

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 14 of 2009

Date of decision: 28.10.2009

Shankar Sharma
Ratnam Square, Plot No. 38/39,
Sector 19A, Vashi,
Navi Mumbai.

..... Appellant

Versus

Securities and Exchange Board of India
Plot No. C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai.

..... Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Ravichandra S. Hegde, Mr. R. B. Dighe,
Mr. V. S. Khandekar, Advocates for the Appellant.

Mr. D. J. Khambatta, Senior Advocate with Ms. Daya Gupta and Ms. Chloris John,
Advocates for the Respondent.

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

Per : Samar Ray, Member

Challenge in this appeal is to the order dated February 13, 2009 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) prohibiting the appellant from buying, selling or dealing in securities and from associating with the securities market in any manner whatsoever for a period of one year. The appellant has been found guilty of synchronizing trades on a large scale in certain scrips which resulted in the creation of artificial volumes in those scrips. The impugned order finds him guilty of violating Regulations 4 (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short the 1995 Regulations) read with the relevant provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter called the 2003 Regulations). The impugned order is the culmination of two show cause notices dated March 9, 2004 and March 28, 2008 which were issued to the appellant and the transactions on the basis on which the order has been passed

pertain to the period from January to March, 2001. This litigation has a chequered history to which a brief reference shall be made.

2. First Global Stock Broking Pvt. Ltd. (for short the Broker) is registered as a stock broker and also as a portfolio manager with the Board. Vruddhi Confinvest India (P) Ltd. is its Sub-broker and is registered with the Board as such and it shall be referred to hereinafter as the Sub-broker. The appellant and his wife Ms. Devina Mehra are the promoter directors of the Broker and also of the Sub-broker and they are the heart and soul of both the companies.

3. On observing excessive volatility and unusual price movement and volumes in a few securities during early 2001, the Board carried out investigations and found that the appellant had executed large number of transactions in ten securities namely Global Tele Systems, Himachal Futuristic Co. Ltd., DSQ Software, Zee Telefilms, Wipro, Satyam Computers, MTNL, SBI, Infosys Technologies and Sterlite Optical which had been synchronized by the Broker and the Sub-broker in a premeditated manner. By an ex-parte order dated April 18, 2001, the appellant, his wife Ms. Devina Mehra, the Broker and the Sub-Broker, among others, had been debarred from accessing the securities market till further orders. This order was confirmed subsequently on May 25, 2001 after affording an opportunity of hearing to all those against whom the said order had been passed. On the basis of the investigations carried out, the Board ordered enquiry proceedings against the Broker and the Sub-broker and they were found guilty of violating the provisions of the 1995 Regulations. By an order dated September 12, 2002, their certificates of registration were cancelled. Feeling aggrieved by this order, the Broker and the Sub-broker jointly filed Appeal no.90 of 2002 before this Tribunal which was allowed on December 3, 2004 and the order impugned therein was set aside only on the ground that the same had been passed after the expiry of 30 days from the date of receipt of the reply to the show cause notice. The Tribunal placed reliance on Regulation 29(3) of the Stock Broker and Sub-Broker Regulations, 1992 which was deleted with effect from September 27, 2002. It is pertinent to mention that Regulation 29, as it then stood, required the stock broker to file his reply to the show cause notice within 21 days from the date of its receipt and the Board was required to consider the same and pass a final order not later than 30 days from the date of receipt of the reply. When the aforesaid appeal was pending, the Board issued a show cause notice dated March 9, 2004 to the appellant and his wife in their individual capacity alleging that

they were vicariously liable for the synchronized trades executed by them on behalf of the Broker and the Sub-broker which are limited companies. On receipt of this notice, the appellant challenged the same in the High Court of Bombay by filing writ petition no. 2031 of 2004 which was dismissed on July 6, 2006 with the following observations:-

“We see no reason, as to why the petitioner should not show cause to the said notice. It will be open to the Petitioner to urge all points as raised in this petition and all other points which he may be entitled to take and raise them before the competent officer. If the order of the competent officer is adverse to the Petitioner, that will not be acted upon for a period of four weeks from the date of communication of the order to the Petitioner.”

The appellant and his wife did not file any reply to the show cause notice and instead raised various technical issues and wanted the Board to decide those issues first before embarking upon the merits of the charges levelled against them. During the pendency of the proceedings against the appellant and his wife, the Board realized that the appellant had executed large number of synchronized trades in his proprietary account i.e. on his own behalf and not on behalf of the companies through Bang Equity Broking Pvt. Ltd. (for short Bang Equity) which is also a stock broker registered with the Board. Accordingly, a supplementary show cause notice dated March 28, 2008 was issued to the appellant and his wife alleging that they had executed fictitious trades by taking opposite positions and placed buy and sell orders between themselves. The appellant did not file any reply to the supplementary show cause notice and instead filed writ petition no. 1331 of 2008 in the High Court at Bombay challenging the two show cause notices and prayed for a direction to the Board not to proceed in the matter. The writ petition was dismissed as withdrawn on October 8, 2008. Thereafter, the appellant wrote a number of letters to the Board raising several technical objections and seeking clarifications on various matters. The objections and the issues raised in the letters have also been taken as grounds of appeal before us. Since no reply was filed to any of the show cause notices, the whole time member examined the charges levelled against the appellant and on a consideration of the material collected during the investigations and the enquiry came to the conclusion that the appellant was guilty of executing fictitious trades by taking opposite positions. He referred to the chart showing the trades executed by the appellant and found that the trades had also been synchronized in a premeditated manner thereby violating Regulations 4(b), (c), and (d) of the 1995 Regulations. By order dated February 13, 2009, the appellant has been debarred from accessing the securities market for a period of one year. Hence this appeal.

4. We have heard at length Mr. Somasekhar Sundaresan, learned counsel for the appellant and Mr. Darius Khambatta, learned senior counsel on behalf of the Board. Learned counsel for the appellant took us exhaustively through the track record of the Broker and also of the appellant highlighting the landmarks in the career of both in the national and international securities market and forcefully contended that the action of the Board in debarring the appellant was malafide. He laid great emphasis on the theory of ‘witch hunting’ against the appellant by the authorities that be for the appellant’s association as a financier in the case of “Tehelka expose” on certain defence deals. Impugned action of the Board, according to him, is one such manifestation of the revengeful action launched by the powers that be. We are unable to agree with the learned counsel. This line of argument, in our opinion is not relevant for the present appeal. In fact, the appellant had vociferously advanced the same ‘witch hunt’ theory earlier when he filed Appeal no.29 of 2001 before this Tribunal against the Board’s order dated May 25, 2001 confirming the exparte order and the same was rejected with the following observations:-

“The Appellants’ contention that the order has been made malafide and for extraneous reasons, remains unsubstantiated. I do not find any force in linking inquiry with “tehelka expose” as alleged. By the Appellants’ own version the enquiry started on 2nd March 2001 with NSE/BSE asking for various information relating to the transactions. It was a preliminary data collection exercise at that point of time. The respondent entered the scene only subsequently on examining those materials and realizing the need to pursue the matter further. In the meantime “tehelka expose” happened. The enquiry was already on even before the tehelka expose. Therefore, it is not correct to link the enquiry with the tehelka expose. The Respondent’s alleged request to provide details of the shareholding pattern of Buffalo Networks P. Ltd. the owner of Tehelka.com, its financial statements, etc does not establish any nexus between the inquiry and the expose. The appellants had admitted that they held 14.5% stake in the said Buffalo Network and in that context there is nothing unusual, if in an inquiry the details of the ownership, management and financial position of the invest company are sought. Further, no reason or any motive on the part of the respondent to act in any vindictive manner against the appellants has been even suggested. The respondent, which is an independent statutory authority is not a person directly or indirectly mentioned in the expose. Further it is also to be noted that the appellants are not the only person subjected to investigations by the respondent. Activities of several market intermediaries, not in any way connected with tehelka.com were also taken up for investigation. In the absence of sufficient material before me substantiating that the impugned order is malafide, the appellants’ allegation fails.”

For the same reasons, we have no hesitation in rejecting this contention.

5. The next argument of the learned counsel for the appellant is that since the show cause notice dated March 9, 2004 has been held to be infructuous and no action has been taken thereon, the supplementary show cause notice issued on March 28, 2008 must also fall as it cannot stand on its own. We are not impressed with this argument. The show cause notice dated March 9, 2004, has been dropped as it was based on the transactions which were executed by the appellant on behalf of the Broker and the Sub-broker and which transactions formed the basis of the order dated September 12, 2002 which order, as already observed, was set aside by this Tribunal on December 3, 2004. The supplementary show cause notice that was issued on March 28, 2008 is based on different transactions executed by the appellant in his proprietary account and not on behalf of the broking companies. In the earlier show cause notice of March 9, 2004 the appellant was sought to be held liable vicariously for the trades that he executed on behalf of the broking companies. In the supplementary show cause notice he was sought to be held liable for the trades that he executed on his own behalf. In this show cause notice he was sought to be held liable directly and not vicariously. This being so, the supplementary show cause notice is an independent notice based on different set of transactions and can sustain on its own. The learned counsel for the appellant laid great stress on paragraph 1 of the show cause notice dated March 28, 2008 wherein it is stated that this show cause notice should be read in conjunction with the earlier show cause notice of March 9, 2004. The details of the trades executed by the appellant on the basis of which action is now sought to be taken against him are referred to in annexure A to the supplementary show cause notice. We have perused the supplementary show cause notice in detail along with annexure A. It is not at all necessary for the supplementary show cause notice to be read along with show cause notice of March 9, 2004 as they are both based on different sets of transactions and the appellant cannot take advantage of this sentence. Annexure A to the supplementary show cause notice contains the details of the trades executed by the appellant on his own account and he must be held responsible for those trades if they are not in accordance with law. He cannot escape liability merely because no action was taken on the basis of the earlier show cause notice dated March 9, 2004.

6. The next argument of Shri Somasekhar Sundaresan, Advocate is that the supplementary show cause notice of March 28, 2008 is violative of Regulations 9 and 10 of 2003 Regulations

inasmuch as the Board did not carry out investigations in relation to the trading data relied upon in annexure A to the show cause notice. We do not find any merit in this contention. Chapter III of the 2003 Regulations deal with the power of the Board to order investigations. It is not necessary that the Board must conduct investigations in every case. In case the Board has enough material with it to issue a show cause notice, it would be justified in doing so and the investigations are only meant to find facts and collect data for proceeding against the delinquent if that were to become necessary. The show cause notice cannot be struck down merely because no investigations were held by the Board. It is pertinent to mention that the Board did not find it necessary to order investigations in regard to the data relied upon in the supplementary show cause notice because the trades referred to in annexure A thereto had already been investigated and enquired into when it (Board) proceeded against Bang Equity for the irregular trades executed by it as a stock broker. As already observed, Bang Equity executed the trades on behalf of the appellant as a client.

7. The learned counsel for the appellant then contended that the impugned order was liable to be set aside on the ground that the appellant is being penalized again for the same charges for which he along with the Broker and Sub-broker had been issued a show cause notice on July 17, 2001 which culminated in the passing of the order dated September 12, 2002 only against the Broker and the Sub-broker and no action had been taken against the appellant. It is urged that the appellant is being exposed to double jeopardy which is not permissible. We are unable to accept this argument either. There is no question of double jeopardy in the present case. The show cause notice of July 17, 2001 issued to the appellant along with the Broker and Sub-broker pertained to the trades executed by the Broker and Sub-broker and the appellant was sought to be held liable vicariously. An order dated September 12, 2002 was passed cancelling the certificates of registration of the Broker and the Sub-broker because the trades were found to be illegal. No doubt that order was set aside by the appellate tribunal on a technical ground that the same had been passed after the expiry of 30 days from the date of receipt of the reply to the show cause notice but that cannot prevent the Board from proceeding against the appellant for altogether different trades which he has executed on his own behalf through Bang Equity as his broker. Since the two sets of trades are entirely different, the argument of the learned counsel must fail. In the same context the learned counsel argued that the Board having passed the order

on September 12, 2002 against the Broker and the Sub-broker had become functus officio and could not initiate the proceedings against the appellant which culminated in the passing of the impugned order. For the reasons already stated hereinabove, we are unable to accept this argument.

8. Another peripheral issue that was raised on behalf of the appellant was that Regulations 11 and 13 of the 2003 Regulations and Sections 11(4)(b) and 11D of the Securities and Exchange Board of India Act, 1992 (for short the Act) could not have been made applicable to the appellant's case as these provisions were brought into force in the year 2002 and thereafter, whereas the alleged trades on the basis of which action is now sought to be taken, took place in the year 2001. This argument also has no merit. The appellant in his individual capacity is not a market intermediary. He is only a person associated with the securities market and the substantive provision under which action has been taken against him is Section 11B of the Act. This section was on the statute book when the appellant executed the trades in question. Since the Board found that the trades were manipulative and detrimental to the investors and the securities market, directions have been issued under Section 11B of the Act debarring the appellant from accessing the securities market for one year. Mere mention of the other provisions in the show cause notice shall not vitiate the proceedings. Moreover, according to Regulation 13 of the 2003 Regulations, action could be taken thereunder for the violation of Regulations 3 to 6 of the 1995 Regulations.

9. Having dealt with all the ancillary issues raised on behalf of the appellant, we may now deal with the trades executed by the appellant on his own behalf on the basis of which the impugned action has been taken. As observed by the whole time member, the appellant has been avoiding a decision on the merits of his transactions and without filing a reply to any of the show cause notices issued to him, wanted the matter to be decided only on peripheral issues. The details of the trades executed by the appellant are mentioned in annexure A to the show cause notice dated March 28, 2008. Reference has been made to these trades in the impugned order as well. These trades have not been disputed by the appellant. It is not necessary for us to refer to all the trades executed by the appellant and we shall only refer to those on which reliance has been placed in the impugned order. The trades are shown in the chart below:

Transactions of Appellant for the period 01/01/2001 to 31/01/2001

Trade Day	Scrip	First Global (129) (Client : Vruddhi Confinvest (India) Pvt Ltd.				Bang Equity (56) (Client : Shankar Sharma)				Trades executed		
		B or S	Order Qty	Order Time	Order Rate	B or S	Order Qty	Order Time	Order Rate	Matched Qty	Mkt. Rate at the time of placing order	Executed Rate
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
8/1/2001	HFCL	B	15000	13.35.40	1250.00	S	25000	13.35.29	1250.00	14000	1249.25	1250.00
8/1/2001	HFCL	B	5000	14.39.22	1205.00	S	10000	14.38.39	1205.00	4869	1205.00	1205.00
8/1/2001	HLL	B	100000	13.37.01	210.75	S	100000	13.37.07	210.75	99767	210.80	210.75
8/1/2001	HLL	B	100000	14.56.32	210.10	S	100000	14.56.29	210.75	96712	210.00	210.00
9/1/2001	INFOSYS	B	3000	13.12.37	5925.00	S	3000	11.12.40	5925.00	2175	5920.00	5925.00
9/1/2001	SSI	B	10000	13.14.21	1313.00	S	10000	11.14.25	1313.00	9709	1311.90	1313.00
10/1/2001	INFOSYS	S	3000	12.01.58	5770	B	3000	12.02.00	5770.00	1565	5969.00	5770.00
10/1/2001	SSI	S	15000	14.41.19	1290	B	15000	14.41.17	1290.00	13848	1290.00	1290.00
11/1/2001	RIL	B	100000	9.56.49	354	S	100000	9.56.45	354.00	98731	353.90	354.00
11/1/2001	SATYAM	B	50000	9.57.57	383	S	50000	9.57.41	382.90	48258	382.00	382.90
15/1/2001	HFCL	B	25000	10.02.11	1168.5	S	25000	10.02.16	1168.00	24995	1168.00	1168.50
15/1/2001	RIL	B	100000	10.02.55	354.5	S	100000	10.02.56	354.50	99721	354.50	354.50
15/1/2001	DSQ SOFT	B	75000	11.19.21	351.5	S	75000	11.19.25	351.50	74445	351.50	351.50
15/1/2001	DSQ SOFT	B	25000	11.19.55	351.5	S	25000	11.19.59	351.50	24395	351.50	351.50
15/1/2001	HFCL	B	25000	12.34.28	1085	S	25000	12.33.02	1085.00	17925	1085.00	1085.00
15/1/2001	HFCL	S	50000	15.41.35	1091.95	B	50000	15.41.36	1091.95	40102	1091.95	1091.95
16/1/2001	L&T	B	100000	13.55.50	205	S	100000	13.55.56	204.95	95477	205.00	205.00
16/1/2001	GRASIM	B	50000	13.56.43	298.75	S	50000	13.56.37	298.75	49299	298.55	298.75
17/1/2001	SATYAM	S	50000	10.25.11	387.1	B	50000	10.25.07	387.10	17350	387.05	387.10
17/1/2001	HLL	S	1750000	12.25.31	206.7	B	1750000	12.25.25	206.70	172614	206.70	206.70
17/1/2001	WIPRO	S	20000	12.26.24	2531.1	B	20000	12.26.19	2531.10	19718	2531.10	2531.10
17/1/2001	DSQ SOFT	S	100000	13.42.09	347.5	B	100000	13.42.17	347.50	98000	347.10	347.50
17/1/2001	DSQ SOFT	S	25000	14.20.41	339	B	25000	14.20.53	339.00	23702	338.50	339.00
17/1/2001	GRASIM	S	50000	14.21.29	311.95	B	50000	14.21.32	312.00	49975	311.60	311.95
17/1/2001	L&T	S	75000	14.22.09	208.5	B	75000	14.22.10	208.50	73744	208.50	208.50
17/1/2001	G. TEL	S	25000	14.18.58	635	B	25000	14.18.59	635.00	25000	635.00	635.00
19/1/2001	GRASIM	S	10000	10.59.43	315.4	B	10000	10.59.43	315.50	8445	315.50	315.40
19/1/2001	L&T	S	10000	11.00.16	225.4	B	10000	11.00.13	225.40	9632	225.40	225.40
19/1/2001	RIL	S	100000	10.48.51	367.5	B	100000	10.48.46	367.50	99816	367.50	367.50
19/1/2001	RIL	S	100000	12.18.59	368.7	B	100000	12.19.00	368.80	100000	368.80	368.70
25/1/2001	HFCL	S	60000	10.35.04	1198	B	60000	10.34.59	1198.00	17717	1198.00	1198.00
25/1/2001	SEE TEL	S	100000	14.15.09	268.1	B	100000	14.15.08	268.10	99290	265.55	268.10
29/1/2001	SSI	S	15000	14.17.46	1509.00	B	15000	14.17.42	1509.00	13638	1508.00	1509.00
29/1/2001	DSQ SOFT	S	50000	14.19.53	411.50	B	50000	14.19.47	411.50	48480	411.50	411.50

Transactions of the Appellant for the period from 01/02/2001 to 19/02/2001 and 05/03/2001 to 31/03/2001

Trade Day	Scrip	First Global (129) (Client : Vruddhi Confinvest (India) Pvt Ltd.				Bang Equity (56) (Client : Shankar Sharma)				Executed trades		
		B or S	Order Qty	Order Time	Order Rate	B or S	Order Qty	Order Time	Order Rate	Matched Qty	Mkt. Rate at the time of placing order	Executed Rate
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
1/2/2001	SSI	B	15000	10.18.32	1424.00	S	15000	10.18.39	1424.00	14451	1425.00	1424.00
1/2/2001	DSQ SOFT	B	50000	10.20.25	414.00	S	50000	10.20.18	413.00	44375	413.00	413.00
2/2/2001	ZEE TV	B	50000	11.13.56	259.00	S	50000	11.14.43	259.00	2481	259.00	259.00
5/2/2001	GUJ. AMB.	S	75000	12.32.26	208.00	B	75000	12.32.26	208.00	75000	208.00	208.00
5/2/2001	SILVERLINE	S	150000	13.49.05	273.50	B	150000	13.49.04	273.50	143248	273.50	273.50
5/2/2001	HFCL	B	50000	13.49.41	1013.00	S	50000	13.49.28	1013.00	46805	1013.00	1013.00
5/2/2001	INFOSYS	B	2000	13.50.15	6675	S	4000	13.50.16	6675.00	1147	6674.00	6675.00
5/2/2001	JAIPRAKASH	S	100000	13.52.31	76.10	B	100000	13.52.29	76.15	99582	76.15	76.15
5/2/2001	ZEE TV	S	100000	13.58.20	253.45	B	100000	13.58.27	253.50	96782	253.59	253.45
6/2/2001	SILVERLINE	B	50000	12.35.26	268.00	S	50000	12.35.30	268.00	46747	268.10	268.00
7/2/2001	SILVERLINE	B	100000	11.57.13	256.00	S	100000	11.57.14	256.00	99149	256.00	256.00
7/2/2001	INFOSYS	S	5000	13.08.04	6540.00	B	5000	13.08.02	6540.00	4912	6539.50	6540.00
7/2/2001	JAIPRAKASH	B	100000	13.09.27	83.00	S	100000	13.09.35	83.00	97096	83.00	83.00
7/2/2001	SATYAM	S	50000	13.10.31	394.70	B	50000	13.10.29	394.70	50000	394.90	394.70
7/2/2001	SATYAM	S	50000	14.33.07	383.25	B	50000	14.33.01	383.25	47500	383.05	383.25
7/2/2001	GUJ. AMB.	B	75000	14.36.05	211.00	S	75000	14.36.05	211.00	67100	210.90	211.00
8/2/2001	ZEE TV	B	55000	11.20.17	234.00	S	100000	10.48.54	234.00	45243	234.20	234.00
8/2/2001	ZEE TV	B	150000	12.01.01	236.50	S	150000	12.01.03	236.50	140689	236.50	236.50

8/2/2001	JAIPRAKASH	B	100000	13.40.15	85.00	S	100000	13.40.18	84.80	99900	84.95	85.00
8/2/2001	JAIPRAKASH	B	100000	13.41.42	84.70	S	100000	13.41.42	84.70	99945	84.70	84.70
8/2/2001	JAIPRAKASH	B	50000	14.31.48	84.70	S	50000	14.31.46	84.70	49250	84.65	84.70
8/2/2001	HFCL	S	32000	12.06.51	1001.00	B	32000	12.06.50	1001.00	30628	1000.00	1001.00
8/2/2001	WIPRO	S	10000	11.55.21	2865.00	B	10000	11.55.11	2865.00	9815	2865.00	2865.00
12/2/2001	LML	S	145000	12.42.52	40.00	B	150000	12.46.15	40.00	144477	39.50	40.00
13/2/2001	STERLITE OPT.	S	10000	12.23.30	790.00	B	25000	13.15.17	790.00	10000	786.00	790.00
15/2/2001	INFOSYS	S	5000	11.41.47	6417.00	B	5000	11.41.52	6417.00	5000	6416.15	6417.00
15/2/2001	TATA ELXSI	B	75000	11.45.02	129.80	S	75000	11.44.59	129.75	73350	129.45	129.75
16/2/2001	GL. TEL.	B	50000	10.22.48	649.50	S	50000	10.22.58	649.50	48048	649.40	649.50
16/2/2001	HPCL	S	25000	10.40.08	187.10	B	25000	10.40.06	187.10	23890	187.55	187.10
16/2/2001	HFCL	S	25000	10.42.25	984.00	B	25000	10.41.46	984.00	23901	985.10	984.00
16/2/2001	BHEL	S	50000	10.42.52	185.60	B	50000	10.42.16	185.60	47732	186.00	185.60
19/2/2001	GL. TEL.	S	25000	13.16.07	587.00	B	25000	13.16.14	588.00	23562	589.00	587.00
19/2/2001	HFCL	S	25000	13.14.19	848.50	B	25000	13.14.24	848.50	22503	848.00	848.50
8/3/2001	WIPRO	S	2300	11.21.17	2085.00	B	10000	11.20.57	2085.00	2155	2090.00	2085.00
8/3/2001	WIPRO	S	977	11.21.17	2085.00	B	10000	11.20.57	2085.00	562	2090.00	2085.00
8/3/2001	WIPRO	S	5000	12.44.26	2105.00	B	10000	12.43.55	2105.00	4530	2112.00	2105.00

When we examine the aforesaid trades, it is clear that the Sub-broker while acting through the Broker (both the companies are owned and managed by the appellant) placed an order for buying 15000 shares of HFCL on 8.1.2001. The appellant on the other hand had put in an order to sell 25000 shares of the same company through Bang Equity. 14000 shares matched and the trade was executed. The buyer was the Sub-broker and the seller was the appellant. The Sub-broker is no other than the appellant himself. It is true that the Broker and Sub-broker are companies but when we lift the veil, it is the appellant and his wife who are lurking behind the curtain. It is thus clear that the appellant was on both sides. He was the buyer as well as the seller. The buy and sell orders were put into the system at almost the same time. Such trades have been executed in large quantities while dealing with the shares of different companies. We have no hesitation to hold that these trades were fictitious as there was no change in the beneficial ownership of the shares traded and it was the appellant on both sides of the trade. How can a person buy from himself and sell to himself. Such trades are only meant to create artificial volumes and they disturb the market equilibrium. It is pertinent to mention that these very trades were enquired into by the Board when it proceeded against Bang Equity and it found that the trades were manipulative. Action was taken against Bang Equity. In appeal filed by Bang Equity, this Tribunal affirmed the findings and the learned whole time member has quoted the relevant portion from the order passed by this Tribunal. Faced with this situation, the learned counsel for the appellant contended that such trades came to be executed when the Broker had exhausted its trading limits. The trades, according to him, were not manipulative but only a shift in position to free the carry forward exposure space in the Broker's trading account for the benefit of the Broker's clients. Assuming this to be so, though the Board contends to the contrary, the appellant had no business to execute manipulative and fictitious trades with himself. This is no

way to create exposure space, if at all it was necessary to do so. We are, therefore, satisfied that the appellant executed fictitious trades by taking opposite positions which is not permissible. The trades were also manipulative inasmuch as the buy and sell orders were placed at almost the same time. In this view of the matter, no fault can be found with the impugned order.

In the result, the appeal fails and the same stands dismissed leaving the parties to bear their own costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

28.10.2009
rhn, ptm & ddg

Prepared and compared by – Devendra