

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 NITIN BANSILAL CHOKSHI, MEMBER, AHMEDABAD STOCK EXCHANGE, IN THE MATTER OF SAWACA BUSINESS MACHINES LIMITED (FORMERLY KNOWN AS SAWACA FINANCE LIMITED)

BACKGROUND

1. M/s. Nitin Bansilal Chokshi is a member of the Ahmedabad Stock Exchange and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide SEBI Registration No. INB020117215.
2. An Enquiry Officer was appointed vide Order dated 24.07.2003, for conducting an enquiry into the affairs of M/s Nitin Bansilal Chokshi, vis-à-vis their 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 the Securities and Exchange Board of India (Stock Brokers and sub Brokers) Regulations, 1992.
3. The shares of SFL were listed on The Stock Exchange, Bombay (hereinafter referred to as 'BSE') and Ahmedabad Stock Exchange.
4. SEBI had 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.
5. During the course of investigations, it was observed that M/s Nitin Bansilal Chokshi (hereinafter referred to as 'Nitin') had acted as a sub-broker to M/s. Bijal Securities Ltd., a corporate member of Vadodara Stock Exchange (hereinafter referred to as 'VSE') who had acted as an unregistered sub-broker to Joindre Capital Services Ltd., member, BSE, while trading in the shares of SFL. Nitin 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

6. It was also seen that Nitin had traded as above for their client, Shri Sanjay R.Shah, himself a broker of Ahmedabad Stock Exchange.
7. Prima facie, it appeared that Nitin had acted as a sub-broker, without having obtained registration from SEBI as such and had thus violated the provisions of SEBI Circulars SMD/POLICY/CIRCULAR/3-97 dated 31.03.1997 and SMD/Policy/CIR-/98 dated January 16, 1998. Hence, as stated at para 2 above, an Enquiry Officer was appointed by SEBI to look into the violations of Clause A(2) and A(5) of the Code of Conduct for Stock Brokers by Nitin.

ENQUIRY REPORT AND RECOMMENDATION

8. 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 29.01.2004 and recommended a penalty of cancellation of Certificate of Registration of Nitin.

SHOW-CAUSE NOTICE AND HEARING

9. Pursuant to the receipt of the enquiry report, a show cause notice dated 03.02.2004 was issued to Nitin along with a copy of the Enquiry Report, advising Nitin to show cause as to why appropriate penalty should not be levied on them. Nitin submitted a reply vide letter dated 29.03.2004.
10. An opportunity of personal hearing was granted to the broker on 6.04.2004. The representative of the broker appeared before me and submitted that the alleged breach was technical and/or venial breach and further submitted that they were not aware of that a stock broker required separate registration as a sub-broker for acting as such. It was further submitted that it was a first offence and hence they be let off with a minor penalty.

FINDINGS

11. I have carefully considered the material available on record and also the submissions made by the broker vide his letters dated 30.12.2003, 20.02.2004 and additional submissions dated 29.03.2004, wherein they had inter alia made the following submissions :

- a) *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.*
- b) *During the course of the business I had undertaken only four transactions on behalf of BSPL (member VSE).*
- c) *All regulatory directions applicable to a sub-broker upon getting himself registered as sub-broker upon getting himself registered as a sub-broker with SEBI, are already duly applicable to a registered stock broker. Thus, by not getting registered as a sub-broker, a registered broker does not remain out of regulatory orbit on any count.*
- d) *The law does not require a registered stock broker to get a separate registration as sub-broker for dealing on another stock exchange through the member of that Exchange.*
- e) *The dealing in shares undertaken by them through Bijal Securities Pvt.Ltd.(BSPL), member of VSE is in essence the same sphere of activity done by them as a member of ASE.The requirement of obtaining separate registration for same activity would therefore seem to be unreasonable.*
- f) *It was within the knowledge of BSPL that they were members of the ASE, having their own clientele who wanted to do transactions on the BSE and NSE. Moreover their clients also knew that the transactions in SFL scrip were routed through BSPL. The same was also within the knowledge of JCSL, the main broker of BSE. In other words, they had acted for the disclosed principal and were accountable to their clients on one hand and to BSPL on the other. Neither their clients nor BSPL raised any objection regarding their acting as such or state that their not obtaining of separate registration certificate as a sub-broker prejudiced their interests. Even the Ahmedabad Stock Exchange did not raise any objection in the matter. In the circumstances, the lapse, if any, of non-obtaining extra and additional sub-broker registration was unintentional and technical in nature.*
- g) *The alleged breach was technical and/or venial breach. They were not aware of the law.*
- h) *It would be most unfortunate that for a first offence they would be saddled with a major penalty."*

12. I find that Nitin 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, Nitin was registered as client with M/s. Bijal Securities Pvt. Ltd., member, Vadodara Stock Exchange. I find that M/s Bijal Securities Pvt. Ltd. had in turn traded as above, through M/s. Joindre Capital Services Ltd., Member-BSE. I have also observed that Nitin had traded on behalf of their client Shri Sanjay R.Shah, himself a member of Ahmedabad Stock Exchange.

13. I find that Nitin had not denied the above transactions or the chain of entities through whom the transactions were done. Thus, it is clear that Nitin had transacted for their client, through an unregistered sub-broker to a member of BSE and had also acted as an unregistered sub-broker itself. In having transacted as such, Nitin had violated the provisions of SEBI Circulars 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, Nitin 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. Further, in having acted as a sub-broker without getting registration certificate from SEBI as such, Nitin had violated the provisions of Section 12 of the SEBI Act,1992.

14. Nitin 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 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 ASE, Nitin should have complied with the regulations and should have had knowledge about the regulations.

15. I find that Nitin 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. Nitin, 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, Nitin 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 Nitin 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.
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 Nitin'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 Nitin. 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 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 Nitin Bansilal Chokshi, member, Ahmedabad Stock Exchange, having SEBI Registration No. INB020117215, 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
Date: October 19th , 2004

A K Batra
Whole Time Member
Securities and Exchange Board of India