# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No. 137 of 2012**

**Date of decision: 14.11.2012**

1. Rich Capital & Financial Services Limited
   (Now known as Rich Universe Network Ltd.)
   7/125, C-2, IInd Floor, Swaroop Nagar,
   Kanpur – 208002.

2. Mr. Rajeev Agarwal
   718, Reckabganj,
   Faizabad – 224001.

3. Mr. Sanjay Gupta
   20/23, Patakapur,
   Kanpur – 208001.

4. Mr. Shashwat Agarwal
   G-12, Anand Niketan,
   New Delhi – 110021.

5. Mr. Dhrupesh Shah
   117/289, "O" Block,
   Geeta Nagar,
   Kanpur – 208025. ……Appellants

Versus

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

Mr. Joby Mathew, Advocate for Appellants.

Mr. Shiraz Rustomjee, Senior Advocate with Mr. Ajay Khaire, Advocate for the Respondent.

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

Per : P. K. Malhotra

The short question that arises for our consideration in this appeal is whether the appellant company, by making announcement that it will consider rights issue of equity shares of the company and then not taking up the issue further, has misled the investors and thereby violated the provisions of Section 12A(c) of the Securities and Exchange Board of India Act, 1992 (the Act) read with regulation 3(d), 4(1), 4(2)(f) and 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short the Regulations).

2. Appellant no. 1 is a company registered under the Companies Act, 1956 and is engaged in the business of financial activities. Its shares are listed on the Bombay Stock Exchange (BSE), Delhi Stock Exchange and Uttar Pradesh Stock Exchange. Appellant nos. 2 to 5 were the directors of the company during the relevant period.

3. The Securities and Exchange Board of India (the Board) conducted investigations into trading in the scrip of the company during the period March 27, 2009 to August 12, 2009. It was noted that the company made corporate announcements relating to financial results and rights issue of equity shares of the company vide notice dated April 14, 2009, July 15, 2009, July 24, 2009, August 1, 2009 and August 28, 2009. The meeting of the board of directors to consider rights issue of equity shares, scheduled to be held on August 1, 2009 was postponed to August 10, 2009. Again, the meeting of board of directors to be held on August 10, 2009 *interalia* to consider the rights issue of equity shares of the company was adjourned. In accordance with the provisions of clause 19 of the listing agreement, the company had given prior intimation to BSE about the board meeting, but it did not give any intimation to the stock exchange immediately after the meeting, as required by clause 20 and 22 of the listing agreement. This intimation was furnished only on October 9, 2009, that too, after repeated telephonic reminders of BSE. It was found by the Board that the rights issue of equity shares of the company was never considered thereafter and it was, therefore, alleged that the company and its board of directors never had an intention to consider rights issue. By putting this item in the agenda and not considering it at all, the appellants have played

fraud with the investors and had thus violated the provisions of Section 12A(c) of the Act read with regulation 3(a), 4(1), 4(2)(f) and 4(2)(r) of the Regulations.

4. A common show cause notice dated May 24, 2011 was issued to the appellants to show cause as to why enquiry should not be held against them and penalty imposed under section 15HA of the Act for the alleged violations. The appellants replied to the show cause notice and denied the charges. The adjudicating officer of the Board provided them opportunity of hearing after which she held the appellants guilty of violating the aforesaid provisions and imposed a penalty of ₹ 1,50,000/- on the company and ₹ 2,50,000/- each on all the directors namely, Rajeev Agarwal, Sanjay Gupta, Shashwat Agarwal, Dhrupesh Shah and K. K. Agarwal. All these persons, except K. K. Agarwal, are in appeal before us.

5. We have heard Mr. Joby Mathew, learned counsel for the appellants and Mr. Shiraz Rustomjee, learned senior counsel for the respondent Board. It was strenuously argued by learned counsel for the appellants that the adjudicating officer of the Board has totally misdirected herself in holding the appellants guilty of violating the provisions of the Regulations. The only default, if any, on the part of the appellants is not informing BSE about the outcome of the meeting of its board of directors held on August 1 and August 10, 2009 as required by clause 22 of the listing agreement. The notice of the board meeting to consider the rights issue was sent from time to time and in the board meeting held on August 10, 2009, the proposal of rights issue could not be considered and intimation thereof was sent on October 9, 2009. Such a lapse was only a normal human error. Subsequently, the company never informed about the rights issue proposal to the exchange as it was not contained as an agenda item in the subsequent board meetings. Since there was no outcome of the board meeting on the rights issue, and the idea of rights issue was dropped, the appellants cannot be held guilty of violating the Regulations. It was further submitted by the learned counsel for the appellants that merely mentioning an item in the agenda for consideration cannot be said to be planting

false and misleading information within the purview of the Regulations which may influence decision of the investors.

6. On the other hand, learned senior counsel for the Board supported the order passed by the adjudicating officer and submitted that from the chronology and facts of the case, it is clear that by the first disclosure about the rights issue, it is but natural that the investors will have a positive reaction with regard to the price of the shares of the company. By withholding the information from the stock exchange that the rights issue is not being considered or that it has been dropped, the appellants have misled its share holders and investors. The appellants have not produced any material, other than a one liner agenda item, showing that the rights issue of equity shares of the company was considered by the board of directors. Before placing the agenda item before the board, the company must have done some ground work and when the proposal was dropped, some deliberations must have taken place. However, in spite of the opportunity afforded to the appellants, no such material was placed on record either before the Board or before the adjudicating officer. Making a simple declaration with regard to the rights issue with no further material on record and then not proceeding with the issue is nothing but a fraud within the meaning of the Regulations and the Board has rightly held the appellants guilty of violating these regulations.

7. We have considered the rival submissions and examined the material on record and are of the view that no interference is called for in the impugned order. Admittedly, the company had placed on its agenda the item of rights issue of equity shares of the company for consideration by the board of directors in its meeting which was to be held on August 1, 2009 and deferred to August 10, 2009. No material, whatsoever, has been placed on record to show that before placing this item on the agenda of the board meeting any ground work was done. There is nothing on record to show that there was any deliberations in the board meeting on this issue or why this agenda item was dropped. The very fact that the company had given prior intimation to BSE about the board meeting containing the above agenda item, as per requirement of clause 19 of the

listing agreement but no such intimation was furnished to BSE under clause 20/22 of the listing agreement leads to a doubt about the bonafides of the appellants on consideration of this issue. By putting the item of rights issue on the agenda note and informing stock exchange about it, surely creates interest in the investors in the shares of the company and thereafter by not taking up the issue at all and not furnishing any reasons therefor and not informing stock exchange about the outcome of the board meeting, in our view, will fall within the definition of fraud under the regulations. Only a belated intimation was furnished, that too, after repeated reminders from BSE. The observations made by the adjudicating officer in paras 24 and 25 of the impugned order are relevant and reproduced hereunder for ease of reference:-

> "24. Thus now I dwell on the charges of inducement for non disclosure. From the chronology and the facts of the case it is evident that by the first disclosure about the rights issue, the general investing public would be expected to have some positive reaction with respect to the price of the shares of the company. The same is evident from the price movement as demonstrated at para 17 above.
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> 25. Thus subsequent to the meeting of the August 10, the company should have promptly informed within 15 minutes of the closure of the meeting about the update of the outcome. The Noticees failed to do so. The onus was on the Noticees to inform to the exchange immediately and by not disclosing the same they withheld vital information from the general public that too for a long period. The Noticees very promptly informed to the general public of their decision to discuss on the Rights Issue of the Equity shares of the company which is considered as price positive information but did not inform about not discussing the same in the Board Meeting held subsequently. The act of the Noticees clearly brings out their intention to play fraud on the gullible investors. Hence the issue is not of complying with clause 19 of the listing agreement and misleading the investors but of withholding information from the public by not making timely disclosure about the outcome of the Board meeting. The submissions given by the Noticees are therefore not acceptable and justifiable."

8. This view gets strengthened after perusing the order dated July 31, 2012 passed by the adjudicating officer of the Board against M/s. Big Brokers House Stocks Ltd. where, after investigation in the same scrip for the same investigation period, the Board has held M/s. Big Brokers House Stocks Ltd. guilty of violating the regulations for entering into reversal/circular trades. A copy of this order has been produced before us by learned counsel for the appellants. Perusal of the same shows that the appellants

before us are connected to the parties involved in the order passed against M/s. Big Brokers House Stocks Ltd. We have looked at the findings in that case only for the purpose of deciding the present appeal and this should not be taken as an expression of our view on the order passed by the adjudicating officer in the case of M/s. Big Brokers House Stocks Ltd. We are, therefore, not inclined to interfere with the order passed by the adjudicating officer.

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

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

Sd/-
S. S. N. Moorthy
Member

14.11.2012
Prepared and compared by:
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