

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 SHREE HARIVANSHA SECURITIES PVT. LTD., MEMBER OF CALCUTTA STOCK EXCHANGE.

MO/72/IVD/3/04

1. M/s Shree Harivansha Securities Pvt. Ltd. is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 030 757231 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 & 5th 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 transactions with the brokers Sanjay Khemani, Ashok Kumar Poddar, and Gautam Bajoria, member CSE. Further, it was observed that principal to principal transactions with clients have also been carried out.
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 vide letter dated 15.07.2002 replied to the said findings of the show cause notice. 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:
 - 2.1 That the member carried out transactions with Sanjay Khemani, Ashok Kumar Poddar and Gautam Bajoria, 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.
 - 2.2 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.

3.0 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.

3.1 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 to the said show cause notice vide letter dated 22.11.2003.

3.2 The member vide the said reply submitted that :

3.2.1 With regard to transactions with outsider, besides principal to principal transactions, outside the price and order matching mechanism of CSE the member stated that it is a common practice among the members of the stock exchange to carry out off-the-floor transactions. The member submitted that it is a usual practice at CSE and within the knowledge of the Exchange Committee of CSE and further stated that in September 1999 a circular was issued by CSE not to enter into negotiated deals in off the floor transactions but to execute transactions only on the screen. That circular was not strictly given effect by CSE. The member contended that CSE should have made it operative by amending its byelaws or regulations, but it was not. As such, under the understanding that the circular is simply of directory nature and not mandatory, members continued to enter into such transactions.

3.2.2 The member also submitted that it carried out off the floor CSE transactions prior to March 2001, bonafidely and in good faith. The sole object was to minimize its losses in view of drastic unexpected fall in the share prices sometime in March 2001 and none else. The member stated that such transaction could hardly have any effect on the capital market and it could not in any manner whatsoever prejudice the interest of the investors and further it could not have any effect and impact in the capital market.

- 3.2.3 The member further submitted that whatever it had done was bonafide and was with an honest intention to minimize its losses incurred arising out of drastic fall on the price of securities and to survive and sustain itself and CSE failed to educate it on such deals.
- 3.2.4 The member denied that it indulged in malpractices as alleged or created any false market. It is also denied that 'off the floor transactions' entered into are of the nature of negotiated deals, hence the member contended that this should be considered in the right spirit and perspective.
- 3.2.5 With respect to receipts / payments of funds for members of CSE without corresponding transactions in securities, the member submitted that the inspecting officer failed to appreciate the financial accommodations extended to fellow brokers to overcome their financial constraints for temporary and short periods.
- 3.2.6 The member further submitted that it was a customary practice among the fellow members and business community to extend support in the hour of financial scarcity. It is reciprocal in nature. It is solely done with the object of supportive act and not at all with the intention to gain or earn out of it. The member stated that it did not use or utilize any part or portion of investors fund while granting financial accommodation to fellow member as set out in the enquiry report forming part of the show cause notice. The member submitted that whatever was done was done with their own funds with sole intention to assist and support in the hour of need. The member therefore denied the fact that they carried out business other than that of securities in violation of Rule 8(1) (f) of SC (R) Act, 1957. The member further stated that there was not a single investor complaint and hardly there is any circumstance where it earned or gained out of such financial transactions.

4.0 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 vide its letter dated 22.11.03. I find that adequate opportunity had been given to the member in accordance with principles of natural justice. On appreciating the facts and circumstances of the case the findings are as under:

- 4.1 I find that the member indulged in off market deals with Shri Sanjay Khemani, Shri Ashok Poddar and Shri Gautam Bajoria members of CSE as under :

Name of the Broker : Sanjay Khemani

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)
HFCL	08.03.01	49/01	Buy	40000	392.50
HFCL	02.03.01	49/01	Sell	40000	741.50
DSQ	08.03.01	49/01	Buy	150000	257.10
DSQ	02.03.01	49/01	Sell	150000	360.50
Zee	07.03.01	49/01	Buy	200000	106.90
Zee	02.03.01	49/01	Sell	200000	161.10
Silverline	07.03.01	49/01	Buy	200000	108.90
Silverline	02.03.01	49/01	Sell	200000	176.50
Satyam	05.03.01	49/01	Buy	150000	237.50
Satyam	02.03.01	49/01	Sell	150000	310.50
Global Tele	07.03.01	49/01	Buy	50000	245.50
Global Tele	02.03.01	49/01	Sell	50000	372.50
NET AMOUNT PAYABLE AS PER DIFFERENCE STATEMENT Rs. 71130000.00					

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)
HFCL	14.03.01	50/01	Buy	60000	196.50
HFCL	09.03.01	50/01	Sell	60000	354.50
DSQ	15.03.01	50/01	Buy	150000	106.50
DSQ	09.03.01	50/01	Sell	150000	228.50
Zee	13.03.01	50/01	Buy	200000	96.90
Zee	09.03.01	50/01	Sell	200000	125.10
Silverline	14.03.01	50/01	Buy	200000	71.90
Silverline	09.03.01	50/01	Sell	200000	108.10
Satyam	13.03.01	50/01	Buy	150000	178.50
Satyam	09.03.01	50/01	Sell	150000	239.50
Global Tele	14.03.01	50/01	Buy	80000	148.40
Global Tele	09.03.01	50/01	Sell	80000	243.50
Net amount payable as per difference statement Rs.					57418000.00

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)	Delivery Recd./ made on	Pay-Ment made/ recd.on
Zee	10.01.01	41/01	Sell	50000	264.00	11.01.01	13.01.01
Zee	12.01.01	42/01	Buy	50000	245.00	12.01.01	13.01.01
HFCL	01.03.01	48/01	Sell	105000	764.00	15.03.01	20.03.01

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)	Delivery Recd./ made on	Pay-ment made/ recd.on
HFCL	15.03.01	50/01	Buy	105000	165.00	15.03.01	20.03.01

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)	Delivery Recd./ made on
ITC	15.04.99	HND 104/99	Sell	100	900.00	Details not available with the broker
ITC	15.04.99	HND 104/99	Buy	100	900.00	

Name of the broker : Ashok Kumar Poddar

Name of the Scrip	Date of transaction	Sett. No	Buy/ Sell	Quantity	Price (Rs)
DSQ	05.03.01 to 07.03.01	49/01	Buy	113933	258.00
DSQ	02.03.01 to 08.03.01	49/01	Sell	113933	344.00
Net amount receivable as per difference statement				Rs.4630968.40	

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)	Delivery Recd./ made on	Payment made/ recd.on
HFCL	06.04.00	2/20	Buy	10000	1280.70	08.04.00	15.04.00
Zee	06.04.00	2/20	Buy	20000	850.00	Sett.No. 2001102	25.04.00
HFCL	20.04.00	4/20	Buy	18500	915.00	27.04.00	02.05.00

Name of the Scrip	Date of transaction	Sett. No	Buy/ Sell	Quantity
RIL	05.03.01 to 07.03.01	49/01	Buy	547300
RIL	02.03.01 to 07.03.01	40/01	Sell	547300
Net amount receivable as per difference statement			Rs.6636741.30	

Name of the Scrip	Date of transaction	Sett. No	Buy/ Sell	Quantity
HFCL	07.03.01	49/01	Buy	72723
HFCL	02.03.01 to 07.03.01	49/01	Sell	72723
Net amount receivable as per difference statement			Rs.12736083.75	

Name of the broker : Shri Gautam Bajoria

Name of the Scrip	Date of transaction	Sett. No	Buy/Sell	Quantity	Price (Rs)
ITC	05.03.01	49/01	Buy	50000	722.35
ITC	02.03.01	49/01	Sell	50000	775.50
TISCO	07.03.01	49/01	Buy	75000	148.50
TISCO	02.03.01	49/01	Sell	75000	167.50
ACC	07.03.01	49/01	Buy	114500	173.00
ACC	02.03.01	49/01	Sell	114500	199.00
RIL	07.03.01	49/01	Buy	60000	399.50
RIL	02.03.01	49/01	Sell	60000	438.50
Net amount receivable as per different statement Rs.9399500 adjusted as a journal entry in the ledger of the broker.					

5.1 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	D K Singhania	16.06.00	Paid	23,50,000.00
2	D K Singhania	02.08.00	Recd	11,00,000.00
3	D K Singhania	10.08.00	Recd	55,00,000.00
4	D K Singhania	16.08.00	Recd	27,00,000.00
5	Sanjay Khemani	28.04.99	Paid	70,00,000.00
6	Sanjay Khemani	12.05.99	Paid	54,50,000.00
7	Sanjay Khemani	28.09.00	Recd	2,32,00,000.00
8	Sanjay Khemani	03.08.00	Recd	1,48,00,000.00
9	Sanjay Khemani	31.08.00	Paid	1,00,00,000.00
10	Gautam Bajoria	30.08.00	Paid	1,10,00,000.00
11	Gautam Bajoria	21.10.00	Recd	1,85,00,000.00
12	Gautam Bajoria	08.12.00	Paid	44,00,000.00
13	Gautam Bajoria	28.09.00	Recd	1,26,00,000.00
14	A K Poddar	13.05.00	Recd	10,45,000.00
15	A K Poddar	24.05.00	Recd	21,50,000.00
16	A K Poddar	12.07.00	Recd	1,33,00,000.00
17	A K Poddar	16.01.01	Paid	3,00,00,000.00

5.2 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;

5.3 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.

6.1 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. Extracts of regulation 4 (a) & (b) as also items (4) & (5) of Clause A of Code of Conduct are given below for ready reference.

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.

6.2 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.

6.3 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.

6.4 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 Shree Harivansha Securities Pvt. Ltd. for a period of six months.

6.5 This order shall come into force on expiry of 3 weeks from the date of this order.

Place: Mumbai
Date: 12th March 2004

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

