BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Appeal No. 114 of 2012

Date of decision: 27.08.2013

HB Stockholdings Limited
Plot No.31, Echelon Institutional Area,
Sector – 32,
Gurgaon – 122 001. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Mr. Rohit Kapadia, Senior Advocate with Mr. Prashant Mishra, Mr. Piyush Prasad, Mr. Praveer Shetty and Mr. Nishith Doshi, Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

WITH

Appeal No. 160 of 2012

Alaknanda Capital Services Pvt. Ltd.
401, Padma Tower II,
22, Rajendra Place,
New Delhi – 110008. … Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Mr. Joby Mathew, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Mihir Mody and Mr. Akhilesh Singh, Advocates for the Respondent.

WITH

Appeal No. 165 of 2012

Har Sai Investments Ltd.
H-72, Connaught Circus,
New Delhi – 110 001. …. Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, G-Block,
Bandra Kurla Complex,
Mumbai – 400 051. … Respondent

Mr. P. N. Modi, Senior Advocate with Mr. Neville Lashkari, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Ajay Khaire and Ms. Virakthi Hegde, Advocates for the Respondent.

CORAM : Jog Singh, Member
A. S. Lamba, Member

Per : Jog Singh

1. A common Show Cause Notice (SCN) dated September 2, 2005 was issued by Respondent to three Appellants, i.e., HB Stockholdings Ltd., Alaknanda Capital Services Pvt. Ltd. and Har Sai Investments Ltd. pertaining to certain incidents which took place in the year 2000. After prolonged and protracted proceedings, the investigation culminated into the impugned order dated May 9, 2012, whereby the Respondent has restrained the three Appellants from buying, selling or dealing in the securities market, whatsoever, directly or indirectly for a period of two years. With consent of the learned counsel for the parties concerned, these three appeals were, therefore, heard together and are being disposed of by

this common order. For the sake of convenience, facts of Appeal no. 114 of 2012 (HB Stockholdings Ltd. vs. SEBI) have been taken as lead case.

2. Appellant in Appeal no. 114 of 2012, namely, HB Stockholdings Ltd. (for short "HB") is in the sole business of investment in and sale/purchase of securities in the capital market and its shares are listed on the National Stock Exchange of India Ltd. (NSE) and the Bombay Stock Exchange Ltd. (BSE). Appellant in Appeal no. 160 of 2012, namely, Alaknanda Capital Services Pvt. Ltd. (for short "Alaknanda") is carrying on the business of dealing in securities and the Appellant in Appeal no. 165 of 2012, namely, Har Sai Investments Ltd. (for short "Har Sai") is a public limited company, incorporated on January 2, 1995, and carrying on the sole business of sale and purchase of securities in the capital market. As part of their normal business activities and also as part of investment of funds available with them, the Appellants traded in shares of various companies that are listed on stock exchanges, including Delhi Stock Exchange Ltd. (DSE) and on NSE, through members of such stock exchanges. One of the companies whose shares Appellants traded in, in year 2000, was Jagsonpal Pharmaceuticals Ltd. ("the Company").

3. Brief facts leading to the present appeals are that the Respondent-SEBI is stated to have conducted some investigation into dealings in the scrip of the Company and reaching prima facie conclusion that all three Appellants had undertaken synchronized trades during August 2000 to December 2000 (the first period) and thereby the Appellants are alleged to have manipulated the price of the scrip during relevant time. Price of the scrip on NSE increased from Rs. 599/- as on August 18, 2000, touched a high of Rs. 700/- on September, 11, 2000 and thereafter decreased to

Rs. 660/- on November 1, 2000. The Respondent also claims that there were irregular patterns in volumes of trading on the Company's scrip, which varied between 39,200 shares on October 31, 2000 to 5 shares as on August 18, 2000 and such a phenomenon was observed on both stock exchanges, only on days, when the three Appellants traded in the scrip of the Company during August to December 2000 and these artificial volumes in the scrip of the Company, are considered injurious to healthy functioning of the capital market. In fact, it is noteworthy that during July 2001 to October 2001 (the second period), price of the same scrip on NSE fell down from Rs. 319.20 on July 2, 2001 to Rs. 129.50 on October 31, 2001. Since some of the Appellants did not trade during the second period in the scrip, it does not form part of present appeal.

4. Accordingly, the SCN was issued by the Respondent dated September 2, 2005 under Sections 11(4)(b) and 11B of the Securities and Exchange Board of India Act, 1992 for the alleged violation of the provisions of Regulation 4(a), (b), (c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, hereinafter referred to as FUTP Regulations, 1995 for suspicious dealings in the scrip of the Company during the first period.

5. It was alleged in the SCN that Appellants had entered into structured/synchronized trades in the scrip of the Company listed on NSE and DSE and that the noticees were related to each other. It is further asserted that there was some abnormal price movement in the Company's scrip during the period in question and on analysis of volume, an irregular pattern was noted. Further, the time gap between the buy and sell orders

placed by one Appellant and the counter parties were of a mere few seconds to few minutes, in some cases. Similarly, the price and quantity of shares placed by parties in the transactions concerned was also the same, in most cases. Moreover, orders were placed on a consistently higher price than the previous day's closing price. Therefore, it was alleged that the Appellants had acted with the malafide intention of creating a false market for the Company's scrip.

6. The Appellant states that it requested the Respondent for supply of documents which formed the basis of the SCN vide letter dated September 26, 2005, and some of the documents were provided to it and on the basis of the available material supplied by the Respondent, a reply to the SCN was submitted by the Appellant vide letter dated December 10, 2005. A personal hearing also took place before the learned Whole Time Member (WTM) on October 27, 2006 during which the Appellant raised certain preliminary issues besides reiterating their request for the supply of additional documents, as requested vide its letter dated October 27, 2006 to file an effective and proper reply. However, nothing was done by the Respondent to supply these additional documents for years together.

7. For more than four years after the hearing conducted by the learned WTM, the Appellant received no communication from the Respondent and suddenly on April 1, 2011 a notice of personal hearing - to be held on April 25, 2011, was received by the Appellant. Based on whatever material was supplied by the Respondent, the Appellant presented its written submissions, inter alia, contending that the long delay in concluding proceedings against the Appellant itself was antithetic to the rule of law, fairness and justice and as such proceedings in the matter, stood vitiated.

On persistent requests made by the Appellant, it received certain more documents on May 10, 2011. The Appellant preferred an additional reply on May 27, 2011 and once again reiterated their request for the following documents:-

"i. Investigation Report of SEBI based on which the SCN was issued.

ii. Statements & Documents forming part of the Investigation.

iii. Notice under Regulation 20(1) or Order under Regulation 20(2) of SEBI (Stock Broker and Sub-Broker) Regulations, 1992.

iv. Information / Statements / Complaints on which SEBI has relied in issuing Investigation Order.

v. Price Volume Data of the Scrip of BSE from August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002.

vi. Price Volume Data of the Scrip of NSE from August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002.

vii. BSE, NSE, DSE Index for the period under Investigation.

viii. Price Volume Data of BSE alongwith the above details of other Pharmaceutical Companies for the period August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002.

ix. Price Volume Data of NSE alongwith the above details of other Pharma Companies for the period August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002.

x. Price Volume Data of DSE alongwith the above details of other Pharma Companies for the period August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002.

xi. Complete Log Book of DSE for the period August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002 including details such as high or low price, transaction time, order placing time, quantity of order placed, purchase & selling broker and dealer

details, traded quantity, delivery taken / given, settlement no. etc.

xii. Complete Log Book of NSE for the period August 1999 to July 2000, December 2000-July 2001 & November 2001 to July 2002 including details such as high or low price, transaction time, order placing time, quantity of order placed, purchase & selling broker and dealer details, traded quantity, delivery taken / given, settlement no. etc.

xiii. Complete Log Books (NSE, DSE) of all transactions alleged to be synchronized/structured including details regarding time of placing order, time of execution, order price etc. **Only extracts (NSE) were supplied for the first time vide letter dated May 10, 2011.**

xiv. Details of persons who have been induced to sell/purchase the scrip due to the trading of the Noticee.

xv. Details of such transactions which are alleged to have been influenced by the change in the price.

xvi. Statement of such persons.

xvii. Documents / statements showing the intention of the Noticee to manipulate price.

xviii. Details of notices issued to / enquiry initiated and result thereof to other entities who are parties to the alleged structured/ synchronized transactions.

xix. All other documents referred to in the SCN."

8. It is submitted by the Appellant that the most important and crucial material on which the SCN was based, i.e., the trade and order logs were not supplied to the Appellant, and most of the documents, in legible form, were supplied only after more than 10 / 11 years of occurrence of the event.

9. In this background, the impugned order was passed on May 9, 2012 i.e. after a lapse of about one year even from the last personal hearing granted to the Appellant on April 25, 2011 and the subsequent supply of additional documents and filing of additional affidavit by the Appellant.

10. Learned senior counsel Mr. Rohit Kapadia, Mr. P.N. Modi with Mr. Joby Mathew submitted on behalf of the Appellants that the main allegation of price manipulation by way of synchronization of trades could not be proved during the proceedings conducted before the learned WTM and, therefore, the Appellants were exonerated of the main charge of price manipulation on basis of the material and evidence on record.

11. Regarding creation of artificial volumes, the Appellant submitted that no big aberrations have been noted. It is a matter of record that ups and downs of a similar nature have been seen in the preceding six as well succeeding six months' period during which the Appellant did not trade in the said scrip. It was also forcefully submitted by all the learned senior counsel that investigation reports as well as trade and order logs of stock exchanges are very important documents and the same have not been supplied to the Appellant. After almost a decade of the execution of the trades in question and after conclusion of the hearing, a chart of some synchronized trades was prepared by the Respondent and supplied to the Appellant but the documents relied upon for preparation of this chart were not made available. In the circumstances, the Appellant was deprived of a valuable right to present a proper defence in support of his case before the Respondent. It is submitted that on the basis of scanty and incomplete records, no reasonable person would hold the Appellant guilty of volume creation.

12. Lastly, it was vehemently argued by Mr. Rohit Kapadia and Mr. P.N. Modi, learned senior counsel, that there is a long unexplained delay in initiation as well as completion of proceedings against the Appellants. The period of alleged manipulations pertains to the year 2000, when the

alleged trades were executed by the Appellant. Admittedly, the SCN was issued after a lapse of more than five years on September 2, 2005 and the hearing took place on October 26, 2006, after which the Respondent did not take any further step to bring the proceedings to their logical conclusion for years together. After a lapse of more than four years from the personal hearing conducted on October 27, 2006, a final hearing was granted to the Appellant on April 25, 2011. The Appellant again demanded crucial and extremely relevant documents like trade and order logs of the stock exchanges and the investigation report, but nothing was supplied. It was only after the final hearing that some of the documents and a few legible copies of certain documents were provided on May 10, 2011 and the Appellants submitted their additional reply based on the limited material they received from the Respondent. Therefore, the contention of the learned senior counsel is that the Appellants have been gravely prejudiced in the matter of their proper defence before the Respondent. The proceedings are, therefore, liable to be quashed on the ground of such a long and unexplained delay of 5 years in initiating an enquiry, and 11 years in completing the proceedings against the Appellant, besides the ground of not finding any credible evidence of price and volume manipulation by the Appellants.

13. Learned counsel for the Appellants have placed reliance on the following judgments:-

i. Subhkam Securities Private Limited vs. SEBI, Appeal no. 73 of 2012 decided by this Tribunal on July 25, 2012;

ii. Libord Finance Ltd. vs. WTM, SEBI, Appeal no. 165 of 2012, decided by this Tribunal on March 31, 2008;

iii. Viram Investment Pvt. Ltd. vs. SEBI, Appeal no. 160 of 2004 decided by this Tribunal on February 11, 2005;

iv. Nirmal Bang Securities Pvt. Ltd. vs. SEBI, Appeal no. 54 of 2002 decided by this Tribunal on October 31, 2003;

v. Porecha Global Securities Pvt. Ltd. vs. SEBI, Appeal no. 164 of 2009 decided by this Tribunal on August 5, 2010;

vi. Khandwala Securities Limited vs. SEBI, Appeal no. 19 of 2012 decided by this Tribunal on September 7, 2012;

vii. M/s. Prashant J. Patel vs. SEBI, Appeal no. 108 of 2012, decided by tis Tribunal on November 12, 2012;

viii. Ms. Aditi Dalal vs. SEBI, Appeal no. 143 of 2011, decided by this Tribunal on November 28, 2011;

ix. Prashant J. Patel vs. SEBI, Appeal no. 150 of 2006 decided by this Tribunal on August 17, 2010;

x. Bijendra Nath Srivastava (Dead) through LRs. Vs. Mayank Srivastava and Others, (1994) 6 SCC 117;

xi. Bharati Thakkar India Securities Pvt. Ltd. vs. SEBI, Appeal no. 44 of 2006 decided by this Tribunal on February 21, 2006;

xii. Vodafone International Holdings B.V. vs. Union of India and Anr. (2012) 170 Comp Cas 369 (SC);

xiii. Sterlite Industries (India) Ltd. vs. SEBI, Appeal no. 20 of 2001 decided by this Tribunal on October 22, 2001;

xiv. Moneygrowth Investment and Consultants Pvt. Ltd.vs. SEBI, Appeal no. 1 of 2008 decided by this Tribunal on August 27, 2008;

xv. Rajendra G. Parikh vs. SEBI, Appeal no. 44 of 2009 decided by this Tribunal on January 1, 2010;

xvi. B.D. Gupta vs. State of Haryana, (1973) 3 SCC 149;

xvii. Nasir Ahmad vs. Assistant Custodian General and Evacuee Property, U.P., Lucknow and Anr. (1980) 3 SCC 1.

14. Mr. Kumar Desai, learned counsel for the Respondent, has argued that the primary charge of price manipulation undoubtedly goes but the charge of the creation of artificial volumes by the Appellant still remains. Regarding non-supply of all relevant materials relied upon by the Respondent for issue of the SCN, Mr. Desai stated that trade and order logs could have been obtained by the Appellant from other sources like the stock exchanges. Mr. Kumar Desai also submits that the Appellants have acted as a group in collusion with each other to commit the objectionable acts in question. One of the Appellants is also seen to have committed two or three self-trades. The submission of Mr. Kumar Desai is that some 50-60 trades could not have coincided without mischievous design on part of the Appellants. According to the Respondent, the fact that the Appellants have taken delivery and made payments for the trades in question as required by law is not relevant. It is also submitted by the Respondent that once the allegation of increase in volume stands established by learned WTM, other issues become inconsequential.

15. Learned counsel for the Respondent has placed reliance on the following judgments:-

i. H.J. Securities Pvt. Ltd. vs. SEBI, Appeal no. 76 of 2012 decided by this Tribunal on May 11, 2012;

ii. M/s. Rajesh N. Jhaveri vs. SEBI, Appeal no. 49 of 2012 decided by this Tribunal on April 16, 2012;

iii. Anita Dalal vs. SEBI, Appeal no. 211 of 2011 decided by this Tribunal on December 3, 2012;

iv. Ketan Parekh vs. SEBI, Appeal no. 2 of 2004 decided by this Tribunal on July 14, 2006;

v. SEBI vs. Ajay Agarwal, Civil Appeal no. 1697 of 2005 reported in [(2010) 3 SCC 765];

vi. Ramrakh R. Bohra & Ors. vs. SEBI reported in [(1998) 18 SCLR 543].

16. We have heard the learned counsel for both the parties at length and have minutely gone through the pleadings and written arguments etc. brought on record by the parties as well as judgments cited before us. It is an admitted position that the major charge of price manipulation has not been proved by the learned WTM on basis of the documents and evidence brought before him. Thus, the only question which remains for us to look into is whether there was any abnormality in the volume of the scrip as a result of the Appellants' trades. In this regard we have minutely perused the SCN as well as documents, other material and certain graphs produced by the parties before us. The facts clearly indicate that fluctuations of a similar nature in the volumes of the scrip existed even during the period when the Appellants did not execute any trade. The SCN itself makes it clear that there were ups and downs in the volume during the preceding and subsequent six months of the period of investigation in question. Therefore, we find that the charge of volume manipulation is also hollow and baseless.

17. Further, it is not disputed by the Respondent that delivery of shares was taken and payments were duly made by the Appellants for the trades in question as required by law. It may be noted that synchronization of trades

is not per se illegal. It is actionable only if it is illegitimate and is the outcome of a mischievous meeting of minds among certain parties. For this purpose, the counter party, namely, Gloria Investment Limited has already been exonerated by the Respondent. Moreover, no cogent and convincing reasons are forthcoming from a reading of the SCN or the impugned order to sustain such a charge of synchronization or creation of artificial volumes against the Appellants. In this connection, we may also pertinently note that the mere factum of one or two Appellants sharing common address or one of the Appellants being the promoter of the other group at some point in time are not in themselves sufficient to bring home the residual charge against the Appellants. There has to be sufficient evidence on record to clearly prove connivance on the part of the Appellants with a counter party to prove the charge in question against the Appellants. In the absence of any such evidence and unambiguous findings by the learned WTM to this effect, we have no option but to quash the impugned order in question.

18. Next, the Appellants have brought on record certain circulars and extracts from the Joint Parliamentary Report presented to the Parliament on December 19, 2002 which, inter alia, clearly state that:-

> "SEBI has also stated that in second interim report of December 2001 that Ketan Parekh entities purchased GTB shares from bulk sellers and the promoters of GTB in late 1999. The phenomenon of synchronized trading which was widely prevalent in the market was also found in the above transactions. SEBI has since confirmed that synchronized deals are ipso facto not illegal. SEBI has also confirmed that in the screen based trading that is prevalent in the stock exchanges, now, the buyer or the broker will not be aware of the identity of the seller or the broker."

This fact is not denied by the Respondent. The Respondent has also given an evasive reply as to the supply of complete trade and order logs of stock

exchanges which were not supplied to the Appellants by the Respondent at any stage of the proceedings. Some extracts were, however, supplied to the Appellants only when the proceedings were on the verge of completion and some even thereafter. This undoubtedly prejudiced the Appellants in exercising a crucial and valuable right to make an effective and proper representation / defence against the charges in question. The evasive reply given by the Respondent that the Appellants could have obtained the documents from other sources is not only unacceptable to this Tribunal but is also considered misconceived, since along with avoiding the responsibility of supply of documents which are relied upon by the Respondent it also suggests that the supply of relevant documents is not their responsibility and that the same may be accessed through other means / institutions; which can also be interpreted as the Respondent not being concerned with proper supply of relevant documents to the Appellants, which they are legally required to supply, in the interest of a level playing field. This suggestion also implies that the Appellant may adopt legal or other unfair or dilatory means for the procurement of relevant documents. This Tribunal takes strong objection to this sort of unfair and evasive reply and considers it its duty to bring it to the notice of all concerned that such non-supply of relevant documents, in proper time and legible form, is the responsibility of the concerned Adjudicating Officer.

19. Further, the charges have been framed and leveled by the Respondent against the Appellants and, therefore, the onus of supplying complete material on which the allegations were made and the impugned order was based lies on the Respondent and no one else. This factor in itself amounts to gross violation of the principles of natural justice in conducting the

proceedings against the Appellants. Undoubtedly, once such documents form the basis of allegations and the subsequent punishment, the same should be supplied to the Appellants in all fairness and also in consonance with the principles of natural justice.

20. Lastly, we turn to the submissions of Mr. Rohit Kapadia and Mr. P.N. Modi, learned senior counsel for the Appellants, regarding delay of more than 11 to 12 years in completion of the proceedings against the Appellants. At the outset, we make it clear that delay in itself may not be fatal in each and every case. At the same time, if it is a case of unnatural and unexplained delay, the Tribunal would be well within its right to interfere with the matter on this count as well. In the instant case admittedly the alleged trades took place in the year 2000. The first show cause notice itself was issued by the Respondent on September 2, 2005 i.e. after a period of more than five years had already lapsed. There is not even a whisper in the impugned order to explain away such a long delay in issuing the SCN. Furthermore, a personal hearing was given to the Appellants and replies etc. were obtained from them on October 26, 2006. Thereafter, the Respondent ought to have passed an order in question within a reasonable period of 2 to 3 months or so. The Respondent shockingly remained silent for a period spanning more than four and a half years when abruptly a notice was issued calling upon the Appellants to appear for a personal hearing on April 25, 2011. At this point we find it pertinent to note that human memory has a short shelf life. Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust. Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to

function normally in the capital market for years together, whereas in some situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going.

21. Further, adverse consequence of such a long delay on the Appellants also needs to be noted. The Appellants did attend the personal hearing and reiterated their request for supply of the investigation report and complete trade and order logs of stock exchanges for the relevant period in question. The same were not supplied and only certain extracts were provided to the Appellants along with legible copies of certain documents which the Appellants had been demanding for almost a decade. In this background, the Appellants were compelled to make a feeble attempt to defend their case on the basis of scanty and incomplete material supplied by the Respondent. Even after the conclusion of the second sitting in April and May, 2011 the Respondent took a period of around one year to pass the impugned order in question on May 9, 2012. This unnatural delay of about 11 to 12 years in initiation and completion of the proceedings against the Appellants has caused definite prejudice to them. The law governing the field of fraudulent and unfair trade practices has since been amended in the year 2003 and the provisions which did not exist earlier have been brought into force. In the impugned order we also note that the Respondent has utilized the amended FUTP Regulations of 2003 not only for procedural matters but applied substantive portions of the amended Regulations for holding the Appellant guilty of the charge against them, which in itself is incorrect as far as substantive law is concerned. Similarly, Section 11(4)(b) of SEBI Act, 1992 was amended in the year 2002 and brought into force w.e.f. October 29, 2002. This section did not exist when the alleged trades took place in the

year 2000. Thus, the existence of unnatural and unexplained delay of more than a decade and prejudice caused due to such undue delay is writ large in the matter. Therefore, the impugned order deserves to be quashed on this ground as well.

22. At this stage, we would like to deal with some of the important judgments cited by all the learned counsel appearing in the matter.

We refer to the judgment cited by the Appellants in support of their case in the matter of Subhkam Securities Private Limited vs. SEBI decided by this Tribunal on July 25, 2012, in which Subhkam was accused of creating artificial volumes in the scrip of Mascon Global Limited, thereby manipulating the price of the same. A show cause notice was issued on October 20, 2008 for trades executed by the appellant during August 1999 to March 2000 and December 2000 to March 2001, and a final order was passed on March 2, 2012. While allowing the appeal this Tribunal held that in cases of serious allegations such as market manipulation or insider trading, expeditious disposal of proceedings alone would ensure that SEBI carries out its duty of protecting investors' interests effectively. It was further held that inordinate delay in conducting inquiries hangs like Damocles' sword on market players and has a rather demoralizing effect on them when they are ultimately exonerated of all charges. In the case in hand too we note that an unexplained delay of around 13 years taints the entire process of the investigation conducted by SEBI.

23. Next, in the case of Libord Finance Ltd. vs. SEBI, decided by this Tribunal on March 31, 2008, it was alleged that promoters of one Mazda Fabrics and Processors Ltd., which had come out with an IPO, manipulated

the issue and arranged applications to be made from various entities so as to try and bail the issue out. The appellant, i.e., Libord, was lead manager to the issue. The allegation against the appellant was that on the one hand, as lead manager, it had failed to ensure that registrar to the issue was not making irregular allotments with the sole purpose of bailing the issue out, and on the other, having failed to notice irregularities the appellant helped Mazda in reaching its subscription level. The IPO was launched in January 1996. It is noteworthy that a notice in the matter was finally issued after a long lapse of 8 years on June 9, 2004. The Board was informed that the Appellant had ceased to be a merchant banker since September 2000 as its certificate of registration had not been renewed. The order in the matter was passed by the Board on February 18, 2008. The Tribunal held that since the Appellant had lost its registration as merchant banker there was no threat to the securities market and, therefore, forbidding the Appellant from accessing the securities market for a period of one month did not serve any purpose. It was also observed that no proper reply could be filed in a particular matter by any party after a lapse of 8 years from the occurrence of the incident and that grave injustice would be caused to the delinquent in such cases in complete violation of the principles of natural justice.

24. We now deal with the judgment in the case of Viram Investment Pvt. Ltd. vs. SEBI, cited by the Appellant and decided by this Tribunal on February 11, 2005. SEBI passed impugned order dated September 8, 2004 against Viram forbidding it from accessing the securities market for a period of 6 months holding it guilty of executing synchronized trades in collusion with a broking firm, OHM Stock Brokers Private Limited, with respect to shares of M/s. Intellivision Software Limited. This Tribunal while allowing the appeal held that executing trades calculated to create a false or

misleading appearance of trading in the securities market would be objectionable acts calling for interference of SEBI. When the intent is not to artificially influence the market and induce investors to buy or sell shares on the basis of artificial transactions no wrongdoing can be established against any entity even if it is proved that it indulged in synchronized trading.

25. In another judgment delivered by this Tribunal on October 31, 2003 in the case of Nirmal Bang Securities Pvt. Ltd. vs. SEBI, relied upon by the Appellant, the impugned order dated July 30, 2002 held the appellant in the matter guilty of executing transactions to depress the price of scrips of certain companies, thereby violating the Brokers' Code of Conduct. For this violation, SEBI cancelled the registration of the appellant as broker. It was held that nowhere in the impugned order had any attempt been made to establish that the prices of the scrips in question had in fact fallen. No exercise had been undertaken to determine the impact of the trades executed on the price of the scrips before inferring that these trades led to any artificial depression in the prices of the scrips. The appeal was, therefore, partially allowed by setting aside the part of the impugned order cancelling the certificate of registration.

26. In Porecha Global Securities Pvt. Ltd. vs. SEBI, Porecha had acted as stock broker for both the parties in a particular transaction, making it a cross deal. Being a negotiated deal executed through the price and order matching mechanism of the BSE, the buy and sell orders matched perfectly which led SEBI to enquire into the concerned deals. After completion of the investigation SEBI came to the conclusion that the Appellants had executed structured and cross deals distorting the equilibrium of the scrip of Mobile Telecommunications Ltd. The impugned order dated September 9, 2009,

disposing off the matter in which the impugned transaction took place in October 2000 and the show cause notice was issued in 2004, held that the appellants had failed to exercise due skill, care and diligence as brokers and suspended its certificate of registration for a period of one month. This Tribunal while allowing the appeal held that executing matching deals is a perfectly valid method of trading as per SEBI's Circular dated September 14, 1999 and, therefore, the appellants had not committed any violation.

27. With respect to delay another case has been cited by the Appellants, viz., the case of Khandwala Securities Limited vs. SEBI decided by this Tribunal on September 7, 2012. The appeal had been filed against order dated January 13, 2012 suspending the certificate of registration of the appellant as a stock broker with SEBI for a period of one month. The appellant was accused of violating the FUTP Regulations, 1995 and the Brokers' Code of Conduct by executing trades in the year 2000 which were in the nature of cross deals in conjunction with certain other entities, thereby influencing the price of the scrip of Kopran Limited causing it to rise without there being any fundamental technical factors for the occurrence of such price rise. The appellant was also alleged to have gained wrongfully at the expense of its clients by not informing them of the execution of the cross deals in question. A show cause notice was finally issued almost 6 years later on June 16, 2006, and after conducting an enquiry the impugned order came to be passed in January 2012. The Tribunal took cognizance of the delay of 12 years on the part of SEBI as a mitigating factor and held that the punishment was not in consonance with the violation. It observed that proceedings before the SEBI require finalization within a reasonable period of time.

28. We may refer to the judgment cited by Mr. Kumar Desai in support of the Respondent's case in the case of H.J. Securities Pvt. Ltd. vs. SEBI, Appeal no. 76 of 2012 decided on May 11, 2012. The appellant company was a stock broker and had executed one-third of the total trades in respect of the scrip of EdServ Softsystems Ltd. between March 2-9, 2009. Investigation was immediately conducted not only by SEBI but also by the BSE and the NSE. A show cause notice was issued by SEBI on June 24, 2011 and after conducting investigative proceedings against the Appellant, the impugned order in that case came to be passed on February 7, 2012. On preferring an appeal before this Tribunal, it was held that the appellant operated through 19 jobbers from various locations and it resulted in fictitious trades being executed. Such trades indeed created artificial volumes in the scrip sending wrong signals to the investors with regard to the trading in the said scrip. Moreover, the Appellant had executed self trades for 2,00,725 shares on the date of listing of the scrip itself. In this background, the Tribunal dismissed the appeal upholding the order of the Respondent. However, in the case in hand there are hardly two or three self trades of an insignificant amount of shares and that too as a result of incorrect punching in of data. Therefore, the case of H.J. Securities Pvt. Ltd. (supra) does not advance the case of the Respondent. Further, in the case of H.J. Securities Pvt. Ltd. (supra), the investigation was promptly conducted by the BSE as well as the NSE, and SEBI issued the SCN soon thereafter, with the result that within a period of about one year, the impugned order came to be issued against the appellant. There was no unnatural or undue delay in conducting the proceedings against the appellant therein and in passing the final order. In the case in hand, however, it has taken more than

a decade to complete the proceedings which is against the principles of natural justice.

29. Similarly, in the case of M/s. Rajesh N. Jhaveri vs. SEBI, Appeal no. 49 of 2012 decided by this Tribunal on April 16, 2012, the appellant therein traded in the scrip of M/s. Adani Exports Ltd. along with a few other entities and manipulated the price of the scrip of the company. It was proved beyond doubt even in the proceedings before the Respondent that as a result of the manipulation there was a sharp increase in the price as well as the volume of the scrip. The adjudication officer in that case duly provided all the details of the transaction undertaken by the appellant in the scrip of M/s. Adani Exports Ltd. and the appellant did not take any objection regarding supply of trade and order logs or regarding undue delay in conducting the proceedings before the Respondent. In fact, on reading of paragraph 9 of M/s. Rajesh N. Jhaveri's judgment it becomes clear that the appellant in that case was duly given trade logs relating to the transactions in the NSE. En bloc supply of trade logs was rightly considered irrelevant by the Respondent in that case. In the case in hand, however, the Respondent has not supplied even the trade logs relating to the transactions undertaken by the Appellants on various days and only a statement prepared by the Respondent on their own, without disclosing the source or basis of the same has been supplied to the Appellant at the fag-end of the enquiry proceedings after a lapse of almost 10 to 11 years of the incident. Therefore, the facts or ratio of the case of M/s. Rajesh N. Jhaveri (supra) is not attracted in the case in hand to help the Respondent advance its case.

30. Mr. Kumar Desai further referred to the case of Anita Dalal vs. SEBI, Appeal no. 211 of 2011 decided by this Tribunal on December 3, 2012.

In this case the appellant was an individual investor and also a trader in the securities market. We note that in the case of Anita Dalal (supra), the appellant therein had acted through Mr. C.J. Dalal, who happened to be her husband and also her broker. The appellant was also a director of Krishvi Securities Pvt. Ltd. which was a major counter party client in the dealings in the scrip of various companies involved in that case. In this backdrop, the act of synchronization was found to be objectionable and rightly so, on the basis of the material on record. In fact, trade logs were also duly supplied to the appellant and reverse trades were also conducted which were clearly found to be against the regulations assisted by concrete evidence brought on record in the case. In the case in hand we, however, note that "Gloria" the counter party which is alleged to have acted in the matter of synchronization of trades with the three Appellants has been exonerated. So there is no guilty counter party in the present case with whom any meeting of minds could be alleged and proved. Therefore, the present case is distinguishable from the case of Anita Dalal (supra) and does not advance the case of the Respondent.

31. Another case referred to by Mr. Kumar Desai is the case of Ketan Parekh decided on July 14, 2006 in Appeal no. 2 of 2004. In Ketan Parekh, the appellant himself was involved in an IPO scam and was debarred from associating with the securities market for a period of 14 years. The impugned order was based on two show cause notices dated March 27, 2002 and July 30, 2002 issued for manipulation in the scrip of Lupin Laboratories Ltd., a pharmaceutical company. The persons intimately involved with Ketan Parekh were also served with the same show cause notice. The Respondent noticed significant rise in the price and volume of the scrip of Lupin between September to December 1999 on the BSE and the NSE.

After issuing show cause notices dated March 27, 2002 and July 30, 2002 under Regulation 11 of the FUTP Regulations, 1995, the Respondent initiated proceedings against the appellant on March 14, 2003. They culminated into the impugned order dated December 12, 2003 mentioned hereinabove. It was concluded, based on cogent evidence, that Ketan Parekh and certain other entities were closely connected to each other in as much as Ketan Parekh was admittedly a director in all those companies which had connived together and created a sharp spurt in the trading volumes leading to unforeseen and adverse consequences in the capital market. It was also the unambiguous finding of SEBI in that case that the price of the scrip of Lupin had substantially moved up in a short span of time accompanied with the creation of large volumes in the trades which convinced the Tribunal of the guilt of the Appellants, since this phenomenon was considered unusual as compared to the trends during the same period in other pharmaceutical companies like Ranbaxy, Glaxo, Novartis and Cipla etc. Thus, the main charge in Ketan Parekh regarding price manipulation and circular trading by repeatedly placing orders at a price higher than the last traded price by Ketan Parekh and his own companies, in league with each other, was proved on the basis of ample evidence on record. There were favourable admissions by senior officers of the companies in which Ketan Parekh was director. Moreover, the floating stock i.e. public shareholding of Lupin was very small, therefore, Ketan Parekh could achieve his ill-conceived design in the matter of manipulation of the price of the scrip of Lupin. Any one big order, in Ketan Parekh’s case, had the potential of upsetting the market. Further, the element inducing, which is an important ingredient of Regulation 4(a) of FUTP Regulations 1995 had also been proved in that case of Ketan Parekh. In this background, the Tribunal, relying upon the judgment of the Hon’ble

Apex Court in the case of Delhi Development Authority (DDA) vs. Skipper Construction Company Pvt. Ltd. reported in AIR 1996 SC 2005, applied the doctrine of lifting the corporate veil and by doing so the Tribunal came to the conclusion that it was Ketan Parekh who was lurking behind the corporate curtain in the entire scam. This case cannot be applied to the present three appeals, being totally different in facts.

32. We have also perused the judgment of the Hon'ble Supreme Court in the case of Ajay Agarwal (supra) as well as the judgment of the Hon'ble Bombay High Court in the case of Ramrakh R. Bohra & Ors. vs. SEBI [(1998) 18 SCLR 543]. Ajay Agarwal's case basically reiterates the settled position of law that an amendment which is procedural in nature can be applied retrospectively. This was held by the Hon'ble Supreme Court in the context of the amendment of the Securities and Exchange Board of India Act, 1992 bringing into the statute book Section 11B in the year 1995 and Section 11(4)(b) in the year 2002. Similarly, the case of Ramrakh R. Bohra deals with the issue of rigging of certain scrips by a group of stock brokers. They were restrained by SEBI from undertaking any fresh business during the pendency of enquiry proceedings launched against them. On being challenged before the Hon'ble High Court of Bombay, the Writ Petitions were dismissed and the following observations were made by the Hon'ble High Court of Bombay:-

> *"Section 11B of the Securities and Exchange Board of India Act, 1992, is an enabling provision enacted to empower the SEBI to protect the interest of investors and to promote the development of and to regulate the securities market and to prevent malpractices and manipulations, inter alia, by brokers. Such an enabling provision must be construed so as to subserve the purpose for which it is enacted. It would be the duty of the court to further the legislative object of providing a remedy for the mischief. A construction which advances this object should be preferred rather than one which attempts to find a way to circumvent it.*

> *When an alternate remedy is available it is merely a rule of convenience that a writ court may not exercise jurisdiction and may direct the party to avail of the alternate remedy. Availability of an alternate remedy, however, cannot oust the exercise of writ jurisdiction. In a proper case even though an alternate remedy is available, the writ court would still be fully justified in exercising its writ jurisdiction."*

Both the judgments were in a different context and do not further the case of the Respondent in the three appeals in hand.

33. In view of the above discussion of law and fact and in the peculiar facts and circumstances of the case, we quash and set aside the impugned order in each case and allow the three appeals on merit as well as on the ground of unconscionable and unexplained delay of about 12 years in initiating and completing the proceedings against the three Appellants in question. No order as to costs.

Sd/-
Jog Singh
Member

Sd/-
A.S. Lamba
Member

27.08.2013
Prepared and compared by:
ptm/msb