

Securities Appellate Tribunal

Sebi vs Jhunjhunwala Stock Brokers Pvt. ... on 12 February, 2007

Bench: V Chopra

ORDER V.K. Chopra, Member

1. BACKGROUND 1.1 Securities and Exchange Board of India (hereinafter referred to in short as "the Board") had ordered an investigation into the alleged 'insider trading' by Shri. Dilip Pendse and others in the shares of Tata Finance Ltd. (hereinafter referred to in short as "TFL"), including the affairs relating to buying, selling and dealing of the M/s Jhunjhunwala Stock Brokers Pvt. Ltd, a Broker of the Stock Exchange Mumbai (BSE) (hereinafter referred to in short as "Broker") in the shares of Tata Finance Ltd.

1.2 In the course of investigation, it was noticed that the Broker had traded in the shares of TFL based on unpublished price sensitive information received from Shri. D. Pendse, the then MD of TFL. Further, in respect of the trades executed between the Broker and his associated entities like Anjudi Properties Investment Pvt. Ltd., it was revealed that contract notes were not issued in proper manner by the Broker.

1.3 The Board after considering the Investigation Report appointed an Enquiry Officer to enquire into the violations allegedly committed by the Broker under the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock Brokers Regulations"), Regulation 3(i) of Securities and Exchange Board of India (Insider Trading) Regulations, 1992 (hereinafter referred to in short as "Insider Trading Regulations"), Regulation 6(d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 (hereinafter referred to in short as "PFUTP Regulations"), Securities and Exchange Board of India Act, 1992 (hereinafter referred to in short as "SEBI Act") and Memorandum and Articles of Association of the Company, Regulations and Bye-laws of BSE.

1.4 The Enquiry Officer, after conducting an enquiry in accordance with the provisions of Regulation 6 of the Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to in short as "Enquiry Regulations") submitted a report dated March 29, 2006 wherein he observed that the Broker had violated 6(d) of PFUTP Regulations, SEBI Circulars No SMDRP/Policy/CIR-32/99 dated September 14, 1999, SEBI Circular no. SMD(B)104/22775/93 dated October 29, 1993 and Regulation 17(1)(j) of SEBI Stock Brokers Regulations. He recommended suspension of certificate of registration of the Broker for a period of two years.

2. SHOW CAUSE NOTICE 2.1 Pursuant to the receipt of the said Enquiry Report, a Show Cause Notice dated April 13, 2006 was issued to the Broker, enclosing therewith a copy of the Enquiry Report advising him to show cause as to why the action as recommended by the Enquiry Officer should not be imposed on it. The Broker submitted its reply dated June 30, 2006 to the show cause notice and also requested for a personal hearing in the matter.

3. REPLY OF THE BROKER TO THE SHOW CAUSE NOTICE 3.1 The Broker stated that the delay in proceedings as a result of adjournment sought by us was unavoidable and due to factors beyond our control and as such, no adverse inference can be drawn against them.

3.2 The Broker submitted that the Enquiry Officer has failed to appreciate the facts and circumstances and the submission made by them during the hearing on January 02, 2006, leading to the admission of backdated of contract notes by its erstwhile director. In this regard, they submitted that Shri. Rajendraprasad Jhunjhunwala, its erstwhile director, was in charge of day to day affairs of the company and solely responsible for the day to day business decisions of the company at the relevant time. Since he was fully conversant with the facts of the case, they had vide letter dated December 20, 2005 inter alia requested him to attend the enquiry proceedings before the Enquiry Officer on January 02, 2006.

3.3 The Broker submitted that Shri. Rajendraprasad Jhunjhunwala for the first time after issuance of the Notice informed them vide letter dated December 23, 2005 that he had carried out the backdating of the contract notes on its behalf at the behest of Shri. Pendse and under pressure from him.

3.4 The Broker submitted that Shri. Rajendraprasad Jhunjhunwala had only admitted the back dating of contract notes and not the Broker. This aspect had escaped from the attention of the Enquiry Officer, and that this fatal omission has resulted in distortion of his findings. The Broker further stated that the above categorical admission of Shri. Rajendraprasad Jhunjhunwala referred to above cannot be considered as that of the Broker. The observation in the Enquiry Report that "JSBL had admitted the violation" is incorrect. It was Shri. Rajendraprasad Jhunjhunwala who admitted the violation, in his individual capacity.

3.5 The Broker submitted that the conclusion in the enquiry report that it had violated the provisions of Regulations 6(d)" of the FUTP Regulations and which is contrary to the facts on record and need to be discarded in as much as the Broker has not admitted any violation of Regulations 6(d) of the FUTP Regulations.

3.6 The Broker submitted that Shri. Rajendraprasad Jhunjhunwala had clearly acted beyond the authority granted by the Board of the Broker to him. The Board had never authorized him to back date the contract notes for the transactions as alleged in the Notice eventhough the Contract Notes were backdated and were shown as issued on behalf of the Company.

3.7 The Broker submitted that as admitted by our erstwhile director that the contract notes were backdated the issue of obtaining written consent for acting as principal does not arise. They further submitted that the alleged contravention of Regulation 17(1)(d) of Stock Brokers Regulations is misplaced, as the same has no applicability to the facts of the instant case. Further, the alleged contravention of Circular dated September 14, 1999 is also misplaced, since the said circular nowhere stipulates about reporting of transaction to the stock exchange.

3.8 The Broker submitted that the Enquiry Officer has rightly exonerated them from the violation of Regulation 3(i) SEBI (Insider Trading) Regulations. With regard to penalty of suspension for a period of two years, as recommended by Enquiry Officer, they submitted that the same cannot be imposed without adequate justification.

4. HEARING 4.1 The Broker was accordingly advised to attend the personal hearing before me at SEBI's Head Office at Mumbai on December 04, 2006. Shri. Rajendra Prasad Jhunjhunwala and Shri. Suresh Kumar Jhunjhunwala attended the hearing alongwith their Advocate, Shri. Vinay Chauhan. They have submitted their written submissions on December 08, 2006. Therefore, I am proceeding in the matter on the basis of the submissions of the Broker and the materials before me.

5. CONSIDERATION OF ISSUES & FINDINGS 5.1 I have carefully examined the findings of investigation, Enquiry Report, Show Cause Notice, reply of the Broker and submissions made at the time of hearing.

5.2. The Enquiry Officer had examined the charges of backdating of contract notes and insider trading in the shares of TFL. The Enquiry Officer held that the allegation of insider trading in the shares of TFL on the basis of unpublished price sensitive information from Shri. Dilip Pendse, the then Managing Director of TFL, had not been established and as such the Broker has not violated Regulation 3(i) of Insider Trading Regulations.

5.3 With regard to the other charge of backdating of contract notes for the purchase and sale of the shares of TFL, the Enquiry Officer found the Broker guilty and arrived at a conclusion that the Broker had violated Regulation 6(d) of PFUTP Regulations, SEBI Circular no. SMD(B)104/22775/93 dated October 29, 1993, SEBI Circulars No SMDRP/Policy/CIR-32/99 dated September 14, 1999 and Regulation 17(1)(j) of SEBI Stock Brokers Regulations.

5.4 The Enquiry Officer has relied on the admission of the Broker regarding the execution of contract notes. The Broker also admitted the same during the course of hearing before me. However, the Broker submitted that the reason for such admission by one of their erstwhile Director, Shri. Rajendra Prasad Jhunjhunwala was explained in its reply dated June 30, 2006 to the show cause notice. On a perusal of the said reply, I find that the Broker has reproduced the extract of the letter dated December 23, 2005 of Shri. Rajendra Prasad Jhunjhunwala which was issued to the Broker informing that he had carried out the backdating of contract notes on behalf of Broker at the behest of Shri. Dilip Pendse. In its reply, the Broker had taken a stand that Shri. Rajendra Prasad Jhunjhunwala had resigned from their Company and was the only person responsible for the violations and their Company is in no way involved in this matter. They have also stated that Shri. Rajendra Prasad Jhunjhunwala has no authority to execute such contract notes on their behalf.

5.5 At the same time, it is clear from the reply of Shri. Rajendra Prasad Jhunjhunwala that he was one of the Directors of the Broker at the time the violation had taken place and he was handling day to day affairs of the Broker at that time. I have noted that SEBI had given prior approval for resignation of Shri. Rajendra Prasad Jhunjhunwala vide letter dated December 05, 2005 only as required under Rule 4(c) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 subject to the

condition that in case of any change in permanent address of Shri. Rajendra Prasad Jhunjhunwala against whom prosecution has been initiated, the Hon'ble Court would be kept informed.

5.6 I observe that this is a case of falsification of records relating to securities which is an unfair trade practice and a serious offence under Regulation 6(d) of PFUTP Regulations. The Broker can not escape action by merely shifting the responsibility on one Director, who resigned subsequent to the incident. The knowledge of the Broker in this regard is evident as all these transactions were done on their behalf. In the absence of any information to the contrary, it seems that the Broker has not taken any action against their ex-director Shri. Rajendra Prasad Jhunjhunwala for the wrong action. Shri. Rajendra Prasad Jhunjhunwala attended the Enquiry proceedings before the Enquiry Officer on January 02, 2006 on behalf of the Broker. He also attended hearing before me along with Shri. Suresh Kumar Jhunjhunwala which gives the impression that Shri. Rajendra Prasad Jhunjhunwala is still with the Broker in spite of grave lapse committed by him in his earlier capacity as an active director.

5.7 The Enquiry Officer found that the Broker issued contract note dated September 13, 2000 for the sale of 1,50,000 shares of TFL at the rate of 90/- per share on behalf of M/s Anjudi Properties Investment Pvt. Ltd. in Form B and another contract note dated September 13, 2000 for the purchase of 75, 000 shares each of TFL at the rate of 90.50 per share on behalf of M/s India Emerging Companies Ltd and M/s Sarjan Securities Ltd. in Form B. I observe that the said antedated contract notes were issued sometime in March 2001 when Shri Dilip Pendse approached the Broker to issue the same to the above mentioned parties identified by him viz. Mrs. Anuradha Pendse, M/s Nalini Properties Pvt. Ltd. (NPPL), M/s Anjudi Properties Investment Pvt. Ltd. (APIPL) and Dr. Anjali Beke as sellers and M/s India Emerging Companies Ltd.(IECL) and M/s Sarjan Securities Ltd.(SSL) as buyers. The above transactions created a wrong impression that the purchase and sale in the shares of TFL had taken place during the period September 2000 whereas the actual transaction had taken place during March 2001. Even I find from the investigation report that the payments for the aforesaid transactions (at the rate of Rs. 90/- per share) were received by the Broker on March 30 and 31, 2001. I also note that the market price of TFL shares on March 30-31, 2001 was in the range of Rs 39/- to Rs 42/-.

5.8 The Enquiry Officer has also found that the Broker had not obtained written consent from M/s Anjudi Properties Investment Pvt. Ltd., M/s India Emerging Companies Ltd. and M/s Sarjan Securities Ltd. for acting as principal for the above transactions and thus violated the provisions of SEBI Circular no. SMD(B)104/22775/93 dated October 27, 1993 and Regulation 17(1)(j) of SEBI Stock Brokers Regulations. In their reply, they stated that the issue of obtaining written consent for acting as principal did not arise as their then director had admitted the execution of backdated contract notes. Their submission is not tenable as the admission of back dated contract notes does not absolve them of their responsibility.

5.9 The Enquiry Officer also found that the Broker had not reported the said transactions to the Stock Exchange and hence, contravened the provisions of SEBI Circular No SMDRP/Policy/CIR-32/99 dated September 14, 1999. The Broker in its reply stated that the said circular is not applicable in this case as there is no provision in the said Circular which mandates

reporting of any transactions to the stock exchanges. I observe that all the impugned transactions are off-market transactions in the shares of TFL. The price formation in such transactions is not through the stock exchange price and order matching mechanism and investors do not have benefit of the best possible price. With a view to regulate such off the floor transactions including cross deals, SEBI had issued a circular SEBI circular No SMDRP/Policy/Cir -32/99 dated September 14, 1999 which prohibited off the floor transactions and cross deals except on the screen of the stock exchanges which lends transparency and results in true and fair discovery of prices of securities. It is an admitted fact that the transactions were carried out outside the trading system.

5.10 Having considered all aspects of the case, I find that the Broker has violated the provisions of Regulation 6(d) of PFUTP Regulations, Regulation 17(1)(j) of SEBI Stock Brokers Regulations, SEBI Circular no. SMD(B)104/22775/93 dated October 29, 1993 and SEBI Circular No SMDRP/Policy/CIR-32/99 dated September 14, 1999 and as such the issue to be decided in this case is the quantum of penalty to be imposed against the Broker.

5.11 During the course of hearing, they have pleaded to take a lenient view in the matter and the same is also reiterated in its written submissions vide letter dated December 08, 2006, which are reproduced hereunder:

(i) Punishment already suffered Pursuant to the arrest of our erstwhile director as a result of his dealing with Mr. Pendse, BSE deactivated out terminal on 11/12/03 and activated the same only on 15/7/05. Thus, as a result of action taken by BSE we have already suffered suspension for a period of 1 year and 6 months Our erstwhile director was arrested by Economic office wing Delhi Police, on 5/12/03 and kept in Tihar Jail till 9/12/04. Thus, he has already suffered incarceration for a period of 1 year. Further, it may be noted that the trial is yet to begin in the case

(ii) Our Conduct We had suo moto stopped trading on 6/12/03 i.e the next day after the arrest of our erstwhile director. BSE's order for deactivation came much later on 11/12/03.

Till date we have not traded at all, despite activation of our terminal by BSE on 15/7/05, since we want to come out clean and commence trading only in consonance with the verdict of SEBI in Enquiry proceedings. Thus effectively till date we have already remained suspended for a period of 3 years and the same is still continuing. Turnover Certificates from BSE are enclosed as Annexure A.

5.12 I have examined the Turnover Certificate dated June 17, 2004 issued by BSE to the Broker wherein BSE certified that the total transactions done by the Broker during the financial year 2003-2004 were Rs 1062.973 Crores. However, Turnover Certificates dated May 06, 2005 and May 29, 2006 for the financial years 2004-05 and 2005-2006 respectively show "NIL" transactions during the said period. It appears that they stopped their business voluntarily and not because of any interim order of SEBI. However, having regard to all aspects of this matter, as also the actions initiated by BSE and Police authorities, I am of the view that suspension of registration of the Broker, M/s Jhunjhunwala Stock Brokers Pvt. Ltd for a period of one year is adequate to have a deterrent effect on the Broker.

6. ORDER 6.1 Taking into account all the above facts and circumstances of the case and in exercise of the powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a major penalty of suspension of certificate of registration of the Broker, M/s Jhunjhunwala Stock Brokers Pvt. (SEBI Registration no. INB030955732) for a period of one year.

6.2 This order shall come into force immediately on the expiry of twenty one days from the date of this order.