

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 113 of 2008

Date of decision: 17.03.2010

Krishna Filaments Limited

Betegaon Village,

Boisar East, Taluka Palghar,

Thane District, Maharashtra.

..... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A, "G" Block,

Bandra Kurla complex, Bandra (East),

Mumbai.

..... Respondent

Mr. P.N. Modi, Advocate with Mr. Ranjit Bhonsale and Mr. Joby Mathew
Advocates for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

This order will dispose of a bunch of 5 Appeals no. 113, 144 to 146 and 149 of 2008 all of which are directed against the common order passed by the whole time member of the Securities and Exchange Board of India (for short the Board) holding the appellants guilty of violating the provisions of Regulation 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (for short the Regulations). He also found that the appellants other than the appellant in Appeal no. 113 of 2008 had violated Regulation 11(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (for short the takeover code) and by his order dated

June 5, 2008 he restrained them from accessing the securities market for a period of two years in addition to the period of debarment already undergone in pursuance to an interim order passed by the Board. He also directed the appellants other than the appellant in Appeal no. 113 of 2008 to make public announcements in accordance with the takeover code by taking March 31, 1998 as the reference date for calculation of the offer price. Since the main arguments were addressed in Appeal no. 113 of 2008, the facts are being taken from this case. Learned counsel for the parties were agreed that the decision in this appeal shall govern the other appeals as well.

2. Krishna Filaments Limited (hereinafter referred to as KFL) is a company incorporated under the provisions of the Companies Act, 1956. It came out in April/May 1997 with a public issue of 33,45,000 optionally fully convertible discounted debentures (for short the debentures) of Rs.200 each for cash at a discounted price of Rs.160. The debenture holders had the option to convert them into equity shares of Rs.10 each at the end of 17 months from the date of allotment at a discount of $33\frac{1}{3}$ per cent to the average daily closing price for the previous six months on the Bombay Stock Exchange (BSE) subject to a maximum conversion price of Rs.200 per share and a minimum of Rs.10 per share. Another option that the debenture holders had was to convert them into non convertible debentures of Rs.200 each carrying interest at the rate of 19 per cent redeemable in three equal installments at the end of 36, 48 and 60 months from the date of allotment. It is common ground between the parties that November 13, 1998 was the date of conversion and the average price of the scrip as on that date for the previous six months was Rs.154. The Board observed that the price of the scrip of KFL increased from Rs.153 on BSE and Rs.154 on National Stock Exchange (NSE) on May 15, 1998 to Rs.311 on June 9, 1998 on BSE and Rs.313 on June 4, 1998 on NSE. As a result of this unusual spurt in price and volumes in the scrip, the Board carried out investigations which revealed that KFL and its directors had rigged the price of the scrip upwards to fix the conversion price of the debentures at Rs.154 per share for non promoters/other shareholders and Rs.200 for promoters and collaborators. According to the Board, the device adopted by KFL and its directors was to corner the already low floating stock of

the scrip from the market by sucking out its liquidity with a view to ensure that the price of the scrip goes up. Investigations further revealed that KFL used a complicated web of different companies to purchase the shares from the market and this, according to the Board, was done to hide the identity of the persons carrying out the rigging operations. According to the investigations, two sets of companies were used for cornering the shares. The first set of companies is Alankar Finance (P) Ltd., Agnikamal Finance (P) Ltd., Adhikash Finance (P) Ltd., Kalpit Finance (P) Ltd., Renold Finance (P) Ltd., and Satyanand Finance (P) Ltd. (hereinafter referred to as Alankar, Agnikamal, Adhikash, Kalpit, Renold and Satyanand, respectively). Alankar, Agnikamal, and Satyanand were allegedly controlled by Nalinesh R. Dalal, a Chartered Accountant whereas Adhikash and Renold were controlled by Anant Narayan Iyer, a financial consultant and this set of companies shall collectively be referred to hereinafter as Dalal-Iyer companies. The other set of companies that were allegedly used to execute the game-plan were Competent Trading Pvt. Ltd., Dominance Trade and Investment Pvt. Ltd., Precise Exports Pvt. Ltd., Marvellous Trading Pvt. Ltd., Lyric Investments and Trading Pvt. Ltd., Responsive Plastics Pvt. Ltd., and Gainful Exports Pvt. Ltd. (hereinafter referred to as Competent, Dominance, Precise, Marvellous, Lyric, Responsive and Gainful, respectively). These companies were allegedly controlled by M/s. Jiten Mehta and Sunil Nair and they shall collectively be referred to hereinafter as Mehta-Nair companies. Based on the findings recorded in the investigation report, the appellant was served with a show cause notice dated July 16, 2001 calling upon it to show cause why suitable directions under section 11B of the Securities and Exchange Board of India Act, 1992 be not issued including directions prohibiting it from accessing the capital market. Similar notices were issued to the appellants in the connected appeals. The appellants filed their replies denying the allegations. The whole time member came to the conclusion that KFL and its directors manipulated the price of the share in the market so that the conversion price of the debentures becomes higher. It was found that KFL and its directors gave their own funds for the purchase of shares by different front entities against fictitious machinery and spare parts bills and also against allotment of preference shares and it was in this manner that

the price of the scrip was sought to be pushed upwards. In view of these findings, the then chairman of the Board found that the appellants violated Regulation 4 of the Regulations and also Regulation 11(2) of the takeover code and by his common order dated September 10, 2004 concluded that the charges levelled against them stood established. Accordingly, KFL and its promoters along with its associate companies and their directors were prohibited from accessing the capital market and dealing in securities for a period of five years. All these entities other than KFL were also directed to come out with a public announcement under the takeover code. Feeling aggrieved by this order, the appellants filed Appeals no. 277 to 280 of 2004 and Appeal no. 30 of 2005 before this Tribunal. These appeals came up for hearing on March 1, 2007 and the Tribunal found that the findings against the appellants had been recorded primarily on the statements of N.R. Dalal, A. N. Iyer, one Mr. Gupta, Jiten Mehta and Sunil Nair. Even though copies of the statements of these witnesses had been furnished to the appellants during the course of the investigations, they were not allowed to be cross-examined and the Tribunal found that this was in violation of the principles of natural justice. The allegations made in the show cause notice were also found to be vague and disjointed. Some additional documents were sought to be placed before the Tribunal for the first time and there was a dispute between the parties as to whether those had been produced during the course of the hearing before the Board. The Tribunal set aside the order impugned in the appeals and observed that "... We deem it proper to remand the case back to the Board to pass a fresh order in accordance with law after affording an opportunity of hearing to the appellant and after complying with the principles of natural justice. The contentions raised before us on either side remain open." It was left open to the Board to issue a fresh or supplementary show cause notice, if so advised.

3. In pursuance to the observations made in the remand order, the Board issued a fresh show cause notice dated May 29, 2007 to the appellant and the same was addressed to the other appellants as well. After referring to the background which necessitated the investigations to which reference has been made in the earlier part of our order, it is alleged that Dalal-Iyer companies which were intimately connected with KFL made gross

purchases of 6,39,500 shares and net purchase of 4,37,800 shares of KFL from the market with the funds received from KFL/its directors as under:

Name of the Company	Qty	Amt. (Rs.)
Alankar	215500	24168198
Agnikamal	77000	8758095
Adhikash	54450	6044705
Kalpit	65100	6884366
Satyanand	161500	16350840
Renold	65950	7044578
Total	639500	69250782

The show cause notice then refers to the funds received by Dalal-Iyer companies from KFL and its directors and it is alleged that the funds were given to these companies against fictitious and bogus machinery and spare parts bills. The details of the fund-flow were furnished in Annexure B to the show cause notice. Having purchased the shares from the market, Dalal-Iyer companies are then said to have sold these shares to Mehta-Nair companies mainly through off-market transfers. It is further alleged that these off-market transactions were not made through regular contract notes but through debit notes raised by the sellers (Dalal-Iyer companies) at prices which were markedly different from the market price. According to the show cause notice, the bills raised by Dalal-Iyer companies were not genuine and were used only as a conduit to transfer the funds to these companies to enable them to purchase the shares of KFL. These facts are said to have been corroborated by the statements made by N.R. Dalal and A. N. Iyer and copies of their statements were annexed to the show cause notice.

4. The show cause notice also alleges that KFL and its associate company Krishna Vinyl Ltd. (KVL which is the appellant in Appeal no. 149 of 2008) had transferred funds to the tune of Rs.27.03 crores to Mehta-Nair companies by way of investment in preference shares of these companies. It is alleged that these companies were unlisted companies and there was no justification for KFL and KVL to make such huge investments which did not yield any interest or dividend. According to the Board, these funds were in fact provided to Mehta-Nair companies for purchase of shares of KFL from the secondary market.

5. There is yet another charge levelled against the appellant. It is alleged that KFL in some cases directly purchased its own shares through a sub-broker Dharamshi Capital Services (for short DCS). The allegation is that DCS as a sub-broker received a sum of Rs.1,36,00,000/- from KFL towards the payment of the shares of KFL purchased by it (DCS) on behalf of Competent and Dominance. The sub-broker is also said to have received another sum of Rs.30 lacs from H.D. Fire Protect Company on the instructions of KFL for the purchase of its shares. The details of the payments received by DCS from KFL are given in para 3 of the show cause notice.

6. In short, the gravamen of the first charge in the show cause notice is that KFL and its directors unlawfully transferred its funds to Dalal-Iyer companies and Mehta-Nair companies by way of bogus machinery bills and by way of subscription to bogus preference shares and that these companies then bought shares of KFL on-market and off-market to manipulate the price of the scrip so as to rig the conversion price of the debentures which had been issued by KFL. The second charge in the show cause notice is that the appellant along with its associate concerns namely, Mehta-Nair companies along with their directors and in association with M/s. Jiten Mehta, Sunil Nair, Lunkaran Kayal, and Smt. M. B. Joshi violated Regulation 11(2) of the takeover code.

7. The appellant filed its detailed reply dated April 30, 2008 denying all the allegations. It is pleaded that despite repeated requests, the Board did not disclose as to which machinery purchase bills were bogus nor those bills or list of such bills or copies thereof or even details thereof were ever furnished to the appellant. The purchase bills were said to be legitimate and genuine and that machinery had been purchased from Renold and two other companies namely, Dharamshi Trading Pvt. Ltd. and Suraj Trading Pvt. Ltd. and it is denied that machinery had been purchased from the six companies referred to in paras 2.3 and 2.5 of the show cause notice. It has also been denied that the preference shares allotted to KFL were bogus or that its subscription to the same was only meant to fund the purchase of KFL shares. It is further pleaded that KFL sold the preference shares for Rs.18.26 crores. The charge that KFL and its associate companies

(Mehta-Nair companies) had violated Regulation 11(2) of the takeover code was also emphatically refuted. The case set up by the appellant is that beyond business relations it had no other connection with Dalal-Iyer and Mehta-Nair companies. The appellant also denied the incidental allegations made in the show cause notice and pleaded that N.R. Dalal, A. N. Iyer, Jiten Mehta, Sunil Nair and others on whose statements reliance had been placed had made false statements and that the appellant be allowed to cross-examine those individuals.

8. On a consideration of the material collected during the course of the enquiry and the investigations conducted by the Board and after affording a personal hearing to the appellant, the whole time member by his order dated June 5, 2008 held the appellant guilty of the charges levelled in the show cause notice and reiterated the findings recorded earlier by the then Chairman of the Board in his order of September 10, 2004. As already noticed, the appellant has been debarred from accessing the capital market for a period of two years in addition to the period for which it already remained out under the interim orders. Hence this appeal.

9. We have heard the learned counsel for the parties at great length who have taken us through the show cause notice, the impugned order and also the voluminous record including the plethora of documents that were placed before us by the parties during the course of the hearing. The question that arises for our consideration is whether the Board has succeeded in establishing the charges that were levelled against the appellant in the show cause notice. As already observed, the first limb of the charge against the appellant is that it gave its funds to Dalal-Iyer companies for the purchase of its shares from the market and that the funds had flown to these companies on the basis of bogus machinery purchase bills. Annexure B to the show cause notice is the chart showing the fund flow from the directors of KFL to these companies. When we examine this charge minutely, we are more than satisfied that the Board has miserably failed to establish the same. Except for a bald assertion made in para 2.5 of the show cause notice that the bills raised by these companies were not genuine, there is no material whatsoever on the record to

substantiate this allegation. All that has been said in the show cause notice is that Dalal-Iyer companies appeared to be finance companies as their names suggest and, therefore, it could be said that the bills raised by them were bogus. The same bald statement has been reiterated in the impugned order. The learned counsel for the respondent conceded before us that the Board was not in possession of any of the alleged bogus bills on the basis of which the machinery is said to have been purchased by KFL. This being so, we wonder how the Board could allege that the bills were bogus. The allegation on the face of it is vague and without any basis. The appellant in its reply to the show cause notice had specifically stated that no details/particulars of the so called bogus bills had been furnished to it. The appellant claims that during the hearing of Appeal no. 279 of 2004 filed by the appellant against the order dated September 10, 2004, a compilation of all machinery purchase bills were duly tendered by the appellant before this Tribunal along with the inventories made by the court receiver. An averment to this effect has been made in the memorandum of appeal to which a reply has been filed on behalf of the Board and this averment has not been denied. As per the practice followed in the Tribunal which is in consonance with the principles of natural justice, no document is accepted or taken on record till a copy thereof has been furnished simultaneously to the counsel opposite. This being the position, copies of the bills should have been available with the respondent Board when it issued the show cause notice after remand. Be that as it may, the appellant denies that it purchased machineries from the six Dalal-Iyer companies referred to in para 2.5 of the show cause notice. It states that it purchased machinery only from Renold which is a Dalal-Iyer company and from two other companies namely, Dharmesh Trading Pvt. Ltd. and Suraj Trading Pvt. Ltd. which are not in that group. The appellant had placed before the Board copies of the two inventories prepared by the court receiver appointed by the High Court of Bombay on August 3, 2000 in Suit no. 1990 of 2000 filed by IDBI as debenture trustees of KFL and the appellant claims that the machineries purchased were in possession of the court receiver and had been duly shown in the inventories. Even though the whole time member assumes that the plea of the appellant was correct, he brushes aside the inventories and holds that since consideration for the

purchase of machinery had been paid by the directors of KFL, it raises a serious doubt as to the genuineness of its claim. We do not agree with him. The bills do not become bogus by the mere fact that the funds came from the accounts of the directors of KFL. This conclusion by the whole time member is baseless and devoid of any logic. If he had any doubt whether the machineries purchased by KFL from Renold and the other two companies had been shown in the inventory or not, he should have probed the matter further and could have even got the machineries physically verified with reference to the bills which he could have obtained from the parties. Not having done so, we cannot uphold the findings recorded by him in this regard. Moreover, there is nothing on the record to show that the appellant had purchased the machineries from all the six Dalal-Iyer companies as alleged in the show cause notice. In this view of the matter, the allegation that the machinery purchase bills were bogus or fictitious and were only a device adopted by KFL to transfer its funds to Dalal-Iyer companies for the purchase of its shares is untenable and contrary to the record. To be fair to Sh. Kumar Desai, learned counsel for the Board, we must observe that when confronted with the record, even he conceded that in the absence of the bills, he could not defend the findings recorded in this regard.

10. We may now examine the purchase of shares by Dalal-Iyer companies and the fund-flow chart in Annexure B to the show cause notice which indicates the manner in which the funds allegedly came to these companies. Here again, the whole time member has completely failed to bring home the charge to the appellant. The summary of the gross purchases made by the six Dalal-Iyer companies has been given in the chart in para 2.3 of the show cause notice which has been reproduced in para 3 above. A mere look at the chart would show that the Board had not furnished any details/particulars of the purchases made by these companies. The dates on which the shares were purchased and the rate at which the purchases were made are conspicuously absent and these details were necessary in view of the discussion that follows. We have, therefore, no hesitation in holding that the show cause notice in this regard was vague. However, this is not the only ground on which we hold that this charge is not proved. During the course of the

hearing the learned counsel for the Board placed before us a large number of documents which are on the record of the Board and these include the contract notes that were issued when the six Dalal-Iyer companies purchased the shares of KFL from the market. These contract notes clearly demolish the case as set up by the Board. The total number of shares of KFL as shown to have been purchased by the Dalal-Iyer companies is given in the chart referred to in para 3 of our order. As already observed, this chart was given to the appellant in the show cause notice and reliance has been placed thereon in the impugned order as well. The total number of shares purchased by these companies as mentioned in the chart does not tally with the total number of shares purchased by each of them as per the contract notes now placed before us by the Board. By way of an example, we shall compare the figures in the case of Alankar which is one of the Dalal-Iyer companies. We have collated the details of the purchases made by Alankar from the contract notes which have been placed before us and the same are reproduced hereunder in the form of a chart. Dates in our chart are in the order in which the contract notes have been compiled by the Board.

ALANKAR FINANCE & INVESTMENT PVT. LTD.

Contract Note No.	Date	Bought Qty.
C/21/0001	31/5/1996	200
A/10/0001	1/6/96	5,500
A/13/0001	25/6/1996	8,900
C/24/0002	21/6/1996	2,600
C/25/0001	28/6/1996	500
C/49/0001	13/12/1996	4,200
A/38/0002	14/12/1996	3,700
C/50/0002	20/12/1996	200
A/42/0002	20/1/1997	1,900
C/03/0001	24/1/1997	1,000
A/44/0001	3/2/97	400
C/03/0001	7/2/97	2,000
A/45/0001	10/2/97	200
C/51/0002	27/12/1996	
A/23/0003	1/9/97	2,100
C/18/0001	9/5/97	19,700
C/19/0001	16/6/1997	29,800
C/21/0002	30/5/1997	1,900
A/10/0002	2/6/97	500
C/22/0002	6/6/97	3,200
A/11/0001	9/6/97	7,500
C/23/0001	13/6/1997	1,700
A/12/0001	16/6/1997	4,600
C/25/0001	27/6/1997	500

A/17/0002	21/7/1997	3,200
C/29/0001	25/7/1997	1,00
A/24/0003	9/9/97	2,100
A/11/0002	9/6/97	4,000
A/07/0012	12/5/97	30,400
A/13/0084	23/6/1997	2,400
A/08/0032	21/5/1997	4,600
A/12/0093	18/6/1997	2,400
A/14/0077	30/6/1997	3,600
F/48/23/0001	23/2/1998	2,500
A/48/0001	2/3/98	14,500
A/46/97/98/0073	19/2/1998	20,000
TOTAL		1,93,500

According to the chart referred to in para 3 above, Alankar purchased 2,15,500 shares gross whereas the contract notes indicate that this company purchased only 1,93,500 shares. The two figures do not tally and since the contract notes have been placed before us, reliance can only be placed on them and not on the chart as prepared by the Board and relied upon to pass the impugned order. We are left wondering how and from where the Board arrived at the figure of 2,15,500. This apart, another interesting anomaly stares us in the face. We have already noticed that the chart relied upon by the Board does not give the dates on which the shares were purchased whereas the contract notes give the exact dates of the purchases as they ought to. In the case of Alankar, the contract notes indicate that purchases were made by this company from May 31, 1996 upto March 2, 1998 and no purchase was made thereafter as there is no other contract note on the record. On the other hand, the fund-flow chart Annexure B to the show cause notice even if taken as correct and which has been heavily relied upon by the Board, clearly indicates that the funds started flowing from the directors of KFL to Alankar only from March 7, 1998 and thereafter. By this time Alankar had already made the purchases of KFL shares from the market from May, 1996 onwards. Can it then be said that Alankar purchased the shares from the market with the funds provided by KFL and its directors. The answer, obviously, has to be in the negative. We have only referred to the case of Alankar but same is the position with regard to the other five Dalal-Iyer companies. In their case also the figures mentioned in the chart do not tally with the total number of shares purchased by them as per the contract notes. Not only this, even the fund-flow as per Annexure B

does not indicate that these companies had received the monies before they purchased the shares.

11. We may now briefly refer to the fund-flow chart as furnished to the appellant as Annexure B to the show cause notice. This chart purports to show the flow of funds from the directors of KFL to Dalal-Iyer companies which funds were allegedly utilized by these companies for acquiring KFL shares. It really makes no sense. Some of the entries from this chart are reproduced below to highlight the absurdity of the chart.

“Chart showing fund flow from the directors of KFL to the group of companies controlled by Mr. Dalal and Mr. Iyer. This fund received by the aforementioned entities was utilized for acquiring KFL/KVL shares. Afterwards, KFL and its associates were repaid by these entities by showing book entries of payment made for purchase of goods.

Initial Date of Transfer						
Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity
07.03.98						
K. K. Agarwal	28	Alankar	28	Dharmesh Trading	28	KFL
18.03.98						
K.K. Agarwal	64.15	Alankar	36415 (19/03/98)	Sanvy	51	KOCL
			12.50	Aganit	12.5	KFL
19.03.98						
K.K. Agarwal	6.35	Alankar	10	Repute		KOCL
09.01.98						
K.K. Agarwal	49	Agnikamal	25	Sanvy	25	KFL
			24	Navrang	25	KFL
19.03.98						
K.K. Agarwal	24.70	Agnikamal	14	Snavy	14	KOCL
			10	Navrang	10	KOCL
			765	Penguin Ent.		
24.03.98						
K.K. Agarwal	75.30	Agnikamal	52.75	Sanvy	40	KOCL
					12.75	KFL
			24	Repute	23.80	KFL

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Initial Date of Transfer								
Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity
17.11.97								
R. K. Agarwal	50	Agnikamal	20	Suraj	9.80	Navrang	9.80	KFL
					10.20	Repute	10.20	KFL
			30	Renold	10.20	Aganit	10.20	KFL
					18.25	Sanvy	18.25	KFL
					1.55	Suraj	1.55	Icon

17.11.97								
R. K. Agarwal	30	Agnikamal	20	Renold Finance	20	Dharmraj	20	Virendra & Co.
			10	Sanvy	10	KFL		KFL

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Initial Date of Transfer						
Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity
18.3.98						
S. K. Agarwal	21.10	Adhikash Finance	5.50	Repute	5.50	KOCL
			14.50	Sanjay	14.50	KOCL
			0.25	Suraj Trading	.25	Impex India
			.25			Impex India

Initial Date of Transfer								
Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity	Amount Rs. Lakh	Name of Entity
18.10.97								
S. K. Agarwal	50	Alankar Finance	10	Renold Finance	10	Dharmraj	10	Laxmi Steel
			6.20	Renold Finance				
			8.80	Renold	5.25	Suraj	5.25	Intel
					0.70	Adhikash	.70	Vimal Sales
					2.85			Jalan Iron
			5	Repute	5	KFL		
			10	Sanvy	10	KFL		
			10	Navrang	10	KFL		

The first entry in this chart shows that on 7.3.1998 K.K. Agarwal, a director of KFL transferred a sum of Rs.28 lacs to Alankar which transferred the said amount on the same day to another entity by the name of Dharmesh Trading who, in turn, transferred it to KFL again on the same day. If this fund flow is correct, then Alankar did not purchase shares with the money which it received from K.K. Agarwal, a director of KFL. The fund flow chart belies the charge levelled against Alankar. Such obscure entries clutter the whole chart. In some of the cases this chart shows that funds given by the directors of KFL land up on the same day through one or the other Dalal-Iyer companies to Icon, Virendra & Co., Impex India, Laxmi Steel, Intel, Vimal Sales, and Jalan Iron. Who are these entities is not even known to the Board and we wonder how this chart was prepared and who prepared it. Another interesting feature to note here is that the statement of N.R. Dalal was recorded during the course of the investigations on 29.8.2000 and at the end of the statement we find a part of the cash flow statement which is a verbatim replica of Annexure B and that is signed by both Dalal and Iyer. We have read the entire statement and there is no reference to this chart anywhere. When we questioned the authorship of this chart, the Board filed an affidavit before us stating that "It is inferred that the investigating officer(s) has prepared the charts to the show cause notice issued by SEBI to the applicants. I further state that the concerned investigating officer(s) has left the services of the Board." Such inferences drawn by the Board lead us nowhere and the fact of the matter is that the chart Annexure B to the show cause notice does not establish that funds from the directors of KFL had flown to Dalal-Iyer companies for the purchase of shares of KFL. The fund-flow chart is as vague as it could be and we have no hesitation in rejecting the same. Since a part of this chart which appears at the end of the statement of N.R.Dalal recorded on 29.8.2000 has been signed both by Dalal and Iyer, it appears to us that this chart was prepared by these two persons and given to the Board during the course of the investigations which has been blindly adopted by it and made the basis of the show cause notice and the impugned order. Here again, we must observe that Sh. Kumar Desai, learned counsel for the respondent Board very fairly conceded that the

fund-flow chart in Annexure B is vague and does not establish the allegation as made in the show cause notice.

12. At this stage we may notice an objection raised by the learned counsel for the appellant regarding the contract notes to which reference has been made hereinabove. Even though we have held that the contract notes belie the allegations levelled by the Board, Sh. Pesi Modi learned counsel for the appellant very seriously contended that these contract notes had never been furnished to the appellants at any stage of the proceedings and the same had been given to them for the first time when the documents were produced before the Tribunal during the course of the hearing of these cases. Sh. Kumar Desai, on the other hand, strenuously contended that the appellants were given the inspection of all the documents including the contract notes and, therefore, it is not open to them to raise such a plea. The appellant then filed another affidavit stating on oath that these contract notes had not been supplied to the appellants at any prior time. Since we have held that these contract notes do not support the case as set up by the Board, it is not really necessary to dwell on this issue any further.

13. We may also refer to the macro data of these purchases which emerges from the record. As per the contract notes, the total gross purchases made by the six Dalal-Iyer companies comes to 4,12,800 shares whereas, according to the Board, the figure is 6,39,500. We do not know from where the figures were gathered by the Board. The contract notes reveal yet another interesting feature which has a direct bearing on the allegations made against the appellant. The case of the Board is that the price of the scrip of KFL was rigged upwards by KFL and its directors in May-June, 1998 with a view to fix the conversion price of the debentures at Rs.154. The contract notes on the record show that all the 4,12,800 shares were purchased by the Dalal-Iyer companies prior to May, 1998. This being so, the case as set up by the Board against the appellant falls flat on the ground.

14. Faced with this situation, Shri. Kumar Desai learned counsel for the Board then took us to the accounts of Dalal-Iyer companies maintained by them in their books

pertaining to their different bank accounts. He took the case of Alankar as an example to contend that funds had actually flown from the directors of KFL to these companies. In particular, he referred to the Canara Bank book maintained by Alankar which showed that it received on March 7, 1998 an amount of Rs. 1,06,00,000/- in two tranches of Rs.78 lacs and Rs. 28 lacs from two directors of KFL. Simultaneously, he referred to the bank account of Alankar maintained by Canara Bank showing a deposit of Rs.1,06,00,000/- in the account of Alankar through 'DDs' (Demand Drafts). On the same day this amount is shown to have been transferred to Dharmesh Trading, Dharmaraj Trading and Renold. No doubt the amount was received by Alankar and disbursed on the same day but these accounts do not show the purpose for which the amounts were paid. We have already seen above that the shares were purchased by Alankar much prior to March 7, 1998. These bank accounts also do not establish the charge as levelled. In any case, the whole time member in the impugned order has not relied upon these accounts nor has any reference been made to them.

15. In view of our aforesaid findings two conclusions emerge: (i) that Dalal-Iyer companies purchased the shares of KFL with their own funds and certainly not with the funds provided by KFL and / or its directors; and (ii) that the purchases made by them were much before May-June, 1998 when the price of the scrip is alleged to have been rigged upwards. Whoever may have rigged the price, if at all, the blame does not rest with KFL or its directors. In any case, the Board has failed to establish this. In the result, we cannot uphold the findings that KFL and / or its directors had given funds to Dalal-Iyer companies against bogus bills to enable these companies to purchase the shares of KFL from the market. The first pillar of the charge of violating the Regulations, therefore, falls.

16. Before we deal with the second pillar of the charge, let us dispose of an ancillary issue that has been referred to in the show cause notice which brings out a glaring contradiction in the allegations. It is alleged in para 2.14 of the show cause notice that

the Dalal-Iyer companies after purchasing the shares of KFL from the market transferred / sold those shares to Mehta – Nair companies in off market deals which were not routed through any broker or any stock exchange and that the transfers were made by raising debit notes and no money had changed hands. It is also alleged in this para that the debit notes were bogus and were antedated and that these were created to justify the possession of shares which were found during the course of a search made by the Income Tax department at the premises of KFL group companies. These allegations are contradicted by what is alleged in para 2.10 of the show cause notice. It is alleged in this para that the dealings in the shares of KFL and the funds provided for purchasing these shares were looked after by K.K. Agarwal, a director of KFL or any one of his trusted employees, namely, Jiten Mehta / Depak Thattee. It is further alleged that the consideration for the shares purchased by Mehta-Nair companies from Dalal-Iyer companies was deposited in the accounts of Dalal-Iyer companies. It is also claimed that Dalal and Iyer had given blank cheques to K.K. Agarwal / Jiten Mehta and on the basis of these cheques K.K. Agarwal had taken the money out which reached KFL and its associate concerns. The flow of funds in this regard has been shown in a chart which is annexure 'E' to the show cause notice. Now let us examine these allegations and take them on their face value. On the one hand it is said that Dalal-Iyer companies sold the shares to Mehta-Nair companies on the basis of debit notes and no money had changed hands and, on the other hand, it is alleged that consideration for the purchase of the shares by Mehta-Nair companies had been deposited in the accounts of Dalal-Iyer companies which money was later taken out by K.K. Agarwal. One wonders which of the two allegations is correct since both cannot exist together. We have carefully examined the fund flow statement in annexure 'E' as well and find that there are several inexplicable entries therein. Reference is made to debit notes in the fund flow chart which is really surprising and the money has also gone to entities like Cipta, Xicon, Cavalier etc. It is not understandable who these entities are and how they form part of the fund flow chain. In this view of the matter, we can place no reliance on either of the allegations referred to above and not even on the fund flow chart in annexure 'E' to the show cause notice. Here, we may also take note of another

objection raised by Sh. Pesi Modi Advocate, on behalf of the appellant. Referring to the impugned order, he argued that findings like K.K. Agarwal or his trusted employees handled the sale / purchase of KFL shares and also the funds provided for the said purpose have been made on the basis of the statements made by Dalal and Iyer whose statements were recorded in detail during the course of the investigations. He also referred to the finding that Dalal-Iyer companies issued bogus machinery bills to KFL and the latter paid money to the former for the same. This finding, according to the learned counsel, could only be based on the statements of Dalal and Iyer, copies of which had been furnished with the show cause notice. There are several other findings in the impugned order which could only be based on the statements of these persons, there being no other material on the record to support them. It is strenuously argued that these persons made false statements and this has been the case of the appellant throughout and that the Board did not allow the appellant to cross-examine them. According to the learned counsel for the appellant, this is a clear violation of the principles of natural justice and also the directions issued by this Tribunal in its order dated March 1, 2007 by which the earlier appeals filed by the appellant and others had been allowed and the cases remanded. There is considerable merit in this objection. It may be recalled that the then Chairman of the Board by his order dated September 10, 2004 had held the appellant and others guilty of violating the Regulations and this order was set aside by this Tribunal on March 1, 2007 holding that the persons on whose statements the Board had placed reliance were not allowed to be cross-examined. There is no material on the record to show that blank cheques were obtained by K.K. Agarwal, a director of KFL or that he was handling the purchase of shares of KFL and also the funds provided for that purpose except the statements of Dalal and Iyer the veracity of which is being seriously disputed. We also find from the record that on the trail of the statements made by Dalal, Iyer and others, the Board had obtained several third party documents like the account opening forms of the so-called front entities, dividend registers of the Registrar and Transfer Agents etc. to establish the close proximity of the appellant with Dalal-Iyer and Mehta-Nair companies. These companies have shown their correspondence address as that of

KFL. The appellant rightly contends that the intention of the entities to record the correspondence address as that of the appellant could have been elicited only through cross-examination which it was denied. We are really surprised why the Board feels shy in allowing cross-examination in cases where it becomes necessary. We do appreciate that it is not to be allowed in every case but where the Board is placing reliance on the statement(s) of some person(s) to uphold the charge and the correctness of that statement is being disputed by the appellant, the only way to bring out the truth is to allow cross-examination of the person(s) who made the statement(s). This is the only way in which the principles of natural justice could be complied with. We are in agreement with the learned counsel for the appellant that the whole time member did not carry out the directions issued by this Tribunal. Similarly, if the Board is to place reliance on third party documents of which the appellant is not the author and is disputing them, it should have been allowed to cross-examine the concerned person(s). It is not fair on the part of the whole time member to say that he is not relying upon the statements of Dalal and Iyer when in fact he is without referring to their names.

17. This brings us to the other main charge levelled against the appellant in the show cause notice. It is alleged in para 2.17 of the show cause notice that funds to the tune of Rs. 27.03 crores had been transferred by KFL and KVL, its associate company to Mehta-Nair companies by way of investment in their preference shares. The summary of this investment was furnished to the appellant in the form of a chart contained in this para of the show cause notice. This investment by KFL in these companies has been doubted both in the show cause and also in the impugned order on the ground that these companies are unlisted with very low equity capital and that the appellant had shown no justification for making this heavy investment in these companies which did not yield any interest or dividend. According to the Board, this investment was an illusion created by KFL and its directors to show that it was paying money to these Mehta-Nair companies but in reality the funds were provided for purchase of shares of KFL from the market. The show cause notice as well as the impugned order observes that these shares were never redeemed and considering the financial health of these companies it was highly

unlikely that the shares would ever be redeemed. We cannot accept this allegation nor the findings recorded by the whole time member in this regard. The fact that KFL invested in the shares of Mehta-Nair companies is not in dispute and the summary of the investment has been mentioned in the show cause notice itself. The plea of the Board that this investment is only an illusion and circuitous method of transferring funds to these companies for the purchase of KFL shares cannot be accepted. The Board has not recorded a finding that the preference shares were bogus. This is not even the case in the show cause notice. In the absence of such a finding, it follows that the appellant actually invested in the preference shares of these companies. When the whole time member says that these companies were not worth investing in and that the preference shares could never be redeemed as they were of no value, he is questioning the wisdom of the investment made by the appellant in the preference shares of Mehta-Nair companies which is outside the scope of his jurisdiction. The apprehension of the whole time member that these shares could never be redeemed is again without any basis because it is the appellant's case that these shares had been sold for a total sum of Rs.18.26 crores in the year 1999. This has been the case of the appellant throughout and this plea had been raised by it in the earlier proceedings as well and the same had been noticed by the then Chairman of the Board in his order dated September 10, 2004 in the following words:

“6.10 As regards the table giving the summary of dealings in shares of KFL by the seven companies, as stated above, KFL denied that it purchased its own shares through these companies. It further stated that as Competent Trading, Dominance Trade, and Precise Exports, could not return the loan of Rs.12.50 crores given by KFL they offered to transfer to KFL the shares of Marvellous Trading, Lyric Investments, Responsive Plastics and Gainful Exports in view of the loan money. Therefore, in order to cut its losses, KFL had taken the preference shares of the said four companies from Competent, Dominance and Precise worth Rs.12.33 crores on March 16, 1999. It further stated that on 31.12.99, it sold the preference shares worth Rs.14.70 crores of Competent, Dominance and Precise and also the preference shares of Marvellous Trading, Lyric Investments, Responsive Plastics and Gainful Exports worth Rs.12.33 crores for a total sum of Rs.18.26 crores and, therefore, the question of redemption of shares does not arise at all.”

The whole time member has not even noticed the plea of the appellant in the impugned order what to say of recording a finding to the contrary. We cannot, therefore, hold that the investment made by KFL in the preference shares of Mehta-Nair companies was a

smokescreen to hide the real purpose of providing them funds for the purchase of its shares. It, thus, follows that Mehta-Nair companies purchased the shares of KFL from the market with their own funds. The second pillar of the charge as referred to above also falls.

18. We may now deal with the charge referred to in para 5 above. In the background of the charge that KFL had provided its funds to its front entities through whom it purchased its own shares from the market, it is alleged that in some cases KFL had directly provided funds to sub-brokers who purchased shares on behalf of Mehta-Nair companies. The name of DCS, a sub-broker has been referred to in para 3 of the show cause notice and the case set up by the Board is that this sub-broker purchased shares on behalf of Competent and Dominance (Mehta-Nair companies) and the funds were directly received by it from KFL. It is also alleged that the sub-broker received another sum of Rs.30 lacs from H.D. Fire Protect Company on the instructions of KFL for the purchase of shares of KFL on behalf of Competent and Dominance. On the basis of these allegations, DCS had also been charged with aiding and abetting KFL to purchase its own shares from the market and a show cause notice dated September 27, 2002 had been issued to it for an enquiry under section 11B of the Securities and Exchange Board of India Act, 1992. By order dated September 10, 2004 DCS was found guilty of the charge and was debarred from accessing the capital market for a period of 5 years. It challenged that order before the Tribunal in Appeal no. 89 of 2005 (Dharamshi Capital Services vs. Securities and Exchange Board of India). On the basis of the admission made by DCS that it had received funds from KFL for the purchase of its shares, the appeal was dismissed on 1.3.2007 with the following observations:

“We have heard the learned counsel for the parties. In view of the admission made by the appellant in the grounds of appeal and also by his learned counsel at the time of hearing as referred to above, the charge of aiding and abetting KFL to purchase its own shares from the market stands established. The trades executed by the appellant as a sub-broker also violated Regulation 4 of the aforesaid Regulations. He has also violated the code of conduct. The violation committed is rather serious and, therefore, the Board was justified in debarring him from accessing the capital market for a period of five years. No fault can, thus, be found with this part of the order.”

The charge levelled against KFL in the present proceedings has been held established only on the basis of our aforesaid observations made while dismissing the appeal of DCS. The whole time member in paragraph 28 of the impugned order has quoted our observations in support of his finding that the charge against KFL stands established. In other words, the whole time member has used the admission made by DCS against the appellant to hold the latter guilty. We cannot uphold this finding. The admission made by DCS before the Tribunal in Appeal no. 89 of 2005 cannot bind the appellant as it was not a party to that appeal nor can the observations made by the Tribunal bind the appellant. If the Board wanted to rely upon the admission made by DCS, it should have confronted the appellant with the same and since the appellant is seriously challenging the admission made by DCS, it should have been allowed to cross-examine the representative of DCS. We have, therefore, no hesitation in setting aside the findings recorded by the whole time member in this regard.

19. This brings us to the charge of violating Regulation 11(2) of the takeover code which has been made against the appellants other than KFL. This charge also fails in view of our aforesaid findings that Dalal-Iyer and Mehta-Nair companies had purchased the shares of KFL with their own funds and, in any case, not with the funds provided by KFL. Besides this, there is no material on the record to show that KFL and these companies were acting in concert when the shares were acquired by these companies from the market. If these companies acquired the shares in violation of Regulation 11(2) of the takeover code, action could be taken against them and not against the appellants. Before we conclude on this issue, we may notice another incomprehensible feature of the direction issued by the whole time member in this regard. After holding that the appellants had violated Regulation 11(2) of the takeover code, he directed them to make public announcements in terms of chapter III of that code by taking March 31, 1998 as the reference date for calculation of the offer price. We have not been able to understand as to how he fixed March 31, 1998 as the reference date. It has no relevance at all and there is no finding as to the date on which the threshold limit prescribed by Regulation

11(2) of the takeover code was crossed which triggered the code. Even the learned counsel appearing for the Board was at a loss to explain the relevance of this date which appears to have no basis. We cannot, therefore, uphold the findings on this charge.

For the reasons recorded above, the appeals are allowed and the impugned order set aside leaving the parties to bear their own costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.03.2010
Prepared and compared by ddg/-

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 146 of 2008

Date of decision: 17.03.2010

Mr. O. P. Agarwal

Betegaon Village,

Boisar East, Taluka Palghar,

Thane District, Maharashtra – 401 501.

..... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A, “G” Block,

Bandra Kurla complex, Bandra (East),

Mumbai.

..... Respondent

Mr. Joby Mathew, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Same order as in Appeal no. 113 of 2008 decided on 17.3.2010.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.03.2010

Prepared and compared by ddg/-

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 149 of 2008

Date of decision: 17.03.2010

M/s. Krishna Vinyls Limited
Betegaon Village,
Boisar East, Taluka Palghar,
Thane District, Maharashtra – 401 501.

..... Appellant

Versus

Securities and Exchange Board of India
SEBI Bhavan, Plot No.C4-A, “G” Block,
Bandra Kurla complex, Bandra (East),
Mumbai.

..... Respondent

Mr. Vinay Chauhan, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Same order as in Appeal no. 113 of 2008 decided on 17.3.2010.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.03.2010
Prepared and compared by ddg/-

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 145 of 2008

Date of decision: 17.03.2010

Mr. K. K. Agarwal

Betegaon Village,

Boisar East, Taluka Palghar,

Thane District, Maharashtra – 401 501.

..... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A, “G” Block,

Bandra Kurla complex, Bandra (East),

Mumbai.

..... Respondent

Mr. Joby Mathew, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Same order as in Appeal no. 113 of 2008 decided on 17.3.2010.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.03.2010

Prepared and compared by ddg/-

**BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI**

Appeal No. 144 of 2008

Date of decision: 17.03.2010

Mr. S. K. Agarwal

Betegaon Village,

Boisar East, Taluka Palghar,

Thane District, Maharashtra – 401 501.

..... Appellant

Versus

Securities and Exchange Board of India

SEBI Bhavan, Plot No.C4-A, “G” Block,

Bandra Kurla complex, Bandra (East),

Mumbai.

..... Respondent

Mr. Joby Mathew, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Ms. Pranita Mhatre, Advocate for the Respondent.

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

Per : Justice N.K. Sodhi, Presiding Officer

Same order as in Appeal no. 113 of 2008 decided on 17.3.2010.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

17.03.2010

Prepared and compared by ddg/-