

IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No.112 of 2007

Shri Gautam N. Jhaveri
Sole Prop. M/s. Rajesh N. Jhaveri

..... Appellant

Versus

Securities and Exchange Board of India

.....Respondent

Shri Anish Khavidia, Practicing Company Secretary for the appellant

Dr. Poornima Advani, Advocate alongwith Shri Ravindra A. Lokhande,
Advocate and Ms. Sejal Shah, Advocate for the respondent

CORAM

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

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

Whether the Securities and Exchange Board of India (for short “the Board”) has the power to order a de-novo enquiry on the basis of some fresh material brought to its notice after the enquiry officer earlier appointed to examine the allegations against a delinquent recommends a minor penalty is the short question that arises for our consideration in this appeal. Facts necessary for the disposal of this appeal lie in a narrow compass and these may first be noticed.

Jhaveri is his brother. The appellant was served with a notice dated August 30, 2004 alleging that he had violated Regulations 4(a), 4(b) and 4(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and the Code of Conduct prescribed for stock brokers under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter called “the FUTP Regulations” and “the Stock Broker Regulations” respectively). The details of the allegations leveled against the appellant were contained in the annexure to the notice. An enquiry officer was appointed to look into the allegations who gave his report dated 31.3.2005 absolving the appellant of the serious charges leveled against him. He however found that the appellant was guilty of having violated the Code of Conduct prescribed under the Stock Broker Regulations and accordingly recommended to the Board the imposition of a minor penalty of “censure”. On receipt of the enquiry report the appellant was served with a copy thereof together with a notice calling upon him to show cause why appropriate order be not passed against him. It is not in dispute that the appellant filed his detailed reply stating therein that the enquiry officer was right in holding that the serious charges under the FUTP Regulations leveled against him had not been established on the basis of the material that was placed before the enquiry officer and that the penalty of censure be also not imposed. The appellant also sought a personal hearing before the Board so that he could present his case in the right perspective. It appears that after the receipt of the enquiry report and the reply of the appellant thereto, the Board received some fresh material in the form of some bank

Ltd (for short “the company”). The fresh material was received after the submission of the enquiry report and since the same had not been put to the appellant at any stage of the proceedings, the whole time member of the Board by his order dated 14.11.2006 directed that a de novo enquiry to be held against the appellant for taking into consideration the fresh material brought to his notice. He appointed another enquiry officer to look into the charges already leveled against him. On the basis of this order the appellant was served with a fresh show cause notice dated 17.11.2006 issued by the new enquiry officer. It is against the issuance of this show cause notice that the present appeal has been filed under section 15T of the Securities and Exchange Board of India Act, 1992 (hereinafter called “the Act”). Even though it is the show cause notice which has been impugned in the memorandum of appeal, we are of the view that the appeal is primarily directed against the order dated 14.11.2006 passed by the Board ordering a fresh enquiry.

There are in force the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (for short “the Enquiry Regulations”) under which the enquiry has been ordered. Regulation 3 provides that “no order under these regulations shall be passed except after holding an enquiry by the enquiry officer.” An enquiry for the purpose of passing an order under these regulations may be held for contravening any of the provisions of the regulations referred to in Regulation 4. Admittedly, the FUTP Regulations and the Stock Broker Regulations find mention in Regulation 4. After an enquiry officer is appointed he is required to issue to the intermediary a notice stating there under the

of documents relied on by the Board and extracts of relevant portions of documents containing the findings arrived at in any investigation or inspection held by the Board in respect of the alleged contravention.” The delinquent intermediary is called upon to submit his reply within the specified time. A presenting officer may also be appointed for the purpose of the enquiry. The relevant parts of Regulation 13 with which we are concerned are reproduced hereunder for facility of reference:

“13. (1) The enquiry officer shall, after considering the written statement and the oral submissions, if any, of the intermediary and the provisions of the relevant Regulations, submit a report to the Chairman or a member designated in this behalf and recommend for the imposition of any of the following penalties by the Chairman or the member, as the case may be, with the justification for the imposition thereof:-

(a) Minor penalties -

- i) [***] censure;
- ii) prohibiting the intermediary to take up any new assignment or mandate or launch a new scheme for a period upto six months;
- iii) debarring a partner or a whole time director of the intermediary from carrying out the activities as intermediary in the intermediary firm or company and other capital market related institutions for a period upto six months ;
- iv) suspension of certificate of registration for a period upto three months;
- v) debarring a branch or an office of the intermediary from carrying out the activities for a period upto six months.

(b) Major penalties -

- i) cancellation of certificate of registration;

ii) suspension of certificate of registration for period

(2) On receipt of the report from the enquiry officer, the Chairman or the member, as the case may be, shall consider the same and issue a show-cause notice to the intermediary [enclosing therewith a copy of the report of the enquiry officer] as to why the action as it considers appropriate should not be taken.

(3) The intermediary [may] within fifteen days of the date of the receipt of the show-cause notice send a reply to the Chairman or the member, as the case may be.

(4) The Chairman or the member, as the case may be, after considering the reply to show-cause notice, if received, shall as soon as possible pass such order as it deems fit.”

Sub Regulation 5 of the Regulations which was existing at the relevant time reads as under:-

“(5) If the enquiry officer under sub-regulation (1) has recommended or imposing of a minor penalty and the Chairman or the member, as the case may be, proposes imposing of a major penalty, he shall give a notice to the intermediary to make written submission against the proposed action within fifteen days after the receipt of the notice and the Chairman or the member after taking into consideration the written submissions, if any, shall pass such orders as deemed appropriate”.

A reading of the aforesaid provisions would make it clear that the enquiry officer after conducting the enquiry shall submit a report recommending the imposition of any of the penalties referred to in Regulation 13 (1) which includes minor penalties as well as major penalties. On receipt of the enquiry report the Board shall consider the same and issue a show cause notice to the intermediary enclosing therewith a copy of the report of the enquiry officer as

was conducted provides that if the Board wants to differ with the enquiry officer and impose a major penalty when a minor penalty had been recommended by the enquiry officer it shall give a notice to the intermediary to make written submission against the proposed action and after taking into consideration the written submission it shall pass such order “as deemed appropriate”. In the case in hand the procedure prescribed by Regulation 13 was followed. When the Board came to consider the enquiry report and the reply furnished by the appellant it sought for fresh information from the bank in the form of some bank statements which, according to it, linked the appellant with the issue of the preferential allotment of shares made by the company. The Board also felt that on the basis of the fresh material a fresh enquiry be held because the fresh material had not been put to the appellant. It was then that the order dated 14.11.2006 was passed ordering de novo enquiry. A reading of Regulation 13(4) leaves no room for doubt that the Board had the power to pass such an order because it is not bound to accept the recommendations made by the enquiry officer. If on the material already placed before the enquiry officer the Board wanted to differ with the findings or recommendation made by the enquiry officer it had to comply with Regulation 13(5) which then existed but this is not the case. The Board came into possession of some fresh material which, according to it, may establish the charges against the appellant and therefore ordered a fresh enquiry. We are of the view that the order dated 14.11.2006 passed by the Board was in accordance with Regulation 13(4) and it cannot be said that the Board did not have the power to pass such an order. If it were to be held otherwise, the consequences

regulate the securities market by such measures as it thinks fit. If the presenting officer does not place the existing material before the enquiry officer as a result whereof the delinquent intermediary gets absolved or where the Board comes across some fresh material on the basis of which it is of the opinion that the charges leveled against the intermediary could be established, it would be open to the Board to order a fresh enquiry or even remit the case back to the enquiry officer for affording an opportunity to the intermediary to respond to the fresh material not already considered. The Board cannot be denuded of this power and a delinquent intermediary cannot be allowed to go scot-free merely because the presenting officer had failed in his duty to present the entire material. The same would hold good if the Board comes across fresh material. Allowing the delinquent intermediary to be absolved merely because of the aforesaid reasons may be detrimental to the interest of the securities market and may work against the interest of the investors depending upon the nature of the allegations made. In this view of the matter we are of view that the Board had the power to order a de novo enquiry as has been done in the present case and that the show cause notice dated 17.11.2006 and the order dated 14.11.2006 could not be challenged on that ground.

The learned counsel for the appellant then referred to the fresh material which is said to have been collected by the Board after the receipt of the enquiry report and contended that it was not a fresh material and that the same was already available with the Board or in any case the Board could have collected the same from the Vadodra Stock Exchange where the scrip of the company had been listed. In view of our findings on the earlier issue that the

or not. The appellant should raise this issue before the Board and if it is raised the Board shall consider the same and pass appropriate order thereon. It goes without saying that in case the order goes against the appellant it will be open to it to challenge the same in accordance with law.

For the reasons recorded above, we find no merit in the appeal and dismiss the same leaving the parties to bear their own costs.

**Sd/-
Justice N.K. Sodhi
Presiding Officer**

**Sd/-
Arun Bhargava
Member**

**Sd/-
Utpal Bhattacharya
Member**

RHN
17.9.2007