

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

IN THE MATTER OF TOP TELEMEDIA LIMITED

In respect of Mr. Gautam Jhaveri

ORDER

Under Section 11 and 11B of the Securities and Exchange Board of India Act, 1992

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation into the buying, selling or dealings in the scrip of Top Telemedia Ltd. (hereinafter referred to as 'TTL') for the period of November 01, 2001 to April 29, 2002, *inter alia*, to ascertain whether there was any violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'). During the period of investigation the scrip of TTL was listed on Bombay Stock Exchange (hereinafter referred to as 'BSE'), Ahmedabad Stock Exchange and Pune Stock Exchange. However, for the present proceedings the trading at BSE only has been considered.
2. The trading details of the persons who had traded in the scrip were collected and analyzed along with the data of volumes contributed. During the investigation, the scrip was traded in weekly as well as rolling segment. In weekly segment, the scrip opened at ₹1 on November 01, 2001 (with face value of ₹1 per share), touched ₹1.95 on November 27, 2001 and closed at ₹0.75 on December 28, 2001. From, November 01, 2001 and till December 28, 2001, the trading in the scrip was in both segments viz. weekly and rolling. After December 28, 2001, the trading in the scrip had started exclusively in the rolling segment. In the month of January, 2002, the shares of TTL were consolidated in the ratio of 10:1. In rolling segment, scrip opened at ₹0.95 (with face value of ₹1 per share) on November 01, 2001, touched ₹18 (with face value of ₹10 per share) on March 21, 2002 and closed at ₹10.70 on April 29,

2002. The investigations *prima facie* revealed that the sales, net profit, total income of the company had reduced considerably for the year ended March, 2001, and quarter ended September, 2001. It was revealed that a group of entities had traded significantly and created large volumes in the scrip.

3. On completion of investigation, *inter alia* SEBI issued show cause notice dated June 05, 2008 (hereinafter referred to as 'SCN') to Mr. Gautam Jhaveri (hereinafter referred to as 'noticee') under Sections 11B and 11(4) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. The SCN alleged that the noticee had executed non-genuine trades through sub-broker Shri Parshwa Finance (owned by his cousin Mr. Piyush Jhaveri) with broker M/s. Rajesh N. Jhaveri (his own proprietary concern) and thereby created artificial increase in price and volumes in the scrip. The SCN, therefore, alleged that the acts of noticee were in violation of Regulations 4(a),(b) and (d) PFUTP Regulations read with Regulations 4(1), 4(2)(a),(b) and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003. Accordingly, it called upon the noticee to show cause as to why suitable directions under Sections 11B and 11(4) of the SEBI Act read with Regulations 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 should not be issued against him.
4. Pursuant to the receiving of the SCN, noticee applied for settlement of the proceedings through consent order in terms of SEBI Circular dated April 20, 2007. SEBI, however, did not agree to settle the proceedings as the consent terms proposed by noticee were not adequate. In the meanwhile, an opportunity of personal hearing was granted to the noticee before me on May 21, 2010. Noticee vide his letter dated May 09, 2010 sought an adjournment on the ground that no advocate is available to represent his case due to the vacation in Courts. The request of the noticee was acceded to and another opportunity of personal hearing was granted to him on July 1, 2010. In the

meantime noticee vide his letter dated June 21, 2010 filed reply to the SCN and submitted that apart from the reply to the SCN he had nothing more to say. Taking note of the same, I am proceeding with the matter on the basis of the material available on record.

5. I have carefully considered the SCN, the reply of the noticee and the material available on record. The submissions of the noticee in brief are:
 - The trading was done on the basis of statistical data available from the newspaper and the exchange website.
 - Documents furnished during investigation have not been made part of SCN.
 - BSE had also initiated proceedings against him and imposed penalty of ₹25,000 instead of furnishing data.
 - Has not been supplied with the trade order log, volume order log, etc.
 - Mr. Piyush Jhaveri was not his cousin.
 - The proceeding suffers from considerable delay.
 - Unable to recollect the events and occurrence to respond the allegation made in SCN and has no means to verify the authenticity of data to prove innocence.
6. At the outset, let me deal with the submissions of the noticee. Regarding the submission that it has not been supplied with the complete data and documents, it is seen that all the documents relied upon by SEBI, have been provided to the noticee. It is also noted that no document, which has not been provided to the noticee, is being relied upon in the present proceedings. Thus, the issue that arises for my consideration is: whether the noticee had indulged in the reversal of trades and thereby created artificial volume in the scrip?
7. **Whether the noticee indulged in reversal of trades and thereby created artificial volume in the scrip?**
 - a. I note that during the investigation period, the noticee had traded as a client through Shri Parshwa Finance, a sub-broker of P. Suryakant Shares & Stock Brokers Pvt. Ltd. It is seen that the proprietor of Shri Parshwa Finance is Mr. Piyush Jhaveri, who is the cousin brother of noticee. Noticee has submitted

vide his reply that Piyush Jhaveri was not his cousin. However, I find no merit in this argument of the noticee, as he himself submitted to SEBI, in a statement recorded on October 29, 2004, had admitted this fact. I note from the investigation that the noticee was also the proprietor of M/s. Rajesh N. Jhaveri, a sub-broker of ASE Capital Market Ltd.

- b.** During the period of January 29, 2002 to February 07, 2002, the noticee is found to have traded on 5 trading days out of total 8 days. A summary of the trades of noticee with M/s. Rajesh N. Jhaveri (proprietary concern of noticee) is brought below:

Trade Date	Buy Clients	Sell clients		No. of Trades	Qty.	Total qty. at exchange	% of noticee & Rajesh N. Jhaveri
		Rajesh N. Jhaveri	Gautam Jhaveri				
29/01/02	Rajesh N. Jhaveri (Own a/c)		20,000	92	20,000	1,85,345	10.79
	Gautam Jhaveri	20,000					
01/02/02	Rajesh N. Jhaveri (Own a/c)		49,900	126	49,750	3,47,039	14.34
	Gautam Jhaveri	49,750					
05/02/02	Rajesh N. Jhaveri (Own a/c)		49,900	173	49,400	3,29,076	15.01
	Gautam Jhaveri	49,400					
06/02/02	Rajesh N. Jhaveri (Own a/c)		39,650	96	39,650	2,50,905	15.80
	Gautam Jhaveri	49,850					
07/02/02	Rajesh N. Jhaveri (Own a/c)		49,675	102	49,675	2,74,746	18.08
	Gautam Jhaveri	49,850					
Grand Total		2,18,850	2,09,125	589	2,08,475	13,87,111	15.03

- c.** From the above, it is seen that the noticee was on both sides of the trade. Whereas on one side he acted as a client, on the other side he traded through his proprietary concern i.e. M/s Rajesh N. Jhaveri. While trading in this pattern noticee entered into 589 synchronized/ reversal trades which accounted for 2,08,475 shares constituting about 15% of the total volume traded on the said days. From the table above, it is noted that noticee has indulged in the reversal of trades with M/s. Rajesh N. Jhaveri. I note that the day-wise contribution of noticee and his proprietary concern was ranging from 10.79% to 18.08% during these days. The time difference between placing orders for these trades was mostly less than one minute in more than 98% of the orders. An analysis of the trade order log reveals that noticee had placed buy and sell orders with identical price and quantities, which were executed with the counterparty and had resulted in trades with negligible time difference. It is also seen that almost

same quantity of shares was exchanged in the reversed transactions between the same parties.

- d. For better understanding, an instance of such perfect matching may be discussed from the annexure to SCN. On January 29, 2002, noticee on one leg of the transaction placed a buy order at 12:24:53 for 5,000 share at the rate of ₹7.15. M/s. Rajesh N. Jhaveri on the other side placed a sell order at 12:25:02 for 5,000 shares at the rate of ₹7.15. These orders matched and got executed in multiple trades with the time difference of 9 seconds. Further, the noticee placed a sell order for 10,000 shares at 12:25:28 at the rate of ₹7.35. Similarly, M/s. Rajesh N. Jhaveri placed a buy order of 10,000 shares at 12:25:33 at the rate of ₹7.35. These orders again got matched and executed in multiple trades with time difference of 5 seconds. Simultaneously, the position of the noticee and M/s. Rajesh N. Jhaveri was reversed by 5,000 shares in this trade and M/s. Rajesh N. Jhaveri was having net position of 5,000 shares.

Again, the noticee placed a buy order at 12:26:41 for 10,000 shares at the rate of ₹7.15. On the other side, M/s. Rajesh N. Jhaveri placed a sell order at 12:26:49 for 10,000 shares at the rate of ₹7.15. These orders also got matched and executed in multiple trades and now the noticee was having the net position of 5,000. Thereafter, the noticee placed a sell order for 10,000 shares at ₹7.70 at 14:11:11 and M/s. Rajesh N. Jhaveri placed buy order at 14:11:22 for same quantity and at same price. These orders got executed in multiple trades and after execution of these trades M/s. Rajesh N. Jhaveri was having net position of 5,000 shares which was also reversed by placing buy order by noticee for 5,000 shares at 14:47:56 at the price of ₹7.85 and sell order by M/s. Rajesh N. Jhaveri at 14:47:53 for the same quantity and at same price.

At the end of the trading session, the noticee reversed 20,000 shares with M/s. Rajesh N. Jhaveri and having zero net position with respect to these trades. Further, as noted above, these orders were placed in synchronized manner where the time difference between placing the buy order and sell order was merely 3-11 second. The similar pattern was also observed on the other days.

- e. I note that the execution of trades in an identical fashion over a period of time between the same parties indicates that the same were structured in nature. Such trades are only possible, if the trades are put in the system with some prior understanding. In such cases, the prices and quantities are negotiated outside the system and the orders are executed simultaneously. I note that the price and quantity were identical in the present case and were synchronized in nature.
 - f. Although the synchronized deals per-se are not illegal, the deliberate matching of trades with fraudulent or deceptive intention to create misleading appearance of trading and to manipulate the volumes of the scrip, tampers the market equilibrium of stock exchange. Such acts are serious in nature and they require to be viewed seriously. The trades entered by the noticee for identical price and quantities, were placed within seconds of one another. Such an exact matching is an extremely unlikely event. The execution of large number of synchronized trades for many days with M/s. Rajesh N. Jhaveri, shows the manipulative intent of the noticee to create artificial volume in the scrip.
8. In view of the facts stated above, I find that the noticee had entered into the impugned trades with a view to create misleading appearance of trading which tampers with price discovery mechanism of the stock exchange and is against the concept of transparency. The synchronized and reversal of trades entered into by the noticee facilitated the creation of artificial volumes and false market in the scrip of TTL. This is likely to induce innocent genuine investors to trade in the scrip. Therefore, it is established that the noticee had indulged in creating false or misleading appearance of trading on the securities market and had dealt in securities, not intending to effect the transfer of beneficial ownership but intending to operate only as a device to cause fluctuations in the price of the scrip.
9. In view of the above, I find the noticee guilty of violating the provisions of Regulation 4 (a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair

Trade Practices relating to the Securities Market) Regulations, 1995 read with Regulation 4 (1), 4 (2) (a), (b), and (g) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003.

10. As regards the submission of the noticee about delay, I note that there is no time limit on the disposal of a proceeding of this nature nor can the delay justify exoneration.
11. Therefore, taking into consideration the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Section 11 of the SEBI Act, 1992 and Regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, do hereby restrain Mr. Gautam Jhaveri [PAN: ADAPJ 5993J] from buying, selling or dealing in the securities market whatsoever or accessing the securities market, directly or indirectly, for a period of one year from the date of this order.
12. This order shall be served on all the recognized stock exchanges and the depositories to ensure that the noticee is not allowed to undertake transactions as prohibited in Para 11 above.
13. This order shall come into force with immediate effect.

DATE : 14/1/2011
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA