

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER SECTION 11B OF SEBI ACT, 1992 READ WITH REGULATION 11 AND 12 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 AND REGULATION 13(3) OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST M/S BHUPALI SECURITIES, AND ITS PARTNERS, SAGAR KAJBAJE AND SMITA KAJBAJE.

CO/ 108/ISD/08/2003

1. SEBI had conducted investigations into the transactions executed by the brokers viz., Dangi Finance and Management Consultancy Ltd. (hereinafter referred to as 'Dangi') and Libord Securities Ltd, (hereinafter referred to as 'Libord') at their Kolhapur terminal pursuant to complaints received from certain investors based at Kolhapur. Investigations revealed that M/s.Bhupali Securities (hereinafter referred to as Bhupali) had acted as unregistered sub broker to Dangi and Libord and had made false representation in the newspapers misleading/inducing the investors.
2. On concluding the investigation, a show cause notice was issued on May 12, 2003 to the partners of Bhupali alleging it to be guilty of violating regulation 5(1)(b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 . Vide the aforesaid notice, Bhupali and its partners were asked to show cause as to why suitable directions under section 11 of the SEBI Act, regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995, including directions to debar them from dealing in securities for a particular duration and prohibit access to capital market for a suitable period should not be passed. It was also stated therein that if they do not reply within 21 days from the date of receipt of the notice, it shall be construed that they have nothing to say and that they will be proceeded with appropriate action in terms of the Regulations. It was also asked to indicate whether they desired a personal hearing.
3. No reply has been received from them despite the reminders dated June 11, 2003 and July 01, 2003 sent to them. In the reminders, they were advised to furnish their replies within the time stipulated therein or else they shall be proceeded against in accordance with the Regulations.
4. I have carefully examined the findings of the investigation as well as other material on record and the show cause notice issued to Bhupali. Bhupali is a partnership firm between Shri Sagar Kajbaje and his mother. Shri Sagar Kajbaje was found to be an employee of Dangi / Libord. Investigation has revealed that Shri Sagar Kajbaje was working in the Kolhapur branch of Dangi ever since the commencement of business at that place. The broking terminal of Dangi and Libord at Kolhapur was operative as a branch till the last week of January /first week of February 1998.
5. During the investigation, it has been found that Bhupali had given an undertaking vide its letter dated 3.2.98, that it would transact as client for Dangi/Libord from the Kolhapur terminal whereas Bhupali was found to have traded for other clients as well. Bhupali was found to be having transactions with other clients also which are evidenced by subsequent transactions statements and the ledger of some of the complainants, which indicated some cheque payments in the account . Therefore, Bhupali has acted as a sub broker to Dangi / Libord, although its application for registration as sub-broker was found to have been rejected by both National Stock Exchange and the Stock Exchange of Mumbai.
6. Bhupali was found to have used the terminals of Dangi / Libord at Kolhapur for its transactions as a sub-broker from 4/2/98. Further, M/s Bhupali Securities was also found to have signed member- sub broker agreement and member client agreement with Dangi/Libord on 3/2/98 and on 4/2/98 respectively. The transaction reports were also found to have been sent by Bhupali to Dangi/Libord and it was found that settlement of shares /moneys had been done.
7. A Memorandum of Understanding (hereinafter referred to as 'MOU') dated 27.2.98 was found to have been entered between Bhupali and Dangi / Libord. The terms of the MoU were such that Bhupali would take over all the assets and liabilities of the Kolhapur branch and all bad deliveries and /or other claims / liabilities arising out of transactions done upto 3/2/98 of Dangi / Libord at their Kolhapur branch shall be the liability of Bhupali and that the same shall be settled by them.
8. Bhupali was found to have given the public notice on 27/8/98 in the newspaper 'Sakal' in response to the public notice made by both Dangi / Libord, wherein they had stated themselves to be authorised sub-broker of Dangi / Libord. It was also said that the public notice given on 15/8/98 by Dangi / Libord to the effect that Bhupali was not their sub-broker was false and misleading.
9. Investigations revealed that Dangi / Libord had sent a letter to Bhupali on 28.8.98 indicating legal actions and Bhupali in response to the same was found to have replied stating that no transactions were entered by it as a sub-broker and that the advertisement /public notice earlier issued by Bhupali on 27/8/98 was forcibly published by some creditors to take advantage of the situation. In a further letter of November 1998 to Dangi/Libord, Bhupali was found to have indicated that it had acted only as client and that payment would be made to Dangi/Libord within 3 years, which was incorrect.

10. During the course of investigation, it was found that Bhupali had affirmed in a communication dated 2/11/98 to Libord on stamp paper that it had started doing business with Libord as client on 3/2/98 and as on 2/11/98 Bhupali had a debit balance of Rs. 832107.42 which would be paid in instalments within a period of 3 years.
11. Investigations also revealed that Bhupali has undertaken unauthorised sub broking transactions on behalf of clients knowing that the same were in violation of SEBI /Stock Exchange rules and regulations. Bhupali was not having the certificate of registration for acting as a sub broker. It is also found that the application for certificate of registration by Bhupali had been rejected as far back as in February 1998, and still Bhupali had undertaken transactions.
12. The findings of the investigation were that Bhupali had not informed Dangi/Libord about its activities in the capacity of a sub-broker to Dangi / Libord, although it issued notes /bill claiming affiliation to Dangi/Libord. Bhupali was also found to have undertaken transactions at the terminal of Libord till the closure of its terminals. Further, there is no evidence available to suggest that it had issued any public notice or having communicated to any investor anything in this regard except for the rebuttal notice in newspapers dated 27.8.98 in response to the notice of Dangi/Libord.
13. Bhupali was found to have undertaken transactions in the capacity of a sub-broker, during the investigation, inspite of it not being registered. Such transactions were found to have resulted in non-delivery of shares purchased, non-receipt of amounts due etc to some clients. Bhupali was also found to have accepted cheque payments from clients such as Shri Chavan without having fulfilled its obligations. It was also found that cases had been filed in consumer courts in respect of such transactions, complainants being Shri Chavan, Shri Kapasikar, Hemant Deshpande and P. Hawaldar who have claimed moneys. The Maharashtra State Consumer Disputes Redressal Commission, vide its order dated 12/4/2001 was found to have directed Bhupali to deposit 75% of the amount decreed by the District Forum, Kolhapur in respect of its order dated 25/11/1999. In addition to the above, the Additional Sessions Judge, Kolhapur vide order dated 2.9.2000 also fixed the liability on Bhupali.
14. In connection with the complaint /claim of Shri Chavan, it has been brought out that he had filed a claim against Dangi/Libord or on Bhupali. Bhupali was found to have paid him Rs. 33597.15 which was his outstanding at the time the branch was closed. Shri Chavan had received and acknowledged receipt of this amount. It appears that the other transactions done by him pertain to Bhupali, although the same has not been resolved by it. Bhupali was found to have admitted the liability but much later in forums when proceedings were initiated against it. Bhupali was found to have given cheques to complainants /investors which had bounced back, the cheques being issued after the bank account was closed or when it was fully aware that the cheques would bounce. For e.g. Bhupali was found to have given cheques to Shri Chavan which were dated 18.9.98 for Rs. 50000 and dated 25.6.98 for Rs. 2,00,000, on his complaint which had bounced.
15. Claims were also found to have been made against Bhupali by the following complainants – Shri Sumer Patil for Rs. 19253, Rs. 6 lakhs by Dr Parandekar, Shri Ravindra Patil who gave deposit of Rs. 10000/- to it in April 1998, Ms Rashmi Divan for Rs. 11025, Shri V A Kapasikar for Rs. 2.58 lakh arising out of cheques and deposits given to Bhupali in March 1998, Shri Ravindra Samant for Rs. 32500 for shares sold through Bhupali and Shri Nandkumar Ghatge for Rs. 26,700 for shares sold through it.
16. Further, Bhupali, as a client of Dangi/Libord, was found during the investigation to be liable to pay around Rs. 20 lakhs to them. According to Dangi/Libord, Bhupali was acting only as its client and the ledger balance was around Rs. 7,00,000 outstanding to be payable by Bhupali to Libord which had gone upto to Rs. 8,43,000 by 29/3/99 due to bad delivery commitments arising out of some shares.
17. Investigations also disclosed that Libord had filed arbitration in BSE on 20/11/98 and that arbitrator had awarded Rs. 8,35,406.24 against Bhupali. Similarly, Dangi was also seen to have filed arbitration in NSE against Bhupali and arbitrator vide order dated 19/3/99 awarded Rs. 11,46,180/- to Dangi. Also Dangi/Libord were found to have apparently attached the property of Bhupali at its registered office at Kandivili.
18. During the course of investigation, Shri Sagar Kajbaje and Smita Kajbaje was found to have stated in their appeal to the State Consumer Disputes Redressal Commission, Maharashtra (Appeal No. 2202 of 2001 dated December 11, 2001) that they were willing to pay amount rightfully due to complainants – C. Y. Chavan, V. A. Kapshikar etc. Further, the partners of Bhupali were found to have filed an affidavit before the said State Commission dated December 13, 2001 wherein they admitted their liability to pay around Rs. 9.8 lakhs and it is also found that Bhupali has already paid an amount of Rs. 1,38,500/- and that it will be making the remaining payment shortly.
19. Whereas summons had been issued to Bhupali for deposition before the SEBI's investigating authority, on all addresses available on record, there has been no response. Thus Bhupali was not cooperating with the investigation and apparently attempting to hamper expeditious completion of the probe.
20. During the investigation, Bhupali was found to have made a false representation in newspapers that it was a sub broker of Dangi/Libord whereas no certificate of registration or other evidence was provided to that effect. Bhupali was found to

have given versions which were contradictory to the facts of the case. Once, as per the MoU signed, Bhupali was found to have agreed to accept the liabilities of the Kolhapur branch. On the other hand, Bhupali had issued public notice stating that responsibility vests with Dangi/Libord since Bhupali was only its employee. Also Bhupali was found to have issued a public notice denying that it was ever a sub broker. Thereafter, Bhupali was found to have stated that it had issued such notice under pressure from creditors as had been communicated to Dangi/Libord vide its letter dated 18/9/1998.

21. Thus, Bhupali is found to have been undertaking transactions as that of a sub-broker on the Kolhapur terminal of Dangi/Libord for itself as well as for clients without being registered as a sub-broker which was in violation of Section 12 of SEBI Act, 1992 and also Rule 3 of SEBI (Stock Broker and Sub Broker) Rules, 1992.

22. However, as per Dangi/Libord, Sagar Kajbaje (one of the partners of Bhupali) had submitted resignation as early as on 3/2/98. Further, Bhupali had also admitted its liability towards the creditors vide agreement dated 25/6/98 and bound itself to pay the moneys due to the creditor and then was found to have issued cheques. But, cheques for payment issued by Bhupali was also reported to have been bounced since account appears to have been closed on 13.6.98. The conduct and action of Bhupali is not befitting that of a responsible capital market participant. Its conduct is also in violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 1995 of regulation 5(1)(b) which states as under :

Prohibition of misleading statements to induce sale or purchase of securities –

No person shall make any statement, or disseminate any information which is likely to induce the sale or purchase of securities by any other person or is likely to have the effect of increasing or depressing the market price of securities, if when he makes the statement or disseminates the information –

(i) *He does not care whether the statement or information is true or false;*

Or

(ii) *He knows, or ought reasonably to have known that the statement or information is misleading in any material particular.*

23. In view of the above, M/s Bhupali Securities is guilty of violation of regulation 5(1)(b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 . Therefore, in exercise of the powers conferred upon me under Section 4(3) read with Section 11 B of SEBI Act as also Regulations 11 and 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Regulation 13(3) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby direct M/s Bhupali Securities and its partners, Sagar Kajbaje and Smita Kajbaje not to deal in securities for three years. This order shall come into force with immediate effect.

G N Bajpai

Chairman

Securities and Exchange Board of India

Place : Mumbai

Date : 26th August, 2003