

## SECURITIES AND EXCHANGE BOARD OF INDIA

### ORDER

UNDER REGULATION 13(4) OF THE OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.AGAINST DEVKI FINANCE & TRADING PVT. LTD., SUB-BROKER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF M/S CELLULOSE AND CHEMICALS PVT. LTD.

#### BACKGROUND

1. Devki Finance & Trading Pvt. Ltd. (hereinafter referred to as "DFTPL") is a sub-broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration no. INS010417330, working with Panorama Shares & Stocks Ltd., a broker registered with SEBI, under the certificate of registration no. INB010675530.
2. Cellulose and Chemicals Pvt. Ltd. (Now: Ask Me Info Hubs Ltd., hereinafter called as "CCPL") is a company engaged in trading activities. The company's shares are listed on The Stock Exchange, Mumbai (BSE) since 1984.
3. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation into the dealings in the scrip of CCPL. It was prima-facie found that DFTPL was responsible for:
  - a. Allowing trading for its client Mrs. Smita Kirti Shah, who along with other entities, participated in hammering down the price of the scrip, by indulging in non-genuine trade transactions, thereby creating a misleading appearance of trading in the scrip of M/s Cellulose.
  - b. Failure on its part to exercise due skill, care and diligence in the conduct of its business as Sub Broker as per the provisions of clause A(2) of Code of Conduct for Sub Brokers as Specified in the Schedule II (Regulation 15) of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

#### ENQUIRY PROCEEDINGS

4. In the light of the above prima-facie findings, an enquiry officer was appointed vide order dated July 24, 2003, read with SEBI order dated September 18, 2003, to enquire into the contraventions, if any, of the provisions of SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992, by DFTPL.
5. The Enquiry officer submitted his report to SEBI on 05.02.2004, with the recommendation that the certificate of registration granted to the said sub-broker be suspended for a period of 4 months.

#### SHOW CAUSE NOTICE

6. A show cause notice dated 13.02.04, under Regulation 13(2) of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "enquiry regulations"), was issued to DFPTL, whereby DFPTL was called upon to show cause as to why the action, as may be considered appropriate, should not be taken against it. It was further mentioned in the notice that if DFPTL failed to give a reply within the period mentioned therein, it would be presumed that it had nothing to say in this matter and SEBI would be free to take such action as deemed fit.
7. DFPTL has not replied to the above show cause notice till date. Since appropriate opportunity has been provided to DFPTL, I am of the view that the principles of natural justice have been adequately complied with and hence, I have no hesitation to proceed further in the matter and to pass an appropriate order in the matter, based on the findings of the enquiry officer and other material available on record.

#### FINDINGS

8. I have taken into consideration the material available on record, including the show cause notice issued to DFTPL, the enquiry report, the submissions made by them in reply to the notice. My findings are as under.
9. CCPL made a preferential issue of 20.5 lac shares, at the rate of Rs. 35 per share, on 17.08.2000. As per the provisions of the SEBI (Disclosure and Investor Protection) Guidelines, 2000:

The issue of shares on a preferential basis can be made at a price not less than the higher of the following:

- i) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date;

OR

- ii) The average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.

["relevant date" for the purpose of this clause means the date thirty days prior to the date on which the meeting of general body of shareholders is held, in terms of Section 81(1A) of the Companies Act, 1956 to consider the proposed issue.]

10. As per the aforesaid guidelines, the "relevant period" for determining the minimum price for issue of shares on a preferential basis by CCPL was 18.01.2000 to 14.07.2000. It was observed that the share price of the company showed a persistent and steady decline during this period.

11. Investigations into the dealings in the shares of CCCP, at BSE, revealed that

- i. The scrip was traded only on 18 days during the years 1998 and 1999.

ii. The trading in the scrip during the year 2000 started from 05.04.2000 and ended on 28.09.2000.

iii. In this period, the highest price of Rs. 71.25 was recorded on 05.04.2000 i.e. on the first trading day for the scrip for the year 2000. From this high, there was a persistent and steady decline in the price of the shares. The lowest price of Rs. 2.65 was recorded on 14.08.2000.

iv. It was also observed that on most trading days only a single trade of 50 shares was recorded. Only on 3 occasions did the traded volume cross 1000 shares.

12. Further investigations established that there was price manipulation in the scrip during the relevant period; the share price was hammered from Rs. 71.25 on 05.04.2000 to Rs. 13.30 on 14.07.2000, thereby enabling the company to issue shares at a rate beneficial to the preferential issue allottees. It was also established that major trades in the scrip were done by persons who were either connected to CCPL or were beneficiaries of the preferential issue or were connected to such beneficiaries.

13. DFTPL, then a sub-broker of M/s Nirmal Bang Securities Pvt. Ltd., then broker of BSE, traded for one such person, Smt. Kirti Shah. It was observed that

i. DFTPL had sold 800 shares on behalf of its client Mrs. Smita Kirti Shah, from June 01, 2000 to June 22, 2000, in lots of 50 shares on each succeeding day, the transaction on each day being at lower circuit filter rates.

ii. On most of the days the scrip (M/s Cellulose) hit the lower circuit filter due to the trades done by Mrs. Shah at the lower circuit filter rates and her transactions have enabled M/s Cellulose to issue shares in the preferential issue (on August 17, 2000) on lower rate of Rs. 35.00 per share, to the benefit of the preferential share allottees.

iii. From the client introduction form of Mrs. Smita Kirti Shah submitted to DFTPL, it was found that she had been introduced by Shri Navnit N Patel on April 04, 2000 (one day prior to the first trading day – April 05, 2000 in the scrip of Cellulose & Chemicals Ltd. during the year 2000). Shri Navnit N Patel is a director of the company CCPL. Shri Navnit N Patel, in his statement to SEBI, has accepted that he has introduced Mrs. Smita Kirti Shah to DFTPL.

14. In his submissions, Mr. Bipin Shah, Director, DFTPL had stated that:

a. Mrs. Smita Kirti Shah had sold only two shares of CCPL.

b. Mrs. Smita Kirti Shah came to him for the purpose of selling of her shares of M/s Cellulose at any rate and therefore, he tried to sell them off.

c. The fall in the share price was natural as there were no buyers for the shares.

d. They had no knowledge of the preferential allotment and they had not subscribed to the same.

15. It is clear that DFTPL allowed trading for its client Mrs. Smita Kirti Shah, based on introduction from Shri Navnit N Patel, Director of CCPL; a fact that has been accepted by Shri Navnit N Patel in his statement.

16. DFTPL's Submission in their letter dated 26-12-2003, that his client Mrs. Smita Shah had sold only two shares of CCPL, is an incorrect statement. As brought out in the investigation report, Mr. Bipin Shah, Director, DFTPL had himself stated that totally, DFTPL had sold 800 shares of CCPL on behalf of Mrs. Smita Kirti Shah from June 01, 2000 to June 22, 2000 and that on each succeeding day he had sold 50 shares.

17. The Client, Mrs. Smita Kirti Shah, was introduced to DFTPL by Shri Navnit N Patel, Director of CCPL. Even if the sub-broker's contention that he was unaware of the preferential allotment, is accepted, the sub-broker should have been alerted by the fact that the client, who he knew was related to CCPL, was trading in the scrip of CCPL itself, which was a thinly traded scrip. The sub-broker should further have been alerted by the fact that his (sub-broker's) transactions for Mrs. Shah were leading to the scrip hitting the lower circuit filter on most of the days.

18. I hold DFTPL responsible for having allowed its client Mrs. Smita Kirti Shah to trade in the shares of CCPL, who along with other entities, participated in hammering of price of the scrip down, by indulging in non-genuine trade transactions, thereby creating a misleading appearance of trading in the scrip of CCPL and facilitating issuance of shares on a preferential basis at a price beneficial to the allottees.

19. Thus, DFTPL has failed to exercise due skill, care and diligence in the conduct of its business and has hence violated the provisions of clause A(2) of Code of Conduct for Sub Brokers, as Specified in the Schedule II (Regulation 15) of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

20. I am satisfied that this is a fit case to impose a penalty and I agree with the recommendation of the Enquiry Officer regarding suspending the registration of the member. However, I am of the view that the circumstances do not merit a penalty of 4 months, as recommended by the Enquiry Officer.

#### ORDER

21. Therefore, I, in exercise of powers conferred on me under Section 19 of the SEBI Act, read with Regulation 13(4) of the Enquiry Regulations, do hereby suspend the certificate of registration No.INS010417330, granted to Devki Finance & Trading Pvt. Ltd. for a period of 3 (three) months.

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

