

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 225 of 2009

Date of decision: 25.2.2010

Vikas Ganeshmal Bengani
2 Devkaran Mansion,
2nd Floor,
63B Princess Street,
Mumbai

.....Appellant

Versus

Whole Time Member,
Securities and Exchange Board of India
SEBI Bhawan, Plot No. C-4A, G-Block,
Bandra Kurla Complex,
Mumbai

..... Respondent

Mr. Vikas Bengani, Appellant in person.
Mr. Dr. Mrs. Poornima Advani, Advocate with Ms. Harshada Nagare, Advocate
for Respondent.

CORAM: Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

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

This order will dispose of two Appeals no. 225 and 266 of 2009 both of which are directed against the common order dated September 15, 2009 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) holding the appellants guilty of violating Regulation 4(a),(b) & (c) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Regulation 4(1), 4(2) (a) & (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. They have been restrained from buying, selling or dealing in the securities market in any manner directly or indirectly for a period of one year from the date of the order. Since arguments were addressed in Appeal no. 225 of 2009, the facts are being taken from this case.

2. A common show cause notice dated March 18, 2008 was issued to the appellants pointing out that there was a sharp increase in the price of the scrip of Brijlakshmi Leasing & Finance Limited (for short the company) during the period of investigation and that the appellants had traded in the scrip and their trades resulted in influencing the price upwards. It is alleged that the appellants purchased large quantities of shares at higher price and thereby became instrumental in creating artificial volumes in the scrip which was illiquid. The Board carried out investigations for the period from January 1, 2002 to June 6, 2002 and again for the period from February 3, 2004 to July 14, 2004. The show cause notice alleges that the trades executed by the appellants do not appear to be genuine. The show cause notice further mentions that the trading by the appellants had contributed to the market volumes in the scrip and that orders were placed at prices higher than the last traded price. Since the appellants were largely purchasers of the scrip, they are alleged to have manipulated the price.

3. The appellant filed his detailed reply denying all the allegations. He pleaded that merely because he purchased the shares, it could not be inferred that he had manipulated the price. He pointed out in his reply that he was not on both sides of the trades nor did he have any connection with the persons on the other side of the trades executed by him and that all his trades were delivery based. It is also the case of the appellant that all the trades were executed by him through the mechanism of the stock exchange.

4. On a consideration of the material collected during the course of the enquiry and the investigations and taking note of the stand taken by the appellant in his reply and the submissions made by him at the time of personal hearing, the whole time member found that the appellant had purchased large quantities of shares of the company and he referred to a chart showing the gross purchases and gross sales made by the appellant. He has also referred to another chart showing the contribution of the appellant to the market volumes in the scrip. The whole time member analyzed the trade data and found that the appellant while

purchasing the shares had been placing orders at a price higher than the last traded price of the previous day. In this context, he made the following observations in paragraph 12 of the impugned order:

“12. Why will a person place buy order in so many instances at a price higher than the LTP if he had genuine intention and therefore, it is not an instance of mere buying of shares in genuine manner as submitted by Shri Vikas Bengani.”

The whole time member describes this conduct of the appellant as unusual and made the following observations in paragraph 16 of the impugned order:-

“16. Shri Bengani has not provided any explanation to his unusual behaviour but has stated that there are no charges of synchronized/circular/reversal trading. He has also submitted that no other person has been named with him in these tradings. I, however, note that in absence of any cogent explanation of unusual (and apparently irrational) behaviour, it gives rise to conclusion that Shri Bengani was acting to artificially prop up the prices of scrip of BLFL by consistently buying (irrespective of the fact whether prices were rising or falling). The investigation could not establish his links with any other person to complete the overall pattern of market manipulation. However, it refers to his purchases being supported by cash deposits in his account.”

After observing that it is not always necessary to require a counterparty seller to manipulate or create artificial volumes in an illiquid scrip, he held the appellant guilty of the charges levelled in the show cause notice.

5. We have heard the appellant in person and Dr. Mrs. Poornima Advani, Advocate on behalf of the Board who have taken us through the records including the show cause notice and the impugned order and are of the view that the charges of manipulation as leveled against the appellant have not been established. Merely because an investor like the appellant placed orders for the purchase of a scrip at a price higher than the last traded price does not by itself lead to the conclusion that he was manipulating the price of the scrip. There could be several good reasons

for an investor to do this. For instance, an informed investor in a given case may feel that the fundamentals of a company justify a higher price than the one at which the scrip is trading in the market, he may like to place his buy orders at a higher price so as to attract all the sellers in the market. In a given case a person putting in buy orders at a higher rate may be desperate to purchase the shares in order to meet his market obligations. In the case of a broker, he may have to meet his obligations to the stock exchange before the settlement period expires. Committing a default in one's settlement obligations is a serious matter on which the stock exchanges take a serious view. Again, it is a matter of common knowledge that several scrips are traded at a price lower than what the fundamentals of the company may justify. Similarly, several scrips are traded at a price much higher than what the fundamentals of the company would demand. In this background, one cannot jump to the conclusion that the price of the scrip was being manipulated merely because a buy order was put in at a price higher than the last traded price. Such an action is only indicative of the desire of the purchaser to buy the shares for whatever reason. A similar view was taken by this Tribunal in **Ketan Parikh v. Securities and Exchange Board of India**, Appeal No. 2 of 2004 decided on 14.7.2006. The charge levelled against the appellant therein was that he had indulged in manipulating upwards the price of the scrip of Lupin Laboratories Ltd. and the same was established on the basis of charts showing that buy orders had been placed at prices higher than the last traded price. While reversing the order of the Board, this Tribunal observed that merely because some buy orders had been placed at prices higher than the last traded price in the scrip would not lead to the inference that the price was being manipulated upwards. It could indicate the desire of the appellant to purchase the shares and it is with that object in view that he may have put in buy orders at the higher rate. The Board did not challenge the findings recorded by the Tribunal. A similar issue arose before this Tribunal in *Jagruti Securities Limited Vs. Securities and Exchange Board of India* Appeal no. 102 of 2006 decided on October 27, 2008 and it was held that for the charge of raising price artificially to

be established, the element of collusion between the buyer and the seller is a sine qua non. While referring to the screen based trading system where buyers and sellers put in their orders through their respective brokers and the trades get executed only when the buy and sell orders match subject to price, time priority, this is what the Tribunal observed:-

“The adjudicating officer has rightly observed that on a screen based trading system, buyers and sellers put in their orders through their respective brokers and the trade gets executed only when the buy and sell orders match subject to price time priority. We may like to add that the price time priority signifies two things; first is the matching of price and second is the priority in point of time. When a buy order is placed on the system, it will be matched with the best sell order (lowest price) available on the system subject to the condition that no buyer will be made to buy at a price more than what he has offered. If more than one pending sell orders match the buy order, the sell order placed earlier in point of time will be picked up to complete the trade. Similarly, a sell order will be matched with the best buy order (highest price) subject to the condition that no seller will be made to sell at a price lower than what he has fed into the system. If more than one pending buy orders match the sell order, the buy order placed earlier in point of time will be matched first. This is how the price discovery mechanism of the system works as it is based on the free inter play of the forces of demand and supply. The price which the system determines is truly the price which a willing buyer would pay to a willing seller. Once the system has determined the price of a scrip in the aforesaid manner, it can never be described as artificial. Artificial price, on the other hand, is a price determined by the buyer and the seller in a premeditated manner through collusion by manipulating the system of which we have seen many instances. Black’s Law Dictionary (eight edition) defines the word ‘artificial’ as “Made or produced by a human or human intervention rather than by nature”. If we substitute the word ‘trading system’ for ‘nature’ in this definition, it becomes clear that an artificial trade/price is the one that is executed or determined by human manipulation rather than through the operation of the system. As at present advised, we are of the view that in an artificial trade there has to be collusion between the buyer and the seller and in the absence of any collusion, the trade cannot be termed as ‘artificial’.”

It is, thus clear, that in order to establish the charge of price manipulation collusion between the buyer and the seller is necessary. In the case before us it has not been alleged that the appellant was colluding with the counterparty (seller) or with his broker. In the absence of such an allegation it cannot be held that the appellant was manipulating the price of the scrip of the company upwards. It is interesting to note that during the second period of investigation from February 3, 2004 to July 14, 2004 the price of the scrip of the company was falling despite the appellant buying the shares. Was he still rigging the price upwards? This apart, we have perused some of the charts that were produced before us during the course of the hearing by the learned counsel for the respondent Board and this would clearly show that the appellant was not responsible for manipulating the price. For instance, Annexure III to the show cause notice had furnished to the appellant some of the trades which he executed from January 1, 2002 to March 22, 2002. This Annexure to the show cause notice does not contain the complete data. It does not contain the trades executed in between the dates on which the appellant had traded in the scrip of the company. On January 1, 2002 the appellant purchased 1000 shares at Rs. 42.70 per share when the last traded price was Rs. 41.1. From this it is inferred that the appellant had raised the price from the Rs. 41.10 to Rs. 42.70. This is so but when we look at the trades executed on days when the appellant did not trade, the price of the scrip had similarly gone up and buy orders had been put into the system which were higher than the last traded price. Admittedly, the appellant did not trade in the scrip of the company on January 14, 2002 on which date a number of trades in the scrip were executed. In all those trades the buy order is higher than the last traded price. This clearly shows that not only the appellant but there were others as well who were trading in the scrip at rates higher than the last traded price. There is nothing on the record to show that the Board had proceeded against them. Be that as it may, the trades on January 14, 2002 clearly establish the fact that the price of the scrip was generally going up and it was not the appellant who was responsible. In this view of the matter, the charge of manipulation must fail. The learned counsel

for the respondent referred to paragraph 9 of the impugned order and urged that the company was making losses for the years ending March 2001 and March 2002 and in the case of such a company the share price is not likely to go up when the same is illiquid and, therefore, the appellant had manipulated the price upwards. No doubt, a passing reference has been made that the company was making losses but no material has been referred to substantiate this fact. The annual reports of the company for the years 2001-02, 2002-03 and 2003-04 were subsequently produced by the learned counsel for the respondent Board and these were not made available to the appellant during the proceedings or thereafter. We have perused the financial statements of the company and would like to mention some financial indicators as reflected in the balance sheets and the profit and loss account.

	As on 31.3.2001 Rs.	As on 31.3.2002 Rs.	As on 31.3.2003 Rs.	As on 31.3.2004 Rs.
Profit after tax	(-) 40,39,699	(-)11,48,018	(+)1,06,67,574	(+)518
Working Capital (Current assets – Current liabilities)	82,76,528	87,35,472	6,81,19,879	6,98,00,348
Share Capital	5,64,85,000	5,64,85,000	5,64,85,000	5,64,85,000
Reserves and Surplus	1,43,31,000	1,43,31,000	1,76,74,614	1,76,75,132

From the above table it would be clear that the company made some operational losses during the year 2000-01 and 2002 which showed a declining trend and has turned into profit from the year 2002-03. It was also observed from the balance sheets that the accumulated losses of the company have been completely wiped off since the year 2002-03. More interestingly, the company’s net worth (total assets minus external liabilities) are on an upswing as would be evident from the table below:

	As on 31.3.2001 Rs.	As on 31.3.2002 Rs.	As on 31.3.2003 Rs.	As on 31.3.2004 Rs.
Net Worth	1,53,80,682	1,70,85,959	2,55,27,086	3,18,23,848

From the financial fundamentals as indicated above, it is unlikely that an informed investor would perceive any red flag in the company. The appellant, however, contends that in his perception the scrip of the company was worth making an investment in and that the fundamentals of the company were good. His perception was not unfounded. Be that as it may, it was not pointed out in the show cause notice that the company was a loss making one.

6. For the reasons recorded above, we are satisfied that the charge of manipulating the price of the scrip by the appellant has not been established.

In the result, the appeals are allowed and the impugned order set aside with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

25.2.2010
pmb

Prepared & Compared By: Pmb