IN THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 35 of 2002

Date of decision : **4.5.2007**

Triumph International Finance Ltd. …… Appellant

Versus

Securities and Exchange Board of India …… Respondent

Mr.Zal Andhyarujina Advocate with Mr. S.H. Merchant Advocate with Mrs. Manik Joshi Advocate and Mr. Bhavin Gada Advocate for the appellant.

Mr. Kumar Desai Advocate for the respondent.

Coram : Justice N.K. Sodhi, Presiding Officer
R.N. Bhardwaj, Member

Per : **Justice N.K. Sodhi, Presiding Officer**

The appellant before us was a stock broker registered with the Securities and Exchange Board of India (for short the Board) and a member of the National Stock Exchange (NSE). Its certificate of registration has been cancelled by order dated May 16, 2002. Feeling aggrieved by this order, it has filed the present appeal under section 15T of the Securities and Exchange Board of India Act, 1992.

In the wake of excessive volatility in the index movements of stock exchanges during the period from February to March 2001 and on apprehensions of possible attempts by certain entities to manipulate the securities market, the Board ordered investigations. The preliminary investigations prima facie revealed that one Mr. Ketan Parekh and his

associate concerns including the appellant had indulged in price manipulation in certain scrips to the detriment of the investors and the securities market in general. By an ex-parte order dated April 4, 2001 the appellant, among others, had been debarred from undertaking any fresh business as a stock broker or merchant banker till further orders. Thereafter, the Board afforded a post decisional hearing to the appellant along with others and confirmed the ex-parte order on June 21, 2001 and simultaneously an enquiry officer was appointed to enquire into the alleged violations by the appellant and some others. After holding a detailed enquiry in which an opportunity of hearing was afforded to the appellant, the enquiry officer found that in the case of some scrips the appellant had placed orders at prices progressively higher than the last traded price which distorted the market equilibrium and interfered with the smooth functioning of the market. He also found that the appellant had indulged in cross deals/negotiated deals by placing orders through the trading system in a synchronized manner and thereby interfered with the price discovery mechanism of the exchange. He further found that the appellant had manipulated the market in a number of scrips and that such trades / transactions were repetitive in nature. The appellant was also found to have violated the Board circular dated September 14, 1999 banning cross deals/ negotiated deals. The enquiry officer also found that the appellant defaulted in the payments to its clients when it sold shares on their behalf and that the cheques issued by it had bounced. Similarly, the appellant was found to have defaulted in the delivery of shares in respect of purchases made by it on behalf of its clients and this, according to the enquiry officer, was a

serious issue which jeopardizes the integrity and safety of the settlement system and exposed the market to systemic risks. On the basis of these findings the enquiry officer concluded that continuance of the appellant as an intermediary in the market would undermine the safety and confidence of the investors. He, accordingly, recommended that the certificate of registration of the appellant as a stock broker be cancelled. On receipt of the enquiry report the Board issued a notice dated 4.3.2002 calling upon the appellant to show cause why penalty as considered appropriate should not be imposed on it in view of the findings recorded by the enquiry officer. A copy of the enquiry report was sent along with the notice. The appellant filed a detailed reply to the show cause notice through its Managing Director denying all the allegations. A request was also made to the Board for the grant of a personal hearing. After hearing the representatives of the parties, the Board concurred with the findings of the enquiry officer and accepted the recommendation made by him. By order dated 16th May, 2002 the certificate of registration was cancelled. Hence this appeal.

Before we deal with the contentions raised by the learned counsel for the parties it is relevant to mention that the Board by its order dated 12.12.2003 found one Shri. Ketan Parekh, his cousin brother Kartik K. Parekh and their investment companies which were actually controlled by Ketan Parekh in their day-to-day business, guilty of market irregularities having manipulated scrips of various companies including Lupin Laboratories Ltd., Global Trust Bank Ltd. and Aftek Infosys Ltd. The Board also found that Ketan Parekh and his entities were involved in

circular trading and that they executed transactions which were non-genuine, fictitious and created artificial market in the scrips and that Ketan Parekh had raised short term finance by distorting the exchange mechanism. In view of these findings Ketan Parekh and his investment companies had been prohibited from buying, selling or dealing in securities in any manner, directly or indirectly and they had also been debarred from associating with the securities market for a period of 14 years. That order was upheld by us in **Ketan Parekh Vs. Securities and Exchange Board of India Appeal no. 2 of 2004 decided on 14.7.2006.** While upholding the order we observed **"that if Ketan Parekh and his entities are allowed to continue with their operations they would pose a serious threat to the integrity of the securities market and endanger the interests of the investors."**

