

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 MKM SHARE BROKING SERVICES PVT. LTD., MEMBER OF CALCUTTA STOCK EXCHANGE.

MO/57/IVD/2/04

1. M/s MKM Share Broking Services Pvt. Ltd. is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 030879131 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 03.06.2002. 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 A. K. Poddar, Biyani Securities Pvt. Ltd., Shri Sanjay Khemani, and Shri D K Singhania. Further, it was observed that the member indulged in fund transfers with Khemani & Sons and with 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 12.07.2002 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 A.K. Poddar, Biyani Securities Pvt. Ltd., 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 Securities Contracts (Regulation) Rules, 1957.
3. 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.
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 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 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 A.K. Poddar, Biyani Securities Pvt. Ltd., Sanjay Khemani and Dinesh Kumar Singhania, members of CSE as under:

Name of the broker : A K Poddar

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001104	Global	19.4.00	10000	1432.10	18.4.00	8000	1679.90
- do -	- do -	- do -	10000	1433.10	- do -	12000	1678.90
Amount receivable from AK Poddar as per difference bill							49,34,000/-

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001106	Global	10.7.00	8000	1170.10	13.7.00	15000	1271.90
-do-	- do -	- do -	7000	1171.10	- do -	5000	1270.90
- do -	- do -	- do -	5000	1172.10			
-do -	Himac	12.7.00	10000	1300.10	13.7.00	10000	1506.90
Amount receivable from AK Poddar as per difference bill							40,82,000/-

Sett. No.	Name of Scrip	Purchases			Sales		
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		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001120	DSQ	7.8.00	4000	473.05	10.8.00	6000	682.90
-do-	- do -	- do -	4500	474.05	- do -	2500	681.90
- do -	Global	- do -	10000	925.10	4.8.00	5000	1155.90
- do -					- do -	5000	1150.40
Amount receivable from AK Poddar as per difference bill							40,57,225

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001129	Himac.	18.10.00	7500	955.10	19.10.00	10000	1155.90
-do-	- do -	- do -	7500	956.10	- do -	10000	1156.90
- do -	- do -	- do -	5000	957.10			
- do -	DSQ	19.10.00	25000	299.05	16.10.00	12500	461.20
					- do -	12500	460.45
Amount receivable from AK Poddar as per difference bill							80,52,875

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001130	Silverline	25.10.00	16735	286.00	20.10.00	16735	310.00
- do -	Satyam	25.10.00	25000	325.00	- do -	25000	365.00
Amount receivable from A K Poddar as per difference bill							14,01,640

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001138	Global	21.12.00	10000	850.10	15.12.00	8700	1130.90
- do -	--do--	--do--	6200	851.10	- do -	12500	1131.90
--do--	--do--	--do--	5000	852.10			
--do--	Himachal	--do--	10000	1218.60	15.12.00	10000	1510.90
Amount receivable from A K Poddar as per difference bill							88,72,260

Name of the Broker: Biyani Securities Ltd.

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001120	Zee	8/8/00	15000	386.00	4/8/00	15000	426.00
-do -	- do -	- do -	12500	397.00	- do -	12500	423.00

Amount receivable from Biyani Securities P Ltd. as per difference bill	Rs.9,25,000.00
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Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001138	Global	20.12.00	50000	891.00	19.12.00	50000	1051.00
- do -	Hima.	21.12.00	50000	1276.00	20.12.00	50000	1443.00
Amount receivable from Sanjay Khemani as per difference bill							1,63,50,000

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001139	Himach	26.2.00	25000	1116.00	22.12.00	25000	1264
- do -	Satyam	26.2.00	20000	300.00	- do -	20000	330
Amount receivable from Sanjay Khemani as per difference bill							Rs.43,00,000

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001141	Global	9.1.01	16700	740.00	8.1.01	16700	840.00
- do -	Himach.	-do-	40000	1146.60	- do -	40000	1361.10
Amount receivable from Sanjay Khemani as per difference bill							Rs.1,02,50,000

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001142	Reliance	15.1.01	100000	354.00	16.01.01	100000	368.00
- do -	Silverline	18.1.01	70000	210.00	12.01.01	70000	235.00
-do-	Satyam	16.1.01	50000	378.00	18.1.01	50000	410.00
Amount receivable from Sanjay Khemani as per difference bill							Rs.43,00,000

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001144	ITC	29.1.01	57500	880.00	31.1.01	57500	920.00
--DO--	Reliance	--do--	100000	370.00	--do--	100000	390.00
Amount receivable from Sanjay Khemani as per difference bill							Rs.43,00,000/-

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001145	ITC	8.2.01	50000	818.00	5.2.01	50000	894.00
- do -	L & T	5.2.01	100000	269.00	8.2.01	100000	282.00
- do -	Reliance	2.2.01	125000	388.00	5.2.01	125000	400.00
- do -	Silverline	7.2.01	100000	245.00	6.2.01	100000	272.00
- do -	Satyam	8.2.01	75000	380.00	2.2.01	75000	420.00
Amount receivable from Sanjay Khemani as per difference bill							Rs.1,23,00,000

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001146	ITC	14.2.01	150000	795.00	15.2.01	150000	818.00
--do--	L&T	--do--	165000	270.00	9.2.01	165000	285.00
--do--	Reliance	12.2.01	225000	402.00	15.2.01	225000	424.00
--do--	Silverline	--do--	150000	238.00	9.2.01	150000	256.00
--do--	Satyam	--do--	150000	358.00	15.2.01	376.00	376.00
Amount receivable from Sanjay Khemani as per difference bill							Rs.1,62,75,000/-

Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001147	ITC	21.2.01	80000	775.00	22.2.01	80000	820.00
- do -	L & T	19.2.01	102500	271.00	20.02.01	102500	291.00
- do -	Reliance	22.2.01	150000	412.00	16.2.01	150000	429.00
- do -	Silverline	- do -	80000	206.00	- do -	80000	256.00
Amount receivable from Sanjay Khemani as per difference bill							Rs.1,22,00,000

Transactions with D K Singhania

Sett.	Name of	Purchases	Sales
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No.	Scrip						
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001106	Satyam	4.5.00	8000	2913	28.4.00	8000	3263.00
Amount receivable from D K Singhania as per difference bill							Rs.28,00,000
Sett. No.	Name of Scrip	Purchases			Sales		
		Date	Qty.	Rate (Rs.)	Date	Qty.	Rate (Rs.)
2001109	Global	24.5.00	20000	964	19.5.00	20000	1044
Amount receivable from D K Singhania as per difference bill							16,00,000/-

5.2 Further, purchases and sales were transacted in settlement No. 2001112 in the scrip of DSQ wherein the member had purchased and sold 16,000 shares on 13/06/2000 and 9/6/2000 respectively and the amount receivable from D K Singhania as per difference bill was Rs. 20,00,000/-. In settlement No. 2001117, the member has bought and sold 25,000 shares of ITC and 15,000 of HFCL and the difference bill was Rs. 20,00,000/-. In settlement No. 2001116, the member has bought and sold 25,000 shares of Satyam and the amount receivable from D K Singhania was Rs. 20,00,000/-. In settlement No. 2001118, the member has bought and sold 20,000 shares of ITC and 15,000 shares of DSQ and the amount receivable from D K Singhania was Rs. 35,00,000/-. In settlement No. 2001119, the member has bought and sold 14,500 shares of HFCL. In settlement No. 2001120, the member has bought and sold 25,000 shares of HFCL. In settlement No. 2001121, the member has bought and sold 12,250 shares of HFCL. In settlement No. 2001122, the member has bought and sold 27,500 shares of Global Tele and 25,000 shares of Satyam. In settlement No. 2001124, the member has bought and sold 25,000 shares of Global Tele. In the settlement No. 2001131, the member has bought and sold 32,500 shares of DSQ and 35,000 shares of HFCL. In settlement No. 2001132, the member has bought and sold 25,000 shares of Satyam. In settlement No. 2001136, the member has bought and sold 25,000 shares of HFCL. In settlement No. 2001140, the member has bought and sold 30,000 shares of Satyam. In settlement No. 2001143, the member has bought and sold 50,000 shares of DSQ, 40,000 shares of Global

and 40,000 shares of HFCL. The difference of bill payable to D K Singhania was 94,50,000/- in this settlement alone. In settlement No. 2001146, the member has bought and sold 1,02,000 shares of Reliance. In settlement No. 2001147, the member has bought and sold 80,000 shares of Reliance and 25,000 shares of Satyam.

5.3 I find that the member admitted the above instances. Enquiry Officer in his report noted the denial of the member that it had not violated SEBI (FUTP) Regulations or Code of Conduct of brokers as alleged in the notice. 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 negotiated deals shall be permitted only if the said deals are executed on the screens of the exchanges in the price and order matching mechanism of the exchanges just 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.

5.4 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.

5.5 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.

- (4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors 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.

(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.

5.6 I find that the member received and paid funds to fellow brokers of the Exchange i.e. A K Poddar and D K Singhania and also with Khemani & Sons as under without there being corresponding transactions in securities.

Name of the Member	Date	Paid / Received	Amount
A K Poddar	14.09.00	Paid	97,00,000,
A K Poddar	29.09.00	Received	1,18,50,000
Khemani & Sons	01.01.01	Received	1,93,50,000
Khemani & Sons	13.02.01	Received	1,23,00,000
D K Singhania	12.08.00	Received	29,00,000
D K Singhania	08.11.00	Paid	71,00,000

5.7 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;

5.8 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 MKM Share Broking Services Pvt. Ltd. for a period of six months.
9. 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

