

ORDER

ORDER UNDER SECTION 12A OF SECURITIES CONTRACTS (REGULATION) ACT, 1956, SECTION 11(4) AND 11B OF SEBI ACT, 1992 AND SECTION 19 OF DEPOSITORIES ACT, 1996 IN THE MATTER OF TRANSACTIONS IN THE SCIP OF BHORUKA FINANCIAL SERVICES LIMITED ON MAGADH STOCK EXCHANGE ASSOCIATION

1. Magadh Stock Exchange Association (MSEA) was recognized as a Stock Exchange under Section 4 of Securities Contracts (Regulation) Act, 1956 by Central Government vide Notification no. SO 899(E) dated December 05, 1986 for a period of 5 years commencing on December 11, 1986. The recognition was subsequently renewed from time to time under Rule 7 of Securities Contracts (Regulation) Rules, 1957.

2. Due to breakdown of internal administration and persistent malfunctioning of the Council of Management of MSEA, the Council of Management of MSEA was superseded by SEBI vide Notification No. SO. No. 822(E) dated December 05, 1997 under Section 11 of the Securities Contracts (Regulation) Act, 1956 for a period of one year. An Administrator had also been appointed to exercise and perform all the powers and duties of the Council of Management. The supersession was extended for a period of one more year with effect from December 08, 1998 to December 07, 1999 which was further extended for a period of 6 months with effect from December 08, 1999 to June 07, 2000. Subsequently, the Council of management of Magadh Stock exchange was restored on June 7, 2000.

3. SEBI has granted renewal of recognition to MSEA for a period of 3 years vide notification No. SO 1107(E) dated December 09, 2000. The recognition was further renewed for a period of one year, vide a Notification dated February 19, 2004 subject to the following conditions :

- (i) Setting of Trade Guarantee Fund /Settlement Guarantee Fund by the Exchange after final approval by SEBI.
- (ii) Trading shall commence only after setting up of Settlement Guarantee Fund or Trade Guarantee Fund, duly approved by SEBI.
- (iii) Payment of balance amount of Rs. 11,31,768 on or before December 1, 2004 towards refundable financial support extended by SEBI to the Exchange.

4. MSEA failed to comply with the said conditions. It was however observed that some trades were conducted on the stock exchange with a turnover of Rs.13.26 lakhs in year 2003-04. Since the turnover was very negligible, though the exchange was not legally permitted to conduct such trades on the exchange without complying with the conditions of renewal, MSEA was counseled and further renewal was granted for a period of one year vide Gazette Notification No. SO 1354 (E) dated December 6, 2004 commencing from 11th day of December 2004 and ending on 10th day of December 2005 subject to the conditions stated below:

(i) The Exchange shall set up Settlement Guarantee Fund in compliance with SEBI Circular SMD/POLICY/SUB BROKER /Cir-12/97 dated June 09, 1997, after final approval by SEBI.

(ii) Trading shall commence only after setting up of Settlement Guarantee Fund, duly approved by SEBI.

(iii) The Exchange shall repay the balance amount of RS 7, 50,000/-(Seven Lakhs fifty thousand only) towards refundable financial support extended by SEBI to the Exchange.

5. As noted from the conditions stated above, MSEA cannot commence trading until SGF is set up. MSEA had sent a proposal vide a letter dated August 8, 2004 for setting up of SGF but the letter was found to be inadequate with respect to risk management measures, adequacy of corpus of SGF, etc. and the exchange was advised vide letter dated December 31, 2004 to submit the proposal in conformity with our circular dated June 9, 1997. MSEA resubmitted the proposal vide letter dated February 14, 2005, which was found to be incomplete and sketchy. MSEA was therefore further advised to furnish complete details regarding setting up of SGF. MSEA submitted clarifications vide their e-mail dated July 11, 2005. The fact remains that MSEA has not yet set up SGF which is condition precedent for commencement of trading. It is further noted that the third condition is also not fully complied with since an amount of approximately Rs. 4.5 lakhs is still due from MSEA. Thus, none of the conditions of the renewal are complied with by the exchange.

6. The officiating Executive Director (OED) informed telephonically on August 10, 2005 to a junior officer in SEBI in a casual manner about the commencement of trading during the course of a conversation regarding Corporatisation and Demutualisation scheme. On further telephonic enquiry next day, it was confirmed by the OED that trading had in fact started on August 1, 2005. To all intents and purposes, MSEA appears to have commenced trading without complying with the conditions mentioned supra.

7. In view of the above, MSEA was advised during telecon on August 11, 2005 to stop trading immediately. Despite, SEBI's advise, it was observed that MSEA continued trading on August 11 and August 12, 2005. This was in complete disregard to the conditions stipulated in the Gazette Notification dated December 06, 2004 and subsequent SEBI's directions.

8. It is observed from the trading volume of MSEA that Exchange had witnessed "NIL" trading in financial year 2004-05 and had negligible trading volume of Rs.13.26 lakhs in year 2003-04, Rs 18.27 lakhs in 2002-03 and only Rs1.12 lakhs in 2001-02. It is further observed that though MSEA had "NIL" volume in 2004-05 and negligible volume in earlier years, there was a unusually high trading volume of approximately Rs 109.71 crores in just 10 trading days in August 2005 since the commencement of trading by MSEA in violation of the conditions of renewal as already stated. Further, it is also observed that MSEA had the highest trading volume of Rs. 39.31 crores on August 12, 2005 alone.

9. From the trading details furnished by MSEA, it was observed that trading was concentrated mainly in the scrip of Bhoruka Financial Services Limited (BFSL). Out of trading volume of Rs 109.71 crores in August 2005, approximately Rs 108.87 crores was in scrip BFSL, which accounted for nearly 99% of the trading volume.

10. It is noted that BFSL is not listed on MSEA. It is listed only on Bangalore Stock Exchange Ltd. (BgSE). The last trading in the scrip on BgSE was in year 1988 and the last traded price was Rs.5.00. MSEA, when enquired, admitted that this scrip was not listed on their exchange but allowed it to be traded in the permitted category on their Exchange only in the month of August 2005 and the trading commenced immediately on the same day.

11. On examination of the trading details, it is observed that the entire volume of trades noted above were through a common broker, namely Rajat Share and Stock Broker Pvt. Ltd of Patna. It is further observed that one DLF Commercial Developers Limited of Delhi was the sole buyer of all the shares and the sellers were Shri Satyanarayan Agarwal, Shri Viveek Agrawal, Umah Agrawal, Siddhartha Agrawal, Satyanarayanan Vivek Kumar HUF, M/s Prabhu Securities Limited, M/s. Bhoruka Engineering Ind. Ltd. who are promoters of BFSL holding 98.73% of the paid up share capital.

12. On verification of the records, it is observed that the said DLF Commercial Developers Limited of Delhi (DLF) had filed an application dated October 30, 2004 under Regulation 4(2) of SEBI (Substantial Acquisition of Shares and Takeovers Regulations) 1997 with SEBI seeking exemption from making public announcement and from complying with other formalities under Chapter III of Takeover Regulations in respect of an open offer to be made under Section 10 & 12 of Takeover Regulations to the balance public shareholders pursuant to the proposed acquisition of 1,98,850 equity shares / voting rights (98.73%) from the promoters of BFSL @ Rs. 2400 per equity share. The remaining 2550 equity shares amounting to 1.27 % shares of BFSL are held only by 26 public shareholders.

13. As recommended by the takeover panel under Regulation 4 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (Takeover Regulations), by an order dated June 29, 2005, SEBI exempted the acquirer DLF from complying with the provisions of Regulation 14, 15, 16 and 18 of Takeover Regulations with regard to the proposed offer to 26 public shareholders for the acquisition of 2550 equity shares.

14. It is noted that the shares of BFSL which were so far in the physical form were dematerialized for the first time on July 13, 2005 i.e immediately after passing of the said order dated June 29, 2005 by SEBI. It is noted that BFSL entered into an agreement with Central Depository Services (I) Limited (CDSL) and that CDSL admitted the securities for dematerialization on July 13, 2005.

15. It is curious to observe that during the period in August 2005, when the trading in the scrip of BFSL was permitted by MSEA in violation of the conditions of renewal, the trading price of the scrip was consistently at Rs. 4490/- for all the trades which is almost double the pre negotiated price of Rs. 2400/- as stated in the said SEBI order dated June 29, 2005. By deviating from the said order, it is prima facie found that the acquirer, DLF has in effect violated the takeover regulations.

16. It is further observed that the buyer DLF Limited is a Delhi based company. The sellers (promoters of BFSL) are Bangalore based entities. The scrip of BFSL is listed only on Bangalore Stock Exchange. In the circumstances it taxes one's credence to note that the highly illiquid scrip of BFSL was traded in Patna on MSEA at such an incredibly high price. It is equally pertinent to note that the trades on both the sides, one located in Delhi and the other in Bangalore, were executed through a common broker namely Rajat Share & Stock Brokers Pvt. Ltd. located in Patna.

17. Normally a scrip will be admitted in a permitted category if the scrip is listed and traded in other exchanges. However in case of BFSL, as noted earlier, the scrip was last traded in BgSE in the year 1988 and there was no trading in the scrip, thereafter. Hence allowing trading of such a scrip, highly illiquid and not traded for nearly 17 years, in the permitted category by MSEA appears to be a colourable action. This is further accentuated by the fact that a scrip which was last traded at Rs. 5.00, 17 years back in the exchange where it is listed was allowed to be traded at a price of Rs. 4490/- without any demur and with undue haste by MSEA on August 01, 2005 on the request of the broker.

18. From the above, it appears that the acquirer DLF and the seller, the promoters consciously and with pre meditated design chose to execute the trades on MSEA in Patna, with a view to avoiding regulatory attention and scrutiny. It appears that there is a tacit understanding between the acquirer, the promoters and a member of MSEA to facilitate the trades on the stock exchange illegally. But for the active connivance of the officiating ED of MSEA, this would not have been possible.

19. The role of the officiating ED in allowing trading of the scrip in MSEA is further exacerbated by the fact that the resumption of trading was allowed by the Officiating ED without obtaining the mandate of the council of management of MSEA as required under the byelaws of the MSEA. In fact the last meeting of the council was held on April 12, 2005, while the subsequent meeting was held on August 12, 2005 to take a decision to stop trading as directed by SEBI.

20. The concatenation of events as brought out supra in vivid details, inexorably lead to the inference that DLF, the promoters of BFSL and the officiating ED of the stock exchange along with the common broker of MSEA were in cahoots to put through the transfer of shares using the exchange mechanism with a view to artificially inflate the price for collateral ends.

21. Under Section 19 of Securities Contracts (Regulation) Act, 1956, no person can act as a stock exchange without proper recognition. The said section reads as under :

"19. (1) No person shall, except with the permission of the Central Government, organize or assist in organizing or be a member of any stock exchange (other than the recognized stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.

(2) This section shall come into force in any State or area on such date as the Central Government may, by notification in the Official Gazette, appoint."

22. It is noted from the above facts that the conditional renewal granted to MSEA is not validly in force in view of the non compliance of the conditions precedent to the renewal of recognition. The recognition granted to MSEA is not a permanent one. Its recognition has to renewed from time to time. In this case, the renewal was granted subject to certain conditions. When these conditions were not complied with, the recognition is deemed not to have been renewed. In the absence of renewal, the recognition was deemed to have lapsed. Therefore MSEA has acted illegally as a stock exchange without having proper recognition. Hence the trades of BFSL on MSEA cannot be construed as transactions on a recognized stock exchange or through members of recognized stock exchange with all attendant consequences under various laws of the country.

23. From the above facts and circumstances, it is prima facie noted that there is clear case of acting in concert to achieve an illegal object by the officiating ED of MSEA, the acquirer, the seller and the member mentioned above for ulterior motives abusing the stock exchange which is a public institution set up under an act and which is also a State under Article 12 of the Constitution of India. It is beyond anybody's comprehension why persons of Bangalore and Delhi go all the way to Patna to execute trades in a scrip which is not listed on MSEA. In his statement dated August 19, 2005, Shri G Kannan, the Vice President, Corporate Affairs of DLF Universal Limited (the holding company of DLF) stated that the price was negotiated but failed to give any justification for the inflated price. It is opposed to common prudence as to how MSEA allowed its trading system to be misused for the above prima facie manipulated trades. The only prima facie inference that can be drawn from the above is that the acquirer and the promoters of the target company wanted to manipulate the scrip of the target company to achieve their illegal and ulterior objective and misuse the trading facilities of MSEA with the active support of the officiating ED and a member. It also appears that the promoters undertook these transactions on the exchange, with a view to gaining undue advantage of provisions of Income Tax Act relating to tax exemption on long term capital gains.

24. These transactions have the potential to disturb the integrity of the securities market and send wrong signals to the market players and investors. Unless a stringent remedial action is taken immediately, the investors will lose faith in the system. The above transactions, the role of the acquirer, the role of the promoter and the role of the stock exchange including that of the Officiating ED and the member have to be thoroughly probed to find out the exact motive behind such transactions and to set the system right.

25. In any case it is obvious that the stock exchange mechanism of MSEA has been illegally used and that the stock exchange had facilitated the trading in the scrip of BFSL illegally in violation of Sections 13 and 19 of Securities Contracts (Regulation) Act, 1956. It is also in violation of the Notification dated December 06, 2004 granting renewal subject to conditions. It is therefore incumbent upon the regulator to take emergent and remedial steps to safeguard the interests of the investors and the orderly development of the securities market.

26. The SEBI has powers under Section 12 A of Securities Contracts (Regulation) Act, 1956 to issue such directions. The said section reads as under:

12A. *If, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary—*

(i) in the interest of investors, or orderly development of securities market; or

to prevent the affairs of any recognised stock exchange or clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or

(ii) to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,—

(a) to any stock exchange or clearing corporation or agency or person referred to in clause

(b) or any person or class of persons associated with the securities market; or

(c) to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.

27. Therefore by exercising powers under Section 19 of the SEBI Act read with Section 12 A of Securities Contracts (Regulation) Act, 1956 , in order to prevent the affairs of MSEA being conducted in a manner detrimental to the interests of the investors and also to secure proper management of the stock exchange, I hereby direct that MSEA which acted as unrecognized stock exchange as above shall not assist , regulate or control the dealings in securities in any manner whatsoever until further directions or pending completion of final proceedings, whichever is earlier.

28. Since it is prima facie found that the member of the MSEA namely Rajat Share & Stock Brokers Pvt. Ltd. facilitated the above transactions illegally on the stock exchange and without following Know Your Client criteria, they are directed not to deal in securities. undertake any transactions in securities as a broker registered with SEBI .

29. SEBI has powers to impound and retain the proceeds or securities in respect of any transaction which is under investigation under section 11(4)(c) of SEBI Act, 1992 . The said section reads as under :

"11 (4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:-

(a) suspend the trading of any security in a recognized stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval, by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached; direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation ".

30. As stated above, the scrip of BFSL has been prima facie found manipulated on the floor of MSEA by the above contrivance and deceptive attitude of the parties involved. The acquirer preferred to pay Rs. 4490/- despite the fact that order dated June 29, 2005 mentions a negotiated price of Rs. 2400/-. As noted from the said order dated June 29, 2005 , the book value of the shares as on March 31, 2004 was only Rs. 326.75 . It is therefore necessary to see that the prima facie disproportionate gains or unfair advantage are not taken away by the manipulators, and have to be impounded. As noted above, the shares of BFSL have been dematerialized with CDSL. It is therefore necessary to see that the manipulators are not allowed to achieve their illegal objective by further dealing in these securities and create third party interest. Therefore under Section 19 of Depositories Act, 1996 read with Section 11 (4) of SEBI Act 1992, the shares of BFSL lying with CDSL in demat form are hereby impounded till further orders. CDSL is also directed not to permit any transfers in the shares of BFSL till further orders.

31. It is also necessary in the interest of orderly development of securities market that the trading in the scrip of BFSL is suspended until further orders. Therefore by deriving powers under Section 11 (4) (a) read with Section 19 of SEBI Act; I hereby direct that the transactions in the scrip of BFSL be suspended on BgSE and any other stock exchange until further orders.

32. As a natural corollary of the above directions, the acquirer is prohibited from dealing in the scrip of BFSL so long as the above directions are in force. Since it is the seller i.e the promoters in this case by name Shri Satyanarayan Agarwal , Shri Viveek Agrawal, Umah Agrawal, Siddhartha Agrawal, Satyanarayanan Vivek Kumar HUF, M/s Prabhu Securities Limited, M/s. Bhoruka Engineering Ind. Ltd., who have been prima facie found to have gained unfairly, they are hereby directed under Section 11 B read with 11(4) to deposit the proceeds of these transactions in an escrow account with a nationalised bank opened exclusively for this purpose and they are further directed to take prior approval of SEBI for dealing in this account.

33. In view of the reckless and unseemly conduct on the part of the OED of MSEA , Shri C M Pandey, he is hereby suspended from acting as a OED or in any capacity in MSEA or in any other institution related with the securities market, till further orders.

34. I am of the considered view that, in view of imminent urgency and in order to safeguard the integrity of the securities market, the previous notice to show cause can be dispensed with and it will be in the interest of justice to pass an ex-parte order. The directions in this order will come into force with immediate effect.

35. Any person aggrieved by this interim ex-parte order may approach SEBI within 30 days of this order showing cause for reconsideration of the directions.

Date : 19th August, 2005	G. ANANTHARAMAN
Place : Mumbai	WHOLE TIME MEMBER