# BEFORE THE SECURITIES APPELLATE TRIBUNAL MUMBAI

**Appeal No. 120 of 2007**

**Date of decision : 14.7.2008**

D-Link (India) Limited …. Appellant

Versus

The Securities and Exchange Board of India …. Respondent

Mr. Amit Desai Senior Advocate with Mr. Zal Andhyarujina and Mr. Indranil Deshmukh Advocates for the Appellant.

Mr. Shiraz Rustomjee Advocate with Haihangrang E.H. Newme Advocate for the Respondent.

Coram: Justice N.K. Sodhi, Presiding Officer
Arun Bhargava, Member
Utpal Bhattacharya, Member

Per : Justice N.K. Sodhi, Presiding Officer

This appeal is directed against the order dated 21.8.2007 passed by the whole time member of the Securities and Exchange Board of India (hereinafter referred to as the Board) holding that D-Link India Limited – the appellant herein never had the intention to buy-back its securities despite having passed a resolution in the specially convened Extraordinary General Meeting (EGM) and having enough opportunities to do the same and that the announcement thereof was only for the purpose of misleading the investors thereby violating Regulation 5(1)(a) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 1995 (for short the Regulations). The appellant was, therefore, directed not to buy, sell or deal in securities in any manner directly or indirectly for a period of one month.

2. Section 77 of the Companies Act, 1956 (hereinafter called the Act) prohibits a limited company from buying its own shares. The main reason for this prohibition is

that it may amount to trafficking in its own shares thereby enabling the company to influence the market price of its shares by reducing the floating stock. It also operates as a reduction of capital to the prejudice of the creditors. However, a report of the working group constituted by the Central Government recommending to provide buy-back of shares was accepted and accordingly sections 77A, 77AA and 77B were inserted by the Companies (Amendment) Act, 1999 and they provide for buy-back of its own securities by a company subject to the safeguards specified therein. These provisions as amended upto date and insofar as they are relevant to the case in hand provide that a company may purchase its own shares only if the buy-back is authorized by its articles and sanction of the shareholders by means of a special resolution is obtained if the buy-back is in excess of the specified limit of 10 per cent of its total paid up equity capital and free reserves. The explanation to section 77A(2) defines the expression "offer of buy-back" for the purposes of this clause to mean "the offer of such buy-back made in pursuance of the resolution of the Board referred to in the first proviso." Sub-section (4) of section 77A mandates that every buy-back shall be completed within twelve months from the date of the passing of the special resolution by the shareholders of the company. The provisions of these sections (sections 77A, 77AA and 77B) are administered by the Securities and Exchange Board of India (hereinafter referred to as the Board) in respect of companies already listed or companies which intend to get listed. With a view to administer the provisions of section 77A of the Act, the Board in exercise of its powers conferred by section 11(1) read with section 30 of the Securities and Exchange Board of India Act, 1992 has framed the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998 (for short the buy-back regulations). These regulations apply to buy-back of equity shares by a company listed on a stock exchange. Buy-back regulations then provide methods in which a company may buy-back its securities and this could be done from the existing security holders on a proportionate basis through the tender offer or from the open market. If a company opts to buy-back from the open market, it has two options (i) through the book building process, or (ii) through the stock exchange. A

company can also buy buy-back its securities from odd lot holders. The buy-back regulations prohibit a company from buying back its securities through negotiated deals whether on or off the stock exchange or through any spot transaction or private arrangement. A company which has been authorized by a special resolution shall, before buy-back of its securities, make a public announcement in terms of the buy-back regulations. Since we are concerned in this case with the method of buy-back from the open market and that too, through the stock exchange, we shall only refer to the concerned provisions. In the case of a company which opts to buy-back its securities from the open market through the stock exchange, the special resolution of the shareholders shall specify the maximum price at which the buy-back shall be made and the buy-back cannot be made from the promoters or persons in control of the company. Such a company has then to appoint a merchant banker and make a public announcement as referred to above. The buy-back of the specified securities shall then be made only through the "**order matching mechanism**" of the exchange. The buy-back regulations lay down general obligations of the company which is buying back its securities and one of the obligations imposed on it is that "**it shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board or public announcement of the offer to buy-back is made**." This in a nutshell is the scheme of the buy-back regulations when the buy-back is from the open market and through a stock exchange.

