

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

In the matter of misleading advertisement by Manna Glass Tech Industries Ltd and its directors, Shri Jayesh Balmukundbhai Mehta, Shri Ashok Navinchandra Chokshi and Shri Dattatray Marutirao Sawant

DATE OF HEARING: 05.07.2007

APPEARANCES:

FOR THE NOTICEES:

1. Shri Jayesh B. Mehta alongwith Shri Noopur Kansara and Ms. Yogini Vyas

FOR SEBI:

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri Naveen Sharma, Manager, SEBI
3. Shri Mohamed Rahaz P. M., Legal Officer, SEBI

ORDER

{Under Section 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995}

1.0 BACKGROUND

- 1.1 During the month of June and July 2002, it was observed that several advertisements appeared in various newspapers in respect of some companies. It was noticed that through such unusual advertisements an attempt was being made to project a bright and rosy picture of company's future growth by making announcements that Board of Directors of the company were about to consider buy-back of shares and issue of bonus shares etc. Preliminary scrutiny into the

matter revealed that shares of such companies were thinly traded. It may be mentioned that such advertisements were not required by law and the companies were voluntarily publishing them. As a result of this publication, there was unusual price volume movement in the shares of the companies around the time of the issuance of such advertisements. It appeared that the purpose of such advertisements was clearly aimed at attracting investors interest in illiquid scrips and to induce them to trade in such scrips. In view of these facts, SEBI conducted investigation in such matters including the issues arising out of advertisement issued by Manna Glass Tech Industries Ltd., a company listed at Bombay Stock Exchange Ltd. (BSE) and Ahmedabad Stock Exchange Ltd. (ASE).

- 1.2 Manna Glass Tech Industries Ltd (hereinafter referred as “the company”) was incorporated in the year 1995 by Shri Amidhar Majumdar and it was engaged in the field of glass technology. The company had come out with an initial public offer in June 1996 and subsequently in the year 2000, the company had issued 1.80 crore shares of Rs 17/- each on preferential basis.
- 1.3 The company had issued an advertisement which appeared in prominent business newspapers from July 01, 2002 to July 04, 2002 regarding the proposed board meeting on July 09, 2002 to discuss the Buy Back of equity shares. The words like “Buyback of shares” and “Rs 10 per share” were given in bold font in the advertisement. At the time of publication of advertisement the shares of the company were trading around Rs. 1.25 to Rs 1.50. The proposed buyback price was around 8 times of the trading price prevailing at the time of publication of advertisement.
- 1.4 At the time of issuance of the advertisement, Shri Jayesh Balmukundbhai Mehta, Shri Ashok Navinchandra Chokshi and Shri Dattatray Marutirao Sawant were directors of the company. Shri Ashok N Chokshi and Shri Dattatray M. Sawant were inducted in the board on December 1, 2001 and Shri Jayesh B. Mehta joined the board on May 24, 2002 just one month before the publication of the above referred advertisement. The promoter family “Majumdars”, who were in the board

since inception, resigned between November 2001 to May 2002.

- 1.5 In the board meeting held on July 9, 2002, attended by all the directors, it was resolved that *“to accommodate expansion plan of the company by planning back the accumulated profit into the business of the company, the proposed buy-back plan of equity shares is hereby cancelled”*. However, no public announcement or advertisements were made to the effect that the proposal was rejected. During the period from issuing the advertisement for proposal for buy-back till the time of withdrawal of buy back proposal, it was observed that volume and price of scrip suddenly shot up. The entire chain of events pointed out a clear involvement on the part of directors to create an artificial demand for the shares of the company and to cheat the innocent investors. Thus, Manna Glass Tech Industries Ltd. and its directors namely Shri Jayesh Balmukundbhai Mehta, Shri Ashok Navinchandra Chokshi and Shri Dattatray Marutirao Sawant (hereinafter referred to as “Noticees”) were alleged to have violated the provisions of Regulation 3, 5(1)(a) &(b) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as “PFUTP Regulations”) for issuing misleading statements / advertisements, designed to defraud and influence the investment decisions of the investors.

2.0 SHOW CAUSE NOTICES

- 2.1 A show cause notice dated March 12, 2007 was issued to the Noticees advising them to show cause as to why directions under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 11 of PFUTP Regulations including debarring them from accessing the capital market and trading in securities should not be issued against them for the violations mentioned at paragraph no. 1.5 above.

3.0 REPLY TO THE SHOW CAUSE NOTICE

- 3.1 **Shri Jayesh B. Mehta**, vide letter dated March 26, 2007 submitted that he has no knowledge about the facts mentioned in the show cause notice and all the

directors mentioned in the notice are presently employees of the company. But it was noticed that he had explained the reasons for the advertisement before the investigating officer and as such his submission after the show cause notice is contradictory in nature.

- 3.2 **Shri Ashok N. Chokshi**, vide letter dated March 27, 2007 informed that he was connected with the company as an accountant looking after company's factory related accounts & thereafter as a director for a very short time. He further stated that he was working at company factory and had no access to the company's share related issues and was not informed about share transactions of the company at any time. He denied any knowledge of buyback including advertisements mentioned in the show cause notice. He has also denied any relation with any of the brokers or companies mentioned in the show cause notice.
- 3.3 Since the show cause notice issued to Shri Dattatray M. Sawant returned back undelivered, ASE was advised vide letter dated April 04, 2007 to affix the letter at the available address of Shri Sawant so as to inform him to collect show cause notice from SEBI office within 22 days of the receipt of the letter. Vide letter dated April 19, 2007, ASE informed that they had deputed its official on April 10, 2007 to affix the above letter but the address was not found and SEBI notice, in original was returned. Subsequently, the show cause notice was posted on SEBI website on May 21, 2007 without any response thereon.
- 3.4 The show cause notice issued to the company was returned back undelivered and ASE was advised vide letter dated April 02, 2007 to deliver the notice to the company or advising the company to collect the notice from SEBI office within 22 days of the receipt of the letter. ASE, vide letter dated April 10, 2007 forwarded the acknowledgement of the company dated April 5, 2007. The Company was reminded vide letter dated May 22, 2007 to submit the reply within 15 days from the date of receipt of the letter. The company failed to send any reply to the various communications sent to them.

4.0 PERSONAL HEARING

- 4.1 An opportunity of personal hearing was granted to the Noticees on July 05, 2007 before me at SEBI's office at Mumbai. Out of Noticees only Shri Jayesh B. Mehta attended the hearing and reiterated his earlier submission that he was a mere employee in the company and was not aware about the company and the impugned advertisement. He explained that one Dr. Amit Naginbhai Shah, who floated the company, was the main person before the whole issue. He repeated this stand in his post hearing written submissions filed vide letter dated July 07, 2007.

5.0 CONSIDERATION OF ISSUES

- 5.1 I have carefully examined the show cause notices, replies thereof and other materials on record.
- 5.2 The facts of the case are that the company had issued an advertisement in prominent business newspapers between July 01, 2002 to July 04, 2002 regarding the proposed meeting of Board of Directors on July 09, 2002 to discuss buyback of shares. The text of the advertisement is given below:

*“Notice is hereby given that the Board of Directors of the company will meet at DAMAN on 9th July, 2002 to consider the **(Buy Back upto 52,67,900 (20% of Equity) shares of the company at a price of Rs. 10/- (At Par) Per Share**”.*

- 5.3 The words “Buyback of shares” and “Rs 10 per share” in the above referred advertisement were given in bold font. At the time of publication of advertisement, the shares of the company were trading around Rs. 1.25 to Rs 1.50. The proposed buyback price of Rs 10 was around 7-8 times of the trading price prevailing at the time of publication of the advertisement. The company had published the advertisement through an Ahmedabad based advertising agency “Garima Communications”. Details in regard to advertisements in different

newspapers as also amount paid to advertising agency “GARIMA” are given below:

Publication	Date	Amount paid to advertising agency (Rs.)
Gujrat Samachar (All Editions)	1/7/2002	53636
Sandesh (All Editions)	1/7/2002	37950
Mumbai Samachar (Mumbai)	1/7/2002	13750
Economic Times (All Editions)	2/7/2002	107800
Financial Express (All Editions)	3/7/2002	19800
Business Standard (All other Editions)	3/7/2002	25718
Investor Guide -Colour	8/7/2002	8800
Total		2,71,034

5.4 It was observed that the advertisement was made at the proposal stage itself which was not warranted by any Rules & Regulations. The company had never issued any such advertisement in the past. This proposal to buy-back of shares was later rejected by board for which no advertisements were published. In this context, I observe that SEBI had conducted an inspection of the company during July 2002 to look into the alleged delay in dematerialisation of shares by the company. During inspection, it was observed that the company had kept 1,933 requests from investors for 61.69 lakhs shares pending for 18 months representing 35.35% (approx.) of free floating stock of the company. The company had deliberately delayed the dematerialisation of shares for more than 18 months and it was unconcerned about the grievances of the investors. Since, the company could not provide any plausible explanation for the delay in dematerialisation, SEBI filed a criminal case before the Additional Chief Metropolitan Magistrate, Eighth Court, Mumbai, against the Noticees.

5.5 While admitting the issuance of above advertisement, Shri Jayesh B. Mehta, the director of the company stated that he knew about the Buy-back of shares around 6-7 days prior to issuance of the advertisement in news papers. He added that

there were reserves in the company and directors were also interested in hiking their stake in the company by returning share capital to the existing shareholders. He also stated that as face value of share was Rs.10/-, they fixed proposed buy-back price at Rs.10/- per share. The financial Performance of the company for the financial year 2000-01 and 2001-02 given below clearly reveals that in both these years, the company incurred losses.

Particulars	FY 2001-02 (Rs)	FY 2000-01 (Rs)
Income	25,40,000	24,66,899
Expenditure	25,62,930	24,74,692
Profit/loss after tax	-22930	-7793
Earning per share (Rs.)	0	0

(Source: Annual Report)

Since the company was incurring losses for two consecutive financial years 2000-01 and 2001-02 they were not eligible to go ahead for the buyback of its shares.

- 5.6 Regarding publishing advertisement at proposal stage itself, Shri Jayesh B. Mehta replied that in view of time constraints to write to individual shareholders they conveyed the matter through news papers. He further stated that the Board thought that the amount may be invested in production activity or for purchasing land rather than going for buy-back of shares. According to Shri Jayesh B. Mehta board dropped the proposal for buy-back of shares due to above referred reasons.
- 5.7 The announcement of buyback of shares in normal circumstances would indicate confidence on the part of management of the company and it has to be taken as a good news for shareholders. The announcement that the company was considering buyback of 20% of the equity capital at Rs 10 per share when shares were trading around Rs 1.25 to Rs 1.50 gave a signal to the market that the company genuinely believes that fair value of the company shares was much more than market price. This obviously would have induced the investors to buy shares. It can therefore be inferred that the motive behind the above advertisement was to

deceive the investors by way of disseminating/issuing of false statement. The process of announcing buy-back of shares and its subsequent withdrawal must have resulted in a pecuniary loss to the investors who were influenced to purchase shares on the basis of the advertisement. No acceptable explanations were given by the Noticees in this regard.

- 5.8 I have also examined the price and volume movement of the shares prior to and after the publication of the aforesaid advertisement. I find that unusual price movement pattern was observed on BSE in the trading of equity shares during the period May 2002 to July 2002.

	Period	Avg. Share Price	Avg. Volume
Time Slot 1	May 1, 2002 to June 30, 2002	Rs. 0.75	1,09,290
Time Slot 2	July 1, 2002 to July 10, 2002	Rs. 1.35	18,06,770
Time slot 3	July 12, 2002 to July 31, 2002	Rs. 0.56	2,14,389

- 5.9 It was observed that in time slot 1 (two months period prior to issuance of advertisement) the average price and volume in the scrip which was Rs. 0.75/- and 1,09,290 shares respectively. The average trading volume increased to around 18 times during time slot 2 (the period between the advertisement and board meeting) compared to time slot 1. The price of the scrip also increased during time slot 2. This can be attributed to the heavy supply of the shares by the related entities during the time of the advertisement published by the Noticees to buyback the shares at Rs 10/- per share. In time slot 3 the price and volume in the scrip came down heavily towards its normal level seen in time slot 1.
- 5.10 Further, after the investigation period, I observed that the trading turnover fell from Rs 6.45 lakhs to Rs 53,492 during August 2002-January 2003 with average trading price being Rs 0.30, before trading was suspended w.e.f. February 03, 2003. It can thus be clearly seen that investors who bought the shares of the company during the advertisement period, would have incurred losses.

- 5.11 The Noticees did not give any cogent reasons for their actions in their submission. During the course of hearing as well as in his written submission, he had taken a different stand that he was only an employee of the company and he was a director for namesake only. This is clearly a contradictory statement on his part and can not be accepted.
- 5.12 On analysing all aspects of the matter as also submission / statement made by the directors. I am of the view that Noticees had committed fraud on shareholders of Manna Glass by first issuing misleading advertisement when they were not eligible to make commitment of buy-back as per financials of the company as also their failure to take any conclusive action thereon. During the period of advertisement, the price and volume increased which would have induced the innocent investors to invest in the scrip. The action on the part of Noticee to lure innocent investors by publishing misleading statement / advertisement tantamounts to defrauding them as it was aimed at manipulating the price and volume in trading of the scrip. All such actions can be termed as frauds under Regulation 2(c) of PFUTP Regulations. They have accordingly violated the provisions of Regulation 3, 5(1) (a) & (b) and 6(a) of PFUTP Regulations reproduced hereunder:

Prohibition of certain dealings in securities

3. No person shall buy, sell or otherwise deal in securities in a fraudulent manner.

Prohibition of misleading statements to induce sale or purchase of securities

5. (1) *No person shall make any statement, or disseminate any information which -*

(a) is misleading in a material particular; and

(b) is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information-

(i) he does not care whether the statement or information is true or false; or

(ii) he knows, or ought reasonably to have known that the statement or information is misleading in any material particular.

Prohibition of unfair trade practices relating to securities

6. No person shall -

(a) in the course of his business, knowingly engage in any act, or practice which would operate as a fraud upon any person in connection with the purchase or sale of, or any other dealing in, any securities;

5.13 I have noted that an order was passed against Manna Glass Tech Industries Ltd. and its erstwhile promoters / directors including Shri Ashok N. Chokshi, prohibiting them from accessing the securities market for a period of three years from February 01, 2006 for manipulation in the scrip of Manna Glass after a fraudulent preferential allotment of shares in the year 2000. I have also noted that serious irregularities were found in the trading of Manna Glass scrip earlier and SEBI had already conducted investigation in those matters. Having considered all aspects of the matter, I am of the view that this is a fit case to restrain the Noticees from accessing the securities market as it will act as a deterrent for such activities in the securities market in future.

6.0 ORDER

6.1 Therefore, taking into consideration facts and circumstances of the case and in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11B of Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, I hereby restrain the Noticees viz. Manna Glass Tech Industries Ltd and its directors, Shri Jayesh Balmukundbhai Mehta, Shri Ashok Navinchandra Chokshi (PAN No. AEZPC2853G) and Shri Dattatray Marutirao Sawant from buying, selling and

dealing or accessing the securities market in any manner for a period of two years. As Manna Glass Tech Industries Ltd. and Shri Ashok Navinchandra Chokshi were already prohibited from accessing the securities market for a period of three years w.e.f. SEBI order dated February 01, 2006, this order restraining Manna Glass Tech Industries Ltd. and Shri Ashok Navinchandra Chokshi from accessing the capital market for a period of two years will run concurrently.

6.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: August 02, 2007

V. K. CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA