BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Order Reserved On: 15.10.2013
Date of Decision: 28.10.2013

Appeal No. 40 of 2013

M/s. NCJ Share & Stock Brokers Ltd.
Jwala Mansion, 1st Floor,
4/2 B, Asaf Ali Road,
New Delhi- 110 002 …Appellant

Versus

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

Mr. Prakash Shah, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Pratham V. Masurekar, Advocate for the Respondent.

CORAM : Justice J.P. Devadhar, Presiding Officer
Jog Singh, Member

Per : Justice J.P. Devadhar

1. Appellant is aggrieved by order passed by whole time member of Securities and Exchange Board of India ("SEBI for short) on January 30, 2013. By that order registration certification of appellant is suspended for a period of one week for violating clauses A(2) and A(3) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of the Broker Regulations ("Broker Regulations" for short).

2. It is not in dispute that appellant has taken over business of M/s. N.C. Jain, then Member of Bombay Stock Exchange ("BSE" for short) and hence liable for commissions/omissions of M/s. N.C. Jain.

3. Dispute in this case relates to investigation conducted by SEBI into the dealings in the scrip of Sun Infoways Limited ("SIL" for short) during February 5, 2001 to May 2, 2001 ("Investigation Period" for convenience).

4. On the basis of investigation report, SEBI initiated proceedings against appellant and by impugned order dated January 30, 2013 registration certificate of appellant has been suspended for one week for violating Broker Regulations.

5. By impugned order appellant is held guilty of executing synchronized circular trades by recording findings as follows:-

> "10a. I note that the noticee had traded in the scrip of SIL for six (6) days during the period of investigation in its proprietary account. The noticee in its reply has submitted that it had traded in the scrip of SIL only on five (5) days. I have seen the available records and note that the sixth day referred in the Enquiry Report appears to be March 15, 2001. To proceed with, I am not considering the said date or the trades on that day for the present proceedings as the same has not been made clear by the Enquiry Officer. As regards the submission of the noticee for traded volume, I note that the para 15 of the Enquiry Report finds mention that the noticee had traded for 63,600 shares (gross) out of this circular/ reversal trades were found executed for 53,000 shares (gross). As per the table- A above, it is seen that the volume contributed by the group consisting of the noticee was 3,42,800 shares (gross) which constitutes about 37.52% of the total trading volume in the scrip during the relevant period. From the same table, I also note that the total number of shares on the buy

and sell side of the group as a whole has remained the same i.e., 1,71,400 shares. Out of this, the noticee had purchased 26,500 shares and sold 26,500 shares in its own account.

b**.** I observe from the available records that the majority of the trades of the noticee were matched within the group with Angel Broking Limited (4 days), Opulant Stock Broking (4 day), Bharati Thakkar India Sec. Pvt. Limited (4 days), Shripal Jain (4 days) and Renaissance Securities Limited (5 days). I have seen the pattern of circular trading that was being followed by the noticee and the other brokers in the group, while trading in the scrip of SIL. A few instances of such trading pattern are being reproduced below on sample basis:

Table – B

Date	**Buy**		**Sell**		**Qty**
	Broker	**Client**	**Broker**	**Client**	
05/02/2001	**N.C. Jain**	Own	Renaissance Sec.	Abhayraj Shukla	500
	Bharati Thakkar	Govind Chinchani	**N.C. Jain**	Own	500
	Opulent Broking	Ramsudhakaran	Bharati Thakkar	Govind Chinchani	500
	ISJ Securities	Chetan Haridas	Opulent Broking	Ramasudhakaran	500
	Angel Broking Ltd.	Heerachand Salecha	ISJ Securities	Chetan Haridas	500
	Renaissance Sec.	Abhayraj Shukla	Angel Broking Ltd.	Heerachand Salesha	500
	N.C. Jain	Own	Renaissance Sec.	Abhayraj Shukla	700
	Opulent Broking	Ramsudhakaran	**N.C. Jain**	Own	700
	ISJ Securities	Vintel Securities	Opulent Broking	Ramsudhakaran	700
	Angel Broking Ltd.	Heerachand Salecha	ISJ Securities	Vintel Securities	700
	Bharati Thakkar	Govind Chinchani	Angel Broking Ltd.	Heerachand Salecha	700
	Renaissance Sec.	Abhayraj Shukla	Bharati Thakkar	Govind Chinchani	700
	N.C. Jain	Own	Renaissance Sec.	Abhayraj Shukla	900
	Opulent Broking	Ramasudhakaran	**N.C. Jain**	Own	900
	Angel Broking Ltd.	Heerachand Salecha	Opulent Broking	Ramsudhakaran	900
	Bharati Thakkar	Govind Chinchani	Angel Broking Ltd.	Heerachand Salecha	900
	Renaissance Sec.	Abhayraj Shukla	Bharati Thakkar	Govind Chinchani	900
	Angel Broking Ltd.	Heerachand Salecha	**N.C.Jain**	Own	1,000
	Opulent Broking	Ramsudhakaran	Angel Broking Ltd.	Heerachand Salecha	1,000
	Renaissance Sec.	Abhayraj Shukla	Opulent Broking	Ramasudhakaran	1,000
	N.C. Jain	Own	Renaissance Sec.	Abhayraj Shukla	1,000
06/02/2001	**N.C. Jain**	Own	Renaissance Sec.	Abhayraj Shukla	1,000
	Opulent Broking	Ramasudhakaran	**N.C. Jain**	Own	1,000
	Angel Broking Ltd.	Heerachand Salecha	Opulent Broking	Ramsudhakaran	1,000
	Bharati Thakkar	Govind Chinchani	Angel Broking Ltd.	Heerachand Salecha	1,000
	Renaissance Sec.	Abhayraj Shukla	Bharati Thakkar	Govind Chinchani	1,000
	N.C.Jain	Own	Renaissance Sec.	Abhayraj Shukla	800
	Shripal Jain	Own	**N.C. Jain**	Own	800
	Opulent Broking	Ramsudhakaran	Shripal Jain	Own	800
	Angel Broking Ltd.	Heerachand Salecha	Opulent Broking	Ramsuchakaran	800
	Bharati Thakkar	Govind Chinchani	Angel Broking Ltd.	Heerachand Salecha	800
	Renaissance Sec.	Abhayraj Shukla	Bharati Thakkar	Govind Chinchani	800

> From table B above, I note that the same number of shares were being rotated in a circular manner among the group of brokers. It is seen that the trades were so well organized that the same number of shares went back to the original seller at the end of the day. I observe from the Enquiry Report that the noticee had executed circular/ reversal trades on all the five (5) days when it traded in the scrip of SIL and contributed to 5.81% of the market traded quantity (gross). I note that the group had repeatedly bought and sold the shares amongst themselves through circular trades in a pattern of A to B to C to D to E to F to A with slight changes in the quantity circulated in each cycle."

6. From aforesaid facts it is clear that according to SEBI, appellant as also Angel Broking Private Limited were involved in executing synchronised circular trades in SIL scrip. SEBI by its order dated January 30, 2013 had upheld above charges against Angel Broking Private Limited. Appeal filed by Angel Broking Private Limited being Appeal No. 25 of 2013 has been dismissed by this Tribunal on October 22, 2013.

7. Mr. Shah, learned counsel appearing on behalf of appellant sought to distinguish decision in case of Angel Broking Private Limited by making following submissions:

- A*)* *Impugned trades were carried out by M/s. N.C. Jain during February 5, 2001 to February 9, 2001. Appellant took over business of M/s. N.C. Jain in March 2003 and at that time there was no whisper of any consequences/liabilities with regard to impugned trades. Moreover, appellant instead of taking over certificate of*

registration of M/s. N.C. Jain, obtained fresh certificate from SEBI and hence, appellant cannot be made liable for offences, if any, committed by M/s. N.C. Jain.

- *B) In respect of trades that took place during February-September 2001 SEBI commenced investigation in September 2006, show cause notice was issued in June 2008 and impugned order has passed on 30th January, 2013. In view of inordinate delay in completing proceedings initiated against appellant impugned order is liable to be quashed and set aside. Reliance is placed on decisions of this Tribunal wherein it is held that considerable delay in conclusion of proceedings is a mitigating factor.*
- *C) There are no findings that appellant was connected with the counter party broker or their clients and, therefore, findings recorded in the impugned order are based on surmises and conjunctures.*
- *D) Without prejudice to above, it is contended that penalty imposed upon appellant is arbitrary and discriminatory, because, for similar offence, Angel Broking Private Limited is prohibited from taking up any new assignment (i.e., not to take up any new clients) for a period of two weeks, whereas in case of appellant, certificate of registration is suspended for one week. Since penalty imposed upon appellant is harsh compared to penalty*

imposed upon Angel Broking Private Limited, impugned order is liable to be quashed and set aside.

8. Mr. Desai, learned counsel appearing on behalf of respondent submitted that on merits decision of this Tribunal in case of Angel Broking Private Limited would squarely apply to facts of present case. He submitted that admittedly appellant has taken over business of M/s. N.C. Jain and hence would be bound by liabilities, if any, of M/s. N.C. Jain. As regards quantum of penalty, Mr. Desai submitted that in case of Angel Broking Private Limited, trades were carried out on behalf of its client Heerachand Salecha, whereas in the present case trades were carried out on proprietary account of M/s. N. C. Jain. Moreover, Angel Broking Private Limited on its own had reported to the stock exchange regarding some other suspicious trades of its client Heerachand Salecha, whereas, in case of appellant no such reporting was made. Hence penalty imposed upon appellant is justified.

9. We have carefully considered rival submissions.

10. Perusal of impugned order shows that appellant was part of a group along with Angel Broking Private Limited which indulged in synchronized circular trades. In case of Angel Broking Private Limited SEBI has held that charge of synchronized circular trades stand proved. Appeal No. 25 of 2013 filed by Angel Broking Private Limited against order of SEBI has been dismissed by this Tribunal on October 22, 2013. Hence for reasons stated in our decision dated October 22, 2013 in

Appeal No. 25 of 2013, in this appeal, we uphold decision of SEBI on merits.

11. However, argument of appellant that penalty imposed upon appellant is harsh as compared to penalty imposed upon Angel Broking Private Limited deserves acceptance. Charge against appellant and Angel Broking Private Limited was that they were part of a chain that indulged in synchronised circular trades in SIL scrip. IF both appellant and Angel Broking Private Limited were part of a group that indulged in synchronized circular trading, then, unless there are special circumstances, similar penalty ought to be imposed upon both appellant and Angel Broking Private Limited.

12. Distinction between two cases sought to be made by SEBI on the ground that Angel Broking Private Limited had traded on behalf of its client whereas appellant traded on proprietary account and unlike appellant, Angel Broking Private Limited had brought to notice of stock exchange regarding some other suspected trades of its client Heerachand Salecha does not merit acceptance. In the present case, since both appellant and Angel Broking Private Limited have indulged in synchronized circular trades, question as to whether such trades were executed on client's account or on proprietary account would make no difference to the offence committed by appellant and Angel Broking Private Limited. Similarly, fact that Angel Broking Private Limited had reported subsequent manipulative trades of its client Heerachand Salecha cannot be a ground to impose different penalty upon appellant,

because Heerachand Salecha was the client of Angel Broking Private Limited and not of appellant and consequently there was no occasion for appellant who traded on proprietary account to report the matter to stock exchange.

13. Accordingly, while upholding decision of SEBI on merits, we modify order of penalty by prohibiting appellant from taking up any new assignment (i.e., not to take up any new clients) for a period of two weeks as in the case of Angel Broking Private Limited.

14. Appeal is partly allowed in aforesaid terms with no order as to costs.

Sd/-
Justice J.P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

28.10.2013
Prepared & Compared By: Pk