

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

-

ORDER

{Under Regulation 13(4) SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 against M/s First Custodian Fund (India) Ltd., Broker, National Stock Exchange (NSE) in the matter of Nedungadi Bank Ltd.}

-

-

1.0 BACKGROUND

- 1.1 Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into the abnormal price and volume movement in the scrip of Nedungadi Bank Ltd. (hereinafter referred to as "NBL") at Bombay Stock Exchange Ltd. (BSE) and National Stock Exchange (NSE).
- 1.2 Investigations revealed that the scrip which was being traded around Rs 56/- on January 15, 1998 moved up to Rs 91.90 on March 25, 1998 i.e. an increase of 64% in a period of about 2 months. The said price rise was coupled with increased volumes. On February 18, 1998, a total of 2,54,400 shares were traded on BSE as against volume of 15,000 shares only in January 1998. On analyzing the trading details obtained from NSE and BSE, it was observed that a set of brokers traded in large volume for common clients in the scrip of NBL during the period under consideration.
- 1.3 Investigation also revealed that the shares of NBL were first sold on spot deals to certain entities and subsequently purchased back at higher prices through the market. This was done by a group of entities to raise finance using the stock exchange trading mechanism and the price was thus artificially inflated using the said trading pattern. It was observed that R K. Banthia, a BSE broker later on corporatised as M/s Harvest Deals Securities Ltd (hereinafter referred to as "HSL"), S. G. Mantri (hereinafter referred to as "SGM") and First Custodian Fund India Limited (hereinafter referred to as 'Noticee') sold shares of NBL on spot basis to M/s Daisy Investments, Goshar Group (comprising of Pankaj Goshar, Naval Goshar, Kamal Champsi, Nutanbean Champsi, and Sakar Hirji) and Shah group (comprising of M. L. Shah, Pankaj Shah, Aamy Shah, Anurag Tulsyan). These entities in turn sold these shares at BSE through Enpee Enterprises and at NSE through Good Fortune Advisory Services Pvt. Ltd. which were purchased by the above three brokers (Banthia & his associates).

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 SEBI after considering the Investigation Report initiated Enquiry proceedings against the Noticee and other two brokers HSL and SGM. Accordingly, Enquiry Officer was appointed to enquire into the violations allegedly committed by the Noticee under the provisions of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock Brokers Regulations"), Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 (hereinafter referred to in short as "PFUTP Regulations"), Securities and Exchange Board of India Act, 1992 (hereinafter referred to in short as "SEBI Act") and Memorandum and Articles of Association of the Company, Regulations and Bye-laws of BSE.
- 2.2 During the course of personal hearing before the Enquiry Officer, the Noticee submitted that they are not an associate concern of SGM or HSL. They have admitted that they sold 4,38,400 shares of NBL through SGM on spot basis and the said transactions were regular transactions executed on the NEAT system of NSE as a broker client basis. Regarding their

knowledge about the purchase of NBL shares from M/s Good Fortune Advisory, they stated that the same may be a mere coincidence. The Noticee also stated that HSL and SGM are the members of BSE and also their clients and vice versa.

- 2.3 The Enquiry Officer, after conducting an enquiry submitted a report dated November 30, 2005 wherein he observed that the Noticee violated Regulations 4(a), 4(b) and 4(c) of PFUTP Regulations and Clause A(3) and A(4) of the Code of Conduct for Stock Brokers under Schedule II of SEBI Stock Brokers Regulations. He recommended suspension of certificate of registration of the Noticee for a period of three months.

3.0 SHOW CAUSE NOTICE

- 3.1 Pursuant to the receipt of the said Enquiry Report, a Show Cause Notice dated January 24, 2006 was issued to the Noticee, enclosing therewith a copy of the Enquiry Report advising the Noticee to show cause as to why the action as recommended by the Enquiry Officer should not be imposed against him. The Noticee submitted its reply dated October 10, 2006 to the show cause notice and also requested for a personal hearing in the matter.

4.0 REPLY OF THE NOTICEE TO THE SHOW CAUSE NOTICE

- 4.1 The Noticee submitted that there was no abnormal price movement in the scrip of NBL at NSE and BSE merely because scrip price increased by 64% between January 01, 1998 to March 25, 1998.
- 4.2 The Noticee denied the increase of volumes in the scrip of NBL from 15,000 shares in the month of January 1998 to 2,54,400 on February 18, 1998 as stated in the enquiry report. The Noticee stated that the volume of trading in the scrip of NBL in January 1998 at BSE was 3,84,100 as evidenced from the data available on BSE website.
- 4.3 The Noticee submitted that the clients normally give orders to different brokers for purchasing and selling the same scrip as it is a common practice in the market and nothing is unusual in these kinds of transactions.
- 4.4 The Noticee submitted that the total trades done by it in the shares of NBL for the period January 15, 1998 to March 25, 1998 was 7,89,200 shares comprising of purchase of 6,23,300 shares and sale of 1,65,900 shares which resulted in a net position on 'client account' and 'vyapar account' to 3,87,400 and 70,000 respectively.
- 4.5 The Noticee submitted that the enquiry officer has proceeded on erroneous assumption and premise that Harvest Deal Securities Ltd., Shri. SGM and the Noticee are associate concerns. The Noticee submitted that they are separate and distinct entity and are not an associate of the above entities.
- 4.6 The Noticee submitted that they have been doing the business of brokerage, arbitrage and investment and always look for better bargain while investing their fund in trading activity. They stated that SGM was the main client in the scrip of NBL and which considered them as important and valued one. They stated that the trading position on their vyapar account were mostly arbitrage / investment nature (buying on BSE and selling on NSE) and vice versa. They also stated that all their outstanding positions have resulted in delivery of shares, either on their own account on behalf of their client and there is no single instances where they have failed on their payment obligation to NSE.
- 4.7 The Noticee submitted that they are not related with Banthia and Associates and thus shall not comment upon their trades. They also submitted that they have sold some shares on spot delivery with the BSE broker SGM for which payment has been duly received and delivery has been effected. The shares were sold to them on spot delivery basis on their own account as normal trades with the objective of arbitrage.

- 4.8 The Noticee submitted that except for sale of some shares on spot delivery on their own account with BSE broker SGM as normal trades, all their trades in NBL had been executed and displayed on NEAT system of NSE. They added that all purchases were as per instruction of their clients and stated that they have no knowledge or intention if the shares sold by the clients were bought by them in spot or normal market. They had also no idea that the client Good Fortune Advisory had earlier purchased shares of NBL from Banthia and its associates. It is also stated that they got delivery at the end of settlement since the same is computerized allotment process at NSE. Hence, it is a mere coincidence even if the Noticee has received majority of shares from Good Fortune Advisory.
- 4.9 The Noticee submitted that the finding of Goshar and Shah Group purchasing shares from spot market and selling through Good Fortune Advisory in normal market and the Noticee receiving them in normal settlement does not in any way put blame on Noticee in any manner.
- 4.10 In the said reply, the Noticee stated that their dealings with SGM was in the nature of arbitrage. They even admitted that they had sold 4,38,400 shares on NBL on spot basis as a regular transaction on a broker client basis.
- 4.11 With regard to the finding of continuous purchase and shares of NBL at prices higher than the prices in the earlier settlement, the Noticee submitted that if a buy order is for a larger quantity of shares vis a vis the quantity available for sale the buy orders will have to be placed at a price higher than the ruling price / last traded price. The Noticee added that if buy orders were to be placed at the existing price / last traded price or at a relatively lower price, it may be possible that the full quantity required by client may not be available and to ensure that full quantity of buy order is fulfilled it would have been necessary to place orders higher than ruling price / last traded price.
- 4.12 The Noticee submitted that all transactions executed by them were on behalf of their clients excepting few in 'vyapar account' (which is only a very low percentage) and as such the clients are responsible for their decisions. The Noticee stated that they were neither aware of any predetermined plan nor were a party to the predetermined plan as alleged.
- 4.13 The Noticee again stated that they sold 4,38,400 shares in BSE through SGM and that transaction were done on spot basis as a regular transaction on broker client basis. They further stated that they have no dealing whatsoever with Enpee Enterprises, a broker of BSE and could not have known or knew that the shares thus sold were purchased by Enpee Enterprises.
- 4.14 The Noticee submitted that if at all the entire sale of 4,93,400 shares sold by Good Fortune Advisory for its client were purchased by Noticee is nothing but a mere coincidence. It is also stated that they have no concern for details of SGM or HSL and hence they have not commented on the same.
- 4.15 The Noticee stated that no adverse inference can be drawn from the fact that relatives of SGM and Shri. R. K. Banthia are on the board of Noticee which is a separate and distinct entity and is not related or associated with SGM or HSL.
- 4.16 The Noticee submitted that it had sold shares of NBL by way of spot transactions on its vyapar account and made purchases on NEAT system and the transactions of purchase and sale were genuine transactions. It also stated that when buy order is entered in the automatic trading mechanism of the stock exchange, the order can be picked up by anyone and the trading mechanism being fast, orders get converted into trades in a fraction of a second. In the automated price and order matching mechanism of NSE trading system, the identity of the seller is not known. It could be possible that seller on NEAT was same party to whom shares were sold on spot deals.
- 4.17 The Noticee submitted that even if it receives 65% of NBL deliveries on NSE, it can not be the logical reason to believe that they have generated interest in the scrip and created artificial market. The Noticee also denied the finding of purchasing

identical quantities of shares that were sold earlier. They added that in the absence of any pattern of purchasing identical quantities of shares by HSL, the question of meeting of minds does not arise or there being collusion among the Noticee, HSL and SGM. Further, even assuming that there was any meeting of mind between clients of Noticee and others, the Noticee submitted that they were merely executing the instructions of their client in good faith and in the ordinary course of business.

- 4.18 The Noticee stated that HSL and SGM are operating from the same office where the Noticee is also operating is incorrect. On the basis of the said reply, the Noticee submitted that they have not violated any provisions of PFUTP or code of conduct and requested to drop the recommendation of the Enquiry Officer. In the said reply, Noticee also requested for personal hearing.

5.0 HEARING

- 5.1 The request of the Noticee for personal hearing in the matter was granted and accordingly advised him to attend the personal hearing before me at SEBI's Head Office at Mumbai on December 08, 2006 at 11.30 a.m. Thereafter, on request from Noticee, two more opportunities of personal hearing were granted on December 18, 2006 and January 04, 2007 which they did not attend. Therefore, I am proceeding in the matter on the basis of the submissions of the Noticee and the materials before me.

6.0 CONSIDERATION OF ISSUES & FINDINGS

-

- 6.1 I have carefully examined the findings of investigation, enquiry report, show cause notice and reply of the Noticee.
- 6.2 The Enquiry Officer found that the Noticee was acting with a predetermined plan with other brokers such as SGM, HSL and their select group of clients and executed artificial trades which resulted in price and volume rise in the scrip of NBL. The price of the NBL scrip moved up from Rs 56/- on January 15, 1998 to Rs 91.90 on March 25, 1998 coupled with increased volume of trading. Investigation revealed that a group of brokers traded in the scrip in large volumes. Accordingly, client details of the said group of brokers were also analyzed and it was found that there were a few common clients who traded in the scrip through the said group of brokers.
- 6.3 The trading details of few brokers who had executed substantial trades in the scrip of NBL during the said period are provided in the following table:

Exchange	Broker	Net Buy Position	Net Sell Position
BSE	SGM	398300	
	Harvest Deal Securities Ltd.	225600	
	Suresh KJ	130600	
	Enpee Enterprises		591800
	PP Shah		100000
NSE	First Custodian Fund (India) Ltd. (Noticee)	678500	
	Wood Stock Broking Ltd.	74700	
	Good Fortune Advisory		461900

- 6.4 The investigation also revealed that Shri. R. K. Banthia, Director of HSL in association with SGM and Noticee dealt mainly in the scrip of NBL in both the NSE and BSE. HSL and SGM are brokers of BSE and Noticee is a broker of NSE. There are a large number of financing transactions among these entities and the affairs of all these three entities were being handled mainly by Shri. R. K. Banthia. The Enquiry Officer observed that these three entities are having the same office. This fact

was impliedly admitted by the Noticee by stating that HSL, SGM and the Noticee operated their business from the same office due to the reason of economy, but they operate as different entities. The Enquiry Officer has also recorded one of the submissions of the Noticee during personal hearing before him that Shri Surendra Banthia, Shri Sushil Mantri, Shri Manish Banthia, Shri Satish Pasari and Shri Ramesh Kundalia were the directors of the Noticee at the relevant period. The Noticee however denied its connection and linkage with HSL and SGM without producing any corroborative evidence to contradict the said findings of the Enquiry Officer. Considering the entire facts and the details of trades executed by these entities in the scrip of NBL, it can be seen that these three entities are one way or other connected and having the common intention to create artificial price and volume in the scrip for deriving definite gain out of it.

- 6.5 I observe that SGM, Panther Fincap and Panna Enterprises were the main clients of Noticee. Proprietary trading and client wise position in respect of the said entities during the period under consideration is provided in the following table:

Client	Position
Vyapar Account (Own Account)	153800
Shrikant Mantri	306500
Panther Fincap	159500
Panna Enterprises	25200

- 6.6 The Noticee admitted that SGM was their main client in the scrip of NBL and that the trading position on their vyapar account are mostly arbitrage / investment in nature. However, they have not explained the same by providing sufficient materials. On the other hand, their trading pattern and the above linkage with the main brokers such as SGM and HSL show that their trades are not in the nature of arbitrage or jobbing and the same is in the nature of circular trading which is also explained in the succeeding paragraphs. In this regard, it is also to be noted that the Banthia group was holding approximately 19% of the equity of NBL out of which Noticee and his family members were holding 10.5% and Shri. R. K. Banthia and his family members were holding 8.4%. Their deliveries constituted 83% of total delivery at BSE and 65% of the total delivery at NSE. This fact indicated that the Noticee and the above mentioned connected entities concentrated their trading in the scrip of NBL, both at BSE and NSE with a pre-determined plan. This also resulted in increase in price of the scrip from Rs 56/- in January 1998 to Rs. 91.90 in March 1998.

- 6.7 It is also noted that they were selling shares on spot basis to various clients. When these clients sold these shares through regular market in "All or None" category in BSE and "Special Term" category in NSE, Banthia and Associates picked up these shares. The Noticee only submitted that they have no connection with Banthia and Associates and all the trades executed by them were through NEAT system. This contention of the broker is not tenable for the reasons stated in the preceding paragraph as the relatives of SGM and HSL were the directors of the Noticee at the relevant time and they operated business from the same premises. Their trading volume in NBL had also strengthened the finding that they had acted in concert and executed trades in NBL with an intention to create artificial volumes.

- 6.8 It is further observed from an analysis of data relating to purchases during 15 settlements that the Noticee took delivery of 6,66,400 shares of NBL. As against the position of the Noticee, the other two brokers who had the highest delivery in these 15 settlements took delivery of only 78,700 and 27,500 shares. This shows that the Noticee was the main purchaser of the shares of NBL at NSE. Likewise, in respect of gross trading, the Noticee had the highest volume of 7,89,200 shares in the scrip of NBL. The broker with next highest gross position was M/s Good Fortune Advisory and it executed substantial sale transactions in the scrip for its clients namely Goshar group (comprising of Pankaj Goshar, Naval D Goshar, Kamal Champsi, Nutanben Champsi Goshar, Sarkar Hirji) and M.L Shah group comprising of M.L Shah, Anurang Tulsyan, Pankaj Shah and Aamy Shah). Almost the entire sale of 4,93,400 shares sold by M/s Good Fortune Advisory for its clients were purchased by the Noticee.

- 6.9 It is further noted that the above clients of Good Fortune Advisory had earlier purchased these shares from Banthia and his associates in spot and sold them through Good Fortune Advisory. It is also observed that the Noticee sold 4,38,400 shares in BSE through SGM. The Noticee while admitting the above trades submitted that the said transactions are jobbing and arbitrage and also even stated that the same were regular transactions on a broker-client basis. Our analysis clearly reveals that these are not at all jobbing or arbitrage transactions and also can not be termed as transactions on broker-client basis as they are in the nature of circular trading. They had been selling the shares of NBL to various entities in spot and then

purchasing these shares in the normal trading cycle both at BSE and NSE. In the said process, there was continuous purchase of the shares of NBL at prices which were higher than the prices in the earlier settlement. The large and continuous delivery based purchases created artificial market and also resulted in substantial increase in price of NBL as stated above.

- 6.10 I have also observed that the Noticee vide its reply dated January 15, 1999 had also admitted that it sold 4,38,400 shares of NBL in BSE through SGM. The Enquiry Officer had given few instances of these trades which is reproduced hereunder:

Date	Quantity
24 January 1998	99200
4 February 1998	9100
4 March 1998	29700
6 April 1998	27900

- 6.11 The Enquiry Officer has also found that the above refereed shares were subsequently sold by Enpee Enterprises and 83.34% of the said sale was purchased by SGM and HSL. The Enquiry Officer has also observed that Goshar and Shah Group sold 4,61,900 shares in NSE through its broker Good Fortune Advisory and the same were purchased by the Noticee. Gohar and Shah Group are noted to have purchased the said shares earlier through SGM and HSL. Details of the trades are also provided as hereunder:

Name of the Broker	Dates of Spot Deals
Shrikant Mantri	January 1, 1998, January 15, 1998, January 16, 1998, March 5, 1998, March 19, 1998, March 20, 1998, March 26, 1998, April 6, 1998
Harvest Deal Securities Pvt. Ltd.	February 11, 1998, February 27, 1998, March 9, 1998, March 20, 1998

- 6.12 Considering the entire findings of Enquiry Officer and the reply submitted by the Noticee, I find that the Noticee is having clear connection with HSL and SGM and the said group is rightly termed as Banthia group and they were holding approximately 19% of the equity of NBL. They were selling shares on spot basis to various clients mainly Daisy Investment (through broker Enpee Enterprises), Goshar group (comprising of Pankaj Goshar, Naval D Goshar, Kamal Champsi, Nutanben Champsi Goshar, Sarkar Hirji), M.L Shah group (comprising of M.L Shah, Anurang Tulsyan, Pankaj Shah and Aamy Shah) and Parikh group (comprising of Panther Fincap, Ketan Parikh, Jayanth Parikh and Kartik Parikh). They sold back these shares through regular market under 'All or None' category in BSE and in Special Term category in NSE which was picked up by the Banthia Group.

- 6.13 I find from the nature of trades and trading pattern of the Noticee and his associates that they sold the shares of NBL on spot basis to financiers whenever they were in need of short term finance. Later these shares were bought from these clients as regular market transactions, through structured deals by asking the clients to put the orders in "All or None Category" or "Special Term Category". The said brokers including Noticee ensured that they matched the quantity and price that their clients have put in the trading terminals. Thus the orders were executed and the shares were received back by them through the clearing house. Payment for this purchase was made during the regular "pay in date of the exchange". The loan thus was enjoyed by the Noticee for around 12 days. The interest for this loan was made by adding it in the price at which shares were purchased back. It is pertinent to note that the trades by way of structured deals, selling in spot and buying back of the shares through regular market reduced the risk of lenders since the payment was ensured through the exchange mechanism. Further, with regard to the issue of financing trade, the Noticee admitted that loan had been taken and given to the above referred entities and it was a normal trade practice. Considering these facts and the association of Noticee with HSL and SGM and their trading pattern it establishes that the loan had been taken / given by the Noticee for creating artificial market in the scrip of NBL as also to derive undue gain.

6.14 I also find that the pattern of trading of Noticee in the scrip of NBL is also indicative of collusion with SGM and HSL. I have noted that these three entities were the major buyers in the scrip at BSE and NSE at the period under consideration and also noted that delivery of shares by them constituted 83% of the total delivery of shares in BSE and 65% of the total delivery of shares at NSE. Further, they were purchasing identical quantities of shares that were sold earlier by them. The said pattern over a long period of time is indicative of meeting of mind and trading of such a significant percentage of the market over a period of time among the parties in identical manner cannot be accepted as mere coincidence.

6.15 Considering the above, it is established that the Noticee was acting in accordance with predetermined plan with the other brokers such as SGM, HSL and also with select group of clients and they created false market which resulted in price rise in the scrip. This type of artificial price and volume creation gives wrong message to the investors and can induce them to trade in the shares where the chances of their incurring loss is imminent. As such, the Noticee has violated the provisions of Regulation 4(a), (b) and (c) of PFUTP Regulations, which provides that,

4. No person shall –

(a) Effect, takepart in, or enter into either directly or indirectly, trasactions in securities, with the intention of artificially raising or depressing the price of securities and thereby inducing the sale or purchase of securities by any person

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

6.16 Further, the Noticee has not taken due care and diligence essentially required in conducting his business as a stock broker and thus violated Regulation 7 read with the clause A (3) and (4) of Code of Conduct as specified in Schedule II of Stock Brokers Regulations, which provides that

(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.

6.17 Under section 11 of the SEBI Act, SEBI can take measures to protect the interests of investors and to regulate the securities market inter alia by registering and regulating the working of stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures taken by SEBI for regulation of the stock brokers would be rendered nugatory and the regulatory function would be jeopardized. It is to be noted that indulgence of the Noticee in the transactions which are prohibited can not be allowed as such transactions are likely to have a detrimental effect on the functioning and integrity of the securities market.

6.18 I have also noted that the certificate of registration of the Noticee was suspended for a period of 12 months from July 14, 2003 (i.e. the date on which the interim order was passed) vide Order dated March 5, 2004 passed by the then Chairman of SEBI for the irregular transactions of the Noticee in the same scrip of NBL. Similar Orders were also passed against SGM and HSL and the issues of their linkage/association and the reasons for executing artificial and manipulative trades in the scrip of NBL were also established in the said orders. The certificate of registration of the Noticee was also suspended recently for a period of 15 days vide my Order dated March 29, 2007 for its irregular dealings in the scrip of Ranbaxy Laboratories Ltd.

- 6.19 Having considered all aspects of the matter and looking into the violations committed by the said broker, I am satisfied that it is necessary to impose a penalty on the said broker. Hence, I agree with the recommendation of the Enquiry Officer that the registration of the Noticee be suspended for a period of three months.

7.0 ORDER

- 7.1 Taking into account all facts and circumstances of the case and in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of suspension of certificate of registration of M/s First Custodian Fund (India) Ltd., a registered broker, National Stock Exchange (NSE) with SEBI Registration No INB230638130 for a period of 3 months.
- 7.2 This order shall come into force immediately on the expiry of 21 days from the date of this order.

Place: Mumbai
Date: April 16, 2007

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