We have heard the learned counsel for the parties who have taken us through the voluminous record of this case. The first argument of the learned counsel for the appellant is that the Board has grossly erred in recording a finding that the appellant was being controlled by Ketan Parekh and that it was difficult to believe that it was an independent body run absolutely with no control of Ketan Parekh. We have perused paragraphs 10.4.1 to 10.4.9 of the impugned order and agree with the learned counsel for the appellant that the findings of the Board in this regard cannot be upheld. It is not in dispute that Mrs. Mamta Parekh wife of Ketan Parekh holds 7.92% of the share capital of the appellant and an equal percentage of shares are held by Mrs. Ami Parekh wife of Kartik Parekh who is a cousin

brother of Ketan Parekh from the paternal side (father's brother's son). The two ladies, thus, hold 15.84% of the total share capital in the appellant company. This by itself does not give Ketan Parekh a controlling stake in the company. It is also true that Ketan Parekh was a director of the appellant from 16.12.2000 upto 31.3.2001 but did not attend any board meeting during this period. This, again, is not indicative of any control over the company. Merely because a person is on the board of directors of a company does not lead to the conclusion that he is in control of that company. The appellant holds 49% shares in Triumph Securities Pvt. Ltd. (TSL) which is admittedly a Ketan Parekh entity and the former (appellant) had entered into an agreement with TSL to acquire 51% shares of Ketan Parekh. The reason for this agreement is that the appellant is a member of the NSE whereas TSL was operating on the Bombay Stock Exchange (BSE) and with a view to expand its business so as to operate on both the exchanges, the appellant decided to takeover TSL. This fact also does not lead us to the conclusion that Ketan Parekh was controlling the appellant. The Board has relied upon the statements of some persons who had dealt with Ketan Parekh and/or his investment companies and/or the appellant prior to April, 2001 who stated that they regarded the appellant as one of the entities of Ketan Parekh which was under his control like any of his investment/broking companies. We were also taken through those statements but that is only the perception of those persons. What appears to us is that because of the close business relations between the appellant and Ketan Parekh and his other entities, the persons dealing with them generally believed that it was Ketan Parekh who was controlling the

appellant as well but we do not find any such material on the record. The perception of some of those who dealt with the appellant and Ketan Parekh is not enough for us to record such a finding.

The learned counsel for the appellant, however, conceded before us during the course of the hearing that the appellant which was a stock broker had close business relations with Ketan Parekh and his investment companies for which it had acted as a broker. The business which Ketan Parekh gave to the appellant was substantial and, therefore, the appellant regarded Ketan Parekh and his investment companies as its valued and important clients. This is what appears to be so. There is ample material on the record to show that Ketan Parekh and his investment companies which had subsequently been debarred from accessing the capital market had been operating through the appellant as their broker. It is not necessary for us to discuss that material in view of the admission made by the learned counsel for the appellant. These business dealings howsoever close they may have been also do not lead us to conclude that Ketan Parekh was controlling the appellant company. The fact that the appellant and TSL (Ketan Parekh entity) had close business association is further clear from the fact that they were enjoying a joint over draft facility from Global Trust Bank Ltd. against common security to be provided by either of them. We agree with the learned counsel for the appellant that this again is no proof of Ketan Parekh having control over the appellant. We have examined the facts noticed by the Board in paragraphs 10.4.1 to 10.4.9 of the impugned order and find that none of them independently or collectively conclusively

establish the fact that the appellant was under the actual control of Ketan Parekh. We are also of the view that the finding whether the appellant was being controlled by Ketan Parekh or not is not material for deciding the issues that have been raised in this appeal. We have examined this aspect of the matter in detail only because great emphasis was laid by the appellant in challenging the finding recorded by the Board that the appellant being a Ketan Parekh entity was actually controlled by him. In view of the above discussion we have no hesitation to hold that the appellant was not under the actual control of Ketan Parekh though it was a close associate of his and his investment / broking companies with which it had substantial business dealings. This apart, Ketan Parekh has financial interest in the appellant.

At this stage we may also notice an ancillary contention advanced by the learned counsel for the appellant. He urged that the enquiry officer and the Board had both relied upon the statements of Namesh Dedhia, Pramod Broota, Nitin Shukla and Deshbandhu Gupta in support of the conclusion that the appellant was a company controlled by Ketan Parekh but they did not allow the appellant to cross examine these persons to bring out the truth. According to the learned counsel for the appellant, the principles of natural justice stood violated. This contention of the appellant is also not relevant for the purpose of deciding the present appeal because we have already recorded a finding that Ketan Parekh did not control the appellant company though he and his other companies were its close associates. Be that as it may, the then chairman of the Board has observed in para 10.1.1

of the impugned order that the appellant had not made any formal request for cross examining the persons whose statements were being relied upon. It is not in dispute that the copies of those statements had been furnished to the appellant. In this back ground we can not hold that the principles of natural justice were violated. In view of this conclusion it is not necessary to deal with the case law cited by the learned counsel for the appellant.

The learned counsel for the appellant then contended that the Board was not right in holding that the appellant was guilty of manipulating the price of the scrips of Lupin Laborites Ltd., Global Trust Bank Ltd. and Aftek Infosys Ltd. He took us through the findings recorded by the enquiry officer and also those recorded by the Board. He submitted that the trades executed by the appellant on behalf of its clients in the scrip of Lupin Laboratories Ltd. were the same which had come up for our consideration in Ketan Parekh's case (supra) and since we had set aside the findings of the Board that the trades were executed with a view to manipulate the market or benchmark the price of the scrip the impugned order in this regard also deserves to be set aside. He further submitted that the allegations in the case of the scrips of Global Trust Bank Ltd. and Aftek Infosys Ltd. were also identical and that for the reasons recorded by us in Ketan Parekh's case these findings also deserve to be set aside. Reliance has been placed on our decision in Ketan Parekh's case (supra). The learned counsel for the appellant also challenged very seriously the findings regarding the alleged synchronized and circular trades executed by the appellant along with Credit Suisse First Boston (I) Securities Pvt. Ltd.

(CSFB). We were taken through the various transactions executed by the appellant to which detailed reference has been made by the enquiry officer and it was contended that there was nothing wrong with the trades-in-question and that such trades are permitted by the Board as per its circular dated September 14, 1999. The learned counsel for the appellant also contended that at the time of executing the trades the appellant as a broker of one of the parties did not know who the counter party was and therefore it could not be held guilty of indulging in synchronized and circular trades. The argument is that the appellant acted purely as a broker and carried out all the trades/transactions through the stock exchange mechanism within the frame work of its rules as per the instructions of its clients. The next argument of the learned counsel for the appellant was that the Board was not justified in cancelling the certificate of registration on the ground that the appellant had failed to remove the grievances of some of the investors who had made complaints regarding non-payment of the amounts due to them and also in regard to the default committed by the appellant in not delivering the shares to the parties on whose behalf they had been purchased. It was contended on behalf of the appellant that the disputes had since been settled though the payments and deliveries of shares were not made within the time allowed by the exchange. In the alternative, Mr.Zal Andhyarujina learned counsel also urged that the certificate of registration was suspended on 4.4.2001 and since then the appellant has been out of business and that we should take a lenient view. It was contended that the period of six years for which the appellant has already remained out of business should be sufficient penalty for the so-called defaults committed

by it and that the certificate should now be restored. He pointed out that 41% of the shareholding in the appellant company is with the general public and that a large number of shareholders are suffering. He also offered that in case the Tribunal were to take a lenient view in the matter, the appellant would restructure itself in a way that Ketan Parekh and Dharmesh Doshi its managing director who is his close associate will have no role to play in the management and operations of the company and that there would be no further complaints. He butteressed his contention by supplying us with the figures regarding the total business of the appellant vis-à-vis the business it transacted on behalf of Ketan Parekh and his entities. He stated that during the period from 1.4.2000 to 31.3.2001 the total turnover of the appellant was Rs.5,95,168 crores whereas out of this, the total business conducted on behalf of Ketan Parekh and his investment companies was only Rs.11,903 crores. He submitted that the appellant could continue its own business without Ketan Parekh and his entities.

Shri. Kumar Desai learned counsel for the respondent very emphatically refuted all the contentions advanced on behalf of the appellant. He urged that even though the appellant may not be under the active control of Ketan Parekh, it was a close associate of his and his companies. He referred to the shareholding pattern of the appellant in support of his contention. He also contended that the appellant had been guilty of manipulating the scrips of Lupin Laboratories Ltd., Global Trust Bank Ltd., and Aftek Infosys Ltd. He referred to the regulations of NSE to contend that those had been violated when the appellant executed trades on

behalf of its clients and that it was also guilty of unfair trade practices within the meaning of the regulations framed in this regard. He conceded that the transactions pertaining to the scrip of Lupin Laboratories Ltd. were the same which had come up for our consideration in Ketan Parekh's case (supra) and that the allegations made in regard to the scrips of Global Trust Bank and Aftek Infosys Ltd. were similar. He further contended that in Ketan Parekh's case there was no allegation that the appellants therein had executed cross deals whereas in the instant case the appellant while executing the trades in the scrips of Lupin Laboratories Ltd., Global Trust Bank Ltd and Aftek Infosys Ltd. had executed cross deals which are not permitted and that the brokers in these deals including the appellant had fixed the price of the scrips and then executed the same through the exchange by matching/synchronized deals thereby distorting the price discovery mechanism of the exchange. The argument is that in the instant case the appellant by executing cross deals did not allow the price discovery mechanism of the exchanges to come into play since the price of the scrip was fixed by the brokers. He also argued that because of the cross deals executed by the appellant our findings recorded in Ketan Parekh's case (supra) would be of no help to the appellant. He strenuously contended that the appellant had executed synchronized trades along with CSFB which trades had already been examined by us while dealing with the second show cause notice in Ketan Parekh's case (supra) and that in view of our findings in that case it has to be held that the appellant was guilty of the charge levelled which would justify the cancellation of certificate of registration. He also pointed out that the appellant had

defaulted in its market obligations when it did not make payments to the clients on whose behalf it had sold the shares and also defaulted in delivering the shares to those for whom they had been purchased. This, according to the learned counsel, is a serious market irregularity which exposes the market mechanism including the settlement system to very great risks and that these defaults undermine the confidence of the investors in the system itself. The learned counsel further pointed out that the settlement guarantee fund maintained by the exchange is also put to risk when suchlike defaults are committed by the brokers. In the end, he urged that the irregularities committed by the appellant were serious enough to warrant cancellation of the certificate of registration and that this is not a case where any lenient view should be taken.

We have heard the learned counsel for the parties. Since the trades on the basis of which the Board has found the appellant to have indulged in synchronized transactions along with CSFB had come up for consideration before us in Ketan Parekh's case (supra) while dealing with the second show cause notice therein and we found the trades to be manipulative, it is not necessary for us to deal with the other contentions now raised in this appeal by the learned counsel for the parties. Learned counsel on both sides are agreed that most of the trades referred to by the enquiry officer and adopted by the Board are the same which were the subject-matter of the second show cause notice in Ketan Parekh's case (supra) and that the other trades are identical. We found in Ketan Parekhs' case that the trades were manipulative and circular in nature executed in a synchronized

manner only to increase artificial volumes in the scrips and that the beneficial ownership in the shares had not been transferred. We further held that the trades were executed with a view to enable Ketan Parekh to raise short term finance from the market by giving them the semblance of sale and purchase and simultaneously putting the settlement guarantee fund of the exchange to risk. In the instant case, the enquiry officer has examined large number of those trades executed by the appellant along with CSFB as the other broker. What was in issue in Ketan Parekh's case (supra) was the conduct of the buyers and sellers whereas in the case before us, it is the conduct of the appellant as a broker that is being synchronized-the trades being the same/identical. In quite a few cases the appellant along with CSFB had executed fictitious trades where both the buyers and the sellers were the same and they were none other than the Ketan Parekh entities. For instance, on 16th February, 2001 Luminant Investments Pvt. Ltd. (Luminant) which is a Ketan Parekh entity [as upheld by us in Ketan Parekhs' case (supra)] placed an order for the purchase of 50,000 shares of Adani Exports Ltd. through the appellant as a broker. Simultaneously, Luminant placed an order to sell 50,000 shares of the same scrip through CSFB as a broker. The buy and sell orders were both punched into the system within a span of one second. The buy order was placed at 13.31.54 hours and the sell order was placed at 13.31.55 hours. The rate at which both the orders were placed was also the same i.e. Rs. 859/-. Both the orders matched and the trade was completed. This is not an isolated transaction. Within a span of few seconds other buy and sell orders were placed for the same scrip and for the same quantity and at the same rate.

The buyer and the seller were also the same. It is obvious that these trades were fictitious to which the appellant was a party. They were fictitious because the buyer and the seller were the same. In some other trades, the buyer and the seller were different but both were Ketan Parekh entities and all other particulars of the trades were the same, that is, quantity and the rate were the same and the buy and the sell orders were placed simultaneously. When we examine the chart containing a large number of such trades we are satisfied that the appellant was indulging in synchronized trades along with CSFB as the other broker. We cannot accept the contention of the learned counsel for the appellant that the appellant did not know at the time of executing the trades as to who the counter party was. It is true that in a normal trade that is executed through the exchange mechanism, brokers cannot possibly know who the counter party is. But in regard to the trades-in-question we have no doubt that the appellant knew about the counter party. It is admitted before us that in all these trades the buyer and the seller which were Ketan Parekh entities have been found guilty of executing manipulative trades and have been proceeded against by the Board and debarred from accessing the capital market for a period of 14 years which order was upheld by us in Ketan Parekh's case (supra). CSFB also acted as a seller's broker in the trades referred to in the chart by the enquiry officer. CSFB, too, was found to be involved in the game plan of Ketan Parekh and was debarred for a period of two years. Out of the four parties to the transactions the three have already been penalized. The appellant as a broker is the one against whom action has now been taken by the impugned order. The question that arises

for consideration is – could it be said that the appellant was innocent and whether such large number of trades could have matched on the screen without the knowledge and active involvement of the appellant as a broker. The answer has to be in the negative. It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and match the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. In the trades now in question the buyer, the seller and CSFB as the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted. There is yet another reason why we believe that the appellant was in the know of the game plan. The appellant may not be a Ketan Parekh entity but certainly it is a close associate of his and his investment/broking companies. The appellant has had very close business relations with Ketan Parekh and his entities and Ketan Parekh also has financial interest in the appellant through his wife and his brother's wife. The two ladies – Mrs. Mamta Parekh and Mrs. Ami Parekh hold 15.84% of the shareholding in the appellant and they constitute

the second largest group of shareholders in the appellant company. Since Ketan Parekh had been manipulating the market in a big way as noticed by us in our order dated 14.7.2006 passed in Appeal no. 2 of 2004 we cannot accept the plea that the appellant was not a party to the illegal and manipulative trades. It was not necessary that the appellant, too, should have been under the control of Ketan Parekh. Ketan Parekh was getting his game plan executed even from the appellant as was being done through other broking entities promoted/controlled by him. In this view of the matter we uphold the findings recorded by the Board and the enquiry officer. This is a serious market irregularity committed by a regulated market intermediary and deserves a severe penalty. In the circumstances, the order canceling the certificate of registration is justified.

The learned counsel for the appellant then urged that the transactions executed by the appellant were perfectly legal and that it did not violate any statutory provisions while executing those trades. There is no merit in this submission. A unique feature of the stock exchange is the anonymity of the buyer and the seller. Unlike other moveable properties, shares are normally bought and sold buy the unknowns who never get to meet. They execute the trades through their brokers and the shares are traded at a price determined by the exchange mechanism based on the demand and supply. It must not be forgotten that every trade establishes the price of the scrip and when the two brokers punch in the buy and sell orders simultaneously at a predetermined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery

process of the exchange and this would amount to manipulation and benchmarking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board. The system is such that no buyer can insist that he must buy shares from a particular seller and nor can a seller insist that he must sell his shares to a particular buyer. The buyer, the seller, the quantity and the price are all matched by the exchange mechanism. A buyer of 1000 shares of a particular scrip may land up buying from three different sellers or even more and vice versa. Bulk deals and negotiated trades are permitted but they are executed differently after informing the exchange so that they do not have any impact on the price of the scrip. In this view of the matter, we cannot accept the plea that the trades executed were legal or justified.

In view of our aforesaid findings we are not dealing with the other contentions raised by the learned counsel for the parties.

After the passing of the impugned order the Board found that the appellant had committed some other irregularities of similar nature along with others and by its order dated March 8, 2004 came to the conclusion that its certificate of registration was liable to be cancelled on the basis of those irregularities as well. It is against that order that Appeal no. 135 of 2004 was filed by the appellant. It is not necessary for us to deal with the merits of this appeal because we are upholding order the dated 16th May, 2002 cancelling the certificate of registration of the appellant impugned in

Appeal no. 35 of 2002. Appeal no. 135 of 2004 is, therefore, dismissed as anfractuous.

In the result, the appeal fails and the same stands dismissed with no order as to costs.

Justice N.K. Sodhi
Presiding Officer

R.N. Bhardwaj
Member

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