

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 SHRI BHUPENDRA MEGHJI BHEDA, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF MOREPEN HOTELS LTD.

Background

1. Shri Bhupendra Meghji Bheda (hereinafter referred to as 'the said broker') is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a stock broker and is a member of The Stock Exchange, Mumbai (hereinafter referred to as 'BSE').

2. The shares of Morepen Hotels Ltd. (hereinafter referred to as 'MHL') were listed for trading on BSE and National Stock Exchange of India Ltd. There was a major spurt in price and volumes traded at these exchanges during the period August to December, 2000 ('said period'). It was observed that :

i. During the one year period of August, 1999 to July, 2000, the total volume traded at BSE was 74,700 shares, as against which, approximately 19 lac shares were traded in the period august-December, 2000. The average quantity traded during the one year preceding the said period was in the range of 100-2800 shares per day, as against which, the average quantity traded during the investigation period was in the range of 18,000 to 25,000 shares per day.

ii. Similarly, at NSE, the volumes in the scrip during May-August, 2000, were in the range of 200 to 500 shares. However, after August 25, 2000, the volumes went up manifold and were in the range of 18,000 to 25,000 shares per day.

iii. The price of the share at BSE, which was Rs. 193.30 as on 25.08.2000, rose to Rs. 264.25 on 09.09.2000 and fell to Rs. 138.95 on 27.11.2000. A similar pattern was noticed at BSE.

iv. The delivery volumes during the said period were less than 1% of the total traded volume on the exchanges.

v. The P/E ratio of MHL was not on par with the rest of the hotel Industry and hence the shares price did not appear to be justified, on the basis of fundamentals.

vi. The public holding in MHL including other Body Corporates not in the group is approximately 37% of the paid up capital of MHL i.e. approximately 24,10,360 shares are with the public. Out of which less than 5% of the paid up equity capital is with Individual shareholders and the remaining shareholding i.e. approx. 32% with body corporates. Further, out of a total 772 shareholders, only 47 shareholders hold approximately 96.35% of the equity capital. This clearly shows that the shares of MHL are concentrated in limited hands.

vii. Trading in the scrip was very infrequent, as is evident from the following table:

Month & Year	No. of Trades	No. of days traded	Avg. trades per day	Total Qnty. Traded	Avg. Qnty. Per day
Aug 99	115	22	5	31,000	1,409
Sept 99	59	19	3	7,700	405
Oct 99	11	8	1	2,300	288
Nov 99	6	5	1	700	140
Dec 99	34	11	3	3,600	327
Jan 00	4	4	1	400	100
Feb 00	4	6	1	700	117
Mar 00	26	13	3	4700	362
Apr 00	1	1	1	100	100
May 00	31	8	4	22,400	2,800
June 00	11	6	2	1,100	183
July 00	NIL	NIL	NIL	NIL	NIL
Aug 00*	Not. Available.	5	Not Available.	85,400	17,080
Sept 00*	-do-	20	-do-	4,64,200	23,210
Oct 00*	“	19	“	3,47,400	18,285
Nov 00*	“	20	“	4,76,500	23,825
Dec 00*	N. A.	20	N. A.	5,08,700	25,435

* The sudden spurt in Volume has been shown in Bold and Italics.

viii. As is observed from the above table, w.e.f August 2000, the volumes started going up and were in the range of 20,000 to 25,000 shares per day till December 2000. Thereafter, the volumes in the scrip started declining and after January 15, 2001 the volumes came down to around 5,000 shares per day. The volume spurt was observed mainly during the five month period viz. August 2000, September 2000, October 2000 , November 2000 and December 2000. During the period August 1999 - July 2000 (one year) the total volume traded at The Stock Exchange, Mumbai was just 74,700 shares . However, during the period August 2000 to December 2000, approx. 19 lac shares were traded at the exchange.

ix. SEBI's investigation revealed that 80% of the volumes traded during the period June-December, 2000 were contributed by a handful of brokers of the exchange. It was found that the clients of these brokers, who were linked/connected to each other, had acted in concert through selected members of the exchanges and were involved in circular trading in the shares of MHL.

x. It was further observed that most of these clients had squared off their positions; not only at the end of the settlement, but also at the end of each day. It was found that the spurt in volumes was entirely contributed by the said "clients", as more than 90% of the trades were done by these entities, by entering into transactions which were "circular" in nature

xi. As stated above, delivery based business in the scrip, during the period June 01, 2000 to December 31, 2000, was less than 1% of the total trading volume on the exchange. It was also observed that during the period of investigations the total volume at both the exchanges mentioned above were almost same and had great degree of similarity both in prices and total number of shares traded per day. It was also observed that the same set of clients was trading at both the exchanges. The total quantity traded by these entities is given as under:

Settl. No.	Name of the Entity	Purchases	Sales	Gross
1.	M/s. Jem Fiscal Ltd.	10,37,800	10,32,001	20,69,801
2.	M/s. F. T. Traders	8,54,800	8,52,200	17,07,000
3.	M/s. K. N. Traders	6,26,226	6,26,226	12,52,452
4.	Prashant Investment	66,300	66,300	1,32,600
5.	K. P Investment	5,94,900	5,95,300	11,90,200
6.	S. M. Investment	3,04,000	3,04,000	6,08,000
7.	N. N. Investment	3,65,500	3,65,500	7,31,000
8.	Hakeem Auto Ltd.	6,610	4,100	10,710
	Total	38,56,136	38,45,627	77,01,763

xii. The combined quantity traded in the scrip at BSE and NSE during the period June 2000 to December 2000 was approx. 38 lac shares, out of which approx. 90% of the shares were traded by the above mentioned entities at both the exchanges taken together.

3. The "clients" mentioned at 2(xi) above were linked to each other. The the exact relationship/link of all the clients mentioned above are as under:

3.1 Jem Fiscal Ltd -

a) It is /was the employer of Ketan Shah (K. N. traders), Prashant Shah (Prashant Investment), Kisan Parwad (K. P. Investment), Shamshad Sheikh (S. M. Investment), Narendra Navale (N. N. Investment).

b) The Director of the firm, Shri Nazir Hakeem is also a Director with Hakeem Auto Ltd.

c) Shri Nazir Hakeem introduced the bank a/c of F. T. Traders (Prop. Fakruddin Moyiandi) with United Bank of India, Fort Branch. d) Shri Prashant Shah (Prashant Investments) placed orders on behalf of Jem Fiscal with Toss Financial Services, member NSE and Varun Stock Brokers, (Sub-broker to Suresh Rathi Securities)

3.2 Hakeem Auto Ltd

a) The Director, Shri Nazir Hakeem is also a director of Jem Fiscal Ltd.

b) Introduced the bank account of F. T. Traders with United Bank of India.

3.3 N. N. Investment

a) The proprietor of the firm, Shri Narendra Navale, is an employee of Jem Fiscal Ltd.

b) He stated that he has traded on the recommendation of his employer's website.

c) Shri Prashant Shah (Prop: Prashant Investment), who also in employment with Jem Fiscal Ltd. placed the orders on behalf of N. N. Investment with Toss Financial, member NSE.

3.4 S. M. Investment

a) The proprietor, Shri Shamshad Sheikh, is an employee of Jem Fiscal Ltd.

b) The account of the firm with United Bank of India was introduced by Shri Fakruddin Moiyaddi of F. T. Traders.

c) He had traded in the scrip because his employer, M/s. Jem Fiscal Ltd. was also trading in the scrip.

3.5 K N Traders

a) The proprietor, Shri Ketan Shah was employed with Jem Fiscal Ltd. as Manager (Research).

b) As per information provided by Shilpa Stock Brokers, he was trading on the terminal provided to Hakeem Auto Ltd.

c) He had given recommendation on the web site of Jem Fiscal Ltd.

d) He had also recommended the scrip for trading to Prashant Shah (Prashant Investment)

3.6 Prashant Investment

a) The proprietor, Shri Prashant Shah, is an employee of Jem Fiscal Ltd.

b) He had traded in the scrip based on the recommendation on the website of his employer.

c) Had discussed the matter with Ketan Shah (K. N. Traders) before he started trading in the scrip.

d) He had placed orders for Jem Fiscal Ltd. with Varun Stock Brokers (sub-broker of Suresh Rathi Securities Pvt. Ltd.).

e) He had also placed orders for Jem Fiscal Ltd. with Toss Financial, Member NSE.

f) He had placed orders for N. N. Investment with Toss Financial, member NSE

3.7 K P Investment

a) He is employed with Jem Fiscal Ltd.

b) Has traded mainly because his employer, Jem Fiscal Ltd. was also trading/investing in the scrip.

3.8 F T Traders

a) Shri Fakruddin Moiyadi, Prop. F. T. Traders, had given the office address of Jem Fiscal Ltd. as his correspondence address.

b) The BOLT terminal provided by Bhupendra M. Bheda to F. T. Traders was installed at the office address of Jem Fiscal Ltd.

c) The account of F. T. Traders with United Bank of India, Fort Branch was introduced by Shri Nazir Hakeem, who is a Director of Jem Fiscal Ltd. and Hakeem Auto Ltd.

d) Shri Fakruddin Moiyadi had introduced the account of S. M. Investment (Proprietor: Shri Shamshad Sheikh, an employee of Jem Fiscal Ltd.) with United Bank of India.

3.9 The other indicators showing the connections of the clients are as under:

3.9.1 FT Traders (Shri Fakruddin Moiyandi) had dealt through three members of BSE simultaneously viz. Bhupendra Bheda, Dinesh J Shah and Anantrai A Parekh.

3.9.2 Jem Fiscal Ltd dealt through two members of BSE simultaneously namely, Suresh Rathi Securities and GSB Capital Markets.

3.9.3 Prashant Investments (Prashant Shah) and KP Investments (Kisan Parwad) have dealt in the scrip of MHL simultaneously through two BSE members viz. Joinder Capital and MJ Doshi.

3.9.4 Hakeem Auto shared the same address as that of FT Traders and KN Traders.

3.9.5 Both FT Traders and KN Traders have accounts with United Bank of India and their account numbers were close to each other i.e 4664 and 4667.

3.9.6 The fax no. 2818179 given by Prashant investments (Prashant Shah) is the same as that of Hakeem Auto and KN Traders.

3.9.7 The telephone numbers provided by FT Traders in the client registration form to BSE member M/s D J Shah are standing in the name of Hakeem Zohra who is one of the directors of Jem Fiscals Ltd.

3.9.8 The telephone numbers provided by KP investments and Prashant Investments in their client forms were matching with the telephone nos of Hakeem Zohra who is a director of Jem Fiscals Ltd.

3.9.9 Both Pramod Navale of NN Investments and Kisan Parwad of KN Traders shared the same address viz. Ganesh Nagar, Pump House, Andheri East.

3.10 It was observed from the trading pattern that these clients were involved in Circular Trading in the scrip. These clients have entered into buy and sell transactions with each other, squaring up positions and reversing trades either on the same day or during the same settlements, making the net receivable/deliverable positions as either nil or shares of negligible quantities i.e about 100 to 200 shares. Thus, all the aforesaid clients had done transactions of fictitious nature, through different members of NSE and BSE and established /created artificial volumes in the scrip, thereby upsetting the market equilibrium in the scrip.

4. The said broker had dealt in the shares of MHL for one such client, namely, M/s F T Traders. An enquiry officer was appointed to conduct an enquiry into the contravention/s alleged to have been committed by the said broker, while dealing in the scrip of MHL and for possible violations of the provisions of the SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 (hereinafter

referred to as the said Regulations) and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "the PFUTP Regulations") and Rules, Bye laws and Regulations of BSE.

5. The enquiry officer, after conducting an enquiry in accordance with the provisions of regulation 13 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 Enquiry Regulations'), submitted a report dated 30.04.04 and recommended that a minor penalty of suspension of certificate of registration of the broker for a period of two months be imposed on them.

SHOW CAUSE NOTICE AND REPLY

6. Pursuant to the receipt of the Enquiry report, a show cause notice dated 06.05.04 was issued to the said broker, 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. The said broker submitted his reply to the said show cause notice, vide letter dated 20.5.04, wherein it was inter alia submitted that :

i. It was mandatory for brokers to collect margins from the clients only when the same exceeded Rupees One Lakh. The BSE notified its member and issued a directive to enforce the same vide notice no.40609/2000. Since at no stage the margin payable by FT Traders was in excess of Rupees One Lakh, therefore the member did not collect any margin from them and also submitted that there was an adequate credit balance in the account of FT Traders at any given time to cover the margin.

ii. He did not carry out any proprietary trade and he earned only the brokerage on the transactions executed on behalf of FT Traders.

iii. He was not concerned with the motives of the clients in squaring off the transactions at the end of the trading session and he simply executes the trades for his clients.

iv. The expression 'illiquid' scrip used by the Enquiry Officer while referring to the scrip of MHL is misleading and fallacious. It is evident that the scrip of MHL was liquid at least from August 2000 onwards on the BSE.

v. Merely because his client, FT Traders, traded heavily in the scrip of MHL along with their associates he cannot be held responsible since he had no knowledge at all about the purported associates/connected entities of FT Traders or their trading activities.

vi. FT Traders were not new clients in as much as they were his clients since February 2000 and had not committed any default whereas the impugned transactions were executed from August to December 2000.

vii. He had got the benefit of the brokerage of Rs.31,744= 50 Ps out of the impugned transactions done by his clients FT Traders.

FINDINGS

7. I have considered the contents of the Enquiry Report, the show cause notice, the replies and submissions of the broker. My findings with respect to the allegations leveled against the said broker are as under.

8. The said broker had traded in the scrip of Morepen Hotels Ltd. on behalf of M/s F T Traders, who started trading with him w.e.f February 2000, on being introduced to him by his remisier, Shri Yogesh F Patel. The trading details of M/s F T Traders with the said broker are as under:

Settl. No.	Gross Purchases	Gross Sales	Net
22	3,000	3,000	0
23	11,900	11,900	0
24	19,000	19,000	0
25	15,500	15,500	0
26	14,600	14,600	0
27	18,900	18,900	0
28	13,800	13,800	0
29	19,200	19,100	100
30	21,900	21,900	0
31	11,600	11,100	500
32	8,100	8,000	100
33	22,300	22,100	200
34	23,400	23,400	0
35	22,900	23,500	-600
36	24,200	24,400	-200
37	21,400	21,900	-500

38	19,500	19,000	500
39	22,500	22,500	0
40	21,000	21,700	300
Total	334,700	334,300	400

9. It is evident that the client was mostly squaring off his positions at the end of each settlement. The details submitted by the broker/client suggest that the client normally used to square off his positions either on the same day or within the same settlement period. It was submitted by the said broker that in July 2000, he had provided a BOLT terminal to the client at the client's office and that having set a trading limit for the client at Rs.10 lacs per day, he did not monitor scrip-wise position of the client.

10. Investigations had indicated that the said broker had not collected any amount towards Initial Margin from the client. The same was confirmed by the member in his sworn statement. However, the member stated that the client generally used to maintain credit balance with him towards initial margin.

11. I have observed that the client was one of the eight entities who were responsible for 90% of the transactions in the shares of MHL during the investigation period, transactions which resulted in creation of artificial volumes in the shares of MHL. I have further observed that the client had traded in significant quantity of shares, across 19 settlements and also that the client had either squared off the transactions or had taken/given delivery of insignificant number of shares, with the result that even after having transacted in a total of 6,69,000 shares, the net position at the end of 19 settlements was a mere 400 shares.

12. As already brought out in para 2 above, eight "clients", including the client of the said broker, had traded in similar fashion through various brokers of BSE/NSE and had created artificial volumes in the shares of MHL, having accounted for more than 90% of the trades. It was also observed during the course of investigations that the client, namely, M/s. F T Traders did not seem to have any kind of financial capability to trade in such huge quantity as all the credit entries in his bank accounts had come just before the pay-in date. The volumes in the scrip had started going up from the last week of August 2000 and the member has traded for the client when his client, along with entities acting in concert, was trading in the scrip and creating artificial volumes.

13. I have noted the contention of the broker in this regard that it was not possible for them to look at the scrip wise position of the client; moreover, the client was squaring-off his position, thereby not posing any financial risk to the broker. I am of the view that this lack of supervision was the precise reason that the client was able to act in the manner he did and was able to generate artificial volumes in the scrip. I find that the Enquiry Officer has not held the broker guilty of having aided/abetted the client, merely of not having exercised due care and diligence while dealing in the shares of MHL, especially considering that

- a. the shares were infrequently traded and the volumes had spurted only from August onwards,
- b. there was no fundamental reason for the share prices to go up as they did, during the investigation period,
- c. the client was entering into continuous speculative transactions in big quantities, without taking delivery of shares

14. The said broker continued trading for a number of settlements, which resulted in building up of artificial volumes and price in the scrip of MHL. Unsuspected innocent investors would be trapped by such false appearance of trading in securities. This is detrimental to the interest of investors and the orderly development of the securities market. I am of the view that the said broker ought to have noticed the trading pattern of the client. It is possible that the reckless trading by the clients involved in generating artificial volumes in the shares of MHL could have been arrested, had the said broker been careful in his dealing in the shares of MHL, given the circumstances mentioned in the para above.

15. In this regard, I have considered the submissions of the broker that the said client had dealt in the same manner in several other scrips, not only MHL and Eonour software, as alleged by the Enquiry Officer and hence, he had no reason to suspect the motive of the client. Having gone through the documents submitted by the broker in support of this contention, I have observed that the quantum of shares of MHL, traded by the said client, were in the region of lacs, as compared to the clients' trades in 69 other scrips, where the trades were largely in a few hundreds/thousands. (excluding 2 scrips, namely Morepen Labs and Veronica Labs, where the trades were also in lacs). Hence, I am of the view that the said broker had enough indications regarding the suspect motives of the said client. However, the broker, having failed to either notice the trading pattern of the client or to take cognizance of the same, enabled the said client in indulging in acts calculated to create false and misleading appearance of trading in the scrip of MHL in violation of Regulation 4(b) of the FUTP Regulations. Thus, the said broker has failed to exercise due skill and care in terms of

16. Further, the member vide his letter dated 26.11.2002 submitted a computer print out of the party ledger from 01.04.2000 to 31.03.2001. From the same I find that the member has not collected requisite Margins from the client and has allowed him to trade settlement after settlement. It is observed from the party ledger that, on 28/8/2000, vide bill no.122011, settlement no.22/2000, there is a debit balance of Rs.55,252.14. Again in settlement no.23/2000, there is a debit transaction of Rs.17,825.02 and the debit balance of Rs.73,077.16. From this, it is evident that the broker did not collect any initial margin as a result client's ledger does not show any credit balance. If the member broker had collected margin from the client, it would show as a credit balance in the ledger of the party on all the days whenever the client dealt with in the stock. I am not convinced with the reply of the member in as much as the broker is required to sell securities on behalf of client only on receipt of a minimum margin of 20% on the price of securities proposed to be sold, unless the member has received the securities to be sold with valid transferred documents to his satisfaction prior to such sale and the member broker shall buy securities on behalf of client only on receipt of margin minimum 20% on the price of the securities proposed to be purchased, unless the client has already an equivalent credit with the broker as per the circular no.SMD/SED/CIR/93/23321 dated November 18, 1993. Therefore, I find that the broker is

17. I note that Clause A(2) of Code of Conduct of the said Regulations reads as under:

"A. General

(1)

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

18. As regards the quantum of penalty, I have noted the findings of the Enquiry Officer and the detailed submissions of the broker, wherein it was stated that :

- a. He has been member of BSE since 1961-62 and has never been penalized for any infraction.
- b. He has a large client base, with six registered sub-brokers and six remisers working for him.
- c. The turnover in MHL was insignificant compared to the total turnover of the broker.
- d. He did not have any proprietary trades in the shares of MHL.
- e. He had disconnected the BOLT terminal granted to the client and had stopped doing business with them since May 2001.

19. Taking an overall view of the case, I find that the crux of the matter really lies in whether it can be realistically and fairly maintained that the broker, in the normal course of his business and working with normal diligence, would have quickly detected the "taint" attaching to the above group of transactions. It is true that, as stated above, going by the highest standards of prudence, the broker should have been more diligent in questioning his client/s about the nature of business being placed by them. For the purpose of determining what the appropriate and fair penalty is, however, it would be inequitable to wholly disregard the ground level practical constraints, the total business volumes handled by the broker, whether the pattern of trading was patently suspicious, and other related issues. Hindsight clarity of vision should not override due consideration of these facts and circumstances.

20. Given the above context, and considering also the turnover and the client base of the broker, as also the fact that the client had traded in more than 70 scrips on a regular basis, it does not appear to be fair to assume that the broker, without undue difficulty and with ordinary diligence, would have been in a position to readily zero-in on or segregate the transactions of the said clients and quickly establish their suspicious nature. Hence, I am of the view that suspension of certificate of registration granted to the said broker, for a period of two months, would be excessive. I am of the view that a penalty of warning would be adequate to meet the ends of justice.

ORDER

21. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Regulation 13(4) of SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby pass an order issuing a warning to Shri Bhupendra Meghji Bheda, member, BSE, to the effect that the broker should be careful in future and exercise due care and diligence in the conduct of its affairs as a capital market intermediary. 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 stringently.

A K Batra

DATED : 28th October, 2004

WHOLE TIME MEMBER

PLACE : MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA