BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 6 of 2012

Date of decision: 14.8.2012

M/s. Ramniklal Mohanlal Capital
Markets Pvt. Ltd.
Great Social Building, 2nd Floor,
60, Sir P.M. Road, 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. Bharat Merchant, Advocate with Mr. Neerav Merchant, Advocate for the Appellant.

Mr. Prateek Seksaria, Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

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

Per : S.S.N. Moorthy

The appellant is a broker on the Bombay Stock Exchange Limited (BSE). Challenge in this appeal is against an order passed by the adjudicating officer of Securities and Exchange Board of India (for short the Board) by which a penalty of ` 2 lacs was imposed on the appellant. The penalty was imposed under section 15HA and 15HB of the Securities and Exchange Board of India Act 1992 (the Act). 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 and clauses A(2), (3) and (4) of the code of conduct for stock brokers as specified in Schedule II under regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. The penalty has been bifurcated at the rate of ` 1 lac each as referable to the above violations.

2. Brief facts leading to the imposition of penalty are the following. The Board investigated trading in the shares of Jaybharat Textiles and Real Estate Limited (Jaybharat) for the period May 7, 2009 to August 20, 2009. During the investigation period the scrip registered price rise in two patches i.e. from ` 230 to ` 495 in one patch and from ` 340 to ` 531.65 in the second patch. The price fluctuation, on investigation, was found to be attributable to circular/reversal/synchronized trades engineered by a group of clients called Mehta group. The appellant was alleged to have aided and abetted the manipulation of the scrip through the transactions of its client Ms. Renu Paliwal from Udaipur terminal of the appellant. It was alleged that Ms. Renu Paliwal, along with a few entities belonging to the Mehta group, had executed manipulative trades in the scrip and the appellant, being the broker, was facilitating the game plan and so the appellant was liable for penal action for violation of FUTP Regulations and code of conduct prescribed for brokers. A show cause notice was issued to the appellant on June 2, 2011 alleging the above violations. The appellant filed a reply to the show cause notice on June 28, 2011 denying all the allegations. After due consideration of the submissions of the appellant and a personal hearing, the adjudicating officer concluded that the appellant had an active role in the manipulative trades executed by Renu Paliwal and hence imposed a penalty of ` 2 lacs.

3. We have heard Shri Bharat Merchant, learned counsel for the appellant and Shri Prateek Seksaria, learned counsel for the Board who took us through the records of the case.

4. The appellant's learned counsel contended that the terminal at Udaipur on which trading was done by Renu Paliwal functioned only for about 5 months and the trades were put in by the dealer, Suresh Hanswal. The said terminal at Udaipur was closed in June 2009 as there was no flourishing business. According to the appellant's learned counsel the appellant had no connection with the client Renu Paliwal other than providing the terminal at Udaipur and it had no personal knowledge about the manipulative activities, if any, indulged in by the client. It is submitted that Renu Paliwal was a day trader who squared off the deals during the day and the trades were executed near about the last traded price of the scrip and no signal whatsoever was given to the appellant managing the

terminal from Bombay. It is very vehemently argued that the appellant and the client had no nexus with the alleged Mehta group and the connections between the parties relied on by the adjudicating officer is not founded on proper facts. There were no circular or synchronized trades in as much as the client was trading with a few persons of the so called Mehta group with whom the appellant had no connection. According to the appellant's learned counsel the Board should have established the nexus of the parties through proper evidence other than the trading details and the failure to do so would absolve the appellant of any wrong doing. It is contended that the appellant's role was that of a broker, pure and simple, and it had no active knowledge, let alone participation, in the activities of the client operating at Udaipur through the dealer Suresh Hanswal. It is also represented that there was no negligence or lack of due diligence on the part of the appellant since it had taken care of the maintenance of the terminal with necessary safeguards and the trades were settled and payment made without any room for complaint. The appellant's learned counsel objects strongly to the use of the expression "aid and facilitate" in the impugned order since it does not amount to "aid and abet" which is the charge leveled against the appellant in the show cause notice. According to him, the appellant might have acted without any business prudence but there was no occasion of negligence or participation in manipulation along with the client.

5. Shi Prateek Seksaria, learned counsel for the Board, defended the order of the adjudicating officer. According to him, the appellant was operating the Udaipur terminal as a branch and, therefore, the appellant was duty bound to monitor the trades taking place therein. The Board has established the close connection among the trading members belonging to Mehta group and there is evidence of circular trades in the transactions of the appellant. It is submitted that the adjudicating officer has brought on record sufficient material and evidence to substantiate the alleged violation and the penalty has been imposed after due consideration of all the relevant facts.

6. We have considered the rival submissions. There is no dispute regarding the trading in the scrip of Jaybharat and the price fluctuation witnessed during the impugned period. There is also no dispute regarding the trades executed by Renu Paliwal on the terminal of the appellant in Udaipur. It is also admitted that the appellant was the broker

who managed the terminal from its Bombay office. During the period when the Udaipur terminal was functioning the trades on the terminal were in relation to a single client namely Renu Paliwal. The appellant's explanation that the Udaipur terminal was controlled by Shri Suresh Hanswal, the dealer on the spot, and there was no direct management of the terminal cannot be appreciated. It is to be noted that the appellant has treated the Udaipur terminal as a branch. It is evident from the reply field by the appellant to the show cause notice. The submissions of the appellant to the above effect appearing in the reply to the show cause notice are as under:

> "(b) Our clients had a short period from 27.1.09 to 18.6.09 established a Branch in the office premises of Suresh Hanswal and provided a IML Terminal (i.e. INTERMEDIAT MESSAGE LAYER) at the said Branch.
>
> (c) The said Branch was operated by Mr. Suresh Hanswal exclusively. Our clients had appointed him as a Dealer for the trades to be executed by him under the Contract Notes to be issued by our clients from Mumbai.
>
> (d) The said Branch was opened by our clients on a trial basis and ultimately was closed on 18.6.2009."

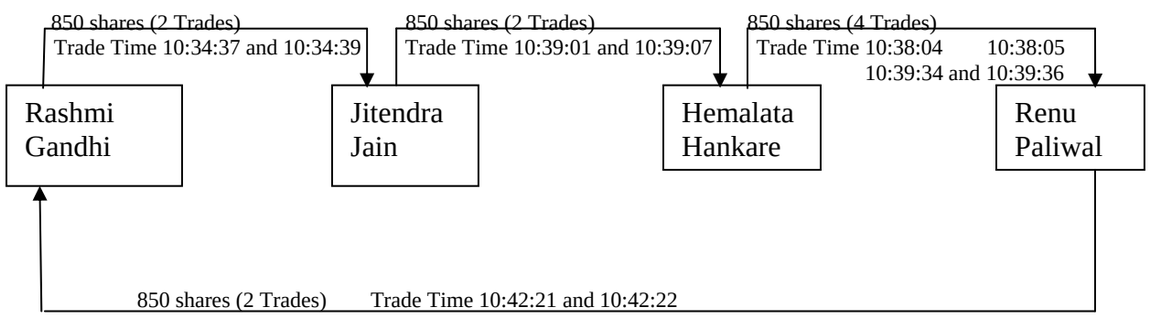
The above submissions would amply establish that the terminal was a branch and, therefore, the appellant was supposed to be in full control and overall responsibility over the branch office. Since the Udaipur terminal was a branch, the appellant was responsible for its proper management as per the guidelines laid down. The appellant cannot take a stand that the trades on the terminal was the lookout of the client and the dealer and that the appellant had no knowledge or control over the transactions.

7. It is interesting to note that the Udaipur terminal functioned only for a period of about 5 months. The only trades on the terminal were that of Renu Paliwal.

8. The argument of the appellant that there was no connection between the client and entities of the Mehta group cannot be accepted. The adjudicating officer, while issuing the show cause notice, has annexed a statement showing the connection among the entities of the Mehta group with reference to telephone numbers and address of the parties. He has also relied on the details of the introducers and the connection among the parties inter se. The operation of bank account in HDFC Bank Kandivali branch, Bombay also points to close nexus among the parties though they lived in different places. The appellant's learned counsel would question the basis adopted by the adjudicating officer to

establish connection among the parties during the hearing of the appeal. However, we notice that no effective objection was raised about the details furnished by the adjudicating officer while filing the reply to the show cause notice. On a perusal of the annexure to the show cause notice we are satisfied that the adjudicating officer has drawn a reasonable conclusion regarding the connection among the parties from the various sources available. It goes without saying that in any case of this kind nexus among the parties can be established only through various circumstantial factors and conduct of the parties. In the present case the KYC document, the address of the parties, their telephone numbers and repeated trades in the scrip of Jaybharat establish the close connection among the parties.

9. The appellant's learned counsel tried to dislodge the theory of circularity in transaction observing that the transaction of Renu Paliwal was with Rashmi Gandhi, Jitendra Jain etc who should be regarded as third parties and Renu Paliwal had no connection with them. We are unable to appreciate this stand taken by the appellant. The adjudicating officer has established the connection among the parties with necessary evidence in the impugned order. The appellant's learned counsel cannot argue that Renu Paliwal had no connection whatsoever with the persons with whom she has traded. On the other hand, the trade details would show that there has been several circular transactions involving Renu Paliwal and the persons of the Mehta group. To illustrate, one such transaction runs as under:



There are several other transactions of this kind.

10. Considering the repeated transactions indulged in by Renu Paliwal in the scrip of Jayabharat and the connection among various persons of the Mehta group, the appellant, having over all charge of the terminal cannot be heard to submit that it had no knowledge

of the dealings therein. On the other hand, the facts of the case show that the appellant had intimate knowledge of the manipulative trades going on in the terminal and it has failed to take any corrective action as expected from a diligent broker.

11. In the impugned order the adjudicating officer has established that Renu Paliwal executed fraudulent trades in the scrip of Jayabharat by resorting to circular and reversal trades. There was no transfer of beneficial ownership. The transactions continued for 21 trading days and contributed to 6.17 per cent of the total market volume. It is admitted that the Udaipur terminal of the appellant functioned only for one client namely Renu Paliwal. Her trades in the scrip of Jayabharat were aimed at manipulative trades to create artificial volumes. The appellant has aided and abetted the manipulative intent of Renu Paliwal. The adjudicating officer has established that the appellant has intimate knowledge of the trades executed by Renu Paliwal and so, by way of aiding the client the appellant has violated the provision of the FUTP Regulations. Similarly, by allowing the client to trade fraudulently in the branch, the appellant has acted without due diligence expected of a broker. The argument of the appellant's learned counsel that the use of the expression "aid and facilitate" should be distinguished from "aid and abet" is without any merit since the intention of the adjudicating officer has been properly conveyed from various factors considered in the impugned order.

12. The appellant's learned counsel placed reliance on a few judgments (1) Deb Nraryan Halder v. Smt. Anushree Halder, AIR 2003 SC 3174 -- the ratio in this judgment is that mere conjuncture or surmise cannot form the basis of the findings of an adjudicating authority. From the facts of the case and the material brought on record we do not find any relevance to the above case law. (2) Rajesh Kasat vs. Securities and Exchange Board of India, Appeal no.159 of 2003 dated 1.5.2006 of SAT and (3) M/s. Jagruti Securities Ltd. vs. Securities and Exchange Board of India, Appeal no.102 of 2006 dated 27.10.2008 of SAT-- the above decisions also do not apply to the facts of the present case since the adjudicating officer has established the wrong doing of the appellant with sufficient material and supporting evidence. It is also noteworthy that the fact situation in each case has to be appreciated first before applying legal propositions laid down in various judgments.

In view of the discussion above, we hold that the adjudicating officer has rightly found the appellant guilty of violating the provisions of FUTP Regulations and code of conduct prescribed for stock broker. The appeal fails and the same is dismissed. No costs.

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

Sd/-
S. S. N. Moorthy
Member

14.8.2012
Prepared and compared by
RHN