

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. SHIVAM INVESTMENTS, SUB-BROKER SEBI REGISTRATION NO. INS 010430713/01-07667 IN THE MATTER OF EONOUR SOFTWARE LIMITED

Background

1. Eonour Software Limited (hereinafter referred to as ESL) was originally incorporated on May 06, 1992 in the name of Mikugura Software Limited with its registered office located in Indore, Madhya Pradesh. Mikugura Software Limited was taken over by Shri R. Karthik from its previous promoters in the month of November, 1999 and renamed ESL. The shares of ESL is listed on Ahmedabad Stock Exchange (ASE), Madras Stock Exchange (MSE), The Stock Exchange, Mumbai (BSE) and Madhya Pradesh Stock Exchange (MPSE). Listing of the shares at MSE and BSE was done after the takeover by the new management. After the takeover, the registered office of ESL changed from Indore (MP) to Chennai.
2. The public holding in ESL excluding other body corporates is about 6.3 lakh shares or 21% of the paid up capital of ESL. Further, out of the total 1,248 shareholders, only 4 shareholders were holding about 79% of the equity capital. This shows that the shares of company are in limited hands.
3. M/s. Shivam Investments (hereinafter referred to as Shivam), Sub-Broker to Joindre Capital Services Ltd. and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) vide SEBI Registration No. INS 010430713/01-07667 had traded in the shares of ESL on behalf of M/s. K. P. Investment and M/s. Prashant Investment.

Trading for Prashant Investment:

Settl. No.	Gross Purchases	Gross Sales	Net
12	9,500	9,500	0
13	12,600	12,700	-100
14	1,000	900	100
15	1,000	1,000	0
16	2,000	2,000	0
17	1,000	1,000	0
22	2,600	2,600	0
24	3,700	3,700	0
Total	33,400	33,400	0

Trading for K. P. Investments

Settl. No.	Gross Purchases	Gross Sales	Net
25	9,500	9,500	0
Total	9,500	9,500	0

4. It was observed from the trading details that the clients were squaring off their positions at the end of each settlement. The details submitted by Shivam / its clients suggest that the clients used to square off their positions either on the same day or within the same settlement. It was observed that Shivam had not taken appropriate margin from the client and had also allowed the clients to trade in substantial quantity even though the stock was completely illiquid.
5. In view of the above, an enquiry officer was appointed by SEBI, vide order dated 18th February, 2002, to conduct an enquiry into the dealings of Shivam in the scrip of ESL for possible violation of the following provisions:
 - a. Rules, Bye-laws and Regulations of the Stock Exchange, Mumbai;
 - b. Provisions of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992; and
 - c. Provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

Enquiry report and recommendation

6. The enquiry officer, after conducting the enquiry as per the prescribed procedure submitted a report on February 28, 2004. The enquiry officer found Shivam guilty of violating the following provisions:
 - a. Clause A (2) of the Code of Conduct prescribed in Schedule II in terms of Regulation 15 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 and
 - b. Regulations 4 (b) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

Consequently, the enquiry officer recommended a minor penalty of suspension of Certificate of Registration of Shivam for a period of two months.

Show-cause notice and reply

7. Pursuant to the submission of enquiry report, a show cause notice (No. IVD-3/PKB/JJS/ESL-ER/4719/2004) dated 8th March, 2004 was issued to Shivam along with a copy of the enquiry report and the same was received by Shivam on 10th March, 2004. Shivam was informed that its reply, if any, should reach SEBI within a period of 15 days of the receipt of notice, failing which it would be presumed that it had no explanations to offer and SEBI would be free to take such action as it deems fit. Shivam neither replied to the show cause notice nor sought time to reply to the said notice.

Consideration of issues

8. I have considered the enquiry report and the findings contained therein. I note that Shivam has chosen not to reply to the show cause notice dated 08.03.04 whereby the findings of the enquiry officer was communicated to Shivam. I feel adequate opportunity has been given to Shivam to reply to the notice. Therefore, I proceed to decide the matter.
9. The provisions of Clause A (2) of the Code of Conduct prescribed in Schedule II in terms of Regulation 15 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 read as under

"(2) Exercise of due Skill and Care: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business."

10. Regulations 4 (b) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 are as follows:

"4. Prohibition against market manipulation.-

- (a)
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;
- (c).....
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities.
- (e)"

11. I find that M/s. Shivam Investments had executed trades for M/s. K. P. Investments for a total purchase of 9,500 shares in Settlement No. 25 and for Prashant Investment a total purchases of 33,400 shares in Sett. No. 12 to 17, 22 and 24. Most of these transactions were squared off with a very highly negligible portion of the purchase resulting in delivery.
12. The clients have traded only in the scrip of ESL which was an illiquid scrip. The scrip has been made liquid by putting artificial volumes and price by certain connected clients including the clients of Shivam. Shivam has allowed clients to trade in such a scrip without collecting margins. The clients have entered into continuous speculative transactions without any genuine interest in giving or taking delivery of shares. This has resulted in creation of artificial volumes and price rise in the scrip which has otherwise no interest from the general investors.
13. I find that only a few clients connected to each other had indulged in circular trading i.e. buy and sell transactions with each other, squaring off positions and reversing trades either on the same day or same settlement, making the net receivables and deliverable positions either nil or in negligible quantities and created a false and misleading appearance of trading on the securities market in the scrip of ESL.
14. In such circumstances, any prudent sub broker would have doubted the intentions of the clients and would have stopped trading for them in that scrip. Instead, Shivam continued trading for its clients across a number of settlements which resulted in building up of artificial volumes and price in the scrip of ESL. 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.
15. Shivam has therefore, failed to exercise due skill and care in terms of Clause A (2) of the Code of Conduct prescribed for sub brokers in Schedule II in terms of Regulation 15 of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. Shivam by allowing the clients to indulge in acts calculated to create a false and misleading appearance of trading in the scrip of ESL, has violated the provisions of Regulations 4 (b) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995.
16. In view of the above, I do not find any reason to differ with the findings of the enquiry officer. I am also convinced that the said broker Shivam is liable for action under regulation 13 (1) (a) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.
17. Under Section 11 of the Securities and Exchange Board of India Act, 1992, SEBI can take measures to protect the interests of investors and to regulate the securities market, inter-alia, by registering and regulating the working of stock brokers, sub-brokers, etc., who may be associated with the securities market in any manner. Further, the Code of Conduct specified in Schedule II of the Broker Regulations also provides for the minimum standards for the working of the stock brokers. If the regulatory requirements of the regulations are allowed to be violated by the sub-broker without any action, the regulatory

function of SEBI would be jeopardized. It is to be noted that indulgence of the said sub-broker and the transactions arising thereof are likely to have a detrimental effect on the investors and the securities market.

18. I find that M/s. Shivam Investments, sub-broker has committed violations as observed above and has failed to abide by the provisions of SEBI Act, 1992 and the rules and regulations issued by the Board thereunder. Looking at the aforesaid violations committed by M/s. Shivam Investments, I am convinced that, in the interests of the securities market and in order to safeguard its integrity, penal action is warranted. I am satisfied that a penalty of suspension of certificate of registration of two months would be adequate and would meet the ends of justice.

ORDER:

19. 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 (1) (a) and 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. INS O10430713 / 01-07667) of M/s. Shivam Investments, a sub-broker of M/s. Joinder Capital Services Ltd. be suspended for a period of 2 (two) months.

This order shall come into force on the expiry of three weeks from the date of this order.

PLACE: MUMBAI

DATE: 30/12/2005

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA