

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Misc. Application No. 79 of 2012

And

Appeal No. 141 of 2012

Date of Decision: 21.11.2012

Ajmera Associates Ltd.
Carmello's Building,
63/67, Pathakwadi, L.T. Marg,
Crawford Market,
Opp: Ashoka Shopping Centre,
Mumbai 400 002.

.....Appellant

Versus

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

..... Respondent

Mr. Abdul Waheb Mukri, Advocate for the Appellant.

Dr. (Mrs.) Poornima Advani, Advocate with Mr. Ajay Khaire and Ms. Rachita Romani,
Advocates for the Respondent.

CORAM : P.K. Malhotra, Member & Presiding Officer (*Offg.*)
S.S.N. Moorthy, Member

Per : P.K. Malhotra, (Oral)

The appellant before us is a stock broker registered with the Securities and Exchange Board of India (the Board) and is trading at the Bombay Stock Exchange and National Stock Exchange. It is also a depository participant of Central Depository Services India Limited and a trading member of MCX-SX.

2. The allegation against the appellant is that it traded, along with other brokers, in the scrip of Advik Laboratories Limited (the company) on behalf of its clients who traded in the scrip of the company synchronizing their trades, creating artificial volumes and price rise enabling the promoter shareholders to offload their shares at a higher

price. The appellant was charged with violating regulations 4(1), 4(2) (a), (b), (e) and (g) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (FUTP Regulations) and Clause A(1) to A(5) of Code of Conduct for Stock Brokers prescribed in Schedule II under Regulation 7 of the Securities and Exchange Board of India (Stock brokers and Sub-brokers) Regulations, 1992 (Code of Conduct).

3. After conducting an enquiry in accordance with the laid down procedure, the charge of violation of FUTP Regulations was dropped observing as under:

“14. Regulation 4(2) (a) of PFUTP prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2) (b) of PFUTP prohibits dealings in a security intended to operate as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gains. Regulation 4(2) (e) of PFUTP prohibits any act or omission amounting to manipulation of the price of a security. Regulation 4(2) (g) of PFUTP prohibits from entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

15. In the present case, I find that there is no material on record to suggest that the Noticee traded in the scrip of ALL with the intention of creating a false or misleading appearance of trading. Further the investigation report has not brought out how the Noticee has inflated, deflated or caused fluctuation in the price of the scrip. I observe that the trading of shares were delivery based, hence the ownership of the shares traded also changed. Therefore, the allegation of violation of regulations 4(1), 4(2) (a), (b), (e) and (g) does not stand established.”

The charge relating to violation of Clause A (1),(3),(4) and (5) of the Code of Conduct was also dropped observing as under:

“16. The Noticee has also been alleged to have violated the A (1), (2), (3), (4) and (5) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations. In terms of Clauses A(1), (3), (4) and (5) of the Code of Conduct prescribed under the provisions of Brokers Regulations, a stock broker shall not, inter alia, create false market or indulge in any act detrimental to the investors’ interest or which leads to the interference with the fair and smooth functioning of the securities market. The Broker shall also maintain high standards of integrity, promptitude and fairness. It also mandates that the Broker

shall not, inter alia, indulge in manipulative transactions with a view to distort the market equilibrium and comply with all the statutory requirements. In the facts and attendant circumstances of the case the allegations made for violation of A(1), (3), (4) and (5) of Code of Conduct for Stock Brokers as specified in Schedule II under Regulation 7 of Brokers Regulations does not stand.”

However, the appellant was found guilty of violating Clause A (2) of the Code of Conduct observing as under:

“17. However the broker has the responsibility to verify the credentials of its clients to ensure that no malpractice is taking place. The broker is expected to be especially cautious when trading takes place in an hitherto illiquid scrip like ALL. The profile of the company whose shares are being traded call for a higher level of diligence on part of the Noticee. Also it was observed that the Noticee’s clients Rajkumar Jain, Vivek Jain and Shivani Jain share a common address at H-27-W8E/15, Western Avenue, Sainik Farms, New Delhi- 110 062, the ‘Name of contact person of client’ was mentioned as ‘V.K.Jain’ in all the three KYC forms, Vivek Jain and Shivani Jain had bank accounts with Hong Kong Bank, K.G. Marg Branch, New Delhi and Shivani Jain was placing orders on behalf of herself, Rajkumar Jain, Vivek Jain and Kumud Jain. All these bring out the inter-relationship between the clients who were trading in huge quantity through the Noticee and were synchronizing their trades with the other entities who were related. The fact that they were offloading shares in large quantities should have aroused its suspicion and it should have been more cautious in its dealing. The Noticee was expected to be diligent and use required skill and care while acting as a broker, in which I find the Noticee has failed. The Noticee cannot plead complete ignorance and shrug off its responsibility as a broker.

18. In view of the above, I find that the Noticee violated clause A (2) of Code of Conduct prescribed under the provisions of regulation 7 of Brokers Regulations.”

In view of the above findings, the adjudicating officer of the Board, by impugned order dated May 3, 2012, imposed a penalty of ₹ 1 lac under Section 15HB of the Act on the appellant. Hence this appeal.

4. We have heard learned counsel for the parties who have also taken us through the records. We are of the view that the appeal must succeed. Clause A (2) of the Code of Conduct makes it obligatory for a stock broker to act with due skill, care and diligence in the conduct of its business. As per adjudicating officers’ own findings, the

trading in the shares was delivery based and ownership in the shares traded also changed. It is also a finding of the adjudicating officer that the appellant is not guilty of creating false market or that it indulged in any act detrimental to the investors' interest or that it had not maintained high standards of integrity, promptitude and fairness. Therefore, we fail to understand what other skill, care and diligence was required to be exercised by the appellant in the conduct of its business as a stock broker. Even if the clients' trading in the scrip were with the connected persons, that by itself, is not enough to say that the due diligence of required standard was not maintained. Having given a clean chit to the appellant with regard to the allegations of violating Regulation 4 of the FUTP Regulations and Clauses A(1),(3),(4) and (5) of the Code of Conduct, we see no reason as to how the appellant can be said to have violated Clause A(2) of the Code of Conduct. We, therefore, set aside the impugned order and allow the appeal with no order as to costs.

The miscellaneous application filed by the appellant also stands disposed of accordingly.

Sd/-
P.K.Malhotra
Member &
Presiding Officer (*Offg.*)

Sd/-
S.S.N. Moorthy
Member

21.11.2012
Prepared & Compared By: Pk