

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 13 of the Securities and Exchange Board of India (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 in the matter of enquiry against M/s Pioneer Equity Trade (I) Ltd.

MO/55/IVD/2/04

1.0 Background:

- 1.1 M/s Pioneer Equity Trade Ltd. (hereinafter referred to as “the said broker”) is a member of National Stock Exchange (hereinafter referred to as ‘NSE’) and registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) under certificate of registration No. INB 231109332.
- 1.2 SEBI conducted an investigation into the dealings in the shares of Shonkh Technologies International Limited (hereinafter referred to as “Shonkh Technologies”) and in the course of investigations observed that the said broker had acquired 11,00,000 shares of Shonkh Technologies (amounting to 6.28% of the share capital) on 22.3.2001, but failed to inform the company of the said acquisition.

2.0 Enquiry Proceedings

- 2.1 In view of the said observation, Chairman, SEBI, vide order dated 14.03.2002, appointed an Enquiry Officer to inquire into the irregularities in the dealings of the said broker in the scrip of Shonkh Technologies and for alleged violation of the provisions of Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as the

“takeover regulations”) and Clause A (5) of Code of Conduct as specified under Schedule II read with Regulation 7 and Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as the “broker regulations”)

- 2.2 The Enquiry Officer, acting in accordance with regulation 16 (2) of the Enquiry Regulations issued show cause notice to the said broker on 08.08.2002 alleging that the said broker held 6.28% of equity of Shonkh Technologies on 22nd March 2001 and that the necessary disclosures to the company as stipulated under Regulation 7 of SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 1997 had not been made and that this in turn was in violation of Clause A(5) of 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.
- 2.3 It was admitted before the Enquiry Officer by the said broker that he purchased 11,00,000 shares of Shonkh Technologies Ltd. on 22.03.2001 on The Stock Exchange, Mumbai (BSE). In this connection, the said broker has also submitted that in the said transactions he had acted as an investor for purchase of shares which were listed on BSE and not as a stock broker. The said broker also stated that he was a trading member of NSE and not a member of BSE and that said purchase was a proprietary investment decision to purchase shares which were listed on BSE through another broker of BSE viz. Pioneer Intermediaries.
- 2.4 The enquiry officer, after considering the submissions of the said broker submitted his report dated 22.4.2003 recommending that a minor penalty of censure may be imposed on the said broker.

3.0 Show Cause Notice and hearing

- 3.1 Subsequent to submission of the enquiry report, show cause notice dated 23.5.2003 was issued to the said broker also forwarding a copy of the enquiry report. Thereafter, an opportunity of personal hearing before me was granted to the said broker on 8.12.2003. Shri Ketan Gandhi, Director, Pioneer Equity Trade India Ltd., Shri Rakesh Bhatia, Director, Pioneer Equity Trade India Ltd. and Shri Girish Bhakre, Officer, Pioneer Equity Trading Ltd. attended the proceedings.
- 3.2 I note that adequate opportunity has been given to the said broker in terms of Regulation 13 of the enquiry regulations. Therefore, I am satisfied that the requirements of natural justice have been fulfilled and I proceed further in the matter.

4.0 Consideration of Issues

I have considered the facts of the matter, the reply of Pioneer Equity Trade Pvt. Ltd. and other material on record. I find the following issues arise for consideration:

4.1 Whether the said broker failed to make necessary disclosures and thereby violated the takeover Regulations.

- 4.1.1 I note that the said broker held 6.28% of equity shares of Shonkh Technologies and that the necessary disclosures were not made to the company in terms of Regulation 7 of the Takeover Regulations, as they existed during the material time. Regulation ibid provided as under:

“Acquisition of 5 per cent and more shares or voting rights of a company

7. (1) Any acquirer who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent shares or voting rights in a company, in any manner, whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company.
- (2) The disclosures mentioned in sub-regulation (1) shall be made within four working days of –
- (a) the receipt of intimation of allotment of shares or
 - (b) the acquisition of shares or voting rights, as the case may be...”

4.1.2 I note that Admittedly, the said broker had purchased 11,00,000 shares of Shonkh Technologies on 22.3.2001 on BSE. The said purchase of shares was an investment decision purchased through another broker of BSE viz. Pioneer Intermediaries since they are trading member of NSE and not BSE. The member further submitted that they informed the company about the acquisition on 19.04.2002 i.e. more than a year since the acquisition and after the observation by the investigating authority of the non-compliance.

4.1.3 In view of the above, I find that the broker, in failing to inform the company i.e, Shonkh Technologies about the acquisition, has failed to comply with the requirements of Regulation 7 of the Takeover Regulations.

4.2 Whether by not making disclosures to the company, under the Takeover Regulations, the broker has violated the Broker Regulations?

4.2.1 I note that a Stock Broker is granted registration subject to certain conditions. These are set out in Rule 4 of the SEBI (Stock Broker and Sub Broker) Rules, 1992 which reads as under:-

“Conditions for grant of certificate to stock broker

4. The Board may grant a certificate to a stock broker subject to the following conditions, namely:-

- (a) he holds the membership of any stock exchange;
- (b) he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member;
- (c) in case of any change in the status and constitution, the stock broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any stock exchange;
- (d) he shall pay the amount of fees for registration in the manner provided in the regulations; and
- (e) he shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received from such investors.

4.2.2 I also note that Rule 3 of Chapter IV of the Rules of the NSE provide that a trading member shall comply with all laws and more particularly securities laws.

4.2.3 I further note that Clause A of the code of conduct for Stock Brokers mentioned in Schedule II to the Broker Regulations provides that :-

“A. General

(1)...

(2)...

(3)....

(4)...

(5) *Compliance With Statutory Requirements:* 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...”

4.2.4 Further, Regulation 7 of the Broker Regulations provides that:-

“Stock Broker to abide by Code of Conduct

7. The Stock Broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II”

4.2.5 In his submissions before me, the authorized representative of the broker admitted that they had purchased 11,00,000 shares of Shonkh Technologies on 22.3.2001 and that they had informed the company of the acquisition more than a year later and that too upon receipt of the notice from SEBI. They further submitted that the breach was the first one on their part and technical in nature. They also submitted that they had made the purchase as investors and not as stock brokers and hence they

may not be held to have violated the broker regulations. They also submitted that the said holding was now partly liquidated.

4.2.6 I note that as found by the enquiry officer, the broker had made a proprietary investment in purchasing the 11,00,000 shares of Shonkh Technologies on 22.3.2001. However, being a Stock broker and not an ordinary investor, the onus of complying with the Takeover Regulations was higher on the broker. As a capital market intermediary registered with SEBI, the broker is expected to have knowledge and comply with the statutory regulations more than an ordinary investor. Therefore, the contention of the broker that he cannot be proceeded against under the broker regulations for his personal trades in securities is not acceptable. The Rules, Regulations and the Code of conduct mentioned supra require compliance at all times and not merely when the broker is acting in his professional capacity as a stock broker.

4.2.7 In view of the non-compliance with the provisions of the Takeover regulations, I find that the broker has violated Rule 3 of Chapter IV of the Rules of NSE and thereby also violated one of the conditions of registration laid down in Rule 4 (b) of the SEBI (Stock Broker and Sub Broker) Rules, 1992. Further, I find that the broker has also violated clause A (5) of the Code of Conduct for Stock Brokers and thereby violated Regulation 7 of the Broker Regulations.

5.0 Order

5.1 Therefore, in exercise of powers under Section 19 of the SEBI Act read with Regulation 13 (4) of the enquiry regulations, I hereby censure M/s Pioneer Equity Trade Ltd (certificate of registration No. INB 231109332) and direct them to be more diligent in complying with the SEBI Act and the Rules and

Regulations framed there under, in future. I also direct the broker to note that any instances of violation or non-compliance with the Act, Rules and Regulations in future shall invite more stringent action.

This order shall come into effect immediately.

Date: 04.02.04
Place: Mumbai

A. K. BATRA
Member
Securities and Exchange Board of India