

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER SECTION 11 AND 11B OF THE SEBI ACT, 1992

IN THE MATTER OF M/S BIYANI SECURITIES PVT LTD, MEMBER OF CALCUTTA STOCK EXCHANGE

M/s Biyani Securities Pvt Ltd. was a member of the Calcutta Stock Exchange and was registered with SEBI as a stock broker with Registration No. INB030795439.

The Securities and Exchange Board of India (hereinafter referred to as SEBI) initiated investigation against Shri Ketan Parekh and some entities associated with it and also by some brokers of the Calcutta Stock Exchange (hereinafter referred to as the CSE) including M/s Biyani Securities Pvt. Ltd (hereinafter referred to as the said broker).

Pending the investigation a show cause notice dated 21.8.2002 was issued to the said broker, to show cause as to why appropriate directions should not be issued under sections 11 and 11B of the SEBI Act, 1992 restraining the said broker from trading or dealing in securities market pending completion of investigations. An opportunity of hearing was also given on 3.9.2002. At the request of Shri HC Biyani, the date of reply to the show cause notice was extended and the date of hearing was adjourned to 25.9.2002 by SEBI's letter dated 3.9.2002. In the said letter dated 3.9.2002, it was made clear no further opportunity to submit reply or hearing would be given.

Reply of Biyani Securities

M/s Biyani Securities Pvt. Ltd vide its letter dated 16.9.2002 submitted its reply to the show cause notice. However, the representatives of M/s Biyani Securities Pvt. Ltd did not attend the hearing on 25.9.2002. Despite the categorical instruction given by SEBI that no further adjournment would be given, M/s Biyani Securities Pvt. Ltd has by its letter dated 21.9.2002 sought for an adjournment till copy of the CSE Byelaws and certain clarifications were made available to it. It is clear that the sole intention of this letter is to protract the proceedings. Its representatives could have attended the hearing on the scheduled day and clarified whatever they wanted to. Moreover, this is not a full-fledged enquiry for conclusive determination of all facts and is only an interim measure to protect investors pending conclusion of the investigation. Therefore, I proceed further based on the basis of material available on record.

In its reply dated 16.9.2002, the said broker had put forth the following contentions:

- The principal allegation in the show cause notice is that it has transacted huge volumes of "off the floor" transactions and organized a "parallel" stock exchange. There is no bar to carrying out off the floor transactions. In fact, the SEBI specifically authorizes such transactions of particular types and has issued circulars to that effect in exercise of powers u/s 16 of the Securities (Contract) Regulation Act permitting such transactions.
- All the transactions carried out by it are fully documented and full particulars have been furnished to SEBI and CSE. Being fully aware that there is no wrong doing on its part SEBI has sought to allege violation of sec 19 of the Securities (Contract) Regulation Act by alleging that it had organized a "parallel" stock exchange. Such allegation besides being incorrect are also contrary to the records lying with SEBI from which our trading activities on the Calcutta Stock Exchange would be amply borne out. It has not been a member of any stock exchange other than the Calcutta Stock Exchange and/ or a recognized stock exchange within the meaning of section 19 (1) of the Securities (Contract) Regulation.
- The figures mentioned in the table forming part of part A appear to be wholly without basis and in fact, no particulars have been given about the manner in which such figures have arrived at.
- The figures mentioned by SEBI are self evidently contradictory to the figures mentioned in a similar notice issued to Shri HC Biyani as will be seen on the cursory examination that the "buy value" of our alleged notice to HCB, do not tally with the "sell value" mentioned in the notice to HCB, with regard to its alleged sales transactions with us and vice versa. However, in the event SEBI should so require, it is willing to point out the full extent of the inconsistency and contradictions in the figures furnished in the notice.
- Thus, allegations in the show cause notice are wholly vague, without particulars and basis and appear to be a hurried exercise to inflict a summary penalty particularly when his registration with SEBI had already been wrongfully cancelled by SEBI.
- In this connection, it is stated that all transactions have been carried out in accordance with all rules, regulations, guidelines and bye-laws relating thereto and all disclosures wherever required have been made. Full data with regard to this is already available to SEBI.
- They seek clarification whether the provisions of the Bye laws of CSE have been amended by due process as provided Section 10 of the Securities Contract Regulation Act 1956.
- It also denies that any transaction impacting the price discovery mechanism of stock exchanges was carried out by it as alleged or that there has been failure to report any transactions required to be disclosed. It denies that it has acted with any other broker or concealed turnover in securities or created any false or misleading appearance of trading on the securities market or violated the SEBI circular of September 14, 1999.
- It denies in particular that it had not reported off market trades as proprietary trades as alleged. It denies that any wrong declaration has been made or that any trading has been concealed. He denies that any transparency has not been complied with.
- The charges of violation of Section 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 and SEBI circular dated September 14, 1999 are based on substantially the same allegations as in paragraph (a).

Consideration of issues

On consideration of the findings of the inspection, the show cause notice and the reply filed by the said broker, my findings are as under:

a. Violation of Section 19 of Securities Contracts (Regulation) Act, 1956 (SC (R) Act).

As per Section 19 (1) of SC (R) Act " no person shall, except with the permission of the Central Government, organize or assist in organizing or be a member of any stock exchange (other than a recognized stock exchange) for the purpose of assisting in, entering into or performing contracts in securities." This prohibition is applicable inter alia within the municipal limits of Calcutta.

Section 2(j) defines Stock Exchange as meaning " Any body of individuals, whether incorporated or not , constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities."

From the data furnished by M/s Biyani Securities Pvt. Ltd, it has been observed that it has indulged in huge volumes of off the floor transactions in 5 major scrips, namely DSQ Software, Himachal Futuristic, Global Tele, Satyam Computers and Zee Tele during the period March 2000 to March 2001 (amounting to around Rs 7 crores with other brokers and around Rs. 15 crores with the Singhanian Group and other broking entities associated with them, who had also been declared as defaulters by CSE outside the trading systems of the recognized stock exchanges.

Brief particulars of the off the floor transactions executed by M/s Biyani Securities Pvt. Ltd with other brokers are given below in the major 5 scrips namely, DSQ Software, Himachal Futuristic, Global Tele, Satyam Computers and Zee Tele during the period March 2000 to March 2001 as per the data furnished by M/s Biyani Securities Pvt. Ltd is as follows.

BROKER	Counter Party in the off the floor transactions	BUY VALUE (in Rs.)	SELL VALUE (in Rs.)	TURNOVER (off the floor transactions) (in Rs.)
Biyani Securities	Other CSE Brokers	36,193,770	32,358,570	68,552,340
Biyani Securities	Biyani Group	0	55,846,965	55,846,965
Biyani Securities	Singhanian Group	0	97,729,270	97,729,270

By transacting such huge volumes of off-the-floor transactions, M/s Biyani Securities Pvt. Ltd. along with other brokers appears to have organized a parallel stock exchange for the purpose of assisting in, entering into or performing contracts in securities. The intention to organize a parallel stock exchange is also evident from the fact that M/s Biyani Securities Pvt. Ltd. had concealed the off the floor transactions from CSE by not reporting them to the stock exchange.

SEBI's circular banning non-screen based trading has been notified by the CSE. From the exchange data, it has been found out that the broker has not reported all of his off-the floor transactions. The figures are arrived from the data provided by the broker in soft form and there are several instances where it traded in its associate NSE card for its CSE transactions without reporting to CSE.

The broker has not furnished any proof such as trade ID, trade time etc. for having executed the transactions at CSE or proof of acknowledgement for having reported the transactions to CSE.

The broker has not denied the inter-broker transactions of Biyani Securities P Ltd and H.C.Biyani. It is pertinent mention here that there is no need for a broker to trade with other brokers of the same stock exchange for his genuine trades. It proves that they had indulged in the off-the-floor transactions and it was also confirmed from CSE's data that they have not reported all of their off-the-floor trades. The broker's reply that the transactions may be verified from the CSE's trade logs is not admissible since off-the floor transactions do not have CSE trade log as they are executed outside the CSE trading system. The figure of off-the floor transactions has been arrived from the data furnished by the broker in soft form.

Violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995

Regulation 4 (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 provides that "no person shall indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market".

As mentioned above, M/s Biyani Securities Pvt. Ltd had executed huge volumes of off the floor transactions. In this context, SEBI circular No. SMDRP/POLICY/CIR-32/1999 dated September 14, 1999 (which was notified to the members of CSE vide CSE's notice dated September 16, 1999) is relevant. The circular inter-alia provides that all deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade. The volume of off the floor transactions which were executed by M/s Biyani Securities Pvt. Ltd, outside the recognized stock exchanges and not reported to the stock exchange was so large that it would have impacted the price discovery mechanism of the stock exchanges, had they been executed through the trading systems of the recognized stock exchanges and disclosed to the market through the official quotation list of the recognized stock exchanges. Hence, by keeping such large volumes of off the floor transactions outside the trading systems of stock exchanges and not reporting these transactions to the stock exchange, M/s Biyani Securities Pvt. Ltd along with other brokers has willfully concealed huge volumes of turnover in securities and thereby interfered with price discovery mechanism of stock exchanges and appears to have created a false and misleading appearance of trading on the securities market and appears to have acted in violation of the SEBI circular dated September 14, 1999 and bye-laws 332 and 334 (iii) of the CSE Bye-laws.

M/s Biyani Securities Pvt. Ltd had reported to the CSE that its trading had been on account of proprietary trades. However as per the findings of the investigation and as per the data furnished by it, it is noted that it had executed substantial amount of client transactions. It has also been noticed that M/s Biyani Securities Pvt. Ltd had executed transactions on behalf of other brokers. Details of declarations made by it to the CSE regarding Proprietary and Client Trades and the actual trade details furnished by it in soft form regarding proprietary trades during the period Nov. 3, 2000- April 4, 2001 are given below.

As per declaration given to the exchange				As per data collected from M/s Biyani Securities Pvt. Ltd in soft form		
Broker	Proprietary	Client	% of Prop. Trade	Proprietary	Client	% of Prop. Trade
H C Biyani	14722378301	40248919	99.73	12340024755	34509932715	26.34

From the data provided above, it appears that M/s Biyani Securities Pvt. Ltd had made wrong declaration to CSE and thereby concealed the trading done by it on behalf of clients.

By concealing the dealings of the clients by giving wrong declarations to the CSE, M/s Biyani Securities Pvt. Ltd has not only avoided compliance with the prudential exposure limits and margin requirements of CSE prevailing during the relevant period of time, but it has also interfered with the fair and smooth functioning of the market by concealing the dealings of the major clients from the exchange authorities. This appears to have been done for the purpose of creating a false and misleading appearance of the market with the intention to prevent the exchange authorities from initiating appropriate measures for the purpose of safety and integrity of the market.

Indulging in off the floor transactions at huge volumes and not reporting or reporting only a fragment of the said transactions to the exchange amounts to creating a parallel market outside the recognized stock exchange mechanism. Such transactions avoid transparency requirements, do not contribute to the price discovery and deprives many investors of the benefit of the best possible price. It also militates against the basic concept of the stock exchanges which is meant to bring together a large number of buyers and sellers in an open manner. These trades also avoid the prudent regulatory controls and market safety measures like payment of margins, intra-trade turnover, exposure limits etc. It is possible that by avoiding margins and exposure limits, M/s Biyani Securities Pvt. Ltd had involved in excessive speculative business in the market beyond reasonable levels not commensurate with its financial soundness.

Further, by concealing the dealings of the clients and by giving wrong declarations to the CSE, M/s Biyani Securities Pvt. Ltd appears to have interfered with the fair and smooth functioning of the market and thus violated Section 19(1) of Securities Contracts (Regulation) Act, 1956 read with Regulation 4 (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

The brokers reply is in general and vague and not addressed to the violation of SEBI Circular dated September 14, 1999. SEBI's circular directing the brokers to report the off-the floor transactions and banning non-screen based trading has been notified by the CSE. And therefore, failure to adhere to above notice is in violation of CSE Bye-law 322 & 334 (iii).

