

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF FLEDGELING NOMINEES INTERNATIONAL LIMITED – FOREIGN INSTITUTIONAL INVESTOR

Fledgeling Nominees International Limited (for brevity's sake referred to as FNIL) is a Foreign Institutional Investor and registered as such with the Securities and Exchange Board of India (hereinafter referred to as "SEBI"). The "SEBI" ordered an investigation into the buying, selling or dealing in the shares of State Bank of India (hereinafter referred to as "SBI") during the period May to October 1996. Copthall Mauritius Investment Limited, (hereinafter referred to as CMIL) a sub account of FNIL and a part of the Jardine Fleming Group was a client with Jardine Fleming India Broking Limited, a member of the National Stock Exchange.

During the course of the investigation/inspection of Jardine Fleming India Broking Limited, it was found that FNIL had for their sub account CMIL, squared off transactions in the scrips of SBI, Reliance Industries Limited and ICICI without giving or taking deliveries. The investigation report was submitted to SEBI and after considering the facts as emerging from the said report, an Enquiry Officer was appointed vide an order dated June 20th, 2001, under Regulations 21 and 25 of the SEBI (Foreign Institutional Investors) Regulations, 1995 (hereinafter referred to as the "FII Regulations") to conduct an enquiry into the affairs of FNIL in respect of their dealings and the alleged violations/irregularities noticed during the investigation as regards the provisions of the SEBI Act, 1992, (hereinafter referred to as the "Act") and the Regulations".

The Enquiry Officer issued a notice dated June 29, 2001, upon FNIL to show cause as to why action in terms of Regulations 21, 22 and 23 of the Regulations should not be initiated against them for the contravention of the provisions of the Act and the Regulations.

Upon the conclusion of the enquiry, on an analysis of the investigation/inspection report and after taking into account the written and oral submissions made by FNIL, the Enquiry Officer submitted his report dated November 29, 2001. In the said report, he recommended that a warning be issued to FNIL to be careful in future.

Subsequently, a show cause notice dated February 22, 2002, was issued to FNIL asking them to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed upon him. Further, FNIL was advised to reply to the same within 21 days of the receipt of the notice and indicate their desire for a personal hearing. Subsequently, FNIL vide their letter dated June 27, 2002, confirmed that they would attend the hearing to be held before me on July 3, 2002. During the course of the hearing the representatives appearing on behalf of FNIL reiterated the submissions made by them before the Enquiry Officer.

Thereafter vide their letter dated July 17, 2002, FNIL, while reiterating the submissions made earlier further stated that the definition of short sales as per the B.D Shah Committee was applicable to the facts of their case in as much as the sale transaction in the SBI scrip was against an earlier purchase in the same settlement, and hence the said sale transaction could not be categorized as a short sale.

I find that the Enquiry Officer has relied upon the definition of short sales as per the B.D Shah Committee on short sales and based on the same, has arrived at a decision to the effect that the definition of short sales as per the said committee is applicable to the facts of the present case in as much as the sale transaction in the SBI scrip was against an earlier purchase in the same settlement. However I find that Regulation 15(3)(a) of the FII Regulations stipulates that a FII shall transact business only on the basis of taking and giving deliveries of securities bought and sold and shall not engage in short selling in securities. A purchaser of securities, including a FII gets delivery of securities purchased in pay in/payout. Therefore sale of securities before it has been paid for or before receipt of delivery in payin/payout, in my view, would amount to a short sale in terms of Regulation 15(3) (a) of the FII Regulations. However taking into consideration the findings of the enquiry officer, I am of the opinion that a warning be issued to FNIL .

In view of the above, In exercise of the powers conferred on me by virtue of sub section (3) of section 4 of the Securities and Exchange Board of India Act, 1992, read with regulation 26 (3) of the SEBI (Foreign Institutional Investors) Regulations, 1995. I am of the opinion that a warning be issued to the FNIL as regards associating with any transactions which could result in the violations of the SEBI Act, 1992, Rules and Regulations made there under. FNIL is warned to be diligent in future while transacting in securities and dealing with the securities market and investors. FNIL should ensure strict compliance of the provisions of the SEBI Act, 1992 and the Regulations made thereunder and to strictly abide by the provisions of the SEBI Act, 1992 and the SEBI (Foreign Institutional Investors) Regulations, 1995.

Date : July 29th , 2002
Place : MUMBAI

G. N BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA