

BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI

**Appeal No. 47 of 2011**

**Date of decision: 29.07.2011**

Mr. Narendra Ganatra  
B/36, Kumar Apartment,  
Behind R. C. Church,  
Vikroli Station Road,  
Vikroli (West),  
Mumbai – 400 079.

.....Appellant

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. J. J. Bhatt, Advocate for the Appellant.

Dr. Poornima Advani, Advocate with Mr. Ajay Khaire, Ms. Amrita Joshi,  
Advocates for the Respondent.

CORAM : P. K. Malhotra, Member  
S.S.N. Moorthy, Member

Per : P. K. Malhotra, Member

The appellant before us is said to be an investor carrying on trading and investment in equity shares of different companies at Mumbai. It is alleged against the appellant that he, in collusion with other entities, indulged in circular and synchronized trades in the scrip of Gemstone Investment Limited (for short the company) and entered into reversal of trades through different brokers using different client codes and created artificial volume and misleading appearance of trades in the scrip of the company which raised its price and enabled promoters/company related entities to offload their shares in the company and thereby violated the provisions of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent Trades and Unfair Practices relating to Securities Market) Regulations, 2003 (for short the Regulations).

2. The facts of the case, in brief, are that the Securities and Exchange Board of India (for short the Board) carried out investigations in the scrip of the company for the period from August 28, 2006 to August 21, 2008. It was noted that during this period, the promoter group entities consisting of ten persons offloaded bulk of their shareholding and another group entity, collectively referred to as 'Narendra Ganatra Group', including the appellant, bought a large chunk of shares and thereby control over the company. The shareholding of the promoters reduced from 69.65% during the quarter ending June 30, 2006 to 1.22% by the quarter ending September 30, 2008 and the price of the scrip also rose from ₹ 2.94 on August 28, 2006 to ₹ 45.45 on November 12, 2007, came down to ₹ 14.85 on April 15, 2008 and again increased to ₹ 51.80 on August 21, 2008. From the trade and order log analysis, it was observed that some of Narendra Ganatra Group entities dealt in the scrip of the company and purchased 12.90 lacs shares accounting for 49.75% of the total market volume and sold 2,38,400 shares. The Board also noted that out of 13,03,800 shares sold by the promoter group, for 9,45,500 shares i.e. (72.51%), the counter party was Narendra Ganatra Group entities. It was alleged that the appellant, acting in collusion with other entities of Narendra Ganatra Group and with the promoters/directors of the company, indulged in circular and synchronized trades in the scrip and entered into reversal of trades through different brokers using different client codes and created artificial volume and misleading appearance of trading in the scrip and raised its price which induced investors to deal in the shares of the company and enabled promoters/company related entities to offload their stakes in the company. A show cause notice dated May 31, 2010 was issued to Ganatra Group entities, including the appellant, calling upon them to show cause as to why an inquiry should not be held against them and penalty imposed under Section 15HA of the Act for the alleged violation of the regulations. The appellant filed its reply and denied the allegations levelled against him. After affording an opportunity of hearing and

considering appellant's response, the adjudicating officer of the Board, by its order dated January 24, 2011 held him guilty of violating the provisions of regulation 4 of the Regulations and imposed a penalty of ₹ 5 lakhs on the appellant under Section 15HA of the Act. The appeal is directed against this order.

3. We have heard the learned counsel for the parties who have taken us through the records of the case. Mr. J. J. Bhatt, learned counsel for the appellant has drawn our attention to the earlier order of the Tribunal in Appeal no. 192 of 2010 dated February 21, 2011 in the case of Premchand Shah and Ors. vs. The Adjudicating Officer, Securities and Exchange Board of India pertaining to the promoter group entities of the company where the Tribunal has held that the promoter group and the Ganatra Group cannot be held to have connived to increase the price of the scrip. This is what the Tribunal has held:-

“5. We have heard the learned counsel for the parties at length and they have taken us through the records of the case. It is not in dispute that the appellants as a group are inter se related/connected to each other and that they, except appellant no. 1, have exited from the company by selling the shares held by them. Appellant no. 1 has also sold his shares but is continuing to hold 3,61,070 equity shares of the company which come to 1.22 per cent of its total issued share capital. It is also on record that 74.26 per cent of the shares sold by the appellants had been purchased by the Ganatra group. The question that we need to answer is whether the sale of the shares by the appellants and the purchase thereof by the Ganatra group was collusive. The appellants contend that they sold the shares in the market in the ordinary course of trading through the stock exchange mechanism and that they did not connive with the Ganatra group and that they did not know at the time of executing the sale transactions as to who the counter party was. The impugned order passed by the adjudicating officer records a finding of connivance primarily on the ground that the majority of the shares sold by the appellants had been purchased by the Ganatra group. This fact does raise some suspicion but, in the facts and circumstances of this case as discussed hereinafter, we cannot conclude that there was any connivance between the two groups. There is no denying the fact that the trading system of the stock exchange maintains complete anonymity and does not allow one party to a transaction or even his broker to know as to who the counter party is or the counter party's broker. In other words, the trading system does not permit any interaction between the buyer and the seller except through the system. A sell order put into the system will match the best buy order on the basis of price time priority. Similarly, a buy order will match a sell order on the same basis and it is the system which matches the orders. Despite the anonymity of the system, we have seen that traders

and/or their brokers try to defeat the system by matching the buy and sell orders by punching them into the system simultaneously for the same amount and for the same price. This happens more frequently in illiquid scrips. In the case before us, there is no charge against the appellants that they matched/synchronized their sell orders with the buy orders of the Ganatra group by punching in the orders simultaneously in a manipulative manner. In the absence of any such allegation, the charge of connivance could be established only if there was some other contemporaneous material on the record to show connivance between the appellants and the Ganatra group. There is no such material on the record and, therefore, we have no hesitation to hold that the charge of connivance as levelled against the appellants must fail. Mere suspicion on the ground that majority of the shares sold by the appellants have been purchased by the Ganatra group cannot lead us to conclude that the charge is established. When we look to the other facts as established on the record and stated in the show cause notice and noticed in the impugned order, we find that the charge of connivance cannot succeed. It is common ground between the parties that the scrip of the company was illiquid and this fact is borne out from the show cause notice itself. For almost a month from August 31, 2006 to September 24, 2006, the scrip was not traded in the market and during this period there were 93 buy orders put in the system by 12 different brokers on behalf of their 21 clients for the purchase of 10,12,200 shares and these were pending and these remained unexecuted due to non availability of sellers. It is also a fact that out of these 93 buy orders, 57 buy orders were placed by the Ganatra group. If the appellants and the Ganatra group were conniving as alleged, then the appellants would have come forward to sell their shares when the buy orders were pending in the system. This did not happen and, therefore, no trade took place. This fact demolishes the allegation of connivance. Again, it is clear from the record that the appellants as a group who were then controlling the company wanted to sell their shares for reasons which have been stated in their reply and the Ganatra group started purchasing the shares from August 2006 upto August 21, 2008 and even thereafter and gained control of the company by reason of their shareholding though appellant no. 1 continues to be one of the promoters. The allegation in the show cause notice is that the appellants and the Ganatra group connived with each other to increase the price of the scrip and when the price went up, the appellants off-loaded their stake at higher prices and violated the regulations. This allegation, too, must fail. It is established on the record that the appellants were selling their shares and the Ganatra group was buying the shares. To increase the price of the scrip could be in the interest of the appellants because they were sellers but it could not be in the interest of the Ganatra group which was buying from the market. Their interest in this regard would obviously clash. It is the case of the appellants that the Ganatra group is still holding the shares and is in control of the company. This fact could not be disputed by the learned counsel for the Board and, in any case, it is not the Board's case that this group has off-loaded the shares. This being so, why should the Ganatra group connive to increase the price when they were buying the shares. If at all it was to manipulate, it would bring the price down. In this view of the matter, we cannot uphold the charge of connivance. The charge of connivance is further belied from the fact that the appellants sold their shares from August 29, 2006 to July 3, 2007 as noticed earlier in the price

range of ₹ 3.08 to ₹ 28.50. The last sale by the appellants was on July 3, 2007 at the rate of ₹ 28.50. The Ganatra group continued purchasing the shares upto August 2008 and, according to the show cause notice, the price of the scrip went up to ₹ 51.81 on August 21, 2008. The show cause notice also states that the Ganatra group was executing circular/reverse trades to raise the price upwards. If the appellants were conniving with the Ganatra group then they would not have exited on July 3, 2007 when the price of the scrip reached ₹ 28.50. They would have waited for some more time knowing that the price of the scrip was being manipulated upwards which did go upto ₹ 51.80. We cannot, therefore, accept the theory of connivance. The possibility of the shares having been sold and bought by the two groups in the ordinary course of trading through the exchange mechanism cannot be ruled out in the circumstances of this case. The scrip was, admittedly, illiquid. The appellants as a group were in the market to sell a large chunk of shares and the Ganatra group consisting of 17 persons was also in the market to make big purchases to take control of the company. In such a scenario, it is possible that Ganatra group picked up around 74 per cent of the shares sold by the appellants. We must also remember that the remaining 25 per cent of the shares sold by the appellants were picked up by others. This would indicate that there were other buyers in the market as well. If the two groups were conniving, the easiest way for them would have been to synchronize their trades as is usually done when traders manipulate the scrips and, in that event, the entire lot could be purchased by the Ganatra group. This has not happened. This fact also does not support the charge of connivance.

6. There is yet another reason why the charge of connivance with Ganatra group to increase the price of the scrip cannot be sustained against the appellants. There is no gainsaying the fact that the price of the scrip did go up from ₹ 3.08 to ₹ 51.80 when the appellants sold the shares and the Ganatra group purchased them. The Ganatra group kept purchasing till August 21, 2008 whereas the appellants exited on July 3, 2007 when the price of the scrip was ₹ 28.50 per share. We have on record that during the period from August 28, 2006 to March 16, 2007 (described as patch I in the show cause notice) there were 4592 buy orders for 3,73,85,295 shares placed by 110 buy brokers on behalf of 333 buy clients and there were 1976 sell orders for 56,94,403 shares placed by 78 sell brokers on behalf of 213 sell clients which resulted in 1864 trades for 25,92,500 shares. These details had been furnished to the appellants alongwith the show cause notice. It is, thus, clear that during patch I, the buyers were far in excess than the sellers and the number of shares offered for sale were far less than those for which buy orders were in the system. In such a situation the price of the scrip had to go up. It must be remembered that the price discovery mechanism of the stock exchanges works on the principle of demand and supply and if the demand is more than the supply, the price is bound to go up and this is the reason why the price of the scrip went up during patch I and not because the appellants were conniving with the Ganatra group. Same is the position with regard to patch II where the period is from March 20, 2007 to August 21, 2008. During this period there were 20,242 buy orders for 3,10,81,583 shares placed by 400 buy brokers on behalf of 1966 buy clients and there were 20,895 sell orders for 1,05,31,799 shares placed by 458 sell brokers on behalf of 1994 sell clients which resulted in 20176 trades for 2,29,44,675 shares.

Since the demand was far in excess of the supply, the price went up. Another interesting feature to notice here is that there were large number of buyers and sellers in both patch I and patch II and the appellants who were the sellers are only 10 in number and the Ganatra group which was buying consists of only 17 persons. It is clear that apart from the appellants and the Ganatra group there were large number of other buyers and sellers in the market which led to price increase. In this background, we cannot hold that the appellants and the Ganatra group connived to increase the price of the scrip.”

In view of Tribunal’s finding noted above, the appellant cannot be said to have connived with the promoter group. Let us now see what is the evidence available on record to show that the appellant colluded with its own group entities and entered into circular/synchronized trades. The details of trades in the scrip of the company by the appellant are as under:-

| Date     | Broker’s name | Buy qty. | Sell qty. | Net qty.<br>Buy +<br>Sell - | Avg.<br>Rate |
|----------|---------------|----------|-----------|-----------------------------|--------------|
| 06/11/06 | Ford Brothers | 100      |           | + 100                       | 6.91         |
| 30/11/06 | Arcadia       | 10,000   |           | + 10,000                    | 11.19        |
| 01/12/06 | Arcadia       |          | 6,400     | - 6,400                     | 11.64        |
| 04/12/06 | Arcadia       |          | 1,800     | - 1,800                     | 12.22        |
| 05/12/06 | Arcadia       |          | 1,800     | - 1,800                     | 12.82        |
| 18/12/06 | Arcadia       | 5000     |           | + 5,000                     | 10.53        |
| 11/01/07 | Arcadia       |          | 5,000     | - 5,000                     | 16.43        |
| 18/12/06 | Ford Brothers | 10,000   |           | + 10,000                    | 10.51        |
| 18/01/07 | Ford Brothers |          | 5,100     | - 5,100                     | 17.04        |
| 19/01/07 | Ford Brothers |          | 5,000     | - 5,000                     | 16.97        |
| Total    |               | 25,100   | 25,100    | 0                           |              |

It is the case of the appellant that he had not indulged in any fraudulent or unfair trade practice while dealing in the scrip of the company. All his transactions were carried out through the stock exchange mechanism during trading hours and were executed at the then prevailing market price. All these transactions were delivery based and there was real and effective transfer of beneficial ownership. At the time of entering into these transactions, the appellant was not holding any position in the company. He became Director of the company much later. Dr. Poornima Advani, learned counsel for the Board strenuously argued before us that the appellant was known to the Managing Director of the company and he (the appellant) facilitated the promoter group entities to offload their shares in

favour of the Ganatra Group entities. The fact that at a later date i.e. on August 1, 2007, the appellant was appointed as Director of the company and later became Managing Director of the company is sufficient proof of his connivance with the promoter group and his being a part of the Ganatra group in entering into circular trades. We are unable to accept the arguments of learned counsel for the Board. Even the Adjudicating Officer, while passing the impugned order has not been able to bring any evidence on record to indicate nexus of the appellant with other group entities and has inferred the collusion from attending circumstances. This is what he has said in para 17 of his order:-

“17. The abovementioned details prima facie, suggest about the connection/relation between the Noticee and the other group members. The said details also indicate relation/connection of the Noticee with GIL and its promoters. However, I am of the view that since in this regard **no other evidence is available to indicate direct nexus of the Noticee with the said other entities, it would be appropriate to infer collusion from the attending circumstances of the case that have been discussed below.**”  
(emphasis supplied)

The role of the appellant in purchase and sale of shares has been noted by him as under:-

“On 06.11.2006 the Noticee had purchased 100 shares from one of the Narendra Ganatra Group entities namely Manish Joshi by placing a buy order which was 4.88% above the last traded price (LTP). Further, the Noticee had bought a total of 10,000 shares on 30.11.2006 and 15,000 shares on 18.11.2006. The said 25,000 shares were bought by the Noticee from Vanechand Vora and Mridula Shah (two of the promoter group entities) as counterparty.”

After discussing other evidence available on record, the adjudicating officer has observed as under with regard to appellant's role:-

“30. In the aforesaid manipulative trades, **as far as individual role of the Noticee is concerned, I have noted that his trades are not very significant.** (emphasis supplied) During the investigation period he had purchased 25,100 shares of GIL and also sold the same number of shares. For his purchase of 25,000 shares the counter party sellers were the promoter group entities and for his one trade of 100 shares the buy order was placed at a price higher than LTP and the counter party seller was Bhavesh Pabari i.e. one of the Narendra Ganatra Group entities.”

However, in para 33 of his order, the Adjudicating Officer has concluded that although the individual trades of the appellant in the scrip are not many, he is not inclined to give him any benefit of doubt. We are of the considered view that it is here that the Adjudicating Officer has failed to arrive at the right conclusion. We should not lose sight of the fact that the charge against the appellant is of conniving with the group entities in creating false and misleading appearance of trading in the market and artificially raising the price of the scrip and for such a serious charge, higher degree of probability is required. Such a charge cannot stand on surmises and conjectures. The allegations in the show cause notice as well as in the impugned order are against the Ganatra Group entities. No evidence has been brought on record to show the role that the appellant has played in the group in executing synchronized or circular trades thereby creating false or misleading appearance of trading in the scrip. The appellant had traded only during the period from November 6, 2006 to January 19, 2007 in the price range of ₹ 6.90 to ₹ 17.00. During the investigation period, the price of the scrip rose from ₹ 2.94 on August 28, 2006 to ₹ 45.45 on November 12, 2007 and thereafter it came down to ₹ 14.85 on April 15, 2008 and increased to ₹ 51.80 on August 21, 2008. The price fluctuation during the period when the appellant traded was small in comparison to market volatility. Therefore, the appellant cannot be held guilty of manipulating the price of the scrip. We also notice that out of 446 days of trading where 2,55,37,175 shares were traded, the appellant traded only on ten days with a total buy and sell quantity of 25,100 shares. All his transactions were through the trading system and were delivery based. The connection of the appellant with other group entities is also restricted to his brother Nimesh Ganatra and Mr. Bhavesh Pabari. The fact that the appellant shares common address with his brother Nimesh Ganatra or has introduced Bhavesh Pabari to broker is not sufficient evidence to prove the charge of connivance in executing circular trades. The adjudicating officer has discussed in the impugned order the total shares sold and purchased by the Ganatra group entities but has failed to bring on record the role played by the appellant in



executing these trades. As far as individual role of the appellant is concerned, admittedly, his trades have not been considered 'very significant'. In the absence of any evidence on record, direct or circumstantial, against the appellant in manipulating the trades or raising the price of the scrip, he deserves to be given the benefit of doubt.

In the result, the appeal is allowed and the impugned order is set aside with no order as to costs.

Sd/-  
P. K. Malhotra  
Member

Sd/-  
S. S. N. Moorthy  
Member

29.07.2011  
Prepared & Compared by  
ptm