

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF MALVICA ENGINEERING LTD.

**In respect of Shri Darshan Desai, Shri Sumit Desai, Smt. Devi Desai, Shri Manoj H Mehta
and M/s. Shagufta Investments Private Limited**

Date of hearing: September 11, 2009

Appearances

**For Shagufta Investment
Private Limited:** Shri Pankaj Desai, Director

For Other Noticees: None

For SEBI: Mr. Amol Hogade, Assistant General Manager
Mr. Rajeev Rastogi, Legal Officer
Ms. Vasudha Goenka, Legal Officer

ORDER

Under Section 11, 11(4) and 11B 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 the Securities Market) Regulations, 2003

1. Securities and Exchange Board of India (hereinafter referred as 'SEBI') had conducted investigation into the buying, selling and dealing in the shares of Malvica Engineering Ltd. (hereinafter referred as 'MEL') for the period June 27, 2003 to November 24, 2003 (hereinafter referred to as the 'investigation period'), *inter alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP

Regulations'), since repealed hence corresponding SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'FUTP Regulations'). During the period of investigations the scrip of MEL was listed on Bombay Stock Exchange (hereinafter referred to as 'BSE'), Ahmedabad Stock Exchange (hereinafter referred to as 'ASE') and Vadodara Stock Exchange (hereinafter referred to as 'VSE').

2. Investigations revealed that during the period June 27, 2003 to August 27, 2003, the scrip opened with a price of Rs. 3.90 on June 27, 2003 and closed at Rs. 15.62 on August 27, 2003 ('rise period'). This rise was followed by a fall in price to Rs. 5.10 till September 24, 2003 and thereafter further to Rs.2.70 on November 06, 2003 ('fall period'). Shagufta Investments Pvt. Ltd., Darshan Desai, Sumit Desai, Devi Desai and Manoj H Mehta allegedly traded among themselves for 479060 shares during the rise period, that is, between June 27, 2003 and August 27, 2003. The circular trading in the scrip resulted in creation of artificial volume and price in the scrip.
3. Accordingly, a notice dated July 05, 2006 (hereinafter referred to as 'SCN') was issued to Shagufta Investments Pvt. Ltd., Darshan Desai, Sumit Desai, Devi Desai and Manoj H Mehta (hereinafter referred to as 'noticees') alleging that the acts of the noticees were in violation of the Regulation 4 (a), (b), (c) and (d) of PFUTP Regulations since repealed hence corresponding Regulations 4(1) and 4(2)(a), (b), (e), (g) and (n) of FUTP Regulations. Accordingly, the SCN called upon the noticees to show cause as to why suitable directions under Sections 11, 11(4) and 11B of SEBI Act read with Regulation 11 of FUTP Regulations including restraining them from accessing the capital market and prohibiting them from buying, selling or dealing in securities in any manner should not be issued against them.
4. The SCNs were duly served on the noticees. All the aforementioned noticees duly replied to the SCN. Pursuant to this, in order to proceed with the matter an opportunity of personal hearing was granted to the noticees before me on September 03, 2009. The hearing, however, was rescheduled for September 11, 2009. Notice issued to Manoj H. Mehta regarding the revised hearing scheduled was returned undelivered. Hence, an advertisement regarding the

undelivered notice was published in Hindustan Times, a national daily, on August 13, 2009. Shri Pankaj Desai appeared before me on behalf of Shagufta Investments Pvt. Ltd. The other noticees did not appear for the personal hearing.

5. I have carefully considered the SCN and other material available on record. The noticees, *inter alia*, submitted that the transactions executed by them were delivery based and genuine transactions. Further, the noticees contended that during the investigation period they sold shares at price less than Rs.5 per share, and were not at all involved in the transactions in the shares of MEL resulting into price fluctuation of Rs. 3.90 to Rs.15.62.

6. I note that during the period from June 27, 2003 to August 13, 2003, Shri Darshan Desai, Shri Sumit Desai, Smt. Devi Desai, Shri Manoj H Mehtra, Shagufta Investments Pvt. Ltd. and a certain Mayekar Investments Pvt. Ltd. purchased 1686313 shares and sold 1710380 shares accounting for 57.61% and 58.43% of gross purchase and gross sales in the market respectively. Their trading accounted for up to 92% of the respective daily market volume. A total of 479060 shares were traded in 1216 trades for 240 buy orders and 178 sell orders in the price range of Rs.2.52 to Rs.5.30 over a period of 30 days from June 27, 2003 to August 13, 2003 as observed from the table below. These trades accounted for up to 55% of the respective daily market volume and 18.22% of the total market volume of 26,29,363 for these 30 days. It was observed that from June 27, 2003 to July 9, 2003 the shares were traded between Darshan Desai and Shagufta Investments P. Ltd, from July 8, 2003 to July 17, 2003 the shares were traded between Manoj H. Mehta and Shagufta Investments P. Ltd, and from July 18 to August 13, 2003 the shares were traded between Manoj H. Mehta and Mayekar Investments Pvt. Ltd.

	Darshan		Shagufta		Mayekar		Manoj		Sumit		Devi	
Date	Buy	Sell	Buy	Sell	Buy	Sell	Buy	Sell	Buy	Sell	Buy	Sell
27.6.03	13000			13000								
27.6.03			30000			30000						
27.6.03		11850	11850									
30.6.03	10000			10000								
1.7.03			41850			41850						
1.7.03	42090			42090								
2.7.03	5000			5000								
2.7.03			34390							34390*		

8.7.03			13090					13090				
8.7.03				2051			2051					
9.7.03	6300			6300								
9.7.03				4210			4210					
9.7.03			3000					3000				
9.7.03			2690	2690								
10.7.03			2300					2300				
10.7.03				3900			3900					
11.7.03			400					400				
14.7.03			12200					12200				
14.7.03					4500			4500				
14.7.03				3000			3000					
14.7.03			5000					5000				
14.7.03				1510			1510					
15.7.03			18400					18400				
15.7.03				4266			4266					
15.7.03			1650					1650				
16.7.03				1700			1700					
16.7.03			2100					2100				
16.7.03				12076			12076					
16.7.03			6024					6024				
16.7.03				9900			9900					
17.7.03				450			450					
17.7.03			7000					7000				
17.7.03				15400			15400					
17.7.03			1000					1000				
17.7.03			1210					1210				
17.7.03				200			200					
18.7.03							9000					9000
21.7.03					3000			3000				
21.7.03							12800					12800
21.7.03					4450			4450				
22.7.03						10500**	10500					
22.7.03					400			400				
23.7.03						200	200					
23.7.03					10000			10000				
23.7.03						9100	9100					
23.7.03					1000			1000				
24.7.03					2000			2000				
24.7.03						650	650					
25.7.03						3000	3000					
25.7.03					2400			2400				
28.7.03					14319			14319				

29.7.03						4000	4000					
29.7.03					220			220				
30.7.03					1800			1800				
30.7.03						4000	4000					
30.7.03					8150**			8150				
31.7.03						3000	3000					
31.7.03					2500			2500				
1.8.03					6990			6990				
1.8.03						500	500					
1.8.03					500			500				
4.8.03					4450			4450				
5.8.03					6352			6352				
6.8.03					3000			3000				
7.8.03					2122			2122				
11.8.03					5000			5000				
11.8.03						6000	6000					
11.8.03					600			600				
12.8.03					2400			2400				
13.8.03						950	950					
Total	76390	11850	194154	137743	86153	113750	122363	159527	0	34390	0	21800

* alongwith Darshan Desai ** Mayekar as sub-broker

Mayekar- Mayekar Investments Pvt. Ltd; Manoj- Manoj H Mehta; Shagufta- Shagufta Investments Pvt. Ltd; Darshan- Darshan Desai; Sumit- Sumit P. Desai; Devi- Devi D. Desai

7. I further note that the above trades included structured deals for 523 trades for 212636 shares. These were deals where related / group entities had entered into transactions by putting buy and sell orders almost at the same time or with minimum gap of time, of the same price and quantity so that these were matched with each other. There were 38 structured deals for 26090 shares between Shagufta Investments Pvt. Ltd. and any of these persons - Mayekar Investments Pvt. Ltd., Darshan Desai, Sumit Desai or Devi Desai. Also, there were 203 structured deals for 85004 shares between Shagufta Investments Pvt. Ltd. and Manoj H Mehta and 282 structured deals for 101542 shares between Manoj H Mehta on one side and Darshan Desai, Sumit Desai, Devi Desai and Mayekar Investments Pvt. Ltd on the other. The time difference between these buy and sell orders were between 0-29 seconds. I observe that the scrip of MEL was illiquid, and the matching of orders of these entities with each other indicates that the said trades were not genuine.

8. I further note that Mayekar Investments Pvt. Ltd. and Shagufta Investments Pvt. Ltd. had a common director, Pankaj Desai. Further, Darshan Desai is Pankaj Desai's son, Sumit P. Desai is his nephew and Devi D. Desai is his sister-in-law (Wife of his brother Dilip A. Desai). Thus, it is clear that they were related entities.
9. The frenzied trading activity which accounted for 55% of the total volume happened between these six entities. While the screen based trading system is faceless in nature and maintains anonymity of the counterparty broker/client, it is also an established fact that two parties with prior intent can match their trades with each other by placing orders simultaneously at the same price. And in this case the circular trading on so many days clearly reveals manipulative intent.
10. The said issue has also been dealt by the Hon'ble SAT in Appeal Nos. 54 to 57 of 2002 in the case of *Nirmal Bang Securities (P) Ltd. v. SEBI* wherein the Tribunal observed that, "*Synchronized trading is in violation of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes... In synchronized trading intention is implicit.*" (Emphasis added.)
11. SAT in Appeal No.2 of 2004 in the case of *Ketan Parekh v. SEBI* also observed that a synchronized transaction would be illegal if, "*It is executed with the intention to manipulate the market or if it results in circular trading or is dubious in nature and ... does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium.*" SAT also noted that the intention to manipulate the market can be inferred from the attending circumstances including the nature of transaction executed, frequency with which the transactions are undertaken, value of the transactions, whether they involve circular trading, real change of beneficial ownership, the conditions then prevailing in the market etc.
12. Moreover, as a group, the noticees made a net sale of 567347 shares of MEL during the entire investigation period, that is, purchased and sold 1754188 and 2321535 shares respectively. Thus, from June 27, 2003 to October 30, 2003 the noticees indulged in circular trading among

themselves in the illiquid scrip of MEL creating a false appearance of trading in the scrip and luring in innocent and unsuspecting investors. Following this, they offloaded shares of MEL to unwary participants.

- 13.** In view of the above, I find that Shagufta Investments Pvt. Ltd., Darshan Desai, Sumit Desai, Devi Desai and Manoj H Mehta indulged in circular trading in connivance with other clients, and thus were instrumental in creating artificial volumes in the scrip which distorted market equilibrium of the shares. Nonetheless, I find that during the investigation period the noticees sold shares of MEL at prices less than Rs.5 per share, and are, therefore, not accountable for the fluctuation in the price from Rs. 3.90 to Rs.15.62. Thus, the alleged violation of Regulation 4 (a) and (c) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 since repealed hence corresponding Regulation 4(2)(b), (e) and (n) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 does not stand established against the noticees. However, I find Shagufta Investments Pvt. Ltd., Darshan Desai, Sumit Desai, Devi Desai and Manoj H Mehta are in violation of Regulation 4 (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 since repealed hence corresponding Regulations 4(1) and 4(2)(a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 for the creation of artificial volumes in the scrip of Malvica Engineering Ltd.
- 14.** Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Section 11, 11(4) and 11B of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain the noticees Shagufta Investments Pvt. Ltd., Darshan Desai, Sumit Desai, Devi Desai and Manoj H Mehta from buying, selling or dealing in securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.
- 15.** This order shall be served on all recognized stock exchanges and depositories to ensure that the noticees are not allowed to undertake transactions as prohibited in Para 14 above.

16. Further, the stock exchanges are hereby directed to permit the respective members dealing for the aforesaid entities to square off their existing open positions, if any, at the earliest in the F&O segment. They must strictly ensure that no fresh positions are created for any of these two entities.

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

DATE: July 15, 2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA