

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 45 of 2010

Date of decision: 17.3.2010

Mackertich Consultancy Services Pvt. Ltd.
Corporate Law Chambers India 44-A,
Nariman Bhavan,
Nariman Point, Mumbai

.....Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G Block, Bandra
Kurla Complex, Bandra (East),
Mumbai

..... Respondent

Mr. Janak Dwarkadas, Senior Advocate with Mr. Vinay Chauhan, Advocate for the Appellant.

Mr. Shiraz Rustomjee, Advocate with Ms. Daya Gupta, Advocate for the Respondent.

CORAM: Justice N.K. Sodhi, Presiding Officer
Samar Ray, Member

Per: Justice N.K. Sodhi, Presiding Officer (Oral)

Whether the appellant is guilty of executing artificial, matched and synchronized trades in the scrip of DSQ Biotech Limited (for short DSQ) is the short question that arises for our consideration in this appeal filed under section 15T of the Securities and Exchange Board of India Act, 1992 (for short the Act).

2. The appellant is a non banking financial company registered with the Reserve Bank of India and is also an investment company and its main business is to buy and sell shares and securities. The Securities and Exchange Board of India (for short the Board) carried out investigations into the buying, selling and dealings in the shares of DSQ and these revealed that, among others, the appellant had executed fictitious and synchronized trades creating artificial volumes in the scrip. Accordingly, a notice dated October 28, 2005 was issued to the appellant alongwith two others calling upon it to show cause why suitable directions be not issued under Section 11B of the Act. The appellant filed its reply denying the allegations. On the basis of the material collected during the investigations and the enquiry conducted by the

whole time member under Section 11B of the Act, he found that the charge of executing fictitious and matched trades creating artificial volumes stood established and by his order dated March 3, 2010 held the appellant guilty of violating Regulation 4(b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. The appellant has been restrained from buying, selling or dealing in the securities market directly or indirectly for a period of one year from the date of the order. It is against this order that the present appeal has been filed.

3. We have heard the learned senior counsel for the appellant and Mr. Shiraz Rustomjee, learned counsel for the respondent Board and are of the view that the appeal deserves to be dismissed. At the outset, we may refer to the trades executed by the appellant which have been found to be artificial, synchronized and matched. The following chart depicts the trades executed by the appellant on October 3 and October 25, 2000 in the scrip of DSQ. The details of these trades and several other trades executed by the appellant had been furnished to it alongwith the show cause notice.

Trade date	Trade time	Trade number	Trade price	Trade Qty.	Buy				Sell				Time Diff.
					Order Time	Order Price	Broker	Client	Order Time	Order Price	Broker	Client	
03/10/2000	14:11:17	341221	136.25	50,000	14:11:16	136.25	CSFB	Noticee	14:11:17	136.25	Khandwala	Noticee	0:00:01
03/10/2000	14:11:35	341498	136.25	50,000	14:11:35	136.25	CSFB	Noticee	14:11:25	136.25	Khandwala	Noticee	0:00:10
03/10/2000	14:11:49	341661	136.25	50,000	14:11:49	136.25	CSFB	Noticee	14:11:43	136.25	Khandwala	Noticee	0:00:06
03/10/2000	14:11:56	341756	136.25	50,000	14:11:56	136.25	CSFB	Noticee	14:11:54	136.25	Khandwala	Noticee	0:00:02
03/10/2000	14:22:28	353461	135.00	99,500	14:22:28	135.00	CSFB	Noticee	14:22:28	135.00	C.Mackertich	Noticee	0:00:00
03/10/2000	14:22:52	353936	135.10	1,00,000	14:22:52	135.10	CSFB	Noticee	14:22:51	135.10	C.Mackertich	Noticee	0:00:01
25/10/2000	14:03:08	525178	66.25	50,000	14:03:07	66.25	Khandwala	Noticee	14:03:08	66.25	CSFB	Noticee	0:00:01
25/10/2000	14:03:21	525448	66.25	50,000	14:03:19	66.25	Khandwala	Noticee	14:03:21	66.25	CSFB	Noticee	0:00:02
25/10/2000	14:03:28	525627	66.25	50,000	14:03:28	66.25	Khandwala	Noticee	14:03:28	66.25	CSFB	Noticee	0:00:00
25/10/2000	14:03:38	525787	66.25	50,000	14:03:38	66.25	Khandwala	Noticee	14:03:38	66.25	CSFB	Noticee	0:00:00
25/10/2000	15:02:02	619333	68.65	49,900	15:01:59	68.65	C.Mackertich	Pinnacle	15:02:02	68.65	CSFB	Noticee	0:00:03
25/10/2000	15:02:22	620137	68.65	49,544	15:02:22	68.65	C.Mackertich	Pinnacle	15:02:21	68.65	CSFB	Noticee	0:00:01
25/10/2000	15:02:44	620756	68.65	49,344	15:02:42	68.65	C.Mackertich	Pinnacle	15:02:44	68.65	CSFB	Noticee	0:00:02

A mere look at the aforesaid chart leaves no room for doubt that the trades executed had been matched to the second and some were matched within seconds. Not only that, another interesting feature of the aforesaid trades is that the appellant is on both sides of the trades i.e.

it was the buyer as well as the seller. For instance, on October 3, 2000 it purchased 50,000 shares of DSQ through CSFB as its broker. The buy order was put in the system at 14:11:16 hours at the rate of Rs. 136.25 per share. Simultaneously, at the same time the appellant was also a seller selling through Khandwala as its broker and it sold the same quantity of shares at the same rate one second later. Both the buy and sell orders matched and the trade was executed through the system. Same is the position with regard to the other trades. In the last three trades Pinnacle was the buyer which is admittedly an associate company of the appellant. These trades are obviously artificial since there was no transfer of beneficial ownership in the traded shares and such trades only created artificial volumes. We must observe that the learned senior counsel appearing for the appellant did not dispute the aforesaid trades but strenuously argued that the appellant did not execute any manipulative trade and it was only trying to shift its position in the scrip. We are unable to accept this contention. There are several known methods by which traders/investors could roll over a trade and postpone the settlement obligations but no investor/trader can be permitted to execute fictitious trades in a manner by which he lands up as the buyer and the seller in a synchronized manner. We are, therefore, satisfied that the appellant was guilty of the charges levelled against it. No fault can, thus, be found with the impugned order.

In the result, the appeal fails and the same is dismissed with no order as to costs.

Sd/-
Justice N.K.Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.3.2010
pmb
Prepared and compared by: pmb