

## **SECURITIES AND EXCHANGE BOARD OF INDIA**

### **ORDER IN THE MATTER OF BANG ENTITIES**

**(Under Regulation 29(3) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities Market) Regulations, 1995).**

1. The index movements of stock exchanges showed excessive volatility especially during mid February to mid March 2001. There were apprehensions of possible attempts by certain entities to distort the true price discovery and manipulate the securities market.
2. In the light of the above, preliminary investigation were carried out by SEBI to find out the role of various entities including entities controlled and connected with Nirmal Bang, Mr. Kishore Bang and Mr. Dilip Bang viz. M/s Nirmal Bang Securities Ltd. (hereinafter referred to as 'NBS'), M/s Bang Equity Broking Pvt. Ltd. (hereinafter referred to as 'BEB'), Bama Securities Ltd. (hereinafter referred to as 'BSL') - all stock brokers registered with SEBI and Bang Securities Pvt. Ltd. (hereinafter referred to as 'BS'), Nadi Finance & Investment Pvt. Ltd. (hereinafter referred to as 'NFL') - sub brokers registered with SEBI (hereinafter collectively referred to as Bang Entities). These preliminary investigations revealed that the Bang entities have indulged in large trading transactions in the scrips of Global Telesystems, HFCL, Zee Telefilms, Wipro, Satyam Computers, Infosys Technologies, Silverline Industries, Reliance Industries, LIC Housing, HCL Technologies etc. These transactions prima facie appeared, inter alia, to have been carried out to artificially depress the prices of the above named securities.
3. In view of the above prima facie findings, an ex-parte interim order was passed on 18.04.2001 debarring the said Bang entities from undertaking any fresh business as stock brokers and sub brokers till further orders. A post decisional hearing was given on 30.04.2001 and a detailed interim order confirming the above ex-parte order was passed on 04.06.2001. An enquiry officer was appointed on the same day vide separate orders.

1. The enquiry officer issued a show cause notice on 10.09.2001 to the above entities, inter alia, on the following charges :

1. That the Bang entities had carried out large transactions in a concerted manner in the following 10 scrips to artificially depress the prices of these securities between mid February and mid March in a concerted manner and thereby distorted the true price discovery process and indulged in market manipulation in these securities :

(i) Global Telesystems,

(ii) HFCL

(iii) DSQ Software

(iv) Zee Telefilms

(v) Wipro

(vi) ) Satyam Computers

(vii) MTNL

(viii) SBI

( ix) Infosys Technologies

- i. Sterlite Optical.

1. That the conduct of the aforesaid entities is unbecoming of stock brokers and sub brokers and that they did not exhibit high standards of integrity, fairness and professionalism of a registered intermediary.
2. The modus operandi adopted to depress the share prices and cause fall in the market indices included placement of orders in the time slots when the share prices registered substantial fall; sharing of commission with non-descript unregistered sub-broker through whom large transactions were routed ; routing of transactions of other brokers through unregistered sub-broker ; entering into short sales in large quantity, placing structured transactions on the stock exchanges in such a manner that buy and sell deal are entered at the same time by two different parties, etc..
3. It is alleged that BEB and NBS have increased their net sale position in the scrips of Global Tele, Infosys, Satyam, DSQ, Zee Tele, and Wipro. The aggregate value of net sale position of the BEB & NBS during these settlements in the scrips of Globaltele, Infosys, Satyam, Wipro and Zeetele increased to Rs. 24.75 cr, 9.23 cr, 9.51cr, 6.22cr and 9.4cr from Rs. 2.93cr, 1.44cr, 3.23cr, 0.86cr, and 6.74 cr respectively at the end of Settlement No. 48. The cumulative net sale positions of approximately Rs. 45 crores were created in these scrips alone.

#### **2.2 Bama Securities**

1. The proprietary trading of Bang Entities is largely done by Bama Securities Ltd. BSL maintained the net sale position in Bank of Rajasthan, Globaltele and Silverline even on February 23, 2001 and created net sale position in HFCL, Reliance Petro, Zeetele, SSI, etc. BSL had large net deliverable position of 43200 shares (Rs 3.2 cr), 4419 shares (Rs 0.09cr), 423514 shares (Rs 9.3cr) of HFCL, Hindlever, Zeetele respectively.

2. BSL also made significant sales during selected time slots in the scrips of Global Tele, Zee and Infosys when their scrip prices had declined and thereby contributed further decline in the share prices.

2.2.3 BSL had significant net sell positions in the scrips of Himachalfut, Zeetele, Bank of Rajasthan, LICHsgfin, Silverline & Wipro (approx. Rs. 6cr) on February 28, 2001, which were maintained even on March 1 2001 and additional net sell positions created in Globaltele, Sqrdsoftware, Softsolint and Satyamcomp (approx. Rs. 20cr). It is alleged that the member had net sale position in certain scrips during the selected time bands on March 01, 2001 when the scrip prices had declined.

4. It is alleged that the net sales by BSL in certain time slots was squarely responsible for the fall in scrip prices. Bulk of these sales had been made by BSL on their own account and on behalf of Bang Securities, which further establish the complicity of the member in hammering down the prices of certain scrips and causing the market to fall on that day in concert with associates.
5. In view of the above, it is alleged that Bama Securities Ltd. built significant sale positions in several scrips across various settlements. Some of the sales had also been effected during some specific time slots when the scrip prices had registered a decline. Since most of these sales were on own account and on behalf of BS, it is alleged that there is a concerted action to manipulate the share prices.

## 2.3 BEBL

2.3.1 BEBL had major dealings in securities for the following clients:

1. A. Shri Shankar Sharma (Director, First Global Stockbroking Pvt. Ltd.)
2. B. Bang Securities P. Ltd. (sub-broker of NBS and BEB)
3. C. CSL Securities. (sub-broker dealing for Ketan Parekh Group)
4. D. DJM Securities P. Ltd.

2. BEBL had significant net sale positions in key scrips that either form part of stock indices or were momentum scrips. BEBL indulged in short sales of the following scrips:

- i. Global Telesystems Ltd.
- ii Stayam Computers
- iii Zee Telefilm
- iv Himachal Furturistic
- v Reliance Industries

2. The trading by BEB was manipulative and BBL had taken significant sale position in various scrips in the periods of their price decline. It had indulged in circular trading in the scrip of Global Tele with a group broking concern to hammer the scrip price.
3. The transactions executed by BEB on behalf of Shri Shankar Sharma, director of First Global Stock Broking Private Ltd., member BSE and NSE were of dubious nature and were with a view to manipulate the market and to avoid detection.

## 4. NBS

1. NBS made a net sale of 5,96,971 shares of Zee, 28677 shares of HFCL and 38115 shares of MTNL on February 23, 2001. There were instances of sale orders being placed during specified time slots when the scrip prices had declined. The orders have been structured to deliberately hammer the scrip prices.
2. NBS had a net sale position of 167602 shares of Zee Tele, 91334 shares of HFCL and 526203 shares of Global Tele on March 1, 2001. In Satyam, which had an intra-day high-low price of Rs.353-300, the member sold 1082211 shares (5.90% of market) on March 1, 2001, which resulted in a net sale position of 670742 shares. The trade by the member had an impact on the scrip price. The member sold 285235 shares of HFCL (3.75% of market) on March 1, 2001, which resulted in a net sale position of 91334 shares. The bulk of sales were made on own account and also on behalf of Bang Securities.
3. NBS made a net sale of 134505 shares of Satyam on March 2, 2001, when the scrip fell from RS.311.50 to 262.65 and 668146 shares of Reliance Industries on own account and on behalf of BS resulting in net sale of 364666 at the end of the day. The sale order were placed in time slots when the scrip price declined and influenced the fall.
4. It is alleged that as in the case of trading by BEB & BSL, trading by NBS was also similarly designed for causing artificial depression of scrip prices.

## 2.5 BS

1. It is stated that Bang Securities had significant net sale position during settlement no. 1048 (19-23<sup>rd</sup> February, 2001) and 1049 (24<sup>th</sup> February - 2<sup>nd</sup> Mar, 2001) and contributed to the decline in scrip prices.

2. The positions by Bang Securities were taken on own account and on behalf of its broking concerns BEB and NBS, Ketan Parekh Group entities like Classic Credit and Landmark and Palombe Securities, Kopran Ltd. etc. as detailed in the show cause notice traded with regard to the scrips of HFCL, Global Tele, Zee Tele, HLL, Reliance, SBI, Satyam Computers and Infosys on 22/2/01, 1/3/01 and 2/3/01.
5. It is further alleged that the Trading terminals of Bama Securities Ltd, Bang Equity Broking Pvt Ltd and Nirmal Bang Securities Pvt. Ltd were installed at the office of Palombe Securities and Finance Limited (Palombe) at Natwar Chambers, Mezzanine Floor, 86, Off Nagindas Master Road, Oak Lane, Fort, Mumbai - 23. Palombe does jobbing and investments on NSE through Bang Securities and Bama Securities Ltd and on the BSE through Bang Securities and NBS. It also trades through Consortium Securities (Member NSE) and on the DSE through CSL Securities Ltd.
  1. Palombe has introduced various clients for trading with Nirmal Bang Group. The clients ostensibly introduced by Palombe include Shri Shankar Sharma of First Global to Nirmal Bang Group. CSL Securities has also been introduced as a client to Bang Equity. For the trades done by these clients through these brokers, Palombe received sub-brokerage fees described as "introductory commission" from Bang entities. Most of the dealings were stated to be conducted directly between these brokers and clients, except that some orders are placed through trading terminals installed at the office of Palombe.
  2. In the case of trades done by Shri Shankar Sharma through Nirmal Bang Group, Palombe passed on part of sub-brokerage received from BEB to CSL Securities since they apparently introduced Shri Shankar Sharma. Palombe passed on refund brokerage in Rs.9,72,000/- and Rs.227826 to CSL Securities on account of trades done by Shankar Sharma through Bang Equity during the period 1.4.2000 to 1.03.2001.
  3. Summary of the sub-brokerage commissions earned by Palombe during the financial year 2000-2001 is given below.

| Received from                                          | Amount (Rs) |
|--------------------------------------------------------|-------------|
| Bang Equity Broking P Ltd. for Settlement no. 2 to 18  | 17,65,006   |
| Bang Equity Broking P Ltd. for Settlement no. 19 to 48 | 47,13,779   |
| Bang Securities P Ltd.                                 | 75,00,000   |
| CSL Securities from 22-3-2000 to 31-12-2000            | 6,37,598    |
| Consortium Securities from 22-3-2000 to 31-12-2000     | 32,42,797   |
| Total                                                  | 18428090    |

The introductory brokerage (@50% of brokerage) accrued to Palombe on account of trades done by Shri Shankar Sharma through Bang Equity was approximately 30 lacs for the year 2000-2001, implying that the aggregate value in trades routed by Shri Shankar Sharma through Bang Equity during the period was approximately Rs. 600 crores. (assuming brokerage @0.1%)

4. Palombe received unsecured loans from various entities in February and March 2001 for about Rs. 5 Crores, which were simultaneously made available to Bang Securities Pvt. Limited. There were instances of transfer of funds between Palombe, Nirmal Bang Group and Shri Shankar Sharma.
5. Palombe has a close nexus with Nirmal Bang Group and their trading terminals are installed at the office of Palombe. Palombe has extended substantial sums as credit to Nirmal Bang Group, which do not appear to be justified to their financial capability. Palombe has introduced certain clients to Nirmal Bang Group including Shri Shankar Sharma of First Global. Shri Shankar Sharma in turn had been introduced to Palombe by CSL. Though DSE and NSE trading terminals belonging to CSL are also installed at the office of Palombe, CSL trades through Bang Equity on the introduction of Palombe.
6. The arrangement between Nirmal Bang entities and Shri Shankar Sharma by way of passing of sub-brokerage to Palombe and CSL/Consortium is indicative of a close nexus between them and their acting in concert. It is alleged that the complex arrangement of positions in the market is a collusive one to circumvent and avoid detection of concentrations and manipulative market practices.
6. It is, therefore, alleged that Nirmal Bang and his entities trading through several other entities were acting in concert with First Global group with the intent of indulging in manipulative trades to depress the market. With the obvious intent of camouflaging their trading and build up of concentrated positions, they resorted to trading through third parties on the introduction of obscure entities like Palombe. It is alleged that their pattern of trading, particularly routing of trades through Palombe is unusual trading behaviour and not consistent with expected professional conduct of a broker.
2. The Enquiry Officer issued a further show cause notice dated 25.01.2002 to Nirmal Bang Securities Ltd., Bang Equity Broking Ltd., Bama Securities Ltd. and Bang Securities Pvt. Ltd.

Following are the charges in the second show cause notice:

1. Nirmal Bang Securities Pvt. Ltd. and Bang Equity Broking Pvt. Ltd., indulged in short sales between March 8 & March 31, 2001 to the extent of Rs.2.31 crores and Rs.3.05 crores respectively which is not in compliance with SEBI Circular No.SMD/RPD/Policy/CIR-13/2001 dated 7<sup>th</sup> March, 2001.
2. The scrip, quantity, price for these orders were synchronized for the counter party and that these structured trades were highly irregular and violative of transparent norms of trading.
3. Bang Equity had indulged in fictitious and synchronized transactions by giving false orders for purchase and sale of securities, the execution of which did not involve change of ownership. They were artificially shifting positions and creating false volumes in the market which resulted in upsetting the market equilibrium. The total amount of such transactions during the period January-March 2001 stood at Rs. 200 crores.
4. Bama Securities Ltd., member of NSE had dealt with un-registered brokers i.e. Divine Securities & OJM Securities Pvt. Ltd while trading in the scrip of Amaraja Batteries Ltd.
5. Nirmal Bang Securities Pvt. Ltd. also dealt with the following un-registered sub brokers for which Bombay Stock Exchange had imposed a fine of Rs.74,000/- under its bye-laws :
  - o Mission & Vission Broking (I) Pvt. Ltd.
  - o Moneygrowth Investment & Cons Pvt. Ltd. &
  - o Arihant Stocks Ltd.
1. Such acts of dealing with unregistered sub brokers is in violation of the Code of Conduct prescribed under the SEBI (Stock brokers & sub brokers) Regulations, 1992.
2. It is alleged that Bang Securities Pvt. Ltd., sub broker did not issue sale/purchase confirmation notes regularly in violation of SEBI (Stock brokers & sub brokers) Regulations, 1992.
3. Bang Securities Pvt. Ltd. has not maintained client registration/agreement forms in contravention of SEBI Circular No. SEBI/POLICY/CIRCULARS/5-97 dated April 11, 1997.
4. The enquiry officer submitted his report dated 22.5.2002 to the Board after conducting the enquiry in accordance with the Regulations and found as follows :

#### 1. NIRMAL BANG SECURITIES

1. Indulging in large trading transactions in the selective scrips with a view to depress artificially the prices of these securities between mid February and mid March in a concerted manner. The details of the trading pattern in the individual scrips and the findings in respect of these scrips have been detailed in the report. NBS was acting in concert with BEB in effecting large sale transaction in the scrips of Global Tele, HFCL, Infosys, Satyam, DSQ Software, Zee Tele Films. The trades of the member in the settlements covering mid February and mid March and on particular dates of 23/2/01, 01/03/01 and 2/3/01 in the shares of Zee, HFCL, MTNL, Global Tele, Satyam and Reliance have been found to be manipulative.
2. Dealing with unregistered sub brokers Money Growth Investments and Arihant Stock Investments.
3. Indulging in short sales after 8/3/01 in violation of SEBI Circular dated 7/3/01.

#### 2. BANG EQUITY BROKING PVT LTD

The findings of the enquiry officer against Bang Equity Broking are :

1. Indulging in large trading transactions in the selective scrips with a view to depress artificially the prices of the said scrips between mid February and mid March in a concerted manner. NBS was acting in concert with BEB in effecting large sale transaction in the scrips of Global Tele, HFCL, Infosys, Satyam, DSQ, Zee Tele Films. The trading by the member in Global Tele, HFCL, Satyam, Infosys, DSQ Software, ZEE in which the member had significant sales between mid February and mid March are found to be manipulative.
2. Two lakh shares of Global Tele were sold when share prices registered substantial fall.
3. There were synchronized trades between Bang Equity Broking and First Global Stock Broking in which the price, quantity etc were matched and which in turn is a manipulative practice.
4. There were dealing with Palombe, an unregistered sub broker and entering the transactions through them.
5. Indulged in short sales after 8/3/01 in violation of SEBI Circular dated 7/3/01.

#### 4.3 BAMA SECURITIES

4.3.1 Indulging in large trading transactions in the selective scrips with a view to depress artificially the prices of these securities between mid February and mid March in a concerted manner. The trading by the member in Global Tele in settlement No.8, HFCL in settlement no 11, Satyam in settlement no 11 are considered significant sales. Trading by the member on 23<sup>rd</sup> February, 1<sup>st</sup> March, 2<sup>nd</sup> March are very high and manipulative.

#### 4.3.2 SALES IN TIME SLOTS

When share prices registered substantial fall – there were 11 such instances of selling which were considered significant.

#### 4.3.3 SALES IN CONCERT WITH BANG SECURITIES

It is established that Bama Securities was acting in concert with Bang Securities for indulging in simultaneous sales in the scrips of Infosys, Reliance and Satyam on the specified dates.

#### 4.4 BANG SECURITIES

4.4.1 Indulged in large trading transactions in the selective scrips with a view to depress artificially the prices of these securities between mid February and mid March in a concerted manner. The trading by the member in Global Tele, HLL, Reliance and Satyam were considered significant sales for the depression in the share prices.

#### 4.5 NADI FINANCE

No material was brought forward in support of the allegations against the aforesaid entity for having indulged in large transactions in a concerted manner to artificially depress the price of the securities or in any other manner. Therefore, the above entity is exonerated of all charges.

6. Having regard to the gravity of various types of the misconduct that have been established against each of the members including that of artificially depressing the prices in the securities in select scrips. Enquiry Officer recommended the cancellation of certificate of registration granted to the following entities:-

1. Nirmal Bang Securities Pvt. Ltd.
2. Bang Equity Broking Pvt. Ltd.
3. Bama Securities Ltd.
4. Bang Securities Pvt. Ltd.

These said recommendations were made under Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulation 1995 for consideration by the Board in terms of Regulation 28(7) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

4. A show cause notice dated 30.05.2002 was issued to the Bang entities under Regulation 29(1) of SEBI (Stockbrokers and Sub-brokers) Regulations, 1992. They replied separately to the show cause notice and the following are their common replies:

5.1 The enquiry officer had charged that the Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 ("Brokers Regulations") and Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation 1995 (FUTP Regulations) have been breached. In levelling the aforesaid charge, the enquiry officer has found that:

they carried out large transactions in select scrips with a view to artificially depress the price of Global Tele, HFCL, Infosys, Satyam, DSQ and Zee between mid-February and mid-March 2001 in a concerted manner with Bang Equity Broking Private Limited (BEB);

- a. dealt with unregistered sub brokers to do so;
- b. effect short sales after SEBI banned them on 07.03.2001.

2. It was contended on behalf of the Bang entities that the enquiry officer, in arriving at his findings, had :-

- a. taken into account sale transactions including sales that resulted in delivery and sale against previous purchase positions;
- b. based his findings on the net sale position of NBS on specific dates and compared it with the net sale position on the Stock Exchange; and
- c. stated that he is unable to determine the impact of NBS transactions on price movements.

2. It was further contended that if the enquiry officer's findings are to be sustained in the fact and in law, the material on record has to establish all the following:

- a. that their transactions resulted in a fall in price;
- b. that such fall in price was artificial;

- c. that the intention behind effecting such transactions was to manipulate prices; and
- d. that they thereby induced the sale or purchase of securities by any person.

Unless and until all these conditions are established by the material on record, no finding of any violation of the Broker Regulations or the FUTP Regulations can be reached.

2. It was submitted that none of the aforesaid conditions are satisfied. In fact, the recommendation of the enquiry officer is unjustified and in appropriate for the following reasons:

- a. The enquiry officer's conclusions are not based on any material on record and are therefore untenable;
- b. The enquiry officer has ignored the purchase position of Bang entities in various scrips including index weighted stocks, which are considered a true barometer of market sentiment;
- c. The enquiry officer has not analysed individual entities overall trading pattern even though he has stated that regard should be had to the overall trading pattern;
- d. The enquiry officer has not applied any intelligible differentia between a natural fall in price and artificial depression of prices;
- e. The enquiry officer has not had regard to the impact cost of transactions on the scrips, all of which are highly liquid stocks with a large quantity base and have large trading volumes;
- f. The enquiry officer has not distinguished between the entities own proprietary transactions and transactions executed on behalf of client;
- g. The enquiry officer has not had regard to the scale of operations of the entities;
- h. The enquiry officer has himself admitted that there was not evidence in support of various allegations and has based his findings on mere conjecture and surmise;
- i. The enquiry officer has ignored the macro-economic factors that impact stock prices during the relevant time;
- j. The enquiry officer has ignored the written submissions.
- k. Even assuming that the enquiry officer's conclusions were tenable, the proposed penalty is excessive.

2. The central allegation was that they carried out large scale trading with a view to artificially depress prices. The central finding was erroneous on the grounds that:

- a. the enquiry officer had proceeded on the assumption that all sales are improper and irregular irrespective of whether they are short sales or they are effected to cover earlier purchases or whether they are effected to give delivery. This failure to distinguish between different types of sales and to treat all sales as illegal or irregular is erroneous on the face of it;
- b. the enquiry officer had failed to appreciate that a sale with a view to artificially depress prices would not actually result in delivery;
- c. the enquiry officer had failed to note that the allegation of artificial price depression cannot be leveled in respect of sale against prior purchase positions for it does not make commercial sense to erode the value of the shares in which there is an existing purchase position;
- d. that until 07.03.2001, any person was at liberty to effect short sales in specified scrips and there was nothing illegal or irregular in effecting such short sales within the stipulated limits, and they were in full and formal compliance with every requirement of the law such as payment of margins, maintenance of base minimum capital etc.
- e. on the contrary, the material on record establishes that during the relevant period, at any point of time across all scrips, they were always net purchases and not net sellers;
- f. there is material on record to establish that the volume of trades effected by them were on the face of it, too insignificant or miniscule to depress prices, save and except as any sale may have normal downward impact on the price. The enquiry officer failed to examine the impact cost of a transaction on the price of the relevant stocks, which had a large equity base and are highly liquid stocks with large trading volumes;
- g. there is no material on record to establish any intention on the part of them to deliberately or artificially depress the prices of any scrip;
- h. the enquiry officer failed to note that the volumes of transactions were in no way deviant from their long-standing normal trading behaviour and that their volumes transactions during the relevant period was consistent with its normal trading volume;
- i. the enquiry officer has merely compared NBS' net sale positions at the end of the day or settlement with the net sales on the Bombay Stock Exchange (BSE). The enquiry officer ignored that the volumes of the BSE alone did not contribute to price discovery, and in fact, the volumes on NSE are two times that on the BSE;
- j. the enquiry officer had not considered the impact of intra-day or intra- settlement transactions or other market participants on prices;
- k. it is not even SEBI's case that there was any conspiracy or complicity between them and any other broker to deliberately bring down prices which is the essential ingredient of establishing intention, in the absence of which any allegation of artificial

depression of price must fail.

2. They contended that it is not correct to conclude that the sales effected by them did result in artificial depression of the price of the particular scrips.
  3. On the other hand, the enquiry officer had chosen to ignore the material adduced by them relating to a fall in prices that may be attributable to the trades effected by other members, several macro economical and technical factors, conveyed vide NBS' written submissions dated 17.10.2001 and during the personal hearing.
  4. As regards the charge of dealing with unregistered entities, the enquiry officer has failed to show as to how such purported dealing led to any artificial depression in price as concluded by him. In any event, the enquiry officer ignored that NBS is one of the largest retail brokers in the country having more than 56 registered sub-brokers and there could have been no reason or motivation for dealing with any unregistered entities, had it known that these entities had approached NBS not in their capacity as clients but as sub-brokers. Assuming while denying that this charge is correct, it certainly does not merit a penalty as draconian as cancellation of registration.
  5. As regards the finding on effecting short sales after SEBI banned them on 07.03.2001 it was submitted that the enquiry officer ignored the valid defence that it had more than 56 sub-brokers all over India and the sudden issuance of this circular requiring a ban on short-sales on the basis of self certification by clients caused considerable confusion for a few days, during which time a broker had no means or control mechanism of knowing that such short sale was being effected. It was further submitted that such short sales were minimal and insignificant and could never have had any impact on prices. None of these short sales were on the proprietary account of the entities but were in fact effected on behalf of clients and clients of their sub-brokers and they had no means of preventing such short sales at the relevant time. They submitted that assuming while denying that this charge is correct, it certainly does not merit a penalty as draconian as cancellation.
  6. The enquiry officer erred in fact and in law in concluding that each entity cannot be regarded as a separate and distinct legal entity for the purposes of this enquiry. In any event, a substantial portion of the trades effected by each entity were on behalf of clients spread all over the country and therefore, such trades cannot be attributed to them or be grouped with proprietary /client trades effected by the other allegedly connected entities.
  7. The enquiry officer exonerated Nadi Finance and Investments Private Limited (Nadi) of all charges on the ground that there was no material on record to substantiate any of the allegations leveled against Nadi. This exoneration of Nadi, on the face of it, established that the enquiry officer himself is not subscribing to the theory of all the entities being controlled by a single mind. Thus, the enquiry officer's finding on grouping all these entities together is erroneous according to his own logic and reasoning.
  8. In spite of the absence of any material on record, the enquiry officer found that sales had an impact on prices in a manner as to violate the Broker Regulations and FUTP Regulations. Given the extreme seriousness of these charges and the ultimate penalty they entail, the Enquiry Officer should not be permitted to reach such findings without any evidentiary basis. As the enquiry officer's findings are based on subjective assessment and opinion such findings are ex-facie untenable and legally unsustainable.
  9. As regards the charges of dealing with unregistered entities and short sales effected by clients after 07.03.2001, even assuming they are correct, a penalty of canceling the registration is nowhere commensurate with the alleged contravention and is draconian.
  10. The suspension already undergone by the entities caused and continues to cause immense financial harm and injury to them their employees, their sub brokers and their respective family members. The penalty of cancellation amounts to destroying the livelihood of all these people at one stroke without there being admittedly, any shred of evidence. The enquiry officer has failed to analyse the overall trading behaviour of the member including the purchases effected during the relevant period.
  11. They submitted that although they are one of India's leading retail brokerages having a large number of sub-brokers and thousands of clients, there was not a single complaint or investor grievance ever since the commencement of business. They urged SEBI to take this into account while taking a decision on the show cause notice.
  12. A charge of acting in concert has been leveled by the enquiry officer on the basis of commonality of positions in three scrips on specific dates. These positions are not comparable and could be a mere coincidence.
  13. They submitted that the Board be pleased to hold that the penalty recommended by the enquiry officer is not appropriate and that they be permitted to resume trading.
5. The said entities appeared for personal hearing before me on 01.07.2001. The following persons appeared on behalf of the entities for the said personal hearing:

Mr. Berjis Desai - Solicitor & Advocate, Mr. S. Sunder - Advocate, Mr. Tushar Sarda - Representative, Mr. Kishore Bang - Director, Mr. Dilip Bang - Director, S. S. Iyer - Representative and Ms. Avani Patel - Advocate.

However, Bama Securities did not appear for personal hearing. Mr. Berjis Desai appearing for the above entities has submitted, inter alia, as under:

1. He stated that the above entities are distinct and separate and a common order cannot be passed against them. Their independent actions cannot be treated as acting in concert.
2. Cancellation is not justified even if we assume that the facts are correct because Regulation 26(2) of SEBI (Stockbrokers and Sub-brokers) Regulations, 1992 is not attracted. All the allegations found under Regulation 26(1) only. He stated that this is a legal flaw as Enquiry Officer cannot recommend a penalty which is not prescribed there for the findings on violations. He further stated that even the proviso under the Regulation 26(1) is not attracted.
3. He reiterated that Nirmal Bang entities is a largest broking firm with a largest clientele of ten thousand and above and has six membership cards. There are no adverse remarks against these entities from its inception. There is no charge of transgression or violation of any Regulation or Bye Laws of the Exchange.
4. He submitted that cancellation is akin to capital punishment as far as the broker is concerned and it should be exercised with great caution and with transparency and it should be comparable to the other identical cases.
5. It was submitted by Mr. Desai that the methodology of the Enquiry Officer is completely flawed, very casual and cavalierous. He however conceded with fairness that Enquiry Officer had given them a fair and complete hearing. He stated that the methodology required total reconstruction and required reassessment of facts and reanalysis of findings. In this context, he pointed out to the reliance of the Enquiry Officer on the observation made by the US Court in Hynes case. In the said case the Court had observed, inter alia, that :

"It is sufficient for the person to engage in a course of business which operates as a fraud or deceit as to the nature of the market for the security to face the charge of manipulation."

6. It is further submitted by Mr. Desai that the above argument is further supported by the finding of the Enquiry Officer that it is not possible to determine with mathematical precision the quantum of fall. He stated that this fall in every scrip can be precisely calculated by the formula of impact cost. He said that NSE vigorously followed the circular of SEBI on impact cost. The impact cost did not take place and it was completely ignored by the Enquiry Officer. He said that this is an example of false methodology adopted.
7. He stated that the whole approach of Enquiry Officer was to conclude against his client since one of their entities deal with Shri Shankar Sharma of First Global.
8. With regard to the central charge of market manipulation as found by the Enquiry Officer Mr. Desai submitted that the intention to manipulate is not proved in whole of the report. He stated that the Enquiry Officer failed to distinguish between the dealings of the Group, the proprietary dealings of the individual entity and client obligations. He stated that there were net purchase across all the scrips and cannot be held to be responsible for depression of the market.
9. He stated that there is not a shred of evidence given by the Enquiry Officer in whole of the report to prove the artificial depression and that no where in the report it was explained or defined what was an artificial depression of the market. In the present electronic system containing automatic limits and circuit breakers one person / group cannot control the market either to depress it or to inflate the market.
10. He stated that Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 was not analyzed properly and any of the proven acts committed by the Group did not result in falls and there was no charge of inducing others to buy or sell the securities.
11. It was submitted that the central approach of the Enquiry Officer was that all sales were banned. Analyzing the sales he stated that there are three types of sales - one results in delivery and the second is squaring up of previous purchases and the third is short sales. According to him the first two kinds of sales do not manifest the intention of manipulation. A third type of short sales is as permitted by SEBI from time to time. He stated that the short sales may prove an intention of manipulation but Enquiry Officer has exonerated them from the charge of short sales.
12. He stated that since it has been observed that they had outstanding purchase positions would not in any case hammer the prices since it amount to cutting the branch on which they are sitting.
13. The Enquiry Officer failed to establish that their sales resulted in fall in market. According to him, SEBI itself has pointed out to JPC the following reasons for the fall in market.
  - o Fall in NASDAQ
  - o Fall in the technology shares prices all over the world.
  - o Fall in Indian Rupee vis-a-vis the US \$.
  - o Reduction of sovereign rating of India by Standard & Poor.

- o Gujarat Earthquake.
- o Unwinding of long positions by the bulls.

Therefore, SEBI now cannot charge the Bang entities for the fall in the market ignoring the above external factors.

1. He has submitted that the trading pattern of the Group before and after the relevant period and during the relevant period is same and

there is no deviation as such in the relevant period.

2. It was further submitted that the market infact had shown an opposite volatility as market fell when he sold and market rose when he bought. He also stated that even when he was not selling the prices of the relevant scrip was falling.
  3. Referring to the charge of dealing with unregistered sub broker he stated that the Group had around hundred sub brokers and there is a possibility that he might have dealt with a person who is not registered as a sub broker. He stated that this violation, if any, will not merit a cancellation of membership as such. He further stated that in similar cases SEBI has earlier not imposed any penalty but only warned them to be careful.
  4. Mr. Desai further submitted that they have been under suspension for already fifteen months and did not challenge the orders of SEBI before any other Forum. He requested SEBI to take a lenient view that the equity demands lenience in case of first violation.
5. I have gone through the findings of the Enquiry Officer, the replies of the entities to the show cause notices. I have also considered the overall submissions of the entities in the personal hearing. From the above following issues would arise for consideration.

1. Whether the above entities as a Group acted in concert and were responsible for the violations committed by each entity?

8.1.1 The enquiry officer has dealt with the issue of lifting of the corporate veil and about control and connection of all these entities in detail in his report.

In the course of enquiry proceedings, a plea was taken by the entities that each of the entities to whom the show cause notice was issued is a separate and distinct legal entity.

The enquiry officer relied on various case laws and further found as under :

2. In *Aron Saloman V Salomon and Company limited* (1897) AC 22,51, the House of Lords had observed, "the company is at law a different person altogether from its subscribers. And though it may be that after incorporation the business is precisely the same as it was before and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as member liable, in any shape or form, except to the extent and in the manner provided b the Act" Since then, however, the courts have come to recognise several exceptions to the said rule. While it is not necessary to refer to all of them, the one relevant to us is "when the corporate personality is being blatantly used as a cloak for fraud or improper conduct". (Gower: principles of Modern Company Law, 4<sup>th</sup> edition, 1979 at page 137. Pennington's Company Law, 5<sup>th</sup> edition 1985, at page 53, also states that "where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law", the court will disregard the corporate veil. A professor of law, S Ottolenghi, in his article from peeping Behind the Corporate Veil, to Ignoring it Completely says " the concept of piercing the veil" in the United States is much more developed than in the U.K.. The motto, which was laid down by Sanborn I. And cited since then as the law, is that "when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons. The same can be seen in various European jurisdiction". (1990) 53 Modern Law Review 338). Indeed, as far back as 1912, another American Professor, L Maurice Wormser, examined the American decisions on the subject in a brilliantly written article Piercing the Veil of Corporate Entity ( published in (1912) XII Columbia Law Review 496) and summarised their central holding in the following words:

"The various Feed2 of cases where the concept of corporate entity should be ignored and the veil drawn aside have now been briefly reviewed. What general rule, if any, can be laid down ? The nearest approximation to generalisation, which the present state of the authorities would warrant is this: when the conception of

corporate entity is employed to defraud creditors, to evade an existing obligation, to circumvent a statute, to achieve or perpetuate monopoly, or to protect knavery or crime, the courts will draw aside the web of entity, will regard the corporate company as an association of live, up and-doing, men and women shareholders, and will do justice between real persons.'

3. In *Palmer's Company Law*, this topic is discussed in Part II of Vol.I. Several situations where the court will disregard the corporate veil are set out. It would be sufficient for our purpose to quote the eighth exception. It runs : The courts have further shown themselves willing to 'lifting the veil' where the device of incorporation is used for some illegal or improper purpose... Where a vendor of land sought to avoid an action for specific performance by transferring the land in breach of contract to a company he had formed for the purpose, the court treated the company as a mere 'sham' and made the order for specific performance against both the vendor and the company".

The law state by Palmer and Cower has been approved by the Supreme Court in *Tata Engineering and Locomotive Company Limited v. State of Bihar* (1964) 34 Comp Cas 458; (1964) 6SCR 885. The following passage from the decision is apposite (at page 470)

" Gower has Feed2 seven categories of cases where the veil of a corporate body has been lifted. But it would not be possible to evolve a rational, consistent and inflexible principle which can be invoked in determining the question as to whether the veil of the corporation should be lifted or not. Broadly stated, where fraud is intended to be prevented, or trading with an enemy is sought to be defeated, the veil of a corporation is lifted by judicial decisions and the shareholders are held to be persons who actually work for the corporation."

4. In *DHN Food Distributors Ltd. v/s London Borough of Tower Hamlets* (1976) 3 ER 462,467, the Court of Appeal dealt with a group of companies. Lord Denning quoted with approval the statement in *Gower's Company Law* that "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group". The learned Master of Rolls observed that "this groups is virtually the same as a partnership in which all the three companies are partners". He called it a case of "three-in-one" – and, alternatively, as "one-in-three".
5. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.
6. In *Delhi Development Authority V. Skipper Construction Pvt Ltd.*, 1997 (089)- COMPCAS-0362-SC., the Supreme Court has referred to the above discussion on the topic of Corporate veil and held as follows :-

"Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created several corporate bodies does not prevent this court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/ or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and / or defraud people."

7. The aforesaid decision of Supreme Court was followed by Bombay High Court in *Securities and Exchange Board of India v. Libra Plantations Ltd.* 1999-(033)-CLA-0256-BOM.

The enquiry officer therefore held that the entities that are controlled and connected with Mr. Nirmal Bang, Mr. Kishore Bang and Mr. Dilip Bang i.e. M/s. Nirmal Bang Securities Pvt Ltd., Bang Equity Broking Pvt Ltd., Bama Securities Ltd., and Bang Securities Pvt.Ltd. are all traders in securities market and the trading activity of the whole group relates to dealing in securities transactions in the capital market. Therefore, the contention that each one of them is a separate and distinct entity does not hold good for the aforesaid reasons and case law discussed.

In the facts and circumstances as dealt with by the Enquiry Officer I agree with the finding of the enquiry officer and hold that the Group as a whole is responsible for the violations as they acted in concert.

1. Whether the above entities are involved in market manipulation?

### 8.2.1 Nirmal Bang Securities

- A. It was observed by the Enquiry Officer that in Sett. 1046 purchase position of 70406 were reduced to 28449 in Sett. 1047. In Sett. 1048 the previous purchases were converted into sales of 40,052 which constituted 4.6 percent of the net of the BSE.
- B. The member argued in his reply to the above finding that these transactions of NBS had no effect on the price and Enquiry Officer did not give any finding to this effect. The member argued that the Enquiry Officer had mistaken the transactions done during the settlements as NBS net positions at the end of the relevant settlements. Hence there is neither a reduction in net purchase position as alleged nor a conversion of purchase position into a sale position.
- C. This argument of the member that the effect of the transaction on the price has not been mentioned by the enquiry office is not correct. As the numbers speak for themselves there is a reduction in net purchase position and conversion of purchase position in sales positions. It is worth noting that it constituted 4.6% of the net of the BSE.
- D. The enquiry officer found that in Sett. 1049, NBS had net sales of 3,50,315 shares, which constituted 17.9% of net of BSE. NBS was a net seller in four out of five days.
- E. The argument of the member is that there is no finding that NBS transactions had any impact on the price is not correct. The findings are given in the context of market fall therefore there is no need to give a finding for every instance that it resulted in a fall. The co-relation between the price movements and fall is self explanatory from the figures. For example the enquiry officer found that the purchase in Sett. No.1050 & 1051 could be with a view to cover the earlier short sales.
- F. The argument of the member was that there is merely an assumption and conjecture of the Enquiry Officer is also not correct. As clearly stated by the Enquiry Officer in the report that the fall in the market position cannot be established with mathematical precision. It is only a preponderance of probability that is required to prove the manipulation. These expressions like "could be" are expression of preponderance of probability.
- G. The enquiry officer found that BEB was also a net seller in Settlement 1049 to the extent of -181503 which constituted -9.2% of net of BSE. He stated that the subsequent purchases appear to cover the earlier short sales. He further found that in settlement No.1049 and 1051, both NBS and BEB were significant net sellers which constituted 9.2% and 17.9% of net sales at the Exchange. Together, the net sales at BSE constituted nearly 27% of the sales in the scrip.
- H. This is not merely an assumption or conjecture as claimed by the member. It is not a mere coincidence of positions. The similarity of the positions certainly established a concerted action. The Enquiry Officer had successfully proved that there were heavy sales by the member and all these figures put together would result in an unfailing conclusion that there is an artificial fall in the price.
- I. With regard to the member dealing in HFCL the Enquiry Officer found that the purchases in Sett. 1048 could be with a view to cover the short sales in the earlier settlements. The member was a net purchaser from Settlement No.1049 to 1051, which covers the period from 26<sup>th</sup> February to 16<sup>th</sup> March, 01. BEB had a net sale of -53442 in Settlement No.1047, as against the net sale -20173 by NBS in the same settlement. Hence, both BEB and NBS had net sales simultaneously in sett no1047 which constituted 6.9% together of the net sales at the exchange in the scrip. The previously built purchase positions were also liquidated by BEB in settlement no.1049 where it had a net sale of -86055 although after taking into account the opening positions, the net position at the end of the settlement is +4286 as per the CA certificate submitted by the member. However, the previous purchase position of 90436 was unwound to 4286 in this settlement.
- J. The above finding of the enquiry officer was arrived at after taking into account the sale positions of 20,173 shares that resulted in delivery. The net sale position is not altered whether there is delivery or not and it is also not correct to state that it is a mere coincidence of position as claimed by the entities in their replies. In the given circumstances it can be concluded that it is an action in concert to depress the prices.
- K. With regard to the member dealing in Infosys, the enquiry officer found that the member was a net seller in Sett 1043 and in 1044 to the extent of -13.4% of net of exchange. The subsequent purchases as found by the enquiry officer could be with a view to cover the earlier short sales. Between Sett No.1048-1051 the member was a net seller. In particular, in Sett 1049 they were sellers to the extent of -6.4% of the exchange net and in 1051 to the extent of -12.6% of the net of BSE. The member had indulged in sales on the crucial dates when the share prices have fallen which created artificial depression in prices. Though the member had given opening purchase position and the quantity delivered for sett 1048 and sett 1049 and sett 1050, these figures were not furnished for the crucial sett of 1051 when the member had a net sales of -42013 which constituted 12.6% of the net sales of the exchange. Though BEB also had net sales in settlement No.1050 and 1051 and to this extent, the Enquiry officer has stated that it could be was acting in concert with NBS, its contribution for the fall in prices can be termed as marginal in view of its smaller net sale of 1225 and 162 shares in these settlements. BEB also had a net sales in settlement No.1050 and 1051 covering the period 5/3/01 to 16/3/01 and to this extent, they can be said to be acting in concert with NBS in artificially depressing the price by its sales.
- L. In his reply the member has only replied that these sales resulted in deliveries and that Enquiry Officer proceeded under a wrong assumption without actually explaining how this assumption was wrong. I have considered this argument and I am the view that this was not mere an assumption but a definite finding on the probability of manipulation. It is also not correct to state that the Enquiry Officer has not produced any data in support of the allegation of sales on crucial dates. The show cause notice contained all these figures. I found that the member did not deny the sales but only stated that they resulted in deliveries which in any case will not alter the net sales position. I also don't accept the statement that it is mere coincidence to have similar positions and this fact will certainly lead to a conclusion of manipulation and acting in concert.

- M. With regard to dealings in the scrip of Satyam Computers the enquiry officer found that member had a net sale position of -70,086 at the end of Sett. No.1043. He had a net purchases in Sett No.1044 to the extent of 241352. This was reduced to 2813 in Settlement No.1045. The purchases of 289734 in Sett No.1047 were cover of short sales in previous settlement, where the net sales were 224803. Similarly, the purchases of 305263 in Sett No.1050 appears to be the short covering for previous settl No.1049 where the net sales were 344378. The member had a net sale of -78831 in Sett No.1051. The purchases were made in Sett No.1047 and Sett No.1050 when the share prices have registered a fall. Therefore, I am of the view that these purchases were made at lower prices after hammering down the prices by sales including short sales in the previous settlements of 1046 & 1049. Hence, the contention that in settl no. 1050 that they were net buyers when the price fell and the fall cannot be attributed to the member since there were net purchases will not hold water. I agree with the Enquiry Officer that the trading pattern of the member is typical of a short seller who sells shares without possessing the same with a view that the prices will come down in future so that the short sales can be covered by purchasing at lower prices. In sett no 1048 and 51, both BEB and NBS were net sellers and to this extent they were found to be acting in concert to bring down the prices. It is the member's own case that the sales in sett no 1048 and 49 were short sales. The net sales by NBS in settlement No.1049 at 344378 constitute 8.2% of the net of exchange even after taking into account the opening purchases of 34398 shares and the deliveries of 156676 shares. I therefore agree with the conclusion of the Enquiry Officer that the member had indulged in short sales.
- N. The members reply was that the Enquiry Officer's finding was without correlating price movements with the transactions. The impact of transactions of other market participants as claimed by the entity is not necessary to be analyzed in this enquiry report. The role of other market participants in the present manipulation is being separately dealt with by the Board. With regard to the contention of the member that short selling was not illegal as stated in the written submissions is contrary to what was submitted by the Counsel during the personal hearing. He conceded during the personal hearing that short selling might result in market manipulation.
- O. With regard to DSQ the enquiry officer found that the member had larger net purchases of 321012 shares in settl no. 1046 which constituted 57.2% of net of BSE and these purchases were unwound in subsequent settlements of 1047 & 1048. Therefore, net purchases in 1049 to 1051 has to be seen against the background of unwinding previous purchases. BEB was also simultaneously selling in settlement No 1047 and NO.1048. Infact, the net purchases in settlement No.1046 which stood at 56.2% of the net of BSE has come down to .1% of net of BSE in settlement No.1047.

The member has admitted the above position but stated that there is nothing wrong in that.

- P. With regard to Zee Telefilms in settlement no. 1049, the correct position is +209795 shares but not -422820 as alleged. The enquiry officer observed that the member was a continuous net seller in sett no. 1046 to 1048. His subsequent purchases in 1049 & 1050 were to be towards covering the short sales in the earlier settlements. Again, in sett No.1051, there was a net sale position of -87013. BEB was also simultaneously selling in settlement No.1048 and 1049 and to this extent it can be said to be acting in concert with NBS.

Admitting the above position the member stated that there is no finding on the impact of such sales on the price. As already stated it is not necessary that every time the finding on correlation between the transactions and the fall should be given. It is to be kept in mind that the whole enquiry is with regard to depression in share prices caused artificially by the member.

## 8. 2. 2 Bang Equity Broking Pvt. Ltd.

- A. It was found by the enquiry officer that member was a consistent net seller of Global Tele from 21<sup>st</sup> February to 23<sup>rd</sup> February in settlement No.1048. The member had long purchases made on 19<sup>th</sup> and 20<sup>th</sup> February, which he had liquidated subsequently and also created fresh net sales.
- B. It was found that after being a net seller from 21<sup>st</sup> to 26<sup>th</sup> February, the subsequent purchases from 27<sup>th</sup> to 1<sup>st</sup> March appears to be a purchase transaction to cover the previous short sales. Further, the sale of 186468 shares by the member on 2<sup>nd</sup> March, 2001 constituted 4.1% of the market net is significant to bring down the prices. Therefore, the overall trading pattern by the member in Global Tele in settlement Nos.48 and 49 with particular reference to settlement No.49 where the net sale of the member was quite high at 181503 contributed to the downfall of the price. Even after taking into account the opening positions, the net sales positions at the end of sett no.1049 would still be 167297.
- C. The Enquiry Officer had taken into account the contention of the member that he was a net purchaser in 1050 and 1051 for about 28,000 shares and found that it had to be seen against the background of net sale position in settlement No.1049 at -167297. (as per page 6 of reply) After pressing huge net sales in settlement No.1049, he was purchasing in the subsequent settlement to cover the short sales in settlement No.1049. He was seen taking advantage of the fall in prices to cover the earlier short sales in settlement No.1050 and 1051. The price of the scrip which closed at Rs.312 on 2<sup>nd</sup> March, when the member had a huge net sale of - 186468 shares fell by Rs.60/- on that day. The price further fell to Rs.225 on 9<sup>th</sup> March in settlement No 1050 to Rs.206 on 16<sup>th</sup> March at the end of settlement No. 1051. The opening price in settlement No 1048 was Rs.615 and the closing price was Rs.439. It is observed that on 19<sup>th</sup> February 2001, which was the opening day of settlement No. 1048, the member had net

purchases of 47598 shares, and this was unwound in the subsequent days as under :

| Date      | Our Net  | Closing Price<br>(Rs.) | Price change<br>(Rs.) |
|-----------|----------|------------------------|-----------------------|
| 16.2.2001 |          | 609                    |                       |
| 19.2.2001 | +47,598  | 604                    | -5                    |
| 20.2.2001 | +2,080   | 583                    | -19                   |
| 21.2.2001 | -75      | 557                    | -26                   |
| 22.2.2001 | -8,218   | 518                    | -39                   |
| 23.2.2001 | -39,175  | 439                    | -79                   |
| 26.2.01   | -26,134  | 416                    | -23                   |
| 27.2.01   | +9588    | 353                    | -63                   |
| 28.2.01   | +695     | 404                    | +51                   |
| 1.3.01    | +13,816  | 372                    | -32                   |
| 2.3.01    | -186,468 | 312                    | -60                   |

- A. On 23/2/01, the member's net sales were -39175 at the end of settlement when the price fell to Rs.439. The price fell by Rs.79 on 23/2/01. Therefore, the enquiry officer concluded that the member had unwound his previous purchases and indulged in net sales to hammer down the prices. In settlement No.1048, the opening price was Rs.619/-, the highest price was Rs.624/- and the closing price was Rs.439. In settlement No.1049, the member had a net sale of -26134 on 26/2/01 and on 2<sup>nd</sup> March his net sales were -186468 which was significant as on that day the price fell by Rs.60/-. The net sales by the member as a whole in settlement No.1049 for -181503 shares constituted -9.2 % for net sale at BSE. The price of the share in settlement No.1049 fell from Rs.443 to Rs.312.
- B. The subsequent purchases by the member in settlement No.1050 were with a view to cover the earlier short sales position and to take advantage of the prices that had fallen. The enquiry officer found that this is typical behaviour of a short seller who sells the share which he does not possess with a view to take advantage of the fall in prices on the subsequent days to cover the earlier short sales.
- C. The contention of the member that though it had a consistent net purchases in settlement No.1046 to 1048 the scrip price fell by 35.67% from Rs.670 to Rs 439 is examined. Settlement No.1046 relates to the period 5/2/01 to 9/2/01 and settlement no 1047 related to period 12/2/01 to 16/2/01. The net purchases in these settlements are at 2612 and 3415 shares respectively which is not significant. Infact, the period mid February commences towards the end of settlement no 1047. Though the member had a net purchases of 2210 in settlement no 1048, he was a consistent net seller in this settlement between 21/2/2001 to 23/02/01 as under:

| Date    | Net    | Closing Price | Price change |
|---------|--------|---------------|--------------|
| 21/2/01 | -75    | 557           | -26          |
| 22/2/01 | -8218  | 518           | -39          |
| 23/2/01 | -39175 | 439           | -79          |

- D. It had liquidated the net purchase of 47598 on 19/02/01 on the first day of the settlement to 22/02/01 at the end of the settlement No.1048 which means that he unwound the previously built purchases.

- E. In settlement No.1049 (26/2/2001 to 2/3/2001) the price fell from Rs.443 to Rs.312, and the member had net sale of 26134 on 26/2/2001. His subsequent purchase on 27/2/01 to 1<sup>st</sup> March were with a view to cover the short sales on 26/2/01. The price fell from Rs.416 to Rs.372 between 26/2/01 and 1/3/01. The net sales by the member on 2/3/01 are quite high at – 186468 and the price fell by Rs.60 on that day to close at Rs.312. The member's contention that their volumes constituted a miniscule of .48% and .98% of the total market volume, cannot be accepted. The net sales by the member in settlement No.1049 constituted –9.2% of net of BSE at –181503 shares when the share price had fallen by Rs.131 in the said settlement. Further, the net sales of the member can be compared with the net sales at the Exchange only. It cannot be compared with the total market volume as that could give a distorted view. In settlement No.1049, the member had purchases of 176397 shares and sold 357900 shares with a net sale of –181503. After considering the opening position, the net sale position would still be –167297 which is significant.
- F. It was contended by the member that the price had declined from Rs.416 to Rs.353 on 27/2/ by approximately 16% though they had a net purchase position. However, this has to be seen against their net sales of –26134 shares on the previous day when the price fell by Rs.23. The subsequent purchases on 27/2/01 could be with a view to cover the short sales of previous day to take advantage of the fall in prices. It may be noted that the price fell by Rs.63/- on that day. The same applies to the purchase on 1/3/01 as well because after being a net seller of –26134 on 26/2/01, the subsequent purchases from 27/2/ to 1/3/01 are marginally exceeding the net sales on 26/2/01. On 2<sup>nd</sup> March, there was a significant net sale of 186468, by the member and the price fell by Rs 60 on this day to Rs.312. The majority of the sales by the member as per his own reply was in the range of Rs.315 to Rs.317 which is nearer to the lower circuit filter of Rs.312.60 for the day. It was contended that their sales did not contribute to the fall in the share prices for the day. However, it is observed that the net sales by the member on 2/3/01 of 186468 shares constituted 4.1% of market sales. Therefore, the significant net sales by the member can be contributory factor to the fall in the prices on that day. The subsequent purchases in settlement No.1050 and 51 when the price fell could be with a view to cover up the short sales of the previous settlements.
- G. The member replied that that there were total number of 49,678 shares purchased on 19<sup>th</sup> and 20<sup>th</sup> February and on 23<sup>rd</sup> February he sold 47468 shares. Thus member admitted to have had net sales on 21 and 23 February in sett. No.1048. The fall of the scrip by Rs.60/- as found by the Enquiry Officer can be easily attributed to the trading pattern of the member on the 02.03.2001. The member admittedly sold 186468 shares which was admittedly significant. The members reply with regard to comparison of its total purchases and total sales volume with the total volume is vague and the Enquiry Officer has rightly not accepted the same. The members argument that the reasons for price fall during the period were not given by the Enquiry Officer is not correct. As stated earlier the transactions of the member are self explanatory for the reasons for the fall.
- H. With regard to the transactions of the member in HFCL the enquiry officer found that the member (BEB) had net purchases of 57764 which constituted 3.7% of BSE in settlement No.1046. His net purchases from settlement No.1044 to 1046 are as under.

#### Settlement Net Purchases

1. 59390
2. 3935
3. 57764

In Settlement No1047, the member liquidated the earlier net purchases and made fresh sales. At the end of settlement no 1047, the member had net sales of -53442 which constituted 5% of the net sales of the Exchange. It was contended by the member that despite their having net purchases position in settlement 1048 to 1051, the price of the scrip fell. The enquiry officer observed that this contention of the member had to be examined in totality against the trading pattern of the member between mid February and mid march when the share prices fell. The member had net purchases in settlement no 1048 and he had net sales in the immediately preceding settlement number 1047 to the extent of –53442. Further, on 23<sup>rd</sup> February, 26<sup>th</sup> February, 27<sup>th</sup> February and 1<sup>st</sup> March, the member was a net seller to the extent of –32563, –42130, –27858 and –21178 respectively. On 2<sup>nd</sup> March, he had a marginal net buy of 2967. The enquiry officer noted that the price of the scrip fell to Rs.743 in settlement no 1048 from its opening position of Rs.910. The member after having been a seller in the earlier settlement had taken advantage of the fall in the price in settlement No 1048 with his purchases. Similarly, with respect to the contention of the member that in settlement No. 1050 and 1051, despite his net purchases to the extent of 5556 and 27724, the price of the scrip fell by Rs.259 and Rs.87 respectively in these settlements. The enquiry officer observed that these purchases were preceded by a huge net sales of 86055 in settlement No. 1049, which constituted 3.5% of net sales at the Exchange. He stated that the price of the scrip which closed at Rs 605 at the end of settlement No 1049 had fallen to Rs.326 and Rs.214 at the end of settlement No 1050 and 1051 respectively. With regard to the contention that the sales in settlement no 1049 were against opening purchase positions and that they continue to have a net purchase position at the end of the settlement, the enquiry officer found that after considering the opening positions the member had a net purchase position of 90436 in settlement No.1048 and the same was significantly reduced to 4286 in settlement No.1049 which means that the member had unwound his previous purchase positions.

- A. Therefore, the contention of the member that its trading pattern in the scrip did not cause fall in the prices of the scrip was not accepted by the enquiry officer rightly having regard to the unwinding of previously built large purchase position. The net sales by the member in settlement no 1047 and 1049 which constitute –5% and 3.5% of the net of the Exchange is considered significant and contributed to the fall in the prices of the scrips. Between settlement No 1047 and 1049, the member had unwound the previously built large purchase position. His sales on 23/2/01, 26/02/01, 27/2/01 and 1/3/01 as referred earlier were also taken into account for this purpose.

- B. The member in his reply to the finding admitted the figures but tried to show some minor contradictions in the statements. It was stated by the member that they were buyers in the relevant settlement and prices fell. Taking into account the overall sale position of the member it is obvious that there was significant contribution of the member to the price fall of the scrip.
- C. With regard to Satyam Computers, the member had a net sales of -82550 which constituted 3.8% of the net sales of BSE in settlement no 1048. In settlement No.1051 covering the period from 12/3 to 16/3, the member had a net sales of -36222 .
- D. It was observed from the enquiry report that the member had purchases of +7944 and +85763 at the end of settlement No 1046 and 1047 respectively. In settlement no 1048, previously built long purchases were converted into net sales which constituted 3.8% net sales of BSE. The price of the scrip fell from a close of Rs.372 to Rs.365 in settlement no.1047. The price further fell to Rs.318 in settlement No.1048. The member after having net sales of 82550 in settlement No 1048 had resorted to purchases in settlement no. 1049 and 1050 when the prices had fallen. It is therefore clear that the member after having artificially depressed the prices in settlement no 1048 as aforesaid, had taken advantage of the fall in prices and resorted to the purchases. The member had net sales of -138885 on 23/2/2001. On 1<sup>st</sup> March and 2<sup>nd</sup> March, the member had net sales of -79317 and -285297 respectively. On these dates, the price of the scrip fell by Rs.20, 34 and Rs.50 respectively. Even after considering his opening purchase positions as claimed by the member, the member had a net purchase position of 102807 in settlement No.1047 which was reduced to 20017 in settlement No.1048. In settlement No.1049 and 1050, he had again made purchases when the prices had fallen in these settlements and at the end of settlement No.1050, he had a net purchase position of 50704. This position was again unwound and reduced to +8254 in settlement No.1051. Therefore, across the settlements 1047 to 1051, when the prices had fallen, the member was a significant seller.
- E. The member has replied that there are contradictions in the findings stating that the member was a buyer when the prices fell and concluded that the member was a significant seller when the prices had fallen. It is observed that there are no contradictions in the findings of the Enquiry Officer, he had only stated that he had reduced his purchase position of 102807 shares in sett. 1047 to 20017 shares in sett. 1048. Hence after selling around 80,000 shares he purchased again in sett. 1050 after the prices had fallen, thereby making a profit without changing the position. I therefore, find that the member was responsible for the artificial fall in the prices.
- F. With regard to Zee Telefilms, the enquiry officer found that the member had net sales of - 182780 in settlement No.1048. In settlement No.1049, further he had net sales of -82020. In settlement No.1048, he had a net sale of - 257590 on 22<sup>nd</sup> February and -52640 on 23<sup>rd</sup> February. Then the price had fallen by Rs.25. The trading pattern in settlement no 1048 reveals that the purchases on 19<sup>th</sup> February and 20<sup>th</sup> February were liquidated on 21<sup>st</sup> February and fresh sales were made from 21<sup>st</sup> to 23<sup>rd</sup> February. Again, on 27<sup>th</sup> February, there was a net sale of -95510 when the price fell by Rs.27. On 28<sup>th</sup> February, the member continued to be a net seller to the extent of -850. On 2<sup>nd</sup> March when the price fell by Rs.26, he was a net seller for 27660 shares.
- G. The purchases on 1<sup>st</sup> March, 2001 for 23135 were covering purchases for the earlier short sales in view of the fact that the member had a net sale position of -95510 on 27/2 and -850 on 28/2/2002. The contention of the member that in settlement No.1048 when he had a net sale of 182780 shares, the price fell by Rs.21 and in settlement No.1049 when he had a net sale of 82020 shares, the price fell by Rs.74 and in settlement No.1050 when he was a net buyer the price fell by Rs.21 and therefore his transactions had no relationship with the price movements was examined. I am of the view that as found by Enquiry Officer in cases of this nature when there is a series of transactions over a period of time, it cannot be determined with mathematical accuracy the extent of the price fall vis a vis the member's trade. What is to be seen is the overall trading behaviour of the member. The proportion of his sales to the exchange net sales should be taken into account. I am of the view that we should see as to what is the contribution of the member to the demand as a whole in the market whether the purchases are on account of covering the previous short sales. Viewed against this background the purchases in settlement no 1050 are preceded by significant net sales in the earlier settlements of settlement No.1048 and 1049 by -182780 and -82020 respectively. The prices had fallen to Rs.210 and Rs.136 in the previous settlements when the member had a net sales as aforesaid. Therefore, it can be reasonably concluded that the purchases in settlement No 1050 when the closing price was Rs.115 was with a view to cover the earlier short sales and taking advantage of the fall in prices after hammering down the prices. His net position as per the certificate given by the chartered accountant is as under:

| SETT.NO | NET POSITION |
|---------|--------------|
| 1047    | +196290      |
| 1048    | +13060       |
| 1049    | -69120       |
| 1050    | +33215       |
| 1051    | +1904        |

From the above table, it can be concluded that the member who had a net purchase position in settlement No.1047 has unwound it in the subsequent settlement and in settlement No.1049 , the net sale was 69120. He made net purchase position of 33215 in settlement No.1050 which could be with a view to cover the earlier short sales.

The member in his reply stated that BEB's net sales in sett. 1048 were out of previous purchases and sales in sett. 1049 have been substantially delivered. In spite of the purchase position, the price of the scrip was falling. At the end of the settlement, BEB had net purchase position. It was contended that the Enquiry Officer should not study the trading behaviour of the member in isolation without considering the behaviour of other participants in the market. Enquiry Officer has to determine whether our operations led to "artificial depression" in prices. It was further submitted that Enquiry Officer is not sure of what his reasonable conclusion is and that Sales of sett. 1048 are out of opening purchase position (or unwinding as stated in the report). Sales of sett. 1049 are substantially delivered. He therefore, submitted that the conclusions of the Enquiry Officer are erroneous.

I have considered the replies of the member. As already stated in the case like market manipulation, it cannot be conclusively determined as to the quantum and means. Hence the conclusions of the Enquiry Officer are reasonable and there is no ambiguity with regard to deliveries, I am of the view that this will not change the net sale position. Hence there is no question of covering any short sales.

The member has only stated that the Enquiry Officer has ignored his reply in this regard but did not elaborate in what way consideration of his reply would have affected the findings. I, therefore, tend to agree with the finding of the Enquiry Officer that the member was responsible for market manipulation with regard to the dealings with Palombe securities, separate finding is given.

### 3. Bang Securities

A. Bang Securities is a registered sub broker of Nirmal Bang Securities and Bang Equity Broking. The charges were that of indulging in excessive sales to bring down the prices, acting in concert with others, short sale of 2 lakhs sales of Global Tele System, receipt of loan of 5 crores from Palombe and sharing of introductory fees with it.

Bang Securities had a significant net sale position during settlement No.1048 (19 to 23 February) and sett no.1049 (22<sup>nd</sup> February to 2<sup>nd</sup> March) .

Enquiry officer exonerated the member from the charge of manipulating the prices of Himachal Futuristic, Zee Telefilms, State Bank of India, Satyam Computers and Infosys. However, in Satyam Computers, the enquiry officer found that there was an unwinding up of previous positions when the sales were made on (100287) 23.02.2001, (50,000) 01.03.2001 and 02.03.2001 (35,000) respectively.

B. With regard to the scrip of Global Tele :

| Name in Clients   | 23.02.2001 |       | 01.03.2001 |      | 02.03.2001 |        |
|-------------------|------------|-------|------------|------|------------|--------|
|                   | Bought     | Sold  | Bought     | Sold | Bought     | Sold   |
| Stock in Trade    |            | 63500 |            |      | 3000       |        |
| Bang Equity Brok. |            | 2500  |            |      | 170000     |        |
| Nirmal Bang Secu. | 66240      |       | 950        |      |            | 194550 |

In Global Tele, it was asserted that a sale of 63,500 shares on 23<sup>rd</sup> February, 2001 is against previous purchases to the extent of 30984 shares. There was no trading on 1<sup>st</sup> March, 01. The enquiry officer found that there were short sales of 32,516 in the scrip.

A. With regard to the allegations of matched trade with Nirmal Bang Securities for 2 lakhs shares of Gopal Tele on 2<sup>nd</sup> March which was a matched trade with Nirmal Bang Securities for 184425 shares it was alleged that this was a case of circular trading with an intention to hammer down the prices. While denying that there was any circular trading, member explained

that on 2/3/01 Bang Securities had decided to square off the sale position of 2 lakh shares of Global Tele with NBS, one of its main broker and created a new sale position with BEB, also one of its brokers for accounting and administrative convenience. When this order was displayed on the screen, it could result on 184425 shares only, the balance was purchased by some other person. This transaction was between Rs.315 and Rs.316 and the lowest circuit filter for the day was Rs.312.60. The trade was executed at 12.35 pm and thereafter the price went up Rs.321 by 1.45 pm. Enquiry Officer however found that this charge is not established.

- B. With regard to Hindustan Lever the enquiry officer observed that the member had a net sales of 39923 and 60000 on 1<sup>st</sup> and 2<sup>nd</sup> March respectively and with respect to Reliance Industries, the member had purchase of 23840 on 23<sup>rd</sup> february and on 1<sup>st</sup> March the purchases were 115100. The sales on 2<sup>nd</sup> March at 255470 are significant. It was contended by the member that SEBI admitted that there was no charge on depressing the prices of HLL and Reliance.

Enquiry officer found that the reply of the member is not satisfactory. The member had sold 39923 shares on HLL on 1/3/01. He further sold 60000 shares on 2<sup>nd</sup> March when the share prices fell. Further, it is not the case of the member unlike the other scrips that these were the opening purchase position in the said settlement. The sale of 2,55,474 shares of Reliance on 2<sup>nd</sup> March was considered significant. As in the case of HLL, it is not the case of the member that this sale on 2<sup>nd</sup> March is on account of any opening purchase position for any client.

- C. With regard to the charge of the payments received by Bang Securities from Palombe the enquiry officer accepted the explanation of the member that Rs.5 crores received from Palombe was on account of money due to them.

#### 8.2.4 Bama Securities

A. With regard to the dealings of the member, the enquiry officer observed that in Global Tele Ltd, they had net purchases in settlement no 7 to the extent of 18053. In settlement no 8, the purchases were converted into a net sale of -7632. In settlement no.9, there were purchases of 2136. In sett no 10 these purchases were converted into net sales of -3677. At the end of sett no 11, the member had a net purchase of 1875. The net purchases of .5.45 crores at the end of sett 7 was reduced with a net sale of 2.3 crores by unwinding previous purchases. The net purchases of 2136 in sett no.9 could be with a view to cover the earlier short sales. The subsequent sales and purchases in sett no. 10 and 11 are not significant. Except in trading in settlement No.8 in which he unwound previous purchases and had a net sale, there is not much activity by the member in the scrip.

The member stated that the Enquiry Officer has not reached any adverse findings.

- B. In HFCL, there was a net sale of -43725 in sett no 7. However, the subsequent purchases from sett no 8 to 10 are significant and were more than the net sales in sett no.7. In sett no 11, the net purchases of 53,936 were liquidated and fresh sales were made with a net sale of -6479 at the end of the sett.
- C. In Infosys, the member had a consistent purchase position from settlement No. 7 to 11. The trading by the member is also not significant.
- D. In Satyam, the member had net sales of -65804 in sett no 7. These were followed by purchasers of 62970. Some of these purchases could be to cover the earlier short sales. The net purchases which stood at 23928 at the end of sett no 10 were converted into net sales of 417 at the end of settlement No. 11.
- E. With regard to the members trading on specific dates i.e. February 23, March 1<sup>st</sup> and 2<sup>nd</sup>, the enquiry officer found that the member had built significant sale positions in several scrips across various settlements, that some of these sales were in specific time slots when the prices had fallen steeply and most of these sale were on proprietary account and on behalf of Bang Security with a view to artificially depress the prices.
- F. Member replied that purchase positions in the relevant scrips and in other pivotal stocks, that constitute the index were ignored. It was argued that such purchases were made not only on the same day but also during the same time slots selected by SEBI.
- G. It was alleged that the member maintained a net sale position in Bank of Rajasthan, Global Tele and Silver Line on February 23<sup>rd</sup>.

It was further stated that the aggregate net position in all scrip of the member was as under :

Date opening net position closing

Position (Rs. in crores) position

23/2/01 32.36 15.93 48.29

1/3/01 48.10 -.22 47.88

2/3/01 47.88 1.82 49.70

- H. With reference to the above table, it was argued that on each of the aforesaid days, the member was a net purchaser, despite the price movements on these days, and that there was no co-relation between their transactions and the market movement because on 23<sup>rd</sup> February, when the markets fell, there were net buyers of Rs.15.93 crores. On March 1<sup>st</sup>, when the markets rose, there were net sellers for 22 lakhs. And on March 2<sup>nd</sup>, when the markets fell, there were net buyers for 1.82 crores. Their outstanding position at the end of March 1<sup>st</sup> and March 2, there was a purchase position of over Rs.47 crores and it is absurd to suggest that they would depress the prices artificially and that no data was provided in respect of scrips like MTNL, Sterlite Optical and SBI.
- I. The enquiry officer has found that the position of the member in Bank of Rajasthan upto February 22 was -42906 and on February 23<sup>rd</sup>, the net sale position was 31011. The net outstanding position upto February 23, was -73917 which constituted -22.33% of the net of exchange. As at the end of the sett the position was 126300.
- J. In Global Tele, the member had a net sale position of -10577 upto 22<sup>nd</sup> February, and on 23<sup>rd</sup> February, there was a net sale of -152578. The net outstanding position on 23<sup>rd</sup> February, was -163155 which constituted -2.53% of net of exchange.
- K. In Silverline, the member had -41920 net sale position upto 22<sup>nd</sup> February and on 23<sup>rd</sup> February, there was a net sale position of -21100.
- L. Net outstanding sale position upto 23<sup>rd</sup> February was -63020 which constituted 1.02% of the exchange net. At the end of the settlement, it was an overall buy position of 5095.
- M. In HFCL, the net upto February 22 was +50480. On 23<sup>rd</sup> February, the net sale were -16781. The net outstanding position upto 23<sup>rd</sup> february was +33699 that constitute .45%. It was replied by the member that he had an opening purchase position of 50,480 share in HFCL and out of this, he had sold only 16,781 shares on 23/2/02 and thus had a net purchase position of 33,699. It was, therefore contended that it was not correct to state that he created a sale position in HFCL for that day can be accepted. However, at the end of the settlement, his net sales were -43,200.
- N. In Reliance Petro, the net upto 22<sup>nd</sup> February, was +121150 and on 22<sup>nd</sup> February , there was a net sale of -75,200. The reply by the member that he had a net purchase position of 45950 for that day can be accepted. However, at the end of the settlement he had a net sale position of -570.

In Zee Tele, the net upto 22<sup>nd</sup> February, +164460 and on 23<sup>rd</sup> February, there was a net sale of -137266.

- O. The Enquiry Officer had accepted the contention of the member that after the sale of 137266 shares, he had a net position of 27,194 on February 23, and therefore it is not correct to state that he had a net sale position. However, it was noted that the purchases of 22<sup>nd</sup> February was unwound on 23<sup>rd</sup> February and fresh sales were made. At the end of the settlement, he had a net sale position of -423514.
- P. In SSI, the net upto 22<sup>nd</sup> February was +17495 and on 23<sup>rd</sup> February, there was a net sale of -8440. The contention of the member that he had a net purchase position after accounting for the sales on that day can be accepted and his net purchases after these sales would be +9055. At the end of the settlement, he had a marginal purchase position of +10.

In Jai Prakash Industries, the member had a net purchase position upto 22<sup>nd</sup> February for 39450 and on 23<sup>rd</sup> February, this purchase position was liquidated and a net sale position of -7500 was created. At the end of the settlement, it was a net sale of -5074.

The member was a consistent seller in the following scrips on 22<sup>nd</sup> February, 23<sup>rd</sup> February, 28<sup>th</sup> February, 1<sup>st</sup> and 2<sup>nd</sup> March as under:

Scrip 22<sup>nd</sup> Feb 23<sup>rd</sup> Feb 28thFeb 1stMar 2ndMar

Bank of Raj -42906 -73917 -19800 -37050 -36450

Global Tele -10577 -163155 +36939 -41385 -99548

HFCL +50480 +33699 -27086 -27893 -23541

LIC Hsg Fin +800 +800 -10597 -27097 -27097

Satyam -194626 +42254 +306214 -171620 -238514

Silverline -41920 -63020 -144930 -139598 -84724

Zee Tele Film +164460 +27194 -64563 -117316 +61164

From the above table, it is clear that the member was a consistent net seller in the above said scrips on the above dates. The purchase positions in some of the scrips like HFCL were followed by net sales which means that the purchase positions were liquidated and fresh sales were created. The purchase positions preceded by net sales were with a view to cover the earlier short sales. Scripwise findings are as under.

Q. The enquiry officer has given the findings scripwise:

1. Bank of Rajasthan

The member had a consistent net sales position on the dates indicated in 'P' above.

1. Global Tele

The member had net sales positions on 22<sup>nd</sup> February, 23<sup>rd</sup> February, 1<sup>st</sup> and 2<sup>nd</sup> March.

The purchases on 28<sup>th</sup> February, could be with a view to cover the earlier short sales, since the sales are quite significant at -163155 on 23<sup>rd</sup> February.

2. HFCL

The purchase position on 22<sup>nd</sup> and 23<sup>rd</sup> February were completely liquidated and the member had a consistent net sales position on 28<sup>th</sup>, 1<sup>st</sup> and 2<sup>nd</sup> March as detailed in 'P' above.

4. LIC Housing Finance

There was a marginal buy position of 800 shares each on 22<sup>nd</sup> and 23<sup>rd</sup> february followed by net sales position on 20<sup>th</sup> February to 2<sup>nd</sup> March.

5. Satyam

The purchase position on 23<sup>rd</sup> February, are preceded by net sales position of 194626 on 22<sup>nd</sup> February. Although the member had a purchase position of 306214 on 28<sup>th</sup> february, the same was liquidated and significant net sales position of -171620 and -238514 were made on 1<sup>st</sup> and 2<sup>nd</sup> March respectively.

6. Silverline

The member had a consistent net sales position on the aforesaid dates for the aforesaid quantity in the table

7. ZEE TELE

The purchase position on 22<sup>nd</sup> and 23<sup>rd</sup> was completely liquidated and net sales position of -64563 was created on 28<sup>th</sup> February which increased to -117316 on 1<sup>st</sup> March. The purchases on 2<sup>nd</sup> March could be with a view to cover the earlier short sales in view of the earlier net sale position.

8. HCL Technology

In HCL Technology, the net purchase position on 22<sup>nd</sup> February, 23 February and 1<sup>st</sup> March were liquidated on 2<sup>nd</sup> March with a net sale of -19913.

R. The member gave the overall position on the aforesaid dates to suggest that he was a net buyer when the markets fell on the above dates. The enquiry officer however had found that his positions in the individual scrips that are being inquired into should be seen and not his overall position. The question is whether he had indulged in significant net sales, short sales, sales in specific time slot in the specific scrip as communicated in the show cause notice. In view of this, the overall position in all the scrips, at the end of the day, on 23<sup>rd</sup> February, 1<sup>st</sup> and 2<sup>nd</sup> March, are not being considered as relevant. What is relevant is his trading positions in the individual scrips as communicated in the show cause notice.

S. On examination of the above issues the enquiry officer gave following findings on the dealings of the member on 22, 23 and 24 February and 1<sup>st</sup> and 2 March. The trading pattern in Infosys, Reliance Petro, DSQ Software, Hind Lever, HCL Technologies does not show any consistent pattern of large sales that can be said to have hammered down the prices on the aforesaid dates.

1. In Reliance, the previously built purchase positions on 22<sup>nd</sup>, 23<sup>rd</sup>, 28<sup>th</sup> and 1<sup>st</sup> March were liquidated on 2<sup>nd</sup> March and the net sales on 2<sup>nd</sup> March was -56909.

2. In SSI, the net purchase position of 17495 on 22<sup>nd</sup> february was gradually reduced, on 23<sup>rd</sup>, 28<sup>th</sup> and on 1<sup>st</sup> March. On 2<sup>nd</sup> March, it was a net sale position of 24109. Therefore, in this scrip, the member had consistently reduced his purchase positions and ultimately had a net sale position on 2<sup>nd</sup> March.

3. In Wipro, the purchase positions on 22<sup>nd</sup>, 23<sup>rd</sup> February were liquidated on 28<sup>th</sup> February, with a marginal net sale of 55. On 1<sup>st</sup> and 2<sup>nd</sup> March also the member had a net sell position to the extent of 15068 and 19282 respectively.

T. The member in his reply stated that the above details refer to the net position at the net of the day after considering the opening purchase / sale position and does not represent transactions for the day. As a result -

1. In case of Global Telesystem the member had a opening net sale position of 15,647 shares on 22.02.01 and has purchased 5,070 shares on 22.02.01 resulting in net sale position of 10,577 shares at the end of 22.02.01. They contended that they are actually net buyers and not sellers as alleged.

2. Same is the case with HFCL on 2<sup>nd</sup> March and Silverline on 1<sup>st</sup> March and 2<sup>nd</sup> March. Further, this has also resulted in the sale figures being overstated since the figures have been arrived at after taking the opening balance into consideration and do not represent transactions for the day as detailed hereunder:

3. The sale figure for Satyam on 2<sup>nd</sup> March is 66,894 shares and not 2,38,514 shares. The sale figure of Zee on 1<sup>st</sup> March is 52,753 shares and not 1,17,316 shares. The sale figure for Silverline on 23<sup>rd</sup> February is 21,100 shares and not 63,020 shares. The sale figure for HFCL on 1<sup>st</sup> March is 807 shares and not 27,893 shares. The sale figure for Global on 2<sup>nd</sup> March is 58,163 shares and not 99,548 shares.

U. Therefore, to suggest that the member was a consistent seller on the days stated above is factually incorrect. The member had net sale position at the end of the day though he could have been a buyer during the day, as already shown above. Since price movements are based on the transactions during the day and not the opening position of the member, attributing fall in prices in the said prices based on the data contained on page 89 and 90 of the notice is totally incorrect, as not only are some of the positions incorrect but are also overstated.

1.

U. The trading pattern of the member as analysed in the preceding pages on the crucial dates of 22<sup>nd</sup>, 23<sup>rd</sup>, 28<sup>th</sup> February, 1<sup>st</sup> and 2<sup>nd</sup> March, in the scrips of Global Tele, HFCL, Satyam, Silverline, Zee Telefilms and Wipro goes to show that the member was a consistent net seller, and also unwound the previously built purchase position and created fresh net sales positions as discussed earlier that can be said to have contributed to the artificial depression of prices of these scrips during the relevant period.

#### W. SALES DURING SELECTED TIME SLOTS

1. The enquiry officer found that Sales during selected time slots by Bama Securities when the prices declined on 23<sup>rd</sup>, 1<sup>st</sup> March and 2<sup>nd</sup> March and had contributed to the decline in the share prices.

2. Following are the specific instances listed in the notice with regard to sales in selected time slots are as under:-

| Scrip             | Date    | Time From | Time To | Minutes | Quantity | % of Market | Fall in Price | % Fall in price |
|-------------------|---------|-----------|---------|---------|----------|-------------|---------------|-----------------|
| Global Telesystem | 23-2-01 | 15:04     | 15.14   | 0.10    | 85655    | 11.68       | (18.65)       | -4.08           |
| -do-              | 2-3-01  | 1233      | 12.41   | 0.08    | 49315    | 9.74        | (12.9)        | -3.91           |
| HFCL              | 2-3-01  | 12.33     | 12.43   | 0.10    | 3395     | .69%        | (22.80)       | -3.38           |

|              |         |       |       |      |        |        |          |        |
|--------------|---------|-------|-------|------|--------|--------|----------|--------|
| Infosys      | 23-2-01 | 14.41 | 14.52 | 0.11 | 444    | 1.12%  | (92)     | -1.61  |
| Inforsys     | 2-3-01  | 13.59 | 14.04 | 0.05 | 575    | 1.32   | (93)     | -1.83  |
| Infosys      | 2-3-01  | 13.20 | 13.40 | 0.20 | 647    | 1.11%  | (108.70) | -2.09  |
| Satyam       | 1-3-01  | 14.13 | 14.33 | 0.20 | 155744 | 5.01%  | (17.65)  | -5.26  |
| Satyam       | 2-3-01  | 10.57 | 11.05 | 0.08 | 62714  | 3.97%  | (12.2)   | -4.10  |
| Satyam       | 2-3-01  | 13.17 | 13.53 | 0.36 | 63979  | 2.56%  | (12.85)  | -4.57  |
| DSQ Software | 1-3-01  | 11.21 | 11.30 | 0.09 | 1433   | 0.68%  | (5.45)   | -1.46  |
| SSI          | 1-3-01  | 13.48 | 14.18 | 0.30 | 3789   | 2.66%  | (48)     | -3.79  |
| SSI          | 1-3-01  | 14.45 | 14.52 | 0.07 | 400    | 1.39%  | (33.75)  | -2.79  |
| SSI          | 2-3-01  | 13.41 | 13.54 | 0.13 | 9955   | 14.79% | (28)     | -2.70  |
| SSI          | 2-3-01  | 12.32 | 13.01 | 0.29 | 19450  | 11.13% | (71)     | -6.48  |
| SSI          | 2-3-01  | 10.56 | 11.16 | 0.20 | 1704   | 1.57%  | (51.4)   | -4.45  |
| WIPRO        | 1-3-01  | 13.33 | 13.41 | 0.08 | 9026   | 15.46% | (15)     | -.006  |
| WIPRO        | 2-3-01  | 10.26 | 10.35 | 0.09 | 1052   | 2.01%  | (76)     | -3.24  |
| WIPRO        | 2-3-01  | 10.55 | 11.05 | 0.10 | 485    | .61%   | (67.7)   | -2.95) |
| Zee Tele     | 23-2-01 | 12.26 | 12.32 | 0.09 | 76279  | 2.33%  | (8.35)   | -3.68  |
| Zee Tele     | 1-3-01  | 12.53 | 13.56 | 1.03 | 129478 | 6.52%  | (8.95)   | -5.17  |
| Zee Tele     | 1-3-01  | 14.45 | 14.55 | 0.10 | 5255   | .73%   | (5.30)   | -3.25  |
| Zee Tele     | 2-3-01  | 12.00 | 12.22 | 0.22 | 116932 | 7.04%  | (11.65)  | -7.77  |
| Zee Tele     | 2-3-01  | 13.36 | 14.05 | 0.29 | 36420  | 1.65%  | (7.15)   | -5.02  |
| Zee Tele     | 2-3-01  | 10.22 | 10.35 | 0.13 | 5160   | 0.64%  | (9.5)    | -3.12  |

With reference to the above table, member argued that in Global Tele Systems, in a time slot of 10 minutes, on February 23, 2001, they were accused of having sold 85655 shares and contributed in decline in price by 4.08% . In another time slot of 8 minutes on March 2, they sold 4931 shares and contributing to decline in prices by 3.91%. It

was argued that the sale quantities were vastly different, yet the fall in prices were nearly 4%. It was argued that there was no cause and effect relationship between their position and prices and that the scrip had a daily trading volume of over 10 million shares on NSE with a very low impact cost.

3. In HFCL, on March 2, 2001, a sale quantity of 3395 shares within a span of 10 minutes resulted in the price of Rs.22.80 (3.38%) . It was argued that this sale represented merely .69% of the market during the time slot. It was argued that such a miniscule quantity cannot lead to a decline by 3.38%.

4. In DSQ Software, a sale of 1433 shares representing .68% of the market position during the time slot was alleged to have caused the price fall by 1.46%. If it in a momentum stock, it defies all logic to allege that sale of 1433 shares would lead the price to fall by as much as 1.46%.

5. As regards SSI, a sale of 400 shares on 1<sup>st</sup> March is alleged to have led to a price fall of Rs.33.75 (2.79%) whereas a sale of 9955 shares on 2<sup>nd</sup> March, is alleged to have a fall of Rs.28 only.

4. In terms of percentage of market, 14.79% on 2<sup>nd</sup> March is the highest but it is shown to cause the least fall in the market price (Rs.28).

5. A sale position in SSI representing 11.13% of the market on 2<sup>nd</sup> March, in a time slot of 29 minutes is alleged to have caused a fall of Rs.71 in the market price. A sale position of 1.75% on 2<sup>nd</sup> March is shown to have caused a market fall of Rs.51.40.

6. In Wipro, a sale representing 15.46% of the market position on 1<sup>st</sup> March, is alleged to have caused the fall of Rs.15 in the prices. But 2 other instances in the notice states that much smaller sale of 2.01% and .61% o the market on 2<sup>nd</sup> March, led to much bigger falls of Rs.76 (3.24%) and Rs.67.70 (2.95%) respectively.

7. In Zee Telefilms, a sale of .64% of the market on 2<sup>nd</sup> March, is alleged to have triggered a fall of Rs.950 in the market price. But a sale position of 6.52% on 1<sup>st</sup> March is alleged to have caused a fall of Rs.8.95 in the market place. Time slots as small as 9 minutes and as big as 63 minutes were taken. Thus, in 9 minutes, sale of 76279 shares constitute to only 2.33% of the market (implying volume of 3.3 million shares) in 9 minutes. But in 63 minutes, sale of 129478 shares constitute 6.52% of the market (implying volume of only 2 million shares in 63 minutes) It was argued that if in 9 minutes 3.3 million shares were traded and their operation contribute only 2.33% of the volume during such period, it would imply institutional activity which caused the price fall.

Large volume of 3.3 million shares in 9 minutes also indicated the inherent depth and liquidity of the markets.

8. Incase of Satyam, the data in the time slots as per the notice was analysed by the member in the following manner.

| Date     | Minutes | Market Vol No of shares | Turnover Rs.lacs |
|----------|---------|-------------------------|------------------|
| 1-Mar-01 | 20      | 3,108,663               | 104,31.16        |
| 2-Mar-01 | 8       | 1,579,698               | 47,0056          |
| 2-Mar-01 | 36      | 2,499180                | 70,27.23         |

Based on the above table, it was argued that in a time slot of 20 minutes on March 1, Satyam traded over Rs.100 crores and the price moved by 5%. Similarly, on March 2, in time slot of 8 minutes, Satyam traded over Rs.47 crores. It was, therefore argued that this indicated the depth and liquidity of the scrip and the large market participation. It was, therefore, argued that their operations could not have any impact on the prices and the charge is baseless.

11. The member relied on the following time slots from the where the price fell and they have purchase position and argued that data favorable to them was ignored in the notice.

| Scrip         | Date    | Time From | Time to | BS Position | Fall in price |
|---------------|---------|-----------|---------|-------------|---------------|
| Zee Telefilms | 23-2-01 | 15.06     | 15.21   | +7,553      | -10.00        |
| Zee Telefilms | 2-3-01  | 9.55      | 10.10   | +190        | -12.00        |

|                   |         |       |       |          |         |
|-------------------|---------|-------|-------|----------|---------|
| Infosys           | 23-2-01 | 10.34 | 10.56 | +30      | -150.00 |
| Satyam            | 1-3-01  | 15.01 | 15.13 | +186,782 | -18.50  |
| Wipro             | 1-3-01  | 13.58 | 14.31 | +5       | 105.00  |
| Global Telesystem | 2-3-01  | 14.30 | 14.52 | -55      | -11.00  |

The member furnished a table showing their purchases in other stocks along with the alleged sale position during some of the time slot that they were accused of trying to depress the market.

| Date      | Time from | Time to | Scrip                                                    | BS Position                                       |
|-----------|-----------|---------|----------------------------------------------------------|---------------------------------------------------|
| 23-2-01   | 15.04     |         | Global Telesystem<br>ICICI<br>Grasim<br>Reliance -85,655 | -85,655<br>+10,000<br>+6,000<br>+12,874<br>+8,700 |
| 23-2-01   | 12.26     | 12.35   | Zee Telefilms                                            | -76,279                                           |
| Date      | Time from | Time to | Scrip                                                    | BS Position                                       |
|           |           |         | Silverline<br>Satyam<br>HFCL                             | +59,180<br>+150,100<br>+27,800                    |
| 01-Mar-01 | 12.53     | 13.56   | Zee Telefilms<br>HFCL                                    | +129,478<br>+48,810                               |
| 2-Mar-01  | 12.00     | 12.22   | Zee Telefilms<br>Tata Power<br>Satyam<br>Global Tele     | +116,931<br>+44,841<br>+68,580<br>+50,34          |
| 2-Mar-01  | 13.41     | 13.54   | SSI<br>Reliance Petro                                    | +9,955<br>+95,800                                 |

Referring to the above table, it was argued that there was no co-relation between the fall in the market price, the quantum of sale and the percentage of net position with the aggregate position in the market during the time slot.

The member also has made the following general submissions on the time slots -

- That the times slots were not arrived at on any scientific basis and a technical analysis of this nature is flawed and conducted in hind sight.
- Time slots when they made purchases were ignored. Such an analysis ignores the fact that markets are liquid and the impact of trades on prices is momentary. The impact cost for trading in HFCL could be less than .4%.
- During the selected time slots, in every single instance, they also have significant purchase positions in other counters that constituted the market indices.
- All orders were limit orders. If it was their intention to depress the share price, they would not have placed limit order and would have depressed sales upto a certain limits.
- The methodology followed is unscientific.

12. Enquiry Officer has considered the above replies and found that the time slots in the day on which the markets fell were identified whenever the share prices had drastically fallen to examine who were the members who sold heavily during these

particular time slot when the share prices registered a steep fall. Such an analysis can only be made after the event i.e. after the share prices had fallen to identify the members who had sold heavily during these particular time slots. It was argued that the time slots when the member made purchases in some of the scrips were ignored. Now, it is not known whether they were preceded by the short sales which the member made during the time slot when the prices had fallen, in which case, he would be taking advantage of the fall in prices after hammering down the prices earlier.

13. The purchases in some other counters in this regard are not relevant as the issue being examined is whether the member was selling in the particular scrip during the specified time slot when the prices of these scrips had fallen.

14. It was argued by the member that there is no correlation between their quantum of sales and the fall in prices in the scrip in the particular time slot, and the sale of same quantity or more would cause a fall in price which is less in absolute terms. For e.g. sale of 400 shares in SSI alleged to have caused a fall in price by 33.75 whereas a sale of 9955 shares is alleged to have caused a fall of 28 only. This argument was extended to certain other scrips as well. In an enquiry of this nature, it is not possible to determine with mathematical precision the percentage of fall of the share price consequent to the sales on account of the member. It can be said that the prices of the shares would depend on the demand and supply of shares at a given point of time. It also depends on what is his contribution to the supply side when the prices had fallen. The reverse argument would apply in the case of purchases for e.g. it can be argued that despite his purchase at different point of time, the share price had fallen. Again, it depends on what is the quantum of his demand and what is his contribution to the whole of the market demand at a particular time. Further, if the sales during time slots when the prices had registered a fall, are followed by purchases, it could be with a view to take advantage of the prices that had fallen because of his earlier sales. Therefore, the argument that the member was a purchaser in different slots at the time selected by him without going into other factors and circumstances does not help him for the above said reasons.

It may be noted that the member was present and selling in the time slots when the share prices had registered a fall.

Although, the member had sales, including short sales in the specified time slots as given in the show cause notice, taking into account the quantum of shares sold, the fall in prices of the shares during the time slots, the percentage of members sales to the market and the duration of the time bands, it is concluded that the following are significant transactions in support of the charge that the member had sales including short sales during specific time bands and caused fall in the prices by these sales.

| Scrip             | Date    | Time From | Time To | Minutes | Sales  | % of market | Fall in Price |
|-------------------|---------|-----------|---------|---------|--------|-------------|---------------|
| Global Telesystem | 23-2-01 | 15:04     | 15.14   | 0.10    | 85655  | 11.68       | (18.65)       |
| -do-              | 2-3-01  | 1233      | 12.41   | 0.08    | 49315  | 9.74        | (12.9)        |
| Satyam            | 1-3-01  | 14.13     | 14.33   | 0.20    | 155744 | 5.01%       | (17.65)       |
| Satyam            | 2-3-01  | 10.57     | 11.05   | 0.08    | 62714  | 3.97%       | (12.2)        |
| Satyam            | 2-3-01  | 13.17     | 13.53   | 0.36    | 63979  | 2.56%       | (12.85)       |
| SSI               | 2-3-01  | 13.41     | 13.54   | 0.13    | 9955   | 14.79%      | (28)          |
| SSI               | 2-3-01  | 12.32     | 13.01   | 0.29    | 19450  | 11.13%      | (71)          |
| WIPRO             | 1-3-01  | 13.33     | 13.41   | 0.08    | 9026   | 15.46%      | (15)          |
| Zee Tele          | 23-2-01 | 12.26     | 12.32   | 0.09    | 76279  | 2.33%       | (8.35)        |
| Zee Tele          | 1-3-01  | 12.53     | 13.56   | 1.03    | 129478 | 6.52%       | (8.95)        |
| Zee Tele          | 2-3-01  | 12.00     | 12.22   | 0.22    | 116932 | 7.04%       | (11.65)       |

In view of the above clear findings of the enquiry officer, I have no hesitation to hold that the dealings / transactions of the member in the specific time slots shows that the member was deliberately depressing prices of the scrips.

X. With regard to members acting in concert with Bang Securities, Enquiry Officer has found that majority of the net sale position taken by the member on 1<sup>st</sup> and 2<sup>nd</sup> March, were on own account and for Bang Securities as summarized below:

| Scrip        | 1-March-01  |                  | 2-March-01  |                 |
|--------------|-------------|------------------|-------------|-----------------|
|              | Own Account | Bang Securities. | Own Account | Bang Securities |
| Globaltele   | 100000      |                  | 96203       |                 |
| HFCL         | 25000       |                  |             |                 |
| Infosys      | 15000       | 2490             |             |                 |
| Reliance     | 85917       | 209000           |             |                 |
| Satyamcomp   | 65299       |                  | 479961      | 17300           |
| HII          |             |                  | 25000       |                 |
| Wipro        |             |                  | 15762       |                 |
| Zeetele      |             |                  | 99000       |                 |
| HCLTech      | 209         |                  |             |                 |
| Sqrdsoftware | 10000       |                  |             |                 |
| Aptech       |             |                  |             | 1000            |

In view of the above table, Bama Securities built significant sales positions in several scrips across various settlements and most of the sales on her own account and on behalf of Bang Securities acting in concert to manipulate the share prices.

It was replied that as seen from the above table, only 3 stocks viz Infosys, Satyam and Reliance there is a concurrent net sale position. It was replied that in no other stock there is a net sale position exists for both of them on the same day simultaneously. On analysis of the position in these stock in which they had concurrent net sale position, it was argued that there is no co relation between their action and that of Bang securities in view of the following :

1. When the position of Bama Securities was 15,000 sale position, in Infosys, Bang Securities had a smaller net sale position of 2490 shares.
2. When Bama Securities had a net sale position of 85917 shares of Reliance on 1<sup>st</sup> March, Bang Securities had a much larger position of 209000 shares.
3. When Bang Securities had a sales position of 17,300 shares in Satyam Computers on 2<sup>nd</sup> March, Bama Securities had a net sale position of 479961 shares. In view of the above, it was argued that on the two relevant days, there was neither any co relation nor concerted action between them to artificially depress the prices.

Y. From the trading data, it is admitted by the member that in the three stock i.e. Infosys, Satyam and Reliance, there is a simultaneous net sales. However, it was contended that the quantum of these positions are not similar so as to suggest any concerted action by them.

The member in his reply stated that this theory itself is wrong since it presupposes that the member knew with total certainty that the share price would fall in the next 20 to 30 to 60 minutes and therefore sold shares.

It was replied that the Enquiry Officer has failed to appreciate is the fact that the total demand and supply in any scrip is visible on the screen of the exchange at any given point of time and all sales by the members were to parties who were interested in buying the stock at the price the member was interested in selling it.

It was further replied as under:

" It is the Enquiry Officer's contention that when we sold prices fell. The Enquiry Officer also states that the purchases made by the member are ignored because it is not known whether they were preceded by short sales, which the member had made during the time slots when prices had fallen. By the same analogy, when we bought prices should

go up irrespective of whether they are fresh purchases or covering of earlier sales. It was within the means available to the Enquiry Officer to get to know the factual position. The Enquiry Officer cannot base his findings on conjecture".

They stated that on March 2, 2001 when there was sale 4,79,961 shares of Satyam in BAMA, Bang Securities had sales of 17,300 shares. Similarly, in case of Infosys Bama had sales of 15,000 shares, Bang Securities had sales of 2,490 shares. The quantities are not comparable.

The price of Reliance Ind. has gone up on 1<sup>st</sup> March from Rs.415 to Rs.440. The member cannot be alleged to have depressed prices of Reliance.

The quantum of sales need not be the same by the two parties acting in concert but sufficient if they are comparable and are on a selling mode simultaneously.

It is, therefore, established that to the extent of the trading in Infosys, and Reliance on 1<sup>st</sup> March and Satyam Computers on 2<sup>nd</sup> March as stated above, Bang Securities and Bama Securities were acting in concert with each other to artificially depress the share prices.

On going through the findings of the Enquiry Officer and replies of Bang entities and their submissions during the personal hearing it can be safely concluded that the said Bang entities were involved and responsible for manipulation of the prices of above stated scrips. They are jointly and severally responsible for the same. As stated earlier the factors other than that of the Bang entities and other external influences like fall in NASDAQ etc. were considered and it is found that the dealings of these entities in the market did have an impact in the depression of prices. I therefore hold the said entities guilty of manipulation of prices for their advantage with the concerted effort.

## 2. Whether the above entities acted through an unregistered sub broker and dealing as such are manipulative in nature?

### 8.3.1 RELATIONSHIP WITH PALOMBE SECURITIES AND FINANCE LTD (PALOMBE)

8.3.2 It is alleged that the trading terminal of BEB was located in the office of Palombe. Palombe had introduced Mr.Shankar Sharma and CSL Securities as clients to Bang Equity and for the trade done by these clients, introductory commission was paid to them. It was replied by the member that the commissions paid to Palombe is in respect of brokerage earned by the clients introduced by them. It was argued that the payments made to Palombe are in the nature of introductory fees that are permitted under the Bye laws 218 of the BSE which provides for sharing of such commission with any introducer.

8.3.3 Bye law 218 of BSE Bye Laws deals with whom the members can share brokerage. The said bye law permits the member to share brokerage with remisier, authorised clerk or employee in his own exclusive employment. He may similarly share brokerg with any other person introducing a constituent provided such person

- i. is not one for with whom members are forbidden to do business under the Rules, Bye-laws and Regulations of the Exchange
- ii. is not a remisier, authorised clerk or employee in the employment of another member;
- iii. does not advertise in the public press or in any other manner that he is acting as a broker;
- iv. does not act as a broker within a distance of fifty miles of the city of Bombay
- v. does not pass contracts in his own name or issue price lists or pamphlets or circulars in respect of business in securities if working within a distance of fifty miles of the city of Bombay
- vi. does not issue price list or pamphlets or circulars in respect of business in securities to other than its own constituents if acting as a broker beyond the distance of fifty miles from the city of Bombay.

8.3.4 Bye Law 218(b) provides that such sharing of brokerage should not exceed 50% of the brokerage charged by the member to the constituent.

8.3.5 It is not shown by the member that Palombe is one such person with whom brokerage can be shared in terms of the proviso to bye law 218(a) or that the Palombe is not a disqualified person for sharing brokerage in terms of the proviso to the bye law 218(a).

8.3.6 The location of trading terminals by the member at the office of Palombe who according to the member does no more than introducing new clients to the member is not understandable and also not satisfactorily explained. The trading terminals of BSL, Bang Equity Broking and Nirmal Bang Securities are installed at the office of Palombe. With placement of terminals at a physical location which is outside the member's office and carrying on business in this terminal, such relationship definitely goes beyond mere sharing of commission for introducing clients. The activities of Palombe were analogous to the activity of a sub broker in the securities market. It is, therefore, concluded that the member had dealt with through unregistered sub broker which amounts to lack of due diligence, exercise of due skill and care expected of a registered broker as per the code of conduct applicable to the brokers.

## 2. Whether there are synchronized deals with Shankar Sharma which amounted to manipulation?

8.4.1 With regard to the dealing with Shankar Sharma of First Global, the Enquiry Officer found that there were number of trades in which there are allegations of synchronized trades between Bang Equity and First Global. There is no denial that Bang Equity has executed the above trades for Mr.Shankar Sharma. However, it was denied that they had any means of knowing who the counter party broker was and for whom it was acting.

8.4.2 When there are too many instances of the trades of Bang Equity acting on behalf of its client Mr.Shankar Sharma, getting matched with First Global as the counter party broker in which the same client is also the Director, it is too much of a coincidence over too long a period in too many transactions with an approximate value of Rs.200 crores. This should have aroused the suspicion of the member. Further, in most of the instances, cited in the show cause notice, the gap between the order placement and its matching is too narrow and the complete order quantity got matched. In view of the close proximity of the order time punched by both the parties in the system, these transactions between BEB and FGSB can be termed as synchronized transactions. Both the parties to the transactions had entered buy and sell orders for the same quantity of shares almost simultaneously. There is no transfer of title in these shares since purchase and sale quantity is exactly the same. For the matched trades, the time lag is very little and just under few seconds as in the following cases.

| First Global |          |        |           |            |            | Bang Equity |           |            |            |             |
|--------------|----------|--------|-----------|------------|------------|-------------|-----------|------------|------------|-------------|
| Trade day    | Scrip    | B or S | Order Qty | Order time | Order Rate | B or S      | Order Qty | Order Time | Order Rate | Matched Qty |
| 28/2/01      | SSI      | B      | 25,000    | 10.18.55   | 1135.50    | S           | 25000     | 10.18.57   | 1135.5     | 25000       |
| 1/3/01       | SSI      | S      | 20000     | 2.34.23    | 1185       | B           | 20000     | 2.34.26    | 1185       | 17210       |
| 1/3/01       | SSI      | S      | 5000      | 2.34.42    | 1190       | B           | 5000      | 2.34.49    | 1195       | 4715        |
| 23/2/01      | WIPRO    | S      | 5000      | 3.22.02    | 2500       | B           | 5000      | 3.22.00    | 2505       | 4327        |
| 1/3/01       | -do-     | S      | 20000     | 2.30.22    | 2420       | B           | 20000     | 2.25.30    | 2420       | 12461       |
| 1/3/01       | -do-     | S      | 25000     | 2.11.20    | 2440       | B           | 25000     | 2.11.13    | 2440       | 23761       |
| /3/01        | Sterlite | S      | 50000     | 3.04.46    | 155.25     | B           | 50000     | 3.04.47    | 155.50     | 50000       |
| 23/2/01      | ITC      | S      | 15000     | 3.23.08    | 805        | B           | 15000     | 3.23.07    | 805        | 1500        |
| 23/2/01      | ITC      | S      | 10000     | 3.27.46    | 803        | B           | 10000     | 3.27.41    | 803        | 10000       |
| 28/2/01      | SBI      | B      | 50000     | 9.55.48    | 224        | S           | 50000     | 10.01.12   | 226        | 38890       |
| 1/3/01       | SBI      | S      | 100000    | 10.58.46   | 261.50     | B           | 100000    | 10.58.21   | 261        | 90000       |
| 2/3/01       | REL      | S      | 75000     | 10.49.49   | 94.75      | B           | 75000     | 10.49.38   | 94.5       | 73175       |

8.4.3 In most of the cases, the order rate and order quantity matched are also substantially close to each other besides the order time, and in the facts of the case, it can be concluded that these are synchronized trades. While in some cases, there is 100% matching of the buy and sell quantity. In others, it was substantial matching. The higher the time differential in the order timings, the less are its chances of it getting matched. The value of such transactions are also quite high. Such transactions are highly irregular and defeat the purpose of normal order matching system in the price discovery process in the exchange. They can also be termed as fictitious dealings in terms of bye law 357(ii) which states that "if he makes a fictitious transactions or gives an order for the purchase or sale of securities, the execution of which would involve no change of ownership or executes such an order with knowledge of its character". It would also amount to prejudicial business within the meaning of bye law 357(iii) of BSE which states that "if he makes or assists in making or with such knowledge is a party to or assist in carrying out any plan or scheme for the making of any purchases or sales or offers or purchase or sales of securities for the purpose of upsetting the equilibrium of the market or bringing about a condition of demoralisation in which prices will not fairly reflect the market value".

8.4.4 These transactions would also be in violation of Regulation of 4c and d of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) 1995.

8.4.5 These charges were denied by the member in his reply. It was stated that as a discount broking house, the transactions are executed as per the instructions of the client. The quantity and the desired price limit for each

transaction is entered as per the instructions of the client. It was, further submitted that there are no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere since in the online trading system, confidentiality of counter parties is ensured and it is not possible for the broker to know who the counter party broker is. It is further submitted that the time of entering the trades were different and the rates at which the orders were placed is also different. It was replied that there was no attempt to avoid detection since the bills were issued in the name of Mr. Shankar Sharma.

There is no denial that Bang Equity has executed the above trades for Mr. Shankar Sharma. However, it was denied that they had any means of knowing who the counter party broker was and for whom it was acting.

8.4.6 Transactions executed by the member on behalf of Shri Shankar Sharma, Director of FGSB are of dubious nature with a view to manipulate the market and avoid detection. Shri Shankar Sharma had a large number of trades executed through the member which were matched with the FGSB acting on behalf of his proprietary sub broker Vruddhi. The scrip, quantity and price for these orders had been synchronized by the counter party broker resulting in circular trades. The approximate value of such trades executed through the member during January – March, 2001 is Rs.200 Crores. These structured trades were highly irregular and are inter-alia violative of all prudent and transparent norms of securities.

7. When there are too many instances of the trades of Bang Equity acting on behalf of its client Mr. Shankar Sharma, getting matched with First Global as the counter party broker in which the same client is also the Director, it is too much of a coincidence over too long a period in too many transactions with an approximate value of Rs.200 crores. This should have aroused the suspicion of the member.

In view of the judgement of Hon'ble Supreme Court in CIT vs East Coast Commercial Co. Ltd. discussed in the preceding pages above, it is concluded that FGSB and BEB were acting in concert with each other in the synchronized deals.

2. Whether the above entities have violated the Code of Conduct as given in Schedule II of SEBI (Stockbrokers and Sub-brokers) Regulations, 1992 read with Regulation 7 ?

8.5.1 It has been found that Nirmal Bang entities has dealt with Money Growth and Arihant Stock who are not registered sub brokers. It was found by the Enquiry Officer that NBS did not exercise due care and diligence as required under Code of Conduct. It was also found by the Enquiry Officer that NBS paid a fine of Rs.75,000 to the Exchange which amounted to a tacit admission of guilt.

8.5.2 It has been found that Bang Equity Broking dealt with FGSB in a synchronized manner. There were many instances of such transactions between the same parties for the period 01.01.2001 to 19.02.2001, 15.03.2001 to 31.03.2001. It was also found that Nirmal Bang and Bang Equity violated Circular dated 07.03.2001 on short sales to the extent of Rs.2.31 Crores and 3.05 Crores respectively.

8.5.3 It has been found that Bama Securities it has dealt with unregistered sub brokers. Therefore, did not exercise due skill and diligence as required under Code of Conduct.

8.5.4 It has also been found that Bang Securities Pvt. Ltd. sub brokers of NBS did not maintain properly the client registration forms as required under SEBI Circular No. SEBI/Policy/CIR-5/97 dated 11.04.1997. However, the enquiry officer recommended a lenient view on this finding since it pertains only to five instances. It was further found that the BSB a sub broker had not issued sales / purchase confirmatory notes in respect of its clients M/s Indo Composite Pvt. Ltd.

8.5.5 All the above findings were not controverted or denied by the member but stated during the hearing that a lenient view may be taken in view of the long standing Group Entity in the Security Market without any infraction whatsoever.

3. Whether penalty of cancellation is not justified in the given case ?

1. The main charge against the entities is that of market manipulation as defined under Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Once this charge of manipulation is proved the course open to SEBI is either to issue directions under Regulation 11 or to proceed against the intermediaries under Regulation 13.

The said regulation reads as under:

#### 8.6.2 Suspension or cancellation of Registration

"The Board may, in the circumstances specified in regulation 11 and without prejudice to its power under regulation 12, initiate action for suspension or cancellation of registration of an intermediary holding a certificate of registration under section 12 of the Act.

Provided that no such certificate of registration shall be suspended or cancelled unless the procedure specified in the regulation applicable to such intermediary is complied with".

8.6.3 It is therefore clear from the above Regulation that the Board is empowered to cancel the registration of the intermediary if it is proved that he violated SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. The proviso to the above Regulation stipulates that the procedure for canceling the registration should be followed as specified in the respective regulations.

8.6.4 In the present case, the procedure as stipulated under SEBI (Stockbrokers and Sub-brokers) Regulations, 1992 for conducting enquiry has been rightly adopted as far as violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 are concerned and the penalty of cancellation is justified.

The Bang entities have indulged in large trading transactions with a view to depress the market artificially in a concerted manner, short sales, synchronised trading, trading in particular time slots when the share prices registered substantial fall, routing of large transactions through unregistered sub-brokers and guilty of violating the code of conduct specified in Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Regulation 4(a) to (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995.

9. In the light of the above findings I am of the considered view that the above entities manipulated the prices and depressed market to their advantage on large scale and huge volumes. I also found that in the argument of the parties that they were the biggest retail brokers in the market and hence the lenient view may be taken does not hold water. Being the biggest retail broker they should be more responsible and their compliance level of Regulations should be very high so as to set an example of high standards. I am of the view that the violations found to have been committed by the entities are very serious in nature and more so when they are biggest retail brokerage house in the market whose influence is very high and the damage unimaginable. I feel that any order to be passed should act as a deterrent and deter other manipulators also. I also feel that these entities should not be permitted to carry on activities as stock-broker. Such kind of manipulative activities detrimentally affects not only the investors in the securities market but also have an adverse impact on the securities market on the whole. The said activities, if permitted, to be carried on erodes the confidence of the investors in the securities market.

Therefore, I agree with the penalty recommended by the Enquiry Officer and I do not find any mitigating circumstances or reasons to reduce it to a lesser penalty.

#### ORDER

I, G N Bajpai in exercise of powers conferred upon me under Section 4(3) of SEBI Act, 1992 read with Regulation 29 (3) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 do hereby order cancellation of Registration of M/s Nirmal Bang Securities Ltd. (NBS), M/s Bang Equity Broking Pvt. Ltd. (BEB), Bama Securities Ltd. (BSL) - all stock brokers registered with SEBI and Bang Securities Pvt. Ltd. (BS), sub brokers registered with SEBI with immediate effect.

Place: Mumbai  
Date: 30/07/2002

G.N. BAJPAI  
CHAIRMAN  
SECURITIES AND EXCHANGE BOARD OF INDIA