

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K M ABRAHAM, WHOLE TIME MEMBER

ORDER

DIRECTIONS UNDER SECTIONS 11B AND 11D OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AGAINST MR. ANIRUDH SETHI AND THE BUSINESS NAME, STOCK MARKET NAVIGATOR

Date of Hearing: April 28, 2009

Appearance:

For Mr. Anirudh Sethi : Mr. Vinay Chauhan, Advocate
Mr. Anirudh Sethi

For the Securities and Exchange Board of India : Mr. Sunil Kadam, General Manager
Mr. Vijayakrishnan G, Deputy Legal Adviser
Mr. T. Vinay Rajneesh, Legal Officer
Ms. Rinkal Shah, Manager

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) noticed that some entities were offering investment advice/tips on purchase and sales of securities through media. It quite common to see such recommendations aired through public media. It is also well known that they exert a distinct influence on the investment decisions of investors. However when the information is misleading in nature, it affects the market integrity, as unsuspecting investors fall prey to such information while making investment decisions. SEBI, in its continuing effort to safeguard the integrity of the securities market, had looked into the advertisements issued by one, Anirudh Sethi in the name of 'Stock Market Navigator' in the stock quotation section of the financial dailies viz. "Business Standard" and "Financial Express". For the

sake of convenience, Mr. Anirudh Sethi and the business name “Stock Market Navigator” are collectively referred as Mr. Anirudh Sethi. SEBI had looked into sixteen such advertisements issued by Mr. Anirudh Sethi. It was noticed that the advertisements issued by noticee included stock specific recommendation with an assurance of price rise on account of certain company specific information relating to company's business, its future prospects, bonus etc. The veracity of the information contained in majority of those recommendations/advertisements was either denied by the companies or that the companies had not made any announcement of such information to the stock exchanges. It was also noticed that Mr. Anirudh Sethi was issuing advertisement in the media, soliciting business from prospective investors for providing recommendations/tips on shares of listed companies, in consideration of certain amount as a fee. On the basis of the preliminary findings, it was *prima facie* found that

- i. Mr. Anirudh Sethi had disseminated company specific information through advertisement on print and electronic media which were denied by the companies or which were not informed by such companies to the stock exchanges (as required under the listing agreement), considered as an attempt to mislead the investors by indulging in activities prejudicial to the price discovery mechanism of the stock exchange and therefore alleged to have contravened the provisions of Regulations 4(1) and 4(2)(k) & 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations), and
- ii. It *prima-facie* appeared that Mr. Anirudh Sethi acted as a portfolio manager without obtaining registration from SEBI as required under

Section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) and Regulation 3 of the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 (hereinafter referred to as the Portfolio Managers Regulations).

2. As the continuous dissemination of such untrue information by Mr. Anirudh Sethi could mislead lay investors and to prevent further impairment of the securities market, SEBI vide an ad interim ex parte order dated January 19, 2007 passed under Sections 11B and 11D of the SEBI Act, directed Mr. Anirudh Sethi and his business name “Stock Market Navigator” to cease and desist from giving investment advice to clients including any recommendations containing company specific news which *prima facie* amounted to violation of Regulation 4(1) read with Regulation 2(1)(c)(5) and Regulation 4(2)(k) and 4(2)(r) of PFUTP Regulations. Further, they were directed to cease and desist from acting as an unregistered portfolio manager until they are registered with the Board in terms of Section 12 of SEBI Act read with Regulation 3 of Portfolio Managers Regulations. The said order advised them to file their objections, if any to the order.

3. Thereafter, Mr. Anirudh Sethi filed various replies and submissions *inter alia* vide letters dated January 22, 2007, January 31, 2007, February 3, 2007, March 6, 2007, March 9, 2007, March 12, 2007, March 30, 2007, June 13, 2007, August 8, 2007, June 27, 2008, January 12, 2009 and April 30, 2009. Mr. Anirudh Sethi, vide the aforesaid letters, *inter alia* submitted the following:

- i. that ‘dealing in securities’ is a pre-requisite for alleging any activity as a violation of PFUTP Regulations and that he did not deal in securities whatsoever;

- ii. that he did not violate Portfolio Managers Regulations since his activity involved only giving recommendation to the subscribers by receiving subscription fees and it was for the subscribers to decide for themselves the price, quantity and timing of the buy or sell;
- iii. that his activities do not involve dealing in securities, holding stock/funds on behalf of subscribers in fiduciary capacity of clients or charging a return based fee;
- iv. that his activity is a prevalent market practice and all his advertisements contained a disclaimer clause inter-alia stating that *'the author does not assume any responsibility or liability, whatsoever resulting from the use of such information, judgments and opinions for trading or investment purpose'*;
- v. that his recommendations and analysis have always been based on what was available at the relevant time in the public domain in various form i.e. business magazine, websites, etc. and a result of his contacts with different entities involved in stock market;
- vi. that the inference in the ex-parte order stating that *'company specific news planted by Shri Anirudh Sethi in the media had an impact on the price and trading volume of the shares of the concerned company'*, was fallacious and based on a wrong assumption. The observations made in the said order was inconclusive in the absence of consideration of other factors like the Sensex/Nifty movements, foreign market behaviours, parallel recommendations by leading brokerage houses and others, etc, and
- vii. that an order under Section 11B read with Section 11D of the SEBI Act cannot and ought not to have been made against him as he is not registered under section 12 thereof, as he is neither a person associated with securities market nor involved in transacting in any securities.

4. Mr. Anirudh Sethi also gave an undertaking vide his affidavit dated March 12, 2007 *inter alia* submitting that:

"That I will include well based information, analysis, articles and public corporate information in my every article. I will research and disclose the entire source on the basis of which such article is published.

That I will not refer to or rely upon or reflect unpublished price sensitive information or any other inside information in any of my article.

That I will restrict my article to technical analysis and give recommendations only on the basis of publish corporate information available in the public domain at the time the article is published and reveal the source in the article.

That I will publish the article containing analysis within the framework of the existing rules and regulations as prescribed and/or promulgated by the market Regulator, SEBI in so far as they are pertaining to the Capital Market.”

5. Thereafter, an opportunity of hearing was granted to Mr. Anirudh Sethi on April 28, 2009, when on the said date, Mr. Anirudh Sethi and his counsel, Mr. Vinay Chauhan appeared before me and made submissions.

6. I have perused the ex-parte interim order dated January 01, 2007, the various replies and submissions made by Mr. Anirudh Sethi, the oral submissions made during the hearing and other material on record. I further note that the investigations in the matter are complete. One of the finding against Mr. Anirudh Sethi in the aforesaid interim order was that he had disseminated company specific information through advertisement in the print and electronic media. The said reports were either denied by the companies or that the same were not informed by such companies to the stock exchanges (as required under the listing agreement). The said action of Mr. Anirudh Sethi was *prima facie* considered to be an attempt to mislead the investors by indulging in activities prejudicial to the price discovery mechanism of the stock exchange and therefore alleged to have contravened the provisions of Regulations 4(1) and 4(2)(k) & 4(2)(r) of PFUTP Regulations. Mr. Anirudh Sethi submitted that his activity is a prevalent market practice and all his advertisements contained a disclaimer clause *inter alia* stating that “*the author does not assume any responsibility or liability, whatsoever resulting from the use of such information, judgments and opinions for trading or investment purpose.*” In this regard, I find that the said disclaimer clause would not absolve Mr. Anirudh Sethi of the

charge of publishing unauthenticated or misleading information about company/companies which had the potential of misleading the investors. He further submitted that his recommendations and analysis have always been based on what was available at the relevant time in the public domain in various forms i.e. business magazine, websites, etc. and also from his contacts who were dealing in the stock market. It was found that recommendations of Mr. Anirudh Sethi (in print and electronic media), did not contain the source or any reference to a company announcement or press release. The veracity of his submissions were tested and I note that specific print or internet sources provided by him to SEBI stating that his 'advice' was based on such information were found to be misleading. To further explain, SEBI observed that two such recommendations made by Mr. Anirudh Sethi were also found to be distorted and the same tabulated below:

Date of the recommendation	Scrip Name, Media & Contents of Advertisement	Submissions of Mr. Anirudh Sethi of his source	Observations of SEBI
18/10/06	SKS Ship Ltd. - Financial Express - Preferential Issue to Bada bhai at Rs. 75/-; Expansion plan for 2500 Crores	Mr. Anirudh Sethi had provided source to SEBI stating 'Contemporaneous information available in the public domain in the website - Projectsmonitor.com'.	The relevant extract of the said article mentions that "Mumbai based SKS (SHIP) Ltd, the country's largest coastal operator, plan to acquire seven vessels...The acquisition is a part of a Rs. 250 crore expansion... For the domestic market, SKS (SHIP) is likely to acquire the two ships by December 2005'. As stated in the website, the article was published on 18 July 2005. Instead of stating ' <u>acquisition is a part of a Rs. 250 crore expansion</u> ' Mr. Anirudh Sethi had mentioned ' <u>Expansion plan for 2500 Crores</u> ' in the advertisement. It was also observed that the article was published in 2005 but the same formed the basis for Mr. Anirudh Sethi in advertising such company specific information in the advertisement October 2006.
13/11/06	Indiabulls Financial Services Limited – FinancialExpress - "Jump of Rs.100/-" Stock split NEWS on card."	Mr. Anirudh Sethi in his reply had stated 'Our statement of stock split on card should be objectable as after our recommendation the company announced 1:1 bonus'.	As confirmed with from the corporate announcements made available in the website of the stock exchange, there was no bonus or stock-split announcement by the company during the period November 2006 – December 2006. Later, the stock exchanges had confirmed that the prices had decreased due to a scheme of Arrangement between the company and Indiabulls Real Estate Limited.

7. Therefore, from the above instances it can be seen that Mr. Anirudh Sethi had based his recommendations on unauthentic information and had even distorted the information available in public domain. Furthermore, I find that the spirit of requiring listed companies to make corporate announcements to the stock exchanges is to provide authentic information to the stakeholders from the original source itself rather than the shareholders/investors acting on rumours and speculations in the securities market. In the present case, out of the 16 recommendations/advertisements, 14 such cases were found to be false. In such cases (14), it was either found that the company had not made any corporate announcements to the stock exchanges or the companies denied such news. In respect of three (out of 14) such cases, when the stock exchange had requested the companies to verify the rumours, the companies denied any such developments. During the course of hearing, it was brought to my notice that there are several persons who adopt a similar practice and put out recommendations or advice on specific stocks. The same, to the extent that it is fraught with danger of potential fraud is certainly a cause of concern for SEBI. But in any case, this argument would not dilute the gravity of the charges leveled against Mr. Anirudh Sethi or afford a defense for him.

8. I note that Mr. Anirudh Sethi has contended that 'dealing in securities' is a pre-requisite for alleging any activity as a violation of the PFUTP Regulations and that he had not dealt in securities whatsoever. According to Regulation 2(1)(b) of the PFUTP Regulations, the definition of the clause "*dealing in securities*" is an inclusive definition and is not restricted to only buy, sell or subscribing to an issue. The said provisions reads thus - "*dealing in securities*" *includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal,*

agent or intermediary referred to in section 12 of the Act". Further, the said provision needs to read together with Regulation 4(2) of the PFUTP Regulations which lays down that "dealing in securities' shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and may include all or any of the act mentioned in the said provision, to find its true import. Mr. Anirudh Sethi alleged to have contravened the provisions of Regulations 4(2)(k) and 4(2)(r) of the PFUTP Regulations. In terms of Regulation 4(2)(k), dealing in securities shall be deemed to be fraudulent or an unfair trade practice if it involves fraud and includes any advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors. Further, Regulation 4(2) (r) provides that dealing in securities shall be deemed to be fraudulent or an unfair trade practice, if it involve fraud and includes planting false or misleading news which may induce sale or purchase of securities. On reading of the aforesaid provisions, it is clear that a person may be dealing in securities in a fraudulent manner if he plants any false or misleading news or information in a distorted manner. In this case, it is already established that Mr. Anirudh Sethi had published information/news which were either false or were published in a distorted manner. In this regard, the following observation of the Hon'ble Gujarat High Court in the matter of Karnavati Fincap Limited [1996] 10 SCL 5 needs to be noted:

"In ordinary meaning, the persons associated with the securities market would include all and sundry who have something to do with the securities market. It is to be noted that the securities market in the sense is not confined to stock exchanges only. The words "persons associated with the securities market" are of much wider import than intermediaries. "Persons associated with" denotes a person having connection or having intercourse with the other; in the present case that "other" with whom a person is to have connection or intercourse is the securities market".

9. Therefore, the activities of Mr. Anirudh Sethi in providing company specific information/news would definitely wrap him within the expression “dealing in securities”. Therefore, this contention of his is without merit.

10. In the aforesaid interim order, it was *prima facie* found that Mr. Anirudh Sethi had acted as a “Portfolio Manager” without obtaining registration from SEBI to act as such, as required in terms of Section 12 of SEBI Act and Regulation 3 of the Portfolio Managers Regulations. In this regard, Mr. Anirudh Sethi submitted that he did not violate the said regulations since his activity involved in only giving recommendation to the subscribers by receiving subscription fees and it was for the subscribers to decide for themselves the price, quantity and timing of the buy or sell. He further submitted that his activities do not involve dealing in securities, holding stock/funds on behalf of subscribers in fiduciary capacity of clients or charging a return based fee. In this regard, I find that Mr. Anirudh Sethi was providing investment tips and views on markets and stocks for a fee. It is also seen that he was not involved in managing or administering the funds or portfolio of securities of his clients. A ‘portfolio manager’ as defined in Regulation 2(e) of the said regulations would mean “*any person who pursuant to a contract or arrangement with a client, advises or directs or undertakes on behalf of the client (whether as a discretionary portfolio manager or otherwise) the management or administration of a portfolio of securities or the funds of the clients, as the case may be*”. In view of the same, the finding in the said interim order that Mr. Anirudh Sethi had acted as an unregistered portfolio manager needs to be reviewed. Based on the factual position and referring to the relevant legal provisions in that regard and in the absence of any documentary evidence to support the said finding, I am of the considered view that the directions to Mr. Anirudh Sethi and the business name “Stock Market Navigator” directing him “to cease and desist from acting as an unregistered portfolio manager until they are registered with the Board in

terms of Section 12 of SEBI Act read with Regulation 3 of the Portfolio Managers Regulations, needs to be vacated.

11. Mr. Anirudh Sethi also questioned the tenability of the order passed under Section 11B read with Section 11D of SEBI Act. The said argument is without merit. I have noted that since Mr. Anirudh Sethi was rendering advice in relation to securities meant for the persons who are dealing and associated with securities market, he shall be considered as a person associated with securities market. The objective of SEBI Act is to protect the interests of investors in securities and in fulfillment of that object SEBI being the regulator certainly cannot allow any person to use the defence that he or she is “not associated with securities market” or ‘not transacting in securities market’ or ‘not registered under Section 12 of SEBI Act’, to provide misleading information to investors. Therefore, directions under Sections 11B and 11D can be issued against Mr. Anirudh Sethi who was observed disseminating misleading company specific information through advertisement on print and electronic media.

12. In view of the foregoing, I find that Mr. Anirudh Sethi had undertaken the activity of spreading unauthenticated, unverified stock specific information through media. He had also relied on certain secondary unreliable sources. His recommendations/advertisements contained information that was distorted and spurious in nature and had the potential to influence the decision of unsuspecting investors in the securities market. It has also been brought out in Para 6 of this order of the instances where the information was distorted by Mr. Anirudh Sethi and presenting the same in a misleading manner. SEBI, as a regulator needs to check such activities in the securities market to protect the interests of the investors from acting upon such rumours. The said acts of Mr. Anirudh Sethi is in violation of the provisions of Regulations 4(1) and 4(2)(k) &

(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

13. SEBI , vide order dated January 19, 2007 (at para 7.1) directed Mr. Anirudh Sethi and the business name “Stock Market Navigator” to cease and desist from giving investment advice to clients including any recommendations containing company specific news which amounts to violation of Regulation 4(1) read with Regulation 2(1)(c)(5) and Regulation 4(2)(k) and 4(2)(r) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003. Further, they were directed (in Para 7.2) to cease and desist from acting as an unregistered portfolio manager until they are registered with the Board in terms of Section 12 of Securities and Exchange Board of India Act, 1992 read with Regulation 3 of Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993.

14. In view of the foregoing, I, hereby confirm the ad interim ex-parte directions issued to Mr. Anirudh Sethi and the business name “Stock Market Navigator”, in para 7.1 of the Securities and Exchange Board of India Order dated January 19, 2007. Mr. Anirudh Sethi is cautioned of his dealing in the securities market and advised to strictly follow his own undertaking dated March 12, 2007 and ensure that his business or dealing in the securities market is done in accordance with the applicable laws.

15. The direction to Mr. Anirudh Sethi and the business name “Stock Market Navigator” to cease and desist from acting as an unregistered portfolio manager, issued vide Securities and Exchange Board of India Order dated January 19, 2007 (in Para 7.2) stands vacated.

16. This order is issued for the limited purposes of concluding the present proceedings initiated under Sections 11B and 11D of the Securities and Exchange Board of India Act, 1992, vide ad interim ex-parte order dated January 19, 2007, passed against Mr. Anirudh Sethi and his business name "Stock Market Navigator". This Order shall be without prejudice to the powers of Securities and Exchange Board of India to initiate any other action deemed fit against Mr. Anirudh Sethi in the matter, in accordance with law.

17. Securities and Exchange Board of India has already initiated adjudication proceedings against Mr. Anirudh Sethi in the matter. Mr. Anirudh Sethi may make his submissions before the Adjudicating Officer, who shall consider the same on merits and pass an appropriate order in accordance with the provisions of law, without being prejudiced by the observations made in this order.

18. This Order shall come into force with immediate effect.

**DR. K M ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

**Place: Mumbai
Date: July 29, 2009**