

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER

ORDER

Under sections 11, 11(4) and 11 B of the Securities and Exchange Board of India Act, 1992 read with regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

In the matter of alleged irregular and fraudulent transactions in the trading account of Mr. Arunava Chkraborty allegedly by Mr. Sidharth Daga (PAN: ADJPD8578L)

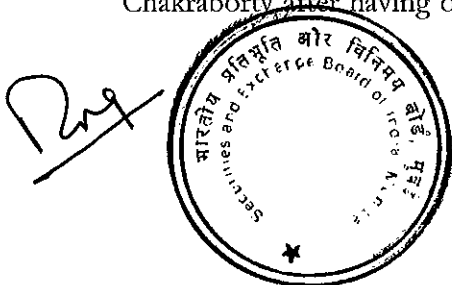
Appearances:

For Noticees: Ms. Neha Mehta, Advocate

For SEBI:

Mr. Santosh Kumar Shukla, Joint Legal Advisor
Mr. A. Vijayan, Assistant General Manager and
Mr. Durgeh Kumar Thakur, Assistant Legal Advisor

1. On August 12, 2009, a news article in the Times of India, Mumbai Edition reported that one Mr. Sidharth Daga, (Vice-president, Eastern Region) of Indiabulls Securities Ltd. (Indiabulls) was arrested by Police for alleged unauthorized dealing in the account of one Mr. Arunava Chakraborty (Mr. Chakraborty). Pursuant to the same, the Securities and Exchange Board of India (SEBI) conducted its investigation into the alleged irregular transactions of buying, selling and dealing in the shares of M/s Aurobindo Pharma Ltd. (APL) on August 06, 2009.
2. During investigation, Mr. Chakraborty had submitted that one Mr. Abhijit Sen (Mr. Sen), the then Relationship Manager with Indiabulls had assisted him to reset his initial password and hence he was aware of his password. Further, Mr. Sen apparently confessed during investigation in the criminal case (Bhawanipore P.S. Case No. 203 dated August 10, 2009) that Mr. Sidharth Daga had obtained the password of Mr. Chakraborty's account from Mr. Sen by threatening him with dire consequences.
3. Pursuant to the investigations, SEBI issued a show cause notice (SCN) no. IVD/ID-3/JS/AV/IBSL/12117/2012 dated June 04, 2012, to Mr. Sidharth Daga (the noticee). The SCN alleged that taking into consideration the complaint of Mr. Chakraborty which corroborated with the abnormal transaction in the account of Mr. Chakraborty, substantiates the allegation that noticee had placed the orders from the account of Mr. Chakraborty after having obtained the password from Mr. Sen by threatening him. The



SCN further alleged that the result of the aforesaid fraudulent, un-authorised and illegal transactions done by the noticee on August 06, 2009 was to make a quick profit by him which was achieved by making a profit of ₹17,10,416.80 in few minutes, thereby he had violated the provisions of regulations 3(a), (b), (c), (d) and 4(1) read with 4(2)(a), (b), (e) and (h) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (PFUTP Regulations).

4. The SCN called upon the noticee to show cause as to why appropriate directions including directions restraining him from buying, selling or dealing in securities for a specified period should not be issued under section 11(4) and 11B of the SEBI Act, 1992 read with regulation 11 (1) of PFUTP Regulations.
5. The noticee filed his reply vide its Advocate's letter dated June 22, 2012. An opportunity of hearing was provided to the noticee on September 06, 2012 before me, when Ms. Neha Mehta, Advocate appeared on behalf of the noticee and made submissions on the lines of the reply filed by the noticee. The learned Advocate also requested time for filing the written submissions on behalf of the noticee, which was granted. The learned Advocate filed the written submissions on September 13, 2012. The submissions of the noticee are *inter alia* as follows-
 - (a) The noticee has denied the charges alleged in the SCN. It has submitted that the noticee transacted regularly in the identical manner in several scrips and its transaction of purchasing 20,000 shares of APL on August 06, 2009 was bona fide and the allegations made in the SCN are baseless and are outcome of surmises and conjecture.
 - (b) The allegations leveled against the noticee are already a subject matter of an ongoing litigation being Bhawanipore P.S. Case No. 203 dated August 10, 2009. The case has already been registered on the basis of the complaint made by Mr. Chakraborty and the case is pending trial. Entire subject matter of SEBI investigation is part of ongoing case before a competent court and the noticee cannot be made to suffer two parallel litigations.
 - (c) The SCN has been issued on the basis of a borrowed investigation from a criminal proceedings being conducted against the noticee in Kolkata. The case is pending trial and is yet to arrive at finality, and therefore, is only at the investigation stage. SEBI has failed to carry out any independent investigation and has completely relied upon the criminal investigation. Proceeding by SEBI on the basis of a borrowed investigation subject matter of which is pending trial before a competent court would amount to pre-judging the matter and would be prejudicial to the noticee.





