

**In Re: Genus Commutrade Ltd. and**

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

**Decided On : Feb-19-2008**

**Judge : V Chopra**

**Appellant : In Re: Genus Commutrade Ltd. and**

**Judgement :**

1. Genus Commutrade Ltd. (hereinafter referred as "the company") was incorporated on May 03, 1995 and it was engaged in the business of manufacturing and marketing of Industrial Machineries, Fabricated Machineries, providing of the Consultancy Services relating to the erection and installation of the heavy engineering machineries and its repairs, maintenance etc. The shares of the company were listed at Bombay Stock Exchange Ltd. (BSE) and Ahmedabad Stock Exchange Ltd. (ASE).

2. The company had issued an advertisement through an Ahmedabad based Advertising Agency namely Garima Communications and the advertisements appeared in prominent business newspapers from July 08, 2002 to July 10, 2002 regarding the proposed board meeting on July 18, 2002, inter alia, to consider the Buy Back of equity shares upto 1823310 shares (18% of equity) at a price of Rs 11/- per share and to allot upto 36% of equity shares to Foreign Institutional Investors (FII). As a result of this publication, there was unusual price and volume movement in the shares of the companies around the time of the issuance of such advertisements.

3. It was observed that several such advertisements were published by certain companies whose shares were thinly traded and such advertisements were made through Garima Communications. The intention behind such advertisement was to disseminate information to the public projecting rosy picture of company's future growth by making announcements that Board of Directors of the company were about to consider buy-back of shares, issue of bonus shares etc.

4. In view of the above, SEBI investigated in the scrip of the company for the period from May 01, 2002 to September 20, 2002. Investigations revealed that Shri Hitesh R. Bhatt, Shri Pritesh B. Shah Shri Kalpesh R. Sheth and Rinku J Shah were the directors who participated in the board meetings during the period of the misleading advertisements issued by the company. Investigation revealed that the connected persons and associated entities to the company namely, Galaxy Home Appliances, Rajesh Kumar Vittalbhai Patel, Kirti R Patel, Santosh Gaykwad, Raju B Shah / Anil B Shah, Shah Maheshbhai M, Atul Hiralal Shah, Paresh Kumar R Patel, Ramilaben Patel, Hema Paresh Kumar Patel, Urvish Ramesh Vora, Rakesh Ramniklal Sheth, Mahendra K Sutaria, Zenet Softwares Ltd., Piyush Jhaveri, Tushar Jhaveri and Atul B Shah offloaded the shares in the market after making artificial market in the scrip. Accordingly the instant proceeding was initiated against the company, its directors and the persons/entities as stated above.

5. Investigation revealed that apparently there was a violation of Regulation 5 (1) (a) and (b) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 by the company Genus Commutrade Ltd and its directors Shri Hitesh R. Bhatt, Shri Kalpesh R. Sheth, Shri Pritesh Shah and Rinku J Shah by issuing misleading advertisements about proposed buy back of shares while there was no provision in Articles of Association of the company for buy back of shares.

6. Investigation further revealed that the associated entities and related persons viz. Shri Raju Shah, Shri Mahesh Shah, Shri Santhosh Gayakward, Shri Atul Shah, Ms Kirtiben Patel, Paresh Kumar R Patel, Ramilaben Patel, Hema Paresh Kumar Patel and Rajesh Kumar Vittalbhai Patel, Genus Commutrade Ltd, Shri

Hitesh R.Bhatt, Shri Kalpesh R.Sheth, Shri Pritesh Shah and Rinku J Shah, Galaxy Home Appliances, Zenet Softwares Ltd, Mahendra K Sutaria, Urvish Ramesh Vora, Rakesh Ramniklal Sheth, Piyush Jhaveri, and Tushar Jhaveri had offloaded shares in artificially inflated market created through making misleading advertisements. Therefore it was alleged that they had violated the provisions of Regulation 3, 4 (a), (b), (c) and (d) and 6 (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 7. Accordingly, Show Cause Notices dated October 14, 2005 were issued to the above referred entities asking them as to why suitable directions including directions of debarring them from dealing in securities for a specific period should not be passed against them under Section 11, 11(4) and 11B of the SEBI Act, 1992 for the violations stated at paragraph above. Supplementary show cause notices dated October 18, 2005 were issued to Rakesh Ramniklal Sheth and Atul Shah for the alleged violations of Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (Takeover Regulations) by not disclosing their holdings to the exchange and not giving the statutory notice when they exceeded the limit prescribed under Takeover Regulations while they were dealing in the scrip of the company.

8. Shri Pritesh Shah vide letter dated March 27, 2006 filed reply to the show cause notice. While denying the charges levelled against him, he stated that he was 19 years old during the investigation period and was an employee of the company. He submitted that he became the director of the company w.e.f. July 11, 2002 (furnished Form 32) and the affairs of the company prior to his joining date may not be considered against him. He further stated that he had already informed these facts to SEBI vide his letter dated November 15, 2002. He further stated that he had not attended the board meeting held on July 18, 2002. He requested to drop the proceedings and also requested for a personal hearing in the matter.

9. Urvish Vora vide letter dated February 06, 2006 replied to the show cause notice stating that he sold shares of the company during June and July 2002 through Parklight Investment which is legal and permissible and he never acted as a front of Shri Rajesh Kumar V Patel.

10. Rakesh Ramniklal Sheth vide letter dated April 16, 2006 replied to the show cause notice stating that adjudication proceeding was initiated by SEBI in respect of the alleged violations under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. He however did not file any reply w.r. to the first show cause notice dated October 14, 2005 wherein the main charges under PFUTP Regulations were alleged against him.

11. Mahendra K Sutaria replied to the show cause notice vide his letter dated April 25, 2006 stating that he was not aware about the impugned advertisements and he had not purchased or sold any shares of the company.

12. I note that Shri Raju Shah, Shri Mahesh Shah, Shri Santhosh Gayakward, Shri Atul Shah, Ms Kirtiben Patel, Paresh Kumar R Patel, Ramilaben Patel, Hema Paresh Kumar Patel and Rajesh Kumar Vittalbhai Patel have filed applications for consent order in terms of SEBI Circular No.EFD/CIR-1/2007 dated April 20, 2007. In view of this, I will proceed in the matter against Genus Commutrade Ltd, Shri Hitesh R.Bhatt, Shri Kalpesh R. Sheth, Shri Pritesh Shah and Rinku J Shah, Galaxy Home Appliances, Zenet Softwares Ltd, Mahendra K Sutaria, Urvish Ramesh Vora, Rakesh Ramniklal Sheth, Piyush Jhaveri, and Tushar Jhaveri (these persons are hereinafter collectively referred to as 'the Noticees' and singularly by their individual name).

13. An opportunity of personal hearing was granted to the Noticees on May 25, 2007, July 3, 2007 and August 24, 2007 before me. On May 25, 2007. Urvish Ramesh Vora attended the hearing. Shri Anish Khardia, on behalf of Rakesh R Seth attended the hearing on July 3, 2007.

14. I have carefully examined the show cause notices, replies thereof and other materials on record and find that the company and its directors published misleading advertisements in several newspapers. In order to utilize the public demand of the shares of the company after the impugned advertisements, one of the promoter/director Shri Pritesh B Shah along with persons acting in concert and related/associated entities offloaded the shares in the market. Hence, the charge against the company and its directors is publication of misleading advertisement whereas one of the director Shri Pritesh B Shah and other Noticees were charged

for their role in creating artificial market in the scrip.

15. As regards the charge of misleading advertisements against the company and its directors, I find that the company issued colour advertisements in the news papers on July 8, 2002 (news papers: Gujarat Samachar, Mumbai Samachar, Sandesh), on July 9, 2002 (news papers: Business Standard, Financial Express, Economic Times) and on July 10, 2002 (Hindu Business line) stating, inter alia "that the Board of Directors of the company will be meeting on 18 July, 2002 at the registered office, to consider possibilities of buy back upto 1823310 shares (18% of equity) at a price of Rs.11/- per share and allotment upto 36% of equity share to Foreign Financial Institution." 16. The aforesaid advertisements were made at the proposal stage itself which was not required by law. The company vide letter dated October 21, 2002 stated that the advertisements were published as per the decision of Board of Directors held on July 01, 2002 attended by Shri Hitesh R Bhatt, Pritesh B Shah, Rinku J Shah, and Kalpesh R Sheth. The Company further stated that an Ahmedabad based advertising agency, Garima Communications prepared the draft of the advertisements which were approved by the Board of Directors and the total cost of the advertisement was Rs. 410728/- Shri Pritesh Shah stated that he was not a director of the company on July 01, 2002 and he became the director only on July 11, 2002. This however will not absolve him from the charges as the other vital board meeting was held on July 18, 2002.

Further he also admitted that he was an employee of the company. The company vide letters dated October 21, 2002 and January 18, 2003 had also stated that the advertisement was released under the oral instructions of Shri. Pritesh B Shah, a director. He had also participated in the manipulative transactions prior to and after the advertisement. Hence, his role in the matter is clear from the entire chain of events explained in the succeeding paragraphs.

17. I note that the company further vide letter dated January 18, 2003 informed SEBI that the board meeting held on July 18, 2002 decided to amend the articles of association of the company and sought approval of the shareholders for buyback of securities at appropriate time. Hence, at the time of making the advertisement on July 8, 2002, there was no provision in Articles of Association to

buy back its shares.

18. The buyback of 1823310 (18%) shares were proposed at Rs.11/- per share when the share price of the company in the market was around Rs.2.40/-. I observe from the financial results of the company during the relevant period that there was no justification for such a proposal of buy back especially when the company had recorded a meagre net profit of Rs.16000/- during the just concluded quarter ending June 30, 2002. The total expenditure incurred by the company during the quarter was a meagre Rs.2.65/- lakhs. They had not kept any provisions for depreciation or tax during the previous two quarters prior to the advertisement. It is highly improbable that such a company will spend Rs.4,10,728/-, which is almost 155% of the total expenditure on the just concluded quarter, on an advertisement that was not even mandated under law.

19. Furthermore, BSE had imposed a special Margin of 25% in the scrip of the company with effect from June 11, 2002. Such action points to the weak fundamentals of the company. It was brought out in the advertisement that the proposed buyback of shares was to allot 36% of the shares to a Foreign Institutional Investor. Given the weak underlying fundamentals of the company no prudent investor would be interested in the company, leave aside an FII. In the given context, the proposal to buyback and allot the shares to an FII and subsequent withdrawal of the proposal was nothing but intended to mislead investors and generate interest on the illiquid scrip.

20. It is apparent from the facts stated herein above that the advertisement was a scheme to mislead the investors by benchmarking price of the scrip at 11/- when the share was trading for less than Rs 3/-. By way of announcing the buy-back of shares, even when the articles of association of the company had no provision for buy back and the company's subsequent withdrawal must have resulted in a pecuniary loss to the investors who could have been influenced to purchase shares on the basis of the aforesaid misleading advertisements. The motive for such advertisement was to enable the promoters to offload the holdings to the innocent investors. Thus I have no hesitation in agreeing with the findings of investigation that Genus Commutrade Ltd and its directors Shri Hitesh R.Bhatt,

Shri Kalpesh R. Sheth, Shri Pritesh Shah and Rinku J Shah have violated Regulation 5(1) (a) & (b) and 6 (a) of PFUTP Regulations.

21. I note that the next charge of manipulation and creation of artificial market in the scrip is against one of the director, Shri Pritesh B Shah and related/associated entities.

22. In this regard, I note that, Shri Pritesh B Shah received shares from the associated entities namely Galaxy appliances, Mahendra Sutaria and Paresh Kumar Patel, who were having the same address. These shares were finally transferred to Atul Shah who had also received shares from Shri Piyush Jhaveri, Sanjay Gaykwad, Raju B Shah and Mahesh M Shah.

23. Rakesh Ramniklal Sheth received a total of 27 lakhs shares of the company on September 13, 2002 and September 14, 2002 from Atul Shah amounting to more than 20 percent of the total listed capital of the company. Because of this acquisition, a supplementary show cause notice dated October 18, 2005 was issued to him for the alleged violations of certain provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. He submitted that Adjudication proceeding had already been initiated in this regard. I observe that Adjudication proceeding is pending and as such it is not proper to decide the charges levelled against him in the supplementary show cause notice dated October 18, 2005. It is however clarified that without prejudice to the Adjudication proceedings pending against him. Further, it is clarified that the findings recorded in this order against him are prima facie in nature. The Adjudicating Officer may conduct his proceedings and pass an appropriate order in accordance with law without being influenced by this order.

24. I have also examined the role of Shri Rakesh Ramniklal Sheth in the alleged manipulation and creation of artificial market in the shares of the company and find that he received shares through Off Market deals from several entities including the persons acting in concert viz Rajesh Kumar V Patel, Kirti R Patel and the associated companies Galaxy Appliances Ltd and Zenet Softwares Ltd. These entities together effected a net transfer of about 4308050 (roughly 42%) shares of the company to Shri Rakesh Ramniklal Sheth just prior to the advertisement.

25. Shri Rakesh Ramniklal Sheth transferred the shares acquired through off-market deals to Piyush Jhaveri, Raju B Shah, Santosh Gaykwad, Maheshbhai Shah and Atul B Shah through similar Off-Market deals. The shares transferred among these entities were offloaded in the market mainly by Shri Piyush Jhaveri and Santosh Gaykwad. They had also purchased from the market during the investigation period.

26. It is clear that Shri. Rakesh Ramniklal Sheth was actively involved in the affairs of the company prior to the advertisements, which is evident from the statement of Shri Dinesh Singh of Garima Communications who stated that Shri Rakesh Ramniklal Sheth approached them for publishing the advertisement. He acquired large quantities of shares through off market deals prior to the advertisement and acted as the central figure in the manipulation of the shares of the company.

The details of the security flow from the group associated companies and persons acting in concert with the promoters are explained in the flowchart given hereunder.

27. Shri Atul Shah in his submission to SEBI dated 26/06/03 stated that he has received and delivered 1075000 shares on behalf of Shri Rakesh Ramniklal Sheth. He also provided other instances when he was operating on behalf of Shri Rakesh Ramniklal Sheth. Similarly, Shri. Raju B Shah in his letter dated 26/06/03 to SEBI had stated that he had received as well as delivered 1075000 shares on behalf of Shri Rakesh Ramniklal Sheth. Shri Santosh Gaykwad vide his letter dated 21/06/03 had also accepted doing transactions on behalf of Shri Rakesh Ramniklal Sheth.

This undoubtedly proves that these entities were acting as front entities in the scheme of things charted out by Shri Rakesh Ramniklal Sheth.

28. Piyush Jhavery received shares through off-market deals from Shri Rakesh Ramniklal Sheth (3202794 shares), Shri Tushar Jhaveri (284229 shares), and Raju B Shah (100300 shares) He also purchased 793905 shares from the market during the months of June-July 2002. In turn he delivered these shares to Shri Santosh Gaykwad (578506 shares) who in turn transferred 578456 shares to Shri

Atul Shah.

29. Shri Piyush Jhaveri also sold 31,74,722 shares in the market through the broker P.Suryakanth Share and Stock Brokers Pvt Ltd. Shri Piyush Jhaveri was having substantial holding of the shares of the company during the relevant period. The holdings of Shri Piyush Jhaveri on June 6, 2002, June 12, 2002, July 6, 2002 July 9, 2002, July 10, 2002 July 11, 2002 and July 12, 2002 were 625000 shares (6.17%), 605750 shares (5.98%), 764596 shares (7.55%), 882846 shares (8.72), 799846 shares (7.89), 756881 shares (7.47) and 752781 shares (7.43) respectively.

30. Shri Urvish Vora received 10 lakh shares on June 17, 2002 from Shri Rajesh Kumar Patel, Shri Kirti R Patel, Shri Paresh Kumar Patel and Hema P Patel. Shri Urvish Vora offloaded these 10 lakh shares in the market through the broker Parklight Investment Pvt Ltd during June-July 2002.

31. Shri Tushar Jhaveri, in June -July 2002 transferred a net of 156000 shares to Shri Rakesh Ramniklal Sheth, the details thereof are given hereunder: 32. I have also examined the price and volume movement of the shares prior to and after the publication of the aforesaid advertisements. I find that unusual price movement pattern was observed on BSE in the trading of equity shares during this period. The advertisements were issued for the first time on July 8, 2002. Prior to the advertisements, the promoters transferred shares to the related entities who offloaded the same during the period of advertisements. In order to attract the innocent investors, they traded among themselves prior to the advertisement and jacked up the price from Rs.2.50/- on May 24 2002 to its highest level of Rs.5.95 on June 13, 2002. Likewise, from the meagre 301 shares traded in four trades in May 2002, trading went upto 11.30 lakh shares and 16364 trades in June 2002. This spurt in volume was not backed by any fundamental of the scrip.

33. After the advertisement, the volume spurted again but the prices fell. This means that the Noticee offloaded the shares in the market during the period of advertisement and as such volume reached the peak of 11.78 lakhs on July 10, 2002. After this, the prices as well as volumes fell sharply. The price fell to Rs.0.80/- in the last week of July 2002 from a high range of Rs.2.85/- to Rs 2.3/-

during the period of advertisements. The fall continued right through the tenure of the advertisements up to end of August 2002 when it touched levels of Re.

0.75 per share in August. Thus, Shri Pritesh B Shah and related /associate entities have violated the provisions of 3,4 (a) (b), (c) and (d) and 6(a) of PFUTP Regulations.

34. The entire chain of events in respect of the buy back of shares described by the company, the unwarranted advertisement, large moneys spent, reasons for the proposed corporate actions and the subsequent withdrawal impact on the price/volume of the shares were done with premeditated design by the notices, to create an artificial demand for the shares of the company and induce innocent public for purchasing shares so as to absorb sales by the promoters and related entities.

Thus, the Noticees have committed fraud on shareholders of the company by first issuing misleading advertisement when they were not legally eligible to make commitment of buy-back as per financials of the company as also their failure to take any conclusive action thereon.

35. Prior to the period of advertisements, the Noticees managed to raise the price and volume of its scrip to induce the innocent investors. In order to strengthen the interest of the innocent investors and to induce them to invest in the scrip, the Noticees published misleading and unwarranted advertisements in the newspapers.

The action on the part of Noticees to lure innocent investors by publishing misleading statement / advertisement tantamounts to defrauding them as it was aimed to manipulating the price and volume in trading of the scrip. All such actions can be termed as frauds under Regulation 2(c) of PFUTP Regulations. Therefore, I hold them to have violated the provisions of Regulation 3, 5(1) (a) & (b) and 6(a) of PFUTP Regulations. Further, Shri Pritesh B Shah and related/associated entities have violated the provisions of 3,4 (a) (b), (c) and (d) and 6(a) of PFUTP Regulations.

36. Therefore, taking into consideration the overall facts and circumstances of the case, in exercise of the powers conferred upon me under Sections 19 of the SEBI Act read with Sections 11B of 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, 1995, I hereby restrain the Noticees viz. Genus Commutrade Ltd. (PAN No. AA ACT5651P), Shri Pritesh B Shah (PAN No. AOPS1281G), Zenet Software Ltd. (PAN No. AAACZ0978K), Urvish Ramesh Vora (PAN No. ADAPV6219R), S Rakesh Ramniklal Sheth (PAN No. AFGPS4063Q), Shri Tushar Jhaveri (PAN No. AACPZ7827J), Shri Hitesh R. Bhatt, Shri Kalpesh R. Sheth, Shri Rinku J Shah, Galaxy Home Appliances, Shri Mahendra K Sutaria, Shri Piyush Jhaveri from accessing the securities market and also prohibit them from buying, selling or otherwise dealing or associating with the securities market in any manner whatsoever for a period of 2 years.

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