

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. BISWANATH M JHUNJUNWALA, MEMBER, BSE (SEBI REGISTRATION NO. INB 010003916) IN THE MATTER OF SNOWCEM INDIA LTD.**BACKGROUND:**

1. M/s. Biswanath M Jhunjunwala (hereinafter referred to as "BMJ") is a member of the Bombay Stock Exchange (hereinafter referred to as "BSE") 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. The increasing trend in volumes was accompanied by the price rise in the scrip as well. The scrip price of SIL fluctuated between Rs. 48.10 to Rs. 55.80 during the period March 1, 1999 to May 25, 1999. From June 3, 1999, it started rising and touched Rs. 127.95 on August 10, 1999.
4. 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. (hereinafter referred to as '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.
5. KIL and Shri Bora indulged in trading in the scrip of SIL, through various members of BSE and NSE, as detailed below:

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

6. During the investigation period, the member traded in the scrip of SIL on behalf of KIL, the details of which is as below:

Sett. #	Purchases	Sales	Gross	Net
11	2,900	-	2,900	2,900
12	5,000	-	5,000	5,000
13	3,600	-	3,600	3,600
14	34,200	-	34,200	34,200
15	1,400	500	1,900	900
16	56,600	3,300	59,900	53,300
17	100	5,100	5,200	-5,000
18	98,700	50,700	1,49,400	48,000
19	-	1,100	1,100	-1,100
20	50,000	-	50,000	50,000
Total	2,52,500	60,700	3,13,200	1,91,800

7. The member has traded on behalf of KIL, who is a promoter group company of SIL. It was also noted that the member was also trading in the scrip for KIL prior to and after the investigation period. The order log analysis revealed that the member was putting large orders in the scrip on several occasions on behalf of KIL. Further, it had not taken any initial margin from its client. The member had thus failed to exercise due skill, care and diligence and therefore has violated the provisions of Code of Conduct prescribed for Stock Brokers contained in Schedule II to Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992. In specific, violated the provisions of Clause A (1) to (4) of the Code of Conduct.

8. The member has also traded in his individual capacity on NSE knowing that KIL was trading heavily in the scrip, which is a promoter group company of SIL. The member has also traded in the scrip by enrolling as client of NSE brokers. This clearly suggests that he was fully aware of the intentions on the part of the management of SIL to manipulate the scrip price. It therefore appeared that the member has aided and abetted KIL in creating artificial/ false market in the scrip and guilty of violating the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to securities market) Regulations, 1995.

9. The member had not collected initial margin from its client, which is in violation of SEBI Circular SMDRP/POLICY/CIR-35/98 dated 04.12.98.

ENQUIRY REPORT AND RECOMMENDATION:

10. 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 certificate of registration of the member be suspended for a period of four months.

SHOW-CAUSE NOTICE:

11. Pursuant to the above, a show cause notice dated 15.03.04 was issued by SEBI to the member along with a copy of the enquiry report. The member submitted a reply vide letter dated 15.04.04 through its representatives, M/s. Gagrath & Co., Advocates, Solicitors & Notaries. I proceed to examine the issues as under:

ISSUES FOR CONSIDERATION:

Charges

- The Member did not collect margin from its clients which is in violation of SEBI Circular SMDRP/POLICY/CIR-35/98 dated 11.12.98 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).
- It is alleged that the member by executing orders on behalf of KIL and on its own account by registering as a client with NSE members has aided and abetted KIL in its 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) & (d) 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

14. The member vide its letter dated 15.04.04 from his representatives, has denied the allegation and submitted as follows:

- a. The member was not in the know how that KIL is a promoter group company of SIL and it was not so established by the enquiry officer.
- b. The member has also submitted that mere non-collection of margin does not, by itself, lead to the conclusion that the conduct of the broker is deplorable. It is at best a test lapse. In this case, the member was covered because he had sufficient credit balance. It has also been submitted that the member was not required to collect margins as per BSE's circulars. In any case, the member had sufficient balance of approximately Rs. 2 lacs was maintained by the client with the member.
- c. KIL being debarred from accessing the capital market by an order dated 27.01.04 was presumed to have been known to the member when it dealt in the scrip of SIL in 1999 shows non-application of mind.
- d. The member has not done any of the acts that fits into the meaning of the word 'misconduct' as defined by the member:
 - i. If a broker has done a transaction of his client and does not give the same to him and eats away the same for personal gains
 - ii. If he eats gala in transaction
 - iii. If he does not make payments in time to his clients
 - iv. If he does not give delivery of shares on the pay-out day
 - v. If he charges excess brokerage than the scheduled brokerage
 - vi. If he does not contracts and/or bills to his clients
 - vii. Does not fulfill or satisfy the arbitration awards
 - viii. Does not follow or carry out the directions and/or instructions given by the stock exchange authorities from time to time.

Finding:

15. I note that Clause A (1) to (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)".

16. I also note that Regulation 4 (a), (b) and (d) 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) 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 the securities;

(e).....".

17. 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.
18. I find from the reply submitted by the member that it has admitted the fact of non-collection of margins. Also, the member has submitted that he was not required to collect any margins as per circular nos. 2301/98 dated 03.07.98 and 2328/99 dated 09.07.99. I have perused the circulars submitted by the member in support of its submissions. The said circulars pertain to the margins that a member has to maintain with the stock exchange for the transactions that it has carried out during the day and over the settlement. These do not pertain to the collection of margins by a member from its client as prescribed in the SEBI circular which the member has violated. Thus, the member has violated the provisions of SEBI circular pertaining to collection of margins no.SMDRP/POLICY/CIR-35/98 dated 4/12/98.
19. I have noted that during the investigation period, the member traded in the scrip of SIL on behalf of KIL, the details of which is as below:

Sett. #	Purchases	Sales	Gross	Net
11	2,900	-	2,900	2,900
12	5,000	-	5,000	5,000
13	3,600	-	3,600	3,600
14	34,200	-	34,200	34,200
15	1,400	500	1,900	900
16	56,600	3,300	59,900	53,300
17	100	5,100	5,200	-5,000
18	98,700	50,700	1,49,400	48,000
19	-	1,100	1,100	-1,100
20	50,000	-	50,000	50,000
Total	2,52,500	60,700	3,13,200	1,91,800

The member had placed large buy orders on behalf of KIL as explained by the extract of Order log of BSE (Clearing No. D0045):

B/S	Rate	Qty	Time	Order ID	Client
B	60.5	49700	1999-07-05:11:12:24	4500153	4034
B	60.5	49700	1999-07-05:11:12:24	4500153	4034
B	54.25	25000	1999-07-19:10:46:09	45010026	5202
B	54.25	25000	1999-07-19:10:46:44	45010027	5202
B	54.25	25000	1999-07-19:10:47:36	45010028	5202
B	54.25	25000	1999-07-19:10:48:03	45010029	5202
S	54.25	25000	1999-07-19:15:05:38	45010072	5202
S	54.4	25000	1999-07-19:15:06:18	45010073	5202
S	138.95	10000	1999-12-23:11:46:24	45010615	4034

20. The member has traded in the scrip of SIL on behalf of KIL as can be observed from the table above. The quantities traded have been in the range of 1,100 shares to 1,49,400 shares by the member. These transactions have been carried out without collecting adequate margins from the client. The order log analysis as mentioned above revealed that the member was putting large orders in the scrip on several occasions on behalf of KIL.
21. The member has also traded in his individual capacity on NSE knowing that KIL was trading heavily in the scrip, which is a promoter group company of SIL. The member has also traded in the scrip by enrolling as client of NSE brokers. This clearly suggests that he was fully aware of the intentions on the part of the management of SIL to manipulate the scrip price. It therefore appeared that the member has aided and abetted KIL in creating artificial/ false market in the scrip and guilty of violating the provisions of Regulation 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to securities market) Regulations, 1995.
22. I feel it would be appropriate to note that the member was prohibited from buying, selling or dealing in securities market in his individual capacity for a period of two years for his transactions in the scrip of SIL through the various brokers at NSE, by an order of SEBI dated 27.04.04. The said order was challenged before the Hon'ble Securities Appellate Tribunal (SAT) vide Appeal No. 107/04. SAT had passed the final order in the appeal on 25.05.05. Vide the said order, SAT has found that there was no reason to interfere with the order of SEBI. But considering the violations being committed in 1999 and the order of SEBI being passed on 27.04.04, SAT was inclined to reduce the period of prohibition from two years to one year. This effectively means that, the transactions carried out by the member in his individual capacity, fairly and squarely fall within the meaning of Regulations 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to securities market) Regulations, 1995. Since the transactions carried out by the member for KIL are the same that it had carried out in its individual capacity, it leaves no doubt that the said transactions are in violation of 4 (a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair trade Practices relating to securities market) Regulations, 1995.

23. KIL being debarred from accessing the capital market as mentioned by the enquiry officer, when he pointed to the alleged violations on the part of the member was not an analogy lacking parity in time making it a wrongful conclusion. In fact, the pointer to this effect has been that the member has been carrying on business relationship with clients whose acts were condemnable and have been debarred from the capital market. This goes to prove the guilt on the part of the member in carrying on such activities. I have also noted that the Hon'ble Securities Appellate Tribunal has upheld the order passed by SEBI against KIL restraining it from buying, selling, or dealing in securities in any manner, directly or indirectly for a period of two years. This further lends credence to the fact that the member had dealt with a person of questionable repute and it has also abetted the acts of KIL by dealing in the scrip of SIL by enrolling as a client with some NSE members.
24. I have noted the submissions of the member relating to what acts would constitute a misconduct for the purpose of the relevant regulations and the code of conduct therein. Most of the instances pointed out by the member are in the nature of the conduct of a member towards its client. Apart from the above, there are certain responsibilities that the member owes to the stock exchange and the general investing community. The member by carrying out and abetting the manipulative transactions in the scrip of SIL has failed in its role or the responsibility towards the other two parties, who are part and parcel of his existence. Thus, the meaning of misconduct as brought out by the member is very restrictive and cannot be taken to cover the complete realm of his activity.
25. The member has traded for KIL, who was found to be one of the main clients trading in the scrip. It has also abetted the manipulation in the scrip of SIL by not collecting margins from KIL and also trading in the scrip of SIL through NSE members. All the acts of the member indicates that it has failed to exercise due skill and care in the conduct of its dealings with respect to its 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. Thus, the member has violated the provisions of the 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) (b) and (d) of the said Regulations during the period of investigation is established.
26. 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), A (3) and A (4) of the code of conduct of Schedule II of the broker Regulations and also violated the provisions of 4 (a), (b) and (d) of the said Regulations.
27. 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:

28. 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 penalty of four months 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) and 13 (6) 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 Biswanath M Jhunjunwala, Member, BSE (SEBI Registration No. INB 010003916) be suspended for a period of four months.

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

Place: Mumbai

Date: 02-02-2006

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA