

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 45 of 2008

Date of decision: 16.9.2008

Mr. Yogesh Babulal Mehta

..... Appellant

Versus

1. Securities and Exchange Board of India
2. The Bombay Stock Exchange Ltd.
3. Atul J. Patira
4. Rita Atul Patira
5. Deepak Sheth
6. Smita Nagda

..... Respondent

Ms. Sonal Advocate for the Appellant.

Mr. Shiraz Rustomjee Advocate with Ms. Daya Gupta Advocate for Respondent No.1.

Mr. P.N. Modi Advocate with Mr. Sagar Divekar Advocates for Respondent No.2.

None for Respondents no. 3 to 6.

Coram: Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

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

Since we are remanding the case back to the Securities and Exchange Board of India (for short the Board), it is not necessary to state the facts in detail. The appellant before us is a broker who was a member of the Bombay Stock Exchange (BSE). He was declared a defaulter in December 1996. However, in the year 1995-96 he executed trades on behalf of respondents 3 to 6 in the scrip of Amit International Limited (for short the company) which was listed on BSE. The Board carried out investigations in the trading of the scrip of the company and found that the price thereof had been raised artificially by manipulating the scrip. The appellant had primarily executed trades on behalf of respondents 3 to 6 during the two settlements no.22 and 23 of 1995-96. The dispute really pertains to settlement no.23 wherein the position of the appellant was a net purchaser to the tune of 24,700 shares. In other words, in settlement no.23 the appellant was to receive 24,700 shares of the company on behalf of his clients for which he was required to make

payment at the rates at which the trades were transacted. It is not in dispute that the trades in settlement no.23 had been executed at the average rate of Rs.268.48 per share and because of the price of the scrip having been rigged, BSE declared the close out rate at Rs.280 per share whereas the standard rate determined was Rs.217. It is also not in dispute that the appellant having deposited the price for the shares purchased by him on behalf of his clients, he did not receive the delivery of the shares. Since the shares were not delivered to the appellant, BSE in the normal course of its activities released the standard rate of Rs.217 per share. The appellant claims that this amount was paid to him. As this amount was less than the one paid by him for the purchase of the shares, the appellant made a representation to the Board for the release of the balance amount of the difference between the transaction rate of Rs.268.48 and the standard rate of Rs.217. On receipt of this representation, the Board passed an order dated 15.6.1999 directing BSE to release this difference in the two amounts to the appellant. However, respondents 3 to 6 on whose behalf the trades had been executed by the appellant had also made a representation to the Board which was prior in point of time and on that representation the Board passed an order on 16.5.1998 directing BSE to release the said amount in favour of respondents 3 to 6. It is, thus, clear that we have two orders passed by the Board which contradict each other. One directs the payment to be made to the appellant and the other require the same to be released to respondents 3 to 6. The appellant has challenged the order dated 16.5.1998. Since this order is in favour of respondents 3 to 6, they were ordered to be impleaded as respondents subsequent to the filing of the appeal. Despite service, they have not put in appearance.

2. We have heard the learned counsel for the parties and perused the two orders dated 16.5.1998 and 15.6.1999. When the order dated 16.5.1998 was passed, the appellant was not heard and since the two are contradictory, we set aside both of them insofar as they relate to the appellant and respondents 3 to 6. The case is remanded to the Board to pass a fresh order in accordance with law after affording an opportunity of hearing to all the parties. Since the order dated 16.5.1998 insofar as it relates to respondents 3 to 6 has been set aside, the necessary consequence is that these respondents must deposit with BSE the money received by them under the order and the Board will

then decide the rights of the parties by passing a fresh order in accordance with law. The appellant and respondents 3 to 6 are both claiming to be entitled to the said amount. It is needless to mention that it shall be open to the Board to call for such additional records and information from the parties as it may deem necessary for deciding the dispute between them. Since the matter is quite old we shall appreciate if the Board decides the issue expeditiously and preferably before the end of the current financial year. There is no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

16.9.2008
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