

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

{Under Regulation 29(3) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 against M/s Sunil Gupta & Co., member, Ludhiana Stock Exchange}

- I. M/s Shivalik Loha Mills Ltd. (hereinafter referred to as 'SLML') came out with a Public Issue of 45, 00,000 equity shares of Rs.10/- each at par in May, 1994. The shares of SLML are listed at Ludhiana, Bombay, Delhi, Jaipur and Vadodara stock exchanges. Ludhiana Stock Exchange (hereinafter referred to as 'LSE') was the regional stock exchange. M/s Shivalikwala Steel Mills Ltd., an associate concern of SLML, filed its draft prospectus for its proposed Public Issue, with SEBI in January, 95. In the draft offer document, it was disclosed that the stock market prices of SLML varied between Rs.11.75 and Rs.59/- during August-December, 1994.
- II. An investigation was ordered into the affairs relating to buying, selling or dealing in the shares of SLML in terms of order dated 18.3.96 to examine the possible violations of the following regulations;
 - i. Sub-regulation (1) of Regulation 7 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995;
 - ii. Sub-Regulation (1) of Regulation 5 of the SEBI (Insider Trading) Regulations, 1992;
 - iii. Sub-Regulation (1) of Regulation 19 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "said Regulations").
- III. Investigations, inter alia, revealed the following:-
 1. There was an unusual price movement accompanied by increased volume of trading in the shares of SLML during August-December 1994, which preceded the filing of offer documents of M/s Shivalikwala Steel Mills Ltd. with SEBI in January, 1995. The scrip moved from a low of Rs.11.75 on 6.10.94 to a high of Rs.59.00 on 29.11.94 at LSE with a corresponding spurt in volume of trading. A similar price and volume trend was observed at Delhi Stock Exchange.
 2. M/s Sunil Gupta & Co., Member-LSE (hereinafter referred to as 'member'), with a net buy of 2, 30,900 shares [3, 15,100 (buy) and 69,200 (sell)] was the most significant buyer at LSE during August-December 1994. His net buying was approx. 5.13% of the floating stock of SLML and approx. 8.58% of the total volume traded in this scrip at LSE. The buying by the member during months of October and November, 1994 when the price increase in the scrip was the most prominent (from Rs.11.75 to 29.25 in October 1994 and from Rs.22/- to Rs.57/- in November 1994) was approx. 52.39% and 11.22% respectively of the total volume traded in the scrip at LSE. Given his volume of trading as a proportion of the total volume traded at the exchange and stock available for trading, it appeared that the member generated unusual buying pressure in this scrip leading to its artificial price rise and thereby induced their sale or purchase by others.
 3. The significant clients of the member were Shri Subhash Chander and Shri Chander Mohan with a net buying of 1,10,100 and 1,20,100 shares respectively. Both these clients could not be traced. Investigations revealed that the broker had received payments for these transactions from the bank accounts of M/s Vijay Singh Arya & Co., (Proprietor, Shri Gopal Kumar s/o a Director of SLML) and M/s PAR Industries (Proprietor, Shri Ram Kumar s/o a Director of SLML) having the same address as SLML and also introduced by Shivalik Woolen Mills Pvt. Ltd. These accounts showed substantial credits from SLML.

Investigations further revealed that M/s Vijay Singh Arya & Co. had entered into an agreement with SLML for construction of their factory building towards which an amount of Rs.77.80 lacs was received in May 94 and a further contract for Rs.790.08 lacs was awarded. Similarly, PAR Industries entered into an agreement with SLML for supply of machinery, towards which an advance of Rs.146.75 lacs was received in 1994-95 and another 314.50 lacs in 1995-96. The advances received were withdrawn in cash and expended for purchase of SLML shares through the member and for providing loans to family members of the Directors. These purchases constituted the bulk of the buying at LSE during August-December 1994 and were responsible for an upward movement in the scrip price during this period.

4. During investigations it was found that the member also sold substantial quantities of SLML shares at the rigged prices of Rs.56 to 60/- per share on behalf of various individuals during the same period i.e., 1.8.1994 to 31.12.1994 by way of off-the-floor Spot transactions, but deliveries and payments of these transactions were effected during 1.1.95 to 31.3.95. These shares were simultaneously purchased by members of the Maria family (promoters of SLML). The sellers appeared to be non-existent as letters sent by SEBI to their addresses provided by the broker were returned undelivered. Investigations showed that the bank accounts of some of these clients had been introduced by the Directors of SLML or their family members and payments made to them aggregating Rs.4 crores approx. had been simultaneously withdrawn in cash by self-cheques. Investigations also showed that SLML shares sold by these persons had been originally allotted to various members of the Maria family or to various individuals with same address. Thus, a large number of apparently unconnected individual applicants appeared to have applied to the Public Issue of SLML from the same address, implying that some of these applicants could be nominees of the promoters, whose holdings in SLML were liquidated in cash through this process at the rigged prices.
- IV. Pursuant to the investigations, an Enquiry Officer was appointed by SEBI vide order dated 22.5.1998 to enquire into the possible contravention of the provisions of Securities Contracts (Regulation) Act, 1956 and the rules made there under; SEBI Act, 1992 and SEBI (Stock Brokers and Sub-brokers) Rules and Regulations, 1992; Memorandum and Articles of Association,

Regulations and Bye-laws of the LSE by M/s Sunil Gupta & Co. in their dealing in the scrip of SLML. The Enquiry Officer submitted his report dated 2.2.2000 to SEBI.

1. The report found that the member did not exercise due skill and diligence as per sub clause 2 of clause A of the Code of Conduct laid down in Schedule II under Regulation 7 of the said Regulations.
2. It was held by the Enquiry Officer that the member continued to transact in SLML shares despite being aware of the intention of his clients to manipulate the scrip price.
3. The Enquiry Officer held that the structured spot transactions by the member were of a manipulative nature and his conduct unprofessional. Sub clause 3 of Clause A of the Code of Conduct laid down in Schedule II under Regulation 7 of the said Regulations provides that a broker shall not indulge in manipulative transactions.
4. The impugned "spot transactions" of SLML shares entered from 1.8.94 to 31.12.94 were delivered during 1.1.95 to 31.3.95. It was held by the Enquiry Officer that the member did not adhere to the time schedule governing "spot transactions" provided under bye-law 48(i) of LSE and section 2(i) of the Securities Contracts (Regulation) Act, 1956 which, inter-alia, provides for actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality.
5. The Enquiry Officer in terms of Regulation 28(7) of the said Regulations recommended that the registration of M/s Sunil Gupta & Co., member of LSE be suspended for six months.
- V. Thereupon, as required under regulation 29(1) of the said regulations, a Show Cause Notice dated 15.2.2000 along with copy of the enquiry report was issued to M/s Sunil Gupta & Co. calling for an explanation as to why penalty as recommended by the Enquiry Officer should not be imposed. In his reply dated 3.3.2000, the member has not contested the findings of Enquiry Officer on merits except raising the following pleas:-

1. That the penalty recommended is too harsh in view of the fact that the year in question was the first year of the broking firm and they were not fully aware of price rigging and other manipulations that companies indulged in.
2. That the price cannot be rigged by 8.58% of the total volume traded at LSE. That due diligence was maintained in their dealings as purchases were on behalf of clients and payments received by cheques and they were unaware of the source of funds provided by their clients.
3. That they could not verify what their clients were doing with payments made by them.
4. That suspension would result in loss of business and goodwill to the firm.

A hearing was accorded to the member before me on 28.6.2002, which was held in New Delhi. The hearing was attended by Shri Sunil Gupta, proprietor of M/s Sunil Gupta & Co. wherein he reiterated the pleas made in his reply to the show cause notice.

- VI. I now deal with the submissions made by the member vis-à-vis the findings of the Enquiry Officer. I have observed that the member has not explained the findings of the Enquiry Officer appearing against him and he has only raised pleas/objections which are not on merits:

1. I find no merit in the contentions of the member that "the penalty recommended is too harsh in view of the fact that the year in question was the first year of the broking firm and they were not fully aware of price rigging and other manipulations that companies indulged in". It cannot be an excuse that in the first year of the broking activities of the member they were not aware of the manipulation activities etc., especially when the member himself has been instrumental in the price rigging of the shares of SLML during the period between 6.10.94 to 29.11.94 and the prices of the shares moved from a low of Rs.11.75 to a high of Rs.59.00 during the said period at LSE. Further, the investigations have revealed that the member was the most significant buyer at LSE with a net buy of 2,30,900 shares of SLML.
2. The buying by the member during months of October & November 1994 when the price increase in the scrip was the most prominent (i.e. from Rs.11.75 to 29.25 in October 1994 and from Rs.22/- to Rs.57/- in November 1994), was approx. 52.39% and 11.22% respectively of the total volume traded in the scrip at LSE. I find these dealings to be unusual on the part of the member as they generated buying pressure in the scrip leading to its artificial price rise.
3. It is submitted by the member that they could not verify what their clients were doing with payments made by them. I find no merit in the contention of the member as the member was required to exercise due skill, care and diligence while dealing with the clients.
4. The member's indulgence in the manipulation of the scrip of SLML needs to be viewed seriously, as it has distorted the price of the scrip during that period. The loss of business or goodwill cannot be a ground for escaping from the liability of the

member under the SEBI Act and Rules and Regulations framed thereunder.

VII. I have considered the facts and circumstances of the case as they appear on record, various submissions made by the member and agree to the recommendations made by the Enquiry Officer in his report dated 2.2.2000. The member should have been more vigilant in protecting the interests of investors from the manipulative trading in the scrip. On the other hand it is established that the member has failed to exercise due skill and diligence and indulged in manipulative trading. Member also did not adhere to the time schedule governing "spot transactions" provided under bye-law 48(i) of LSE and section 2(i) of the Securities Contracts (Regulation) Act, 1956. In this regard also the member has not furnished any explanation.

The said conduct of the member is detrimental to the interest of the investors. In view of the above, I conclude that M/s Sunil Gupta & Co. is guilty of violating Clause A (2) & A (3) of the Code of Conduct as provided in Schedule-II read with Regulation 7 of the said regulations and bye-law 48(i) of LSE and section 2(i) of the Securities Contracts (Regulation) Act, 1956.

The relevant portions of regulation 26(1) of the said regulations, which lays down the circumstances in which the certificate shall be liable to be suspended, read as under:

"26(1). A penalty of suspension of registration of a stock broker may be imposed if:-

- i. the stock broker violates the provisions of the Act, rules and regulations;
- ii. the stock broker does not follow the code of conduct annexed at Schedule II;
- iii. ---
- iv. ---
- v. the stock broker indulges in manipulating or price rigging or cornering activities in the market;
- vi. the stock broker is guilty of misconduct or improper or unbusinesslike or unprofessional conduct;
- vii. ---
- viii. ---
- ix. the stock broker violates the conditions of registration;
- x. ---

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The conduct of the member as discussed above attracts the penalty of suspension of his registration in terms of Regulation 26(1)(i), Regulation 26(1)(ii); Regulation 26(1)(v); Regulation 26(1) (vi) , Regulation 26(1) (ix) of the said regulations.

VIII. Therefore, in the interest of the investors and the securities market and in exercise of the powers conferred upon me under sub-section (3) of Section 4 of the SEBI Act, 1992 read with sub-regulation (3) of Regulation 29 of the said Regulations, I hereby order that the registration of M/s Sunil Gupta & Co., member, Ludhiana Stock Exchange be suspended for a period of six months. His membership of LSE Securities Ltd. by virtue of being member of LSE also stands suspended concurrently for a period of 6 months.

This order shall come into force with effect from 10th August, 2002.

PLACE: MUMBAI
DATE: 27/07/2002

GN BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA