

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 54 of 2007

Date of Decision 14.8.2007

Pawankumar Parmeshwarlal

..... ***Appellant***

Versus

Securities and Exchange Board of India

..... ***Respondent***

Present : Mr. J.J. Bhatt, Advocate for the appellant
 Mr. D.P. Desai, Advocate with Mr. Gagan Sharma, 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)

Whether the appellant has created artificial volumes by executing synchronised trades in the scrip of Prudential Pharmaceuticals Ltd. (for brevity the company) is the short question that arises for our consideration in this appeal filed under Section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act). This issue arises in the following circumstances.

2. The appellant is a stock broker and a trading member of the Bombay Stock Exchange (BSE). It is alleged that he traded in the scrip of the company and sold 82,534 shares on behalf of five clients who were his

(for short Tropical) out of which 12810 shares were bought by it through structured trades. The details of the structured trades were also furnished to the appellant along with the show cause notice dated 13.7.2006 in the form of Annexure 1. On the basis of these structured trades it was alleged that the appellant had aided Tropical and its associate concerns to misuse the stock exchange mechanism to come out of their financial difficulties. The show cause notice further stated that this conduct of the appellant was in violation of Regulation 4 (b) and (c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Regulation 7 of the code of conduct specified under Schedule II to the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. The appellant was called upon to show cause why appropriate action be not taken against him under the aforesaid Regulations. An enquiry officer was appointed who after holding a detailed enquiry in which opportunity of hearing was afforded to the appellant, came to the conclusion that the latter had violated the aforesaid provisions of the Regulations and accordingly recommended suspension of his certificate of registration for a period of one month. On receipt of the enquiry report the whole time member of the Board served another show cause notice on the appellant along with a copy of the enquiry report calling upon him to show cause why the recommendation of the enquiry officer be not accepted and appropriate action taken against him. The appellant filed his detailed reply denying the allegations levelled against him. On a consideration of the material available on the record the

and that he had executed synchronised trades and created artificial volumes in the scrip of the company when he sold the shares on the screen of the exchange on behalf of his family members. He, accordingly, suspended the certificate of registration of the appellant for a period of one month. It is against this order that the present appeal has been filed.

3. We have heard the learned counsel for the parties. As already noticed, the charge levelled against the appellant is that he created artificial volumes in the scrip of the company by executing synchronised trades. Before we deal with the charge levelled against the appellant and also the findings recorded by the Board in the impugned order, it is necessary to examine the nature of the business which the appellant and his close family members were carrying on at the relevant time. The period for which the Board conducted investigations in the trading of the scrip of the company is July 9, 2001 to March 6, 2002. It is common case of the parties that during that period the trading cycle on the exchange was weekly and the settlement cycle was the following week. In other words, when a trade was executed during any day of a week, the same could be settled at the end of the following week. Any person willing to sell the shares and wanting instant cash would approach the appellant. He would then get the shares transferred in the demat account of his family members by way of security and then put in a sale order on the screen of the exchange. After the trade was completed, which obviously had to be settled at the end of the following week, the family member of the appellant in whose demat

depending upon the number of days remaining for the settlement of the trade. The appellant would then as a broker receive the sale consideration at the end of the settlement cycle and pay the same to his family member after deducting his brokerage. In other words, the appellant sold the shares as a broker on behalf of his family member(s). In the case before us one Harbinger Trading Company Pvt. Ltd. which is an investment company (hereinafter called Harbinger) approached the appellant for the sale of the shares of the company and wanted instant cash. As per his practice, the appellant got the shares transferred in the demat account of his five family members who provided instant finance to Harbinger and simultaneously put in the sale order(s) on the screen of the exchange for the sale of the shares. The price was paid to Harbinger after deducting the interest for the period between the date of payment and the date on which the trade had to be settled as per the settlement cycle of the exchange. According to the show cause notice issued to the appellant, he had sold 82,534 shares on behalf of his five family members out of which 33,410 shares were purchased by Tropical. It is also alleged that out of these 33,410 shares, 12,810 shares were sold through structured trades; the details of the structured trades are mentioned in Annexure 1 to the show cause notice and this chart has been referred to in the impugned order as well. The learned counsel for the parties have taken us through this chart and we have examined the same in great detail and this is what we find. The appellant had placed a sell order of 200 shares on 9.7.2001 at 14:20:29 hours which immediately matched with a corresponding buy order put in by a broker whose member code was

was Tropical and the buying client Pursarth Trading Co. Pvt. Ltd. (for short Pursarth), an associate concern of Tropical. Thereafter on 10.7.2001 the appellant placed a sell order of 3000 shares of the company. This order was placed at 12:58:38 hours. While placing this order he gave a command to the system to reveal 300 shares at a time. There was a corresponding purchase order placed by Tropical on behalf of Pursarth wherein the buyer had commanded that only 500 shares at a time for the purpose of purchase be revealed. The number of trades then matched each other and this order of 300 shares was completed. As is clear from the chart, shares in small quantities ranging from 300 to 100 matched simultaneously. Similarly, orders for different quantities were placed by the appellant on 11.7.2001, 28.8.2001, 19.9.2001 and 1.10.2001. It is not in dispute that the total number of orders placed by the appellant were six. On the aforesaid dates, the total quantity of shares sold was 12,810. As already noticed the total number of shares which the appellant had sold were 82,534 out of which only 12,810 were purchased by Tropical through synchronised trade by placing six orders as referred to above. The remaining shares were purchased by Tropical and admittedly these were not synchronised trades and more than 50% of the total shares sold by the appellant were picked up by other parties through the system of the exchange. It is thus clear that six trades were executed by the appellant in a synchronised manner and he sold 12810 shares which were picked up by Tropical and this quantity works out to about 14% of the total shares sold by him. In these circumstances, what is required to be examined is whether it was a coincidence by which these

and executing trades in a synchronised manner with a view to create artificial volumes in the scrip of the company as alleged by the Board in the show cause notice. Having perused the chart of the synchronised trades, we find that these trades only come to about 14% of the total sales executed by the appellant. No doubt the six orders matched but if the intention of the appellant had been to increase artificial volumes he would have traded the rest of his shares too in a similar fashion. It is the Board's own case that about 85% of the shares sold by the appellant were sold in trades which were not synchronised. Further, even though the enquiry officer in his report found that the appellant had executed synchronised trades and recommended the suspension of his certificate of registration, he found that there was no connection seen between him and Tropical which was the counter-broker in the trade. It is not in dispute that trades are executed on the screen of the exchange through brokers only and that at the time of the execution of the trade there is no means for the brokers to know and it is well nigh impossible for him to know as to who the counter party is or even the counter broker is. These details of the counter party and the counter broker can be found out only after a detailed enquiry after the trade had been executed. In these circumstances, it may not be possible for us to draw an inference that the appellant at the time of executing the trades on the aforesaid six dates knew who the counter party was. In hindsight we know who it was but the question is whether it was known to the appellant at the time of the execution of the trade. We also find from the show cause notice, which is also the case of the Board that the price of the scrip was

was not good and that there were only three brokers on the exchange who had traded in the scrip which was said to be illiquid. As already noticed only six sale orders of the appellant were found to have matched with the buy order of Tropical and this constituted only about 14% of his total sales. Having regard to all these circumstances, we are inclined to give a benefit of doubt to the appellant. While dealing with synchronised trades and when they became illegal this Tribunal in Ketan Parekh vs. Securities and Exchange Board of India Appeal no. 2 of 2004 decided on 14.7.2006 observed as under:-

“As already observed ‘synchronisation’ or negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is a real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the

decisive and it is from the cumulative effect of these that an inference will have to be drawn.”

In view of the fact that only six orders had matched while trading in about 14% of the total shares and that the remaining shares were sold to others in the market through the price and order mechanism of the Exchange we are of the view that it is not conclusively established that the appellant had indulged in synchronised trades only with a view to increase artificial volumes in the scrip of the Company. It could well have been a coincidence. In this view of the matter, we are unable to uphold the findings recorded in the impugned order.

4. No other point has been raised.

5. In the result, the appeal is allowed, the impugned order dated 10.4.2007 set aside with no order as to costs.

Justice N.K. Sodhi
Presiding Officer

Arun Bhargava
Member

Utpal Bhattacharya
Member