

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr.T.C. NAIR, WHOLE TIME MEMBER

AGAINST M/S. JUGGONPURSAD BAIJNATH

AND ITS PROPRIETOR SHRI. M.L.NATHANY.

BROKER OF CALCUTTA STOCK EXCHANGE

SEBI REGISTRATION NO. INB030040915

IN THE MATTER OF INVESTIGATION INTO DEALINGS IN THE SCRIP OF ANKIT PRACHI TRADING AND INVESTMENTS LTD.

WTM/TCN/IVD/ID1/02/04 /07

DATE OF HEARING: Not availed.

ORDER

[Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing Penalty) Regulations, 2002 and under Sections 11B And 11(4) of Securities and Exchange Board of India Act, 1992 read with regulation 11 of SEBI (Prohibition of Fraudulent and unfair Trade Practices Relating to Securities Market) Regulations, 2003]

1.1 M/s. Juggonpursad Baijnath (hereinafter referred to as 'the broker') is a member of the Calcutta Stock Exchange (hereinafter referred to as 'CSE') and is registered with the Securities and Exchange Board of India, (hereinafter referred to as 'SEBI') as a stock broker vide registration number INB 030040915.

1.2 SEBI observed an unusual price rise in the scrip of Ankit Prachi Trading and Investments Ltd. (hereinafter referred to as 'APTIL') which moved from Rs. 8.40/- to Rs.86/- during the period 05.12.1997 to 26.02.1998. Since the sudden rise in the price of the said scrip was neither justified by the fundamentals of the company nor any announcements made by it during this period, SEBI ordered an investigation into the possible price manipulation in the scrip of APTIL, and in pursuance to the same, sought information from CSE as regards the trading details in the scrip, price volume data and the names of the top trading brokers in the said scrip during the relevant period, to examine the possible violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the 'FUTP Regulations' and 'Broker Regulations' respectively) and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as SCRA). The information so furnished inter-alia revealed that the broker had dealt in the said scrip of APTIL through three major dealing brokers viz. S.K. Khattri & Co., Lyons Range Share Broking Pvt. Ltd. and Ladha & Co. and had contributed nearly 96% of the total gross traded volume of the scrip at the Exchange and appeared to have contravened the provisions of the FUTP Regulations and the Broker Regulations.

2.0 Enquiry Proceedings

2.1 In view of the above, SEBI appointed an Enquiry Officer vide order dated 24.07.2003 read with order dated 28.03.2003 under the provisions of the SEBI (Procedure for holding Enquiry by the Enquiry Officer and Imposing Penalty), Regulations, 2002 (hereinafter referred to as 'the Enquiry Regulations') to enquire into the possible violations of the Broker Regulations and the FUTP Regulations, alleged to have been committed by the broker.

2.2 After taking into consideration the facts of the case and the evidence on record and having regard to the gravity of charges, the Enquiry Officer, vide his report dated 05.02.2004, recommended a penalty of suspension of the certificate of registration of the broker for a period of two years.

3.0 Show cause notice and the broker's submission

3.1 SEBI issued a notice dated 24.02.2004 to the broker, calling upon him to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed upon him and to reply to the said notice within 21 days of the receipt of the notice failing which it would be presumed that the broker had no explanation to offer and that SEBI would be constrained to proceed ex-parte. Since the broker failed to reply to the above said notice, reminder letter dated 04.03.2004 was sent to the broker. The broker replied vide letter dated 17.03.2004 that its proprietor Shri.M.L.Nathany is already 75 ½ years old and due to his ill-health and old age requested for personal hearing after one month in Calcutta. Vide letter dated 17.06.2004, SEBI had advised the broker to file written submissions within 15 days, failing which the matter will be decided based on the available records and the said letter was returned with endorsement as 'left'. SEBI had sent the same information vide letter dated 25.06.2004 through CSE to the broker. No reply had been received from the broker.

4.0 Consideration of issues

4.1 I have carefully examined the facts and circumstances of the case, investigation report, enquiry report, submissions of the broker, materials available on record and my findings are as follows:

4.2 I observe that the broker was one of the top brokers who had transacted in the said scrip of APTIL during the relevant period of investigation and had dealt in the scrip through three major dealing brokers viz. S.K. Khattry & Co., Lyons Range Share Broking Pvt. Ltd. and Ladha & Co. They had contributed to nearly 96% of the total gross traded volume at the Exchange in the scrip. All the three brokers had given the name of the broker M/s.Juggonpursad Baijnath as ultimate client. Settlement wise dealings done by the broker in the market during the period December, 1997 to February, 1998 are tabulated as follows:

Table-I

Sett no.	Name of the broker	Buy	Sale	Gross	% to total market vol.
36/97-98	S K Khattry	-	(-)9,700	9,700	100%
38/97-98	S K Khattry	-	(-)400	400	80%
43/97-98	S K Khattry	700	-	700	90%
	Lyons Range Share Broking P Ltd	300	-	<u>300</u>	
				<u>1000</u>	
46/97-98	Lyons Range Share Broking P Ltd	5,300	-	5,300	63%
47/97-98	Lyons Range Share Broking P Ltd	8,700	-	8,700	78%
	Ladha & Co.	-	(-) 2,700	2,700	
48/97-98	Ladha & Co.	6,100	-	11,400	100%

Apart from the above, the broker had also entered into the following off market transactions:

1. Sold 13,500 shares which were in the name of Ashika Stock Broking Ltd. on 12.01.1998 (Settlement No.41/97-98), which were bought by a group of people.
2. Shares sold in Settlement No.41, in off market deal, were bought back by the broker in Settlement No.46 and 47 of 97-98 in lots of 5300 and 8700 shares respectively through the Exchange.

For the off market deal in settlement No.41, the payment receivable by the broker was adjusted against purchases made by him in subsequent settlements.

4.3 I have noted from the findings of the EO that letters sent to the broker during January, 1999, May and June, 2000 calling for details of purchases and sales made by him was replied through its proprietor Shri.M.L.Nathany on 14.06.2006 stating that he is more than 71 years old and not in active business. Further, he had stated that he was not maintaining office and staff and all his records were eaten by ants and hence he could not reply. Since the broker had expressed his inability to provide details as called for, the information was gathered from various sources including CSE.

4.4 The volume and price of the said scrip traded on the Exchange is as under:

Table-II

Sett.No.	Sett. Dates	High	Low	Gross Volume
36	05.12.97 to 11.12.97	10.2	8.4	9700
37	12.12.97 to 18.12.97	14.2	11.1	1400
38	19.12.97 to 24.12.97	19.5	16	500
39	26.12.97 to 01.01.98	26.5	22.5	600
40	02.01.98 to 08.01.98	35	30	3400
41	09.01.98 to 15.01.98	39.5	31.5	900
42	16.01.98 to 22.01.98	49	42.5	3600
43	27.01.98 to 29.01.98	61.2	53.2	1100
45	06.02.98 to 12.02.98	70.2	65	400
46	13.02.98 to 19.02.98	70.2	58	8400
47	22.02.98 to 26.02.98	86	65.4	14600
	Total			44600

The above table shows that the price of the scrip increased from a low of Rs.10.2/- in Settlement No. 36/97-98 to Rs.86/- in Settlement No.47/97-98, i.e, within a short time of 05.12.1997 to 26.02.1998, the period during which the broker had traded.

4.5 I observe that the broker had dealt across settlements, through more than one broker and had accounted for 80% to 100% of the total market volume at CSE. The above table I and II reveals the broker's trading pattern and that he had first started dealing in the captioned scrip in Settlement No.36/97-98 in very low quantity at CSE through S. K. Khattry, Member CSE. The data reveals that at that point of time the scrip was very thinly traded and there was hardly any public interest in the scrip. The trading pattern also shows that the broker had traded in small quantities on almost everyday of the settlement, thus increasing the price on gradual basis. In other settlements also whenever the broker had traded, he had contributed to nearly 80% to 90% of the total volume in the scrip as brought out in Table-I. The trading pattern as stated above and the fact that the broker had contributed to the maximum volume during the period under investigation apparently indicates his involvement both in the creation of volume and movement of price in the said scrip.

4.6 I have also noted the finding of the EO that in the very first settlement, i.e., settlement No.36, the broker had delivered 9,700 shares bearing distinctive nos.1312301-1322000 through S.K.Khattry, member CSE, which were allotted to Samson Marketing P Ltd situated at 49, Regent Place, Calcutta-700040. These were locked-in shares and thus were neither tradable nor transferable as they belonged to promoter's quota. It was not clear as to how, when and from whom the broker had acquired these shares.

4.7 I am of the view that the broker had not given any clear reply regarding how he got the shares which were allotted to the promoters. Assuming that the broker had traded for his clients, the shares delivered by the broker in the very first settlement were standing in the name of Samson Marketing Private Ltd. (a promoter group company as per the statement of Shri S K Agarwala, director of Ankit) and were under lock-in. This also shows that the broker was aiding and abetting the promoters in the creation of artificial market. Since the broker had failed to give satisfactory explanation, its complicity in the matter is explicit. It is apparent that the broker had artificially raised the price of the scrip by buying and selling the said scrip through the said three brokers which is evident from Table-I and II. It is apparent that there is no transfer of beneficial ownership in the traded scrip and the transactions were done only with an intention to create a false or misleading appearance of trading in the market and the transactions were not genuine in nature. It is clear that the broker had violated Regulation 4(a) to (d) of FUTP Regulations.

4.8 Regulation 4(a) of FUTP Regulations says " No person shall (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person."

Table-I shows the dealings of the broker during the investigation period and his contribution (in percentage) to the total volume of the market in the said scrip. Table-II shows the gradual rise in the price of the scrip during the relevant period. Moreover, the broker had off market transactions in Settlement No.41/97-98. The broker had not given any satisfactory reply for his trading in the particular scrip through three brokers even though he was a registered broker with CSE and how he had received the locked-in shares allotted to one of the promoters of the APTIL, which clearly indicates nexus with the promoters and his intention of artificially increasing the price of the said scrip.

4.9 Regulation 4(b) and (c) of FUTP Regulations says "(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."

Table-I and II clearly show how the trading pattern of the broker had lead to the increase in the price of the scrip. The trades were not genuine trade transactions but were only traded with the intention of increasing the price of the scrip in a gradual manner and the broker had contributed 80% to 100% of the total volume in CSE during the investigation period. Moreover, the broker had not chosen to give any reply in this regard other than an evasive reply that the records were destroyed by the ants and he was more than 75 ½ years old and not in active business. In fact, the price of the said scrip was increased from a low of Rs.8.40/- to a high of Rs.86/- within a short duration due to the above said trading pattern of the broker.

4.10 Regulation 4(d) of FUTP Regulations reads "(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities."

The trading pattern of the broker reveals that the broker had purchased and sold the said scrips and it is apparent that there is no transfer of beneficial ownership in the scrip. But due to selling and buying in the said scrip, the price had increased considerably from a low of Rs.8.40/- to a high of Rs.86/.

4.11 Moreover, I have noted that the broker was registered as a broker of CSE with Registration No. INB030040915 dated 30.11.92 and it is inexplicable as to why the broker had undertaken these transactions through other brokers, if at all he had traded for clients as claimed by him. Further, it is noted that the broker had been registered with Lyons Range as a client since 04.10.1997. I have, therefore, no reasons to differ with the findings of the EO that since the broker failed to provide details of clients, the trades could have been undertaken by him on his own account only. When confronted with the details of his trades and involvement, he had started claiming that he had traded in the scrip only as a broker and not as a client. Moreover, the broker had registered himself as a client with Lyons Range on 04.10.1997 and had started trading in the said scrip from 05.12.1997. Instead of trading in the said scrip on behalf of his client, he had traded through the other broker Lyons Range. The broker had not given a clear reply regarding this issue. It can be reiterated that the pattern of the broker's trading reveals that the transactions entered into by him in the scrip of APTIL were not genuine trade transactions but were done with a view to raising the price and creating artificial market and interest in the said scrip and thereby violating Regulation 4 (a) to (d) of FUTP Regulations.

4.12 The EO found that the broker had traded through three brokers though he was a registered broker of the Exchange. As per the Exchange bye-laws, the brokers are required to report all the trades done on own account as off market transactions to the Exchange. Moreover, SEBI, vide its Circular No.SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 has addressed the issue of reporting off-the-floor transactions and prescribed that all brokers are required to report to the Exchange, all the transactions done on a spot basis on the same day. I have noted the findings of the EO that in reply to a query about reporting of 'off market deals', CSE vide its letter dated 30.11.2002 had stated that "we have searched our old records and not found any such report of 'off-market deal' of the aforesaid shares (Ankit) in that period." From the above, it is clear that the broker had not reported any of his trades to the Exchange and thus violated the bye-laws of the Exchange and SEBI circular dated 14.03.1995.

4.13 Further certificate of registration is granted by SEBI to a stock broker, subject to the fulfillment by the broker of certain conditions laid down in Rule 4 of the SEBI (Stock brokers and sub brokers) Rules, 1992. Rule 4 (b) of the said Rules inter alia provides that the Board may grant a certificate to a stock broker subject to the following conditions, namely:

- a. ...
- b. He shall abide by the rules, regulations and bye-laws of the Stock Exchange or stock exchanges of which he is a member.

4.14 It is to be noted that Code of Conduct for the Stock Brokers as set out in Schedule II read with Regulation 7 of the Broker Regulations 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."

By the above discussed conduct in the previous paragraphs, the broker had clearly violated clauses A(2) to A(5) of the Code of Conduct by not exercising due skill and care, manipulating the price of the said scrip in the market, committing malpractice by indulging in creating false market and had not complied with the statutory requirements.

4.15 The broker had manipulated the price of the scrip from a low of Rs. 8.40/- to a high of Rs.86/- through artificial buying and selling. By entering into such artificial transactions, the broker has not only failed to carry out his business operations in

accordance with the provisions of law, but has also violated the letter and spirit of the investor protection measures introduced by SEBI. Apart from violating Regulation 4 (a) to (d) of FUTP Regulations, the broker had also violated the provisions of the circular issued by SEBI relating to off market transactions, as well as the bye-laws, Rules and Regulations of the CSE, and also the provisions of Clauses A(2) to A(5) of the Code of Conduct for the Stock Brokers as set out in Schedule II read with Regulation 7 of the Broker Regulations. I am, therefore, convinced that this is a fit case to impose penalty of suspension.

- 4.16** On a careful perusal of the charges, and the findings as recorded above, I am of the view that a penalty of suspension of registration of the broker for a period of six months would be adequate and required to have a deterrent effect on the broker.
- 4.17** I have also noted that a separate show cause notice dated 04.03.2004 was sent to Shri.M.L.Nathany, proprietor of the broker calling upon him to show cause why appropriate directions under Section 11 of SEBI Act, 1992 read with Regulation 11 of FUTP Regulations, 2003 including restraining him from being associated with the Securities Market in any manner whatsoever and prohibiting him from buying, selling and dealing in securities in any manner whatsoever for a particular period should not be issued against him for violating the provisions of Regulation 4(a) to 4(d) of FUTP Regulations, 1995. The broker through its proprietor, Shri.M.L.Nathany, vide letter dated 17.03.2004 furnished a common reply to the show cause notices dated 24.02.2004 and 04.03.2004.
- 4.18** I am of the view that since the broker is a proprietary concern, all business activities are conducted through the proprietor Shri.M.L.Nathany. I have noted that the charges under the enquiry proceedings and the proceedings under Section 11 of SEBI Act and Regulation 4 of FUTP Regulations are the same. As the charges for both the show cause notices were also replied by Shri.M.L.Nathany as proprietor of the broker, I feel that it is not necessary to pass separate orders and directions can be passed against Shri.M.L.Nathany and the broker in the same order itself.
- 4.19** The broker had failed to provide details of clients, if any, on whose account he had traded and hence, it is presumed that the trades were done by him on his own account only. When confronted with the details of his trades and involvement, the broker had started claiming that he had traded in the scrip only as a broker and not as a client. The broker through its proprietor, Shri. M.L.Nathany had not given any clear reply whether all the above said trades were done by him as a broking firm or as its proprietary trades. When asked for details, the broker had given only an evasive reply that all the records were eaten by ants. Keeping the evasive attitude of the broker in view, I am convinced that it is a fit case to pass directions under Section 11B and 11(4) of SEBI Act, 1992 read with Regulation 11 of FUTP Regulations, 2003 against Shri.M.L.Nathany, proprietor of M/s.Juggonpursad Baijnath in regard to his involvement in the price manipulation of the said scrip.

5.0 ORDER

- 5.1** Now, therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby impose a penalty of suspension of Certificate of Registration of the broker, M/s. Juggonpursad Baijnath, member, CSE, bearing SEBI Registration No. INB030040915, for a period of six months.
- 5.2** And also in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Sections 11B and Section 11(4) of SEBI Act, 1992 read with Regulation 11 of FUTP Regulations, 2003, I hereby prohibit Shri.M.L.Nathany, proprietor of the broking firm M/s.Juggonpursad Baijnath, from buying, selling or dealing in securities in any manner whatsoever for a period of six months.
- 5.3** This order shall come into force immediately on the expiry of twenty one days from the date of this order.

PLACE: MUMBAI

T.C.NAIR

DATE : 26.4.2007

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA