

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In the matter of directions to Tulsi D Bhayana under Section 11 read with section 11B of the Securities and Exchange Board of India Act, 1992 regarding irregularities in the conduct of the affairs of Bhubaneswar Stock Exchange Member's Welfare Trust and charges of murder against him

C/116/MRD/09/2003

- 1.0 In exercise of powers under Section 6(3) of the Securities Contract (Regulation) Act, 1956 (hereinafter referred to as "SC(R)A"), on 28.9.2001, The Securities and Exchange Board of India (hereinafter referred to as "SEBI") instituted an inquiry into the affairs of the Bhubaneswar Stock Exchange (hereinafter referred to as "the Exchange") in relation to the alleged siphoning of funds out of the exchange to the tune of Rs.1.30 crore including interest through The Bhubaneswar Stock Exchange Members Welfare Trust (hereinafter referred to as "the Trust") by the members of the Exchange.
- 2.1 The Inquiring Authority appointed vide the order mentioned in paragraph 1.0 supra, conducted inquiry in the manner laid down in Rule 11 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SC(R)R") and submitted his report to SEBI on 22.10.2001. In his report the Inquiring Authority has found that : -
- 2.1.1 The Exchange had neither sought permission nor sent any intimation to SEBI regarding the formation of the Trust. They were unable to produce any documents to prove that approval of SEBI was obtained for the formation of the trust.
- 2.1.2 As per the Trust Deed, the number of trustees of that trust shall not be less than three and more than five. It was observed that the trustees have always been from among the elected members of the exchange. The President and the Treasurer of the exchange are also the Chairman and Treasurer of the Trust respectively. No Public Representative and SEBI nominee Director was made a Trustee. The Executive Director of the exchange was present in meetings of the Trust as a special invitee without having any say in the decision for grant of loan by the trust to the members of the exchange.
- 2.1.3 The Rules of the Trust initially stipulated that "in case of temporary financial difficulty in making payment of dues to the Clearing House of the Exchange, a maximum of Rs.2,00,000/- shall be paid as loan which shall be recovered in 5 equal instalments alongwith 24% p.a. simple interest" and that "a member shall not be entitled to avail loan under this facility more than two times in a year." Thereafter, the Council of Management of the exchange at its meeting held on November 29, 1997 amended the Rules of the Trust to provide that "in case of temporary financial difficulty in making payment of dues to the Clearing House of the Exchange, a loan upto Rs.5 lacs or if the circumstances so warrant, such other higher amount as may be decided by the Trustees may be sanctioned which shall be ordinarily recovered within a period of two months along with the simple interest of 24% per annum. The trustees, however, may extend the aforesaid period of two months in appropriate cases from time to time as may be deemed fit."
- 2.1.4 As on the date of inquiry (1.10.2001 - 3.10.2001), out of total outstanding loan of Rs.95,83,782 (excluding interest) a sum of Rs.94,13,782 (i.e. approx 98% of the total outstanding loans) was due from members who were either office bearers of the exchange or the trustee of the Trust. Further, out of the total loan outstanding (excluding interest), one Shri Babulal Sharma's outstanding loan amount (excluding interest) constitutes 92.5% of the total loan outstanding of Rs.95,83,782/-. Further, out of the total outstanding loan, a loan of Rs.90,99,620/- (i.e. 95%) was granted to meet the members' pay in liabilities. Further, it was also observed that in some cases, it was observed that loans were sanctioned without proper security.
- 2.1.5 The rules of the Trust clearly state that loans may be granted subject to the fulfilment of several conditions. One of the conditions clearly states that at the time of submitting application for loan, there should not be any amount of loan outstanding which is refundable to the Trust. This condition has not been adhered to in the case of Shri Babulal Sharma, where loan has been sanctioned although the previous loan has not been repaid. In the case of Shri Arun Kumar Girdhar, loan has been sanctioned when interest of the previous loan has not been paid by him.
- 2.1.6 It was also observed from the bank statement in the name of Shri Babulal Sharma's account No.1003, maintained with Canara Bank, Exchange Branch, that major portion of the above loans were used for making payments to Indian Finance Guaranty Ltd. (IFGL), member of the National Stock Exchange. It was further observed that Shri Tulsi D. Bhayana (hereinafter referred to as "the member") and Shri Ashok K. Sardana, the Directors of IFGL, were elected President and Vice President respectively of the exchange in the Annual General Meeting of the members of the exchange held on September 29, 2001.
- 2.2 SEBI also came to know from newspaper reports that the member was allegedly involved in the murder of a stock broker and that he has been arrested and lodged in prison. It was also noted that the High Court of Orissa had refused to grant him bail.
- 2.3 In view of the above, in the interest of investors and in the interest of the securities market, vide order dated 29.10.2002, the member was prohibited from buying, selling or otherwise dealing in the securities market till further orders.
- 2.4 The member has vide letter dated 30.1.2003 requested for recalling of the order dated 29.10.2002. In the said letter, the member has submitted that:

- 2.4.1 The order is contrary to the findings in SEBI's own investigation report which has not found him guilty regarding irregularities in the affairs of the Welfare Trust.
- 2.4.2 He is not connected with any irregularity in respect of the funds of the trust since he was not a office bearer of the Welfare Trust or of BhSE during the relevant time when the irregular loans were sanctioned.
- 2.4.3 The order does not specify any facts on the basis of which the same has been made.
- 2.4.4 Paragraphs (1) to (6) of the Order contain details of the investigation made by SEBI. The only reference to him in the investigation report is at Para 6 wherein it is stated that a major portion of the loan given to and availed by Shri Babulal Sharma was used to make payments to IFGL.
- 2.4.5 The SEBI Inquiry Officer has nowhere in the report indicted him regarding sanction or disbursement of the loan to Babulal Sharma rather there are various findings to the effect that it was the office bearers of BhSE and the MWP who misutilised their positions and availed loan to pay their liabilities.
- 2.4.6 The crime branch of Orissa Police has conducted an investigation into the affairs of the Welfare Trust and submitted a chargesheet on 3.1.2003 wherein they have framed charges against Shri Manoj Thakker, Mr. D.P. Singh, Mr. Anjani Kumar Singh, Mr. Sanjay Mahapatra, Mr. Jay Sadani and Mr. Babulal Sharma. They have not found him to be guilty.
- 2.4.7 He was arrested on false allegation of conspiracy to murder on 31.5.2002 for a murder that happened on 30.3.95. There are only allegations against him and he has not been convicted of any crime. The order of the High Court refusing to grant bail is not any finding on the merits of the case.
- 2.4.8 The allegation of murder is based on fabricated circumstantial evidence and there is no nexus established between him and the commission of the said offence.
- 2.4.9 Persons who have made statements implicating him in the murder are individuals against whom he had taken disciplinary action when he was office bearer of BhSE.
- 2.4.10 The order does not give any instant of mis conduct which confirms that there is an emergent situation wherein the investor in the securities market would suffer any loss and wherein any harm would be caused to the market.

2.5 Further, vide his letter dated 4.7.2003, the member has submitted that:

- 2.5.1 One of the grounds stated in the order passed against him is that he is implicated in a criminal case. The said case is false and motivated and he is completely innocent in the matter. This is confirmed by the fact that even after 4 hearings in the trial of the case, no witness has supported the case of the prosecution.
- 2.5.2 The order does not give any reasons or facts leading to the conclusion that he was in any way involved in the irregularities with respect to the funds of the Welfare Trust. The Crime Branch of the Orissa Police has also made an investigation in the matter and has not held him to be involved.

2.6 The member was also granted opportunity to be heard in person before me on 15.5.2003 and 9.7.2003. However, the member sought repeated adjournments thus indicating that he did not wish to appear before me in person or through an authorised representative and make submissions. I find that adequate opportunity has been given to the member and the requirements of natural justice have been met. Hence I proceed further in the matter.

3.0 I have considered the facts of the matter, the report of the inquiring authority, the findings in the order dated 29.10.2002, the submissions of the member, the order dated 16.1.2003 of the exchange and other material on record. The following issues arise for consideration:

3.1 **Whether it is necessary for SEBI, in the interest of investors and the securities market, to continue the prohibition on the member from dealing in securities and from being associated with the securities market.**

3.1.1 I note that the member has been expelled from the membership of the exchange on account of the irregularities committed by him. I note that the exchange vide its order dated 16.1.2003 has expelled the member from the membership of the exchange with immediate effect. I also note that in the said order, the following findings have been made:

3.1.1.1 That an amount of Rs.40 Lakhs had been illegally transferred from the exchange to through the trust and subsequently through the account of M/s Pradeep Investments to IFGL a company of which the member is a director.

3.1.1.2 That certain loans granted by the member during his tenure as office bearer of the exchange and trustee of the trust to members were not consistent with the rules.

3.1.1.3 That during his tenure as the president of the exchange in 1998, the member had :

3.1.1.3.1 failed to take disciplinary action against Shri Arun Kumar Girdhar notwithstanding the fact that he had failed to make good his pay-in liabilities of Rs.4,22,815/- on 16.1.1998 to the clearing house of the exchange and had allowed him to do business on the floor of the exchange.

3.1.1.3.2 failed to take disciplinary action against Shri Anjani Kumar Singh in spite of the fact that he had failed to make good his pay-in liabilities of Rs.2,74,620.50 on 16.3.1998 in respect of Settlement No.9/98 to the clearing house of the exchange and had allowed payment of the said amount from the margin account of the exchange with Canara Bank by way of overdraft against the dues of Shri Anjani Kumar Singh.

3.1.1.3.3 allowed illegal transfer of funds from the exchange to the trust without prior approval of the council of management of the exchange on the following dates:

	Date	Amount
	4.4.1997	2.00 Lakhs
	30.4.1997	3.00 Lakhs
	30.5.1997	1.75 Lakhs

3.1.1.4 That the member, being chairman of the trust had never reviewed the recovery position, bad debts, market valuation and net worth of loanees

3.1.2 I note that the member is no longer the member of a recognised stock exchange and as such has violated one of the conditions subject to which registration was granted to him. In this regard, I note that an enquiry has been initiated against the member by SEBI.

3.1.3 I further note that the exchange has expelled the member on the grounds of his involvement in the irregularities in the affairs of the trust and dereliction of duty as president of the exchange.

3.1.4 I further note that the member is still in police custody regarding the charge of murder of a stock broker

3.1.5 In view of the above, I find that it is not in the interest of investors and the securities market to permit the member to be associated with the securities market or to deal in securities.

4.0 Therefore, in exercise of the powers conferred upon me under Section 4(3) of the SEBI Act, 1992, read with Sections 11 and 11B of the SEBI Act, 1992, I hereby direct that Tulsi D. Bhayana, erstwhile member of Bhubaneshwar Stock Exchange and holder of SEBI Registration Certificate bearing number – INB170264715 shall not associate himself with the securities market and shall not buy, sell or otherwise deal in the securities market till further orders.

G. N. BAJPAI

Date : 8th September, 03

Chairman

Place: Mumbai

Securities and Exchange Board of India