

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G.ANANTHARAMAN, WHOLE TIME MEMBER

Against M/s Vidyut Devendrakumar, Member, The Bombay Stock Exchange Limited - In the matter of its dealings in the shares of Himachal Futuristic Communications Limited.

WTM/GA/130/IVD/2/07

Date of Hearing: January 19, 2006

Appearances:

For noticee: Shri Vidyut Devendrakumar

**For SEBI : Shri P K Nagpal, Chief General Manager
Shri Praveen Trivedi, Deputy Legal Advisor
Shri Ansuman Dev Pradhan, Manager
Smt. Sakkeena.P.V, Legal Officer.**

ORDER

[Under Regulation 13(4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002]

1.0 FACTS

- 1.1 The shares of Himachal Futuristic Communications Limited (hereinafter referred to as 'HFCL') are listed at the Bombay Stock Exchange Ltd. (hereinafter referred to as BSE) and at the National Stock Exchange of India Ltd.(hereinafter referred to as NSE). The price of the shares of HFCL noticed unusual movement during the period November 1999 and March 2001. The price of the said shares moved from Rs 355/- on November 1999 to reach a high of Rs. 2047.55/- on March 2000 and thereafter the price of the said shares witnessed a downtrend while paring away to Rs.210/- on March 2001.
- 1.2 In view of the unusual price movement noticed in the shares of HFCL, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigation into the alleged manipulation in the shares of HFCL and to look into the possible violations of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the Act), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations,1992 (hereinafter referred to as the Broker Regulations).
- 1.3 The investigation conducted by SEBI inter alia revealed that M/s Vidyut Devendrakumar (hereinafter referred to as the 'Broker'), Member, BSE, executed substantial trades in the shares of HFCL on behalf of various clients including M/s Classic Credit Ltd. (hereinafter referred to as CCL).

CCL belonged to and or controlled by Shri Ketan V Parekh and Shri Kartik K Parekh. It was observed that the trades executed by the Broker on behalf of the said client had matched with select counterparty brokers and that the clients of the said counter party brokers were either the same KP entity or different set of KP entities. In some of the trades executed by the Broker, the buying and the selling client was the same i.e CCL. The trades made by the Broker in the shares of HFCL on behalf of the said client are mentioned below:

Settle ment No.	Trade Date	Trade No	Trade Time	Trade Qty	Trade Price	Order Number	Bu y/S ell	Order Rate	Order Qty	Order time	Member Name	Counter Party Name	Client Name
1999035	19-Nov-99	49873	14:33: 15	14900	367.50	85040142	B	367.5	16100	14:33:15	C J Dalal	Vidyut Devendra kumar	CCL
	19-Nov-99	49873	14:33: 15	14900	367.50	685010994	S	367.5	16100	14:33:14	Vidyut Devendra kumar	C J Dalal	CCL
1999050	28-Feb-00	16425	14:32: 34	11700	1706.5	460120011	S	1706.5	12500	14:32:32	Milan Mahendra Sec	Vidyut Devendra kumar	CCL
	28-Feb-00	16425	14:32: 34	11700	1706.5	685010218	B	1706.5	12500	14:32:34	Vidyut Devendra kumar	Milan Mahendra Sec	CCL
2000021	18-Aug-00	97839	11:57: 23	25440	1506.00	850040001000 1516	B	1506	26000	11:57:21	C J Dalal	Vidyut Devendra kumar	PFMS
	18-Aug-00	97839	11:57: 23	25440	1506.00	685001000100 13907	S	1506	26000	11:57:22	Vidyut Devendra kumar	C J Dalal	CCL
2000023	28-Aug-00	15824	14:27: 12	23243	1454.00	248003000100 00826	S	1454	25000	14:27:10	Hem Securities	Vidyut Devendra kumar	CCL
	28-Aug-00	15824	14:27: 12	23243	1454.00	685001000100 15318	B	1454	25000	14:27:11	Vidyut Devendra kumar	Hem Securities	CCL
2000023	31-Aug-00	95611	11:13: 59	22000	1421.50	850040001000 1797	B	1421.5	22000	11:13:58	C J Dalal	Vidyut Devendra kumar	PFMS
	31-Aug-00	95611	11:13: 59	22000	1421.50	685001000100 15716	S	1421.5	22000	11:13:59	Vidyut Devendra kumar	C J Dalal	CCL
2000026	18-Sep-00	27496	14:32: 12	28360	1584.00	248003000100 01126	S	1584	30000	14:32:12	Hem Securities	Vidyut Devendra kumar	PFMS
	18-Sep-00	27496	14:32: 12	28360	1584.00	685001000100 18190	B	1584	30000	14:32:12	Vidyut Devendra kumar	Hem Securities	CCL

2000026	22-Sep-00	207850	12:47:59	29980	1326.00	8500400010002227	B	1326	30000	12:47:59	C J Dalal	Vidyut Devendra kumar	PFMS
	22-Sep-00	207850	12:47:59	29980	1326.00	68500100010018849	S	1326	30000	12:47:59	Vidyut Devendra kumar	C J Dalal	CCL
2000029	09-Oct-00	17649	15:20:01	40000	1254.5	46001200010001239	S	1254.5	40000	15:19:59	Milan Mahendra Sec	Vidyut Devendra kumar	PFMS
	09-Oct-00	17649	15:20:01	40000	1254.5	68500100010020263	B	1254.5	40000	15:20:01	Vidyut Devendra kumar	Milan Mahendra Sec	CCL
2000029	13-Oct-00	131893	11:39:40	38973	1006	24800300010001646	B	1006	40000	11:39:38	Hem Securities	Vidyut Devendra kumar	PFMS
	13-Oct-00	131893	11:39:40	38973	1006	68500100010020658	S	1006	40000	11:39:40	Vidyut Devendra kumar	Hem Securities	CCL
2000030	16-Oct-00	12341	12:44:17	61354	1089	24800300010001679	S	1089	65000	12:44:16	Hem Securities	Vidyut Devendra kumar	PFMS
	16-Oct-00	12341	12:44:17	61354	1089	68500100010020799	B	1089	65000	12:44:17	Vidyut Devendra kumar	Hem Securities	CCL
2000030	16-Oct-00	26038	15:02:46	11066	1025	46001200010001361	S	1025	20000	15:02:45	Milan Mahendra Sec	Vidyut Devendra kumar	PFMS
	16-Oct-00	26038	15:02:46	11066	1025	68500100010020847	B	1025	20000	15:02:41	Vidyut Devendra kumar	Milan Mahendra Sec	CCL
2000032	27-Oct-00	30278	15:26:31	28628	1182	8500400010002590	S	1182	34000	15:26:29	C J Dalal	Vidyut Devendra kumar	PFMS
	27-Oct-00	30278	15:26:31	28628	1182	68500100010021817	B	1182	34000	15:26:31	Vidyut Devendra kumar	C J Dalal	CCL
2000033	07-Nov-00	45343	13:45:21	24000	1337.5	16300100010003437	S	1337.5	25000	13:45:18	Omega Equities	Vidyut Devendra kumar	
	07-Nov-00	45343	13:45:21	24000	1337.5	68500100010022696	B	1337.5	25000	13:45:21	Vidyut Devendra kumar	Omega Equities	CCL
2000033	10-Nov-00	117495	10:11:55	12750	1345	405046000000001211	B	1345	21000	10:11:54	Latin Manharlal	Vidyut Devendra kumar	PFMS
	10-Nov-00	117495	10:11:55	12750	1345	68500100010022997	S	1345	21000	10:11:54	Vidyut Devendra kumar	Latin Manharlal	CCL
2000034	17-Nov-00	154175	14:21:00	11505	1319.5	8500400010003035	B	1319.5	23500	14:21:00	C J Dalal	Vidyut Devendra kumar	PFMS
	17-Nov-00	154175	14:21:00	11505	1319.5	68500100010023746	S	1319.5	23500	14:21:00	Vidyut Devendra kumar	C J Dalal	CCL
2000035	20-Nov-00	5657	10:38:10	34900	1332.5	405046000000001245	S	1332.5	35000	10:38:07	Latin Manharlal	Vidyut Devendra kumar	PFMS
	20-Nov-00	5657	10:38:10	34900	1332.5	68500100010023824	B	1332.5	35000	10:38:09	Vidyut Devendra kumar	Latin Manharlal	CCL

	24-Nov-00	159951	14:48:03	42686	1331	8500400010003139	B	1331	47000	14:48:02	C J Dalal	Vidyut Devendra kumar	PFMS
2000035	24-Nov-00	159951	14:48:03	42686	1331	68500100010024264	S	1331	47000	14:48:02	Vidyut Devendra kumar	C J Dalal	CCL
	15-Dec-00	120856	12:50:10	20270	1420	24800300010002542	B	1420	30000	12:50:04	Hem Securities	Vidyut Devendra kumar	PFMS
2000038	15-Dec-00	120856	12:50:10	20270	1420	68500100010026392	S	1420	30000	12:50:10	Vidyut Devendra kumar	Hem Securities	CCL
	26-Dec-00	23328	12:11:38	48652	1101	24800300010002607	S	1101	50000	12:11:36	Hem Securities	Vidyut Devendra kumar	PFMS
2000040	26-Dec-00	23328	12:11:38	48652	1101	68500100010027336	B	1101	50000	12:11:37	Vidyut Devendra kumar	Hem Securities	CCL
	16-Jan-01	68492	11:10:45	39780	1139.5	24800300010002811	S	1139.5	40000	11:10:43	Hem Securities	Vidyut Devendra kumar	PFMS
2000043	16-Jan-01	68492	11:10:45	39780	1139.5	68500100010029676	B	1139.5	40000	11:10:45	Vidyut Devendra kumar	Hem Securities	CCL
	25-Jan-01	134247	14:53:30	28334	1234.75	40504600000001925	B	1234.75	28334	14:53:22	Latin Manharlal	Vidyut Devendra kumar	PFMS
2000044	25-Jan-01	134247	14:53:30	28334	1234.75	68500100010030766	S	1234.75	30000	14:53:29	Vidyut Devendra kumar	Latin Manharlal	CCL
	02-Feb-01	170776	12:45:39	34960	1071.5	46001200010001922	B	1071.5	35000	12:45:38	Milan Mahendra Sec	Vidyut Devendra kumar	PFMS
2000045	02-Feb-01	170776	12:45:39	34960	1071.5	68500100010031424	S	1071.5	35000	12:45:39	Vidyut Devendra kumar	Milan Mahendra Sec	CCL
	13-Feb-01	60955	13:14:54	24420	1018	46001200010001978	S	1018	25000	13:14:52	Milan Mahendra Sec	Vidyut Devendra kumar	PFMS
2000047	13-Feb-01	60955	13:14:54	24420	1018	68500100010032849	B	1018	25000	13:14:54	Vidyut Devendra kumar	Milan Mahendra Sec	CCL
	07-Mar-01	57893	12:28:36	34450	434.75	46001200010002263	B	434.75	35000	12:28:31	Milan Mahendra Sec	Vidyut Devendra kumar	PFMS
2000050	07-Mar-01	57893	12:28:36	34450	434.75	68500100010035052	S	434.75	35000	12:28:35	Vidyut Devendra kumar	Milan Mahendra Sec	CCL

1.4 It can be seen from the above table that the buy and sell orders were put almost at the same time with the same price and quantity. The buy and the sell orders were put with prior understanding with a view to ensure that the sell order of the KP entities matched with the buy order of other set of KP entities. In the process shares sold by the KP entities were again

purchased back by KP entities, thereby engendering circular trades. By executing various synchronized transactions on behalf of the KP entity (CCL) in the shares of HFCL as mentioned above, it appeared that the Broker had not exercised due care and skill in its dealings and had aided and assisted KP entities in circular trading/synchronized trades, in the creation of artificial market and in executing fictitious deals in the shares of HFCL. In view of the above it was observed that the Broker had prima facie violated Clauses A (1) and (2) of the Code of Conduct specified in Schedule II of the Broker Regulations and regulation 4(b), (c) and (d) of the FUTP Regulations.

2.0 APPOINTMENT OF THE ENQUIRY OFFICER

- 2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide order dated October 14, 2004 under regulation 5(1) of 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) to enquire into the alleged violations (as mentioned above) committed by the Broker while executing trades on behalf of its client (CCL) in the shares of HFCL. The Broker filed its reply and also made its submissions during the course of the hearing before the Enquiry Officer. The Enquiry Officer conducted the proceedings in terms of the provisions of the Enquiry Regulations and submitted his report dated May 24, 2005 and recommended for the imposition of a minor penalty of suspension of certificate of registration of the Broker for a period of one month.

3.0 SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3.1 Based upon the recommendation of the Enquiry Officer, a show cause notice dated June 07, 2005 was issued to the Broker under regulation 13(2) of the Enquiry Regulations, asking it to show cause as to why the action should not be taken against it as recommended by the Enquiry Officer. The Broker vide letter dated June 20, 2005 requested SEBI to grant one month time to submit its reply to the said show cause notice. The Broker was requested by SEBI vide letter dated June 29, 2005 to file its reply within ten days of the receipt of the said letter. Subsequently, the Broker submitted its reply vide letter dated July 20, 2005. While denying the charges leveled, the Broker has inter alia submitted the following:

- a) that it had traded only on behalf of Classic Credit Ltd among all the KP entities and that the said client was introduced to the Broker by its senior remisier whose business track record and client track record were very clean. The broker further submitted that it had executed trades for the clients for commercial consideration only.
- b) that the transactions had taken place on screen and the Broker was not aware of the counter party who was purchasing/selling in the scrip. The Broker further submitted that there was no mechanism/software provided either by the stock exchange or by the Regulatory Authority which could help in identifying such transactions. That it was impossible for an individual Broker to find out that, in which scrip circular trading/price rigging activities were carried out.

c) that while dealing with Classic Credit Ltd., it had incurred a loss of Rs.66,92,235.97/- and further submitted that knowingly or unknowingly no broker would indulge in such business where there was risk of loss of huge amount. The Broker further submitted that during the relevant period the daily turnover of HFCL was in few crores shares and it had traded for Classic Credits Ltd for less than 0.0001% of the total turnover i.e. only 23 (Twenty Three) Transactions. In view of the above submissions, the Broker submitted that it had not violated the provisions of the FUTP Regulations and the Broker Regulations or of any other Rules/Regulation of SEBI or BSE and further requested to withdraw all the charges made against it. The Broker had also requested for a personal hearing.

3.2 An opportunity of hearing was granted to the Broker on January 19, 2006. Shri Vidyut Devendrakumar Shah, proprietor of the Broker appeared before me and made submissions on the lines of the reply dated July 20, 2005 filed by the Broker. The Broker had also filed its written submissions vide letter dated January 23, 2006. In the said written submissions, the Broker had inter alia stated the following:

a) that the business of the Broker was mainly retail client business and it had approximately 1050 clients spread throughout India and its annual turnover for the last three years was approximately Rs.700 crores. Further the Broker submitted that it was not having any institutional business and had no institutional clients.

b) that all the transactions alleged in the instant case in the scrip of HFCL were done by the broker for its client, Classic Credit Ltd. and

the said client was introduced to the broker by one Mr Bhupendra P Shah who was acting as a remiser to the broker. The broker further submitted that as the client was introduced by the remisier, there was no question to doubt as to the bonafides, intention and the integrity of Classic Credit Ltd. The Broker further stated that Classic Credit Ltd. had been effecting business through the Broker with effect from September 1999. It was also stated that the transactions were effected in pursuance to the instructions received from Classic Credit Ltd. and that contract notes and settlement bills were issued in the name of Classic Credit Ltd.

- c) that the transactions in the shares of HFCL were effected by the Broker in the ordinary course of business as per the instructions received from Classic Credit Ltd. and the transactions were entered in the BOLT system of the Stock Exchange in pursuance of the best price mechanism of the BSE. The Broker further submitted that all the transactions were done genuinely and synchronization, if any, has been done by Classic Credit Ltd.
- d) that transactions mentioned in the Table-1 of the Enquiry Report only reflected the trade time i.e. the time when the trade were actually executed and not the time of placing the order. The Broker further submitted that merely because the trade time and price got matched, one cannot come to the conclusion that the transactions were circular in nature.
- e) that the only motive was to earn the brokerage and while doing so it did not disobey any of the guidelines/norms laid down by the

Exchange or by SEBI nor it disregarded its duty towards the general investors. It was further stated that the trades done by Classic Credit Ltd. in the shares of HFCL had resulted into the delivery and the said transactions were genuine transactions . It had reiterated that in the transactions it had lost a sum of Rs.66,92,236/- and that no broker would enter into such transactions which would impose financial losses. In view of the above submissions, the Broker submitted that it had not violated the provisions of the FUTP Regulations and the Broker Regulations as observed by the Enquiry Officer. The Broker had also submitted that " I once again assure your honour that I am not a party to this so called circular trading and price rigging and the said trades have been taken place in system through us only in normal course of business and in good faith and without any monetary or other benefits except the brokerage." The Broker had also enclosed the total trades made by it on behalf of its various clients in the shares of HFCL with the said letter.

4.0 CONSIDERATION OF ISSUES AND FINDINGS

4.1 I have carefully examined the facts and circumstances of the case, the findings of the investigation report, the Enquiry Report, the submissions (oral as well as written) made on behalf of the Broker and all other materials available on record. The following issues are framed for consideration:

a) whether the Broker had violated the clause A(2) of the Code of

Conduct as specified in Schedule II of the Broker Regulations?

b) whether the Broker had violated the provisions of regulation 4(b),
(c) and (d) of the FUTP Regulations?

- 4.2 The transactions executed by the Broker on behalf of its clients including CCL (a KP entity) has not been disputed. I note that the Broker vide reply dated December 29, 2004 (to the Enquiry Officer) had submitted the details of transactions executed by it in the shares of HFCL on behalf of CCL. The trade details (including trade date/time, quantity, price etc.) in respect of the said client for the period November 19, 1999 to March 07, 2001 was also submitted by the Broker with the said letter. The Broker had also enclosed the copy of the member client agreement and the client registration form entered into between it and the said client, CCL. I find from the submissions made by the Broker in its written submissions dated January 23, 2006 that CCL was effecting transactions through the Broker with effect from September 1999. However, the member client agreement and the client registration form were entered into between the Broker and the said CCL only on April 11, 2000 i.e much after the transactions executed by the Broker on behalf of CCL in September/November 1999. Further, the details regarding the annual income of the client for the past three years, net worth etc. are missing in the client registration form.
- 4.3 Shri Vidyut Devendra Kumar, proprietor of the Broker in his statement dated July 29, 2003 to the investigating officer of SEBI, admitted that CCL was introduced by one of his remissiers Shri Bhupendra B Shah. Shri Vidyut Devendra Kumar had also stated that Shri Bipin Joshi and sometimes Shri Kartik Parekh used to place orders on behalf of CCL. He

further stated that he was aware that Shri Kartik Parekh was related to Shri Ketan Parkh and that he knew them for the last 6 or 7 years. In the said statement, it was clarified that he was aware that Shri Kartik Parekh and Shri Ketan Parekh had their own broking firms, having membership in BSE and NSE.

- 4.4 In terms of clause A (2) of the Code of Conduct prescribed in Schedule I of the Broker Regulations, a stock broker has to act with due skill, care and diligence in the conduct of all his business. SEBI had also issued circulars (February 11, 1997 and April 11, 1997) advising the stock brokers to maintain a database [pertaining to 'Know Your Client' (KYC) norms/ guidelines] of their clients. It was further advised that the stock brokers might seek additional information, if any, so as to satisfy themselves about the antecedents of the client and that it would be the responsibility of the stock brokers to provide for clients' details as and when need arises. These precautions are prescribed for minimizing the risk involved in the transactions.
- 4.5 In the present matter, I note that the Broker had started executing transactions on behalf of CCL before entering into the member client agreement and client registration form. I note that as an intermediary registered with SEBI, the Broker has to comply with the code of conduct/ circulars/ guidelines relating to its functioning in order to protect the interest of investors and for the efficient functioning of the securities market.
- 4.6 Shri Vidyut Devendra Kumar, proprietor of the Broker had also admitted before the investigating officer that he had collected margins from his

client, CCL only upto July 2000 and thereafter the margin was not collected. In this context, I refer to the circulars issued by SEBI in respect of the collection of margin. SEBI vide circular dated November 18, 1993 had issued directions to all the intermediaries of the stock markets through all the stock exchanges regarding the regulation of transactions between clients and stock brokers. The relevant paras of the said circular which provide for the collection of margins by the stock brokers are excerpted below for the sake of reference

"4. Member Brokers shall buy securities on behalf of client only on receipt of margin of minimum 20 percent on the price of the securities proposed to be purchased , unless the client has already has an equivalent credit with the broker. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FI's.

5) Member brokers shall sell securities on behalf of client only on receipt of a minimum margin of 20 percent on the price of securities proposed to be sold, unless the member has received the securities to be sold with valid transfer documents to his satisfaction prior to such sale. Member may not, if they so desire, collect such a margin from Financial Institutions, Mutual Funds and FI's."

4.7 Thereafter, SEBI had issued another circular on December 11, 1998 regarding the collection of margin and the relevant paragraph of the said circular is reproduced hereunder for facility of reference:

"It shall be mandatory for member-brokers to collect margins from clients in all cases where the margin in respect of the client in the settlement would work out to be more than Rs.50,000/- . The margin so collected shall be kept separately in the client bank account and utilised for making payment to the clearing house for margin and settlement with respect to that client"

4.8 The above limit of Rs.50,000/- in respect of the margin was increased Rs.1,00,000/- by SEBI vide circular dated February 04, 2000. Subsequently, vide circular dated July 27, 2000 SEBI had inter alia advised that "All the clients excluding FIs/FIIs/MFs shall maintain a deposit of minimum margin with a broker in the form of cash, bank guarantees, FDRs or approved securities. Such margin deposit shall not be less than 10% of the net open position of a client at any point of time. Actual delivery of shares sold or actual payment made for shares bought shall be excluded from the net position".

4.9 The purpose of collecting margin from the client is primarily to minimise the risk of default. The Broker stated that it had collected margin upto July 2000 and thereafter it had not collected margin. I note from the details of transactions executed by the Broker in the shares of HFCL on behalf CCL that all such trades (except one) were after July 2000.

4.10 The said details as submitted by the Broker to the Enquiry Officer vide letter dated December 29, 2004 are mentioned below:

"Details of Transactions done in the Scrip of Himachal Futuristic Communications Ltd. on behalf of *Mis.* Classic Credit Ltd.

Trade Date	Trade Tim	Trade No.	Order Number	lay	Price	Buyl Sell
19-Nov-99	14:33:15	49873	685010994	14900	367.50	S
9-Oct-00	15:20:01	17649	68500100010020263	40000	1254.50	B
13-Oct-00	11:39:40	131893	68500100010020658	38973	1006.00	S
16-Oct-00	12:44:17	12341	68500100010020799	61354	1089.00	B
16-Oct-00	15:02:46	26038	68500100010020847	11066	1025.00	B.
27-Oct-00	15:26:31	30278	68500100010021817	28628	1182.00	B
7-Nov-00	13:45:21	45343	68500100010022696	24000	1337.50	B
10-Nov-00	10:11:55	117495	68500100010022997	12750	1345.00	S
17-Nov-00	14:21 :00	154175	68500100010023746	11505	1319.50	S
20-Nov-00	10:38:10	5657	68500100010023824	34900	1332.50	B
24-Nov-00	14:48:03	159951	68500100010024264	42686	1331.00	S
15-Dec-00	12:50:10	120856	68500100010026392	20270	1420.00	S
26-Dec-00	12:11:38	23328	68500100010027336	48652	1101.00	B
28-Feb-00	14:32:34	16425	68510218	11700	1706.50	B
18-Aug-00	11 :57:23	97839	68500100010013907	25440	1506.00	S
28-Aug.-00	14:27:12	15824	68500100010015318	23243	1454.00	B
31-Aug-00	11:13:59	95611	68500100010015716	22000	1421.50	S
18-Sep- 00	14:32:12	27496	68500100010018190	28360	1584.00	B
22-Sep. 00	12:47:59	207850	68500100010018849	29980	1326.00	S
16-Jan-01	11:10:45	68492	68500100010029676	39780	1139.50	B
2-Feb-01	12:45:39	170776 :	68500100010031424	34960	1071.50	S
13-Feb-01	13:14:54	60955	68500100010032849	24420	1018.00	B
7-Mar-01	12:28:36	57893	68500100010035052	34450	434.75	S

4.11 Further the value of the said transactions was submitted by the Broker vide his written submissions dated January 23, 2006. It can be seen that

the value of the transactions executed by the Broker in the shares of HFCL on behalf of CCL was very high. The Broker contended that it had incurred a loss of Rs. 66,92,236/- while dealing with the said client. In this context, I would like to reiterate that the Broker in the client registration form had not mentioned the annual income, the net worth of its client etc. as required therein. The fact that the Broker had suffered loss is not an excuse to absolve it from the charges leveled against it. Profit or Loss are necessary incidents to business and not the attributes of business to invest it with any character. Therefore, the plea of loss can not provide any mitigation. An ordinary and a prudent stock broker should assess the situation taking into consideration all the relevant factors while trading for such a client (and in such a situation wherein the price was very high) in substantial quantity . It would be impolitic to trade without collecting the margin and without properly assessing the financial capacity of the client and the same is fraught with risk, imposing strain on the system. Exercise of due diligence in ongoing transactions is a continuous process and is a requirement under the code of conduct.

- 4.12 The conduct of the Broker by transacting in huge quantity of the shares of HFCL on behalf of its client, in the facts and circumstances of the case, in my view is not demonstrative of the exercise of proper due care and diligence. If the Broker had been sensitive to the risk factors and exercised due care and diligence it would not have made the transactions without the collection of margin when the price of the shares was very high. Due skill ,care and diligence in dealing with a client is not a one time measure; on the other hand it is a continuing exercise and a stock broker shall take appropriate decision on the basis of ongoing developments while he can not remain complacent. Therefore, on the basis of the admissions made

by the Broker and materials available on record, it is fairly established that the Broker had failed to exercise due skill, care and diligence in the conduct of his business while dealing in the shares of HFCL on behalf of its clients and thereby violated clause A (2) of the Code of Conduct specified in Schedule II of the Broker Regulations. May be, it is a necessary concomitant of the violations of FUTP Regulations, alleged against the Broker. Code of Conduct is the inevitable casualty when there is alignment of interests with market manipulators.

4.13 Further , the Broker in its written submissions dated January 23, 2006 stated " You will appreciate the facts that my only motive is to earn the brokerage , however, while doing so we do not disobey any of the guidelines/norms laid down by the Exchange or by the SEBI, nor we disregard my duty towards general investors". In terms of Clause B (4) of the Code of Conduct specified in Schedule II of the Broker Regulations, a stock broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission. In the present case, it is to be kept in mind that the Broker had allowed the client to trade without the margin in highly valued liquid scrip. As the Broker had admitted that its only motive was to earn brokerage, it is fairly established that it had violated the clause B (4) of the Code of Conduct specified in Schedule II of the Broker Regulations.

4.14 In so far as the allegations with respect to the violations of the provisions of FUTP Regulations is concerned, I note that Broker had executed various trades on behalf of his client, CCL. A total of twenty four such trades were executed by the Broker on behalf of the said client. On a perusal of the said transactions executed by the Broker it can be seen that

the said trades were matched with trades executed by another KP entity on the other hand. In some of the cases, the trades were executed between the same clients i.e CCL. All the transactions were executed between a maximum of time difference of seven seconds. An analysis of the time difference between the buy /sell orders of the said transactions are

Time difference (in seconds)	Number of trades
nil	5
1	7
2	7
3	1
4	2
6	1
7	1

- 4.15 As transactions were executed between the KP entities themselves, there was no change in beneficial ownership of shares. In this context, the relevant observation made by the Hon'ble Securities Appellate Tribunal(hereinafter referred to as SAT), Mumbai in the case of Nirmal Bang Securities (P) Ltd. vs. SEBI is reproduced below:

“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 establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit.”

- 4.16 Admittedly, while executing the transactions on behalf of its client in the shares of HFCL, the Broker had sufficient knowledge that it belonged to KP group and that they had several broking firms in their names. Also the Broker, with his exposure and insights in the market , had the necessary means to know that HFCL share was one of the KP scrips identified by KP

for manipulation through his own brand of modus operandi which the market was aware of. The relevant extracts, of certain statements given by Shri Vidyut Devendra Kumar, proprietor of the Broker to the investigating officer of SEBI which is reproduced below, bear ample testimony to the Broker's evasive tactics when confronted with an inconvenient question and the same provides the justification for an adverse inference on his conduct.

Q.4 Whether you are aware that Shri Kartik Parekh was related to Shri ketan Parekh and that they have their own broking firms and were members of BSE and NSE.

A.4 Yes. We know them for the last 6 or 7 years.

“Q 11 : I am showing a list of trades executed by you on behalf CCL and PFMS in the scrip of Himachal Futuristic Communications Ltd. . These trades executed were of significantly large quantity and the clients of the counter party broker are the same as of your client. It appears that these trades were synchronised to manipulate the market by creating artificial volume or misusing the stock exchange mechanism to make available funds to the client or shifting positions from one broker to the other, Please comment.

A. 11. I have no comments”.

4.17 From the above statements, it can be seen that the Broker had traded in the shares of HFCL during the same period both for CCL and PFMS at a time when the said clients were executing synchronised deals between

themselves. It is further noted that the same clients were on both the sides in the course of execution of some of the synchronised trades. These statements will prove that the Broker had knowledge that the clients belonged to KP entities and his claim that he was unaware of the counter party/client can not be countenanced, considering the facts and circumstances of the case, including the ones wherein the Broker knew the client, in its true colours, in the contemporaneous swathe of happenings in the market, allowed it to trade without the margin after a specified point of time, despite the fact that the price of the said shares was very high and wherein due diligence and care was knowingly sacrificed at the altar of expediency.

- 4.18 The transactions made by the KP entities were non-genuine as it involved no change in the beneficial ownership of shares as such i.e. the shares were merely rotating from one KP entity to same or other KP entity. The buy and sell orders for these trades were put at the same time. This pattern of trades without much difference in time with the quantity and price tallying would create doubt even in the eyes of a lay man that these orders were put with prior understanding and with a view to ensure that sell order of one KP entity matched with the buy orders of same selling KP entity or other set of KP entity (who was also a client of the Broker during the relevant point of time) . It is also difficult to believe that there was no predetermination as regards the placement of orders when the trades were matched within the time difference of few seconds (maximum difference was 7 seconds). One can not ignore other attendant circumstances in the present case like allowing the client to trade substantially without any margin, allowing the client to trade before the execution of the member client agreement and client registration, without

ensuring that the client had sufficient means to fulfil its obligation, the Broker forsaking the Code of Conduct in favour of an alignment with manipulative forces in the market etc.

4.19 Having regard to the frequency of the transactions, their value and volumes and taking note of the fact that the KP entities were involved in circular trading/ synchronised trading without change of beneficial ownership and without intending to trade, it can be undoubtedly held that the transactions made on behalf of CCL were non genuine, fictitious and circular in nature which were executed to create artificial market in the shares of HFCL.

4.20 The Broker contended that Table I to the Enquiry Report gave only the trade no. and time from which one could not make out whether the transactions were put in the bolt simultaneously. It was also stated that merely because, the trade time and price matched, one could not come to the conclusion that the transactions were circular in nature. This contention of the Broker is not acceptable. Even if the order time was not mentioned in the Table I to the Enquiry Report, it can be seen the said table specifies the trade time, trade no., trade date, order number, member/counter party member, client name, quantity and price. The only missing item in the said Table was the order time. In this context, I would like to mention that the order time of the Broker should be within its knowledge and the trade time was already mentioned in the said Table. I further note that the details of the trades made by the Broker were already forwarded to the Broker at the time of appointment of the Enquiry Officer. However, I note that in the said table, the order time (both buy and sell) and the trade time was mentioned as same. In fact there were few

seconds difference (maximum seven seconds) between the order time and the trade time , as mentioned in table at para 4.14 of this order. In any way no prejudice has been caused to the Broker by not mentioning the order time in Table I to the Enquiry Report, as it was already communicated to the Broker.

- 4.21 The peculiar nature of the trades executed by the Broker and the modus operandi in those transactions persuades me to the conclusion that these transactions were the outcome of a predetermined and planned action. Without such predetermined plan the transactions could not be matched with the same set of group especially in a highly liquid scrip. The defense with regard to anonymity of the counter party broker on a screen based computerized system is also not always acceptable because the fact as to whether there was a deliberate attempt to synchronize or not, can only be made out from the peculiar facts and circumstances of each case. In the present case, admittedly the Broker was aware that his clients were belonging to the KP group at the time of executing the transactions. The Broker allowed them to trade in the shares of HFCL substantially without collecting any margin. Given the fact that there was enormity of market manipulation by Shri Ketan Parekh and his related entities in certain scrips including HFCL and that Shri Ketan Parekh and his related entities could not have manipulated the market to such huge proportions alone, it stands to reason that the entities who had direct dealings with KP entities can't escape their responsibility on the plea that they were not aware of Shri Ketan Parekh's manipulative intentions in the market. As observed by SAT in the case cited supra, **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. To suggest that synchronization is a market phenomenon dehors of the Broker is at once facile and facetious. The market does not generate something on its own, without the contributory role of the intermediaries. Synchronisation, involving interplay of market forces, pre supposes the active participation of the Broker, more so, in a setting, wherein the occurrence of large scale market manipulation in certain scrips of KP has been acknowledged and come to stay. Such attendant circumstances relating to the period marked with KP induced price manipulation, invest synchronization and circular trading with special significance in relation to market manipulation. Further the trading features like synchronization and circular trading need to be evaluated not necessarily with reference to a scale of numbers, frequency of occurrences over period of time etc. but necessarily as a support function at various price levels, irrespective of such arithmetics, failing which the true evaluation of market manipulation would be lost in numbers and their likely impact, if any. The same compels greater attention in the context of the prevailing scenario at that time when KP/ and related entities deliberately diffused the concentration of their market activities to avoid detection through several subterfuges which included, inter alia, the employment of a hierarchy of trusted intermediaries, financiers, corporates etc. in certain periodicity and levels , in a make – believe of what can pass muster in the market in terms of their seeming insignificance. The question is whether the issue is going to be decided on the basis of such specious measurables or on the basis of individual transactions per se in the gravitas of market abnormalities at the material point of time. In this exercise, the transactions per se become more material to reckon with, since they embodied questionable and doubtful characters with suspect

bonafides. In all such transactions, there may be no direct evidence on intentions but definitely the tell – tale circumstances, as brought out in the instant case , hold the mirror on to the intentions of parties, albeit shrouded in secrecy. And the legal proof in such circumstances is nothing but a prudent man's estimate of the probabilities of the case. There can be no direct evidence in the context of market operations as to whether there was a constructive knowledge on the part of the entities on manipulation while dealing with Shri Ketan Parekh and his entities. As a matter of fact the Hon'ble Supreme Court in the matter Collector of Customs, Madras and Others Vs D. Bhoormall made the following observation "El Dorado of absolute proof being unattainable, the law accepts for it probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent mans estimate as to the probabilities of the case".

4.22 In the attendant circumstances of the present case, the Broker can not take the plea that it was not aware of the nature of the transactions executed by its client, more so, when during the same time, Classic Credit Ltd. was trading on both sides (buy and sell). In these circumstances, it is difficult to accept that the Broker was not aware of such trades.

4.23 Proof of manipulation always is drawn from a mass of details and accordingly, it is purely inferential on the materials available in a given case. Further such a proof has to be a prudent man's estimate as to the probabilities of the case, in the absence of recorded contemporaneous

material evidences like communications through e- mail, telephone or other forms of correspondences etc. Accordingly, presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any large scale manipulation. For instance, while trading, a lip service can be paid to a screen based trading system while agreement is reached beforehand between brokers to effect the transaction. Anonymity can also be a cloak to cover anastomosis of interest. Therefore, the hackneyed plea based on intentions in the market place can not pass muster in all circumstances, more so when such intentions are in the special / peculiar knowledge of the parties to the transactions.

- 4.24 It is exceedingly difficult to prove facts which are especially within the knowledge of the parties proceeded against and in that view the findings would be inferential from the conduct of the parties. The KP entities manipulated the securities and defrauded the genuine investors inter alia with the assistance of the Broker and created a false appearance of trading and the said transactions (without any change in beneficial ownership) resulted in the artificial inflation of the price of HFCL shares.
- 4.25 In the facts and material attendant circumstances, I hold that the broker has violated the provisions of regulation 4(b),(c) and (d) of the FUTP Regulations and Clause A (2) and B(4) of the Code of Conduct specified in Schedule II of the Broker Regulations. The said violations calls for a penalty.

5.0 Order

- 5.1** In view of the foregoing and taking into account the relative role of the Broker, I, in exercise of the powers conferred vide regulation 13(4) of (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby impose a penalty of suspension of the certificate of registration of M/s Vidyut Devendrakumar, registration No: INB 010030018 Member, The Bombay Stock Exchange Limited for a period of one month.

This order shall come into effect on expiry of 21 days from the date of this order.

G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : 02/02/2007