

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

Dr. T. C. NAIR, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/s. UNIQUE STOCKBRO PRIVATE LIMITED, MEMBER, BOMBAY STOCK EXCHANGE, (SEBI REGISTRATION NO. INB 011072130) IN THE MATTER OF M/S. SPANCO TELESYSTEMS AND SOLUTIONS LIMITED

WTM/TCN/ID3/90/02/2007

BACKGROUND

1. Spanco Telesystems and Solutions Limited (hereinafter referred to as "STSL") promoted by Shri Ashok Oberoi, Shri Bansilal Tandon, Shri V V Balakrishnan, Shri Vinod Kumar Nemani and Shri Jai Prakash Nemani was originally incorporated in 1984 as Kadambari Leasing Private Limited. Kadambari Leasing Private Limited had taken over business of STSL and adopted its name with effect from 11th November 1999. In 1984, the company had come out with a public issue of 1, 50, 000 shares at par and was listed on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE").
2. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received certain complaints about price rigging in the scrip of STSL. After receiving the observations relating to the same from BSE, SEBI conducted an investigation into the affairs of STSL for the period from 1st October 2000 to 31st July 2001 (hereinafter referred to as "investigating period"). The observations under the investigation are as under:
3. In an Extra Ordinary General Meeting held on 11th December 1999, STSL passed a resolution to allot 10,00,000 shares to its promoters and transfer its management control to Kapil Puri Group. The same day 10,00,000 preferential shares at Rs.10/- each were issued to Kapil Puri Group and others comprising individuals, not necessarily shareholders of STSL. The shares were listed on BSE on February 24, 2002. As on October 01, 2000, Shri Kapil Puri was Chairman of STSL.
4. From the distribution schedule of STSL as on August 24, 2001, it was observed that the public holding in STSL was only 5, 77, 000 equity shares amounting to 8.26%. FIIs, NRIs, and Banks together had a holding of less than 1%. Other Body Corporates held 29.80%, while Promoters of STSL held 61%. Out of 637 shareholders, 19 shareholders held 94.67% of the equity capital of STSL.
5. A preferential allotment of 22,50,000 shares at Rs.15/- each (premium Rs.5/-) was made under section 81(1A) of the Indian Companies Act, 1956, on 16.02.00, to the parties as mentioned in the table below. These shares were listed on BSE on 26.06.00.

Table 1

S.No.	Name of the Allottee	Shares Allotted
1	Shri Kapil Puri	8,00,000
2	Neha Equisearch Pvt Ltd	3,75,000
3	Smt Kavita Puri	2,55,000
4	Shri Rajesh Chhabria	2,30,000
5	Shri Mahendra G Shah	2,00,000
6	Shri Sanjeev Chainani	1,75,000
7	Shri Kishore Saigal	60,000
8	M/s Network Stock Broking Ltd	50,000
9	Smt Chanderkanta Malik	50,000
10	Sarvpriya Leasing Pvt Ltd	20,000

S.No.	Name of the Allottee	Shares Allotted
11	Shri Sudanshu Tewari	20,000
12	Shri Naresh Bahri	15,000
	Total	22,50,000

6. Further, a special resolution was passed in an Extra Ordinary General Body Meeting convened on January 30, 2001 under section 81(1A) of Companies Act, 1956 to allot 30,00,000 equity shares at Rs.52/- each (premium Rs.42/-) on preferential basis to the following persons:

S.No.	Name	Shares Allotted
1	Shyam Telecom Ltd	15,60,000
2	Shri Rajesh Chhabria	7,20,000
3	Shri Kapil Puri	7,20,000
	Total	30,00,000

7. Though the resolution was passed to allot shares in the above manner, no allotment was made within stipulated period of three months. An Extra Ordinary General Meeting was held on May 29, 2001 wherein a resolution was passed to allot 30,00,000 shares at Rs.10/- each for cash at a premium of Rs.27/- per share aggregating to Rs.11,10,00,000/- on preferential basis to the persons mentioned in the above table. It was observed that this premium structure was reduced from Rs.42/- to Rs. 27/- per share.
8. It was observed that there was an effort to create artificial volume in the scrip of STSL during the period of investigation, to influence the terms and conditions of the preferential allotment mentioned hereinabove. It was alleged that a set of brokers/members of BSE have traded in the scrip of STSL and indulged in creating artificial volumes thereby influencing the price of the said scrip. Accordingly, it is alleged that volumes in the scrip of STSL were high as compared to the volumes prior to and after investigation period. The price of the scrip on October 01, 2000 was Rs.50/- with a volume of 1,000 shares. The price had reached its peak of Rs.54.95/- on October 06, 2000 and the number of shares traded were 2,300 after which the price had come down to a low of Rs.18.80 with 14, 660 shares being traded on April 20, 2001. Further, it was noticed that the price of the scrip had started rising and by June 29, 2001; it had reached Rs. 44.55/- with a trade volume of 61,460 shares. After this period, the price of the scrip again started falling and at the end of the investigation period i.e., on July 31, 2007, the price of the scrip was hovering around Rs. 26/- whereas traded volume reported at the exchange on the same day was 7,600 shares.
9. Investigations revealed that M/s. Unique Stockbro Private Limited (hereinafter referred to as 'USP' or 'broker'), member of BSE was one of the stock brokers who had executed trades on behalf of their clients. The clients, for whom the broker had transacted are listed below:

- a) Hitesh C Shah (1,83,365)
- b) Rashi Investment (1,40,529)
- c) Neha Equisearch Limited (1,03,330)
- d) Narayandas J Thakkar (67,300)
- e) Vishal T Malik (49,600)
- f) Amiti Vadalia (44,366)
- g) Others (7,725)

USP had traded in the scrip of STSL for its clients, the main of them being M/s. Neha Equisearch Limited (NEL). The allegation against the broker was that, it had transacted (1,03,330 shares) in the scrip of STSL for its client NEL even on being aware that Shri Kapil Puri, a promoter of STSL was also a promoter of NEL and that its directors were the beneficiaries of the preferential allotment made by STSL. It was also alleged that most of the trades were squared off and the nature of the trades were artificial thereby creating false appearance leading to price rise and that the broker had not exercised due skill and diligence while transacting in the scrip for its clients who were promoters and associates of STSL. Based on the above, the broker was alleged to have failed to exercise due care and skill in his dealings thereby violating the provisions of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-broker) Regulations, 1992. It was also alleged that the broker had not collected the requisite

margins from their clients and further the client introduction forms were not obtained in case of Smt. Amit Vadalia, Shri Hitesh Shah and Raasi Investments, thereby contravening SEBI Circular dated April 11, 1997.

10. In view of the aforesaid findings of investigation and the allegations leveled against the broker, an enquiry was recommended.

ENQUIRY REPORT, FINDINGS AND RECOMMENDATIONS

11. An Enquiry Officer was appointed by SEBI vide its order dated October 13, 2003 to inquire into the aforesaid allegations against the broker. The Enquiry Officer after conducting the inquiry, following the due procedure laid down in this regard, had submitted his report to the Board on June 01, 2005. Vide the said report, the Enquiry Officer found the broker had not acted in good faith and that it failed to exercise due skill and care. By virtue of this, the broker's conduct was found not to be in conformity with the provisions of Clause A (2) of the Code of Conduct prescribed in Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-broker) Regulations, 1992. In view of the aforesaid findings, the Enquiry Officer recommended that a minor penalty of censure be levied on the broker for its lapses.

SHOW CAUSE NOTICE AND REPLY

12. The Board, after considering the recommendations of the enquiry officer, issued a notice dated June 13, 2005 to the broker, enclosing a copy of the enquiry report, requiring the broker to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed on it. It was also mentioned that if the broker failed to reply within 15 days of the receipt of the notice, then it would be presumed that the broker had no explanation to offer and the Board shall be free to take such action as it deems fit. The broker had replied vide its letter dated July 14, 2005. The main submissions of the broker are that:

- It was possible that the corporate announcements made by the company at the relevant time had impacted on the prices of the "scrip".
- No where in the entire order was the learned Enquiry Officer able to prove that the said trades carried out by their clients were artificial in nature or which were entered to create false appearance of trading in the market or which may be termed as leading to price manipulation
- The learned Enquiry Officer had not raised doubts about the genuineness of the clients or the propriety of the trades done for the clients as regards the financial capability of the client and the same being bonafide
- M/s. Rash Investments was a proprietorship firm and therefore information like Copy of Memorandum and Articles of Association, details of promoters/key personnel of the entity, copies of the Annual Report and the networth column in the KYC form were not applicable
- The allegation of the Enquiry Officer that most of the transactions were squared off is not true in the case of Neha Equisearch Ltd. as they had taken delivery of shares and have not squared off the transactions
- They have not dealt with Shri Kapil Puri or Mrs. Kavitha Puri and also not aware of the relation of these entities with the directors of Neha Equisearch Ltd.
- The non-filling of columns like Annual Income and Market value of portfolio in the KYC form were purely lapses "technical and venial" in nature
- The learned Enquiry Officer had not enlisted anything to prove lack of exercise of due skill, care and diligence while executing transactions
- There was no evidence of any violation of Code of Conduct
- The Enquiry Officer was trying to find out deficiencies in the KYC form which were not so severe a charge.
- The Enquiry Officer had not brought out any specific violation or contravention of any rules or regulations but has made it in general
- They did not involve or indulge in any act detrimental to the investors interest or that lead to interference in the fair and smooth functioning of the market

- All orders were executed in accordance with generally accepted principles and had been faithful in executing the orders at the best available market prices
- They had adhered to comply all rules and regulations both in letter and spirit and therefore they should be discharged
- As per the case of M/s. J. M. Morgan Stanley Retail Services Pvt. Ltd., technical and venial lapses did not warrant any form of severe punishment
- In the facts and circumstances of the case the charges levied are totally unfounded and imaginary and based on surmises
- Any proposal to initiate any action was clearly unwarranted and should not be imposed on them
- They should be discharged from penalty of censure as recommended by the Enquiry Officer.

Since the Enquiry Officer has recommended only a penalty of 'censure', I feel that a personal hearing is not required and I proceed to consider the issues involved on merit.

CONSIDERATION OF ISSUES

13. I have taken note of the findings of the investigation against the broker. I have also perused the Enquiry report, the findings arrived at and the reply dated July 14, 2005 sent by the broker in response to the Show Cause Notice. The main issues for consideration herein are:
 - i) Whether the broker failed to exercise the due care and diligence as expected in terms of the provisions of Clause A (2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992; and
 - ii) Whether the broker failed to collect margin money from its clients for the aforesaid trades
14. One of the allegations against the broker is that, the broker had not exercised due diligence while executing the trades on behalf of their clients. I note that few instances where the broker was not vigilant enough to obtain and record all particulars of their client would by itself prove that they were not careful. I, further note that the broker has allowed Shri Hitesh C Shah and Rashi Investment to trade in the scrip without fulfilling the KYC requirements. The telephone number and the address furnished by Shri Hitesh C Shah was the same as that of Shri Sirish C Shah and the said Shri Hitesh C Shah and Shri Sirish C Shah were related to each other. (Shri Sirish Shah was mainly responsible in manipulating in the scrip of STSL) Further, M/s. Rashi Investment was admitted as a client during the year 2000. The details of promoters and key personnel and net worth columns were left blank in the 'Know Your Client Form' (KYC). Copies of memorandum of association, articles of association and annual reports for three years preceding 2000 were not enclosed. Also, the KYC form of Shri Amit K Vadalia did not contain details of his annual income and market value of the portfolio. The signature of the introducer was not present in the KYC form of this client.
15. The broker has submitted that the above said lapses were 'technical and venial' in nature. But I find that such details are of importance to know all particulars about their clients and their financial status as per the KYC norms. I am not able to therefore, concur with the contention that certain columns are of not much significance. In this connection, I find that the particulars in the Know Your Client Forms are of much importance and are prescribed only to elicit true and correct information about the clients and to ensure that unscrupulous people are filtered at an early stage. In this connection Clause A of Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 reads as under -

"A. GENERAL

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise Of Due Skill And Care: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance With Statutory Requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him. "

The Regulation casts a duty on a broker that they should exercise due diligence while trading in securities. Since the broker has failed to obtain the requisite information from its clients in their 'Know Your Client Forms', they have contravened the provisions of Clause A(2) of Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. In my view, the penalty of censure is commensurate with the gravity of violations

16. The other charge against the broker is that it had failed to collect the margin money for the trades from its clients. I note that the Enquiry officer had observed that the broker had demonstrated that in respect of each of its client, no margin was required to be collected in view of SEBI circular dated February 04, 2000. Taking into account the said observation, I hold that the charge of non-collection of margin money would not stand in the present facts of the case.

17. With regard to the allegation that broker was involved in aiding the clients in creating artificial volumes thereby manipulating the price of scrip, I find that there is no evidence to substantiate that the broker was responsible for the artificial trades and thereby manipulated the price of the scrip. Accordingly, this charge stands unproved.

18. From the aforesaid, it is clear that the broker has not exercised due diligence in transacting for their clients. The incomplete KYC forms of the clients would per se go to prove that the broker has not taken the steps ought to have been taken to ensure that risks are mitigated in case of any untoward events. Since the broker failed to do so, they have violated Clause A (2) of the Code of Conduct mentioned in Schedule II read with Regulation 7 of the SEBI (Stock Broker and Sub-Broker) Regulations, 1992. The penalty of censure as recommended by the Enquiry Officer would however suffice in the instant case in order to dissuade the broker from repeating the same. Thus I have no reason to differ with the recommendation of the Enquiry Officer with respect to the quantum of penalty.

ORDER

18. In view of the above, in exercise of powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I direct that a penalty of censure be imposed on M/s. Unique Stockbro Private Limited (SEBI Registration No. 011072130), member of Bombay Stock Exchange Limited.

DATE: 22.2.2007
PLACE: MUMBAI

T C NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA