

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER UNDER SECTIONS 11, 11B AND 11(4) 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

IN THE MATTER OF THE DHAR TEXTILE MILLS LIMITED AND ITS DIRECTORS MR. PANKAJ JAJOO AND MR MANISH JAJOO

Date of hearing: February 13, 2009

Appearance:

For Dhar Textile Mills Limited & its directors : Mrs. Shailashri Bhaskar, Company Secretary, Authorized representative.

For Securities and Exchange Board of India : Mr. G. Ramar, Deputy General Manager
Mr. Vijayakrishnan G, Deputy Legal Adviser,
Mr. Lamber Singh, Manager.

1. The shares of Dhar Textile Mills Limited (hereinafter referred to as the company) are *inter alia* listed on Madhya Pradesh Stock Exchange Limited, Ahmdebad Stock Exchange Limited etc. It was brought to the notice of Securities and Exchange Board of India (hereinafter referred to as SEBI) that in the weekly settlement segment, the price of the shares of the company increased from Rs. 49.70/- (on May 8, 2000) to Rs. 52.00/- (on December 28,2000). In the rolling segment, the shares of the company were traded in the range of Rs.53/- - Rs.54/- for the period August 29, 2000 to March 9, 2001.

2. In view of the above, SEBI ordered an investigation into the buying, selling and dealings in the shares of the company for the period May 8, 2000 to March 9, 2001 (hereinafter referred to as the period of investigation). It was found that the entire trading in the shares of the company (in rolling segment) was due to circular trading among three stock brokers namely, MPSE Securities Limited, Churiwala Securities Private Limited and Mr. Suresh O. Khandelwal for their clients namely Pious Overseas Private Limited (hereinafter referred to as POPL), Mr. Ashok Kumar Chopra (ultimate client POPL) and Mr. Giriraj Kothari respectively. The above mentioned clients were found to have been connected with the company. The director of POPL namely Mr.N.K. Ajmera and Mr. Giriraj Kothari were employees of the company. The investigation conducted by SEBI, *inter alia* observed that the company allotted 2,83,000 shares on preferential basis to General Insurance Corporation (GIC) on January 2, 2001 at a premium of Rs. 43/- per share. Similarly, 3,50,000 shares of the company were allotted to Life Insurance Corporation of India (LIC) on May 15, 2001 at a premium of Rs. 44/- per share. It was also found that Mr. Manish Jajoo and Mr. Pankaj Jajoo (directors of the company) had incorporated a company called M/s. Jajoo Overseas Private Limited in 1993. They sold the said Jajoo Overseas Private Limited to one N.K. Ajmera, who was an employee of the company. The name of Jajoo Overseas Private Limited was subsequently changed to Pious Overseas Private Limited. It appeared that the above mentioned entities/person executed trades in the shares of the company to enable the company to maintain constant share price before the allotment of shares on preferential basis to LIC and GIC at a high premium while the profits and working results of the company were in decline. It was *prima facie* found that the said trades were executed at the instance of the company/its management in order to achieve the above mentioned object.

3. In view of the above, it is alleged that the company and its directors have *prima facie* violated the provisions of Regulation 4(a),(b),(c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Separate proceedings are initiated by SEBI against POPL (including its director Mr. N.K Ajmera) and Mr. Giriraj Kothari in respect of their alleged role in the manipulation in the shares of the company. Accordingly, SEBI issued a notice dated March 09, 2005 to the company and its directors viz Mr. Pankaj Jajoo and Mr. Manish Jajoo, asking them to show cause as to why appropriate directions *inter alia* under Sections 11, 11B & 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act) should not be passed against them. The company and its aforesaid directors are hereinafter collectively referred to as noticees. Details of the trades executed in the shares of the company and the role of the noticees in respect of the alleged violations are specified in the said show cause notice.

4. The noticees vide letter dated April 07, 2005 *inter alia* stated that the shares of the company were being traded frequently with a substantial volume all the time and during the two relevant periods for the preferential issue, first starting from May 2000 and ending on October 2000 and the second starting from October 2000 and ending on March 2001. According to them, during the above periods, the share price of the company at BSE fluctuated between Rs. 45.75/- to Rs.55/-. The noticees contended that the price fluctuation was much higher even prior to the above period i.e July 1999 to April 2000, wherein the price moved from Rs. 35.10/- to Rs.55/-. They stated that pursuant to the sale of POPL to Mr. N K Ajmera and Mr. Prashant Gupta, the said company had ceased to be under the control of the family of Mr. Jajoo. Further, the noticees claimed that after the closure of the second relevant period i.e. after March 2001, there was substantial volume in the shares of the company during

subsequent five month period i.e. April 2001 to August 2001 and the share price was constant between Rs 54/- and 55/-. According to them, there is no correlation in the transfer of the company POPL and the alleged transactions. They denied that Mr. N K Ajmera & Mr. Giriraj Kothari traded in shares of the company at their instance. The noticees reiterated that neither the company nor its directors ever instructed any person to trade on their behalf during the period of investigation.

5. Thereafter, SEBI granted an opportunity of hearing to the noticees on December 18, 2008 and the same was adjourned to February 13, 2009 at their request. Mrs Shailashri Bhaskar, practicing company secretary as authorized by the noticees represented them in the hearing on February 13, 2009. The authorized representative made submissions on the lines of the reply of the noticees and also submitted shareholding pattern of the company. She further requested to take a lenient view in the matter.

6. I have considered the show cause notice issued to the noticees, their oral as well as written submissions and other materials available on record. The allegation against the noticees in short is that, certain trades in its shares were executed during the period mentioned above by some of its connected entities/persons, at their instance. The alleged reason for this was the preferential allotment of shares of the company to LIC and GIC (as stated above in this order), subsequent to the trades in question. The entities/person, by executing number of trades (either synchronized or circular) in the shares of the company appears to have enabled the company to maintain the share price at a higher level before the allotment of shares on preferential basis to LIC and GIC at a high premium. Significantly, during the period of allotment of shares, the profits and working results of the company were in decline. I note that the investigation conducted by SEBI *inter alia* observed the following:

- i. POPL traded (bought 3700 shares and sold 3600 shares) in the shares of the company during settlement nos 108 to 241 through Mr. Ashok M. Chopra, who in turn traded through ESL Fincap Limited. POPL had also undertaken counter party trades (bought and sold 3200 shares) during settlement nos. 126 to 241 through SNR Shares & Stock Services. POPL (through Mr. Ashok M Chopra) also bought and sold 800 and 600 shares, respectively during the weekly settlement nos.7 to 21.
- ii. Analysis of trades done by POPL and Mr. Giriraj Kothari (an employee of the company during the period of his trades), revealed that the 4 trades for 400 shares of the company undertaken by POPL through Mr. Ashok M. Chopra (with ESL Fincap Limited) during settlement Nos.108, 111 and 115, the counter party client for the said trades was Mr. Giriraj Kothari who was trading through M/s. Tambi Securities Private Limited. All these trades undertaken by POPL and Mr. Giriraj Kothari and vice versa are found to have been matched. The details of the aforesaid trades were provided to the company alongwith the show cause notice dated March 09, 2005.
- iii. Mr. Ashok M. Chopra traded for POPL through M/s. Tambi Securities Private Limited and ESL Fincap Limited who in turn traded on BSE through Mr. Suresh O. Khandelwal and M/s. Churiwala Securities Limited respectively during the weekly settlement Nos. 7 to 21. These were matched trades and the details of such trades were also provided to the company.

7. The trades in the shares of the company, including the manner in which they were executed, were not disputed either by the company or by the above mentioned clients. The fact that Mr. Giriraj Kothari was an employee of the company during the period of his trades, is also not denied. Even, Mr. N K Ajmera was an employee of the company while executing some of the trades. Why did the employees of the company (one of whom was still at the services of the company during the period of his transactions) trade in the shares of the company between themselves continuously? One can argue that the company cannot control the dealings executed by their employees in their personal capacity. However, the facts and circumstances indicate that their relationship is not just an employer–employee relationship. Admittedly, Mr. Giriraj Kothari represented the company before SEBI during the course of investigation. According to the noticees, Mr. Giriraj Kothari represented only the directors of the company in their personal capacity. Even if that is so, it establishes the close nexus between the management of the company and Mr. Giriraj Kothari. POPL had executed number of trades in the shares of the company during May 2000 to March, 2001. Even, Mr.N.K. Ajmera executed certain trades (in the shares company through POPL) while he was an employee of the company. The trades were synchronized/circular in nature. This is not possible without a well established nexus and unity of minds of those involved in a trade. The submissions of the noticees is that the shares of the company were frequently traded during the relevant period and in such a situation, matching of trades could not be possible unless there is unity in all aspects of a trade such as price, volume, time etc. The counter party in respect of some of the trades was Mr. Giriraj Kothari (another employee of the company). Both of them were actually buying and selling the same 100 shares of the company through different stock brokers over a period of time.

8. In a proceedings of this nature, it would be difficult to prove facts which are solely within the knowledge of the party concerned. Proof of manipulation always depends on a combined interpretation of various factors such as trading data, connection amongst the parties etc. All these put together provide the ingredients in a manipulative plan. The standard of proof required in a proceeding of this nature is at variance with the standard of proof required in other matters like criminal cases. Clearly, it is sufficient, if the preponderance of probabilities establishes the involvement of the person against whom the charges are made. Proof beyond reasonable doubt cannot be the key yardstick applicable to a proceeding of this nature.

9. Considering the facts and circumstances of the case, I am of the considered view that the trades of the above mentioned entities/person in the shares of the company were executed only to ensure that price of the shares of the company remained high so that the company could allot its shares to GIC and LIC at a higher price. On considering the totality of the case, it can be reasonably inferred that the trades of POPL and Mr. Giriraj Kothari were at the behest of the company as it was the company which had benefited from maintaining the share price at a higher level. Thus, the company could gain undue advantage. It is an admitted case that the company had allotted 2,83,000 shares to GIC (on January 02, 2001) and 3,50,000 shares LIC (on May 15, 2001) at a premium of Rs. 43/- and Rs. 44/- respectively on preferential allotment basis. Further, the argument of the noticees that POPL was sold to Mr. N.K. Ajmera much before the alleged transactions is fallacious as the date of transfer of POPL (as per filing of the form-32 with Registrar of Companies) was not long before the start of the first relevant period of pricing i.e. April 27, 2000 to October 27, 2000 and one can expect that during that period, the company would have started negotiation with LIC and GIC in respect of the preferential allotment. Besides, the time of sale of POPL to Mr.N.K. Ajmera is

not the core issue. On the other hand, the relevant issue is whether the Mr.N.K. Ajmera acted in connivance with the company/its management to the detriment of genuine investors. The facts of the case indicate that this was indeed so. The trades of the above mentioned entities/persons in the shares of the company created misleading appearance of trading in securities market. It also artificially raised the price of the shares. Besides, the transactions were not genuine, as most of them were circular trades without intending to effect the beneficial ownership of shares and further intended to operate only as a device to inflate/fluctuate the share price of the company. POPL and Mr. Giriraj Kothari are *inter alia* responsible for the manipulation in the shares of the company during the relevant period. The long standing relationships between the trading clients {POPL (of Mr. N.K. Ajmera) & Mr. Giriraj Kothari} and the noticees, the timing, number & nature of transactions undertaken by the said clients indicate evident manipulation. Subsequently, shares of the company were allotted to GIC and LIC, on preferential basis. POPL & Mr. Giriraj Kothari traded in the shares of the company, at the same time, through Tambi Securities Private Limited. The role of the company in the above manipulation is obvious as discussed above in this order. Thus, the company, its directors have violated the provisions of Regulations 4(a), 4(b), 4(c) and 4(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Taking into account, the totality of the facts and circumstances of the case, I dispose of the present proceedings as ordered herein under.

10. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11B and 11(4) of Securities and Exchange Board of India Act, 1992 and Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby direct Dhar Textile Mills Limited and its

directors namely Mr. Pankaj Jajoo and Mr. Manish Jajoo to be careful and cautious in future while dealing in securities market.

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

Place: Mumbai

Date: March 5, 2009