BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 23 of 2009

Date of Decision: 7.1.2010

1. Lunar Finance Ltd.
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

2. Yare Engineering Pvt. Ltd.
   D-15/4, Okhla Industrial area Phase I,
   New Delhi 110 020

3. Sunraj Software Pvt. Ltd.
   S-453, GK-II,
   New Delhi

4. Echo Chemicals Pvt. Ltd
   A-81, Okhla Industrial area Phase I
   New Delhi-110 020.

5. Emeraid Housing & Constructions Pvt. Ltd.
   15 A/38, WEA, Karol Bag
   New Delhi

6. Teknik Digital Systems Pvt. Ltd.
   73, Vijay Block, 3rd floor Laxmi Nagar, Vikas Marg,
   New Delhi

7. Shri S.L. Maloo
   D-15/4, Okhla Industrial area Phase I
   New Delhi 110 020

8. Shri R. K. Agarwal
   D-15/4, Okhla Industrial are Phase I
   New Delhi-110 020.

9. Shri Digambar Mandal
   D-15/4, Okhla Industrial area Phase I
   New Delhi-110 020

10. Shri M.C. Chhajer
    D-15/4, Okhla Industrial area Phase I
    New Delhi 110 020

11. Shri S.C. Shethia
    A-81, Okhla Industrial area Phase I
    New Delhi 110 020 …… Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan,
Plot No. C4-A, "G" Block,
Bandra Kurla Complex, Bandra (East), Mumbai. …… Respondent

Ms. Gayatri Sharma, Advocate with Ms. A. Lobo, Advocate for the Appellants.

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

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

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

Same order as in Appeal no 22 of 2009 decided on 7.1.2010.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

7.1.2010
pmb

Prepared & Compared By: Prerana

BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 22 of 2009

Date of Decision: 7.1.2010

1. Websity Infosys Ltd.
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

2. Shri S.L. Maloo
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

3. Shri R. K. Agarwal
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

4. Shri M.C. Malu
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

5. Shri S.C. Shethia
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

6. Shri K.K. Agarwal
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

7. Shri Sunil Agarwal
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

8. Shri D.D. Manager
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024.

9. Shri Ashutosh Sharma
   B-218, Ground floor, Lajpat Nagar, Part-I,
   New Delhi-110 024. …… Appellants

Versus

Securities and Exchange Board of India
SEBI Bhavan,
Plot No. C4-A, “G” Block,
Bandra Kurla Complex, Bandra (East), Mumbai. …… Respondent

Ms. Gayatri Sharma, Advocate with Ms. A. Lobo, Advocate for the Appellants.
Mr. Kumar Desai, Advocate with Mr. Kersi Dastoor, Advocate for Respondent.

CORAM : Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

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

This order will dispose of three Appeals no. 22 to 24 of 2009 all of which are directed against the order dated December 31, 2008 passed by the whole time member of the Securities and Exchange Board of India (for short the Board) by which he has prohibited, among others, the appellants from accessing the securities market for a period of 5 years holding them guilty of two sets of charges. He found that Websity Infosys Ltd. (hereinafter called the target company) and its promoters had committed gross violations of the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) and for these violations the appellants have been debarred from accessing the securities market for a period of 5 years. The whole time member has also found that the target company and its promoters manipulated the scrip of the company by creating artificial volumes and after raising the price, off-loaded their shares in the market violating the provisions of the (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 (hereinafter called the Regulations). The appellants have been debarred for a period of 5 years on account of these violations as well and it appears that both the periods of debarment are to run concurrently though it has not been specifically stated in the impugned order.

2. At the outset, we may mention that the learned counsel for the appellants made a request for an adjournment in these cases on the ground that the appellants were in negotiations with the respondent Board for a settlement. We have declined this request because the appeals are one year old and were being adjourned from time

to time and the ground now mentioned before us appears to be another ploy for getting the cases adjourned. Had the appellants been serious about the settlement, they should have negotiated the matter with the Board much earlier. We are informed that they have filed an application for a consent order only in October, 2009 when the appeals are pending since January last year. Be that as it may, they have offered a paltry sum of Rs. 5000/- each for obtaining a consent order. It is obvious that they are not serious and only want to prolong the matter. We have heard the learned counsel appearing for the Board who has taken us through the record and the impugned order and we now proceed to decide the appeals on merits.

3. On October 5, 1999, the target company which is a listed company made a preferential allotment of shares to its promoters. 41,81,700 fully paid up equity shares of Rs. 10 each were issued to the promoters at par and another 4, 40,00,000 partly paid-up equity shares at the rate of Re. 1/- each for consideration other than cash. With this allotment to the promoter group, their shareholding increased from 32.99 per cent to 70.20 per cent as a result whereof the takeover code got triggered. Since the total shareholding of the promoter group had increased by more than 15 per cent, they alongwith persons acting in concert with them were required to make a public announcement to acquire further shares of the target company in accordance with the takeover code. Admittedly, no public announcement has been made. This is, indeed, a very serious lapse on the part of the promoter group as they have deprived the public shareholders of their right to exit the company on account of this substantial acquisition by them. This apart, the target company and the allottees (promoters) were required to make the necessary disclosures under Regulations 7 and 8 of the takeover code since the total acquisition had exceeded the requisite percentages mentioned therein. This was also not done. Before the whole time member, the stand taken by the appellants was that they had sent the information regarding the holding of the Board meetings in which the allotment of shares to the promoter group was to be considered. Even if this were so, it does not meet the requirements of the takeover code in terms of Regulations 7 and 8. The allottees (promoters) were required to

disclose the percentage of their shareholding as and when they exceeded the requisite percentages mentioned in these two Regulations. Not having done so, the provisions of the takeover code were violated. Since the allotment made to the promoters was on preferential basis after passing a resolution under Regulation 81(1A) of the Companies Act, it could have been exempted from the provisions of the takeover code provided the allottees complied with the conditions stipulated in Regulation 3(1)(c) of the takeover code which was then in force. Those conditions were not satisfied and, therefore, the appellants and the promoters were not entitled to the exemption and were required to make a public announcement as well as make the necessary disclosures as required by the takeover code. In this view of the matter, we have no hesitation in upholding the findings recorded by the whole time member. For these very violations, adjudication proceedings had been initiated against the appellants and others which culminated in the passing of an order imposing a monetary penalty of Rs. 40,000/- on each of the appellants. Appeal no. 48 of 2001 filed by some of the promoters of the target company was dismissed by this Tribunal on March 20, 2002. Against that order an appeal was filed in the Delhi High Court which was dismissed and that order was upheld by the Supreme Court as per its order dated April 21, 2008.

4. The target company and its promoters not only violated the provisions of the takeover code as referred to above, they also manipulated the scrip of the company by executing trades which were fictitious and created artificial volumes which led to increase in the price of the share. The shares held by the promoters were traded in the market through M/s. Jayshankar Investment (Pvt.) Limited and its director M. M. Miglani. They traded through several brokers on the Bombay Stock Exchange and the Delhi Stock Exchange. It is on record that M. M. Miglani executed several trades in which he was the buyer as well as the seller. In other words, he was on both sides of the trade. How can a person buy and sell shares from himself. The trades were obviously fictitious and were meant to create artificial volumes. Reference to these trades has been made in paragraph 25 of the impugned order. By executing these

trades, Miglani not only created artificial volumes but also increased the price of the scrip because every trade establishes the price. There is also on record material to

show that Miglani after trading in the shares had passed on the sale proceeds to the promoters and their group entities. The fund-flow chart has been referred to in the impugned order in paragraphs 31 and 32 and these clearly indicate that Miglani was acting as a conduit to hide the identity of the promoters. Interestingly, Miglani also traded the shares of the promoters with third parties and since the shares were in the physical form, deliveries were given by the promoters. By this time the target company had already come under the compulsory demat mode and the shares could be traded only after dematerialization. The public shareholders whose percentage of shareholding had been considerably reduced on the preferential allotment being made to the promoter group, approached the target company for dematerialization. The modus operandi adopted was that the requests coming from the public shareholders for dematerializing the shares was kept on hold and undue delay was caused in dematerializing the shares as a result whereof the liquidity of the shares in the market had reduced which resulted in further increase in price. While the request for dematerialization from the public shareholders was being delayed, Miglani, on the other hand, continued trading in the shares and his requests for dematerialization were taken out of turn and granted. In other words, the shares traded by Miglani were dematerialized and his trades were executed at a much higher price because of reduced liquidity. Miglani appeared before the Board and stated that he had off-loaded the shares of the promoters in the aforesaid manner. Similar are the statements of some other promoters as well. We are, therefore, satisfied that the target company and its promoters through Miglani and Jaishankar had manipulated the price of the scrip in the market and after it had risen, they off-loaded their shares thereby duping the lay investors. The whole time member has debarred the company and its promoters for a period of 5 years for committing these illegalities. We find no ground to differ with what the whole time member has held in the impugned order.

5. In view of the aforesaid illegalities which, indeed, are very serious and sufficient to uphold the directions issued by the whole time member, it is not necessary for us to deal with the findings regarding the other irregularities committed by the target company and its promoters.

For the reasons recorded above, we find no merit in these appeals and dismiss the same with no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

7.1.2010
pmb

Prepared & Compared By: Prerana