

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 JYOTISH BHOGILAL STOCK BROKERS PVT. LTD., MEMBER, AHMEDABAD STOCK EXCHANGE, IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED (FORMERLY KNOWN AS SAWACA FINANCE LIMITED)

BACKGROUND

1. M/s. Jyotish Bhogilal Stock Brokers Pvt. Ltd. (hereinafter referred to as 'JBSBPL'), member, Ahmedabad Stock Exchange, is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide SEBI Registration No. INB020916831.
2. An Enquiry Officer was appointed by SEBI, vide Order dated 24th July, 2003, for conducting an enquiry into the affairs of JBSBPL vis-à-vis his dealings in the scrip of Sawaca Finance Ltd. (presently known as Sawaca Business Machines Ltd.) for possible violation of the provisions of the following :-
 - (a) SEBI (Stock Brokers and sub Brokers) Regulations, 1992.
 - (b) SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.
 - (c) Securities and Exchange Board of India Act, 1992.
3. The shares of Sawaca Business Machines Ltd (hereinafter referred to as 'SFL') were listed on The Stock Exchange, Bombay (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange.
4. 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.
5. 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. Shri Mahendra A. Shah had created artificial volumes in the scrip by trading with different brokers/ sub-brokers during the period under investigation, in a scrip which was more or less dormant till September, 1999 and volumes had started picking up only when Shri Mahendra A. Shah and others (Harvic Management, Mayekar Investments, etc.) had started trading in the scrip. 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.
6. During the course of investigations, it was observed that JBSBPL acted as unregistered sub-broker to M/s. Prabhudas Liladhar Pvt. Ltd. (PLPL), member, BSE, while dealing in the shares of SFL. It was also seen that JBSBPL had dealt for one M/s Parshwa Finance Ltd., who had in turn dealt for Shri Mahendra Shah, who had manipulated the price/volume of the shares of SFL. Shri Parshwa Finance has also traded in the scrip on behalf of Rajesh N. Jhaveri, who in turn has primarily traded for Shri Mahendra A. Shah and associates. JBSBPL had traded on behalf of Shri Parshwa Finance during the above referred period in the scrip of SFL, details of which are as under :-

Sett.No.	Purchases	Sales	Gross	Net
38	9100	9100	18200	0
39	0	18200	18200	-18200
40	700	0	700	700
41	0	1500	1500	-1500
Total	9800	28800	38600	-19000

7. In the light of the above, it was alleged that
 - (a) since JBSBPL acted as unregistered sub-broker with Prabhudas Liladhar Pvt. Ltd. (PLPL), JBSBPL had violated the provisions of SEBI Circular SMD/Policy/Circular/3-97 dated 31st March, 1997 and SMD/Policy/Cir/98 dated 16th January, 1998.
 - (b) By acting as sub-broker without registration, JBSBPL had failed to exercise proper skill, care and diligence and thus, violated Clause A(2) of the Code of Conduct for Stock Brokers as mentioned in Schedule II of the SEBI (Stock

- Brokers and Sub-Brokers) Rules and Regulations,1992 and
- (c) since the ultimate client of JBSBPL i.e. Shri Mahendra A.Shah had indulged in price manipulation of the scrip of SFL,JBSBPL had, in having dealt for him, acted in an unbusiness like manner and had aided and abetted the ultimate clients in creation of a false market in the scrip and with the result, violated the provisions of Regulation 4(a),(b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations,1995.

ENQUIRY REPORT AND RECOMMENDATION

8. The enquiry officer, after having given an opportunity of hearing to JBSBPL and conducting the enquiry as per the provisions of 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 30.01.2004, to SEBI, with the recommendation that a penalty of cancellation of Certificate of Registration may be imposed on JBSBPL.

SHOW-CAUSE NOTICE, HEARING AND BROKER'S REPLY

9. Pursuant to receipt of the Enquiry report, a show cause notice dated 03.02.2002, was issued to JBSBPL, enclosing 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. JBSBPL submitted their replies vide letters dated 23rd March, 2004 and 29th March, 2004. JBSBPL was also granted a personal hearing on 19.04.2004, on which date the broker appeared before me and made submissions. The submissions made by the broker, inter alia, are as under.
- " 1) *They had not funded their client Shri Parshwa Finance for the execution of the said trades and they had no connection /link/relation whatsoever either with the client or Rajesh N Jhaveri or Shri Mahendra Shah, the ultimate client, as alleged. They had not traded on their own account or through their friends /relatives /employees during the relevant period. Therefore, whatever they were obligated to do vis-à-vis their Client, in terms of the Regulations, they had done and hence, they cannot be accused of not exercising due skill and care.*
- 2) *They had acted as sub-brokers under the mistaken impression that a registered stock broker did not need a separate registration as a sub-broker. Further, they did not know that the ultimate client/Shri Mahendra Shah was manipulating the price of the scrip. They used to get instructions from Shri Parshwa Finance for buying/selling the shares and they had absolutely no knowledge of the alleged intention/design, if any, of Shri Parshwa Finance, Rajesh N.Jhaveri and the ultimate client / Shri Mahendra Shah. Hence, there was no question of their aiding and abetting the Client, as alleged.*
- 3) *Even if it were assumed that they had traded on behalf of Shri Parshwa Finance, who in turn has traded on behalf of Rajesh N. Jhaveri who again had traded on behalf of Shri Mahendra Shah, there was nothing to establish their connection with Shri Parshwa Finance, Rajesh N.Jhaveri and Shri Mahendra Shah, in terms of their having had the knowledge of manipulation of the scrip by all the said persons.*
- 4) *No material was there which established their nexus with Mahendra Shah whether directly or indirectly. Therefore, there was no question of their having aided and abetted Mahendra Shah, as alleged. They did not at all know about Shri Mahendra Shah's alleged role in the transactions.*
- 5) *Even assuming without admitting, for a while that we were aware of the price rise, the said fact, in the absence of any concrete evidence or material on record, cannot lead to an inference that they were aware of the purpose behind the operations of the so called ultimate client Shri Mahendra Shah.*
- 6) *There is nothing on record to show that they had dealt in the shares on behalf of the ultimate client Shri Mahendra Shah intentionally to facilitate the manipulation of price of the scrip.*
- 7) *Circular cannot have overriding effect over the provisions of the Act, Rules and Regulations.*
- 8) *As per Section 2(f) of the SEBI (Stock Brokers and Sub-Brokers) Rules,1992, " Sub-broker" means any person not being a member of a stock exchange who acts on behalf of a stock broker as an agent or otherwise for assisting the investors in buying, selling or dealing in securities through such stock brokers. In the present case, they were members of Ahmedabad Stock Exchange and, therefore, it could not have dual capacity as stock broker as well as sub-broker.*
- 9) *Even otherwise, if the said circulars are perused, the said circulars are only guidelines but cannot have the force of law. The said circulars were addressed to the stock exchanges and were not much aware to the stock brokers and sub-brokers. The said circulars were not gazetted. The said circulars cast duty upon the brokers to ensure that its clients are not acting as sub-brokers without being registered. Therefore, it was mainly the duty of the broker to see that the delinquent is registered as sub-broker. Now, if the main broker viz. Prabhudas Liladhar Pvt.Ltd., in the present case, is exonerated by giving a warning, how can the delinquent be recommended penalty of cancellation of registration. The Mumbai Stock Exchange has vide Notice No.54809/2000 dated 1.7.00 instructed all the members*

acting as brokers to get their clients registered as sub-brokers. In the card notice also the Member Stock Exchange has put the onus on the members to ensure that their clients are not acting as sub-brokers without registration.

- 10) *The broker in the present case viz. M/s. Prabhudas Liladhar Pvt.Ltd. had instructed them to get themselves registered as sub-broker and pursuant to the same they had applied for sub-broker registration on July'2000 and were registered on September,2000.*
- 11) *The said regulations apply to stock brokers and not sub-brokers and, therefore, the same were not applicable to them*
- 12) *As per the Mumbai Stock Exchange's norms for imposing penalty, the punishment / penalty prescribed for being an unregistered sub0broker was Rs.25,000/- per unregistered sub-broker.*
- 13) *As per the record of the Registrar of Companies, Shri Mahendra Shah had become director of SFL on 28.1.00, whereas their transactions were of much prior date. Therefore, they could not have been linked to Mahendra Shah.*
- 14) *Further, if on the similar and identical allegations, the broker PLPL was only issued a warning, how can a graver punishment be imposed upon them.*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully considered the material available on record and also the submissions made by the broker vide his letters and the additional submissions dtd. 29th March, 2004. My findings are as under.
11. I find that JBSBPL had acted as an unregistered sub-broker to PLPL while trading in the scrip of Sawaca Finance Ltd.(SFL). JBSBPL has not denied the said allegation except for stating that they were members of the Ahmedabad stock exchange and hence, did not need to be registered as sub-brokers, while transacting with another broker. They had further stated that the circulars issued by SEBI in this regard could not have an over-riding effect over the provisions of the Acts, Rules and Regulations. I find that JBSBPL, having traded through PLPL, for its clients Shri Parshwa Finance, has acted as an unregistered sub-broker to PLPL, had violated the provisions of SEBI Circular SMD/Policy/Circular/3-97 dated 31st March,1997 and SMD/Policy/Cir-/98 dated 16th January,1998. By acting as an unregistered sub-broker, JBSBPL had failed to exercise proper skill, care and diligence and thus, violated Clause A(2) & (5) of the Code of Conduct for Stock Brokers as mentioned in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations,1992.
12. JBSBPL had stated that they were under the impression that since they were registered as a member of ASE, there was no need to get registered separately as a sub-broker. In this regard, I note that a stock broker is granted a certificate of registration to act only as stock broker and not as a sub-broker. Existence of registration as a stock broker does not automatically confer upon the broker a right to act as a sub-broker. The two registrations are mutually exclusive and a clear distinction is made to this effect in both, the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992 and the relevant Regulations, wherein the functions, duties, responsibilities of both entities are defined. A stock broker is a principal whereas a sub-broker is an agent to the principal. When a stock broker trades through another stock broker for his clients, he becomes a sub-broker to the stock broker, through whom he is trading for his own clients. The circulars issued by SEBI in this regard merely supplement the principles stated above. Hence, the contention of JBSBPL that the law does not require a stock broker to get a separate registration as sub-broker is not only not acceptable, but also calls into question the exercise of due diligence by the Broker. Being a member of ASE, JBSBPL should have complied with the regulations and should have had knowledge about the regulations.
13. I find that JBSBPL had failed to comply with the provisions of SEBI Circular SMD/Policy/Cir/98 dated 16th January, 1998, which requires every stock broker, irrespective of its registration as stock broker of a particular exchange, to obtain registration as sub-broker if it wishes to trade with broker of another exchange, on behalf of its clients.
14. The Code of Conduct prescribed for Stock Brokers, laid down in clause A(2) of Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations,1992 states that "A stock broker shall act with due skill, care and diligence in the conduct of all his business." However, JBSBPL has not exercised due skill, care and diligence, having acted as an unregistered sub-broker. I further find that JBSBPL violated Clause A(5) of Schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations,1992 which requires that " a stock broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him." Therefore, I find that JBSBPL failed to abide by the clause A(2) and A(5) of Schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations,1992 and breached the provisions of Section 12 of the SEBI Act,1992.

15. JBSBPL had traded on behalf of Shri Parshwa Finance during the above referred period in the scrip of SFL, details of which are as under :-

Sett.No.	Purchases	Sales	Gross	Net
38	9100	9100	18200	0
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16. Shri Parshwa Finance had in turn traded for Shri Mahendra Shah, who was involved in manipulation in the shares of SFL. The kind of trading that their client was doing should have alerted JBSBPL, 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 client. In having failed to check the trading done by their client, acting on behalf of Shri Shah, in an illiquid scrip, JBSBPL had facilitated Shri Shah in indulging in price/volume manipulation in the scrip of SFL. Thus, I hold JBSBPL guilty of having violated 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.
17. However, given the quantum of transactions, as well as the fact that JBSBPL did not have any proprietary trading in the share of SFL, I do not agree with the quantum of penalty recommended by the Enquiry Officer. I am of the view that a penalty of suspension of the registration for a period of six months would meet the ends of justice.

ORDER

18. 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 the Certificate of Registration of M/s. Jyotish Bhogilal Stock Brokers Pvt.Ltd., member, Ahmedabad Stock Exchange, be suspended for a period of six months.
19. This order shall come into force on the expiry of three weeks from the date of this order.

Place: Mumbai	A K Batra
Date: October 20th , 2004	Whole Time Member
	Securities and Exchange Board of India