

WTM/KMA/IVD/64/04/2009

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

DIRECTIONS UNDER SECTIONS 11 AND 11 B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST ISHITA INVESTMENTS AND ITS PROPRIETOR, MR. ASHISH DHIRAWANI IN THE MATTER OF HITECH DRILLING SERVICES INDIA LIMITED

Date of hearing: January 06, 2009

Appearance:

For Ishita Investments & Mr. Ashish Dhirawani : Mr. Joby Mathew, Advocate
Mr. Ashish Dhirawani, Proprietor of Ishita Investments

For Securities and Exchange Board of India : Mrs. Barnali Mukherjee, General Manager
Mr. Vijayakrishnan G., Deputy Legal Adviser
Mr. Narendra Rawat, Assistant General Manager

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into the affairs relating to the acquisition of Hitech Drilling Services India Limited (hereinafter referred to as the company) by Aban Lloyd Chiles Offshore Limited (hereinafter referred to as Aban) and the trading which took place in the shares of the company during March 2001. The shares of the company are listed on the Bombay Stock Exchange Limited (hereinafter referred to as BSE) and the Delhi Stock Exchange Limited (hereinafter referred

to as DSE). The shares of the company are also permitted to be traded at National Stock Exchange of India Limited. The investigation conducted by SEBI observed that the shares of the company were being traded in the range of Rs.32/- to Rs.40/- between March 1, 2001 and March 13, 2001. However, from March 14, 2001, the share price of the company touched the upper circuit limit till March 16, 2001. The price of the shares went up from Rs.35.75/- on March 14, 2001 to Rs.53.05/- on March 16, 2001. It was observed that Ishita Investments, proprietor of which was Mr. Ashish Dhirawani, placed orders for nearly 2,70,000 shares of the company on March 14, March 15 and March 16, 2001 on behalf of Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments. The investigation of SEBI observed that the said orders were placed through the stock broker viz. M/s S A Deshpande (Member, BSE). Further, it was observed that Ishita Investments was not a registered sub broker during the relevant period. In view of the aforesaid trading pattern, it was alleged that Ishita Investments and its proprietor Mr. Ashish Dhirawani *prima facie* violated Regulation 4(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as PFUTP Regulations). Accordingly, a notice dated February 3, 2006 was issued to Ishita Investments and Mr. Ashish Dhirawani asking them to show cause as to why action should not be taken against them.

2. Mr. Ashish Dhirawani, vide letter dated February 12, 2006 *inter alia* stated that he had not done anything personally in placing the order and that the entire benefit had gone to Mr. Paresh Thakkar and the others. According to him, he had not committed any violation of either the repealed Regulation of 1995 i.e PFUTP Regulations or the new Regulation of 2003. Mr. Ashish Dhirawani contended that SEBI had not provided him with the documents which were relied upon by SEBI while issuing the show cause notice. He further

stated, *“I further most respectfully submit that I never dealt in past in such transactions nor I have intentions to do so, on the contrary it is Paresh Thakkar and others who had used me and taken advantage of my goodness and co-operation.”*

3. Subsequently, Ishita Investments and Mr. Ashish Dhirawani availed an opportunity of hearing which was granted by my predecessor on May 29, 2007. Thereafter, written submissions was filed by Mr. Ashish Dhirawani, vide letter dated June 12, 2007 (the date mentioned in the letter was June 12, 2006). He *inter alia* stated that out of the 9 days in which Ishita Investments traded in the shares of the company, irregularities were pointed out only in respect of its trades executed, through the trading terminal of M/s. S. A. Deshpande, on behalf of the clients viz. Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments on March 14, 15 & 16, 2001. He further stated that Ishita Investments acted as the sub broker to M/s. S. A. Deshpande while placing the impugned orders in the shares of the company on behalf of the aforesaid clients. According to him, Ishita Investments placed the orders at the upper circuit filter prices (for the said shares) as per the instructions of its clients. Mr. Ashish Dhirawani contended that it cannot be said that the trades of Ishita Investments were responsible for inducing the sale of the shares, as the aforesaid clients sold the said shares in a week or so when the share price got increased. Mr. Ashish Dhirawani added that Ishita Investments had applied for registration as a sub broker with SEBI on February 20, 2001 and it was granted a certificate of registration on April 30, 2001. He also stated *“We submit that we may have acted as sub brokers for a period of one month in ignorance of SEBI’s directives to the contrary.”* Mr. Ashish Dhirawani had also provided the following trade details executed by Ishita Investments in the said shares:

Date	Purchase/Sale	Quantity(no. of shares)	Price(Rs.)
09.03.2001	Purchase	3400	36.40
12.03.2001	Purchase	1100	35.40
13.03.2001	Purchase	22450	34.65

14.03.2001	Purchase	18199	37.99
15.03.2001	Purchase	17571	46.00
16.03.2001	Purchase	1,00,001	53.00
22.03.2001	Sale	50,000	84.70
23.03.2001	Sale	41,909	85.15
26.03.2001	Sale	70,812	85.05

4. Subsequently, SEBI granted an opportunity to Mr. Ashish Dhirawani to inspect documents as requested by him. Mr. Ashish Dhirawani inspected various documents, on October 22, 2008, including his statements given to SEBI, statements of Mr. Paresh Thakkar, Mr. Bharat P. Palan, Mr. Naresh Thakkar, Mr. Ramamurthy Srinivasan etc, price volume chart, extracts of the trade and order log in respect of his orders and the extracts of the investigation report (pages 7 to 9 and 11 of the report). Mr. Ashish Dhirawani was also provided with the copies of the above documents.

5. Thereafter, Mr. Ashish Dhirawani and Ishita Investments were given another opportunity of hearing on January 6, 2009. Mr. Joby Mathew, Advocate represented them and made submissions on their behalf on the lines of their replies (stated above). The learned counsel further stated that Mr. Paresh Thakkar (one of the persons on whose behalf Ishita Investments placed orders in the shares of the company) was a regular client of Ishita Investments and was known to it for the past several years. Subsequently, vide letter dated January 13, 2009, Mr. Ashish Dhirawani made written submissions and *inter alia* stated that they had merely acted as intermediaries and that they cannot be held liable for the irregularities committed by the client. They also placed reliance on the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Kasat Securities Limited Vs. SEBI and Millennium Equities (India) Private Limited Vs. SEBI.

6. I have considered the show cause notice dated February 03, 2006, the oral as well as written submissions made on behalf of Mr. Ashish Dhirawani and

Ishita Investments and other material available on record. The only issue to be considered in the present case is whether the buy orders for nearly 2,70,000 shares of the company placed (on March 14 to March 16, 2001) by Ishita Investments at the upper circuit price on behalf of Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments were in violation of Regulation 4(a) of PFUTP Regulations.

7. I note that the allegation leveled against Mr. Ashish Dhirawani and Ishita Investments is that they had placed buy orders at the upper circuit level for nearly 2,70,000 shares of the company on the aforesaid dates on behalf of the persons/entity mentioned in the previous para. Though, the said orders were placed through M/s. S. A. Deshpande (Member, BSE), it was observed that Ishita Investments was not registered as a sub broker at the relevant point of time. These facts are not disputed before me. Mr. Ashish Dhirawani, vide letters dated February 12, 2006 and June 12, 2007 admitted the following facts:

- i) He had placed the buy orders in respect of the shares of the company on behalf of Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments on March 14 to March 16, 2001.
- ii) The said buy orders were placed at the upper circuit level,
- iii) Ishita Investments acted as a sub broker to the aforesaid clients while placing the orders through the trading terminals of the stock broker viz. M/s. S. A. Deshpande (Member, BSE),.
- iv) Ishita Investments was not registered as a sub broker while placing the said orders.

8. One of the contentions raised by Mr. Ashish Dhirawani and Ishita Investments is that though they had dealt in the shares of the company for nine trading days, SEBI found irregularities only in respect of their orders placed on

three days (March 14-16, 2001) on behalf of the aforesaid persons/entity. This contention may not carry much weight for the following reasons. As stated earlier, the investigation of SEBI was to look into the affairs relating to the acquisition of the company by Aban and the trading which took place in the shares of the company. As per the investigation, the said acquisition deal was finalized on the evening of March 13, 2001 (Tuesday) and the same was notified to the stock exchange on March 18, 2001. It was observed that there was unusual price movement in the shares of the company on March 14, 2001 (Wednesday), March 15, 2001 (Thursday) and March 16, 2001 (Friday). In the meanwhile, it was noticed that the share price of the company witnessed sharp increase on March 14 to March 16, 2001. This was the reason for SEBI to *inter alia* examine the genuineness of the buy orders placed by Ishita Investments.

9. It is not in dispute that the shares of the company were being traded at around Rs. 37/- from March 1, 2001 to March 13, 2001. However, from March 14, 2001 share price touched the upper circuit limit continuously till March 16, 2001. The buy orders in the shares of the company by Ishita Investments on the aforesaid dates on behalf of Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments at the upper circuit limit are not disputed before me. The case of Mr. Ashish Dhirawani and Ishita Investments is that the placement of orders at the upper circuit price is not irregular. However, the nature of the orders placed by Ishita Investments in the shares of the company on March 14–16 2001 on behalf of the entities (as mentioned above) clearly indicate that the said trades were not bonafide. The investigation conducted by SEBI found that Ishita Investments placed orders continuously at upper circuit prices to get ‘time priority’. The investigation conducted by SEBI *inter alia* observed that, a total of 40 orders were placed in a span of 1 minute and 15 seconds which indicated that the person putting in the buy orders was desperate to get the time priority.

Needless to say, such nature of transactions entered into by Ishita Investments had impacted the price of the shares of the company during the relevant period.

10. Admittedly, Ishita Investments acted as a sub broker (of M/s S A Deshpande) while placing the said orders at a time when it was not holding a valid certificate of registration from SEBI to act as a sub broker. Ishita Investments, vide letter dated June 12, 2007, submitted that it had placed the orders in the shares of the company while its application for registration was pending before SEBI and later the registration was granted. It is not the case of Ishita Investments that the said application (which was pending at the relevant point of time) was made for the grant of registration as a sub broker to be affiliated to M/s S A Deshpande. I also note that Mr. Ashish Dhirawani in his letter dated June 12, 2007 stated *"We submit that we may have acted as sub brokers for a period of one month in ignorance of SEBI's directives to the contrary."* It is further borne out from the letter of Mr. Ashish Dhirawani dated January 13, 2009 that Ishita Investments, at present, is a sub broker registered with SEBI and affiliated to M/s SVS Securities Private Limited (Member BSE and NSE). He also stated in the said letter *"During the relevant period, we acted as sub brokers to M/s S A Deshpande, but were not registered as sub brokers with SEBI, primarily due to the refusal of M/s S A Deshpande to take steps to register us as their sub broker"*. It may be noted that, Mr. Ashish Dhirawani vide letter dated January 13, 2009 stated that M/s S A Deshpande, the stock broker through whom it placed orders (in the capacity of sub broker) refused to register it as its sub broker. Thus, it is established that Ishita Investments acted as an unregistered sub broker to M/s S A Deshpande while dealing in the shares of the company during the relevant period. The continuous placement of orders for a large quantity at the upper circuit level should have been suspected by Ishita Investments. I note that Mr. Ahsish Dhirawani in his statement had mentioned that he did not enquire the reason behind the purchase of shares by the

aforesaid entities, even after noticing a substantial price rise in the shares of the company. It may be noted that the impugned buy orders were placed by Ishita Investments at the upper circuit level on three consecutive days, as stated above. When the shares were available at a lower price, no genuine investor would generally place buy orders at very high price than the prevailing market price and that too at the upper circuit level. Mr. Ashish Dhirawani also stated vide letter dated February 12, 2007 *"the clients did not hold on to the shares and sold them a week or so later when the price increased"*. During the course of hearing, it was submitted that Mr Paresh Thakkar was a regular client of Ishita Investments, trading through it for several years. Considering the totality of the facts and circumstances of the case and the manner in which large quantity of buy orders were placed by Ishita Investments at the upper circuit price on behalf of Mr. Paresh Thakkar, Mr. Bharat Palan and M/s. Vinayak Investments on consecutive three trading days cannot be treated as bonafide transactions.

11. The Learned Counsel for the parties placed reliance on the judgment of the Hon'ble Securities Appellate Tribunal (SAT) delivered in the matters of Kasat Securities Limited and Millennium Equities (India) Private Limited. In the said cases, the Hon'ble SAT was of the view that merely because a stock broker traded on behalf of several clients in the scrip of a company, would not lead to the conclusion that the said stock broker knew about the nature of the transactions executed by its clients. The said observation would pertain to registered stock brokers, whereas in the case before me Ishita Investments did not have any *locus standi* to trade as a sub broker through M/s S A Deshpande during the relevant period as it was not holding a valid certificate of registration. Besides, the order of the Hon'ble SAT in the matter of Millenium Equities is under challenge before the Hon'ble Supreme Court. Thus, the case laws relied

upon by the parties may not be applicable in the facts and circumstances of the present case, for the reasons stated above.

12. All these factors would go to prove the culpability of Ishita Investments and Mr. Ashish Dhirawani in the present case. Thus, without any hesitation, I, hold Ishita Investments and Mr. Ashish Dhirawani guilty of violating Regulation 4(a) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

13. In view of the foregoing, in exercise of the powers conferred upon me in terms of Section 19 of Securities and Exchange Board of India Act, 1992 read with Sections 11 and 11B of Securities and Exchange Board of India Act, 1992 further read with Regulations 11 and 13 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, M/s. Ishita Investments and its proprietor Mr. Ashish Dhirawani are hereby warned for their conduct while dealing in the shares of Hitech Drilling Services India Limited as mentioned in the show cause notice dated February 03, 2006 and directed to strictly abide by laws, rules and regulations that govern dealings in the securities market .

14. Accordingly, the show cause notice dated February 03, 2006 issued to M/s. Ishita Investments and its proprietor Mr. Ashish Dhirawani is disposed of.

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

Place: Mumbai

Date: April 29, 2009