It is alleged that Client trades are wrongly reported as proprietary trades and not off-the floor trades. By concealing the clients trades and also by not reporting off-the floor trades the broker involved in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

The broker has not given any proof for having reported the off the floor transactions to CSE. The broker has not denied the fact that he has made wrong declaration to CSE regarding the client trades as proprietary trades.

The broker is asking SEBI to furnish the copy of their Stock Exchange's Bye-laws. The bye-laws and amendments thereto are public documents and are notified in the Official Gazette which could be obtained by the said broker from the Official Gazette.

The broker has also contended that he is no longer an intermediary registered with SEBI and as such no order can be passed against him under sections 11 and 11B of the SEBI Act. It may be noted that the investigation is in respect of alleged violations of the SCRA and the SEBI (Prevention of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995. This contention of the broker is wholly untenable in view of the provisions of section 11(2)(i) of the SEBI Act, which empowers the SEBI to call for informations, conduct inspections/ inquiries in respect of persons associated with securities market and also the judgement of the Gujarat High Court in *Karnavati Fincap Ltd. v. SEBI*, [1996] 10 SCL 5, interpreting the words 'persons associated with the securities market'.

Conclusion

M/s Biyani Securities Pvt. Ltd's action as elaborated above is detrimental to the orderly development of securities market and amounts to its acting against the interest of genuine investors. Hence some preventive action is urgently required to be taken by SEBI against it in order to ensure that the investors in the securities market do not in any way suffer any losses and are not put to any harm and that the safety and integrity of the market remain unimpaired.

It is also noted that M/s Biyani Securities Pvt. Ltd has defaulted in meeting its pay-in obligations for the settlement nos. 148,149 and 150 and had been declared as a defaulter by CSE and was not readmitted by CSE within a period of six months from the date of declaration of default. It is noted that recovery proceedings including civil and criminal proceedings have also been initiated against M/s Biyani Securities Pvt. Ltd by the exchange. Further the certificate of registration granted to it by the SEBI has been cancelled under the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 vide order dated **July 24, 2002** since it had ceased to be a member of the CSE.

It should also be not lost sight of that these proceedings are for the limited purpose of preventing the said broker from carrying out a similar manipulation pending completion of the investigation, under sections 11 and 11B of the SEBI Act. They are not for the conclusive determination of all facts, which may be possible only after completion of the investigation. The Bombay High Court has upheld SEBI's power under sections 11 and 11B to pass preventive orders pending completion of investigation in *Anand Rath v. SEBI*, [2001] 32 SCL 227.

Therefore any further proceeding in the matter by SEBI would be conducted uninfluenced by any observation or finding made in this interim order.

The investigation is still pending. The findings of investigation at the present stage as elaborated above shows the prima facie involvement of M/s Biyani Securities Pvt. Ltd in activities which are detrimental to the interests of the securities market and the common investors. It is felt that preventive action is necessary in order to prevent M/s Biyani Securities Pvt. Ltd from dealing in the securities market pending completion of the investigation.

In view of the emergent situation, it is necessary to ensure that no further harm or detriment is caused to the market or that investors are not adversely affected. Hence after taking into consideration the above mentioned facts and circumstances of the case, in exercise of the powers conferred upon me under section 4(3) of the SEBI Act, 1992, read with Sections 11 and 11B of the SEBI Act, 1992, I hereby debar M/s Biyani Securities Pvt. Ltd and its directors Shri Alope Biyani and Shri Ravindra Biyani from associating with securities market activities and dealing in securities market till the completion of investigation. During the said period, M/s Biyani Securities Pvt. Ltd and its directors are directed not to buy, sell or deal in the securities market directly or indirectly.

G. N. BAJPAI

Date: October 18, 2002

CHAIRMAN

Place: MUMBAI

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