

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/S. JAYSUKHLAL STOCK BROKING PVT. LTD, MEMBER BSE, IN THE MATTER OF VIDEOCON INTERNATIONAL LTD

CO/ /2003/IES/FUTP

Investigations were conducted by SEBI into the alleged irregularities by Shriram Mutual Fund (SRMF) into the scrip of Videocon International Ltd (VIL) during June 1998.

On the basis of the finding of investigations, an Enquiry Officer was appointed to enquire into the possible violation of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations') with reference to their dealings in the scrip of VIL.

The Enquiry Officer after issuing JSBL the show cause notice and considering the reply of JSBL vide his report dated June 10, 2002 found that JSBL has failed to abide by the Code of Conduct as specified in Schedule II and thus has violated the provisions of Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The Enquiry Officer recommended that the registration of JSBL as broker be suspended for a period of one month.

Pursuant to the report of Enquiry Officer, a show cause notice dated December 18, 2002 was issued advising JSBL to show cause as to why the penalty as considered by the Board should not be imposed on it. JSBL vide its reply dated 7.2.03 submitted its reply to the said show cause notice. As requested, JSBL was granted an opportunity of personal hearing on 5.3.03 before me which was attended by Shri Nitin Doshi and Shri Jaysukhlal Doshi, Directors of the company. Shri Somasekhar Sundaram, Advocate, made submissions on behalf of JSBL and reiterated the submissions made in their reply to show cause notice. It was also submitted on behalf of JSBL that considering the overall facts and circumstances of the case and past record of the broker, a lenient view may be taken.

I have carefully considered the findings of the investigations, enquiry report, show cause notice and the submissions made by JSBL. I find that SRMF and its associates / sister concerns viz. SIS Stock Broking Pvt. Ltd (SIS) and Springfield Securities Ltd (SSL) belonging to the Shriram Group of Companies were operating from 101/102, Dalamal Towers, Mumbai.

It was observed in the investigations that SRMF purchased 1,20,600 shares of VIL @ Rs.84/- per share. This purchase was claimed to have been made by SRMF on 19.6.98. However, the contract note issued by broker M/s.Jaysukhlal Jagjivan Stock Brokers Pvt Ltd (JSBL) showed that the purchase was made on 24.6.98. It was also observed that the market price of the shares of VIL was Rs.62.75/- on 24.6.98. It was further revealed that the purchase of the shares of VIL by SRMF was part of bail out operations for brokers of BSE having payment difficulties due to large carry forward positions in VIL.

During the course of investigations, SEBI investigations team visited the office of M/s.Jaysukhlal Jagjivan Stock Broking P Ltd (JSBL) and gathered information and recorded statements of its representatives. From the details gathered, it appeared that JSBL had purchased 2,14,100 shares of VIL in Settlement no.GA-13 of BSE on June 19, 1998 on behalf of its client M/s.Springfield Securities Ltd (SSL), who was a member of NSE and Hyderabad and Cochin Stock Exchange as 'all or none' transaction. During the investigations, JSBL in his statement submitted that this deal was a part of the bail out package arranged by BSE top management to bail out certain brokers facing payment crisis at the exchange. Since the trading session for settlement no.GA-13 of BSE had closed, these trades were matched by way of three transactions on 19.6.98, after the closure of trading hours i.e. 16.00:40 hrs to 16.04.06 hrs.

Regarding SSL, JSBL submitted that they had a client namely, M/s SIS Stock Broking Pvt. Ltd. (SIS) who was dealing with them since last two to three years and that JSBL received instructions from SIS to put a buy transaction of 2,14,100 shares of VIL in the name of SSL, a sister concern of SIS.

Regarding purchasing the shares @ Rs.84/- per share but issuing the contract note @ Rs.111.60/- it was submitted by JSBL that on the basis of said instructions, it purchased the said 2,14,100 shares of VIL on June 19, 1998 and subsequently raised contract note and bills in the name of SSL. It further stated that as per the instructions of SIS, these shares were carried forward to the next settlement at the standard rate of Rs.84/- but the purchase was executed @ Rs.111.60/-. The broker in his statement has admitted that he had never met any person from SSL and it was only SIS who told them to use this name for this transaction.

JSBL in his statement further submitted that the transaction of purchase of 2,14,100 shares of VIL was done through the contingency pool of BSE on 19.6.98 after the trading hours. JSBL while detailing the sequence of events of purchase of said shares of VIL mentioned that Mr. Surin (who is Chairman of SSL and Director of SIS) alongwith other persons (Mr.Ajay Kejriwal, Mr.Milind, Mr.Yatin) of SIS had come to his office at 24, Rajabhadur Mansion on 18.6.98 and also on 19.6.98. They asked JSBL to enter the purchase of 2,14,100 shares of VIL to bailout some brokers of BSE who were having payment problem, at a rate to be decided by BSE. Later on 19.6.98 Mr Milind and Mr.Yatin accompanied Mr.Vipul (employee of the JSBL) to BSE where the trade was punched in "All or None" category. No client code was punched in as the client name was not given to the JSBL till that time. These purchases were carried forward on 20.6.98. On 22.6.98, JSBL was asked by Shri Surin to issue the contract note in the name of SSL and accordingly the broker issued the same dated 19.6.98 by antedating the contract notes. It is further stated by JSBL that the purchase was being made on delivery basis on behalf of one of the schemes of SRMF. As these purchases were made on the last day of Settlement no.GA-13, these purchases were required to be carried forward. Since a Mutual Fund cannot carry forward its transactions, JSBL was instructed by SIS to show these purchases in the name of SSL. SIS assured JSBL that SIS would guarantee the payment for these purchases.

Thus, it was found that JSBL had not executed the transactions in the name of the clients who had placed the order and issued contract notes in the name of different clients whom he had not even met.

Further, it was found that JSBL executed transactions in the nature of cross deal of 1,20,600 shares of VIL between two of its clients viz. SSL and SRMF. The cross deals as stated above, being off market transaction, should have been reported to the exchange.

It was further alleged that JSBL did not report off market transactions to the exchange.

It was also alleged that JSBL executed these transactions only to bail out certain brokers who were in the payment crisis and therefore it was alleged that JSBL colluded with SRMF, SSL and SIS in antedating the letters/correspondence with had resulted in SEBI getting false/misleading information.

On a perusal of the reply filed on behalf of JSBL, I find that JSBL without contesting the charges, in its reply to show cause notice dated 7.2.03 submitted that the said transactions were made on the basis of the instructions received from the office bearers of BSE which itself is a statutory body with powers to make bye-laws and regulates business of the brokers. Since such instructions came from the self regulatory body, i.e. BSE, JSBL had no reason to believe that they did not have official sanction for the larger good of the capital market. Regarding issuing of contract note in the name of SSL without having any dealing with it, it was submitted on behalf of JSBL that the instructions to execute the deal indeed came from their client SIS who were having trading relationship with it. However, on a request by SIS, the contract notes were issued in the name of SSL. It was further submitted that the person in charge of and in control of both the entities was the same, their offices were in the same premises and the instructions for the deal were issued by the same individual. Therefore, it was submitted by JSBL that not having a client relationship with SSL was at worst, a technical breach not warranting regulatory action of the nature recommended by the Enquiry Officer. JSBL submitted that the Enquiry Officer did not take the above mitigating factors into account and that regard should be had to the same in order that a fair appraisal of the facts of the case be made.

Regarding execution of cross deals between SSL and SRMF and non-reporting the transactions to the exchange, JSBL admitted of doing cross deals. So far non reporting the transactions to the exchange, it was stated by JSBL that as there was a delay on the part of SRMF to decide the bifurcation of shares with respect to its schemes, though the transactions were affected on 19.06.98, the position was held in trust till the name of the scheme was finalised by SRMF on 23.06.98 after the trading hours and therefore eventually, the order was executed on 24.06.98.. Accordingly, JSBL issued contract notes in favour of both the parties on 24.6.98 and reported these trades to the exchange on the same day at a negotiable price of Rs.84/-. It was submitted by JSBL that these facts cannot be summarily dismissed as constituting collusion for the purpose of bringing the charge of violation of the broker regulations. It was reiterated that they simply followed the instructions of BSE and thus they have not violated the provisions of Code of Conduct as alleged.

It was submitted on behalf of JSBL that the penalty as recommended by the Enquiry Officer is severe and not commensurate with the gravity of the breach alleged and the impact of penalty as recommended is harsh. It was further submitted that JSBL is having unblemished record of over 50 years in the capital market and there has been no occasion of any action being taken by any regulatory authority against them for any violation.

In the instant case JSBL is a stock broker registered with SEBI under the provisions of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. To protect the sanctity and integrity of the market, the intermediaries are expected to set a standard of integrity and fairness in their dealings to infuse confidence in the market participants including small investors. The member being registered with SEBI is duty bound not only to comply with the Rules and Regulations but is also expected to adhere to and respect the spirit of the Regulations.

JSBL has not disputed the fact that the transactions in question were traded after the closure of trading hours which was in violation of bye-laws of the stock exchange. The member should have, in exercise of its due care and skill and should have refused to be part of the irregular activities. Further, JSBL has not disputed the allegation that a cross deal was executed by it between SSL and SRMF for the sale of 1,20,600 shares @ Rs.84/- per share. The same was not reported to the stock exchange in violation of Circular No.SMD/RCG/CIR/(BKG)/293/95 dated 14.3.95 issued by SEBI.

With regard to filing false and misleading information with SEBI, JSBL submitted that initially they had executed the transaction for SRMF on 19.06.98 but as SIS informed it that SRMF had not finalised the schemes under which these shares will be picked up and requested JSBL to carry forward the transaction, the position was held in trust till the names of schemes were finalized. JSBL further stated that on 23.06.98, SRMF had given the names of the schemes and accordingly they had transferred 1,20,600 shares to those schemes by way of cross deals on 24.06.98. JSBL has further submitted that the letter issued by SRMF on 15.06.98 was received by them before 19.06.98 and the confirmation letter dated 19.06.98 was issued by them on 22.06.98 on the request of SRMF, since as a mutual fund, SRMF required a letter on the date of transaction. From these submissions, it was observed that the member has admitted that it had transacted the business on one day but issued the confirmation letter on another day. The reasons advanced by the member that it did so at the request of the client and to accommodate the client, do not absolve him from the misconduct. Thus it is established that JSBL in collusion with SSL, SSI and SRMF, submitted false and misleading information to SEBI.

SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 prescribes a Code of Conduct to be followed by the intermediaries in order to ensure certain ethics, standards and professionalism. It promotes confidence of the investors in the dealings of securities and the orderly development and the safety of securities market. Even though there may not be a direct involvement of JSBL in market manipulation and as such there is no charge also in this regard but becoming party to the transactions which are entered into after the official working hours of the exchange to bail out of certain persons was certainly an act which was in violation of the bye-laws of the stock exchange and the Code of Conduct prescribed for a stock broker by the said Regulations. Further, issuing contract notes and bills in the name of an entity which is not registered as a client with it is a clear violation of code of conduct and bye laws of the stock exchange. Non reporting of off Market transactions to the Exchange raises a doubt on the integrity of the broker and similarly transacting the business on one day and issuing confirmation letter on another day is not in accordance with the Code of conduct, as enumerated in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The above conduct of JSBL clearly establishes the lack of integrity on the part of JSBL and its involvement in malpractice and deceptive transactions apart from non compliance of statutory requirements by JSBL. JSBL has thus, violated the provisions of Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

Having regard to the above, I agree with the findings of the Enquiry Officer, that SSL has violated / not complied with the provisions of the Code of Conduct. The broker who claims to have 50 year experience as a member was expected to act more fairly and diligently to set an example for other intermediaries. Further, having such a vast experience, it would have immediately sensed the foul play and would have refused to become a party to the misdeeds. In my view, the active involvement of JSBL in the aforesaid transactions which were irregular in nature, was serious enough to accept the recommendations of the Enquiry Officer more so to maintain the sanctity of the market place.

In exercise of the powers conferred upon me under section 4(3) of SEBI Act 1992, read with Regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, order that the Certificate of Registration granted by SEBI to JSBL, Member BSE be suspended for a period of one month.

This order shall come into force with effect from 28th April, 2003.

PLACE: MUMBAI

DATE : April 3, 2003

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA