

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 PRABHUDAS LILADHER PVT. LTD., MEMBER, BSE

1.0 BACKGROUND OF THE CASE :

1.1 M/s Prabhudas Liladher Pvt Ltd, (hereinafter referred to as PLPL or the member) is a member of Bombay Stock Exchange (hereinafter referred to as BSE) and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI).

1.2 Pursuant to the investigation carried out by SEBI into the alleged market manipulation in the scrip of Sawaca Business Machines Ltd (earlier known as Sawaca Finance Ltd, SFL), an enquiry officer was appointed by SEBI vide Order dated 24.07.2003 against the broker, BSE, to inquire into the alleged violation of the provisions of SEBI Act, 1992 and SEBI (Stock Brokers & Sub-brokers) Regulations, 1992, consequent to the alleged price manipulation in the scrip of Sawaca Business Machines Ltd. The details of violation mentioned in the show cause notice dated 31.10.03 issued by the Enquiry Officer are as follows :-

“M/s Prabhudas Liladher Pvt Ltd has allowed M/s Jyotish Bhogilal Securities Pvt Ltd to trade in the scrip as an unregistered sub broker. Further, it has been noted that the unregistered sub broker of M/s Prabhudas Liladher Pvt Ltd has traded for Parsha Finance, another unregistered sub broker, who in turn has traded for Shri Mahendra A. Shah. Shri Mahendra Shah was acting as front to the management / promoters of

SFL. M/s Prabhudas Liladher Pvt Ltd is guilty of trading for and on behalf of unregistered entities, which is in violation of the provisions of SEBI Circular SMD/POLICY/CIRCULAR/3-97 dated 31.3.1997 and SMD/Policy/CIR-/98 dated January 16, 1998. M/s Prabhudas Liladher Pvt Ltd is guilty of allowing Jyotish Bhogilal to act as unregistered sub broker. Thus, M/s Prabhudas Liladher Pvt Ltd has failed to exercise due skill, care and diligence and has violated the provision of Code of Conduct prescribed for Stock Brokers laid down in Schedule II to Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. Further, M/s Prabhudas Liladher Pvt Ltd has acted in an unbusiness like manner and has aided and abetted the ultimate clients in the price manipulation of the scrip. M/s Prabhudas Liladher Pvt Ltd is guilty of violating the provisions of Regulation 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.”

2.0 ENQUIRY REPORT:

- 2.1 The enquiry officer, after conducting the enquiry as per the procedure laid down under SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as “the said regulations”) submitted a report dated 27.01.04.

3.0 SHOW-CAUSE NOTICE AND HEARING :

- 3.1 Pursuant to the above, a show cause notice dated 03.02.04 was issued to PLPL along with a copy of the enquiry report. PLPL submitted a reply vide letter dated 19.2.04. Vide the said letter, PLPL submitted that they had carefully noted the contents of the letter and the report of the enquiry officer attached to the letter dated 03.2.04. I proceed to examine the issues and contents of the enquiry report as under :

4.0 ISSUES FOR CONSIDERATION :

4.1 Pursuant to the aforesaid Order, a notice in terms of Regulation 6 of the SEBI (Procedure for holding enquiry by enquiry officer and imposing penalty), Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”) was served vide letter No.VSS/EO/ARR/20650/03 dated 31.10.2003. The facts/allegations against the member were set out in the Annexure to the aforesaid notice. The allegations, inter- alia, were as under:

- a) M/s Jyotish Bhogilal Stock Brokers Pvt. Ltd had acted as un-registered sub broker to PLPL. Shri Mahendra A Shah was the ultimate client of JBSPL, who indulged in the price manipulation of the shares of SFL. PLPL had carried out transactions for JBSPL who in turn had transacted for Shri Mahendra A Shah who had manipulated the price/volume of the shares of SFL.
- b) The member broker should have been more diligent in its dealings and should have exercised greater restraint and control in its dealings with M/s Jyotish Bhogilal Stock Brokers Pvt. Ltd. By dealing with entities who were acting as un-registered sub-broker, the member broker had failed to comply with the provisions of SEBI circular SMD/POLICY/CIRCULAR/3-97 dated 31.03.1997 and SMD/Policy/CIR-/98 dated January, 16, 1998 and hence, failed to exercise proper skill care and diligence. Thus, the member had violated the provisions of the code of conduct i.e Clause A(2) of the Code of Conduct for Stock Brokers as mentioned in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations-1992.

- c) Further, the member broker had acted in an unbusiness like manner and had aided and abetted the ultimate client, Shri Mahendra Shah, in the price manipulation of the scrip. By dealing with such ultimate clients, the member broker is guilty of violating the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

5.0 REPLY

- 5.1 The Member vide letter dated 24.11.2003 has furnished his reply. The submissions made by the member are as follows:

QUOTE

1. At the outset, we submit that we have not violated any of the provisions of :
 - a) Code of Conduct for Brokers as laid down in Schedule II to Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations 1992 (hereafter, "Brokers Regulation"); or
 - b) Regulation 4 (a), (b) or (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 1995 (hereafter, "FUTP Regulation"); or
 - c) any other Acts, Rules or Regulations of SEBI or the Exchange.
as contended in the SCN under reference read with the Annexures thereto.

2. We would also like to place before you the following for your kind consideration: -

- i) We are the members both at BSE and NSE and render service to institutional clients, sub-brokers, high net worth individuals and retail clients and have a reputation of being conservative and law-abiding brokers. As regards the trades done by us for our sub-broker M/s Jyotish Bhogilal Stock Brokers Pvt. Ltd. (hereinafter referred to as JBSPL) are concerned, we have exercised due skill and care and have taken all necessary precautions prescribed by SEBI and BSE in letter and spirit;
- ii) All the transactions done by us for and on behalf of our sub-broker in the scrip of SFL have been as per the Stock Exchange mechanisms, were settled in all respects and no complaint has been received by us from any person or the Exchange in this regard till date.

3. We now proceed to deal with the contents of Annexure-2 to the SCN herein in so far as our company is concerned :-

- 4. With Reference to paras titled "Background", we submit that we are unaware about the contents of the said paras in as much as it is neither expected from nor incumbent upon a share broker to monitor compliance of regulatory requirements by a company whose scrip it/ its sub-brokers' clients trades, especially the compliance pertaining to allotments of shares by such company in the instant case i.e.SFL.
- 5. With reference to paras titled "Role played by M/s. Prabhudas Lilladher Pvt. Ltd., Member, BSE", we submit that the trades covered by para 2.2 were executed by JBSPL.

6. We further submit that we wish to rely upon contents of the statement enclosed as Annexure –3 (i.e. statement made by Mr. Uday Kajaria before SEBI on April 16, 2002) to the above SCN where we have explained our stand in its proper perspective.
7. We further submit that the trades done in the scrip of SFL for the relevant period were negligible compared to our total trades for the period under reference on behalf of all our other clients in various other scrips. We have not traded in SFL at any time. In the said trades, our role was only as a broker whose sub-broker executed the trades in SFL. Our gain was only legitimate share of brokerage and nothing else.
8. We further submit that all the trades done by JBSPL were settled in all respects and the said sub-broker had fulfilled all his obligations towards the Exchange.
9. As you would observe from the trades given in para 2.2 of Annexure 2 of the SCN which were done only during 4(four) settlements, the net result thereof is only for sale of 19,000 shares, which was completed by deliveries and completing the trades in all respects in accordance with Stock Exchange mechanism.
10. With Reference to para 3.1, we state that we were monitoring operations of our sub-broker JBSPL on following basis :-
 - i. Generally, during the period October 1999 to January 2000, we were permitting exposure of 8 times of sub-broker's base capital. In appropriate cases, higher exposure of upto 10 times of the sub-broker's base capital was permitted.

- ii. At BSE there was requirement to pay additional margin if net exposure at day end in B1 or B2 group exceeded prescribed limit. Hence, we had developed a report to show outstanding position in B1 and B2 group to our sub-brokers. If exposure increased the prescribed limit, we called upon concerned sub-broker to reduce outstanding position. However, we were not in a position to monitor the intra-day-trading in the scrips during the period, as there was no appropriate means or mechanism available.
- iii. We also ensure that our sub-broker fulfills his obligations for trades executed by him. In the trades done, JBSPL settled its obligations as per the BSE requirement.

11. We impressed upon all our sub-brokers including JBSPL to execute trades for their clients only and they must not deal with any person who is acting as a sub-broker. In given case, we were not aware that JBSPL was entertaining trades as stated in the Annexure. Unless sub-broker and its clients disclose their intentions to its main-broker, it is highly impossible for the main broker like us to ascertain nature of the clients trades. We submit that it is neither expected nor possible for a share broker to know the motives of all his sub-brokers or clients whose trades are executed through him from time to time. If we were aware about the irregular trades as stated in the Annexure, we would not have allowed execution of such trades.

12. With reference to para 3.2 we submit that JBSPL was and is a leading member of ASE and we never imagined that reputed broker like JBSPL would indulge in such alleged irregularities. Otherwise, we would not have allowed JBSPL to execute trades through us. In any case, we discontinued dealings with M/s JBSPL from 6th February, 2003.

13. We further submit that we do not know Mr. Mahendra Shah. Neither we are related or associated with him in any manner whatsoever. There was no

privity of contract at any time between him and us during the period in question. We once again reiterate that it is impossible to monitor and or find out the ultimate client for whom our sub-broker was trading. We deny that Mr. Mahendra Shah is our ultimate client as alleged in the above SCN or otherwise.

14. With reference to para 4.1 we submit that the allegation that 'Shri. Mahendra A Shah was ultimate client of M/s Prabhudas Lilladher Pvt. Ltd'. is misconceived, baseless and totally inappropriate as -

- i) Shri. Mahendra A Shah never submitted Account Opening Form to PL.
- ii) There is no Client-Member agreement between PL and Shri. Mahendra A Shah.
- iii) We never issued any contract / confirmation memo to Shri. Mahendra A Shah at any time.
- iv) PL has not issued any cheque or received any cheque from Shri. Mahendra A Shah.
- v) PL has not received any demat shares or delivered any shares to Shri. Mahendra A Shah.

15. Thus, we submit that the allegation that Shri. Mahendra A Shah is PL's client is totally incorrect and inappropriate.

16. It would also be unfair to consider Shri. Mahendra A. Shah as the ultimate client of our company. We never acted or traded for Mr. Mahendra A. Shah

or at his instance in respect of any of the trades executed by us and set out in clause 2.2 of Annexure 2.

17. We submit that at no point of time, we had knowledge that JBSPL was dealing for and on behalf of unregistered sub-broker and such other entities/associates who were connected with the management of SFL in off loading the shares in the market as is alleged in the said SCN. It is significant to note that SEBI, with its vast resources has taken about 3 years to arrive at the present findings, then, how as a broker, we were expected to know these at the time of execution of the trade.
18. It has been found as recorded in Clause 4.2 of Annexure 2 that Mr. Mahendra A. Shah was one of the main persons responsible for the rise in price and volume of the scrip during the period under investigation. As stated hereinabove, we have neither acted on instruction of Mr. Mahendra A. Shah for the trade done by us nor have we any association or relationship with him of any nature whatsoever. We submit that para no. 4.2 is totally irrelevant to us as we had no privity of contract or relationship with Shri. Mahendra A Shah and we were not aware about the irregularity.
19. With reference to para titled "Findings" we submit that we were under the impression that if a member of any other Exchange was dealing through us on BSE or NSE, then, in that case, there was no need for such a member to be also registered as our sub-broker. However, as soon as we were advised by the Chartered Accountant appointed by SEBI and read with the Notices/Circulars issued by BSE, we initiated the process to register JBSPL as our sub-broker with SEBI and the same was granted by SEBI in September, 2000. No prejudice or damage was done to any person or investor due to non-registration of JBSPL as sub-broker by SEBI. We

humbly request you to be lenient as we corrected the technical irregularity immediately. We have further streamlined our procedure and are operating for sub-brokers who are duly registered with SEBI as per SEBI's requirement. Hence, we make humble submission to condone the technical infraction.

20. In this regard, we draw your kind attention to BSE Notice dated 1st July, 2000 as well as 14th September, 2000 (Please refer Annexure 1 and 2). On perusal thereof it would be evident that there were several members of other Stock Exchanges who were not registered with SEBI as sub-brokers but were carrying on trade/dealings through the members of the BSE as sub-brokers. The Notice dated 1st July, 2000 issued by BSE, inter-alia, states as under :-

“SEBI has clarified that members of Exchange executing transactions of their clients through the members of other Exchanges are to be treated as sub-brokers. Accordingly, members of Stock Exchanges who also act as sub-brokers should hold a separate registration with SEBI as a sub-broker.”

“Members are therefore advised that if they have allotted their BOLT TWS's to members of other Exchanges, they are required to get the members of other Exchanges registered with SEBI as their sub-brokers immediately.”

21. We submit that the act complained of in the SCN has already been rectified by us way back in September, 2000. In view of the directions given by BSE as aforesaid and, hence, any proceedings including present SCN is uncalled for and the same need not be pursued.
22. In the Notice dated 14th September, 2000, issued by BSE it is stated as under :-

“It may be noted that Securities & Exchange Board of India (SEBI) has stipulated that no person/entity who may be acting as a Sub-Broker shall buy, sell or deal in securities unless he is registered with SEBI as a Sub-Broker. SEBI has further advised that Members of Stock Exchanges who are executing transactions of their clients through members of other Exchanges are to be treated as a ‘Sub-Broker’ and accordingly these members should hold a separate registration as Sub-Brokers. SEBI has put the onus on Members to ensure that their clients are not acting in the capacity of Sub-Brokers without complying with the said requirement.”

23. Issue of the BSE notices during July, 2000 and September, 2000 requiring its members to register members of other exchange as its sub-broker signifies clearly that the requirement was not generally complied with by the BSE Members and large number of members were dealing with / for un-registered sub-brokers.
24. We also invite your kind attention to BSE Notice No. 20031112-5 dated 12.11.2003 (Please refer Annexure 3). Item no. 31 of the Annexure to the notice deals with unregistered sub-broker is as per BSE Notice No. 54809/2000 dated July 1, 2000 (Please refer Annexure I). This signifies that liberal view has been taken for the matter as prevalent prior to July 2000. In view of the situation, we request you to take view in the matter consistent with the Notice dated 12th November, 2003 of BSE.
25. We submit that the process of registration was delayed as there was delay in the submission of details from JBSPL. However, the formality of registration of JBSPL as our sub-broker was completed and SEBI issued Sub-Broker registration certificate to JBSPL in September, 2000 (Please refer Annexure 4). We may also submit that BSE has not imposed any

penalty on us as stated by it in its notice dated 14th September, 2000 as we complied with the requirement in September, 2000.

26. We had informed time and again all our Sub-Brokers including JBSPL that we do not deal with unregistered sub-brokers. Without prejudice to what is stated above, we may also submit that during the period under reference i.e. October, 1999 to March 2000 and thereafter, several unregistered sub-brokers were in operation and, hence, SEBI had issued a caution advertisement relating to dealing for unregistered sub-broker. Copy of the SEBI's advertisement dated July 1, 2003 is enclosed for your ready reference (Please refer Annexure 5). We submit that if we are punished for such technical infraction, the same would be discriminatory. Besides, we suspended operation with JBSPL on getting information about irregularity committed by JBSPL.
27. We submit that the finding that "the member has also aided and abetted the ultimate clients in creation in the price manipulation of the scrip of a false market in the scrip" is without any basis and no documentary proof or other convincing supporting detail is given in the Report. The said allegation/charge is inappropriate and unjustified.
- Mere allegation which is not supported by any document evidence, cannot be and ought not to be made against us. As mentioned above, our role in the trades was only as a main-broker whose sub-broker JBSPL executed trades in SFL and we received our legitimate brokerage and nothing else. Trades were settled in all respects in accordance with Stock Exchange Mechanism. As informed earlier, we never traded in SFL at any point of time. Hence, there is no question of our being involved in such trades, as alleged.
28. In view of the above submissions, we submit that we have taken all reasonable care and precaution as expected from a broker and we have

not violated either the provisions of Code of Conduct prescribed for Stock Brokers laid down in Schedule II to Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 or any other rules, regulations etc.

29. In view of the aforesaid, we submit that the findings mentioned in the Annexure 2 to the SCN and the charges of the alleged violations leveled upon us are unfair, inappropriate, harsh, burdensome and discriminatory. We once again humbly appeal to you that for technical mistakes (without any intention) committed by us, we should not be penalized. We assure you that we are and will be extra careful in future while dealing with our sub-brokers.

30. We are operating as a share-broker since 1945 and have operated strictly as per SEBI/BSE/NSE requirements as applicable from time to time. We have enjoyed reputation of conservative, law-abiding and reliable share-brokers among the Investors and broking community. We always endeavor to comply with all applicable requirements. Hence, technical irregularity, if any, committed unintentionally may be condoned.

31. In view of the aforesaid, we reiterate and respectfully submit that the SCN herein ought to be withdrawn.”

6.0 HEARING

6.1 An opportunity of personal hearing was given to the Member to present their case before the enquiry officer on 30.12.2003 at WTC, SEBI, Mumbai. Shri Uday Kajaria and Raju Ashar, authorized representative of PLPL attended the hearing before the enquiry officer.

6.2 The member reiterated the submissions made vide their letter dated 24.11.2003 and submitted, further, as under:

“The representatives further submitted that they were under the impression that since Jyotish Bhogilal Stock Brokers Pvt. Ltd. JBSPL was a registered broker of ASE, there was no need to register the said intermediary separately as a sub-broker. However, subsequent to the notice dated July 1, 2000 of BSE, necessary steps have been taken to get the intermediary registered as a sub-broker. The formalities were completed in September 2000. It was also submitted that BSE gave a reminder notice on September 14, 2000 in this regard. Subsequently, BSE issued a notice in November 2003 stating, inter-alia, that the brokers who had failed to comply with the aforesaid notices would be penalized. The representatives stated that since PLPL had complied with the notice of BSE, no penalty was levied on them. It was further submitted that JBSPL was the only broker of the other stock exchange with whom PLPL had dealt during the period referred to in the investigation. The dealings of JBSPL did not give any suspicion in the minds of PLPL as JBSPL was regular in making payment and delivery of securities. As JBSPL was a reputed and credible broker of ASE, PLPL did not suspect his motives as alleged by SEBI. Further, the volumes transacted by JBSPL in SFL was only 19000 shares (net) worth Rs.8 lakhs approximately. As against this, the turnover of PLPL was approximately Rs.35,000 crores during the year 1999-2000.

- 6.3 PLPL was never aware that JBSPL had indulged in trades of SFL as alleged in SEBI notice. Had PLPL was aware about such trades, PLPL would not have allowed JBSPL to operate on its behalf. PLPL, on getting notice from SEBI about JBSPL, discontinued operations with JBSPL.
- 6.4 PLPL had never dealt with Shri Mahendra Shah, either directly or indirectly. PLPL was also not aware that JBSPL was transacting in the scrip of SFL on behalf of Shri Mahendra Shah. PLPL had also never dealt in the scrip of SFL on their proprietary account.

- 6.5 PLPL was permitting all its sub-brokers including JBSPL to have exposure not exceeding 8 to 10 times of their base capital. PLPL had put in a system through which daily reports were generated to calculate the actual exposure taken by sub-brokers vis-à-vis permitted exposure to a sub-broker. Wherever, the exposure had exceeded the prescribed limits, the sub-broker was made to reduce its outstanding positions or provide additional capital.

Further, in B1 and B2 Group additional margins were required to be paid. In order to ensure timely collection of margin, PLPL developed a software to generate a report about the exposure in B1 and B2 scrips. The positions of the sub-brokers were monitored through this reports to ensure that sub-brokers exposure in B1 and B2 remain within prescribed limits.

- 6.6 Besides the monitoring as stated above for all sub-brokers including JBSPL, PLPL was monitoring that all its sub-brokers including JBSPL settled its obligations as per time schedule prescribed by BSE. JBSPL was regular in settling its obligations and its exposure was within the prescribed limit. Hence, no doubt arose in PLPL's mind about the trades executed by JBSPL in SFL.

- 6.7 PLPL has been acting as a BSE broker since 1945 and as NSE broker since its inception. During such a long tenure, PLPL has been complying with SEBI, BSE/NSE regulations as applicable from time to time. During this tenure, PLPL has earned the reputation of a conservative and law abiding broker. Due to this reputation, PLPL has increased its business by many fold and its clients includes FIIs, Institutional clients, MFs, high networth clients and around 25 sub-broker (all registered with SEBI as sub-broker) spread over different parts of India.

- 6.8 PLPL submitted that its role in the trade of SFL was only as a broker whose sub-broker traded in the scrip and PLPL had earned its share of legitimate brokerage only and nothing else. PLPL resubmitted that it has complied with all regulations and has not violated any regulations as alleged in the notice.
- 6.9 In the light of the above, the representatives submitted that the allegations made by SEBI, inter-alia, that PLPL had failed to exercise due diligence and consequently violated the code of conduct and acted in an unbusinesslike manner and aided and abetted the ultimate clients in the price manipulation of SFL, are not true and therefore, denied.”

7.0 ASSESSMENT OF ISSUES AND FINDINGS BY THE ENQUIRY OFFICER

- 7.1 It was alleged that there was an unusual upward price movement in the scrip of SFL during 1999. In order to ascertain the facts, an investigation was carried out by SEBI in the scrip of SFL for the period from October 1999 to December, 1999. The investigations had brought out that the price of the scrip of SFL went up from Rs.8/- per share in October, 1999 to a high of Rs.38/- per share in the last week of December, 1999.
- 7.2 SFL had made preferential allotment to various entities/individuals of 52,00,000 shares @ 10/- per share on January 05, 2000. SFL confirmed that the money towards the preferential allotment was brought in properly. On verification of the bank statements of SFL, it was observed that as on 5th January 2000 there were both debit and credit entries appearing in the account for the same amount signifying that the money towards the preferential allotment did not come in at all. They were shown as brought in by means of “fictitious book entry”. The bank statement of the company for the preferential issue indicates that there was no genuine inflow of money

into the account of the company. The balance in the account of the company which was approx. Rs. 11,905/- before the start of credit and debit entries has remained the same even after the last entry. SFL only resorted to book entries for showing subscription. Thus, shares were fraudulently created without infusion of funds. SFL, in one of its letter, had informed SEBI that Satish R. Shah, Shetal R. Shah, Vishal S. Shah and Jyotsna S. Shah were the directors on the board SFL and they were coming under the definition of directors/friends and relatives as per Section 6 of the Companies Act, 1956.

7.3 SFL in another communication to SEBI had stated that Shri Mahendra A. Shah was the current Managing Director of the company. Shri Mahendra A. Shah was appearing as the largest seller in the scrip of SFL during the period under investigation.

7.4 PLPL was one of the trading members during the above period in the scrip of SFL and had traded for and on behalf of JBSPL who is a Member of ASE. The trading details of PLPL on behalf of JBSPL in the scrip of SFL are as follows:

Sett. No.	Purchases	Sales	Gross	Net
38	9100	9100	18200	0
39	0	18200	18200	-18200
40	700	0	700	700
41	0	1500	1500	-1500
Total	9800	28800	38600	-19000

7.5 JBSPL had traded in the scrip of SFL on behalf of M/s Parshwa Finance, Laharia Pole, Jhaveri Wad, Relief Road, Ahmedabad 01. M/s Shree Parshva Finance had traded in the scrip on behalf of Rajesh N. Jhaveri, who in turn had primarily traded for Shri Mahendra A. Shah and associates.

Shree Parshva Finance had also traded directly for Shri Mahendra A. Shah. JBSPL had traded on behalf of M/s Parshwa Finance during the referred period in the scrip of SFL, details of which are as under:

Sett. No.	Purchases	Sales	Gross	Net
38	9100	9100	18200	0
39	0	18200	18200	-18200
40	700	0	700	700
41	0	1500	1500	-1500
Total	9800	28800	38600	-19000

7.6 Shri Mahendra A. shah, the ultimate client of PLPL was appointed as Managing Director of SFL and was seen as the largest seller in the scrip of SFL. Shri Mahendra A. Shah had created artificial volumes through Harvic Management and Mayekar Investment and at the same time offloaded the shares through M/s Rajesh N. Jhaveri and others. The shares of SFL offloaded by Shri Mahendra A. Shah actually belonged to the promoter group. Shri Mahendra A. Shah traded in the scrip SFL with different brokers/sub-brokers during the period under investigation. Shri Mahendra A. Shah was one of the main persons responsible for the rise in price and volume of the scrip during the period under investigation. Shri Mahendra A. Shah had given huge orders to different brokers/sub-brokers with whom he had dealt. Shri Mahendra A. Shah had created artificial volume in the scrip. SFL was more or less dormant till September 1999 and volumes had started picking up only when Shri Mahendra A. Shah and others (Harvic Management, Mayekar Investments etc.) had started trading in the scrip.

7.7 In the light of the aforesaid findings, it was alleged that, (a) Since PLPL traded on behalf of JBSPL which acted as an un-registered sub-broker, PLPL had violated the provisions of SEBI Circular SMD/Policy/Circular/3-97 dated 31.03.97 and SMD/Policy/Cir-/98 dated 16.01.1998 (b) By dealing

with an un-registered entity, PLPL had failed to exercise proper skill care and diligence and thus, violated Clause A(2) of the Code of Conduct for Stock Brokers as mentioned in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992. (c) Since the ultimate client of JBSPL, i.e. Shri Mahendra A. Shah had indulged in price manipulation of the scrip of SFL, PLPL had acted in an unbusiness like manner and had aided and abetted the ultimate clients in the price manipulation of the scrip and with the result, violated the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

- 7.8 It is observed from the submissions of PLPL that BSE has given a notice on 1st July, 2000, inter-alia, stating that if a Member of BSE is dealing with a member of other exchange as sub-broker, it was advised to get the members of other exchanges registered as their sub-brokers immediately. It is also observed that BSE issued a reminder dated September 14, 2000. Pursuant to the notice, PLPL had taken steps to register JBSPL as a sub-broker and the registration process was completed in the month of September, 2000 i.e. before the reminder notice was given by BSE. Further, BSE had issued one more notice in November, 2003 stating, inter alia, that the brokers who had failed to comply with the aforesaid notices would be penalized. It is observed that BSE has not levied any penalty on PLPL.
- 7.9 Enquiry Officer noted the submission of the member that they were under impression that since JBSPL was a registered broker of ASE, there was no need to register the said intermediary separately as a sub-broker. However, once BSE issued a notice, PLPL has taken steps to register JBSPL as a sub-broker and completed the process before a reminder was issued.

7.10 Enquiry Officer also noted the submission of PLPL that they do not know Shri Mahendra Shah and that PLPL neither entered into agreement with the ultimate clients nor executed a transaction on behalf of Mahendra Shah. Enquiry Officer also noted the submission of PLPL that its turnover was approximately Rs. 35,000 crores during the year 1999-00 (during which period the manipulation in the scrip of SFL had taken place) whereas the transaction in the scrip of SFL was 19,000 shares (net sales) valued approximately Rs. 8 lakhs. Enquiry Officer also considered the submission that JBSPL was a reputed member of ASE and keeping the reputation of JBSPL, as a leading broker of ASE, and the proper settlement done by JBSPL for the trades done, PLPL had no occasion to suspect the credentials of JBSPL or its transactions and thus, PLPL was unaware of the fact that irregular trades have been executed by JBSPL on behalf of Mahendra Shah and Parshwa Finance.

7.11 The Enquiry Officer also found that PLPL had transacted for JBSPL, the fact of which was not disputed by PLPL. Enquiry Officer has also found that as soon as BSE issued a notice regarding the need for obtaining registration as a sub-broker, PLPL had taken steps to register JBSPL as a sub-broker and completed the process. Thus, JBSPL remained as un-registered sub-broker of PLPL for a limited period of time, i.e. from the date of SEBI circular/s and reminder notice of BSE. However, since PLPL had complied with the notice of BSE as soon as it was issued, Enquiry Officer intended to give the benefit of doubt to PLPL and accept the submission of PLPL in this regard that it was under the bonafide belief that a member of another exchange need not register separately as a sub-broker. Enquiry Officer, therefore, observe that the allegations made against PLPL of having violated the SEBI circulars and code of conduct of brokers, albeit for a temporary period, could be regarded as a violation of technical in nature and PLPL may not be punished for the same.

- 7.12 Further, the Enquiry Officer found that Shri Mahendra Shah had used various web of entities for manipulating the price and volume SFL. The transaction done by Shri Mahendra Shah through JBSPL-PLPL was (net) 19,000 shares (valued approx. Rs. 8 lakhs). From the submissions of PLPL, Enquiry Officer found that PLPL's annual turnover was Rs.35,000 crores for the year 1999-00. As against this, the volume/turnover of 19,000 shares of SFL (valued approx. Rs. 8 lakhs) transacted by PLPL, was hardly anything. Enquiry Officer also found that the trades done in the scrip of SFL for the relevant period were negligible compared to PLPL's total trades for the period under reference on behalf of all other clients in various other scrips. PLPL has not traded in SFL on proprietary account at any time. In the said trades, the role of PLPL was only as a broker whose sub-broker executed the trades in SFL. PLPL's gain was only legitimate share of brokerage. Further all the trades done by JBSPL in SFL were settled in all respects and JBSPL and PLPL had fulfilled all its obligations in this regard.
- 7.13 Enquiry Officer observed from the submission of PLPL that it had no relationship whatsoever with Shri Mahendra A Shah. Enquiry Officer also observed that the investigation has not brought out any direct or in-direct relationship between Shri Mahendra Shah/the various other entities used by him and PLPL. In the absence of any such concrete and absolute relationship between the entities involved in the price/volume manipulation and the broker, it would be difficult to accept the allegation that merely because the broker had transacted in the scrip, he had aided and abetted the ultimate entities in their misdemeanor. Therefore, Enquiry Officer do not concur with the allegation that PLPL had aided and abetted Shri Mahendra Shah and thus, violated the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

8.0 RECOMMENDATION OF THE ENQUIRY OFFICER

- 8.1 The enquiry officer, in terms of Reg. 13 (1) read with Reg. 23 of the SEBI (Procedure for Holding Enquiry by Enquiry officer and Imposing Penalty) Regulations, 2002, recommend that a warning may be issued to PLPL advising them to be careful in future in their business.

9.0 CONCLUSIONS :

I have examined the material available on record and I do not find any reasons to differ with the findings of the enquiry officer as mentioned in detail hereinabove. I feel that it is a fit case for issue of warning to PLPL.

10.0 ORDER :

Therefore, in exercise of the powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby pass an order issuing a warning to M/s Prabhudas Liladher Pvt Ltd, Member, BSE and also advise them to be careful in future in conducting their business as a stock broker.

A.K BATRA

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : 27th April, 2004