

SECURITIES AND EXCHANGE BOARD OF INDIA

DIRECTION UNDER SECTION 11B READ WITH SECTION 11(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA, ACT, 1992, READ WITH REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULANT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003.

AGAINST SHRI ARUN UPADHYAYA OF M/S ARCHANA INVESTMENTS, IN THE MATTER OF M/S. GREENFIELD TRADING AND FINANCE LIMITED.

BACKGROUND

1. The shares of M/s Greenfield Trading and Finance Ltd. (hereinafter referred to as "GTFL") were listed on The Stock Exchange, Mumbai. (hereinafter referred to as "BSE"). As per BSE, the capital of GTFL was Rs. 99.66 lacs, comprising 9.96 lac equity shares of Rs. 10 each.

2. The price of the shares of GTFL, which was quoting at around Rs.52/- at BSE, as on 16.01.96, with a volume of 600 shares, moved up from this level and reached Rs.210/- as on 22.02.96, with a volume of 1,46,750 shares. On account of the sudden increase in volume and price, BSE had suspended trading in the scrip of GTFL on 24.01.96, 30.01.96 and 08.02.96. The share price came down to Rs.122/- by 15.03.96. However, the volumes were on the higher side, with the average daily volume being more than 1.50 lakh shares. The share price started moving up once again and reached to Rs.450/- by 16.05.96, with a volume of 18,600 shares. The last quotation was Rs. 420, on 06.06.96, after which the scrip was placed under indefinite suspension by BSE.

3. The paid up equity capital of GTFL comprised only 9.96 lakh shares, with very low floating stock with the general public. Considering the low floating stock and the not-too-encouraging fundamentals of the company, it appeared that the increase in price and volumes in the scrip, observed during the aforesaid period, did not reflect genuine investment buying, but appeared to be intended to manipulate the market and to make abnormal gains.

4. A letter dated 04.06.96 was received from BSE, requesting Securities and Exchange Board of India (hereinafter referred to as "SEBI") to give permission for indefinite suspension in trading of GTFL scrips. According to BSE, GTFL had shown unusual price rise since March 1996, despite suspension of trading and imposition of special margins from time to time. Even though the special margins were enhanced to 100.0% from 30.05.96, the price movement had not abated. It was submitted that preliminary investigations by BSE revealed that the huge price movement of GTFL was not justified and did not serve any purpose of the general investor as the company was closely held with a very low equity base. BSE was of the view that although the company declared a 1:1 bonus in the month of April 1996, the general fundamentals of the company was not good for investors to make an investment in the scrip of GTFL.

5. In view of the above, after a preliminary enquiry and based on the findings of BSE, SEBI initiated an investigation, vide order dated 7th October, 1999, into the affairs relating to dealing in the scrip of GTFL, during the period January-June, 1996.

6. During the course of investigations it was observed that M/s D S Kothari, member, BSE had traded heavily in the shares of GTFL, on behalf of his sub-broker M/s Archana Investments.

SHOW CAUSE NOTICE AND HEARING

7. Pursuant to the investigation, a show cause notice dated 30.09.03 was issued to Mr. Arun Upadhyaya of M/s. Archana Investments, asking him to show cause as to why a suitable direction under Section 11B read with Section 11(4) of SEBI Act including a direction restraining him from accessing the capital market for a suitable period, should not be issued. It was also mentioned that if he failed to submit any reply within the stipulated period of 15 days then, it would be presumed that he had no evidence to adduce in the matter and SEBI would be free to take such action as deemed fit in the matter. Mr. Arun Upadhyaya has not submitted any reply to the show cause notices issued by SEBI.

8. Thereafter, in the interest of natural justice, SEBI vide its letter dated 20.01.04 granted an opportunity of hearing to Mr. Arun Upadhyaya before me on 05.02.04. However, the said date of hearing was rescheduled for 16.02.04. Mr. Arun Upadhyaya appeared before me on that day and made his submissions. I proceed further based on the material available on record and his submissions before me.

FINDINGS

9. Having examined the material available on record, I have observed that the market operations in the trading of the scrip were looked after by the promoter/directors of GTFL, along with certain persons appointed by them, who operated the scrip through a chain of brokers and sub brokers of BSE. The various operations undertaken by the promoters/directors in this regard are enumerated below:

- a. Appointment of persons like Mr. Prakash Pandya, Mr. KJ Desai, Mr. Viral Dave etc., to look after the day to day market operations of the scrip.
- b. Appointment of sub-brokers and getting them registered with various Trading Members of the stock exchange.
- c. Appointment of the clients with these brokers/sub-brokers (connected/related to GTFL or the Directors).
- d. Arrangement for introduction of these clients to various brokers and sub brokers of BSE.
- e. Arrangement for putting orders (both buy and sell) in the name of the various clients through various brokers so as to create artificial volumes/liquidity in the counter.
- f. Rigging up the scrip price by giving quotes at higher prices.
- g. Arrangement by giving shares/ shares certificates towards the sale positions of the clients with various brokers.
- h. Arrangement of funds to meet the pay in obligations of the various clients with various brokers and sub brokers.

- i. Appointments of financiers like Mr. Sanjay Fathepuria to meet the pay in obligation of funds of the clients through spot sales.
- j. Shifting the positions through unauthorized badla transactions from one settlement to another settlement with the help of the financier Mr. Sanjay Fathepuria.
- k. Delivering the shares of GTFL in the auctions conducted by the stock exchange, when the general investors failed to meet the pay in obligation of shares.
- l. Arrangements for collecting the contract notes, bills, cheques, delivery of shares (for the purchase position) etc., Similar arrangements were also made to issue cheques, delivery of shares (for the sale position) to the brokers.
- m. Arrangements for depositing the cheques issued by the brokers, favoring the clients appointed, towards the sale of GTFL shares in the respecting bank accounts.
- n. Arrangements for withdrawing the amount in cash terms after collection of the cheques.
- o. Co-ordination between the above mentioned entities, appointed for the exclusive purpose of manipulating the scrip price.

10. I have also observed that :

- a. Mr. Prakash Pandya and Mr. KJ Desai, having connections with the management of GTFL and Mr. Arun Gandhi, one of the Directors of GTFL, wanted to create market for an illiquid scrip.
- b. Around 1,50,000 shares were given by the management of GTFL to Mr. KJ Desai and Mr. Prakash Pandya for market operations. [This was admitted by Mr. KJ Desai in his sworn statement given to the investigating team.]
- c. On behalf of the management of the GTFL some clients like M/s. Umi Investments, Mr. Manish Pancholi, M/s. BNP Securities, Mr. Girish Shah of M.P. Investments, Mr. Viral Dave of Niyati Investments, Mr. Rajan Bhuchar, Mr. Jaspalsingh Matta, Mr. Naren Shah etc., traded through various brokers.
- d. The clients were introduced to many of the brokers by Mr. Prakash Pandya, who according to some of the clients was the primary person behind this manipulation exercise.
- e. Mr. KJ Desai was registered with various brokers as a common client.
- f. The price of the scrip was manipulated by increasing the buy quotes continuously.
- g. During the period of investigations the volumes in the scrip were contributed essentially due to trading activity in the scrip by the aforementioned clients.
- h. To meet the pay in obligation, funds were borrowed from the financiers such as M/s. Fathepuria Enterprises and the arrangement/management of funds were mainly looked after by the management of the company with the help of Mr. Prakash Pandya, Mr. KJ Desai, Mr. Viral Dave etc.
- i. Mr. Sanjay Fathepuria used to enter into unauthorised badla transactions with the clients who have traded in the scrip of GTFL.

11. To meet the pay in obligations of the clients, who were merely acting at the behest of the promoters/directors, the services of Shri Fatehpuria, a financier, were used. In those cases where the "clients" had pay-in obligation of funds to the exchange, Mr. Fatehpuria, the financier appointed by the company, used to bail out these clients by buying the shares from them on spot basis and advancing them the money. On the same day Mr. Fatehpuria would place the second leg of the transaction, by reversing the deal in the regular segment. Towards this, Mr. Sanjay Fathepuria got enrolled as an unregistered sub-broker to various brokers of BSE. The modus operandi adopted for this purpose was as follows :

- The shares were sold on spot basis to Mr. Sanjay Fathepuria on behalf of the common clients (mostly Mr. KJ Desai) before the pay in day of funds.
- The bills were raised in the name of Mr. Fathepuria and the share certificates were handed over.
- Mr. Fathepuria used to verify the authenticity of share certificates and transfer deeds before releasing the funds.
- Later, on the same day when Mr. Fathepuria used to reverse the transaction at a slightly higher rate (to take into account the badla charges) in the regular market segment. This leg of the transaction was mostly done through his broker M/s. Vinod Kumar Roongta.
- For the second leg of the transaction, buyers of the shares were arranged by the management of GTFL and they were mostly the same common clients who have sold the shares on spot basis to Mr. Sanjay Fathepuria.
- After confirming that the shares were sold in regular market, Mr. Fathepuria used to release funds to the sellers in the spot transactions.
- With the funds received from Mr. Fathepuria, the common clients used to meet their pay in obligation.
- In most of the cases, these cheques were issued by Mr. Fathepuria as per the instructions of Mr. Prakash Pandya, Mr. Viral Dave and Mr. KJ Desai. These cheques were favouring those BSE members through whom the common clients have traded/registered as clients.
- Mr. Fathepuria used to receive the payments from Mr. Vinod Kumar Roongta after the payout of the settlement (regular). The amount received from Roongta included the "badla charges" (Finance charges).

Using the above mentioned methods, the promoters/directors succeeded in creating an artificial market for the shares of GTFL. By this procedure, the scrip price was also moved up gradually.

12. I also observed that M/s. Archana Investments had done trading in large volumes through one of the brokers M/s. DS Kothari. The trading details furnished by M/s DS Kothari revealed that maximum trading was done on behalf of M/s. Archana Investments. As per the information collected, M/s. Archana Investments in turn had traded for ultimate client such as Mr. Kiran J Desai, one of the key persons responsible for price manipulation in the shares of GTFL. M/s. Archana Investments also entered into one spot transaction on behalf of Mr. Kiran J Desai, which was seen to be a financing deal disguised as securities transaction.

13. As submitted by Mr. Arun Upadhyaya, Mr. Prakash Pandya who was introduced to Mr. Upadhyaya orally by Mr. Kiran J Desai, used to deal in the scrip of GTFL. Mr. Prakash Pandya dealt in these scrips on behalf of the management of GTFL with manipulative intentions, as has been established in the investigations.

14. Taking into consideration the above mentioned factors, I conclude that M/s. Archana Investments had aided and abetted Shri K J Desai and Shri Prakash Pandya in of manipulating the share price of GTFL, as these "clients" were employed by the management of GTFL specifically for this operation (the ultimate client was KJ Desai). Therefore, I find Mr. Arun Upadhyaya of M/s. Archana Investments guilty of violating the provisions of Regulation 4(a), (b), (c), (d) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 which reads as under :

"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) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market.
- (c) indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine trade transactions"
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the market price of securities;.
- (e) pay, offer or agree to pay or offer, directly or indirectly, to any person any money or moneys worth for inducing another person to purchase or sell any security with the sole object of inflating, depressing, or causing fluctuation in the market price of securities."

15. I note that Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 reads as under :-

"Repeal and savings

13. (1) The Securities and Exchange Board of India ((Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 is hereby repealed.

(2) Notwithstanding repeal of the Securities and Exchange Board of India ((Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

(3)Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

16. I find that Mr. Arun Upadhyaya is responsible for aiding and abetting the management of GTFL in creating false and misleading appearance of trading and artificial price rise in the scrip of M/s. Greenfield Trading and Finance Ltd. Innocent investors would be induced to trade by such false appearance of trading in the securities market, unless these unscrupulous activities are prevented/contained in the securities market. In view of my findings mentioned hereinabove, I find that it is a fit case for issue of directions against Mr. Arun Upadhyaya whose conduct is detrimental to the interest of investors and the securities market.

ORDER

17. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 read with Regulation 4(a), (b), (c), (d) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and Regulations 12 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby direct that Mr. Arun Upadhyaya be restrained from associating with any corporate body in accessing the securities market and prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of two years.

18. This direction shall come into force with immediate effect.

PLACE : MUMBAI
DATE : July 23, 2004

A.K.BATRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA