

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 M/s DEEPAK JHUNJHUNWALA & Co. MEMBER OF CALCUTTA STOCK EXCHANGE.

MO/58/IVD/2/04

1. M/s Deepak Jhunjhunwala is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 031070411 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 06.06.2002. 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, Shri D K Singhanian & Co., Deo Jones, Gautam Bajoria and H C Biyani, members of CSE. Further, it was observed that the member indulged in fund transfers with brokers like D.K. Singhanian and Sanjay Khemani. 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 21.06.02 advising the member to file its comments if any, on the findings of the inspection. The member failed to reply to the said findings of the inspection report. An Enquiry officer was appointed vide SEBI's order dated 08.08.2002 to enquire into the contraventions as observed in the inspection report. 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, Shri A K Poddar, D K Singhanian & Co. Doe Jones, Gautam Bajoria and HC Biyani 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 Securities Contracts (Regulation) Rules, 1957.
1. The Enquiry Officer submitted his report on 30.09.2003. 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.
2. 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 13.10.2003 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 replied vide letter dated 17.06.2003 and made the following submissions :
 1. The member submitted that certain transactions with some members of CSE were carried out within the parameters of day's high and low quoted prices of the stock exchange and as such have not interfered with the price discovery process of the exchange. Further, the member stated that some of the transactions have been overlooked inadvertently to be informed to CSE as it had then recently became the member of CSE and stated that it had sufficient margins with CSE and had not been defaulters.
 2. The member submitted that as it is a new member of CSE, it was not aware of all the SEBI Rules and its applications. The member stated that as it was dealing with big brokers at CSE, who were holding responsible positions, it had mistakenly followed the footsteps of such brokers and had become victim of lack of stringent control / check by CSE on its members.
 3. Regarding indulgence in fund transfers, the member submitted that some payments made / received from 2 members of CSE (total number of transactions = 5) were actually temporary accommodation and such payments has taken place to meet urgent payment commitments due to high volatility in stock prices.
 4. The member submitted that the lapses are procedural and the penalty recommended by the enquiry officer is too harsh. The member requested to review the recommendation of the enquiry officer and assured that it shall exercise utmost caution and never repeat such irregularities.
3. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report and the submissions of the member made vide his letter dated 27.10.2003. 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, Shri D. K. Singhanian & Co., Doe Jones, Gautam Bajoria and H C Biyani, members of CSE as under:

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Name of the scrip : HFCL

Name of the Broker : Shri Sanjay Khemani

Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
08.01.2001	2001141	BUY	350000	Amount as per difference bill is Rs.79905000.00
11.01.2001	2001141	SELL	350000	
Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
16.02.2001	2001147	Buy	350000	Amount as per difference bill is Rs.61320000.00
22.02.2001	2001147	Sell	350000	
Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
28.02.2001	2001148	Buy	155000	Amount as per difference bill is Rs.38602500.00
28.02.2001	2001148	Sell	150000	

Name of the Scrip: Zee

Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
26.04.2000	2001104	Sell	18000	Delivered on 27.04.2000
02.08.2000	2001118	Sell	33500	Delivered on 04.08.2000

Name of the Scrip : HFCL

Name of the broker : Ashok Kumar Poddar

Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
19.07.2000	201116	Sell	8000	Delivered on 21.7.2000

Name of the Scrip : HFCL

Name of the broker : D K Singhania & Co.

Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Amount as per Diff Bill.
18.05.2000	2001108	Buy	15000	29.05.2000
01.06.2000	2001110	Buy	350000	Amount as per difference bill is Rs.91419332.40
26.05.2000	2001110	Sell	350000	
29.06.2000	2001114	Buy	10000	10.07.2000
06.07.2000	2001115	Buy	7000	**
04.08.2000 to 08.08.2000	2001120	Sell	196800	Amount as per difference bill is Rs.40243006.50
09.08.2000 to 10.08.2000	2001120	Buy	196800	
12.09.2000 to 14.09.2000	2001125	Sell	243800	Amount as per difference bill is Rs.21392238.30
13.09.2000	2001125	Buy	243800	
	2001125	Buy	71500	**
01.12.2000	2001136	Sell	156800	Amount as per difference Rs.9542611.50
to 05.12.2000	2001136	Buy	156800	
01.03.2001	2001136	Buy	273750	

Name of the Scrip: Satyam

Date of Transaction	Sett. No.	Member's Buy/ Sell	Quantity	Date of Delivery
06.04.2000	2001102	Buy	5000	**
27.04.2000	2001105	Buy	2500	**
13.07.2000	2001116	Buy	3500	**
31.08.2000	2001123	Buy	30000	**

Name of the Scrip : Global Tele

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Date of Transaction	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
10.05.2000	2001107	Buy	13000	17.05.2000
04.09.2000	2001125	Buy	54700	Amount as per difference bill is Rs.9707072.40
08.09.2000	2001125	Sell	54700	
28.09.2000	2001127	Buy	70000	**
21.09.2000	2001126	Buy	36000	26.09.2000

Name of the Scrip : DSQ

Date of Transaction	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
27.07.2000	2001118	Buy	14000	04.08.2000
08.09.2000 to 11.09.2000	2001125	Buy	1317596	Amount as per difference bill is Rs.95450641.70
14.09.2000	2001125	Sell	1317596	

Name of the Scrip : Zee Tele

Date of Transaction	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
04.05.2000	2001106	Buy	10000	**
18.05.2000	2001108	Sell	20000	**
20.07.2000	2001117	Buy	21000	**
27.07.2000	2001118	Buy	29000	**
21.09.2000	2001126	Buy	100000	**
25.10.2000	2001126	Buy	95000	**
12.01.2001	2001142	Buy	183000	20.01.2001
01.02.2001	2001144	Buy	167000	06.0.2001
19.02.2001	2001147	Sell	20000	**

Name of the broker : Doe Jones

Name of the scrip : Zee Tele

Date of Transaction	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
02.03.2001		Buy	30000	14.03.2001
Name of the Broker ; Gautam Bajoria Name of the Scrip : Zee Tele				
Date of Transaction	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
21.09.2000	2001126	Buy	25000	30.09.2000
30.01.2001	2001144	Buy	132300	Amount as per difference bill is Rs.24091830.00
01.02.2001	2001144	Sell	132300	

Name of the broker : Harishchandra Biyani

Date of Transaction	Name of the Scrip	Sett. No.	Member's Sell	Buy/ Quantity	Date of Delivery
27.07.2000	DSQ Soft	2001118	S	20000	4.8.2000
25.01.2001	DSQ BIO	2001143	S	100000	2.2.2001
12.10.2000	DSQ Soft	2001128	S	23500	18.10.2000
28.09.2000	DSQ Soft	2001127	S	10000	18.10.2000

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.

Regulation 4 (a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, provides that:

No person shall -

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

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

Item 4 & 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

- a. Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investor's interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.
- b. 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.

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	Amount	Cheque No.
1.	Sanjay Khemani	28.9.2000	20400000.00	HDFC-740591
2.	Sanjay Khemani	28.9.2000	20100000.00	HDFC-643692
3.	Sanjay Khemani	20.10.2000	19300000.00	HDFC-761856
4.	Dinesh K. Singhanian	8.11.2000	3000000.00	HDFC-557789
5	Dinesh K. Singhanian	7.11.2000	7500000.00	HDFC-557826

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 -

(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.

1. 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.
2. I find that the member vide letter dated 27.10.2003 admitted its lapses and in its submission stated that it was not aware of all the SEBI Rules and its implications and further stated that he followed the footsteps of big brokers mistakenly. The submission of the broker cannot be accepted in terms of the well known precept of law that ignorance of law is no excuse. Further, I find that violations are serious in nature which cannot be taken lightly.
3. 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.
4. 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 Deepak Jhunjhunwala & Co. for a period of six months.
5. This order shall come into force after 3 weeks from the date of the order.

Place: Mumbai

Date: 9th Feb., 2004

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA