

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: Dr. T.C. NAIR, WHOLE TIME MEMBER

**Against Fincap Portfolio Ltd. in the matter of
M/s. ASTRASENECA PHARMA INDIA LTD.**

WTM/TCN/IVD ID1/ /07

Date of hearing : 14-07-2006

Appearance

For Noticee : Vishal Suneja, Director, Fincap Portfolio Ltd.

For SEBI : Mr. P.K. Nagpal, Chief General Manager.

ORDER

[Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002]

- 1.1** Fincap Portfolio Ltd. (hereinafter referred to as Fincap or broker), a company incorporated under the Companies Act, 1956, is a member of the National Stock Exchange (hereinafter referred to as NSE) registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as stock Broker, bearing registration No. INB 230876533.
- 1.2** SEBI conducted investigation into the price manipulation in the scrip Astrasenecca Pharma India Ltd. (hereinafter referred to as Astra) *inter alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as FUTP Regulations) and SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations). The trading details of the persons who had traded in the scrip were collected and analyzed along with the data of the volumes contributed by these entities. From these details it was found that Fincap had traded on behalf of its client Dinils Adhesives Pvt. Ltd. (hereinafter referred to as Dinils) and its counter party broker was N.J. Shares and Securities Pvt. Ltd. (hereinafter referred to as NJS) who traded on behalf of client Ivory Securities Ltd. (hereinafter referred to as Ivory). The investigations found that Fincap and NJS had dealt for their clients only on two days i.e. August 06 & 07, 2001 in the scrip of Astra and the total quantity dealt by Fincap was 8950 shares during the period of investigation. Investigations *prima facie* revealed that the above trading contributed towards an unusual spurt in the traded volumes and prices in the scrip.
- 1.3** The investigations found that Ivory held 9.25 % of the share capital of Fincap which it sold in June 2001 with the permission of NSE. It was further observed that the director of Ivory, Mr. Vishal Suneja, was the director of Fincap. Ms. Bharti Suneja, wife of Mr. Vishal Suneja was one of the subscriber to the memorandum of Ivory while another subscriber to the memorandum was Romesh Chandra Suneja (father of Vishal Suneja). Address of Ivory and Fincap were common and this further infers Ivory the client of NJS had close relation with Fincap.
- 1.4** Investigations found NJS guilty of violating the provisions of Clause A (3) and A (4) of the Code of Conduct specified in Schedule II read with Regulation 7 of Broker Regulations and Regulation 4 (a), (b), (c) and (d) of FUTP Regulations as applicable at the time when the alleged act was committed. The price of the scrip artificially raised from Rs. 266/- (closing price on August 3, 2001) to about Rs. 290/- (closing price on August 7, 2001) by trading on two days only. It was alleged that Ivory the client of NJS and Dinils had entered into purchase or sale of securities without any intention of taking delivery and did not intend to effect transfer of beneficial ownership. All these acts were aided and abetted by NJS and Fincap to create false/artificial market in the scrip which resulted in transactions which were not genuine trade transactions.
- 1.5** In view of the above, an enquiry officer was appointed under Regulation 5(1) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) to enquire into the alleged acts of commissions and omissions of Fincap while transacting in the above mentioned scrip.

2. Enquiry Proceedings

- 2.1** The Enquiry Officer, issued a Show Cause Notice (hereinafter referred to as SCN) dated April 30, 2004 under Regulation 6 (1) of Enquiry Regulations to Fincap communicating thereby the allegations in respect of the transactions in the scrip of Astra. After considering the reply dated May 29, 2004 from Fincap, the Enquiry Officer conducted the enquiry as per the procedure laid down in Enquiry Regulations and submitted a report dated August 31, 2004. The Enquiry Officer found that Fincap had indulged in aiding and abetting its client and undertaking transactions which were manipulative and fraudulent in nature. The Enquiry Officer had recommended the suspension of certificate of registration granted to Fincap for a period of four months.

- 2.2** A copy of the Enquiry Report was issued to the broker along with a SCN dated September 17, 2004 in terms of Regulation 13(2) of the Enquiry Regulations calling upon it to show cause as to why appropriate action as recommended by the Enquiry Officer should not be taken against it. The broker had replied to the said SCN vide its letter dated October 23, 2004.
- 2.3** The broker was also given an opportunity of personal hearing before me on July 14, 2006. On the designated day Mr. Vinod Suneja appeared and made submissions on behalf of Fincap.

3. Consideration of Issues

- 3.1** I have carefully considered the facts of the case, the findings of the Enquiry Officer and the reply of the broker including the submissions made during the personal hearing. My findings are as follows:

- a)** With regard to the finding that Fincap had executed series of structured/ synchronized trades in concert with NJS, the broker submitted that its role in the subject transactions was to be a medium through whom transaction were executed on NSE. It was further submitted by the broker that the scrip Astra was thinly traded and the trading of only 8950 equity shares of Astra contributed to 96% of the total volume.

The Enquiry Officer pointed to the instances where the orders were put simultaneously by Fincap and NJS more or less at the same time and the time of punching in the buy and sell orders matched second by second on various occasions. In some instances the difference was of one or two seconds only. Also the quantity entered by both the brokers (i.e. Fincap and NJS) on behalf of their clients was the same on most of occasions.

I find that the broker has not explained the nature of the transactions entered into. The broker in its reply has discussed at length about price manipulation, quantity manipulation etc. but has not explained about the exact matching of trades. I, therefore, hold that the explanation of the stock broker is not satisfactory as it is impossible for such exact matching of trades to happen in such accuracy without pre-understanding of both the clients and the executing brokers. This makes it clear that the trades entered by Fincap and NJS on behalf of their clients were synchronized and structured deals. In view of this I, hold broker guilty on this count.

- b)** With regard to the finding that all the parties were connected the broker submitted that this finding is based on the facts supplied by it. The Enquiry Officer found that Ivory, the client of NJS was related to the counter party broker Fincap. The director of Ivory is Vishal Suneja, who is also the director of Fincap. Ms. Bharti Suneja, wife of Mr. Vishal Suneja was one of the subscriber to the memorandum of Ivory. Other subscriber of the memorandum were Romesh Chandra Suneja (father of Vishal Suneja). Further Bharti Suneja and Romesh Chandra Suneja were the first directors of Ivory. Even the addresses of Ivory and Fincap were common.

The Enquiry Officer further found that Nitish Moondhra, Director of Dinils, the client of Fincap is the husband of Mrs. Sonal Moondhra of Indcap which was a sub broker of Fincap. In view of all this the Enquiry Officer reached the conclusion that there was a link among Fincap, its client and the counter party client.

By taking all this into consideration the inference that could be drawn is nothing but the fact that all the persons concerned in this matter had a pre-mediated plan. The defense that the finding is based on facts supplied by broker nowhere stands as the purpose of enquiry is to reach to the root of the matter.

The broker resisted to this finding and explained the business relationship of the persons in detail explaining the present responsibilities. I have gone through the submission made by the broker, in which, it had tried to make a distinction between the positions held by Mr. Vishal Suneja as a broker and as a director in Ivory. I have perused the submissions regarding how the address of broker and Ivory are same. I agree with the brokers contention that being a director on the Board of a company, one cannot said to be controlling the same nor can an inference be drawn that he is involved in the day to day decision making process of the company.

However, on perusal of the relation between these two entities one can easily draw inference that the person heading one entity can have easy access to the information of the other entities. If this chain of relations is taken forward it comes to the knowledge that Indcap who was a sub-broker of Fincap at one point of time was having relation with Dinils as one of the director of Dinils, Mr. Nitish Moondhra was the husband of proprietress of Indcap Mrs. Sonal Moondhra. Considering all this I, come to the conclusion that there is a link among Fincap, its client and the counter party client.

- c)** With regard to the finding that the broker is guilty of creating false market in the scrip, broker replied to this by submitting that it was working for the brokerage amount and it has not derived any benefit except this. The broker further submitted that it had traded in 8950 shares of Astra and that too only on two trading days, while trading in this manner it can not interfere in the market mechanism. The broker contended that it was neither acting as a consultant nor as a decision maker for its client but was merely executing the decisions made by clients.

This explanation of Fincap is not tenable as the misconduct is manifest in the manner of trading itself and the synchronization of trading between the same parties can not be a mere coincidence. I find that the trading in which the broker had indulged itself is misuse of screen based trading and is detrimental to the orderly development of the securities market and the interest of investors.

The Enquiry Officer further found that Fincap and NJS had traded on two days only i.e. August 06, 2001 and August 07, 2001 and on these days their trades constituted 96% and 91% respectively of the total volumes in NSE. The price moved from Rs. 266/- (closing price on August 03, 2001) to Rs. 290/- (closing price on August 07, 2001). After this the prices declined to Rs. 278/- (closing price on August 10, 2001) when both the parties had not traded. The Enquiry Officer further found that all these transactions were squared off transactions and there was no delivery of shares. This trading pattern demonstrates the culpability of Fincap.

The broker in its reply has explained the price and quantity manipulation in the scrip very minutely and after going through it I find that the broker's submissions have some relevance. But these submissions are incomplete in explaining the intent for executing the trades which ultimately matched with the NJS.

At this instance, I go further to find whether the broker had some role in creating false market in the scrip. I rely on the case referred in this regard i.e. *Nirmal Bang Securities (P) Ltd. Vs. SEBI*, wherein Hon'ble SAT held that;

"...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. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establishes that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

Taking consideration of this in the present case as reported by the Enquiry Officer, had the trades executed by Fincap be genuine, the possibility of perfect matching would not have been possible. One or two deals on the exchange may be synchronized but trades to the extent of such volumes, had some malafide intent. The greater the number of synchronized trades, the larger are their chances of not being genuine in nature.

After going through the submissions made by the broker I, find that it has no merits in the present circumstances of the case. I agree with the views of the Enquiry Officer that these are quite implicit synchronized trades executed on the screen of exchange, have an inherent element of intent involved in them, thereby the broker had created false market in the scrip. Therefore, I, find broker guilty on this count.

- d)** With regard to the finding that the orders were put simultaneously by Fincap and NJS at more or less the same time and the orders between these two trading members matched again and again, the broker submitted that the trades were executed on the directions of the client. The submission of the broker is not very much convincing. I find that the broker has failed to explain why the trades were matching again and again between these two trading members only. This can happen only when there is some pre-mediation between the brokers, as the terminal used is of the brokers only. The coincidence of matching trades can be once or twice but matching of the orders upto the extent of 37 orders raises concern for the regulator.

The Enquiry Officer found that Fincap and NJS alongwith their clients bought and sold shares among themselves through the exchange by squaring off the trades in a circular manner and generated artificial volume and price in the scrip.

I find that the trading was carried out with an intention that the orders of particular client and broker match with each other. I agree with the finding of Enquiry Officer that the registered brokers should exhibit high standards of integrity, professionalism and diligence and should not misuse the safe and transparent exchange system. I find that the trading pattern adopted by Fincap gives false appearance of trading and innocent investors are being trapped by creating an impression that the scrip is being actively traded at the price quoted, which in reality are not genuine prices. I further find that all these transactions were squared off transactions and there was no delivery of shares. After going through this, I

come to the conclusion that Fincap had traded in a manner which gives a false appearance of trading, which is detrimental to the orderly development of the market and interest of investors.

- e) With regard to the finding that stock broker was aiding and abetting the clients, the broker submitted that it was acting on the instructions from its clients. The Enquiry Officer on this charge discussed the available proofs and stated that there were series of transactions which were executed by broker for its client. If one believes that the client was artificially raising or depressing the prices of the security on its own, it can not be convincing as the terminal used in such case is of broker only. It can not be said that the broker was not aware of the behavior of transactions of its client. The standard of proof in these circumstances is as discussed by the Enquiry Officer *"almost depends on inferences drawn from patterns of behaviour, from apparent irregularities and from trading data. Price leadership by the manipulator, domination and control of the market, and restricting the floating supply of stock are some of the factors which characterize attempts by manipulator to raise the price of a security"* (Pagel Inc., 48 S.C.E.C. 223, 223 (1985), aff'd, 803 F2nd 942 (8th Cir. 1986). U.S.

At this juncture it is also relevant to note the observation of the U.S. Courts in *Hyne's Case* that *"proof of manipulation is generally not based on a single activity but rather on a course of conduct showing an intentional interference with the normal functioning of the market for a security. Indeed the manipulation is usually the result of acts, practices and course of conduct that deceive the market place....."*.

After considering the case in totality I, find that the broker has aided and abetted Fincap, its client in creation of artificial market and entered into transactions which were not genuine trade transactions. I further find that the broker has failed to give convincing explanation. Hence I, find the broker guilty of this charge.

- 4.1 In view of the above factual conclusions arrived by me, I find that the broker has violated Regulation 4 (a), (b), (c) and (d) of FUTP Regulations as applicable at the time when the act was committed and Clause A (3) and A (4) of the Code of Conduct specified in Schedule II read with Regulation 7 of Broker Regulations. In the facts and circumstances of the case and taking the dimensions of violations in terms of volume of synchronized trading undertaken, I am of the view that a penalty of suspension of certificate of registration granted to Fincap for a period of one month would be appropriate.

Order

- 5.1 Therefore in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the Enquiry Regulations, I hereby impose a penalty of suspension of certificate of registration for a period of one month on Fincap Portfolio Ltd., member, NSE Ltd., bearing SEBI Registration No. INB 230876533.
- 5.2 This order shall come into force immediately after expiry of 21 days from the date of this order.

Mumbai

Date: 04th January, 2007

T.C. Nair

Whole Time Member

Securities and Exchange Board of India