

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 73 of 2012

Date of decision: 25.07.2012

Subhkam Securities Private Limited
a company incorporated under the
Companies Act, 1956, and having
its registered office at 4th floor,
International House, 16, Maharshi Karve
Road, Churchgate, Mumbai – 400 020.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-1A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051.

... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Ravichandra S. Hegde, Advocate
for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mobin Shaikh, Advocate for the
Respondent.

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

Per : P. K. Malhotra

This appeal has been filed against the order dated 2nd March, 2012 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) holding the appellant guilty of violating the provisions of regulations 4(b) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (FUTP Regulations) and clauses A(2) and (3) of the Code of Conduct prescribed for the stock brokers in Schedule II under Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (stock brokers regulations).

2. The facts of the case, in brief, are that, the appellant is a stock broker registered with the Securities and Exchange Board of India and is carrying on activities of stock broking since 1999. In and around June, 2001, the Board

conducted investigation into the dealings in the scrip of Mascon Global Limited (for short the company) for the period between August, 1999 to March, 2000 and December, 2000 to March, 2001. Investigations conducted by the Board in the scrip of the company revealed that during the period from December, 2000 to March, 2001, there was price fluctuation from a high of Rs.505.60 to a low of Rs.84. The appellant is alleged to have extensively traded in the scrip of the company on behalf of its six clients, viz., Subhkam Monetary Services Limited, Khazana Tradelink Private Limited, Asian Equity Investment Limited, Pushpak Securities Private Limited, Sweet Solution Limited, Milton Securities Limited. It was further alleged that these clients of the appellant were related/connected/associated to Ketan Parekh and transactions in the scrip of the company were in tandem with other group/associates companies of Ketan Parekh to deflate the price of the scrip and create artificial demand. The appellant is alleged to have traded to the extent of buying 7,54,633 shares and selling 7,89,765 shares. It was further noted that the price matched in a synchronized manner and the appellant executed cross trades for a total quantity of 4,79,285 shares during the investigation period. Accordingly, a show-cause notice dated September 25, 2008 was issued to the appellant under regulations 25 and 38 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (the intermediary regulations) calling upon it to show cause as to why its certificate of registration should not be suspended or cancelled and why any other action as provided under the said regulations may not be taken. The appellant replied to the show-cause notice vide its letter dated October 20, 2008, denying the allegations. An enquiry was held against the appellant and the designated authority, by its report dated July 21, 2009, recommended that certificate of registration of the appellant be suspended for a period of two weeks. A copy of the report was made available to the appellant vide letter dated August 31, 2009. The appellant again denied the charges by its letter dated April 19, 2011. After considering the reply submitted by the appellant, the whole time member of the Board, by his order dated March 2, 2012, observed that inference about the nexus between counter party clients/brokers for the trades of its clients is not supported by any proof. According to whole time member, the inquiry report makes a reference to the

nexus between the clients of the noticee and their counter party clients but does not explain as to what was the nexus. Therefore, this charge was dropped by the whole time member. However, he found the appellant guilty of executing synchronized trades on behalf of its clients thereby violating the provisions of regulations 4(b) and (d) of the FUTP Regulations and clauses A(2) and (3) of the code of conduct under the stock brokers regulations and suspended the certificate of registration of the appellant as a stock broker for a period of two weeks. Hence this appeal.

3. We have heard Mr. Somasekhar Sundaresan, Advocate for the appellant and Mr. Kumar Desai, Advocate for the respondent-Board. After hearing the learned counsel for the parties and perusing the material available on record, we are of the view that the appeal must succeed for the reasons given hereunder. The charge levelled against the appellant was that the clients of the appellant, on whose behalf the trades were executed, were the Ketan Parekh entities who have actively traded in the scrip by creating huge volumes to indulge in rampant manipulation of price and volume of the scrip of the company. The whole time member, after considering the material on record, has come to a definite finding that there is no nexus of the appellant or his clients with Ketan Parekh and the entities related to him. It has been specifically observed by him that the inference about the nexus is not supported by any proof and in the absence of the same, it is difficult to conclude that the noticee was aware of the counter party clients/brokers for the trades of its clients. The only other charge, which according to the whole time member stands proved, is that the trades of the appellant were being matched in a synchronized manner and that it had executed cross trades. The explanation offered by the appellant that the reason for execution of cross trades was that it knew both the parties has not been accepted by the whole time member observing as under:-

“I note that the scrip of Mascon was illiquid at the relevant point of time and it is understood that it would be difficult to get the counterparties to such large trades. Further, these large trades had accounted for a considerable quantity of the total volume of shares traded in the scrip on subject dates as seen from the BSE website. In view of this, it can be concluded that these cross trades in the scrip were arranged in such a manner that the orders will match with the specified counterparties.”

While arriving at this conclusion, the whole time member has totally ignored the submissions made by the appellant that the alleged trades were carried out only for four days during investigation period and were spread over a period of three months with substantial time difference between trades. The buyers and sellers for each of the four trades were different entities and there was no reversal of trades. The transactions were executed at the prevailing market price and there is no allegation of price manipulation. The trades were carried out on the floor of the exchange and there was transfer of beneficial ownership in all the transactions. Assuming that the trades were synchronized, the fact remains that the trades were executed over a period of three months and there is no allegation that it affected the price of the scrip. It is an admitted position that synchronized trades per se are not illegal. It is only when synchronized trades are executed with a view to manipulate the price of the scrip that the provisions of the FUTP Regulations will get attracted. All these trades were executed on behalf of the clients and no action is said to have been taken by the Board against these clients. In view of the foregoing discussions, we are of the view that in the facts and circumstances of this case, the charge of violating the provisions of regulations 4(b) and (d) of the FUTP Regulations is not made out.

4. The appellant has also been found guilty of violating clauses A(2) and (3) of the Code of Conduct prescribed for the Stock Brokers in Schedule II under regulation 7 of the Stock Broker Regulations. While arriving at this finding, the whole time member in para 11 of his order has observed as under:-

“11. I note that the broker is expected to be cautious when trading takes place hitherto in the scrip which is not so liquid and that too placing orders for the clients and trading in substantial volume. I note that the profile of the company whose shares are being traded call for a higher level of diligence on the part of the broker. The noticee being a responsible market intermediary should have allowed the orders to match in the system on their own, so that the public at large could have availed the benefit of such orders as otherwise the volumes in the scrip of Mascon has remained very thin. I note that interference with the market mechanism is not in the interest of securities market. Thus, I find that the noticee has failed to perform its duties as specified in the code of conduct for stock brokers in the Broker Regulations.”

The aforesaid clauses of the stock brokers regulations read as under:-

“CODE OF CONDUCT FOR STOCK BROKERS

A. General.

- (1)
- (2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.
- (3) Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.
.....”

Since we have come to the conclusion that the charge of violating FUTP Regulations is not made out, the charge of violating clause A(3) of the code of conduct also fails. Due care and diligence as contemplated in the regulations governing code of conduct of brokers can be due care and diligence as expected of a prudent broker operating in the normal circumstances of the market. The whole time member has not brought out any instance of due skill and care which has not been followed by the appellant in the conduct of his business. If the transactions were entered into at the prevalent market price and the transactions resulted in the delivery of shares and there is no allegation of price manipulation, how can such a transaction be said to have been executed or entered into without due care and diligence.

5. There is yet another aspect of the case which we would like to highlight here. The trades for which investigation was carried out pertain to the year 2000 and the impugned order has been passed only in March, 2012. Investigation started in or around June, 2001. It has taken the Board twelve years to complete the proceedings in a matter relating to market manipulation. This is not the way to conduct proceedings against entities who are charged with serious allegations like market manipulation or insider trading. Expeditious disposal of such proceedings by the Board alone will ensure that the Board is carrying out its duty effectively to protect the interest of investors in securities and to promote the development of and regulating the securities market as mandated by section 11(1) of the Act.

Inordinate delay in conducting inquiries and in punishing the delinquent not only permits market manipulator to operate in the market, it also has demoralizing effect on the market players who are ultimately 'not found guilty' but damocles' sword of inquiry keeps hanging on them for years together from the date of starting investigation by the Board to the date of completion of inquiry proceedings. Precisely for this reason, regulation 28(2) of the intermediary regulations also provides that the designated member should pass appropriate order after considering reply as expeditiously as possible and endeavour shall be made to pass order within one hundred and twenty days from the date of receipt of reply of the notice or hearing. A market player has a right that if proceedings are initiated against him by the Board for violation of any rules and regulations, the proceedings against him, are also concluded expeditiously and he is not made to undergo mental agony when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. We hope that the Board will take necessary steps to ensure that inquiry proceedings against market manipulators are completed expeditiously and guilty persons are punished in a time bound manner so that the objective of having a clean and investor friendly market can be achieved.

For the reasons stated above, we set aside the impugned order and allow the appeal with no order as to costs.

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

Sd/-
S. S. N. Moorthy
Member

25.07.2012
Prepared & compared by-ddg