

SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/GA/ 78 /IVD/ 07 /06

CORAM: Shri G ANANTHARAMAN, WHOLE TIME MEMBER

Order against Credit Suisse First Boston (India) Securities Private Limited, Member, both BSE (INB 010970631) and NSE (INB 230970637), in the matter of dealings in the scrip of M/s South East Asia Marine Engineering and constructions Limited.

DATE OF HEARING: April 7, 2006

Appearances:

For noticee: Shri Kanakasabapadi Kumar

Shri P.C. Singh

Shri Shuva Mandal

For SEBI: Shri P.K. Nagpal – CGM

Shri Praveen Trivedi – DLA

ORDER

(Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002)

1.0 FACTS

- 1.1 M/s. Credit Suisse First Boston (India) Securities Limited (CSFB), is a SEBI Registered Stock Broker having the membership of both, The Stock Exchange, Mumbai (BSE) as well as National Stock Exchange (NSE) as per the afore mentioned SEBI registration numbers.
- 1.2 Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigation into the trading in the scrip of South East Asia Marine Engineering and Constructions Limited (SEAMECL), which was formerly known as M/s Peerless Shipping and Oilfields Limited, for the period June 01, 1999 to May 31, 2000 (investigation period).
- 1.3 Findings of the investigations were as under :

- 1) During the investigation period (June 01, 1999 to May 31, 2000) the scrip of SEAMECL was traded on BSE, NSE and Calcutta Stock Exchange (CSE). The price volume data of the scrip at the aforesaid three exchanges shows that the price of the scrip moved from Rs.15 to Rs.389 within a period of around 8 months. The total quantity traded during the relevant period at these exchanges was 5,24,52,600 shares.
- 2) The investigation further revealed that during the investigation period, CSFB traded in the scrip of SEAMECL on behalf of M/s. C. Mackertich Limited ('CML'- Member of NSE & BSE), M/s. Kallar Kahar Investment Limited ('KKIL'- CSFB's associate/group company), M/s. Milhill Investment Limited (Milhill) and in its own trading account as under:

NSE

S. No.	Name of the client	Quantity bought	Quantity sold
1.	M/s C Mackertich Ltd.	1255200	703700
2.	M/s Kallar Kahar Investment Limited	0	153200
3.	Own Trading	400	600
	Total	1255600	857500

BSE

S. No.	Name of the client	Quantity bought	Quantity sold
1.	M/s C Mackertich Ltd.	363400	868000

2.	M/s Kallar Kahar Investment Ltd.	300000	76800
3.	Own Trading Account	2200	2100
4.	M/s Milhill Investments Ltd.	100000	0
	Total	765600	946900

- 3) It was also observed that during the relevant period CSFB bought 12,55,600 shares and sold 8,57,500 shares at NSE and bought 7,65,600 shares and sold 9,46,900 shares at BSE. It was seen that CML which itself was the member of BSE & NSE had also bought 12,55,200 shares and sold 7,03,700 shares at NSE and bought 3,63,400 shares and sold 8,68,000 shares at BSE.
- 4) It was also noted that CSFB had bought 300,000 shares and sold 230,000 shares for its associate concern KKIL. In the investigation, from the trade log of BSE it was also observed that CSFB was continuously executing buy trades for the smaller quantities at the next higher prices, even when the rates of scrips were falling. Therefore it was concluded in the investigation that CSFB was interested in the increase in the price of the scrip.
- 5) It was further observed in the investigation that CSFB executed structured deals also on behalf of CML, KKIL and Milhill.
- 6) From the trading pattern and trade logs referred to in the investigation report, it was inferred that CSFB entered into several trades and deals which influenced the price and volume of the scrip of SEAMECL in violation of regulation 4 (a), (b), (c), (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (FUTP Regulations).
- 7) During the course of investigation it was observed that CML acted as a sub-broker to CSFB and bought 15,71,700 shares and sold 16,18,600 shares in such capacity. In a statement before the Investigating officer it was stated on behalf of CML, that it had executed most of the transactions on behalf of its director Shri Ajay Kumar Kayan. It was noted that though CSFB was aware that CML was a member of the same exchange, it allowed trades conducted by CML as its sub-broker without signing any agreement with it. This was alleged to be in violation of SEBI circular no.SMD/Policy/CIR-/98 dated January 16, 1998 as also in violation of Clause A(2) of Schedule II (Code of Conduct) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

2.0 APPOINTMENT OF ENQUIRY OFFICER AND ENQUIRY REPORT

- 2.1 Based on the findings of the investigations, vide Order dated April 08, 2004 an Enquiry Officer was appointed under regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the contraventions if any, committed by CSFB, as mentioned in the investigation report inter alia of the following:
 - a) SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995;
 - b) SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and;
 - c) SEBI Circular No.SMD/Policy/Cir-/98 dated January 16, 1998.
- 2.2 The Enquiry Officer having conducted the enquiry in terms of the Enquiry Regulations, vide his report dated November 30, 2004 found CSFB to have violated SEBI Circular No. SMD/Policy/Cir-/98 dated January 16, 1998 by trading with other member of the exchange in violation of Clause A(2) of Schedule II read with regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.
- 2.3 The Enquiry Officer also held CSFB responsible for abetting M/s. C.Mackertich Limited to contravene the provisions of section 12 of SEBI Act and Rule 3 of SEBI (Stock Brokers & Sub-Brokers) Rules, 1992 and recommended a minor penalty of suspension of its registration for a period of one month.

3.0 SHOWCAUSE NOTICE, REPLY AND PERSONAL HEARING

- 3.1 A show cause notice dated January 12, 2005 along with the Enquiry Report was forwarded to CSFB advising it to show cause as to why the action as may be considered appropriate should not be taken against it.
- 3.2 CSFB vide its letter dated January 31, 2005 replied to the said show cause notice and inter alia raised preliminary objection of non adherence to the principles of natural justice, *double jeopardy* and *res-judicata* citing previous penalty of two years suspension imposed on it vide order dated June 13, 2002 for the violations committed during the same period and action taken by NSE with respect to the trades under examination in the present case.

- 3.3 CSFB further submitted that CML was a client of CSFB and not a sub-broker. It further stated that the Enquiry Officer relied upon the statement of CML without disclosing the said statement to CSFB. It was also stated that SEBI Circular alleged to have been violated by CSFB applied only to the transaction of a broker effected through a member of another exchange and not where the two brokers were members of the same exchange. It was also stated that in any case, NSE had already initiated disciplinary action against CSFB on two occasions for the violations/trades in question and had reprimanded as well as imposed a penalty of Rs.15,000/- for violating regulation 2.1.11 of the capital market trading regulations of NSE.
- 3.4 It was submitted that NSE and SEBI being part of same regulatory framework, SEBI could not ignore disciplinary action by another regulatory agency and any further action by SEBI on this account would be double jeopardy and be against the principle of natural justice. It was further added that in view of the fact that NSE had already imposed a penalty of Rs.15,000/-, the imposition of suspension of one month by SEBI for the same violation would be highly disproportionate and unwarranted.
- 3.5 CSFB also stated that the Enquiry Officer had completely ignored the fact that CSFB approached the NSE on its own, sought clarification in the matter and stopped dealing with CML upon being told that it was not permissible to trade with another member of the same exchange. CSFB further submitted that assuming without admitting the violations, the violations alleged were technical in nature and were committed without any intention and therefore considering the penalty already imposed by NSE, CSFB needed to be discharged from the present proceedings.
- 3.6 A personal hearing was granted to CSFB on April 07, 2006 wherein its representative while reiterating the aforesaid submissions requested for a lenient view to be taken in the matter, in light of the fact that CSFB had already suffered two years' suspension for its dealings in the same period and had also been penalised by NSE for the irregularities which are also the subject matter of the present proceedings.

4.0 CONSIDERATION OF ISSUES AND FINDINGS

- 4.1 I have carefully considered the investigation report, show cause notice issued to CSFB, the findings of the Enquiry Officer as contained in the Enquiry Report and also the earlier orders dated June 13, 2002 and December 11, 2003 passed by SEBI, as referred to by CSFB in its replies to the show cause notice issued by the Enquiry Officer.
- 4.2 I note that during the investigation period CSFB had executed trades in the scrip of SEAMECL on behalf of MCL, KKIL, Milhill and on its own trading account. CSFB bought 12,55,600 shares and sold 8,57,500 shares at NSE whereas at BSE it bought 7,65,600 shares and sold 9,46,900 shares.
- 4.3 I further note that CML which was a member of NSE and BSE had bought 12,55,200 shares out of total buy quantity of 12,55,600 shares and sold 7,03,700 shares out of total sell quantity of 8,57,500 shares of CSFB at NSE.
- 4.4 I note that the Enquiry Officer after conducting the detailed enquiry under Enquiry Regulations had, inter alia, recorded in his report that except on January 19, 2000 when they bought 100000 shares, on remaining days they traded only in few hundred shares which was less than 1% of the total volume traded and such minuscule quantity could hardly have any impact on the price of the scrip. The Enquiry Officer further recorded that there were only six transactions that were structured on three days during the investigation period of one year which was insignificant as compared to the total trading volume of 5,24,52,600 shares during the investigation period.
- 4.5 Enquiry Officer had further recorded that there was neither any material on record to establish nor was it SEBI's case that CSFB was a party to any conspiracy between the promoter group and/or CML to manipulate the price or create an artificial market or volume in the stock. The Enquiry Officer further found that CSFB had not only bought but also sold during the relevant period.
- 4.6 Regarding violation of SEBI Circular no.SMD/Policy/CIR-/98 dated January 16, 1998, having perused the reply of CSFB dated January 31, 2005, I am not in agreement with Enquiry Officer that CSFB had violated the above circular in as much as, apparently the said circular was applicable only in a case where the members happened to be from two different stock exchanges. This however should not be construed as my approval on the trades executed by CML through CSFB, as such trades were inherently irregular and CSFB should not have allowed CML to execute trades from its terminal in view of the clear statutory restraint, in relation to allowing trades through unregistered sub-broker.
- 4.7 From the facts available on record, I do not agree with the submission of CSFB that CML was acting as its client, as the nature of trades make it apparently clear that CML had executed most of the trades through CSFB for one of its directors. The fact that CML has acted as an intermediary (sub-broker) between CSFB and its director Shri Ajay Kumar Kayan is further demonstrated from the statement of CML recorded by SEBI during the investigation and referred to not only in the show cause notice but also by the Enquiry Officer in his report.

- 4.8 In respect of the submission that the statement of CML was relied upon by SEBI without disclosing the same to CSFB, I find that the content of the said statement was part of the show cause notice dated May 3, 2004 issued to CSFB during the Enquiry Proceedings. I also note that in its reply dt. May 24, 2004, to the said notice, CSFB had simply submitted that they had executed trades of CML as its client. Apparently, on a second thought, after the receipt of the show cause notice dated January 12, 2005, whereby the Enquiry Report was forwarded to it, CSFB vide its letter dated January 31, 2005 alleged that the aforesaid statement was not disclosed to them. In my view, the appropriate stage for demanding the statement was the Enquiry Proceedings wherein CSFB had every opportunity to rebut the allegation. Therefore, having failed to exercise their right at the appropriate stage, it is difficult to accede to the request of CSFB at this stage, more so when the contents of the statement were part of the show cause notice dated May 03, 2004.
- 4.9 In any case, from the facts and circumstances of the case, it is apparent that CSFB had executed the trades of CML which was admittedly acting as unregistered sub-broker in violation of clear statutory mandate of section 12 of SEBI Act read with rule 3 of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992. Still in view of the submission of CSFB, assuming but not admitting, that CML was indeed a client of CSFB as claimed by it, SEBI has on its record the reply dated 24 May, 2004 of CSFB wherein in para 4.4, it has admitted that, it did not execute mandatory member-client agreement. To quote :
- " Although it did not execute a member-client agreement, it had sought the relevant documents and performed 'know your client' checks."*
- 4.10 This omission of the mandatory requirement, by itself makes CSFB liable for appropriate action as this itself is a violation of the Code of Conduct which every stock broker is expected to comply with, not only in its letters but also in its true spirit.
- 4.11 As regards the findings of Enquiry Officer, that CSFB had abetted the contravention of the provisions of section 12 of SEBI Act read with rule 3 of Broker Rules, I am of the view that being SEBI registered broker, CSFB was expected to act more diligently and within the prescribed parameters, and by allowing CML to act as unregistered sub-broker, CSFB has miserably failed to abide by Code of Conduct prescribed for a broker. Further, the possibility that the very trades executed by CML through the terminal of CSFB, forming part of the trades which led to the manipulation of the scrip of SEAMECL, can also not be ruled out. In any event, the fact remains that CSFB allowed its terminal to be misused by CML.
- 4.12 I have also taken note of the submissions of CSFB that as they were having some doubt of conducting the trades of CML on their NEAT terminal, they by their own, approached NSE for clarification and immediately discontinued such trades after the clarification was received from NSE. I have also noted that NSE, after conducting disciplinary proceedings for the violation of their Regulation 2.1.11 of the Capital Market Trading Regulation, had reprimanded as also imposed a penalty of Rs.15,000/- which was paid by CSFB. I however fail to understand that what stopped CSFB from seeking the clarification from NSE before allowing CML to access its NEAT system and thereby executing the trades in question which allegedly aided the market manipulation of SEAMECL by CML.
- 4.13 So far as the submission regarding violation of natural justice by Enquiry Officer, applicability of the principles of "double jeopardy" and "res-judicata" are concerned, I find that there is no violation of the principles of natural justice by the Enquiry Officer, as CSFB was not only communicated all the charges but was also given adequate opportunity to rebut the charges at every stage. Further, I agree with the Enquiry Officer that the principles of "res judicata" and "double jeopardy" have no application in the present case as the transactions covered under Order dated June 13, 2002 whereby the registration of CSFB was suspended for the period of 2 years and the transaction in question in the present case are different and therefore SEBI had a fresh cause of action. Similarly, proceedings before NSE and the proceedings before SEBI are different and based on the violations of different legal requirements and therefore the principles of *res judicata* and *double jeopardy* would also have no application in the present case.
- 4.14 Regarding SAT judgments cited by CSFB, it is mentioned that each case turns on the facts and material circumstances particular to that case.
- 4.15 In the given facts and circumstances, in total agreement with the Enquiry Officer, I am of the view that CSFB needs to be penalized for its omission to observe the Code of conduct as contained under Schedule II r/w Regulation 7 of Broker Regulation and to that extent I am in agreement with the Enquiry Officer.

5.0 ORDER

- 5.1 Therefore, on a conspectus of the facts of the case and the material circumstances attendant thereto, I, 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, do hereby suspend both the certificates of registration bearing registration Nos. INB 010970631 and INB 230970637 of M/s Credit Suisse First Boston (India) Securities Limited, for a period of one month.

5.2 This order shall come into effect after 21 days from the date of this order.

Date :10-08-2006
Mumbai

G. ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA