

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 GAUTAM BAJORIA, MEMBER CALCUTTA STOCK EXCHANGE

CO\98\ISD\08\2003

1. Gautam Bajoria is a member of Calcutta Stock Exchange and is a SEBI registered stock broker with a Reg. No. INB 030724412.
2. The eastern regional office of SEBI conducted an inspection of the member and submitted an inspection report on 15.07.02. It has been prima facie found in the said inspection that the member involved in off the floor transactions in violation, inter alia, of provisions of the Calcutta Stock Exchange Association Rules and Bye laws and Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices in Securities Market) Regulations, Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 (hereinafter referred to as Stock Brokers Rule) and Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) and code of conduct stipulated in the broker regulations and Rule 8(1)(f) of SC (R) Rules. Therefore, Shri Ananta Barua had been appointed as Enquiry Officer vide orders of the Chairman dated 16.09.02 to enquire into the said violations.
3. The enquiry officer conducted the enquiry in terms of the order appointing the enquiry and Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter called the said regulations) submitted his report on 07.05.2003. In his report the enquiry officer found the member guilty of indulging in off floor transactions in violation of SEBI Circular dated 14.09.1999 and indulging in financing transactions in violation of Rule 8(1) of SC(R) Rules, 1957. The enquiry officer recommended that the Certificate of Registration of the member be suspended for a period of one year.
4. A show cause notice under Regulation 13(2) of SEBI (Procedure Regulations), 2002 was issued to the member on 20.05.03 forwarding therewith a copy of the enquiry report with an advise to show cause as to why the penalty recommended by the enquiry officer should not be imposed. It was indicated in the said show cause notice that the member should reply to the show cause notice within 15 days of the receipt and to intimate in writing as to whether the member desire a personal hearing. The said show cause notice was delivered to the member through Calcutta Stock Exchange, the member acknowledged the receipt on 28.05.03.
5. The member has replied to the said show cause notice vide his letter dated 11.06.03. In his said reply he had stated as under:
 - 5.1 Shri Bajoria stated that he had explained the facts and circumstances under which the transactions in question were carried out by him in his letter dated 25th January 2003 addressed to the Enquiry Officer and reiterated the same as part of this reply.
 - 5.2 He stated that as explained by him in his reply dated 25th January 2003 that on several occasion C Star System used to get hanged or frozen and it became necessary to enter into off the floor transactions which were entered into good faith. It has been alleged by the enquiry officer that some of such transactions were not spot delivery transaction in as much as payment were not made or deliveries were not effected within the same day or the next day.
 - 5.3 He further submitted that the transactions in question were entered into by him on principal to principal basis and not as broker for any investors. He contended that according to the then prevalent practice amongst the members of the Calcutta Stock Exchange no one insisted on payment or delivery of shares within the same day or the next day and it was normal for payments to be made or securities to be delivered within a couple of days. He stated that he carried out all such transactions in accordance with the then prevalent practice in the Calcutta Stock Exchange bonafide and in good faith.
 - 5.4 He contended that he had not diverted funds of any investor and that no complaint has been made by any investor against him that he has not received his dues. He argued that the findings of the enquiry officer that temporary financial accommodation to his colleagues would shake confidence of the investors was wholly imaginary.
 - 5.5 He submitted that no ground exists for imposing any major penalty against him and that the delay in payment or delivery of such securities by couple of days was in accordance with then prevalent practice in the Calcutta Stock Exchange and in any event is a technical breach.

- 5.6 He also stated that he was only a member of Calcutta stock Exchange and that by reason of recession in the stock market he had not carried on any business as a member of Calcutta Stock Exchange since April 2001 till date.

In the aforesaid background he requested not to impose any further or other penalty and to drop proceedings.

6. I have noted from the above reply that the member did not ask for any personal hearing to make further oral submissions in addition to what has been stated above. I am of the considered view that principals of natural justice have been sufficiently complied with no further opportunity for hearing is required to be given and proceed accordingly.
7. I have considered the enquiry report and the reply of the member. I note that the member had taken a preliminary objection as to the applicability of SEBI (Procedure Regulations) and that the enquiry officer had given a preliminary finding on the issue stating that the said Regulations are applicable to the present proceedings. I further note that the member did not raise any objection to the said finding and therefore, hold that the finding of the enquiry officer is legally tenable and the proceedings are in order.
8. It is found that the member had indulged in following off floor transactions with Sanjay Khemani.

Settle- ment No.	Name of scrip	Khemani's Purchases				Khemani's Sales			
		Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/ Sell	Qty	Rate (Rs.)
2001141	HFCL	10.1.2001	S	50000	1094.00	08.01.2001	B	50000	1368.00
Amount payable to Sanjay Khemani as per difference bill								Rs.1,37,00,000	

Settle- ment No.	Name of Scrip	Khemani's Purchases				Khemani's Sales			
		Date	Buy/ Sell	Qty	Rate (Rs.)	Date	Buy/ Sell	Qty	Rate (Rs.)
2001142	HFCL	15.1.2001	S	30000	1077.90	12. 01. 2001	B	42000	1220.50
		15.1.2001	S	12000	1077.00				
Amount payable to Sanjay Khemani as per difference bill								Rs.60,00,000/-	

9. The enquiry officer observed that member had executed the above off the floor transactions with Sanjay Khemani in the scrip of HFCL. I have noted that the member did not dispute the fact of entering into such off market deals. SEBI vide circular No.SMDRP/POLICY/Cir-32/1999 dated 14.9.99 has banned all negotiated deals. As per the said circular such deals shall be permitted only if these are executed on the screens of the exchange in the price and order matching mechanism like any other normal trade. Such negotiated deals/off-market deals were banned as such deals tamper with price discovery mechanism and militate against concept of stock exchange.
10. The enquiry officer further noted that the broker had also entered off the floor transactions with D.K Singhania and H.C.Biyani as per the finding of inspection which was not disputed by the member.
11. I therefore agree with the finding of the enquiry officer that the member by executing such trade outside the exchange has violated the above circular dated 14.9.99 and item A(5) of Schedule II of regulation 7 of Stock Broker Regulation.
12. I also find that the broker had entered the following transactions with Sanjay Khemani:

Sl. No.	Name of the Scrip	Date of Transaction	Quantity	Date of delivery
1.	HFCL	08.06.2000	72000	17.06.2000
		08.06.2000	25000	19.06.2000
2.	Global Tele	10.05.2000	54900	12.05.2000**
3.	HFCL	10.05.2000	84500	12.05.2000**
4.	Zee Tele	10.05.2000	21200	12.05.2000**
5.	Zee Tele	20.04.2000	18000	26.04.2000
6.	Satyam	06.08.1999	4000	23.08.1999

From the above it is clear that the delivery of the scrips did not take place within 48 hours of date of transaction dated 8.6.2000. The delivery of security had taken place on 17.6.200 and 19.6.2000 i.e., after 9 to 10 days from date of

transaction. The said transactions were not spot delivery contracts and in violation of the byelaws of the exchange. The same are also in violation of SEBI notification No.S.O.182(E) dated 1.3.2000 issued under section 16 of S.C.(R) Act which prohibits entering into any contract in securities other than spot delivery contract, or contract in securities as per the byelaws of the exchange.

13. The enquiry officer has further found that the member had made payments to and received payments from the clients ledger, which are not backed by any transactions as under:-

Date	Name of the member	Paid/received	Amount (Rs.)
28.07.2000	Harish Chandra Biyani	Received	38,25,000.00
17.11.2000	Harish Chandra Biyani	Paid	17,00,000.00
15.04.2000	Dinesh Kr. Singhanian & Co.	Received	1,75,00,000.00
17.08.2000	Dinesh Kr. Singhanian & Co.	Paid	1,15,00,000.00
07.04.2000	Ashok Kumar Poddar	Received	4,00,00,000.00
16.06.2000	Ashok Kumar Poddar	Paid	1,00,00,000.00
29.12.2000	Prema Poddar	Paid	2,57,25,000.00
01.01.2001	Prema Poddar	Received	2,57,25,000.00
17.04.2000	Sanjay Khemani	Received	5,82,00,000.00
08.05.2000	Sanjay Khemani	Paid	5,00,00,000.00
11.01.2001	Doe Jones & Investments & Cons.	Paid	5,26,00,000.00
12.01.2001	Doe Jones & Investments & Cons.	Received	5,26,00,000.00
08.03.2001	Arihant Exim Scrip Pvt. Limited	Paid	16,61,11,500.00
12.03.2001	Arihant Exim Scrip Pvt. Limited	Received	16,61,11,500.00
14.12.2000	Khemani & Sons	Paid	1,79,00,000.00
15.03.2001	Khemani & Sons	Received	1,97,00,000.00

15. The member contended that none of the advances could be termed as commercial transactions. It was submitted that they were of personal nature and no interest had been charged for such advances except in the case of Khemani & Sons, who to stated to be not a member of CSE. Enquiry Officer held that the member had made advances from the client ledger and received funds from other members of CSE and are not backed by any delivery of securities transactions etc. Lending money to other broker/persons with or without interest from the fund of the client is in violation of SEBI circular No.SMD/SED/Cir-93/23321 dated 18.11.93 which mandates keeping of fund/securities of client in a separate account and not to use such fund/securities for any other purpose. Similar obligations have been cast under the byelaws of the exchange. The above instances also indicate that the member has indulged in regular lending of money which is in violation of rule 8(1) (f) of S.C.(R)Rules, 1957.

Rule 8(1) of SC (R) Rules reads as under:

“ 8. Qualifications

The rules relating to admission of members of a stock exchange seeking recognition shall inter alia provide that:

- (1) No person shall be eligible to be elected as a member if -

(a)

(b);

(c)

(d)

(e).....

(f) he is engaged as principal or employee in any business other than that of securities except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business:

Provided that the *Securities and Exchange Board of India* may, for reasons sufficient in the opinion of the said *Board*, permit a recognised stock exchange to suspend the enforcement of this clause for a specified period on condition that the applicant is not associated with or is a member of or subscriber to or shareholder or debenture holder in or connected through a partner or employee with any other organisation, institution, association, company or corporation in India where forward business of any kind whether in goods or commodities or otherwise is carried on or is not engaged as a principal or employee in any such business;”

16. 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 their notice dated 16.09.99 and which resulted in market disturbances.

17. 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 Clause A (5) of Code of conduct stipulated in Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992.
18. 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) (b) of the Securities and Exchange Board of India (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002.
19. 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 Gautam Bajoria, (SEBI Reg No INB 030724412) Member, Calcutta Stock Exchange, be suspended for a period of one year.

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