

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

Name of the entity : M/s. Vishal J Shah & Co., Member, Calcutta Stock
Exchange

Date of Hearing : 17-07-2006

Appearance of parties

For the noticee : Shri Haresh Dave, Counsel for noticee

For SEBI : Shri P K Bindlish, General Manager
Shri Pradip Bhowmick, Manager

ORDER

UNDER REGULATION 13(4) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s. VISHAL J SHAH AND CO. (SEBI REGISTRATION NO. INB031122618) MEMBER OF CALCUTTA STOCK EXCHANGE, REPRESENTED BY ITS PROPRIETOR SHRI VISHAL J SHAH IN THE MATTER OF DEALING IN THE SCRIP OF WESTERN PROJECTS LIMITED

WTM/TCN/ID3/100/02/2007

1.0 BACKGROUND

1.1 The entity against whom this order is directed is M/s. Vishal J Shah & Co. (herein after referred to as "the noticee or member", represented by its proprietor Shri Vishal J Shah, member of the Calcutta Stock Exchange (CSE). The allegation against the member was that it had executed many cross deals in the scrip of M/s. Western Projects Limited (herein after referred to as 'WPL and that in those transactions both the buying and the selling clients belonged to the member. It is noted that Shri Vishal J Shah is also a Director of WPL. The trades were alleged to be in the nature of matched deals in terms of quantity, time and price and also included proprietary trades between May 07, 2001 and September 17, 2001. It was further alleged that these artificial trades were executed to enable one Mr. Ashwin Mehta who on 07-12-2001 proposed to acquire 17.5% of the shares of WPL at Rs. 3/- per share and filed an application with the Securities and Exchange Board of India (herein after referred to as 'SEBI for exemption from making a public announcement under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (herein after referred to as 'SAST Regulations which had been rejected. It was alleged that the above said artificial trades were undertaken by the member, also a director of WPL with the objective of making the said scrip to be classified as 'frequently traded shares as prescribed by the SAST Regulations so as to reduce the financial liability of the acquirer to enable him to acquire the shares at Rs. 3/- per share instead of the book value of the share which was at Rs. 58/-. In view of the said violations, it was felt that an enquiry was necessary to look into the same.

2.0 SHOW CAUSE NOTICE AND ITS REPLY

2.1 In order to enquire into the allegations leveled against the member, an Enquiry Officer was appointed by SEBI by an order dated 10-10-2003. A show cause notice dated 27-02-2004 as prescribed under Regulation 6(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 was issued to the member informing it about the charges with respect to its transactions in the scrip of WPL. The member had submitted its reply dated 10-04-2004. The member was also heard by the Enquiry Officer, wherein one Shri Sanjay M Bavishi, Chartered Accountant made submissions on behalf of the member.

2.2 After conducting the enquiry in accordance with the prescribed regulations, the Enquiry Officer had submitted his report dated 31-08-2004. Extracts from the observations made by the Enquiry Officer are as under:

"In view of the frequent churning of shares amongst few clients, the broker should have exercised due diligence and questioned the clients on these type of transactions particularly when these clients were relatively new, have not been introduced and did not deal in any other shares. Hence, it cannot be said that the broker had acted in good faith and without negligence before executing transactions for these clients in the script

"Under these circumstances, such transactions wherein the buy and sell orders were entered as cross deals and matched in terms of order quantity, price and time amongst few clients of the broker who are relatively new are highly irregular and defeat the purpose of normal order matching system in the price discovery process in the exchanges and would also be in

Based on the above findings the Enquiry Officer has recommended that the member's certificate of registration be suspended for a period of 6 months for violating the relevant provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

3.0 SHOW CAUSE NOTICE AND REPLY

3.1 After the Enquiry Officer had submitted the report, a show cause notice dated 07-09-2004, in terms of Regulation 13(2) of the SEBI (Procedure For Holding Enquiry By Enquiry Officer And Imposing Penalty) Regulations, 2002 was issued to the member calling it to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed against it for violating the relevant provisions of law. The show cause notice required the member to submit its reply together with documents within 15 days of receipt of the notice. The notice also mentioned that if the reply is not received within the stipulated time it would be construed that the member had no explanation to offer and in that case the Board would be free to issue directions that may deem fit in the facts and circumstances of the case. The member, vide its reply dated 04-10-2004 to the show cause notice made its submissions along with certain documents. A notice for hearing dated 08-10-2004 was thereafter sent to the member requiring it or its representative to appear on 26-10-2004 before the erstwhile Whole Time Member, SEBI. By the member's reply dated 25-10-2004, acting through its legal counsel M/s. Negandhi, Shah and Himayatullah, Advocates and Solicitors, a request for postponement of the hearing was made. At this point of time the Whole Time Member in charge of the proceedings had resigned thus not resulting in any hearing by him. Subsequently when the case was referred to me, a notice dated 16-05-2006 was sent to the member requiring it to appear before me for a hearing which was scheduled for 15-06-2006. On request from the member the date of hearing was re-scheduled for 17-06-2006. On the said day, the member represented by Shri Haresh R Dave appeared before me and made his submissions.

4.0 ISSUES FOR CONSIDERATION

4.1 I have perused the show cause notices, enquiry report, the replies and the submissions of the member. The issues that arise for consideration in the present case are:

- i) Whether the member has entered into artificial trades thereby creating a false misleading appearance of trading in the market in the scrip of WPL
- ii) Whether the member has violated the relevant provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

4.2 I note that the charge against the member was that, it had executed many cross deals in the scrip of WPL and that in those transactions both the buying and the selling clients belonged to the member. It is to be mentioned here that the proprietor, Shri Vishal J Shah of the broking concern was also a director of WPL. The trades were alleged to be in the nature of matched deals in terms of quantity, time and price and also included proprietary trades between May 07, 2001 and September 17, 2001. It was further alleged that these artificial trades were executed to enable one Mr. Ashwin Mehta who on 07-12-2001 proposed to acquire 17.5% of the shares of WPL at Rs. 3/- per share and filed an application with SEBI seeking exemption from making a public announcement under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (herein after referred to as 'SAST Regulations which had been rejected. It was alleged that the above said artificial trades were undertaken by the member, also a Director of WPL with the objective of making the said scrip to be classified as 'frequently traded shares as prescribed by the SAST Regulations so as to reduce the financial liability of the acquirer to enable him to acquire the shares at Rs. 3/- per share instead of the book value of the share which was at Rs. 58/-.

4.3 I note that the scrip (WPL) was an illiquid scrip in the Calcutta Stock Exchange with no trading volumes for years 2000 and 2002. I note that the Enquiry Officer has observed that between May and September 2001 there were trading for only 6 days totaling to 10,000 shares, which is just above 2% of the shares of WPL to enable it to qualify as "frequently traded scrip. Thus the allegation against the member was that just to give the benefit of the price of the scrip to the said Shri Ashwin Mehta; the member had executed the trades for some clients just to bring the scrip into the category of frequently traded scrip. The trade details show that they were matched deals as to the order, time and price. I am in full agreement with the finding of the Enquiry Officer that when the scrip was illiquid and not traded during 2000 and 2002, trades were executed immediately prior to the filing of the exemption application filed by Shri Ashwin Mehta, who wanted exemption from SEBI from making a public announcement for such acquisition. It is also pertinent to note that in the deals executed by the member; both the seller and the purchaser belonged to the member. Thus all these will go on to substantiate that the member has aided in transactions which has helped Shri Ashwin Mehta to circumvent the relevant provisions of the SAST Regulations.

- 4.4 The Enquiry Officer has also observed that the clients of the member were new and had traded only in the scrip of WPL and in no other scrip. It was also observed that the Know Your Client forms did not have introductions for most of the clients. All these create a reasonable doubt that the member had executed the trades with the full knowledge (since he is also a director of WPL) only to aid the said Shri Ashwin Mehta in acquiring the shares of WPL at a lower price. However, there is no material to show any nexus between Shri Ashwin Mehta and Shri Vishal J Shah.
- 4.5 I note that the member has submitted in his undated reply to the show cause notice issued under Regulation 13(2) that all the trades were done only in the ordinary course of business and that the trades were executed only on the instructions of the clients both buying and selling and delivery has taken place between the clients. The member also admitted that it had executed the trades in question only for brokerage and also that there was no relationship between him and the said Shri Ashwin Mehta.
- 4.6 However, even holding that there was no relationship between the member and Shri Ashwin Mehta, it should have doubted the trading pattern of the clients and questioned about that. Since it had failed to do this, it has failed to exercise the due care and diligence expected of a trading member. The Code of Conduct for brokers mentioned in SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 prescribes that a stockbroker should act with due skill and diligence in the conduct of his business.
- 4.7 I also note that the member has admitted that he has traded only for brokerage, which is also a contravention of the Code of Conduct, which prescribes that a member shall not encourage trades only with the motive of earning commission in those trades.
- 4.8 On careful consideration of facts and circumstances of the case and the dimensions in terms of volume of transactions undertaken by the member, I find that the trades even though were matched as to time, price and quantity, still resulted in their delivery to and from clients. The above aspects could be a mitigating factor in determining the quantum of penalty against the member. Thus, in my view, the penalty of censure would meet the ends of justice in the instant case.

5.0 ORDER

- 5.1 Therefore, in exercise of powers conferred upon me under Regulation 13(4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I, hereby censure M/s. Vishal J Shah and Co., member of Calcutta Stock Exchange, with SEBI registration no. INB031122618.

DATE: 23.02.2007

PLACE: MUMBAI

T C NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA