

**BEFORE THE SECURITIES APPELLATE TRIBUNAL  
MUMBAI**

**Appeal No. 63 of 2011**

**Date of Decision: 6.7.2011**

Shailesh M. Ved  
45, G.K. Bhatia Building,  
Room No.17, 2<sup>nd</sup> Floor,  
Vithaldas Road, Mumbai – 400 002.

..... Appellant

Versus

The Adjudicating Officer  
Securities and Exchange Board of India  
SEBI Bhavan, Plot No. C-4A, G Block,  
Bandra Kurla Complex, Mumbai – 400 051.

..... Respondent

Mr. Zal Andhyarujina, Advocate with Mr. Deepak Dhane, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Harshada Nagare, Advocate for the Respondent.

CORAM : Justice N. K. Sodhi, Presiding Officer  
P. K. Malhotra, Member  
S.S.N. Moorthy, Member

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

This order will dispose of two Appeals no.63 and 71 of 2011 which involve identical questions of law and fact. Since arguments have been addressed in Appeal no.63 of 2011, the facts are being taken from this case.

2. The appellant before us is an investor in the securities market and he has been trading in different scrips including the scrip of Nandan Exim Ltd. (hereinafter called the company). He is a director in Krishna Capshares (P) Ltd. which is the appellant in the other appeal. The shares of the company are listed on the National Stock Exchange of India Ltd., Bombay Stock Exchange Limited and Ahmedabad Stock Exchange. The Securities and Exchange Board of India (for short the Board) investigated the trading in the scrip of the company for the period from June 13, 2005 to September 30, 2005 and again for the period from September 20, 2006 to November 23, 2006. We are concerned with the subsequent period during which the appellant is said to have executed trades in the scrip of the company. On the conclusion of the investigations, the appellant was

charged with two violations. The first violation was in regard to Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. It was alleged that he placed buy orders in the scrip of the company at a price lower than the last traded price and was deleting such orders after some time. Investigations had also revealed that he was placing big buy orders and was later updating them with minor changes or without any change. By following this practice, it was observed that his orders were going in queue and the orders remained unexecuted and after some time those were being deleted. In short, the appellant is said to have been putting huge buy orders away from the market price revealing the entire quantity on the trading screen and subsequently updating and deleting the orders and, thus, created artificial buying pressure in the market and manipulated the order book. This according to the Board violated Regulations 3 and 4 of the Regulations. The second charge levelled against the appellant is that he failed to provide crucial information/documents during the course of the investigations whereby he prevented the Board from effectively gathering vital evidence. The appellant was summoned by the investigating authority to provide certain information/documents and was also required to appear in person with the requisite information. According to the Board, he repeatedly failed to comply with the summonses and, therefore, violated section 11C of the Securities and Exchange Board of India Act, 1992 (for short the Act). A show cause notice was issued to the appellant with the aforesaid two charges to which he filed his reply denying both of them. On a consideration of the material collected during the course of the investigations and the enquiry conducted by the adjudicating officer, she found that both the charges stood established and by her order dated December 30, 2010 she imposed a monetary penalty of ₹ 15 lacs on the appellant. ₹ 5 lacs was the penalty for not complying with the provisions of section 11 C of the Act and a sum of ₹ 10 lacs for violating Regulations 3 and 4 of the Regulations. It is against this order that the appellant has filed the present appeal.

3. We have heard the learned counsel for the parties who have taken us through the record and the impugned order. We shall first deal with the charge relating to the violation of Regulations 3 and 4 of the Regulations. The details of the trades and orders placed by the appellant in the scrip of the company are as under:-

Date	Buy Order Qty	Buy Trade Qty	Diff	Sell Order Qty	Sell Trade Qty	Diff	Buy trade Value	Sale Trade Value
17/10/06	7,417,463	1,809,365	5,608,098	2354266	1,809,365	544,901	31574910.48	32,167,219.97
18/10/06	3,265,732	360,000	2,905,732	670784	341,640	329,144	6283122.92	5,854,722.48
19/10/06				18360	18,360	0		314,958.37
27/10/06	5,070,978	1,162,114	3,908,864	2011666	1,162,114	849,552	18758583.33	18,744,488.87
30/10/06	11,198,101	2,452,561	8,745,540	2728794	2,452,561	276,233	37150632.05	37,291,428.38
31/10/06	14,010,274	1,546,474	12,463,800	2042164	1,546,474	495,690	24005391.67	23,987,137.22
1/11/06	7,103,787	1,696,577	5,407,210	2004151	1,696,577	307,577	25498139.35	26,348,557.15
2/11/06	15,887,249	1,205,245	14,682,004	1496144	1,205,245	290,899	17672383.95	17,709,529.50
3/11/06	4,046,778	688,926	3,357,852	911667	688,926	222,741	9369393.6	9,437,261.80
6/11/06	8,649,463	216,079	8,433,384	216079	216,079	0	3046244.2	3,079,125.75
7/11/06	11,391,800	779,474	10,612,326	1391930	779,474	612,456	10828594.4	10,910,897.70
8/11/06	4,000,429	96,591	3,903,838	123409	96,591	26,818	1246053.65	1,252,151.10
9/11/06	1,920,214	427,470	1,492,744	580096	427,470	152,626	5345893	5,350,787.15
10/11/06	2,194,845	5,155	2,189,690	6803	4,500	2,303	61860	54,225.00
Total	96,157,113	12,446,031	83,711,082	16,556,316	12,445,376	4,110,940	190841202.6	192,502,490.44
Total Buy trade value and Sale Trade Value		38.33 crore						

The adjudicating officer has also relied upon this chart as it correctly depicts the trade and order logs of the appellant. The appellant claims to be a day trader who buys and sells shares during the course of the day and squares off his position at the end of the day. It is clear from the aforesaid chart that on 13 days when the appellant placed his buy orders, he could square off his position on 11 days when the shares bought and sold during the course of the day were the same and he only made profit/loss to which he was entitled and he had no obligation to deliver or to pay during the course of the settlement. It is only on 18<sup>th</sup> of October, 2006 and 10<sup>th</sup> of November 2006 that the total number of shares purchased by the appellant did not tally with those sold during the course of those days and the difference is nominal. On the basis of the aforesaid trading pattern of the appellant, the adjudicating officer has found that he had been placing huge quantities of buy orders and those which actually resulted in trades were comparatively much less from which an inference has been drawn that the appellant has been putting in buy orders without the intention of getting them executed and it is for this reason that the buy orders were being placed at a price lower than the last traded price. This, according to the adjudicating officer, resulted in creating artificial buying pressure in the market and manipulating the order book. The adjudicating officer holds that such acts of the appellant created false appearance of trading in the scrip of the company and misled the gullible investors. It is on this basis that she holds the appellant guilty of violating Regulations 3 and 4 of the Regulations which prohibit persons from buying, selling or otherwise dealing in securities in a fraudulent manner and from indulging in fraudulent

and unfair trade practices in securities. Having examined the trading pattern of the appellant, we are not inclined to agree with the adjudicating officer. It is true that the appellant had been placing huge buy orders and that those which resulted into trades were comparatively less. For instance, on November 2, 2006 the appellant had placed buy orders for 1,58,87,249 shares whereas he could only purchase 12,05,245 and sold an equal number on that day. Instead of drawing an inference that the appellant did not have the intention of getting his buy orders executed into trades because the orders were being placed at a price lower than the last traded price, one could also infer that as a day trader the appellant wanted to buy and sell large quantities of shares but could manage to buy and sell only 12,05,245 which again is not a very small number. Again, from the fact that the orders were being placed at a price lower than the last traded price, it is reasonable to infer that the appellant was following the normal *market mantra* of “buy low sell high”. It is reasonable to infer that as a genuine buyer the appellant wanted to buy at the rate slightly lower than the last traded price and this is what he did. This is clear from the price at which he had put in his buy orders. It must be remembered that day traders who trade during the course of the day usually net their position like the appellant did and their profits are extremely low and in order to make good profit, they need to trade in high volumes. It could be for this reason that the appellant put in buy orders for 1,58,87,249 shares on November 2, 2006 and there is nothing unnatural about it. Similar is the trading pattern on the other days as depicted in the aforesaid chart. A charge of manipulative trading like the one levelled against the appellant is a serious charge which involves fraud and, therefore, has to be established with a high degree of probability. Looking at the trading pattern of the appellant, we do not find that the charge is established with the required degree of probability. In this view of the matter, we set aside the findings of the adjudicating officer on the first charge.

4. Now coming to the second charge regarding the violation of section 11 C of the Act. Here we find that a number of summonses had been issued to the appellant to furnish detailed information during the course of the investigations. The appellant had been asked to furnish the details of the scrips other than that of the company in which he had traded and also the source of money that had come into his bank accounts. A copy of the demat account and the bank account statements were also asked for. Some of the

information was furnished. When we look at the bank account statements we find that large sums of money were deposited in cash on a day to day basis during short intervals. The source of these cash and other deposits/entries has not been adequately explained. It is, therefore, not enough to impose a monetary penalty of ₹ 5 lacs on the appellant and leave the matter at that. This is what the adjudicating officer has done. We, therefore, set aside the findings on the second charge and remit the case to the Board with a direction to call upon the appellant to explain the source of the monies which came into his account on the basis of which he was trading in the securities market. We are issuing this direction because we are conscious that section 11 of the Act enjoins a duty on the Board to protect the integrity of the securities market and this duty makes it obligatory on the Board to ensure that tainted/unaccounted money does not come into the securities market. On the basis of the findings that the Board records after getting full information from the appellant it shall be open to it to proceed further in the matter in accordance with law. The appellant is directed to co-operate with the Board in this regard.

#### **5. Appeal no.71 of 2011**

Krishna Capshares Pvt. Limited is the appellant in this appeal. The primary charge against it is that it aided and abetted Shailesh M. Ved, the appellant in Appeal no.63 of 2011 in executing manipulative trades in the scrip of the company. Since the charge of manipulative trades against Shailesh M. Ved has not been established, this charge against the appellant must fail.

6. The other charge levelled against the appellant is that it failed to co-operate with the investigating officer and did not respond to the summonses issued to it requiring it to furnish information which was necessary for investigating the trading in the scrip of the company. Admittedly, two summonses had been issued to the appellant to which it did not respond nor did its representative appear before the investigating officer. We are, satisfied that the violation of section 11 C of the Act stands established against this appellant. The adjudicating officer has imposed a penalty of ₹ 5 lacs for this violation which is upheld.

In the result, both the appeals are partly allowed. Appeal no.63 of 2011 is remanded to the Board for proceeding against the appellant for violation of section 11 C of the Act and then proceed in accordance with law. In Appeal no.71 of 2011 the

findings of violation of the Regulations is set aside whereas the findings on the other charge upheld. The appellant in Appeal no.63 of 2011 is directed to appear in the office of the Board on July 25, 2011 for further proceedings. There is no order as to costs in both the appeals.

Sd/-  
Justice N.K.Sodhi  
Presiding Officer

Sd/-  
P.K. Malhotra  
Member

Sd/-  
S.S.N. Moorthy  
Member

6.7.2011  
Prepared and compared by  
RHN