BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No.37 of 2010

Date of decision: 30.7.2010

Ms. Smitaben N. Shah
18, Manekbaug Society,
Ambawadi, Ahmedabad. ….. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C-4A,
G Block, Bandra Kurla Complex,
Mumbai. ……Respondent

Mr. P.N. Modi, Advocate with Mr. Ranjit Bhosale, Mr. Joby Mathew, and Mr. Deepak Dhane, Advocates for the Appellant.

Mr. Shiraz Rustomjee, Advocate with Mr. Nikhil Pai, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

Per : Justice N.K. Sodhi, Presiding Officer

This order can conveniently dispose of a group of five Appeals no.37 to 39 and 52 of 2010 and 282 of 2009 which were all heard together as they arise out of similar sets of facts and raise identical questions of law. Since the main arguments were addressed in Appeal no.37 of 2010, the facts are being taken from this case. Reference to the facts of other cases shall be made wherever necessary.

2. Nissan Copper Ltd. (hereinafter called the company) came out with an Initial Public Offering (IPO) of 64.10 lac equity shares with a price band in the range of Rs.33/- to Rs.39/-. The issue opened on December 4, 2006 and closed on December 8, 2006. It was oversubscribed by 5.25 times and the issue price was finalized at Rs.39/- per share. 45 per cent of the issue size (28.85 lac shares) were required to be subscribed by Qualified Institutional Buyer(s) (QIB). Only one QIB, namely, Venus Capital Management Inc. and its two sub accounts, namely, Vacuf Ltd. and ITF Mauritius

(individually referred to hereinafter as Venus, Vacuf and ITF respectively and collectively as QIB) subscribed for 43.67 lac shares in the QIB category and received allotment of the entire quota of 28.85 lac shares. The shares of the company were listed on the Bombay Stock Exchange Ltd. and the National Stock Exchange of India Ltd. (for short BSE and NSE respectively) on December 29, 2006 which was the first day of trading on the stock exchanges and the next day of trading was January 2, 2007. On the day of listing, the shares of the company opened at Rs.39/- on NSE and Rs.40/- on BSE and closed at Rs.130.90/- on NSE and Rs.128.80/- on BSE. The total traded quantity on the first day of trading was around 7 crore shares on NSE and around 6.11 crore shares on BSE. Spurt in price, traded quantity and the delivery percentage on the first day of listing aroused suspicion of the Securities and Exchange Board of India (referred to hereinafter as the Board) and it ordered investigations. By letter dated January 2, 2007, the Board advised the stock exchanges to withhold the pay-out of securities and funds for the trading done on December 29, 2006 and January 2, 2007 for a period of 15 days and to shift the trading in the scrip to trade-to-trade segment with immediate effect. This precautionary measure was adopted as the pay-out of securities and funds for the trades executed on December 29, 2006 were due on January 3, 2007.

3. Pending investigations, the then whole time member of the Board by a detailed ad-interim ex-parte order dated January 17, 2007 directed the stock exchanges to withhold the profits/gains of as many as 40 entities including the appellants and put the same in a separate escrow account. They were also directed to release the funds and securities pay-out of December 29, 2006 and January 2, 2007 with immediate effect. The Board also restrained some stock brokers from trading in the market but we are not concerned with them in these appeals. The persons/entities against whom the ex-parte order was passed were given an opportunity to file their objections, if any, within 15 days from the date of the order. It is pertinent to mention that in the ex-parte order the Board found that several persons/entities which traded in the scrip of the company formed separate groups and the two groups which dealt with QIB are the Vora group and the Reniwal group. All the appellants were identified as a part of the Vora group and we are only concerned with this group in the present appeals. Members of this group allegedly

led by one Dhiren Vora are said to have acted in concert with each other in cornering the shares of the company from QIB through structured/synchronized trades.

4. On completion of the investigations, the Board served a common show cause notice dated November 7, 2007 on 21 entities including the appellants who had purchased the shares and were collectively referred to as the connected buyers, pointing out that within a few minutes of the commencement of the trading on December 29, 2006, the QIB offloaded its entire allotted quantity of 28.85 lac shares in the market in quick successive trades of large quantities without the expected price fall which is usually associated with such large sales. It is alleged that because of the similar trading pattern adopted by these 21 entities, they acted in concert with each other and cornered the shares from the QIB by devising a scheme whereby the latter was given an exit route to offload the shares at a predetermined price on the listing day. This scheme, according to the show cause notice, was meant to prevent a fall in the price of the scrip that accompanies such large sales. Investigations revealed that all the 21 noticees were connected to each other, some of them through financial dealings while others through family relations or business links. The manner in which each of the noticees was connected to the other(s) is given in Annexures 1 and 2 to the show cause notice. The noticees allegedly had a design to suck out the liquidity of the shares of the company from the market thereby creating an artificial scarcity of shares. The noticees are said to have executed structured trades with Venus, Vacuf and ITF though the appellants are shown to have executed such trades only with Venus and Vacuf. Some of the details of the structured trades were furnished to the noticees in the show cause notice though the details were not complete. Having made all these allegations, the show cause notice states that these establish that the offloading of the shares on the first day of trading was premeditated and thereby the noticees including the appellants violated the provisions of Regulations 3 (a) and (c) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter called the Regulations). The noticees including the appellants were called upon to show cause why suitable directions be not issued to them under sections 11 and 11B of the Securities and

Exchange Board of India Act, 1992 including the direction to impound and retain the money already withheld in terms of the ex-parte order dated January 17, 2007.

5. The appellant filed her reply on July 8, 2008 emphatically denying all the allegations. She made a grievance that the data supplied in the show cause notice and the Annexures thereto in so far as they related to the appellant are an interpretation of the trade and order logs which were never made available to her despite a specific request to furnish the same alongwith other documents and records relied upon by the Board. The case set up by the appellant is that she placed orders for the purchase and sale of shares with her brokers in the normal course of trading and that she acted on her own and that she was neither aware nor connected with others who placed such orders for the same scrip with her broker. Referring to the two Annexures to the show cause notice pointing out her connection with other entities, she stated that her name does not figure in Annexure 1 at all and that besides being a sister-in-law of Dhiren Vora she was not a part of the Vora group or any other group as wrongly alleged and that she has no concern with the trades executed by Venus, Vacuf or ITF. Paragraphs 13 and 14 of her reply bring out the case as set up by her and these are reproduced hereunder for ease of reference:

> "13. With regard to paragraphs 22 to 27, of the captioned show cause notice, I submit that:-
>
> (a) I placed orders with my brokers on the Bombay Stock Exchange Limited ("BSE") and the National Stock Exchange of India Limited ("NSE") (Collectively referred to as "Stock Exchanges") in the normal course of business and acting on my own. I am not aware of or concerned with the orders placed by the other persons/entities with my brokers.
> (b) I placed the order to purchase shares of Nissan Copper Limited with brokers Limited at a price of Rs.30/- per share at 10:10:14 am even as per the tables in paragraph 23.
> (c) I intended to purchase the shares since I was enthusiastic about the prospects of the company i.e. Nissan Copper Limited and could not gather sufficient number of shares in the IPO. I had also anticipated that he price of the scrip would rise in the course of the day or in a couple of days and hence wanted to invest substantially in the scrip.
> (d) As my orders remained unexecuted for around 30 minutes and therefore, I modified the orders by increasing the price to Rs.46.50 per share at 10:35:53 and my modified order for shares allegedly matched with the sell order placed by Vacuf Limited.
> (e) My trading behavior is consistent with normal trading behavior of any investor who foresees a short term profit opportunity in a newly listed share.
> (f) It is pertinent to note that the orders and modifications of the orders were made in accordance with the rules, regulations and bye-laws of the Stock Exchanges and therefore, valid and permitted under law. Unless it is shown by SEBI that the said trades by me were part of a larger scheme to

defraud investors and my role in the said scheme is clearly established. It is erroneous to allege that the buy orders placed by me were "kept alive" until the sell orders were placed by Vacuf Limited.

(g) I was not aware of the intention of Vacuf Limited to sell or the price or time at which they would place their sell orders. In this regard, it is pertinent to note that there is no allegation that I am connected to or acted together with Vacuf Limited; and therefore, the allegation that my orders were synchronized with that of Vacuf Limited and that the trades were structured trades is false, malicious, mischievous and completely unsustainable.

14. With regard to paragraphs 28 to 32, I submit as under:-

(a) I deny that I was connected with any of the other buyers in any manner whatsoever. As per the data given by SEBI, buy orders of 20 buyers including me have "matched" with that of Venus Capital Management Inc and its two sub-accounts i.e. ITF Mauritius and Vacuf Limited; however, in Annexure 2, I am shown to be connected only with buyers and that too because I had "large value fund transfer" with them. It is pertinent to note that SEBI has not mentioned whether the buy orders that matched with the sell orders were the only orders on December 29, 2006 and if not what the details/proportion of the other orders were. This once again shows that SEBI has acted upon presumptions and surmises and not on evidence brought out in investigations.

(b) SEBI has not disclosed why it considers the price of Rs.30/- at which I first placed orders as being unrealistic. Without doing so, SEBI has wrongfully arrived at a conclusion that I placed the order at Rs.30/- with the intention of ensuring that the order remained unexecuted till sell orders were placed by the Flls.

(c) My trading behavior may be similar to that of others, but that cannot mean that I acted as part of a premeditated scheme and in any case, while I placed orders with my brokers, I cannot be responsible for all trades under taken by the brokers and I cannot be held to have acted together with all clients who traded through the said stock broker.

(d) I once again deny that I was connected to any of the buyers and further deny that I have "cornered" any shares or that I was part of any scheme intended to provide an exit to the Flls or to such out liquidity or to create an artificial market for the shares.

Similar is the reply filed by the other appellants. On a consideration of the reply filed by the appellant and taking note of the facts as they emerged from the record and the written and oral submissions of the appellant and the material collected during the investigations and the enquiry, the whole time member found that the appellant who formed a part of the connected buyers had dealt in the shares of the company in a fraudulent manner. Referring to one buy order of the appellant for the purchase of 70,000 shares of the company on NSE on the first day of listing and considering the fact that the same had been modified subsequently which resulted in several trades with Vacuf, he found that there was fine synchronization of order placement and modification even though it involved a QIB and from this he concluded that the appellant was a part of the connected buyers and that the connected buyers arranged QIB subscription for the IPO with the

assurance of an exit. The whole time member went on to hold that the connected buyers including the appellant had employed a scheme to grant exit to the QIB on the day of listing and accordingly the QIB sold its entire stock of shares which were purchased by the connected buyers through structured deals. By his order dated December 30, 2009 he found the appellant guilty of violating Regulations 3(a) and (c) of the Regulations and impounded the unlawful gains made by her and directed NSE to remit the same to the Board alongwith interest accrued thereon within 15 days from the date of the order. She has also been restrained from buying, selling or dealing in securities market in any manner whatsoever directly or indirectly for a period of 3 years from the date of the order. Similar orders have been passed in the case of other appellants as well and identical directions issued. These orders are under challenge before us.

6. We have heard the learned counsel on both sides who have taken us through the record. At the outset, it may be mentioned that the appellant was a day trader in the scrip of the company and that she traded not only on the first day of trading but also on the following day i.e. January 2, 2007 and that on both these days she traded on NSE as well as BSE. The details of her trades on the first two days of the trading which are not in dispute are as under:

Date	Client Name	Scrip Name	Purchased Qty	Purchase Value	Purchase Price	Sale Qty	Sale Price	Sale Value	Profit Loss	Exchange
12/29/2006	Smitaben Shah	Nissan Copper	70,000	3,255,700.00	46.51	70,000	130.57	9,140,239.55	5,884,539.55	NSE
		Nissan Copper	70,000	4,163,950.90	59.49	70,000	125.41	8,779,023.05	4,615,072.15	BSE
1/2/2007	Smitaben Shah	Nissan Copper	50,000	7,785,849.95	155.72	50,000	130.18	6,609,034.40	- 1,276,815.55	NSE
		Nissan Copper	70,000	10,814,138.15	154.49	70,000	103.24	7,226,800.00	- 3,587,338.15	BSE

As can be seen from the chart reproduced above that the appellant purchased 70,000 shares on NSE on the first day of trading and sold those shares on that very day and squared off her position like any other day trader. She did day trading not only on NSE but also on BSE on the first day and bought and sold 70,000 shares on that exchange as well. Again, she traded on the second day of trading on both the exchanges and squared off her position with a net loss on both the exchanges. It is pertinent to note that the Board has found fault only with her one buy order of 70,000 shares on NSE on the first day of trading and has found no fault with the sell orders on the same day on the same

exchange. It has also not found any fault with her trades on the BSE on the first day of trading nor with the trades on BSE and NSE on the second day of trading. The other appellants are also day traders and had traded on NSE and BSE on both the days like Smitaben Shah.

7. We may now deal with the contentions raised by the learned counsel for the appellant. The first argument of Shri P.N. Modi Advocate is that the principles of natural justice had been violated in as much as the appellant had not been furnished with the trade and order logs repeatedly asked for by her which formed the basis of the charges levelled against her. There is merit in this contention. As already noticed, the primary charge against the appellant is that she alongwith other buyers who also had a similar pattern of trading, had devised a scheme to allow the QIB an exit route to offload their shares on the first day of trading. In support of this charge, the Board in the show cause notice had given to the appellant charts containing some selective data culled out from the trade and order logs of the exchange pertaining only to trades of the so called connected buyers including the appellant. We do not think that this data was enough. On the first available opportunity, that is, in response to the ex-parte order dated January 17, 2007, the appellant demanded from the Board complete trading history of the scrip on BSE and NSE for December 29, 2006 and January 2, 2007 and more particularly such data that was prevalent at the time when she executed her trades/transactions. Again, in her reply to the show cause notice she demanded the trade and order logs and stated "….it is pertinent to note that SEBI is yet to furnish me with copies of the trade and order logs based on which the tables in paragraphs 4, 6 and 7 are based. Thereby, SEBI has denied me an opportunity to submit complete and comprehensive replies to the allegations made against me." She asked for this material because, according to her, she was not a connected buyer and wanted to know whether she and the alleged connected buyers were the only ones who had similar trading pattern or whether there were other buy and sell orders as well on the trading screen which showed a similar pattern of modification of orders. This information could come only from the trade and order logs which were not supplied to the appellant. It was legitimate for her to know how many other orders were there on the screen and at what rate and how many of those orders were

modified and to what extent and how many of those resulted in trades. If this information had been favourable to her it could have changed the fate of the case. The learned counsel for the respondent Board contended that the trade and order logs pertaining to the two days of trades were voluminous and, therefore, it was not feasible to furnish the same to the appellant. We cannot accept this plea. If the records asked for were voluminous, the appellant should have been allowed inspection and since they were in the electronic form, she could have been furnished with a soft copy at her own expense. We may hasten to add that trade and order logs asked for by the appellant are on the records of the stock exchanges as well as with the Board and there is nothing confidential about them. The grievance that the appellant had not been supplied with the trade and order logs was also made before the whole time member and he rejected this contention with his observations in paragraph 8 of the impugned order and this is what he said:

> "There is absolutely no dispute about the facts – the order timing and the transaction values. The trade log and order log are relevant if there is dispute about the trades/orders placed by the noticees. In any case, SEBI is not under obligation to arrange and provide all the records and documents that the accused may need and even may not need to defend itself. The tests of natural justice are met if the records relied upon are provided and I find that the same has been provided."

We do not agree with the whole time member. If the documents asked for are relevant and may help the delinquent to prepare his/her defence they have to be furnished and it is not correct to say that only the documents relied upon in the show cause notice alone are to be supplied to meet the ends of justice. Let us not forget that the details in the charts relied upon in the show cause notice have been culled out from the trade and order logs and, in the circumstances of the case, it was not only relevant but even necessary that the appellant be furnished with those trade and order logs so that she could possibly make out a case based on other orders punched into the system. The appellant had repeatedly pointed out the relevance of these documents to prepare her defence. We are, therefore, satisfied that non furnishing of the trade and order logs to the appellant in the circumstances of this case resulted in the violation of the principles of natural justice. In this view of the matter, we were inclined to remand the case to the Board for a fresh enquiry. However, the learned counsel for the appellant strenuously urged that we should

decide on merits the other issues and that he did not want the case to be sent back to the Board on this ground.

8. The case of the Board proceeds on the basis that the 21 persons/entities including all the appellants to whom the show cause notice dated November 7, 2007 had been issued were connected to each other and that they designed a scheme to provide an exit to QIB by way of structured trades at a predetermined date, time and price. The connection of each noticee with the other is given in Annexures 1 & 2 to the show cause notice and they have all been described as "connected buyers" which term, according to the Board, means that they jointly designed and executed trades and acted in tandem. It is also the case of the Board that the appellants before us had a similar trading pattern even though it involved a QIB and its two sub accounts and from this it has concluded that the appellants were part of the connected buyers. The appellant in her reply has emphatically denied that she had any connection with any other noticee save and except that she is the sister-in-law of one Dhiren Vora featuring among the 21 noticees. She has denied that she was a part of the Dhiren Vora group or any other group and it is her case that she placed orders on the two exchanges through her broker in the normal course of business and acting on her own. She also states that she was not aware or concerned with the orders placed by the other persons/entities through her broker. According to her she wanted to purchase the shares as she was enthusiastic about the prospects of the company and that she had anticipated that the price of the scrip would rise either in the course of the day or in a couple of days. The other appellants have also denied their connection with any other noticee in Annexure 2 and their stand is that they are also not connected buyers.

9. From the rival stands of the parties what we need to examine is whether the appellants had any connection with any other noticee and whether they were a part of the "connected buyers". As already observed, the connection of the appellants with the other entities has been given in Annexures 1 and 2 to the show cause notice and we have carefully perused these Annexures. Annexure 1 is a bank statement analysis of some persons/entities and the names of the appellants do not figure anywhere in this Annexure. This Annexure indicates some financial relations between the company and one Shanti

Swaroop Reniwal who is shown to be heading the so called Reniwal group. His name also appears among the noticees. The Reniwal group is said to have advanced some loans to Dhiren Vora HUF which are shown to have been returned. There is a rectangular box in Annexure 1 which mentions the words "Vora group" which is said to have some connection with Dhiren Vora and some others without identifying those who constitute this group. Then we have Annexure 2 with a heading "Connections Between Major Buy Clients" and it reads "The relationship between the Noticees 1 to 16 who were related to each other in addition to their inter se fund transactions (Annexure 1) is given below:" This Annexure then gives details of 23 persons/entities who are said to be connected with each other. The name of the appellant, Smitaben N. Shah appears in the list as also the names of three other appellants namely, Deven Patel, Tejas Patel and Kirtiben Patel. Interestingly, the name of Mahesh P. Gandhi, the appellant in Appeal no.282 of 2009 does not feature in the list of connected buyers though he, too, has been held guilty as a connected buyer alongwith the other appellants. Smitaben Shah is shown to be connected only to Dhiren Vora. She is his sister-in-law. On a query made by us during the course of the hearing, we were informed that her husband's sister is married to Dhiren Vora. There is no other connection either with Dhiren Vora or with any other person/entity mentioned in Annexure 2. There is also no business or financial connection with any of the entities referred to in Annexure 1. Dhiren Vora was summoned to appear before the investigating officer on May 22, 2007 and he made a statement on his own behalf and on behalf of Sonal U. Vora, Uday Vora, Sonali Dhiren Vora, M/s. Deep Infrastructure (P) Ltd. and M/s. Parklight Securities Ltd. In his answer to the very first question he stated that he was making the statement on behalf of Vora group. From this fact one can assume that the persons/entities on whose behalf Dhiren Vora made the statement constituted the so called "Vora group". There is no other material on the record to show who all were the members of the Vora group. If this is the Vora group, none of the appellants figure therein and Dhiren Vora did not represent them. As already noticed, the only connection of Smitaben Shah with the persons mentioned in Annexure 1 is that she is related to Dhiren Vora. This relationship by itself cannot lead us to conclude that she was a part of the "connected buyers". Apart from Smitaben Shah, the

names of the other three appellants also figure in Annexure 2. Their so called "connection" with each other or with the other entities as shown in the Annexure is even more tenuous to hold them as part of the connected buyers who are said to have traded fraudulently in connivance with others. Deven Patel is said to be a connected buyer only because he has financial dealings with one Rajesh Kumar Patel whose name also figures among the noticees. What kind of financial relation they had is not known nor have the details of this relationship been spelt out either in the show cause notice or in the impugned order. There is also no other material that could throw any light on this matter. Deven Patel is being roped in because Rajesh Kumar Patel is said to have floated Parklight Securities Ltd. which is supposed to have been acquired by Dhiren Vora group. Then we have Tejas Patel another appellant before us. He has also been described as a connected buyer. His connection is based on some bank statements the particulars of which have not been referred to either in the show cause notice or in the impugned order on the basis on which there are said to have been large value fund transfers between him and the aforesaid Rajesh Kumar Patel, H. Nyalchand and Parklight. H. Nyalchand Financial Services Limited is a broking company of which Dhiren Vora is a director. There are two Parklight companies and which one is being referred to is not known. There is one Parklight Securities Limited which was a buyer of the shares of the company from QIB and there is another Parklight Investments Private Limited which is a broking company. This is the only connection on the basis on which the Annexure identifies Tejas Patel as a connected buyer. We wonder what the connection is. Kirtiben Patel, the wife of said Rajesh Kumar Patel is another appellant before us. She is said to be a director of Parklight Securities Limited which company traded through H. Nyalchand Financial Services Limited of which Dhiren Vora is a director. It is common case of the parties that Kirtiben Patel resigned as a director in June, 1992 long before the impugned transactions took place. This connectivity is again as vague as in the case of the others to make her a connected buyer. As already observed, Mahesh Gandhi, the appellant in Appeal no.282 of 2009 does not figure in any of the two Annexures to the show cause notice though in the impugned order he has also been shown as a connected buyer. We were wondering how this could be and the ex-parte ad-interim order gives us the reason

why he was roped in. He along with the other appellants had purchased shares through the same broker M/s. Religare Securities Limited and that is why they have been artificially grouped together. This is borne out from the allegation made in the show cause notice as well. This leaves us with an impression that there has been non application of mind while establishing the connectivity between the appellants and the other noticees or between themselves. Having examined the connections of the appellants with the other entities referred to in Annexure 2, we are satisfied that the Board has failed to establish any link worth the name between these entities while they dealt in the scrip of the company. It is surprising that a conclusion about connectivity between the buyers including the appellants has been drawn on the basis of such jumbled up data and tortuous relationship without even recording the statement of any of the appellants particularly when Dhiren Vora is not owning up any of the appellants as part of his so called group. We cannot lose sight of the fact that a serious charge like fraudulent trading cannot be established on the basis of these tenuous and farfetched connections. In this view of the matter, we have no hesitation to hold that the appellants did not act in tandem with any of the entities referred to in Annexure 2 as alleged in the show cause notice and found by the whole time member.

10. The so called connectivity between the appellants has also been sought to be established by the similarity of their trading pattern in the scrip of the company. It is alleged that all the appellants had, on the first day of trading, placed an original buy order for 70,000 shares at a uniform rate of Rs.30/- per share on NSE and BSE at around the same time and modified their orders in a 17 seconds window on NSE at a uniform price of Rs.46.50 and on BSE at Rs.47.50. This proximity of time in placement of buy orders between the appellants at identical rates cannot make us overlook the fact that all the appellants traded through the same broker M/s. Religare Securities Limited as independent clients and the similarity of order placement through the common broker is not such an unusual feature which may lead us to conclude that the appellants were acting in collusion for a fraudulent trade. Again, we are satisfied that the appellants did not place orders for the purchase of identical number of shares and that their orders were for varied quantities through the same broker. Smitaben Shah had placed an order for the

purchase of 70,000 shares on NSE and an equal number on the BSE. The Board has called in question only the purchases made by her on the NSE. Deven Patel and Tejas Patel purchased 1,05,000 and 1,65,000 shares respectively on NSE and only the purchase of 70,000 shares by each of them have been called in question. They also purchased 70,000 shares each on BSE on the first day of trading and only Deven Patel's purchases on BSE have been questioned. Kirtiben Patel also purchased 70,000 shares each on NSE and BSE and all her trades have been impugned. Again, on the second day of trading i.e. on January 2, 2007, they have all traded on both the exchanges for similar quantities and in a similar manner but those trades have not been called in question. By challenging only the purchases of 70,000 shares by each of the appellants on the first day of trading, the Board has brought them on a common platform created artificially to hold that they were acting in tandem. In the case of Mahesh Gandhi, his trading pattern is not akin to the trading pattern of other four appellants and he, too, has been dubbed as a connected buyer only because he traded through the same broker. We find no material on the record which could show that Mahesh Gandhi was in any way connected with any of the connected buyers. Thus, the grouping of the appellants together as connected buyers which the learned counsel for the Board argued so assiduously fails on all counts. It follows that the appellants acted on their own while dealing in the shares of the company and the charge levelled against them that they acted in tandem to provide an exit to the QIB falls flat.

11. Before we conclude, we may deal with two peripheral issues that have been raised in the show cause notice and which were argued before us though no findings have been recorded on those issues in the impugned order. It is alleged that to disguise their trades the appellants entered the orders at the beginning of the day at unrealistic prices so that the orders did not result into trades and at an appointed time updated the price to match the sell order of the QIB. As already noticed above, the original order was placed at the rate of Rs.30 per share which was subsequently modified upwards which is said to have resulted in trades with QIB. This allegation cannot stand scrutiny even for a moment. The show cause notice in paragraph 27 itself states that "most of the buy orders did not get executed or were executed for insignificant quantities prior to the final updation …".

A finding to this effect has been recorded in the ex-parte order as well. It is, therefore, admitted and the learned counsel for the Board could not dispute that some of the orders at the original rate, though for insignificant quantities did get executed. Even if one trade gets executed at the rate of Rs.30/- as put in by the appellants, how can it be said that the rate was unrealistic. Obviously, there were persons to sell the shares at that rate. It is by now well settled that every trade establishes the price of the scrip. We cannot lose sight of the fact that the impugned purchase orders of the appellants had been executed on the first day of trading when there was no circuit filter on the price range of the scrip and the price discovery mechanism of the stock exchanges was in full play to discover the price. The price discovery mechanism allows a free play of the forces of demand and supply on the basis of which the price is discovered. In other words, the price is what a willing buyer pays to a willing seller. When the price discovery mechanism is in operation on the first day of trading, it is not unusual for buyers and sellers to put in orders of their choice, unhindered by any limit put by the circuit filter as they would be testing the waters. It is, therefore, prudent and quite usual for a buyer to put in orders at a low price and for a seller at a high price because it is natural that a buyer will want to buy at the lowest price and the seller would like to sell at the highest available price. 'Buy low and sell high' is the mantra of any market including the securities market. The fact that only insignificant quantity of orders of the appellants got executed as trades at the rate of Rs.30 per share goes to show that their initial exercise of testing the waters proved successful only to a very limited extent and they had to raise the bar to get the desired quantity of shares. This pattern of trading is not unusual to cause any alarm.

12. We may now refer to the second peripheral issue pertaining to the charge levelled in paragraph 32 of the show cause notice. It is alleged that when the QIB offloaded 28.85 lac shares on the first day of trading, these were cornered by the connected buyers including the appellants through similar trading pattern and they had a design to suck out liquidity of the shares of the company from the market thereby creating an artificial scarcity of shares and the insinuation is that this prevented the fall of the price of the scrip inspite of large scale offloading of shares by the QIB. The learned counsel for the Board very emphatically argued that the appellants alongwith the other connected buyers had

placed orders for the purchase of large quantities of shares and those having matched with the sell order(s) of the QIB resulted in sucking out liquidity and creating artificial scarcity in the market. This allegation is also without any basis. We have already held that the appellants were not connected buyers and that they were trading on their own in the market. This apart, we are also of the view that the appellants were not sucking out liquidity from the market because all of them were day traders and the quantity of shares purchased by them had been sold in the market on the same day. When all the shares bought had been sold on the same day, where is then the sucking out of the shares from the market. As a matter of fact, the appellants did not suck out even one share from the market. This fact appears to have been lost sight of by the Board while framing the charges and the whole time member seems to be right in not recording a finding on this issue. We also cannot agree with the learned counsel for the Board that the appellants had purchased large quantity of shares with a view to corner them from the QIB. The purchases made by the appellants which have been called in question are only 70,000 shares each on the first day of trading. We cannot lose sight of the fact that the IPO had been over subscribed by 5.25 times which means that for every one share allotted there was an unmet demand for more than four shares and the market opened on the first day of trading with this appetite. It was, therefore, natural that investors/traders would throng the market to purchase the shares in large quantities which is evident from the fact that more than 13 crore shares of the company were traded on the first day of trading on both the exchanges. It is pertinent to mention that despite the sale of 28.85 lac shares by the QIB on the first day of trading, the market demand was more than the supply as a result of which the intra-day price of the scrip showed an upward trend. In this backdrop, the purchase of 70,000 shares by each of the appellant is just a drop in the ocean and cannot by any standard be described as a large quantity. There could be many others who might have placed orders for similar or larger quantities because of the market appetite discussed above. All these orders would have come to light if the order and trade logs had been furnished to the appellants for which they had made repeated requests. Again, one can see no red alert merely because the purchase orders of the appellants got matched with the large sell order(s) of the QIB. Let us not forget that the QIB was offloading

huge quantity of shares on the first day as they had done on atleast three earlier occasions in the case of different scrips and they were in the market around the same time when the appellants put in their purchase orders and the orders matched through the trading system of the exchanges. Further, two of the appellants purchased shares even from non QIBs who were also in the market to sell. We have already noticed that Tejas Patel purchased 1,65,000 shares on NSE out of which only 70,000 shares came from the QIB. It is obvious that he purchased larger quantity of shares from non QIB sellers who were also in the market to sell. Similar is the case with Deven Patel. He, too, purchased 1,05,000 shares out of which only 70,000 shares came from the QIB and the remaining came from others. This is indicative of the fact that all purchases were made through the trading system and not that they were premeditated with a prior understanding with the QIB as alleged. If there had been such a prior understanding these two appellants would have picked up all their shares from the QIB only.

13. The learned counsel for the Board then argued that the appellants had manipulated the price of the scrip through structured and synchronized trades. We cannot agree with him on this issue as well. There is no such charge laid in the show cause notice and rightly so because of the following observations made by the whole time member in the ad-interim ex-parte order wherein he had absolved the day traders of manipulating the price of the scrip. This is what he said:

> "In view of the nature of day-trading activities, the day-traders used to place both buy and sell orders simultaneously throughout the day. This nature of day-trading activities is generally observed in most of the scrips traded in the stock market and not specific to this scrip. Therefore, on the face of it, it cannot be said the day-traders have manipulated price of the scrip. However, due to the extra-ordinary volume of day-trading activity in the scrip, the role played by the day-traders in the scrip is to be examined thoroughly."

The learned counsel drew our attention to paragraph 32 of the show cause notice to argue that price manipulation was implied. Paragraph 32 of the show cause notice reads as under:-

> "Within a few minutes on December 29, 2006, the FII had off-loaded around 28.85 lakh shares constituting 45% of the free float of the shares of the company in quick successive trades of large quantity, without any concomitant and expected price fall associated with such large sales. These shares were cornered by the connected buyers through similar trading patterns. It was observed that the connected buyers devised a scheme whereby the FII got an exit at a predetermined price on the listing day in order to prevent a price fall that accompanies such large sales and

had a design to suck out the liquidity of the shares of the company from the market, thereby creating an artificial scarcity of shares in the market."

We cannot read the charge of price manipulation in this paragraph. It must be understood that whenever a charge is sought to be levelled against a delinquent, it has to be clear, precise and focussed to enable him to know what exactly is the case against him so that he is able to file his response. When an authority charging a delinquent has a mass of data to deal with for framing the charge(s), it must sift the data in a purposive way to crystallise the charge(s) against each delinquent. We need not deal with the matter any further because the whole time member has not found that the appellants had manipulated the price of the scrip. In this view of the matter, we cannot but reject the contention of the learned counsel for the Board.

14. This brings us to the contention very strenuously argued by the learned counsel for the appellant assuming a demurrer position. He argued that even if the allegations in the show cause notice were taken to be correct, no case is made out against the appellants and they cannot be held guilty of executing fraudulent trades since negotiated deals executed on the screen of the exchanges in accordance with their price and order matching mechanism are legal and permissible transactions sanctified by Board's own circular dated September 14, 1999. Though we agree with him regarding the validity of such negotiated deals, we are not discussing this issue any further since we have already found the Board's case otherwise unsustainable on merits.

In the result, the appeals are allowed and the impugned orders set aside. The Board is directed to refund the amounts impounded from the appellants together with interest accrued thereon till the date those amounts were remitted to the Consolidated Fund of India. We make it clear that the appellants shall not be entitled to any interest thereafter. Parties shall bear their own costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

30.7.2010
Prepared and compared by
RHN