

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 NVS BROKERAGE PRIVATE LIMITED, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE CASE OF SNOWCEM INDIA LIMITED.

BACKGROUND

1. NVS Brokerage Private Limited (hereinafter referred to as "the said broker") is a member of Bombay Stock Exchange (hereinafter referred to as "BSE") and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide registration no. INB010995139.
2. National Stock Exchange of India Limited (hereinafter referred to as 'NSE') conducted an internal investigation in the scrip of M/s Snowcem India Ltd (hereinafter referred to as 'SIL') for the period 03.06.1999 to 10.08.1999 and submitted its report to SEBI. Thereafter, SEBI carried out a detailed investigation of the dealings in the scrip of SIL. The investigations, inter alia, revealed that :
 - Kosha Investments Ltd (hereinafter referred to as 'KIL') and one Shri Sourabh Bora were the predominant traders in the scrip during the period of investigation.
 - KIL was the promoter group company of SIL, a fact that has been agreed to by the management of SIL.
 - Funds flow revealed KIL had received funds from SIL, that were time and again utilised for the purpose of making payments to brokers, in lieu of trades done in SIL. The timing of the fund transfers from the books of SIL to the account of KIL and from KIL to the accounts of the brokers/sub brokers suggested that there were clear-cut intentions on the part of the company to manipulate the scrip price of SIL. The contention that the company was not aware of the details of the funds utilisation by KIL is without any conviction. In almost all the occasions it was observed that funds were transferred from the account of SIL and credited into the account of KIL, prior to their placement of transactions in the scrip of SIL.
 - It is observed that KIL was the predominant buyer in the scrip and it was its trading which was responsible for the price movement in the scrip of SIL. From the trading details submitted by the exchanges it appeared that KIL had employed manipulative tactics either to maintain the scrip price and/or to increase the price. In view of the fund transfers that occurred frequently, it appeared that the management of SIL was directly responsible for the price movement in the scrip during the aforementioned period.
 - SIL had issued some forfeited shares to Shri Bora. On investigation, it was seen that SIL had transferred funds to the account of KIL, its promoter group company, and on the very same day two other transactions had taken place i.e. one wherein KIL transferred the funds to Shri Sourabh H Bora to enable him to make payments towards the allotment of forfeited shares and second transaction being Shri Sourabh Bora making payments to SIL in respect of the forfeited shares allotted to him. The fund transfers suggest that SIL was very well aware that it has lent the money for the purpose of making payments towards forfeited shares. It was also seen that although Shri Sourabh H Bora had given cheques during the first week of September 1999, these cheques were presented to the bank for realisation only in the last week of September 99 and the actual realisation of the cheques took place on October 1, 1999 (after the bank account of Shri Sourabh Bora was adequately capitalized by way of transfer of funds from SIL). In addition to the above, the records indicate that Shri Sourabh H Bora still owes more than Rs. 6 crores to KIL, which in turn owes more than Rs. 15 crores to SIL. It is clear that Shri Bora has not made the payments to the company towards the forfeited shares allotted to him and the whole matter was just a book entry and the company has managed to create shares without actual infusion of funds.
3. It was seen that KIL and Shri Bora indulged in trading in the scrip of SIL, through 11 members of BSE and NSE, including through the said broker. The names of the brokers through whom KIL and Shri Bora had traded are as follows:

Member Name	Exchange	Member Name	Exchange
Indraprastha Holdings Ltd.	NSE	M.J. Patel Share & Stock Brokers Ltd.	BSE
Triveni Management Consultancy Services Ltd.	NSE	Bishwanath M Jhunjunwala	BSE
Master Capital Services Ltd.	NSE	Kaynet Capital Ltd.	BSE
Kasat Sec. (P) Ltd.	NSE	NVS Brokerage (P) Ltd.	BSE
Nariman Finvest (P) Ltd.	NSE	Joindre Capital Services	BSE

4. The said broker had traded in the scrip of SIL mainly on behalf of M/s. Bajaj Auto Ltd., Shri Sourabh H Bora, and also in the name of one of its directors, namely, Shri N V Shah.

Trading details of M/s. Bajaj Auto Ltd. through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	50,000	-	50,000	50,000

Trading details of Shri Sourabh H Bora through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	-	25,000	25,000	-25,000
22	22,900	2,100	25,000	20,800
Total	22,900	27,100	50,000	-4,200

Trading details of Shri N V Shah through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	10,000	-	10,000	10,000
21	-	1,700	1,700	- 1,700
23	-	3,100	3,100	- 3,100
24	-	3,100	3,100	- 3,100
Total	10,000	7,900	17,900	2,100

5. It was seen from the extracts of Trade Log of BSE that the said broker had bought for one client and sold for another at the same time by matching the orders. It was seen that the buy and sell orders were executed at the same rate.

Qty	Price	B/S	Trade Date Time	Cnt Pt Cd	Client Cd
15000	116.00	B	1999-08-06 15:16:22.000	D0531	4237
15000	116.00	S	1999-08-06 15:16:22.000	D0531	5509
10000	116.00	B	1999-08-06 15:16:42.000	D0531	4237
10000	116.00	S	1999-08-06 15:16:42.000	D0531	5509
500	152.00	B	1999-08-19 12:38:47.000	D0531	5509
500	152.00	S	1999-08-19 12:38:47.000	D0531	7436
9700	151.35	B	1999-10-27 12:52:41.000	D0531	7410
9700	151.35	S	1999-10-27 12:52:41.000	D0531	MAITRY

6. As stated above, the said broker had traded for Shri Sourabh H Bora, who was found to be one of the main clients trading in the scrip of SIL. Shri Bora was in turn found to be acting hand in glove with the management of both SIL and KIL, in the manipulation of the scrip of SIL.

7. Shri N V Shah, who is a director of the said broker, had also traded in the scrip on his own account.

8. In view of the above, it was alleged that the said broker had aided and abetted Shri Bora in his manipulative and fraudulent transactions in SIL. Also, in view of the fact that Shri N V Shah, the director of the said broker had also traded in the shares of SIL, it was alleged that the said broker had not exhibited the high standards of integrity, fairness and professionalism expected of a registered intermediary, while dealing in the aforesaid scrip; their transactions having contributed to artificial volumes in the market. It was also observed that the said broker had not taken margin from most of his clients. The said broker had therefore failed to exercise due skill, care and diligence and has violated the provision of Code of Conduct laid down in Schedule II read with Regulation 7 of SEBI (Stock brokers and Sub brokers) Regulations, 1992(hereinafter referred to as "the said regulations"). More specifically, the said broker had violated the provisions of clauses A(1) to A(4) of the code of conduct. The said broker was also found to be guilty of having violated the provisions of Regulation 4 (a) and (b) of SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.

ENQUIRY REPORT AND RECOMMENDATION

9. Pursuant to the investigation, an enquiry officer was appointed to enquire into the dealings of the said broker in the shares of SIL, who after conducting the enquiry as per the procedure laid down under SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the said regulations") submitted a report dated 31.03.2004, with the recommendation that the registration of the said broker be suspended for a period of one month.

SHOW-CAUSE NOTICE

10. Pursuant to the receipt of the enquiry report, a show cause notice dated 02.04.2004 was issued to the said broker, along with a copy of the enquiry report. The said broker submitted a reply vide letter dated 24.04.2004. I proceed to examine the issues as under.

ISSUES FOR CONSIDERATION

11. Allegation

The said broker did not collect margin from his clients, which is in violation of SEBI Circular SMDRP/POLICY/CIR-35/98 dated 11-12-1998 and therefore the conduct of the said broker is found to be in violation of the code of conduct as specified in Schedule II of SEBI (Stock-brokers & Sub-brokers) Regulations, 1992.

Reply

The said broker vide his letter dated 24/4/2004, inter-alia, submitted as follows :

"In terms of the show cause notice dated 3/10/03, there are only two clients viz. Mr Bora & Mrs Maitry Shah in respect of whom we had not collected initial margin for valid reasons. As far as Mr Bora was concerned, he had sold the shares and for the sale transactions he had deposited the shares in our demat account and therefore there was no necessity of collecting margin from him. It is submitted that Mr Bora had sold 25,000 shares on 6/8/99 in Settlement No. 20 through us. Since the shares were deposited by Mr Bora in our demat account before the transaction was executed, therefore it was not necessary to collect the margin in cash. Further, Mr Bora had purchased 22,900 shares through us in Settlement No 22 and sold 2100 shares in the same Settlement. This resulted in net purchase of 20800 shares by Mr Bora through us. Mr Bora was maintaining a running account with us at that point of time and there was enough margin kept in his account for the said purchase transaction of 20,800 shares".

Finding

I find that as per SEBI's circular no.SMDRP/POLICY/CIR-35/98 dated 11/12/98 (although the enquiry officer inadvertently mentioned it as no. SMD/POLICY/Cir-35/98 dated 4/12/98), it was mandatory for the said broker to collect margins from clients in all cases where the margin dues in respect of the client's trades in the settlement would work out to be more than Rs.50,000/-. The margin so collected was to be kept separately in the client bank account and utilized for making payment to the clearing house for margin and settlement with respect to that client's settlement obligations.

Admittedly, the said broker had not collected margins from the two clients, namely, Mr. Bora and Mrs. Maitry Shah and had therefore violated the provisions of SEBI's circular no.SMDRP/POLICY/CIR-35/98 dated 11/12/98. Therefore, I hold the said broker guilty on this count.

12. Allegation

The said broker has violated clauses (1), (2), (3) and (4) of Code of Conduct as specified in Schedule II of SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992.

Reply

The said broker denied that it had violated the provisions of the clause 1 of Code of Conduct in as much as it has never failed to maintain high standards of integrity, promptitude and fairness in the conduct of all its business. With regard to contravention of said Clause 2, the said broker, inter-alia, submitted as follows:

"The said order which Enquiry Officer is referring to has been passed by SEBI very recently i.e. on 21/11/03 (SEBI order against Shri Bora). We are at loss to understand that how we could have known this fact at that point in time and how by executing the said transactions on behalf of Mr Bora, when there was no adverse order against him, we failed to exercise due skill and care, as alleged".

As regards the contravention of clause (3) of the Code of Conduct, the said broker submitted as follows :

"It is submitted that we have not indulged in any manipulative, fraudulent or deceptive transactions or schemes as alleged. There is not even a whisper about any intention on our part to do the alleged acts, in the Enquiry Report, which is a crucial and determining factor for leveling the said charges of indulging in manipulative, fraudulent or deceptive transactions or schemes as alleged. It is submitted that trading in 10000 shares [delivery based] by one of our directors in the scrip of Snowcem during the investigation period cannot be given the colour of the proprietary trading by us".

As regards the contravention of clause (4) of Code of Conduct, the said broker submitted as follows :

"It is not the charge that we were negligent or incompetent and that as a result of the alleged manipulation anybody has been put to any loss. We have been accused of knowingly dealing on behalf of Mr Bora to manipulate the prices and create artificial volumes in the scrip of Snowcem. Therefore, if the allegation is correct, in terms of this Clause we are necessarily persons acting in concert with Mr Bora in our act, of dealing on his behalf, of creating false market resulting in detriment to the investors interest or resulting in interference with the fair and smooth functioning of the market. But that is not the case. It is submitted that the Enquiry Officer has not shown how we are persons acting in concert with Mr Bora for the transactions entered by Mr Bora through us and how we all shared the same intent/ knowledge/design while executing the said transactions".

Finding

I note that the trading details of M/s. Bajaj Auto Ltd. through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	50,000	-	50,000	50,000

I also note that the trading details of Shri Sourabh H Bora through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	-	25,000	25,000	-25,000
22	22,900	2,100	25,000	20,800
Total	22,900	27,100	50,000	-4,200

Further, I note that the trading details of Shri N V Shah through the said broker are as under:

Settl. #	Purchases	Sales	Gross	Net
20	10,000	-	10,000	10,000
21	-	1,700	1,700	- 1,700
23	-	3,100	3,100	- 3,100
24	-	3,100	3,100	- 3,100
Total	10,000	7,900	17,900	2,100

I find merit in the contention of the said broker in as much as the said broker cannot be blamed for having dealt with Mr Bora in 1999 since the order debarring Mr Bora from the capital market was passed by SEBI in 2003.

13. As regards the allegation against the said broker that matched transactions, I have noted the following submission of the said broker

"M/s Bajaj Auto had bought 25,000 shares of Snowcem on 4.8.99 through us. On 6.8.99 when sale order was placed by Mr Bora we had an enquiry from M/s Bajaj Auto and hence, acting pursuant to the instructions of the clients, the sale and purchase orders got matched on the system. It is submitted that the trades were executed at the market rate and settled as per normal settlement procedure. At the time of execution we had no knowledge that such sale was done by Mr Bora with the intent to manipulate the scrip".

Having considered the submissions of the said broker, as well as the number of such matched transactions and the quantity involved, I am inclined to grant a benefit of doubt to the said broker.

14. Allegation

The broker aided and abetted Shri Sourabh Bora in price manipulation by executing orders on his behalf thereby violating the provisions of Regulation 4(a) & (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

Reply

The said broker, vide his letter dated 24/04/2004, inter-alia, submitted as follows:

"In this context it is submitted that in terms of the Investigation Report, the investigation period is from June 1999 to August 1999. Mr Bora executed the first transaction through us on 6/8/99. It is submitted that till date we have executed only two transactions on behalf of Mr Bora in Settlement No's 20 & 22 for 50,000 shares and which constituted about 0.75% of the total volume of the scrip of Snowcem during the relevant period. Simply on the basis of these two stray transactions, with negligible proportion of the total volume, executed by us on behalf of Mr Bora the Enquiry Officer has found us guilty of violation of Regulation 4.

It is submitted that at the time of executing the said two transactions:

- i) *we had no knowledge of Mr Bora's manipulative intention/design*

- ii) we were not aware that Mr Bora was the main client in the scrip of Snowcem at that point in time
- iii) we were not aware that Mr Bora was acting hand in glove with the management of Snowcem Ltd & Kosha Limited in the manipulation of the scrip.

Further, the total volume of our trades in the scrip of Snowcem during the relevant period was hardly about 95,000 shares, compared to the 75,00,000 shares being the combined volume of BSE & NSE during the investigation period. Thus, the trades in the scrip of Snowcem, through us, forms a negligible 1.25% of the total trades in the scrip and out of this, the trades with Mr Bora constitute a meager 0.75% of the total volume during the investigation period. It is submitted that volume of the two transactions with Mr Bora vis a vis the total volume in the scrip at that point in time was negligible and could not have influenced the price to an extent so as to result in manipulation.

Finding

I have observed that the said broker had executed only two transactions on behalf of Mr. Bora, the total shares traded in these two transactions being about 0.75% of the total volume in the scrip of SIL during the investigation period. Even though the said broker had dealt for Shri Sourabh Bora, who was found to have had a significant role in the manipulation of the shares of SIL, it can not be said with any amount of certainty that the said broker had knowingly aided and abetted Shri Bora in his manipulations.

15. In view of the above, even though I hold the said broker guilty of having violated the provisions SEBI's circular no.SMDRP/POLICY/CIR-35/98 dated 11/12/98 regarding collection of margins from the clients, I am of the view that no case has been made out regarding the substantive allegation against the said broker i.e. regarding his having violated the provisions of Regulations 4(a) and (b) of the SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995.
16. Hence, I am of the opinion that the penalty of one month, as recommended by the Enquiry Officer, would not be necessary, considering the facts and circumstances of the case. The interests of justice would be adequately served by imposing a minor penalty of warning on the said broker, while advising him to be more careful in future.

ORDER

17. Therefore, 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 regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby pass an order issuing a warning to M/s NVS Brokerage Pvt. Ltd., to the effect that the broker should be careful in future and exercise due care and diligence in the conduct of his affairs as a capital market intermediary.

PLACE : MUMBAI

DATE : SEPTEMBER 21, 2004

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA