

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

Under regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008 against M/s. Ramrakh Bohra (SEBI Registration No. INB010022711), trading member of the Bombay Stock Exchange Limited.

In the matter of AKL Soft and Infosys Limited.

Appearances

For M/s. Ramrakh Bohra :

1. Mr. Ankit Lohia, Advocate and
2. Mr. Manish C., Advocate

For SEBI :

1. Mr. Santosh Shukla, Joint Legal Adviser
 2. Mr. Jeevan Sonparote, General Manager
 3. Mr. N. Sunil, Assistant General Manager and
 4. Mr. T. Vinay Rajneesh, Assistant Legal Adviser
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1. SEBI conducted an investigation into the trading in the shares of AKL Soft and Infosys Limited (hereinafter referred to as "the Company") for the period - January 31, 2003 to April 04, 2003 ("the investigation period"). The investigation observed that the trades of ASK Holdings Private Limited ("AHPL") and Mr. Vinod Khetan had contributed to substantial volumes in the scrip during the investigation period. AHPL [*traded through its stock broker, M/s. Ramrakh Bohra (hereinafter referred to as "the Broker")*] had purchased 15,66,001 shares and Mr. Vinod Khetan [*traded through his stock broker, Ramaben Samani Finance Private Limited (hereinafter referred to as "Ramaben Samani")*] had sold 15,57,405 shares of the Company and the trades between them were alleged to be synchronised trades that had manipulated the volume of the scrip during the investigation period.
2. Based on the findings of the investigation, it was alleged that the Broker had aided and abetted his client, AHPL in the creation of artificial volumes in the shares of the Company and had failed to exercise due care and diligence while dealing with the said client. In view of the same, proceedings were initiated against the Broker under the SEBI (Procedure for Holding Inquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (*since repealed*) and an Enquiry Officer was appointed. The said proceeding culminated in the passing of the order dated August 23, 2007 ("SEBI order"), wherein the Broker was found to have violated the provisions of regulation 4(b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995

(hereinafter referred to as the "the PFUTP Regulations") and Clause A (2) of the Code of Conduct for stock brokers read with regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "the Stock Brokers Regulations"). By the said order, SEBI suspended the Broker's certificate of registration for a period of one month.

3. The Broker had challenged the SEBI order before the Hon'ble Securities Appellate Tribunal ("the Hon'ble SAT") in Appeal No. 118 of 2007. While setting aside the order, the Hon'ble SAT vide order dated August 31, 2010, made the following observations :

"..... In view of the fact that the appellant was not allowed to cross-examine Ashok Jain and Vinod Khetan who are said to have made statements against the appellant, we are of the view that the matter needs to be examined afresh. We accordingly set aside the impugned order and remand the case to the whole time member to pass a fresh order in accordance with law after affording an opportunity to the appellant to cross examine the persons on whose statements reliance has been placed in the show cause notice. It is, however, made clear that all the issues raised in the memorandum of appeal shall remain open before the whole time member."

4. Pursuant to the order of Hon'ble SAT, the Broker was afforded opportunities to cross-examine Mr. Vinod Khetan and Mr. Ashok Jain with respect to their statements that were relied upon by SEBI in the matter. On March 27, 2012, the Broker cross-examined Mr. Vinod Khetan with respect to his statement dated April 23, 2004 and on May 16, 2012, the Broker cross-examined Mr. Ashok Jain with respect to his two statements dated April 16, 2004 and May 13, 2004. The Broker was also granted an opportunity of personal hearing before me on July 05, 2012, when Mr. Ankit Lohia, Advocate represented the Broker. While reiterating the grounds of appeal (*against the SEBI order*) the Broker has, *inter alia* submitted the following :

- a) There was no merit in any of the allegations in the show cause notice (SCN) and that the allegations therein were vague, unclear and not supported by any credible evidence.
- b) The Broker did not have any knowledge of the ulterior motive behind the transactions executed in the scrip nor was he aware that his client was indulging in synchronisation by placing sell orders through some other stock broker. Aiding and abetting somebody to indulge in an act which violates the provisions of law comes from knowledge and the same is crucial.
- c) The SCN alleges that the Broker was a party to the whole scheme of things by allowing his client uninterrupted flow of transactions through his terminals without any counter checks. In this regard, it is submitted that the Broker did not possess the knowledge of the trading strategy of the client and was not a party to the scheme of things as alleged.

- d) The transactions that took place through the terminal of the Broker resulted in delivery and/or payments, thus giving no cause to the Broker to be concerned or to apply any counter checks and balances beyond reasonable prudence.
 - e) Relying upon the order dated November 21, 2006 of the Hon'ble SAT in the matter of Latin Manharlal Securities Pvt. Ltd., Broker submitted that SEBI failed to provide clear and unequivocal evidence of aiding and abetting by him.
 - f) The client of the Broker purchased shares through the terminal of the Broker. Merely on this basis, alleging synchronised trades by the Broker is highly improbable and unrealistic to the extent that the Broker had no prior understanding either with the counter-party broker or the client more so when his client was taking deliveries of the purchases made by him. The charge of circular trading could be established if it is proved that there was a nexus between the stock broker with his client and the counter-party selling stock broker.
 - g) When the Broker became aware of the alleged wrong-doing of his client from the BSE, he discontinued and stopped all dealings with client.
 - h) Mr. Ashok Jain is the sub-broker of the Broker and therefore there is no prohibition for the Broker to extend the trading terminals to his sub-broker. No special favour was therefore shown on his sub-broker. During the cross-examination Mr. Ashok Jain has also confirmed that in his statement dated May 13, 2004, when he had stated that the Broker '*facilitated these transactions*' he meant that the Broker permitted him to use his terminal for trading. This was allowed at the relevant time. Merely by allowing the sub-broker to use the terminal cannot lead to conclusion that the Broker had nexus with his client in his trades.
 - i) The fact that the scrip was thinly traded cannot be the only reason to conclude that the Broker failed to exercise diligence.
 - j) As observed by the Hon'ble SAT in the matter of Kasat Securities Private Limited vs. SEBI, in this case also there is no link between the Broker and his client.
 - k) SEBI in the order passed against Ramaben Samani (the counter-party selling broker in the scrip) had levied a penalty of suspension of its certificate of registration for a period of 15 days only.
 - l) For the same allegations, SEBI has already penalized the Broker by imposing a monetary penalty of Rs.75,000/- vide order dated April 11, 2005. The Broker has paid the said penalty and the matter was put to rest.
 - m) The Broker has proposed to surrender his certificate of registration and requested SEBI to dispose of the instant proceeding against him without any penalty.
 - n) The SCN may, therefore, be discharged and no action pursuant thereto may be taken against the noticee.
5. On a request made by the learned advocate, the Broker was allowed to file written submissions and also furnish copy of the client ledger statement of Mr. Ashok Jain within

one week from the date of hearing. However, after a reminder by SEBI, the Broker vide letter dated September 10, 2012, furnished only the copy of the client ledger statement of Mr. Ashok Jain.

6. I have noted the observations made by the Hon'ble SAT in its order while disposing off the appeal of the Broker and also the grounds of his appeal challenging the SEBI order. I have considered the Enquiry Report, the statements made by Mr. Ashok Jain and Mr. Vinod Khetan, their statements made during the cross-examination by the Broker and other material available on record. The specific charge against the Broker in the instant proceeding is that the Broker aided and abetted his client, AHPL in the creation of artificial volumes in the shares of the Company during the investigation period and failed to exercise due diligence while dealing with the said client.
7. There is no dispute regarding the trades of AHPL executed through the Broker, as described in the SCN and in the Enquiry Report. The following facts, found during investigation and enquiry, have also not been disputed by the Broker :
 - a) Mr. Ashok Jain is the director of AHPL (*the Broker's client*) and AHPL was a sub-broker to the Broker during the relevant period.
 - b) AHPL was a self introduced client of the Broker and Mr. Ashok Jain was allowed to use the Broker's trading terminal.
 - c) AHPL (the buyer) and Mr. Vinod Khetan (the seller) were connected/related to each other.
8. It has been found during investigation and enquiry that AHPL (the buyer) and Mr. Vinod Khetan (the seller) were reversing their positions in off-market deals and were giving legality to their transactions which were in the nature of financial accommodation. Total 7,22,185 shares were traded in a manner wherein the buy and sell orders were placed within one minute. There were many trades where the differences in time of the buy-sell orders were less than 15 seconds. In 17 settlements, the buy orders (*placed by AHPL through the Broker*) and the sell orders (*placed by Mr. Vinod Khetan through Ramaben Samani*) matched and were synchronised in terms of the number of shares.
9. The investigations had also revealed that the shares received by the Broker in the buy transactions of AHPL were transferred from the demat account of the Broker to the demat account of Mr. Vinod Khetan. It was also noticed from the bank account of Mr. Vinod Khetan that funds were transferred to AHPL on the same day when they were received from Ramaben Samani. Further, from the depository account of AHPL, it was observed that once the settlement was cleared and AHPL was in possession of the shares, it would transfer them to the account of Mr. Vinod Khetan which was sold again by Mr. Vinod Khetan through Ramaben Samani.

10. The Broker had a purchased a total of 15,66,001 shares for his client AHPL in 40 settlements during the investigation period. The said quantity constituted about 79.4% of the total floating stock of the Company. Out of the said quantity, 15, 57,405 shares were purchased from Mr. Vinod Khetan who traded through his stock broker, Ramaben Samani. It was observed that on the days when there were large volumes, the trades of AHPL and Mr. Vinod Jain through the Broker and Ramaben Samani had contributed to more than 90% of the volumes.
11. The Broker has been charged that knew that the clients were trading to manipulate the volumes in the scrip of the Company by executing synchronised trades. This charge is predominantly on the basis of the statements of Mr. Ashok Kumar Jain and Mr. Vinod Khaitan recorded during the investigation.
12. I note that in his statement recorded on April 16, 2004 Mr. Ashok Kumar Jain had stated that since he was facing financial crisis and in order to tide the same, he had told one of his client, Mr. Vinod Khetan to sell the shares of the Company from the terminals of Ramaben Samani which were purchased by AHPL (*by Mr. Ashok Jain*) from the terminals of the Broker. The sale proceeds received by Mr. Vinod Khetan were then transferred to Mr. Ashok Jain and the same were used to meet the pay-in obligations to the Broker. The shares were obtained from one Mr. Sandeep Merchant on loan basis which were provided to Mr. Vinod Khetan for meeting his securities pay-in obligations for the sale done through Ramaben Samani. The transactions were entered by Mr. Ashok Jain from the trading terminal provided to him (*to carry on trades as a sub-broker*) by the Broker. Mr. Ashok Jain had also stated that the orders placed by (through the terminals of the Broker) and that of Mr. Vinod Khetan (placed through Ramaben Samani) were synchronised.
13. Mr. Ashok Jain had also stated that, after the execution of the sale transactions, Ramaben Samani used to give the proceeds of the sale into the respective account i.e., either to him or to Mr. Vinod Khetan, immediately on the next day before the payout of these transactions were released by the stock exchange (i.e., two days in advance of the pay-out released by the stock exchange). The shares received in the "buy" trades were transferred to the demat account of Mr. Vinod Khetan. I also note that in the statement dated May 13, 2004, Mr. Ashok Jain stated that the sell orders were first keyed in through Ramaben Samani and the same were purchased by him from the terminal of the Broker. Mr. Ashok Jain has admitted that his transactions were entered into without the intention to transfer ownership of shares and that the same may have created false and misleading appearance of trading in the market. He also stated that the transactions were primarily indulged in to tide over the immediate financial crisis and that their intention was not to create any volumes in the market.

14. During the cross-examination of Mr. Vinod Khetan by the Broker, Mr. Vinod Khetan stated that Mr. Ashok Jain used his account and that during his meeting with the Broker, he never felt that the Broker was aware of these transactions. During the cross-examination Mr. Ashok Jain, he stated that he did not have any proof to show that the Broker was aware that he would indulge in synchronised transactions through the Broker's trading terminals, as the matter was more than 8 years old. Mr. Ashok Jain further stated that normal brokerage was paid to the Broker for the trades and nothing extra was given. Therefore, on a conjoint reading of the statements of Mr. Ashok Jain and Mr. Vinod Khetan and their statements made during the cross-examination, I am of the considered view that for the purposes of contemplated action under section 11 and 11B of the SEBI Act, the benefit of doubt may be given to the Broker with regard to charge that the Broker aided and abetted his client AHPL in creation of artificial volume in the shares of the Company. On the basis of these statements, particularly after cross-examination, it would be difficult to establish that the Broker was aware of the manipulative intention of the clients or was party to their any manipulative plan or device while trading in the shares of the Company.
15. As regards the allegation of financial accommodation/arrangement by the Broker I note that in his statement dated May 13,2004 , Mr. Ashok Jain had stated that "*We have business relationship with the broker. Shri R R Bobra was aware of the financial predicament I was in and he accommodated me during the financial crisis and facilitated these transactions for enabling me to pay my pay-in due and other obligations.*" During the cross-examination, while confirming the aforesaid reply, Mr. Ashok Jain clarified that when he stated that the Broker "*facilitated these transactions*" he meant that the Broker permitted him to use his terminals for trading. To a question (*during cross-examination*), whether the Broker gave any facility with respect to pay-in pay-out obligations in the transactions in the shares of the Company, Mr. Ashok Jain submitted that since he was a sub-broker, the Broker accommodated in case of any debit balance. He further stated that he did not recollect whether such accommodation was given for transactions in the shares of the Company.
16. I note that the Broker had extended his trading terminal to AHPL (being used by its director Mr. Ashok Jain). Further, from the client ledger statements of the client AHPL pertaining to the investigation period, it is noted that as on March 31, 2003, the debit balance in the client account of AHPL was to the tune of Rs.1,07,41,412.74/-. I, therefore find that the Broker has accommodated the huge trades of the client even when the client did not have enough funds for such trades. In this regard, I note that Mr. Ashok Jain, during the cross examination, has stated that the Broker used to accommodate him in case of debit balance. In this regard, I find that the Broker has not been diligent in his dealings

with his client AHPL and due to his negligence the client could indulge in manipulative trades.

17. I find that the Broker should have been more diligent in execution of trades of his client AHPL when he had allowed it to use his terminal without adequate checks. Such free and uninterrupted permission necessitated the Broker to exercise due care and diligence while dealing with such clients. Therefore, in the facts and circumstances of the case, the submission that the Broker did not supervise the trading as long as he was getting payment and delivery on time, does not have merit I, therefore, find that the Broker did not act with due care, skill and diligence in the conduct of his stock broking business, and thus did not abide by Clause A(2) of the Code of Conduct for stock brokers prescribed under the Stock Brokers Regulations, in this case.
18. I note that in another proceeding against the Broker in the matter of Granules India Limited involving almost similar facts and circumstances, SEBI vide an order dated January 28, 2010 found that AHPL, the client was allowed to place orders through the Broker's trading terminal. In that case, under similar facts and circumstances, warning was issued to the Broker.
19. I further note that the transaction in question relate to the year 2003. I also note that with regard to same transactions, vide order dated September 16, 2005, the Broker's client, AHPL was warned. For the same allegations and charges, a monetary penalty of Rs.75,000/- had already been imposed upon the Broker in the matter and he had already paid the said penalty. Further, the Broker has proposed to surrender his registration certificate and has expressed willingness to discontinue his stock broking activity.
20. Considering the facts and circumstances of the instant case, I am of the view that a warning to the Broker would be reasonable and commensurate with his lapses in this case.
21. I, therefore, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby warn the stock broker, M/s. Ramrakh Bohra to be careful and cautious in the conduct of his stock broking activity and to adhere to and comply with all the statutory provisions while carrying out his activities in the securities market, till such time he continues to act as a stock broker.

Date : December 31st, 2012

Place : Mumbai

RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA