

SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: Dr. T. C. Nair, Whole Time Member

Name of the noticee : M/s. Mahek Consultants
Date of hearing : 13-06-2006
Appearance of Parties
For the noticee : Shri Hari Om Sharma, Authorised
Representative of M/s. Mahek Consultants
For SEBI : Shri P. K. Bindlish, General Manager

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/s. MAHEK CONSULTANTS (SEBI REGISTRATION NO. INS010574411), A SUB-BROKER AFFILIATED TO M/s. ACME SHARES AND STOCKS PRIVATE LIMITED, MEMBER, BOMBAY STOCK EXCHANGE

WTM/TCN/ID3/ 94/02/2007

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, 2000. 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 February 16, 2000, to the parties as mentioned in the table below. These shares were listed on BSE on June 26, 2000.

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 Networth Stock Broking Ltd	50,000
9	Smt Chanderkanta Malik	50,000
10	Sarvpriya Leasing Pvt Ltd	20,000
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:

Table 2

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 01.10.00 was Rs.50/- with a volume of 1,000 shares. The price had reached its peak of Rs.54.95/- on 06.10.00 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, 2001, 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. A group of brokers at BSE had traded and indulged in creating artificial volume and influencing the price of the scrip of STSL. M/s. Mahek Consultants, a sub-broker had also dealt with in scrip of STSL. M/s. Mahek Consultants (herein after referred to as 'sub-broker' or 'MC') is a sub-broker with SEBI registration number INS 010574411 and affiliated to M/s. Acme Shares and Stocks Private Limited, member of BSE. The details of the trades executed by MC are tabulated below.

Table 3

NAME OF THE SUB-BROKER	SETTLEMENT	PURCHASES	SALES	NET	GROSS
Mahek Consultants					
ACME Share & Stock	48	4,250	4,250	0	8,500.00
Pvt. Ltd.	49	9,000	9,000	0	18,000.00

NAME OF THE SUB-BROKER	SETTLEMENT	PURCHASES	SALES	NET	GROSS
	50	1,500	1,500	0	3,000.00
	04	2,600	2,600	0	5,200.00
	05	5,500	5,500	0	11,000.00
	06	2,800	2,800	0	5,600.00
	07	5,200	5,200	0	10,400.00
	08	7,500	7,500	0	15,000.00
	09	4,500	4,500	0	9,000.00
	10	7,500	7,500	0	15,000.00
	11	1,500	1,500	0	3,000.00
	12	9,500	9,500	0	19,000.00
	14	8,080	8,080	0	16,160.00
	15	3,900	3,900	0	7,800.00
Total		73,330	73,330	0	146,660.00
Mahek Consultants	39	1,000	1,000	0	2,000.00
Kolar Shares Pvt. Ltd	40	1,750	1,750	0	3,500.00
	41	1,500	1,500	0	3,000.00
	42	1,250	1,250	0	2,500.00
	43	1,850	1,850	0	3,700.00
	44	500	500	0	1,000.00
	45	1,000	1,000	0	2,000.00
	46	6,500	6,500	0	13,000.00
	47	15,500	15,500	0	31,000.00
	48	6,820	6,820	0	13,640.00
	49	12,700	12,700	0	25,400.00
	50	5,250	5,250	0	10,500.00
	52	2,000	2,000	0	4,000.00
	03	2,000	2,000	0	4,000.00
	04	1,600	800	800	2,400.00
	05	5,500	5,500	0	11,000.00
Total		66,720	65,920	800	132,640.00
G. Total		140,050	139,250.00	800	279,300.00

From the above table, it is seen that except for 800 shares for settlement no.4 (deals through M/s. Kolar Sharex P Ltd); all the other deals were squared off. These trades have been alleged to have been executed only to create false appearance of trading in the market, thereby contravening the provisions of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. The investigations also alleged that, by executing the artificial trades the sub-broker has contravened the provisions of the Code of Conduct prescribed for sub-brokers prescribed under the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

10. In view of the allegations against MC, an inquiry was found necessary to probe into the allegations leveled against it.

ENQUIRY PROCEEDING

11. SEBI appointed an Enquiry Officer vide an order October 13, 2003 to enquire into the contraventions alleged against the sub-broker while trading in the scrip of STSL.
12. The Enquiry Officer issued a notice dated April 30, 2004 to MC in terms of Regulation 6(1) of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002, wherein the sub-broker was required to show cause as to why action should not be taken for the alleged violations of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

13. The Sub-Broker failed to reply and subsequently another notice dated August 17, 2004 for hearing was issued to it. The sub-broker thereafter replied putting forth its submissions.
14. SEBI re-appointed the Enquiry Officer (EO) in the matter vide order dated September 30, 2004. The EO issued thereafter a notice dated November 17, 2004 to MC advising them to attend a hearing on December 10, 2004; the hearing was held on December 17, 2004 as per request of the sub-broker.
15. The Enquiry Officer after holding the enquiry in accordance with the Enquiry Regulations submitted the Enquiry Report to the Board. The Enquiry Officer had observed that:
 - a) MC had not collected the requisite margin money from their clients thereby violating SEBI Circulars dated November 18, 1994, December 04, 1998, February 04, 2000 and July 27, 2000.
 - b) MC was guilty of violating the provisions of Regulation 4 of FUTP Regulations and also not complying with the Code of Conduct as prescribed for sub-brokers by failing to exercise proper skill, care and diligence while executing the trades on behalf of their clients and also violating Rule (3) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 read with Section 12 of the SEBI Act.
16. The Enquiry Officer recommended in her report that the certificate of registration granted to MC by SEBI be suspended for a period of one month as penalty against the sub-broker.

NOTICE UNDER REGULATION 13(2) OF ENQUIRY REGULATIONS AND ITS REPLY

17. On consideration of the Enquiry Report and the recommendations made therein, a Notice dated February 03, 2005 in terms of Regulation 13 (2) Of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing of Penalty) Regulations, 2002 was issued to the sub-broker, to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it.. The notice also required the sub-broker to submit its reply along with documents, if any within 15 days of receipt of the notice.
18. The sub-broker in its reply dated February 07, 2005 reiterated its earlier stance on the violations. In the said reply, the sub-broker submitted that it had conducted its business in good faith and requested not to impose any penalty. In order to give the sub-broker another opportunity, a notice for hearing dated May 05, 2006 was sent requiring the sub-broker to appear before me for hearing on May 22, 2006. On request from the sub-broker (vide its letter dated May 22, 2006) the hearing was postponed to June 13, 2006 and on that date Shri Hari Om Sharma appeared and made his submissions on behalf of M/s. Mahek Consultants.

CONSIDERATION OF ISSUES

19. I have perused the Show Cause Notice dated April 30, 2004 issued to the sub-broker, its submissions and the Enquiry Report submitted by the Enquiry Officer. On a perusal of the material facts of this case, the following issues arise for consideration:
 - i) Whether the sub-broker indulged in trades that were artificial in nature thereby contravening Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995
 - ii) Whether the sub-broker failed to exercise proper skill, care and diligence by allowing such artificial trades to happen thereby contravening the Code of Conduct as specified to sub-brokers under SEBI (Stock Brokers and Sub-brokers) Regulations, 1992
 - iii) Whether the sub-broker acted on behalf of M/s. Kolar Sharex (P) Limited, without obtaining registration from SEBI contravening the relevant provisions of SEBI Act, 1992 and SEBI (Stock Brokers and Sub-brokers) Rules, 1992

- iv) Whether the sub-broker had obtained the requisite Client Introductions Forms for all his clients
- v) Whether the sub-broker had collected the requisite margin money from his clients for the trades done on their behalf

- 20 I take note from the records placed before me that the scrip of STSL was illiquid scrip before the investigation period. As on August 21, 2001 only 8.26% of the stocks of STSL were held by the public (500 shares were traded on October 1, 2000) but this magnified to about 78,700 shares as on May 30, 2001. This rise in the trading volumes and price was found to coincide with the preferential allotment of 30,00,000 shares by STSL on May 29, 2001. It is pertinent to note that the sub-broker has admitted that it had traded 2,79,300 shares of STSL on behalf of their clients Ms. Kanta Chandrasekhar, Mercap Investment Private Limited, Fiscal Stock Broking Private Limited and Maxim Equifin Finance Private Limited. Out of the said quantity, 1,46,660 shares were transacted through M/s. Acme Share and Stocks Private Limited and the rest were traded through M/s. Kolar Sharex Private Limited. It is also admitted that all the orders have been placed only after receiving instructions from their clients through telephone. I also note that 1,00,960 shares of STSL were admittedly traded for Shri Chandrasekhar Shah, who was introduced to them by Shri Shirish Shah. I further note that Shri Shirish Shah had placed the said orders, took deliveries and also made the payments on behalf of Mr. Chandrasekhar Shah. I also note that another sub-broker had traded extensively in the shares of STSL on behalf of their clients. It is pertinent to note that here also Shri Shirish Shah had placed the orders, took deliveries and made the payments. I note that the sub-broker had purchased 1,40,050 shares and sold 1,39,250 shares and almost all trades had been squared off. I agree with the finding of the Enquiry Officer that the trading pattern was such that the buy and sell orders were always set-off against each other and the delivery was minimal. From the trades executed by the sub-broker, I find that except for one settlement (settlement no. 4 traded through M/s. Kolar Shares Pvt. Ltd. as shown in the Table 3 above) all the other trades have been squared off. This kind of trading would be, only to create a false appearance of trading in the scrip and would thus contravene the provisions of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.
21. I further find that the trading pattern by its client as shown vide Table supra should have instilled some doubt or should have alerted the broker. I refer to the statement of Mr. Hari Om Sharma who has stated that they have traded in the scrip of STSL in the normal course and that they had no reason to doubt the purpose behind the said transactions. From the facts of the case and contents of the Table no. 3, it is not correct to say that MC had traded in the scrip of STSL in the normal course. A sub-broker is expected to exercise diligence and proper care when it enters into trades on behalf of his clients. This is only to ensure that the designs of the market manipulators are kept at bay thereby safe guarding the interest of the investors. I note that the Enquiry Officer has observed that the sub-broker, by failing to exercise diligence had inadvertently facilitated the manipulation in the scrip. Thus the sub-broker can be taken to task for not exercising due diligence and care while transacting in the said scrip on behalf of its client and thus liable for breaching the code of conduct prescribed for sub-brokers mentioned under Regulation 15 read with Schedule II of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.
22. Further, the sub-broker had traded through M/s. Kolar Sharex Private Limited without obtaining registration as their affiliate. I further find that the sub-broker had admitted during its hearing on December 17, 2004 before the Enquiry Officer that it traded through M/s. Kolar Sharex Private Limited without being registered as sub-broker. Thus, the sub-broker had clearly violated the provisions of Section 12 of the SEBI Act and Rule 3 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992.
23. Further, with respect to the charge of non-collection of margin money for the trades, I note that the sub-broker (acting through its authorized representative Shri Janak Raja) had admitted during the investigations on February 11, 2003 that it had not collected margins from its clients in the scrip of STSL. Further, the sub-broker vide its reply dated nil received by SEBI on June 28, 2004 had not denied the charge of non-collection of margin money. I further note that the sub-broker had admitted (during the personal hearing on December 17, 2004) before the Enquiry Officer that it had not collected any margin money from the clients for trading in the scrip of STSL. The sub-broker vide its reply dated February 07, 2005 had stated that it had conducted all its business in good faith and due care without enclosing any documentary proof in support of its contention. It is important that a broker or a sub-broker collect margin money as the main object is to minimize the risk of non-payment. Since the sub-broker had admitted the above allegation, I hold that the sub-broker has violated SEBI Circulars dated November 18, 1994, December 04, 1998, February 04, 2000 and July 27, 2000.
24. Based on the above discussions, in my view the sub-broker has therefore contravened the provisions of Regulation 4 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, the Code of

Conduct prescribed for sub-brokers under Schedule II read with Regulation 15 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992, Section 12 of the SEBI Act read with Rule 3 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992 and SEBI Circulars dated November 18, 1994, December 04, 1998, February 04, 2000 and July 27, 2000. Thus in the facts and circumstances of the case, I find that the period of suspension as recommended by the EO is commensurate to the violations committed by the sub-broker.

ORDER

25. In exercise of powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 and Regulation 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I, hereby therefore direct that the certificate of registration granted to M/s. Mahek Consultants (SEBI Registration No. INS010574411) a sub-broker affiliated to M/S. Acme Shares And Stocks Private Limited, be suspended for a period of one month.
26. The period of suspension shall come into operation after the expiry of 21 days from the date of this order.

Place: Mumbai

Date: 22.02.2007

T. C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA