IN THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 74 of 2006

Date of Decision 6.8.2007

M/s. Safal Investments Ltd. **……** ***Appellant***

Versus

Securities and Exchange Board of India **……** ***Respondent***

Present : Mr. Vinay Chauhan, Advocate for the appellant

Mr. Cherag Balsara, Advocate with Mr. Mihir Mody, Advocate for the respondent

Coram:

Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

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

This order will dispose of two connected Appeals nos. 74 and 75 of 2006 in which common questions of law and fact arise. Learned counsel for the parties are agreed that the order passed in Appeal no. 74 of 2006 will govern the other appeal as well. Since arguments were addressed in Appeal no. 74 of 2006, the facts are being taken from this case.

2. This appeal deserves to succeed on the short ground that the whole time member of the Securities and Exchange Board of India (for short the Board) did not apply his mind at any stage of the proceedings and has recorded findings blindly basing himself on the conclusions arrived at during the course of the investigation and without referring to any material which could support the findings. Facts giving rise to the appeal are these.

3. An investor complaint was received by the Board in the year 2001 regarding the delay in the dematerialisation of the shares in the scrip of M/s. Warner Multimedia Ltd. (hereinafter called the Company). Investigations were carried out by the Board and it transpired that the Company, its directors and associate entities including the appellants herein had tried to mislead and delay the investigations by submitting wrong information regarding their shareholding pattern to the Bombay Stock Exchange (BSE) on which the shares of the Company were being traded in addition to the Calcutta Stock Exchange. The investigations further revealed that the Company had furnished to the BSE a wrong statement regarding its promoters and that it did not furnish the list of its shareholders. The appellants herein and some other entities that had traded in the scrip of the Company had been included in the list of non-promoter body corporates. The investigating officer also found that there was considerable delay on the part of the Company in dematerialising the shares of the general public but not in the case of its associates including the appellants. Investigations also revealed that entities associated with the promoter group had accounted for almost 75% of the total trading on BSE and that the Company and its promoters had dealt in the scrip in significant quantities with a view to manipulate the price and they also created artificial market and false volumes in the scrip. On the basis of the findings recorded by the investigating officer, the Board issued a notice dated 25.2.2003 calling upon the appellant to show cause why directions in terms of Section 11B read with Section 11(4) of the Securities and Exchange Board of India Act, 1992 be not issued against it for violating the Securities

and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. It was alleged in the show cause notice that the appellant was an entity associated with the promoters of the Company and having traded in the scrip of the Company had, along with others, executed manipulative trades and created false volumes in the market. The appellant was alleged to have acted in concert with the promoters of the Company in manipulating the price of the scrip. Details of some of the trades executed by the alleged associates of the Company were referred to in the show cause notice insinuating that not only the price of the scrip had been manipulated but even false volumes had been created while trading in the scrip. The charge that the appellant was an associate of the Company and its promoters was levelled in the following words:

> "Safal Investments Ltd. is an entity associated with the promoters of Warner Multimedia Ltd.(WML). Safal Investments Ltd. has Gopal Khadaria as one of its Directors. Safal Investment Ltd. and Jagdish Prasad Purohit have been introduced to the broker ISJ Securities Ltd. by the same entity, Nouveau Shares & Securities Pvt. Ltd., trading member of NSE. Nouveau also has Gopal Khadaria as one of its Directors and address is also same as the address given in the copy of Tax Returns filed by Krishan Khadaria. Therefore, it is apparent that Safal Investment Ltd. is a company associated with the promoters of WML."

The appellant filed its reply on 22.9.2003 denying all the allegations. The charge that the appellant was an associate of the Company and its promoters was specifically denied in the following words.

> "WE WOULD LIKE TO SUBMIT THAT WE ARE NOT AN ASSOCIATE CONCERN WITH THE PROMOTERS OF WML. EXCEPT THE PERSONAL AQUAINTANCE WITH MR. JAGDISH PUROHIT WE HAVE NO BUSINESS OR COMMERCIAL RELATIONSHIP WITH HIM OR THE CONCERNS IN WHICH HE IS INTERESTED. HENCE, WE DENY ANY ASSOCIATION WITH THE PROMOTERS OF WML."

After affording an opportunity of personal hearing to the appellant which it did not avail, the Board by its order dated 1.2.2006 concluded in paragraph 3.10 as under:

> "Thus I find and conclude that the WML, its promoters and entities associated with it created artificial market and false volumes in the scrip of WML in violation of the provisions of Regulation 4(a) (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 which reads as under:"

It is pertinent to mention that a common enquiry was conducted by the Board into the conduct of the Company, its promoters and other associate entities including the appellant though separate show cause notices were issued to each of them and a common order has been passed. It is against this order that the two appellants in Appeals nos. 74 and 75 of 2006 have filed the present appeals.

4. We have heard the learned counsel for the parties. As already observed, we are satisfied that there was no application of mind by the Board in passing the impugned order. When we look at the charge levelled

against the appellant regarding its association with the Company, we find that the appellant is alleged to have traded in the scrip of the Company through a broker by the name of ISJ Securities Ltd. (ISJ). Mr. Jagdeesh Prasad Purohit who is admittedly the managing director of the Company is also said to have traded in the market through ISJ and both the appellant and the said managing director had been introduced to the broker by Nouveau Shares & Securities Pvt. Ltd. which is a trading member of the National Stock Exchange. Nouveau Shares & Securities Pvt. Ltd. and the appellant have Gopal Khadaria as their common director and the address of Gopal Khadaria is the same as that of Nouveau Shares & Securities Pvt. Ltd. which is clear from the income tax return filed by one Krishan Khadaria. From these facts an inference in the show cause notice has been drawn that the appellant was an associated entity of the Company and its promoters. On the basis of the allegations as made in the show cause notice itself, we are satisfied that the inference that has been drawn does not follow and that the same is misconceived. In this view of the matter the charge, on the face of it, is absurd. The matter does not end here. In the impugned order the learned member of the Board in paragraph 3.4 has recorded a general finding common to all the entities including the appellants herein holding that “As all these shareholders are having same addresses as the promoters and their associates, I find them as promoter associates.” It was not even the case of the Board in the show cause notice that the appellant had a common address either with the Company or with any of its promoters. Not only this, the learned counsel for the appellant strenuously contends before us that the address of the appellant is different

from that of the Company and the other entities referred to in the impugned order. The learned counsel appearing on behalf of the Board is unable to dispute this factual position. Be that as it may, there is no material on the record which would indicate that the address of the appellant and that of the Company or its promoters is common. It is, thus, clear that the aforesaid finding in the impugned order is without any basis and without any material in support thereof.

5. Now coming to the findings regarding manipulation in the price of the scrip of the Company. What we find is that the Board has recorded the findings only on the basis of the finding recorded by the investigating officer in his report without referring to any other material on the record. In the show cause notice issued to the appellant, several trades were referred to indicating that those had been manipulated and that false volumes had been created in the scrip while trading on the screen of the exchange. The charge was denied in the reply. No reference has been made to any of the trades in the impugned order. Apart from bodily lifting the finding of the investigating officer the Board has not indicated in the impugned order as to how the appellant manipulated the price of the scrip of the Company and how it indulged in creating artificial volumes. No reasons have been given. Here again, we find that there is total lack of application of mind by the Board. We cannot resist observing that the findings recorded in the impugned order have serious repercussions so far as the appellants are concerned and the Board ought to have dealt with the material, if any, gathered during the course of the enquiry in support of the findings recorded in the impugned order as is done in other cases. The effect of the

impugned directions issued to the appellant is that it stands debarred from carrying on its business for a period of three years. This is, indeed, a serious matter and it cannot be dealt with lightly and the findings could not be recorded only on the basis of the investigation report. In this view of the matter, we have no hesitation in setting aside the impugned order qua the two appellants which we hereby do leaving the parties to bear their own costs. We, however, make it clear that the observations made herein above apply only to the two appellants who have challenged the impugned order before us and that they will have no bearing in regard to any other entity dealt with in the impugned order.

Justice N.K. Sodhi
Presiding Officer

Arun Bhargava
Member

Utpal Bhattacharya
Member

6.8.2007

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