

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 69 of 2008

Date of decision : 5.11.2008

Shri Ashok K. Chaudhary Appellant

Versus

Securities and Exchange Board of India Respondent

Mr. Vinay Chauhan Advocate for the Appellant.

Mr. Kumar Desai Advocate with Mr. Haihangrang E.H. Newme Advocate
for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

This order will dispose of two Appeals no. 69 & 70 of 2008 both of which are directed against the common order dated March 3, 2008 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) restraining, among others, the two appellants from accessing the securities market and also prohibiting them from buying, selling or otherwise dealing with the said market in any manner whatsoever for a period of two years.

2. Sun Infoways Ltd. previously known as Best Mulyankan Consultants Ltd. (hereinafter referred to as the company) is the company whose shares are said to have been manipulated by its promoters by executing transactions in the names of different entities including the two appellants. Investigations carried out by the Board revealed that the promoters of the company who held 98 per cent of its capital traded in the shares during the period from February, 2000 to November, 2000 which trades resulted in significant price rise accompanied with rise in volumes. The Board found that the promoters traded in the scrip through as many as 31 entities including the two appellants and indulged in price manipulation and created artificial volumes and thereby violated Regulations 3, 4 (a) to (e)

and 6(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 (for short the Regulations). Accordingly, a common show cause notice dated June 8, 2006 was issued to all the 31 entities. By then, more than six years had elapsed after the manipulative trades were allegedly executed by them. All the entities including the appellants were called upon to show cause why appropriate directions be not issued under section 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) restraining them from accessing the securities market. The appellants filed their separate replies denying all the allegations. On a consideration of the material collected during the course of the investigations and relying upon the statements of some of the persons recorded and having regard to the trades executed by the different entities including the appellants, the whole time member by his order dated March 3, 2008 has found “that almost all deals evidence the fact that there was a matching of the buy and the sell quantity as well as the price. The proximity in the placing of orders at the same price and for the same quantity which resulted in getting them matched, indicates structured deals.” Again in para 59 of the impugned order the whole time member has found “that the Noticees misused stock exchange mechanism by executing manipulative trades in the nature of structured and cross deals. I also find that the price and volumes in the scrip increased manifold and this type of artificial volume creation gives wrong message to the investors and induces them to trade in the shares. The dealings of the noticees in the scrip of SIL abetted in creating artificial volumes and false market in the said scrip and thus the Noticees violated the provisions of Regulation 3, 4 and 6(d) of SEBI (Prohibition of Fraudulent and Unfair trade Practices) Regulations, 1995.” Feeling aggrieved by this order, Ashok Kumar Chaudhary has filed Appeal no. 69 of 2008 and his brother Rajesh Kumar Chaudhary has filed Appeal no. 70 of 2008 which are being disposed of by this order. Saksham Financial Services Ltd. to whom directions had also been issued filed Appeal no. 66 of 2008 before this Tribunal.

Appeal No. 69 of 2008

3. As could be seen from the show cause notice, the charge against the appellant is that the promoters of the company traded in the scrip and the transactions were put through, among others, in the name of the appellant. The appellant was summoned to

appear during the course of the investigations and he admitted that he traded in the scrip of the company but stated that all the trades were executed by him on his own account and that he never traded for anybody else. In the light of this stand taken by the appellant and the nature of the charges levelled against him, the first question that arises for consideration is whether there was any link between him and the promoters of the company who are said to have executed trades in his name and if so, what is that link? Even in the absence of any link, if the trades executed by the appellant were manipulated as alleged, then he would be guilty of violation of the Regulations. It will, therefore, be necessary to examine the nature of the transactions executed by the appellant.

4. Let us first find out whether there was any link between the appellant and the promoters of the company. There is not even an iota of evidence on the record which establishes any link between him and any of the promoters. As a matter of fact, Shri Kumar Desai the learned counsel for the Board fairly conceded during the course of the arguments that there was no direct link between him and the promoters of the company. He, however, contended that there was an indirect connection which could reasonably lead us to conclude that the promoters executed the transactions in his name. He pointed out that Kuldeep Handoo is a director of the company, Dilip Nabera is the auditor and that Dilip Nabera and Handoo are friends. He stated that they are also friends of Manish Kumar Marwah who is the son of S. K. Marwah. It was pointed out that Manish Marwah is also a friend of the appellant and it is on the say so of Mr. S. K. Marwah that the appellant traded in the scrip of the company. He further contended that Telefinlease, a company of Manish Marwah had also traded in the scrip of the company through R.S. Investments and Jhunjhunwala Stock Brokers Private Limited (Jhunjhunwala) and that the appellant had introduced him to the brokers. Even if we accept all that is stated by Shri Desai to be correct, we find that there is no link established between the appellant and the promoters of the company. Kuldeep Handoo undoubtedly is a director of the company but there is nothing on the record to show any link between him and the appellant. In the absence of any link, we cannot disregard the statement of the appellant when he stated that he had traded on his own behalf and not on behalf of anyone else. We are, therefore, satisfied that

no direct or indirect link has been established on the record between the appellant and the promoters of the company. It would follow that the trades executed by the appellant were on his own behalf and not on behalf of anybody else.

5. Having failed to satisfy us that there was any link between the appellant and the company, Shri Kumar Desai learned counsel for the Board strenuously tried to link the trading of one Rajinder Rai in the scrip of the company with the appellant. This is not the allegation in the show cause notice. On the contrary, a finding has been recorded in the impugned order that he was a front entity of Kuldeep Handoo, a director of the company. Be that as it may. Since this was the main plank of the arguments of Shri Desai, we shall deal with the same. Trades in the scrip of the company were admittedly executed in the name of Rajinder Rai and there is enough material on the record to show that those trades in large numbers were reverse trades with Rajesh Chaudhary, the brother of the appellant who is the appellant in Appeal No.70 of 2008. The argument of Shri Desai is that the appellant traded in the name of Rajinder Rai and executed reverse trades with his brother and thereby manipulated the scrip and created artificial volumes. In support of this argument, the learned counsel relied upon the statement of Shri Kapil Awal Manager, Compuaction Securities Private Limited which is a sub-broker of IKM Investors Services Limited (IKM) which is one of the two brokers through whom the appellant had traded in the scrip. Shri Kapil Awal in his statement said that “in case of Rajinder Rai the orders were given mostly on phone by himself, sometimes by Mr. Manish Kumar (S/o Shri S. K. Marwah) and by Shri Ashok Kumar Chaudhary”. While referring to the deliveries, Shri Awal stated that “in case of Rajinder Rai and Shri S. K. Marwah deliveries were given/received by Shri Ashok Kumar Chaudhary &/or Shri Manish Kumar (son of Shri S. K. Marwah).” It is urged that since the appellant took delivery of shares which were purchased by Rajinder Rai, it was he (the appellant) who traded in his name and entered into reverse trades with his brother Shri Rajesh Kumar Chaudhary and thereby executed manipulative trades violating the Regulations. He pointed out that Rajinder Rai was a peon in a private office and drew a monthly salary of Rs.2500/- and could not, therefore, execute trades running into crores of rupees. We have considered this argument of Shri Desai and find no merit therein. It is true that Rajinder Rai is a peon in a private office and

was drawing a salary of Rs.2500/- per month at the relevant time. It is legitimate to infer that he could not possibly trade or execute transactions worth crores of rupees in the scrip of the company and that someone else must have traded in his name. Rajinder Rai stated that he did not invest in any scrip in the securities market. The question then is, who traded on behalf of Rajinder Rai? Rajinder Rai was summoned to appear before the investigating officer and he admitted having signed a client broker form with Compuaction Services Private Limited which carried his photograph. When confronted with this form, he stated that it was never filled by him and that his photograph and signatures on blank form were taken by one Dhananjay Kumar in whose office he was working as a peon. Shri Dhananjay Kumar died thereafter in a road accident. He also admitted that he had signed some blank cheques on the asking of Shri Dhananjay Kumar. To a specific question whether he knew the appellant, his answer was that he did not know the appellant. During the course of his statement, Rajinder Rai admitted that he knew Kuldeep Handoo who used to visit the office both before and after the death of Dhananjay Kumar. This statement of Rajinder Rai read with the statement of the appellant clearly establishes the fact that they were not known to each other and there is nothing on the record from which we could hold otherwise. It is also clear that Rajinder Rai was not in a position to trade in such large quantities keeping in view his monthly income. Who used the blank forms and blank cheques which Rajinder Rai had signed on the asking of late Shri Dhananjay Kumar is not clear from the record and, in any case, there is not an iota of evidence on the record to link those forms with the appellant. The Board in para 9 of the show cause notice itself has alleged that Rajinder Rai was a front entity of Kuldeep Handoo, a director of the company. A finding to this effect has also been recorded in para 28 of the impugned order and this appears to be so. If Rajinder Rai was a front entity of Kuldeep Handoo, then it was he who was trading in his name and not the appellant. Shri Kumar Desai brought to our notice the observations made by us in Appeal No. 52 of 2008 decided on 11.9.2008 in the case of Compuaction Securities Private Limited Vs. SEBI, wherein we had observed that the appellant Ashok Kumar Chaudhary had traded in the shares of the company in the name of Shri Rajinder Rai and had executed manipulative trades with Rajesh Kumar Chaudhary. That was a case where the Board by a separate order and in separate proceedings arising

out of the same investigations had taken action against Compuaction Securities (P) Ltd. on the ground that it had executed manipulative trades on behalf of Rajinder Rai. We referred to the statement of Kapil Awal, Manager and used the same against Compuaction Securities and proceeded on the basis that on the statement of the manager himself, the trades executed by the sub-broker were manipulative. The correctness of the statement of Kapil Awal had not been challenged in that case which is now being challenged before us in this case. When we read his statement in the light of what has been said by Rajinder Rai and the appellant, we feel that it is not safe to rely on the statement of Kapil Awal. In this view of the matter, we cannot but hold that it is not established on the record that the appellant had traded in the name of Rajinder Rai. It is to be noted that even if we had recorded this finding in the case of Compuaction Securities (P) Ltd. vs. SEBI (Appeal no. 52 of 2008 decided on 11.9.2008), our order in that case would not have been any different in any respect. Be that as it may, the appellant was not a party in Appeal no. 52 of 2008 and, therefore, he is not bound by any observation made by us in that case.

6. This brings us to the trades executed by the appellant. It is alleged in the show cause notice that the appellant and his brother Rajesh Kumar Chaudhary were counter parties in the same trade(s) involving buying and/or selling of the scrip of the company. The details of the transactions where the appellant was the buyer and his brother was the seller are shown in Annexure 9 to the show cause notice and those in which his brother was the buyer and the appellant the seller are shown in Annexure 10. Both these Annexures were furnished to the appellant alongwith the show cause notice and these are reproduced hereunder for facility of reference:

Annexure-9

TRANSACTION WHERE BUYER IS ASHOK KR CHAUDHARY AND THE SELLER IS RAJESH KUMAR								
DATE	TIME	MEMBER	QUANTITY	PRICE	B/S	CPCODE	CLIENT CODE	Counter Client
22/06/2000	10:18:32 AM	D0766	100	329.7	B	D0519	A	RAJ2
22/06/2000	10:18:32 AM	D0766	100	329.7	B	D0519	A	RAJ2
22/06/2000	10:18:32 AM	D0766	100	329.7	B	D0519	A	RAJ2
22/06/2000	10:20:32 AM	D0766	100	329	B	D0519	A	RAJ2
4/9/2000	10:57:54 AM	D0766	600	602	B	D0519	A	RAJ2
29/06/2000	10:14:43 AM	D0766	100	358.5	B	D0519	A	RAJ2
29/06/2000	10:15:54 AM	D0766	100	358.5	B	D0519	A	RAJ2
		TOTAL	1200					

Annexure-10

TRANSACTION WHERE SELLER IS ASHOK KUMAR AND THE BUYER IS RAJESH KR								
DATE	TIME	MEMBER	QUANTITY	PRICE	B/S	CPCODE	CLIENT CODE	Counter Client
24/04/2000	10:45:42 AM	D0766	100	67.7	S	D0519	A	RAJ2
18/05/2000	11:01:39 AM	D0766	200	130.8	S	D0519	A	RAJ2
21/06/2000	12:23:55 PM	D0766	200	318.6	S	D0519	A	RAJ2
18/09/2000	3:04:56 PM	D0766	100	560	S	D0519	A	RAJ2
18/09/2000	3:04:56 PM	D0766	100	560	S	D0519	A	RAJ2
18/09/2000	3:04:56 PM	D0766	100	560	S	D0519	A	RAJ2
		TOTAL	800					

Trades executed by the appellant as a seller where Rajinder Rai was the buyer are mentioned in Annexure 22 to the show cause notice. Again, transactions where the appellant was the seller and the buyer was Telefinlease acting through R.S. Investments a sub-broker of Jhunjhunwala are contained in Annexure 23. Annexures 22 & 23 are also reproduced hereunder:

Annexure 22

TRANSACTION WHERE SELLER IS ASHOK CHAUDHARY AND THE BUYER IS RAJENDRA RAI (routed through R. S. Investments)								
DATE	TIME	MEMBER	QUANTITY	PRICE	B/S	CPCODE	CLIENT CODE	Counter Client
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	200	570	S	D0766	10007	RR
4/8/2000	2:59:49 PM	D0717	100	570	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	800	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	200	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	600	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	400	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	400	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	600	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	200	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	800	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	800	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	200	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	600	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	400	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	400	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	600	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	200	462	S	D0766	10007	RR
11/8/2000	2:47:39 PM	D0717	800	462	S	D0766	10007	RR
TOTAL			9500					

Annexure-23

Transactions where buyer is R.S. Investment (for Telefinlease) and seller IKM for Ashok Chaudhary and Rajendra Rai								
DATE	TIME	MEMBER	QUANTITY	PRICE	B/S	CPCODE	CLIENT CODE	Counter Party Client
4/8/2000	10:15:15 AM	D0717	500	584	B	D0766	10007	A
4/8/2000	10:15:15 AM	D0717	500	583	B	D0766	10007	A
15/06/2000	12:30:09 PM	D0717	100	272.5	B	D0766	7	A
4/8/2000	10:17:44 AM	D0717	300	582	B	D0766	10007	A
21/07/2000	10:59:21 AM	D0717	1600	397	B	D0766	7	RR
		TOTAL	3000					

The aforesaid are the only trades of the appellant on the basis of which the findings have been recorded against him. As already observed, the Board has found that there was a matching of the buy and sell quantity as well as the price and that the proximity in the placing of orders at the same price and for the same quantity resulting in matching trades indicates structured deals. The Board has also observed that the appellant alongwith other entities had misused the stock exchange mechanism by executing manipulative trades in the nature of structured and cross deals. We are unable to agree with these findings. The aforesaid charts are not computer printouts. We do not know from where the details contained therein have been picked up by the Board as the trades mentioned therein are not date wise. Those have been jumbled up. The aforequoted charts are incomplete and insufficient to record a finding that the trades were matched trades or that they had been structured as alleged. These charts do not show that the buy and sell orders had matched. The complete information in this regard could be had from the order logs which are not on the record nor have they been referred to in the impugned order. The order logs would show the time at which the buy and sell orders were placed and also the price and the quantity at which they were put in the system. It is only then that a finding could be recorded. If the time, price and quantity had matched one could say that the trades had been structured and that the stock exchange mechanism had been misused. In the absence of the order logs such an inference cannot be drawn only from aforesaid charts. The details in the charts may have been taken from different trade logs. A trade log only shows the details of the trades which have been executed. No trade can go through the system unless the buy and sell orders match in all respects and, therefore, a trade log will always show a matched trade. A trade log is not enough to record a finding that the trades were matched or structured as alleged. In the absence of the order logs, we cannot uphold the findings that the trades executed by the appellant were matched or structured as found in the impugned order. This apart, the orders placed by the appellant were for small quantities though they resulted in the execution of several trades and keeping in view the time gap between different orders, it is not possible to hold that the trades were matched or structured. When we look at Annexures 9 and 10, we find that there could be, at the most, only seven orders during the period from 24.4.2000 to 18.9.2000 for small quantities.

Annexures 22 and 23 are not relevant. Annexure 22 shows only the trades between the appellant and Rajinder Rai and we have already held that they were trading independently. Moreover, it appears from this Annexure that there were only two orders with a gap of one week which resulted in several trades. It is difficult to infer that these trades were matched or structured as the data is incomplete. Same is the case with Annexure 23 where the appellant is shown as the seller in the first four trades which appear to be result of two orders after a gap of almost seven weeks. As already observed, the data contained in these charts is incomplete and the findings recorded in the impugned order cannot be affirmed. We wonder how the whole time member drew such inferences from the jumbled up data picked up from different trade logs. In this view of the matter, we have no hesitation in reversing the finding of the Board that the trades executed by the appellant were structured in the manner as found in the impugned order.

7. To sum up, the appellant traded on his own behalf and not on behalf of any promoter of the company and the trades executed by him cannot be said to be structured or matched. This being so, the impugned order qua the appellant cannot be sustained.

Appeal no. 70 of 2008

8. Rajesh Kumar Chaudhary is the appellant in this appeal. In his case also it is alleged that the promoters of the company traded in the scrip and the transactions were put through, among others, in the name of the appellant and that the trades were manipulated, structured creating artificial volumes in the scrip of the company. It is not necessary for us to examine whether the promoters traded in the name of the appellant as we are satisfied that the trades which were executed by the appellant were manipulated and he is guilty of the charges levelled against him. The details of the trades executed by the appellant are contained in Annexures 7 and 8 to the show cause notice and these Annexures had been furnished to the appellant. These Annexures show large number of trades executed between the appellant and Rajinder Rai. The appellant is selling the scrip of the company through N. C. Jain as his broker and Rajinder Rai is buying the scrip through IKM. When Rajinder Rai sells the scrip through IKM, it is the appellant who buys the same through

N.C. Jain. A mere look at these two Annexures which contain the details of a large number of trades between them inter se makes it clear that the trades are reverse trades. When the appellant buys, it is Rajinder Rai who sells and vice-a-versa. Such large number of reverse trades cannot take place through the mechanism of the system. These have obviously been manipulated. Moreover, reverse trades are fictitious trades meant to increase volumes on the screen of the trading system as there is no change of beneficial ownership in the traded shares. We have taken note of these trades while dealing with the case of M/s. Compuaction Securities Private Limited (Appeal no. 52 of 2008) which is a sub-broker of IKM and held that the trades were manipulated. This being the position, we uphold the findings recorded by the Board against the appellant.

9. Before concluding, we would like to observe that there has been inordinate delay of six years in issuing the show cause notice to the appellants. The Board has been established to promote orderly and healthy growth of the securities market and for protecting the interest of investors. It is monitoring the activities of market intermediaries and other market players to achieve these goals. Those who come to the market are required to play the game according to the rules and it is expected of the Board as a market regulator to deal sternly with those who play mischief and misuse the market mechanism. This is how it protects the market and the interest of investors. Long delays in issuing show cause notices to the delinquents will not subserve the purpose for which the Board has been set up. It would rather act against the interest of the securities market. Delays do not help any one and besides depriving sometimes the delinquents of their right to defend themselves against the action sought to be taken against them, defeat the very purpose for which such notices are issued. It must be remembered that promptness in such matters will have a more deterring effect and advance the cause for which the enquiries are held. It will also deny to the delinquents the additional plea of delay in challenging the action taken against them. In the case before us we are not setting aside the impugned order on the ground of delay though it was argued by Shri Vinay Chauhan learned counsel for the appellants that the case of his clients had been prejudiced on account of delay as they could not verify after a lapse of six years the details of the transactions imputed to them and that

they had to accept those transactions as correct. We would like the Board to act with promptitude in such matters.

In the result, Appeal no. 69 of 2008 filed by Ashok Kumar Chaudhary is allowed and the impugned order set aside qua him. Appeal no. 70 of 2008 filed by Rajesh Kumar Chaudhary is dismissed. The parties shall bear their own costs in both the appeals.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Utpal Bhattacharya
Member

5.11.2008
ddg and rhn/-