BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 44 of 2009

Date of decision: 21.1.2010

Rajendra G. Parikh
Yogesh Bhuvan, 1st Floor,
31, N. S. Patkar Road,
Mumbai. ……Appellant

Versus

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

Mr. Zal Andhyarujina, Advocate with Mr. Simil Purohit, Advocate for the Appellant.
Mr. Kumar Desai, Advocate with Mr. Kersi Dastoor, Advocate for the Respondent.

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

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

This order will dispose of a bunch of six connected Appeals no. 43 to 45, 265, 267 and 279 of 2009 all of which raise common questions of law and fact. Since arguments have been addressed in Appeal no. 44 of 2009, the facts are being taken from this case. Reference to the facts in other appeals shall be made wherever necessary.

2. The appellant is a promoter and managing director of JIK Industries Limited (hereinafter called the company). The scrip of the company is listed on the Bombay Stock Exchange and the National Stock Exchange. The Securities and Exchange Board of India (for short the Board) carried out investigations in the scrip of the company for the period from June 1, 2004 to August 3, 2004 since the trading in the scrip had shown fluctuations in volumes during the said period. Investigations revealed that the shares of the company had been initially transferred in off market transactions by the appellant, Smt. Jagruti Parikh and Jagruti Securities Limited who are the promoters of the company. The entities to whom the shares had been

transferred further off-loaded the shares in the market. The Board also found that in some cases the entities on receiving the shares in off market transactions further transferred them to other entities again in off market transactions and the shares were ultimately traded in the market. It may be mentioned that Smt. Jagruti R. Parikh is the wife of the appellant and she is the appellant in the connected Appeal no. 45 of 2009. Jagruti Securities Limited which is also one of the promoters of the company is the appellant in Appeal no. 43 of 2009. It is alleged that the entities to whom the appellant, his wife and Jagruti Securities Limited had transferred the shares in off market transactions had formed a cartel with a view to facilitate the off-loading of the shares in the market. The list of the entities to whom the shares had been transferred in off market transactions is given in paragraph 4 of the show cause notice that was issued to the appellant. Among others, Vipul R. Jain, Rameshchandra K. Jain and Vikas Gourihar Narnavar are the persons to whom the shares are said to have transferred in the off market transactions. They are the appellants in Appeals no. 265, 267 and 279 of 2009 respectively. It is also alleged against the appellant and the other two promoters of the company that while transferring the shares in off market transactions, they were hand in glove with the entities to whom the shares were off-loaded. This, according to the show cause notice, was done by the appellant and the other promoters to conceal their identity and, thus, were trying to escape the surveillance net of the exchanges. On the basis of these allegations, all the appellants in this bunch of appeals are alleged to have violated the provisions of Regulations 3(a), 3(c) and 4(1) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (for short the FUTP Regulations). The charge that is levelled against the appellant is contained in para 6 of the show cause notice which reads as under:-

> "6. You alongwith the other promoter entities / persons acting in concert; Jagruti R. Parikh and Jagruti Securities Ltd. were hands in glove with the aforesaid entities and have offloaded your holdings allegedly concealing your identity and thus trying to escape the surveillance net of the exchanges. The same is reflected in **Annexure 1.** Accordingly, you are alleged to have violated provisions of Regulations 3(a), 3(c), 4(1) of the PFUTP Regulations."

In addition to these charges, the appellant and Smt. Jagruti Parikh were also alleged to have violated the provisions of Regulation 13 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (for short the IT Regulations). The allegations in this regard are contained in paras 7 and 8 of the show cause notice which are reproduced hereunder:-

> "7. Pursuant to the findings of investigation conducted in the scrip of JIK, you were found to have held more than 5% of the shares of JIK. You were found to have been holding 12205815 shares representing around 31.30% of shareholding of JIK as on May 30, 2004. However, subsequently you sold more than 2% of the said shares on various occasions as shown below and accordingly you were required to disclose the change of voting rights/shareholding to JIK in terms of Regulation 13(3) of the IT Regulations.

Date	From	To	Quantity	Shareholding	% Shareholding
14.6.04	10299348	Market	31401	11422756	29.29
28.6.04	10264251	10045185	500000	10622756	27.24
08.7.04	10264251	10045185	500000	9622756	21.97
	10264251	10113394	350000	8569268	
09.7.04	10264251	10078939	1500000	6869268	17.61

> However, there was a failure on your part to make the necessary disclosure in this regard. You are, therefore, alleged to have violated the provisions of Regulations 13(3) of the IT Regulations.
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> 8. Further, you being the director of JIK at the relevant time were also required to make disclosures as required under Regulation 13(4) of the IT Regulations. However, you are alleged to have failed to disclose the same on 19 such occasions as reflected in **Annexure 2** in violation of Regulation 13(4) of the IT Regulations."

The Board initiated adjudication proceedings against all the appellants in these appeals and after holding an enquiry and on the basis of the material collected during the course of the investigations and the enquiry, the adjudicating officer concluded that the charges levelled against the appellants stood established. While recording the finding that the appellants in all the appeals were guilty of violating the FUTP Regulations, this is what the adjudicating officer held in the impugned order:-

> "18. Clearly, it has been the endeavor of the three promoter entities to offload their holdings while concealing their identity firstly to escape the surveillance

> net of the exchanges and secondly, to protect the price of the scrip from falling drastically than from what it had already fallen during the said Investigation period from Rs.4 to 2.80 at NSE and from Rs.3.95 to 2.80 at BSE during the said period, in case the information of off-loading by the promoters had been known to the general investors, thereby manipulated the price of the scrip. It is also pertinent to note keeping in view the fact that the disclosures about bulk deals do not indicate that it was the promoters of the company who were off loading the shares, thus misleading the general investors. This point is further supported by the fact that the Noticee failed to make disclosures under the relevant provisions of the Insider Trading Regulations and this hid his identity so as to protect the price of the scrip from falling and escape the surveillance net. If the Noticee didn't want to do the same, he would have made the necessary disclosures at the relevant time, which he didn't make."

As regards the other charge of non-disclosure under the IT Regulations, the adjudicating officer held the appellant and his wife Smt. Jagruti Parikh guilty of violating Regulation 13 of the IT Regulations and recorded his findings in the following words:-

> "27. However, it is pertinent to note here that no disclosures have been made by the Noticee as required. In fact, it is observed that when SEBI Investigation team specifically asked to produce the copy, Noticee had failed to submit the same. However, surprisingly, vide reply dated November 14, 2008, the Noticee enclosed the copies of disclosures and clarified that these disclosures were made in the relevant period of time viz., 2004.
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> 28. In this regard I am doubtful about the genuineness of his claim since if the Noticee had made disclosures in accordance with Regulation then who prevented him from submitting the copies of the same to the SEBI investigation team in the year 2004 itself. However, it is admitted fact that he failed to do so.
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> 29. Secondly, assuming that Noticee had made disclosures to JIKIL and then it was mandated on JIKIL to in turn inform BSE and NSE within five days of receipt of the same from the Noticee as per Regulation 13(6) of the Insider Trading Regulations. However, I find that, no disclosures have been made by JIKIL to the exchanges under both SEBI (SAST) Regulations, 1997 and Reg 13 (6) of the Insider Trading Regulations between June 1, 2004 and August 31, 2004 specifically and generally throughout the year 2004. Furthermore, JIKIL has not submitted copy of any disclosures made to it by the two entities including the Noticee in the year 2004 when the investigation took place. Therefore, in my opinion if the Noticee had made the disclosures in the year 2004 in the five instances specified the table on page 15 to JIKIL then JIKIL would have immediately made the disclosures to the stock exchanges where the

> company is listed i.e., the BSE and NSE as per the mandatory provisions under Insider Trading Regulations, which the company did not make till today as the same has been confirmed from BSE and NSE recently vide letters dated February 10, 2009. Thus, it seems to be only an after thought and evidence has been fabricated since mere submission of documents containing disclosures after a period of four years does not mean that disclosures have been made at the relevant time and if the disclosures had been made at the relevant time, then the Noticee should have submitted copies of the same to the SEBI Investigation team during or immediately after the investigation in 2004. And when asked during the period of investigation in 2004, the Noticee did not have these documents as the Noticee did not make disclosures then, however, somehow the Noticee managed to procure the same now. In this regard, it is pertinent to note that submission of documents after thought that too obtaining of the acknowledgement from JIKIL is more easily accessible to the Noticee by observing the fact that Noticee is the Chairman of JIKIL. I am unable to ignore these facts. It is thus, quite clear to me that the Noticee has not made any disclosures under Regulation 13(3) and 13(4). Further, I do not find any reason to disbelieve the letters issued by the SROs i.e., BSE and NSE considering the weight they carry, hence I place reliance on the same."

These findings are now under challenge in these appeals.

3. We have heard the learned counsel for the parties who have taken us through the record and the impugned orders in different appeals. As is clear from the show cause notice and the findings recorded by the adjudicating officer, he has found all the appellants guilty of violating the FUTP Regulations. As already noticed, the charge levelled in the show cause notice was that the three promoters of the company had transferred their holdings in off market transactions to conceal their identity and, thus, were trying to escape the surveillance net of the exchanges. The details of the shares which had been off-loaded were reflected in Annexure 1 to the show cause notice. It was nowhere alleged that there was any price manipulation of the scrip by any of the appellants nor was it alleged that the shares had been off-loaded to arrest the price of the scrip from falling drastically than from what it had already fallen during the investigation period. Curiously enough, without making any allegations in the show cause notice, the adjudicating officer basing himself on material which was never furnished to the appellants at any stage of the proceedings found that they had violated the FUTP Regulations with a view to protect the price of the scrip from falling drastically. The adjudicating officer

further referred to the price data of the scrip on the Bombay Stock Exchange and also on the National Stock Exchange to conclude that the price had already fallen from Rs.4 to Rs.2.80 on NSE and from Rs.3.95 to Rs.2.80 on the BSE. The adjudicating officer has gone far beyond the show cause notice and recorded findings on issues which were never raised in the show cause notice. On this ground alone, the impugned orders in so far as they hold the appellants guilty of violating the FUTP Regulations cannot be sustained. This is not only ground on which we are setting aside the impugned orders. The adjudicating officer, as is clear from the impugned orders, has referred to a plethora of documents to hold that the charge against the appellants regarding the violation of FUTP Regulations stands established without realizing that none of those documents had been furnished to the appellants at any stage of the proceedings. This material had not been referred to in the show cause notice either. The adjudicating officer has relied upon the price volume statement which was an annexure to the investigation report. Again, he has quoted and relied upon several portions of the investigation report on the basis of which he has recorded his findings. Admittedly, these documents had not been furnished to the appellants. Further, he has heavily relied upon some reports submitted to the Board by the Bombay Stock Exchange and the National Stock Exchange which were admittedly not furnished to the appellants. Surprisingly, the adjudicating officer collected information behind the back of the appellants from the two depositories and while relying on that information recorded findings against them. He seems to have been influenced by what appeared in an article in the financial express which referred to some bulk deals allegedly executed in the scrip of the company. He has referred to such deals as well in paragraph 12 of the impugned order to draw some inferences against the appellants. The appellants should have been confronted with all this material and surely, they had a right to offer their explanation. We are not happy with the manner in which the proceedings have been conducted by the adjudicating officer. A reading of the impugned order leaves us with an impression that the adjudicating officer does not seem to know the basic elementary principles of holding a quasi judicial enquiry. Firstly, he has recorded findings which go far beyond the show cause notice and

secondly, he has relied upon documents which were never put to the appellants during the course of the proceedings. How could he collect material behind the back of the appellants and use the same against them without confronting them with that material. We are satisfied that the principles of natural justice have been flagrantly violated seriously prejudicing the rights of the appellants.

4. This apart, he goes on to hold that the appellants in Appeal nos. 265, 267 and 279 of 2009 had, alongwith others to whom the shares had been transferred in off market transactions, formed a cartel to assist the promoters in manipulating the scrip of the company. There is no allegation in the show cause notice that the price of the scrip had been manipulated. The allegation is that these appellants alongwith others formed a cartel to facilitate the promoters to off-load their shares in off-market transactions. Apart from a bald assertion made in the show cause notice, there is not an iota of material on the record to show that these persons formed a cartel or that the promoters of the company were in any way linked with the persons to whom the shares had been transferred in off market transactions. He has not referred to any material which could substantiate these findings nor could it be pointed out to us by the learned counsel appearing for the Board. Merely because the promoters transferred the shares to them in off market transactions is no ground to hold that there was a link between the two. Off market transactions are not per se illegal. In this view of the matter and without saying anything more, we set aside the findings recorded by the adjudicating officer regarding the violation of the FUTP Regulations by the appellants in this bunch of appeals.

5. This brings us to the charge against the appellant and his wife regarding violation of Regulation 13 of the IT Regulations. It is clearly alleged in the show cause notice that the appellant and his wife held more than 5 per cent of the shares of the company and that they sold more than 2 per cent of the shares on various occasions as referred to in Annexure 2 and that they were required to make the necessary disclosures to the company which in turn was required to disclose the same to the stock exchanges where the scrip was listed. It is also alleged that both the appellants failed to make the necessary disclosures. It has been found in the impugned order that the appellants had not made the necessary disclosures and the

subsequent stand taken by them that they had disclosed their holdings to the company is incorrect and the adjudicating officer did not rely upon their version. The learned counsel for the Board has placed before us three letters, all dated September 29, 2006 from the two appellants and one from the company. These are the replies which the appellants had furnished to the investigating officer when called upon to explain as to whether they had made the necessary disclosures under the IT Regulations. Their categorical reply then was that they had not made any disclosures. Having taken that stand before the investigating officer, we are in agreement with the adjudicating officer that the appellants had not made the necessary disclosures and had violated the provisions of the IT Regulations. Their stand now before us is that they had disclosed their shareholding to the company and to substantiate this stand, they have placed before us the letters purporting to have made the disclosures to the company. Even though these letters bear the stamp of the company showing that they were received in the office, we are not satisfied whether the disclosures were really made in view of their stand before the investigating officer. The learned counsel for the appellants may be right that the adjudicating officer should have enquired further into the matter and should have sent for the records from the company to ascertain whether the letters purporting to make the disclosures had been received or not. Even though he did not undertake this exercise, we cannot lose sight of the fact that the appellant is the managing director of the company and such letters could be placed on the records of the company any time. We are inclined to uphold the finding on the basis of the letters dated September 29, 2006 which the appellants and the company had addressed to the investigating officer. The learned counsel for the appellants however, objected to the production of these letters (dated September 29, 2006) for the first time in the appeal before us. These letters were produced on January 19, 2010 during the course of the hearing and on the request of the learned counsel for the appellants, we adjourned the matter to the following day to enable him to seek instructions from his clients and he could not dispute that his clients had addressed these letters to the investigating officer though he sought to offer some explanation for the admission made. As already observed, the letters categorically state that the

appellants had not made the necessary disclosures and, therefore, we uphold the findings recorded by the adjudicating officer that they had violated Regulation 13 of the IT Regulations.

6. The next question that arises is what should be the penalty imposed on the two appellants who have violated Regulation 13 of the IT Regulations. The adjudicating officer has imposed a monetary penalty of Rs.15 lacs on each of the two appellants for violating the FUTP Regulations as well the IT Regulations without bifurcating the amounts for each violation. We have already set aside the findings pertaining to the violation of FUTP Regulations. There is no gainsaying the fact that the violation of FUTP Regulations is, indeed, a very serious violation and definitely more serious than the mere failure to make declarations under the IT Regulations. After hearing the learned counsel for the parties on this aspect and having regard to the facts and circumstances of these cases, we are satisfied that the ends of justice would be adequately met if the monetary penalty on the appellants in Appeals no. 44 and 45 of 2009 is reduced to Rs.3 lacs each. We order accordingly. The impugned orders in these two appeals will stand modified accordingly.

In the result, Appeals no. 43, 265, 267 and 279 of 2009 are allowed and the impugned orders set aside. Appeals no. 44 and 45 are partly allowed and the impugned orders stand modified as stated above. Parties will bear their own costs in all the appeals. The appellants in Appeals no. 44 and 45 of 2009 are allowed six weeks time to pay the penalty amount.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

21.1.2010
ptm

Prepared & Compared by
ptm