BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

Appeal No. 19 of 2010

Date of decision: 21.07.2010

Mr. Shailesh Patel
A-14, Snehadri Apts.,
Opp. Shreyas Apt.,
Shreyas Tekra, Ambawadi,
Ahmedabad – 380 015. …… Appellant

Versus

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

Mr. J. J.Bhatt, Advocate for the Appellant.

Mr. Kumar Desai with Mr.Kersi Dastoor, Advocates for the Respondent.

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

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

Whether the appellant who is the managing director of Shree Yaax Pharma & Cosmetics Ltd. (hereinafter referred to as the company) made misleading and inaccurate corporate announcements on behalf of the company thereby violating the provisions of Regulation 4(2)(e) and (r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (for brevity the Regulations) is the short question that arises for our consideration in this

appeal. Facts giving rise to this appeal lie in a narrow compass and these may first be stated.

2. The company whose shares are listed, among others, on the Bombay Stock Exchange was required to publish its quarterly financial results as per the listing agreement which has a statutory force. The following corporate announcements were made by the company along with the financial results declared by it for the quarter ending June, 2004.

(1) Company Plans to open new R&D Center for Ayurvedic & Herbal Medicine in near future to avail of Tax Benefits available to Bio Tech Companies engaged in R & D Activities, as approved in the Finance Bill 2004.
(2) Bagged an order worth Rs.360 million from Salt Trading Corporation a Semi Government Corporation of Nepal for Export of Urea.
(3) Company is in the final stages of Negotiation with M/s. Domes International Inc. USA for processing and marketing in SAARC Countries.
(4) Company has acquired Iron Ore Mine in Karnataka on Lease Basis looking to growing opportunities in global scenario.
(5) Tied up with Collatelly Solutions to acquire Intellectual Property Rights (IPR) for X Comm, US Patent Technology that enables bridging of Tele Communication Infrastructure.

The total listed capital of the company at the relevant time was 44,13,100 shares only. Investigations carried out by the Securities and Exchange Board of India (for short the Board) revealed that the price of the scrip of the company increased from Rs.6 per share on June 11, 2004 to Rs.10.20 on June 22, 2004 whereafter it started falling and closed at Rs.1.02 in August, 2004. It also transpired that trading in the scrip of the company was brisk immediately after the corporate announcements were made. The Board also found that some of the promoter group shareholders had off-loaded their shares in the market. On completion of the investigations, a common show cause notice dated July 24, 2007 was issued to the company and the appellant who was its managing director along with sixteen others who were found to have off-loaded their shares in the market. All the 18 noticees including the appellant have been found guilty of the charges levelled against them and since the appellant alone has come up in appeal, we are only concerned with him. Against the appellant and the company, it was alleged that they “have violated Regulation 4(1)(2)(e) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade

Practices relating to Securities Market) Regulations, 2003 by announcing misleading and false corporate announcements in the quarterly results of June 2004." Against the other 16 noticees (with whom we are not concerned in this appeal), it was alleged that they had violated Regulation 4(1)(2)(a) and (e) of the Regulations "by aiding and abetting creation of artificial volume by transferring shares through off market transactions to the ultimate clients who traded substantially in the market and offloaded the shares to the gullible investors." The appellant did not file any reply to the show cause notice though he appeared before the investigating officer and his statements were recorded on two occasions. On a consideration of the material collected during the course of the investigations and the inquiry conducted by the whole time member, he came to the conclusion that the charge levelled against the appellant stood established. He also found that the other noticees were guilty of the charges levelled against them. Accordingly, by his order dated January 22, 2010 he restrained, among others, the appellant from buying, selling or dealing in the securities market in any manner or accessing the same directly or indirectly for a period of 5 years. It is against this order that the present appeal has been filed.

3. We have heard the learned counsel for the parties. As already observed, the question that we need to answer is whether the corporate announcements made by the company whose managing director was the appellant are inaccurate and misleading. The corporate announcements have already been referred to in para 2 above. We will deal with each corporate announcement and see what material has been placed on the record to justify such announcements. The first announcement is regarding the plans of the company to open new research and development centre for ayurvedic and herbal medicines in the near future in order to avail tax benefits available to Bio Tech companies engaged in research and development activities. It appears that in the Finance Bill, 2004 some tax benefits had been announced for Bio Tech companies engaged in research and development activities. The appellant claims that the company is a pharmaceutical company as its name suggests and that the statement in regard to the company's plans had been made in generic terms in view of the tax benefits that had

been announced in the Finance Bill of 2004. Apart from this generic statement, there is nothing on the record to show that the company had any plans to start a research and development centre for ayurvedic and herbal medicines. On an inquiry made by us, the learned counsel for the appellant admitted that the so called plans had never been discussed by the board of directors of the company. It is also admitted that the announcement made in this regard has not been implemented so far. We are, therefore, satisfied that the company had no such plans and that the corporate announcement made in this regard was only to mislead the investors.

4. The next announcement made by the company is regarding the order worth Rs.360 million which it claimed to have bagged from Salt Trading Corporation of Nepal for the export of urea. As can be seen from the language of the announcement, the company was categorical that it had an order for the export of urea. No such order has been placed on the record nor was copy of any such order placed before the Board either during the course of the investigations or the inquiry by the whole time member. We have on record a letter dated March 24, 2006 by which the company had furnished some information/documents to the Board during the course of the investigations. It is stated in this letter at item no.4 that copy of the order received from Nepal was being attached. It appears that the company did not furnish any copy of the order and it has been so stated in the show cause notice and again reiterated before us in the reply filed on behalf of the Board by way of an affidavit. A letter of intent issued by the Salt Trading Corporation Ltd., Kathmandu, Nepal has been placed before us which bears the date of July 1, 2004. A reading of this document leaves no doubt that it is only a letter of intent and not a supply order. We cannot infer from this letter of intent that a supply order had been placed on the company for the export of urea. It is, thus, clear that the announcement made in this regard was also misleading and inaccurate. Same is the position with regard to the announcement regarding the negotiations with M/s. Domes International Inc. USA for processing and marketing its products in SAARC countries. We find that no material has been placed to show that such negotiations were at final stages. However, a copy of an agreement dated May 10, 2003 between the company and

Domes International Inc. USA has been placed on the record. If this agreement had been arrived at, where was then the need for the company to announce that negotiations were at final stages. The other announcement made is regarding the company having acquired an iron ore mine in Karnataka on lease basis. There is not even an iota of material on the record to support this announcement. The appellant has placed some power of attorney allegedly executed by one Shri B.R.Shivakumar Singh appointing M/s. Shree Sai Minerals Trading Company as his attorney to act on his behalf. This trading company is said to be a partnership firm in which the appellant is a partner but the company does not figure anywhere. There is no mining lease in favour of the company and none has been produced. Regarding the fifth announcement referred to in para 2 above, it is admitted that the same is in generic terms and has not been implemented and that there was no tie-up for the acquisition of intellectual property rights. Since all the corporate announcements made by the company are inaccurate and misleading, we are satisfied that the company and the appellant who is the managing director have violated Regulation 4(2)(r) of the Regulations. Regulation 4(1) prohibits a person from indulging in a fraudulent or an unfair trade practice in securities and sub-regulation (2) gives some instances of fraudulent trade and unfair trade practices. Planting false or misleading news which may induce sale or purchase of securities is one such instance referred to in clause (r) of Regulation 4(2) of the Regulations. We have already observed that the announcements were false and misleading and being price sensitive had the effect of inducing the sale or purchase of the securities of the company. Thus, the violation of Regulation 4(2)(r) stands established. However, we are of the view that the violation of Regulation 4(2)(e) is not established. Any act or omission which may amount to manipulation of the price of a security is prohibited by this clause. In the case before us, the misleading corporate announcements did not have any material impact on the price of the scrip and this is not even the charge levelled against the appellant in the show cause notice. The finding in the impugned order in this regard cannot, therefore, be upheld.

5. The next question that arises for our consideration is whether the appellant made any unlawful gains in the process. The answer to this question has to be in the negative because admittedly, he did not trade in the scrip of the company as is clear from the show cause notice. It were the promoter related shareholders who traded and may have increased the volumes in the scrip but this is not the charge against the appellant in the show cause notice. This, however, does not take away from the fact that the appellant is guilty of making false, misleading and inaccurate corporate announcements which surely have the effect of luring the lay investors. The fact that these announcements did not materially affect the price of the scrip is only fortuitous. The only mitigating factor that we see in the case is that the appellant himself made no illegal profits and it has not been alleged in the show cause notice that he aided and abetted others.

6. In this view of the matter, we are inclined to reduce the period for which the appellant has been debarred from accessing the securities market. In our view, the ends of justice would be adequately met if this period is reduced from five years to two years from the date of the impugned order. We order accordingly.

The appeal stands disposed off as above with no order as to costs.

Sd/-
Justice N. K. Sodhi
Presiding Officer

Sd/-
Samar Ray
Member

Sd/-
P.K. Malhotra
Member

21.7.2010
Prepared & compared by-ddg