# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No. 49 of 2011**

**Date of decision: 28.4.2011**

M/s. Vijay Textiles Ltd.
104, Surya Towers,
Sardar Patel Road,
Secunderabad- 500 003. ……Appellant

Versus

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

Mr. Pesi Mody, Advocate with Mr. Anant Upadhyay, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Kersi Dastoor, Advocate for the Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
P.K. Malhotra, Member
S.S.N. Moorthy, Member

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

The precise charge levelled against the appellants in these two Appeals no. 49 & 50 of 2011 is that they made a false/ misleading corporate announcement relating to an export order which led to increase in the price and volumes of the scrip of M/s. Vijay Textiles Limited (hereinafter referred to as the company) and when the price went up the promoters of the company off-loaded a substantial part of their holdings thereby making huge profits. It is on this basis that both the appellants have been charged with violating the provisions of Regulations 4(1), 4(2)(e) and (r) of the Securities and Exchange Board of India (Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 (for short the Regulations). Since common questions of law and fact arise in these two appeals, they are being disposed of by this order.

2. The shares of the company are listed on the Bombay Stock Exchange Limited (BSE) and the Hyderabad Stock Exchange. The Securities and Exchange Board of India (for short the Board) carried out investigations in the scrip for the period from November 1, 2004 to March 11, 2005 and it was observed that on BSE the price and

volumes had witnessed a huge spurt. Investigations revealed that the company had come out with a false/misleading news regarding it having received an export order from a Swiss company which induced investors to purchase the scrip. It was also observed that the so-called export order did not fructify and the company omitted to bring this information to the notice of the investors. Investigations further revealed that after the price of the scrip had gone up considerably, the promoters of the company (one of which is the appellant in Appeal no. 50 of 2011) sold a substantial part of their holdings thereby making huge profits. On the conclusion of the investigations, the Board was prima-facie of the view that the appellants had violated the provisions of the Regulations and accordingly two show cause notices both dated May 8, 2008 were issued to the appellants which contain identical allegations alleging that the company had made the following corporate announcements during November 2004 to February 2005.

a) Opening of retail Showroom

b) Opening of Studio

c) Bagging of export order.

Since no fault has been found with the announcements at (a) & (b) above, it is not necessary to deal with those announcements in any detail. However, it was alleged that the announcement regarding the bagging of the export order was false and misleading which did not materialize. According to the show cause notice, this announcement was made by the company on February 21, 2005 and again on February 24, 2005 stating that it had bagged an export order worth 4.60 million US $ (about ₹ 20 Crores) from Simran Enterprises from Europe for the supply of exclusive range of home furnishings. It is further alleged that the company produced an unsigned fax letter from the Swiss Firm which was only a letter of intent and did not refer to the placing of any order with the company. It is the case of the Board that when the company made this corporate announcement the price of the scrip went up and the promoters including the appellant in Appeal no. 50 of 2011 sold a substantial part of their holdings and thus violated Regulations 4(1), 4(2)(e)& (r) of the Regulations. The appellants filed their detailed replies to the show cause notices denying the allegations. It was stated that the price of the scrip was in the upward mode since October 2004 and that the company had made several corporate announcements as a result whereof the price of the scrip went up. It was

pointed out that on November 20, 2004 the Board of directors considered the proposal for division/splitting of the share capital of the company and on November 22, 2004 they decided to set up a Design Studio. The Board of directors approved the sub-division of the shares in their meeting held on November 27, 2004. Again, in their meeting held on January 20, 2005, the Board of directors considered the declaration of interim dividend and in their meeting held on January 31, 2005 they recommended interim dividend of 40% and also announced the financial results for the quarter ending December 2004. The appellants also stated in their reply that a public announcement was made on February 17, 2005 that the Board of directors of the company would consider the matter regarding the issue of bonus shares in their meeting to be held on February 24, 2005. In the meeting held on February 24, 2005, a recommendation was made for the issue of bonus shares in the ratio of 2:1. On February 21, 2005, the company announced that it had received an export order worth ₹ 20 crores. The appellants also pointed out that on February 22, 2005 the company had executed a lease for a duration of 25 years for an area of about 12,000 sq ft. for setting up its large retail showroom at Ameerpeth, Hyderabad. Since all these announcements were price sensitive, the company informed the BSE of these announcements where its shares were listed and, according to it, this was done as per the requirements of the listing agreement and other securities laws. As regards the announcement pertaining to the export order, it was admitted that the same was made on February 21, and February 24, 2005. It was pointed out that the representatives of Simran Enterprises had approached the company and had expressed interest in purchasing the fabric made by it and that a presentation had been made to them at the Hyderabad showroom. The appellants also pleaded that in pursuance to their meeting with the representatives of Simran Enterprises in December 2004, the company received a letter dated February 15, 2005 through fax from Simran Enterprises inter-alia expressing its intent to purchase furnishing fabrics from the company worth ₹ 20 crores within a period of 12 months. It is also pleaded that on receipt of this letter the announcement regarding the receipt of the export order was made on February 21, and February 24, 2005. It is denied that the announcement is false or is in any way misleading and it is the case of the company that it pursued the matter further with Simran Enterprises through telephone calls and also by addressing three letters dated March 10,

2005, May 2, 2005 and February 2, 2006. Since no response was received from Simaran Enterprises nor did they open the letter of credit, the company, according to the appellants, made an announcement that the export order worth ₹ 20 crores with the Swiss Firm had not materialized due to inability of the buyer to open a letter of credit. This announcement was not only sent to the BSE but was also published in a newspaper "Business Standard" dated October 28, 2006 alongwith its unaudited financial results. The company pleaded that there was no misrepresentation as alleged and that increase in the price of the scrip could not be attributed to the announcement made regarding the export order and that it was due to the other corporate announcements made during the same time as referred to above with which no fault has been found. It is also pleaded that the sale of shares made by the promoters had no co-relation with the public announcement regarding the export order and that they had been selling their holdings much before and after the said announcement.

3. On a consideration of the material collected during the course of the investigations and the enquiry, the adjudicating officer came to the conclusion that the appellants had falsely informed the BSE about the receipt of the export order when actually it was just an intent of purchase and not an actual purchase. He also found that the appellants failed to inform the investors that it was during a period of 12 months that Simran Enterprises intended to purchase the furnishing fabrics from the appellants and not just in one flow. He also observed that the letter was unsigned. It was on this basis that the adjudicating officer concluded that the appellants had deliberately made an inaccurate and misleading corporate announcement regarding the export order. He then observed that "The price of the said scrip on February 21, 2005 touched a high of ₹ 48.85 because of said announcement." He also concluded that when the price of the scrip increased as a result of this misleading announcement, the promoters and directors sold their shares and made huge profits at the behest of gullible investors thereby violating Regulations 4(1) and 4(2)(e) and (r) of the Regulations. Accordingly, by his two identical orders dated January 13, 2011 he imposed a monetary penalty of ₹ 25 lacs on each of the appellants. It is against these orders that the present two appeals have been filed.

4. We have heard the learned counsel for the parties at length who have taken us through the record and the impugned order.

5. The first question that arises for our consideration is whether the announcement made by the appellants regarding the export order was deliberately made to mislead the investors and whether the price of the scrip went up only because of this announcement. The fact that the price of the scrip increased is not in dispute. Let us now examine whether the announcement regarding the export order was misleading. Having regard to the facts and circumstances of this case, we are of the view that it was not misleading and that the increase in price cannot be attributed solely to this announcement. As already observed, the appellants had announced on February 21 and February 24, 2005 that the company had received an export order from a Swiss firm for the supply of furnishing fabrics worth about ₹ 20 crores. It is common ground between the parties that this information was price sensitive and, according to the Listing Agreement which binds the appellants, the information had to be sent to the stock exchange where the shares of the company were listed and it is through this mode that the information is disseminated to the public. The Insider Trading Regulations framed by the Board also require such information to be made known to the public. The company was in negotiations with Simran Enterprises, a Swiss firm and it is its case that the representatives of this firm had visited the premises of the company in December, 2004 and having approved the fabric had agreed to place an order for the supply of the same which material was to be supplied during a period of 12 months. A letter dated February 15, 2005 was then received from Simran Enterprises through fax which is reproduced hereunder for facility of reference:-

"**LETTER OF INTENT / SOURCING AGREEMENT**

Date : 15th February 2005

**Mr. Vijay Kumar Gupta**
Managing Director
Vijay Textiles Limited,
104, Surya Towers,
Sardar Patel Road,
Secunderabad – 500 003.
Andhra Pradesh
India.

Dear Mr. Gupta,

We thank you very much for the lovely presentation given by you at your showroom during our recent visit to India. We are quite impressed with

> the quality of fabric and your capability to execute large export orders. We are therefore, pleased to enter into an understanding for sourcing our requirements of furnishing fabrics from Vijay Textiles Limited in India.
>
> Under our business understanding it is our intent to purchase USD$4.6 Million (INR 200.00 Million approx.) worth of furnishing fabrics from Vijay Textiles Limited within a period of twelve months.
>
> Please feel free to revert back to us in case of any clarification or concern.
>
> With Warm regards,
>
> Yours Sincerely,
>
> For Simran Enterprises"

Admittedly, this letter is unsigned though it refers to the presentation made by the company at its showroom when the representatives of the Swiss firm had visited. It is true, as found by the adjudicating officer, that this was not a firm order placed by the purchaser on the company but it does express the intention of the purchaser to purchase the fabric from the company. The adjudicating officer has expressed a doubt about the genuineness of this letter but in the circumstances of this case we are unable to agree with him on this count. The letter is on the letterhead of the Swiss firm and has been faxed and, therefore, contains not only the name of that firm but also the fax number from where it was faxed and also the date and the time. If the matter had rested here, we might have agreed with the adjudicating officer but the company pursued the matter further and addressed as many as three letters dated March 10, 2005, May 2, 2005 and February 2,2006 requiring Simran Enterprises to open a letter of credit to enable the company to process the order further. These letters written by the company have not been doubted. If the adjudicating officer had any doubt about the letter he should have made further queries from the company and its promoters and should have satisfied himself in whatever manner regarding the negotiations that had taken place between the parties as reflected in the letter in question. Expressing a mere doubt as to the existence of the letter does not justify the imposition of penalty particularly when we look to the other circumstances of the case. The letter dated 15th February, 2005 from Simran Enterprises may not be an order in the strict sense of the term but when we go through the letters subsequently addressed by the company, it makes the intention of the parties clear that the letter was understood by the company as an order and it insisted that before it could

be processed any further it was necessary for the purchaser to open a letter of credit. In other words, it appears to us that since the negotiations between the parties had reached a level where the purchaser had sent a letter of intent and the company was wanting a letter of credit to be opened, it would be reasonable to infer that the company treated this letter as an order on the basis of which it made public announcement on February 21 and February 24, 2005. We have already noticed that after receipt of this letter the company pursued the matter with the Swiss firm for opening a letter of credit and when this did not happen, the company made an announcement that the export order did not fructify on account of the failure of the buyer to open a letter of credit. Merely because the purchase order did not eventually come through does not mean that the announcement made by the appellants was false or misleading. In these circumstances we cannot hold that the company deliberately made a misleading corporate announcement. Again, we cannot agree with the adjudicating officer that this announcement was made only to increase the price of the scrip. It is common ground between the parties that the company had not only made an announcement regarding the export order but had also, at around the same time, made several other public announcements relating to price sensitive events which were summarized by the investigating officer in his report as under:-

> "**Corporate News / Announcements**
> November 20, 2004 : VTL Board considers proposal for division/splitting of share capital
> November 22, 2004 : Setting up of a Studio
> November 27, 2004 : Board approves sub-division of shares
> January 3, 2005 : Board to consider fixing of record date for sub-division/split of shares.
> January 20, 2005 : Considers declaration of Interim Dividend.
> January 31, 2005 : Board recommends interim dividend. Announces the results for the December, 2004 quarter.
> February 17, 2005 : Board to consider Bonus Issue
> February 21, 2005 : Receives export order worth Rs.200 million
> February 22, 2005 : Setting up of another new large Retail Showroom at Hyderabad
> February 24, 2005 : Members approve issue of Bonus Shares, Receives export order worth US$ 4.60 Millions."

Apart from the aforesaid price sensitive announcements, the company's financial performance had also shown increase in the profits for the year ending March, 2004 as compared to March, 2003. The profits of the company significantly improved during the period ending March, 2005 and it earned a profit of ₹ 5.23 crores on an equity capital of ₹ 3.32 crores. The company had also declared a dividend of 40 per cent and made a bonus issue in the ratio of 2:1. The financial performance of the company has been

noticed by the investigating officer in his report and we are of the firm view that the financial performance coupled with the aforesaid announcements made in regard to price sensitive events other than the export order were primarily responsible for the increase in the price of the scrip. Let us not forget that good financial performance coupled with bonus issue and dividend are far more price sensitive than a mere declaration of an export order though that is also price sensitive. In this view of the matter, we cannot agree with the adjudicating officer that the company deliberately made a false corporate announcement regarding the export order only to increase the price of the scrip.

6. Shri Kumar Desai, learned counsel for the Board then strenuously argued that the company did not promptly inform the public about the fact that the order had not materialized and that it took several months to inform the investors in this regard. He points out from the letter of February 15, 2005 that the Swiss firm was to purchase the fabric within a period of 12 months and that the company informed the public almost 6 months after the expiry of that period that the export order did not materialize. We are unable to accept this argument. Firstly, it is alleged in the show cause notice that the company did not inform the public at all about the non finalization of the export order which is not true. Even the investigation report did not make a mention about the company having informed the public about the non finalization of this order. We wonder what kind of an investigation was carried out when a public announcement in this regard was made by the company which not only appeared on the website of BSE but had also been published in a financial newspaper “Business Standard”. Be that as it may, we have already noticed that the company on receipt of the letter of intent was pursuing the matter with the purchaser for the opening of a letter of credit and some letters have been written in this regard which have been referred to above. It was reasonable for the company to wait for some time before it could finally conclude that the export order had not been finalized. We cannot, therefore, accept the contentions of the learned counsel for the Board nor the findings recorded in the impugned order in this regard.

7. When confronted with the fact that the company had informed the public about the non finalization of the export order through BSE and also through an announcement made in a newspaper, the learned counsel for the Board then urged that the company did not inform the public in the same manner in which the information regarding the placing

of the export order had been disclosed. Here again we cannot agree with him. The information was sent to BSE and was on its website because the company had made this announcement alongwith its un-audited financial results for the period ending September 2006. These un-audited financial results contained a note in this regard. We are of the view that this publication was way better to inform the investors because un-audited financial results are closely looked into and examined both by those who wish to invest in the market and also by those who are already invested in the company. Those wanting to invest want to know the financial performance and so do those who are already invested. In the absence of any prescribed mode of making such an announcement, we cannot but hold that this announcement was made in a manner which prominently brought to the notice of the public the fact that the export order had not been finalized.

8. We may notice another argument raised on behalf of the respondent Board. It is argued that when the price of the scrip went up, the promoters including the appellant in Appeal no.50 of 2011 sold a substantial part of their holdings thereby making huge profits and are, therefore, guilty of violating the Regulations as alleged. It is contended that between February 21, 2005 and February 25, 2005 the promoters of the company sold more than 54 per cent of the total quantity sold by them during the investigation period and since this period coincides with the announcement in regard to the export order, they are guilty of violating the Regulations. We cannot accept this contention either. We have already held that there was no misleading announcement made by the company and its promoters and that the price of the scrip went up not because of the announcement regarding the export order but because of the other corporate announcements which are far more price sensitive. We find from the record that the promoters had been selling their stocks much before and after the dates of the two public announcements regarding the export order. There is no allegation levelled against the promoters that they did not make the necessary disclosures required under various securities laws and we have on record that such disclosures were made. In this view of the matter, we find no fault with the sales made by the promoters. Lastly, it was argued by Mr. Desai that pursuant to the public announcements made on the 24th February, 2005 regarding the export order and the issue of bonus shares in the ratio of 2:1 by the Board of Directors of the company, the price of the scrip thereafter had fallen. He contends that

it is wrong to say that the price of the scrip went up only because of the declaration of bonus. There is no merit in this contention as well. The learned counsel is not right in contending that the announcement regarding bonus was made for the first time on February 24, 2005. As a matter of fact, the matter regarding issue of bonus shares was first made known to the public on February 17, 2005 when BSE was informed that a meeting of the Board of Directors of the company would be held on February 24, 2005 to consider the issue of bonus shares to the existing shareholders. This announcement to the public was enough to raise the price of the scrip which did actually go up. The price and volume data of the scrip and the record clearly supports this view.

9. No other point has been raised.

For the reasons recorded above, we allow the appeals and set aside the impugned orders. Parties shall bear their own costs in both the appeals.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
P.K. Malhotra
Member

Sd/-
S.S.N. Moorthy
Member

28.4.2011
RHN

Prepared & Compared by
PTM