

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

AGAINST BIPIN R VORA, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF TRADING IN THE SCRIP OF SAWACA BUSINESS MACHINES LTD.

BACKGROUND

1. The shares of Sawaca Business Machines Ltd (earlier known as 'Sawaca Finance Ltd' and hereinafter referred to as 'SFL') were listed on The Stock Exchange, Bombay (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange.
2. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into the alleged price manipulation in the scrip of SFL, during the period October – December, 1999. It was seen that there was unusual upward price movement in the shares of SFL during this period, the price having moved up from Rs. 8 to a high of Rs. 38. Similarly, it was also seen that the volumes in the shares, which were traded a total of 7 times in the whole year, prior to 26.10.99, went up significantly during the investigation period.
3. Investigations revealed that one Shri Mahendra Shah, who was subsequently appointed the Managing Director of the company, was the largest seller during the investigation period. It was observed that Shri Shah along with other entities like Mayekar Investments Pvt. Ltd., had created artificial volumes in the shares of SFL and had then offloaded a large quantity of shares in the market. It was also seen that Shri Shah had put in large buy orders to influence the price of the scrip and had created false/misleading appearance of demand/interest in the shares of SFL, thereby influencing the share price of the scrip.
4. Investigation conducted by SEBI revealed that M/s Bipin R Vora (hereinafter referred to as "BRV") a member of The Stock Exchange, Bombay had traded in the scrip, with significant volumes. It was gathered that BRV had dealt in the scrip for its sub-broker, Sai Investment Corp Pvt Ltd (hereinafter referred to as "sub-broker") for sub-broker's client Mayekar Investments Pvt Ltd (hereinafter referred to as "MIPL"), details of which are as follows:

Settlement no	Purchases	Sales	Gross	Net
33		100	100	-100
35	2900	200	3100	2700
36	2600	2500	5100	100
37	5200	0	5200	5200
38	0	6000	6000	-6000
40	9500	16000	25500	-6500
R	100	0	100	100
R	0	25400	25400	-25400
Total	20300	50200	70500	-29900

5. It was alleged that in having allowed trading as above to MIPL, client of their sub-broker, BRV had not shown due skill, care and diligence while dealing on behalf its clients, which was in violation of Code of Conduct as prescribed under Schedule II read with regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations").
6. It was further alleged that BRV had aided and abetted the client in creation of a false market in the scrip and was hence guilty of having violated the of provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair trade practices relating to securities market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations").

ENQUIRY PROCEEDINGS

7. Having considered the investigation report, Chairman, SEBI, vide order dated 24th July 2003, appointed an Enquiry Officer to enquire into the alleged violations committed by BRV, as per the provisions of the Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "the Regulations").

8. As required under regulation 6 of the Regulations, Enquiry Officer issued a show cause notice to BRV dated 25th November, 2003 to show cause notice as why action should not be initiated for violation of FUTP Regulations and Code of Conduct under Broker Regulations, for which BRV responded vide its letter dated 3rd December 2003.
9. The Enquiry Officer provided an opportunity of personal hearing to BRV on 29th January 2004, on which date Shri Ashish Ganatra, authorized representative of BRV attended the hearing and made submissions. The Enquiry Officer, after considering the submissions of BRV, submitted his report dated 25th February, 2004, recommending a minor penalty of suspension of certificate of registration of BRV for a period of three months.

SHOW CAUSE NOTICE AND REPLY

10. On receipt of the enquiry report, a show cause notice dated 17th March, 2004 was issued to BRV, advising them to show cause as to why the penalty, as recommended by the Enquiry Officer, should not be levied on them. BRV vide letter dated 31st March 2004 replied to the said show cause notice inter alia submitting as follows:
 - i. BRV admitted to having traded for MIPL. However, they stated that all the trades done for their sub-broker were done on the BOLT screen and were bonafide transactions.
 - ii. BRV submitted that sub-broker separately gets registered from SEBI; is independent to enroll his clients; is liable for his compliance with regulatory provisions and hence should be held responsible for its actions.
 - iii. BRV submitted that they had exercised due skill and care in their dealings. Further, they had not done any trading with intent to create artificial trading in the scrip of SFL. In view of his submissions, BRV requested SEBI to discharge them of the allegations.

CONSIDERATION OF ISSUES

11. I have considered the facts of the case, the findings of the Enquiry Officer, the reply of BRV in response to the show cause notice etc. My findings with respect to the allegations against BRV are as under.
12. As already stated at para 2 above, SEBI had observed unusual price movement in the shares of SFL during the period October-December, 1999. Investigations revealed that Shri Mahendra Shah, along with entities such as MIPL, among others, traded in the shares of SFL and their trading had largely contributed to the price rise in the scrip. Once investor interest was created in the shares of SFL, Shri Shah and other connected entities had sold the shares held by them.
13. One of the entities through whom MIPL had traded in the shares of SFL was the sub-broker of BRV, through whom MIPL had bought 20,300 shares and sold 50,200 shares during the relevant period.
14. I have observed that BRV had admitted to having trading for MIPL, through his sub-broker and also that they were aware of the fact that their sub-broker was trading for MIPL. The kind of trading that their sub-broker was doing for MIPL should have alerted BRV, particularly in view of the fact that the client was transacting in significant quantities of a stock which was practically illiquid before the relevant period. However, BRV failed to monitor the functioning of its sub-broker, a failure which calls into question the exercise of due diligence by the Broker and more so the intention of the Broker to comply with Broker Regulations in respect of due diligence, which is observed from the hands-off attitude of the Broker, reflected in his reply to the show cause notice wherein he stated that a broker is not responsible for his sub-brokers actions.
15. It can not be claimed that a sub-broker is exclusively responsible for its client; the broker is under obligation to keep himself abreast of the activities of the sub-brokers clients. If BRV's argument of broker not being responsible for sub-broker is accepted, then the whole purpose of tripartite agreement between the broker, his sub-broker and the client is lost. Although sub-brokers are primarily responsible for their own clients and trading decisions, I have noted that affiliation to a registered broker is a pre-condition for registration as a sub-broker and the very existence of this requirement clearly signifies the symbiotic relationship between a broker, a sub-broker and the ultimate client. That being the case, BRV can not deny all responsibility towards the acts of its sub-broker.
16. In view of the facts and circumstances of the case, I agree with the Enquiry Officer in that BRV, by allowing its sub-broker to deal with MIPL, one of the entities responsible for the manipulation in the shares of SFL, had failed to exercise due care and diligence and had thus violated the Code of Conduct as given under Schedule II of Securities and Exchange Board of India (Stockbrokers and sub-brokers) Regulations, 1992.
17. As regards the allegation of violation of FUTP regulations, I find that BRV had traded in the shares of SFL in six settlements and also offered shares in auction in two settlements, gross volume being 70,500 shares, in a scrip which was largely illiquid before the relevant period, having been traded only 7 times in the year before 26.10.99. I have considered the submissions of BRV that they did not have any proprietary trades in SFL. However, BRV was admittedly aware of the fact

that the trades were on behalf of MIPL. The very fact that MIPL was trading in an illiquid scrip in significant volumes should have alerted BRV to the motives of MIPL.

18. In the above circumstances, any prudent broker should have doubted the intentions of the client and stopped trading for them. In having allowed MIPL to trade in the shares of SFL across six settlements, in huge quantities, BRV has facilitated MIPL in creation of false market in the scrip of SFL. MIPL had traded in the scrip SFL which was illiquid scrip and was made liquid by putting artificial volumes and price by certain connected clients, including MIPL, client of BRV. BRV had allowed its client MIPL to trade in such scrip, who had entered into continuous speculative transactions without any genuine interest in giving or taking delivery of shares. This had resulted in creation of artificial volumes and price rise in the scrip, which otherwise had no interest from the general investors. Thus, BRV has aided and abetted MIPL in the price manipulation of SFL's shares. By dealing with such clients, BRV has violated the provisions of regulation of 4 (b) of FUTP Regulations.
19. In view of the above findings, I do not find any reason to differ from the recommendations made by the Enquiry Officer.

ORDER

20. Therefore, in terms of Section 19 of the Securities and Exchange Board of India Act, 1992, read with regulation 13(4) of Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby impose a penalty of suspension of registration of certificate of M/s Bipin R Vora, member, BSE, for a period of three months.
21. This order shall come into effect after the expiry of three weeks from the date of this order.

Place: Mumbai

Date: October 6th, 2004

A K Batra

Whole Time Member

Securities and Exchange Board of India