of 'single self trades' which had an effect on the price of the scrip. Single self trades are suspicious transactions as such trades are no trades at all because one cannot trade with oneself. Such trades are fictitious having no economic value or bonafide purpose. Under the circulars issued in January and March 2006, the intermediaries were required to report and maintain record and to give information relating to such transactions to the FIU. The adjudicating officer has observed that quantity of fictitious trades of Nathani group was 318 shares and such trades were executed on 200 instances over a period of 88 days. Out of 200 instances of fictitious trades, on 197 instances, the traded quantity was single share. The matching of buy and sell orders placed by the same entities from the same location IDs over such a prolonged period should have attracted attention of the appellant since such trades did not have any economic rationale and should have raised suspicion in the mind of the appellant. Since the appellant has failed in discharging its duty and has not complied with the obligation cast on it under the two circulars issued by the Board, it was justified in holding the appellant guilty and imposing the penalty. Therefore, no fault can be found with the order passed by the adjudicating officer.

8. Let us first deal with the power of the Board to initiate adjudication proceedings under the Sebi Act for violating the provisions of the circulars issued in January and March 2006. The circular of January 2006 was issued to all intermediaries registered with the Board under Section 12 of the Sebi Act prescribing guidelines on anti money laundering standards. It brings to the notice of the intermediaries that the PMLA was brought into force with effect from July 1, 2005 and necessary notifications/rules under that Act were issued by the Ministry of Finance. It was also brought to the notice of the intermediaries that as per the provisions of that Act, every banking company, financial institution and intermediaries shall have to maintain a record of all transactions, the nature and

value of which has been prescribed in the rules notified under the PMLA. The guidelines were also enclosed with the said circulars stating that the compliance with these standards by all intermediaries and by the country has become imperative for international financial relationship in the context of the recommendations made by the Financial Action Task Force (FATF) on anti money laundering standards. In addition to these guidelines, the circular also mandates that the intermediaries may, according to their requirements specify additional disclosures to be made by clients to address the concerns of money laundering and suspicious transactions undertaken by clients. The intermediaries were also advised to put in place anti money laundering measures and also designate an officer as a principal officer who will ensure compliance with the provisions of the PMLA and details thereof to be intimated to FIU. The circular specifically says that it is being issued in exercise of the power conferred under Section 11(1) of the Sebi Act to protect the interest of investors in securities and to promote the development of and to regulate the securities market.

9. In continuation of the aforesaid circular, the Board issued another circular in March 2006 inviting the attention of all the intermediaries to the provisions of the PMLA and obligation of intermediaries in terms of rules notified thereunder with regard to the maintenance and preservation of records and their reporting obligations. It was further stated that the circular is being issued in exercise of the powers conferred under Section 11 of the Act and Rule 7 of Prevention of Money Laundering (Maintainance of Records of the Nature and Value of Transactions, Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (2005 Rules) to protect the interest of investors in securities and to promote the development of and to regulate the securities market. Sub-rule (4) of Rule 7 of the 2005 Rules provides that it shall be the duty of every banking company, financial institution and intermediaries to observe the procedure and a manner of

furnishing information **as specified by its regulator** *(emphasis supplied).* The scope of the powers of the Board under Section 11, 11A and 11B of the Sebi Act came up for consideration before this Tribunal in the case of **Sahara India Real Estate Corporation Limited (supra).** After discussing the relevant provisions, the Tribunal has taken a view that the Board, as a market regulator, can have any of the measures mentioned in Sub-section (2) and (4) of Section 11 to carry out the duty assigned to it under Section 11(1). The measures referred to in Sub-section (2) and (4) are only illustrative and not exhaustive and in a given case the Board can take such measures as it deems apropriate keeping in view the circumstances of the case. The Tribunal has expressed the view that the Board has all the powers to take whatever steps it thinks necessary to safeguard the interest of investors in securities and to regulate the securities market and with this objective, it can issue appropriate direction under Section 11A and 11B of Sebi Act. It was further observed that the words employed in these provisions are of wide amplitude and having regard to the fact that we are dealing with a growing capital market where new economic trends including financial instruments are emerging on a regular basis, widest possible interpretation needs to be given to the provisions of the Sebi Act subject, of course, to the two parameters enumerated in Section 11(1) namely, protection of the interest of the investors in securities and promotion and regulation of the securities market. Such an interpretation alone would advance the object of the Sebi Act. Similarly, in the case of **Parsoli Corporation Ltd. (supra)**, the Tribunal observed as under:-

> "The Board is a statutory body established under section 3 of the Act and section 11 thereof enjoins a duty on it to protect the interests of investors in securities and to promote the development of and to regulate the securities market. Parliament in its wisdom has left it to the Board to take such measures as it thinks necessary to carry out these duties. The powers of the Board in this regard are, indeed, very wide and it can do anything and take any action/step in order to perform its functions/duties. Howsoever wide the powers be, every action of the Board has to be judged on the twin tests of investor protection and development and regulation of the securities market. In other words, the Board may be free to do anything but whatever it does has to be for the protection of the interests of investors or for the development and

> regulation of the securities market. It has the freedom to play only within these parameters. Having left it to the Board to take such measures that are necessary for investor protection and regulation and development of the securities market, sections 11(2) and 11(4) without diluting the powers of the Board under section 11(1) suggest some of the measures which it can take in this regard."

10. No doubt the genesis of the two circulars in question issued by the Board lies in the PMLA and these circulars are issued in compliance with the mandate which the Board is required to comply with as a regulator, while issuing these circulars, the Board has also exercised its powers under Section 11 to ensure that interest of investors is protected and the market players ensure that suspicious transactions are reported to the FIU to comply with country's mandate given to the Financial Action Task Force under its national obligation. It is for this reason that while issuing the circular in January 2006, it has cast an additional obligation on the intermediaries by providing that the intermediaries may, according to their requirement, specify additional disclosures to be made by clients to address the concerns of money laundering and suspicious transactions undertaken by the clients. We are not inclined to agree with the learned counsel for the appellant that even if the circular is issued by the Board, since circular pertains to enforcement of provisions of PMLA, it is only the authorities under the PMLA who can take action against the intermediaries. In the instant case, action has been taken by the Board not for violating the provisions of the PMLA or the rules made thereunder but for violating the circular issued by the Board mandating intermediaries to comply with certain procedural requirements to ensure that there is no violation of PMLA. Let us examine this issue from another angle. Suppose there is no enactment like PMLA, but with a view to ensure that there is no activity of money laundering in the securities market, the Board issues a circular to the intermediaries directing them to report suspicious transactions to an authority other than the Board. Will Board be handicapped to take action against the intermediaries for not complying with the requirements under such order/circular. Looking at the scope of Section 11, as discussed above, we are clearly of the view that dehors the provisions of PMLA, the Board is competent to

issue such a circular in exercise of its power under Section 11(1) of the Sebi Act and to enforce it. Simply because the genesis of the circular lies in the PMLA or the rules made thereunder, it will not deprive the Board from taking action against the intermediaries for vioalting the circular issued by it. It needs to be appreciated that the action in the instant case is not for violating the provisions of PMLA but for violating the circular issued by the Board mandating the market players to comply with certain obligations and maintainance of records to help the authorities to check menace of money laundering. In a large country like ours where a number of regulatory authorities are functioning under the mandate given by the Parliament, they cannot discharge their duties and functions in isolation. It is necessary for these authorities to work in tandem, coordinate and assist one another for the purpose of carrying out their functions effectively and in the best interest of the country, more so for the purposes of investigating crime and in the areas of commerce and economics. It is in this spirit that Section 12 of PMLA cast a duty on every banking company, financial institution and intermediary to carry out certain responsibilities for maintaining records of transactions, furnish information of transactions and verify and maintain records in the manner prescribed. Section 54 of the Act further empowers and requires certain authorities in enforcing the provisions of PMLA Act. Clause (h) of Section 54 specifically refers to officers of the Board. This by itself does not empower officers of the Board to initiate action for violation of the provisions of PMLA. However, it surely empowers the Board to issue orders/circulars/guidelines in exercise of its power under the Sebi Act to carry out obligations imposed on it under the PMLA. And if any intermediary, falling under the jurisdiction of the Board, fails to comply with the obligations imposed on it under an order/circular/guidelines issued by the Board, it will surely be competent to initiate action against such intermediary under the Sebi Act. Such an action will not amount to action under the PMLA. We are not inclined to agree with the learned counsel for the appellant that by enforcing the circular issued by it, the Board is travelling into the domain which pertains to authorities under the PMLA.

The decisions cited by learned counsel for the appellant are also of no help to him. In the case of **Gold Multifab Ltd. (supra),** action was initiated by the Board for violating certain provisions of the Companies Act and not for violating the provisions of any rule/order or circular issued by the Board. In the case in hand, the Board is seeking to enforce its own circular issued under Section 11 of the Sebi Act. The decision of the Apex Court in the case of **Saikala Associates Ltd. (supra)** also has no application to the facts of the present case. In that case the Apex Court held that in case of contravention of Section 12 of the Act or rules made thereunder, only penalty provided under the Act can be imposed. The decision concerns exercise of general powers when there were specific powers under the same Act. It does not concern exercise of independent powers under two different Acts as in the present case viz PMLA and Sebi Act. In the present case the Board is taking action against an intemediary for violating the provisions of circulars issued by the Board under Section 11 of the Sebi Act and not for violating the provisions of the PMLA or rules made thereunder. We are, therefore, of the considered view that the Board is competent to take action in accordance with the provisions of the Sebi Act for violation of the provisions of the circulars issued by it.

11. Coming to the merits of the case, we are of the view that the order passed by the adjudicating officer needs to be upheld. It is not in dispute that the appellant traded in the scrip of the company on behalf of Nathani group entities for period of 101 trading days during the investigation period. 200 trades involving 318 shares were alleged to be fictitious, the buy clients and the sell clients being the same. Out of these 200 fictitious trades, 197 trades were executed with traded quantity of one share where the buying and selling party was the same. Self trades, by their vary nature, are fictitious. The argument of the appellant that these trades were entered into ‘to test the waters’ or ‘to make price discovery’ cannot be accepted as one share traded, which is also a self trade, can never result in any genuine price discovery. There were 197 such one share self

trades executed on 88 trading days. It is not a small number and could have easily been detected by the appellant with due diligence. Self trade can never serve the purpose 'to test the waters' for price discovery. The one share traded which is also a self trade can never result in any genuine price discovery. There were 197 such one share self trades which is not a small number and which could easily have been and ought to have been detected by the appellant. Such transactions executed for and on behalf of the clients will fall within the definition of suspicious transactions having no economic rationale or bonafide purpose, as defined in the circulars. The order passed by this Tribunal in the case of **Networth Stockbroking Ltd. (supra)** relied upon by the learned counsel for the appellant has no application to the facts of the present case. In that case the Tribunal had discussed the circumstances to hold a broker liable for violation of the FUTP regulations in a case where the broker is alleged to have executed circular/synchronised or matched trades on behalf of his clients with a counter party broker and its clients. In the case in hand, the appellant has executed trades on behalf of its clients which are self trades. Such trades were executed on a large number of days which have been held by the Board to be suspicious transactions having no economic rationale. We do not find any infirmity in the order passed by the adjudicating officer.

In the result, the appeal fails and is dismissed with no order as to costs.

Sd/-
P. K. Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S. S. N. Moorthy
Member

26.07.2012
Prepared & Compared by
ptm