

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: T.C. NAIR, WHOLE TIME MEMBER

**Against Arcadia Share and Stock Brokers Pvt. Ltd. in the matter of
M/s. ORIENT INFORMATION TECHNOLOGY LTD.**

WTM/TCN/IVD ID1/ 50,

Date of hearing : 23-06-2006

Appearance

For Noticee: Mr. Antony Sequeira, M.D., M/s Arcadia Share & Stock
Brokers Pvt. Ltd.
Mr. Ravi Kumar Varanasi, Advocate
For SEBI: Mr. P.K. Nagpal, Chief General Manager.

ORDER

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

1.1 M/s Arcadia Share & Stock Brokers Pvt. Ltd. (hereinafter referred to as ASL or broker), a company incorporated under the Companies Act, 1956, is a member of the National Stock Exchange (her referred to as NSE) registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as stock Broker, bearing registration no. INB 230778238.

1.2 SEBI conducted investigation into the buying, selling or dealings in the scrip Orient Information Technology Ltd. (hereinafter referred to as Orient) *inter alia*, to ascertain whether there was any viol the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as FUTP Regulations) and SEBI (Stock Brokers & Brokers) Regulations, 1992 (hereinafter referred as Broker Regulations). The scrip of Orient was listed on NSE, Stock Exchange, Mumbai, and the Delhi Stock Exchange at the time of investigati trading details of the persons who had traded in the scrip were collected and analyzed along with the data of the volumes contributed by these entities. From these details it was found that ASL a two clients Nirjay Securities Pvt. Ltd. (hereinafter referred to as Nirjay) and Kaushik Shah Shares & Securities Ltd. (hereinafter referred to as Kaushik) had actively traded in the shares of Orient du relevant period. Investigations *prima facie* revealed that the above trading contributed in an unusual spurt in the traded volumes in the scrip.

1.3 The investigations further found that ASL was involved in almost 35 cross deals and guilty of violating the provisions of Clause A (1), A (3) and A (4) of the Code of Conduct specified in Schedule with Regulation 7 of Broker Regulations and Regulation 4 (b), (c) and (d) of FUTP Regulations as applicable at the time when the alleged act was committed. The cross deals constituted 99.54% of th traded quantity for the entire period under scrutiny of ASL. It was therefore, alleged that ASL had aided and abetted Kaushik and Nirjay to create artificial market in the scrip which resulted in tran which were not genuine trade transactions. The maximum volume traded in the scrip was of 3,70,870 shares (as on 31-01-2001) to lowest of 36,042 shares (as on 07-12-2000).

1.4 In view of the above, an enquiry officer was appointed under Regulation 5(1) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referrr the Enquiry Regulations) to enquire into the alleged acts of commissions and omissions of ASL while transacting in the above mentioned scrip.

2. Enquiry Proceedings

2.1 The Enquiry Officer, issued a Show Cause Notice (hereinafter referred to as SCN) dated April 30, 2004 under Regulation 6 (1) of Enquiry Regulations to ASL communicating thereby the allega respect of the transactions in the scrip of Orient. After considering the replies dated June 10, 2004 and January 11, 2005 from ASL, the Enquiry Officer had conducted the enquiry as per the proced down in Enquiry Regulations and submitted a report dated March 29, 2005. The Enquiry Officer found that ASL had indulged in transactions which were manipulative and fraudulent in nature. The Officer had recommended the suspension of certificate of registration granted to ASL for a period of seven days.

2.2 A copy of the Enquiry Report was issued to the broker along with a SCN dated April 12, 2005, in terms of Regulation 13(2) of the Enquiry Regulations calling upon it to show cause as to why app action as recommended by the Enquiry Officer should not be taken against it. The broker had replied to the said SCN vide its letter dated May 13, 2005.

2.3 The broker was also given an opportunity of personal hearing before me on June 26, 2006. On the designated day Mr. Antony Sequeira and Mr. Ravi Kumar Varanasi appeared and made submiss behalf of ASL. No documents were submitted by them and they relied on oral arguments, which are by and large reiteration of written reply dated May 13, 2005.

3. Consideration of Issues

3.1 I have carefully considered the facts of the case, the findings of the Enquiry Officer and the reply of the Broker including the submissions made during the personal hearing. My findings are as follo

- a)** It has been alleged that Nirjay used to sell shares through the member Kaushik at BSE on last day of settlement, which were purchased by Kaushik by acting as a client and the same shares w by it at NSE through ASL and these shares were purchased by Nirjay. Further it has been alleged that on the last day of settlement of NSE, the transactions were reversed i.e. Nirjay sold shares ASL which were brought by Kaushik as a client and then Kaushik sold the shares through its broking firm at BSE which were purchased by Nirjay. ASL submitted that this practice was prevaler market. It further submitted that the purpose of these transactions was not to manipulate the prices or the volumes. The reply of ASL is not convincing as the manner in which the trades were e is not proper and the same resulted in creation of false market in the scrip. The said conduct defeats the objective of screen based trading.
- b)** With regard to the finding that the trades executed by ASL were cross deals and these transactions were structured and synchronized, the broker submitted that it had executed these transact the exchange terminal in the nature of cross deals. The broker further submitted that by doing this it had not violated the provisions prescribed by SEBI and Stock Exchanges. It was found Enquiry Officer that ASL had executed 35 deals and this constituted 99.54 % of the trades of ASL during the relevant period. ASL was found to be predominant trader in the scrip of Orient & executed trades on behalf of its two clients namely Nirjay and Kaushik. As a member of BSE, Kaushik had executed proprietary trades in the scrip of Orient and also traded for their client & furtherance both Nirjay and Kaushik had taken counter positions at both the exchanges. The quantity ordered, price quoted and time at which order was entered into the system at both the ex i.e. NSE and BSE exactly matched. An inference can easily be drawn that these transactions were structured and synchronized as the proximity of timing of putting in the buy and sell order: matching of price and quantity of shares and matching of trades almost on every occasion between themselves. The Enquiry Officer had rightly stated that these trades cannot be said to be coincidence as these were not isolated transactions.

ASL contended that the said deals are cross deals and these deals are valid in terms of SEBI Circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999. ASL had executed cross on NEAT system of NSE at the prevailing market price, which were in accordance with the said circular. I am of the view that the deals entered by ASL may be cross deals but the manner in whic deals have been entered is not proper and resulted in creation of false market. As the terminal used in these deals is of one person only, these deals were structured in such a manner that th matched there and then only. The time difference in these deals is of a few seconds only.

I appreciate the findings of the Enquiry Officer about the benefits of screen based trading. She has rightly stated that it enables investors to transact in a fair and transparent mann mechanism is to ensure matching of the orders through screen, on the basis of best offer price, wherein the sellers would realize the true price of their securities within the circuit filters prescr SEBI. But in light of the above cited circular I am of the view that broker might have technically not violated the abovesaid circular but the manner in which the trades were entered would de objective of the said circular and the trading system.

- c)** With regard to the finding that the transactions entered by the broker are synchronized transactions the broker submitted that this is only a presumption of the Enquiry Officer. The Enquiry found that these synchronized trades were executed on the screen of the exchange by ASL only for their two clients, because these were arranged deals with a prior understanding. The Enquiry had rightly disregarded the argument of the broker that the identity of the other trading client is not known to each other, by saying that the frequency of trades and the perfect matching of th order and price to the extent of two decimal places in one scrip only cannot be a mere co-incidence. The details of transactions are as follows:

Details of buy and sell of client		Order Execution on NSE				Data revealing synchronized nature of trade executed					
Buy client	Sell client	Date	Time	Qty	Traded Price	Buy Order Time	Sell Order Time	Buy Order Qty	Sell Order Qty	Buy Order Rate	Sell order Rate
Nirjay	KSL	06.12.00	14:03:38	74900	167.35	14:03:38	14:03:38	75000	75000	167.35	167.35
Nirjay	KSL	06.12.00	14:39:07	25000	167.25	14:39:06	14:39:07	25000	25000	167.25	167.25
KSL	Nirjay	12.12.00	12:15:17	50000	172.00	12:15:17	12:15:17	50000	50000	172.00	172.00
KSL	Nirjay	12.12.00	12:15:30	48000	172.00	12:15:30	12:15:29	49000	49000	172.00	172.00

KSL	Nirjay	12.12.00	12:15:50	1000	172.00	12:15:30	12:15:50	49000	1000	172.00	172.00
Nirjay	KSL	15.12.00	12:05:53	49850	161.80	12:05:53	12:05:50	50000	50000	161.80	161.80
Nirjay	KSL	15.12.00	12:06:26	24900	161.90	12:06:26	12:06:25	25000	25000	161.90	161.90
Nirjay	KSL	15.12.00	12:07:09	25000	161.85	12:07:09	12:07:09	25000	25000	161.85	161.85
KSL	Nirjay	19.12.00	14:43:32	50000	152.00	14:43:22	14:43:32	50000	50000	152.00	152.00
KSL	Nirjay	19.12.00	14:43:58	50000	151.90	14:43:57	14:43:58	50000	50000	151.90	151.90
Nirjay	KSL	22.12.00	12:10:28	51942	140.70	12: 10:28	12:10:27	52000	52000	140.70	140.70
Nirjay	KSL	22.12.00	12:11:12	48000	140.75	12:11:12	12:11:11	48000	48000	140.75	140.75
KSL	Nirjay	26.12.00	11:28:24	50000	115.25	11:28:24	11:28:24	50000	50000	115.25	115.25
KSL	Nirjay	26.12.00	11:28:51	50000	115.10	11:28:51	11:28:51	50000	50000	115.10	115.10
Nirjay	KSL	29.12.00	11:51:37	49770	119.75	11:51:37	11:51:36	50000	50000	119.75	119.75
Nirjay	KSL	29.12.00	12:51:59	49690	119.75	12:51:59	12:51:59	50000	50000	119.75	119.75
KSL	Nirjay	02.01.01	12:29:00	39850	116.15	12:29:00	12:28:58	40000	40000	116.15	116.15
KSL	Nirjay	02.01.01	11:37:42	40000	114.95	11:37:42	11:37:42	40000	40000	114.95	114.95
KSL	Nirjay	02.01.01	14:03:16	20000	114.40	14:03:16	14:03:16	20000	20000	114.40	114.40
Nirjay	KSL	05.01.01	13:18:00	20000	121.30	13:18:00	13:17:59	20000	20000	121.30	121.30
Nirjay	KSL	05.01.01	13:21:11	29000	120.90	13:21:11	13:21:11	30000	30000	120.90	120.90
Nirjay	KSL	05.01.01	14:08:30	49900	121.75	14:08:30	14:08:29	50000	50000	121.75	121.75
KSL	Nirjay	09.01.01	11:22:23	49950	115.05	11:22:23	11:22:23	50000	50000	115.05	115.05
KSL	Nirjay	09.01.01	12:49:16	49925	112.75	12:49:15	12:49:16	50000	50000	112.75	112.75
Nirjay	KSL	12.01.01	13:43:37	49990	112.70	13:43:37	13:43:37	50000	50000	112.70	112.70
Nirjay	KSL	12.01.01	13:45:44	24655	112.75	13:45:43	13:45:44	25000	25000	112.75	112.75
Nirjay	KSL	12.01.01	14:19:29	25000	111.15	14:19:29	14:19:28	25000	25000	111.15	111.15
KSL	Nirjay	16.01.01	14:10:10	85000	90.65	14:10:10	14:10:10	85000	85000	90.65	90.65
KSL	Nirjay	16.01.01	14:10:35	14890	91.00	14:10:34	14:10:35	15000	15000	91.00	91.00
Nirjay	KSL	19.01.01	11:30:05	29840	99.80	11:30:03	11:30:05	20000	20000	99.80	99.80
Nirjay	KSL	19.01.01	11:44:31	30000	100.55	11:44:31	11:44:30	30000	30000	100.55	100.55
Nirjay	KSL	19.01.01	14:12:25	24900	106.15	14:12:24	14:12:25	25000	25000	106.15	106.15
Nirjay	KSL	19.01.01	14:14:04	24999	106.60	14:14:03	14:14:04	25000	25000	106.60	106.60
KSL	Nirjay	23.01.01	12:32:07	50000	115.70	12:32:07	12:32:07	50000	50000	115.70	115.70
KSL	Nirjay	23.01.01	12:33:04	49950	115.75	12:33:03	12:33:04	50000	50000	115.75	115.75

The pattern of trading of Kaushik and Nirjay shows that the very purpose of impersonal trading has been defeated through putting of trades which were structured transactions entered into by the clients of ASL duly facilitated by ASL.

I have gone through the findings of the Enquiry Officer regarding the genuineness of the trades and I appreciate the case referred in this regard i.e *Nirmal Bang Securities (P) Ltd.* Vs wherein Hon'ble SAT held that;

"...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. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establishes that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

Taking consideration of this in the present case as reported by the Enquiry Officer, had the trades executed by ASL been genuine, the possibility of perfect matching would not have been possible. One or two deals on the exchange may be synchronized but trades to the extent of such large volumes i.e. 35 deals had with some mala fide intent. The greater the number of synchronized trades, the larger are their chances of not being genuine in nature. Therefore, I agree with the views of the Enquiry Officer that it is quite implicit that synchronized trades executed on the screen exchange, have an inherent element of intent involved in them and I find broker guilty on this count.

- d) With regard to the finding that ASL has created artificial volume without any transfer of beneficial ownership the broker replied that the client was shifting their position on the settlement sheet because of this the deliveries always retained with the client . It is an undisputed fact that the trades of clients of ASL alone constituted significant percentage of volumes at both the exchanges i.e. ASL and BSE as is brought out in the table below:

Name	Date	Total Trades by the client at BSE	Vol at BSE	% of client's trades to the total trades at BSE	Total trades by the client at NSE	Volume at NSE	% of client's trades to the total trades at BSE	Total at NSE & BSE by the client's	Total volume at BSE & NSE	Client's trade % at NSE & BSE
Kaushik	06.12.00(wed)	100000	188929	52.93%	100000	260631	38.37%	200000	449560	44.49%
	12.12.00(tue)	100000	272172	36.74%	100000	300194	33.31%	200000	572366	34.94%
	15.12.00(fri)	100000	155120	64.47%	100000	235011	42.55%	200000	390131	51.26%
	19.12.00(tue)	100000	220820	45.29%	100000	268007	37.31%	200000	488827	40.91%
	22.12.00(fri)	100000	236328	42.31%	100000	263724	37.92%	200000	500052	40.00%
	26.12.00	100000	209961	47.63%	100000	286275	34.93%	200000	496236	40.30%
	29.12.00(fri)	100000	145105	68.92%	100000	175882	56.86%	200000	320987	62.31%
	02.01.01(tue)	100000	157087	63.66%	100000	206022	48.54%	200000	363109	55.08%
	05.01.01(fri)	100000	134307	74.46%	100000	237169	42.16%	200000	371476	53.84%
	09.01.01(tue)	100000	167525	59.69%	100000	204636	48.87%	200000	372161	53.74%
	12.01.01(fri)	100000	171056	58.46%	99710	195422	51.02%	199710	366478	54.49%
	16.01.01(tue)	100000	204168	48.98%	100000	229670	43.54%	200000	433838	46.10%
	19.01.01(fri)	100000	196571	50.87%	290	370649	0.08%	100290	567220	17.68%
	23.01.01(fri)	100000	168420	59.38%				100000	168420	59.38%
Nirjay	06.12.00(wed)	100000	188929	52.93%	100000	260631	38.37%	200000	449560	44.49%
	12.12.00(tue)	100000	272172	36.74%	100000	300194	33.31%	200000	572366	34.94%
	15.12.00(fri)	100000	155120	64.47%	100000	235011	42.55%	200000	390131	51.26%
	19.12.00(tue)	100000	220820	45.29%	100000	268007	37.31%	200000	488827	40.91%
	22.12.00(fri)	100000	236328	42.31%	100000	263724	37.92%	200000	500052	40.00%
	26.12.00	100000	209961	47.63%	100000	286275	34.93%	200000	496236	40.30%
	29.12.00(fri)	100000	145105	68.92%	100000	175882	56.86%	200000	320987	62.31%
	02.01.01(tue)	100000	157087	63.66%	100000	206022	48.54%	200000	363109	55.08%
	05.01.01(fri)	100000	134307	74.46%	100000	237169	42.16%	200000	371476	53.84%
	09.01.01(tue)	100000	167525	59.69%	100000	204636	48.87%	200000	372161	53.74%
	12.01.01(fri)	100000	171056	58.46%	100000	195422	51.17%	200000	366478	54.57%

	16.01.01(tue)	100000	204168	48.98%	100000	229670	43.54%	200000	433838	46.10%
	19.01.01(fri)	100000	196571	50.87%	100000	370649	26.98%	200000	567220	35.26%
	23.01.01(fri)	100000	168420	59.38%	100000	241762	41.36%	200000	410182	48.76%

I find from the above, the trades executed by ASL in the scrip generated considerable volumes and this fact has not been denied by it. At this juncture it is relevant to note the observation of the U.S Courts in *Hynes Case* that "proof of manipulation is generally not based on a single activity but rather on a course of conduct showing an intentional interference with the normal functioning of the market for a security. Indeed the manipulation is usually the result of acts, practices and course of conduct that deceive the market place.....".

- e) With regard to the finding that the clients of ASL were not doing genuine arbitrage, the broker stated that their clients had merely taken advantage of price difference on both the exchanges and a nominal price difference profit in the different settlements. The broker further submitted that in arbitrage it is obvious that one client will earn profit and another will lose.
- f) With regard to the finding that transaction of the broker had misled the investors while making their investment decisions, the broker submitted that these transactions were carried out on the days of the settlement on the two stock exchanges and not on everyday. The broker further submitted that by doing this there was no question of unusual fluctuation in the volumes in each day. With the views of the Enquiry Officer that the creation of volumes and liquidity in a particular scrip is an important criterion and this is capable of misleading the investors while making their investment decisions. The volumes in particular scrip creates artificial demand inducing innocent investors, not well versed with the market practices. They can be carried away by the unusual fluctuation in volumes and could be induced into investing their hard earned money in the scrip and lose out their invested amount.

The trades of ASL during the period of investigation had led to volume generation to the extent that it alone was found to have contributed 16.43% of the gross traded quantity in the scrip. The said scrip and substantial volume on the days when these transactions were executed. As rightly found by the Enquiry Officer, it is a substantial volume, for a single broker trading for just two days. These trades account for around 1/6th of the total trades in the said scrip at the NSE. The reply of the broker that it had only traded on closing days of settlement is therefore, not convincing and unsustainable.

The broker has also referred to the order passed by SEBI in the matter of JM Morgan Stanley Retail Services Pvt. Ltd. The Enquiry Officer has rightly found that the case referred to is not on the same facts. In the present case a detailed investigation was conducted into the irregularities in the trading of the scrip, which involves larger public interest. The conduct of ASL is found to be detrimental to the interest of investors and the safety and integrity of the securities market.

Another contention raised by the broker is that the Enquiry Officer has not produced any evidence on record to prove that the investors had made losses due to the transactions carried out on behalf of the clients. I find that there is no such requirement and in any case it is not possible to quantify loss to investors in the instant case. It cannot be ignored that the trades which create artificial volume, gives a false appearance of trading on the exchange and consequent rise in the prices of the scrip or both. This is an unhealthy market practice. SEBI, as a capital market regulator, is duty bound to prevent such unhealthy market practices and it would be failing in fulfilling its duty if it overlooks such practices.

- g) I have considered the fact that ASL was penalized for creating false market in the scrip by the stock exchange. ASL had paid the penalty amount without challenging the same before the appellate authority. The broker in reply to this submitted that there is no appellate authority in NSE for challenging the Disciplinary Action Committee Directions. And because of this it had no other option but to accept the penalty levied by NSE. However this will not preclude SEBI from imposing a penalty as per its Regulations.
- h) The Enquiry Officer has very carefully brought out the professional relationship between the three entities, with the help of the data of disciplinary proceedings against ASL in NSE. By taking into consideration it becomes apparent that all of them would have had consensus in undertaking such undesirable nature of transactions.
- i) As regards the contention of the broker that it had no intention to manipulate the market, I find from the above discussion that ASL had acted in concert with its client, to create an artificial market in the scrip of Orient. As per the Enquiry Report ASL had traded in the scrip of Orient during the period under investigation by carrying out substantial transactions in the scrip. This cannot be genuine as these were meant to serve the purposes other than that of ordinary trading in the market.

4.1 In view of the above factual conclusions arrived by me, I find that the broker has violated Regulation 4 (b) (c) and (d) of FUTP Regulations as applicable at the time when the act was committed. Clause A (1), A (3) and A (4) of the Code of Conduct specified in Schedule II read with Regulation 7 of Broker Regulations.

4.2 From the aforesaid, I find that the broker has failed to explain the necessity of executing structured trades within the same exchange or in two exchanges for the purpose of so called arbitrage. Therefore, in the facts and circumstances of the case, I am not inclined to differ with the enquiry officer.

Order

5.1 Therefore in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the Enquiry Regulations, I hereby impose a penalty of suspension of Certificate of Registration of M/s Arcadia Shares & Stock Brokers Pvt. Ltd., member, NSE Ltd., bearing SEBI Registration No. INB 230778238 for a period of seven days.

5.2 This order shall come into force immediately after expiry of 21 days from the date of this order.

Mumbai **T. J. N.**
Date: 1.11.2006 **Whole Time Member**
Securities and Exchange Board of India