

**IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No.117 of 2003

Date of Decision : 10.10.2007

Harinarayan G. Bajaj
Rahul H. Bajaj

.....

Appellants

Versus

Securities & Exchange Board of India

.....

Respondent

Present: Mr. D.J. Khambatta, Senior Advocate with Mr. Zal T. Andhyarujina,
and Ms. Shruti Baya, Advocates for the appellants

Mr. Kumar Desai and Ms. Daya Gupta, Advocates for the respondent

Coram:

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

Per: Justice N.K. Sodhi, Presiding Officer

The Securities and Exchange Board of India (hereinafter called “the Board”) received complaints regarding market manipulations/irregularities in the trading in the scrip of M/s. Amara Raja Batteries Ltd. (for short “the company”). It ordered detailed investigations in the matter for the period from August 2000 to March 2001 to look into

the alleged violations of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “FUTP Regulations” and “Stock Broker Regulations” respectively) and the role played by various persons/intermediaries. On the basis of the findings recorded by the investigating officer, the Board issued a show cause notice dated July 27, 2001 to the appellants herein alleging that they were the predominant traders in the scrip of the company since August, 2000 and that they traded through various brokers on the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). The details of the trades executed by the two appellants in each settlement on the two exchanges were mentioned in the notice in the form of charts. It was further alleged that the appellants had taken delivery of approximately 3.75 lac shares out of which large quantity had been pledged with banks and loan was taken to use that money for further purchase and sale of shares of the company. The appellants were also informed that they were making use of different trading cycles of BSE and NSE with a view to shift their position from one exchange to another. According to the allegations, the appellants were selling shares on the exchange where the trade cycle was ending and simultaneously buying on the exchange where the trade cycle was beginning and this, according to the Board, prompted arbitrage activity and the arbitrageurs purchased on the exchange where the appellants were selling and sold on the exchange where they were purchasing. It was in this manner that the appellants were alleged to have used the arbitrage mechanism to carry open positions. The appellants had been asked during the course of the investigations as to why they were building large purchase positions when

they did not have sufficient funds to make payments for the same. The appellants were also alleged to have maintained the price of the scrip of the company in spite of the falling market. It is on the basis of these allegations that the Board levelled the following two charges in the show cause notice:

“It is very clear from the above that your trading along with the trading of your son Shri Rahul Bajaj has resulted in creation of false market in the scrip of ARBL and you and your son were solely responsible for:

- a) Creating a false market in the scrip of ARBL, and
- b) Artificially raising the price of the scrip of ARBL,”

The appellants had been called upon to show cause why they should not be penalized for violating Regulation 4(b) of the FUTP Regulations.

2. The appellants filed their detailed reply to every allegation made in the show cause notice denying all the charges. They categorically stated that they had not been furnished with all the documents on which reliance was sought to be placed by the Board and that the principles of natural justice stood violated. It was also pointed out that the investigations in the scrip of the company had commenced on the basis of the complaints made by the appellants as per their letters dated March 13, 2001 and March 14, 2001. It was pointed out that the surveillance department of BSE had also carried out a similar investigation in the month of January 2001 and it found nothing wrong with the trading of the appellants. The appellants seriously disputed some of the figures mentioned in the charts giving details of their trades on the two exchanges. They sought permission to examine the officers who conducted the investigation because the appellants alleged that they had furnished the detailed information of their trades during the course of the

investigations. It is on this basis that the appellants stated in their reply that the “show cause notice is fraught with details and figures that are completely distorted even to the own knowledge of the SEBI officials and thus no document which is itself based on misconceived information can be made an instrument for indicting or framing charges on any other person by any agency and” The appellants disputed that their trades in the scrip were 30% of the total trades in the market. In the alternative, they pleaded that even if their trades constituted 30% of the entire trade in the market, this fact would not establish the charges levelled against them. They also pleaded that their trades were delivery based as well and that they were not trading only for speculative purposes and that they had invested heavily in the company and next to the promoters, they were the largest shareholders. As regards the shifting of their positions from one exchange to the other, the stand of the appellants is that they did not shift their positions and that they only traded on either of the exchanges keeping their respective trading cycles into consideration. They have also taken the stand that assuming that they shifted their positions as alleged, this, according to them, is neither illegal nor in breach of any trading guidelines. They also stated that if their trading on the two exchanges prompted arbitrage activities, that again is perfectly legal and valid and that such activities are recognized by the Board as perfectly legal. The appellants have also pleaded that they did not default in any of their obligations to the exchange and that while trading they had adequate margins with their brokers. The reasons, as mentioned by the appellants, for trading in the scrip of the company were that it had a powerful balance sheet and had launched a series of new products which were likely to benefit the shareholders. In the end, they pleaded that all their trades were transparent inasmuch as they were executed through the exchange

and that they were at a loss to understand as to how they could be said to have created a false market in the scrip or artificially raised its price.

3. On a consideration of the material collected during the course of the investigations and also the reply filed by the appellants, the Board after referring to the trades executed by the appellants found that they were shifting their positions from one exchange to the other and that there was no intention of acquiring beneficial ownership in the shares and that this was done only with a view to inflate prices. It further found that by taking up large positions without the financial capability to meet their market obligations, the appellants acted in a fraudulent manner contravening Regulations 3 and 4 of the FUTP Regulations. In view of this finding, the Board by its order dated June 25, 2003 directed the appellants to disassociate themselves from the capital market for a period of five years and they were also prohibited from dealing in securities for a period of 10 years. It is against this order that the present appeal has been filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short “the Act”).

4. We have heard Shri D.J. Khambatta, learned senior counsel on behalf of the appellants and also Shri Kumar Desai, Advocate on behalf of the Board. The main charge that has been levelled against the appellants is that while trading in the scrip of the company they were shifting their positions from NSE to BSE and vice-versa which gave rise to arbitrage activity and this, according to the Board, had created false market in the scrip and artificially raised the price. Before we deal with this charge, it is necessary to refer to the settlement system that prevailed at the relevant time on the two stock

exchanges, viz. BSE and NSE. Settlement refers to the process whereby payment is made by all who have made purchases and shares are delivered by all who have made sales. The exchange ensures that buyers who have paid for the shares purchased receive the shares and sellers who have given delivery of shares to the exchange receive payment for the same. The entire process of settlement of shares and money is managed by stock exchanges through their clearing houses which are entities formed specifically to ensure that the process of settlement takes place smoothly. The period within which the trade is required to be settled – the period within which buyers receive their shares and sellers receive their money – is called a settlement cycle. It is possible to buy and sell within a settlement cycle many times which is what traders do. They settle only their net outstanding positions at the end of the cycle. In other words, a settlement cycle refers to a calendar according to which all purchase and sale transactions executed within the dates of the settlement cycle are settled on a net basis. The time schedule of a trading cycle and settlement cycle is prescribed by the Board as the market watchdog with a view to regulate the market and protect the interests of investors. It is common ground between the parties that during the period from August 2000 to March 2001 the trading cycle on the BSE was from Monday to Friday and on the NSE it was from Wednesday to Tuesday. Learned counsel for the parties are also agreed that the trades executed during the trading cycle could be settled in the following five working days which cycle was popularly known as T + 5. Apart from the fact that the trading cycles of the two exchanges were different, there was another difference in the method of settling trades on the two exchanges. Trades during a settlement cycle could be settled either on net basis by squaring off the sales and purchases or by taking/giving delivery of shares on

making/receiving payment. In case the purchases and the sales balance each other exactly during the trading cycle, they would cancel out each other and the trades would be squared off. This procedure of settlement was common to both the exchanges but on the BSE the traders had yet another mode of settlement available to them. Instead of settling the trades during a settlement cycle, they had the option to carry forward their obligations whether in terms of payment or in terms of delivery by paying additional carry over margin money and in that event they could meet their obligations in the following settlement cycle(s). This facility was not available on the NSE and here lies the difference between the two exchanges.

5. What the appellants were doing was that they were selling the shares of the company on the exchange where the trading cycle was ending and simultaneously buying shares on the exchange where the trading cycle was beginning. This pattern of trading is described by the Board as shifting positions from one exchange to the other. The appellants, however, contend that they were trading on the two exchanges separately and on the BSE they would trade during a trading cycle and if they were unable to settle the trade in the settlement cycle, they would carry forward their obligations by paying the additional margin money. Since this facility was not available on the NSE, the appellants necessarily had to settle their trades at the end of the settlement cycle either by squaring off the trades or by taking delivery of the shares if the purchases exceeded the sales or by giving delivery if the sales exceeded the purchases. Having sold or squared off their trades on the NSE, the cycle at the BSE would begin and since the appellants were keen to trade in the scrip of the company, they would purchase the shares on the BSE.

Whether we call this pattern of trading as shifting of positions from one exchange to the other or whether we describe the appellants as having traded independently on the two exchanges would make no difference because in either case there is no bar in carrying on such activities. The Board as a regulator has a statutory duty to regulate the securities market and protect the interests of investors by taking such measures as it thinks fit. In the discharge of this statutory duty, the Board has framed a plethora of regulations and it also issues circulars from time to time taking regulatory measures, all of which are contained in the SEBI manual. These regulations and circulars impose certain restrictions on the intermediaries of the market and other market players. In other words, the SEBI manual contains all the restrictions imposed by the Regulator in the matter of trading in financial instruments such as scrips of different companies and one can trade only in accordance with and to the extent specified in different sets of regulations. What is not barred by the regulations or the circulars issued from time to time is obviously permissible. There is no provision either in the Act or in any of the regulations or circulars issued by the Board which debar a trader from shifting his positions from one exchange to the other in the manner as alleged and none could be pointed out to us during the course of the arguments. All that has been stated in the impugned order and what was contended by the learned counsel for the respondent is that such shifting gave rise to arbitrage activity and created artificial market in the scrip of the company and that this also artificially raised the price. We are unable to accept this contention. The question that obviously arises is does shifting from one exchange to the other as alleged against the appellants give rise to arbitrage activity and if so does such activity create artificial market in the scrip and raise its price artificially. We are clearly of the view that

such shifting from one exchange to the other, though not barred under any provision of law, could give rise to arbitrage opportunity and the Board to that extent was right in alleging in the show cause notice that the trading pattern of the appellants had prompted arbitrage activity. This activity again, is perfectly legal and legitimate and is recognized by the Board as such. It brings a risk-free profit. Arbitrage is the practice of taking advantage of a price differential between two or more markets: a combination of matching deals is struck that capitalize upon the imbalance, the profit being the difference between the market prices and a person who engages in arbitrage is called an arbitrageur. The term is mainly applied to trading in financial instruments such as bonds, stocks or derivatives, commodities and currencies. Arbitrage is not simply the act of buying a product in one market and selling in another for a higher price at some later time. The transactions must occur *simultaneously* to avoid exposure to market risk or the risk that prices may change on one market before both the transactions are complete. It is a matter of common knowledge that in the securities market where trading is on the screen of the exchange, prices of the scrips change quite rapidly and quite often in seconds and, therefore, the arbitrageurs have to be alert enough to take advantage of the price differential. Since the price difference is small, one needs to trade in large quantities to make a profit and this increases the volumes. This arbitrage activity, as already observed, is a legitimate mode of trading and is recognized by the Board. This being so, if the shifting of positions of the appellants from one exchange to the other “prompts arbitrage activity”, we see nothing wrong in this. We, however, do not agree with the Board that the shifting of positions from one exchange to the other which provides for an arbitrage opportunity would by itself create artificial market in the scrip. It appears that the Board

was not clear as to what an artificial market in a scrip means. It is a fraudulent form of trading where sell orders are entered on behalf of a trader who knows that offsetting buy orders of the same number of shares at the same time and at the same price either have been or will be entered in the system. Such trades do not represent real change in the beneficial ownership of the security. Circular trading is the most common form of creating artificial volumes/market for a scrip and this is how it works: A manipulator targets a scrip and acquires as much of the floating stock as is necessary to ensure his profits and creates an illusion of high trading volumes at the counter. He indulges in what is called circular trading where a few of them get together and buy and sell large blocks of shares among themselves. The shares are sold to associates at a price higher than what was prevailing in the market who in turn sell them to another associate for even a higher price. All transactions usually cancel out each other and the shares remain within the circle without any genuine trading transaction. This creates an impression on the screen of the exchange that the stock is an actively traded one and sought after and, therefore, such transactions attract those outside the circle to buy the stocks. In other words, the general investing public gets induced to buy such stocks. The manipulators not only increase artificially the trading volumes but also change the market price because every trade establishes the price of the scrip. Tragically, retail investors and day traders are most vulnerable to such trading as they follow the herd mentality because they lack market intelligence and experience to diagnose such cases and they are usually the ones left holding the parcel when the music stops. The manipulators who had taken large positions in the beginning normally cash out and the consequences of manipulation are borne by the innocent investors. It is not the case of the Board in the show cause notice

that the appellants had executed trades without meaning to transfer beneficial ownership in the scrip of the company. In any case, not a single instance of such a trade has been referred to either in the show cause notice or even in the impugned order. What is said is that since the shifting of positions from one exchange to the other gave rise to arbitrage activity, it led to generating artificial volumes and thereby created artificial market. We do not think so. We have already observed earlier that arbitrage is a perfectly legal form of trading and, therefore, it cannot be said that it, by itself, leads to the creation of artificial volumes or artificial market in the scrip. How are the appellants concerned if their trading gave rise to arbitrage activity which is otherwise legal. When the appellants were shifting their positions from one exchange to the other, they were selling and buying the shares of the company. It is not the case of the Board that the trades were executed at prices other than those prevailing in the market. The appellants cannot, therefore, be said to have interfered with the price and order matching mechanism of the exchange(s). There is also no material on the record to show that any of those trades were artificial in nature or that they did not transfer the beneficial ownership in the scrip. Such a finding could be justified if the Board had alleged and established that the persons to whom they were selling or those from whom they were buying were their own henchmen with whom they had a prior understanding. But this is not the case set up in the show cause notice. The inference drawn by the Board that the trades of the appellants which gave rise to arbitrage activity created a false market in the scrip of the company and artificially raised its price is wholly misconceived and unwarranted. In this view of the matter, we have no hesitation in holding that the pattern of trading resorted to by the appellants was not contrary to any statutory provision and that the shifting of positions from one market to

the other by itself neither created artificial market nor did it artificially raise the price of the scrip. We are also of the view that such shifting of positions from one market to the other did not by itself result in the violation of any FUTP Regulation. The findings recorded in paras 9.10 and 10.1 of the impugned order cannot, therefore, be sustained.

6. At this stage we may also notice another contention raised by the learned senior counsel for the appellants in regard to the aforesaid findings of the Board. He strenuously contended that in order to hold that the appellants were shifting their positions from one exchange to the other during the period of investigation from August 2000 to March 2001, the Board has placed reliance only on the first one hour of trading by the appellants on February 26, 2001 and again on the first hour of trading on February 28, 2001. The learned senior counsel drew our attention to the trade logs of February 26 and February 28, 2001 which have been referred to in the impugned order and contended that the trade log of February 28, 2001 had not been furnished to the appellants at any stage of the proceedings and, therefore, reliance on that trade log was contrary to the principles of natural justice and also to the undertaking given by the Board to this Tribunal in its affidavit of April 30, 2002 filed in Appeal no. 1 of 2002 to the effect that it would rely only upon such documents as would be furnished to the appellants. He further contended that the trade log for the first one hour trading of February 26, 2001 was not sufficient to record a finding as to the pattern of trading of the appellants during the period of investigation from August 2000 to March, 2001. He also urged that the data contained therein was incomplete for recording such a finding. The learned counsel for the respondent, on the other hand, very fairly conceded before us that the trade log of

February 28, 2001 had not been supplied to the appellants at any stage of the proceedings and, therefore, he could not justify the reliance on the same in the impugned order. Whether the trade log of February 26, 2001 relied upon in the impugned order was sufficient to record a finding as to the pattern of trading of the appellants during the entire period of investigation is the question which arises from the contentions raised on behalf of the appellants. In view of our finding recorded above that the shifting of positions by the appellants from one exchange to the other was not barred by any set of regulations framed by the Board or under any of its circulars, it is not necessary for us to record a finding on this issue.

7. The learned senior counsel for the appellants seriously challenged the findings recorded in paragraphs 7.5 and 7.8 of the impugned order wherein it has been held that the appellants had traded recklessly and negligently in the scrip of the company and that while trading heavily in the scrip through several brokers, they did not disclose the fact to each broker that they were dealing with several other brokers as well. At the outset, we may state that these findings are beyond the show cause notice and were not the subject matter of the charges levelled against the appellants. As already observed, the only two charges that were levelled against the appellants were that by shifting their positions from one exchange to the other they had created a false market in the scrip of the company and that they also artificially raised the price. These charges, if established, would mean violation of Regulation 4(b) of FUTP Regulations which has been alleged in the show cause notice but reckless and negligent trading in a scrip by itself does not fall in any category prohibited by the FUTP Regulations. Be that as it may, the finding that the

appellants had indulged in reckless and negligent trading in the scrip of the company is without any basis. It is the admitted case of the parties before us that the appellants while trading heavily in the scrip of the company had never defaulted in any of their market obligations prior to the afternoon of 9.3.2001. Of course, they defaulted on 9.3.2001 and they are in fact making a grievance of this. Their grievance is that they defaulted because some of their brokers through whom they were dealing in the scrip of the company made short sales on their behalf without their consent which sales had by then been prohibited by the Board and they complained about this fact to the Board as per their letters dated March 13 and March 14, 2001. Their case is that they defaulted not because of their alleged reckless or negligent trading but because of the default of their brokers. It is the admitted case of the parties that some of the brokers who made short sales have been dealt with the Board and have been suitably penalised for their role. We specifically asked the learned counsel for the Board whether the appellants had committed any market default prior to 9.3.2001 and his answer was in the negative. When the appellants had not defaulted in any of their market obligations, we do not think that the Board was justified in holding that their trading was reckless or negligent. It could not be reckless or negligent merely because they had borrowed money from the financial institutions to trade in the scrip. It is also their case and the Board has not found otherwise that they always had sufficient margins with their brokers. In the absence of any default, we cannot uphold the finding that the appellants were negligent or reckless in their trading in the scrip of the company.

8. We may now deal with the finding that the appellants had not disclosed their trading with one broker to several others through whom they had traded extensively. The fact that the appellants traded through 33 brokers is not in dispute though it has been wrongly mentioned in the impugned order that they traded through 45 brokers and sub-brokers. When the appellants appeared before the Board during the course of the investigations they were asked as to why they traded with such large number of brokers which, undoubtedly, is unusual and the reply furnished was that they wanted their trades to remain confidential and that they wanted to divide their risk. One would normally raise one's eyebrows on learning that a trader wants to keep his trades confidential on a system which provides for a screen based trading but unless the Board as a regulator can find out what exactly was the wrong/irregularity which the trader was trying to hide, the latter cannot be proceeded against on mere suspicion and this is what the Board has been unable to point out. Maybe, a trader, for whatever reasons, wants to keep his trades confidential but this by itself is not a market irregularity. The Board has not been able to find out the nature of the mischief, if any, that the appellants might have committed. The learned senior counsel for the appellants referred to the Board circular no.SMD I / 23341 dated 18.11.1993 listing the precautions to be exercised by member-brokers of recognized stock exchanges while trading on behalf of their clients and entertaining new clients. The Board in its wisdom considered it necessary to list these precautions so that they were uniformly followed by the member-brokers as this would protect the interests of member-brokers, instill transparency and discipline in the deal between clients and brokers and would contribute to the healthy working of the secondary capital market. The precautions to be exercised by the member-brokers have been classified into two

categories- (a) mandatory; and (b) precautions by way of a guideline. The Board wants member-brokers of the exchanges to compulsorily follow the precautions suggested in part (a) of their operating system, whereas those suggested in part (b) may be treated as guidelines to be followed as and when circumstances warrant. We have gone through the mandatory precautions laid down by the Board and find that there is no requirement of any broker to know from his client the names of other brokers through whom he may be dealing with. The guidelines which are obviously not mandatory do require that each client should give full particulars in writing including the member(s) through whom he is currently/ was previously operating in the market in the prescribed form. Even going by this circular which lays down precautions for the member-brokers and not for the traders like the appellants, it is only a guideline for them to obtain full particulars of other brokers through whom the client may be dealing. This guideline is meant to enable the broker to contact the previous broker if he wanted to get an opinion from him about the dealings of the client. In view of the aforesaid circular issued by the Board, we have no hesitation in holding that it was not a mandatory requirement for a trader to inform his broker about other brokers through whom he was dealing in the scrip though the form contains a clause requiring a trader to furnish such information. The appellants have already furnished an explanation, whether we accept it or not, that they did not fill up the relevant column pertaining to the information regarding other brokers as they wanted their trades to be kept confidential. The learned senior counsel also pointed out that after the appellants had left the relevant column blank, none of the brokers got back to them requiring them to furnish that information. In this view of the matter, the learned senior counsel for the appellants is right in contending that furnishing of the aforesaid

information was not mandatory and no fault could be found with the appellants in this regard.

9. The findings in paragraph 8 of the impugned order that the appellants traded beyond their means and jeopardized the market integrity is equally untenable and cannot be upheld. This charge like the earlier one had not been laid out in the show cause notice and, therefore, the Board was not justified in recording a finding in this regard. It is an established principle of law that the facts constituting gravamen of the charge have to be communicated to the delinquent in the show cause notice to enable him to furnish an explanation of his conduct. It follows as a necessary corollary that what has not been communicated or not relied on in the show cause notice as a ground for the proposed action can not be relied upon for recording a finding in the impugned order. We are, therefore, clearly of the opinion that the principles of natural justice were violated by the factum of the impugned order having been founded on grounds which are at variance from those in the show cause notice. Be that as it may, the appellants undoubtedly traded in the scrip of the company in a big way even after borrowing money by pledging the shares with financial institutions. The Board itself has observed in paragraph 8.1 of the impugned order that such trading is not per se illegal. The Board, however, jumps to the conclusion that the dealings of the appellants in the scrip of the company resulted in creation of artificial market and manipulation of the scrip. We fail to understand this logic. As already observed, the appellants were trading in large quantities and in the absence of any default prior to March 9, 2001 for which they blame their brokers, we cannot uphold the findings that they traded beyond their means and jeopardized the

market integrity particularly when they claim that they always had adequate margins with their brokers. It is an undisputed fact that the trades of the appellants were delivery based as well and that they were not trading only for speculative purposes. It is the Board's own case that they took delivery of about 3.75 lac shares of the company and pledged a large quantity of these with banks and took loans which were further used in the trading of the scrip. We do not think that they did anything wrong. The Board has also observed that the appellants were the predominant traders in the scrip since August, 2000 and that their trading accounted for approximately 30% of the total trading in the scrip on the two exchanges (NSE & BSE). The appellants have disputed this percentage figure but, assuming it to be so, it only shows that the appellants were trading in a big way in the scrip of the company and this by itself is no offence unless some other fault is found with their trading. Therefore, to say that the appellants' share of the total trades was 30 % in the market has no meaning.

10. Shri. Kumar Desai learned counsel appearing for the Board strenuously urged that the appellants have failed to furnish any satisfactory explanation as to why they were dealing with 33 brokers. He was also emphatic in his submission that manipulative intent of a trader had to be gathered from the manner of trades executed by him and when we look at the pattern followed by the appellants by shifting their trades from one exchange to the other the said intention is clearly discernable. For the reasons already recorded, we are unable to agree with the learned counsel. He also placed before us during the course of hearing, the price-volume data of NSE and BSE pertaining to the scrip of the company to show that during the period of investigation, not only the volumes but also the price of

the scrip was gradually going up. His contention is that since the trades of the appellants constituted 30 per cent of the total trades on both the exchanges, they were responsible for the increase and the charges levelled against them stand established. We do not think so. The price volume data of the two exchanges does show that there was a gradual increase in the volumes and price of the scrip but this by itself is not sufficient to attribute the increase only to the appellants. No doubt the appellants traded in large quantities and this could be a factor which might have increased in the market the demand for the scrip and that could have increased the volumes and the price but there were others as well who were trading in the scrip. This apart, we have held that the appellants had not violated any regulation or trading guideline when they traded in the scrip of the company. When their trades were legitimate, how are they concerned if the demand increased and consequently the volumes and the price. If trading increases, the demand for the scrip and volumes are bound to go up. Since the trading pattern of the appellants prompted arbitrage activity and the arbitrageurs were simultaneously buying and selling the shares of the company, the volumes had to go up because arbitrageurs trade in large quantities to make their profits on small price differences. We are satisfied that mere increase in the volumes and price of the scrip does not establish the charges levelled against the appellants.

11. The Board has relied upon the trade logs of the appellants pertaining to their trading on February 26 and February 28, 2001 and after referring to the different arbitrageurs who, through their brokers, were simultaneously buying and selling the

shares of the company on the two exchanges (BSE and NSE) concluded in para 9.8 of the impugned order as under:-

“As shown in above-mentioned tables, most of the brokers were buying at BSE on behalf of Shri Harinarayan Bajaj and his family members. On the same day and at the same time on NSE, brokers of Shri Harinarayan Bajaj and his family members were selling. This clearly proves that Shri Hari Narayan Bajaj and persons acting in concert with him were buying on the first day of the settlement at BSE.”

This finding of the Board is not very clear but the insinuation appears to be that the appellants were acting in concert with the arbitrageurs when they were buying and selling the shares on the two exchanges or when they were shifting their positions from one exchange to the other. The finding is beyond the show cause notice and cannot be upheld. It is nowhere alleged that the appellants had acted in concert with the arbitrageurs when they were trading on the two exchanges or that they knew who the counter parties were.

No other point was raised.

For the reasons recorded above, we allow the appeal and set aside the impugned order dated 25.6.2003. There is no order as to costs.

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

**Sd/-
Arun Bhargava
Member**

**Sd/-
Utpal Bhattacharya
Member**

Bbn/Rhn
10.10.2007