

THE GAZETTE OF INDIA
EXTRAORDINARY
PART – II SECTION – 3 SUB-SECTION (ii)
PUBLISHED BY AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA
NOTIFICATION

Mumbai, the 3rd day of January 2003

Order under section 11 of the Securities Contracts (Regulation) Act, 1956 superseding the Council of Management of Bhubaneswar Stock Exchange

S.O. No. 5 (E) 1.0 The Securities and Exchange Board of India (hereinafter referred to as "SEBI"), vide its order dated September 28, 2001, instituted an inquiry under Section 6 (3) of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "SCRA") into the affairs in relation to the Bhubaneswar Stock Exchange (hereinafter referred to as "BhSE") in relation to the siphoning of the funds out of the exchange to the tune of Rs.1.30 Crores through the Bhubaneswar Stock Exchange Members Welfare Trust (hereinafter referred to as "MWT") by certain members of the exchange. SEBI initiated the said inquiry based on representations/complaints received by it from Members of Parliament and from the SEBI Nominee on the Council of Management of BhSE and other quarters.

2.0 The Inquiry Officer appointed vide the order dated September 28, 2001, conducted inquiry as per the provisions of Rule 16 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR") and submitted his report to SEBI on October 22, 2001. The Inquiry Officer in his said report dated October 22, 2001 has inter alia found that:-

- 1) BhSE did not intimate SEBI regarding setting up the MWT and did not obtain permission from SEBI to set up the same.
- 2) Out of the total loan amount of Rs.95,83,782/- disbursed to members by BhSE from the MWT, Rs.94,13,782 i.e. around 98%, are outstanding and payable by members of BhSE who were either office bearers of BhSE or Trustees of the MWT. 95% of the loan amounts were granted to meet the pay-in liabilities of members. The total amount owed by Shri Babulal Sharma constitutes 92.5% of the total loan amount. The following table describes the outstanding position of the loans:

Sl.No.	Name of member	Position in BhSE	Position in MWT	Principal loan amount	Interest Amount	Total
1.	Arun Kumar Girdhar	President Sep.1994 to Sep 1995	--	1,12,843	3,43,639	4,56,482
2.	Anjani Kumar Singh	Treasurer Sep 1999 to Sep 2001	Trustee Sep 1996 to Sep 2001	2,74,620	1,98,810	4,73,430
3.	Babulal Sharma	Vice-president Sep 1999 to Sep 2000	--	88,62,319	45,31,98	1,33,94,307
4.	Dharmendra P Singh	Treasurer Sep 1997 to Sep 1999	Trustee Sep 1997 to Sep 2000	84,000	37,500	1,21,500
5.	Jaswant Singh	--	--	10,000	1,505	11,505
6.	Nirmala Banka	--	Trustee Sep 1996 to Sep 1997	80,000	8,312	88,312
7.	S Kedarswamy Patra	--	--	1,00,000	19,824	1,19,824
8.	Santosh Kumar Jhingan	--	--	60,000	11,994	71,994
	TOTAL			95,83,782	51,53,57	1,47,37,354

3) The loans were given purely on the basis of verbal discussions and no specific requisition for issuing such loans were obtained from MWT by BHSE. Further, no procedures were followed for sanctioning the loans from BhSE to MWT and no reference was made by the MWT to BhSE on any occasion indicating that the loans and the interest are not being repaid by any of the members of the exchange.

4) The Council of Management in its meeting held on July 12, 1997 had imposed a ceiling of Rs.25.00 Lakhs on the total contribution from BhSE to MWT. The Council of Management was not informed with regard to the sanctioning of loan from BhSE beyond the ceiling of Rs.25.00 Lakhs and the Council came to know of the huge outstanding loans only on September 1, 2001 after receiving an auditor's observation letter.

5) The MWT has been used by the Office Bearers of BhSE mainly to meet their pay-in liabilities. The Office bearers of the exchange and the trustees of the MWT are the major beneficiaries of the loans granted by the MWT and in some cases the loans

were granted without proper security.

3.0 Based on the recommendations of the Inquiry Officer in the said inquiry report, SEBI in exercise of powers conferred on it under Rule 11 of the SCRR, directed the stock exchange vide letter dated January 29, 2002, to take the following actions immediately:

1. To form a committee consisting of the non elected directors to enquire into the veracity of the complaints against the Executive Director of his alleged trading activities and non compliance with procedures in granting loans from the Members Welfare Trust and to submit the findings so as to take action against him.
2. To immediately change the constitution of MWT and to ensure that the majority trustees should be non-elected directors. The MWT should stop grant of loan till the trust is reconstituted.
3. To ensure that members having outstanding loans from the Member's Welfare Trust Fund including Shri Babulal Sharma, Shri Anjani Kumar Singh and Shri Manoj Thacker) should not act as office bearers of the exchange or in any other segment where Bhubhaneshwar Stock Exchange is acting as a broker or as trustees of the Members Welfare Trust.
4. To take immediate legal steps for recovering the outstanding loan including interest. The Exchange and the Members Welfare Trust should also consider initiating criminal proceedings against the members having the outstanding loans.
5. To ensure that no member having outstanding loans is allowed to trade in Bhubhaneshwar Stock Exchange and in other segments where the subsidiary of Bhubhaneshwar Stock Exchange is acting as a broker.
6. To get back outstanding loans from members and to ensure that no member having outstanding loans should be allowed to withdraw any BMC, Cash/security from the exchange.
7. Henceforth, to grant all loans by Bhubhaneshwar Stock Exchange to Members Welfare Trust only after approval has been obtained from the council of management.

3.1 It was further directed that the letter dated January 29, 2002 be placed before the council of management of the exchange and that they should reply to SEBI within 7 days of receipt of the said letter. The exchange vide their letter dated February 8, 2002 informed SEBI that the matter is being put up to the meeting of the council of management to be held on February 16, 2002. Subsequently, the exchange vide their letter dated March 28, 2002 informed that the said meeting proposed to be held on February 16, 2002 could not be held and the council met on March 26, 2002 and took the following decisions :-

(a) A committee was constituted consisting of the following public representatives to enquire into complaints against the Executive Directors :

- (i) Shri M. N Ray
- (ii) Shri G.K Upadhyaya
- (iii) Shri Samson Maharana

(b) The Board of Trustees of the Members Welfare Trust could not be reconstituted for want of adequate representation by members.

(c) The following members have failed to pay dues owed to the Members Welfare Trust :

- (i) Shri Anjani Kumar Singh
- (ii) Shri Babulal Sharma
- (iii) Shri Arun Kumar Girdhar
- (iv) Shri S. Kedar Swamy Patra
- (v) Shri Dharmendra Prasad Singh

The council also decided to issue notice of suspension to the above members in accordance with the rules and bye laws of the exchange.

(d) The council authorised Shri Thomas Mathew to consult an advocate to examine the feasibility of initiating criminal proceedings against the beneficiaries of loans granted by the Members Welfare Trust.

3.2 SEBI vide its letter dated April 30, 2002 forwarded a copy of the inquiry report dated October 22, 2001 and directed BhSE to take action against the following members as specified hereunder :

- (i) Shri Anjani Kumar Singh – suspension for 2 years
- (ii) Shri Babulal Sharma – suspension for 2 years
- (iii) Shri Manoj Thakar - suspension for 1 year
- (iv) Shri Dharmendra Prasad Singh - suspension for 1 year

They were also directed to issue show cause notices to the said members and also directed that the show cause notices should mention the penalty proposed to be imposed and that the members should be granted a personal hearing. The stock exchange was also advised that in the light of the personal hearing, if they are of the opinion that the directive of SEBI needs to be modified, they may take up the matter with SEBI.

No reply was forthcoming from BhSE to the letters dated January 29, 2002 and April 30, 2002 and therefore, vide letter dated August 5, 2002 addressed to the Executive Director and Council of Management, SEBI directed them to comply with the directions mentioned in the said letters and submit their report within 2 weeks from date of receipt of the letter. They were also directed to submit the report of the committee constituted to enquire into complaints against the Executive Director within 2 weeks from date of receipt of the letter. The stock exchange vide its letter dated August 22, 2002 informed that a meeting of the council of management will be held on August 28, 2002 to take up matters relating to compliance of directions given in the letters dated January 29, 2002 and April 30, 2002.

4.0 While the above matter was pending, SEBI received complaints from Shri Kedar Swamy Patra, member of BhSE and Shri M. N Ray, public representative alleging financial fraud and irregularities in the exchange. Further, SEBI came to know through newspaper reports that certain members of the exchange had been arrested and imprisoned for murder and that there were several irregularities taking place in the stock exchange. In the light of the said complaint and media reports, SEBI undertook an inspection of the BhSE during the period August 29 to August 30, 2002. The inspecting team made the following observations:

(i) BhSE has no turnover ; last trading on the floor of the exchange took place on May 25, 2000. The exchange has also no trading in their subsidiary i.e Bhubaneshwar Shares and Securities Ltd on BSE and there is negligible turnover on the ISS Segment. Presently, only 68 companies are listed with the exchange, the last listing being in May 2000. Thus, the exchange is not performing the role of providing a platform for equity trading; on the other hand, the trading in equities has shifted from BhSE to NSE and the trading terminals of NSE are providing facilities for equity trading to investors originally serviced by BhSE.

(ii) The annual accounts for the year 2000-01 is yet to be adopted and the annual accounts for the year 2001-02 is yet to be finalised. The annual accounts for the year 2000-01 was placed before the Annual General Meeting held on September 29, 2001 but the same was not adopted due to the demand of the members to audit the books of account of the members Welfare Trust for the years 1997-98, 1998-99, 1999-00 and 2000-01. An auditor appointed to audit the books of account of the Welfare Trust submitted their report to the exchange on July 12, 2002. After perusal of the report, the council decided to request the auditors to review the work.

(iii) BhSE had an excess of income over expenditure to a tune of only Rs. 29 lacs, whereas, the exchange has Rs. 4.94 crore as cash and bank balance which generates most of its income in the form of interest. Therefore, it appears that the exchange is at present surviving on the interest income earned through the deposits.

(iv) There is conflict between various functionaries of the exchange. The Executive Director and the Secretary of the exchange do not have a cordial relationship with the Council of Management and many of the members of the council are seen to be acting against the Executive Director and Secretary. The exchange officials are not devoting sufficient time and efforts towards the day to day functions of the exchange. In this regard, as an instance of the conflict of interest, it was noted during the inspection that the council of management in its meeting on July 17, 2002 asked the public representative Shri M.N Ray to prepare draft charges against the Executive Director and Secretary for their poor performance, professional misconduct, dereliction of duties and misappropriation of funds of the stock exchange. However, Shri Ray instead of submitting the draft charges to the council of management issued a show cause notice to the Executive Director and Secretary wherein, he described himself as Chairman of the exchange.

(v) The Committee constituted to enquire into the charges against the Executive Director was constituted on March 26, 2002 and later 2 more members were added on July 17, 2002. Although, the committee has met 3 times, they have failed to submit their report within 6 months as directed by SEBI. Till date, the committee has not submitted their report to SEBI.

(vi) With regard to irregularities in the disbursement of loans from the MWT, it was observed that the MWT had delivered 16,200 shares of Reliance Industries Ltd to one broker on NSE – M/s Indian Finance Guarantee Ltd (IFGL). These shares were sold @ Rs. 367/- per share. The details of proceeds of the said transactions are as under :-

Sr. No	Name of the loanees	Number of shares	Rate	Amount (Rs.)
1	Pradeep Investment	5350	367	1963450
2	Kumar & co	1900	367	697300
3	A.K Financial & Co	4600	367	1688200
4	Giridhar & Co	2000	367	734000
5	D.P Singh & Co.	2350	367	862450
	Total	16200		5945400

BhSE received only Rs. 46,60,624 out of the total sale proceeds of 59,45,400 and an amount of Rs. 12,84,776 is due from IFGL. However, BhSE has no documents pertaining to the sale of these shares and no contract notes were found on scrutiny of the records.

(vii) A house building advance of Rs. 10 lacs has been sanctioned to the Secretary and the Executive Director. However, the said loans have not been secured by mortgage of properties. In addition to the above, the entire amount of the loan was disbursed to the Secretary even before construction of the house. Further, the secretary also applied for a housing loan from the Union Bank of India who requested the ED to transfer the housing loan of the Secretary to the Bank.

(viii) Several office bearers of the exchange including certain members of the Council of Management have made the allegation that Shri M.N Ray, public representative has exceeded his authority. In this regard, the inspection team observed the following :-

(a) Shri M.N Ray had written a letter to the ED of the exchange to release Rs. 70,000 for booking of air tickets for proposed visits to Mumbai and New Delhi. However, the Council of Management did not release the money.

(b) The Council of Management had asked Shri M. N Ray to prepare draft charges against the E.D and Secretary of the Stock Exchange but, Shri Ray instead of submitting the draft charges to the Council of Management, issued a show cause notice to the E.D and the Secretary. In the said show cause notice, he also used the designation of Chairman of the Exchange.

(c) Shri Ray issued letters to the E.D asking for information such as cash flow statement of the exchange from September 2001 to February 2002 and such other information.

(ix) There is a proposal to construct a new building for the exchange. The land has already been acquired and the exchange has constituted a building committee to co-ordinate and oversee the construction. The said committee in its meeting dated June 11, 2002 proposed to the council of management to approve expenditure of Rs. 60 lacs towards the new building. The substantial investment in a new building may adversely affect the cash and bank balances with the exchange and thereby, considerably reduce the interest earnings on which the exchange now survives.

5.0 In view of the failure of BhSE to carry out the directives of SEBI and in the light of the observations made by the inspecting team, it appeared that the Council of Management of the exchange has failed to effectively discharge its duties and therefore, SEBI issued a show cause notice dated September 24, 2002 advising them to show cause why appropriate action including supersession should not be taken against them.

5.1 The Council of Management of BhSE submitted their reply vide letter dated October 8, 2002. In their reply, they have stated as follows :-

(i) The committee formed to enquire into complaints against the Executive Director has submitted its report and the same will be forwarded to SEBI after the council of management gives approval to the same.

(ii) The constitution of the members welfare trust has been amended suitably and at present there are five trustees out of which three are non elected directors. The trust has also stopped granting loans to members of the exchange since December 2001.

(iii) Members having outstanding loans from the Members Welfare Trust including Shri Babulal Sharma, Shri Anjani Kumar Singh and Shri Manoj Thakkar are no more office bearers of the exchange, nor are they holding any post in any of the segments where the exchange is acting as a broker.

(iv) The following penalties have been imposed on some of the members who have taken loan from the Members Welfare Trust.

1. Shri Babulal Sharma – Expelled from the exchange
2. Shri Anjani Kumar Singh – Expelled from the exchange
3. Shri S. Kedar Swamy Patra – Suspended from the membership rights
4. Shri Dharmendra P. Singh – Matter is sub-judice

(v) Necessary legal steps for recovery of outstanding loans have been taken and five persons including the erstwhile executive director and secretary of the stock exchange have been arrested by the state police for financial irregularities.

(vi) Members having outstanding loans have been barred from conducting trading in any of the segments of the exchange.

(vii) The Council of Management in its meeting held on March 1, 2002 had decided not to allow withdrawal of BMC and security deposit and adjustment of the same against outstanding dues. The Council of Management has also decided to stop granting loans to the Members Welfare Trust.

(viii) With regard to absence of turnover, the council submitted that the nature of trading has become cyclical nationally and internationally and they do not have any control over the volume of trading and this cannot be construed as a ground for supersession.

(ix) With regard to the annual accounts for the year 2000-01, the council submitted that the same could not be adopted because of the fact that there were inherent irregularities in the accounts of the MWT members welfare trust. The accounts of the MWT for the years 1997-98, 1998-99 and 1999-00 and 2000-01 have been accepted by the Council of Management in its meeting dated October 1, 2002 and the same are being placed in the annual general meeting to be held on November 9, 2002. Subsequent to the adoption of the accounts of the exchange for the year 2000-01, the accounts for the years 2001-02 will be placed to the council for approval.

(x) The conflict between the functionaries of the exchange was as a result of siphoning / abetting siphoning of funds of the exchange by office bearers and officers of the exchange. As a result of the Executive Director and Secretary being arrested and thereafter suspended, this conflict has come to nought.

(xi) With respect to the sale of securities in favour of IFGL, the council is initiating both civil and criminal action.

(xii) With regard to the housing loan, Shri Sanjay Mahapatra, Secretary (under suspension) has repaid his housing loan and the exchange is considering legal steps for recovery of housing loan availed by Shri Jay Sadany, Executive Director (under suspension).

5.2 In view of the above, the Council of Management requested SEBI not to take any action including supersession of the council of management. As per the request of the Council of Management of the Stock Exchange, an opportunity to be heard before the Chairman was granted to them on November 20, 2002. During the hearing, the Council of Management of BhSE was represented by M/s L N Patnaik, S K Jhingan and M N Ray, all directors of BhSE. Shri M N Ray is also the public representative on the Council. In the course of the hearing, the directors of the exchange submitted that they have taken effective steps to exclude the persons responsible for the irregularities at the stock exchange from responsible positions and a few of them have even been arrested by the State Police. They requested that they may be given another chance to turnaround the management of the stock exchange. They also referred to the misdeeds of the earlier council of management and stated that they would like to have some more time to take action against the persons responsible for the irregularities in the BhSE.

6.0 I have carefully considered the facts of the matter, the reply submitted by the Council of Management of BhSE and the submissions made by their representatives before me in the course of personal hearing before me.

7.0 I find that BhSE has failed to implement the directives of SEBI issued under Rule 11 of the SCRR and communicated vide letters dated January 29, 2002, April 30, 2002. The report of the Committee constituted by the Council of Management to enquire into the allegations against the Executive Director is yet to be submitted to SEBI although it was stipulated in SEBI's letter dated August 5, 2002 that the same should be submitted within 2 weeks from date of receipt of the said letter.

7.1 I find that conflict between various functionaries of the stock exchange still exists and that the Council of Management has not regained credibility. The Executive Director and Secretary of the Stock Exchange have been arrested by the State Police and consequently suspended by the Stock Exchange. In order to replace them, the Council of Management has appointed one Shri Bhagyadhar Behera as Secretary and entrusted M/s Gadadhar Mishra and Tapan Ranjan, Assistant Managers with the task of running the day to day affairs of the exchange under the supervision of a sub-committee consisting of the Chairman and two public representatives. SEBI has received complaints against the secretary, Shri Bhagyadhar Behera from members of the exchange also from one of the public representatives on the sub-committee, Shri M N Ray. It has also been brought to the notice of SEBI that the Hon'ble High Court of Orissa has passed severe strictures against Shri M N Ray. Therefore, it cannot be said that cordial relation among the functionaries of the stock exchange and credibility of the members of the Council of Management has been restored.

7.2 I find that the stock exchange has failed to adopt the accounts for the years 2000-01 and 2001-02. The failure to adopt the accounts indicates financial mis-management. The explanation submitted by the exchange in this regard that the accounts shall be adopted at the Annual General Meeting to be held on November 9, 2002 has not been substantiated by action since no statements in this regard has been forwarded to SEBI. Further, accounts for the year 2001-02 are yet to be adopted.

7.3 I find that no effective steps have been taken by the Council of Management with regard to the irregularities in payments made to M/s Indian Finance Guarantee Ltd. The explanation of the council that the matter has been taken up with IFGL for making good the shortfall and that the council is initiating both civil and criminal action, is not satisfactory. The irregularities were noticed in the year 1999 and were also mentioned in the report of the inquiry officer submitted on October 22, 2001. However, BhSE is yet to take any effective action in this regard.

7.4 I find that during the course of hearing, the submissions made by the representatives indicated that they only wished to take action against their predecessors and that they were not inclined to follow the directives of SEBI. Moreover, two of the representatives who appeared before me were found to be lacking in credibility. As mentioned hereinbefore, strictures have been passed by the High Court of Orissa as per the report of the inquiry officer, against Shri M.N Ray and Shri S.K Jhingan is one of the defaulters in respect of the loan availed from MWT.

8.0 In view of the above facts, I am convinced that the Council of Management of Bhubaneswar Stock Exchange has failed to ensure proper governance and implementation of the provisions of the SCRA and SEBI directives and to ensure proper financial integrity in the functioning of the exchange. As a result of this, confidence of investors in the functioning of the exchange has been impaired.

9.0 Due opportunity was given to the Council of Management of Bhubaneswar Stock Exchange to show cause as to why it should not be superseded. The reply given by the Council of Management is not found to be satisfactory. Therefore, I am of the opinion that it is essential that immediate measures are taken to ensure safety and integrity of the market and to restore the confidence of investors in the functioning of the Stock Exchange.

10.0 SEBI is mandated to ensure that the effective steps are taken to protect the safety and integrity of the market and to protect the interest of the investors. Therefore, it is necessary that the persons who have failed to take effective action need to be excluded from governance of the exchange and an independent and impartial person is appointed.

11.0 In view of the above and in exercise of the powers conferred on me under Section 11 of the Securities Contracts (Regulation) Act, 1956 read with Government of India Notification No. S.O.573 dated July 30, 1993 and Section 4 (3) of the Securities and Exchange Board of India Act, 1992, I hereby supersede the Council of Management of Bhubaneswar Stock Exchange with effect from January 03, 2003 for a period of one year and appoint Shri. Jai Prakash Verma as an administrator to exercise and perform all the powers and duties of the Council of Management Shri. Jai Prakash Verma may take the assistance of such persons as he deems necessary in discharge of his duties as administrator.

Dated this 3rd day of January 2003

File no. SEBI/LE/ 23 /03

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA