

Against M/s. B M Gandhi Securities (P) Limited, member, Bombay Stock Exchange Limited, Mumbai, having SEBI Registration No. INB 01984835.

DATE OF HEARING: 01.06.2006

Appearances:

For noticee: Shri Simil Purohit, Advocate.

Shri Paresh Gandhi

Shri Devin Joshi

For SEBI: Shri P K Nagpal, Chief General Manager

Shri Prashant Saini, Manager

Ms Sakkeena P.V, 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 said scrip of MEL.
- 1.2 M/s B M Gandhi Securities Pvt. Limited (hereinafter referred to as the broker), member, BSE is a SEBI registered broker having SEBI Registration No: INB 01984835 was one among the brokers who have traded in the scrip of MEL and 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 in 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 relevant 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 It was further found 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, alongwith other allottees indulged in creating the artificial volume in the scrip of MEL at BSE by conducting matched trades among themselves. 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.
- 1.6 The investigation 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, volume of the scrip was increased artificially from 100 shares on August 4, 2000 to 1,19,500 shares on August 7, 2000 and 1,59,900 shares on August 08, 2000.

- 1.7 The investigation further revealed that the volume in MEL 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.
- 1.8 It was further revealed during investigation that M/s. Harvic Management Services (I) Ltd., the sub-broker registered with M/s. B M Gandhi Securities Private Limited and M/s. Havermore 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 Chawalla and Vibha Jangla were allotted 1,00,000 shares each. Total acquisition of these persons along with their companies in MEL amounted 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 MEL at BSE by trading among themselves.

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	13:28:53
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

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)
Bipin Vora	25000	9.9	15:23:19	BM Gandhi S P Ltd	3300	15:23:26

- 1.9 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 and 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 11, 2003.
- 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 provisions of Clauses A (1), (2), (3) and (4) of 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 11, 2004 recommending a minor penalty of suspension of certificate of registration of the broker for a period of two months.

3.0 Show Cause Notice and Reply

- 3.1 A copy of the said Enquiry Report along with a show cause notice dated March 24, 2004 was issued to the broker under Regulation 13(2) of the Enquiry Regulations, informing about the Enquiry Officer's findings and 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 vide letter dated April 22, 2004 replied to the said show cause notice and while reiterating most of the submissions made before the Enquiry Officer submitted inter alia the following:

a) That Harvic Management Services (I) Pvt. Ltd. was appointed as registered sub-broker in pursuance to an agreement dated April 24, 1999. Pursuant to said agreement a BOLT was installed at the office of the said sub-broker. The sub-broker also paid Rs.1 lac towards security deposit as demanded by the broker.

b) That looking to the transactions effected by sub-broker from time to time, the broker was demanding margin money and were holding an amount of Rs.3.50 lacs towards margin money in the account of the sub-broker.

c) That the sub-broker had performed all its pay in and pay out obligations quite sincerely and till date the broker had no grievance of any nature against the sub-broker.

d) That as the market was bullish, the volumes in most of the scrips were large and the sub-broker has also traded in many scrips apart from the scrip of MEL. The broker was never suspicious of the trades done by the sub-broker as the percentage of turnover of the scrip of Malvica was not alarming comparing to other scrips.

e) That when SEBI and BSE initiated enquiries, the broker reduced the trading limits of the sub-broker considerably and from August 2003, the broker stopped the business of the sub-broker.

f) That the penalty imposed by BSE on the broker was passed by it on to the sub-broker and the sub-broker paid the same.

g) the broker also requested for a personal hearing.

3.3 A personal hearing was granted to the broker by the then Whole Time Member of SEBI on January 13, 2006, who having examined the Enquiry Report, reply and other oral as well as written submissions of the broker, passed the order dated January 25, 2006, agreeing with the findings and recommendations of Enquiry Officer and suspended the certificate of registration of the broker for a period of two months.

3.4 Feeling aggrieved by the said order dated January 25, 2006, the broker filed an Appeal No.26/2006 before the Securities Appellate Tribunal (SAT). The SAT vide order dated March 21, 2006 while allowing the appeal and setting aside the impugned order of SEBI, made it clear that it shall be open to the Board to proceed against the broker herein from the stage of submission of the Enquiry Report, if it so desires.

3.5 Accordingly an opportunity of personal hearing was granted to the broker before me on June 01, 2006. During the personal hearing, the representatives of the broker made oral submissions and the broker was given time to file its further written submissions. Subsequently vide letter dated June 02, 2006 the broker forwarded its reply whereby while reiterating most of the submissions already on record, inter alia made the following additional submissions:

i) That the broker appointed the sub-broker on the recommendation of one Mr. Bipin Diwani who was known to the broker since 1992 and on an investigation about the sub-broker, the broker was satisfied with the financial records and statements of the sub-broker.

ii) That as per the settlement wise break up data for the period between December 20, 1999 to March 31, 2000 the total purchase and sale transactions of the sub-broker in the scrip were a meager 2.50% of the gross turnover of the broker. The percentage of total amount of shares of MEL purchased and sold by the sub-broker amounted to 0.0011% of total turnover of the broker. The risk assessment of 0.0011% of total turnover was very small and negligible to arouse the interest or to create any suspicion in the mind of the broker. Further, the entire transaction in the scrip of MEL ranged from 0.008% to 0.3902% of the total transaction of the broker. It is not possible to monitor each and every transaction of the sub-broker unless the trading is much skewed.

iii) That the broker was in no way connected to Mayekar, M/s K.P Investments, M/s Havemore Financial Services (I) Limited as alleged. Further, by looking only at the transactions of M/s Harvic Management Services (I) limited, it is not possible to ascertain the circular transactions or arranged deals done by these entities, as alleged.

iv) With regard to the allegation of fictitious trades by the sub-broker it was submitted that all the trades executed by the sub-broker were within the limits as the system would not accept trades exceeding their limit. The broker further submitted that it was never aware of any such artificial trades as they were not reflected in the system

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 and sub-brokers and brokers indulged in manipulation in the scrip of MEL and the broker B M Gandhi Securities Private Limited 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 after 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. B.M. Gandhi Securities Ltd. 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 and imposed a fine of Rs. 25,000/- upon broker.

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 transaction 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 ; "

- 4.3 I further note from the findings of the Enquiry Officer that the broker purchased 1,57,600 shares and sold 2,46,700 shares for its sub-broker and the sub-broker along with some connected entities namely M/s K.P Investments, M/s Havmore Financial Svices (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, alongwith 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.

In this regard I further find that another group of clients consisting of M/s Harvic Management Services (I) Ltd. and M/s Havmore Financial Services (I) Ltd. along with its directors and their relatives who were allotted reissued shares and were having substantial holdings in MEL, had also indulged in creating artificial volume in the scrip of MEL at BSE. It was also observed that M/s Harvic Management Services (I) Ltd., the Sub-Broker with M/s B M Gandhi Securities Pvt. Ltd., executed its trades through different brokers and conducted matched trades with M/s Havmore Financial Services (I) Ltd. As all the three directors namely Shri Kalpesh Chawla, Shri Hemang Jangla and Shri Himanshu Chawala, of both the entities namely M/s Harvic Management Services (I) Ltd. and M/s Havmore Financial Services (I) Ltd. were common, it was found that in fact, there was no change in beneficial ownership of the shares so traded and all these transactions were not genuine transactions.

- 4.4 I note that the broker has contended that since the sub-broker was located in a remote area, the broker was not having control over transactions effected by the sub-broker. I have no hesitation in rejecting this contention as accepting the same would be disastrous for the safety and integrity of the securities market. Further, if the contention that the broker had no control over its own terminals or had no knowledge regarding their misuse, manipulation in the market can not be curbed and innocent investors would suffer losses by investing in the scrips on the basis of artificial volume and prices. This would result in erosion of investors' confidence in the functioning of the market. 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. In view of this, I, in full agreement with the findings of the Enquiry Officer, hold that the broker has failed to act with due diligence, skill and care and thus has violated the mandate of the Broker Regulations.
- 4.5 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 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 Clauses A(1), A(2), A(3) and A(4) 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 M/s B M Gandhi, member, Bombay Stock Exchange Limited, having SEBI Registration No.INB 01984835, for a period of two months.
- 5.2 This order shall come into force after 21 days from the date of this order.

DATE: 27-12-2006

T.C. NAIR

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA