

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 124 of 2006

Date of decision: 30.08.2007

Eonour Technologies Ltd. and
R. Karthik

.....Appellant

Versus

Securities & Exchange Board of India

....Respondent

Present: Mr. Vinay Chauhan, Advocate for the appellants

Dr. Poornima Advani, Advocate with Mr.Kaushik Rajkhona &
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 (oral)

This appeal is directed against the order dated 10.02.2003 passed by the then Chairman of the Securities and Exchange Board of India (for short the Board) under section 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter called the Act) directing Shri. R. Karthik, the promoter of Eonour Technologies Ltd. (for short the company) and the company not to deal in securities in any manner for a period of three years from the date of the order. Facts giving rise to this appeal are these.

2. The company was earlier known as Mikugura Software Ltd. It was taken over by Shri. Karthik from its previous promoters in the month of November 1999 on completion of open offer formalities as prescribed. It is pertinent to mention here that in the open offer made by Karthik to the

public shareholders of the company, he offered a price of Rs. 33/- for fully paid up shares and Rs. 8.25p for partly paid up shares. The Board found that immediately after Karthik took over the company, its scrip started trading substantially on the Madhya Pradesh Stock Exchange (MPSE) where it was listed. After Karthik took over the company he got it listed on the Madras Stock Exchange on 28.8.2000 and also on the Bombay Stock Exchange (BSE) on 13.3.2000. It is common case of the parties that trading in the scrip of the company on BSE commenced only with effect from 12.6.2000. It appears that the scrip of the company which was hitherto before illiquid was suddenly traded in large volumes on the BSE as well. Board conducted investigations into the price movement and volumes generated by the scrip of the company. Investigations revealed that on MPSE, Indore about 7 brokers had formed a cartel and they indulged in circular trading in the scrip which pushed up the price to unrealistic levels. The price of the scrip on MPSE was Rs. 31.50 on 1.12.1999 and it had risen to Rs. 401 on 14.3.2000 whereafter there were no trades on that exchange. As already noticed the scrip of the company was listed on the BSE on 13.3.2000 and when the trading started from 12.6.2000 the share opened at a high price of Rs. 520/- . Some entities at the behest of the appellants, as we shall find hereinafter, traded in the scrip on the BSE and managed to raise the price up to Rs. 634.75 on 7.7.2000. As found during the course of the investigations and not disputed before us, Karthik who was holding 22,44,200 shares amounting to 75% of the total equity capital of the company had transferred 1,24,000 shares to one N.K.R. Shanmugan of Pondicherry on the basis of an agreement dated 30.1.2000. This was a sale agreement and even though it did not go through, the shares stood transferred and Shanmugan did not pay the sale consideration to Karthik. It is further clear that Karthik also transferred 1,45,000 shares each to Hakeem Auto Ltd. (HAL) and Veronica Financial Services Ltd. (VFSL) which are two of the three companies owned by one Nazir Hakeem. The third company owned by Hakeem to which reference shall be made hereinafter is Jem Fiscal Ltd. (JFL). These transfers were made on 07.06.2000 and 12.06.2000 respectively and in lieu thereof HAL and VFSL paid a sum of Rs.25 lakhs

each to Karthik on 07.08.2000 and 06.09.2000 and this amount was credited to the account of the company. There is yet another fact which needs to be noticed before we deal with the charges levelled against the appellant. Shanmugan who had not paid for the 1,24,000 shares transferred to him by Karthik had transferred those shares on 09.06.2000 in the name of JFL, the third entity owned by Hakeem. We fail to understand why Shanmugan transferred these shares to JFL when these had been transferred to him by Karthik under a sale agreement fell through, the shares should have been transferred back to Karthik but this was not done and instead they were transferred to JFL on 09.06.2000.

3. On the basis of the aforesaid facts as found during the course of the investigations, the Board served the appellants with a notice to show cause why action be not taken against them for creating a false/ artificial market in the scrip of the company both on MPSE and BSE. It was also alleged that JFL, HAL and VFSL, had actively traded in the scrip of the company whereby they aided and abetted the appellants in manipulating the price of the scrip by executing circular trades and creating false volumes. The appellants were alleged to have violated Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and were asked to show cause why appropriate directions be not issued to them under section 11B of the Act. Karthik filed a detailed reply on his own behalf and on behalf of the company denying all the allegations though he did not dispute the fact that the shares were transferred to Shanmugan and also to HAL and VFSL as stated hereinabove. He also did not dispute the fact that Shanmugan after failing to pay the sale consideration of the shares transferred to him had transferred those shares in the name of JFL. On a consideration of the reply filed by the appellants and the material collected by the Board during the course of the enquiry conducted by it, the then Chairman came to the conclusion that the charges leveled against the appellants stood established and accordingly by the impugned order, the appellants were

directed not to deal in securities in any manner for a period of three years. Hence this appeal.

4. We have heard the learned counsel for the parties. The charges leveled against the appellants as culled out by us from the impugned order and the show cause notice issued by the Board and as agreed to by both the learned counsel are these. The first charge is that Karthik was a party to the manipulation of the scrip of MPSE and that the cartel of seven brokers who traded on that exchange did so at his behest. The second charge pertains to the trading by the three entities of Hakeem on BSE and it is alleged that these entities along with their employees while trading had executed circular trades and created false volumes in the scrip thereby raising the price to unrealistic levels and this, too, is said to have been done at the instance of Karthik. The third charge is that the appellant after jacking the price of the scrip on the BSE had deceived Canara bank by taking loan against the scrip of the company. The allegation in this regard is that the price of the scrip was artificially raised and on the increased price they took loan from the bank. The fourth and the last charge against the appellants is that Shanmugan transferred the shares to JFL at the instance of Karthik. Now we will deal with these charges seriatim.

Charge No. 1

5. As already noticed, the allegation is that Karthik was a party to the manipulation of the price of the scrip on MPSE. It is common ground between the parties that seven brokers who were members of MPSE had formed a cartel and they traded in the scrip of the company executing circular traded creating artificial volumes. By separate orders passed by the Board these seven members of the cartel have been punished for executing circular trades which orders have not been challenged by them. The question that arises for our consideration is whether those seven members of MPSE had traded at the behest of the appellants. The finding of the Board in this regard is to be found in paragraph 6.5 of the impugned order wherein it is stated that the scrip of the company was

illiquid and suddenly showed an increase in the price which was due to circular trading. The Chairman of the Board observed that there is nothing special about the fundamentals of the company for such a movement and that the promoter was a first generation entrepreneur without any major track record to boast about. From these facts he jumps to the conclusion that circular trading on MPSE had taken place in connivance with the promoter of the company. We cannot, subscribe to this view. To say the least, the finding is conjectural and based on surmise and inferences which are unwarranted. There is no material on the record to show that the seven brokers on the MPSE had traded either in connivance with the appellants or at their behest. Of course, they traded in a circular manner creating artificial volumes which might have increased the price but that does not involve the appellants. We have therefore, no hesitation in reversing the finding of the Board on the first charge.

Charge No.2

6. HAL, VFSL, JFL and some others traded in the scrip of the company on the BSE from 12.6.2000 onwards and the price of the scrip which opened at Rs.520/- had gone up to Rs.634/- on 7.7.2000. These trades were all circular and created artificial volumes. It is admitted by the parties that the Board by its separate orders passed against these entities has imposed a penalty of debarring them from accessing the capital market for a period of three years each. The charge against the appellants is that those entities traded in the scrip at the instance and behest of Karthik. The Board has found this charge as established. We also agree with the Board that this charge stands established though for a different reason. It is not in dispute that Karthik transferred 1,45,000 shares each to HAL and VFSL as noticed in the earlier part of the order and having transferred these shares he received a sum of Rs.25 lakhs from each of them which amount was deposited in the accounts of the company. The question that arises is why did Karthik transfer these shares to HAL and VFSL. The explanation furnished by Karthik is that he was in need of finances and approached Hakeem who owned HAL and

VFSL and entered into an agreement with the two companies on 5.6.2000 whereby shares were transferred to them and they were to pay a sum of Rs.25 lakhs each within a period of 60 days. The stand of Karthik is that the shares were pledge which stands is false. It is true that the amount was received in the coffers of the company on 7.8.2000 and 6.9.2000, but we are unable to accept the explanation furnished by Karthik. Karthik is alleged to have executed two agreements with each of the two companies- one for the loan and the other for pledging the shares. The stand taken by Karthik is obviously false because the shares were not pledged and instead they had been transferred in the name of HAL and VFSL as is clear from the demat account, which fact is admitted before us. When shares are to be pledged for obtaining loan, there is a procedure prescribed under the Depositories Act, 1996 and the regulations framed thereunder. Admittedly, that procedure had not been followed. Moreover, the pledged shares cannot be traded till such time the pledge is redeemed. Since the shares were transferred in the name of the two companies which made payments subsequently, the agreements, even if they were to be accepted, result in an outright sale and not a pledge as is contended by Karthik. The fact that the shares were transferred in the name of the two companies belies the stand taken by Karthik. The two agreements allegedly; executed by Karthik with each of the two companies (HAL and VFSL) are nothing but sham transactions as found by the Board and we are in agreement with that finding because these agreements cannot be relied upon. They were prepared on a plain piece of paper and not on a stamp paper. Such agreements could be prepared at any time. This is not the manner in which such agreements are executed. The question is, as already posed, why were the shares transferred to HAL and VFSL by Karthik. It is on record and this fact is not disputed by the parties that HAL and VFSL along with their employees traded in these shares on the BSE and executed circular trades by creating artificial volumes for which they have been adequately punished by the Board. Obviously, these shares were transferred by Karthik to enable the two companies and their employees to trade in those shares and manipulate the price of the scrip which they did. We are,

therefore, satisfied that the trades executed on the BSE by HAL, VFSL and other entities including their employees was at the behest of Karthik. It is relevant to notice another material aspect in this regard. The shares were transferred to HAL and VFSL in June 2000 at 50% of the book value of the share which was about Rs.17/- although the listed price of the share on the BSE was between Rs.520/- and Rs.634/-. It is, thus, clear that the shares were transferred at a ridiculously low price. We are, therefore, satisfied that the transfer of the shares to HAL and VFSL was motivated and the intention was that the two companies should manipulate the price on the BSE. In this view of the matter, we hold that the second charge stands established.

Charge No.3

7. This charge really flows from the second charge. Having successfully manipulated the price of the scrip on the BSE the appellants approached Canara Bank for a loan and pledged 5,04,000 shares. The book value of the share was around Rs.34/- whereas loan was obtained on the listed price which was around Rs.600/-. The Board is not wrong when it observes that the appellants had deceived Canara Bank.

Charge No.4

8. According to this charge Shanmugan transferred the shares of JFL at the behest of Karthik. The stand of Karthik is that he sold the shares to Shanmugan and in pursuance to that agreement these were transferred. Admittedly, the agreement fell through. There is no reason why Shanmugan should not have returned the shares back to Karthik. He (Shanmugan) instead transferred the shares to JFL on 9.6.2000 and this company also traded on the BSE and is a party to the circular trades for which suitable action has been taken against it by the Board. It is quite probable that Karthik had provided JFL with shares to trade in the market and asked Shanmugan to transfer them to JFL. The transfer of shares to JFL and subsequent trading by it on the BSE was to the advantage of Karthik because the scrip of the company had been manipulated and

price jacked up. This of course, is an inference we are drawing but in the circumstances, it cannot be said to be far fetched.

9. In view of the findings recorded on the second and fourth charge which are very serious indeed, we uphold the impugned order and dismiss the appeal with no order as to costs.

**Sd/-
Justice N. K. Sodhi
Presiding Officer**

**Sd/-
Arun Bhargava
Member**

**Sd/-
Utpal Bhattacharya
Member**