

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. JRM SHARE & STOCK BROKERS PRIVATE LIMITED. (SEBI REGN. NO. INB010983033)

WTMN/69/IVD/7/04

BACKGROUND

1. M/s Magic Trading and Agencies Ltd (hereinafter referred to as MTAL) which is listed and traded on The Stock Exchange, Mumbai (hereinafter referred to as BSE) was incorporated as a Public Limited Company in the year 1981. The main objects of the company as per its Memorandum of Association is to carry on trade, occupation or business as general merchants, concessionaires, exporters, importers etc.,
2. As per the distribution schedules submitted to BSE, the issued capital of the company as on September 30, 1999 was Rs.50,00,000/- divided into 5,00,000 shares of Rs.10/- each. As of 30.09.99, Ms. Monica Patel along with her family members, was holding 1,34,350 shares, around 26.9% of the share capital of the company.
3. It is observed from the profit & loss account of MTAL for the year ended March 31, 2000, around 80.0% of the total income i.e. Rs.5.46 lakhs came from interest and profit on the sale of investments. It thus appears that the company is mainly an investment company rather than a trading company.
4. Until February 2000, the scrip of the company was not actively traded and was very illiquid. During the years 1998 and 1999, only three trades took place for a total volume of 900 shares.
5. On 17th February, 2000, the first trade was noticed at a price of Rs.28.25 after a gap of nearly 11 months with volumes of about 4,500 shares. The price of the scrip gradually fell down from Rs.28.25 in February 2000 to reach Rs.9/- by the end of August, 2000. Further the scrip never witnessed an upward movement during the period February 2000 to August 2000. The total trading volume noticed during the period 17.02.00 to 05.11.00, was to the extent of 36,650 shares.
6. The Registrar of Companies, (hereinafter referred to as RoC) Chennai in the second week of December, 2000 received certain complaints, alleging, inter-alia that the promoters were trying to create a big market for the shares and off load their shares in the market, and indulged in insider trading by reducing the price and thereby cheating the innocent public. The ROC, Chennai forwarded these complaints to the Securities and Exchange Board of India (hereinafter referred to as the SEBI).
7. At the instance of SEBI, BSE carried out a preliminary investigation and informed SEBI that MTAL had initiated amalgamation proceedings with another unlisted company namely QPRO IT Services Ltd. under section 395 of the Companies Act, 1956 and had applied for listing of equity shares issued on amalgamation. It was stated that pursuant to the said scheme of amalgamation, which did not involve the court procedures, MTAL had allotted 50,00,000 equity shares of Rs.10/- each to the share holders of QPRO in the ratio of 1:1 with a share holders base of around 269. The Listing Committee, BSE came to the conclusion that the ratio of allotment of shares was not correct and that it was arrived at by hammering the share price on the exchange and therefore the listing application in respect of the additional shares was proposed to be rejected.
8. It was further stated that the investigation carried out by BSE for the period February, 2000 to November, 2000, indicated possible manipulation of the price of the scrip prior to the Extra-ordinary General Body Meeting of MTAL convened to obtain shareholders' approval for the amalgamation scheme.
9. In the light of the above, SEBI undertook formal investigation into the trading of the shares of MTAL. The investigation report, inter-alia, pointed out that the trading in the scrip became active from February 17, 2000 onwards, after nearly one year's stagnation and that two brokers of BSE accounted for almost the entire volumes i.e. about 96.0% of the total volumes in the scrip, during the relevant period. These brokers were JRM Share and Stock Brokers Pvt. Ltd and M. J. Patel Share and Stock Brokers Ltd (hereinafter referred to as JRM and MJP respectively) The report further noted that not only were JRM and MJP found to be acting in concert with each other, but the management of these two broking entities were also related to the erstwhile management of MTAL. These two entities, between themselves, were found to have dealt with four clients namely Ms. Monica Patel, Mr. Dinesh Shah, Mrs. Usha Shah and Mr. Sushil Motishaw who besides being inter related, actively traded in MTAL scrip. These entities were matching orders amongst themselves within seconds.

FINDINGS OF ENQUIRY

10. Based on the above, an enquiry was initiated into the dealings of JRM and according to the enquiry report dated 28.01.04:
 - a. There was no practical difference between the operations of JRM and MJP although on paper and records they were shown as two different entities with separate SEBI registrations
 - b. The entities and the erstwhile management of MTAL were related
 - c. The entities had entered into rampant circular trading to depress the price of MTAL with a view to influence the terms and conditions of the swap ratio culminating in the amalgamation of MTAL with QPRO, an unlisted company. The enquiry officer has recommended suspension of the Certificate of Registration of JRM for a period of five months.

HEARING AND SUBMISSIONS

11. Pursuant to the above, a notice dated 03.02.04 was issued to JRM asking them to show cause as to why the Certificate of Registration granted to JRM should not be suspended for a period of five months, as recommended by the enquiry officer. In reply, the following contentions have been made:
 - a. Access had been denied to vital material/ documents relied upon by the Enquiry Officer for recommendation of the penalty.

b. The procedure followed by the Enquiry Officer was not as per the procedures laid down by SEBI (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 in as much as the notice under Regulation 22(3) by Enquiry Officer had been served directly instead of through concerned Stock Exchange.

c. The Enquiry Officer has not properly considered the provisions of Section 15I and 15J of the SEBI Act while recommending the penalty. Also provisions of Section 15D and 15E of the Act containing the expression "shall be liable to penalty" and its implications were not considered.

d. The following were also not proven or considered by the Enquiry Officer:

- Alleged hammering of price and their influence on the exchange ratio for amalgamation of MTAL and QPRO
- Connivance or connection between JRM, management of MTAL and QPRO
- Genuineness of the anonymous complaints
- Loss or damage caused to any single investor or inducement of any investor to trade in the scrip
- False and misleading appearance of trading in the scrip
- One client who has purchased majority of the shares is still holding the shares duly transferred in his name
- Ms Monica M. Patel has ceased to be a director long time back and she has no control over the management of MTAL during the investigation
- MTAL, a loss making company had incurred a huge loss of Rs.8.42 lakhs during the year ended 31.03.99 and book value of its share of Rs.10/-each was mere Rs.11.04 as on that date.

12. An opportunity was granted to JRM for being heard. At the request of JRM, the hearing rescheduled for 01.04.04 was postponed and held on 28.04.04. During the hearing, JRM made oral and further written submissions.

CONSIDERATION OF ISSUES

13. I have considered the facts of the case, material available on record, the oral and written submission of JRM. JRM has contended that copies of the following documents had not been furnished to them:

- a) The complaints
- b) The Exchange ratio report
- c) The statement recorded by the investigating officer and also by the enquiry officer
- d) The report submitted by BSE to SEBI

I find that copies of all the documents except BSE's report had been furnished to JRM. I note that the investigation report of SEBI, which is relevant and based on which action has been initiated against the broker, had been furnished.

14. I find that service of notice directly to the member is a valid service of notice. JRM has received the notice and made his submissions before the enquiry officer.

15. I note that the proceedings taken up against JRM are under SEBI (Procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002, which is a separate procedure, distinct from adjudication proceedings envisaged under Section 15 of the SEBI Act.

16. It is stated that Ms Monica M. Patel, had ceased to be a director of MTL and had no control over the management of MTAL "during the period of investigation". I observe from the reports that as of 30.09.99, Ms. Monica Patel along with her family members, was a dominant shareholder holding 1,34,350 shares, constituting 26.9% of the share capital of this closely held company.

17. JRM has contended that MTAL was not a fundamentally sound company "deserving a price of Rs.29.50 or so". The profit for the year ended 31.03.98 was Rs. 2.58 lakhs and that for the year ended 31.03.99 was a negative Rs.8.41 lakhs. Thus the book value of share was a mere Rs.11.04 and therefore, its "market price has to come down to reflect its true value". The arguments seem to go to justify the efforts to hammer down the price of MTAL, to its perceived "true value" so as to influence the share valuation for the purpose of amalgamation.

18. JRM has also contended that the trades have been executed through the order matching mechanism of the BSE and there was no possibility of any collusion between JRM and MJP in hammering the price of MTAL. Here, I note that the scrip of MTAL was a highly illiquid one before the trading started from February 2000. The data presented in the following table indicate co-ordinated action on the part of JRM and MJP in hammering down the price of the illiquid scrip of MTAL. A series of transactions of this kind cannot be a mere coincidence:

Member Code	Buy/Sell	Price	Quantity	Date	Time	Difference of time	Remarks
425	B	29.00	2000	17-02-2000	15:23:15		
425	B	28.50	1000	17-02-2000	15:23:23	37 seconds	After a gap of 11 months

338	S	28.50	3000	17-02-2000	15:24:00		
425	B	28.25	1800	17-02-2000	15:24:55	23 seconds	
338	S	28.25	1500	17-02-2000	15:25:18		
425	B	27.25	5000	21-02-2000	14:56:14	20 seconds	Only tran. Reported on that day
338	S	27.25	4000	21-02-2000	14:56:24		
338	B	26.50	5000	24-02-2000	15:27:51	20 seconds	Only tran. Reported on that day
475	S	26.50	5000	24-02-2000	15:28:11		
338	B	24.50	1000	30-03-2000	12:36:17	10 seconds	
425	S	24.50	1000	30-03-2000	12:36:27		
338	B	24.60	1200	30-03-2000	13:29:28	No time gap	
425	S	24.60	1200	30-03-2000	13:29:28		
338	B	24.55	1500	30-03-2000	13:50:41	No time gap	
425	S	24.55	1500	30-03-2000	13:50:41		
425	S	21.00	4500	07-04-00	15:12:04	5 seconds	Only tran. Reported on that day
338	B	21.00	4500	07-04-00	15:12:09		
338	B	19.50	500	10-04-00	11:14:34	9 seconds	
425	S	19.50	500	10-04-00	11:14:43		Only tran. Reported on that day
338	B	21.00	100	10-04-00	15:02:39	2 seconds	
425	S	21.00	100	10-04-00	15:02:41		
338	B	19.50	800	19-04-2000	15:15:40	15 seconds	Only tran. Reported on that day

425	S	19.50	800	19-04-2000	15:15:55		
338	B	17.95	100	20-04-2000	13:45:25	28 seconds	Only tran. Reported on that day
425	S	17.95	100	20-04-2000	13:47:53		
338	S	16.55	100	24-04-2000	15:26:48	17 seconds	Only tran. Reported on that day
425	B	16.55	100	24-04-2000	15:27:05		
338	S	15.50	200	26-04-2000	14:14:05	1 second	Only tran. Reported on that day
425	B	15.50	200	26-04-2000	14:14:06		
425	B	14.50	100	27-04-2000	13:40:31	18 seconds	Only tran. Reported on that day
338	S	14.50	100	27-04-2000	13:40:49		
338	S	13.50	50	28-04-2000	11:14:05	9 seconds	
425	B	13.50	50	28-04-2000	11:14:14		
338	S	12.75	50	02-05-00	12:07:31	No time gap	Only tran. Reported on that day
425	B	12.75	50	02-05-00	12:07:31		

It is noted that the administrative office of both the entities is the same Cama Building, 3rd Floor, 24-26, Dalal Street, Mumbai – 23 and that the two brokers were responsible almost for the entire trade volumes in the scrip as may be seen from the table below:

Particulars	Purchase Volume	Sales Volume
MJP	16200	20750
JRM	18650	15200
Total	34850	35950
Total volume at Exchange	35950	35950
%of volume contributed by the two TMs	96.9	100

Ms Monica Patel was one of the Directors of JRM and she is the wife of Shri Mahesh J Patel, a director of MJP. She was also a director on the board of MTAL. During the period of investigation, Ms. Monica Patel along with her family members, was holding 1,34,350 shares, which works to around 26.9% of the entire share capital of the company. The facts and data presented in the investigation and enquiry report establishes inter connections among the brokers, clients and MTAL, and the transactions in question do reflect the manipulative intent on the part of the broker, JRM.

19. The findings of the investigation and enquiry lead to inescapable conclusion that JRM had hammered the price of M/s. Magic Trading and Agencies Ltd. in collusion with MJP, with a view to influencing the share exchange ratio for the purpose of amalgamation of M/s. Magic Trading and Agencies Ltd with QPRO.

The impugned transactions had been made during February – May 2000, when the SEBI (prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, were in force. It is noted that these Regulations stand repealed effective 17th July, 2003. However, notwithstanding the repeal, the new Regulations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 which repealed the earlier one contains a saving provision under Regulation 13(2) and (3) whereby any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 can be investigated and proceeded against in accordance with the procedure laid down in the new regulations and any investigation pending, at the commencement of the new regulations can be continued and disposed of in accordance with the procedure laid down in the new regulations. In terms of Regulation (4) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995,

No person shall, inter-alia,

"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"

"Indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market" or "enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities."

20. Further, Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 provides that the stock broker holding the certificate of registration shall at all times abide by the Code of Conduct as specified in Schedule II which provide inter-alia, that

A stock broker

1. shall maintain high standard of integrity, promptitude and fairness in the conduct of all his business
2. shall act with due skill, care and diligence in the conduct of all his business
3. shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains and
4. 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.

CONCLUSION

21. I find that JRM Shares and Stock Brokers Pvt. Ltd. had actively indulged in transactions with the intention of artificially depressing the price of M/s. Magic Trading and Agencies Ltd. I am satisfied that JRM is guilty of having violated

(a) the provisions of Regulations 4(a), (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and

(b) the provisions of clauses A of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

I, therefore, agree with the recommendations of the Enquiry officer and I consider that it would be in the interest of investors and securities market to impose a penalty by way of suspension of certificate of registration granted to JRM for a period of five months.

ORDER

22. 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) and 13 (6) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I, therefore, hereby order that the certificate of Registration of M/s. JRM Shares and Stock Brokers Pvt. Ltd., a member of the Bombay Stock Exchange be suspended for a period of five months.

This order shall come into force with effect from 21 days from the date of the order.

Place : Mumbai
Date : 19.07.2004

T. M. NAGARAJAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA