

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 125 of 2010

Date of decision: 29.8.2011

Bombay Stock Exchange Limited
25th Floor, P. J. Tower, Dalal Street,
Fort, Mumbai – 400 001.

..... Appellant

Versus

- 1) Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400 051.
- 2) Mr. Yogesh Babulal Mehta
106, Padma Society, 164,
S. V. Road, Vile Parle (W),
Mumbai – 400 056.
- 3) Ms. Smita Nagra
Harison Compound
Near Godrej Petrol pump,
LBS Marg, Vikhroli (W),
Mumbai – 400 079.
- 4) Atul J. Patira
Hemketu, Maruti Nagar, Airport Road,
Rajkot – 360 001.
- 5) Rita Patira
Maruti Nagar, Sheri (Street) No. 3,
Opposite Sanidhya Flat, Near Saraswati Shishu
Vihar School, Airport Road, Rajkot – 360 001.
- 6) Deepak Sheth
“Roshni” Opposite Bhakti Nagar,
Sub-station, Rajkot – 360 002.

..... Respondents

Mr. Janak Dwarkadas, Senior Advocate with Mr. P. N. Modi, Mr. Faraz Alam
Sagar, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for
Respondent No. 1.

Ms. Sonal, Advocate for Respondent No. 2.

None for Respondent Nos. 3 to 6.

CORAM : Justice N.K. Sodhi, Presiding Officer
P. K. Malhotra, Member
S.S.N. Moorthy, Member

Per : Justice N.K. Sodhi, Presiding Officer

This order will dispose of two Appeals no. 125 and 152 of 2010 both of which are directed against the common order dated June 30, 2010 passed by the Securities and Exchange Board of India (for short the Board) declaring Yogesh Babulal Mehta (respondent no. 2 in Appeal no. 125 of 2010 and the appellant in the other appeal and hereinafter referred to as the broker) entitled to receive from Bombay Stock Exchange Limited (BSE) a sum of ₹ 12,71,556/- together with interest on account of the trades executed by him on behalf of Smita Nagra, Atul J. Patira, Rita Patira and Deepak Sheth who shall collectively be referred to hereinafter as the clients. Before we deal with the issues involved in these appeals, it is necessary to refer to the background in which the dispute has arisen between the parties.

2. On receiving complaints and other information from the stock exchanges regarding the unusual price movement in the shares of Amit International Limited (hereinafter called the company) from ₹ 25/- on December 18, 1995 to ₹ 280/- on February 14, 1996, the Board investigated the trading in the scrip. Investigations revealed that abnormal volumes and price rise were created by a group of persons acting in concert who violated the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. Pursuant to the enquiries conducted by the Board, certain persons/entities were found to have rigged the price of the scrip and they were debarred from dealing in the securities market. Pending investigations, the Board had suspended on February 12, 1996 the trading in the scrip of the company with a view to check the unusual price rise. By order dated March 27, 1996 the Board directed the stock exchanges including BSE to freeze the proceeds which were received by them from auctions/closing out of the transactions and this was done to ensure that if there was any market manipulation, the manipulators should not be in a position to receive the ill-gotten profits arising out of the manipulation. Monies, therefore, remained frozen with

the exchanges during the investigations. On July 4, 1996 the Board directed BSE that from the auction proceeds withheld by it, difference between the auction price and the standard rate and the difference between the close-out price and the standard rate should not be given to the auction offerors in case of auction process and the receiving members (stockbrokers) in the case of close-out process and instead, those amounts be impounded. BSE was further directed to credit the impounded monies to its Investor Protection Fund. The Board also pointed out that an opportunity of hearing be granted to all those who were affected by the impounding of the auction proceeds and the aggrieved persons were advised to make written representations to the Board which representations would be dealt with by a committee constituted by it. BSE issued a notice on July 8, 1996 inviting written representations.

3. The broker purchased 26,500 shares of the company on behalf of the clients and it is common ground between the parties that these trades were to be settled in settlement no. 23 of 1996. In this settlement 1800 shares were delivered to the broker and there is no dispute between the parties in regard to these shares. The remaining 24,700 shares were pending delivery and the seller(s) defaulted since the price of the scrip of the company had been rigged as found by the Board and trading suspended and the normal procedure for settling the trades could not be adopted and it transpired that the auction price also did not reflect the true market price of the scrip. The broker did not get delivery of the shares. Since the price of the scrip had been rigged and trading suspended, the Board, as already noticed above, had directed that the difference between the auction price and the standard rate and the difference between the close-out price and the standard rate be impounded and credited to the Investor Protection Fund. In response to the notice issued by BSE on July 8, 1996, the clients made a claim stating that they had received the standard rate and were entitled to the difference of the standard price and close-out/auction price. This claim was made on the basis that the trades had been executed by them through the broker and that they were entitled to the amount. This claim of the clients was considered by the Board and by

order dated May 16, 1998 (hereinafter referred to as the 1998 order) the same was allowed and the amount ordered to be released to them. Subsequent to the passing of this order, the broker also made a representation dated August 29, 1998 before the Board stating that he had traded on behalf of the clients in settlements no. 22 and 23 of 1996 and requested that the payments made by him towards the close-out in the settlements should be refunded to him. In other words, the amount that was ordered to be released in favour of the clients was being claimed by the broker as well on the plea that he had made the payment from his own funds and was entitled to the refund and the same could not be given to the clients. His claim was also considered by the Board and since the broker had a purchase position of 28,700 shares in settlement no. 23 of 1996, BSE was directed by order dated June 15, 1999 (hereinafter referred to as the 1999 order) to release the difference between the purchase price and the standard rate to him. This order and the 1998 order are contradictory. The 1998 order required BSE to release the amount in favour of the clients whereas the 1999 order directed the exchange to release the amount to the broker. Despite the 1999 order passed in favour of the broker, the disputed amount was released to the clients on the basis of the 1998 order. Payment was made to three clients on July 26, 2000 and to one of them on January 1, 2001. Feeling aggrieved by the 1998 order, the broker filed Appeal no. 45 of 2008 before this Tribunal which came up for hearing on September 16, 2008. Noticing the two contradictory orders, the appeal was allowed and the case remanded to the Board with the following observations:-

“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.”

In pursuance to the remand order, the Board has now passed a fresh order dated June 30, 2010 holding that the broker is entitled to receive from BSE the disputed amount of ₹ 12,71,556/- together with interest thereon and the latter has been directed to release the amount within two weeks from the date of the order. BSE has filed Appeal no. 125 of 2010 challenging this order whereas the broker has filed the other appeal claiming an enhanced amount of ₹ 15,56,100/- and in the alternative a sum of ₹ 13,64,000/- alongwith compound interest at the rate of 24 per cent.

4. Before we deal with the merits of the dispute, it is necessary to refer to the settlement process of a stock exchange in so far as it is relevant to the facts of the case. Every trade executed through the trading system of an exchange is required to be settled which means payment has to be made by all who have made purchases and shares have to be delivered by those who have made sales. This process of settlement of shares and money is managed by stock exchanges through their respective clearing houses. Stock exchanges do not deal with investors/clients directly and they deal with them only through their brokers who are their members and registered intermediaries with the Board. In every market transaction for the purchase of shares, the client gives money (margin/deposit) to the stockbroker for buying shares on his behalf and it is the stockbroker who accordingly places the order and makes the purchase. It is he who receives the shares from the stock exchange and passes them on to the client. In other words, every trade is settled through the stockbrokers and investors have no access to the stock exchange except for the purpose of dispute resolution through arbitration. It is pertinent to mention that according to the normal stock exchange procedure when there is no rigging of the scrip and there is default by the seller in delivering the securities and the exchange purchases those securities in auction, monies are taken from the buyer to the extent of the transaction/standard price and from the

seller to the extent of the difference between the transaction/standard price and the auction price and given to those who offer their securities in auction proceedings.

5. We have heard the learned senior counsel on behalf of BSE, Mr. Kumar Desai Advocate on behalf of the Board and Ms. Sonal Advocate appearing for the broker. The clients have not appeared despite service by publication in a newspaper having wide circulation in the area of their last known address. It is not in dispute that the broker had executed trades on behalf of the clients in the shares of the company during settlements no. 22 and 23 at BSE. The broker had purchased 27,500 shares of the company on behalf of the clients in settlement no. 23 and these were delivery based transactions. He also had a net sale position of 1000 shares in that settlement and that he received 1800 shares from the market which were delivered through M/s. Abhishi Investments, the sub-broker. He was, thus, to receive 24,700 shares during this settlement. His grievance is that he neither received the shares nor the amount of ₹ 13,64,000/- from the BSE which he had paid. It is common case of the parties that for settlement no. 23, BSE had declared a close-out rate of ₹ 280/- per share when the standard rate was ₹ 217/- per share. It is also not in dispute that since the shares were not delivered to the broker, he received the standard rate and his grievance is that the difference between the close-out rate and the standard rate in respect of 24,700 shares should also have been given to him. Instead, the difference was disbursed to the clients in terms of the 1998 order in July 2000 and January 2001. BSE took the stance that upon receipt of the 1999 order, it had, by its letter dated June 22, 1999, requested the broker to furnish the necessary details and undertaking as per the standard format to enable it to comply with the said order and credit the appropriate amount to his account with the Defaulter's Committee. It is pertinent to mention here that by order dated December 10, 1996 the broker had been declared a defaulter by BSE and all his assets came to vest in that committee. It is BSE's case that the broker did not furnish the necessary details and raised frivolous contentions and made unwarranted allegations. BSE also pleaded that the broker never denied the fact that he had carried out the trades on behalf of the

clients and that he never disputed their entitlement to receive the said amount. These pleas were taken by BSE to justify its action in disbursing the amount to the clients. Be that as it may, since both the orders of 1998 and 1999 had earlier been set aside by this Tribunal, the short question now to be decided is whether the difference between the transaction rate and the standard rate in respect of 24,700 shares is due to the broker or to the clients. We have already noticed that the broker was to receive 24,700 shares in settlement no. 23 and his case is that he paid ₹ 13,64,000 to BSE and that he neither received the delivery of the shares nor the refund of the amount. The fact that the broker had paid this amount to BSE has not been denied by the latter. We have already noticed in para 4 above that shares are bought and sold in the market through brokers who are members of the stock exchange(s) and registered intermediaries and it is they who deal with the stock exchanges on behalf of their clients. Once the trade is executed, the stockbroker receives shares from the stock exchange and passes them on to the clients. It is he who acts as an interface between the stock exchange and the clients in respect of the clients' transactions on the stock exchange. For the settlement of trades in the stock exchange which is done through a clearing house monies are received from the buyers and the securities are delivered by the sellers through their respective stockbrokers and the stock exchange does not deal with the parties directly. In the case before us, the broker states that he made the payment of ₹ 13,64,000/- on behalf of the clients who had not made the payment to him and this he did to save himself from being declared a defaulter. It appears from the record that the clients claim that they made the payment through the broker and BSE does not dispute having received the money from the broker. Since the shares were not delivered to the broker in the settlement, the money ought to have been refunded to him. Whether he paid the money from his own funds or had received the same from the clients for executing the trades is a dispute inter se between them and BSE does not come in. This inter se dispute between the broker and the clients can be settled only through the arbitration mechanism of BSE which is laid down in its rules, bye-laws and regulations. The

refunds and the delivery of shares could only be made to the brokers. This is the manner in which the stock exchanges and their clearing houses function. In this view of the matter, we agree with the whole time member that the amount had to be refunded to the broker and not to the clients directly. The broker has claimed ₹ 13,64,000/- which he states he had paid for purchasing the shares on behalf of the clients. It was not disputed before us that the difference between the standard rate and the purchase price is ₹ 51.48 per share and, therefore, the broker is entitled to claim a sum of 24,700 x ₹ 51.48 which works out to ₹ 12,71,556/- only and not ₹ 13,64,000/- as claimed by him. The broker is also making a claim with regard to some trades executed by him in settlement no. 22. Since that claim is not the subject matter of the dispute in the present proceedings, the whole time member rightly rejected the same. Claim in that regard could be made separately. The broker is not entitled to any amount in excess of ₹ 12,71,556/- as principal amount together with interest as ordered by the whole time member. The claim made by him in excess of this amount has been rightly rejected by the whole time member. In this view of the matter, no fault can be found with the impugned order.

6. We are also of the view that BSE was not justified in disbursing the amount to the clients on the basis of the 1998 order when it had already received the 1999 order requiring it to pay the amount to the broker. We have already noticed that the payment was disbursed to the clients in July 2000 and on January 1, 2001 whereas the 1999 order was received by BSE sometime in June 1999. On receipt of this order, BSE ought to have clarified the matter with the Board. The learned senior counsel appearing for BSE pointed out that the exchange had sought the details of the purchase of 24,700 shares of the company from the broker pertaining to settlement no. 23 of 1995-96 and that he refused to furnish the particulars. It may be so but that is no justification for BSE to disburse the amount to the clients on the basis of the 1998 order. The details of the purchase as sought from the broker were with the exchange because, admittedly, the trades were executed on BSE. It appears that BSE did not bother to check its own

records nor that of the clearing house and sought the information from the broker. The broker was also remiss in not furnishing the details but disbursement of the amount to the clients could not be justified. In these circumstances, BSE must make payment to the broker and it will be open to it to recover the same from the clients in accordance with law.

In the result, both the appeals fail and they stand dismissed with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
P. K. Malhotra
Member

Sd/-
S. S. N. Moorthy
Member

29.8.2011
Prepared & Compared by
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