

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 73 of 2011

Date of decision: 21.6.2011

Networth Stock Broking Ltd.
2nd Floor, D C Silk Mills Compound,
Kondivita Road, Andheri (E),
Mumbai – 400 059.

.....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. P. N. Modi, Advocate with Mr. Neville Lashkari, Advocate for the Appellant.
Mr. Shiraz Rustomjee, Advocate with Mr. Mihir Mody, Mr. Faiz Khan,
Advocates for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer
P. K. Malhotra, Member

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

Since we are remanding the case to the Securities and Exchange Board of India (for short the Board) for proceeding afresh in the matter, it is not necessary for us to state all the facts in detail nor is it necessary to deal with all the contentions raised on both sides. The appellant before us is a public limited company which is registered as a stock broker with the Board. It had executed trades on behalf of its clients, among others, in the scrip of G. G. Automotive Gears Limited (for short the company). The Board carried out investigations in the scrip of the company for the period from August 1, 2002 to October 16, 2002 and it transpired that a group of four member brokers including the appellant and their clients traded in the scrip in a circular pattern intra-day for 40 days during the period of investigation. The appellant had executed trades on behalf of Ms. I. U. Goda. Proceedings were initiated against the brokers and their clients separately around the same time. Show cause notice dated June 5, 2006 was

issued to the four brokers including the appellant alleging that “four member brokers and their clients traded in a circular pattern intra-day for 40 days during the period of investigation.” The brokers and their clients involved in circular trading alongwith the contribution of each was mentioned in the show cause notice in the form of a table which is reproduced hereunder for facility of reference:-

<u>S. No.</u>	<u>Broker Name and Code</u>	<u>Client Name</u>	<u>No. of Shares Bought</u>	<u>No. of Shares sold</u>
1	DPS Shares and Securities Pvt. Ltd. (Clg. No. 151)	1. Anju Gandhi (A017) 2. Atul Gandhi (A018) 3. Harshad (H012) 4. Soham Securities (S251) 5. S 6. S012	3500 28000 8125 40000 2500 18230	5000 30850 8125 48999 2500 18250
2	Unique Stockbro Pvt. Ltd. (Clg. No. 170)	1. Hitesh Shah (8654) 2. Trusha Goda (9393)	66775 29890	67825 37750
3	Networth Broking Limited (Clg. No. 197)	I U Goda (3217)	111250	98420
4	Action Financial Services (India) Limited (Clg. No. 444)	P B Chandrashekhar (406748)	120479	111030

The show cause notice further mentioned that investigations had revealed that “one Shri Shirish C. Shah had fraudulently traded on behalf of Ms. Indumati Goda and her daughter-in-law, Ms. Trusha Goda.” On the basis of the allegations made in the notice the appellant was alleged to have violated the code of conduct prescribed for the stockbrokers and also Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. The appellant filed its reply denying the allegations and stated that it was not involved in any way in circular trades in the scrip of the company though it admitted that it had executed trades on behalf of Ms. I. U. Goda. On a consideration of the material collected during the investigations and the enquiry, the enquiry officer submitted his report holding the appellant guilty of the charges levelled against it. A copy of the enquiry report was then furnished to the appellant alongwith a notice calling upon it to show cause why the same be not accepted. The appellant filed its reply denying

that it had participated in circular trading. The whole time member considered the entire material on the record and noted that during the investigation period, the appellant had traded for its client Ms. I. U. Goda in the scrip of the company. He then upheld the finding recorded by the enquiry officer that the appellant had violated the aforesaid provisions and finally concluded as under:-

“As already established, the noticee has aided and abetted the creation of misleading appearance of trading by its client in the securities market. Thus it is clear that the noticee has failed to comply with duties expected from a registered intermediary.”

Accordingly, by his order dated April 19, 2011 he suspended the certificate of registration of the appellant as a stock broker for a period of one month. It is against this order that the present appeal has been filed.

2. We have heard the learned counsel for the parties at length who have taken us through the impugned order and the record. As already noticed above, the appellant has been found guilty of aiding and abetting its client, namely Ms. I. U. Goda for the creation of misleading appearance of trading in the securities market by executing circular trades. Separate proceedings had been initiated against the clients as well including Ms. I. U. Goda and it is common ground between the parties that she has been let off the charge of executing circular trades. It must be remembered that every broker executes either a self trade or a trade on behalf of his client(s). Admittedly, in the case before us the appellant is said to have executed trades on behalf of Ms. I. U. Goda and the finding recorded by the whole time member is that while executing trades on her behalf, the appellant had aided and abetted her in creating misleading appearance of trading in the scrip of the company. When Ms. Goda has been exonerated, we wonder how the finding against the appellant that it aided and abetted her in executing false/circular trades can be upheld. It is clear from the record that Ms. I. U. Goda has been exonerated of the charges on the ground that the aforesaid Shirish Shah had fraudulently executed trades on her behalf by opening bank accounts in her name. In this view of the matter, we cannot uphold the finding recorded by the whole time member.

In the result, the appeal is allowed and the impugned order set aside. The case is remanded to the respondent Board for taking fresh proceedings in accordance with law. Since the transactions that have been called in question were executed way back in 2002 and the matter is quite old, we direct that the proceedings be concluded expeditiously but not later than six months from the date of receipt of this order. We make it clear that all contentions raised on both sides are kept open and the Board shall decide the issues afresh without being influenced by any observation made by us in this order. No costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

21.6.2011
Prepared & Compared by
ptm