- (d) The SCN is based on the confessional statement of one Mr. Abhijit Sen who is co-accused in the pending criminal trial. The reliance upon this confessional statement is vague and absurd. The statement made before one statutory authority cannot be relied upon by another statute authority under another statute and hence SEBI has erred in relying on the confessional statement of Mr. Abhijit Sen and in making the same as the basis of enquiry.
- (e) Despite relying upon the confessional statement of the co-accused, neither copy of his statement/deposition has been furnished to the noticee nor Mr. Abhijit Sen has been made a party to enable the noticee to cross-examine him.
- (f) The statement of a co-accused cannot be relied upon unless the same is corroborated by material particulars. In the instant case, SEBI has failed to bring upon any corroborative evidences and hence the charges against the noticee cannot be proved.
6. I have considered the SCN, the submissions of the noticee and other material available on record. For the sake of easy reference the provisions which are alleged to have been violated by the noticee are reproduced below:

PFUTP REGULATIONS

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or unfair trade practice in securities.
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—
- (a) indulging in an act which creates false or misleading appearance of trading in the securities market;
- (b) 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;

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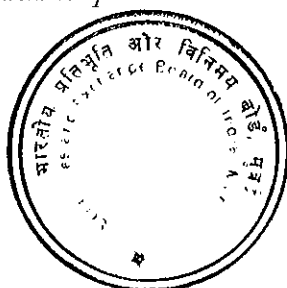


- (c)
- (d)
- (e) any act or omission amounting to manipulation of the price of a security;
- (f)
- (g) selling, dealing or pledging of stolen or counterfeit security whether in physical or dematerialized form;

7. Before dealing with the merit of the case it is pertinent to deal with the preliminary objections raised by the noticee. I note that the present proceedings before me are civil proceedings and this position has been upheld by Hon'ble High Court of Bombay in the matter of *SEBI Vs. Cabot International Capital Corporation* (2004) to Comp L J and the Hon'ble Supreme Court in *Sriram Mutual Fund & Anr.* {Appeal (civil) 9523-9524 of 2003}. I further note that the present proceedings and the pending criminal proceedings are independent of each other and both have different objective. In the present proceedings, the issue for determination is whether the noticee is guilty of the contravention of the provisions of regulations 3(a), (b), (c), (d) and 4(1) read with 4(2)(a), (b), (e) and (h) of the PFUTP Regulations that may attract the civil direction under section 11 and 11B of the SEBI Act, whereas the question for determination in the pending criminal proceedings would be whether the 'offence' for which the accused/noticee is charged is established beyond doubt and what punishment for that offence should be imposed upon him.
8. I note that pending criminal proceedings for an 'offence' under one statute do not bar the civil proceedings under a different statute for the same conduct which might have led to the charge of the 'offence'. This position has been upheld by the Hon'ble Supreme Court of India in *Kendriya Vidyalaya Sangathan and Ors vs. T. Srinivas* (2004)SCC(LS)1011.
9. I note that in the matter of *DLF Ltd. vs. SEBI and Others*, wherein SEBI had initiated its own investigations under SEBI Act when an F.I.R. was already lodged on the same subject matter, Hon'ble High Court of Delhi while dismissing the petition challenging the action of SEBI observed as under:

"There is no bar or impediment cast on the Board by the Act, to say that it would not entertain or look into evidence that the complainant may rely upon in support of his complaint earlier made, while considering whether, or not, to direct an investigation. There is no reason to put any such fetters on the powers of the Board or to read such restrictions into the statute, which are clearly not there. The Board is the sole authority created by law to deal with complex issues which arise in the management and supervision of the securities

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markets. Any such restrictions, artificially introduced would denude the Board of its powers and hamper its functioning."

10. Since the matter in issue in the present proceedings is the allegation of violations of provisions of regulations 3(a), (b), (c), (d) and 4(1) read with 4(2)(a), (b), (e) and (h) of the PFUTP Regulations which may culminate in civil actions under section 11 and 11B of the SEBI Act, I find that the pending criminal proceeding (i.e. Bhawanipore P.S. Case no. 203 dated August 10, 2009), does not bar the present proceedings. Further, the subject matter of the pending criminal proceedings could be the alleged criminal act and intent of the accused whereas in the present proceedings the matter for my determination is the civil default of the noticee. Thus, in my view, the present proceedings will in no way pre-judge the pending criminal proceedings before the competent court. I, therefore, do not accept the contention of the noticee.
11. The other contention of the noticee is that SEBI has not done its own investigation and has completely relied upon the criminal investigation and the present proceedings are based on the borrowed investigation. In this regard, I note that the present proceedings have been initiated by SEBI after conducting its own investigations. The SCN clearly narrates the background of initiating the investigation by SEBI, the relevant facts and circumstances observed during the investigations and findings on examination of trading in the shares of APL from the accounts of Mr. Daga and Mr. Chakraborty and other facts relating to trading in the shares of APL on the BSE and NSE on August 06, 2009. I, therefore, reject the contentions of the noticee in this regard. I further note that though the SCN has taken note of confession of Mr. Sen in the criminal investigation, the allegation in SCN is predominantly based on the complaint of Mr. Chakraborty, abnormal transactions in the account of Mr. Chakraborty and Mr. Daga. I, therefore, do not agree with the contentions of the noticee.
12. Now I proceed to deal with the matter on merit. I note while the noticee has generally denied the charges he has not disputed the transactions alleged in the SCN. He has submitted that those transactions were *bona fide* and regular for which he has sufficient evidence. However, the noticee failed to submit any evidence in support of this claim.
13. During investigation SEBI noted that on August 06, 2009, Mr. Chakraborty had complained to Indiabulls that he could not log on to his internet trading account from 09:50 a.m. onwards and their software was showing that his client ID or password was wrong. Mr. Chakraborty had also submitted that one Mr. Abhijeet Sen, the then

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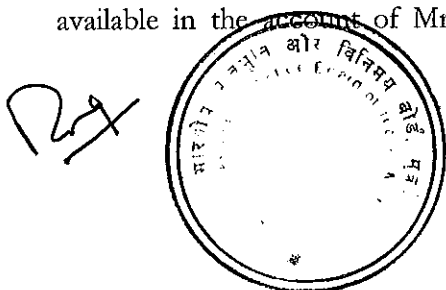


Relationship Manager with Indiabulls had assisted him to reset his initial password and hence Mr. Sen was aware of his password.

14. The trade data in the scrip on August 06, 2009 observed by SEBI's investigation is as under:

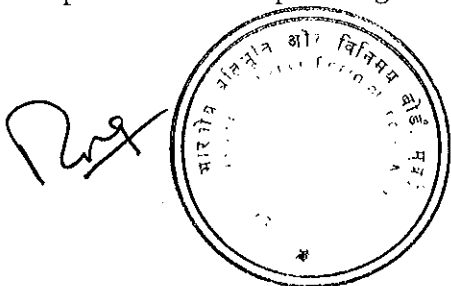
Exchange	Price Movement					Volume	Turnover (Lac)
	Open Price(₹)	High price	Low Price (₹)	Closing price (₹)	Average Price (₹)		
BSE	610.05	660.00	594.30	604.35	624.21	46,078	287.62
NSE	600.20	659.00	512.65	604.25	614.53	3,09,200	1900.13

15. The scrip was traded for large volume both at NSE and BSE on August 06, 2009. However, there was huge difference between total volume traded at NSE and BSE. Further, that the NSE's low price (₹ 512.65) was ₹ 81.65 (i.e., 13.73%) below BSE's low price (₹594.30). This suggested some unusual trading in scrip at NSE on August 06, 2009. It was further observed that there was no major change in the closing price of the scrip on August 06, 2009 (₹604.25) at NSE from the previous day's closing price (₹616.05). The traded volume (88,000 shares) from the accounts of Mr. Chakraborty and Mr. Sidharth Daga constituted significant portion of the traded volume at NSE.
16. SEBI investigation revealed that on August 06, 2009, Mr. Sidharth Daga had placed a buy order for 20,000 shares of APL at 09:58:47 at a price of ₹ 520 (approx 15% less than the last traded price) from his trading account held with M/s Sharekhan Ltd. (Sharekhan), which matched with a sell order that was placed for 50,000 shares of APL at 09:58:52 at a price of ₹510 when the last trading price of the scrip was ₹619.80, from the trading account of Mr. Chakraborty held with Indiabulls. This single buy order of Mr Daga was more than 7% of the total trading volume of the scrip on that day.
17. On successful matching of the buy order of 20,000 shares from the account of the noticee with the sell order of 50,000 shares placed from the account of Mr. Chakraborty, the sell order (for 15,289 shares) that remained in the system was immediately deleted from the account of Mr. Chakraborty. This deletion happened exactly at the time of execution of buy order of Mr. Daga and after such deletion; there were no pending buy or sell orders from both these accounts. It was observed in the SEBI's investigations that when this sell order for 50,000 shares was placed, only 8,000 shares of APL were available in the account of Mr. Chakraborty. Further, in order to meet the delivery



obligation of 34,711 shares (out of the sell order of 50,000 shares), a buy order was placed from his account on August 06, 2009 at 9:59:41 hrs for 50,000 shares at a price of ₹610. This order was regularly revised/ amended with respect to the quantity and price so as to ensure that the order gets executed. The said buy order was fully executed at 10:04:02 hrs on August 06, 2009 at the price ranging from ₹ 610 to ₹ 700.

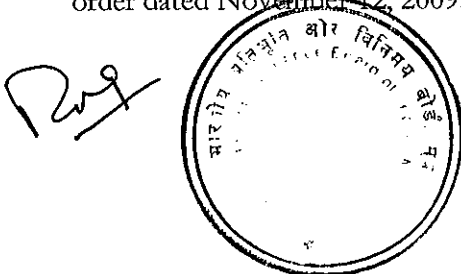
18. It is further noted that after purchasing 20,000 shares from Mr. Chakraborty's account, within a minute, the noticee placed a sell order at 09:59:37 hrs for the 20,000 shares from his account. This order for sale of 20,000 shares got executed in 44 trades with price ranging from ₹ 600 to ₹ 606 and the noticee made a profit of ₹17,10,416.80/- in few minutes. This trade had brought the price of the share back to the normal rate.
19. In my view it is unusual and irrational for any ordinary prudent investor to place a sell order for 50,000 shares at a price of ₹ 510 at 09:58:52 hrs when the market price of the scrip was ₹ 619.80 and the very next minute, to place buy order for same quantity of the same shares at a price ranging from ₹ 603 to as high as ₹ 659. Further, the above facts brought out in SEBI's investigations, clearly show that the orders in question from Mr. Chakraborty's trading account in all probability were placed by someone else who had access to use his trading account on August 06, 2009.
20. I note that the Police investigations in the matter has also confirmed that on August 06,2009 there were series of failed attempts to log-in to the account of Mr. Chakraborty (KT13002) from 09:37 to 11:44 from the IP address '115.240.119.125' that corresponds to usage of Mr. Chakraborty. Further, the account of Mr. Chakraborty was already logged-in at 09:24:21 on August 06, 2009 and the trade in question was executed by using a laptop through Wireless Internet Connections System (WIFI) having IP address 202.54.72.61 from canteen hall of Indian Institute of Social Welfare and Business Management (IISWBM), 3, Madan Mohan Sen Street, College Square (West), Kolkatta - 700 073. From aforesaid IP address a sell order was placed at 09:58:52 in the trading account of Mr. Chakraborty for 50,000 shares of APL.
21. I note that prior to the buy order of the noticee, there were 83 trades at price ranging from of ₹ 600.20 to ₹ 622.90. These trades were for 3,076 shares and the maximum quantity placed in a single buy order was only 1,500 shares. While the quantity ordered in the above cases was between 100 to 500 shares, Noticee's order for 20,000 shares (i.e. 7% of the total trading volume) appears abnormal and unusual in view of the trading pattern in the scrip on August 06, 2009. In my view it is too much of a coincident that :-



- (a) When the scrip is traded in small orders, the noticee, who was Vice-President of the stock broker with whom Mr. Chakraborty had account, places at 9:58:47 a comparatively large buy order of for 20,000 shares at the price of ₹520/ per share; when the last trading price of the scrip was ₹619.80;
- (b) When Mr. Chakraborty is trying to log-in his account he is constantly failing whereas during the same time at 9:58:52 (i.e. just after 5 seconds of the placing of the buy order of the noticee) a sell order of 50,000 shares is placed from his account , at a price of ₹510, when the last trading price of the scrip was ₹619.80;
- (c) Price in the buy order and price in the sell order is in close proximity and both are substantially lower than the last traded price(₹619.80) of the scrip;
- (d) Substantial portion of the sell order is matching with pending large buy order of 20,000 shares from the noticee;
- (e) The remaining portion of sell order from Mr. Chakraborty's account is being immediately deleted on execution of the buy order of the noticee;
- (f) Within a minute of the execution of his buy order of 20,000 shares from the sell order of Mr. Mr. Chakraborty, the noticee places a sell order for all 20,000 shares bought from Mr. Chakraborty and makes a profit of ₹17,10,416.80/.

22. These facts strongly indicate that the sell order was deliberately placed from the account of Mr. Chakraborty so that the comparatively large buy order of the noticee for 20000 shares at a price approximately 15% less than the last traded price of the scrip could be executed. I have already found that the said sell order was not placed by Mr. Chakraborty. I find that in the above facts and circumstances particularly, the fact that the noticee was an employee of the broker with whom Mr. Chakraborty had trading account; he placed unusual and abnormal buy order at substantially lower price than the last traded price; the buy order of the noticee and sell order from Mr. Chakraborty's trading account were placed with close the proximity of time and price; and ultimately the noticee got benefit out of the unusual and abnormal trading; one will be compelled to infer that the noticee was the person involved in fraudulently placing orders from the account of Mr. Chakraborty.

23. I note that with respect to the same transactions, the noticee has been terminated from the services of Indiabulls after being found to have violated the Indiabulls's common code of ethics in respect of client confidentiality and business ethics. Further, the dubious nature of the above transactions has also been highlighted by the action of the surveillance team of Sharekhan in withholding payout to the noticee in the above transaction and subsequently releasing the payment to Indiabulls, pursuant to a court order dated November 12, 2009.



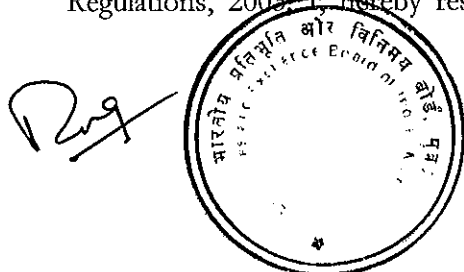
24. Hon'ble Supreme Court of India in *Syad Akbar v State of Karnataka* AIR 1979 SC 1848 has held that "~~...there is a marked difference as to the effect of evidence, viz. the proof in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt...~~"The present proceedings being a civil proceeding the level of proof is just 'preponderance of probability' and not 'beyond reasonable doubt' as is in the criminal proceedings pending before the competent court. Further, I am of the view that attainment of 'preponderance of probability' depend upon the subject matter, conduct of the party both prior to the act and after the act and facts and circumstances of the case, etc.

25. On examining the subject matter and, facts and circumstances of the present matter on the touch stone of 'preponderance of probability', I am of the view that in all probability the noticee must have been, directly or indirectly, involved in fraudulently operating the trading account of Mr. Chakraborty. I, find it highly improbable that the instant trade happened without active connivance of the noticee. I, therefore, am of the view that the noticee has dealt in the securities of APL in a fraudulent manner and contravened regulations 3(a), (b), (c) (d), regulation 4(1) , (2) (a) , (b) , (e) and (g) of PFUTP Regulations, 2003.

26. I note that Mr. Sen had apparently confessed during investigation in the criminal case (Bhawanipore P.S. Case No. 203 dated August 10, 2009) that Mr. Sidharth Daga had obtained the password of Mr. Chakraborty's account from Mr. Sen by threatening him with dire consequences. In my view, the facts and circumstances as found above suggest strong preponderance of probability that the noticee was, directly or indirectly, involved in fraudulently placing the orders from the trading account of Mr. Chakraborty and they are also corroborated by the statement of Mr. Sen.

27. I am of the view that if any person deal in securities in such fraudulent manner, it would seriously jeopardizes the faith of a common investor in the free and fair functioning for the securities market. Therefore, this kind of fraudulent, manipulative and unfair practice should be dealt with iron fist.

28. In view of the foregoing, I, in exercise of the powers conferred upon me by virtue of section 19 read with sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I, hereby restrain Mr. Sidharth Daga (PAN: ADJPD8578L) from



accessing the securities market and further prohibited^{him} from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner for a period of five years from the date of this order.

29. A copy of this order shall be served on all recognized stock exchanges and depositories to ensure that the direction given in para 28 above are complied with.

30. This order shall come into force with immediate effect.

DATE: DECEMBER ^{20th}, 2012
PLACE: MUMBAI


RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

