

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M ABRAHAM, WHOLE TIME MEMBER

ORDER UNDER SECTIONS 11(4), 11, AND 11 B OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTISES RELATING TO SECURITIES MARKET) REGULATION 2003 AGAINST MR. DEBAPRIYA GHOSH IN THE MATTER OF ADINATH BIO-LABS LIMITED.

Date of hearing: December 19, 2008

Appearance: Mr. Debapriya Ghosh in person

For Securities and Exchange Board of India : Mr. Jayanta Jash,
General Manager

Mr. Vijayakrishnan G,
Assistant Legal Advisor

Mr. Mrithyunjay Behera,
Manager

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed unusual price movement in the shares of various companies (with low market capitalization) including Adinath Bio-Labs Limited (hereinafter referred to as the company) listed on Calcutta Stock Exchange Association Limited (CSE),

during April 2005 to November 2005. In view of the above, SEBI conducted a preliminary analysis of trading data in respect of buying, selling, dealing in the shares of such companies including the company. It was *inter alia* observed that the average share price of the company increased from Rs.20.80/- to Rs.88/- during the period May 16, 2005 and November 24, 2005 (hereinafter referred to as the relevant period). Given the above circumstances, in order to protect the interest of investors, SEBI, vide an ad- interim ex parte order dated November 30, 2005 directed various stock brokers, including stock broker namely, M/s Dinesh Kumar Lodha (Member, CSE) not to buy, sell or deal in securities, in any manner, either directly or indirectly, till further directions, as they had prima facie violated the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the FUTP Regulations) and Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992. Subsequently, SEBI, after affording an opportunity of hearing to the aggrieved persons, vide order dated May 31, 2006, confirmed directions passed vide ad interim order dated November 30, 2005, as stated therein. The investigation conducted by SEBI *inter alia* observed that Mr. Debapriya Ghosh (hereinafter referred to as the noticee) traded substantially in the shares of the company during the relevant period. It was observed that the noticee bought and sold 17,600 shares (each) of the company during the relevant period through the stock broker M/s Dinesh Kumar Lodha. It was prima facie observed *inter alia*, that the trades of the noticee in the shares of the company had created misleading appearance of trading in securities and ultimately resulted in the manipulation of the share price of the company and prima facie violated Regulation 4(2) (a), 4(2) (b) and 4(2)(e) of the FUTP Regulations.

2. Thereafter, SEBI issued a notice dated October 19, 2006 to various

entities including the noticee asking him to show cause as to why directions under Sections 11, 11B and 11(4) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) read with Regulation 11 of the FUTP Regulations, should not be issued against him, as stated therein. As no reply was received from the noticee, SEBI, vide letter dated February 21, 2007 granted another opportunity to file his reply. Thereafter, the noticee, vide letter dated March 15, 2007, *inter alia* stated that the subject matter of the show cause notice was never within his knowledge. He further stated that he was an employee of one 'Beekay & Associates' for the period 2002 to May 26, 2006. The proprietor of the said Beekay & Associates was one Binod Kumar Banthia. He contended that he was sacked from the above job on his refusal to sign on some papers as told by them. He further stated that on May 26, 2006, Mr Binod Kumar Banthia handed over the xerox copy of summons sent by SEBI in his name. He pleaded for leniency in the matter. Thereafter, SEBI granted an opportunity to the noticee on May 23, 2008. The noticee appeared on the said date and filed written submissions *inter alia* stating that he had never signed any document related to the company or investment in securities market. Subsequently, another opportunity of hearing was granted to the noticee on December 19, 2008. The noticee appeared before me on the said date and requested to consider his letters dated March 15, 2007 and May 23, 2008.

3. I have considered the show cause notice issued to the noticee, his submissions as stated above and other materials available on record. The issues to be considered in this case are:

- i) Whether the noticee had traded in the shares of the company during the relevant period, as alleged in the show cause notice
- ii) If so, whether the said trades are in violation of the provisions of the FUTP Regulations,.

4. The allegation is that the noticee had traded substantially in the shares of the company (35,200) during the relevant period through the stock broker M/s Dinesh Kumar Lodha. The said 35,200 shares accounted for 68% of the total volume of the said stock broker, in the shares of the company. The said stock broker stated that the noticee had appeared before him and signed the client registration form and the member client agreement in his presence. The trades alleged to have executed by the noticee happened to be from July 25, 2005 to September 28, 2005 between the price range Rs.27/- and Rs.86.90/-. The investigation conducted by SEBI observed that during the days of the said trades, share price of the company increased by around 4% on daily basis. The case of the noticee is that, on May 26, 2006 he was sacked from his job on his refusal to sign some papers as per the wishes of the employer. The alleged trades took place in the year 2005. The stock broker through whom the noticee alleged to have executed trades in the shares of the company stated that the noticee appeared before him and executed the Know Your Client (KYC) requirements such as member client agreement and client registration form etc. The noticee does not have case that his employer misused certain papers signed by him. Even according to the noticee, he was sacked from the job on his refusal to sign some papers as per the wishes of his employer. On the other hand, the Broker through whom the noticee had traded in the shares of the company stated before SEBI that the noticee had appeared before him and signed all basic requirements. The noticee could not satisfactorily establish that he had not traded in the shares of the company. He did not prefer to file any complaint in respect of the said allegation. In the facts of the case, I do not have any hesitation to hold that the noticee had traded in the shares of the company as alleged in the show cause notice.

5. As it is established that the noticee had traded in the shares of the

company during the relevant period, the next question to be decided is whether such trades were in violation of the provisions of FUTP Regulations. I cannot discard certain established facts that happened during the relevant period. The noticee executed trades involving 35,200 shares of the company during the relevant period. The said trades accounted for 68% of the total volume of the said stock broker and as stated above, the share price increased daily by 4% during his period of transactions. He also executed synchronized trades. He continuously squared off his transactions. There were very few trades during the trades of the noticee. Though, the details of his specific trades are explained in the show cause notice issued to the noticee, he did not take any effort to controvert the same. Thus, undoubtedly, the trades of the Broker in the shares of the company created misleading appearance of trading in the securities market. The trades of the noticee contributed to the above i.e misleading appearance of trading and price manipulation. There is no dispute to the fact that the share price of the company increased substantially during the relevant period. The noticee had traded when the share price was in the range of Rs. 27/- to Rs. 86.90/- Further, most of the trades of the noticee were synchronized trades and thereby determined the share price bypassing the price discovery system of the stock exchange. The details of the trades of the noticee in the shares of the company were explained to him in the show cause notice dated October 19, 2006. However, the noticee failed to explain anything in respect of the said trades. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI had *inter alia* observed :

“ As already observed ‘synchronisation’ or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does

not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium..... **Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."** (Bold supplied)

6. The facts of the present case satisfy the above attributes. The Hon'ble SAT in the appeal Triumph International Limited Vs SEBI *inter alia* observed that *"It must not be forgotten that every trade establishes the price of the scrip and when the two brokers punch in the buy and sell orders simultaneously at a predetermined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery process of the exchange and this would amount to manipulation and benchmarking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board"*

7. I would like to mention the fact that SEBI had initiated enquiry proceedings against the stock broker namely Mr. Dinesh Kumar Lodha (member, CSE) through whom the noticee had executed his trades in the shares of the company. The said enquiry proceedings was disposed of by SEBI vide order dated November 28, 2008, as stated therein. The facts of the case established as above would indicate that the noticee was a necessary party in the series of transaction which culminated in the manipulation of the shares of the company. The trades executed by the noticee also created misleading appearance of trading. The said trades were also not genuine as the noticee determined the price of the shares of the company by executing synchronized trades and bypassing the price discovery mechanism of the stock exchange. In the facts and circumstances, I am of the view that the noticee is guilty of violating the provisions of Regulation 4(2) (a), 4(2) (b), 4(2) (e) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and calls for a direction under Section 11(4), 11, 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 11 of the above Regulations. Accordingly, the present proceedings stands disposed of as directed herein under.

8. In view of the foregoing, I, in exercise of the powers conferred on me under Sections 11(4), 11, 11B read with Section 19 of Securities and Exchange Board of India Act, 1992 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 prohibit Mr. Debapriya Ghosh from buying, selling or dealing in securities, in any manner, for a period of one month.

9. This order shall come into force with immediate effect.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: December 26, 2008