

IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 68 of 2006

Date of decision : 18.12 .2007

1. Shri Balubhai Muljibhai Sardhara
2. Mrs. Sadhanaben Balubhai Sardhara
3. Miss Koonjanben B. Sardhara
4. Miss Sejalben B. Sardhara
5. B.M. Sardhara – HUF
6. M.N. Sardhara – HUF .

..... Appellants

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Balubhai Sardhara Appellant in person.
Dr. Poornima Advani Advocate with Mr. Haihangrang E.H. Newme Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Whether the appellants in Appeals no. 68 & 69 of 2006 acted in concert among themselves and with others to artificially depress the price of the scrip of M/s. Ask Me Info Hubs Limited in order to make the preferential allotment of shares to themselves at a lower price is the short question which arises for our consideration in this set of three Appeals no. 68 to 70 of 2006.

Ask Me Info Hubs Limited (formerly known as Cellulose and Chemicals Limited) (for short the company) is a public limited company and its shares are listed on the Bombay Stock Exchange (BSE) since the year 1984. In its extraordinary general meeting held on 16.8.2000, the company issued 20.5 lac equity shares of the face value of Rs.10 on preferential basis @ Rs.35 per share which included a premium of Rs.25. This preferential allotment was made on 17.8.2000 in favour of the appellants in Appeals no.68 & 69 of 2006 and some others. The company approached BSE seeking permission for the listing of the preferential shares. It appears that BSE carried out an internal investigation and concluded that there was manipulation in the scrip during the six

months period preceding the date of allotment during which period the price of the scrip had been artificially depressed for the purpose of reducing the minimum price for the preferential issue. In view of these findings BSE rejected the application of the company for listing the preferential shares.

In the light of the observations made by BSE in its internal investigation report, the Securities and Exchange Board of India (for short the Board) also conducted investigations into the trading of the scrip of the company for the period from January 18, 2000 to July 14, 2000. Investigations revealed that the scrip of the company was traded only on seven days during the year 1998 and on 11 days in the year 1999. Trading in the year 2000 started from 5.4.2000 and the scrip was last traded on 28.9.2000. During the investigation period the price of the scrip had fallen from Rs.71.25 on 5.4.2000 to Rs.13.30 per share on 14.7.2000. Investigations further revealed that Smita Shah, Smita Patel, Ravi Parab, Dasharath Rane, Shree Sound Pvt. Ltd. (against whom action has been taken) and some others traded in the scrip of the company from April 5, 2000 to July 14, 2000 and that the trades were executed by them for paltry number of shares of 50/100 at the lower circuit limits. These trades, according to the Board, enabled the company to allot preferential shares to the aforesaid appellants at a lower price.

Preferential issue of equity shares by listed companies whose equity share capital is listed on any stock exchange to any select group of persons under section 81(1A) of the Companies Act, 1956 on private placement basis is governed by the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as the guidelines). The guidelines have been issued by the Board under section 11 of the Securities and Exchange Board of India Act, 1992 (for short the Act). Para 13.1.1 in Chapter XIII of the guidelines provides that preferential issues by listed companies by way of equity shares shall be made in accordance with the pricing provisions mentioned below.

“13.1.1- Pricing of the issue :

13.1.1.1-The issue of shares on a preferential basis can be made at a price not less than the higher of the following :

(i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six

months preceding the relevant date; or

(ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

Explanation :

(a) “relevant date” for the purpose of this clause means the date thirty days prior to the date on which the meeting of the general body of shareholders is held, in terms of section 81(1A) of the Companies Act, 1956, to consider the proposed issue.

(b) “stock exchange” for the purpose of this clause means any of the recognised stock exchanges in which the shares are listed and in which the highest trading volume in respect of the shares of the company has been recorded during the preceding six months prior to the relevant date.”

A reading of the aforesaid provisions makes it clear that the pricing of the issue of shares on preferential basis entirely depends upon the average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding thirty days from the date on which the meeting of the general body of shareholders is held or the average of the weekly high and low of the closing prices during the two weeks preceding the relevant date, whichever is higher. Since the average price of the scrip during the six months preceding the relevant date was higher of the two, the Board carried out investigations during that period. The meeting of the general body of shareholders of the company was held on 16.8.2000 to consider the proposed issue of preference shares. It is thus, clear that the value of the shares during the period of six months prior to thirty days from 16.8.2000 was very crucial for the determination of the price at which preferential shares could be issued/allotted. The allegation against the appellants is that the price of the scrip of the company was brought down by them acting in concert with others during that period in order to get a favourable low price for the preferential allotment.

A notice dated 25.9.2003 was issued to 15 noticees (including the 11 appellants before us in these three appeals) under sections 11 and 11B of the Act read with Regulation 11 of the (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short FUTP Regulations) requiring them to

show cause why appropriate directions including the direction to prohibit them from dealing in securities be not issued against them. The notice gave the details of the trades in the scrip of the company between 5.4.2000 and 14.7.2000 to show that all the noticees including the appellants who were all known to each other had acted in concert to bring down the price of the share of the company by executing non-genuine trades. The appellants filed their replies controverting the allegations made against them. It was pointed out that the company never paid any dividend to its shareholders nor did it issue any bonus shares during the last 36 years of its operations and that the share of the company was thinly traded and the investors were not able to find any buyers. The appellants further pointed out that the price of the scrip of the company was continuously falling because of its poor performance and no market demand. They denied that they acted in concert among themselves and with others to bring down the price of the scrip of the company during the relevant period. They pleaded that no preferential allotment was made to those appellants who were net sellers of the scrip and that the allottees were net buyers who had no reason to lower the price. According to the appellants, the price of the scrip of the company had steadily fallen not only before, during and subsequent to the relevant period but also after the allotment was made on preferential basis. The appellants pleaded that in the aforesaid circumstances, it was unfair to charge them for lowering the price of the scrip of the company during the relevant period.

On a consideration of the material collected during the course of the inquiry and the replies filed by the appellants and others, the whole time member of the Board concluded that the charge levelled against the appellants stood established because of the interconnection between the 15 noticees and the benefits received by some of them in the form of preferential allotment. This is what he observed in the impugned order :

“..... Therefore I find that the price of the scrip was consistently hammered down during the relevant period and all the trades during the period were undertaken by the above **persons who were either connected to CCPL or were beneficiaries to the preferential issue of CCPL or connected to those beneficiaries.** Their interse connection has been demonstrated in the following paragraph 3.2 below.

3.2. I note that Shri Navin N. Patel and Shri Babubhai Muljibhai Sardhara are the directors of CCPL. Ms. Sadhanaben B. Sardhara is the wife of Shri Balubhai Muljibhai Sardhara. Ms. Koonjanben B.

Sardhara and Ms. Sejalben B. Sardhara are daughters of Shri Balubhai Muljibhai Sardhara. B.M. Sardhara-HUF and MN Sardhara –HUF also belong to Shri Balubhai Muljibhai Sardhara. Shri Bipinchandra Patel is the director of M/s. Shree Sound Pvt. Ltd. Ms. Smit B. Patel is the wife of Shri Bipinchandra Patel. These two are the clients of Shri Bipinchandra Sardhara. B.N.Patel-HUF belongs to Shri Bipinchandra Patel. Shri. Ravindra Parab and Shri Dasarath Rane are the employees of M/s. Shree Sound Pvt. Ltd. From the client introduction form of M/s. Smita Kirti Shah submitted to sub broker Devki Finance & Trading Pvt. Ltd., it was found that Mrs. Smita Kirti Shah was introduced by Shri Navnit N. Patel. In view of the above, I find that Shri Navnit N. Patel, Shri Balubhai Muljibhai Sardhara, Mrs. Sadhanaben B. Sardhara, Ms. Koonjanben B. Sardhara, Ms. Sejalben Balubhai Sardhara, B.M. Sardhara – HUF, M.N. Sardhara – HUF, Mrs. Smita Kirti Shah, M/s. Shree Sound Pvt. Ltd., Shri Bipinchandra N. Patel, Mrs. Smita B. Patel, B.N. Patel – HUF, Shri Ravindra Parab & Shri Dasarath Rane, **who are all connected with one another in some way or the other, acting together, created an artificial market for the price of the scrip of CCPL and also manipulated the price of the scrip during the period April 5, 2000 to July 14, 2000.**” (emphasis supplied)

The whole time member also observed that 11 out of the 15 noticees had been allotted shares on preferential basis and if they had not manipulated the price of the scrip in concert with others, they would have had to pay more than Rs.70 per share for the preferential allotment. He observed that all the noticees had violated the provisions of FUTP Regulations and, accordingly, by his order dated 2.2.2006 prohibited them from buying, selling and dealing in securities and from accessing the securities market in any manner directly or indirectly for a period of three years. It is against this order that the 11 appellants have filed the three appeals that are being disposed of by this order.

We have heard Shri. Balubhai M. Sardhara in person who appears on his own behalf and on behalf of the other appellants in Appeal no. 68 of 2006 and also on behalf of the company. Shri. Bipinchandra Patel has appeared on behalf of the appellants in Appeal no. 69 of 2006. We have also heard Dr. Mrs. Poornima Advani learned counsel on behalf of the Board who placed before us different charts showing the price volume data of the scrip of the company on BSE. One of the charts contains not only the volumes traded but also the closing price of the scrip during the pre-investigation period, investigation period and also for the post investigation period. The other charts give the transaction details of the scrip on BSE from April 5, 2000 to September 28, 2000. The trade log during this period has also been produced. We have carefully examined these

charts and are of the considered view that the scrip of the company was very thinly traded and that its price was continuously falling not only during the investigation period but even before and after that. Only seven trades were executed in the scrip of the company in the year 1998 and during this year price came down from Rs.225 on 12.1.1998 to Rs.146 on 25.5.1998. In the 11 trades executed in the year 1999, the price of the scrip came down from Rs.134 on 25.1.1999 to Rs.77 on 10.12.1999. There was no trade between 11.12.1999 and 4.4.2000. During the period of investigation from 18.1.2000 to 14.7.2000, the price of the scrip fell from Rs.71.25 on 5.4.2000 to Rs.13.30 on 14.7.2000. Only 33 trades for very small number of shares were executed during this period. During the post investigation period also the price of the scrip fell from Rs.11.85 to Rs.7.95 from 18.7.2000 to 28.9.2000 and during this period only 16 trades were executed. It is further clear from the charts produced by the learned counsel for the respondent that the trades during the relevant period were executed not only by the noticees but by others as well. When we look at the chart analyzing the trades during the preferential pricing period, we find that when a buy order for a small quantity of shares was put in the system there were sale orders already pending in the system for larger quantity for which there were no buyers. For instance, on 31.5.2000 when Shree Sound Pvt. Ltd. one of the appellants had placed a buy order for 50 shares there were pending sale orders for 1250 shares. The trade for 50 shares was executed and Shree Sound Pvt. Ltd. made the purchase. There were no buyers for the remaining 1200 shares. We are, therefore, satisfied that there was no demand for the shares of the company. This being the position, the price of the scrip had to fall and this is the primary reason why it was steadily falling from 12.1.1998 to 28.9.2000. It has to be remembered that the price order matching mechanism of the exchange through which the price of a scrip is discovered which is also known as price discovery mechanism is based on the fundamental principle of demand and supply. When there is no demand and there are only sellers in the market, it is axiomatic that the price will fall and this is precisely what happened. This also answers the charge levelled against the appellants and others that they were manipulating the price to artificially depress the same. It is alleged that the appellants and others who traded in the scrip were

putting in buy orders at the lower circuit filter rate which, in common parlance, is the lowest rate that is accepted by the system. It is pertinent to mention that with a view to regulate/control the volatility in the price of a scrip, the stock exchange fixes a circuit filter - both lower and upper- within which the trades in that scrip are permitted to be executed. Any order beyond those limits is not accepted by the system. The limits that are fixed by the stock exchange generally vary from 2% to 20% of the previous day's closing price of the scrip and this percentage varies from scrip to scrip. There are scrips which have no such limits. Since there were no buyers for the scrip of the company, those holding the shares and wanting to sell were compelled to offer them at as low a price as the system would permit which could be the lower circuit filter limit or very close to it. In this view of the matter, if the appellants and others who sold their shares offered them at rates close to the lower circuit filter, it could not be said that they were manipulating the price of the scrip or were artificially depressing the same. This apart, Appellants no. 2 and 4 in Appeal no. 69 of 2006 (Shri. Bipinchandra N. Patel and Shri. B.N. Patel-HUF) did not trade in the scrip at all. They could not, therefore, depress the price of the scrip. Appellant no.3 in this appeal (Mrs. Smita B. Patel) was a net buyer and we fail to understand as to how she could depress the price of the scrip. One has to be a seller to do that. M/s. Shree Sound Pvt. Ltd. which is Appellant no.1 in Appeal no.69 of 2006 bought 50 shares on 31.5.2000 and sold those shares on 23.6.2000. These are the only two trades which this appellant had executed. We cannot infer from these trades that this appellant was trying to manipulate the price by depressing the same. The findings recorded by the Board in this regard holding the appellants guilty of the charge cannot, therefore, be sustained.

There is yet another reason why the appellants should succeed. None of the appellants in Appeal no.68 of 2006 had traded in the scrip of the company during the preferential pricing period which in the instant case coincides with the period of investigation. This fact is not disputed. What is contended by the learned counsel for the Board is that those who traded in the scrip were so closely linked-up with these appellants that it could be inferred that they were all acting in concert with each other.

We cannot agree with the learned counsel for the respondent. There is no material on the record to show that those who traded in the scrip did so at the behest of the appellants in Appeal no.68 of 2006. Merely because some of the noticees knew Shri. Babubhai M. Sardhara who was the director of the company during the relevant period is not enough to hold that the trades were being executed on behalf of these appellants. Since the appellants did not trade in the scrip they cannot be held responsible for the fall in price.

Same is the position in Appeal no.70 of 2006 in which the company is the lone appellant. It is alleged that the company was instrumental in manipulating the price of its own scrip in order to make the preferential allotment of shares to the allottees at a lower price. The only material on the basis of which this finding has been recorded is that one Smt. Smita K. Shah who is one of the noticees had traded on most of the days during the relevant period and that she had been introduced to her broker by Shri. Navnit N. Patel – a director of the company. It is true that Navnit N. Patel who is the director had introduced Smita K. Shah to the broker but this by itself is not enough to hold that the trades executed by her were at the behest of the company. Shri. Navnit N. Patel had stated before the Board that he had introduced Smt. Smita K. Shah to the broker but he was not aware of the trades executed by her. There is nothing on the record to controvert this statement. Further, the Board has not examined Smt. Smita K. Shah for her role in the alleged manipulation. It is relevant to mention here that neither Smt. Smita K. Shah nor Shri. Navnit N. Patel were the allottees of the preferential allotment made by the company. There is no other material on the record to link the trades of Smt. Smita K. Shah with the company. In these circumstances, we cannot hold the company responsible for manipulating the fall in the price of its own scrip.

Lastly, the learned counsel for the respondent contended that some of the trades executed by M/s. Shree Sound Pvt. Ltd. and Smt. Smita B. Patel had matched with the trades of some of the noticees and, therefore, it could be inferred that they all acted in concert with each other in bringing down the price of the scrip of the company. We cannot accept this argument. What is now urged by the learned counsel was not even the charge levelled against the noticees including the appellants. Moreover, most of the

trades out of 33 executed during the relevant period matched after a gap of couple of hours. Having regard to the fact that the shares of the company were illiquid and its fundamentals poor, it could not be said that the appellants were responsible for any manipulation in the scrip of the company.

For the reasons recorded above, we are unable to uphold the findings recorded in the impugned order that the appellants were “hammering down” the price of the scrip of the company. In the result, the appeals are allowed and the impugned order set aside. There is no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

18.12.2007
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