

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

DATE : 16.01.2018

Misc. Application No. 79 of 2017
And
Appeal No. 72 of 2017

Monarch Network Capital Ltd.
(Formerly known as Monarch Research &
Brokerage Pvt. Ltd.)
901/902, 9th Floor, Atlanta Center,
Opp. Udhog Bhavan,
Sonawala Road, Goregaon (E),
Mumbai 400063.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, C-4A, G-Block,
Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051

..... Respondent

Mr. Vinay Chauhan, Advocate with Mr. K. C. Jacob, Ms. Neha Garg,
Advocates i/b Corporate Law Chambers India for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Pulkit Sukhramani, Ms. Vidhi Jhavar,
Advocates i/b The Law Point for the Respondent.

CORAM : Justice J. P. Devadhar, Presiding Officer
Jog Singh, Member
Dr. C. K. G. Nair, Member

Per : Jog Singh, Member (Oral)

1. The appellant, namely – Monarch Network Capital Limited, is a company duly certified by the Securities and Exchange Board of India [for short ‘**SEBI**’] to act as a Stock Broker on the Bombay Stock Exchange. The appellant claims to have more than two lakh clients, who deal in various scrips of several companies through the appellant. It is submitted by the appellant that it executes thousands of orders on instructions from its clients every day. The

appellant neither advises these clients nor does he challenge their wisdom and it simply transacts on their behalf.

2. The appellant has challenged impugned order dated July 31, 2015 by which a penalty of Rs. 35 Lac (Rupees Thirty Five Lac only) has been imposed on it for violating clause A(2) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. Vide show cause notice (for short ‘SCN’) dated May 15, 2013 it has been alleged by SEBI that the appellant failed to observe due skill, care and diligence in the matter of trades undertaken for his clients, namely – Mr. Vijay Vora and his wife Ms. Hina Vora, while transacting in the shares of M/s. Sky Industries Limited.

3. The case of the respondent is that during the investigation conducted by SEBI in the scrip of M/s. Sky Industries Limited for the period from January 01, 2009 to May 10, 2010 it was noticed that–

- a) Mr. Vijay Vora bought 95,945 shares from his wife Ms. Hina Vora and sold 59,302 shares of SIL to her.
- b) In respect of 47,670 shares the appellant has acted as both broker and counterparty broker and out of these 6500 shares were synchronized.
- c) Some of the aforesaid trades were also executed from the same terminal.
- d) Mr. Vijay Vora executed self trades for 18,358 shares wherein the appellant acted as both broker and counterparty broker for 5,087 shares and in some instances both buy orders and sell orders were executed from the same terminal.

4. On the basis of the above said, it is alleged in the SCN dated May 15, 2013 that the appellant failed to exercise due skill, care and diligence in the conduct of his business. After seeking reply of the appellant on the above SCN and affording him an opportunity of personal hearing thereafter, it has been

held by the Ld. Adjudicating Officer of SEBI in the impugned order dated July 31, 2015 as follows:

“48. In the instant case, I find that Monarch allowed its client to execute fictitious trades through it. Out of 95,945 shares Mr. Vijay Vora bought from his wife Ms. Hina Vora (one side), Monarch acted as both Broker and counter party Broker for 5,902 shares traded between Mr. Vijay Vora and Ms. Hina Vora. Out of 59,302 shares Vijay Vora sold to Ms. Hina Vora during the investigation period, Monarch acted as both Broker and Counterparty Broker for 41,768 shares traded between Mr. Vijay Vora and Hina Vora. Thus, Monarch executed cross deals which accounted for 6% of Vijay Vora’s buy and Ms. Hina Vora’s sell and 70% of Vijay Vora’s sell and Ms. Hina Vora’s buy of trades between Ms. Hina Vora and Vijay Vora. Such trades for 47,670 shares between Mr. Vijay Vora and Ms. Hina Vora, wherein the Noticee acted as both Broker and Counterparty Broker, were observed to have been executed on 38 days during the investigation period and involved 86 trades. Further, 6500 shares i.e. 13% out of the total of 47,670 shares, where Monarch acted as a broker and counterparty broker to the trades of Ms. Hina Vora and Mr. Vijay Vora, were synchronized. I note that the Noticee also acted as both Broker and Counterparty broker in respect of self trades for 5,087 shares executed on 23 days, involving 37 trades during the investigation period, out of total self trades for 18,358 shares of Mr. Vijay Vora. Thus, the noticee was the broker and counterparty broker in respect of more than one-fourth of the self trades of Mr. Vijay Vora in SIL Scrip during the investigation period.”

5. A penalty of Rs. 35 Lac has, therefore, been considered appropriate by the Ld. Adjudicating Officer to be imposed on the appellant under Section 15 HB of the SEBI Act, 1992 for the aforesaid violation.

6. Learned Counsel for the appellant, Shri Vinay Chauhan, submits that Shri Vijay Vora and Mrs. Hina Vora had been regular clients of the appellant since 2007 with a good track record. They also dealt in other scrips of various other companies, therefore, no suspicion ever arose in the mind of the appellant in respect of such self trades. The Learned Counsel further submits that the appellant had traded on behalf of about 35000 clients during the investigation period, i.e., 01.01.2009 to 10.05.2010. Even otherwise, Mr. Vijay Vora had been a regular client and out of total of 6,80,540 shares bought through the appellant, the shares bought by Mr. Vijay Vora from his wife Ms. Hina Vora only amounted to 5902 shares. Similarly, out of the total self trades for 18,358

shares executed by Mr. Vijay Vora, the appellant has acted as broker and counterparty broker for only 5087 shares. Keeping in view the large volume of trades undertaken by Mr. Vijay Vora during the relevant period, the percentage of self trades is 0.03%, which is very minuscule and not 27% as incorrectly contended by SEBI. Alternatively, Shri Vinay Chauhan, the Learned Counsel for the appellant submits that the penalty of Rs. 35 Lacs for such a menial and insignificant violation is unjustified as the same is disproportionate.

7. Per contra, Shri Kumar Desai, submits that the Ld. Adjudicating Officer has applied his mind to the facts and circumstances of the case and has considered imposition of monetary penalty of Rs. 35 Lac as appropriate.

8. Heard Shri Vijay Chauhan, Learned Counsel for the appellant and Shri Kumar Desai, Learned Counsel for the respondent at length. We have also perused the pleadings and documents annexed therewith.

9. We have considered the submissions of the parties. It is true that the applicant has got lakhs of clients and thousands of them trade every day. It is true that the appellant traded in the scrips of many companies but it is also equally true that Mr. Vijay Vora and Ms. Hina Vora undertook repeated trades between January 01, 2009 and May 10, 2010 and, admittedly, dealt in about 5000 shares of M/s. Sky Industries Limited, which amounted to self trades being totally synchronized between Mr. Vijay Vora and Ms. Hina Vora. Thus, the charge in question stands established against the appellant in terms of Clause A(2) of Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and sub Brokers) Regulations, 1992 which mandates that every broker shall exercise due skill, care and diligence in the conduct of his business. The appellant has, undoubtedly, transacted on behalf of Mr. Vijay Vora and out of 13,24,344 shares which were undertaken by the appellant on behalf of Mr. Vijay Vora,

5087 shares amounted to self-trades. In fact, such self-trades are very harmful in the capital market inasmuch as the buyer and seller both are essentially the same person and there is no change of ownership. This hits at the very foundation of the capital market, as a result of which the respondent is bound to deal with such violations strictly.

10. The appellant submits that the turnover of the appellant company from the impugned trades is small and insignificant in comparison with the massive turnover of the appellant company in general, and should therefore not lead to any penalty being imposed upon the appellant company. This argument, in our opinion, does not hold water because of the simple reason that imposition of penalty for violating provisions of SEBI Act and any regulations made thereunder does not relate to the total turnover of the company in any manner. In synchronized trading, the buy and sell order quantities are identical and are put through at exactly the same time on the trading platform which hurts the substratum of the securities market and affects the prices of scrips illegally. This, in turn, leads to many variables in the securities market being affected artificially through self trades.

11. **In Chander Kanta Bansal Vs. Rajinder Singh Anand [2008 (5) SCC 117]** it was held that due diligence means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs. Therefore, the stock broker's responsibility of due diligence is such that any other reasonable person would apply in his/her own affairs. Applying this to the facts of the present case, it is evident that a reasonable person exercising due diligence would not have ignored the self trades being conducted by the Voras right under the appellant's nose. It is the duty of the stock broker under the Brokers Regulations to constantly monitor the trades executed by the client through the internet based trading platforms so as to ensure that the trades are executed in accordance with law and do not disturb the market equilibrium.

12. In the case of **Madhukar Sheth Vs. Securities and Exchange Board of India [Appeal No. 46/2002 decided on 18.09.2003]** the following was held in para 24 -

“It is true that a broker cannot act of his own against the instructions of the client. But no one can compel him to be a party to manipulate the market. No doubt the broker is supposed to protect the interest of his client but he is also expected to protect the interest of the securities market in which he operates. It is his duty to ensure not to be a party to any market manipulation and that the market in which he operates is run on a healthy and non manipulative basis.”

On a perusal of the abovementioned paragraph it is borne out that even though a stock broker acts on the instructions of his clients, the former cannot be forced to act in ways which contributes to the manipulation of the market. In the present case, therefore, it is clear that acting on the instructions of Shri Vora, the appellant ought not to have allowed the self trades to occur.

13. In the case of **Anita Dalal Vs. SEBI [Appeal No. 211 of 2012 decided on 3.12.2012]**, this Tribunal held in para 7 as follows :

“Self trades admittedly are illegal. This Tribunal has held in several cases that self trades call for punitive action since they are illegal in nature.”

It follows, therefore, that the act of indulging in self trades is itself a straightforward violation which calls for a penalty.

14. Having said so, we now turn to the contention of the appellant that the penalty in question is disproportionate. We have minutely gone through the SCN and the impugned order. It is true that there is no allegation of any connivance by the appellant with said Shri Vijay Vora who undertook self trades with his wife but it is also true that the appellant company, being a stock broker, is a responsible player in the capital market and must conform to the norms laid down by the Regulator in his conduct. The appellant has, thus, not

been vigilant enough to detect such self trades in about 5000 shares in a span of less than 40 days. Therefore, the penalty of Rs. 35 Lacs imposed under Section 15HB of SEBI Act as against maximum imposable penalty of Rs. One crore under the said Section is not disproportionate in the facts and circumstances of the case. For invoking the doctrine of disproportionality, one has to prove that the penalty imposed in a particular case is highly disproportionate to the violation committed by a party in a given case. In the present situation we do not find any unwarranted penalty being imposed on the appellant. Due diligence is one of the most important responsibilities of a stock broker and cannot be taken for granted. This being the position, the impugned order is, therefore, upheld and the appeal is hereby dismissed, however, with no order as to costs.

15. Accordingly Misc. Application No. 79/2017 also stands disposed of.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Jog Singh
Member

Sd/-
Dr. C. K. G. Nair
Member

16.01.2018
Prepared & Compared by
PTM