

SECURITIES AND EXCHANGE BOARD OF INDIA

MO/37/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 DINESH KUMAR MODI & CO., MEMBER OF CALCUTTA STOCK EXCHANGE.

1. M/s Dinesh Kumar Modi & Co. is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 030741610 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 04.06.2002. 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, Shri Ashok Poddar and Shri D K Singhania. Further, it was observed that the member indulged in fund transfers with other brokers like D.K. Singhania and A.K. Poddar groups. 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 10.07.2002 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 Dinesh Kumar Singhania, members, CSE, outside the price and order matching mechanism of CSE. By not executing the aforesaid transactions

on the trading system of CSE, it was alleged that the same are in violation of 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 failed to reply to the said show cause notice.

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 Shri Sanjay Khemani, Shri Ashok Poddar and Shri Dinesh Kumar Singhania members of CSE as under:

TRADING WITH MR SANJAY KHEMANI :-

HIMACHAL FUTURISTIC

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
29/01/01-01/02/01	2001144	600	761450	600	652210.10	109240.00
07/02/01	2001145	88600	82855150.00	88600	90321000.00	7465850.00
12/02/01	2001146	80650	77648887.50	80650	82219112.50	4570225.00
16/02/01-22/02/01	2001147	105850	83591720.00	105850	106793250.0	23201530.00
26/02/01-27/02/01	2001148	111900	65358195.00	111900	83600130.00	18241935.00
Amount payable by Khemani as per difference bill						53370300.00

Global Tele

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
08/02/01	2001145	55000	34802500	55000	38971000.00	4168500.00
12/02/01	2001146	57000	35011600	57000	37268775.00	2257175.00
16/02/01-22/02/01	2001147	68000	34019400	68000	44330300.00	10310900.00
26/02/01-27/02/01	2001148	28000	9851150.00	28000	12594275.00	2743125.00
Amount payable by Khemani as per difference bill						19479700.00

TRADING WITH MR ASHOK PODDAR:-**HIMACHAL FUTURISTIC**

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
18/05/00	2001108	5000	3755000.00	---	-----	Bill raised on 27/05/00
12/02/01-18/02/01	2001142	8200	8972742.00	8200	9555445.80	581063.80.00

GLOBAL TELE

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
19/01/01-25/01/01	2001143	2750	1946249.10	2750	2147050.00	200250.90

ZEE TELE

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
19/01/01-25/01/01	2001143	217182	57198027.00	217182	62723407.00	5525380.00

TRADING WITH MR D.K. SINGHANIA:-**HIMACHAL FUTURISTIC**

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
17/05/00	2001108	----	---	5000	3770000.00	Delivery Memo issued on 25.05.00

ZEE TELE

Date of Transaction	Sett. No.	Buy Quantity	Buy Value	Sale Quantity	Sale value	Amount as per Diff Bill.
17/05/00	2001108	5000	3755000.00	---	-----	-----
18/08/00 24/08/00	2001122	36550	18247665.00	36550	14727665.00	3520000.00

5.2 I find that the member admitted the above instances. Enquiry Officer in his report noted the submission of the member that the notice of CSE was inadvertently overlooked due to oversight. 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 matching 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. Infact, 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	Chq no	Amount
1.	DK Singhanian	13./04/2000	27491	20,00,000.00
2.	DK Singhanian	27/4/2000	27817	20,00,000.00
3.	DK Singhanian	27/5/2000	450996	10,00,000.00
4.	DK Singhanian	30/08/2000	923512	49,00,000.00
5	AK Poddar	15/4/2000	511389	22,00,000.00
6	AK Poddar	28/04/2000	404885	30,00,000.00
7	AK Poddar	17/06/2000	923413	38,00,000.00
8	AK Poddar	27/10/2000	337853	22,00,000.00

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 Dinesh Kumar Modi & 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

