

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.161 of 2007

Date of decision : 29.10.2007

ASK Financial Services Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Pradeep Sanchieti Advocate for the Appellant.

Mr. Shiraz Rustomji Advocate with 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)

Appeals nos. 161 and 162 of 2007 can be conveniently disposed of together as the issues involved therein are identical. The appellants in both the cases have been levied a monetary penalty of Rs.10 lacs each on account of their failure to exercise due skill, care and diligence and also for their failure to comply with the directions issued by the Securities and Exchange Board of India (for short the Board).

The appellants in both the appeals are registered stock brokers and members of the National Stock Exchange (NSE). Pursuant to reports of manipulations in the initial public offerings (IPO) of various companies, the Board examined the IPO dealings of various companies including that of Yes Bank and IDFC Ltd. The investigations revealed that one Manojdev Seksaria alongwith several other entities had made a large number of applications in fictitious names for cornering the retail portion of the IPO shares which were reserved for genuine retail applicants. In view of the serious irregularities which came to light as a result of the investigations, the Board by an interim order dated January 12, 2006 directed, among others, Manojdev Seksaria not to buy, sell or deal in the securities market either directly or indirectly till further directions. The order became effective from the date on which it was made. It was sent to the stock exchanges and the depositories were directed to ensure that the directions issued therein were strictly

enforced. It is not in dispute that the said order was posted on the website of the Board on January 12, 2006 itself and was also communicated to the media through a press release on the same day. The said order received wide media coverage on the next day in all the national dailies especially the financial dailies which came out with headlines. On receipt of the order from the Board, NSE communicated the same to its member-brokers for due compliance as per its circular dated January 13, 2006. Despite the restraint order, the aforesaid Manojdev Seksaria sold 19000 shares of Reliance Industries on January 13, 2006 through M/s. Brics Securities Limited (for short Brics)-the appellant in Appeal no. 162 of 2007 as the broker. Similarly, ASK Financial Services Limited (for short ASK)- the appellant in Appeal no.161 of 2007 entered into a transaction for options for 700 shares of ICICI Bank, a future's contract for 21000 shares of Reliance Industries Ltd. and sold another 11000 shares of Reliance Industries Ltd. All the three transactions were entered into on January 13, 2006 on the instructions of the aforesaid Manojdev Seksaria. Since the appellants had executed the aforesaid transactions in violation of the restraint order, they were served with show cause notices dated August 18, 2006 alleging that they had violated clauses A(1), A(2) and A(5) of code of conduct prescribed for the stock brokers in Schedule II to the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (for short the Regulations) read with Regulations 7 and 26 of the Regulations. They were informed that they had made themselves liable for action under section 15HB of the Securities and Exchange Board of India Act, 1992 (for short the Act). They were required to show cause why an inquiry be not held against them for imposing a monetary penalty. Both the appellants filed their detailed replies controverting the allegations. Brics took the stand that it was not aware of the restraint order and since it was not a party to the said order which had not been received, the trades executed by it were in ignorance of the said order and that it sold 19000 shares of Reliance Industries Ltd. on behalf of Manojdev Seksaria. ASK took a slightly different stand. While admitting that it had come to know of the restraint order through the media, it was not sure whether Manojdev Seksaria was the same person who was registered with it as Manoj G. Seksaria. It is pleaded that immediately on executing the trades on behalf of Seksaria on 13.1.2006 it

addressed a communication to the NSE on the same day to find out whether Manoj G. Seksaria was the same person as Manojdev Seksaria whose name appeared in the restraint order. It is further pleaded that ASK acted bonafide while executing the trades because there was a mismatch of the names of Seksaria in the records of the company (ASK) and the restraint order. On a consideration of the replies filed by the appellants and the material collected, the adjudicating officer came to the conclusion that the appellants had violated the code of conduct prescribed for the stock brokers under the Regulations the result of which was that a barred entity was allowed to trade in the securities market. The adjudicating officer also found that the appellants had made themselves liable for a monetary penalty under Regulation 26(xv) of the Regulations in as much as they failed to comply with the directions issued by the Board in the restraint order. The adjudicating officer by her two separate orders dated August 6 and August 13, 2007 passed in the case of ASK and Brics respectively imposed a monetary penalty of Rs.10 lacs on each of the two appellants. It is against these orders that the present appeals have been filed.

We have heard the learned counsel for the parties. The learned counsel for Brics strenuously urged that his client which was a broker had no knowledge of the restraint order since it was not a party to that order nor was that order served on it and, therefore, it could not be said that Brics had knowingly violated the restraint order. He further argued that the bonafides of Brics is clear from the fact that immediately on coming to know of the restraint order and after executing the trades, it informed NSE about the same. The learned counsel for ASK contended that the show cause notice issued to his client was vague and did not state all the facts necessary to establish the charge levelled against the broker. He also urged that the show cause notice did not refer to the fact that the appellant had verified from NSE whether Manojdev Seksaria was the same person as Manoj G. Seksaria. Another grievance of this appellant is that it had not been informed in the show cause notice that the Board by putting the restraint order on its website had issued directions to the brokers. According to the learned counsel the fact as to when the NSE informed its members is also absent in the show cause notice. He urged that the impugned order deserves to be set aside on the aforesaid grounds. The learned counsel appearing for

the Board, however, urged that the adjudicating officer has found that the appellants as stock brokers had failed to exercise due skill, care and diligence in the discharge of their duties and that the adjudicating officer was justified in imposing the monetary penalties on them. He also strenuously urged that in the facts and circumstances of the present case, both the appellants had sufficient knowledge of the restraint order passed by the Board and that they knowingly executed the trades on the following day which was a clear violation of the restraint order warranting the imposition of monetary penalty. Having given our thoughtful consideration to the rival contentions of the parties, we are of the view that the appeals deserve to be dismissed. It is true that the appellants were not parties to the restraint order and a copy thereof had not been sent to them directly by the Board. This is so because the Board does not deal with the brokers directly. All notices, orders and circulars are sent to them through their respective stock exchanges of which they are members. It is also not in dispute that the restraint order was given wide publicity in the newspapers particularly the financial dailies which came out with headlines and reported all the details of the entities against whom the restraint order had been passed. This by itself may not be enough for us to hold that Brics was in the know of the order. We cannot presume that its representative must have read the news papers which carried the news prominently though one fact is established that when the restraint order was passed by the Board it was put up on its website immediately on the same day. The appellants are registered stock brokers and their code of conduct requires them to exercise due skill, care and diligence in the conduct of all their business. The least that is expected of a registered stock broker is to access the website of the Board and the stock exchange of which he is a member to know what notices, orders, directions or circulars have been issued. The Board as a regulator does not deal with the stock brokers directly. There are more than 12000 stock brokers registered with the Board throughout the country and it is not feasible to send copies of orders, notices and circulars to each one of them. The notices and orders are sent to the respective stock exchanges and they in turn inform the brokers through their own website and their notice Board. The rules of stock exchanges provide that notices put on their website and also on the notice board would be deemed to be a notice to all concerned

including the market intermediaries like the stock brokers. May be, Brics did not access the website of the Board or the NSE and, therefore, it may not have known about the restraint order but surely, it defaulted in not carrying out due diligence by accessing the website. Had it done so, it would have learnt about the restraint order and since it did not do so the charge of failure to exercise due diligence stands established. The act of Brics in not accessing the website amounts to culpable negligence which resulted in a barred entity being permitted to trade in the securities market. The impugned order imposing a monetary penalty on this appellant is, therefore justified. We are also in agreement with the learned counsel for the Board that the appellant did not act bonafide as was sought to be argued on its behalf. 36500 shares of Reliance Industries Ltd. owned by Seksaria had been pledged with Birla Global Finance Ltd. for availing a loan facility. These shares were also transferred on January 13, 2006 from the demat account of Seksaria to the demat account of Birla Global Finance Ltd. maintained with Brics-the appellant herein and were then sold in the market by the appellant. This transaction was also contrary to the restraint order but was not brought to the notice of NSE by Brics. If it could bring to the notice of the exchange the sale of 19000 shares it could well have brought this fact also to the notice of the exchange. Not having done so, we are satisfied that the appellant did not act bonafide.

We shall now deal with the contentions of the learned counsel appearing for ASK. His argument that the show cause notice was bereft of the material facts is being noticed only to be rejected. The charge against the appellant is that it had failed to exercise due diligence while trading on behalf of Seksaria on January 13, 2006 after the restraint order had been passed. The appellant knew about the restraint order as per its own case and made an inquiry from NSE whether Manojdev Seksaria was the same person as Manoj G. Seksaria who had been registered with it as its client. Shri. Ashok Jogani a director of ASK appeared before the adjudicating officer on September 26, 2006 and his statement was recorded wherein he stated that Seksaria had been asked whether he was the same person against whom the restraint order had been passed and he answered in the negative. Seksaria is then said to have informed ASK on or about January 16, 2006 that he was the

same person. It is difficult to believe this statement in the facts and circumstances of the present case. In the letter dated January 13, 2006 addressed to the NSE, ASK had taken a contradictory stand. It is stated therein that when a clarification was sought from Seksaria about his identity he was unable to confirm the same. In view of these glaring contradictions, we are unable to accept any of the stands taken by this appellant. There are further contradictions in this regard which have been pointed out by the learned counsel for the respondent Board. Moreover, ASK sought a clarification from NSE only after executing the trades on behalf of Seksaria. Why was such clarification not sought before executing the trades. In the case of ASK it is clear that it executed the transactions on January 13, 2006 on behalf of Seksaria knowing well that there was a restraint order passed against him. In this view of the matter, the impugned order imposing a monetary penalty on the appellant is justified.

The learned counsel for ASK contended that the impugned order was liable to be set aside on the ground that the adjudicating officer while levying the penalty did not take into consideration the factors enumerated in section 15J of the Act. This section provides that the adjudicating officer while adjudging the quantum of penalty shall have regard to the factors like the amount of disproportionate gain or unfair advantage wherever quantifiable made as a result of the default. The adjudicating officer is also required to take into account the loss, if any, caused to an investor or group of investors as a result of default and also the repetitive nature thereof. It may be mentioned that the factors mentioned in section 15J are not exhaustive and it is open to the adjudicating officer to take into consideration such other relevant facts which may go to determine the gravity of the default committed by the delinquent. In the facts and circumstances of the present case, ASK did not disclose the amounts involved in the transactions which it executed on 13.1.2006 on behalf of Seksaria. This apart, the amount of disproportionate gain or unfair advantage made as a result of default is not quantifiable nor is it possible to ascertain the amount of loss that may have caused to any investor or a group of investors.

The learned counsel for the appellants then contended that the penalty imposed is harsh and unduly excessive in the facts and circumstances of this case. We do not think so.

The appellants have been guilty of culpable negligence which is in violation of their code of conduct and this negligence resulted in allowing a barred entity from trading in the securities market. This is a serious act which adversely affects the interest of the investors and the securities market itself. There is, thus, no scope for taking a lenient view in the matter.

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

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

29.10.2007
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IN THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

Appeal No.162 of 2007

Date of decision : 29.10.2007

M/s. Brics Securities Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Somashekhar Sundaresan Advocate with Mr. Joby Mathew Advocate for Appellant.
Mr. Shiraz Rustomji Advocate with Ms. Sejal Shah Advocate for Respondent.

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

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

Same order as in Appeal no. 161 of 2007 decided on 29.10.2007.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

29.10.2007
bbn