IN THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 2 of 2004

Date of Decision 14/07/2006

Ketan Parekh ***……Appellant***

Versus

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

Shri N.H. Seervai, Sr. Advocate with Ms. Prarthana Awasthi, Advocate for the appellant

Shri Rafique Dada, Sr. Advocate with Shri Kumar Desai, Advocate, Ms. Daya Gupta, Advocate and Mr. Praveen Trivedi, Dy. Legal Advisor for the respondent.

Coram:

Justice N.K. Sodhi, Presiding Officer
C. Bhattacharya, Member
R. N. Bhardwaj, Member

Per: Justice N.K. Sodhi, Presiding Officer

This order will dispose of a bunch of 9 Appeals nos. 2 to 10 of 2004 in which common questions of law and fact arise. Since arguments were addressed in Appeal no. 2 of 2004 the facts are being taken from this case.

2. Challenge in this appeal is to the order dated 12.12.2003 passed by the then Chairman of the Securities and Exchange Board of India (for short the Board) prohibiting Ketan V. Parekh, Karthik K. Parekh, Classic Credit Ltd., Panther Fincap & Management Services Ltd., Luminant Investment Ltd., Chitrakut Computers Pvt. Ltd., Saimangal Investrade Ltd. and Classic

Infin & Panther Investrade Ltd. from buying, selling or dealing in securities in any manner directly or indirectly and also debarring them from associating with the securities market for a period of 14 years. The order is based on two separate show cause notices issued by the Board to Ketan Parekh and the other above named entities allegedly associated with him which have been found to be either connected with or controlled by Ketan Parekh hereinafter collectively described as KP entities. Since the Board has recorded separate findings in regard to the two show cause notices, it will be convenient to deal with them separately in our order as well.

Re: First show cause notice.

3. This show cause notice relates to the alleged price manipulation in the scrip of Lupin Laboratories Limited (for short 'Lupin'). Persons allegedly involved in the price manipulation are Ketan Parekh (appellant herein), Classic Credit Limited, Panther Fincap and Management Services Limited and Saimangal Investrade Limited (hereinafter referred to as Classic, Panther and Saimangal respectively). The Board witnessed significant rise in price and volumes in the scrip of Lupin during the period from September to December, 1999 on the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) and, therefore, it ordered investigations into the buying, selling and dealings in the scrip. Investigations revealed that Ketan Parekh, Classic, Panther and Saimangal had together indulged in the price manipulation in the scrip of Lupin. They were issued a notice dated March 27, 2002 calling upon them to show cause

why necessary directions under Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 (for short the Regulations) and Section 11 and 11B of the Securities and Exchange Board of India Act, 1992 (for short the Act) be not issued to them debarring them from dealing in securities. The appellant filed his reply on 16.12.2002 to the show cause notice and also filed separate but identical replies on behalf of the other entities under his signatures. In his reply, the appellant questioned the very basis on which the Board had compared the price movement in certain scrips in the pharmaceutical sector during a certain period and stated that any particular scrip moves according to its own tradeability and the fact that it does not move in line with the market index does not make persons who trade in that particular scrip guilty of price rigging in the scrip. He also objected to the period chosen by the Board for comparing the price movement in the scrip of Lupin with the scrip of other pharmaceutical companies. He stated that the Board had picked out a certain period in time and construed the findings of the investigations in such a manner that it would appear as if the movement in the scrip of Lupin was abnormal. It was pointed out that price movement in any scrip is dictated by various factors such as growth potential, future earning capability etc. He also pointed out that the pharmaceutical companies with which the scrip of Lupin had been compared are big and well established companies which had already achieved a certain degree of critical mass and had only a limited ability to grow whereas Lupin was a middle size company which had greater

potential to grow and therefore the comparison made by the Board was not fair and that it compared the unequals. As regards the sharp spurt in trading volumes, it was pointed out in the reply that that was a time when there was great optimism in the stock market and the technology boom was at its zenith and that the euphoria attached to technology stocks had spread to the pharmaceutical stocks as well. He also pleaded that it was well known that stock movements are not always rational and are very often irrational and are largely governed by rumours and hearsay. He stated that in continuation of his reply he would be submitting part II thereof shortly which he did not file. The Board fixed 14.3.2003 as the date of hearing for the first show cause notice and afforded an opportunity to the appellant and other entities to appear in person. The appellant could not appear in person on this date as he was in judicial custody in Kolkata. Classic, Panther and Saimangal appeared through their representatives on the date fixed and sought adjournment on the ground that Ketan Parekh was in judicial custody and his personal presence was necessary at the time of the hearing as he alone was in the know of facts. The case was adjourned to April 30, 2003 on which date a similar request for adjournment was made because Ketan Parekh was still in custody and the matter was finally heard on June 23, 2003. At the conclusion of the hearing, the appellant as also Classic, Panther and Saimangal filed their written submissions which were taken into consideration by the Board while passing the final order. The appellant admitted that he was a director on the Board of Classic, Panther and Saimangal which were all independent investment companies. He also

stated that he had not acquired any shares of Lupin in his name and the transactions were carried out by the investment companies on whose Board he was a director. He also took the stand that even though he was on the Board of the aforesaid companies he was not involved in the day to day decision making. He also denied that there was any artificial price rise in the scrip during the period under investigation and that placing large orders in the market was not per se illegal. It is pertinent to mention here that identical replies to the show cause notice were filed on behalf of the three companies signed by Ketan Parekh and at the conclusion of the hearing, written submissions were also filed on their behalf which too were signed by him.

4. On a consideration of the submissions made by the appellant, Classic, Panther and Saimangal at the time of hearing and also the written submissions filed by them, the Board came to the conclusion that the price of the scrip of Lupin had moved upwards substantially during the short span of time and this was accompanied with large volumes. The Board compared the price movement in the scrip of Lupin with other scrips in the pharmaceutical industry like Ranbaxy, Glaxo, Novartis and Cipla and found that the price rise in the scrip of Lupin was neither in consonance with the movement of market indices nor was it in tandem with the price movement of other scrips in the pharmaceutical industry. The Board also recorded a finding that the broking firms through which the scrip was traded had on some occasions placed orders for purchase of shares of Lupin

at a price above the then prevailing market price. The Board then referred to various instances where Classic, Panther and Saimangal had traded in the scrips of Lupin. On an analysis of the order log and trade log the Board found that Classic had on some occasions placed orders for the purchase of shares of Lupin with a view to establish a higher price. The Board has referred to the transactions of 6.10.1999, 14.10.1999 and 16.10.1999 on BSE to show that Classic – a KP entity had been placing buy orders for the shares of Lupin on these dates at a price higher than the last traded price and was, therefore, instrumental in establishing an artificial higher price for the scrip of Lupin. Reference was also made to the statements of some of the brokers and others recorded during the course of investigations and on the basis of these statements a finding is recorded that all the three entities namely Classic, Panther and Saimangal were controlled and operated by Shri Ketan Parekh and orders on their behalf were placed either by Ketan Parekh or his brother Kartik Parekh. N.H. Securities had acted as a broker on behalf of Classic and that they both tried to establish a higher price of the scrip. Several instances have been quoted in support of this finding. Ketan Parekh and his entities were found to have transacted in the scrips of Lupin in large quantities which constituted a significant portion of the total transaction on the two exchanges namely BSE and NSE. The Board also found that the floating stock of Lupin in the market was less than 18% because 82.4% was held by its promoters and, therefore, any big order placed by Ketan Parekh or any of his entities would lead to the price fluctuation which was invariably on the higher side. As a result of these

findings the Board concluded that the price rise in the scrip of Lupin was artificial which was accompanied by artificial volumes and that Ketan Parekh and his entities were primarily responsible for the same and that they created higher price for the scrip. Accordingly, Ketan Parekh, Classic, Panther and Saimangal were held guilty of violating Regulation 4(a) of the Regulations. Feeling aggrieved by the findings they are in appeal before us.

5. During the course of hearing Shri N.H. Seervai, learned senior counsel appearing for the appellants argued that while it was a fact that Shri Ketan Parekh was on the Board of Classic, Panther and Saimangal, it could not be said that he was controlling them. He urged that these three companies were independent entities and that they were being run by their respective Boards of Directors and being investment companies it was their business to deal in the scrips of other companies and that they did nothing wrong in trading in the scrip of Lupin. He drew our attention to some reports by equity research analysts which gave rave reviews about the future growth and profitability of Lupin to contend that it was generally perceived in the market that Lupin would do well in the future. He also argued that the Board had selected the period of September to December 1999 only because during that period the price of Lupin was rising faster than the stocks of four other companies with which it has been compared. He pointed out that if we were to compare the share price of those companies with Lupin for the period from 1.6.1999 to 31.8.1999 the picture

would be entirely different. He also argued that the four companies namely Ranbaxy, Glaxo, Novartis and Cipla with which the price movement of Lupin has been compared were large size companies and had already reached their zenith having limited scope for further growth whereas Lupin was a medium capital size company with high growth potential. He strenuously urged that the Board was in error in comparing the unequals. He also pointed out that the price movement was compared on the basis of wrong data and he took us through different charts relied upon by the Board to show that some of the figures referred to therein were incorrect. The learned senior counsel also placed before us scripwise price and volume data of the shares of some other pharmaceutical companies which were medium size and urged that medium size companies like Lupin and others in the pharmaceutical industry were expanding faster due to liberalisation and globalisation of the economy. The grievance of the appellants is that the Board should have compared the price movement of Lupin with some other medium size companies which were fast expanding instead of comparing it with large size companies. The learned senior counsel was emphatic in his submission that the price rise in the stock of Lupin was not out of tune with the market sentiment then existing. The learned senior counsel forcefully challenged the finding recorded by the Board that Ketan Parekh and his entities had traded in the scrips of Lupin only with a view to establish a higher price. He referred to various charts relied upon by the Board in the impugned order to show that in most of the cases there was a marginal difference in the buy orders placed by the appellants than the last

traded price of Lupin. He went on to argue that there is nothing unusual if the buy order placed at the time of the opening of the trading at the exchange is higher than the previous day's closing price and that very often buyers do place orders at a higher price to ensure that the deals go through. The learned senior counsel took us through the price volume data of shares of some of the companies in the pharmaceutical industry to prove his point. Having pleaded on the factual aspect, Shri Seervai then submitted that even assuming though not admitting, that there was any artificial rise in the price of Lupin, Regulation 4(a) of the Regulations was not attracted in this case and that no action could be taken against the appellants. The argument is that it is not the case of the Board that artificial rise in price/volumes in the scrip of Lupin had induced any other person to sell or purchase this scrip. According to the learned senior counsel it is the requirement of Regulation 4(a) that artificial rise in price should induce the sale or purchase of securities by any person and since this has not even been alleged by the Board the requirements of the Regulation were not satisfied and no action could be taken against the appellants.

6. Shri Rafiq Dada, the learned senior counsel for the Board controverted the submissions made on behalf of the appellant and contended that it was Ketan Parekh who was the main person controlling the three entities which were issued a show cause notice along with him. He referred to the three letters all dated 12.3.2003 written by Classic, Panther and Saimangal and urged that the three companies had by these

letters informed the Board that the presence of Ketan Parekh at the time of personal hearing was necessary as he alone knew the details of the transactions and therefore they sought adjournment on 14.3.2003 on which date the cases were fixed for hearing before the Board. He pointed out that the corporate office address as printed on the letterheads of the three companies was the same and that these companies were functioning from the same office location and when they informed the Board that Ketan Parekh is the man who knows the details of the transactions and therefore his presence was necessary, the only inference that could be drawn is that he was controlling the day to day working of the three companies. He also urged that this was a fit case where the corporate veil should be lifted and that when we see behind the curtain it is Ketan Parekh who was placing the buy and sell orders on behalf of Classic, Panther and Saimangal. Shri Rafiq Dada, learned senior counsel argued that the period of investigation was selected by the Board because it was during that period that the scrip of Lupin was showing an unusually fast rising trend along with a steep increase in volumes and therefore no fault could be found for selecting that period. He further pleaded that the shares of Lupin were compared with Ranbaxy, Glaxo, Novartis and Cipla because these four companies were market leaders in pharmaceutical industry and their scrips were quite active on both BSE and NSE. He referred to the instances relied upon by the Board in paragraph 4.9 of the impugned order to urge that repeated orders at slightly higher price for substantial quantities were being placed to hike the price and to ensure that the higher price was established. He pointed

out several other instances as well including the two trading transactions on 14.10.1999 in support of his contention. He further argued that the three entities had been resorting to matching trades where the sell and purchase orders were placed at the same time at a price higher than the previous day's closing price of Lupin. According to the learned senior counsel the appellants had violated Regulation 4(a) of the Regulations and he was emphatic in his submission that Regulation 4(a) was attracted to the facts and circumstances of this case and that when any person trades in the shares of a company with the intention to artificially raise or depress the price of securities he necessarily induces the sale or purchase of such securities by many other innocent investors who may be difficult to be located. In his view the securities market is so wide spread and in a system of screen based trading various potential investors tracking the scrip through the screen could only see that the scrip is active / inactive, its trading volumes are large / small, its price is going up / down and therefore they may decide to invest/disinvest in the scrip. According to Shri Rafiq Dada it is not possible to locate as to how many such investors were taken in by the price manipulation. According to him if price manipulation is established then it should be assumed that investors in the market were induced to buy/sell as a result of that manipulation.

7. Having heard the learned senior counsel for the parties we shall record our findings on the issues that arise from the first show cause notice. There is no gainsaying the fact that the price of the scrip of Lupin had been

rising steadily during the period from April 1999 to December 1999 and from January 2000 onwards it started falling. Whether the price rise during September to December 1999 was caused by Ketan Parekh and his three entities as alleged is the question which needs to be answered. At the outset it is necessary to first examine whether Classic, Panther and Saimangal were being controlled by Ketan Parekh. It is an admitted case of the appellants that Ketan Parekh was a director on the Board of Directors of each of these three companies. It is true that by merely being a director on the Board of a company, one cannot be said to be controlling the same nor can an inference be drawn that he is involved in the day to day decision making process of the company. However, in the case before us, there is sufficient material on the record to show that Ketan Parekh was the person who was controlling the three companies and was taking day to day decisions on their behalf. We have on record the admission of the three companies as borne out from their letters dated 12.3.2003 addressed to the Board seeking adjournment on 14.3.2003. The three companies wrote identical letters on the same date on their letter heads and it would be useful to reproduce the said letter at this stage.

> " Sub: Personal hearing scheduled for 14th March 2003 at 2.30 p.m.
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> This is with reference to your letter providing us an opportunity of personal hearing before the Chairman, SEBI in relation to the report of the Enquiry Officer dated 30th July 2002. In this respect, you will appreciate that we have represented before you and before the Enquiry officer through Mr. Ketan V. Parekh. On prima facie perusal of the Show

> Cause Notice you will note that a person with knowledge about the transactions mentioned therein is Mr. Ketan Parekh.
>
> Mr. Ketan V. Parekh is currently in judicial custody in Kolkata in relation with the matter being CC No. 476/2002. In this connection, he has applied for bail before the Hon'ble Supreme Court which application is scheduled to come up for hearing on the 24th of the March 2003.
>
> We are very keen that we must avail of the opportunity of personal hearing and Mr. Ketan Parekh's presence at such hearing is necessary for a full defence in the matter. On this basis we request you to kindly reschedule the personal hearing so that the same (i.e. opportunity for hearing) may be availed of by us, sometime during the first week of April, 2003. You will appreciate that no prejudice will be caused as a result of such rescheduling of the personal hearing."

8. A reading of the letter leaves no room for doubt that Ketan Parekh was the person who was controlling Classic, Panther and Saimangal and that he was the person having knowledge about the shares transacted by these companies. Since he was in the judicial lock up in March 2003 the companies sought an adjournment from the Board which was granted. Apart from this admission made by the three companies, the Board during the course of the investigations had recorded the statements of some witnesses including one Nimesh Dedhia who was a representative of one of the brokers (Triumph Securities Ltd.). Dedhiya was specifically asked as to who was placing the orders and what were the instructions in respect of those orders and he replied that the orders had been placed on behalf of Classic and the persons who had placed the orders were either Ketan Parekh or his brother Kartik Parekh. The Board has relied upon this statement to hold that Classic and other two companies were entities of

Ketan Parekh and he was controlling them. This finding is substantiated by the fact that it was Ketan Parekh who filed replies to the show cause notice on behalf of these companies and he also filed the written submissions on their behalf under his signatures. The statement of Nimesh Dedhia was not challenged before us though it was contended that a copy of the statement had not been supplied to the appellants which resulted in the violation of the principles of natural justice. We shall deal with this contention later. When we look at the letter heads of the three companies we find that their corporate address is the same though their registered offices are different. It is, thus, clear that they were functioning from the same office location. In view of the admission made by the three companies coupled by the statements recorded by the Board and having regard to the fact that Ketan Parekh was a director on the Board of Directors of all the three companies which were functioning from the same office and that he filed replies on their behalf to the show cause notice and also the written submissions, the only irresistible conclusion we can draw is that he was the person who was controlling the companies and that all the buy and sell orders were being placed on their behalf under his instructions. It may be relevant to mention here that Shri N.H. Seervai, the learned senior counsel during the course of the hearing had been contending that Ketan Parekh was a different entity from the three companies on whose Board he was a director but did not seriously challenge before us the finding recorded by the Board that he was the force behind the three companies and was controlling them. In the result, it has to be held that Ketan Parekh was controlling the three

companies and all the buy and sell orders on their behalf were being placed by him.

9. We shall now deal with the question whether Ketan Parekh and his three entities namely Classic, Panther and Saimangal were responsible for the price rise in the scrip of Lupin during the period under consideration. It may be mentioned at the outset that every trade that takes place establishes the price of the scrip and the same fluctuates with every buy/sell order which is executed. Having carefully examined the various transactions relied upon by the Board in the impugned order we do not think that they conclusively show that the price rise was due to the transactions undertaken by Shri Ketan Parekh and his three companies. Admittedly, some buy orders were placed by the appellants at slightly higher than the last traded price but this by itself does not lead us to conclude that the increase in the price of Lupin during the period under consideration was solely, or even largely, due to these orders placed by the appellants. The comparison of price movement of certain pharmaceutical stocks with the stock of Lupin will prove the point. It is a normal feature of the stock market that prices of all the stocks pertaining to a particular industry do not always move in tandem. There are a host of factors which influence the pattern of price rise or fall in the share price of a particular company in the stock market. Merely because the price of the scrips of Ranbaxy, Glaxo, Novartis and Cipla (the four companies with which the price of Lupin has been compared by the Board) did not move up that much during the relevant

period does not mean that the price rise in the shares of Lupin was abnormal or that it was artificially ramped up during the said period. The appellants have produced records to show that there were many other pharmaceutical companies whose share prices were also rising significantly, some of them even at a faster pace, during the same period. Our pointed attention was drawn to the scrips of Arbindo Pharma, Ipca Lab, Nicholas Piramal, Orchid Chemicals and Pharma, Sun Pharma and Torrent Pharma. These are all medium size companies in the pharmaceutical sector which could be compared with Lupin. The share price of Arbindo Pharma on 01/09/1999 was around Rs. 560/- and on 30/12/1999 it had risen to Rs. 1234.55. There was an increase of 121.19% during this relevant period. Similarly share price of Torrent Pharma on 01/09/1999 was around Rs. 210.75 and on 30/12/1999 it closed at Rs. 585/- though during the course of the day it had touched Rs. 599.95. There was thus an increase of about 185% in the price. Similar is the case with the other companies. Shri N.H. Seervai, learned senior counsel appearing for the appellants was not wrong when he contended that the Board was in error in comparing the price of Lupin with big size companies and did not take note of the rising prices of the medium size companies with which Lupin could be better compared. From the various charts that he produced along with the compilation, the veracity of which could not be challenged by the respondent because all were computer printouts from the concerned exchanges, it is clear that the price of the shares of pharmaceutical companies was on the rise during the relevant period. It cannot therefore be said that the price of Lupin alone had

shot up during the period under consideration. Again, it cannot be said that the price of Lupin had risen solely because the appellants had traded in this scrip. It is relevant to take note of another factor which was highlighted by Shri N.H. Seervai. The BSE index (popularly known as Sensex) had risen from 3060 points on 01/01/1999 to 5005 points on 30/12/1999. Similarly, price index of NSE (popularly known as Nifty) had risen from 890 points on 01/01/1999 to 1480 points on 30/12/1999. It is thus clear that not only the shares of the pharmaceutical companies were on the rise but the sentiment of the stock market as a whole was positive and the price of all the shares generally had an upward trend. The Board, however, while recording a finding that Ketan Parekh and his three companies were instrumental in establishing an artificially higher price in the scrip of Lupin has relied upon the transactions executed on 06/10/1999, 14/10/1999 and 15/10/1999. It is not necessary for us to examine all these transactions that took place on these dates and it will suffice if we examine only a few of them by way of a representative sample. The appellants had placed six buy orders of 10,000/- shares each of Lupin on 06/10/1999. These orders were placed within a period of less than four minutes as is shown in the chart below:

Date	Name of the Exchange	Name of the Broker	Time	Qty.	Order No.	Rate (Rs.)	LTP (Last Traded Price) (Rs.)	Change In Price (Rs.)
6/10/99	BSE	Triumph Securities Ltd.,	10.14.37	10000	372010160	250	245	5
6/10/99	BSE	Triumph Securities Ltd.,	10.15.44	10000	372010161	255	250	5
6/10/99	BSE	Triumph Securities Ltd.,	10.16.47	10000	372010162	260	255	5
6/10/99	BSE	Triumph Securities Ltd.,	10.17.24	10000	372010166	260.1	260	0.1
6/10/99	BSE	Triumph Securities Ltd.,	10.17.35	10000	372010167	260.2	260.1	0.1
6/10/99	BSE	Triumph Securities Ltd.,	10.18.01	10000	372010169	260.25	260.2	0.05

It is clear from the aforesaid chart that the first three buy orders were at a difference of Rs. 5/- from the last traded price whereas last three orders were almost at the same rate as the last traded price. As per the table in para 4.3 of the impugned order the previous day's closing price of Lupin was Rs. 241/- and when the first order was placed by Classic at 10.14.37 hours the last traded price had already moved from Rs. 241/- to Rs. 245/-. It is clear that the scrip was already showing a rising trend due to purchase by others and the rise in the price from Rs. 245/- to Rs. 260/- on that day is not solely due to purchase orders placed by the appellants. The last three orders placed by the appellants on 06/10/1999 were almost at the last traded price and all this would indicate the desire of the appellants to purchase the shares but it cannot be said that they were establishing a higher price.

10. There is yet another set of transactions to which reference is necessary as much has been said about those transactions in paragraph 4.9 of the impugned order. The Board has relied, amongst others, on the trades executed on 14.10.1999 on BSE and we are extracting those transactions in the chart below:

Date	Name of the Exch-ange	Name of the Broker	Time	Qty.	Order No.	Rate (Rs.)	LTP (Last Traded Price) (Rs.)	Change in Price (Rs.)
14/10/99	BSE	C. J. Dalal (Purchase)	10.03.34	25000	85040040	411	382.25 (closing)	Buyer and Seller both Classic Credit Ltd.
14/10/99	BSE	Parvin V. Shah (sale)	10.03.34	25000		411	Price on previous day)	Buyer and Seller both Classic Credit Ltd.
14/10/99	BSE	C. J. Dalal (Purchase)	15.12.51	30000	85040076	412.80	Buyer and Seller both Classic Credit Ltd.	Buyer and Seller both Classic Credit Ltd.
14/10/99	BSE	Milan Mahendra (Sale)	15.12.52	40000	460120041	412.80	Buyer and Seller both Classic Credit Ltd.	Buyer and Seller both Classic Credit Ltd.,

Classic had placed a buy order of 25000 shares of Lupin through broker C.J. Dalal at 10.03.34 hours at a rate of Rs. 411/- when the previous day's closing price was Rs. 382.25 only. Simultaneously, a sell order had also been placed with another broker Praveen V. Shah at the same time and according to the Board this matching transaction by Classic established a higher price of Rs. 411/- in the scrip of Lupin which was 8% higher than the closing price on the previous day. Relying on the aforesaid transactions, the Board observed that "The order for purchase and sale was entered and executed by Classic Credit Ltd., at the opening of trading session on 14.10.1999 at a rate of Rs. 411/-. With this transaction Classic Credit Ltd., established a price of Rs. 411/- in the scrip of Lupin Laboratories Ltd., 8% higher than the closing price on the previous day which was Rs. 382.25". This finding is based on incomplete data and on the wrong assumption that the order at Rs. 411/- had been placed at the opening of the trading session on 14.10.1999 which is not so. We have perused the trade log of 14.10.1999 as produced by the respondent and it is clear that trading on that day started at 9.55 a.m. Between 9.55 a.m. and 10.03.34 hours more than 100 trades in the scrip of Lupin had been transacted by others and the price of the scrip had touched Rs. 412/- even though the previous day's closing was at Rs. 382.25. It was then that Classic placed its order at 10.03.34 hours at Rs. 411/-. Was Classic then establishing a higher price. Obviously not. It is also clear that apart from the appellants, there were others who were dealing in the scrip of Lupin and this demand could have led to the price rise.

11. As regards the allegation of creation of artificial volumes the impugned order in para 4.14 has referred to a table in which the transactions of Shri Ketan Parekh and his companies in the scrip of Lupin have been compared with the total transactions on the NSE. We do not have on record the total transactions in the scrip of Lupin at NSE and other stock exchanges in the country. If one were to examine whether volumes were being artificially increased one has to see the total volume of trade in the scrip in the market and then only can one conclude whether the appellants had really played any significant role in increasing the volumes artificially. The complete data in this regard is not forthcoming nor has it been referred to in the impugned order. The trades of Ketan Parekh and his three companies cannot be compared with the total volume only on the NSE as that will not give the true and fair picture. Even going by the table referred to in para 4.14 of the impugned order, out of the 39 settlement periods referred to therein the percentage of gross trading volume of the appellants is 50% or more in relation to the gross traded quantity in only four settlements, it was 25% or more in another 8 settlements and in the remaining 27 settlements the percentage of gross quantity traded by the appellants was less than 25%. In such a situation we find it difficult to hold that the transactions undertaken by the appellants had artificially increased the volumes in the scrip of Lupin during the period under consideration. In the result, we have no hesitation to hold that the appellants did not establish a higher price for the scrip of Lupin nor did they create artificial volumes and the findings recorded by the Board in this regard cannot be upheld.

12. We will now deal with the other contentions raised by Shri N.H. Seeravai, learned senior counsel for the appellants. It was vehemently argued by the learned senior counsel that even if it were to be assumed that the appellants had artificially raised the price of the scrip of Lupin and had created artificial volumes in the market, the charge levelled against them under Regulation 4(a) cannot stand as it is not the case of the Board that such artificial price rise had induced any person to sell or purchase the scrip of Lupin. In view of our findings recorded herein above that the appellants neither raised the price of Lupin nor did they create any artificial volumes in the market the discussion on this issue becomes academic. Since this issue was debated at length by both sides we think it appropriate to record our findings on the interpretation of Regulation 4(a) so that it could be properly applied in future in other cases that may be pending. In order to deal with the argument of the learned senior counsel it is necessary to refer to the provisions of Regulation 4(a) under which the charge has been levelled against the appellants. This regulation reads as under:

> "Prohibition against market manipulation.
>
> 4. No person shall --
>
> (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;
>
> (b) ……

(c) …….

(d) …….

(e) …….”

According to the learned senior counsel clause (a) of Regulation 4 consists of two parts and that both the parts have to be satisfied before the charge can be said to have been established. The first part according to him is the act of a person in trading/transacting in the securities directly or indirectly with the intention to artificially raise or depress the price of the securities. According to him merely raising or depressing the price of a scrip artificially by itself is not enough to establish the charge until it induces some other person to buy or sell that scrip. The argument is that the Board must not only establish that the price of Lupin was artificially raised / depressed but it must further establish that such manipulation led to inducing some other person to by or sell those shares. In support of his contention he cited a judgement of this Tribunal in *Nirmal Bang Securities Pvt. Ltd. Vs. SEBI* (2003) 6 Comp. L.J. 20 (SAT). Mr. Rafique Dada learned senior counsel for the respondent, on the other hand strenuously urged that when a person directly or indirectly transacts in securities with the intention to artificially raise or depress the price, that act by itself would induce various investors to buy / sell those securities and that no further material in this regard is necessary to be produced. Having given our thoughtful consideration to the rival contentions of the parties we are inclined to agree with Shri Rafique Dada learned senior counsel. One cannot lose sight of the fact that a stock exchange is a place where persons willing to trade in the securities come to buy and sell and they are provided

with a platform where a buyer buys securities without knowing the seller and vice-versa. The stock exchange is also a platform for the fair price discovery of a scrip based on the market forces of demand and supply. Securities market is so wide spread and in a system of screen based trading various potential investors who track the scrips through the screens of the exchanges only see whether a particular scrip is active or not, whether it is trading in large volumes and whether the price is going up or down. Having regard to these factors he makes up his mind to invest or disinvest in the securities. When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the

Board a burden which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations.

13. Since we have already held that the appellants had neither raised artificially the price of Lupin nor its trading volumes the charge levelled against them under Regulation 4(a) cannot stand.

14. At this stage we may also take note of another objection raised by the learned senior counsel appearing for the appellants. He strenuously urged that the Board had arbitrarily picked up the period from September, 1999 to December, 1999 for the purpose of investigation and that if an earlier period or later period had been taken the picture would have been entirely different. We are unable to accept this contention. The period was taken by the Board because it was during that time it found that there was unusual spurt in the price and volumes in the scrip of Lupin. It cannot therefore be said that the Board acted arbitrarily in selecting the period because as a regulator it was perfectly justified to look into any unusual movement in the scrip of any company.

15. Lastly, it was urged that the Board violated the principles of natural justice inasmuch as it did not supply copies of the statements of some of the brokers which were recorded during the course of investigations to enable the appellants to cross-examine the deponents. We specifically asked the learned senior counsel whether any request was made on behalf of the appellants for the supply of the statements and the answer was in the

negative. He submitted that such a request was made verbally at the time of personal hearing. We do not think that that was the proper stage for making such a request. In any case, the respondent seriously disputed the fact that any such request was made for the supply of the copies of the statements recorded by the Board. There is no mention of any such request in the impugned order. This being so, mere ipse dixit of the appellant at the time of hearing before us which is seriously disputed by the Board cannot be accepted to hold that the principles of natural justice were violated. For the reasons stated above, the charge levelled against the appellant in the first show cause notice dated March 27, 2002 must fail.

Re: Second show cause notice

16. This brings us to the second show cause notice dated July 30, 2002. Due to excessive volatility in the index movements of stock exchanges during mid February to mid March, 2001 and apprehensions of some attempts by certain entities to distort the true price discovery and manipulate the securities market, the Board ordered investigations into the affairs of two brokers namely, Credit Suisse First Boston (India) Securities Pvt. Ltd., and Desdner Klienwort Bensons Securities (I) Limited (hereinafter referred to as CSFB and DKB respectively). Investigations were carried out for the period from April 1, 2000 to March 31, 2001 and these revealed that Classic, Luminant Investment Private Limited

(Luminant) and Panther had sold the shares of some companies through these two brokers which were bought either by the same entity or by other entities connected / controlled by Ketan Parekh / Kartik Parekh. The other entities allegedly involved in similar transactions were Saimangal, NH Securities Limited (for short “NH Securities”), Classic Shares and Stock Brokers Limited (CSSB), Chitrakut Computers Private Limited (Chitrakut), Classic Infin Limited (Classic Infin) and Panther Investrade Limited (Panther Investrade). After the conclusion of the investigations the Board issued a show cause notice to Ketan Parekh, Kartik Parekh and the aforesaid entities alleging that they were all being controlled and managed by Ketan Parekh or Kartik Parekh. It was alleged that KP entities sold and purchased shares of other companies through CSFB and DKB and that the transactions were in the nature of circular and fictitious trades which created artificial volumes and artificial market in the scrips. It was also alleged that KP entities received finance against delivery of shares without waiting for pay out at the exchange and that the transactions were so structured as to give the semblance of sale and purchase of shares at the recognised stock exchanges. It was further alleged that the transactions executed by Classic, Luminant and Panther through the two brokers were non genuine and involved no change in the beneficial ownership of the shares since shares were merely rotating from one KP entity to the same entity or to another KP entity. The show cause notice also alleged that Classic and Panther had also indulged in similar circular trades thereby creating artificial volumes and artificial market in certain scrips. In short,

the allegations made against KP entities are that they indulged in manipulative activities such as synchronized trades, financing transactions giving the semblance of purchase and sale of shares at the exchanges, circular trading and creation of artificial volumes and bench marking the prices of certain scrips by executing non-genuine transactions. All this, according to the Board, was detrimental to the integrity of the securities market and also violative of the Regulations. The appellants (Ketan Parekh, Kartik Parekh and their entities) were called upon to show cause why suitable directions under Regulation 11 of the Regulations read with Section 11B of the Act including a direction to prohibit them from dealing in securities be not issued against them. None of the appellants responded to the second show cause notice. They were afforded an opportunity of hearing and were called upon to appear before the then Chairman of the Board on March 14, 2003. All the KP entities requested for an adjournment on the ground that Shri Ketan Parekh was in judicial custody of Kolkatta Police and that his presence was required during the hearing. They all wrote identical letters of request stating that "you will appreciate that we have represented before you and before the Enquiry Officer through Mr. Ketan V. Parekh. On prima facie perusal of the show cause notice you note that a person with knowledge about the transactions mentioned therein is Mr. Ketan Parekh." The matter was being adjourned time and again on the request of the appellants because Ketan Parekh was not available and was finally heard on June 19, 2003. On a consideration of the material collected by the Board during the course of investigations and after considering the

written submissions filed by the appellants, it came to the conclusion that Ketan Parekh and Kartik Parekh and also their entities which are being controlled by them were guilty of the charges levelled against them and that by indulging in circular and fictitious trades they created artificial volumes and artificial market in the scrips in which they traded. The Board also found that Ketan Parekh and his entities had raised finance through manipulative transactions and that they indulged in synchronized trades bench marking the prices of certain scrips. In view of this finding and also those recorded under the first show cause notice the Board by its order dated December 12, 2003 exercising its powers under Section 11(4)(b) and 11B of the Act read with Regulation 11 of the Regulations prohibited Ketan Parekh, Kartik Parekh and their entities from buying, selling and dealing in securities in any manner directly or indirectly and also debarred them from associating with the securities market for a period of 14 years. Hence these appeals.

17. At the outset we may notice a contention raised by the learned senior counsel appearing for the appellants that Ketan Parekh and Kartik Parekh had nothing to do with the other companies which have been held to be their entities nor were they connected with them. It was urged that the companies are independent corporate entities governed by their respective Boards of Directors and therefore the Parekh brothers could not be held responsible for their actions. An identical contention was raised while challenging the findings recorded under the first show cause notice. We

have dealt with this contention in detail in the earlier part of our order while dealing with the first show cause notice and for the reasons recorded therein we have no hesitation in rejecting this contention and uphold the findings of the Board that all the KP entities were being controlled by Ketan Parekh / Kartik Parekh and that all the buy and sell orders on behalf of these entities were being placed under their instructions. We are also of the view that since serious allegations of market manipulations including circular and synchronized trades resulting in artificial markets and volumes in different scrips have been levelled against Ketan Parekh and his entities, it is a fit case where the corporate veil should be lifted to find out who are the persons playing behind the curtain. It is true that the company in law is a different person from those who constitute it and in that sense Ketan Parekh would be distinguished from the entities said to be associated with him but this rule has several exceptions which have now come to be recognised by our Courts, Courts in England and also in the United States. Palmer on Company Law, Volume I, Part II has discussed several situations where the court would disregard the corporate veil and has pointed out several exceptions to the general rule. That discussion has been approved by the apex Court in *Delhi Development Authority v. Skipper Construction Company Pvt. Ltd*. AIR 1996 SC 2005 wherein their Lordships after discussing the law on the subject as it prevails in some other jurisdictions have observed as under:

> "28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to

> commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people".

In view of the serious allegations levelled against the appellants we are of the view that it would be proper to lift the corporate veil of the KP entities and when we do that we find it is Ketan Parekh who is lurking behind the corporate curtain.

18. The Board in the impugned order has referred to a large number of trades transacted by different KP entities to show how they were indulging in circular and fictitious trades creating artificial volumes and artificial market in those scrips. It will be pertinent to mention that the appellants do

not dispute any of those transactions. While admitting that they executed those trades they contend that the transactions are legal and perfectly legitimate and that they did not violate any law. We will take up two types of transactions executed by KP entities by way of sample to see whether the findings recorded by the Board are justified or not. However, before we deal with the transactions it is necessary to state as to what are circular trades and synchronised deals. It will also be relevant to make a mention about the settlement system that operates in the stock market and what are stock exchanges meant for.

19. A stock exchange is an association of member brokers, whether incorporated or not, for the purpose of facilitating and regulating the trading in securities. Bulk of the trading takes place in equity shares of public limited companies which are transferable by endorsement. It provides the service of getting shares of companies listed for trading purposes. A stock exchange provides a trading platform to a very large number of buyers and sellers who come and trade their stocks. A unique feature of the stock exchange is that, unlike other moveable properties, stocks are generally traded there between the unknowns who never get to meet and the price at which they trade is determined by the free market forces of supply and demand. All the players and intermediaries are expected to play the game according to the rules all of which are not codified. We also know that not all play the game fairly and some manipulate the market. There are a variety of methods in which the market could be manipulated all of which

cannot be envisaged as human ingenuity knows no bounds and sometimes even the Board – the watchdog of the securities market comes to know only after the event. However, one of the methods commonly employed by manipulators to create an impression of high trade volumes and rising prices is circular trading. This is how it works: a manipulator targets a scrip and acquires as much of the floating stock as is necessary to ensure his profits and creates an illusion of high trading volumes at the counter. He indulges in what is called circular trading where a few of them get together and buy and sell large blocks of shares among themselves. The shares are sold to associates at a price higher than what is prevailing in the market who in turn sell them to another associate for even a higher price. All transactions usually cancel out each other and the shares remain within the circle without any genuine trading transaction. This creates an impression that the stock is an actively traded one and sought after and, therefore, such transactions attract those outside the circle to buy the stocks. In other words, the general investing public gets induced to buy such stocks. The manipulators not only increase artificially the trading volumes but also benchmark the price because every trade establishes the price of the scrip. Circular trading is among the easiest ways to increase volumes. Tragically, retail investors and day traders are most vulnerable to such trading as they follow the herd mentality because they lack market intelligence and experience to diagnose such cases and they are usually the ones left holding the parcel when the music stops. The manipulators who had taken large positions in the beginning normally cash out and the consequences of

manipulation are borne by the innocent investors.

20. There are yet another type of transactions which are commonly called synchronised deals. The word ‘synchronise’ according to the Oxford dictionary means “cause to occur at the same time; be simultaneous”. A synchronised trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. Every buy and sell order has to match before the deal can go through. This matching may take place through the stock exchange mechanism or off market. When it matches through the stock exchange, it may or may not be a synchronised deal depending on the time when the buy and sell orders are placed. There are deals which match off market i.e., the buyer and the seller agree on the price and quantity and execute the transaction outside the market and then report the same to the exchange. These are also called negotiated transactions. Block deals (when shares of a company are traded in bulk) are an instance of trades that match off market. Such trades have always been recognised by the market and also by the Board as a regulator. It has recently issued a circular requiring all bulk deals to be transacted through the exchange even if the price and quantity are settled outside the market. When such deals go through the exchange, they are bound to synchronise. It would, therefore, follow that a synchronised trade or a trade that matches off market is per se not illegal. Merely because a trade was crossed on the floor of the stock exchange with

the buyer and seller entering the price at which they intended to buy and sell respectively, the transaction does not become illegal. A synchronised transaction even on the trading screen between genuine parties who intend to transfer beneficial interest in the trading stock and who undertake the transaction only for that purpose and not for rigging the market is not illegal and cannot violate the regulations. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the

cumulative effect of these that an inference will have to be drawn.

21. We may now briefly refer to the settlement system in a stock exchange. Settlement refers to the process whereby payment is made by all who have made purchases and shares are delivered by all who have made sales. The exchange ensures that buyers who have paid for the shares purchased receive the shares and sellers who have given delivery of shares to the exchange receive payment for the same. The entire process of settlement of shares and money is managed by stock exchanges through clearing house which are entities formed specifically to ensure that the process of settlement takes place smoothly. The period within which the settlement is made – the period within which buyers receive their shares and sellers receive their money – is called a settlement cycle. It is possible to buy and sell within a settlement cycle many times which is what traders do. They settle only their net outstanding positions at the end of the cycle. Therefore, a settlement cycle refers to a calendar according to which all purchase and sale transactions executed within the dates of the settlement cycle are settled on a net basis. There is also a rolling settlement where each trading day is considered as a trading period and trades during the day are settled based on the net outstandings for the day. Presently, trades in rolling settlement are settled on T+2 basis i.e., on the second working day. T+2 means that trades are settled two working days after the day the trade takes place. This time schedule has been prescribed by the Board as the market watchdog with a view to regulate it and protect the interest of the investors.

We are informed that during 2000-01 up to June 30, 2001, the settlement cycle at the Bombay Stock Exchange (BSE) was from Monday to Friday and at the National Stock Exchange (NSE) was from Wednesday to Tuesday. In July, 2001 rolling settlement was introduced in phases across all stock exchanges in India. To begin with, it was T+5 i.e., trades taking place on a Monday were settled on the following Monday. Thereafter the cycle was reduced to T+3 and currently it is T+2.

22. Let us now examine some of the transactions executed by Ketan Parekh and his entities allegedly with a view to raise funds from the market by rigging its mechanism. It appears that Ketan Parekh wanted to raise funds against shares of various companies including Global Trust Bank (GTB) held by him or his entities. In the normal course he could have gone to a bank or any financial institution and after pledging the shares he could have raised the money. In that event he would have lost control over the shares for as long as they remained pledged. Instead of adopting this method he decided to use the market mechanism in a devious way and executed transactions giving them the semblance of sale and purchase of shares thereby achieving the same object of raising money without losing control over the shares. The following chart will illustrate the manner in which he operated through his entities thereby manipulating the market.

Circular trades of KP entities through CSFB Prop Account

Ketan Parekh Group entities buying the same shares through other set of brokers, which was sold by CSFB Prop A/c through CSFB Sec through synchronized trades

Scrip Name	Trade Date	Ex-change	Trade Time	Trade Qty	Trade Price	Buy Member	Buy Client	Sell Order number	Buy order number	Sell order time	Buy Order Time	`Sell Order Qty	Buy Order Qty	Sell Order Price	Buy Order Price
GTB	30-Oct-00	NSE	14:02:41	99160	70.00	NH Sec	PFMS	200010300572946	200010300572929	14:02:41	14:02:40	100000	100000	70.00	70.00
			14:02:54	740	70.00	NH Sec	PFMS	200010300572946	200010300573280	14:02:41	14:02:54	100000	100000	70.00	70.00
			14:02:54	99260	70.00	NH Sec	PFMS	200010300573273	200010300573280	14:02:54	14:02:54	100000	100000	70.00	70.00
			14:03:02	740	70.00	NH Sec	PFMS	200010300573273	200010300573444	14:02:54	14:03:02	100000	100000	70.00	70.00
			14:03:04	99260	70.00	NH Sec	PFMS	200010300573479	200010300573444	14:03:04	14:03:02	100000	100000	70.00	70.00
			14:03:11	740	70.00	NH Sec	PFMS	200010300573479	200010300573631	14:03:04	14:03:11	100000	100000	70.00	70.00
			14:03:13	99260	70.00	NH Sec	PFMS	200010300573657	200010300573631	14:03:13	14:03:11	100000	100000	70.00	70.00
			14:03:27	740	70.00	NH Sec	PFMS	200010300573657	200010300573915	14:03:13	14:03:27	100000	100000	70.00	70.00
			14:03:27	99260	70.00	NH Sec	PFMS	200010300573920	200010300573915	14:03:27	14:03:27	100000	100000	70.00	70.00
			14:05:27	740	70.00	Milan Sec	PFMS	200010300573920	200010300576521	14:03:27	14:05:27	100000	100000	70.00	70.00
			14:05:27	99260	70.00	Milan Sec	PFMS	200010300576531	200010300576521	14:05:27	14:05:27	100000	100000	70.00	70.00
			14:05:38	740	70.00	Milan Sec	PFMS	200010300576531	200010300576799	14:05:27	14:05:38	100000	100000	70.00	70.00
			14:05:38	99260	70.00	Milan Sec	PFMS	200010300576802	200010300576799	14:05:38	14:05:38	100000	100000	70.00	70.00
			14:06:28	590	70.00	Milan Sec	PFMS	200010300576802	200010300577845	14:05:38	14:06:28	100000	100000	70.00	70.00
			14:06:35	99360	70.00	Milan Sec	PFMS	200010300577959	200010300577845	14:06:35	14:06:28	100000	100000	70.00	70.00
			14:06:46	640	70.00	Milan Sec	PFMS	200010300577959	200010300578184	14:06:35	14:06:46	100000	100000	70.00	70.00
			14:06:46	99360	70.00	Milan Sec	PFMS	200010300578187	200010300578184	14:06:46	14:06:46	100000	100000	70.00	70.00
			14:06:58	640	70.00	Milan Sec	PFMS	200010300578187	200010300578439	14:06:46	14:06:58	100000	100000	70.00	70.00
			14:06:58	99360	70.00	Milan Sec	PFMS	200010300578450	200010300578439	14:06:58	14:06:58	100000	100000	70.00	70.00
			14:07:13	640	70.00	Milan Sec	PFMS	200010300578450	200010300578735	14:06:58	14:07:13	100000	650	70.00	70.00
				999750											

KP entities, after synchronised trades, sold the shares to CSFB Sec via cross deals

Exchange	Trade Time	Trade Qty	Price	Sell Client
NSE	14:13:45	1000000	69	CCL

It will be seen from the chart that Panther which is one of his entities placed 20 different buy orders for the purchase of 9,99,750 shares of GTB at Rs. 70/- on October 30, 2000 on the NSE. The orders are placed within a span of less than 5 minutes ranging from 14:02:41 hours to 14:07:13 hours. CSFB which is essentially a broker sells the shares to Panther from its propriety account i.e., it acts as a client which is permissible. As a normal transaction the settlement would have taken place on T+5 basis which was then prevalent. In other words the shares would have been delivered and the price paid only at the end of the settlement cycle. Within less than seven minutes of Panther's buy orders, Classic – another KP entity, sells 10 lac GTB shares through a cross deal to CSFB in its propriety account at Rs. 69/-. This is a cross deal because CSFB acted as a broker on behalf of Classic and also on its own behalf. This was also a spot deal where shares were delivered instantly against receipt of money. CSFB in the process made a profit of Re. 1/- per share within a few minutes. It is, thus, clear that the shares which moved apparently from one KP entity to another remained within the control of Ketan Parekh and Classic through the spot deal received the price of the shares from CSFB to whom they were sold and that Panther would be paying to CFSB only at the end of the settlement period. In this way Ketan Parekh through Classic has raised short term money while retaining control over the shares which have actually been traded through the exchange mechanism without the intention of transferring any beneficial ownership therein. It is true that these shares were actually transferred from the account of Classic to CSFB which held them as a temporary parking slot and they eventually went to Panther.

Since Classic and Panther are both being controlled by Ketan Parekh, the latter took a short term loan from CFSB which acted as a financier for the period of a few days for which it gave the money to Classic without incurring any risk because it had shares worth that amount by way of security. CSFB was not to retain those shares nor did it purchase them with the intention of actually buying them. It had purchased those shares for passing them on to Panther and for the period it retained the shares it had advanced a short term loan to Ketan Parekh through Classic. Ketan Parekh had, thus, raised a short term loan from CSFB against those shares with a clear understanding between him and CSFB that Panther would first place a buy order and thereafter Classic would sell those shares to it. It is interesting to note that CSFB was not in possession of the shares when it agreed to sell them to Panther. This, in the market terminology is called short selling which is permissible but nevertheless the broker runs a great risk in going through such a transaction. In the instant case, CSFB did not run any risk and was doubly sure that the money paid to Ketan Parekh through Classic would be recovered from Panther from whom a buy order was already pending which transaction was to be settled on T+5 basis. If for any reason Panther were to default in the purchase of the shares (which of course it did not) the exchange guarantee fund would have taken care of the payment to CSFB. If one were to examine the transaction between Classic and CSFB or between CSFB and Panther in isolation there would be nothing wrong with either of them because the shares were sold and transferred. But these transactions cannot be considered in isolation because they were a part of a chain whereby the shares were made to rotate from

one KP entity to another through CSFB as a broker which acted as a conduit (financier) to advance a short term loan to Ketan Parekh. As already observed, these transactions were not meant to execute a genuine trade in the scrips because the control of those was always with Ketan Parekh and he had a clear understanding with CSFB in this regard which acted hand in glove with him in executing these transactions and we are informed that action has been taken against it as well. The fact that these were financing transactions is further clear from the statement that was made by the representative of CSFB during the course of the investigations. He stated that the brokerage which it was charging from the KP entities varied depending upon the period intervening the date on which the money was advanced and the date on which it was received back. In the aforesaid illustrations the finance was given to Ketan Parekh through Classic and the money was received back by CSFB through Panther and the brokerage was proportionate to the number of days that elapsed between the day on which money was advanced to Ketan Parekh through Classic and the day when it was received back through Panther. The major portion of the amount that was charged as brokerage was in reality the interest for the days for which the amount had been advanced to Ketan Parekh through different entities. It is, thus, clear that the transactions were in reality financing transactions though they were given the semblance of sale and purchase of shares. Transfer of shares from Classic to Panther through CSFB was not a solitary instance and a very large number of transactions were executed in a similar fashion not only between Classic and Panther but also between the other KP entities. As found by the Board, which fact was not disputed before us

at the time of hearing, that during the period from April 1, 2000 to March 31, 2001 shares worth Rs. 5644 crores were traded only by three Ketan Parekh entities on the NSE and BSE by raising short term finance from CSFB the broker. Trades by other entities were in addition. Such large was the trading by Ketan Parekh and his entities. Having regard to the frequency of the transactions, their value and volumes and taking note of the fact that they involved circular trading without change of beneficial ownership and without intending to trade, we have no hesitation in holding that these transactions were non genuine, fictitious and circular in nature which were executed to create artificial market in the scrips and that Ketan Parekh raised short term finance by distorting the exchange mechanism. As we have already noticed in the earlier part of the order, a stock exchange is a platform for genuine trading in the scrips of companies and that they are generally traded among the unknowns at a price which is determined by the market forces of supply and demand. In the very nature of things, a stock exchange is not meant for financing transactions. If one needs money, the shares could be sold in the market which provides liquidity but you can't raise short term finances through the circuitous methods as resorted to by Ketan Parekh. In the case before us matching buy and sell orders were placed by the KP entities at a predetermined price which did not lead to the true price discovery of the scrip and thereby the entire market mechanism was polluted in a big way. One can only marvel at the ingenuity of the manipulators who resorted to this methodology and the Board appears to have realised after the event that market could be rigged in this manner as well.

23. In order to show how circular and fictitious trades were being executed by KP entities through the stock exchange mechanism is further clear from yet another set of transactions executed among them and in some of the cases the buyer and the seller were the same. The following chart pertains to the synchronised trades at NSE where KP entities are selling through DKB as a broker and simultaneously other set of KP entities are buying through other brokers:

Scrip	Trade Date	Trade Time	Trade Price	Trade Qty	Buy member	Sell Client	Buy Client	Sell Order Time	Buy Order Time	Sell Order Vol.	Buy Order Vol.	Sell Order Price	Buy order price
DSQ Bio	13-Dec-00	11:01:32	238.25	74339	NH Sec	CCL	PFMS	11:01:32	11:01:31	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:01:32	238.25	25661	NH Sec	CCL	NH Sec	11:01:32	11:01:31	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:01:42	238.25	99995	NH Sec	CCL	NH Sec	11:01:42	11:01:38	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:01:54	238.25	98965	CSSB	CCL	CSSB	11:01:54	11:01:53	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:04	238.25	96486	CSSB	CCL	CSSB	11:02:04	11:02:04	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:04	238.25	1014	CSSB	CCL	CSSB	11:02:04	11:01:53	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:13	238.25	98987	Keynote	CCL	PFMS	11:02:13	11:02:13	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:13	238.25	1013	CSSB	CCL	CSSB	11:02:13	11:02:04	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:29	238.25	1013	Keynote	PFMS	PFMS	11:02:29	11:02:13	100000	100000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:30	238.25	50000	Keynote	PFMS	PFMS	11:02:29	11:02:30	100000	50000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:30	238.25	47895	CSSB	PFMS	CSSB	11:02:29	11:02:30	100000	50000	238.25	238.25
DSQ Bio	13-Dec-00	11:02:47	238.25	49825	CSSB	PFMS	CSSB	11:02:47	11:02:45	50000	50000	238.25	238.25

24. A perusal of the chart would show that on 13/12/2000 one KP entity is buying the shares of DSQ Bio and another entity is selling at the same time and at the same rate and therefore the trades had to match on the screen of the exchange. In some cases the buyer and the seller is the same entity. The aforesaid chart clearly illustrates how circular trading was carried on by the KP entities in a synchronised manner through DKB as a broker. This is only one instance but not the solitary one. Large number of

fictitious trades were executed in this manner in the scrips of different companies whereby artificial volumes were created by Ketan Parekh. The Board has in the impugned order referred to quite a few of the transactions executed by these entities and we are in agreement with those findings that these were synchronised trades executed in a circular manner to create artificial volumes. We are not dealing with each and every transaction executed by the appellants only with a view to avoid making this order bulky. It is relevant to mention here that the modus operandi adopted by KP entities in dealing with CSFB and DKB as brokers was similar and circular and fictitious trades were executed to create artificial volumes and market in the scrips. Ketan Parekh also received finance against delivery of shares without waiting for pay out at the exchange and the transactions were given the semblance of sale and purchase of shares. We have, therefore, no hesitation to hold 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.

25. We shall now deal with the remaining two submissions made by the learned senior counsel on behalf of the appellants. It was strenuously contended by Shri N.H. Seervai that the Board had violated the principles of natural justice as it did not allow Ketan Parekh and his entities to cross-examine the representatives of the brokers whose statements had been recorded during the course of investigation which statements had been relied upon by the Board in recording its findings against the appellants. The argument of the learned senior counsel is that Ketan Parekh was only a Director on the board of the companies which have been dubbed as his

entities and that he had no concern with their day to day working and that it was necessary to cross-examine the representatives of the brokers who had stated that it was Ketan Parekh who was placing the buy and sell orders on behalf of the companies. Since this right was denied to the appellants the learned senior counsel contends that the principles of natural justice were flagrantly violated and that the order deserves to be set aside on this ground alone. We do not think so. In the two show cause notices issued to Shri Ketan Parekh and his entities, it was clearly pointed out to them that Shri Ketan Parekh was not only associated with the companies but was also controlling them. At no stage of the proceedings before the Board did Ketan Parekh or any of the companies rebutted this allegation. As a matter of fact, when Ketan Parekh appeared before the Board during the course of investigations he admitted that he was connected with the companies in one way or the other. It is on record that in his reply filed to the first show cause notice he did not dispute this fact. He and the companies did not file any reply to the second show cause notice. At the time of final hearing before the Board all the companies were represented by Shri Ketan Parekh and that the proceedings were being adjourned from time to time when Ketan Parekh was in judicial custody of the Calcutta Police. We also have on record identical letters from the companies requesting for an adjournment on account of non-availability of Ketan Parekh who alone, according to them, was in the know of facts. The written submissions filed by all the companies had also been signed by Shri Ketan Parekh. At no stage of the proceedings did any of the companies or Ketan Parekh make a request to the Board that it needed to cross-examine the

representatives of the two brokers and, in our view, rightly, because they knew that it was Ketan Parekh who was controlling them. It appears that the plea that the appellants should have been allowed to cross-examine the representatives of the brokers had been raised for the first time by their counsel at the time of final hearing before the Board which, in any case, was not the stage to raise such a plea. It was at that stage that the appellants pleaded for the first time through their counsel that Ketan Parekh was only a director on the board of the companies and that he was not looking after their day to day business and that he was distinct from those entities. In such a situation we are of the view that the Board was justified in not allowing the representatives of the brokers to be cross-examined when it was never the case of any of the appellants including Ketan Parekh himself that he was not controlling the companies. We have, therefore, no hesitation in rejecting the contention. In this view of the matter it is not necessary for us to discuss the case law cited by the learned senior counsel in this regard.

26. Lastly, it was urged that the Board discriminated against the appellants in imposing a high dose of penalty on them whereas lesser penalty was imposed on the two brokers who had played an equally dubious role, if not more, in the execution of the transactions which have been found to be illegal and manipulative in nature. The argument is that CSFB and DKB had both played an equal role in the execution of the transactions which have been dubbed as illegal and their certificates of registration had been suspended for a period of 18 months and two years respectively whereas the appellants have been debarred from accessing the securities market for a period of 14 years from the date of the order. The

learned senior counsel referred to the orders passed by the Board in the case of CSFB and DKB in support of his contention. Having heard the learned counsel for the parties on the quantum of penalty we are of the view that the Board was not justified in letting off the two brokers lightly by imposing on them a penalty which was clearly disproportionate to the gravity of the charges proved against them. They should have been given a heavier dose considering the fact that their role in the execution of the transactions was no less than those of the appellants. The Board had committed an error in this regard but that matter is not in appeal before us. This, however, will not justify the appellants to contend that the Board should have committed a similar mistake in their case as well and awarded them a lesser punishment. As noticed earlier the appellants have rigged the market in a big way and the penalty imposed on them in our view is quite reasonable having regard to the gravity of the charges proved. In this view of the matter we find no ground to reduce the period of debarment.

27. In view of our findings recorded on the second show cause notice upholding the findings of the Board we find no merit in the appeals which stand dismissed with no order as to costs.

sd/-
Justice N.K. Sodhi
Presiding Officer

sd/-
C.Bhattacharya
Member

sd/-
R.N.Bhardwaj
Member