

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. JOINDRE CAPITAL SERVICES LTD., MEMBER, BSE AND NSE (SEBI REGISTRATION NO. INB 011107555 AND INB 230766739) IN THE MATTER OF SNOWCEM INDIA LTD.

BACKGROUND:

1. Joindre Capital Services Limited (hereinafter referred to as "the member") is a member of Bombay Stock Exchange (hereinafter referred to as "BSE") and National Stock Exchange (hereinafter referred to as "NSE"), registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI').
2. An internal investigation was conducted from June 3, 1999 to August 10, 1999 by the NSE in the scrip of Snowcem India Ltd (hereinafter referred to as 'SIL') and submitted its report to SEBI. According to the report, there was a major spurt in the total traded volume in the scrip of SIL. From an average volume of 12,521 shares during the period March 1, 1999 to May 25, 1999, it recorded a five-fold increase to record volumes of 68,370 shares a day during the investigation period, which is from June 1999 to August 1999.
3. Thereafter, SEBI carried out a detailed investigation of the dealings in the scrip of SIL. The investigations, inter-alia, revealed that:
 - a. Kosha Investments Ltd. (KIL) was the predominant trader in the scrip during the period of investigations. SIL had re-issued forfeited shares and the same were allotted to one Shri Sourabh Bora (whose name also figured among the top clients during the period of investigations). Shri Sourabh Bora was identified as one of the top clients who had traded in the scrip apart from KIL.
 - b. The money received by KIL from SIL was time and again utilised for the purpose of making payments to brokers. The timing of the fund transfers from the books of the company to the account of KIL and from KIL to the accounts of the brokers/sub brokers suggested that there were clear- cut intentions on the part of the company to manipulate the scrip price of SIL. The fact that the company was not aware of the details of the funds utilisation by KIL is again without any conviction. In almost all the occasions it was observed that funds were transferred from the account of SIL and credited into the account of KIL prior to their placement of transactions in the scrip of SIL. Moreover, KIL is also the promoter group company of SIL and this has been agreed by the management of SIL.
 - c. It is observed that KIL was the predominant buyer in the scrip and it was their trading which was responsible for the price movement in the scrip of SIL. From the trading details submitted by the exchanges it appeared that KIL had employed manipulative tactics either to maintain the scrip price and/or to increase the price drastically. In view of the fund transfers which occurred frequently, it appeared that the management of SIL was directly responsible for the price movement in the scrip during the aforementioned period.
 - d. SIL transferred the funds to the account of KIL, its promoter group company, and on the very same day two other transactions have taken place i.e. one wherein KIL transferred the funds to Shri Sourabh H Bora to enable him to make payments towards the allotment of forfeited shares and second transaction being Shri Sourabh Bora making payments to SIL in respect of the forfeited shares allotted to him. The fund transfers suggest that SIL was very well aware that it has lent the money for the purpose of making payments towards forfeited shares. It should also be borne in mind that although Shri Sourabh H Bora had given cheques during the first week of September 1999 these cheques were presented to the bank for realisation only in the last week of September 99 and the actual realisation of the cheques took place on October 1, 1999 (after the bank account of Shri Sourabh Bora was adequately capitalized by way of transfer of funds from SIL). In addition to the above, the records indicate that Shri Sourabh H Bora still owes more than Rs. 6 crores to KIL, which in turn owes more than Rs. 15 crores to SIL. It is clear that Shri Bora has not made the payments to the company towards the forfeited shares allotted to him and the whole matter was just a book entry and the company has managed to create shares without actual infusion of funds.
4. KIL and Shri Bora indulged in trading in the scrip of SIL, through various members of BSE and NSE, including the member.

Member Name	Exchange	Member Name	Exchange
Indraprastha Holdings Ltd.	NSE	M.J. Patel Share & Stock Brokers Ltd.	BSE
Triveni Management Consultancy Services Ltd.	NSE	Bishwanath M Jhunjunwala	BSE
Master Capital Services Ltd.	NSE	Kaynet Capital Ltd.	BSE
Kasat Sec. (P) Ltd.	NSE	NVS Brokerage (P) Ltd.	BSE
Nariman Finvest (P) Ltd.	NSE	Joindre Capital Services	BSE
		Sovereign Sec. (P) Ltd.	BSE

5. During the investigation period, the member traded in the scrip both at BSE and NSE. At NSE, the client was Shri Sunil Samtani and at BSE the clients were Shri Sunil Samtani and Shri Sourabh H Bora, who were the clients of member's Fort Branch, Mumbai details of which are as follows:

Trading details of Shri Sourabh Bora through JCSL				
Sett. #	Purchases	Sales	Gross	Net
19	-	42,500	42,500	-42,500
Total	-	42,500	42,500	-42,500

Trading details of Sunil Samtani through JCSL				
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Sett. #	Purchases	Sales	Gross	Net
19	10,000	10,000	20,000	-
20	1,000	1,000	2,000	-
21	4,000	4,000	8,000	-
21	1,000	-	1,000	1,000
22	5,900	5,900	11,800	-
24	500	500	1,000	-
Total	22,400	21,400	43,800	1,000

6. The member has traded for Shri Sourabh Bora, who was found to be one of the main client in the scrip. Shri Sourabh Bora was acting hand in glove with the management of both SIL and KIL in the manipulation of the scrip of SIL. It was therefore alleged that JCSL had aided and abetted Bora in his manipulative and fraudulent transactions in SIL, they did not exhibit high standards of integrity, fairness and professionalism of a registered intermediary in their dealings in the aforesaid scrip leading to artificial volumes in the market. It was observed that the member had not taken margin from his clients. The member had therefore alleged to have failed to exercise due skill, care and diligence and has violated the provisions of Code of Conduct prescribed for Stock Brokers laid down in Schedule II to Regulation 7 of SEBI (Stock Brokers and sub-brokers) Regulations, 1992, in specific, violated A (1) to A (4) of the Code of Conduct. The member is guilty of violating the provisions of Regulation 4 (a), (b) & (d) of SEBI (PFUTP) Regulations, 1995.

ENQUIRY REPORT AND RECOMMENDATION:

7. Pursuant to the investigation, an enquiry officer was appointed and after conducting the enquiry as per the procedure laid down under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the said regulations") submitted a report recommending that the member's certificate of registration be suspended for a period of one month.

SHOW-CAUSE NOTICE:

8. Pursuant to the above, a show cause notice dated 31.03.2004 was issued by SEBI to the member along with a copy of the enquiry report. The member submitted a reply vide letter dated 27.04.2004. I proceed to examine the issues as under:

ISSUES FOR CONSIDERATION:

Charges

9. The Member did not collect margin from its clients which is in violation of SEBI Circular SMDRP/POLICY/CIR-35/98 dated 11-12-1998 and therefore the conduct of the member is found to be in violation of the code of conduct as specified in Schedule II of SEBI (Stock brokers & Sub-brokers) Regulations, 1992 (hereinafter referred to as the broker Regulations).
10. It is alleged that the member by executing orders has aided and abetted Shri Sourabh Bora in his manipulative and fraudulent transactions in the scrip of SIL thereby failed to exercise due skill and care in the transactions of its clients and violated the provisions of 4 (a) & (b) of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to securities market) Regulations, 1995 (hereinafter referred to as the said Regulations) read with the Code of Conduct as specified in Schedule II of the Broker Regulations.

Reply

11. The member vide his letter dated 27/4/2004 denied the allegation and submitted as follows:

"It appears from the Enquiry Report that the sole basis of the findings against us is that we allegedly had not taken margin from our client, viz. Mr. Sourabh Bora and Mr. Sunil Samtani. In our letter dated 11th August, 2003, we had pointed out to the Enquiry Officer that we had in fact secured margin from both Mr. Bora and Mr. Samtani and had furnished the particulars in that regard. In the case of Mr. Bora, we had taken margin in the form of 30,000 shares of Advent Computers Ltd. valued at about Rs.5 lakhs, prior to the impugned transaction of SIL. We had also confirmed that Mr. Bora in fact held 42,500 shares of SIL in his demat account prior to selling the same. In the case of Mr. Samtani also, we always had a margin with us. Mr. Samtani had instructed us to retain the amount to his credit in his account as margin by his letter dated 19th April, 1999. All these facts were placed before the Enquiry Officer by our letter dated 11th August, 2003, but the same have been totally ignored/overlooked by the Enquiry Officer in his Report while making his report. In fact, while reproducing our aforesaid letter dated 11th August, 2003, in the Enquiry Report (pages 5 to 11 thereof), for some reason, the relevant para of the letter pertaining to the details of the margin secured by us has been incorrectly/inaccurately reproduced. The version reproduced is inconsistent with the actual para. The facts contained in our letter pertaining to the margins were chosen to be ignored by the Enquiry Officer and consequently he did not accurately reproduce the relevant letter. The Enquiry Officer has thereafter proceeded to record a finding against us on the basis of his erroneous perception of our explanation in the letter. In view of the above, the finding of the Enquiry Officer that by not collecting the margin, we have violated the SEBI circular SMDRP/Policy/Cir-35/98 dated 4th Dec., 1998 and the Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992, is perverse and ought not to be accepted".

12. The member while denying the allegation at para 8 above, vide its letter dated 27/4/04, inter-alia, submitted as under:

- Prior to 1999, Mr. Bora was dealing in the stock market for a number of years. As far as we are aware, he had no record of any default and there was no case against him in respect of any transaction executed by him either on the BSE or the NSE. Accordingly, when Mr. Bora approached us in July, 1999 and requested us to act as his broker in respect of transactions on the NSE and BSE, we did not find any reason not to execute transactions on his behalf.
- During the period from July to March, 1999 we executed several orders on behalf of Mr. Bora. The total volume of the trades executed by us on behalf of Mr. Bora during this period was Rs. 206.44 Crores. Out of this, transactions

pertaining to approximately 13.66 lakh shares worth Rs.93.77 Crores were executed at the NSE and transactions pertaining to approximately 24.92 lakh shares worth Rs. 112.67 Crores were executed at the BSE. Mr. Bora did not commit any default in respect of any of the transactions.

- c. We executed one transaction of sale of 42500 shares of SIL on 30th July, 1999 on behalf of Mr. Bora on the BSE. The value of this transaction was approximately Rs. 38 Lakhs. This constituted only about 0.18% of the total volume of transactions executed by us on behalf of Mr. Bora.
- d. This sale of 42500 shares of SIL on 30th July, 1999 constituted only 13.57% of the total volume of transactions of the SIL scrip on the BSE and NSE on that date. This transaction further constituted only 0.50% of the total volume of transactions in the SIL scrip during the period from June to August, 1999, which was 84.87 lakhs shares. In fact, as on 30th July, 1999 the scrip of SIL was being actively traded with high volumes. In these circumstances the impugned transaction was insignificant and inconsequential.
- e. The impugned transaction of sale of 42500 shares of SIL occurred at the fag end of the trading session on 30th July, 1999. This trade was executed by us through the screen based trading mechanism of the BSE. We simply placed the order for sale of the shares through the computer system and the transactions were concluded as and when our sale orders were matched on the screen. There was no question of our being aware of the purchasers or the counter party brokers and in fact we were and are not aware of the same till today.
- f. The sale of the said 42500 shares took place as and when matching purchase orders were found, at prices ranging from Rs.97.50 to Rs.99/- per share. These sales took place at the day's highest prices, which ranged from Rs.88/- to Rs.99/- per share and closed at Rs.98.10 per share.
- g. Before executing the transaction we confirmed that Mr. Bora did in fact have 42,500 shares of SIL in his demat account. After the transaction the said 42,500 shares were duly delivered by Mr. Bora.
- h. Throughout his dealings with us Mr. Bora did not commit any default. He duly made payments as and when demanded.
- i. Apart from the impugned transaction in the scrip of SIL, we also traded in the scrip of SIL for some of our other clients.
- j. In view of what is stated above, we submit that we, as brokers, acted prudently and with due care, skill and diligence. We duly executed the transaction of sale of 42500 shares of SIL on behalf of Mr. Bora. We duly delivered the said shares. This sale was effected in a rising market when it was prudent to book profits. This sale was effected at a time when the volumes generally as well as in the scrip of SIL were huge. This transaction was affected without any knowledge whatsoever about the alleged manipulation or fraudulent nature of the transaction. There was no reason to arouse our suspicion. We genuinely believed that the transaction was a normal transaction executed in the ordinary course of business. In these circumstances we submit that we have not violated any of the provisions of the SEBI (FUTP) Regulations or the Code of Conduct for Stock Brokers, as alleged in the Enquiry.

Finding:

13. I note that Clause A (2), (3) and (4) of Code of Conduct of Broker 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.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investor's interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5)"

14. I also note that Regulation 4 (a) and (b) of the said Regulations reads as under:

"4. Prohibition against market manipulation. – No person 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 market;

(c).....

(d).....

(e)....."

15. I find that as per SEBI's circular no.SMDRP/POLICY/CIR-35/98 dated 4/12/98 , it shall be mandatory for member to collect margins from clients in all cases where the margin in respect of the client in the settlement would work out to be more than

Rs.50,000/-. The margin so collected shall be kept separately in the client's bank account and utilized for making payment to the clearing house for margin and settlement with respect to that client.

16. I find that as per the said circular margin has to be collected solely in terms of cash. Whereas the member has submitted a letter dated 25/07/99 of Shri Bora stating that 30000 shares of Advent Computers Ltd valued at Rs.5.00 lacs should be treated as margin and also that 42500 shares held by Shri Bora of SIL in the demat account prior to selling be also considered. I do not find merit in the submission of the member since the same is not in compliance with the provisions of the circular in as much as margin is required to be collected in terms of cash but not in any other form. Therefore, I hold the member guilty on this count.
17. I find the trading details of Shri Sourabh H Bora through the member (at BSE) are as under:

Sett. #	Purchases	Sales	Gross	Net
19	-	42,500	42,500	-42,500
Total	-	42,500	42,500	-42,500

18. Trading details of Shri Sunil Samtani through the member are as under:

Sett. #	Purchases	Sales	Gross	Net
19	10,000	10,000	20,000	-
20	1,000	1,000	2,000	-
21	4,000	4,000	8,000	-
21	1,000	-	1,000	1,000
22	5,900	5,900	11,800	-
24	500	500	1,000	-
Total	22,400	21,400	43,800	1,000

19. The member has traded for Shri Sourabh H Bora, who was found to be one of the main clients trading in the scrip. Shri Sourabh H Bora was acting hand in glove with the management of both SIL and KIL in the manipulation of the price of the scrip of SIL. I also note that SEBI had passed an order dated 21/11/2003 restraining Shri Sourabh Bora from buying, selling or dealing in securities, directly or indirectly, for a period of 18 months for violating the provisions of the said Regulations. The said order was passed for his role in the price manipulation in the scrip of SIL. For his transactions in the scrip of SIL, Shri Bora, amongst other brokers, had also employed the services of the member. The fact that the member has failed to collect margins from the client i.e. Mr. Bora indicates that he has failed to exercise due skill and care in the conduct of his dealings with respect to his client which gives rise to the conclusion that the member has aided and abetted the client in the manipulation of price of the scrip of SIL. The argument that the said order was not in operation during the period of investigation will not anyway help the member in as much as the role of the member in violating the provisions of clause A (2), (3) and (4) of Code of Conduct as specified in Schedule II read with Regulation 7 of the said broker regulations read with the provisions of Regulation 4 (a) and (b) of the said Regulations during the period of investigation is established.
20. In view of the above findings, I am fully convinced that the broker had failed to collect margin from its client and failed to adhere to the provisions of clauses A (1), A (2) and A (3) of the code of conduct of Schedule II of the broker Regulations and also violated the provisions of 4(a) and (b) of the said Regulations.
21. The Broker while replying to the show cause notice had sought for a personal hearing. However, I note that there is no provision for personal hearing under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I have noted that the Enquiry Officer had already heard the Broker in person. In addition the Broker has been given opportunity to file written submissions to the show cause notice issued along with a copy of enquiry report. Therefore I find that natural justice requirement has been met with. I do not find any substantive reason / justification furnished by the Broker warranting a personal hearing again.

ORDER:

22. I am satisfied that it is necessary to secure the proper management of the stock broker and also in the interest of the securities market that a minor penalty of one month suspension of certificate of registration of the Member as recommended by the enquiry officer is reasonable. 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 regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby order that the certificate of registration of M/s Joindre Capital Services Limited, Member BSE and NSE (SEBI Registration No. INB 011107555 and INB 230766739) be suspended for a period of one month.

This order shall come into force after the expiry of three weeks from the date of passage of the order.

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Date: 25.01.06

Place: Mumbai