

SECURITIES AND EXCHANGE BOARD OF INDIA

MO/36/ISD/12/03

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s S. P. RAKHECHA & Co., MEMBER OF CALCUTTA STOCK EXCHANGE.

1. M/s S. P. Rakhecha & Co. is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 031032718 and is a member of Calcutta Stock Exchange (CSE). An inspection of books of accounts, documents and other records of the member was conducted on 4th June, 2002. During the inspection, it was found that the member had indulged in off market trades outside the price and order matching mechanism of CSE. The data collected by the inspection team indicated that the broker had indulged in off the floor transactions with the brokers Shri Sanjay Khemani and A K Poddar, members CSE. Further, it was observed that the member indulged in fund transfers with Khemani & Sons and other brokers like Shri Sanjay Khemani and A K Poddar, members CSE. It was found that the fund transfers were not backed by any transactions.
2. The findings of the inspection report were forwarded to the member vide letter dated 21.06.2002 advising the member to file its comments if any, on the findings of the inspection. The member vide letter dated 17.07.2002 replied to the said findings of the inspection report. On not being satisfied with the reply filed by the member an Enquiry officer was appointed vide SEBI's order dated 08.08.2002. The allegations as per the show cause notice dated April 30, 2003 issued by Enquiry Officer are as under:
 - a) That the member carried out transactions with Sanjay Khemani and A.K. Poddar, members, CSE, outside the price and order matching mechanism of CSE. By not executing the aforesaid transactions on the trading system

- of CSE, the member violated SEBI Circular SMDRP/POLICY/CIR-32/99 dated 14th September, 1999 which was notified by CSE to its members vide its notice dated 16th September 1999. Further, it was alleged that such transactions are irregular and are prohibited under Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995 and are also in violation of Clause A(1) (4)&(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations 1992 and Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules 1992.
- b) That the member made payments/received funds from other members of CSE, without corresponding transactions in securities. It was therefore alleged that the member carried out business other than that of securities, which is prohibited under Rule 8(1)(f) of SC(R) Rules, 1957.
3. The Enquiry Officer submitted his report on 29.08.2003. In his report the EO found that the member indulged in off market deals and lending of funds and recommended suspension of certificate of registration of the member for a period of 6 months.
4. Consequent upon above, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 08.09.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on it. The member was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that the member has no explanation to offer. The member was also asked to intimate along with the reply whether it desired a personal hearing. The member vide letter dated 23.09.2003 replied to the said show cause notice stating that he will not repeat the lapses in future.

5. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report. On appreciating the facts and circumstances of the case the findings are as under:

5.1 I find that the member indulged in off market deals with members Sanjay Khemani and A K Poddar of CSE as under:

TRANSACTIONS WITH SANJAY KHEMANI

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001147	Himachal	22.02.01	10000	780.00	16.02.01	10000	1010.00
-do	Zee	19.02.01	40000	225.00	-do-	20000	243.00
					-do-	20000	245.00
-do-	Satyam	16.02.01	10000	280.00	22.02.01	30000	325.00
-do-	-do-	-do-	10000	282.00			
-do-	-do-	-do-	10000	283.00			
	Global	21.02.01	15000	552.00	16.02.01	5000	653.00
					-do-	10000	650.00
Amount received from Sanjay Khemani as per difference bill							Rs. 58,45,000/-

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001146	Himachal	12.02.01	10000	930.00	13.02.01	10000	1015.00
-do	Zee	-do-	25000	227.00	15.02.01	25000	245.00
-do-	Satyam	-do-	30000	358.00	-do-	30000	377.00
-do-	Global	-do-	20000	610.00	-do	20000	643.00
Amount received from Sanjay Khemani as per difference bill							Rs. 25,30,000/-

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001145	Himachal	08.02.01	15000	922.00	02.02.01	15000	1087.00

-do	Zee	-do-	30000	230.00	-do-	25000	260.00
-do-	Satyam	-do-	25000	374.00	-do-	25000	422.00
-do-	Global	-do-	10000	633.00	-do-	10000	700.00
-do-	-do-	-do-	10000	635.00	-do-	10000	705.00
Amount received from Sanjay Khemani as per difference bill						Rs. 59,45,000/-	

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001142	Himachal	18.01.01	15000	1112.00	15.01.01	15000	1175.00
-do	Zee	-do-	20000	223.00	-do-	25000	240.00
-do-	-do	-do-	30000	222.00	-do-	25000	242.00
-do-	Satyam	15.01.01	10000	380.00	18.01.01	15000	403.00
-do-	-do-	-do-	20000	378.00	-do-	15000	405.00
-do-	Global	18.01.01	10000	634.00	15.01.01	5000	729.00
-do-	-do-	-do-	10000	647.50	-do-	15000	730.00
Amount received from Sanjay Khemani as per difference bill						Rs. 44,15,000/-	

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001141	Himachal	11.01.01	10000	1120.00	08.01.01	10000	1380.00
-do	Zee	-do-	20000	248.00	-do-	20000	270.00
-do-	-do	-do-	25000	247.00	-do-	25000	272.00
-do-	Satyam	08.01.01	15000	365.00	10.01.01	35000	395.00
-do-	-do-	-do-	20000	366.00			
Amount received from Sanjay Khemani as per difference bill						Rs. 46,95,000/-	

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001140	Himachal	03.01.01	5000	1229.00	04.01.01	5000	1367.00

-do	-do-	-do-	10000	1230.00	-do-	10000	1365.00
-do-	Zee	01.01.01	25000	257.00	-do-	10000	271.00
-do-	-do	-do-	25000	258.00	-do-	20000	272.00
-do-					-do-	20000	273.00
-do-	Satyam	02.01.01	20000	327.75	-do-	20000	360.00
-do-	-do-	-do-	30000	311.00	-do-	30000	365.00
-do-	Global	01.01.01	15000	758.00	-do-	15000	830.00
Amount received from Sanjay Khemani as per difference bill						Rs. 61,20,000/-	

Sett. No	Name of Scrip	Purchases			Sales		
		Date	Qty	Rate	Date	Qty	Rate (Rs)
2001142	Himachal	15.01.01	10000	1175.00	16.01.01	10000	1076.50
-do	Zee	-do-	20000	240.50	18.01.01	40000	225.00
-do-	-do	-do-	20000	241.50			
-do-	Satyam	18.01.01	30000	405.00	16.01.01	30000	378.00
-do-	Global	15.01.01	10000	720.00	18.01.01	5000	632.00
-do-					-do-	5000	635.00
Amount payable to AK Poddar as per difference bill						Rs. 33,00,000/-	

5.2 I find that the member admitted the above instances. Enquiry Officer in his report noted the denial of the member that they have indulged in any malpractice or creation of any false market. SEBI vide Circular 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 i.e. the price and order match mechanism of the Exchange like any other normal trade. It was explained in the said circular that the above decision was taken as negotiated deals avoid transparency requirement, do not contribute to price discovery and investors do not have benefit of the best possible price and militate against the basic concept of the stock exchanges which are meant to bring together a large number of buyers and sellers in an open manner.

5.3 In view of the above, the member should not have executed off the floor transactions otherwise than through the trading mechanism of the exchange. This is in violation of SEBI Circular SMDRP/ Policy/CIR-32/99 dated 14/09/1999. In fact, the CSE notified the SEBI circular 14.09.99 on the off market trades to its members vide its notice dated 16.09.99.

5.4 Further, I find from the above instances that the quantity and value of such transactions are also quite high. Off market deals do not lend transparency and distort the true price discovery process in the regular market since the investors would not be aware of the large scale unauthorized transactions taking place outside the market system which if executed on the screen based system would have an impact on the demand and supply of the shares and consequently on the prices. Conducting such off market transactions outside the price order mechanism of the exchange is, therefore, a serious irregularity which is in violation of SEBI Circular dated 14/9/1999. Such transactions also attracts Regulation 4(a) and (b) of SEBI (Prohibition of Fraudulent and unfair Trade Practices relating to Securities Markets) Regulations, 1995. Such deals are also in violation of item 4 & 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

5.5 I find that the member received and paid funds to fellow brokers of the Exchange as under without there being corresponding transactions in securities.

No.	Broker	Date	Paid/Recd	Amount
1	SANJAY KHEMANI	17.05.1999	Paid	10,00,000/-
2	SANJAY KHEMANI	31.08.1999	Received	10,00,000/-
3	AK PODDAR	13.10.2000	Received	75,00,000/-
4	A K PODDAR	07.02.2001	Paid	25,00,000/-

With Khemani & Sons

KHEMANI & SONS	20.02.2001	Received	1,26,50,000/-
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5.6 I find that the member received substantial amounts and also paid substantial amounts to the fellow brokers as can be seen from the above table without there being corresponding transactions in securities. I have also noted that the member admitted that it received funds and made payments to others as shown above.

Rule 8(1) (f) of SC(R) Rules, 1957 reads as under:-

Qualifications for membership of a recognized stock exchange

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 a 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 SEBI may, for reasons sufficient in the opinion of the said (Board) permit a recognized 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 a subscriber to or shareholder or debenture

holder in or connected through a partner or employee with any other organization, institution, association, company or corporation in India where forward business of any kind whether in goods or commodities or otherwise is carried on or in not engaged as a principal or employee in any such business;

5.7 I find that in the absence of corresponding transactions in securities for such huge flow of funds in crores of rupees between the member and others the member had violated Rule 8(1)(f) of SC (R) Rules, 1957.

6. In view of the above, I find that by indulging in off market deals the member violated SEBI Circular No.SMDRP/Policy/Cir-32/99 dated September 14, 1999 which prohibits all negotiated deals unless such deals are executed on the screen of the exchange in the price and order matching mechanism of the exchange. Such transactions also attracts Regulation 4(a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 and also item 4 & 5 of Clause A of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations 1992. Further, I find that the member received funds and made payments to other fellow members and as a consequence violated rule 8 (1) (f) of SC (R) Rules 1957.

7. I have no hesitation to agree with the findings of the enquiry officer that the member indulged in large scale off the floor transactions which interfere with fair and smooth functioning of price discovery mechanism of the exchange. The said acts of the member militate against the very concept of a stock exchange which draws large number of investors before it to deal in a transparent atmosphere. Further, the member received substantial amounts and also paid substantial amounts to the fellow brokers without there being corresponding transactions in securities. Such practices shake confidence of investors in securities

market. The violations cannot be taken lightly particularly when the same are in the nature of disturbing the equilibrium of the market and hindering the interest of investors and the development of capital market.

8. I am satisfied that this is a fit case to impose major penalty suspending the registration of the member. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby suspend the certificate of registration of M/s S. P. Rakhecha & Co. for a period of 6 months. This order shall come into force after 3 weeks from the date of the order.

Place: Mumbai
Date: 17.12.03

A K BATRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

