

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 SHIVAM STOCK BROKING PRIVATE LIMITED, MEMBER CALCUTTA STOCK EXCHANGE

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1.0 Shivam Stock Broking Private Limited, (hereinafter referred to as "member") is a Member of Calcutta Stock Exchange (hereinafter referred to as "CSE") holding SEBI Regn no 031051239.

1.1 Based on the inspection report dated 11th July 2002, Securities and Exchange Board of India (hereinafter referred to as "SEBI"), vide Order dated 16th September, 2002 appointed an Enquiry Officer to enquire into the contraventions committed by the member of the following

(i) Violation of CSE's notice dated 16th September 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 7th May 2003 found that the member had done Off-the-floor transactions in the scrips of Himachal Futuristic Communications Ltd (HFCL), DSQ Software (DSQ) and Zee Telefilms Ltd (Zee TV) with brokers Shri Sanjay Khemani and Shri Ashok Poddar, details of which are as follows :

Name of the scrip : GLOBAL TELE

Date of transaction	Member's Buy / Sell	Quantity	Amount (As per difference bill)
16/02/2001	SELL	75000	9150000.00
22/02/2001	BUY	75000	
09/02/2001	SELL	75000	2115860.00
14/02/2001	BUY	75000	
12/01/2001	SELL	75000	5625000.00
17/01/2001	BUY	75000	

Name of the scrip: HIMACHAL FUTURISTIC

Date of transaction	Member's Buy / Sell	Quantity	Amount (As per difference bill)
02/03/2001	SELL	80000	23440000.00
08/02/2001	BUY	80000	
12/01/2001	SELL	36800	4600000.00
17/01/2001	BUY	36800	
16/02/2001	SELL	80000	12560000.00
22/02/2001	BUY	80000	
19/01/2001	SELL	80000	4800000.00
24/01/2001	BUY	80000	
29/01/2001	SELL	13200	1914000.00
01/02/2001	BUY	13200	

Name of the scrip: ZEE TV

Date of transaction	Member's Buy / Sell	Quantity	Amount (As per difference bill)
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19/01/2001	SELL	75000	3075000.00
24/01/2001	BUY	75000	

Name of the scrip: DSQ SOFTWARE

Date of transaction	Member's Buy / Sell	Quantity	Amount Rs (As per difference bill)
02/03/2001	SELL	75000	6900000.00
08/03/2001	BUY	75000	
16/02/2001	SELL	75000	5325000.00
22/03/2001	BUY	75000	
19/01/2001	SELL	80000	4240000.00
24/01/2001	BUY	80000	

The member had also executed off the floor transactions with another broker Shri. Ashok Poddar details of are given below:

Name of the scrip: HIMACHAL FUTURISTIC

Date of trans-action	Member's Buy / Sell	Quantity	Amount Rs (As per difference bill)
14/07/2000	BUY	25000	950000.00
17/07/2000	SELL	25000	
22/09/2000	BUY	50000	3950000.00
28/09/2000	SELL	50000	
03/10/2000	BUY	44400	10345200.00
17/07/2000	SELL	44400	

- 1.3 Enquiry officer in his report recommended a penalty of suspension of registration of the member for a period of one year.
- 2.0 After considering the enquiry report, a show cause notice under regulation 13 (2) of the said Regulations dated 20th May 2003 was issued to the Member informing them of the enquiry officer's finding and requiring him to show cause as to why action should not be taken 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 its letter dated 6th June 2003 replied to the show cause notice. Member did not add anything to an earlier replies vide letter dated 21st January 2003 inter alia stating as follows
- 2.2 With regard to off-the-floor transactions member submitted that most of their transactions were done on the floor and off-the-floor transaction was done due to non awareness of CSE Notice dated 16.09.1999.
- 2.3 The member did not express any desire for a personal hearing. However, pleaded SEBI to reduce the punishment.
- 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 has done off-the-floor transactions as established during the enquiry. The member had indulged in off the floor transactions in the scrips HFCL, DSQ and Zee TV with brokers Shri Sanjay Khemani and Shri Ashok Poddar as given in detail in para 1.2 above. Member has dealt with Shri Sanjay Khemani and Shri Ashok Poddar. The member did not deny this fact.
- 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. The price and order match mechanism of the Exchange like any other normal trade.
- 3.3 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. Therefore, the investors do not have 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 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 since he failed to comply with Circular dated 14.09.1999 which was notified by CSE vide notice dated 16.09.99. Had the member scrupulously complied with these stipulations, the integrity at the market and the confidence of the investors in the market could have been safeguarded. He has also violated as a consequence, Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992.

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 in violation of item 4 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

4.2 In view of the above, I find that the member by indulging in the off the floor transactions has violated Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992 and Clause A (4 & 5) of the Code of Conduct stipulated in Schedule II of SEBI (Stock Brokers and Sub Brokers) Regulations.

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

5.2 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 Shivam Stock Broking Private Limited, (SEBI Reg No INB031051239) Member, Calcutta Stock Exchange, be suspended for a period of one year.

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

Place: Mumbai

Date : 13th August, 2003

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA