

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

Order Reserved On: 23.06.2016

Date of Decision : 30.06.2016

**Appeal No. 225 of 2014**

1. Somani Overseas Ltd.  
306, Nilkanta Apartments,  
Near Umrajakat Naka Athwa Lines,  
Surat- 395 002
2. Sumeet Menthol Pvt. Ltd.  
504, Trividh Chambers,  
Opp. Fire Station, Ring Road,  
Surat, Gujarat- 395 002
3. Sumeet Silk Processors Pvt. Ltd.  
504, Trividh Chambers,  
Opp. Fire Station, Ring Road,  
Surat, Gujarat- 395 002
4. Sitaram Prints Pvt. Ltd.  
306, Nilkanta Apartments,  
Near Umrajakat Naka Athwa Lines,  
Surat- 395 002
5. Ambaji Syntex Pvt. Ltd.  
504, Trividh Chambers,  
Opp. Fire Station, Ring Road,  
Surat, Gujarat- 395 002
6. Urmila Sunder  
129, Sarjan Society,  
Umrajakat Naka Parle Point,  
Surat- 395 002
7. Ganga Somani  
12, Keshav Park Society,  
Parle Point,  
Surat- 395 002
8. Sumandevi Somani  
37, Ghod Dod Road,  
Surat- 395 002

...Appellants

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai -400 051

...Respondent

**WITH**  
**Appeal No. 227 of 2014**

1. Shankarlal Somani

2. Raj Kumar Somani

3. Bajranglal Somani  
504, Trividh Chambers,  
Opp. Fire Station, Ring Road,  
Surat, Gujarat- 395 002

...Appellants

Versus

Securities and Exchange Board of India,  
SEBI Bhavan, Plot No. C-4A, G-Block,  
Bandra-Kurla Complex, Bandra (East),  
Mumbai -400 051

...Respondent

Mr. Somasekhar Sundaresan, Advocate with Mr. Paras Parekh and  
Mr. Dhaval Kothari, Advocates i/b. J. Sagar Associates for Appellants.

Mr. Shyam Mehta, Senior Advocate with Mr. Saurabh Bacchawat and  
Mr. Hitesh Mutha, Advocates i/b K. Ashar & Co. for the Respondent.

CORAM: Justice J.P. Devadhar, Presiding Officer  
Dr. C.K.G. Nair, Member

Per: Justice J.P. Devadhar

1. Appellants in these two appeals are aggrieved by the order passed by the Whole Time Member (“WTM” for short) of Securities and Exchange Board of India (“SEBI” for short) on 21.05.2014. By the said order appellants are jointly and severally directed to disgorge ₹ 4,69,40,232 being the profits earned through fraudulent and manipulative trades executed in the scrip of Sumeet Industries Limited (“SIL” for short) during the investigation period and further, the appellants are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly

or indirectly or being associated with the securities market in any manner whatsoever for a period of three years.

2. Since both appeals arise from a common order both these appeals are heard and decided on merits by this common decision.

3. SEBI carried out investigation into the suspected price and volume manipulation in the scrip of SIL during the period from 01.10.2006 to 12.03.2007. The investigation revealed the following:-

- a) As on the quarter ended on March 2007 SIL had issued 1,73,99,300 equity shares having face value of ₹ 10 each. The promoters of SIL as on 30.09.2006 held 79,78,832 shares (45.84%) of SIL. Their shareholding came down to 67,57,677 shares (38.83%) as on 31.12.2006 and further reduced to 49,38,010 shares (28.38%) as on 31.03.2007 on account of sale of shares by the promoters.
- b) During the investigation period the scrip of SIL was traded only at Bombay Stock Exchange Limited ("BSE" for short). During the investigation period, price of SIL scrip went up by 507.4% while the SENSEX recorded an increase of 3.4% during the same period (from 12,473.79 on 03.10.2006 to 12,902.63 on 12.03.2007). The price of the scrip mainly increased during the period from 05.12.2006

to 21.02.2007 where, in 52 trading sessions, the price of the scrip increased from ₹ 4.81 on 05.12.2006 to ₹ 34.25 on 21.02.2007 (rise of 612%) along with volumes spurt when the scrip was traded with an average volume of 9,78,304 shares.

- c) One month before the investigation period i.e. during the period from 01.09.2006 to 30.09.2006, the price of the shares of SIL was in the range of ₹ 4.30 to ₹ 5.90 and the shares of SIL were traded with an average daily volume of 17,775 shares.
- d) One month after the investigation period, the price of SIL scrip decreased from ₹ 27.60 on 13.03.2007 to ₹ 15.10 on 30.04.2007 and the scrip was traded with an average daily volume of 5,26,582 shares.
- e) During the investigation period several corporate announcements were made, some of which were neither implemented nor intimated to the stock exchange till issuance of show cause notice by SEBI. According to SEBI, these unimplemented price sensitive announcements were made with a view to influence the price of SIL scrip so that the promoter group entities could reduce their holdings in SIL at a profitable price.

f) Major counter party to the sales of promoter group entities (i.e. for 11,53,032 shares accounting for 31.80% of total quantity sold by the promoter group) was Mr. Purshottam Madanlal Khandelwal (“PK” for short). PK was trading through a stock broker M/s. SIC Stocks and Services Pvt. Ltd. (“SIC”) and during investigation period PK had placed buy orders for 18,39,36,413 shares of SIL. Total orders placed and trades carried out by PK are as follows:-

| <i>No. Buy Orders</i> | <i>Buy order quantity</i> | <i>No. of Trades</i> | <i>Purchase Qty.</i> | <i>% of Mkt Volume</i> | <i>No. of Sell Orders</i> | <i>Sell Order Quantity</i> | <i>No. of Trades</i> | <i>Sale Qty.</i> | <i>% of Mkt. Volume</i> |
|-----------------------|---------------------------|----------------------|----------------------|------------------------|---------------------------|----------------------------|----------------------|------------------|-------------------------|
| 7,540                 | 18,39,36,413              | 15,754               | 1,46,29,418          | 24.27%                 | 8,086                     | 3,03,97,898                | 14,257               | 1,42,62,631      | 23.65%                  |

g) The valid buy orders placed by PK far exceeded his valid sell orders thus indicating buying pressure in the scrip. The total number of valid buy orders placed by PK (7540 buy orders) constituted 71.83% of the total valid buy orders placed in the system. Out of total buy orders placed by PK, 1611 buy orders i.e. 21.37% orders (constituting 74% of his order quantity) were deleted and only 7.95% of the buy orders got executed.

h) Further, about 80% of his buy orders (for 14,90,80,942 shares) were in the nature of large buy orders (quantity $\geq$ 1,00,000 shares). Out of these large buy orders, only buy orders for 73,19,561 shares

(4.85% of 14,90,80,942 shares) got executed. Bulk of such large buy orders for 10,98,39,068 shares (73.68% of 14,90,80,942 shares) were deleted by PK.

- i) Out of large buy orders placed by PK, buy orders for 7,16,45,712 shares (i.e. 48% of 14,90,80,942 shares) were placed at prices marginally lower than the prevailing market price. PK had created artificial buying pressure in the scrip by manipulating the order book. Out of the large buy orders placed by PK at prices slightly lower than the prevailing market price, only a fraction of the orders were executed and bulk of those orders were deleted. Thus, his intention was only to create a false appearance of volume in the scrip and he was not a genuine buyer.
- j) PK was counterparty to the sales of promoter group entities for 1153032 shares (31.80% of total sales of promoter group entities in the scrip). Out of the above quantity, trades for 5,38,427 shares (14.85% of sales of promoter group entities and 47% of the sales of promoter group entities to PK) were synchronized i.e. buy and sell orders were placed within one minute of each other. Further, 1370 trades (for 2,37,035 shares) of PK were 'self trades' (where he was both on the buy and sell sides). The buy orders placed by PK accounted for around 77% of the total valid buy

orders placed during this period which was mainly around the sales of the promoter group entities.

- k) It was observed that SIL and PK are connected with each other. PK had transferred shares of Mefcom Agro Industries Ltd. (“Mefcom” for short) to SIL through off market transaction. SIL had transferred ₹ 18,87,073 to SIC, by way of following three cheques, out of which an amount of ₹ 6,91,225 was credited for the purchase of shares of SIL by PK.

| <i>Sr. No.</i> | <i>Cheque No.</i> | <i>Cheque Date</i> | <i>Amount (₹)</i> | <i>Allegation</i>                                                                                                  |
|----------------|-------------------|--------------------|-------------------|--------------------------------------------------------------------------------------------------------------------|
| 1.             | 547013            | 15/01/07           | 6,91,225.00       | Credited into Mr. Purshottam Khandelwal's ledger account in the book of SIC for purchases of shares of the company |
| 2.             | 547014            | 05/12/06           | 11,57,310.00      | .....                                                                                                              |
| 3.             | 547015            | 06/12/06           | 38,538.38         |                                                                                                                    |
|                | <i>Total (₹)</i>  |                    | 18,87,073.38      | .....                                                                                                              |

4. In view of above facts revealed during the investigation, show cause notices were issued to SIL, its directors, promoter group entities (appellants herein) and PK on 19.03.2012 calling upon them to show cause as to why action should not be taken against them for violating the provisions contained in the SEBI Act, Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“PFUTP Regulations” for short) and the Securities Contracts (Regulation) Act, 1956.

5. Appellants denied the allegations made in the show cause notice dated 19.03.2012 and submitted that the trades executed by them were in the ordinary course of business and therefore the profits made thereunder cannot be said to be illegal profits and hence, cannot be directed to be disgorged. It was submitted that since appellants have not committed any violations, the show cause notice deserves to be dropped.

6. Rejecting the contention of the appellants, the WTM of SEBI passed a common order on 21.05.2014 against SIL, its directors, promoter group entities and PK. By the said order, SIL and its two directors, namely Sumeet Kumar Somani and Mahesh Kumar Somani were restrained from accessing the securities market for two years and by the said order appellants and PK are jointly and severally directed to disgorge the wrongful gains amounting to ₹ 4,69,40,232 with simple interest at the rate of 12% per annum from 12.03.2007 till payment and are also restrained from accessing the securities market in any manner whatsoever for a period of three years. Challenging the said order dated 21.05.2014 appellants have filed these two appeals.

7. Mr. Sundaresan, learned counsel appearing on behalf of the appellants submitted as follows:-

- a) The WTM of SEBI erroneously held that some of the public announcement (which could not be implemented due to bonafide reasons) were made with the fraudulent intention of inflating the price of SIL scrip and thereby enable the appellants

(promoters) to offload the shares of SIL at inflated prices and make unlawful gains. By adopting the arguments advanced by him in Appeal No. 224 of 2014 (SIL v/s SEBI), counsel for the appellants submitted that when most of the public announcement made during the investigation period are implemented and merely because, three public announcements could not be implemented due to benafide reasons, the WTM of SEBI ought not to have held that the said three public announcements were made with fraudulent intentions.

- b) Decision of WTM of SEBI that SIL had funded PK through SIC for trading in the scrip of SIL is also erroneous. SIL had paid ₹ 18,87,073/- to SIC towards purchase of 67,559 shares of Mefcom. Out of the said amount of ₹ 18,87,073/- received from SIL, it appears that SIC had credited ₹ 6,91,225/- to the ledger account of PK. Since the amount paid by SIL to SIC was towards acquiring 67,559 shares of Mefcom and it is demonstrated that SIL has in fact received 67,559 shares of Mefcom, the WTM was not justified in holding that SIL had paid to PK ₹ 6,91,225/- through SIC for trading in the shares of SIL.

- c) In his statement recorded before SEBI, PK had stated that he had not traded in the scrip of SIL during the investigation period. PK had further stated that he knew Mr. Nirmal Jain, an employee of SIC and that since all demat account and bank accounts of PK were with Mr. Nirmal Jain, it is possible that Mr. Nirmal Jain might have traded in the scrip of SIL by using the accounts of PK. During the course of cross examination, PK admitted that Mr. K. K. Modi was the boss of Mr. Nirmal Jain. When confronted with undertaking dated 12.04.2006 and instruction slip for delivery/receipt dated 21.01.2007 and 23.01.2007, PK admitted that the signature on the undertaking dated 12.04.2006 was his signature. By the said undertaking, PK had authorized Mr. K.K. Modi to trade on behalf of PK. Admittedly, Mr. K.K. Modi has not been examined by SEBI. In such a case even if it is held that PK had traded in the shares of SIL it cannot be said that PK had traded in the shares of SIL at the instance of appellants.
- d) Fact that PK was counterparty to 11,53,032 shares (31.80% of the total quantity sold by appellants) and out of the above quantity, trades for 5,38,427 shares (14.85% of sales by appellants and 47% of the sales by appellants to PK) were synchronized cannot be a

ground to hold that appellants were connected to PK and that PK had traded in the shares of SIL with a view to inflate the price of SIL scrip, so that the appellants could sell shares of SIL at inflated prices and make unlawful gains. Moreover, the alleged synchronized trades were only 0.89% of the total trades executed in the market during the investigation period and therefore, such miniscule synchronized trades ought not to have been the basis for drawing adverse inference against the appellants.

- e) Similarly, fact that PK had placed 7540 buy orders (71.83% of the total valid buy orders placed in the system) in the SIL scrip during the relevant period, out of which 1611 i.e. 21.37% orders (constituting 74% of his order quantity) were deleted and only 7.95% of the orders got executed, cannot be a ground to hold that PK traded in the shares of SIL at the instance of the appellants. Fact that PK was placing large buy orders at prices slightly lower than the prevailing market price and only a fraction (4.85%) of buy orders were executed and bulk of the buy orders were later deleted by PK within few minutes of placing those buy orders may create buying pressure in the scrip of SIL, but that cannot be attributed to the appellants.

- f) With a view to establish that PK traded in the scrip of SIL at the instance of SIL and its promoters it is erroneously held in the impugned order that SIL transferred ₹ 6,91,225/- to PK through SIC. As noted earlier, the documents on record, namely, demat statements, contract notes and bank statements clearly show that the amounts paid by SIL to SIC were for acquisition of 67,559 shares of Mefcom and once it is established that, in fact, SIL has received 67559 shares of Mefcom, it could not be said that SIL funded PK through SIC.
- g) In the impugned order it is erroneously held that misleading statements are made in the annual report of SIL regarding sale of SIL shares, deliberately with a view to camouflage the transfer of monies to SIC for the trades of PK in the scrip of SIL. The annual report of SIL in fact refers to the buy and sale of Mefcom shares and merely because, the annual report does not set out the details of sale of Mefcom shares, the WTM of SEBI could not have held that the annual report of SIL contained misleading statements.
- h) By relying on an e-mail of BSE dated 31.01.2014 and order of AO dated 20.02.2014 it is held in para 36 of the impugned order that the contract notes produced

by SIL for acquiring 67559 shares of Mefcom were fake/forged/fabricated and accordingly the claim of SIL that ₹ 18,87,073/- was paid by SIL to SIC for acquiring 67559 shares of Mefcom has been rejected. This finding is totally perverse for the following reasons:-

- i) E-mail of BSE dated 31.01.2014 was not furnished to SIL. Without furnishing a copy of the said e-mail, no adverse inference could be drawn behind the back of SIL and appellants.
- ii) In the show cause notice it was alleged that out of ₹ 18,87,073/- paid by SIL to SIC only ₹ 6,91,225/- constituted 'fund transfer' by SIL to PK through SIC. However, in the impugned order it is held that the entire amount of ₹ 18,87,073/- did not represent the amount paid by SIL for acquiring 67,559 shares of Mefcom. Thus, the finding recorded in the impugned order which is not even alleged in the show cause notice cannot be sustained.
- iii) Even if the e-mail of BSE suggests that the trades on the basis of contract notes were executed on behalf of Mr. Deepak Shantilal Rana, and the said e-mail received after the

personal hearing was granted to the appellants, the WTM of SEBI could not have held that e-mail against the appellants without giving an opportunity of hearing to the appellants.

iv) In any event when the fact of receiving 67559 shares of Mefcom by SIL and thereafter sale of 67559 shares of Mefcom by SIL is established by producing various documentary evidence especially the demat statement, the WTM of SEBI could not have disbelieved the case of SIL that ₹ 18,87,073/- was paid by SIL to SIC for acquiring 67,559 shares of Mefcom.

i) The impugned order is dated 21.05.2014 and on the same day i.e. on 21.05.2014 itself, the very same WTM of SEBI has passed an order in case of SIC wherein it is held that PK and Mr. K.K. Modi were known to each other and Mr. K. K. Modi in his capacity as remisier was handling PK's account. However, there is no link to establish the knowledge or involvement of SIC in the impugned trading of PK or in any plan of SIL. If there is no link between SIL and SIC, then obviously it cannot be said that SIL funded PK through SIC.

- j) Relying on the decision of the Apex Court in case of Ritesh Chakarvarti v/s State of M.P. reported in (2006) 12 SCC 321 it is submitted that in view of failure on part of SEBI to examine Mr. K.K. Modi no adverse inference could be drawn against the appellants.
- k) The profits derived from sale of SIL shares was in the ordinary course of business and could not be said to be illegal profits and consequently the said profits are not liable to be disgorged.
- l) Assuming for sake of argument it is held that the profits made in the present case are liable to be disgorged then the quantum of illegal profits computed by SEBI is faulty. While the net sale realization is correctly computed at ₹ 18.98 per share, SEBI has wrongly taken the price of ₹ 4.34 per share being the closing price on 30.09.2006 as the acquisition price of SIL shares by the appellants. It is submitted that since the WTM of SEBI in para 2(f) of the impugned order has recorded that one month after the investigation period, the price of SIL scrip decreased from ₹ 27.60 on 13.03.2007 to ₹ 15.10 on 30.04.2007, the price of ₹ 15.10 ought to have been

taken as the acquisition price for determining the alleged illegal profits.

- m) Assuming that the trades in question were manipulated trades, in the facts of present case, while directing the appellants to disgorge the profits, restraining the appellants from accessing the securities market for three years is extremely harsh and hence liable to be quashed and set aside.

8. Mr. Mehta, learned Senior Advocate appearing on behalf of SEBI, on the other hand, by relying on facts of figures set out in the impugned order submitted as more particularly set out herein below, that no fault can be found with the impugned order and the appeals filed by the appellants are liable to be dismissed.

9. We have carefully considered the submissions made by counsel on both sides.

10. In the present case, the appellants who are promoters of SIL are held guilty of making illegal profits by resorting to manipulative and fraudulent trades through PK and are accordingly directed to disgorge the illegal profits and are also restrained from accessing the securing market for three years.

11. In our order passed today in Appeal No. 224 of 2014 we have held that three public announcements made by SIL were not bonafide public announcements. For the reasons set out in our order in Appeal No. 224

of 2014 we hold that SIL and its promoters had made three price sensitive public announcements not with a view to implement the same but with a view to inflate the price of the SIL scrip so that the appellants who are promoters of SIL could off-load the SIL shares at the inflated price and make illegal profits.

12. It is relevant to note that the appellants claim that as promoters of SIL they wanted to pump-in funds for expansion of SIL, by subscribing to the preferential allotment of SIL shares at ₹ 30 per share. However, facts on record reveal that no preferential allotment was made on some pretext or the other and in the interregnum taking advantage of price rise in the SIL scrip due to price sensitive public announcement, the appellants have sold more than 30 lac SIL shares at inflated price and made huge profits. Thereafter, the appellants have abandoned the proposal to pump in funds by subscribing to preferential allotment of shares and resorted to the rights issue, wherein, appellants have subscribed to 95% of SIL shares under the rights issue at ₹ 15 per share. These facts amply demonstrate that the unimplemented public announcements were made with a view to inflate the price of SIL scrip so as to make profits by off-loading the shares of SIL and thereafter subscribe to the shares of SIL at ₹ 15/- per share under the rights issue.

13. Apart from the above, findings recorded in the impugned order that the trades in the shares of SIL executed by PK has also resulted in inflating the price of SIL scrip and facilitated appellants to off-load SIL shares at inflated prices deserves acceptance for the following reasons:-

- a) Findings recorded in paras 40 to para 44 of the impugned order clearly reveal that PK was placing large buy orders at prices slightly lower than the prevailing market price, and only a fraction (4.85%) of those orders were actually executed and bulk of the orders were later on deleted by him within few minutes of placing those buy orders. Such pattern of trading gave misleading impression of market depth and thereby induced the buyer's interest in the scrip of SIL.
- b) PK was counterparty to 11,53,032 shares (31.80% of the total quantity sold by the promoter group entities). Out of the above quantity, trades for 5,38,427 shares (14.85% of promoter group sales and 47% of the promoter group sales to PK) were synchronized i.e. buy and sell orders were placed within one minute of each other. In these circumstances, the WTM of SEBI is justified in holding that placing sell orders by the appellants (promoter group entities) with PK for same quantity at the same price within too negligible time difference repeatedly over a period of time are clear indication that those synchronized trades were not a matter of coincidence.

- c) Bulk buy orders placed by PK as also synchronized trades executed by PK created spurt in the volume and price of SIL scrip and during that period the appellants have sold more than 30 lac shares of SIL and made huge profits.
- d) Although the appellants have contended that they were not connected with PK, fact that PK had off-market dealings with SIL and that PK had transferred 17559 shares of Mefcom to SIL without receiving any consideration and that the appellants are the only beneficiaries of the manipulative trades executed by PK clearly show that the appellants and PK were connected to each other and that PK resorted to manipulative trades with a view to inflate the price of SIL scrip so as to enable the appellants to off-load the shares of SIL at inflated prices.
- e) In the written submission filed on behalf of appellants it is submitted (see page 18 of the written submissions) that the deep link among Mefcom, SIC, PK and Vishwas Securities is established from the quarterly filings of shareholding pattern with stock exchanges by Mefcom. If PK, Vishwas Securities and SIC had deep links, then obviously appellants as promoters of SIL had also deep links with PK and

Vishwas Securities, because PK executed manipulative trades in the scrip of SIL for the benefit of appellants whereas, Vishwas Securities was to be a joint venture partner of SIL for developing 200 acres of land to be acquired by SIL as per the public announcements made by SIL. Moreover, it is a matter of record that the Board of directors of SIL on 27.02.2007 had approved allotment of 2,50,000 shares of SIL to Vishwas Securities on preferential basis. All these factors show that SIL, PK and Vishwas Securities were all connected to each other.

- f) It may not be out of place to note that PK has deemed it fit not to challenge the impugned decision.

In these circumstances, the findings recorded in the impugned order that PK executed manipulative trades in the scrip of SIL with a view to inflate the price of SIL scrip and thereby enable the appellants to off-load the shares of SIL at inflated prices cannot be faulted.

14. Since the profits or gains made by the appellants are on account of fraudulent and manipulative trades, the appellants are liable to disgorge the said wrongful gains.

15. Computation of wrongful gains in the impugned order at ₹ 4,69,40,232 is seriously disputed by the appellants. Appellants do not dispute the net sale realization on sale of SIL shares during the

investigation period (weighted average sale price) determined at ₹ 18.98 per share of SIL. However, the appellants object to the acquisition price determined at ₹ 4.34 per share by taking the closing price on 30.09.2006, merely because the investigation by SEBI commenced from 01.10.2006.

16. We see merit in the contention of appellants. Fact that SEBI investigated into the trades of SIL from 01.10.2006 cannot be a ground to hold that fraudulent and manipulative trades were executed in the SIL scrip from 01.10.2006. Admittedly, PK had not commenced trading in the SIL scrip from 01.10.2006 and therefore, it cannot be said that the manipulative trades took place from 01.10.2006 and accordingly take the closing price on 30.09.2006 as the acquisition price of the SIL shares sold by the appellants while determining the illegal profits. If manipulative trades commenced with the trading executed by PK, then the price prevailing on the date on which PK commenced trading could be taken as the acquisition price of SIL shares.

17. In para 2(f) of the impugned order, the WTM of SEBI by referring to the price of SIL scrip prevailing on 30.04.2007 at ₹ 15.10 has sought to demonstrate that the price of SIL scrip during the investigation period was inflated. If price of SIL scrip prevailing on 30.04.2007 was a relevant criteria, then why the price prevailing on 30.09.2006 is taken into consideration while computing the illegal profits is not explained in the impugned order. Thus, the illegal profits computed by the WTM of SEBI at ₹ 4,69,40,232/- cannot be said to be based on relevant criteria.

18. In these circumstances, while upholding the decision of WTM of SEBI that the appellants are liable to disgorge the illegal gains made on sale of SIL scrip during the investigation period, we set aside the illegal profits quantified at ₹ 4,69,40,232/- and direct that the quantum of illegal profits be determined afresh by setting out the norms laid down by SEBI for determining the illegal profits.

19. Plea of the appellants that the impugned order which seeks to restrain the appellants from accessing the securities market is harsh and excessive, deserves acceptance for the following reasons-

- a) In the impugned order it is held that SIL funded PK through SIC for trading in the shares of SIL with a view to inflate the price of SIL scrip and thereby enable the appellants to off-load the SIL shares at the inflated prices and make illegal profits. According to appellants SIL had paid ₹ 18,87,073/- to SIC for acquiring 67559 shares of Mefcom and out of the said sum of ₹ 18,87,073/-, if SIC transfers ₹ 6,91,225/- to PK, it cannot be said that SIL had funded PK through SIC. The demat statement of SIL clearly show that 67559 shares of Mefcom were actually received by SIL. In such a case, fact that SIC transferred ₹ 6,91,225/- to PK out of ₹ 18,87,073/-received from SIL, could not be a ground to hold that SIL funded to the extent of ₹ 6,91,225/- to PK through SIC.

- b) Apart from the above, the demat statement of SIL clearly shows that out of 67559 Mefcom shares, SIL has received only 50000 shares of Mefcom from SIC and the balance 17559 shares of Mefcom are received by SIL from PK. When SIL had paid ₹ 18,87,073/- for acquiring 67559 shares of Mefcom, why SIC delivered only 50,000 shares and why PK delivered 17559 shares of Mefcom to SIL without receiving any consideration from SIL is a question, which ought to have been considered before arriving at a conclusion that SIL funded PK through SIC. Without considering these aspects of the matter, findings recorded in the impugned order that SIL funded ₹ 6,91,225 (out of ₹ 18,87,073) to PK through SIC for trading in the shares of SIL cannot be sustained.
- c) Moreover, by relying on an e-mail of BSE dated 31.01.2014 it is held in the impugned order that the entire amount of ₹ 18,87,073/- did not represent the amount paid by SIL for acquiring 67559 shares of Mefcom. No such case was made out in the show cause notice. Even the e-mail of BSE dated 31.01.2014 was not furnished to the appellants. Thus, the findings recorded by the WTM of SEBI which goes beyond the allegations made in the show cause notice and is based on e-mail of BSE dated

31.01.2004 which was not furnished to the appellants cannot be sustained being violative of the principles of natural justice.

- d) In the impugned order, it is erroneously held that the Annual Report of SIL contains misleading statements. This finding is unsustainable, because the Annual Report of SIL refers to purchase and sale of Mefcom shares and merely because the sale particulars were not set out therein, it could not be inferred that the Annual Report contained misleading statements.
- e) As the restraint order passed by the WTM of SEBI is based on various findings recorded in the impugned order and some of the findings set out herein above cannot be sustained, we deem it proper to modify the impugned order by reducing the period of restraint from three years to the period already undergone by the appellants up to the date of present order.

20. In the result, we pass the following order:-

- a) The WTM of SEBI was justified in holding that the trades executed by the appellants in the scrip of SIL during the investigation period were fraudulent and manipulative trades and therefore the wrongful gains made by the appellants from the said fraudulent and

manipulative trades are liable to be disgorged by the appellants. However, the quantum of unlawful gains determined by the WTM of SEBI being not in accordance with any precise norms, we set aside the quantum of unlawful gains determined by SEBI and direct the WTM of SEBI to recompute the quantum of unlawful gains liable to be disgorged by the appellants.

- b) Since some of the findings recorded in the impugned order cannot be sustained for the reasons set out in para 19 above, we modify the impugned order by reducing the period of restraint imposed on the appellants from 3 years to the period of restraint undergone by the appellants up to the date of the passing of the present order.

21. Both the appeals are disposed of in the above terms, with no order as to costs.

Sd/-  
Justice J.P. Devadhar  
Presiding Officer

Sd/-  
Dr. C.K.G. Nair  
Member

30.06.2016  
Prepared & Compared By: PK