

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. BIJAL SECURITIES PVT. LTD., MEMBER, VADODARA STOCK EXCHANGE, IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED (FORMERLY KNOWN AS SAWACA FINANCE LIMITED)

BACKGROUND

1. M/s. Bijal Securities Pvt. Ltd. is a member of the Vadodara Stock Exchange (hereinafter referred to as 'VSE') and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide SEBI Registration No. INB191013534.
2. The Enquiry Officer was appointed vide Order dated 24th July, 2003 to conduct an enquiry into the affairs of M/s. Bijal Securities Pvt. Ltd. (hereinafter referred to as 'bijal'), vis-à-vis his dealings in the scrip of Sawaca Finance Ltd. (hereinafter referred to as 'SFL'), for possible violation of the provisions of the following :
 - (a) Clause A(2) and A(5) of the Code of Conduct for Stock Brokers – Schedule II of Regulation 7 of the Securities and Exchange Board of India (Stock Brokers and sub Brokers) Regulations, 1992; and
 - (b) Section 12 of the Securities and Exchange Board of India Act, 1992.
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. As a part of investigations into the price manipulation of the shares of SFL, SEBI had looked into the roles of various brokers and sub-brokers who had dealt in the shares of SFL during the relevant period. During the course of investigations, it was observed that M/s. Bijal Securities Ltd., a corporate member of Vadodara Stock Exchange (hereinafter referred to as 'Bijal') had acted as an unregistered sub-broker to Joindre Capital Services Ltd., member, BSE, while trading in the shares of SFL, for its client M/s Nitin B Chokshi, itself a member of Ahmedabad Stock Exchange. M/s Nitin Bansilal Chokshi had traded in the scrip through Bijal, as under :

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

M/s Nitin Bansilal Chokshi had in turn traded for its client Shri Sanjay R.Shah, also a member of ASE.

5. Prima facie, it appeared that Bijal had acted as unregistered sub-broker to M/s Joindre Capital Services Ltd. As per the SEBI Circular SMD/Policy/CIR-/98 dated January 16, 1998, every stock broker, irrespective of its registration as stock broker of a particular exchange, is required to obtain registration as sub-broker if it wishes to trade with broker of another exchange, for its clients. It appeared that in having failed to obtain registration as a sub-broker, Bijal had violated Section 12 of the SEBI Act, 1992 and had also failed to exercise due skill, care and diligence and compliance with statutory requirements and, therefore, violated the provisions of Code of Conduct prescribed for Stock Brokers laid down in Schedule II to Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations,1992. Hence, as stated at para 2 above, an Enquiry Officer was appointed by SEBI to look into the violations alleged to have been committed by Bijal.

ENQUIRY REPORT AND RECOMMENDATION

6. The Enquiry Officer, after conducting the enquiry as per the provisions of the SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, submitted a report dated 23.01.2004 and recommended a penalty of cancellation of Certificate of Registration of Bijal.

SHOW-CAUSE NOTICE AND HEARING

7. Pursuant to the receipt of the enquiry report, a show cause notice dated 03.02.2004 was issued to Bijal along with a copy of the Enquiry Report, advising Bijal to show cause as to why appropriate penalty should not be levied against them.
8. The broker submitted a reply vide letters dated 18.02.2004 and 29.03.2004. The broker was also granted an opportunity of hearing before me on 19.04.2004, on which date the broker appeared before me and submitted that the alleged breach was a technical and/or venial breach and further submitted that they were not aware of the law and indirectly admitted that they had committed an offence for the first time and pleaded that they be let off with a minor penalty.
9. In addition, Bijal had submitted as below :-
 - a) *Rule 2(f) of SEBI (Stock Brokers and Sub-Brokers) Rules,1992 defines sub-broker as " 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. The SEBI Circular SMD/Policy/CIR/98 dated 16/1/1998 is in contravention of SEBI (Stock Brokers and Sub-Brokers) Rules,1992....It is clear that only such a person can be granted registration as a sub-broker who is not a member of Stock Exchange. In our case, we are already stock broker member of Vadodara Stock Exchange. Hence, we could not have simultaneous, dual, integrated and combined identity of a stock broker as well as of a sub-broker. The said Circular was not published in the official gazette but addressed to the Stock Exchanges. The concept of circular is prevalent under the Income Tax Act, the Companies Act,1956 and other statutes. As per the various decisions under the above Acts, it is clearly held that Circulars are more of operating and administrative nature and are issued for guidance to the departmental officers and more as a standard operating procedure.*
 - b) *the circulars issued to the effect was not issued in exercise of powers conferred under Section 11(1) of the SEBI Act,1992;*
 - c) *an existing old stock broker member cannot have simultaneous dual and composite identity – that of a broker as well as of a sub-broker.*
 - d) *the objective of sub-broker registration is to address regulatory concerns and risk management. In our case, we had duly fulfilled these aspects and on account of our dealings – acting as "unregistered sub-broker" – there was no default by our clients to us nor by us to the broker through whom we carried out trades of our clients. In other words, core objective viz. possibility of default and risk management requirements were duly met and complied with. (Ref.Circular SEBI/MIRSD/Cir-06/2004 dated 13/1/2004) a charge is levelled against me that I have acted as sub-broker of BSPL (Member-VSE) without obtaining the Certificate of Registration as Sub-Broker. "Only the aforesaid Circular has required the Stock Exchanges "to ensure that their members do not transact business as sub-brokers through members of other Exchanges without due registration as sub-broker from SEBI." Further Circulars cannot create conflict in the Rules or Regulations and acquire status of " super provisions" of law for the purpose of penalty especially when the Stock Exchanges had taken a practical view considering the ground realities and regulated their members in multiple ways through the disciplinary provisions contained in their Rules and Bye-laws. "The aforesaid Circular cannot have overriding effect and cannot supersede the provisions of Rules, Bye-laws and Regulations of the Stock Exchanges which are statutory in nature.*
 - e) *We as member of the VSE later became sub-broker of VSE's subsidiary VSE Securities Ltd. who provided BOLT Terminals to us for trading on the BSE."*
 - e) *The penalty recommended was extremely harsh and disproportionate to a first offence.*

FINDINGS

10. I have carefully considered the material available on record and also the submissions made by the broker vide their letters dated 18.02.2004, 29.03.2004 and during the personal hearings. My findings are as under.
11. I find that Bijal had traded as under in the scrip of SFL :

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

In doing the above trades, Bijal was registered as client with M/s. Joindre Capital Services Ltd. However, Bijal had not transacted as above, as a client. They had instead dealt for their client, M/s Nitin Bansilal Chokshi, member, Ahmedabad Stock

Exchange, who had in turn traded for Shri Sanjay R.Shah, himself a member of Ahmedabad Stock Exchange.

12. I find that Bijal had stated that they were under the impression that since they were registered as members of VSE, there is no need to get registered as a sub-broker of Joindre Capital Services Ltd. I have observed that Bijal had dealt with Joindre Capital Services Ltd. from the month of July,1998 to December,2000, a period of two and a half years. Shri N.T.Shah, one of the directors of Bijal Securities was past President of VSE. I have also observed that Bijal had given undertaking to Joindre Capital Services Ltd. vide letter dated 21st July,1998, wherein it was undertaken by Bijal Securities that it would " (i) to do business only on my behalf, (ii) not to issue any further contract whatsoever to anybody in relation to my dealings with you; and (iii) not to deliver you any shares which are not registered in my name or are not purchased through you." I further find that Bijal also admitted that they had acted as sub-broker of Joindre Capital Services Ltd., although it had registered with it as a client.
13. I find that since Bijal had traded with Joindre Capital Services Ltd. and acted as an unregistered sub-broker, they 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 a sub-broker, with out getting registered as such, Bijal 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. In addition, Bijal, having acted as sub-broker without getting registration certificate from SEBI, had also violated the provisions of Section 12 of the SEBI Act,1992.
14. I do not agree with the submissions made by Bijal as regards the redundancy of obtaining registration as a sub-broker, while being registered as a stock broker of an exchange. I also find that ignorance of law is no excuse, and therefore Bijal cannot take shelter by hiding behind such excuses. 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 supplement the principles stated above. Hence, the contention of Nitin 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 VSE, Bijal should have complied with the regulations and should have had knowledge about the regulations.
15. I find that Bijal 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. Bijal, having failed to get registered as a sub-broker also failed to adhere to and comply with the provisions of Section 12 of the SEBI Act, 1992.
16. 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, Bijal has not exercised due skill, care and diligence, having acted as an unregistered sub-broker. I further find that NBC 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 Bijal 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. Therefore, I am in complete agreement with the observations of the enquiry officer.
17. However, considering the quantum of transactions, as also the fact that no case has been made out regarding any harm caused to the investors on account of Bijal's having transacted in the manner detailed above, I do not agree with the recommendation of the Enquiry Officer regarding the quantum of penalty to be imposed on Bijal. I find that the ends of justice would be adequately served by imposing a penalty of suspension of registration of the broker for a period of 6 months.

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 regulation 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby order that the Certificate of Registration (SEBI Registration No. INB 191013534) of M/s. Bijal Securities Pvt. Ltd., a member of the Vadodara 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 19th , 2004	Whole Time Member
	Securities and Exchange Board of India

