

## **SECURITIES AND EXCHANGE BOARD OF INDIA**

### **ORDER**

#### **UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST SHRI MOHAN MALPANI, MEMBER OF MPSE.**

#### **BACKGROUND**

1.0 Shri Mohan Malpani is a member of Madhya Pradesh Stock Exchange (hereinafter referred to as MPSE) and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) vide registration no. INB 070523619.

1.1 An enquiry officer was appointed vide Order dated 18.02.02 for conducting enquiry into the affairs of Shri Mohan Malpani, member of MPSE, vis-à-vis his dealings in the scrip of Eonour Software Ltd (hereinafter referred to as ESL) and possible violation of the provisions of the following :-

- a. Rules, Bye-laws and Regulations of Madhya Pradesh Stock Exchange.
- b. Provisions of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and sub Brokers) Regulations, 1992.
- c. Provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations, 1995.

#### **2. INVESTIGATION BY SEBI :**

2.1 ESL was originally incorporated on May 06, 1992 in the name of Mikugura Software Limited with its registered office located in Indore, Madhya Pradesh. The main object of the company was to develop system software and application software. In January 1996, ESL came out with a public issue of 12,50,000 shares of Rs. 10/- each at a premium of Rs.20/- per share aggregating to Rs. 375 lac. As per the prospectus, the shares of Mikugura Software Ltd. were proposed to be listed at M. P. Stock Exchange (MPSE) and Ahmedabad Stock Exchange (ASE).

2.2 ESL was taken over by Shri R. Karthik from its previous promoters in the month of November 1999. Shri R. Karthik in terms of Regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 made an open offer to the shareholders of ESL and paid Rs. 33/- per share for the fully paid up shares and Rs. 8.25 per share for the partly paid up shares of ESL. These were evident from the open offer document made in line with the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997. The name of Mikugura Software Ltd, following the takeover, was changed to Eonour Software Ltd. The shares of ESL are listed on Ahmedabad Stock Exchange (ASE), Madras Stock Exchange (MSE), The Stock Exchange, Mumbai (BSE) and M. P. Stock Exchange, which is the regional exchange of ESL. Listing of the shares at MSE and BSE was done after the takeover by the new management. After the takeover, the registered office of ESL changed from Indore to Chennai.

2.3 The public holding in ESL excluding Other Body Corporate is approximately 6.3 lac shares constituting approximately 21% of the paid up capital of ESL. Further, out of total 1248 shareholders, only 4 shareholders were holding approximately 79% of the equity capital. This shows that the shares of company are in limited hands.

2.4 It was observed that 5 shareholders collectively were holding 26,12,700 shares constituting approximately 87% of the paid up share capital of ESL as on February 10, 2000. It was also observed that Shri Karthik R. the main promoter of the company was holding 22,44,200 shares of ESL constituting approximately 75% of the paid up capital of ESL.

2.5 A perusal of the trading details from December 01, 1999 to July 31, 2000, shows that no trading was reported at ASE during the said period. However at MSE., the scrip was listed on February 28, 2000 and the trading permission was granted on February 29, 2000. The first trade on the exchange was reported on March 06, 2000 at a price of Rs. 419/-. The total quantity traded during the period under investigation, at the exchange was only 1,500 shares and the highest price it touched at the exchange was Rs. 492/-. The scrip of ESL was not traded at NSE during the period June 2000 to December 2000.

2.6 Substantial quantity of shares were traded at Madhya Pradesh Stock Exchange during the period December 01, 1999 to March 14, 2000. After March 14, 2000 no trades were reported at the exchange. Incidentally, it is observed that the scrip was listed on the Stock Exchange, Mumbai, on March 13, 2000. From the price volume details as submitted by MPSE, it is observed that the price of the scrip, which was Rs. 31.50 on December 01, 1999 rose to Rs. 401/- on March 09, 2000. Prior to November 1999, the scrip of ESL was not actively traded and the scrip was considered highly illiquid. In the Madhya Pradesh Stock Exchange prior to December 1999, the scrip was thinly traded and the price was in the range of Rs. 18/- to Rs. 30/- per share.

2.7 At The Stock Exchange, Mumbai the first trade was reported on June 12, 2000 (although listed on March 13,2000) and the price was Rs. 520/- which went up to Rs. 634.75 on July 07, 2000. It was noticed that the clients were connected to each other. It is observed that a total of 2,22,600 shares were traded on the exchange. The maximum quantity traded on the exchange on a particular day during the period was 11,700 shares on June 22, 2000. It was observed that the total purchases/quantity traded during the aforementioned period were 2,22,600 shares.

2.8 At MPSE, a total of 2,47,100 shares were traded during the period December 01, 1999 to March 14, 2000. It was observed that trading in the scrip was concentrated among 7 brokers of the exchange who have traded in the scrip

during the period December 1999 to March 2000 and their names along with their positions are as under:

| Name of Broker                    | Purchases       | %age of Total | Sales           | %age Total    | of Gross      |
|-----------------------------------|-----------------|---------------|-----------------|---------------|---------------|
| Mohan Malpani,<br>President, MPSE | 65,900          | 26.67         | 66,300          | 26.83         | 132200        |
| Shaifali Khajanchi                | 65,600          | 26.55         | 65,500          | 26.50         | 131100        |
| Ravindra Khajanchi                | 57,100          | 23.10         | 56,800          | 22.99         | 113900        |
| Dilip Bhandari                    | 30,100          | 12.18         | 30,100          | 12.18         | 60200         |
| Vijay Vyas                        | 23,100          | 9.34          | 23,100          | 9.34          | 46200         |
| Anil G. Bhandari                  | 4,000           | 1.61          | 4,000           | 1.61          | 8000          |
| Sharad Bhandari*                  | 1,300           | 0.52          | 1,300           | 0.52          | 2600          |
| <b>Total</b>                      | <b>2,47,100</b> | <b>100.00</b> | <b>2,47,100</b> | <b>100.00</b> | <b>494200</b> |

\* Sharad Bhandari has also traded in the scrip prior to December 1999.

2.9 It is observed from the trading details collected that all the trading done in the scrip during the aforementioned period has been contributed by the above mentioned brokers only. The scrip price had moved from Rs. 31/- on December 01, 1999 to Rs. 402/- on March 09, 2000. These brokers, without actually taking or giving delivery, have jacked up the price of the scrip at M. P. Stock Exchange. They have also reversed the position amongst themselves and indulged in rampant "Circular Trading" in the scrip so as to register artificial volumes and also to jack up the price of the scrip. The brokers have done the trades in their own account.

### 3.0 ROLE OF SHRI MOHAN MALPANI -

3.1 Mohan Malpani is a proprietary member of M. P. Stock Exchange. The member has traded in the scrip of Eonour Software Ltd. mainly in his own account and for three clients who have traded 200-400 shares on delivery basis. All the transactions which were executed on behalf of his own trading account were squared off.

3.2 The trading details of Shri Mohan Malpani are as under :-

| Name of Broker | Sett. | Purchases     | Sales         | Net         | Gross           |
|----------------|-------|---------------|---------------|-------------|-----------------|
| Mohan Malpani  | 37    | 6,800         | 6,800         | 0           | 13,600          |
|                | 38    | 7,200         | 7,200         | 0           | 14,400          |
|                | 39    | 3,000         | 3,000         | 0           | 6,000           |
|                | 40    | 3,900         | 3,900         | 0           | 7,800           |
|                | 41    | 3,700         | 3,700         | 0           | 7,400           |
|                | 42    | 9,100         | 9,100         | 0           | 18,200          |
|                | 43    | 7,200         | 7,200         | 0           | 14,400          |
|                | 44    | 3,700         | 3,700         | 0           | 7,400           |
|                | 45    | 5,200         | 5,200         | 0           | 10,400          |
|                | 46    | 3,900         | 3,900         | 0           | 7,800           |
|                | 47    | 3,500         | 3,900         | -400        | 7,400           |
|                | 48    | 3,500         | 3,700         | -200        | 7,200           |
|                | 49    | 2,100         | 1,900         | 200         | 4,000           |
|                | 50    | 3,100         | 3,100         | 0           | 6,200           |
| <b>Total</b>   |       | <b>65,900</b> | <b>66,300</b> | <b>-400</b> | <b>1,32,200</b> |

3.3 Shri Mohan Malpani was squaring off his positions at the end of each settlement, which was confirmed by him. In his sworn statement, Shri Malpani stated that apart from clientele business which was negligible ( where he had given delivery/received delivery from clients), all the other transactions were squared off. During the course of investigation / enquiry, the member was asked to confirm as to whether he had indulged in similar kind of transactions in other scrips as well, to which he stated that volumes in other scrips were almost Nil at MPSE and, therefore, his trading was restricted to the scrip of Eonour Software Ltd. He also stated that he did jobbing in the scrip of Eonour because there were very few scrips to trade on the exchange.

3.4 During the course of investigation / enquiry, Shri Mohan Malpani was asked that the price of the scrip had moved up from Rs. 31/ in December 1999 to Rs. 400/- by March 2000 and why it should not be inferred that he along with the other members of the exchange were responsible for creating artificial market. In reply to this, Shri Mohan Malpani stated, "I agree to the fact that I have done jobbing transactions in the scrip. However, it was not my intention to either create false market or do trading which is circular in nature. All my transactions were done only to earn some jobbing differences arising in the scrip. I have submitted the settlement wise pay-in/pay-out details, which clearly indicates that most of the time my pay-out was in the range of Rs. 500/- or so, which was my profit in the scrip. Further, I have always maintained integrity in my dealings as a member of the stock exchange and have always complied with the regulatory requirements."

3.5 During the course of investigation / enquiry, the member was asked to comment on the fact that most of the time his counter party was Smt. Shaifali Khajanchi and Shri Ravindra Khajanchi as per the information provided by the exchange. The member was asked as to whether he noticed any abnormality in this regard. Shri Malpani stated that there were hardly 10-15 brokers who were active at MPSE in a true sense and most of the time the counter-party

brokers in other scrips as well, were same. The member further submitted that he did not notice that most of his trades were matching with Khajanchis as he used to square off his position on daily basis.

3.6 It was observed that some cash was deposited with his bank account in the month of November 1999. On being asked to explain the source of the same, Shri Malpani stated that he had given advances to few parties by cheques which were paid back by them in cash and furnished the proof of advance made to the parties.

3.7 Shri Mohan Malpani's trading in the scrip constituted approx. 25% of the trading volume at the exchange and most of his transactions were matching with Khajanchis. It was also noted and confirmed by the member that the profit made by him was always in the range of Rs. 200/- to Rs. 1000/- per settlement and the price of the scrip was continuously going up and touched Rs. 400/- in March 2000. The member has entered transactions at successive higher prices along with other members of the exchange. The member has contributed to the price rise at MPSE. The price rise in the scrip was too steep for it to go unnoticed especially when profit or loss in the dealings never exceeded Rs. 1000/- in any settlement. This should have alarmed the member and he should have stopped dealing in the scrip immediately. It was also observed that in spite of very little profit, the member has chosen to deal in almost all the settlements in which the stock was traded.

3.8 The volumes in the scrip were generated by Shri Mohan Malpani along with other members of the exchange who have acted in concert and have created artificial volumes. It may, therefore, be concluded that the member has created a false and misleading appearance of trading in the scrip. The member is also responsible for artificial rise in the price of the scrip, along with other members of the exchange.

#### **4.0 ENQUIRY REPORT AND RECOMMENDATION :**

4.1 The enquiry officer, after conducting the enquiry as per the prescribed procedure submitted a report dated 07.08.03 and recommended a penalty of suspension of certificate of registration of the broker for a period of six months.

#### **5.0 SHOW-CAUSE NOTICE, HEARING AND BROKER'S REPLY**

5.1 Pursuant to the submission of enquiry report, a show cause notice dated 18.8.03 was issued to the broker along with a copy of the enquiry report. The broker submitted a reply vide letter dated 12.09.2003. An opportunity of personal hearing was granted to the broker on 10.10.03 and the same was rescheduled for 27.10.2003 as per the request of the broker. Shri Mohan Malpani appeared before me and reiterated his contentions already made vide his letter dated 12<sup>th</sup> September, 2003.

5.2 The broker vide his letter dated 12.09. 2003, inter alia, submitted that he was a small broker and traded only for the nominal jobbing profit only. The broker further submitted that since very few brokers of the exchange were active and trading was also in a few scrips, therefore, concentration of trades among 5-7 brokers was only a coincidence. The broker also pleaded for a lenient view in the matter.

#### **6.0 CONCLUSIONS**

6.1 I have carefully considered the material available on record and also the submissions made by the broker vide his letter dated 12.9.2003. My findings are as follows :-

6.2 Shri Mohan Malpani had traded in the scrip mainly on his own account and very negligible trades were executed for clients. He had executed a total purchases of 65,900 shares and sale of 66,300 shares from Settlement no.37 to 50 in MPSE. All these transactions were squared off with a highly negligible delivery of shares.

6.3 Shri Mohan Malpani has submitted that he had transacted mainly for earning jobbing income arising out of price difference and he has executed few transactions for clients in settlement no.47, 48 and 49. He further submitted that he used to square off the transactions in the same settlement and as far as the clients transactions are concerned, they were executed on delivery basis. Shri Mohan Malpani further submitted that there were hardly 10 – 15 brokers who were active in MPSE in a true sense and most of the time the counter party brokers in other scrips as well, were same.

6.4 I find that the submissions of Shri Mohan Malpani are not convincing. He has traded mainly on his own account in the scrip of ESL along with few other brokers of MPSE. The scrip price has moved from Rs.31/- in December 1999 to Rs.400/- in March 2000. Prior to November 1999 the scrip was not actively traded and the scrip was highly illiquid. These brokers without actually taking or giving delivery have artificially raised the volumes and price of the scrip by indulging in circular trading. I find that all these brokers have executed transactions mainly on their own accounts.

6.5 The investigation report has brought out that many of the transactions of Shri Mohan Malpani matched with that of Shri Ravindra Khajanchi and Smt. Shefali Khajanchi's transactions. The scrip has been made liquid by putting artificial volumes and price by few brokers including Shri Mohan Malpani. These brokers have entered into continuous speculative transactions without any genuine interest in giving or taking delivery of shares. This has resulted in creation of artificial volumes and price rise in the scrip which has otherwise attracted no interest from the general investors.

6.6 I find that only few brokers in concert indulged in circular trading i.e. buy and sell transactions with each other, squaring off positions and reversing trades either on the same day or same settlement, making the net receivables and deliverable positions either nil or in negligible quantities and created a false and misleading appearance of trading on the securities market in the scrip of ESL. Since there were very few active brokers in MPSE and the price of the scrip which is illiquid had been rising phenomenally, Shri Malpani was aware that the price was moving up because of the jobbing done by few brokers including himself and not because of any enthusiasm from the general investors. Therefore, he should have stopped doing jobbing in the said scrip immediately.

6.7 In view of the above, I am convinced that Shri Mohan Malpani has therefore, failed to exercise due skill and care in terms of Clause A(1) to (4) of the Code of Conduct contained in Schedule II read with Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 . He has also indulged in acts calculated to create a false and misleading appearance of trading in the scrip of ESL and entered into purchases and sale of securities not intended to effect transfer of beneficial ownership but to inflate the price of the scrip. These acts are in violation of Regulation 4(b) and 4(d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. Regulations 4(b) and 4(d) read as follows :-

"4. No person shall -

*(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market.*

*(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the market price of securities."*

6.8 Regulation 7 of the said Regulations provides that the stock broker holding the certificate shall at all times abide by the Code of Conduct as specified in Schedule II. Further, Clause A (5) of Schedule II provides that 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. In view of the conclusions mentioned hereinabove, I conclude that the said broker is guilty of having violated :-

a. the provisions of clauses A(1) to A(4) of the Code of Conduct

as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992; and

b. the provisions of Regulation 4(b) &(d) of SEBI (Prohibition of

Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

I am also of the view that the said broker is liable for action under regulation 13(1)(b) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

6.9 Under section 11 of the SEBI Act, SEBI can take measures to protect the interests of investors and to regulate the securities market, inter alia, by registering and regulating the working of stock brokers. Further, the Code of Conduct specified in Schedule II of the said Regulations also provides for the minimum standards for the working of the stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures taken by SEBI for regulation of the stock brokers would be rendered nugatory and the regulatory function would be jeopardized. It is to be noted that indulgence of the said broker in the transactions which are prohibited can not be allowed especially when such transactions are likely to have a detrimental effect on regulation of the securities market.

## 7.0 **ORDER :**

7.1 I find that the said broker has committed violations as observed above and has not exercised due care and diligence in the observance and compliance of the statutory requirements pertaining to the conduct of his business as a stock broker. Looking to the afore-stated violations committed by the said broker, I am convinced that, in the interests of the securities market and in order to safeguard its integrity, penal action is warranted. I am satisfied that a penalty of suspension of certificate of registration for a period of six months would be adequate and would meet the ends of justice.

7.2 Therefore, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 13(4) and 13(6) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby order that the Certificate of Registration no. INB 070523619 of Shri Mohan Malpani, a member of the Madhya Pradesh Stock Exchange be suspended for a period of six months.

This order shall come into force on the expiry of twenty one days from the date of this order.

**Sd/-**

**DATE : 5<sup>TH</sup> NOVEMBER, 2003**

**A K BATRA**

**PLACE: MUMBAI**

**MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**