

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : V. K. CHOPRA, WHOLE TIME MEMBER

In the matter of R. S. Damani Group

Order No.WTM/VKC/ID6/27/07

DATE OF HEARING: 28.11.2006

APPEARANCES;

FOR COMPANIES/ BROKERS:

1. Shri R. K. Damani, Director, Damani Shares & Stock Brokers Pvt. Ltd.
2. Shri. Somashekhar S, Partner, J. Sager Associates
3. Shri. Ramakant Baheti, Director, Damani Shares & Stock Brokers Pvt. Ltd.

FOR SEBI

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri Deepesh M.U, Manager, SEBI
3. Shri. Mohamed Rahaz. P.M, Legal Officer, SEBI

ORDER

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

1.0 BACKGROUND

- 1.1 M/s R. S. Damani Group consists of three broking entities viz. M/s Damani Shares & Stock Brokers Pvt. Ltd., M/s Maheshwari Equity Brokers Pvt. Ltd. and M/s Avenue Stock Brokers (I) Pvt. Ltd. M/s Damani Shares & Stock Brokers Pvt. Ltd. is broker of Stock Exchange Mumbai with SEBI Registration no. INB010995932 and National Stock Exchange with SEBI Registration no. INB231098139. M/s Maheshwari Equity Brokers Pvt. Ltd. is a broker of Stock Exchange Mumbai with SEBI Registration no. INB010722230 and Delhi Stock Exchange with SEBI Registration no. INB050722231. M/s Avenue Stock Brokers (I) Pvt. Ltd. is a broker of National Stock Exchange with SEBI Registration no. INB231057630. All these entities were known as R. S. Damani Group (hereinafter referred to in short as "Noticees").
- 1.2 Securities and Exchange Board of India (hereinafter referred to in short as "the Board") had ordered an investigation into their dealings to ascertain as to whether any provisions of Securities and Exchange Board of India Act, 1992 and various rules and regulations framed there under have been violated.
- 1.3 The Board, after considering the Interim Investigation Report, appointed an Enquiry Officer vide Order dated September 17, 2001 to conduct enquiry in respect of the violations allegedly committed by the Noticees under the provisions of Regulations 4(a) & (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to in short as "PFUTP Regulations"), Regulation 7 read with clause A(3), (4) and (5) of the Code of Conduct for Stock Brokers under SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock brokers Regulations") and Rules, Regulations and Bye-laws of Stock Exchange.
- 1.4 The Enquiry Officer had conducted an enquiry in accordance with the provisions of Regulation 6 of the Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "the Enquiry Regulations") and submitted a report dated April 08, 2002 under Regulation 13(1) of the Enquiry Regulations. The Enquiry Officer in his report recommended that a warning may be issued to the Noticees for the delay in transfer of securities from the brokers pool account to the beneficiary account.

2.0 SHOW CAUSE NOTICE

- 2.1 The Board disagreed with the above findings of the Enquiry Officer and considered the matter for imposing a higher penalty. In view of the same, Show Cause Notices dated June 08, 2006 were issued to the Noticees viz. M/s Damani Shares & Stock Brokers Pvt. Ltd., M/s Maheshwari Equity Brokers Pvt. Ltd. and M/s Avenue Stock Brokers (I) Pvt. Ltd. advising them to show cause as to why the penalty as considered appropriate including suspension / cancellation of the registration and / or prohibiting them from accessing capital market for a specific period should not be imposed on them. They were also advised to send their reply to the Show Cause Notice alongwith the documents, if any within 15 days of the receipt thereof.

- 2.2 The Noticees submitted their replies to the Show Cause Notices vide three letters all dated June 27, 2006. The averments and contentions in their replies are considered in deciding this matter.

3.0 HEARING

- 3.1 Noticees in their replies requested for personal hearing. Accordingly they were advised to attend the personal hearing before me at SEBI's Head office at Mumbai on November 28, 2006. Shri R. K. Damani, Director, M/s Damani Shares & Stock Brokers Pvt. Ltd, and Shri. Ramakant Baheti, Director, Damani Shares & Stock Brokers Pvt. Ltd. attended the hearing along with their Advocate Shri. Somashekhar S. Therefore, I am proceeding in the matter on the basis of the submissions of the parties and the materials before me.

4.0 CONSIDERATION OF ISSUES & FINDINGS

- 4.1 I have carefully examined the Enquiry Report, Show Cause Notices, Replies of the Noticees and submissions made at the time of hearing and proceed to deal with the same as under.
- 4.2 The charges levelled against the Noticees are under the provisions of Regulations 4(a) & (b) of the PFUTP Regulations, Regulation 7 read with clause A (3), (4) and (5) of the Code of Conduct for Stock Brokers under Stock brokers Regulations and Rules, Regulations and Bye-laws of Stock Exchange. The Enquiry Officer held that the Noticees have not violated the above Regulations and suggested warning for the delay in transfer of securities from the brokers pool account to the beneficiary account. This was however not accepted by the Board. Three separate Show Cause Notices were issued to each of the Noticees and the same were replied by them.
- 4.3 The said Show Cause Notices were issued to the Noticees in terms of Regulation 13(5) of the Enquiry Regulations as a pre-condition to impose higher penalty. The Counsel who appeared on behalf of Noticees raised a preliminary objection of maintainability of the impugned Show Cause Notices on the ground that the same failed to provide any justification for proposing higher penalty. In this regard, I have perused the Show Cause Notices and find that reasons had been given in it.
- 4.4 The Enquiry Officer has examined the charge of concentrated delivery based sale in the scrip of Infosys allegedly committed by the Noticees on February 23, 2001 and March 02, 2001 and consequent fall of index by 140 and 176 points. He found that concentration based on daily exchange volume (BSE+NSE) hovers within the range of 0.6% to 1.7%, which is miniscule and would hardly have impacted the price discovery process in the market. It is stated in the show cause notice that the time slot analysis (15 Mins. Gap) of the purchase and sale pattern in the scrip of Infosys revealed concentration with the Noticees in the range of 1% to 6.41% of the Exchange (BSE) during specific timeslots. I am of the view that the volumes of 1% to 6.41% in the scrip like Infosys on BSE alone in a 15 minute time – slot in itself is not sufficient to bring a charge of price manipulation or creation of artificial market.
- 4.5 During the course of hearing, the Noticee contented that their group sold 98,089 shares and these shares were held by them for a long time before they sold these shares in the market. They also submitted that the shares were sold for raising funds and all these transactions ended into deliveries. It is observed that aforesaid shares were sold by the Noticees after a long gap and as such I don't find any evidence suggesting that the Noticees were involved in manipulation of shares and the charge of creating artificial volume and price cannot legally sustain itself against the Noticees. In the absence of sufficient material to link the Noticees in respect of their role in the price manipulation of the shares of Infosys, there was nothing else to prove that the said entities were involved in the price manipulation.
- 4.6 I have also examined the allegations pertaining to transactions with Rakesh Jhunjhunwala group and M/s Nirmal Bang and observe that the connections or linkage of Noticees with Rakesh Jhunjhunwala group or with M/s Nirmal Bang is neither indicated in the Show Cause Notice nor established in any other manner. Further, with regard to the allegations of short sales by the Noticees, I find that they had broadly complied with the SEBI norms on short sales. I note that the Enquiry Officer has also come to the same conclusion and exonerated the Noticees from the charges under the provisions of PFUTP Regulations and Stock Brokers Regulations. He observed that the Noticees committed technical violation of delayed transfer of securities from the pool account of the broker to the beneficiary account of the client on number of occasions, beyond the stipulated period of 15 days. He suggested a penalty of warning for the said technical violation.
- 4.7 After examining all aspects of this case, I observe that the said delayed transfer of shares from the pool account was certainly in violation of SEBI circular no. SMDRP/Policy/Cir-11/99 dated May 07, 1999. I also find that the Enquiry Officer has also referred SEBI Circular dated Feb 01, 2001 which contains revised policy for transfer of shares from the Broker's pool account to the client's beneficiary account. The Enquiry Officer however, did not find any malafide or intentional misuse of the pool account and held that the delay in transfer of securities is a technical violation. As such I don't find any reason to interfere with the findings of the Enquiry Officer.

- 4.8 In view of the above facts and circumstances of the matter as also since the Noticees have not violated any provisions of PFUTP Regulations or code of conduct under the provisions of Stock Brokers Regulations excepting the technical violation of delay in transfer of securities, a minor penalty of 'censure' (prior to the amendment 'warning') on them will meet the ends of justice.

5.0 ORDER

- 5.1 Therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby impose a minor penalty of 'censure' to the Noticees viz M/s Damani Shares & Stock Brokers Pvt. Ltd., M/s Maheshwari Equity Brokers Pvt. Ltd. and M/s Avenue Stock Brokers (I) Pvt. Ltd.

Mumbai
January 02, 2007

V. K. CHOPRA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA