

Before the Securities and Exchange Board of India

CORAM: Dr.T.C. NAIR, WHOLE TIME MEMBER

WTM/TCN/70/IVD/12/06

Against M/s Ramanlal D Shah, member, Bombay Stock Exchange Limited, having SEBI Registration No.INB01905326.

DATE OF HEARING: 30.06.2006

Appearances:

For noticee: Shri Vinay Chouhan, Advocate,

Shri Ketan K Shah

Shri Kamalesh K Shah

For SEBI: Shri P K Nagpal, Chief General Manager

Shri Prashant Saini, Manager

Shri Amitesh Kumar, Legal Officer.

ORDER

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

1.0 FACTS

- 1.1 Bombay Stock Exchange (BSE) vide their letter dated July 11, 2001 and subsequent letter dated February 14, 2002 forwarded their Investigation Reports in the scrip of M/s Malvica Engineering Ltd. (MEL) for the period of December 20, 1999 to March 31, 2000 and August 07, 2000 to August 31, 2001 respectively to SEBI. BSE vide its letter dated July 11, 2001 also informed that a fine of Rs.25,000/- each has been imposed inter alia upon four brokers of the exchange for entering into fictitious deals and creating volumes in the scrip of MEL.
- 1.2 M/s Ramanlal D Shah (hereinafter referred to as the broker), member, BSE is a SEBI registered broker having SEBI Regn: INB01905326 was one among these brokers who were fined Rs. 25,000/- each by BSE for entering into fictitious deals and creating volumes in the scrip of MEL.
- 1.3 After examining the aforesaid investigation reports of BSE, Chairman, Securities and Exchange Board of India (SEBI) vide his order dated August 31, 2002, ordered investigation into the alleged irregularities in the trading of the scrip of MEL for the aforesaid two periods i.e. December 20, 1999 to March 31, 2000 and August 7, 2000 to August 31, 2000 (hereinafter referred to as investigation period).
- 1.4 It is also noted from the investigation that MEL had in March 1999 forfeited 37,63,500 shares which were held by the public on account of non-payment of call money. It was also found that MEL reissued 35,14,100 shares in December 1999 to 46 allottees.
- 1.5 The investigations further revealed that during August 7, 2000 to August 31, 2000 the price of the scrip touched a high of Rs 11.10 on August 14, 2000 and a low of Rs. 5.00 on August 31, 2000. Due to the non genuine trades executed by the aforesaid entities, the volume of the scrip was increased artificially from 100 shares on August 4, 2000 to 1,19,500 shares on August 7, 2000 and 1,59,500 shares on August 08, 2000. Further the volume of the scrip was increased substantially in the period from December 1999 to January, 2000 (from 100 shares on December 20, 1999 to 1,50,800 shares on January 7, 2000). The price of the scrip increased from Rs. 8.95 on December 20, 1999 to Rs. 20.15 on January 12, 2000.
- 1.6 The investigation further revealed that M/s Harvic Management Services (I) Ltd and M/s Havmore Financial Services (I) Ltd. were allotted 1,64,100 shares and 1,50,000 shares respectively which amounts to 3,14,100 shares which is 5.80% of the

total issued and subscribed capital of the company. Also, the directors of these companies, Mr. Hemang Jangla, Mr. Kalpesh Chawalla, Sangita and Vibha Jangla were allotted 1,00,000 shares each. Total acquisition of these persons along with their companies in the company M/s Malvika Engineering Limited amounts to 7,14,100 shares which was 13.19% of the issued and subscribed capital of the company. After the shares were allotted, these entities indulged in creating artificial volume in the scrip at BSE.

The following table shows the trading pattern of the above entities:

Structured Deals Executed on August 7, 2000:

Broker	Order Qty (Buy)	Trade Price	Time of placing order(Buy)	Broker	Order Qty (Sell)	Time of placing order(Sell)
B M Gandhi S P Ltd.	8000	9.4	12:39:01	Ramanlal D Shah	2000	13:24:04
Ramanlal D Shah	1000	9.4	12:43:07	Ramanlal D Shah	1000	13:28:53
Bipin Vora	15000	9.4	12:44:05	Ramanlal D Shah	2000	13:46:03
				Ramanlal D Shah	3000	13:52:06
				Ramanlal D Shah	2000	13:55:48
B M Gandhi S P Ltd.	2200	9.4	13:33:26	Ramanlal D Shah	1000	14:01:20
				Ramanlal D Shah	1000	14:10:37
				Ramanlal D Shah	2000	14:14:03
				Ramanlal D Shah	1000	14:19:02
				Ramanlal D Shah	1000	14:19:16
				Ramanlal D Shah	1000	14:19:27
B M Gandhi S P Ltd.	5000	9.4	14:40:46	Ramanlal D Shah	2000	14:44:38
Ramanlal D Shah	5000	9.5	10:03:09			

Structured Deals Executed on August 8, 2000:

Broker	Order Qty (Buy)	Trade Price	Time of placing order(Buy)	Broker	Order Qty (Sell)	Time of placing order(Sell)
	5000	9.5	10:03:09	Ramanlal D Shah		
Bipin Vora	20000	10.1	10:12:35	Ramanlal D Shah	5000	10:11:30
		10.25		Ramanlal D Shah	5000	10:11:20
		10.5		Ramanlal D Shah	5000	10:11:10
		10.2		Ramanlal D Shah	10000	15:15:50
		10		Ramanlal D Shah	2000	15:20:30
Ramanlal D Shah	20000	10	15:18:11	Bipin Vora	20000	15:21:21
Bipin Vora	25000	9.9	15:23:19	Ramanlal D Shah	2000	15:23:36
		9.9		Ramanlal D Shah	3000	15:23:47
		9.9		Ramanlal D Shah	5000	15:24:07
		9.9		Ramanlal D Shah	1000	15:24:15
		9.9		Ramanlal D Shah	2000	15:24:22
		9.9		Ramanlal D Shah	1000	15:24:35
		9.9		Ramanlal D Shah	2000	15:24:55
		9.9		Ramanlal D Shah	2000	15:25:26
		9.9		Ramanlal D Shah	1000	15:25:36
		9.9		Ramanlal D Shah	12100	15:29:34
Ramanlal D Shah	12100	10	15:29:10			
Ramanlal D Shah	12100		15:29:34			

Structured Deals Executed on August 9, 2000:

Broker	Order Qty (Buy)	Trade Price	Time of placing order(Buy)	Broker	Order Qty (Sell)	Time of placing order(Sell)
Ramanlal D Shah	10000	10.2	10:19:03	Bipin Vora	5000	10:17:05
		10.3		Bipin Vora	5000	10:17:19
Ramanlal D Shah	2000	9.5	10:00:21			

- 1.7 Further it was noted during investigation that M/s Harvic Management Services (I) Ltd. (sub-broker with broker M/s B M Gandhi Securities Pvt. Ltd.) and M/s Havmore Financial Services Pvt. Ltd. executed transactions in the scrip of MEL. It was also noted that all the three directors of these two companies were the same and there was no change in the beneficial ownership of the shares.
- 1.8 Based on the above findings of the investigations it was concluded that the broker herein has failed to exercise due skill, care and diligence in the conduct of its business as per the provisions of clauses A (1), (2), (3) and (4) of the Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations').

2.0 Appointment of the Enquiry Officer

- 2.1 Therefore, vide order dated July 24, 2003, an Enquiry Officer was appointed by SEBI under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the affairs of the broker in the matter of alleged manipulation in the scrip of MEL and possible violations of the provisions of Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) by the said broker.
- 2.2 The Enquiry Officer issued a Show Cause Notice dated October 16/20, 2003 under Regulation 6(1) of the Enquiry Regulations. The Broker replied to the said Show Cause Notice vide letter dated November 17, 2003.
- 2.3 The Enquiry Officer granted a personal hearing to the broker as per Regulation 9 of the Enquiry Regulations on 19th December, 2003 when Shri J J Bhatt, and Shri Ketan K Shah authorized representatives of the broker appeared before the Enquiry Officer and made submissions
- 2.3 The Enquiry Officer after considering the findings of the investigation, the oral and written submissions made before him by the broker concluded that the broker had failed to exercise due skill, care and diligence in the conduct of its business as broker as per the Code of Conduct for brokers specified in Schedule II read with regulation 7 of Broker Regulations. The enquiry officer submitted his Enquiry Report dated March 16, 2004 recommending a major penalty of suspension of certificate of registration of the broker for a period of six months.

3.0 Show Cause Notice and Reply

- 3.1 A show cause notice dated March 9, 2004 was issued to broker forwarding therewith a copy of the said Enquiry Report under Regulation 13(2) of the Enquiry Regulations informing about the Enquiry Officer's recommendation and advising it to show cause as to why action as may be considered appropriate should not be taken against it.
- 3.2 The broker submitted its reply dated April 12, 2004 and while reiterating most of the submissions made before the Enquiry Officer submitted inter alia the following:
- a) that the broker had carried out transactions of its sub-broker M/s Mayekar Investments Pvt Ltd (MIPL) in MEL scrip during the period January 2000 to July 2001. The enquiry officer was appointed after about three years from the dates of obtaining discharge from the sub-broker and after completed settlements in MEL scrip as per Rules and Regulations of the BSE, therefore show cause notice suffers from great delay and barred by limitations.
 - b) The concerned trades were done in the name/code of their SEBI registered sub-broker viz. MIPL as per their instructions at the relevant time on certain days and in some settlements and not continuously and throughout the period. Contract notes were issued and bills were accounted in the ledger accounts of MIPL. The volume of trades in MEL scrip and its financial implications were moderate and within the BSE's prescribed exposure limits and margins and other requirements of BSE were met by them on time. Neither the broker was aware of any manipulation nor could be linked, related or concerned with the dealings of the sub-broker.
 - c) The broker submitted that there had been only one incidence of matching of trade for 10,000 shares on May 17, 2000 which was reversed between Havmore Financial Services (I) Ltd and Mayekar Investments Pvt Ltd. The broker has further contended that it came to know about this matching through BOLT system when BSE informed the broker of the same. It did not know about aforesaid matching as both the trades were carried out by different dealers for different clients at different timings.
 - d) Further the broker contended that the circulars cited by the enquiry officer in the enquiry report are not a matter of enquiry under regulation 6 and hence these cannot be made basis for any penal action.
 - e) The broker submitted that the trades in MEL scrip were delivery based and total business in MEL scrip resulted in the net delivery of 74,800 shares. This is very insignificant compared to their volume/value at the relevant time. The Enquiry officer has applied gross (purchase +sales) criterion. Further broker submitted that BSE has classified the various scrips 'A', 'B-1', 'B-2', 'Z' group etc categories. BSE has not classified different scrips into 'liquid scrip' and 'illiquid

scrip' There is no such branding provision for illiquid scrips. Therefore trading in so called "illiquid "scrip per-se is neither illegal nor can be considered irregular or bad, when trades executed for delivery.

f) Further the broker contended that the enquiry officer's finding that broker did not exercise due care and diligence in the conduct of its business is not based on any direct, concrete and independent evidence but based on non collection of margin and dealing with an unregistered sub-broker for a period of eleven months.

g) The broker submitted that Regulation 13(6) of the Penalty Regulations states that major penalties may be imposed only in specific circumstances set out in clause (a) to clause (e) of the said Regulation 13(6). The broker submitted that the enquiry report attached to SCN does not contain any finding that the broker is guilty of (i) price or market manipulation of any scrip or index or (ii) assisting in such manipulation or (iii) or any insider trading, so clause 13(6) has no application in the present case.

h) The broker also requested for a personal hearing

3.3 Further to the aforesaid reply dated April 12, 2004, the broker submitted some additional submissions vide its letter dated May 25, 2004 and thereby submitted that the interpretation given to the subject of due skill, care and diligence be reconsidered. The broker submitted that due skill and care would mean such care and skill as a man of ordinary prudence and caution would exercise under similar circumstances. Further, it was submitted that SEBI has not prescribed any yardstick in regard to the nature of prudence to be exercised by the broker and the key test that is universally accepted in financial markets is financial resources (solvency)/ liquidity and no payment default.

3.4 As requested by the broker an opportunity of personal hearing was granted to it before me on June 30, 2006 when Shri Vinay Chauhan, advocate, Shri Ketan Shah and Shri Kamlesh R. Shah were present and made submissions. Subsequently, vide letter dated July 7, 2006, the broker submitted additional submissions wherein while interalia repeating the submissions already available on record, submitted that dealing with unregistered sub-broker and non exercise of due diligence is not serious enough to impose a penalty of suspension of certificate of registration for a period of six months.

4.0 Consideration of the Issues and Findings

4.1 I have carefully examined the facts and circumstances of the case, investigation reports, the Enquiry Report and other material on record. A group of connected clients, sub-brokers and brokers indulged in manipulation in the scrip of MEL and the broker Ramanlal D Shah was a part of this group. The group contributed to major portion of the total volume in the scrip in the market. Such pattern of trading cannot be done without the active participation and knowledge of the brokers. I have also considered the oral as well as written submission made by the broker including the written submissions of the broker filed subsequent to the personal hearing before me.

4.2 I note that BSE being a self regulatory organization and first level regulator had, through its in-house surveillance system, noticed these very dubious trades executed by certain entities through its members (brokers) and after examining the role played by them in such trades issued show cause notices. BSE found that M/s Ramanlal D Shah the broker herein, by indulging in these fictitious trades which created artificial volumes, had violated Bye-laws nos. 355 (a) and 357(ii) of the BSE Bye-laws. Bye-law no. 357 of BSE provides as under:

Bye-law-357: "A member shall be deemed guilty of unbusinesslike conduct for any of the following or similar acts are omissions namely –

(ii) if he makes a fictitious transactions or gives an order for the purchase or the sale of the securities the execution of which would involve no change of ownership or executes such order with knowledge of its character ;
"

and imposed a fine of Rs. 25,000/- upon broker M/s Ramanlal D Shah.

4.3 I further find from the findings of the Enquiry Officer that the trading of the broker in the scrip of MEL during the period December 20, 1999 to March 31, 2000 was amounting to 9.87% of the gross sales. During this period the broker sold 70,000 shares on behalf of the sub-broker, M/s. Mayekar Investments Pvt. Ltd. (Mayekar) and 40,000 shares on behalf of Havemore Financial Services Ltd. During August 2000, the broker conducted gross purchases of 1,63,400 shares and gross sales of 1,50,700 shares solely on behalf of Mayekar. I further note that Mayekar, the sub-broker of the client along with some connected entities namely M/s KP Investments (KP Investments), M/s Havemore Financial Services (I) Limited created volume in the market by executing arranged deals among themselves. In this regard it is worth noting that MEL had in March 1999 forfeited 37,63,500 shares which were held by the public on account of non-payment of call money and reissued 35,14,100 shares in December 1999 to 46 allottees. I further find that MEL had itself extended loans to certain individuals to subscribe and get allotment of those reissued shares of MEL and thus had, in fact, financed the subscription of

its own shares. These allottees were M/s Mayekar Investments Pvt. Ltd. (Mayekar), M/s K.P. Investment Consultancy (K.P.), Shri Pankaj A Desai, Shri Dilip A Desai, Ms. Kirtida P Desai (Brother and wife of Shri Pankaj A Desai) and other members of Desai family. It was also found that after the said allotment, some of these entities viz. Mayekar and K.P. and Shri Dilip A Desai, along with other allottees indulged in creating the artificial volume in the scrip of MEL at BSE by conducting matched trades among themselves by appearing on either side of transactions through the broker and reversing the transactions. Shri Pankaj A Desai was the director of Mayekar whereas Ms. Kirtida P Desai, the wife of Shri Pankaj A Desai was the proprietor of K.P.

4.4 I also note that Shri Pankaj A Desai the director of Mayekar, one of the client for which the broker had executed the trades, in his statement dated October 01, 2002 made before SEBI, admitted that his companies namely Mayekar and K.P. Investments were appearing on both sides of the transactions and thus created artificial volumes.

4.5 I further note that the broker has contended that the broker has executed these trades on behalf of its sub-broker Mayekar and there was only incidence of matching of trade for 10,000 shares on May 17, 2000 which was reversed between Havemore Financial Services (I) Ltd and Mayekar Investments Pvt Ltd. The broker has further contended that it came to know about this matching through BOLT system when BSE informed of the same. In this regard I have noted that the broker has executed a cross deal amounting to 10,000 shares on behalf of Mayekar, the sub-broker of the broker. I have further noticed that the broker - sub-broker agreement was signed w.e.f. June 10, 1999 and at that point of time the sub-broker Mayekar was not even registered with SEBI as a sub-broker. The sub-broker got its registration through only on May 24, 2000 and till this time the broker was dealing with an unregistered sub-broker. Hence, in my view, the broker has violated section 12 of SEBI Act which provides for the mandatory registration for intermediaries

4.6 I further note that all the trading of the broker in the scrip of MEL were for and on behalf of Mayekar and Havemore Financial Services India Ltd. In my view, the fact that these trades were being carried on by these two entities which resulted in creation of volume in the market should have created awareness to the broker as to the activities of the sub-broker and its vested interest in such illiquid scrip. In this regard, I have no hesitation in rejecting the submission of the broker about the risk management measures deployed in its office with regard to the sub broker and its client. Moreover, the brokers being professionals must keep a watch on the trading pattern of their clients and sub brokers and market trends to ensure that no manipulative activities are carried out through their terminals.

4.7 In the light of the foregoing discussion, I do not find any substance in the arguments of the broker and am of the view that broker has failed to put forth any plausible defence against the charges leveled against it. Hence, I do not find any reason to differ with the findings and recommendations of the Enquiry Officer and hold that the broker, while indulging in the trades in question for the related entities, who while trading among themselves, created artificial volumes in the scrip of MEL, has failed to exercise due diligence, care and skill in violation of the Code of Conduct for brokers specified in Schedule II read with regulation 7 of SEBI (Stock brokers And Sub -Brokers) Regulations 1992. Therefore, it is necessary to take appropriate disciplinary action against the said broker to protect the interest of investors and integrity of the market.

5.0 ORDER

5.1 Now, therefore in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby suspend the registration of Certificate of M/s. Ramanlal D Shah member, Bombay Stock Exchange Limited, having SEBI Registration No.INB01905326, for a period of six months.

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

DATE: 27-12-2006

PLACE: MUMBAI

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA