

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 MAN MOHAN DAMANI, MEMBER, CALCUTTA STOCK EXCHANGE ASSOCIATION LIMITED, HAVING SEBI REGISTRATION NO. INB030766312.

MO/22/IVD/07/04

1. BACKGROUND

- 1.1 M/s Man Mohan Damani is registered with SEBI as a stock broker (hereinafter referred to as 'member') bearing SEBI registration no. INB 030766312 and is a member of Calcutta Stock Exchange Association Limited (CSE). An inspection of books of accounts, documents and other records of the member was conducted on June 17, 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 and that he had made payments/received funds from the other members of the exchange, which were not backed by any transactions in securities.

2. ENQUIRY PROCEEDINGS

- 2.1 The inspection report was forwarded to the member, advising him to file his comments, if any, on the findings of the inspection. On not being satisfied with the reply filed by the member, an Enquiry officer (EO) was appointed vide order dated 08.08.2002, to inquire into the irregularities noticed in the course of the inspection. The EO submitted his report on 22.01.2004, with the recommendation that the certificate of registration of the member be suspended for a period of six months.

3. **SHOW CAUSE NOTICE AND MEMBER'S SUBMISSIONS**

- 3.1 A show cause notice dated 04.02.2004, was issued to the member, 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'), advising him to show cause as to why the penalty, as recommended by the enquiry officer, should not be imposed on him. The member was advised to submit his reply, if any, within 15 days of the receipt of the show cause notice. The member was also asked to indicate whether he desired a personal hearing.
- 3.2 After seeking and availing of further time for submitting his reply to the show cause notice, the member finally made his submissions vide his letter dated 13.04.2004, as under:
- i. With regard to indulgence in off-market trades, the member stated that all these trades were executed as proprietary trades in 'Self Account' and none of the trades were executed on behalf of any client. He further stated that since he was under the impression that only trades executed on behalf of clients, outside the trading terminal, need reporting to the exchange, he did not report these transactions to the exchange. He further stated that he had no intention to avoid transparency or to interfere with the price discovery process of the exchange or to defraud anybody.
 - ii. With regard to payments/receipt of funds from other members of CSE, the member stated that he did not carry any other business other than that of securities. He admitted that he had paid/received funds from member brokers of CSE and added that these payments/receipts were in the nature of business accommodation of funds to fellow brokers and no interest was charged on it. He stated that business accommodation of funds to fellow members is common and requested that it be viewed accordingly. He further reiterated that he had no intention of

defrauding/depriving anybody and if these acts have violated the rules and regulations of SEBI, he asked for pardon and assured that he would be careful/ vigilant in future.

4. **CONSIDERATION OF ISSUES**

4.1 I have carefully examined the facts and circumstances of the case. I have also considered the Enquiry Report and the submissions of the member. I find that adequate opportunity had been given to the member in accordance with principles of natural justice. My findings on the allegation made against the member are as follows :

4.2 **Off market transactions**

4.2.1 I note that the member is alleged to have carried out transactions with D K Singhania, A K Poddar and Sanjay Khemani, members, CSE, outside the price and order matching mechanism of CSE. The enquiry officer has found that the member indulged in off market deals with the aforesaid members of CSE, as under:

Name of the Broker: D K Singhania

Name of the Scrip: DSQ Software

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
5/4/2000	2001102	Buy	8000	5/4/2000
10/5/2000	2001107	Buy	6500	15/5/2000
10/8/2000	2001120	Buy	12000	12/8/2000

Name of the Scrip: SATYAM

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
12/4/2000	2001102	Buy	9000	13/4/2000
13/4/2000	2001103	Buy	2100	28/4/2000

8/6/2000	2001111	Buy	3000	13/6/2000
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Name of the Scrip: Zee Tele:

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
6/4/2000	2001102	Buy	25000	12/4/2000
25/4/2000	2001105	Buy	33000	24/4/2000
12/10/2000	2001128	Buy	10000	23/9/2000

Name of the Scrip: Global Tele:

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
30/10/2000	2001131	Buy	21500	16/10/2000

Name of the broker : A K Poddar

Name of the Scrip: Himachal Futuristic

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
21/12/2000	2001138	Sell	10000	1/1/2001
9/12/1999	9900137	Buy	15000	14/12/1999
16/12/1999	9900138	Buy	5000	20/12/1999

Name of the Scrip: DSQ Software:

Date of transaction	Sett. No	Member's Buy/Sell	Quantity	Date of Delivery
16/12/1999	2001138	Buy	3000	21/12/1999

Name of the Broker: Sanjay Khemani

Name of the Scrip: Himachal Futuristic

Date of	Sett. No	Member's	Quantity	Date of
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transaction		Buy/Sell		Delivery
20/4/2000	2001104	Buy	13800	25/4/2000

4.2.2 In this regard, the member has stated that all off market trades executed by him were proprietary trades in 'Self Account', and none of these trades were executed on behalf of any client and therefore he did not report the same to the stock exchange.

4.2.3 I note that SEBI had, vide circular SMDRP/POLICY/CIR-32/99 dated 14th September, 1999, directed that all negotiated deals, including cross deals, shall not be permitted then onwards and that all such deals shall be executed only on the screens of the exchange, as per the price and order matching mechanism of the exchange. This measure was taken to curb negotiated deals, as they lack transparency, do not contribute to price discovery, deny investors the benefits of the best possible price and militate against the basic concept of the stock exchange. The said circular did not provide for any exception, for proprietary trades or otherwise. Hence, the member cannot claim ignorance regarding the applicability of the circular to self trades. Moreover, I have also noted that the disciplinary action sub-committee of CSE had imposed a fine of Rs. 25,000 on the member, for indulging in off market transactions. I, therefore, do not accept the member's contention and hold him guilty of indulging in off-market trades.

4.2.4 I find that by indulging in off market deals, the member violated the provisions of SEBI Circular No.SMDRP/Policy/Cir-32/99 dated September 14, 1999. Such transactions are also in violation of Regulation 4(a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 as well as Clause A(1), A(4) and A(5) of the Code of Conduct, as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations 1992.

4.3 **Indulging in transactions other than securities transactions**

4.3.1 The enquiry officer found that the member received and paid funds to fellow brokers of the Exchange, without there being corresponding transactions in securities, details being as under:

No.	Broker	Date	Paid/Recd	Amount (in Rs)
1	D K Singhanian	20/04/2000	959701 - HDFC	9,000,000
2	D K Singhanian	8/6/2000	030 - CitiBank	1,18,00,000
3	D K Singhanian	17/6/2000	924347 - HDFC	2,25,00,000
4	D K Singhanian	21/9/2000	924388 - HDFC	50,00,000
5	D K Singhanian	25/1/2001	385402 – Citi Bank	1,25,00,000
6	Ashok K Poddar	1/9/2000	996326 - HDFC	33,00,000
7	Ashok Poddar	15/9/2000	924379 - HDFC	24,00,000
8	Ashok Poddar	9/11/2000	996519 - HDFC	31,00,000
9	Ashok K Poddar	21/12/2000	315496 – Citi Bank	17,00,000
10	Ashok K Poddar	15/2/2001	183527 - HDFC	5,00,000

4.3.2 I have also noted that the member admitted that he had received funds and made payments to other members of CSE, as shown above, explaining these transactions as being in the nature of business accommodation to fellow members, as per the business practices prevalent in the market. He has further stated that he has not carried out any business other than that of securities.

4.3.3 The member has not denied making payments/receiving funds from other members of CSE, without there being corresponding transactions in securities. The substantial quantum of funds transferred between the member and other members, coupled with an absence of any securities transactions between these entities, leads me to believe that the member was involved in transactions not in the nature of securities transactions. Thus, I find that the member has carried out business other than that of securities business, an act prohibited under Rule 8(1)(f) of the Securities Contracts (Regulation) Rules, 1957.

4.3.4 I therefore hold that the member had violated the provisions of Rule 8(1)(f) of SC (R) Rules, 1957.

4.3.5 Hence, I have no hesitation in agreeing with the findings of the Enquiry Officer, that the member :

- i. indulged in large scale off-the-floor transactions, which would have interfered with the fair and smooth functioning of price discovery mechanism of the exchange.
- ii. received and paid substantial amounts to fellow brokers without there being corresponding transactions in securities.

5. **ORDER**

5.1 I am satisfied that this is a fit case to impose a penalty of suspending the registration of the member.

5.2 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 Man Mohan Damani, member, Calcutta Stock Exchange Association Limited, having SEBI registration no. INB030766312, for a period of six months.

This Order shall come into effect on the expiry of 21 days from the date of this Order.

Place: Mumbai
Date : July 2 , 2004

A K BATRA
Whole Time Member
Securities and Exchange Board of India