BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 162 of 2012

Date of Decision: 3.12.2012

Shraddha Stock Broking Private Limited
6, Brabourne Road, Vaishno Chambers,
2nd Floor, Room No. 205,
Kolkata- 700 001 ……Appellant

Versus

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

Mr. Vinay Chauhan, Advocate for the Appellant.
Mr. Shiraz Rustomjee, Senior Advocate with Mr. Mobin Shaikh, Advocate for the Respondent.

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

Per : P.K. Malhotra, (Oral)

This appeal has been filed against the order dated April 30, 2012 of the adjudicating officer of the Securities and Exchange Board of India (the Board) holding the appellant guilty of violating Regulation 4 (2) (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (FUTP Regulations) and imposing a monetary penalty of ₹ 18 lacs under Section 15HA of the Securities and Exchange Board of India Act, 1992 (the Act).

2. The facts giving arise to this appeal, in brief, are as under:

The appellant is a stock broker registered with the Board and the Calcutta Stock Exchange. It entered into certain proprietary trades through other brokers in the scrip of

Bhansali Engineering Polymers Limited (the Company) during the period May 20, 2003 to August 20, 2003.

3. The Board carried out investigations into buying, selling and dealings in the scrip of the company for the period from May 12, 2003 to October 8, 2003 and noted continuous rise in the price of the scrip from ₹ 9 to ₹ 116.10 although the company had declared loss in the last two quarters and there was no indication of improvement in the performance of the company. The volumes were fluctuating sharply and the scrip was touching upper circuit limit on many days. The investigation report also brought on record that two trading members namely, TCP Stock Brokers Ltd. (TCP) and KCG Investment and Finance (P) Ltd. (KCG) had highest concentration of 25.13% and 18.41% respectively in gross purchase and the appellant was a major client who dealt in the scrip through these trading members during the period from May 20, 2003 to August 20, 2003 purchasing 7,09,944 shares and selling 7,36,779 shares through TCP. It also purchased 79,395 shares and sold 50,000 shares through KCG. This amounts to 14.11% of total market volume of 55,95,159 shares. As per the details given in the show cause notice, the appellant was involved in self-trades which were in the nature of cross trades with entities, mainly MKJ Enterprises Ltd.(MKJ), Toplight Vinmay Pvt. Ltd., M/s. Shankar, Eminent Sales Pvt. Ltd., Sanatan Merchants Pvt. Ltd., Sweet Solution Ltd. and Mantu Housing and Projects Ltd. The appellant took large amount of interest free loan from these very entities for trading in the scrip and is said to have made a profit of ₹ 1.43 crores in the deal. The trading of the appellant was considered by the Board to be violative of regulation 4(2) (b) of the FUTP Regulations.

4. A show cause notice dated August 12, 2012 was issued to the appellant to show cause as to why enquiry be not held against the appellant and penalty imposed in accordance with the laid down procedure. The appellant replied to the show cause notice after which a personal hearing was granted. The appellant also filed its written submissions denying the charges. After consideration of the material on record, the adjudicating officer passed the impugned order holding the appellant guilty of violating

regulation 4(2) (b) of the FUTP Regulations and imposed a penalty of ₹18 lacs under Section 15HA of the Act. Hence this appeal.

5. We have heard Shri Vinay Chauhan, learned counsel for the appellant and Shri Shiraz Rustomjee, learned senior counsel for the respondent Board and are satisfied that the adjudicating officer, while passing the impugned order, has brought sufficient material on record to bring home the charge against the appellant. Regulation 4 of the FUTP Regulations makes provision for prohibition of manipulative, fraudulent and unfair trade practices. Sub-regulation (2) (b) of the said regulation specifically provides that dealing in securities shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and may include dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss.

6. The trades entered into by the appellant are not in dispute. It is also a matter of record that the appellant traded heavily with insignificant net position and placed large buy orders. It is an admitted position that the appellant took loan from clients with whom it had entered into cross deals. It is also not in dispute that the appellant knew the entities of the MKJ group which provided interest free loan and these group entities were the counter party in the trading of the scrip by the appellant. In its reply to the show cause notice, the appellant had submitted that such transactions result in influencing the price of the scrip but contended that that these were genuine transactions. However, we are of the view that the transactions where the appellant had financial arrangement with the counter party clients and had taken loans for trading heavily in the scrip resulting in price rise without any other fundamental being on record, cannot be said to be genuine transactions. Therefore, we cannot find any fault with the findings of the adjudicating officer that the appellant, while trading heavily in the scrip with connected parties with the loan provided by them and with insufficient

net position, has breached the provisions of regulations 4(2) (b) of the FUTP Regulations.

7. It was also argued by the leaned counsel for the appellant that the Board has initiated action against the appellant but no action has been initiated by the Board against the counter parties who had provided finance for its trading activities. If the action of the appellant is culpable so is the action of the counter parties belonging to MKJ Group. There is nothing on record to show that the Board had proceeded against the counter parties for these transactions where the appellant was provided finance. However, we are of the view that the guarantee of equality before law under Article 14 of the Constitution is a positive concept and it cannot be enforced in a negative manner. This view gets support from the principles laid down by the Apex Court in the case of State of Bihar vs. Upendra Narayan Singh and Ors.[(2009)5SCC65], relied upon by learned senior counsel for the Board. If the appellant has been found to be guilty of violating the regulatory framework, it cannot claim exoneration on the ground that no action has been initiated by the Board against another person who has been found guilty for violating the Regulations. We may hasten to add that the regulator is supposed to adopt a uniform policy for initiating action against persons who violated the regulatory framework but any such deviation cannot give a right to the appellant to claim immunity from action for the violation committed by it. We, therefore, reject this contention of the appellant.

8. It was then argued by leaned counsel for the appellant that in the case of BMD Estate Pvt. Ltd. and Kamal Kumar Duggar & Company, against whom the Board had initiated action for similar violation a penalty of ₹ 2 lacs and ₹ 5 lacs respectively has been imposed. The appellant had no financial dealings with them. The adjudicating officer himself has recorded that the Board has not quantified disproportionate gain or unfair advantage which the appellant might have drawn as a result of its default. Therefore, the penalty of ₹ 18 lacs imposed of the appellant is excessive. Learned senior counsel for the Board justified the quantum saying that the same falls within the parameters as laid down under Section 15J of the Act. Admittedly, no action has been

initiated by the Board against the counter parties of the appellant who provided finance to the appellant for entering into the trades in question. In a way culpability of the counter parties of the appellant who provided the finance is more as compared to the culpability of the appellant. Further we have also taken note of the fact that two other entities namely Kamal Kumar Duggar & Co. and BMD Estate (P) Ltd. have been let off with a penalty of ₹ 5 lacs and ₹ 3 lacs each. Taking into consideration all these facts, we are of the view that the ends of justice would be met by reducing the penalty to ₹ 3 lacs. We order accordingly.

In the result, while upholding the findings of the adjudicating officer, we reduce the penalty to ₹ 3 lacs. No costs.

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

Sd/-
S.S.N. Moorthy
Member

3.12.2012
Prepared & Compared By: Pk