

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 102 of 2006

Date of decision : 27.10.2008

M/s. Jagruti Securities Ltd.

..... Appellant

Versus

Securities and Exchange Board of India

..... Respondent

Mr. Pradip Sancheti Advocate with Mr. Vineet Jagtap Advocate for the Appellant.

Dr. Mrs. Poornima Advani Advocate with Ms. Sejal Shah Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Whether the appellant executed trades on behalf of its client with the intention of artificially raising the price of the scrip of JIK Industries Limited (for short JIK) is the short question that arises for our consideration in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act). It is directed against the order dated March 28, 2006 passed by the adjudicating officer holding the appellant guilty of having executed trades with a view to artificially raise the price of the scrip of JIK thereby violating Regulation 4(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter called the Regulations). Facts giving rise to this appeal lie in a narrow compass and these may first be noticed.

2. Jagruti Securities Limited (the appellant) is a company incorporated under the Companies Act, 1956. It is a member of the Bombay Stock Exchange (BSE) and the National Stock Exchange Ltd. (NSE) and has been carrying on business of stock broking since the year 1991. The Securities and Exchange Board of India (hereinafter called the Board) conducted investigations in the scrip of JIK for the period from January 23, 2003 to April 1, 2003 and found that some irregularities had been

committed during the course of the trading in the scrip. The appellant on behalf of its clients Axtel Industries Limited (Axtel) and Ameet Parikh had executed the trades in the scrip of JIK during the period of investigation. The details of the trades are as under:

Client	NSE		BSE		Total	
	Bought	Sold	Bought	Sold	Bought	Sold
Axtel Industries Ltd.	0	529	0	19,835	0	20,364
Ameet Parikh	8,843	0	70,249	0	79,092	0
Total	8,843	529	70,249	19,835	79,092	20,364

On the basis of the findings recorded in the investigation report, the Board initiated adjudication proceedings against the appellant. A notice dated May 11, 2005 was issued by the adjudicating officer calling upon the appellant to show cause why penalty be not imposed on it in terms of section 15HA of the Act read with Regulation 4(a) and 4(c) of the Regulations. Two charges were levelled against the appellant as referred to in para 28 of the show cause notice which reads as under:

“In view of the aforesaid findings of the investigation carried out by SEBI, it is charged that you were interested in the price rise of the scrip of JIK and therefore placed buy orders in small quantities at the higher price than the last traded price of the scrip of JIK with the intention of artificially raising the price of the scrip of JIK. Your transactions resulted in reflection of price of the scrip of JIK based on non-genuine trade transactions and as such you violated the provisions of Reg.4(a) and 4(c) of Securities and Exchange Board of India (Prohibition of Fraudulent and unfair Trade Practices in Securities market) Regulations, 1995.”

Since the appellant was alleged to have violated clauses (a) and (c) of Regulation 4 of the Regulations, it is necessary to refer to these clauses at this stage and they are reproduced hereunder for facility of reference:

- “4. Prohibition against market manipulation.-** No person shall-
- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
 - (b)
 - (c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
 - (d)
 - (e)”

A detailed reply dated June 21, 2005 was filed by the appellant denying each and every allegation made in the show cause notice. On a consideration of the reply filed by the appellant and the material collected during the course of the investigations, the adjudicating officer by the impugned order found the appellant guilty of violating only Regulation 4(a) of the Regulations and not Regulation 4(c) and accordingly, imposed a penalty of Rs.10 lacs. Hence this appeal.

3. We have heard the learned counsel for the parties and are of the view that the impugned order cannot be sustained. As is clear from the chart reproduced hereinabove, the appellant as a broker had executed trades on behalf of Axtel and Ameet Parikh during the period in question. The appellant sold 529 shares of JIK on NSE and another 19,835 shares on BSE on behalf of Axtel and did not make any purchase on behalf of this client and, therefore, there is no allegation that the appellant manipulated the price of the scrip while executing the sale transactions. Since price of a scrip can ordinarily be raised artificially by buying that scrip, it is alleged that the appellant made purchases on behalf of Ameet Parekh on NSE and BSE in small lots at a price higher than the last traded price (LTP) during the period of investigations and this is said to have been done to raise the price of the scrip of JIK or to support it at a level higher than what it would have otherwise been. It is on account of these buy orders executed by the appellant that it is alleged to have violated Regulation 4(a) of the Regulations.

4. At the outset, we may mention that the appellant had also been charged with violating Regulation 4(c) which prohibits a person from indulging in any act which results in reflection of prices of securities based on transactions that are “**not genuine trade transactions**’. In other words, what is prohibited is the execution of transactions that are not genuine trade transactions. We have perused the impugned order carefully and find that the adjudicating officer has not recorded any finding against the appellant for violating Regulation 4(c). As a matter of fact, he has not dealt with this charge at all in the impugned order. This charge will be deemed to have been dropped. It would follow that the buy orders executed by the appellant on behalf of Ameet Parekh when it

made purchases on his behalf were genuine transactions. If the trades (buy orders) had been genuinely executed by the appellant as a broker through the trading system of the two exchanges where is then the question of the appellant artificially raising the price of the scrip. It is axiomatic that a genuine trade will always reflect a genuine price of the scrip. The adjudicating officer has rightly observed that on a screen based trading system, buyers and sellers put in their orders through their respective brokers and the trade gets executed only when the buy and sell orders match subject to price time priority. We may like to add that the price time priority signifies two things; first is the matching of price and second is the priority in point of time. When a buy order is placed on the system, it will be matched with the best sell order (lowest price) available on the system subject to the condition that no buyer will be made to buy at a price more than what he has offered. If more than one pending sell orders match the buy order, the sell order placed earlier in point of time will be picked up to complete the trade. Similarly, a sell order will be matched with the best buy order (highest price) subject to the condition that no seller will be made to sell at a price lower than what he has fed into the system. If more than one pending buy orders match the sell order, the buy order placed earlier in point of time will be matched first. This is how the price discovery mechanism of the system works as it is based on the free inter play of the forces of demand and supply. The price which the system determines is truly the price which a willing buyer would pay to a willing seller. Once the system has determined the price of a scrip in the aforesaid manner, it can never be described as artificial. Artificial price, on the other hand, is a price determined by the buyer and the seller in a premeditated manner through collusion by manipulating the system of which we have seen many instances. Black's Law Dictionary (eight edition) defines the word 'artificial' as "Made or produced by a human or human intervention rather than by nature". If we substitute the word 'trading system' for 'nature' in this definition, it becomes clear that an artificial trade/price is the one that is executed or determined by human manipulation rather than through the operation of the system. As at present advised, we are of the view that in an artificial trade there has to be collusion between

the buyer and the seller and in the absence of any collusion, the trade cannot be termed as 'artificial'.

5. Now let us see what the adjudicating officer has found. In para 4.6 of the impugned order he rightly observes that "To establish the charge of artificial trades, the nexus of the parties needs to be established." Having said this, he observes that there is no allegation of nexus between Ameet Parikh and the appellant and JIK. He is wrong when he observes that there is no nexus between Ameet Parikh and the appellant. The nexus is obvious. Ameet Parikh is the client and the appellant is his broker and the nexus between the two is well understood by law as well as by the market. Needless to say that every client has a nexus with the broker through whom he trades. In para 4.15 of the order the adjudicating officer has found that there is a nexus between the appellant and JIK and he is right. Smt. Jagruti Parikh is a director in the appellant company whereas her husband Shri R. G. Parikh is a director in JIK. We can assume that these two companies were associate entities but this association is of no consequence. In fact, the adjudicating officer is unclear about the parties between whom nexus needs to be established. Nexus between the buyer and his broker or between the broker and the company whose scrip is being traded is not relevant in this context. In order to establish the charge of artificially raising the price of the scrip of JIK, it has to be shown that there was a nexus between the buyer Ameet Parikh and the appellant on the one hand and the seller counter party or his broker on the other. We cannot lose sight of the fact that Ameet Parikh had bought the shares through the appellant as his broker and a nexus had to be established between him and the seller before the trades could be dubbed as artificial. There is no such allegation in the show cause notice nor any finding recorded in the impugned order. In the absence of such a nexus it cannot be said that the appellant acting on behalf of Ameet Parikh was artificially raising the price of the scrip of JIK. The charge must, therefore, fail.

6. The adjudicating officer has referred to a chart showing that the appellant had placed buy orders on behalf of Ameet Parikh before the start of the trading session in

small quantities at rates higher than the previous day's closing price and this, according to the chart, he did repeatedly. From this pattern of trading, the adjudicating officer has drawn an inference in para 4.6 of the impugned order that the conduct of the appellant was not innocent because, according to him, the appellant did not give to his client the best market rate. He has also inferred an element of manipulation of the opening price of the scrip of JIK. We are unable to agree with the adjudicating officer. No allegation was ever made against the appellant that it failed to give the best market price to its client. Moreover, the inference that has been drawn is wholly unwarranted and there is no basis for it. It is the case of the appellant that the total purchases made by it on behalf of Ameet Parikh at rates which were higher than the last traded price was less than 7 per cent of the total purchases executed on his behalf during the investigation period. This plea was taken before the adjudicating officer and has been reiterated in the grounds of appeal. Unfortunately, the adjudicating officer has not dealt with this aspect at all. We have to acknowledge that the fact that 93 per cent of the purchases of Ameet Parikh were at the last traded price or below – a fact that could not be disputed before us – lends weight to the view that the appellant was not trying to raise the price of the scrip artificially. However, in the view that we are taking of the appellant's transactions, it would not matter if the percentage of purchases at the last traded price or below were lower or the total purchases at rates higher than the last traded price were more than 7 per cent. The artificial nature of trades cannot be established on the basis of percentage of such purchases but only on the basis of collusion or nexus between the buyer and the seller, as we have observed supra. It is true that the appellant was punching in buy orders before the beginning of the trading session and he did this on as many as 28 days at prices close to the upper circuit limit and on this basis it has been inferred that the appellant was manipulating the opening price of the scrip in question. We cannot uphold this finding either. By putting in buy orders into the system and ensuring that its order was the first one therein at a higher rate than the last traded price, it could well be inferred that the appellant was keen that the purchase order goes through the system and the shares are purchased. During the course of the

investigations, the appellant was asked as to why this was being done and his reply was that he was keen to complete the transactions as early as possible and, therefore, he was putting in the order at a little higher rate to attract the sellers. When this explanation is considered in the light of the fact that Ameet Parikh had placed an open ended order with the appellant for the purchase of 70,000 odd shares against the credit that he had with the appellant, there is nothing unnatural about the same. This pattern of trading could be an indication of his desire to purchase the shares for whatever reason. A similar view was taken by this Tribunal in **Ketan Parikh v. Securities and Exchange Board of India**, Appeal No. 2 of 2004 decided on 14.7.2006. The charge levelled against the appellant therein was that he had indulged in manipulating upwards the price of the scrip of Lupin Laboratories Ltd. and the same was established on the basis of charts showing that buy orders had been placed at prices higher than the last traded price. While reversing the order of the Board, this Tribunal observed that merely because some buy orders had been placed at prices higher than the last traded price in the scrip would not lead to the inference that the price was being manipulated upwards. It could indicate the desire of the appellant to purchase the shares and it is with that object in view that he may have put in buy orders at the higher rate. The Board did not challenge the findings recorded by the Tribunal. Similar is the position in the case before us.

7. The matter can be looked at from another angle as well. With a view to reduce the volatility in the trading of a scrip and to protect the interest of the investors and the stock market, stock exchanges usually set circuit filters on percentage basis on the previous day's closing price of that scrip. They are numeric percent limits set on individual scrips to stop any unduly rising or falling of a stock price. Circuit filter defines the price band within which the traders can place the buy and sell orders on the system and any order above the upper limit of the band or below the lower limit shall not be accepted by the system. To illustrate, as in the instant case, the closing price of the scrip of JIK on BSE on 22.1.2003 was Rs.31.70. There being a circuit filter of 20

per cent on the scrip, it could trade between 20 per cent higher than previous day's closing price and 20 per cent lower on the next day i.e. 23.1.2003. The price band for the purpose of trading on 23.1.2003 would thus be Rs.38.04 at the upper end and Rs.25.36 at the lower end. Any order beyond these limits (upper and lower) would not be accepted by the system. Considering that the appellant was putting in buy orders within the upper circuit limit on all the days that it traded on behalf of Ameet Parikh and if those orders resulted into trades, there being a willing seller to sell at those rates, it cannot be said that the appellant was artificially trying to raise the price of the scrip unless collusion could be established with the counter party. We, therefore, come back to the conclusion which we have already drawn that for the charge of raising price artificially to be established, the element of collusion between the buyer and the seller is a sine qua non.

8. For the reasons recorded above, it is difficult to hold that the appellant by placing purchase orders on behalf of Ameet Parikh at prices higher than the last traded price, was artificially trying to raise the price of the scrip of JIK. In this view of the matter the impugned order cannot be sustained.

In the result, the appeal is allowed and the impugned order set aside leaving the parties to bear their own costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Utpal Bhattacharya
Member

27.10.2008
ddg/-