

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11, 11B and 11(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 11 AND 13 OF THE SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST ABHISHEK KHARE IN THE MATTER OF KWALITY DAIRY (INDIA) LIMITED

1.0 BACKGROUND

1.1 Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigations into the dealings in the scrip of Kwaliti Dairy (India) Limited (hereinafter referred to as "KDIL") for the period from February 5, 2003 to June 6, 2003. The scrip of KDIL is listed on the Madhya Pradesh Stock Exchange (hereinafter referred to as "MPSE").

2.0 SHOW-CAUSE NOTICE

2.1 It was alleged that Abhishek Khare has aided and abetted the clients in creating artificial market in the scrip of KDIL and therefore, guilty of violating the provisions of Regulation 4(a), (b),(c) and (d) of the SEBI (Prohibition of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations, 1995"). A Show Cause Notice No. IVD/ID1/PKN/AP/17812/04 dated August 12,2004 was issued to Mr. Abhishek Khare calling upon him to show cause as to why suitable directions including issuing such directions under Section 11(4) and Section 11 and 11B of the SEBI Act,1992 read with Regulation 11 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "FUTP Regulations, 2003") restraining him from accessing the capital market and prohibiting from buying, selling or dealing in the securities in any manner for a particular period should not be initiated. However, Mr. Abhishek Khare failed to submit reply to the said Show Cause Notice. Mr. Abhishek Khare was afforded enough opportunity to offer his comments. Further, in terms of the said show cause notice Mr.Abhishek Khare was asked as to whether he would prefer a personal hearing before me. Mr. Abhishek Khare did not respond.

3.0 CONSIDERATION OF ISSUES AND OBSERVATIONS

- 3.1 I am convinced that ample opportunities have been granted to Mr.Abhishek Khare to make submissions and my observations, on the basis of the material available on record, are as under:
- 3.2 I observe that KDIL suffered loss for the years ended March 31, 2000, March 31, 2001, March 31, 2002 and March 31, 2003. KDIL earned a net profit of Rs.1.06 million on turnover of Rs.34.48 million during the quarter ended on June 30, 2003. Investigations revealed that the total volume traded during the period of investigation was 3403923 shares. During the period February 5, 2003 to March 31, 2003, the scrip was infrequently traded with a very small volume and from April 2, 2003 there was a price rise with increasing volumes. From April 2, 2003 to April 11, 2003, there was price rise in the scrip from Rs.3.05 to Rs.11.25 and from April 29, 2003 to June 6, 2003 the price rose from Rs.11.70 to Rs.46.95. It was observed that out of the total volume, 3288016 shares were traded during the period April 23 to June 6, 2004 when some of the entities were involved in trading by entering into circular / reversal of trades. Investigation revealed that during the period April 23, 2003 to June 6, 2003, around 25% of the volume of trading was due to circular trades / reversal of trades among different groups of clients and brokers. The clients and the member-brokers of each of these groups bought and sold the shares among themselves by squaring off the deals often the same day through the same brokers(s) in a circular manner.
- 3.3 I note from the analysis of trading that during the period 23rd April, 2003 to 6th June, 2003 around 25% of the total volume of trading was due to circular trades / reversal of trades among different groups of clients and brokers. I observe that the clients and the member-brokers of each of these groups bought and sold the shares among themselves by squaring off the deals often the same day through the same broker(s) in a circular manner.
- 3.4 I observe that the artificial volume generated through these circular deals / reversal of trades were mainly during April 23, 2003 to June 6, 2003 and this volumes on most of the days was around 20-25% of the day volume and on some days between 30-40%.
- 3.5 I observe that one of the groups involved in circular trading comprised of the brokers of Madhya Pradesh Stock Exchange (MPSE), Shri Sanjay Biyani and M/s.Sunil Shares and Stock Pvt. Ltd. who traded through MPSE Securities Ltd. (Clearing No.296), a subsidiary of MPSE. Shri Sanjay Biyani also acted as a client and traded through his own broking firm and M/s. Sunil Shares and Stock Pvt.Ltd. traded for the ultimate client Shri Abhishek Khare.
- 3.6 I observe that both these clients successively bought and sold the shares to each other several times intra day, thus not taking or giving delivery during the period of investigation. I observe that these deals continued for 32 trading days and involved a total of 731764 shares constituting around 22% of the volume traded during the period of investigation.
- 3.7 I further observe that all the orders for the said trades were placed within 0-34 seconds of each other. Out of a total of 4239 trades of MPSE Sec.Ltd., 4116 trades were executed between these two brokers and clients.

3.8 Trading details of Mr. Abhishek Khare in the scrip of Kwaliti Dairy (India) Ltd. are as under:

Date	Bought Qty.	Bought by Client (Broker)	Bought From Client (Broker)	Sold Qty.	Sold by Client (Broker)	Sold to Client (Broker)
23.4.03 to 6.6.03	731764	Sanjay Biyani (Sanjay Biyani)	Abhishek Khare (Sunil Shares and Stocks)	731764	Sanjay Biyani (Sanjay Biyani)	Abhishek Khare (Sunil Shares and Stocks)

3.9 I have also considered the integrated Trade and Order Log – Self Trade done by the member MPSE Securities Ltd. with regard to the circular trading/ reversal of trades which show that order quantity, price and timings of placing orders on both the buy and sell sides matched with each other, as was annexed to the show cause notice as Annexure V. I observe that where the several other member-brokers were also found to be active during this period, the orders placed by the brokers trading on behalf of these clients matched with those of each other which are nothing but their concerted effort and manipulative intent. I find the same to be more than a coincidence.

3.10 I note that in Appeal No.54 of 2002 – Nirmal Bang Securities Pvt. Ltd. vs SEBI, the Hon'ble Securities Appellate Tribunal has held as under with regard to the synchronised deals :-

"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale, can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously."

3.11 I find such transactions wherein the buy and sell orders were entered as cross deals and matched in terms of order quantity, price and the time of punching orders are highly irregular and defeat the very purpose of normal order-matching system in the price discovery process in the exchanges. Therefore, I find the said transactions are in violation of Regulation 4 of the FUTP Regulations, 1995 which reads as under:-

Prohibition against market manipulation.

4 No persons shall

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities markets;

(c) indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(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 fluctuation in the market price of securities.

(e).....

3.12 In view of the aforesaid observations, I am satisfied that this is a fit case to initiate action against Mr. Abhishek Khare.

4.0 ORDER:

4.1 Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Section 11, 11B and 11(4) of the SEBI Act, 1992, read with regulation 11 and 13 of the FUTP Regulations, 2003, I, hereby pass an order restraining Mr. Abhishek Khare from accessing the securities market and prohibiting him from buying, selling or dealing in securities, directly or indirectly for a period of six months. I am convinced that this would commensurate with the defaults committed by Mr. Abhishek Khare in the facts and circumstances of the case.

4.2 This order shall come into force with immediate effect.

PLACE: MUMBAI

DATE: January 13, 2006

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA