

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 193 of 2007

With

Misc. Applications No.12 & 13 of 2008

Date of decision : 20.8.2008

M/s. Shobha Investments

..... Appellant

Versus

1. Securities and Exchange Board of India

2. Pune Stock Exchange Ltd.

..... Respondents

Mr. Bharat Merchant Advocate for the Appellant.

Mr. Kumar Desai Advocate with Ms. Sejal Shah Advocate for Respondents

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 December 5, 2007 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) imposing a major penalty of suspension of the certificate of registration as a broker of M/s. Shobha Investments – the appellant herein which is a proprietary concern of Shri Ajay Shah. The certificate has been suspended for a period of 18 months.

2. The appellant is a stock broker registered with the Board and is a member of the Pune Stock Exchange Ltd. The Board carried out investigations in the trading of the scrip of Home Trade Limited (HTL) and it transpired that, among others, the appellant along with three other brokers executed buy and sell orders on the asking of one Mr. Veerkar an employee of HTL. The period for which investigations were carried out was from December 10, 1999 to January 20, 2000. The investigations also revealed that the appellant conducted himself in a manner unbecoming of a stock broker and he did not exhibit high standards of integrity, fairness and professionalism as a registered intermediary of the stock market. A notice dated March 28, 2003 was issued to the

appellant pointing out that the price of the scrip of HTL rose sharply from Rs.250/- to Rs.800/- during a short span of time during which period the appellant along with other three brokers executed circular trades among themselves. Having alleged that the appellant along with other brokers had executed circular trades, the show cause notice levelled other charges summarized as under:

- “1. You received no margin money on the purchase transactions done on behalf of some clients namely M/s. Foresight Fragrance, Dinesh Jain, Hemalata Jain, Bharti Mehta, Naresh Mehta, Prabhavati Mehta, D.S. Investments, Jaganath Kabra, Vijay Chaprot, Navyodaya Agency, Channel East Distributors, Arihant Enterprises, M/s. Porwal & Co., Upendra Acharya. This is in violation of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.1993.
2. All Mumbai based clients were not known to you and Mr. Veerkar, an employee of HTL, used to place orders on behalf of the clients mentioned at point 1 above which is in violation of SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.97.
3. You have not maintained Client Registration forms for Naresh Mehta, Channel East Distributors, Arihant Enterprises, Upendra Acharya. This is in violation of SEBI Circular No.SMD/POLICY/CIRCULAR/5-97 dated 11.04.1997.
4. You have actively traded in the scrip of HTL and thus, artificially created higher price and volumes in the scrip of HTL as detailed in Annexure III and IV. You had placed buy as well as sell rates which were significantly different from the prevailing market price or the last traded price at the time of entering the orders. Thus, you have entered into transactions that are not genuine trade transactions. By doing this, you have contravened provisions of the Regulation 4(a)(b)(c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and violated Clause A(3) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB& SB) Regulations 1992.
5. You have considered all the clients introduced by Mr. Veerkar as a single group and used to adjust debit balance of one client against the credit balance of another client and if any debit balance arose, Mr. Veerkar used to make the payments accordingly. This is in violation of SEBI Circular No. SMD-1/23341 dated 18.11.1993. When these clients were introduced by Mr. Veerkar, who is an employee of HTL and who was also placing the orders on behalf of the clients as mentioned above, it should have aroused your suspicion of the genuineness of these trades and you should have enquired further of these transactions which you failed to do.

6. All the above mentioned acts are in violation of Rule 4(b) of SEBI (SB & SB) Rules, 1992 and Clause A(1), A(2), A(4) and A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations, 1992. ”

The appellant filed his reply denying all the allegations. On a consideration of the material collected during the course of the investigations and the enquiry conducted by the Board and also the documents furnished by the appellant, the whole time member by the impugned order came to the conclusion that the charges as levelled in the show cause notice stood established. Hence this appeal.

3. We have heard the learned counsel for the parties. The most serious charge that has been levelled against the appellant is the violation of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter called the regulations). Violation of the code of conduct has also been alleged against the appellant. Regulation 4 prohibits a person from effecting, taking part or entering into any transactions in securities with the intention of artificially raising or depressing the prices of securities. It also prohibits a person from buying or selling securities with the intention to inflate, depress or cause fluctuation in the market price of securities. The details of the buy and sell orders that were placed by the appellant as a stock broker have been furnished in Annexures III and IV to the show cause notice. It is the appellant's own case that he placed these orders on the asking of Veerkar an employee of HTL. In his statement recorded during the course of the investigations, the appellant admitted that the quantity, rate and time of placing the orders was being furnished by Veerkar and those orders were being faithfully implemented through the exchange mechanism. Having carefully perused the buy and sell orders executed by the appellant on the asking of Veerkar, we do not think that the case of circular trading as alleged in the show cause notice is made out. There are very few isolated transactions where the buy and sell orders were executed between the same brokers and on the basis of these isolated transactions we are unable to hold that the appellant along with other brokers was executing circular trades. However, when we peruse these orders carefully we find that the appellant was selling shares at a lower price and buying at a higher price. For instance, on 27.12.1999 the appellant sold

shares of HTL at 11.40 a.m. @ Rs.450 per share and the counter party broker was Amin Mulani & Co. On the same day the appellant has purchased at 12.29 p.m. shares from Amin Mulani & Co. @ Rs.460 per share. There are other instances as well when the appellant purchased shares at a higher price and sold at a lower price. This is incomprehensible. Mr. Bharat Merchant, learned counsel for the appellant is right when he contends that his client executed the trades as a broker and not in his proprietary account. He however misses the point that every stock broker while executing trades on behalf of his client is expected to caution him in an eventuality where buy orders are being placed at a higher price and the shares are sought to be sold at a lower price. The code of conduct for stock brokers prescribed by the Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations 1992 (for short the code of conduct) clearly stipulates that a stock broker must caution his clients. It is obvious that the applicant did not do so. It is his own case that he blindly executed the orders on the asking of Veerkar who happened to be an employee of HTL whose scrip was being traded. The code of conduct for stock brokers requires that they should execute the trades at the best available price in the market. It follows that the broker is not expected to blindly follow the instructions and keep on buying the shares at a higher price and sell them at a lower price. It is thus clear that the appellant was guilty of violating the code of conduct. This apart, we have on record that Veerkar was not only placing orders on the appellant but also on the other three brokers whose names were mentioned in the show cause notice namely, Yatin Shah & Co., Amin Mulani & Co. and Harish Kadam. We have no doubt that Veerkar was playing mischief and was manipulating the scrip and it appears that all the four brokers including the appellant by blindly following his directions were aiding and abetting him. We have already observed that the shares of HTL were being purchased at a higher price and sold at a lower price though the trades were executed at prices higher than the last traded price and all this resulted in the rise in price of the scrip of HTL. It can be seen from the table which is Annexure III with the show cause notice the price of the scrip on 21.12.1999 was Rs.364.25 and within a period of one month the price rose to Rs.726.50 on 20.1.2000. Since the appellant aided and abetted Veerkar in successfully raising the price of the scrip, we have no doubt that the

former is guilty of violating Regulation (4) of the regulations. In this view of the matter, no fault can be found with the finding recorded in the impugned order.

4. Now coming to the other charges levelled in the show cause notice. It is alleged that the appellant while executing the trades did not receive margin money on the purchase transactions done on behalf of his clients. It is further alleged that he did not maintain client registration forms for some of his clients. It is not necessary for us to examine this aspect of the matter in detail because the appellant in his statement had admitted that he did not receive the margin money and that he did not maintain the client's registration forms. All this is in violation of the circulars dated 18.11.1993 and 11.4.1997 issued by the Board. The appellant has also admitted in his statement that he never met his clients and had not known them. His case is that he executed the orders on the asking of Veerkar. This action establishes the fact that the appellant as a stock broker did not carry out due diligence in knowing his clients. It is in violation of the code of conduct prescribed by the Board and the circular dated 11.2.1997. In view of the charges established against the appellant, the major penalty of suspension of the certificate of registration for a period of 18 months cannot be said to be harsh or disproportionate to the gravity of the charges.

For the reasons recorded above, we find no merit in appeal and the same stands dismissed with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

20.8.2008
ddg/-