

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 J.B. SHARES & STOCKS LTD., SUB-BROKER TO M/S INDO SHARES AND FINTRADE LTD., MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF M/S VAKRANGEE SOFTWARES LTD.****BACKGROUND**

1. The shares of M/s Vakrangee Software Ltd. (hereinafter referred to as 'VSL') are listed for trading on the Stock Exchange, Mumbai (hereinafter referred to as 'BSE'). On receipt of complaints alleging price manipulation in the scrip of VSL by Shri Harshad Mehta, in connivance with certain entities, SEBI conducted an investigation into the dealings in the shares of VSL. The price volume data of VSL during the period September 1999 to March 8, 2000 was analysed. The share price was found to have increased from Rs.10/- during September, 1999 to Rs.152/- by the end of December 1999 and subsequently to Rs.597/- by March 2000, signifying that the price of the VSL scrip had substantially moved upwards during a short span of period.
2. Investigations also revealed that on certain days the price rise was 8% higher (maximum permissible in a day) than the previous closing price, with low volumes, and the circuit filter did not even open on certain days, which means the transactions took place at 8% higher than the previous closing price immediately on the opening of the trading session and the price did not come down from that level, as the pending buy orders at circuit limit was not fully exhausted. Repeated occurrences of such instances during several trading days appear to have caused sharp rise in the price of the scrip in a short span of time.
3. Investigations found prima facie involvement of certain brokers and other intermediaries in increasing the shares price of VSL during the aforesaid period. Separate enquiries were held against such entities, as per the procedure prescribed under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.
4. One such broker which was found to have transacted significant quantities in the shares of VSL was M/s Indo Shares and Fintrade Ltd., member, The Stock Exchange, Mumbai, which had traded on behalf of his sub-broker M/s JB Shares & Stocks Ltd. (hereinafter referred to as 'JB shares'). It was found that both, the broker M/s Indo Shares and Fintrade Ltd. and the sub-broker JB Shares were promoted by Shri Jasmine Shah, director on both these entities. It was also found that M/s Indo Shares and Fintrade Ltd. had indulged in short selling large quantities of shares of VSL on behalf of JB shares, which it was subsequently unable to deliver to BSE and was hence declared a defaulter by BSE.

ENQUIRY PROCEEDINGS

5. In view of the above facts, an enquiry was ordered against JB Shares According to the procedure laid down under law, show cause notice was served on JB Shares by the Enquiry Officer (hereinafter referred to as "E.O.") and the replies from JB Shares were received. Opportunity of hearing was also given to JB Shares by the E.O.
6. Having considered of the findings of Investigation, replies of JB and their oral submissions, the E. O. submitted his report on October 23, 2003. His findings regarding violations of JB shares were as follows:-

"JB Shares has not exercised due care and skill while entering or executing the trades on behalf of his clients or purported to have been executed on behalf of his clients. JB Shares has failed to exercise the required standards of integrity, promptitude and fairness while conducting his business transactions. Therefore, JB Shares is guilty under Clause A(1) and A(2) of Code of Conduct specified in Schedule II, compliance of which is mandatory for sub-brokers in terms of Regulation 15(1) (b) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992."
7. In view of the above findings, the E.O. has recommended that the certificate of registration granted to JB Shares be suspended for a period of one year.

SHOW CAUSE NOTICE AND REPLY

8. A show cause notice dated November 05, 2003 was issued to JB Shares, enclosing a copy of the Enquiry Report. JB shares was advised to reply to the said notice within 15 days of receipt of the notice.
9. A reply was submitted by JB Shares in response to the show cause notice. JB Shares submitted that since the last date of hearing before the E.O. was in April 2003 the report of E.O. coming after a lengthy interval of more than 6 months thereafter was clearly vitiated and no cognizance could be taken thereof.

10. They also submitted that the E.O. has misconstrued and / or misunderstood their arguments and failed to consider the same. JB Shares had submitted that the show cause notice dated June 25, 2002 was vague since the particular regulation which had been allegedly contravened was not cited.
11. JB also submitted that order appointing EO/ SCN was totally vague since no particulars of any rule or regulation which was allegedly contravened by JB was given therein.
12. They also submitted that although they had invited the attention of EO for investigation report being without any application of mind in as much as Regulation 7 of Chapter II of SEBI (Stock Brokers and Sub-Brokers / Rules and Regulations) 1992 since it did not apply to sub brokers but only to stock brokers, the E.O. had failed to appreciate the said contention. They further said that the E.O. ought to have appreciated that the Regulation pertaining to Code of Conduct for sub-brokers was Regulation 15 and not Regulation 7. They also objected to the rectification filed by the Presenting Officer, since quoting the wrong provision had deprived JB Shares of opportunity of dealing with the said allegation.
13. JB Shares has contended that the order of investigation was dated May 2000, which was based on the complaint regarding rigging of shares of M/s Vakrangee Softwares Ltd. Accordingly, the order of investigation only pertained to historical events which had taken place prior to the issue of the order of investigation. Thus, JB submitted that any enquiry or investigation after the date of issue of order of investigation was clearly beyond the scope of the same and no action could or should be taken on such findings.
14. JB Shares also objected to the investigation report, stating that it was completely silent on the persons behind the rigging of the scrip of Vakrangee Softwares Ltd. from Rs.10/- to Rs.600/- and on the contrary concentrated on certain inconsequential and immaterial transactions of JB Shares for the period subsequent thereto, when there was no allegation of manipulation of rigging of the price nor was there any significant change in the price. It was also said that the Investigating Officer had merely sidestepped this issue by claiming that the matter is subjudice. They further said that the rigging of the price between the period September 1999 to March 2000 was not subjudice.
15. They added that the allegations in the report of E.O. are not against the "broker" trading recklessly but against the "clients" trading recklessly. According to them, no liability could be foisted on JB Shares on this account. With respect to allegation on violation of Regulation 7, it was said that the same was not applicable for JB. Thus, the two allegations, as included in the investigation report, are not applicable at all to JB Shares. JB also said that the two allegations as included in the investigation report are not at all substantiated. Thus, JB submitted that there was no reason to hold them guilty of any infraction under the SEBI Act or Rules and Regulations thereafter.
16. JB also contended that the E.O. had taken the alleged failure of the broker to produce certain documents, out of context.
17. As regards the failure of the broker to deliver the shares of VSL, JB shares submitted that the E.O. failed to properly appreciate that JB Shares was unable to take delivery of shares from M/s Kirit Sheth in view of the premature deactivation of the terminal of the main broker and the failure of the stock exchange to respond to the request of Shri Kirit Sheth, who merely wanted an assurance that he would be given proper credit for delivery of shares which he was ready to deliver but in view of the deactivation of the terminal of the main broker had certain reservations about. JB also said that this aspect has not been taken into consideration at all by the E.O.
18. JB submitted that the E.O. had failed to appreciate that JB Shares had made pay-in for settlements upto 23.6.2000. For settlements thereafter, delivery dates were 29th and 30th June 2000 and 3.7.2000 for rolling settlements 62, 63 and 64. It was said that Shri Kirit Sheth was ready to give delivery on 28.6.2000. However, in view of the deactivation of the broker's terminal, by BSE and in the absence of any positive assurance from the Bombay Stock Exchange that payment would be given for shares delivered by him, the said Shri Kirit Sheth refused to deliver the shares.
19. They also submitted that the E.O. failed to appreciate that JB Shares had been shown 4,00,000 lakh shares of VSL held by one Parsram Jamnani which shares were being sold by Kirit Sheth. They stated that, JB Shares could not be charged with reckless trading as JB Shares had physically verified the shares in the custody of Kirit Sheth before the same were sold.
20. They also stated that the observation in report of E.O. regarding alleged failure of JB Shares to exercise due skill and care having affected himself, the main broker and also other share holders, was based on surmises and conjectures and not on actual facts.
21. JB also submitted that the E.O. had failed to consider that no details were furnished in the inspection report about the alleged harm done to the safety and integrity of the market by the transactions of JB Shares. According to them, in the absence of such details and particulars, no finding could have been given against the JB regarding reckless trading.
22. They also contended that the penalty sought to be levied by the E.O. is wholly disproportionate to the alleged violations stated to have been committed by them. They said that there is no allegation of manipulation or rigging of the scrip but mere allegation of reckless trading by the "clients" (and not by JB Shares) which JB Shares permitted. Further, the allegation, they said, was of failure to keep proper records and documents (which incidentally is not even the charge in the

investigation report against JB Shares). They submitted that they should be exonerated from all charges in the enquiry in question and the enquiry should be closed.

HEARING

23. An opportunity of hearing was granted on January 14, 2004 to JB Shares, which was communicated to it vide letter dated December 30, 2003. Sean Wassoodew, Advocate for JB Shares attended the hearing and made submissions. The submissions were similar as that in the reply of JB shares to the show cause notice. They also said that the recommendation of major penalty by the E.O. was without merit. It was also submitted that the investigation report, the enquiry report or the show cause notice had not made out grounds of violation alleged against them. According to them, recklessness, if any, was to be attributed to the client and not to the sub-broker, through whom the trades are done.

FINDINGS

24. I find that Shri Jasmine Shah, Managing Director of Indo Shares & Finstock Ltd., Member of Bombay Stock Exchange, (who was subsequently declared to be a defaulter) was also the Director of J B Shares and Stock Limited, sub broker of Indo Shares and Finstock Ltd.
25. As regards the contention of JB that the order issued by the Executive Director was vague as it did not contain specific mention of violation of Regulations, I also concur with the finding of E.O. that the order issued by the Executive Director, SEBI does not have any infirmities and the Show Cause Notice did specifically mention the violations in the last paragraph hence the same is untenable.
26. As regards the contention of JB Shares that the Regulation 7 of the Chapter II does not apply to stock brokers and that therefore, the investigation report was prepared without any application of mind, I note that rectification was done and the finding was also been expunged before the E.O. himself. It is for the said purpose that a hearing is granted and they were given opportunity to address to all the charges leveled against them. There should be no issues regarding the same since the charge of violation of Regulation 7 is no more applicable.
27. As regards the broker's contention that Regulation (1) of Regulation 28 of SEBI (Stock brokers & sub brokers) Regulations, 1992, has no application to sub brokers, I find that the application of Regulation 28 is applicable to the sub brokers also. Regulation 16 of the said Regulations clearly specifies that "*the provisions of Chapter IV, V & VI of these Regulations shall apply to a sub broker as they apply in case of a stock broker*". Hence it is clear that, Regulation 28(1) is also applicable to sub brokers."
28. As regards JB's contention that the investigation report goes beyond the Order of investigation, I again agree with the E.O. that the investigation team has its right to look into all the aspects related to the facts and circumstances of the case and also the incidentals thereto. Therefore, the Order issued by the Chairman is in order.
29. As regards the broker's contention that the report does not disclose the names of the other brokers and their respective clients, the Presenting Officer had mentioned that various brokers were asked to furnish the details of the transactions in the scrip of VSL. The Presenting Officer mentioned that the statements of the brokers who have transacted in large quantities or who had placed large orders were also recorded. In any case, I find that whether the other brokers were charged or not, is not a matter to be considered under the present scope of enquiry. The scope of enquiry before the Enquiry Officer is limited to the extent of deciding on the charges as contained in the Show Cause Notice.
30. The E.O., I find had examined the following issues while adjudging the merits of the case, are:
- i) Whether the broker, JB Shares has transacted in large quantities ?
 - ii) Whether the broker had recklessly traded or allowed clients to trade recklessly in the scrip of VSL ?
31. I have noted that the broker Indo Share and Fintrade Ltd., acting on behalf of JB Shares, had short sold large quantities of shares of VSL in the period June 12 to June 26, 2000. However, the broker/sub-broker failed to deliver a single share against these transactions. The broker was declared a defaulter by BSE as he could neither deliver the shares nor make payment in respect of the difference arising out of auction/close out of these transactions.
32. I have examined the data relating to the broker's transactions that were furnished in the investigation report, which is reproduced hereunder:

a) Transactions by J B Shares :

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
28/99-2000	284100	258700	25400
29/99-2000	80100	92500	12400
30/99-2000	50900	28400	22500
31/99-2000	144800	56800	88000

32/99-2000	258300	195900	62400
33/99-2000	94300	118500	24200
34/99-2000	0	5100	5100
35/99-2000	600	45600	45000
36/99-2000	0	75000	75000
37/99-2000	6500	1000	5500
38/99-2000	71600	89300	17700
39/99-2000	11000	11500	500
40/99-2000	5000	5000	0
41/99-2000	1000	1000	0
05/2000-2001	22400	22400	0

From the data provided in the above tables, I find that J B Shares and Stock Ltd. together with Indo Shares and Finstock Ltd. have transacted in large quantities in the scrip of VSL.

I have also observed that JB shares had claimed that the above transactions were done by them on behalf of the following clients ;

b) Client name : Dinesh Nandwana

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
25/99-2000	3600	72900	69300
26/99-2000	10200	81000	70900
27/99-2000	51900	62100	10200
28/99-2000	284101	108401	--
29/99-2000	1	92301	92300
30/99-2000	50901	28401	22500
31/99-2000	114600	56800	57800
32/99-2000	258300	195900	62400
33/99-2000	94300	118500	24200
34/99-2000	0	5100	5100
35/99-2000	600	45600	45000
36/99-2000	0	75000	75000
37/99-2000	6500	1000	5500
38/99-2000	71600	89300	17700
39/99-2000	11000	11000	0
40/99-2000	5000	5000	0
41/99-2000	1000	1000	0

c) Client name : Ratnamani Metals and Tube Ltd.

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
25/99-2000	105000	0	105000

d) Client name : Kirit Rasiklal Shah

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
25/99-2000	0	150000	150000

e) Client name : Ratnamani Food Products P. Ltd.

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
25/99-2000	45000	0	45000
29/99-2000	29800	0	29800

f) Client name : Manohar Manak Alloys P. Ltd.

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
29/99-2000	50100	0	50100

g) Client name : Jugal Karnani

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
31/99-2000	14600	0	14600

h) Client name : Indu Maheshwari

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
31/99-2000	15600	0	15600

33. As regards the transactions alleged to have been done by the client Shri Kirit Shah, of sale of 1,50,000 shares of VSL (table (d) above) and that of Shri Jugal Karnani (table (g) above), I decline to give my findings, as the matter is sub judice before the Bombay High Court.
34. Similarly, as regards the details given about the transactions made in the name of Dinesh Nandwana, Ratnamani Metal and Tubes Ltd. and Ratnamani Food Products Pvt. Ltd., I find that no allegation was made on these transactions.
35. As regards the transactions carried by the broker during June 12 to 26, 2000, I find that these transactions are of large quantities and constituted 71.29% (undisputed by the broker) of the total orders put in the system on BSE during that period. I have also observed that JB shares had failed to deliver a single share as against these large short sales. I note that JB Shares, in his written reply, has made submissions that these transactions were done on behalf of its client Shri Kirit Sheth and that it should not be found guilty on account of Shri Kirit Sheth not delivering the shares to him.
36. In this regard, I agree with the E.O that JB Shares, being the Sub-broker in the said transactions, cannot be found guilty for his client not delivering the shares. However, at the same time, I find that JB Shares has been lax in exercising due diligence while entering such trades. M/s J B Shares should have been much more careful while entering such large quantities of orders (total sell orders of 7,64,015 shares of VSL).
37. I have observed that the first default of Shri Kirit Shah occurred on June 20, 2000, when he failed to deliver the shares sold by him on June 12, 2000. However, despite this failure of the client to deliver the shares, I find that J B Shares allowed the said client to further sell 16,150 shares on 21st June, 2000, 66,805 shares on 23rd June, 2000 and 2,17,334 shares on 26th June, 2000 Hence, I agree with the finding of E.O. that J B Shares has not exercised the due care and skill that should have been exercised by a sub-broker before entering such large orders.
38. I have noted the argument of J B Shares to the effect that The Stock Exchange, Mumbai had deactivated the terminal of his main broker M/s Indo Shares on 26th June, 2000, because of which he could not have delivered the shares and hence he should not be held responsible for failure to deliver the shares. I have however observed that the terminal was switched off on 26th June, 2000, whereas, the client of J B Shares, Mr. Kirit Sheth, was not delivering the shares from 20th June, 2000 onwards. Since the client had failed to deliver shares on 20th June, 2000, as against his sale on June 12, 2000, the broker should have immediately stopped his client from trading any further. On the contrary, I find that JB Shares had allowed his client to trade continuously upto 26th June, 2000, the day on which the terminal was deactivated. The failure of the Sub-broker to exercise due skill and care has not only affected himself and his main broker, but also might have had an impact on other shareholders at large who were trading in the scrip of VSL during that period of time. I also find that allowing such huge and reckless trading without exercising due skill and care would have had its impact on safety and integrity of the market at large.
39. J B Shares has argued that The Mumbai Stock Exchange has asked for early pay in of the shares and his client Shri Kirit Sheth was ready to give delivery directly to the Exchange on 28th June, 2000 with a condition that the payment should be made directly to him (the client), which was not responded by the Mumbai Stock Exchange. In the instant case, I note that the Mumbai Stock Exchange has asked for an early pay-in from the broker but not from his client. Apart from the issue of fulfilling the obligation on the part of the broker to make early pay-in, as required by the Mumbai Stock Exchange, the broker, in the first place, had allowed his client to short sell shares despite the fact that the broker did not get the delivery of shares from 20th June, 2000 onwards for the transactions entered by his client Shri Kirit Sheth from 12th June, 2000 onwards. Therefore, I find that JB Shares was fully aware that his client has failed to deliver the shares and despite this fact he continued to allow him to short sell the shares subsequently. The Stock Exchange, Mumbai, not responding to his client Shri Kirit Sheth's request to make direct payment for the shares the client intended to deliver cannot be taken as a valid ground to show that the broker's obligations to perform certain responsibilities are fulfilled. A client straight away approaching the Mumbai Stock Exchange for seeking a direct payment is a matter which ought to be decided by the Mumbai Stock Exchange itself.
40. I note that Shri Jasmine B. Shah had argued before E. O. to prove that these transactions were exclusively carried out by his clients and he is in no way connected with these transactions. In this regard I find that the broker had entered into many questionable transactions with various clients without adhering to proper procedure such as not taking the payment or making the payment directly to his clients or delivering the shares or taking the delivery of the shares directly from the clients. In this connection I consider it necessary to take note of the investigation report pointing out that the broker did not maintain a proper documentation in many transactions carried by him. Non adherence to the procedure by Shri Jasmine Shah as outlined in the investigation report is mentioned here under :

That the broker failed to produce :

- copies of account opening form for the client

- copy of client registration agreement
- copies of contract notes duly acknowledged by the client
- copies of bills duly acknowledged by the client
- evidence in the form of demat account of the client reflecting delivery of shares
- evidence in the form of physical delivery of shares and acknowledgement obtained from the client for the delivery of shares.

I find that non production of documents in any form as mentioned above is a serious violation on the part of the sub-broker M/s J B Shares.

41. Under the circumstances mentioned above, I concur with the finding of E.O. that JB Shares has not exercised due care and skill while entering or executing the trades on behalf of his clients or purported to have been executed on behalf of his clients. The broker has failed to exercise the required standards of integrity, promptitude and fairness while conducting his business transactions. Hence, JB Shares is guilty under Clause A(1) and A(2) of Code of Conduct specified in Schedule II, compliance of which is mandatory for sub-brokers in terms of Regulation 15(1) (b) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

ORDER

41. Therefore, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 I hereby direct that the certificate of registration granted to JB Shares & Stocks Ltd. be suspended for a period of one year.
42. This order shall come into force with effect from three weeks from the date of this order.

PLACE : MUMBAI

DATE : AUGUST 19th, 2004

**A.K.BATRA
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA