

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 52 of 2008

Date of decision : 11. 09. 2008

M/s. CompuAction Securities Pvt. Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Prakash Shah Advocate for the Appellant.

Mr. Kumar Desai Advocate with Ms. Sejal Shah Advocate for the Respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

This appeal is directed against the order dated February 7, 2008 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) levying a penalty of suspension of certificate of registration of the appellant for a period of four months. The appellant is a registered sub-broker of IKM Investor Services Limited.

The Board carried out investigations into the alleged price manipulation in the scrip of Sun Infoways Limited (hereinafter called the company) between February 2000 and December 2000. Investigations revealed that on February 9, 2000 there was only one trade executed in the scrip of the company and thereafter the volumes of trades increased enormously and also the price. The shares which were trading at Rs. 10 in February 2000 had reached a level of Rs. 697 on September 11, 2000 with a volume of 24,800 shares. It transpired that the promoters of the company who were holding about 98 per cent of the capital of the company, sold their shares to one Anil Pujari and his associates and the said Anil Pujari became the managing director of the company. The Board also found that the

new promoters and the directors of the company traded in the scrip in large volumes in which they were the purchasers as well as the sellers. The trades were alleged to have been executed through a series of entities including the appellant. On the basis of the investigation report, the appellant was served with a notice calling upon it to show cause why proceedings be not initiated against it for executing manipulative trades thereby violating Regulation 4(a) and (b) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short the Regulations). It was alleged that the appellant as a sub broker had executed trades on behalf of its clients Ashok Kumar Chaudhary, S.K. Marwah, Rajendra Rai and Ramesh Kumar Choudhary who traded in large volumes in the scrip of the company. These clients were found to be associates of the new promoters of the company. It is alleged that some of the clients had executed reversal trades which were manipulative and not genuine trades. The details of these trades were furnished along with the show cause notice as an Annexure thereto. In short, the appellant was alleged to have executed on behalf of its clients manipulative trades thereby increasing the volumes and the price of the scrip. The appellant filed a reply denying all the allegations. On a consideration of the material collected during the enquiry and the reply filed by the appellant it was found that the charges levelled against the appellant stood established. The enquiry officer took note of the reversal trades executed by the appellant on behalf of some of its clients including Rajendra Rai who was found to be a front entity of Kuldip Handoo one of the promoters/directors of the company. Accordingly, a recommendation was made to the Board to suspend the certificate of registration of the appellant for four months.

On receipt of the enquiry report, the whole time member issued another show cause notice to the appellant calling upon it to show cause why the same be not accepted and penalty be not imposed in terms of the recommendations made therein. A copy of the enquiry report was sent to the appellant along with this show cause notice. The appellant filed its reply disputing all the findings recorded by the enquiry officer. The whole time

member of the Board considered the enquiry report alongwith the reply filed by the appellant and after affording an opportunity of personal hearing to the appellant, agreed with the findings in the enquiry report and by his order dated February 7, 2008 suspended the certificate of registration of the appellant for a period of four months. Hence this appeal.

We have heard the learned counsel for the parties and perused the show cause notice and its annexures alongwith the findings recorded by the whole time member and also the material placed before us by the parties. Annexure A to the show cause notice contains the details of the transactions executed by the appellant on behalf of Rajendra Rai one of its clients. This chart shows the large number of buy orders placed by the client through the appellant and in every such trade the seller is Rajesh Kumar Choudhary. The appellant has also placed sell orders on behalf of Rajendra Rai and the details of those orders are also contained in annexure A. In these trades the buyer is Rajesh Kumar Choudhary. Some of these trades were executed on the same day while the others were executed on different days but it is clear that when Rajendra Rai was buying through the appellant, Rajesh Kumar Choudhary was the seller and vice-versa. This clearly establishes that the trades were manipulative and had been reversed. The learned counsel for the appellant is right when he contends that the appellant only played the role of sub-broker and that at the time of the execution of the trades, it was not known as to who the counter party was and, therefore, no fault could be found with the appellant unless there was material on the record to show that the appellant was conniving with the clients in reversing the trades. It cannot be disputed that reverse trades are not genuine trades and obviously, when Rajendra Rai was buying from Rajesh Kumar Choudhary and also selling to him, the beneficial ownership in the scrip did not change and such trades only led to increase in volumes giving a signal to the market that the scrip was very liquid thereby generating interest of the lay investors in the scrip. If the appellant as a sub-broker was not aware of what mischief its clients were playing, it may not be held responsible for such trades but in this case there is enough material to indicate that the

appellant was aware of the mischief and could well have been a party thereto. Apart from the trades being reversed, we find from the chart that on a large number of occasions Rajendra Rai was selling through the appellant the scrip at a lower price and buying the same at a higher price and such buy and sell orders were executed on the same day within less than a minute. We cannot imagine that an investor or a trader would knowingly trade with a view to make a loss. If he does so, it has to be a part of a sinister design. It is the case of the appellant that the orders were being placed by Rajendra Rai on telephone. If it were so, the code of conduct prescribed for brokers and sub-brokers required the appellant to guide and warn the clients. Not having done so and having executed the trades in the manner aforesaid lead us to conclude that he was aware of the game plan. This apart, the findings recorded in the impugned order that Rajendra Rai was a front entity of Kuldip Handoo the promoter/director of the company is also well founded. It is on record that Rajendra Rai was a peon working in a private establishment with a salary of Rs. 2500 p.m. Whether he could trade in such large quantities in the scrip of the company involving lacs of rupees is a question which makes us raise our eyebrows. Be that as it may, we have on record the statement of Rajendra Rai recorded during the course of enquiry proceedings in which he has categorically stated that he did not know the appellant nor did he place any buy or sell orders with it. If he is to be believed, then who placed the orders on his behalf. We have also on record the statement of the manager of the appellant who stated that Ashok Kumar Chaudhary brother of Rajesh Kumar Choudhary who was the counter party in the reverse trades was present at the terminal of the appellant when the trades were executed. This being so, it is safe to infer that Ashok Kumar Chaudhary was placing the orders on behalf of Rajendra Rai. We find support from the statement of the manager when he stated that orders on behalf of Rajender Rai were mostly placed by himself and some time by Ashok Kumar Chaudhary. Rajendra Rai having denied placing any orders, it is clear that he was a front entity and trades in his name were manipulative because Ashok Kumur Chaudhary who was placing orders is the brother of the counter party. To sum up, orders were placed by

Ashok Kumar Choudhary on behalf of Rajendra Rai when his own brother was the counter party and that shares were purchased at a higher price and sold at a lower price and all these trades were executed through the appellant. In these circumstances we cannot but hold that the appellant was aware of the game plan.

For the reasons recorded above, no fault can be found with the impugned order holding the appellant guilty by executing manipulative trades thereby increasing the volumes in the scrip and also its price. The appeal, therefore, fails and the same is dismissed with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

11.09.2008

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