

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : V. K. CHOPRA, WHOLE TIME MEMBER

In the matter of M/s Bharat Bhushan & Co, Broker, Delhi Stock Exchange (DSE) and M/s Bharat Bhushan Equity Traders Ltd, Broker, National Stock Exchange (NSE)

DATE OF HEARING: 04.12.2006

APPEARANCES:

FOR COMPANIES/ BROKERS:

1. Shri. Vijay Bhushan, Partner, M/s Bharat Bhushan & Co
2. Shri. Shanker Singal, Authorised Representative, M/s Bharat Bhushan Equity Traders Ltd.
3. Shri Bajrang Prasad, Company Secretary, M/s Bharat Bhushan Equity Traders Ltd.

FOR SEBI:

1. Mrs Barnali Mukherjee, DGM, SEBI

ORDER

{Under Regulation 13(4) SEBI (Procedure for Holding Enquiry by Enquiry

Officer and Imposing Penalty) Regulations, 2002 in the scrip of Information Technologies (India) Ltd.}

1.0 BACKGROUND

- 1.1 M/s Usha Services and Consultants Ltd. was incorporated in September 20, 1976 as a wholly owned subsidiary of Usha India Ltd. formerly Usha Rectifiers Corporations (India) Ltd. The company was initially engaged in the business of software development, consultancy services and financial services. In December 1993, the company changed its name to Information Technologies India Ltd (hereinafter referred to in short as "ITIL") and engaged in the business of software developments. ITIL is a part of Usha Group Companies and Shri Anil Rai and Shri Vinay Rai are its promoter directors.
- 1.2 Securities and Exchange Board of India (hereinafter referred to in short as "SEBI") had ordered an investigation into the affairs relating to buying, selling and dealing in the shares of ITIL on observing a steep rise in the price and volume of the scrip. The investigation inter alia revealed that M/s Bharat Bhushan Equity Traders Ltd., Broker, NSE (hereinafter referred to in short as "BBETL") with SEBI Registration No. INB230772430 and M/s Bharat Bhushan & Co., Broker, BSE (hereinafter referred to in short as "BB&Co.") with SEBI Registration No. INB050455023 are two among the other brokers who had substantially traded on behalf of promoter/their front companies.
- 1.3 The Board, after considering the Investigation Report, appointed an Enquiry Officer vide Order dated July 18, 2002 to enquire into the violations allegedly committed by BBETL and BB&Co. under the provisions of Regulation 4(a), to (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to in short as "PFUTP Regulations") and Regulation 7 read with schedule II, clause A(3) to (5) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock brokers Regulations").
- 1.4 The Enquiry Officer, after conducting a common enquiry for both BB&Co. and BBETL in accordance with the provisions of Regulation 6 of the Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "the Enquiry Regulations") submitted a report dated September 30, 2003 under Regulation 13(1) of the Enquiry Regulations. The Enquiry Officer in his report observed that the above mentioned charges were established and accordingly recommended suspension of registration granted to BB&Co. for a period of two months and BBETL for a period of one month.

2.0 SHOW CAUSE NOTICE

- 2.1 Pursuant to the receipt of the said Enquiry Report, two separate Show Cause Notices both dated February 13, 2004 were issued to the said entities, along with copies of the said Enquiry Report, advising them to show cause as to why the action, as recommended by the Enquiry Officer or any other penalty deemed appropriate, should not be imposed on them.

3.0 REPLY TO THE SHOW CAUSE NOTICE

- 3.1 BB&Co. submitted its reply dated March 25, 2004 to the said show cause notice wherein they inter alia stated as under:

"All the transactions in ITIL shares dealt in by BB&Co. were genuine transactions. All transactions done by BB&Co. are supported by payment and delivery. In the first instance, BB&Co. were neither aware of the real persons behind the four client companies nor their alleged motive to indulge in manipulative practices."

The Hon'ble Enquiry Officer has recorded the price movement of ITIL shares from Rs 469.35 on January 03, 2000 to Rs 2,023.25 on February 22, 2000, the Hon'ble Enquiry Officer has failed to take due cognizance of the fact that BB&Co. did not trade in ITIL shares during this period. The Enquiry Officer has clearly erred in recording a finding of fact to the contrary.

The fact that BB&Co. had acted as brokers to the public issues of certain Usha Group Companies does not ipso facto mean that the broker is bound to know or is presumed to know every single entity incorporated by the promoters, some of which may not be in existence at the relevant time.

What is more significant is the fact that the knowledge of all entities belonging to Usha Group in sought to be attributed to BB&Co. on the footing that the entities that transacted in ITIL shares "acted through common persons namely, Mr. V. K. Agarwal and Mr. P. R. Rao". What however, is completely overlooked and ignored deliberately is the simple and uncontroverted fact that Mr. V. K. Agarwal and Mr. P. R. Rao had never dealt with BB&Co. at the time of the public issues of the Usha Rectifier and Usha Ispat. BB&Co. had therefore no basis whatsoever to conclude that Mr. V. K. Agarwal and Mr. P. R. Rao were in anyway connected with the Usha Group. It is not even the case in the show cause notice that Mr. V. K. Agarwal and Mr. P. K. Rao had dealt with BB&Co. at the time of public issue of Usha Rectifier and Usha Ispat.

It is respectfully submitted that the Hon'ble Enquiry Officer has erred in inferring that since there were Vyaj Badla done by the promoters of Usha Group of Companies with BB&Co. in their personal capacity, BB&Co. is ought to have known each and every company or organization in the "Usha group". Similarly, mere participating in the public issues as stock brokers for two Usha Group entities sometime in the past cannot lead to any intelligible conclusion that BB&Co. should have known all the Usha Group Companies.

It is respectfully submitted that undertaking trading transactions supported by payment and delivery and following the rules and regulations cannot be termed as manipulative. The crucial factor in deciding whether the trading was to manipulate the market, is the underlying intention of the stock broker. There is neither reasonable nor convincing evidence stated in the Enquiry Report to prove the motive. Belief, however, benign and genuine cannot be a substitute for evidence. The test of evidence to establish the charge of market manipulation should be a realistic one. In the instant case, the Enquiry Report fails to satisfy the said test. On mere conjectures and surmises the Hon'ble Enquiry Officer ought not to have recommended any penalty.

The Enquiry Officer's reliance on the statement of Bharat Bhushan & Co. that the clients may appear to have links with promoters of Usha Group can by no stretch of imagination can be construed as admission of knowledge. The observations of the enquiry officer regarding the statement of Mr. Vijay Bhushan has been taken and quoted out of context in which the statement was made. The time and circumstances were different when the statement was made and it was not in relation to any knowledge at the time of the transaction. The possible inference was made from the records already submitted to Shri R Mohan (Division Chief, Investigation Department, SEBI) at the time when the question was posed. Therefore, the heavy reliance by the Hon'ble Enquiry Officer on an opinion expressed about the clients' links is unwarranted and cannot be substituted for appropriate evidence for recommending any penalty. The preponderance of probability mentioned by the Hon'ble Enquiry Officer is itself based on conjectures, surmises and presumptions that are unfounded and benefit of hindsight. The important point is that at the time of conducting the securities transactions, BB&Co. had no means of finding out / discovering the links between its clients and Usha Group.

The Hon'ble Enquiry Officer has failed to disclose any material to show that floating stock of ITIL shares was very low to the knowledge of BB&Co. There was no public domain knowledge of floating stock. Besides there were no regulations or guidelines concerning computation by brokers of floating stocks nor was there any requirement for making such determination during that period.

The net purchases through the member were as low as 0.1375% (Purchase of 94,700 shares of ITIL out of the total Share Capital of 6,92,56,600 shares) of the total capital over a period of 5 months. Obviously, such absolute low volumes of share trading could not have manipulated the share prices. There was therefore nothing to arouse the suspicion or put BB&Co. on enquiry as to purchase and sale of ITIL shares by its constituents.

It is further submitted that the Enquiry Officer has erroneously relied upon the statement of Mr. Vijay Bhushan recorded on 10th May, 2002 that the UTI transactions were "off market transactions". By a letter dated 15th May 2002, it was specifically brought to the notice of the Enquiry Officer that the transactions with UTI were not "off market transactions" but were "offer-sauda transactions". Such "offer-sauda transactions" were a normal practice of buying and selling by financial institutions. The said transactions were carried out at market prices and resulted in delivery and payment. No brokerage is paid by the financial institution in "offer-sauda transactions".

During the period between 3rd January, 2000 to 22nd February, 2000 when the price of ITIL shares moved upwards we did not conduct any transaction on account of any alleged Usha Group entities nor of the four alleged Usha Group Companies referred to in the Show Cause Notice.

During the aforesaid period we purchased very negligible number of Shares of ITIL – viz. 2800 shares out of the total Issued Capital of 6,92,59,600 Equity Shares which constituted 0.004% of the paid up Equity Capital of ITIL on account of certain individual constituents and the same were on usual terms as per the Regulations evidenced by payment and delivery and in the normal course of business.

We may submit that even the transactions that had been alleged to have taken place in relation to ITIL shares during August / September 1999 to end December 1999 constituted less than 0.21% of the total Equity Shares Capital of ITIL and there could be no basis or justification for alleging any involvement in any manipulation of prices by any unfair means particularly when we acted bona fide.

We had not been provided with any data or material concerning the alleged extent of the Floating Stock. It is well known that such information was not in public domain during the relevant period. We too were unaware about the same.

It would also be evident from the Report that there is no finding with regard to our having made any gains or took any undue advantage of the then prevalent upswing in the Market.

It may be submitted that the said transactions had also been carried out in the normal and usual course of business as per the then prevalent market conditions at the prevalent price.

The said transactions related to about a net purchase of 1,46,900 shares out of the Total Equity Share Capital of 6,92,59,600 shares of ITIL over a period of five months and constituted transactions merely of 0.205% of the issued Equity Capital of ITIL.

Such minimal quantity transactions cannot be considered to make any impact of effect on the Liquidity or Floating Stock.

The Enquiry Officer also failed to appreciate that the Firm Bharat Bhushan & Co. was a distinct and independent entity having independent Office and Staff of its own, Merely because a Partner of the Firm was a non-executive Director of our Company would be no ground for imagining our linkage with the alleged Usha Group entities with whom the said Bharat Bhushan & Co. was alleged to be having certain transactions.

The Enquiry Officer failed to take note of and properly appreciate that there could be no inference of linkage on such nebulous grounds and in any event there could be no basis for assuming our involvement in any dealings which were alleged to be of the Usha Group entities with Bharat Bhushan & Co.

The entire Show Cause Notice dated August 28, 2002 and the Enquiry Report dated September 30, 2003 proceed on the assumption that notice BBETL was allegedly aware of the fact that certain entities allegedly belonging to Usha Group were indulging in market manipulation of shares of ITIL. This knowledge which is sought to be attributed to BBETL (a registered broker on NSE) is based on firstly on the presumption that the knowledge of one of the director's of BBETL namely Mr. Vijay Bhushan is the knowledge of the Company; secondly on the basis that Mr. Vijay Bhushan, being a director of BBETL and a partner of Bharat Bhushan & Co., Bharat Bhushan & Co.'s state of knowledge is deemed to be the state of knowledge of BBETL.

4.0 HEARING

- 4.1 BB&Co. and BBETL were accordingly advised to attend the personal hearing before me at SEBI's Northern Regional Office at Delhi on December 13, 2006. Shri. Vijay Bhushan, Partner, M/s Bharat Bhushan & Co, Shri. Shanker Singal, Authorised Representative, M/s Bharat Bhushan Equity Traders Ltd and Shri Bajrang Prasad, Company Secretary, M/s Bharat Bhushan Equity Traders Ltd attended the hearing and also submitted their written submission on the date of hearing itself.

5.0 CONSIDERATION OF ISSUES & FINDINGS

- 5.1 I have carefully examined the findings of investigation, enquiry report, show cause notice, reply of BB&Co and BBETL and the submissions made at the time of hearing.
- 5.2 The company, ITIL was incorporated in September 20, 1976 as Usha Services and Consultants Ltd., wholly owned subsidiary of Usha India Ltd. formerly Usha Rectifiers Corporations (India) Ltd. The company was initially engaged in the business of software development, consultancy services and financial services. ITIL came out with its initial public issue on January 14, 1993 for 25,00,000 shares of Rs 10/- each at a premium of Rs 30/- each. The issue was undersubscribed to the extent of 20,57,300 shares and devolved on the underwriters who had taken up 3,64,600 shares and the balance was subscribed by the promoters. As a result, promoters, directors, relatives and group companies were holding about 92% of the post issue capital of the company. After the issue, the total nominal value of the share capital of the company stood at Rs 6.10 crores (61,00,000 shares) and share premium amount at Rs 7.5 crores. In

December 1993, the company changed its name to Information Technologies India Ltd (ITIL) and engaged in the business of software developments. ITIL is a part of Usha Group Companies and Shri Anil Rai and Shri Vinay Rai are its promoter directors.

- 5.3 The price of the scrip of ITIL was Rs 469.35 on January 03, 2000 and had moved up to the highest of Rs 2999 on March 09, 2000, an increase of Rs 2529.65 or 539% in a period of only two months. During this period the daily volume in the scrip had risen from 80,200 shares on January 03, 2000 to a high of 1,73,400 on February 22, 2000, an increase of about 2 times. Prior to January 2000, the daily volumes in NSE were only about 8,000 shares which spurted to a daily volume of about 80,000 shares and further to 1,73,000 during the investigation period. Similarly, the price in BSE on January 03, 2000 was Rs 462.40 which increased to the highest of Rs 2940/- on 9.3.2000. Thereafter the prices started falling upto Rs 1800/- on 21.3.2000 and once again started rising to reach a high of Rs 2,600/- on 3.4.2000 after which the prices once again started falling to reach Rs 1661/- on 20.4.2000.
- 5.4 The investigation revealed that among Usha group entities, M/s Arunday Vinimay Pvt Ltd, M/s Sunmac Iron & Steel Pvt Ltd, M/s KRP Consultant Ltd, M/s Eureka Machineries Ltd had transacted through common directors namely V.K Aggarwal and P. K Rao. The Enquiry Officer observed that Shri. P. K. Rao was giving instructions for the trades of M/s Arunday Vinimay Pvt. Ltd. and M/s Sunmac Iron & Steel Pvt. Ltd. and Shri. V. K. Aggarwal was the common person who was giving instructions and taking deliveries on behalf of M/s KRP Consultant Ltd. and M/s Eureka Machineries Ltd. Admittedly, the said entities were the client of BB&Co. who had a role in the public issue of various flagship companies of Usha Group. Shri Vinay Rai who was the chairman and Managing Director and promoter Director of ITIL, was also the Chairman of Usha Group of Companies. They were also associated with Shri Vinay Rai and Usha Group Companies as their share broker and executed Vyaj Badla transactions for them.
- 5.5 It is alleged that BB&Co. and BBETL are associated with each other. Shri Vijay Bhusan who is a partner of BB & Co, is also a Director of BBETL. However, in their reply to show cause notice and also during the course of hearing, they submitted that both entities are distinct and independent having separate office and staff and the linkage between them can not be attributed merely because a partner of the firm was also a non executive director of their associated company. During the course of hearing, Shri Vijay Bhusan submitted that he made a statement before the Investigating Authority of SEBI where he only suggested that there may be links between the clients viz M/s Arunday Vinimay Pvt Ltd, M/s Sunmac Iron & Steel Pvt Ltd, M/s KRP Consultant Ltd and M/s Eureka Machineries Ltd with the promoters of the Company ITIL as they were mainly trading in the scrip of ITIL.
- 5.6 I have examined the details of trades executed by them in the scrip of ITIL which are given hereunder

Details of trades at NSE by BBETL

Item	Details	(% to total in NSE)
Settlement No.	1999039 to 2000023	-
Gross Purchases (Qty)	156,200	2.49%
Net purchases (Qty)	120,500	15.19%

Details of Trades of BB&Co. in ITIL Scrip in DSE

Settlement No.	Purchases (Qty)	Sales (Qty)
Sumac Iron & Steel (P) Ltd.		
N/9935	20300	12600
N/9936	8200	1200
N/9937	24100	7500
N/9938	19200	9400
N/9939	21900	5400
N/9940	24800	7700
N/9941	21600	0
N/9942	20600	200
N/9943	14000	100
N/9944	5300	600
N/9945	2100	0
N/9946	10600	400
N/9947	600	800
N/9949	5900	1500
N/9950	10600	2200
N/9951	3700	0
N/9952	300	800
B/9923	8200	600
B/9924	200	3900
B/9925	6800	2500
B/9926	1400	1400
B/9927	4800	1900
B/9928	5900	2000

B/9929	3100	6200
B/9930	11300	0
B/9931	5500	0
B/9932	9200	0
B/9933	3600	0
B/9934	400	0
B/9935	1200	0
B/9936	4500	0
B/9937	200	100
B/9938	4700	1800
B/9939	2800	0
B/9940	1700	0
B/9941	100	100
D/9937	0	40000
D/9938	0	17000

Settlement No.	Purchases (Qty)	Sales (Qty)
Eureka Machineries (P) Ltd.		
D/9929	0	20000
D/9938	0	13000
B/2013	200	100
B/2014	400	0
B/2058OL	20	10
B/2064OL	1	0
B/2065OL	1	0
Arunoday Vinimay (P) Ltd.		
N/9930	5300	0
N/9935	0	23900
B/9920	15600	0
B/9921	0	800
B/9925	2800	2800
KRP Consultants (P) Ltd.		
D/9929	0	20000
D/9938	0	10000

5.7 I find from the above table that the gross purchases and net purchases of BBETL were concentrated to the extent of 2.49% and 15.19% respectively. The Enquiry Officer observed that the total floating stock of the company with the public was only 5.11% of the issued capital as on January 07, 2000 and by the end of May 2000, it was further reduced to 1.39% of the issued capital. He also observed that the average daily volumes of the scrip at NSE were 11833 in October 1999 to December 1999. The total trades executed by BBETL during the said period was 1,69,200 which constituted 29.17% of the volume traded in the exchange. During the said period, their gross purchase was 1,56,200 shares. I have also examined the percentage of other main brokers who had dealt in shares of ITIL during the relevant period and find from the Investigation report that the percentage of trades executed by BBETL & BB&Co. was small compared to the transactions of other brokers.

5.8 BBETL stated in its reply to the show cause notice that they had not dealt with the aforesaid front entities during the settlement No 1999039 and 2000023 at NSE (January 3, 2000 to February 22, 2000). They submitted that they purchased only 2800 shares of ITIL shares during the said period and the same is negligible. However, they admitted that they had dealt for their client BB&Co., a broker of DSE during the said period. They further stated that even the transaction alleged to have taken place in the scrip of ITIL during the period August 1999 to December 1999, constituted less than 0.21% of the total Equity Share Capital of ITIL. They also stated that they purchased only 2800 shares during the period January 3, 2000 to February 22, 2000 out of the total issued capital of 6,92,59,600 equity shares which constituted 0.004% of the paid up capital of ITIL. Considering this and all aspects of the matter including the nature of transactions executed by BBETL and BB&Co, I do not find any evidence suggesting manipulative intent on their part.

5.9 Apart from that, the following Usha Group entities sold through BB&Co., 120,000 shares of ITIL in off market transactions during the period October and December, 1999 which are given hereunder:

Seller	Intermediary	Date	Quantity
Sumac Iron & Steel	Bharat Bhushan & Co.	29.11.99 to 04.12.99	40,000
		06.12.99 to 10.12.99	17,000
Eureka Machineries	Bharat Bhushan & Co.	04.10.99 to 08.12.99	20,000
		06.12.99 to 10.12.99	13,000
KRP Consultants	Bharat Bhushan & Co.	04.10.99 to 08.12.99	20,000
		06.12.99 to 10.12.99	10,000
Total			120,000

- 5.10 I also find from the record that the promoters of ITIL had through BB&Co. sold 1,20,000 shares to UTI on behalf of M/s Sumac Iron & Steel Pvt. Ltd., Eureka Machineries Ltd and KRP Consultants. The shares were sold in the price range of Rs 290/- to 395/- during October and December 1999 for a total value of 3.92 crores. The Enquiry Officer held that the said transactions of BB&Co. were off-market and is against SEBI Circular dated September 14, 1999. The representatives of BB&Co. and BBETL submitted before me that the said transactions are not off market transactions but are "Offer Sauda" and therefore the same were not reported to the exchanges. They also submitted that such transactions are common especially when the deals are executed for institutions like UTI. I observe that there is no exemption to "Offer Sauda" transactions in the said circular. The price formation in such transactions is not through the stock exchange price and order matching mechanism and investors do not have benefit of the best possible price. With a view to regulate such off the floor transactions including cross deals, SEBI had issued a circular SEBI circular No SMDRP/Policy/Cir -32/99 dated September 14, 1999 which prohibited off the floor transactions and cross deals except on the screen of the stock exchanges which lends transparency and results in true and fair discovery of prices of securities. It is admitted by the member that these transactions were carried out outside the trading system. However, I note that they have executed agreement to that effect with the UTI and duly recorded the said transactions with their register. Further, I note that the transactions in questions are immediately after the issuance of the said circular and the said transactions were executed for UTI.
- 5.11 I find that Shri P. K. Rao who was representing M/s Arunday Vinimay Pvt. Ltd. and M/s Sunmac Iron & Steel Pvt. Ltd. and Shri. V. K. Aggarwal who was representing M/s KRP Consultant Ltd. and M/s Eureka Machineries Ltd., were giving instructions and taking deliveries on behalf of their aforesaid clients. Further, Shri Vijay Bhusan admitted that there may be links between the clients viz M/s Arunday Vinimay Pvt Ltd, M/s Sunmac Iron & Steel Pvt Ltd, M/s KRP Consultant Ltd and M/s Eureka Machineries Ltd with the promoters of the Company ITIL as they were mainly trading in the scrip of ITIL. This should have alerted them to verify the bonafides of client's antecedents and they should have exercised due diligence in order to keep away from these transactions. Thus, they have violated the code of conduct prescribed under clause A (5) of schedule II read with Regulation 7 of Stock brokers Regulations. Having considered this aspect and all other facts and circumstances of the matter, I am of the considered view that a penalty of 'censure' is sufficient to meet the ends of justice.

6.0 ORDER

- 6.1 Therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a penalty of 'censure' on the Brokers M/s Bharat Bhusan & Co and M/s Bharat Bhusan Equity Traders Ltd.

Place: Mumbai
Date: February 5, 2007

V. K. CHOPRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA