

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 192 of 2007

Date of decision : 22.9.2008

Victory Trading Corporation Appellant

Versus

Securities and Exchange Board of India Respondent

Mr. Vijendra Jabra Advocate with Mr. Vinod Pauka Advocate for Appellant.
Dr. Poornima Advani Advocate with Ms. Sejal shah Advocate for Respondent

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

Per : Justice N.K. Sodhi, Presiding Officer (Oral)

This appeal is directed against the order dated November 1, 2007 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) restraining, among others, the appellant from buying, selling, dealing or accessing the securities market in any manner for a period of four months. This direction has been issued in exercise of the powers under section 11B of the Securities and Exchange Board of India Act, 1992.

The appellant is the proprietorship firm of Mr. Vasant H. Bissa who traded in the scrip of M/s. Todays Writing Products Ltd. (for short the company) whose shares are listed on the Bombay Stock Exchange and the National Stock Exchange. Both the exchanges conducted investigations in the scrip of the company and informed the Board that certain brokers and their clients including the appellant and his broker M/s. Harikishan Hiralal were involved in circular trading in the scrip by way of structured/ synchronized trades. The Board then conducted investigations into the buying and selling of the scrip during the period from April 1, 2004 to

May 14, 2004 (23 trading days). Investigations revealed that five clients including the appellant and eight brokers including the appellant's broker had formed a group and they traded in the scrip among themselves and executed synchronized and circular trades. Investigations further revealed that the trades of the group constituted 50% of the total trades in the market. On the conclusion of the investigations, the Board issued separate show cause notices to all the clients and the brokers including the appellant herein alleging that they traded in the scrip of the company in a group and that 50% of the trades were executed among themselves. The appellant received a notice dated October 12, 2006 calling upon him to show cause why he should not be restrained from accessing the capital market in view of the irregularities committed during the course of the trading. He is alleged to have violated the provisions of regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for short the regulations). The appellant filed his reply dated November 20, 2006 denying all the allegations. On a consideration of the material collected during the course of the investigations and the enquiry conducted by the whole time member and after taking into consideration the reply furnished by the appellant, the whole time member found that the charges levelled against the appellant and others stood established and by his order dated November 1, 2007 the appellant along with others who are said to have formed the group were restrained from accessing the capital market for a period of four months. Hence this appeal.

We have heard the learned counsel for the parties. The precise charge levelled against the appellant is that he along with others formed a group and executed circular and synchronized trades among themselves thereby violating regulation 4 of the regulations. In ground D(iv) of the grounds of appeal the appellant has submitted as under :

“Further, on perusal of the Annexure attached to the SCN it is clear that there were hundreds of transactions executed on behalf of the Appellant by his broker on the instruction of the appellant in this particular scrip apart from other scrips, but taking a closure look at these transactions, out of these hundreds of transactions stretched over a period of more than 4 weeks, only 11 trades seem to have identical quantity, price and time. Out of total 326 trades executed in the scrip only 11 trades have matched and therefore the Respondent has blindly drawn a common conclusion without verifying the facts that the Appellant has synchronized transactions, this conclusion is incorrect as it is natural while executing thousands of transactions a few transactions may match exactly.”

From a reading of the aforesaid ground taken by the appellant, it is clear that he admits that out of the total trades executed by him eleven trades were matched trades in which the time, quantity and price exactly matched with the corresponding orders of the counter party. This is enough to hold him guilty of the charge levelled against him. However, from the annexures attached to the show cause notice containing the details of the various trades executed by the group of which the appellant was a part, it is clear that not only eleven but many more trades were executed by the appellant and that the counter party in all the trades was from the group. When the appellant was buying the scrip the person selling that scrip was one of the members of the group and vice-versa. The learned counsel for the respondent took us through the annexures including annexures I to III to the show cause notice and these do indicate that the appellant was a part of the group and that quite a few of his trades had matched with the counter party from within the group. Since the members of the group executed trades among themselves the trades were obviously fictitious and created artificial volumes on the screen of the exchange without transferring the beneficial ownership in the traded shares. We are, therefore, satisfied that the charge levelled against the appellant stands established and that the impugned order does not call for any interference.

At this stage the learned counsel for the appellant contends that the period of prohibition be reduced as his client had only eleven matched trades out of 326 trades executed by him during the investigation period. In the circumstances of the

case, we are unable to accept this contention. As already noticed, the number of trades executed by the appellant with the counter parties who were a part of the group is much more than eleven. We have held that these trades were artificial and did not change the beneficial ownership in the traded scrip. This is a serious market irregularity and we do not think that the period of debarment needs to be reduced.

In the result, the appeal fails and the same is dismissed with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

22.9.2008
bk/-