

In Re: Cyberspace Ltd.

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Court : SEBI Securities and Exchange Board of India or Securities Appellate Tribunal SAT

Decided On : Aug-17-2004

Judge : A Batra

Appellant : In Re: Cyberspace Ltd.

Judgement :

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the dealings in the shares of Cyberspace Limited. (formerly known as Cyberspace Infosys Ltd and hereinafter referred to as 'CL') for alleged market manipulation and irregularities in the trading of shares of CL by Century Consultants Limited, a group company of CL (hereinafter referred to as "CCL) and a member of NSE, BSE and OTCEI.2. As per the annual report of CL for the year 1999-2000, 'CL' was found to be holding 55% of the equity shares of CCL, which in turn was holding 21% of the total equity paid up capital of 'CL'. Shri G.N.Johari, Shri A.K. Johari and Shri A.M. Johari are the common directors of 'CL' and CCL.

3. During the course of investigation, the statements of the employees of CL were recorded. As per these statements, the promoters/directors of 'CL', intending to create artificial volumes in the scrip of 'CL', used their broking entity, CCL, for this purpose and the modus operandi adopted by Shri Arvind Johari, the promoter, was to use the employees or clients or sub brokers of CCL to act as front entities for entering into the trades intended to create artificial volumes in the shares of CL.

It was noted that Shri Arvind Johari used to take the signatures of these entities in various blank documents like cheque books, depository instruction slips, account opening forms, client introduction forms etc and then used to do the transactions on their behalf or on behalf of the shell companies formed in their names.

4. On analysis of the trading details of the various member/brokers as well as of their clients who had traded in the scrip of 'CL', it was observed that the trades of most of the "clients" were done through CCL.

5. Investigations revealed that the following parties were related to each other or were working in conjunction with the promoters of 'CL', while dealing in the shares of CL. The interrelationship between the parties aforementioned and their working in conjunction with each other and the promoters of 'CL' was discerned by a preliminary analysis of the bank account statements of some of these entities viz. M/s Amit Interchemicals P. Ltd, M/s Pradeepak Finance & Mgmt Consultants P. Ltd, M/s Shivam Multi Services P. Ltd, M/s Nucleus Softel P.Ltd, M/s Kamrao Plastique etc. The analysis of the bank account statements showed that the promoters of CL and CCL were providing necessary funds to the above mentioned entities, in order to settle their transactions in the scrip of CL.

6. One such client was Shri Jugal Kishore Barasia (hereinafter referred to as "Barasia"), found to be one of the main "clients" who had traded in the scrip of 'CL' in his individual capacity, during the investigation period and who was a major seller in this period.

7. It was noted that Barasia was a client of CCL and his relationship with CCL, CL and Sri Arvind Johari was such that he appeared to be purchasing the said shares through them, mostly on spot basis. He was found to have purchased 171755 shares and sold 722800 shares during the investigation period. He was also seen to have constantly bought and sold shares of CL and hence, his transactions did not appear to be in the nature of investments. Barasia was also found to be financing CCL, by making spot payments in many cases, before the pay-in date.

8. In view of the findings of the investigations, SEBI issued a notice dated July 23, 2002 to Barasia, asking him to show cause as to why suitable directions should

not be passed against him under Regulation 11 of the SEBI (Prohibition of fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to as "the Regulations") read with section 11 and 11B of the SEBI Act, 1992 and directed him to reply to the said notice within 15 days of the receipt thereof. It was further stated that if he failed to furnish its reply within the said time, it would be presumed that he had nothing to say in the matter and thereafter SEBI would be free to take such action as deemed fit.

9. On receipt of the same, Barasia, vide his letter dated August 20, 2002 requested for additional time to send his reply within 15 days of the receipt of the notice. Thereafter, vide his letter dated September 07, 2002, while refuting any involvement in the said matter, Barasia inter-alia submitted that he was not guilty of violating the provisions of the Regulations, since he was not guilty of creating an artificial market and disturbing the market equilibrium, as alleged by SEBI.10. Barasia requested that the proceedings initiated against him be dropped and further requested for a personal hearing. Accordingly, Barasia was advised to appear before me for a personal hearing on September 18, 2003. On the said date Shri Krishna Tanne, Solicitor, Shri Minoo Siodia, Solicitor and Advocate and Shri Raju Snoni , Accounts Asst, appeared on behalf of Shri Barasia and reiterated the submissions made earlier. Thereafter, vide letter dated September 29, 2003, additional submissions were made on behalf of Barasia.

i. in the report/observation submitted by BSE, a copy which was given to him, BSE was not able to prove that he was a 'related party' and there was no single evidence on record to the effect that he was working in collusion with the promoters of CCL or involved in fraudulent transactions/trading in the scrip of CL and on the basis of such baseless allegations, no directions could be issued against him.

ii. During the period April 2000 to March 2001, he had traded in the shares of 120 companies, including in the scrip of CL and his total turnover of all the scrips for that period was approximately Rs.95,03,39,100/-, out of which the turnover in the scrip of CL was only Rs.18,66,25,936/- i.e. only 20% of the total turnover of all the scrips traded by him during the said period. As such, the transactions in the said

scrip could not be termed as trading in large quantities at all. Barasia enclosed a statement certified by his chartered accountant as regards his total turnover in the capital market for the said period, as well as the statement of his net position in the scrip of CL. iii. He had held the stock of CL time and again and not sold them immediately or forthwith, as alleged. It was stated that the projections/conclusions about his trading appeared to be totally prejudicial as the same were contrary to what had actually transpired.

iv. The total market volume for the trades executed in the scrip of CL for the period from 23.10.2000 to 14.03.2001 aggregated to Rs.6,12,69,20,338/- and the total trading done/carried out by him in the said scrip during the said period was for Rs.18,66,01,758 i.e.

only 3.04% of the total market volume, which was negligible.

v. He had not purchased the said scrip on spot basis and disclaimed knowing Shri Arvind Johari or the details of his company and stated that he did not know the promoters of CCL and also vehemently denied that he had financed any promoters of CCL. He stated that "financing" meant making payment to a person/third party to enable the said person/third party to carry on trades prior to such transactions actually taking place or financing him/them to enable him/them to obtain the shares from any depository or market. It was further stated that a very important component of financing was the interest element since interest was a pre condition for any finance transaction or for financing of purchase of securities". He further stated that in the absence of proof of him having charged any interest in any of the reports submitted by BSE to SEBI till date, there was no question of him having financed any transaction and his purchase transactions could not be termed as financing, since he had only purchased the shares of CL through CCL i.e he had entered into a member client agreement with CCL and had purchased shares of CL through CCL which was a broker of BSE on the BOLT. vi. He denied having asked the promoters of CCL to open accounts of their shell companies with the brokers through whom he was trading.

As regards the issue of him making payments before the pay in, Barasia stated that he had purchased the shares of CL in rolling settlements. Hence when the

monies were called for by the broker, as he had the monies and knowing that he had to pay for the same within 48 hours, the payment was accordingly made, albeit only after the trades were executed and not before, and hence he had not violated any regulation of BSE as he was legally permitted to pay before the pay-in but after execution of the trade.

vii. He denied knowing that Mr. Ajay Gupta was working for CCL or that he worked for Mr. Johari and stated that he did not know the promoters of CCL or the fact as to whether they were the same as those of CL. Barasia submitted that if he did know Mr. Johari or his Associates, as alleged by SEBI, he would not have incurred a loss in some of the trades of the said scrip of CL and at the end of the trading period in the said scrip only have made a nominal profit of Rs.6,56,014/- . To support his contention, Barasia annexed the statement indicating the loss that he had incurred.

viii. He stated that although SEBI relied upon the examination of Mr. Ajay Gupta, he was not given any opportunity to cross examine him. It was further stated by him that as Mr. Ajay Gupta himself had admitted that Barasia had never met Mr. Johari, there was no question of him being a related party with Mr. Johari or his associates. Barasia denied that he knew anything about market manipulation and price rigging and stated that if that was the case, he would have made huge profits and got out in time. Barasia further stated that if he was supporting Mr. Johari, he would not have been pleading for the monies from BSE/NSE in respect of legitimate trades executed by him.

ix. He further stated that there was no evidence whatsoever available on record to prove that he was involved in market manipulation or artificial rigging of prices and all allegations were merely based on surmises and conjunctures, which was violative of the principles of natural justice and equity. Barasia stated that he was a general investor in the securities market and had bought and sold shares through the registered member brokers of both BSE and NSE, through the BOLT for which contract notes and invoices had been raised and shares delivered in his demat account and delivery given from his demat account and monies paid for from his bank account to the member brokers only after the trades were executed.

No spot payment and or off market deals had been entered into. All his trades are genuine and conducted as per the rules and regulation.

x. He stated that he was a senior citizen aged 70 years and for the last 10 years, was an investor in the capital market and had invested in the scrips of several companies on both the BSE and NSE. Barasia reiterated that he became aware of the said Joharis and their share holdings only after the findings of inquiry by BSE and NSE which were provided by the two exchanges to his brokers but before then, he never knew Shri Johari or the nature of his activities and as such, was unaware of their motives about creating artificial market or about their modus operandi. Barasia stated that if he was aware of the manipulations of Mr. Johari and his associates, he would have made huge profits, and not losses. Barasia stated further that there was no evidence on record either from BSE or SEBI (who have thoroughly investigated in the said trades of the said scrip) that he was related to the promoters of Cyberspace as all the reports only suggested or gave "prima facie" observations, which could not be and should not be termed as conclusive by any stretch of imagination and any actions based on such reports would be against the principles of natural justice.

xi. While enclosing an extract of the report of BSE which showed that, his turnover during the period 8th March, 2001 to 16th March, 2001 was only 5.41% Barasia submitted that despite the same, other entities with 38% of the market turnover had been absolved with their monies released. Barasia stated that for the period of 18th Dec., 2000 to 16th March, 2001, although his turnover was only 3.89% of the total market turnover, other entities with nearly 15% of the total market turnover, had been absolved and hence his turnover which was significantly lower by 5 to 7 times, could not be termed as involved in irregularities.

xii. Barasia denied that he had constantly bought and sold shares on a regular basis and stated that his dealings in the said scrip were purely in the nature of investments. He annexed the statement of the daily stock/position of the trades in the said scrip which allegedly showed that he had held the stock of the said scrip time and again and not sold immediately or forthwith as alleged. Barasia further stated that he had purchased on spot basis but was a client of the member broker

of BSE and had purchased from the said broker through the BOLT, for which he had been issued invoices and all his trades were complete as per the laws and regulations framed by the BSE.¹² I have taken into consideration the facts and circumstances of the case and the material available on record, which includes the facts leading to the investigation, submissions made on behalf of Barasia, the findings of the investigation relevant to him, the show cause notice dated July 23, 2002 issued to Barasia and his replies to the same.

13. From the findings of the investigation, I have noted the client wise buy and sell positions of different parties during the period of investigation and in particular the details of buy and sell positions of Barasia, relevant to the shares of CL during the said period. The trading volume and the total volume of Barasia, as a percentage of the exchange volumes is shown in the table below:-

14. From the demat statement of Barasia, it is seen that Barasia had purchased 1,29,000 shares of CL on March 14, 2001. Out of these, 15,673 shares were through market purchases, 26,564 were through inter-depository transfers and the rest i.e. $129000 - 15673 - 26564 = 86,763$ shares were through spot purchases. This was discerned from the fact that there was a transfer of 86763 CL shares from the beneficiary account of CCL (GTB 10222248) on March 14, 2001, to the DP account of Barasia (Indbank 10022732). If one were to multiply the price of CL on the said date (around Rs.81/-) by the total quantity of shares purchased by him, one would get a figure of 1,04,49,000 (One crore, four lac and forty nine thousand shares). As seen from the account of CLL in the ledger of Barasia, he had made a payment of Rs 1,00,00,000 vide cheque number 5816163 on March 14, 2001. Since Barasia was maintaining a running account with CCL, it can be assumed that this payment was made towards the purchase of shares made on March 14, 2001.

15. The fact that Barasia had transacted in the scrip of CL in extremely large quantities is not in dispute since Barasia had admittedly bought and sold shares, particularly the shares of CL, on a regular basis. Moreover from the records, I have noted a trend wherein Barasia sold the shares soon after purchasing them, from which it can be inferred that his dealings in the scrip were not in the nature of investment, as contended by him.

16. Although Barasia has contended that his turnover in the scrip of CL is negligible when compared to his dealings in the other scrips, I am of the opinion that it would be more relevant to consider his total turnover only in the scrip of CL during the relevant point of time, for the consideration of the present case. In that context I have noted that Barasia not only sold the shares of CL extensively during the period of investigation, but he also bought a number of the shares of CL, from CCL, on a spot basis. I have also noted that his transactions in the scrip of CL were made in large quantities, and were not negligible as contended by him. In fact, as is evident from the table at point 13 above, Barasia's purchase transactions contributed upto 39.62% of the daily volume in the scrip while his sale transactions contributed upto 91.08% of the daily volume in the scrip. His total purchases and sales each are 11,12,700 shares, contributing in aggregate to 14.64% of the total market volume while purchasing and 16.52% of the total market volume while selling the scrip. I have further seen that Barasia's trading accounted for more than 10% of the daily volume in the scrip on 14 out of the 30 days on which he purchased the scrip and for 10% or more of the daily volume in 23 out of 26 days on which he sold the shares on the exchanges.

17. Upon analysis of the bank account statements of some of the entities stated to be acting in concert with each other, as brought out earlier at point 5 above, and the flow of funds between the accounts of the relevant entities, it was seen that the promoters of 'CL' and CCL were providing necessary funds to these entities in order to settle their transactions in the scrip of 'CL' and the transactions by these entities caused artificial volumes in the said scrip.

18. Investigations have clearly indicated that all the purchases of Barasia have been through CLL, either on spot basis from the front/shell companies floated by Shri Arvind Johari or through purchase of CL's shares on the exchange, as a client through CCL itself. This is evidently contrary to the contention advanced on behalf of Barasia by his Counsel at the time of the hearing held before me that Barasia had not indulged in any spot/off market deals in the scrip of CL.

19. There was clearly an arrangement between Barasia and the promoters of CCL to open the accounts of their shell companies with the brokers with whom Barasia

was trading viz. ACK Capital Management Pvt. Ltd., Mayur Mangaldas Kothari, Churiwala Securities etc. to facilitate the faster transfer of shares into his account, to enable him to pay them directly, thereby indirectly financing the promoters of CCL for their market manipulation.

20. Admittedly Shri Ajay Gupta (from CCL), used to inform Barasia about the buying opportunities and charge 10% of the returns from Barasia. On the basis of information provided by Shri Ajay Gupta, Barasia used to buy the shares through CCL and offload them subsequently at a higher price. These circumstances, when viewed in totality, leads to the inevitable inference that Barasia could not have been unaware of the fact that Ajay Gupta was from CCL or that the promoters of CL were the same as those of CCL. An investor who dealt so heavily in shares, on the basis of the tips received from another individual, as regards a specific company, could not have been unaware of the inner details of the management of that company. Although Barasia has contended that he suffered losses and claimed that the same would not have happened, if he indulged in market manipulation, the fact remains that Barasia's contribution to the daily market volume was in proportions greater than 50% during March, 2001 when the price of the scrip was falling rapidly.

This lends credence to the fact that he was acting in concert with Shri Arvind Johari to create a false support to the price of the scrip and create an artificial market in the scrip.

21. Moreover, Barasia is alleged to have been assured returns on his purchases in the scrip of CL by Ajay Gupta with whom he shared 10% of the returns on his purchases. Even if it were not so, when transacting in this manner, Barasia could not have been unaware of the market manipulation and price rigging being done by the promoters of CCL in concert with other entities, which clearly got reflected in the share price of CL.

22. A collective reading of the above facts leads one to infer that Barasia had indeed aided the promoters of CCL in creating an artificial market in the scrip, by trading heavily in the said scrip. By making early payments to CCL, he has also provided them with finance for their market manipulation activities, an act which

resulted in disturbing the market equilibrium and had a significant impact on the trading in the shares of CL.

23. As regards the issues of denial of the right of cross examination to Barasia, it is to be noted that the right of granting cross examination varies from case to case. It is a settled principle of law that where prejudice is caused to a person by way of denial of facility for cross examination by the authority, the same would amount to a breach of the principles of natural justice. If the statements referred to by an individual, in this case Shri Ajay Gupta, is the only evidence to come to an adverse conclusion against Barasia, the request for cross examination needs to be accepted. In this case, I am of the opinion that sufficient material is available on record against Barasia, in the form of trading data, funds flow etc. other than the personal statement of Shri Gupta, for reaching the findings made hereinabove. Moreover, the fact that he had entered into deals that clearly endangered the stability of the market is in itself sufficient to warrant action. In view of the aforesaid, the only conclusion which can be drawn by cogent reading of the documents and statements together is that no prejudice is caused to Barasia on account of lack of opportunity to cross examine Shri Ajay Gupta.

24. As per the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995: a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person; b) Indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market; c); d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities; 25. Though Barasia has time and again pleaded his innocence and contended that there was no intention on his part to manipulate the market, and hence no violation of the provisions of the Regulations quoted above, a cumulative reading of the facts available on record and mentioned above and the circumstantial evidence, read with the provisions of the regulation quoted above, I find that Barasia acted in concert with other entities

to create an artificial/ false market during the said period and supported these entities in carrying out substantial transactions in its scrip by providing financial support, thereby aiding and abetting the price manipulation of the scrip. These acts are violative of the provisions of Regulations 4(a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

26. It is to be noted that persons who operate in the market are required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. People, who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, are not fit or proper persons to operate in the market.

27. Accordingly, in view of the facts and circumstances of the case and the blatant violations by Barasia of the provisions formulated by SEBI for the protection of the investors, I find that a direction restraining him from dealings in the securities market would be required. The passing of such an order would be necessary for the regulation of the persons operating in the capital market and the development thereof, as well as in the larger interest of the investors.

28. In view of the above and in exercise of the powers conferred upon me under Sections 19, read with Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby restrain Barasia from accessing the securities market and prohibit him from buying, selling and dealing in securities for a period of one year. 29. This order shall come into force with immediate effect.

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