

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 24 of 2011

Date of decision: 8.6.2011

M/s Jayantilal Khandwala & Sons Pvt. Ltd.
201, Stock Exchange Tower,
Dalal Street, Fort,
Mumbai – 400 001.

.....Appellant

Versus

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

..... Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Neerav Merchand, Ms. Poonam Gadkari, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
S. S. N. Moorthy, Member

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

The appellant – a private limited company is a stockbroker registered with the Securities and Exchange Board of India (for short the Board) and is carrying on its business in the securities market. It has come up in appeal against the order dated January 14, 2011 passed by the whole time member of the Board suspending its certificate of registration as a stockbroker for a period of three weeks from the date of the order.

2. The Board carried out investigations in the scrip of DSQ Biotech Ltd. (hereinafter called the company) and it transpired that, among others, the appellant had traded in the scrip on behalf of its clients including Nirjay Securities Pvt. Ltd. (Nirjay) and that while trading on behalf of this client the appellant had aided and abetted the client in influencing the price of the scrip and also created

artificial volumes by indulging in fictitious deals/trades without intending to transfer the beneficial interest in the traded security. The appellant is, thus, said to have violated Clause A of Schedule II read with Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and these shall be referred to hereinafter as stockbroker regulations and FUTP regulations respectively. On the basis of these charges, an enquiry was conducted against the appellant under Regulation 6 of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. The Enquiry officer found that in settlement no. 25 of 2000 the appellant placed a sell order for 50,000 shares of the company on behalf of Nirjay on September 14, 2000 at 11:30:43 hours at the rate of ` 194/- per share. While this order remained unexecuted for quite sometime, the appellant placed on the same day an order for the purchase of 50,000 shares of the company at 14:27:59 hours at the rate of ` 197.30 per share. This purchase order was also placed on behalf of Nirjay and it got matched with the earlier sell order pending since morning and that the two orders (buy and sell) resulted in 39,785 shares being traded. The enquiry officer further found that in these trades Nirjay was the buyer and seller and the appellant was the broker placing both the buy and sell orders in the system. He concluded that the appellant had executed a fictitious trade which raised the price of the scrip upwards and thereby violated the aforesaid provisions. There were two other similar trades executed by the appellant on behalf of Nirjay where the latter was both the buyer and the seller. It was also found that in settlement no. 27, the appellant purchased on September 26, 2000 shares of the company on behalf of Khandwala Securities Ltd. which is an associate of the appellant and the counter party broker was Prabhudas Liladhar who sold the shares on behalf of DSQ Holdings Ltd. which is the holding company of the company whose shares were being manipulated. Another finding

recorded in the enquiry report is that the appellant executed matched trades in settlements no. 29 to 32 of 2000. On the basis of the findings recorded in his report, the enquiry officer recommended that the certificate of registration of the appellant be suspended for a period of four months. The enquiry report was considered by the whole time member who then issued a notice to the appellant to show cause why the enquiry report be not accepted. The appellant filed his detailed reply controverting the findings recorded by the enquiry officer and pleaded that it had done no wrong in executing the trades referred to by the enquiry officer in his report. On a consideration of the material on the record and taking note of the response filed by the appellant, the whole time member by the impugned order found the appellant guilty of the charges levelled against him and having regard to the small number of trades found to be executed illegally, he suspended the certificate of registration for three weeks. Hence this appeal.

3. We have heard the learned counsel for the parties who have taken us through the record. As found by the enquiry officer the appellant executed three trades on behalf of Nirjay on September 14, 2000 which have been found to be fictitious. The fact that these trades were executed has not been disputed before us. When we look at the trades, we find that in all the three trades the buyer and the seller was Nirjay and the appellant was the broker. We are in agreement with the enquiry officer / whole time member that these three trades are fictitious because no person can buy from himself and/or sell to himself. Mr. Zal Andhyarujina learned counsel for the appellant very strenuously urged before us that the appellant did not commit any wrong while executing the trades on behalf of Nirjay which was a day trader. He further pointed out that the appellant executed large number of trades on September 14, 2000 on behalf of Nirjay and other clients which have not been found fault with and that even with the three trades referred to by the enquiry officer, it was the system which matched the buy and sell orders of Nirjay and that there was no synchronization or intention to match those orders. We are unable to accept this contention. It is by now well understood that the buy and sell orders put in the trading system by

the respective brokers are matched by the system subject to price time priority and that the price discovery mechanism of the system is based on the principle of demand and supply. In other words, the price as discovered by the system is one which a willing buyer would give to a willing seller. Moreover, the trading system/ price discovery mechanism is in conformity with normal human conduct according to which a buyer would buy at the lowest available price and the seller would sell at the highest available price in the system. The trading system follows this principle while matching the buy and sell orders subject to the condition that no buyer would be compelled to buy at a rate higher than what he has punched in the system and no seller shall sell at a rate lower than what he has punched in. There may be some other facets of the trading system but we are not concerned with those in the present case. In the case before us, the appellant had put in a sell order for 50,000 shares at 11:30:43 hours at the rate of ` 194/- per share. Admittedly, this order remained unexecuted for about three hours and the reason for this is not far to seek. There were no buyers in the system to purchase the scrip at the rate of ` 194/-. It is clear from the trade and order logs that trading in the scrip was going on but all trades were being executed at a price less than ` 194/-. When the order did not get executed for almost three hours, Nirjay then placed a buy order for 50,000 shares at 14:27:59 hours at the rate of ` 197/- per share. It is pertinent to mention that on the trading screen what the broker can see before placing any buy/sell order are five best buy orders and five best sell orders. Having seen those orders and knowing that the trades were being executed at a price less than ` 194/- a buy order was put in at the rate of ` 197/- which matched with the sell order pending earlier which had been put in by the appellant on behalf of Nirjay. It is, thus, clear that Nirjay was buying shares at 14:27:59 hours and, therefore, its attempt ought to have been to purchase them at the lowest available price in the system. Instead, it went on to purchase shares at a higher

price of ` 197/- and 39,785 shares got traded. Not only was the trade fictitious/artificial because the buyer and the seller was the same but the price of the scrip also went up because every trade establishes the price. In addition to this trade, the appellant had executed two similar trades on behalf of Nirjay on the same day. We are satisfied that the appellant on behalf of Nirjay not only executed artificial trades but also raised the price upwards. Since the three trades in question were fictitious, they also increased the volumes. The charge, thus, stands established. It is not really necessary for us to examine the other trades executed by the appellant in settlements no. 27 and 32. It is enough for us to uphold the impugned order. It is clear from the trade and order logs that the appellant had executed 53 orders on September 14, 2000 resulting in about 800 trades and only three trades have been found fault with. We agree with the learned counsel for the appellant that the ends of justice would be adequately met if the period of suspension is reduced to ten days. We order accordingly.

The appeal stands disposed of as above with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
S. S. N. Moorthy
Member

8.6.2011
Prepared & Compared by
ptm