

ORDER AGAINST PRAKASH CHAND BAID, MEMBER OF CALCUTTA STOCK EXCHANGE UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002

1.0 SEBI had conducted an inspection of the books of account of Prakash Chand Baid (hereinafter referred to as "the stock broker"), in view of the alleged involvement of the stock broker in off the floor transactions. During the inspection it was found that the stock broker had committed inter alia the violations of the following:-

- (i) Notice of CSE dated September 16, 1999 and CSE's Bye Laws 332 and 334 (iii);
- (ii) Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Practices relating to Securities Market) Regulation, 1995;
- (iii) Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Clauses A (1,4 and 5) of Code of Conduct stipulated in Schedule II of the said regulations;
- (iv) Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957.

1.1 The findings of inspection had been communicated to the stock broker. However, the broker failed to submit explanation on the findings.

2.0 Subsequently, vide order dated September 16, 2002 under the SEBI(Stock Brokers and Sub-brokers) Regulations, 1992, an enquiry officer was appointed to enquire into the above mentioned contraventions committed by the stock broker.

2.1 Upon consideration of the reply submitted by the stock broker vide letter dated 16.10.2002, and oral submissions made on his behalf during the hearing before him, the Enquiry Officer submitted the enquiry report dated March 27, 2003. In view of the facts and findings recorded during the enquiry proceedings, the Enquiry Officer, having regard to the gravity of the violations, recommended that the certificate of registration be suspended for a period of 4 months.

3.0 In terms of Regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, a show cause notice dated April 08, 2003 was issued to the stock broker asking it as to why the appropriate penalty as recommended by the Enquiry officer should not be imposed upon it. It was also advised to reply to the same together with the documents if any, that it may choose to rely upon in support of its reply, within 15 days of the receipt of the same, failing which it would be presumed that it has no explanation to offer. The stock broker was also advised to intimate its desire for personal hearing, along with his reply. The said show cause notice was served through the Calcutta Stock Exchange on the stock broker. The stock broker had neither replied nor availed opportunity of oral hearing.

3.1 Therefore, I proceed in the matter, taking into account the findings and recommendations of Enquiry officer and submissions of the stock broker made during the enquiry proceedings.

4.0 My findings are as follows:-

4.1 It was found that the stock broker had indulged in off the floor transactions in the scrip of Himachal Futuristic with other brokers, namely with A.K. Poddar and Sanjay Khemani. The details of the off the floor transactions entered into by the stock broker with A. K. Poddar in the scrip of Himachal Futuristic are given below :

Date of Transaction	Settlement No.	Purchase/Sale	Quantity	Rate (Rs.)	Amount (Rs)
20/04/00	2001104	Purchase	2000	915/-	18,30,000/-

It may be noted that the delivery of the above shares was made on 28/4/00, i.e. after about 8 days.

4.2 The stock broker was found to have entered into off the floor transactions with Sanjay Khemani also, the details of which are given below :

HIMACHAL FUTURISTICS

Date of Transaction	Settlement No.	Purchase/Sale	Quantity	Rate (Rs.)	Amount (Rs)
29/01/01	2001144	Sale	50000	1240/-	620,00,000/-
29/01/01	2001144	Sale	80000	1245/-	996,00,000/-
29/01/01	2001144	Sale	82000	1248/-	10,23,36,000/-
01/02/01	2001144	Purchase	25000	1064/-	266,00,000/-
01/02/01	2001144	Purchase	25000	1063/-	265,75,000/-

01/02/01	2001144	Purchase	75000	1060/-	795,00,000/-
01/02/01	2001144	Purchase	87000	1062	923,94,000/-
NET AMOUNTPAYABLE BY SANJAY KHEMANI					388,67,000/-

Date of Transaction	Settlement No.	Purchase/Sale	Quantity	Rate (Rs.)	Amount (Rs)
02/02/01	2001145	Sale	70000	1080/-	756,00,000/-
02/02/01	2001145	Sale	60000	1075/-	645,00,000/-
02/02/01	2001145	Sale	2000	1072/-	21,44,000/-
08/02/01	2001145	Purchase	65000	940/-	611,00,000/-
08/02/01	2001145	Purchase	65000	945/-	614,25,000/-
08/02/01	2001145	Purchase	2000	940/-	18,80,000/-
NET AMOUNTPAYABLE BY SANJAY KHEMANI					178,39,000/-

4.3 In addition to above transactions, it is also found from the client ledger of A. K. Poddar that the stock broker had the following off-the-floor transactions.

HIMACHAL FUTURISTICS

Date of Transaction	Settlement No.	Purchase/Sale	Quantity	Rate (Rs.)	Amount (Rs)
02/02/01	2001145	Sale	60000	1075/-	645,00,000/-
02/02/01	2001145	Sale	35700	1078.50/-	385,02,450/-
02/02/01	2001145	Sale	2000	1073.75	21,47,500/-
08/02/01	2001145	Purchase	60000	943.25/-	565,95,000/-
08/02/01	2001145	Purchase	35700	942.50/-	336,47,250/-
08/02/01	2001145	Purchase	2000	940.50/-	18,81,000/-
NET AMOUNTPAYABLE BY ASHOK KR. PODDAR					130,26,700/-

Date of Transaction	Purchase/Sale	Quantity	Rate (Rs.)	Amount (Rs)
02/03/01	Sale	3000	722.50	21,67,500/-
02/03/01	Sale	500	726.60	3,63,300/-
08/03/01	Purchase	3000	400.50	12,01,500/-
08/03/01	Purchase	500	402.00	2,01,000/-
NET AMOUNTPAYABLE BY ASHOK KR. PODDAR				11,28,300/-

Therefore, I find that the member had entered into large off the floor transactions in the scrip of Himachal Futuristic with brokers, Sanjay Khemani and A. K. Poddar. The member has not disputed the findings.

4.5 In response to the show cause notice sent by the Enquiry Officer, a reply was sent vide letter dated 16.10.2002 in which the Stock Broker had stated that the alleged transactions had been negotiated deals entered into with his clients and these deals were of squaring off nature, and hence there was no delivery of shares. He also stated that the transactions had not been reported to the Exchange for the reason that he was not aware of the guidelines. The stock broker also pleaded ignorance of SEBI Circular no. SMDRP/Policy/CIR-32/99 dated 14.09.99. As regards the financial transactions made with a member broker of the Calcutta Stock Exchange, they also stated that these transactions were in the nature of temporary accommodation. He also stated that such transactions were frequently done in order to meet some urgent needs of finance for payment of margin etc. from time to time. Therefore, he submitted that the violations made were not intentional and the same had occurred due to the non-awareness of guidelines, rules and regulations. He apologized for the violations and requested that the proceedings against him be dropped.

4.6 SEBI vide circular no. SMDRP/Policy/Cir-32/1999 dated 14.9.1999 had banned negotiated deals, cross deals which also includes off the floor transactions. SEBI vide the said circular has notified that all negotiated deals shall be permitted only if these are executed on the screens of the exchange in the prices and order matching mechanism of the exchange like any other normal trade. It was stated that the said decision was taken as negotiated deals avoid transparency requirement, do not contribute to price discovery and investor do not have benefit of best prices. Therefore such deals militate against basic concept of stock exchange which are meant to bring large number of buyers and sellers in transparent manner. Thus off the floor transactions as mentioned above was not put in the system of the exchange by the broker but had been negotiated or dealt privately with other brokers namely A. K. Poddar and Sanjay Khemani. I find that the above mentioned transactions were violative of SEBI circular dated 14.9.1999. Such off the floor transactions also tamper with price discovery mechanism of the exchange.

Trading by the stock broker in the manner described above has led to interference with the fair and smooth functioning of the market which is in violation of item 4 of clause A of Schedule 2 of Code of Conduct read with regulation 7.

- 4.7 It was also found that the date of transaction entered into by the Stock Broker with A. K. Poddar, was 20.4.2000 for 2000 securities of Himachal Futuristic. However, delivery was found to have been made on 28.4.2000, i.e. after more than 8 days. SEBI had vide its notification no. S.O. 184(E) dated 1.3.2000 issued under section 16 of SC(R) Act banned all the transactions which were not as per the byelaws of the stock exchange and also SC(R) Act. In case of spot delivery contracts, payment and delivery has to be made within 48 hours. However, delivery was found to have been made beyond 48 hours which was in violation of the above notification dated 1.3.2000. Thus the broker is guilty of violation of item 5 of clause A of regulation 7 of Code of Conduct for Stock Brokers read with regulation 7.
- 4.8 It was also found from the client ledger that the stock broker had made payments and received funds from the other members of the exchange. The Stock broker was found to have indulged in fund transfer with other brokers, which were not backed by any transaction. Few instances are as given below.

NAME OF THE BROKER	DATE OF TRANSACTION	Received/ Paid	AMOUNT (RS.)
Dinesh Kr. Singhania	14/10/99	Received	7,00,000/-
Dinesh Kr. Singhania	25/10/99	Received	4,00,000/-
Dinesh Kr. Singhania	07/12/99	Paid	11,00,000/-
Dinesh Kr. Singhania	13/09/2000	Paid	10,00,000/-
Dinesh Kr. Singhania	22/02/2001	Received	6,00,000/-
Premratan Bahety	06/04/99	Paid	30,00,000/-
Premratan Bahety	21/04/99	Received	20,00,000/-
Premratan Bahety	24/01/2001	Paid	30,00,000/-
Premratan Bahety	22/03/2001	Received	195,00,000/-
Ashok Kumar Poddar	21/02/2000	Paid	30,00,000/-
Ashok Kumar Poddar	25/02/2000	Received	30,00,000/-
Ashok Kumar Poddar	09/02/2001	Received	24,00,000/-
Ashok Kumar Poddar	23/02/2001	Paid	10,00,000/-
Sanjay Khemani	12/02/2001	Received	50,00,000/-
Sanjay Khemani	20/02/2001	Paid	28,50,000/-

The practice of giving loan to brokers from the fund of the client is in violation of the bye-laws of the exchange and SEBI circular no. SMD/SED/Cir/93/23321 dated 18.11.1993 by which it has been mandated that a broker cannot use money of the client for any other purpose and his money is to be kept segregated only for his transactions. The stock broker, in view of the above transaction is thus found to have violated the circular dated 18.11.1993 and also violated items (6) of clause B of Schedule II read with regulation 7 of Stock Brokers Regulation. The above transactions also show that the member had entered into regular lending transactions which is in violation of rule 8(1)(f) of SC(R). Such lending transactions that too from the monies of the client are in violation of rule 8(1)(f) of SC(R) Rules and SEBI circular dated 18.11.1993.

- 5.0 In the light of the facts and circumstances narrated above, I find that the stock broker has committed following violations:
- (i) Notice of CSE dated September 16, 1999 and CSE's Bye Laws 332 and 334 (iii);
 - (ii) Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with Clauses A (4, 5 and 6) of Code of Conduct stipulated in Schedule II of the said regulations;
 - (iii) Rule 8 (1) (f) of Securities Contracts (Regulation) Rules, 1957.

5.1 In view of the above, I am satisfied that in order to secure the proper management of the stock broker and also in the interest of Securities Market, a penalty of suspension of certificate of registration of the stock broker for a period of four months as recommended by the Enquiry Officer is justified. Therefore, in exercise of the powers conferred upon me under Section 4(3) of SEBI Act, 1992 read with Regulation 13(4) and 13(6) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby suspend the Certificate of Registration of Shri Prakash Chand Baid, Member of Calcutta Stock Exchange (SEBI Regn. No. INB 030827516), for a period of four months.

5.2 This order shall come into effect after three weeks from the date of this order.

Date : July 29, 2003

Place: Mumbai

G.N. BAJPAI

CHAIRMAN

