

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 JOINDRE CAPITAL SERVICES LTD., MEMBER,BSE, IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED. (EARLIER KNOWN AS SAWACA FINANCE LTD.)

BACKGROUND

1. M/s. Joindre Capital Services Ltd., Member, The Stock Exchange, Mumbai (hereinafter referred to as 'BSE') is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide SEBI Registration No. INB011107555.
2. 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.
3. 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, had gone up significantly during the investigation period.

4. During the course of investigations, it was observed that M/s. Joindre Capital Services Ltd. (hereinafter referred to as 'Joindre') was one of the brokers who had dealt in the shares of SFL during the investigation period. Joindre had dealt for and on behalf of M/s. Bijal Securities Ltd. (hereinafter referred to as 'bijal'), a corporate member of Vadodara Stock Exchange (hereinafter referred to as VSL), who had in turn traded for one Shri Nitin B Chokshi. Therefore, Bijal had acted as a sub-broker to Joindre Capital Services Ltd. However, Bijal was not registered as a sub-broker to Joindre.
5. In view of the above, an Enquiry officer was appointed vide Order dated 24th July, 2003, for conducting enquiry into the affairs of M/s Joindre Capital Services Ltd., member, BSE, vis-à-vis its dealings in the scrip of SFL and possible violation of the provisions of Clause A(2) of the Code of Conduct for Stock Brokers – Schedule II of the Securities and Exchange Board of India (Stock Brokers and sub Brokers) Regulations, 1992.

ENQUIRY REPORT AND RECOMMENDATION

6. The enquiry officer, after conducting enquiry 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"), submitted a report dated February 5, 2004 and recommended a penalty of suspension of certificate of registration of Joindre for a period of 3 (three) months.

SHOW-CAUSE NOTICE, HEARING AND BROKER'S REPLY

6. On receipt of the enquiry report, a show cause notice dated February 09, 2004 was issued to Joindre, along with a copy of the Enquiry Report, advising them to show cause as to why the penalty, as recommended by the Enquiry Officer, should not be imposed on them.
7. Joindre submitted a reply vide letter dated 27th February, 2004 and subsequently made additional submissions vide their letter dated 12th April, 2004, in support of their case. An opportunity of personal hearing was granted to the broker on 29th March, 2004, later postponed to 6th April, 2004. The broker appeared before me on 6th April, 2004 and admitted having committed mistakes and pleaded that their failure to act with due skill, care and diligence, by failing to notice that Bijal was dealing on behalf of ultimate clients and acting as an unregistered sub-broker, was not deliberate or intentional. Joindre had also submitted that
 - i. *Bijal was registered only as a client and by that very fact, it was supposed to do transactions only on its own behalf. Further, Bijal had, at all times, represented that the transactions undertaken by them were their own transactions. As a client Bijal was not required to be registered at all with any regulatory body.*
 - ii. *They had more than 100 sub-brokers and there was no reason why they would not have registered Bijal as one more sub-broker.*
 - iii. *They had carried out the trades in SFL for Bijal and did not have any trades on their own account.*
 - iv. *Bijal was registered only as a client with them and had entered into a Member-Client Agreement with them. Further, Bijal had also submitted an undertaking to the effect that they would be transacting only for themselves and not for anyone else. Therefore, they had taken all the*

necessary precautions to ensure that Bijal was dealing with it only as a client and was doing transactions only on its behalf.

- v. Bijal was a member of the Vadodara Stock Exchange. Therefore, they believed that if Bijal wanted to do business on behalf of any of their own clients, the same would be done on the Vadodara Stock Exchange.*
- vi. When BSPL had sold the shares of Sawaca Finance Ltd., the delivery of share certificates was given along with blank transfer deeds. At that time, the share certificates along with blank transfer deeds were negotiable by tendering delivery. Hence, they did not have any means of knowing that the deliveries were not by Bijal but that of a third party. They had accepted the said shares in good faith and in the normal course of its business. In respect of the sale made by Bijal, they had prepared, issued and delivered contract notes and bills in favour of Bijal and the same had been received, retained and accepted by Bijal. Thus, they had no reason to believe that BSPL was dealing with them on behalf of someone else.*
- vii. Presuming, whilst emphatically denying that they had failed to act with due skill, care and diligence by failing to notice that BSPL was dealing on behalf of ultimate clients and was acting as an unregistered sub-broker, the said failure on their part was not deliberate or intentional. They submitted that since its aforesaid failure was not deliberate or intentional, no penalty should be imposed on them by SEBI.*
- viii. Hence, it was submitted that they were not guilty of trading on behalf of unregistered entities and hence they had not violate the provisions of the code of conduct, as alleged.*

CONSIDERATION OF ISSUES

- 8. I have carefully considered the material available on record and also the submissions made by the broker vide his letter dated 27th February, 2004

and the additional submissions dated 12th April,2004. My findings are as under.

9. Joindre had traded in the shares of SFL, for and on behalf of Bijal as follows:

Sett.No.	Purchases	Sales	Gross	Net
36	0	49500	49500	-49500
37	0	6700	6700	-6700
39	0	5000	5000	-5000
40	0	5000	5000	-5000
Total	0	66200	66200	-66200

10. I have noted the contention of Joindre that they had relied upon the undertaking given by Bijal that they would be dealing with them as clients and that they did not have any reason or opportunity to suspect that Bijal was acting as a sub-broker.
10. I find that the submissions of Joindre are not convincing. I find that Joindre had merely relied upon the undertaking given by Bijal, without undertaking any due diligence to find out the details of the transactions done by them for Bijal. I have observed that Joindre had dealt with Bijal for the period July,1998 to December, 2000 i.e. a period of two and half years. I have also observed, as per the ledger copy of Bijal in the books of Joindre, that Bijal was consistently running huge debit/credit balances e.g. on 24th December,1999, BSPL had a debit balance of Rs.45.33 lakhs. It was also known to Joindre that Bijal was a member of VSE and hence, would have had its own set of clients. The huge volume of transactions of Bijal should have alerted Joindre to examine whether Bijal was complying with the undertaking given by it or not. For such a long period of time, JCSL failed to notice that Bijal was

trading on behalf of ultimate clients and was acting as sub-broker without a registration from SEBI as such.

11. Bijal had traded in the shares of SFL for its client, through Joindre. Joindre had knowledge of trades taking place at Bijal's end. The kind of trading that Bijal was doing should have alerted Joindre, particularly in view of the fact that the scrip of SFL was illiquid till before the relevant period.
12. In view of the above observations, I find it difficult to accept the argument of Joindre that it had merely relied upon the undertaking given by Bijal and had traded on its behalf under the assumption that all the trades were being done by and for Bijal itself. Even if benefit of doubt were to be given to Joindre and it were to be assumed that they were indeed unaware of Bijal acting in the manner of a sub-broker, the fact that they had failed to notice Bijal's acting as a sub-broker, despite the quantum of transactions of Bijal over an extended period, merely underscores the failure of Joindre to exercise due skill and diligence in their role as a registered stock broker.
13. In view of the above, I hold Joindre guilty of having violated the provisions of Clause A(2) of the Code of Conduct prescribed for stock brokers, in Schedule II in terms of Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992.
14. Looking to the aforesaid violations committed by Joindre, I am convinced that in the interests of the securities market and in order to safeguard its integrity, a suitable penal action is warranted. However, considering the facts and circumstances of the case, I feel that that a penalty of warning in this case would be sufficient to meet the ends of justice.

ORDER

15. 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 regulations 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby order that a penalty of warning be imposed on M/s. Joindre Capital Services Ltd., member, BSE, having SEBI Registration No. INB011107555. I also direct the broker to note that any instances of violations or non-compliance of the Securities and Exchange Board of India Act and the Rules and Regulations, in future, shall be dealt with more stringently.

Place: Mumbai	A K Batra
Date: October 07 , 2004	Whole Time Member Securities and Exchange Board of India