

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER**

ORDER

DIRECTIONS UNDER SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATIONS 11 AND 13 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003, IN RESPECT OF MR. VIMAL MEHTA, M/S. BHARTIYA INVESTMENT (PROPRIETOR: MR. RAKESH SHARMA) AND MR. R.L. TIWARI IN THE MATTER OF BRUSHMAN (INDIA) LIMITED

1. On noticing unusual price rise in the shares of Brushman (India) Limited (hereinafter referred to as the company) during the period between January 30, 2001 and June 29, 2001 at the Delhi Stock Exchange Limited (hereinafter referred to as DSE), the Securities and Exchange Board of India (hereinafter referred to as SEBI) had conducted an investigation into the trading in the shares of the company for the aforesaid period. The findings of the investigation suggested *inter alia* that the stock brokers, Esha Securities Limited & Moongipa Securities Limited (Members of DSE) along with their trading clients, Mr. Vimal Mehta, M/s. Bhartiya Investment and Mr. R.L.Tiwari had played a role in the alleged manipulation in the shares of the company during the relevant period. In view of such findings, it was alleged that Mr. Vimal Mehta, M/s. Bhartiya Investment and Mr. R.L. Tiwari had contravened the provisions of Regulation 4(a), (b) & (c) 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 the PFUTP Regulations).

2. Thereafter, separate show cause notices dated February 8, 2005 were issued to Mr. Vimal Mehta, M/s. Bhartiya Investment and Mr. R.L. Tiwari, directing them to show cause as to why they should not be restrained from accessing the securities market and prohibit them from dealing in the securities market for an appropriate period. For the sake of convenience, the aforesaid persons shall be collectively referred to as the noticees and individually by their respective names. Mr. Rakesh Sharma, the proprietor of M/s. Bhartiya Investment, vide letter dated February 17, 2005 requested time for collecting documents and to file his reply thereafter. Mr. Vimal Mehta also sought one month's time to file his reply, vide letter dated February 16, 2005. Thereafter, SEBI, vide letter dated February 17, 2005 had informed Mr. Vimal Mehta that he may inspect the documents by February 25, 2005 and submit his reply by March 4, 2005. Similarly, Mr. Rakesh Sharma was also advised to inspect the documents by February 28, 2005 and to file the reply by March 7, 2005. Subsequently, Mr. Vimal Mehta (vide letter dated March 9, 2005) and Mr. Rakesh Sharma for M/s. Bhartiya Investments (vide letter dated March 11, 2005) had filed the reply. Thereafter, hearing notices dated September 3, 2009 were issued to the noticees, advising them to appear in a personal hearing before me on September 17, 2009. Mr. Vimal Mehta, vide letter dated September 10, 2009 submitted that he was not in a position to appear before SEBI. He further stated that he had already sent a letter dated March 9, 2005 to SEBI and submitted that he had no intention to violate any SEBI Regulations. M/s. Bhartiya Investment failed to appear in the hearing. The show cause notice was sent to Mr. R.L. Tiwari by registered post to his last known address. The said notice returned undelivered by postal authorities with an endorsement "No such person". Letters/notices could not be delivered on Mr. R.L. Tiwari even during investigation. Further, the hearing notices sent to him for personal hearing also could not be delivered at his last known address. As the case is relatively old, I proceed to dispose of the case on merits on the basis of the available materials on record. I have examined the show cause notices issued to the noticees, the replies dated March 9, 2005 and March 11, 2005 of Mr. Vimal Mehta and M/s. Bhartiya Investments respectively, the letter dated September 10,

2009 from Mr. Vimal Mehta and other material available on record. The issue for consideration is whether the noticees had violated Regulation 4(a), (b) & (c) of the PFUTP Regulations, as alleged in the show cause notice. I note that the company was *inter alia* listed in DSE and that its shares were only traded on DSE during the relevant period. In DSE, the share price of the company had increased from Rs.15/- on January 30, 2001 to Rs.33.80/- on June 29, 2001, an increase by around 125%. These facts are not in dispute before me. The said price rise was found to be unusual and not supported by any fundamentals of the company. I note that a total of 3,28,366 shares were traded in the investigation period on 25 days during the entire period. The investigation revealed that around 99.80% of the total trading during the relevant period was concentrated only between two stock brokers (members of DSE), namely, Esha Securities Limited and Moongipa Securities Limited. The buy-sell details of the said stock brokers are as mentioned below:

Name	No. of Shares Bought	No. of Shares sold	Gross	Net
Moongipa Securities Limited	10024	318321	328345	308297
Esha Securities Limited	317101	10021	327122	-307080

3. From the table above, it can be seen that Esha Securities Limited had purchased 3,17,101 shares which constituted 96.56% of the total purchases made during the investigation period. It is also seen that during the said period, Moongipa Securities Limited sold 318321 shares, which constituted around 96.94% of total shares sold. The trade details of Esha Securities Limited and Moongipa Securities Limited for their respective clients are given below:

Member	Client	Buy	Sell
Moongipa Securities Limited	M/s. Bhartiya Investment	10000	288200
	Vimal Mehta, Director of Moongipa Securities Limited	23	13621
	Kapil Kumar, Managing Director of the company	-	16500
Esha Securities Limited	Self	278500	10000
	Vimal Mehta, Director of Moongipa Securities Limited	26501	21

	Mr. R L Tiwari	12100	-
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4. The investigation had also revealed that Esha Securities Limited and Moongipa Securities Limited allegedly entered into a number of synchronized/structured deals while trading in the shares of the company. It was found that the trade orders were placed by them either at identical prices or with only a negligible difference and for the same quantity. It therefore appeared that those orders were entered at predetermined prices at short intervals so as to ensure matching of trades at successively higher prices, thereby manipulating the shares of the company. The manner of synchronization and structured transactions entered into by the aforesaid stock brokers had been mentioned in the show cause notices issued to the noticees. It was *inter alia* alleged that Mr. Vimal Mehta had traded in the shares of the company in nexus with the aforesaid stock brokers for creation of artificial market and rigging the share price. The fact that he was the director of Moongipa Securities Limited during the relevant period is not denied. Admittedly, Mr. Vimal Mehta had traded through both the stock brokers, Esha Securities Limited and Moongipa Securities Limited. It was found that while trading through Moongipa Securities Limited, Mr. Vimal Mehta had purchased 23 shares and sold 13,621 shares of the company and while trading through Esha Securities Limited, he had bought 26,501 shares and sold 21 shares. It was also found that Mr. Vimal Mehta's purchase quantity in the shares of the company was worth Rs.7,05,482/-. He had sold shares of the company and purchased shares of other companies, thus off-setting any receipt and was found to have taken a portfolio of around Rs. 11,00,000/- when admittedly his income never exceeded the tax free limit. Mr. Vimal Mehta has not denied the execution of trades. It was also noticed that his bank account (A/c. No. 17310) maintained with Vijaya Bank for the period April 3, 2000 to March 31, 2002 did not show receipt or payment above Rs.5,000/-.

5. Mr. Vimal Mehta in his reply dated March 8, 2005 had submitted that he had no intention to violate any SEBI regulation or to manipulate the share price of the company. He stated that around May 2001, there were some news articles

about the expansion of the business of the company and a tie-up with a foreign partner. He also stated that he was advised by Mr. Sanjay Kulshreshtra of 'Esha Securities' to invest in the shares of the company and had therefore opened a trading account with Esha Securities Limited. He submitted that all the trades in the shares of the company were done by him only. Mr. Vimal Mehta further stated *"I am deeply apologetic for any adverse effect my trades have had on the shares I assure SEBI that I never had any intention to create an artificial market or rig the price of the Brushman India Ltd shares. I therefore request SEBI not to initiate any proceeding in this regards."* Mr. Vimal Mehta had placed buy and sell orders at prices higher than the market prices and thus facilitating creation of artificial market and also rigging the share price upwards. Needless to say, such trades also created misleading appearance of trading in the securities market. The said trades were not genuine as he was the buyer and the seller at the same time. Mr. Vimal Mehta did not offer any convincing reasons for executing such trades. In this regard, it is pertinent to note the following observation of the Hon'ble Securities Appellate Tribunal in the matter of Triumph International Finance Limited Vs SEBI (Order dated May 4, 2007);

".....It is obvious that these trades were fictitious to which the appellant was a party. They were fictitious because the buyer and the seller were the same."

6. Further, I am not inclined to be moved by the submissions that he had traded in the shares after hearing the news of the company's expansion. In such cases, a person may want to accumulate shares instead of buying and selling shares of the company simultaneously. Mr. Vimal Mehta had executed trades at higher prices, as stated above. It is also noted that on May 14, 2001 he had executed both buy and sell orders at a price higher than the last traded price. If the intention of Mr. Vimal Mehta was bonafide, it is difficult to appreciate why he should have bought and sold simultaneously and that too at a higher price. The most pertinent factor is that Mr. Vimal Mehta was seen on both the sides of the transactions. The only inference that can be drawn from such trades is that the

same was only intended for creating misleading appearance of trading, artificial increase in the share price. Thus, it is proved that Mr. Vimal Mehta had indulged in transactions which were responsible for artificially rising the prices of the securities of the company at DSE, creating a false or misleading appearance of trading in the shares of the company during the relevant time and that his non-genuine transactions had impacted the share price. In view of the above, I have no hesitation in holding that Mr. Vimal Mehta by his aforementioned acts had contravened Regulation 4 (a), (b) & (c) of the PFUTP Regulations.

7. With respect to M/s. Bhartiya Investment (Proprietor: Mr. Rakesh Sharma), I note that the said entity had traded through Moongipa Securities Limited. It had bought and sold 10,000 shares and 2,88,200 shares of the company, respectively during the relevant period. The 'sell' quantity of M/s. Bhartiya Investment was around 4.36% of the total issued capital of the company and around 87.76% of the total quantity sold (3,28,368 shares) at DSE during the relevant period. It was noticed that M/s. Bhartiya Investment was not among the top 50 shareholders of the company and did not also figure in the list of top 100 shareholders as on April 1, 2000, December 31, 2000, March 31, 2001 and June 30, 2001. It found that M/s. Bhartiya Investment was delivering shares upto April 2001, and his acquisition of the same was found to be apparently acquired in off-market transactions. It was also found that the distinctive nos. of shares delivered by M/s. Bhartiya Investment were between DNR Nos. 300000 to 1600000 and that the shares with such distinctive nos. were issued under the 'promoter quota' on December 13, 1995. It was noticed that 4000 shares bearing distinctive nos. 1576001 to 1580000 delivered by M/s. Bhartiya Investment during the settlement (no. 2000045) at DSE were purchased by the stock broker, Esha Securities Limited in its own account. Later, the shares bearing the same distinctive nos. were again delivered (during settlement no. 2001004) by M/s. Bhartiya Investment to Esha Securities Limited, which purchased in its own account. As those shares were not delivered in the market (from the distinctive nos. provided by DSE) by Esha Securities Limited pursuant to its purchase in settlement no. 2000045, it thus

implies that Esha Securities Limited had delivered the same back to M/s. Bhartiya Investment. No submissions were made by M/s. Bhartiya Investments in this regard. In view of the same, the only logical view would be that the shares had again come back to M/s. Bhartiya Investment which was again delivered by it to Esha Securities Limited.

8. The investigation had also found that M/s. Bhartiya Investment had sold 14,700 shares of the company during settlement no. 2001006 and the deliveries of those shares were given in the dematerialized mode. However, the demat account statement of Moongipa Securities Limited indicated that the shares for the pay-in, in respect of the said transaction had not come from M/s. Bhartiya Investment but from the demat account of Mr. Kapil Kumar (the managing director of the company). M/s. Bhartiya Investment had replied to the said show cause notice stating that they have not indulged in any corrupt practices and that it had no intention to create an artificial market in the shares of the company. It denied having any connection with the company or Mr. Kapil Kumar. It was further contended that it had delivered the shares directly to the said stock broker and that it was a coincidence that Mr. Kapil Kumar had also delivered the shares of the company for his own transactions or dealings in the scrip. Though, the entity had contended that it had transferred shares to its stock broker, it failed to support the same with necessary documents like demat statements, acknowledgement notes etc. It was also noticed that the credit balance arising out of the sale of shares of the company were used for purchasing shares of other companies. It was also found from the ledger account of M/s. Bhartiya Investment in the books of the stock broker, Moongipa Securities Limited always had a debit balance, which was Rs.41,00,000/- as on February 9, 2001. When M/s. Bhartiya Investment was queried during the course of investigation, as to the source of shares of the company which was delivered by it in the market, it informed that it had suffered bad deliveries of around Rs.7-8 lakhs in various shares delivered by one Mahesh Kumar and that the said person had given the shares of the company as he did not have any other shares. On enquiries, it was found that Mr. Mahesh Kumar had

gone back to his native place during 1999-2000 and in the absence of documentary proof, it was doubted as to how the shares could have been delivered in 2001 by M/s. Bhartiya Investment. In its reply, it was reiterated that the shares of the company were received from Mr. Mahesh Kumar and were sold in 2001 through Moongipa Securities Limited. No supporting material was submitted in that regard. With regard to the debit facility, it was submitted that the stock brokers give a similar facility for their clients. However, I note that concessions were shown by Moongipa Securities Limited to M/s. Bhartiya Investment by receiving very little receipts when there was a huge debit balance to be cleared. This would indicate the close nexus between M/s. Bhartiya Investment and the said stock broker. Though, one could argue that the same may be within the agreement of the entity and the stock broker, the same still seems to be suspicious in the facts and circumstances of the case. The submission that '*no investor was harmed or was induced to trade in the shares of the company*' has very little merit. I note that Mr. Rakesh Sharma/ Bhartiya Investment have not put forth any substantive explanation in respect of the charges leveled against it. I note that M/s Bhartiya Investment were not able to give any reasonable explanation as to the source of delivery of promoter quota shares. As the entity has failed to show the source of shares, I have to come to a conclusion that M/s. Bhartiya Investment did not own the shares of the company which were delivered through Moongipa Securities Limited. It could have been a conduit as it had sold around 87.76% of the total quantity sold (3,28,368 shares) at DSE during the relevant period. Therefore, I conclude that M/s. Bhartiya Investment has contravened the provisions of the PFUTP Regulations.

9. Mr. R. L. Tiwari was found to have bought 12,100 shares of the company through Esha Securities Limited on June 6, 2001 and June 8, 2001, which were worth Rs.3,58,420.50/-. It was found from his ledger account maintained by the stock broker, Esha Securities Limited that Mr. R. L. Tiwari had deposited cash of Rs.79,000/- in daily fund transactions of Rs.15,000/- to Rs.17,000/- from April 5, 2001 to June 7, 2001. Mr. R.L. Tiwari was not found to have traded in any other

shares. He did not sign a client introduction form. Mr. R.L. Tiwari had a client account (no. 10003378) with the depository participant-Jammu & Kashmir Bank. From the records of the depository participant, it was noted that the address of Mr. R.L.Tiwari was shown to be 18/12, WEA, Karol Bagh, New Delhi, which was the address of Moongipa Securities Limited. The said account was opened after being introduced by Mr. Sanjay Jain, the director of Moongipa Securities Limited. Further, his bank account [with UCO Bank-A/c. No. 9005] was a joint account with Mr. Pintu Lal Yadav, Mr. Ramu and Mr. Sanjay Jain. It was alleged that the trades of Mr. R.L.Tiwari in the shares of the company were for creation of artificial market and price rigging. In this regard, I note that Esha Securities Limited had bought a total of 3,17,101 shares of the company during the relevant period. Further, the SEBI investigation had revealed that around 99.80% of the total trading in the shares of the company was concentrated between Moongipa Securities Limited and Esha Securities Limited. Mr. R.L.Tiwari had bought 12100 shares of the company during the relevant period through Esha Securities Limited. The same was around 3.8% of the buy quantity of the said stock broker. Mr. R. L. Tiwari failed to adduce any explanation in respect of his trades. In the facts and circumstances, it has been reasonably established that M/s. Bhartiya Investment had violated the provisions of PFUTP Regulations, as alleged in the show cause notice. As already mentioned above, Mr. Vimal Mehta and M/s. Bhartiya Investment have been found guilty of contravening the provisions of the PFUTP Regulations. As stated earlier, Mr. Vimal Mehta had *inter alia* entered into non genuine trades besides executing synchronized transaction. Further, he was placing orders through two different stock brokers at a time when he was a director of one of the stock brokers. He has not denied the execution of such trades. M/s Bhartiya Investment has offloaded the shares of the promoters of the company. It had also sold substantial quantity of the shares of the company. Besides, it had also indulged in off market transactions with Esha Securities Limited. It is pertinent to note that the shares sold by it to the stock broker were subsequently received back through off market and delivered again to the said stock broker for another trade. The traded volume of Mr. R. L. Tiwari was very less than Mr. Vimal Mehta

and M/s Bhartiya Investment. I also note that Mr. R.L Tiwari had traded in the shares of the company and the shares purchased by him were kept in his demat account till July 23, 2004. In view of the same, I dispose of the show cause notices dated February 2, 2005 to Mr. Vimal Mehta, M/s. Bhartiya Investment and Mr. R L Tiwari, as ordered herein below.

10. In view of the foregoing, I, in exercise of powers conferred under Section 11B of the Securities and Exchange Board of India Act, 1992 read with Regulations 11 and 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, hereby restrain Mr. Vimal Mehta, M/s. Bhartiya Investment (Proprietor: Mr. Rakesh Sharma) from accessing the securities market and further prohibit them from buying, selling or dealing in securities market, directly or indirectly, for a period of one year.

11. Mr. R.L. Tiwari is warned for his conduct and directed to be careful while dealing in securities.

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

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

PLACE: MUMBAI
DATE: FEBRUARY 20, 2010