

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 108 of 2009

Date of decision: 13.1.2010

N.M. Lohia
178, Mahatma Gandhi Road,
2nd Floor,
Kolkata.

...Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A,
G-Block, Bandra Kurla Complex,
Bandra (East), Mumbai.

...Respondent

Ms. Anjali Agrawal, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms Daya Gupta, Advocate for the Respondent.

Coram : Justice N. K. Sodhi, Presiding Officer
Samar Ray, Member

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

This appeal is directed against the order dated May 14, 2009 passed by the adjudicating officer imposing a monetary penalty of Rs. 6 lacs on the appellant for executing fictitious trades in the scrip of Richfield Financial Services Ltd. The appellant has been found to have violated the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. The appellant is a stock broker registered with the Securities and Exchange Board of India and he has also been found guilty of violating the Code of Conduct prescribed for the stock brokers.

2. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. A show cause notice dated October 20, 2008 had been issued to the appellant making the aforesaid allegations against him. Details of the trades executed by the appellant were also furnished along with the show cause

notice which were annexures attached thereto. A mere look at the trades executed by the appellant would show that they are on the face of it fictitious in as much as he executed trades as a broker in which he himself is the buyer and also the seller. It is not that he executed a solitary trade or only a few of them. He executed a large number of trades for over a year in this fashion. It is interesting to note the explanation that he offered while giving his reply to the show cause notice. This is what he has said:

“We had done some transactions from 09.06.2004 – 27.07.2004 where the prices of the said script were Rs 50.30 – 149.50. We had done few transactions from 04.08.2004 – 11.08.2004 and 12.08.2004 – 04.10.2004 where the price of the said script were Rs. 95.75 – 129.50 and Rs. 140.10 – 163.80 respectively. Some transactions were executed by us from 06.10.2004 – 23.11.2004 where the price of the said script were Rs. 175 – 195.65. We had done few transactions on 25.11.2004 and 29.11.2004 – 30.11.2004 where the price of the said script were Rs. 145 – 148 and Rs. 173 – 189.40 respectively. We had carried out maximum transactions from 14.01.2004 – 24.05.2004 where the prices of the said script were Rs. 2.30 – 26.80 and from 01.12.2004 – 20.01.2005 in the narrow price band of Rs. 192.50 – 198.20. All the trades were done as close to the last traded price. We would to state that we were not instrumental in the movement of prices in the said script during the said period. We also wish to clarify that the transaction done by us on 02.04.2004 has been misinterpreted in your data as trade for 04.02.2004. All the transactions made by us on the on line trading system of CSEA on behalf of our various clients. We had placed the order as per clients instructions in their respective client codes. In few cases order were placed for self code due to unintentional error of the operator but these transactions were duly rectified in the back office system of the firm.

Thus we would like to state that we have not violated any regulations, Circular, Directives of SEBI & also CSEA. We had tried to comply all the requirements of SEBI. We pray before you that no action that might be initiated against us.

Sir, As you are aware that our firm is not operational for more than two years, we do not have any source of income therefore you are requested to take a lenient view in the above matter.”

The appellant has virtually admitted the allegations when he asks for lenient view to be taken against him. This apart, he has mentioned that in a few cases, orders were placed for self code due to unintentional error of the operator but these transactions were duly rectified in the back office system of the firm. This is no explanation at all. Having executed fictitious trades where he himself is the buyer and seller, he claims that he rectified the error in his back office. Admittedly, the trades were executed online and since every trade is recorded in the system of the stock exchange, the

error should have been rectified there. The learned counsel for the appellant was at pains to point out that the appellant had informed the stock exchange about the error but for reasons best known to the exchange it took no steps to rectify the mistake. She admits that she has no documentary proof to establish this fact. The mere ipse dixit of the appellant cannot be accepted particularly when the adjudicating officer in the impugned order has categorically recorded a finding that the appellant did not produce any documentary material to substantiate his plea. Once this explanation is discarded, we are only left with charts annexed to the show cause notice giving the details of the trades and those on the face of it are fictitious trades meant only to create artificial volumes and price rise. This being so, the adjudicating officer was right in holding that the appellant violated the provisions of the aforesaid regulations. Being a stock broker, his ethics do not permit him to execute such trades. He has, therefore, violated the Code of Conduct as well. In view of these irregularities which are sufficient to uphold the impugned order, it is not necessary for us to examine the other charges that have been established against him in the impugned order. No fault can, thus, be found with the impugned order.

3. The learned counsel for the appellant then urged that the penalty imposed by the adjudicating officer is highly excessive and disproportionate to the charges established against the appellant and that it deserves to be reduced. We cannot agree with her. Nothing can be more serious for a stock broker than to execute fictitious trades in his proprietary account and violate the Code of Conduct. In view of the serious charges established against the appellant, it is not a fit case where the penalty needs to be reduced.

In the result, the appeal fails and the same is dismissed with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

13.1.2010
Prepared and compared by:
msb/-

