

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 MAHESH J DOSHI, MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF MOREPEN HOTELS LTD .

Background

1. Shri M J Doshi (hereinafter referred to as 'the said broker') is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as 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 two such clients, namely, M/s K P Investments and M/s Prashant Investments. 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 31.05.04 and recommended that the certificate of registration of the broker be suspended for a period of two months.

SHOW CAUSE NOTICE AND REPLY

6. Pursuant to the receipt of the Enquiry report, a show cause notice dated 03.06.04 was issued to the member, along with a copy of the enquiry report, advising the broker to show cause as to why the penalty as recommended by the Enquiry Officer, should not be imposed on them. In reply to the said notice, the broker submitted a letter dated 18.06.2004, wherein inter alia the following submissions were made :

"i. Transactions of M/s Prashant Investments in Morepen Hotels Ltd., and also that of M/s K.P. Investments were squared off on the same day and the transactions were more or less in the nature of jobbing transactions. As the transactions were squared off at the end of the day we did not require margin deposits from the said two constituents.

ii. Out of the eight parties mentioned in Para 2.14 on page 6 of the enquiry report who had very huge transactions, we had deals with these two clients only and that too for negligible number of shares if compared to the very high volume by other brokers. And as our clients were honoring their pay-in obligations on times and had never defaulted in the same. All the payments/receipts have been dealt through a/c payee cheques. There is nothing due or payable by any of these two clients to us.

iii. On an average the said two clients were purchasing and selling one thousand to two thousand shares of Morepen Hotels Ltd., and at the end of the day their transactions stood squared – up. We did not find any risk in the said transactions.

iv. The transactions were affected at the rate prevailing in the market. The transactions were of the nature of jobbing. There was no slightest chance to doubt the genuineness of the said transactions or bonafides of our clients. Viewing from this angle that both these clients were punctual in honoring their pay-in obligations and never defaulted.

v. On 29.12.2000 we received a letter from BSE informing us about their doubt about transactions of these two clients. We immediately stopped dealings with them. And we informed BSE about the same vide our letter of 03.01.2001. This endorses our genuineness and bonafideness".

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 dealt for M/s K P Investment and M/s Prashant Investment, as under:

Settl. No.	Gross Purchases	Gross Sales	Net
22	1,000	1,000	0
23	8,700	8,700	0
24	10,500	10,500	0
25	14,300	14,300	0
26	14,300	14,300	0
27	17,600	17,600	0
28	13,300	13,300	0
29	18,800	18,800	0
30	16,800	16,800	0
33	21,800	21,800	0
34	22,500	22,500	300
35	12,200	12,200	0
37	11,300	11,300	0
38	18,800	18,800	0
39	22,100	22,100	0
40	20,000	20,000	0
	2,44,000	2,43,700	300

Trading details of M/s Prashant Investments

Settl. No.	Gross Purchases	Gross Sales	Net
22	1,000	1,000	0
23	8,100	8,100	0
24	13,400	13,400	0
	22,500	22,500	-100

9. From the trading pattern of the clients it is evident that the clients were generally squaring off their positions at the end of each settlement. The details submitted by the broker/client suggest that the clients used to square off their positions on the same day. In this regard the broker had stated that since the clients were mostly squaring off their positions at the end of the day, he did not notice their dealings in the scrip and carried out the transactions in the normal course of business.

10. I have observed that the two clients were a part 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 M/s K P Investments had traded in significant quantity of shares, across 16 settlements and also that both the clients had either squared off the transactions or had taken/given delivery of insignificant number of shares.

11. I have also observed that BSE had imposed a penalty on the said broker. Shri Mahesh J Doshi had stated that the penalty was collected by BSE, by way of direct debit to their General Charges Account maintained with Bank of India. The broker stated that he had stopped dealing with the client since January 2001 and passed on the fine to the clients by raising debit note.

12. I find that the member had executed trades for M/s. KP Investment for a total purchases of 2,88,000 shares from Settlement no.25 to 40. Almost all of these transactions were squared off with a very negligible portion of the purchases resulting in delivery. In addition, The Member had also purchased and sold 22,500 shares of MHL for Prashant Investments in Settlement No.22 to 24. As already brought out in para 2 above, eight "clients", including the two clients 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. The volumes in the scrip had started going up from the last week of August 2000 and the member has traded for the clients when his clients, along with entities acting in concert, were trading in the scrip and creating artificial volumes.

13. I have noted the contention of the broker in this regard that their clients were squaring off their positions every day and hence they did not pose any risk to the broker. I am of the view that this lack of supervision was the precise reason that the clients were able to act in the manner they did and were able to generate artificial volumes in the scrip. I find that the said broker could have been more careful in his dealings with the said clients, 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 clients had shown no inclination of picking up or giving delivery and the net worth of both the clients was insignificant.
- d. The said two clients were introduced to them only in July, 2000. Yet, the broker allowed the new clients to trade substantially in what was an illiquid scrip, made liquid from August, 2000 onwards, by eight entities generating artificial volumes. The broker allowed the said clients to trade in the scrip over extended periods and stopped trading only after BSE expressed its doubts regarding the trading of these clients.

14. As stated above, the said broker continued trading in the shares of MHL for a number of settlements, which resulted in building up of artificial volumes and price in the scrip of MHL, a scrip which did not attract much attention from investors otherwise, as is evident from the low volumes before the investigation period. The scrip was been made "liquid" by artificial volumes and price by certain connected clients, including the clients of the said broker. Unsuspecting 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. However, the broker, having failed to either notice the trading pattern of the clients or to take cognizance of the same, enabled the said clients 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 clause A(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said regulations.

16. 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.

17. However, I have also noted that :

- a. The said broker did not have any proprietary trades in the shares of MHL.
- b. He had discontinued trading with the said clients immediately on receipt of letter from BSE regarding suspicious transactions of these clients.

18. 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.

19. Given the above context, and considering also that the entities who had generated volumes in the scrip, had transacted through several brokers, making it difficult for the concerned brokers to easily detect any suspicious trading activity, 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. Given the circumstances, imposition of a penalty of warning would be adequate to meet the ends of justice.

ORDER

20. 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 Mahesh J Doshi, 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