

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

AGAINST SHRI SUSHIL VERMA, DIRECTOR, M/S. FOCUS PORTFOLIO LTD. UNDER SECTION 11B READ WITH SECTION 11 (4) (b) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH REGULATION 11 AND 13 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET) REGULATIONS, 2003, IN THE MATTER OF M/S. HAVELLS INDIA LIMITED.

BACKGROUND

1. Havells India Ltd. (hereinafter referred to as HIL) was promoted by Shri Qimat Rai Gupta and Shri S. K. Gupta. HIL was incorporated as Havells Pvt. Ltd. in August, 1983 and converted into a public limited company in March, 1992. It started by producing miniature circuit-breakers and distribution boards in 1984. It entered into a technical collaboration with Christian Geyer, Germany to manufacture miniature circuit breakers in India. In 1991, it was amalgamated with Elymer Havells Pvt. Ltd.
2. The National Stock Exchange based on a market alert received for the period October – December 2002, scrutinised the trading pattern in the scrip of HIL for Settlement nos. 2001141W to 2001151W (i.e. for the period October 15, 2001 to December 28, 2001) due to the high trading activity in an illiquid scrip.
3. Further investigations conducted by the Securities and Exchange Board of India (hereinafter referred to as SEBI) brought out that two NSE brokers – M/s. O. J. Financial Services Ltd. (hereinafter referred to as OJFSL) and M/s. Emerging Securities Private Limited (hereinafter referred to as ESPL) based in New Delhi had together contributed 96.70% of the gross traded quantity during the period. Two clients, M/s. Focus Portfolio Pvt. Ltd. (hereinafter referred to as Focus) and M/s. Hind Comtel Ltd. (hereinafter referred to as HCL) had contributed to the entire volumes from these brokers respectively.
4. It was revealed during the investigations that total transactions performed by the two brokers comprised of 66 structured deals between these two clients accounting for a gross traded quantity of 1,79,600 shares which constituted 95.76% of the gross quantity traded during the period under scrutiny. It was also revealed that both the clients shared the same address, M-19, Munish Plaza, 20, Ansari Road, Darya Gunj, New Delhi - 110002.
5. Focus has traded in all the 11 settlements during the investigation period. The client has bought 46,562 shares and sold 44,800 shares in the entire period under scrutiny. The total traded quantity by Focus was 48.71% of the total gross quantity for the entire period. Most of the orders placed on behalf of Focus have matched exactly with those of HCL in the 11 settlements under scrutiny. The transactions were synchronised in nature where the order times for the buy and the sell orders is either nil or close to zero.
6. Based on the above findings of the investigation, it was alleged that Focus along with the other client HCL has created a false and misleading impression of trading in the scrip of HIL for the period under scrutiny by entering into synchronised deals violating the provisions of Regulation 4 (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

SHOW-CAUSE NOTICE, REPLY AND HEARING

7. Pursuant to the investigation, a show cause notice No. IVD/ID3/PKB/JJS/HIL/1215/04 dated 19th January, 2004 was issued to Sushil Verma, Director, Focus under Section 11 (4) (b) read with Section 11B of the SEBI Act, 1992, read with the provision Regulation 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 asking it to show cause as to why suitable directions including such directions prohibiting it from buying, selling or dealing securities for a specified period should not be issued. It was also mentioned that if it failed to submit any reply within the stipulated period of 21 days, it would be construed that he had no explanation to offer and SEBI would be constrained to pass such order specified in terms of the Act and Regulations. Focus did not reply to the said show cause notice.
8. Further to the above, an opportunity of hearing was granted to Shri Sushil Verma on 3rd April, 2004 by the then Whole Time Member, Shri A. K. Batra and on 19th January, 2006, before me. Shri Praveen Rastogi, a practicing Company Secretary, holding power of attorney from Shri Sushil Verma appeared and represented Focus before me. He submitted that he had nothing more to add to the explanations given on behalf of Shri Sushil Verma at the time of investigation. He prayed for a lenient view considering the hapless state of affairs of Focus.

FINDINGS:

9. I have considered the findings of the investigation, the submissions of Shri Verma at the time of investigation, the show cause notice issued to Focus and the submissions made on behalf of Shri Verma at the time of hearing before me. Now, I proceed to analyse the charges against Shri Verma and the response in this behalf, to arrive at a conclusion as to the validity of the charges or otherwise.

10. I note from the submissions of Shri Verma at the time of investigation that the scrip of HIL was a good prospect and earning profit was the only motive for trading the scrip at the time, as was the case in other scrips dealt with. I see that no plausible explanation was forthcoming as to the synchronization of the transaction with HCL but for the profit motive. The client has denied any link between itself and HCL or HIL.
11. I observe that Focus had bought and sold a total of 56,571 shares during the year 2001-2002, in a combination of market trades to the extent of 3,720 shares and off-market deals to the extent of 52,851 shares. The shareholding of Focus at the end of Financial year 2001-2002 was nil as a result of these transactions. All the synchronised deals executed through the broker OJFSPL were executed by the User IDs 4611 and 4612 which are located at the registered and correspondence office of the broker – 231, I.J.S Palace, 320, Delhi Gate Bazar, Asaf Ali Road, Delhi - 110002.
12. I further observed that there were 66 synchronised deals accounting for a gross traded quantity of 1,79,600 shares accounting for 98.29% of the total quantity traded by Focus on the stock exchange. I also observe that synchronisation of the order times as observed in this case was so accurate that in 39 instances there is 'zero' time difference, there was a time difference of upto 1 second in 22 transactions and 4 transactions where the time difference for the order entry of the buy and sell was 2 seconds. The client could not explain the synchronisation and there hardly appears to be any investment purpose / objective to these transactions since there has been no delivery involved in any of these transactions. Thus, I hereby conclude that these transactions have been carried out to create a false and misleading appearance of trading in the scrip of HIL in the market, especially considering that the scrip at the time of the investigation was very illiquid.
13. I observe that Focus is sharing the same office address with HCL. However, Focus has denied any relation with the HCL or HIL. I do not find the submission of Focus satisfactory, especially in view of the large number of synchronised deals that have been put through by the two clients within fractions of second difference or even zero time difference.
14. Further, I have also noted that Shri Verma used to sit in the office of the broker to place orders and carry out the transactions, to make quick investment decisions based on the market movements and used to have informal talks with the broker as regards the scrip of HIL.
15. After taking into consideration the material and evidence gathered during the investigations in the price manipulation in the scrip of M/s. Havells India Limited, I conclude that M/s. Focus Portfolio Ltd. had acted in a manipulative manner in order to create an artificial market and disturb the market equilibrium in the scrip of M/s. Havells India Ltd, which is detrimental to the stability of the securities market and for the interest of investors. Therefore, I find that M/s. Focus Portfolio Ltd. is guilty of violating the provisions of regulation 4 (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. However, Focus has become a defunct company under the provisions of Section 560 of the Companies Act, 1956 and its name has been struck off the register of the Registrar of Companies, NCT of Delhi & Haryana. Shri Verma was the director of Focus at the time of the violations as noted above and was actively involved in the dealings as per the deposition before SEBI.
16. By such false appearance of trading and creating false impression of liquidity in the securities market and its continuance thereof, innocent investors would be induced to trade unless these unscrupulous activities are prevented/ contained in the securities market. I find that it is a fit case for issue of directions against Shri Sushil Verma, Director of M/s. Focus Portfolio Ltd. whose conduct is detrimental to the interests of investors and the securities market.

ORDER

17. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Sections 11 (4) (b) and 11B of the Securities and Exchange Board of India Act, 1992, read with Regulations 4 (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations,1995 read with regulation 11 and 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations,2003, I hereby direct that Shri Sushil Verma, Director of M/s. Focus Portfolio Ltd. be prohibited from buying, selling or dealing in securities, directly or indirectly, for a period of six months.

This direction shall come into force with immediate effect.

DATE:31-01-06
PLACE:MUMBAI

MADHUKAR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA