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

Decided On : Jan-27-2005

Judge : G Bajpai

Appellant : Sebi

Respondent : Paark Securities

Judgement :

1. Securities and Exchange Board of India (hereinafter to be referred as SEBI) conducted investigation into the dealings in the scrip of Moschip Semiconductors Limited (hereinafter referred to as 'Moschip') for the period May 07, 2001 to May 31, 2001, noticing unusual price rise. Two entities namely M/s Vijay Growth Financial Services Ltd. (hereinafter referred to as VGFL) and Shri B. Jayaprakash, an employee of VGFL were found to be trading substantially in the scrip. Both Shri B. Jayaprakash, and VGFL (which is a Member of Hyderabad Stock Exchange) were found to be common clients of Techno Shares & Stocks Ltd. and Cholamandalam Securities, members of BSE.2. Investigations revealed that the purchase of shares by Shri B.Jayaprakash, an employee of VGFL, resulted in the establishment of higher price levels from Rs. 25.80 to Rs. 50.00 during the above period. Shri Jayaprakash & VGFL were seen to have executed trades in the scrip of Moschip, at upper circuit filter level through the sub-broker, M/s Paark Securities, the sub-broker of Techno Shares & Stock Brokers Limited. Pursuant to investigations, an enquiry was ordered under Regulation 4 (a) of SEBI

(Proceedings for Holding Enquiry and Imposing Penalty) Regulations, 2003 (Enquiry Regulations) to enquire into the contravention of provisions of SEBI Act and Regulations made there under by M/s Paark Securities, a member of the Stock Exchange, Mumbai (hereinafter referred to as 'Paark') in respect of their dealings in the scrip of Moschip.

Paark Securities facilitated establishment of higher price in Moschip by placing orders at upper circuit filter price on behalf of Shri B. Jayaprakash on 7 days of trading during May, 2001.Paark is found to have allowed debit balance of Rs.2 to 3 lakhs to Shri B. Jayaprakash. Therefore, Paark Securities has violated regulation 4(e) of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Paark Securities has also failed to exercise due diligence and care in carrying out his business and violated clause A(2) of the code of conduct for sub-brokers specified in schedule II read with regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 by executing large order to the extent of Rs.6.19 lakhs in a single month on behalf of Shri Jayaprakash, in a scrip like Moschip whereas the annual income of Shri Jayaprakash was only Rs.3 lakhs.

In view of his findings, the E.O recommended suspension of registration of Paark Securities for a period of six months.

4. A show cause notice dated April 7, 2004 was sent to Paark asking them why action recommended by Enquiry Officer should not be taken against them. They were asked to furnish reply in 15 day's time.

5. A reply dated 28.04.2004 was received from Shri A Ramarao, on behalf of Paark. In the reply, he submitted that he was a Chartered Accountant cum Company Secretary and was in the business of dealing in securities for 13 years, as a remisser to the director of Karvy Consultants in HSE and he himself became registered as a sub-broker to Techno Shares & Stocks Limited. He also said that he had never defaulted in any manner and there were no complaints pending against him. He stated that he does not know the promoters of Moschip and he has never had any financial/business dealings them.

6. Further, he submitted that neither he nor his family members purchased/sold shares of Moschip in their name or made any gain, other than brokerage earned in a routine course of business. He said that his association with Shri Jayaprakash was long enough since 1990 and that he was a regular client from 22.12.1998 till 31.12.2002. He also furnished the details of all the purchases and sales of Shri Jayaprakash since the beginning. He said that there were several scrips in which purchases and sales were made by Shri Jayaprakash through Paark.

7. He also stated that the second half of 1999 to 2000 was a period of boom in technology shares not only in India but world over and that there was phenomenal and historic rise of rates in shares of technology companies as seen in the case of Satayam, Danlaw Technologies, Himachal Futuristic, Global Tele Systems, etc. He said that Shri Jayaprakash was also associated with Vijaya Growth Financial Services Ltd., an investment company which in those days had a reputation for identifying technology shares with good future prospects and taking a long term perspective on technology shares. He said that considering the possibility of a revival in demand for technology shares post 2001 budget, and keeping in view, the meteoric rise in the prices of technology shares in the period of December, 1999 to March, 2000, he thought it natural for any investor wanting to acquire and accumulate the shares of technology companies at any price in the lower range of rates.

8. He also submitted that he was under the honest belief that Shri Jayaprakash wanted to acquire and accumulate the shares of Moschip and he did not have an intention to inflate the price. Also, he said that he never doubted his bonafides and not having doubted so always executed the orders placed by Shri Jayaprakash irrespective of the fact that they could be purchase orders at upper circuit price. Further he stated that Shri.B.Jayaprakash was his client since, December, 1998 and pattern of his trading in shares or history of his account never was such that it gave a suspicion that the Shri.B.Jayaprakash could be involved in insider/ circular trading or trading with an intent of manipulation of price or with any other malafide intentions. He also stated that the total volume of purchases of Shri.B.Jayaprakash in the month of May, 2001, was just a mere 19,160 shares, monetary value of purchases being Rs.6.19 Lakhs.

9. Further, he submitted that in every business there will be debtors and creditors and allowing credit to clients who are having good business dealings and having good track record is nothing but a prudent business practice in any type of business. He said that in broking business, the transactions revolve around cash and securities and also, the existence of settlement period necessitates the brokers to allow credit to clients. He stated that he allowed debit to Shri.B.Jayaprakash only after seeing his track record and due to the association with him for the last several years.

10. He also said that he never doubted his bonafides in acquiring shares of Moschip (going by his track record) and having been satisfied about his bonafides allowed the debit. He further stated that the debit was allowed not only for acquiring shares of Moschip but also for other shares. Also, he said that the inference of enquiry officer that Paark facilitated Shri.B.Jaya Prakash to acquire the shares of Moschip by allowing him debit balance is an adverse inference. He said that incidentally there was a debit balance in the month of May, 2001 and that allowing a debit balance does not under any stretch of imagination amount to collusion with the client as wrongly alleged by the enquiry officer. Further, he reiterated that neither him nor his family members traded in the shares of Moschip. Therefore, he said, there has not been any monetary gain. Thus, he said, there was no question of collusion with Shri.B.Jayaprakash and allowing debit is a business decision and not a decision on which it could be inferred that one had aided / colluded with Shri.B.Jayaprakash in manipulating the price of Moschip.

He also said that allowing of debit balances does not tantamount to carrying on fund based activities as there were never any financial charges/levies collected from the clients and on the contrary allowing of debit balance is a corollary to the fact that there is intense competition (amongst brokers) in the ages of falling brokerages, and allowing of debit is a business practice, being exclusively based on the relationship with the client and the confidence to recover the dues. Shri Rama Rao of Paark also confirmed that there were no dues from Shri.B.Jayaprakash till then.

11. Based on his submissions, he said that there was no violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, no collusion was there between him and Shri Jayaprakash. All transactions were carried out with due diligence and care. He conceded that there could have been an error of judgement on his side while executing the transactions in Moschip of Shri Jayaprakash in going by his bonafides keeping in view his behaviour pattern of his accounts and dealings in shares since 1998.

12. An opportunity of hearing was granted to Paark on October 12, 2004 which was communicated vide letter dated September 20, 2004. On the said date, Shri Ramarao, the proprietor of Paark appeared before me and made his submissions similar to that already made vide his reply to the Show Cause Notice.

13. I have carefully considered the findings of Investigation report, Enquiry Officer, Show Cause Notice issued by SEBI and the reply as well as submissions of Paark. I find that the price of Moschip rose from Rs. 25.80 on May 7, 2001 to Rs. 50.85 on May 31, 2001. There was sudden increase in the price and volume of the scrip. The price rose from Rs. 25.60 on May 7, 2001 to Rs. 50.85 on May 31, 2001. Two entities, namely, namely VGFL and Mr. B. Jayaprakash, the employee of VGFL were found to have traded substantially in the scrip. Also, they were the common clients of Techno Shares & Stocks Ltd. and Cholamandalam Securities. I note that the purchase of these shares by the above two entities had resulted in the establishment of higher price levels from Rs. 25.80 to Rs. 50.00 during the above period.

14. I find that trades in Moschip were executed by Shri.B.Jayaprakash and VGFL at upper circuit filter level through the sub-broker Paark.

The details of same are given in following paragraphs:- From the price - volume data of the Moschip on BSE, I find that the scrip touched upper circuit filter limit on the following days.---------- Opening Previous day %age----------10-May-01 28.7 27.65 3.797411-May-01 29.8 28.7 3.83 I note that the upper circuit filter limit in the scrip was revised by BSE from 8% to 4% on February 15, 2001. Thereafter the filter had been 4%

through out the period of investigation.

From the order log details it is observed that the upper circuit filter orders were put by Paark, for the client Shri.B.Jayaprakash and VGFL. From the order log, I also noticed that these orders were first of the orders in the day.

15. A date-wise analysis of the orders put by Shri Jayaprakash through the notice at upper circuit limits is given below:- On May 10, 2001, 1100 shares of Moschip were traded on BSE. Shri B Jayaprakash placed buy orders for 5,000 shares at the rate of Rs.28.70 at 9:56:53 A. M. This was the first order of the day. On the previous day i. e. on May 09, 2001 the closing price of the scrip was Rs.27.65. This shows that the rate at which these orders were placed by Paark was higher by 4% than the previous day's closing price.

On May 11, 2001, 7250 shares of Moschip were traded on BSE. Shri B Jayaprakash placed buy orders at Rs.29.80 for 5,000 shares. He placed these orders at 9:55:07 A. M., 9:55:10 A. M., 9:55:13 A. M., 9:55:16 A. M. from the trading terminal of noticee. On the previous day i. e. May 10, 2001 the closing price was Rs.28.70. This shows that the rate at which Shri.B.Jayaprakash has placed his buy order was higher by 4% than the previous day's closing price. Out of the total 7250 shares traded in the day Shri.B.Jayaprakash purchased 6545 shares which is 90% of the shares of Moschip traded in the day in the exchange.

On May 14, 2001, 1575 shares of Moschip were traded on BSE. Mr. B Jayaprakash placed two buy orders at Rs. 31/- for quantities of 500 shares and 5,000 shares. These orders were placed at 10:18:56 A. M. and 10:19:33 A. M. from the trading terminal of Paark. On the previous day i. e. on May 11, 2001 the closing was Rs.29.80. It indicates that the rate at which Shri B Jayaprakash has placed his buy order was higher by 4% than the previous day's closing price i.e., at upper circuit filter level. Out of the 1575 shares traded, Shri.B.Jayaprakash purchased 1000 shares which is 63.5% of the volume traded in the scrip of Moschip in BSE in the day.

On May 16, 2001, 975 shares of Moschip were traded on BSE. Shri. B Jayaprakash placed two buy orders at Rs. 33.40 for quantities of 7500 shares and

2500 shares. These orders were placed at 10:23:30 A. M. and 10:23:57 A. M. from the trading terminal of Paark, and on the previous day i. e. on May 15, 2001 the closing price was Rs.32.15.

This shows that the rate at which Shri.B.Jayaprakash has placed his buy order was higher by 4% than the previous day's closing price.

Out of the total 975 shares traded in the day Shri.B.Jayaprakash purchased 575 shares which is 59% of the total volume traded in scrip on the said day).

On May 17, 2001 only 300 shares of Moschip were traded on BSE. Shri.B.Jayaprakash placed two buy orders at Rs. 34.70 for quantities of 5000 shares each. These orders were placed at 9:55:24 A. M. and 9:55:40 A. M. from the trading terminal of Paark. On the previous day i. e. on May 16, 2001 the closing price was Rs.33.40. This shows that the rate at which Shri.B.Jayaprakash has placed his buy order at upper circuit filter level. Whole volume of 300 shares was in the day was the purchased by Shri.B.Jayaprakash which is100% of the volume traded in the day.

On May 24, 2001 the volume was 4900 shares on BSE. Paark placed nine buy orders at Rs. 43/- for quantities of 5000 shares each. These orders were placed between 9:53:44 A. M. and 9:54:59 A. M. All these orders were invalid as the orders were placed before the market hours. On the previous day i.e., on May 23, 2001 the closing price was Rs. 40.35 and the price at which the limit order was placed by Paark on behalf of Shri Jayaprakash and VGFL i.e., Rs.43/- was higher by 4% i. e. at upper circuit filter level. No other orders were placed by the Paark in the day. The purchases were made by VGFL at the rate of Rs.42 and Rs. 41.95.

On May 25, 2001 the volume was 2640 shares of Moschip on BSE. Paark placed eight buy orders at Rs. 43.60 for quantities of 5000 shares each. Out of these orders, only one order was placed after the start of the market. All other orders were invalid as the orders were placed before the market hours. On the previous day i.e., on May 23, 2001 the closing price was Rs. 41.95 and the price at which the limit order was placed by Paark on behalf of Shri.B.Jayaprakash and VGFL. i. e. Rs. 43.60 which was higher by 4% i. e. at upper circuit filter level.

16. From the above, I find that Shri.B.Jayaprakash and VGFL were the first to place these buy orders on the scrip of Moschip on all these days through the Paark at upper cicuit filter level, which has influenced the price of the scrip and thereby inflated the price from Rs. 28/- to Rs. 43/-. I find that Paark has in his reply stated that "we never doubted his bonafides and not having doubted, so always executed the orders placed by him irrespective of the facts that they could be purchase orders at upper circuit price". A broker being an intermediary has to maintain safety and integrity of the market and ensure that its action should not interfere with smooth and fair functioning of the market in a scrip or interfere with price discovery mechanisms. The placing of orders by the client in upper circuit limit for a scrip like Moschip for a number of days such as on 10.5.2001, 11.5.2001, 14.5.2001, 16.5.2001, 17.5.2001 , 24.5.2001 and 25.5.2001 should have risen doubt in the mind of the Paark. If it had been alert or exercised due diligence and care, it could have easily known from such pattern of trading the intention or role of the client.

17. I find that Paark has executed trades in the scrip of Moschip during the above period on behalf of Shri.B.Jayaprakash and has also allowed him debit of Rs. 2 to 3 lakhs for the trades he has done with it. I also find that Shri.B.Jayaprakash in client registration form has stated his annual income as Rs. 3 lakhs and whereas Paark has executed an order in the scrip like Moschip (which is not so frequently traded) for Rs.6.19 lakhs through Paark in a single month of May. 2001. Thus Paark has again failed to exercise due diligence by executing order of 6.19 lakhs in a month in a single scrip when the annual income of the client is Rs.3 lakhs. Further allowing debit of Rs.2 to 3 lakhs to a client in a single month also suggest the role or connivance in manipulation of the scrip. The brokers or sub-brokers are not allowed to undertake fund based activities and such practices, if any, cannot be accepted to be correct.

18. The actions of Paark in allowing the debit balance and executing trades in Moschip on behalf of clients and inaction in not having exercised due diligence has led in the establishment of higher price levels from Rs.25.80 to Rs.50.00 for the above period. Both the clients, Shri Jayaprakash and VGFL of Paark Securities have been proceeded for violations of SEBI (Prohibition of Fraudulent and Unfair

Trade Practices Relating to Securities Market) Regulations, 1995.

Against VGFL, order has been passed canceling its certificate of registration. From the above, I find that Paark was instrumental in creation of higher price in Moschip during the above period.

19. I note that before the E.O. there was a subsequent submission made in a letter dated 29.10.03 written by the client Shri Jayaprakash that debit balance was due to dealing in other scrips also. This seems to be an after thought. He has not made this submission in his reply dated 28.04.2004, to the SCN.20. I find that Shri B Jayaprakash has made purchases of 19,160 shares of Moschip in May, 2001, the monetary value being Rs.6.19 lakhs. Paark, by executing a very large order of Rs.6.19 lakhs in a single month in a scrip like Moschip for the client, when his annual income was only Rs.3 lakh shows that Paark has executed the order without proper verification of financial position of the client. In addition to above, he has given debit balance of Rs. 2-3 lakhs.

a) M./s. Paark Securities facilitated the violations of Regulation 4(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 by Shri Jayaprakash and VGFL.

b) M/s. Paark Securities failed to exercise due diligence and care in carrying out his business and violated clause A(2) of the Code of Conduct for sub-brokers in Schedule II read with Regulation 15 of SEBI (Stock Broker and Sub-Broker) Regulations, 1992.

22. Having regard to the facts and circumstances of the case, I, in exercise of my powers under Section 4 of SEBI Act, 1992 read with SEBI (Stock Broker and Sub-Broker) Regulations, 1992 and Regulation 13(5) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 direct that the certificate of registration granted to M/s. Paark Securities Pvt. Ltd., be suspended for a period of six months.

23. This order shall come into effect after three weeks from the date of the order.

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