

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Section 11 read with Section 11B of the Securities and Exchange Board of India Act, 1992 against Shri Surendra Kumar Banthia, Director, First Custodian Fund (India) Ltd.

CO/07/ISD/06/2004

1.0 Background

M/s. First Custodian Fund (India) Ltd (hereinafter referred to as "the said broker") is a member of National Stock Exchange (hereinafter referred to as "NSE") and a stock broker registered with SEBI under certificate of registration bearing No. INB230638130. Shri Surendra Kumar Banthia (hereinafter referred to as "S.K. Banthia") is one of the directors of the said broker holding 4.96 % shares.

The Reserve Bank of India (hereinafter referred to as "RBI") vide their letter dated 27.4.2001 informed the Securities and Exchange Board of India (hereinafter referred to as "SEBI") that M/s. Nedungadi Bank Ltd. (hereinafter referred to as "NBL") had approved in September, 1999, a scheme for arbitrage dealings through three stock brokers viz. the said broker, Shrikant G. Mantri and Harvest Deal Securities Ltd and also that receivables from the aforesaid brokers to NBL as on 31.3.2000 amounted to Rs.94.52 Crores. They also informed that of the said amount, Rs.73.42 Crores had been recovered leaving an amount of Rs. 21.10 Crores to be recovered thus adversely affecting the Bank's Balance Sheet. Therefore, RBI requested that SEBI investigate the matter.

Based on the complaint from RBI, SEBI conducted an investigation into the matter. The findings of the investigation are as under:

R.K. Banthia and persons associated with them held 8.41%, M/s. First Custodian Fund (India) Ltd. held 3.28% and Shrikant G. Mantri held 10.51% of the equity shareholding of NBL

The Board of Directors of NBL in its meeting held on 26.9.1999 took the following decisions :

- i. To allow purchase and sale of shares in various markets and stock exchanges.
- ii. To vest to Chairman and General Manager (P&D), powers to the extent of Rs.5.00 crore and Rs.2.00 crore respectively to purchase and sell shares to the stock brokers namely First Custodian Fund (I) Ltd. Shrikant G. Mantri and the said broker and other recognized brokers and pay brokerage.
- iii. To permit Chairman to ratify loss, if any, in any transactions upto a maximum of 5% of the price.
- iv. To permit the bank to open DP accounts with Standard Chartered Bank and Global Trust Bank, Mumbai.

Even prior to the aforesaid decision of the Board of NBL, the bank had allowed the said three stock brokers to undertake the following transactions:

Date	Purchase in Rs.	Sales in Rs.	Gross Income in Rs.
14.09.99	1,90,17,389	1,92,03,740	1,86,351
20.9.99	4,45,15,443	4,48,51,270	3,35,827
21.9.99	2,15,67,8665	2,17,94,508	2,26,643

As per the decision taken by the Board of NBL in its meeting held on 26.9.1999, the following reporting system was decided to be followed in respect of the arbitrage transactions:

Sr.No.	Particulars	By whom	To whom	Periodicity
1.	Statement of purchase and sale	Senior Manager, Investment Dept., Mumbai	Assistant General Manager (F&A)	Daily
2.	-do-	Assistant General Manager(F&A)	The Chairman through General Manager(P&D)	-do-
3.	Purchase and sale statement	Chairman	The Board	Monthly
4.	Brokerage paid at Mumbai Branch	Senior Manager, Fort, Mumbai Branch	Assistant General Manager(F&A)	Monthly
5.	Statement of brokerage	Chairman	The Board	Quarterly
6.	Sale or purchase ended in loss	Senior Manager, Fort, Mumbai Branch	Assistant General Manager (F&A)	On the date of occurrence
7.	-do-	Assistant General Manager(F&A)	The Chairman Through General Manager (P&D)	-do-
8.	-do-	Chairman	The Board	Monthly

However, it was observed that this reporting system was not observed in practice and the Chairman and other officers of NBL who were mandated to decide on the scrips to be purchased or sold, had delegated these decisions to the three stock brokers.

An analysis of the transactions entered into by NBL through the above brokers till 31.3.2001, revealed that:

- i. Most of the transactions were not executed as arbitrage transactions i.e. purchases / sales of equal quantity of the particular shares were not executed simultaneously through different exchanges.
- ii. The purchases and sales had been effected in different exchanges through these brokers mutual co-ordination.
- iii. The bank had made purchases in shares of InfoTech companies such as HFCL, DSQ, Global Tele etc during first week of March, 2000 to an extent of Rs.84.9 crores through these brokers. But during this time the prices of shares of all these companies were at their highest levels. Further, the sales during the last week of March, 2000 mostly in the above scrips amounted to Rs.58.7 crores. The above purchases and sales were well in excess of the approved limits of the bank.
- iv. It was observed from the statement of account of the dealings of the bank and the broker books of accounts with regard to their dealings with NBL that the three brokers including the said broker failed to make payments towards the sale of shares by the Bank in time on several instances. These three brokers withheld the payments due to the bank for considerable period of time and thereby delayed the payments to the clients.
- v. There were some instances of delay in delivery of securities by the brokers to the bank towards their purchases. Similarly it was noticed that the bank had not delivered the shares of HFCL which were sold in March 2000 to the brokers in time. The reason for the late delivery on part of the bank was explained as the subsequent delay in payment of funds by the brokers after the sale of securities.
- vi. The transactions which were said to have taken place in the last week of March 2000 were bogus transactions. The contract notes issued by the said broker and others in respect of the said transactions did not contain the time of transaction and these transactions were not done through the stock exchanges. Further on investigating into the dealings of March, 2001 it is observed that these transactions were effected not through the exchange but through off market one sided deals wherein there were no selling clients. From an examination into the statements of the broker it is observed that the said three brokers had these stocks in their portfolio which they had offloaded the same to NBL in order to mobilize funds from these purchasers.

2.0 Action taken against the said broker

Pursuant to the said investigation, an enquiry was conducted against the said broker and the Enquiry Officer in his report dated 12.1.2004 recommended that a major penalty of suspension of certificate of registration of the broker for a period of 12 months may be imposed on the said broker. Thereafter, show cause notice dated 22.1.2004 was issued to the said broker to which he submitted their reply on 5.2.2004. Upon their request, the said broker was also given an opportunity of personal hearing on 12.2.2004. After considering the reply of the said broker and their submissions and other material on record it was found that the said broker had acted beyond the mandate given to him by NBL, that the said broker had failed to obtain client registration and to enter into broker client agreement with NBL, that the said broker had delayed making payment to NBL and in doing so Whether the said broker had acted in concert with M/s. Harvest Deal Securities Ltd. and Shrikant G. Mantri. In view of the above, vide order dated 5.3.2004 the certificate of registration granted to the said broker was suspended for a period of 9 months w.e.f.14.7.2003.

3.0 Show cause notice and personal hearing to S.K. Banthia

Show cause notice was also issued to S.K. Banthia on 16.12.2003 in his capacity as Director of the said broker. Shri Banthia submitted his reply to the said show cause notice vide his letter dated 26.12.2003. In his reply, S.K. Banthia made the following submissions:

- a. That he denied each and every allegations and contentions made in the subject show cause notice and nothing therein admitted or should be deemed to have been admitted by him, save and except to the extent specifically admitted by him thereunder.
- b. That that the aforesaid show cause notice is bad in law and against natural justice in as much as action taken against him six month prior to the issue of show cause notice without giving him any opportunity of pre decisional or post decisional hearing. He stated that Chairman, SEBI vide his order dated 14.07.2003 passed under Section 11(4) of the SEBI Act 1992 directed him not to deal in securities in any manner till further orders. It is therefore clear that the Chairman order debarring him from accessing the securities market was passed without giving any opportunity to represent his case either pre decisional or post decisional hearing. On this ground alone, the order passed by Chairman is bad in law and against the basic principles of natural justice, equity and fair play and should be set aside forthwith and that he had assailed Chairman order on this ground alone.
- c. That in the said show cause notice SEBI had reserved the right to initiate the prosecution under Section 24 of the SEBI Act or any other action as SEBI may deem fit. It is submitted that prosecution under Section 24 of SEBI Act has already been initiated against him on 31.03.2003 i.e. 9 months prior to the issue of show cause notice. This itself evidences that SEBI has prejudged him without giving him any chance or any opportunity to present his case. Such act of SEBI is itself bad in law and against all norms of justice, equity and fair play.
- d. That he was a resident of Kolkata and the Chief Executive of Magnum Enterprises. That he was a respected member of society and a member of the Apparel Export Promotion Counsel and other such organizations. He submitted that he was only a non executive Chairman of the said broker and not involved in the day to day functioning and working of the said broker. He further submitted that he does not sign any cheques or invoices on behalf of the said broker and his role is confined to attending board meetings as and when he is free.
- e. That the said broker has denied having violated any of the provisions of the SEBI Act, Rules or Regulations and have submitted reply to SEBI on 27.4.2003. The said reply of the said broker should be treated as part and parcel of his reply.

- f. That the said broker has informed him that enquiry proceedings have been conducted and stand concluded on 13.11.2003. The replies of the said broker and the proceedings before the enquiry officer should be treated as part of his reply.
- g. That in view of the above, no action is warranted against him and the subject show cause notice should be dismissed forthwith.

An opportunity of personal hearing was also granted to Shri Banthia on 9.3.2004 on which date representative of Shri Banthia appeared before me and made submissions.

4.0 Consideration of issues

I have considered the reply of S K Banthia, submissions made by his representative before me and other material on record.

I have vide order dated 5.3.2004 found that the said broker had committed several irregularities including acting beyond the mandate given to them by clients, delay in making payments, issuing of fictitious contract notes etc. Accordingly, I had vide the said order suspended the registration granted to the said broker for a period of 12 months.

I note that in his reply S.K. Banthia has stated that he is a non-executive Chairman of the said broker and not in charge of the day to day functioning of the said broker and or that she was ignorant of the irregularities committed by the said broker. I am unable to accept the explanation submitted by Shri Banthia. Being the Chairman and holding 4.96 % shares in the said broker, Shri Banthia is liable for all the acts of omission and commission by the said broker.

I note that Shri Banthia has submitted that the enquiry proceedings have exonerated the said broker. In this regard, I have vide order dated 5.3.2004 already found the said broker to guilty and suspended their certificate of registration for a period of 12 months.

In view of the above, I find that S.K. Banthia is liable for all the irregularities / violations committed by the said broker.

5.0 Order

I find that S.K. Banthia as Chairman of the said broker has acted in such a manner that has placed the interest of investors at risk and also jeopardized the trust of investors in the safety and integrity of the securities market. I find that it is necessary in the interest of investors in the securities market to restrain persons such as S.K. Banthia from being associated with the securities market.

5.1 Therefore, I, in exercise of powers conferred on me by Sections 11(4) (b) and 11B read with Section 4(3) of the SEBI Act do hereby direct that Shri Surendra Kumar Banthia shall disassociate himself from the securities market and that he shall not buy, sell or otherwise deal in securities in any manner for a period of 12 months w.e.f. 14.7.2003 i.e. the original date from which he was prohibited from buying, selling or dealing in securities vide my earlier order dated 14.7.2003.

This order shall come into effect immediately.

Place : Mumbai

Date : 24.6.2004

G.N. Bajpai

Chairman

Securities and Exchange Board of India