3. We shall now deal with the facts giving rise to the present appeal.

4. An extraordinary general meeting of the shareholders of the appellant company was held on 30.9.2002 and as per the first item of the meeting, Article 6B was inserted in the Articles of Association authorizing the company to buy-back its shares in accordance with the provisions of the Act. The notice calling the EGM had an explanatory statement annexed thereto setting out the various disclosures required to be made by the company under the Act and the buy-back regulations. As per the

requirements of Schedule I to the buy-back regulations, the company disclosed the necessity for the buy-back as under :

> "The share Buy-back programme is being proposed in pursuance of the Company's desire to maximize returns to investors and enhance overall shareholder value. The Buyback is expected to lead to a reduction in the number of Shares outstanding, which can lead to improvement in earnings per share and an overall enhancement of value for shareholders continuing with the Company."

It is also relevant to refer to para 9 of the explanatory statement which is in the following words :

> "As per the provisions of the Act, the special resolution passed by the shareholders approving the share Buy-back will be valid for a maximum period of twelve months from the date of passing of the special resolution (or such extended period as may be permitted under the Act or the Regulations or by the appropriate authorities). The Company proposes to complete the buy-back on or before 29th September, 2003."

After inserting Article 6B, the members of the company resolved as under:-

> "RESOLVED THAT in accordance with the provisions of Articles of Association and Sections 77A, 77AA and 77B and all other applicable provisions, if any, of the Companies Act, 1956, and the provisions contained in the Securities and Exchange Board of India (Buy-Back of Securities) Regulations, 1998 ("Buy-back Regulations") (including any statutory modification(s) or re-enactment of the Act or Buy-back Regulations, for the time being in force) and subject to such other approvals, permissions and sanctions as may be prescribed or imposed while granting such approvals, permissions and sanctions which may be agreed to by the Board of Directors of the Company (hereinafter referred to as "the Board" may constitute to exercise its powers, including the powers conferred by this resolution), the consent of the Company be and is hereby accorded to the Board to purchase its own fully paid-up equity shares of Rs.2/- each for an amount not exceeding Rs.16 crores, upto a maximum price of Rs.80 per equity share (hereinafter referred to as "Buy-Back")."

The members of the company further resolved that:

> **"nothing contained hereinabove shall confer any right on the part of any Shareholder to offer, or any obligation on the part of the Company or the Board to Buy-back, any shares, and/or impair any power of the**

> **Company or the board to terminate any process in relation to such Buy-back, if so permissible by law**."

The shareholders approved the implementation of buy-back and authorized the company to go through the methodology of open market purchases in the stock exchanges with electronic trading facility and on such terms and conditions as the board of directors may determine. Since buy-back of shares by the company was a price sensitive information, it was required to immediately inform the exchange where its securities were listed. This is the requirement of clause 36 of the listing agreement. Accordingly, by letter dated September 30, 2002 the Bombay Stock Exchange (BSE) was informed that the company had altered its Articles of Association and it had authorized its board of directors to purchase its own fully paid up equity shares of Rs.2/- each for an amount not exceeding Rs.16 crores upto a maximum price of Rs.80 per equity share. By another letter of October 4, 2002 certified true copy of the proceedings of the EGM were also sent to the BSE. On receipt of this information/document, BSE put up on its website under the caption "Corporate Announcements" a summary of the information received from the appellant company regarding its proposal to buy-back its own paid up shares. The summary as put on the website reads as under:

> "D-Link India Ltd. has informed BSE that at the EGM of the Company held on September 30, 2002 the shareholders have :
> Authorised Board of Directors to purchase own fully paid up equity shares of Rs.2/- each for an amount not exceeding Rs.160 million upto a maximum price of Rs.80 per equity share."

It is common ground between the parties that the aforesaid information was simultaneously sent to the Board as well. After passing the resolutions in the EGM as aforesaid and having furnished that information to the BSE where the securities of the appellant company were listed, it took no further steps to buy-back the shares though the process of buy-back could be completed within 12 months from the date of the passing of the resolutions. The appellant company could complete the buy-back process if it wanted to upto September 29, 2003. Since the appellant company had taken no steps, the Board by its letter dated August 26, 2003 enquired from the company an

update on the status of the buy back. In response to this letter the appellant as per its letter dated September 2, 2003 informed the Board "that the board of directors have not decided to buy-back shares of the company till date." The period within which the shares could be bought back was over on September 29, 2003. Since the company did not buy-back the shares, one Shri. Ravi Deshmukh filed a complaint with the Board informing the latter that in spite of passing a special resolution in the EGM to buy-back its equity shares, the company did not buy-back those shares as a result whereof small investors who bought shares from the open market in anticipation of the buy-back suffered losses. On receipt of this complaint, the Board ordered investigations and found that the company never had any intention to buy-back its shares and that the information purveyed to the public through BSE was misleading. The Board prima facie found that the appellant company had violated Regulation 5(1)(a) of the Regulations and accordingly issued a show cause notice dated May 5, 2006 calling upon the company to show cause why action be not taken for disseminating misleading information as stated above. The appellant filed its detailed reply taking the stand that it was under no obligation to buy-back its fully paid up equity shares and that the resolution was meant only to enable the company to buy-back if it so wanted. It was pleaded that there was no contractual obligation on the part of the company to buy-back the shares and it was left to the board of directors to take a decision in this regard. It was further pleaded that in any case the resolution for buy-back was valid for a period of one year upto 29.9.2003 before which the price of the scrip in the market had gone upto Rs.80 which was the maximum price at which the company could buy-back as per the authority given by the shareholders. Reference was made to the resolution passed in the EGM which clearly stated that the same did not confer any right on the part of any shareholder to offer nor any obligation on the company or its board of directors to buy-back any shares. The shareholders had also authorized the company and/or its board of directors to terminate the process of buy-back at any time if so permissible by law. As regards the information sent to BSE regarding buy back, it was pleaded on behalf of the company that that was an obligation under Clause 36 of the listing agreement and also

under the buy-back regulations and that it did not mean that the company had to buy-back the shares. It was categorically stated in the reply that no misleading information had been furnished to BSE and all that the company did was to send a true certified copy of the resolution with a forwarding letter without making any comments thereon. The power of the Board to take action under section 11B of the Securities and Exchange Board of India Act, 1992 was also challenged. The Board granted personal hearing to the appellant on September 13, 2006 on which date its authorized representative had undertaken to file the written submissions as well. The detailed written submissions were filed on September 21, 2006. The company gave an explanation as to why it did not buy-back the shares after the passing of the resolution in the EGM and the justification was stated in para 3 of the written submissions which is reproduced hereunder for facility of reference:

> "At the outset, our clients deny that they had no intention of implementing the Buy-back at the time of EGM or on or about 4th October, 2002, as alleged or at all. It is submitted that the option of Buy Bank could have been exercised by the Board of Directors of the Company from 30th September, 2002 till 30th September, 2003 (hereinafter referred to as the **"Relevant Period"**). With the advent and growing importance of information technology, networking and ancillary products, like motherboards, switches, routers, structured cabling products etc. (hereinafter referred to as "**New Products**"), the management of the Company decided to focus its attention on the opportunity of investing in infrastructural facilities such as new plant and machinery, which would enable the Company to manufacture New Products and consolidate and further expand the business of the Company. The opportunity to expand the infrastructure was a sudden development which came about in January/February, 2003 due to the decision of Economic Development Corporation of Goa to auction 2 of its units, located adjacent to the existing facility of the Company. In view thereof, the Company decided to bid to purchase both the plots along with building thereon considering the long term strategic importance of having all manufacturing and distribution set-ups at one location. In view of the changed market scenario, it was essential for the Company to make rapid investments in infrastructure and other fixed assets, required to keep pace with the emerging market requirement. In light of the above, the Board of Directors of the Company approved greater investment on fixed assets and infrastructure of the Company. Consequently, during the Financial Year 2003-04 the total additions made by the Company to its fixed assets were about Rs.14.30 crores, which was significantly higher than Rs.4.08 crores, made by the Company in Financial Year 2002-03."

5. After hearing the representative of the appellant the orders were reserved on 13.9.2006. By order dated 21.8.2007 the whole time member came to the conclusion that the charge levelled against the appellant stood established and recorded his findings in para 4.9 of his order which reads as under :

> "From the facts and circumstances stated above, I find that there was no intention to buy-back by the company despite passing the resolution in the specially convened EGM and having enough opportunities to do the same. Further by not intimating the failure to buy-back not even through the Annual Report, which is required as per the provisions of section 217(2B) of the Companies Act, 1956, fortifies the finding that there was never an intention to buy-back the shares and the announcement thereof was only for the purpose of misleading the investors. This act of the company amounted to sending out false or misleading information by the company when it did not intend to implement the resolution. In view of the above, aforesaid acts of DIL construe as misleading information to the public which is in violation of Regulation 5(1)(a) of FUTP Regulations, 1995 which states that no person shall make any statement or disseminate any information which is misleading in a material particular which induces sale or purchase of securities."

Accordingly, the appellant was debarred from buying, selling or dealing in securities in any manner directly or indirectly for a period of one month. Hence this appeal.

6. We have heard Shri. Amit Desai learned senior counsel on behalf of the appellant and Shri. Shiraz Rustomjee Advocate on behalf of the Board. The first question that needs to be answered is whether the appellant company was under any obligation to go ahead with the buy-back after its shareholders had passed a special resolution in the EGM authorizing it to buy-back its fully paid up equity shares. On a reading of the provisions of section 77(A) of the Act and the relevant provisions of the buy-back regulations to which detailed reference has been made in the earlier part of our order we are of the considered view that a company is under no obligation to buy-back its securities even if its shareholders have passed a special resolution authorizing it to buy-back on the terms and conditions mentioned in the resolution. Section 77(A) of the Act is only an enabling provision and all that it mandates is that no company shall buy-back its own securities unless it is authorized by its articles and also by its

shareholders. But even where the shareholders pass a special resolution, it does not become obligatory for the company to buy-back the shares. The passing of a special resolution by the shareholders is the first step by which they authorize the company and the second step would be the decision of the company to buy-back by making an offer to its share holders. The buy-back regulations prescribe the manner in which such an offer could be made. Since the shareholders of the appellant company had authorized it to buy-back the shares from the open market through the stock exchange, Regulation 15 of the buy-back regulations read with Regulation 8 required it to make a public announcement if it wanted to buy-back and the public announcement would then have been the offer which the company would have made to its shareholders. As it took no decision to buy back, it did not come out with a public announcement and consequently no offer to buy-back was made to the shareholders.

7. At this stage it would be relevant to refer to clause (d) of Regulation 19(1) of the buy-back regulations which reads as under:

> "**Obligations of the company**
> 19.(1) The company shall ensure that; -
> (a) to (c) ……..……..
>
> (d) the company shall not withdraw the offer to buy-back after the draft letter of offer is filed with the Board or public announcement of the offer to buy-back is made;
>
> (e) ……"

This provision is a clear indication that once the company has made an offer either by issuing a letter of offer or by public announcement to its shareholders to buy back, it cannot withdraw the same. It follows that it is only when the second step of making an offer to the shareholders has been taken that the company is obliged to go through with the buy back. In the case before us the company had not come out with a public announcement and, therefore, it was open to it not to go through with the buy back.

8. However, the charge against the appellant is that since it took no steps to buy-back the shares after its shareholders had authorized to it to buyback, it never had the

intention from the beginning to buy-back and disseminated misleading information to the public through BSE thereby violating Regulation 5(1)(a) of the Regulations. Assuming that a company which has no intention to buy-back its own securities gets a resolution passed from its shareholders authorizing such a buy-back and disseminates that misleading information to the public, it violates Regulation 5(1)(a) of the Regulations. In the case of the appellant before us, we are of the considered opinion that there is no material on the record to indicate that it had no intention to buy-back its shares when the shareholders passed the resolution in September 2002. We have already held that even where such a resolution is passed, the company is under no obligation to go through with the buy back. It, therefore, follows that it cannot be inferred that the company had no intention to buy-back merely because it made no offer to its shareholders to buy-back their securities. There has to be some other material or circumstances from which such an inference could be drawn. We do not find any such circumstance in the present case. Rather, the appellant company has furnished a reasonable explanation for not going through with the buy-back as authorized by its shareholders in view of the subsequent events which explanation unfortunately has not been examined by the whole time member in the impugned order. The explanation furnished in the written submissions has been reproduced in the earlier part of our order. The shareholders authorized the company in their meeting held on 30th September 2002 to buy-back the securities. According to section 77(A)(4) of the Act the buy-back could be completed within twelve months i.e. up to 29th September 2003. The appellant is a Goa based company and to begin with when the special resolution was passed the desire of the company was to maximize returns to the investors and enhance overall shareholder value. As per section 77(A)(4) of the Act the buy-back could be completed within twelve months from the date of the special resolution i.e. up to 29th September 2003. Much before this period expired the Economic Development Corporation of Goa auctioned some time in January/February, 2003 two of its units in Goa which were adjacent to the existing facility of the company and it decided to purchase both the plots along with the buildings thereon considering the long term strategic importance of

having all manufacturing and distribution set-ups at one location. In view of the changed market scenario, the company thought that it was necessary for it to make investment in infrastructure and other fixed assets with a view to keep pace with the emerging market requirements. Having this consideration in view the board of directors approved greater investment on fixed assets and infrastructure of the company and they thought that this would be more beneficial for the shareholders in the long run. Instead of spending the money in buying back the shares, the company thought that the overall shareholder value would be enhanced if investments were made in infrastructure. It is primarily for this reason that the company did not go through with the buy-back offer. As already observed, this is a reasonable explanation furnished by the company and we cannot lose sight of the fact that the company and its board of directors are the best judges of the interest of their shareholders and it was primarily a business decision which the company took and neither the Board nor we can substitute our own views for theirs. We wonder how the Board is concerned whether the company increases the investor wealth of its shareholders through the buy-back process or by making investments in infrastructure. This is not a matter which affects the securities market. The Board is primarily a market regulator and its duty is to ensure that the market remains a safe place for the investors to invest. It cannot interfere with the business decisions taken by the company so long as they do not prejudicially affect the securities market. The learned counsel for the respondent very strenuously contended that this was not the explanation furnished by K. G. Prabhu the company secretary when his statement was recorded on February 1, 2005 during the course of the investigations. He also pointed out that in the reply filed to the show cause notice the stand taken by the appellant was that it was under no obligation to go through with the buy-back offer. He contends that the explanation furnished in the written submissions is an afterthought. We are unable to agree with him. The appellant has furnished a detailed explanation giving the approximate time of the auction of the two plots in Goa which are said to be adjacent to the company’s premises. These are facts which could be verified and the Board in our opinion should have looked into this aspect. The written submissions were

filed on September 21, 2006 and the impugned order was passed after almost a year and the Board had sufficient time to look into this explanation if it wanted to. We see no reason why the explanation should be disregarded merely because it was furnished in the written submissions. The appellant was right when it submitted in its reply to the show cause notice that it was under no obligation to go through with the buy-back even after its shareholders had passed a special resolution to that effect. In this view of the matter and having regard to the explanation furnished by the appellant, we cannot agree with the Board that the appellant had no intention to buy-back the shares even when the resolution was passed in September 2002.

9. There is yet another reason why we cannot find any fault with the appellant. It is common ground between the parties that the shareholders had authorized the company to buy-back its securities up to a maximum amount of Rs.16 crores at a price not exceeding Rs.80 per share. They had also authorized the company to buy-back the shares from the open market through the stock exchange which means that the shares were to be bought back at the market price through the price order matching mechanism of the exchange subject to the maximum limit of Rs.80 per share. It is also not in dispute and it has been noticed in the impugned order as well that the price of the scrip of the company had reached Rs.80 on August 3, 2003 by which time there were still two months left for the implementation of the buy-back resolution. It is also agreed between the parties that the price of the scrip continued to rise thereafter and never came down below Rs.80 till September 29, 2003 which was the outer limit for implementing the buy-back resolution. This being so, it became impossible for the company to buy-back its shares because the shareholders had authorized them to buy-back only up to the maximum price of Rs.80. This was the precise explanation offered by Shri K. G. Prabhu in his statement recorded during the course of the investigations and we cannot understand why the same was not accepted. As already noticed the company had twelve months at its disposal to implement the buy-back and before that period expired it became impossible in twelve months to implement that resolution as the price of the

scrip had reached Rs.80 and above. It cannot therefore be said that the company had no intention ever to implement the buy-back resolution and the Board was not justified in proceeding against the appellant when before the expiry of the period, the implementation had become impossible. We cannot, therefore, uphold the findings recorded in the impugned order.

10. The learned counsel for the respondent laid great stress on the letter dated 2nd September 2003 addressed by the company to the Board in response to its letter dated August 26, 2003 wherein the company had said that it had taken no decision to buy-back the shares. By its letter dated August 26, 2003, the Board had enquired from the company regarding the status of the implementation of the buy-back resolution. We do not think that anything hinges on the reply furnished by the company. As a matter of fact, the query made by the Board was not tenable because by that time the price of the scrip had gone beyond Rs.80/- and the question of buy-back had become impossible. The Board should have taken note of this aspect. Reference was then made to the letter dated 16th April 2004 addressed by the National Stock Exchange (NSE) by which it had forwarded a complaint made by one Ravi Deshmukh to the company asking for the latter's explanation on the complaint to contend that the appellant never had the intention to implement the buy-back resolution. It is interesting to note that the complainant in his complaint had made the following grievance:

> "It may be noted that in the entire process, small investors had purchased shares in anticipation that they may offer the shares in the buy back. However, these investors were made an easy prey and were forced to sell the shares at a loss since the offer for buy-back was never made."

This complaint on the face of it is absurd and we do not think that NSE should have called upon the appellant company to offer its explanation and it appears that the complaint was sent in routine without any one applying his mind. The kind of buy-back which the shareholders of the company had authorized was such that we see no logic for any one to purchase shares from the market in anticipation of the buy-back offer. As already observed, the company was to buy-back the shares at the market price through

the price order matching mechanism of the exchange subject to the maximum limit of Rs.80 per share. The so-called innocent investors whose cause was being pleaded by the complainant would have purchased the shares only from the market through the price order matching mechanism of the exchange. We wonder why any one will buy shares in anticipation at the market price knowing that the company is going to buy them back at the market price through the exchange unless he anticipates the price to go up. If that were to happen (in the instant case the price did go up in August 2003) and the price were to reach Rs.80 or above, the company will be unable to buy-back though the shares could still be sold in the market and the investor would make profit. Such a purchase/investment can have nothing to do with the buy-back offer. The period for implementing the buy-back resolution was up to 29th September 2003 and we presume that no "innocent investor" would have sold his shares till then and if he was forced to sell the shares thereafter because the company did not offer to buy-back, he should not be complaining because the price had gone up. In this view of the matter the complaint should have been rejected summarily but that could be done only if somebody were to apply his mind. It is expected of the Board and other regulatory bodies like the stock exchanges to apply their mind on receipt of a complaint to find out whether there is prima facie substance in it before calling upon any entity or market player to explain. We have examined the reply of the company dated April 20, 2004 sent to NSE in response to its letter dated April 16, 2004. The reply is quite plausible and does not support the contention of the respondent that it (company) had no intention from the beginning to buy-back its shares.

11. Shri Shiraz Rustomjee learned counsel for the Board then relied upon the statement of Shri K. G. Prabhu to contend that on a reading of the same it is amply clear that the company never intended to buy-back its shares and that the resolution had been passed by the shareholders only to purvey misleading information to the market. We find no merit in this contention either. We have already observed that the explanation which Mr. Prabhu had furnished should have been accepted by the Board because he

did give the details showing that it had become impossible for the company to implement the buy-back because of the increase in the price of the scrip of the company. The learned counsel then referred to the reply filed by the company to the show cause notice and our attention was drawn to paragraphs 3.9 onwards. We have examined the same and find that the company was not only justifying its action but also taking up a plea that it had not violated regulation 5(1) of the Regulations as it did not disseminate any information which was misleading in material particulars. This aspect of the matter was also argued before us by the appellant but we do not think it necessary to decide the same in this case as we are of the view that the company had justifiable reasons for not going through with the buy-back resolution.

12. It was then argued that lack of intention on the part of the company could be inferred from the fact that it did not appoint a merchant banker nor made a public announcement. We do not think that any such inference could be drawn as is sought to be argued on behalf of the Board. A merchant banker would have been appointed if the company had decided to go ahead with the buy-back resolution. Since it was not buying back its securities, there was no question of its appointing a merchant banker or making a public announcement. Lastly, it was urged that the board of directors of the company violated section 217(2B) of the Act inasmuch as they did not in their report furnish to the company reasons for the failure to complete the buy-back process. This argument is also devoid of merit. Sub-section (2B) of section 217 of the Act requires that the board of directors of the company shall in their report specify reasons for the failure, if any, to complete the buy-back within the time specified in sub-section (4) of section 77A. The company did not go through with the buy-back and, therefore, it cannot be said that there was any failure in completing the buy-back within twelve months period specified in section 77A. If it had gone through with the buy-back and not completed the same within the prescribed time, it was required to record reasons for the delay. We cannot, therefore, hold that the company or its board of directors violated

this provision or that their not having furnished any reasons in their report, we could infer that the company had no intention to buy-back its securities.

13. No other point was raised.

For the reasons recorded above, we allow the appeal and set aside the impugned. There is no order as to costs.

Sd/-
Justice N.K. Sodhi
Presiding Officer

Sd/-
Arun Bhargava
Member

Sd/-
Utpal Bhattacharya
Member

14.7.2008
ddg