

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13 (4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST KRISHNA KUMAR DAGA, MEMBER CALCUTTA STOCK EXCHANGE

CO\93\SMD\08\2003

- 1.0 Sri Krishna Kumar Daga, (hereinafter referred to as "member") is a Member of Calcutta Stock Exchange (hereinafter referred to as "CSE") holding a SEBI Regn no 030044216 and has his office at 24 Harchandra Mullick ST, Kolkatta – 700 005.
- 1.1 Based on the inspection report dated 10th September 2002, Securities and Exchange Board of India (hereinafter referred to as "SEBI"), vide Order dated 10th October, 2002 appointed an Enquiry Officer to enquire into the contraventions committed by the member of the following
- (i) Violation of CSE's notice dated September 16, 1999 and CSE's Byelaws 332 and 334 (iii);
 - (ii) Violation of Regulation 4 SEBI (Prohibition of Fraudulent and Unfair Practices relating to Securities Market) Regulation, 1995, (hereinafter referred to as "FUTP Regulations")
 - (iii) Violation of Rule 4(b) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, (hereinafter referred to as "Broker Regulations") read with clauses A (1, 4, and 5) of the Code of Conduct stipulated in schedule II of the Broker Regulations;
 - (iv) Violation of Rule 8(1) (f) of Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SC(R) Rules")
- 1.2 The Enquiry Officer in his enquiry report dated 31st March 2003 found that the member had done Off-the-floor transactions in the scrips of Global Telesystems Limited (GTL), Himachal Futuristic Communications Ltd (HFCL) and DSQ Software (DSQ) with brokers Sanjay Khemani and D K Singhania, details of which are as follows :

Transacted with	Settl no. / begin date of settlement	Scrip	B_Qty	S_Qty	B_Value	S_Value
D K Singhania	2001103	GTL	0	5400	0	9922500
D K Singhania	2001105	DSQ	0	20000	0	18200000
D K Singhania	2001106	GTL	0	5500	0	5901500
H C Biyani	2001109	GTL	2000	0	1764000	0
D K Singhania	2001112	HFCL	35000	0	52500000	0
D K Singhania	2001125	HFCL	0	3000	0	5100000
D K Singhania	2001130	HFCL	3000	0	3300000	0
Arihant	2001150	HFCL	0	280000	0	65000000
H C Biyani	9900142	GTL	0	5000	0	5331500
Sanjay Khemani	09-03-01	HFCL	487000	0	94965000	0
Sanjay Khemani	17-04-00	HFCL	100000	0	91550000	0
Sanjay Khemani	21-05-99	Ranbaxy Lab	1541	0	1036322.5	0
Sanjay Khemani	23-02-01	HFCL	0	487000	0	370015000
Sanjay Khemani	31-03-00	Zee TV	49000	0	41919500	0

- 1.3 Enquiry officer in his report to SEBI on 31st March 2003 recommended a penalty of suspension of registration of the member for a period of three months.
- 2.0 After considering the enquiry report, a show cause notice under regulation 13 (2) of the said Regulations dated 23rd April 2003 was issued to the Member informing him of the enquiry officer's finding and requiring him to show cause as to why action should not be taken against him as recommended by enquiry officer. A copy of enquiry report was also annexed to this. It was also stated in the said show cause notice that if the member desired a personal hearing before the Chairman the same should be intimated in the reply.
- 2.1 The Member vide his letter dated 12th May 2003 replied to the show cause notice stating that he did not wish to add anything to what he had already submitted in his reply dated 27th January 2003 to the show cause notice issued by enquiry officer and during the hearing before him on 3rd March 2003. He however stated further as under;
- 2.2 The member submitted that Notice issued by the CSE dated 16th September 1999 was informative in nature, informing about the closure of the windows of C-star for 'Negotiated Deals & Cross Deals', as the same have been banned by SEBI. Since the said circular was not a direction, there was no violation of notice dated 16.09.1999 of CSE.

- 2.3 Member submitted that all the off-the-floor transactions were reported to CSE as per normal practice, hence, there was no violation of Regulation 4 of SEBI (FUTP) Regulations.
- 2.4 Member further submitted that he had not indulged in any malpractices so there was no violation of Rule-4 (b) of Brokers Rules and regulation 7 of Brokers Regulations read with clauses A (1, 4 and 5) of the Code of Conduct stipulated in Schedule-II of Broker Regulations.
- 2.5 The member did not express any desire for a personal hearing. However, he pleaded that SEBI should take a considerate view and not a harsh one.
- 3.0 I have carefully, considered the findings of the enquiry officer and the submissions made by the member. I find that -
- 3.1 The member had done off-the-floor transactions as established during the enquiry. The member had indulged in off the floor transactions in the scrips of GTL, HFCL and DSQ with brokers Sanjay Khemani and D. K. Singhanian as given in detail in para 1.2 above. Enquiry against Sanjay Khemani is pending before SEBI for their dealings with the member. Member has dealt with D K Singhanian in GTL, DSQ and HFCL scrips with Sanjay Khemani in HFCL, Ranbaxy Labs and Zee TV. I found that the member had not disputed the said transactions.
- 3.2 SEBI vide its circular no. SMDRP / POLICY/ Cir-32/ 1999 dated 14.09.1999 banned all negotiated deals, cross deals etc. which include Off-the-floor transactions also. In the said circular it had been notified that all negotiated deals shall be permitted only if the said deals are executed on the screens of the Exchange in the price and order match mechanism of the Exchange like any other normal trade.

The said decision was taken as negotiated deals are devoid of transparency requirements. They also do not contribute to price discovery at the stock exchange depriving the investors of the benefit of best price. Therefore, such deals militate against basic principals of stock exchange mechanism which is meant to bring large number of buyers and sellers together in a transparent manner. It is apparent from the above that the off the floor transactions as shown in para above was not put in the system of the Exchange by the member. Therefore, this is violative of SEBI Circular dated 14.09.1999. This kind of off the floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Such deals are also in violation of item 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

- 4.1 Regulation 7 of SEBI (Stock Broker and Sub Brokers) Regulations, 1992 reads as under :

"7. The stock broker holding certificate shall at all times abide by the Code of Conduct as specified in schedule II."

The relevant portions of clause A of Schedule II mentioned above reads as under :

Item 5 : Compliance With Statutory Requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him."

Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 read as under :

"4. The Board may grant a certificate to a stock broker subject to the following conditions namely:

a...

b. He shall abide by the rules, regulations and bye laws of the stock exchange or stock exchanges of which he is a member."

As can be seen from above, the member has violated item 5 of Clause A of Schedule II by failing to comply with SEBI Circular dated 14.09.1999. In view of the above, I find that the Member is guilty of violating Rule 4 (b) of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Rules, 1992 and regulation 7 of Broker Regulations read with Clauses A (5) of Code of conduct stipulated in Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992

- 4.2 As a registered market intermediary, the member is under a positive obligation to abide by the concerned Regulations and Code of Conduct envisaged thereunder. Conforming to the Code of Conduct is a condition precedent for continuation of his registration under Rule 4(b) as above. The misconduct of the member, therefore, warrants imposition of a penalty in terms of regulation 13 (1) (a) of the Securities and Exchange Board of India (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002.

4.3 Therefore, in the interest of the securities market and in exercise of the powers conferred upon me under sub-section (3) of Section 4 of the SEBI Act, 1992 read with sub-regulation (4) of regulation 13 of the Securities and Exchange Board of India (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002, I hereby order that the registration of Sri Krishan Kumar Daga, (SEBI Reg No INB030044216) Member, Calcutta Stock Exchange, be suspended for a period of three months.

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

Place: Mumbai

G. N. BAJPAI

CHAIRMAN

Date : 12th August, 03

SECURITIES AND EXCHANGE BOARD OF INDIA