

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 107 of 2007**

**Date of decision : 8.7.2008**

Sanjay Kumar Gupta

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Shyam Mehta Advocate with Joby Mathew and Zerick Dastur Advocates for Appellant

Mr. Kumar Desai Advocate with Mr. Hitesh Mutha Advocate for Respondent

Coram : Justice N.K. Sodhi, Presiding Officer

Arun Bhargava, Member

Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

Noticing unusual price movement in the scrip of Padmini Technologies Limited (for short Padmini), the Securities and Exchange Board of India (hereinafter called the Board) ordered investigations with a view to ascertain the role of the former, the role of its directors and other entities and to look into the possible violations inter alia of the provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), Regulations 1995 (for short the Regulations) in respect of the said price movement. Investigations revealed that Padmini had allotted on June 20, 1999, 1,80,000,00 shares to two sets of allottees one belonging to Kolkatta and the other to Delhi and they will hereinafter for the sake of convenience be referred to as Kolkatta allottees and Delhi allottees respectively. The investigations further revealed that Padmini had allotted preferential shares to these allottees without actual receipt of application/allotment money and that the allotment money was received from these sets of allottees long after the allotment and after the shares had been listed on the Delhi Stock Exchange (DSE).

According to the investigations, the Kolkatta and Delhi based allottees were mere name lenders in the entire preferential allotment and that some of the Kolkatta based allottees sold their shares to Sanjay Kumar Gupta the appellant herein and bills were raised in favour of other entities. The Board also found during the course of the investigations that some of the preferential allottees had sold the shares to some companies which were controlled/managed by the appellant which companies in turn, off loaded those shares to entities controlled by one Ketan Parekh in the secondary market thereby creating artificial volumes and price in the scrip of Padmini. It is pertinent to mention here that Ketan Parekh and his companies were involved in a securities market scam in the year 2001 in which they had manipulated the scrips of several companies including Padmini and rigged the market in a big way and the Board by its order dated 12.12.2003 had debarred them from accessing the capital market for a period of 14 years which order was upheld in appeal. The investigations found that more than 70 entities including the appellant were involved in manipulating the price of the scrip of Padmini. On the basis of these findings, the Board was prima facie of the view that all the entities including the appellant had violated Regulations 3 and 6(a) of the Regulations. Accordingly, separate notices were issued to all such persons/entities calling upon them to show cause why proceedings be not initiated against them and directions issued debarring them from accessing the capital market and from associating with any of the intermediaries in the market for an appropriate period. In this appeal we are only concerned with Shri. Sanjay Kumar Gupta the appellant who received a show cause notice dated December 26, 2003 pointing out his role in the entire game plan as aforesaid. It is not in dispute that he is a chartered accountant by profession. Since the primary argument of Mr. Shyam Mehta the learned counsel for the appellant is that the show cause notice on the face of it did not disclose any cause for proceeding against his client, it is necessary to refer to the same at this stage :

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**Sub: Your role in Padmini Technologies Ltd.- Show Cause Notice u/s 11B of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation, 1995.**

SEBI has investigated into the price rise in the scrip of M/s Padmini Technologies Ltd. (hereinafter referred to as Padmini) during 1999 and 2000 and observed your role in the case as detailed in this show cause notice.

A preferential allotment of 2,00,00,000 equity shares of Rs.10 each for cash at par was made by Padmini in pursuance to an EGM resolution dated 24.3.99. Shares allotted to the these entities were not subject to lock-in as none of them were shown as part of Promoter group. Allottees of the shares allotted on 21.6.99 can be broadly categorized into two groups: Kolkatta based entities and Delhi based entities as shown as **Annexure I**. Examination of the bank account of these preferential allottees shows that cheques issued by them towards application/allotment money were mostly cleared for payment much after the listing of shares at DSE. Investigations show that in most of the cases cheques of preferential allottees were cleared after receiving proceeds from Ketan Parekh entities after listing of the shares. This has been detailed at **Annexure II**.

During investigations various Kolkatta based allottees or their directors/ dealing persons namely Shri. Sunil Kishorepuria, Shri Alok Khetan, Shri Jitendra Aggarwal, Shri S. Beriwal and Shri Prakash Kumar Damani acting on behalf of himself and his HUF have all stated that they were approached by you for disposal of their allotment.

During a visit by our officials at the address of M/s DKG Buildcon P. Ltd. i.e. D-2, Bal Udyan Road, Uttam Nagar, New Delhi, it was further discovered through informal discussion with occupants that this company was managed by you having address of L-53, Bal Udyan Road, Uttam Nagar, New Delhi, which is also the address of M/s JP Promoters P. Ltd. Our officials spoke to you on your telephone numbers obtained during the visit i.e. 25333373, 25337030 and 9811075173 and you acknowledged being an authorized representative of these companies. As may be seen, (a) JP Promoters P Ltd. and VB Impex P. Ltd. are Delhi based preferential allottee of Padmini shares. (Annexure I) (b) DKG Buildcon P. Ltd. had purchased all the preferential allotment shares of Royal Bengal Exports P. Ltd., Kolkatta based allottee (Annexure II).

To confront you about your dealings in the shares of Padmini, summons for personal appearance were issued to you on 9.4.2003. You were also telephonically pursued. However, you failed and avoided to appear

before the investigating officer. In the interest of natural justice, another opportunity for personal appearance on 23.10.2003 was given to you vide our summons dated 17.10.2003. You failed to appear before the investigating officer, on the plea of traveling. Thereafter, another hearing was offered for 5.11.2003 vide our letter dated 30.10.2003, which clearly conveyed that this was the final opportunity being offered to you and it was indicated that non-appearance will draw penal action u/s 11C, 15A and 24 of SEBI Act, 1992. However, you again chose not to appear before the investigation officer. It seems that you are deliberately not appearing before SEBI. The non-cooperation by you has seriously hampered our investigations.

Thus, your role has been determined on the basis of documents/records/statements available, as follows:-

1. All the Kolkatta based allottees uniformly mentioned about your having approached them for sale of their shares aggregating 1,08,00,000 shares. You played a key role in disposal of allotments of the said allottees.

2. As advised by you: Shri Jitendra Aggrawal (representative of M/s Royal Bengal Exports and M/s Savara Tieup, both Kolkatta based preferential allottees) had issued sales bills in favour of entities namely M/s DKG Buildcon P. Ltd. and M/s JP Promoters P. Ltd., which are represented by you.

3. You approached the Kolkatta based allottees apparently at the instance of management of Padmini and executed the disposal of their shares, which is evidenced by the following:

- As (i) the shares were yet to be listed at the time of sale and (ii) as per the records of ROC, return of allotment has not been filed, you would have got the details of the names and addresses of Kolkatta-based allottees only from the company.

- The entities apparently acting in nexus with you/represented by you, namely VB Impex P. Ltd. and JP Promoters P. Ltd. were also allotted shares by the company in the preferential allotment. This again indicates your proximity with the management of Padmini.

- None of the preferential allottees reportedly bothered to do any due diligence about you or entities introduced by you for sale of allotment which would have been possible only when they knew that you were the representative of Padmini.

It therefore emerges that on the insistence of the Kolkatta-based parties for exiting out of the allotment, you were nominated by the management of Padmini to Kolkatta based allottees. The deals for the said sale

through you would not have worked out unless you had the backing of the company. Thus you played an active role in facilitating the irregular preferential allotment process and subsequent stock market operations with the help of preferential allotment shares. The documents generated at your instance in the case of purported sale of allotments to Shivesh have been disputed by Shivesh. Similarly, in a number of cases, as detailed earlier, receipt of payments against the sale of allotments were received from the entities other than the ones to whom sale(s) were made at your instance. Your conduct has been found to be detrimental to the interest of securities market. Further, this is also in violation of Regulation 3 & 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995.

**You are therefore directed to show cause as to why proceedings u/s 11B of SEBI Act 1992 read with Regulation 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 not be initiated against you inter-alia a)prohibiting you from issuing any certificate with respect to compliance of obligations and requirements under securities laws (SEBI Act, 1992, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and the provisions of the Companies Act, 1956 which are administered by SEBI under provisions of the Companies Act, 1956 which are administered by SEBI under section 55A thereof, the rules, regulations, guidelines etc. made under these Acts and the Listing Agreement) for appropriate period, and b)debarring you in any capacity whatsoever from associating with the capital market related activities, dealing in securities, accessing the capital market and associating with any of the intermediaries in the capital market for appropriate period. This will be without prejudice to any other action which SEBI may deem fit in the interest of investors and securities market. If you require an inspection of the documents relied in preparation of this show cause notice can be obtained after fixing an appointment with Shri Achal Singh, AGM over telephone at 011-25732313, 25739784. Your explanation should reach the undersigned latest by **5.01.2004**.**

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Before we analyse the show cause notice, it is necessary to refer to the reply furnished by the appellant and the stand taken by him in his letter dated January 15, 2004. By this letter which was described as his preliminary reply, he denied all the allegations levelled in the show cause notice and asked the Board to supply him with copies of all the statements of the allottees which were recorded during

the course of the investigations and which were sought to be relied upon against him. He also demanded cross examination of the persons who had made statements against him. The appellant was furnished copies of most of the documents he had asked for. He then filed his detailed reply on 17.6.2005 controverting every allegation that was made against him and further demanded the cross examination of the representatives of Padmini as well. On a consideration of the material collected during the course of the investigations and the statements of some of the Kolkatta based allottees, the whole time member by a composite order recorded common findings against all the 74 entities including the appellant which were allegedly involved in the manipulation of the scrip of Padmini holding them all guilty of the alleged violations. By his order dated March 31, 2007 he prohibited all the entities including the appellant from buying, selling and dealing in securities and also from accessing the capital market in any capacity whatsoever for a period of five years with effect from the date of the order. It is against this order that Shri. Sanjay Kumar Gupta has filed the present appeal.

We will now examine the show cause notice reproduced in the earlier part of our order. All that it says is that preferential allotment was made in favour of Kolkatta and Delhi based entities as referred to in annexure I thereto and that the payment for allotment was mostly received after the shares were listed on the Delhi Stock Exchange. It is further alleged that the appellant approached the Kolkatta based allottees for the sale of their shares and this he did at the instance of Padmini and that he played a key role in the disposal of their shares. On the basis of these allegations it is further alleged that he “played an active role in facilitating the irregular preferential allotment process and subsequent stock market operations with the help of preferential allotment shares.” It is also pointed out in the show cause notice that payments against the sale of allotments were in some cases received from entities other than the ones to whom the sales were made at the instance of the appellant. There is no other allegation made

against the appellant in the show cause notice. These allegations even if taken as true, do not, in our opinion, make out any culpable charge against the appellant. So what if the appellant approached Kolkatta based allottees to sell their shares. This by itself cannot be a charge unless it is further alleged that he had knowledge of the fact that the shares allotted to them were irregular/illegal and without payment of allotment money. This knowledge has not been attributed to the appellant in the show cause notice. The other allegation in the show cause notice is that he was managing M/s. DKG Buildcon Pvt. Ltd. having its office at D2, Bal Udyan Road, Uttam Nagar, New Delhi and that he was residing at L-53 Bal Udyan Road, Uttam Nagar, New Delhi which is also the address of M/s. JP Promoters Pvt. Ltd. (a Delhi based allottee). DKG Buildcon is a company which purchased the shares from Royal Bengal Exports which is a Kolkatta based allottee. This is clear from Annexure II to the show cause notice. The show cause notice further mentions that the appellant had acknowledged to the Board that he was an authorized representative of these two companies. The fact that he is an authorized representative in his professional capacity is not disputed before us. He has, however, disputed that he manages M/s. DKG Buildcon Pvt. Ltd. as alleged in the show cause notice. The impugned order upholds the allegation that he is managing these companies alongwith some others only on the basis that he appeared on their behalf as a chartered accountant before the income tax authorities. The appellant is a chartered accountant by profession and merely because he represented any company or companies before the tax authorities, it cannot be inferred that he was managing those companies. The case of the appellant is that these companies belong to his close relatives and friends and that he is not even a shareholder muchless a director in any of these companies. The impugned order does not record any finding as to whether the appellant was a director or even a shareholder in any of these companies. We are, therefore, proceeding on the assumption that he was their authorized representative in his professional capacity as a chartered accountant as acknowledged by him to the

Board and in regard to which there is a recital in the show cause notice. There is nothing wrong in his being an authorized representative of these companies as a chartered accountant. The show cause notice after alleging that at the instance of Padmini the appellant approached the Kolkatta allottees to sell their shares, states that he facilitated the irregular allotment process and subsequent stock market operations. Allotment of irregular preferential shares is one thing and their subsequent sale is another. Assuming, that the appellant was instrumental in selling the shares of Kolkatta allottees as alleged, would not by itself mean that he was also responsible for their irregular allotment. He could be but the show cause notice must say how. Admittedly, the allotment was made by Padmini and it is not said in the show cause notice that the appellant had any concern or connection with that company. There is no finding in the impugned order that he was in any way connected with Padmini. All that is said is that he had been authorized by Padmini to approach the Kolkatta allottees for the disposal of their shares. In the case of DKG Builcon Pvt. Ltd. it is said in the notice that the appellant was managing it. Not a word is said about his connection with Padmini. How could he then be responsible for the irregular allotment which has to be the internal affair of that company. We have already noticed that the show cause notice does not attribute to the appellant knowledge of illegal allotment in favour of the allottees. On the basis of the role allegedly played by the appellant as referred to in the show cause notice, one cannot conclude that he was also a party to the irregular / illegal preferential allotment when no connection is alleged between him and Padmini. The only other allegation made in the show cause notice is that proceeds of the shares sold at the instance of the appellant had been received from persons other than those to whom the sales were made. It is pointed out that this averment does not appear to be correct when we look at Annexure II to the show cause notice. The appellant is the authorized representative of DKG Buildcon and JP Promoters as stated in the show cause notice. Both these companies purchased shares from Royal Bengal Exports and Savera Tieup – the



Kolkatta based allottees. The annexure shows that the payments were made by these very entities. In the case of some other purchasers from Kolkatta based allottees, the Annexure shows that payments have been received from entities other than the purchasers. How is the appellant concerned if in some cases payments were made by persons other than those who purchased the shares. The appellant is only alleged to have prevailed upon the Kolkatta based allottees to dispose of their shares. Even if the companies of which he was the authorized representative had purchased the shares or made payments on behalf of some other purchasers, the appellant is not concerned and cannot be held responsible. In this view of the matter, we have no hesitation to hold that the show cause notice read with the Annexures attached thereto does not establish a charge against the appellant. Be that as it may, the charge in such proceedings which are bound to have serious repercussions has to be precise and unambiguous levelling allegations very clearly so that the delinquent knows what case he has to meet. This is the basic and minimum requirement of fair play. We are satisfied that the show cause notice states the allegations in vague and general terms. This is what their Lordships observed in *Canara Bank and others vs. Debasis Das and others* (2003) 4 SCC 557 :

“15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. **The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet.** Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the “Magna Carta”. The classic exposition of Sir Edward Coke of natural justice requires to “vocate, interrogate and adjudicate.” In the celebrated case of

Cooper v. Wandsworth Board of Works the principle was thus stated: (ER p.420)

“Even God himself did not pass sentence upon Adam before he was called upon to make his defence. ‘Adam’ (says God), ‘where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?’”

Since then the principle has been chiselled, honed and refined, enriching its content, Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

Similar view was taken in B.D. Gupta vs. State of Haryana (1973) 3 SCC 149 and A Sudhakar vs. Post Master General and anr. (2006) 4 SCC 348.

We may now deal with the other contentions raised by Shri. Shyam Mehta learned counsel for the appellant. We have seen the show cause notice and it is alleged therein that the appellant had approached at the instance of Padmini, Kolkatta based allottees to dispose of their shares. This is the role alleged to have been played by the appellant. Soon after receiving the show cause notice the appellant addressed a letter dated January 15, 2004 to the Board denying all the allegations and stated that before he could file his parawise reply he required some documents the details of which were mentioned therein. These included the statements of various Kolkatta based allottees who had stated that the appellant had approached them to dispose of their shares. In this letter he also demanded that **“I should be allowed to cross examine all the persons on whose statements and evidences you are relying upon.”** After the receipt of documents he filed his detailed reply in June 2005 and submitted that **“I have never met your so-called Kolkatta based allottees till today in my life time.”** The argument of the learned counsel for the appellant is that the Board recorded a finding on this issue against the appellant solely on the statements made by the Kolkatta based allottees without allowing the appellant to cross examine them and

this, according to him, violated the principles of natural justice. We find merit in this submission. The core issue to be decided in this regard was whether the appellant had approached the Kolkatta based allottees for the disposal of their shares. If he had not, the entire case against him would fall. We have already seen his reply and he has denied having ever met them. The Kolkatta based allottees during the course of the investigations had stated that the appellant had approached them for the disposal of their shares. They have not been cross examined. There is no documentary evidence on the record to substantiate this fact. It is only the oral statement made by the Kolkatta based allottees. The appellant contends to the contrary. Since it is a case of accepting the word of one party against the other, the least that the Board was required to do was to have allowed the appellant to cross examine those persons particularly when such a request had been made. That was the only way in which the truth could come out. Without allowing such an opportunity, the Board has chosen to accept the word of the Kolkatta based allottees. This is unfair and amounts to denying a reasonable opportunity to the appellant to defend himself in the enquiry. The Kolkatta based allottees have also been charged for having received irregular allotment and are being punished by the impugned order. They could possibly have a motive to shift the burden on to the appellant and implicate him. It was, therefore, necessary in the facts and circumstances of this case to allow the appellant to cross examine those persons who had stated that they sold their shares on the asking of the appellant. Shri. Kumar Desai learned counsel for the respondent contended that before the impugned order was passed, the whole time member had called upon the appellant to appear in person and make submissions before him. He referred to the letter dated December 13, 2005 issued to the appellant in this regard. The appellant was required to appear on December 15, 2005. It appears that the final hearing in the case was being adjourned from time to time and the appellant was being required to appear in person to make oral

submissions. The appellant received another letter dated 23.8.2006 for a personal hearing to which he replied as under :

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Ref: Your letter no. IVD/NRO/03/325/2002/SG/418 dated 23.08.2006

With reference to above, I humbly submit that I have already filed my detailed submissions in the above captioned subject and I have nothing to add. In the above said letter of your good office, it appears that the object of appearance is to make submissions which I have already submitted vide my letter dated 17.06.2005 (Copy enclosed).

It is, therefore, respectfully submitted that my personal appearance may kindly be exempted in view of the above. In the light of the facts and circumstances, my name may kindly be dropped from the above proceedings.”

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Shri. Kumar Desai strenuously urged that by writing the aforesaid letter the appellant had foreclosed his right to cross examine the persons on whose statements reliance had been placed. In the alternative he urged that the appellant should have appeared before the officer on the appointed date and could have submitted that he should be allowed to cross examine the witnesses. We cannot accept this contention at all. The appellant was being called to appear personally for making his oral submissions before the impugned order was passed. This was not the stage when the witnesses could be allowed to be cross examined nor was the appellant told that the persons would be available for cross examination. It is usual for the Board to offer such a hearing to the delinquent before the final order is passed. It is true that he did not avail of this opportunity but this does not mean that he had given up his claim for cross examination. That was a prayer made by him at the outset when he received the show cause notice alleging that Kolkatta based allottees had sold their shares at his instance. The stage for cross examination was much earlier to the stage for personal hearing. We cannot, therefore, agree with the learned counsel for the Board and have no hesitation in holding that the principles of natural justice have been violated. The finding that the appellant had approached Kolkatta based allottees for the disposal of their shares cannot be sustained.

The next argument of the learned counsel for the appellant is that the findings recorded in the impugned order are far beyond the show cause notice and in regard to some of the allegations the whole time member has not recorded any finding against the appellant. There is merit in this contention as well. As already noticed, there were as many as 74 entities who were found to be involved in the larger game plan to which reference has been made in the earlier part of our order. Each entity had a role of its own to play and, may be, some of them had a common role. The Board had issued separate show cause notices to each of the entities including the appellant. In the show cause notice issued to the appellant his role has been pointed out as already observed. What the learned whole time member has done is that he has considered the replies of all the entities together and having taken notice of the entire material collected during the course of the investigations, has passed a composite order recording common findings in regard to all the entities. He has not dealt with the roles of the entities individually or separately. The role of the appellant was certainly different from others. The whole time member of the Board in para 2.7 of the impugned order culled out issues, which according to him, arose for his consideration and this is what he states in this para:

“In the context of the above facts and circumstances and considering the replies of entities/persons, the issues to be decided are (a) whether the Kolkatta and Delhi based allottees, Shri. Sanjay Kumar Gupta and other entities mentioned above either individually or acting in concert with other people had facilitated KP entities in manipulating the market in the shares of Padmini in violation of the provisions of Regulations 3 and 6(a) of the FUTP Regulations and (b) Whether the transactions by these allottees were in any way in violation to the provisions of Securities Contracts (Regulation) Act, 1956.”

These issues did not arise in the case of the appellant. It is axiomatic that when you ask wrong questions, the answers are bound to be wrong. Issue (a) as referred to above was not the charge levelled against the appellant in the show cause notice issued to him. It was never alleged against him that he had either individually or acting in concert with any other person facilitated Ketan Parekh

or his entities in manipulating the market in the scrip of Padmini. The name of Ketan Parekh appears in the show cause notice issued to the appellant but in a totally different context. To recapitulate, it is stated in the show cause notice that “cheques of preferential allottees were cleared after receiving proceeds from Ketan Parekh entities after listing of the shares.” We have already noticed that the appellant was not an allottee but only an authorized representative of two companies which had been allotted shares. Common findings have been recorded in the impugned order deciding issue (a) against all the entities including the appellant. This is where the whole time member has faulted. Since the appellant had a different role from the other entities, his case should have been dealt with separately even if a composite order was to be passed. He could not be clubbed with others. As regards issue (b) referred to in para 2.7 of the impugned order, again no such allegation has been made in the show cause notice qua the appellant. It is nowhere alleged that the appellant had violated the provisions of the Securities Contracts Regulation Act, 1956. Since common findings have been recorded against all the entities, the appellant is right in contending that the findings against him are wholly beyond the show cause notice.

For the reasons recorded above, we allow the appeal and set aside the impugned order. No costs.

Sd/-  
Justice N.K. Sodhi  
Presiding Officer

Sd/-  
Arun Bhargava  
Member

Sd/-  
Utpal Bhattacharya  
Member

8.7.2008  
bk/-