

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 11 AND 13 OF SEBI (FUTP) REGULATIONS, 2003 AGAINST IVORY SECURITIES LTD, IN THE MATTER OF TRADING IN THE SCRIP OF ASTRASENECA PHARMA INDIA LTD.

1.0 Investigation

1.1 Investigation conducted by the Securities and Exchange Board of India (hereinafter referred to as "SEBI") into the trading of the scrip of Astraseneca Pharma India Ltd. (formally known as Astra IDI Ltd. and hereinafter referred to as "APIL") revealed that Ivory Securities Ltd. (hereinafter referred to as "ISL"), had traded through N J Shares & Securities Pvt. Ltd. (hereinafter referred to as "NJSSPL") to the tune of 8,950 shares. The orders placed by ISL substantially matched with that of Dinils Adhesives Pvt. Ltd. (hereinafter referred to as "DAPL") in terms of time, price of the share and quantity.

1.2 ISL had dealt through a Trading Member of National Stock Exchange (hereinafter referred to as "NSE"), NJSSPL on two days i.e. 6th August, 2001 and 7th August, 2001. The total quantity dealt by ISL was 8,950 shares. ISL held 9.25% of the share capital of a Trading Member of NSE, Fincap Portfolio Ltd. (hereinafter referred to as "FPL"). The counter party broker to the transactions made by NJSSPL for ISL was FPL which traded for its client DAPL.

1.3 Investigations also revealed that ISL's director Vishal Suneja, is also a director of FPL. One of the subscribers to the Memorandum of Association of ISL, Bharti Suneja happens to be wife of Vishal Suneja. The other subscriber to the Memorandum of Association is Romesh Chandra Suneja, who is father of Vishal Suneja. Also Bharti Suneja and Romesh Chandra Suneja are the first directors of ISL.

1.4 It was alleged that the trading done by ISL was irregular market practice in violation of regulation 4 (a) to (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").

2.0 Show cause notice and reply

2.1 ISL was issued a show cause notice (hereinafter referred to as "SCN") dated 30th April, 2004 intimating the findings of investigation and to show cause as to why directions under section 11B read with section 11 of the SEBI Act, 1992 read with regulations 11 and 13 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "FUTP Regulations, 2003") should not be issued for violating regulation 4 (a) to (d) of FUTP Regulations. Along with the SCN, four annexures containing the details of trading, trade log/ order log, details of price volume etc. done by ISL were also forwarded. ISL was also asked to indicate in its reply whether it would prefer personal hearing before SEBI.

2.2 ISL vide letter dated 25th May, 2004 responded to the SCN dated 30th April, 2004 stating that it does not wish to make any additional submissions to its earlier letter dated 6th February, 2004 whereby it had made detailed submissions. ISL had not pressed for personal hearing and left it to the discretion of SEBI. ISL by letter dated 6th February, 2004, inter alia, had made following submissions:

2.3 ISL submitted that there was no way to know to what percentage its trading in APIL was amounting to and denied having any relationship with FPL by way of holding any shareholding in FPL.

2.4 ISL submitted that in view of the fact that buyer and seller are not related to each other, the charge of structured deals is not justified.

2.5 ISL submitted that its investment decision was purely commercial and was well within the band allowed by SEBI.

2.6 In view of the above, ISL submitted that there was never any question of ISL indulging in illegal or irregular activities hence, requested SEBI to withdraw charges made against it.

3.0 Consideration of Issues and observations

3.1 I have carefully considered the facts of the case, show cause notice and submissions made by ISL in response to the same. I note that the written submissions filed by ISL vide its letter dated 6th February, 2004 have been taken on record. Since I have considered the detailed submissions made by ISL vide the said letter dated 6th February, 2004, I am, therefore, convinced that the principles of natural justice have been complied with and also that ISL did not seek personal hearing in the matter.

3.2 I observe, from the trade log and order log of APIL at NSE that orders were put simultaneously both by NJSSPL for ISL and FPL for DAPL for same quantity, at same price and more or less at the same time. The time of punching in the buy and sell orders matched second by second on many occasions. Price Volume details reveal that on two days on which ISL and DAPL traded i.e., 6th August, 2001 and 7th August, 2001 volume in the scrip of APIL was highest in the market. The gap between the orders placed by ISL and DAPL was too narrow. Further the whole order quantity had matched. Both parties to the transactions had entered buy and sell orders of shares almost simultaneously, purchase and sale quantity was exactly the same.

3.3 I observe from order log of NSE that on 6th August, 2001 first buy order for 1,500 shares was put by FPL on behalf of DAPL at 12:13:45 at a price of Rs.268.50 and simultaneously at the same time and price a sale order of 1,500 shares was put in by NJSSPL on behalf of ISL, both the orders matched immediately. The next order was put in for 1,500 shares at Rs.268.05 by FPL and NJSSPL at 12:14:25 and 12:14:26 respectively which got executed at 12:14:26. The next order of 1,550 shares at Rs.268.80 was put in by FPL and NJSSPL at 12:14:50 and 12:14:51 respectively. The next order of 1,400 shares at Rs.268.10 was put in by FPL and NJSSPL at 12:27:11 and 12:27:11 respectively.

3.4 I further note that no trading took place after the above trades for nearly one hour and first trade after the above trades was only of the above clients in reverse positions. First sale order of 450 shares at Rs.274.80 was put in by FPL for DAPL at 13:19:53 and a purchase order of 450 shares at Rs.274.80 was put in by NJSSPL for ISL after nearly four seconds at 13:19:57. After this all the shares bought by DAPL an hour earlier were sold by it and all the shares sold by ISL earlier were bought back by it. The reverse transactions were carried out by both of them in trenches in quantity of shares ranging from 25 to 525 shares. All these transactions concluded at 13:53:45 at NSE and after this, only three trades of 42, 5 & 5 shares were observed on that day. The result of the above trading was that price of the scrip was raised from Rs.268/- to Rs.277.50/- on 6th August, 2001.

3.5 I also observe, on 7th August, 2001, first purchases by DAPL and sales by ISL (first leg) and later on sales by DAPL and purchases by ISL (second leg) took place. The first trade of the day was executed between them (first leg) at Rs.273/- on 10:21:31 of 50 shares. The last transaction of first leg was executed at Rs.272.50. However first transaction of second leg was executed at Rs.288.50 on 11:41:29. No trades were executed at the exchange between these transactions indicating there was no other interest in the scrip in the market.

3.6 From the close proximity of the order time placed by both ISL and DAPL, quantity of order and the price at which orders were placed in all the trades, I have come to the conclusion that these cannot be mere co-incidence. Such transactions being more than hundred, and almost all of them getting matched in trade time, sale quantity and price, it is difficult to overlook them, treating them as a mere coincidence.

3.7 I further observe that on 6th August, 2001 the total volume in weekly settlement of NSE was 12,368 shares and ISL along with DAPL had traded for 11,900 shares, who bought and sold 5,950 shares each and thus had contributed to 96% of the total volume at NSE. Similarly, on 7th August, 2001 the total volume in weekly settlement was 6,600 shares out of which ISL along with DAPL had traded for 6,000 shares, both bought and sold 3,000 shares each on that day and thus had contributed to 91% of the total volume at NSE.

3.8 The closing price in weekly settlement at NSE on 3rd August, 2001 was Rs.266/- which had gone up to a closing price of Rs.290/- on 7th August, 2001 showing a rise of about 9%. Some trades were conducted between both the parties at around Rs.295/- also on 7th August, 2001. On 10th August, 2001, closing price at NSE declined to Rs.278/- when neither ISL nor DAPL traded. I further note that out of 68 buy orders placed by NJSSPL for ISL, 64 orders matched with FPL on the sell side who was trading for DAPL.

3.9 I note that in Appeal No.54 of 2002 – Nirmal Bang Securities Pvt. Ltd. Vs SEBI, the Hon'ble Securities Appellate Tribunal has held as under with regard to the synchronised deals :-

"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale, can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously."

3.10 In view of the above I am of the view that ISL along with DAPL had indulged in trading which is calculated to create false and misleading appearance of trading in the scrip of APIL. ISL and DAPL had also artificially raised the price of the scrip from Rs.266/- to nearly Rs.295/- by trading on two days between themselves. The price of securities on both these days was based on transactions which were not genuine trade transactions. ISL along with DAPL entered into purchase or sale of securities without any intention of taking delivery and did not intend to effect transfer of beneficial ownership. I find ISL guilty of indulging in irregular market practices which is a violation of regulation 4 (a) to 4(d) of FUTP Regulations 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 the 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 markets;

- 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 fluctuation in the market price of securities;

3.11 The trades executed by ISL were manipulative practice which resulted in creating artificial volume of the scrip of APIL and were done with a view to set the prices or artificially fix the price. It also has an impact on market by way of creating artificial illusionary volumes. Such transactions are highly irregular and defeat the purpose of normal order matching system in the price discovery process in the exchanges and have to be viewed as serious violation. ISL had executed transactions without any genuine interest in giving or taking delivery of shares. This has resulted in creation of artificial volumes and rise in the scrip which otherwise had no interest from the general investors. Unsuspected innocent investors would be trapped by such false appearance of trading in securities. This is detrimental to the interest of investors and the orderly development of the securities market. I am, therefore, convinced that it is a fit case to impose directions under Section 11 and 11B of the SEBI Act, 1992.

4.0 Order

4.1 In view of the above findings and in exercise of power conferred upon me under Sections 19 read with Sections 11 and 11B of SEBI Act, 1992 and Regulations 11 and 13 of FUTP Regulations, 2003, I hereby restrain ISL, from accessing the securities market and prohibit it from buying, selling or dealing in securities for a period of six months. I am convinced that it would be commensurate with the defaults committed by ISL in the facts and circumstances of the case.

4.2 This order shall come into force with immediate effect.

Place: Mumbai
Date: 12th January, 2006

Madhukar
Whole Time Member
Securities And Exchange Board Of India