

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: V. K. CHOPRA, WHOLE TIME MEMBER**

Against M/s Jayantilal Khandwala and Sons Private Limited, Broker, Bombay Stock Exchange Ltd (BSE) having SEBI Registration no. INB010998038 in the matter of irregularities in the trading of the shares of M/s. Roofit Industries Ltd.

DATE OF HEARING: 27.12.2006

APPEARANCES

FOR NOTICEE:

1. Shri. Gaurav Joshi, Advocate
2. Shri. Deepak Shah, Advocate
3. Shri. Jatin Khandwala, Director, M/s Jayantilal Khandwala and Sons Private Limited

FOR SEBI:

1. Shri. Sanjiv Dutt, CGM, SEBI
2. Shri. Jitendra Kumar, Manager, SEBI.
3. Shri. Mohamed Rahaz. P.M, Legal Officer, SEBI

ORDER

**Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by
Enquiry Officer and Imposing Penalty) Regulations, 2002**

1.0 BACKGROUND

- 1.1 M/s. Roofit Industries Ltd. (hereinafter referred to as "Roofit") was incorporated on February 18, 1982 as a Private Limited Company in the name and style of Ratnagiri Asbestos Private Ltd. It subsequently changed its name to Ratnagiri Building Products Ltd. on October 21, 1987 and later to Roofit Industries Ltd. in 1996. The shares of Roofit were listed on National Stock Exchange (NSE), Bombay Stock Exchange Ltd (BSE), Delhi Stock Exchange (DSE) and Ahmedabad Stock Exchange (ASE).
- 1.2 Securities and Exchange Board of India (hereinafter referred to in short as 'SEBI') initiated investigation in the scrip of Roofit Industries Ltd. on observing sudden spurt in the price and volume of the shares traded on NSE during the period October 6, 1999 to December 12, 1999. The price of the scrip had moved up from Rs 127/- to Rs 268/- during the period and the volumes traded increased from 2,100 shares per day to 1,13,400 shares. Further, SEBI received a complaint dated January 19, 2001 from one Shri. Michael D'silva alleging that the entire shareholding in Roofit was directly or indirectly controlled by its management to rig its share price.
- 1.3 SEBI directed NSE and BSE to conduct further investigations at their end. NSE submitted its investigation report for the period November 8, 2000 to February 6, 2001 vide its letter dated December 31, 2001 and for the period February 7, 2001 to May 8, 2001 vide letter dated September 11, 2002. BSE submitted its report for the period January 22, 2001 to May 4, 2001 on September 26, 2001 and for the period October 10, 1999 to December 12, 1999 vide letter dated May 24, 2002. Considering the above, SEBI conducted investigation for the period October 06, 1999 to December 12, 1999 and November 08, 2000 to May 08, 2001.
- 1.4 Investigations revealed that certain brokers including M/s Jayantilal Khandwala and Sons Private Limited (hereinafter referred to in short as "Noticee") were involved in the manipulation of Roofit shares.
- 1.5 After considering the investigation report, SEBI appointed an Enquiry Officer to enquire into the dealings of the Noticee for finding out the possible violations of the provisions of Regulation 4(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995 (hereinafter referred to in short as "PFUTP Regulations"), Clause A(3) and (4) under Regulation 7 of the SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock brokers Regulations").
- 1.6 The Enquiry Officer, after conducting an enquiry in accordance with the provisions of the Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, submitted a report dated September 14, 2006 wherein he observed that the Noticee had aided and abetted its related clients in manipulating scrip of Roofit and also acted in concert with them. In view of this, they violated the provisions of Regulation 4(a) of PFUTP

Regulations and clause A(3) and (4) of Code of Conduct as specified under Regulation 7 of Stock Brokers Regulations. The Enquiry Officer recommended suspension of registration of the Noticee for a period of six months.

2.0 SHOW CAUSE NOTICE

- 2.1 Pursuant to the receipt of the Enquiry Report, a Show Cause Notice dated November 16, 2006 was issued to the Noticee, along with a copy of the Enquiry Report, advising them to show cause as to why the action, as recommended by the Enquiry Officer or any other penalty deemed appropriate, should not be imposed on him. The Noticee furnished a detailed reply to the post enquiry show cause notice vide letter dated November 30, 2006.

3.0 REPLY OF THE NOTICEE TO THE SHOW CAUSE NOTICE

- 3.1 The Broker while denying all the allegations in enquiry report submitted as under:

- 3.1.1 That SEBI has erred in equating relationship of the common director, namely, Mr. Suresh Hemwani, with their two clients. They further stated that relationship alone cannot and should not form a basis for justifying any violation unless it is proved with credible evidence that such relationship did result into a violation.
- 3.1.2 That their volumes in the shares of M/s Roofit. have to be examined in comparison to the total volume of the market as a whole, which they state is insignificant and that they cannot be singled out for framing charges of wrong doings only on the basis of relationship, as referred to in the said Show Cause Notice. It is also stated that SEBI should substantiate its findings and further produce credible evidence to show that transactions entered into by their clients were illegal, not permissible and were with ulterior intention. We submit that no inference whatsoever can be drawn from the fact that Mr. Suresh Hemwani was a common director of two of their clients.
- 3.1.3 That the allegation of relationship of their clients with the promoters or directors of M/s Roofit is based on presumptions and assumptions. The Broker added that their clients were registered with them independently and not by virtue of their alleged relationship with the promoters or directors of Roofit. They have also submitted that SEBI has failed to define in a codified manner as to what constitutes a "relative" and how the facts and circumstances justify categorizing their clients as "relatives" of the promoters or directors of Roofit, and how and why such alleged relationship automatically translates into the alleged violation.
- 3.1.4 That all trades entered into the automated trading mechanism of the Stock Exchange will definitely have a bearing on the market price and as such the alleged trades cannot be singled out to erroneously infer that they influenced the price at the Exchange. They have also stated that the trades of their clients were within the price band of the day and the said transactions of their clients were in the price and order matching mechanism of the Stock Exchange.
- 3.1.5 That their client's transactions alone cannot be said to have influenced the prices at the Exchange and it is for SEBI to first determine how much of the rise in the price was due to factors other than the trades of their clients and how much of the rise in the price can be ascribed to their clients' transactions.
- 3.1.6 That the alleged manipulative intentions of their clients must be established with credible evidence and not only on the basis of preponderance of probability. They further submitted that the role played by them as an intermediary in the market, was that of a broking house only and that they did not control or influence the investment decisions of their clients and that as an intermediary, they only executed orders of their clients. Hence, they cannot be held guilty of aiding and abetting their clients in influencing the price or otherwise. They have also submitted that SEBI has failed to provide any credible evidence to substantiate its claim that their clients' relationship with the promoter and directors of M/s Roofit translated into a violation.
- 3.1.7 That as regards the allegation of placing of orders at a price higher than ruling price / last trade price, if a buy order is for a larger quantity of shares vis-à-vis the quantity available for sale, the buy orders will have to be placed at a price higher than the ruling price / last trade price in order to fully fulfill or fulfill a substantial portion of the buy order. If the 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 their clients may not be available and to ensure that the full quantity of buy order is fulfilled it would have been necessary to place orders higher than ruling price / last trade price.
- 3.1.8 That it is impossible, impracticable and unfeasible for them as brokers to detect and perceive the intentions of a client and the concept of aiding and abetting their clients to influence the price cannot be extended in a manner to suggest that the intentions and objective of a client should always be known to them as a result of which their alleged acts of influencing the price be converted into and be attributable to a violation on their part.
- 3.1.9 That they have not violated any provisions of PFUTP Regulations or Code of Conduct as specified under the Stock Brokers Regulations.

4.0 HEARING

- 4.1 The Noticee in their above reply to the show cause notice requested for a personal hearing. Accordingly, the Noticee was advised to attend the personal hearing before me at SEBI's Head Office at Mumbai on December 27, 2006. Shri. Jatin Khandwala, Director of Noticee attended the hearing alongwith their Advocates, Shri. Gaurav Joshi and Shri. Deepak Shah. They also sought time to file written submission which was also granted. They have filed their written submission on January 04, 2007 wherein they have cited some of the decisions of Supreme Court, SAT and also referred some of the orders passed by SEBI in the matters of synchronisation of trades. On the basis of the above orders, they submitted that the recommendation of the Enquiry Officer to suspend the registration of the Noticee for a period of six months is absolutely disproportionate and the same needs to be set aside.

5.0 CONSIDERATION OF ISSUES & FINDINGS

- 5.1 I have carefully examined the findings of investigation, enquiry report, show cause notice, reply of the Noticee and submissions made at the time of hearing.

- 5.2 I observe that the Noticee had mainly dealt for their clients M/s Habiscus Investment Pvt. Ltd. (hereinafter referred to in short as "Habiscus") and M/s Onlooker Investments Pvt. Ltd. (hereinafter referred to in short as "Onlooker"). The Noticee bought 29,800 shares and sold 15,600 shares for Habiscus and also bought 8,200 shares and sold 8,200 shares on behalf of Onlooker. The details of the trades executed by Noticee in three settlements were taken to analyse the trading pattern. The details of the price movement at BSE in Settlement No 34 (07/11/1999 to 12/11/1999), Settlement No. 37 (29/11/1999 to 03/12/1999) and Settlement No.38 (06/12/1999 to 10/12/1999) are given hereunder:

Settlement No 34

Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	Trades	Volume	Turnover (Rs.)
07/11/1999	160.00	167.65	159.80	167.65	21	3000	496275
09/11/1999	175.00	181.05	162.05	181.00	59	9760	1713024
11/11/1999	195.45	195.45	191.10	194.10	123	20660	4014485
12/12/1999	187.00	196.00	182.55	194.80	93	16500	3126732

Settlement No. 37

Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	Trades	Volume	Turnover (Rs.)
29/11/1999	240.00	240.00	225.00	229.95	74	12120	2799094
30/11/1999	235.05	235.05	228.50	235.00	44	6230	1439410
01/12/1999	231.85	253.00	231.20	249.80	88	18870	4564665
02/12/1999	245.00	257.90	245.00	254.15	170	25004	6317906
03/12/1999	257.00	269.00	254.00	258.35	155	30990	8123301

Settlement No.38

Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	Trades	Volume	Turnover (Rs.)
06/12/1999	265.00	266.00	257.10	260.00	81	10580	2759303
07/12/1999	255.00	263.40	255.00	258.50	47	6010	1555303
08/12/1999	259.00	261.90	246.00	246.20	47	6300	1585230
09/12/1999	246.00	247.00	240.00	241.00	51	7370	1793845
10/12/1999	242.00	260.00	238.00	258.15	71	13390	3322837

- 5.3 Viewed in this backdrop, it is clear that Noticee was instrumental in systematically pushing up the price of Roofit by putting in trades at or near the circuit filter. Shri Jatin Khandwala, Director of the Noticee in his statement accepted that these two clients were related to each other as well as known to the broker and that these clients are related to Roofit. On a specific question about the knowledge of Noticee about the relationship of their clients Habiscus and Onlooker with the company Roofit, Shri Jatin replied *"These clients M/s. Habiscus and M/s. Onlooker were introduced to us by my brother – Shri Mayank Khandwala – who is also a director in the broking firm M/s. Jayantilal. We knew the antecedents of these clients as well as their directors and may be these clients were related to the company M/s. Roofit"*. I also find that Habiscus and Onlooker are having same address and same directors namely Shri Suresh Hemwani and Smt Meenal Chhabara. Further, the relationship of Onlooker to Roofit is explained below:

- M/s New Bharat Builders has introduced Onlooker to M/s Goldcrest Capital Markets Ltd.
- Subscribers to the Memorandum of Association of M/s New Bharat Builders are Ms. Sangeeta Motwani and Mr. Kishore Motwani.
- Ms. Sangeeta Motwani is the wife of Mr. Vinod Motwani.
- Mr. Kishore Motwani and Mr. Vinod Motwani are directors of Roofit.

- 5.4 From the above details, it is clear that the clients of the Noticee are related to Roofit and this fact was in the knowledge of the Noticee while it dealt in the scrip of Roofit on behalf of its clients Habiscus and Onlooker.
- 5.5 The Noticee in its reply stated that the above relationship alone can not form a basis for justifying any violation unless it is proved with credible evidence that such relationship did result into a violation. They also stated that all the trades were executed into the automated trading mechanism of the stock exchange and the alleged trades can not be singled out to infer that the said trades influenced the price at the exchange. Another contention of the Noticee is that for purchasing larger quantity of shares, the buy orders will have to be placed at a price higher than the ruling price/last trade price. These contentions of the Noticee however are not tenable as it is not an isolated or non-repetitive transaction. In the instant matter, the Noticee had executed repetitive trades for its clients knowing that they are related to Roofit as mentioned herein above.
- 5.6 I have also found that the volume in the scrip of Roofit also increased considerably due to the transactions of some of the entities related to promoters of Roofit including Onlooker and Habiscus and they have been found to be trading in the scrip of M/s. Roofit during the time period of investigation, through the various broking entities of BSE and NSE. Onlooker traded through the brokers M/s Amgis Holdings Pvt Ltd, M/s. Pals Overseas Pvt. Ltd, M/s Goldcrest Capital Market Limited and M/s. Express Securities Ltd etc. Likewise, the other client of the Noticee, Habiscus also traded through the brokers M/s Amgis Holdings Pvt. Ltd. and M/s Goldcrest Capital Market Ltd. It is also pertinent to note that an Order was passed on January 09, 2007 restraining 8 entities including the said clients of the Noticee from accessing the securities market for a period of 6 months for the violations of Regulation 4 (b), 4 (c) and 4 (d) of PFUTP Regulations. Further, SEBI has launched adjudication as well as prosecution proceedings under the appropriate provisions of SEBI Act, 1992 against the said entities because of their non-cooperation during the process of investigation in this matter. The Adjudication Officer imposed monetary penalty against all the above eight entities. Accordingly, four out of the said eight entities viz. M/s Alkan, M/s Mayfair Paper, M/s Vynex and M/s M'Belle appealed to Hon'ble Securities Appellate Tribunal (SAT) against the impugned order of Adjudicating Officer. SAT has reduced the penalty in case of first three Noticees and upheld the impugned order in the case of M'Belle.
- 5.7 The Noticee has also taken a contention that it is not possible for them to identify the manipulative intention of their clients to put the trades in a particular scrip like Roofit and that they have not violated the code of conduct as specified under the Stock Brokers Regulations. It is pertinent to note that the Noticee was having a clear knowledge of the relationship of its client with the company Roofit. I have also noted that the clients Onlooker and Habiscus had executed number of trades through the Noticee on several days in three settlement periods and executed trades even at the upper circuit level. Since the trades are repetitive in nature and the Noticee is well aware of the linkage of their clients with the company Roofit, should have alerted them and should have stopped further execution of trades in the scrip on behalf of the aforesaid clients. Instead of taking extra caution, the Noticee facilitated its client to execute trades in the Roofit scrip and thereby aided them in carrying out manipulative transactions. Noticee thus facilitated its clients Onlooker and Habiscus to execute trades in the scrip of Roofit knowing that they are related to the company Roofit. As such Noticee has failed to observe clause A (3) and (4) of Code of Conduct as specified in Schedule II under Regulation 7 of Stock Brokers Regulations. However, I don't find any reason to charge the Noticee under Regulation 4(a) of the PFUTP Regulations as its clients were not booked for the violations of the said provision.
- 5.8 I have also noted that the Noticee had relied on some of the judgement and orders in their written submission dated January 04, 2007. The facts and circumstances leading to pass the said judgment and orders are different and distinguishable from the facts involved in the instant matter. In the said judgment, it is held that the Broker must have knowledge about the illegal transactions to prove the charge of manipulation against them. In the instant matter, the knowledge of Noticee is clearly established from the pattern of trade executed by them on behalf of their clients, Onlooker and Habiscus. This finding is corroborated by the statement of Shri Jatin Khandwala, Director of the Noticee as reproduced at paragraph 5.3 above. The Noticee has also cited some of the orders wherein the main issue was illegal synchronisation of trades with a view to create artificial market. On the other hand, the issue in this matter is aiding and abetting the above clients of the Noticee to influence the price by way of placing continuous orders at the upper circuit level. In view of this, the above judgement and orders cited by the Noticee are not applicable to the facts, circumstances and issues involved in this matter.
- 5.9 I have noted that all the ingredients of the provisions of clause A (3) and (4) of Code of Conduct as specified in Schedule II under Regulation 7 of Stock Brokers Regulations are established in the matter as discussed in the preceding paragraphs. If a broker indulges in manipulative transactions in violation of clause A(3) and (4), the mischievous clients are encouraged to manipulate the market which would ultimately affect the innocent investors as observed by SAT in the matter of Ketan Parekh Vs SEBI as reproduced hereunder:

"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy / sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the

view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden which is impossible to be discharged."

- 5.10 Having considered all aspects of the matter, I find that the Noticee traded on behalf of their two clients, Onlooker and Habiscus related to each other and who were introduced to the Noticee by one of their director. The Noticee therefore knew the antecedents of these clients and was also aware that these clients are related to the company Roofit. In fact the Noticee continuously placed buy orders for these clients and these orders were placed at a price higher than the previous traded price and also upto the circuit filter level which resulted in influencing the price of Roofit scrip. Such action on their part may influence and induce the innocent investors of the market. In this context, I have also noted one of the decision of Hon'ble Securities Appellant Tribunal (SAT) in Appeal no. 282 of 2004 (Shrikant G. Mantri v/s SEBI – date of Order : February 23, 2005) wherein the broker, Shrikant G. Mantri had traded on two days for their client, Shri. R. N. Jhaveri. In the said order, the Hon'ble SAT observed as hereunder:

"We however find that there may have been some negligence on the part of the appellant and such negligence would be in violation of the code of conduct under Regulation 1992. The appellant ought to have noticed that there was something strange in the high volumes that have been traded with respect to the Sawaca scrip. In that view of the matter, we confirm that order of the respondent only in so far as the violation of Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulation 1992."

- 5.11 I have also observed that the instant matter is more serious than the above case (Shrikant G. Mantri v/s SEBI – date of Order : February 23, 2005) as evident from the foregoing paragraphs. Further, the Code of Conduct for Stock Brokers specified in Schedule II under Regulation 7 of the said Regulations also provides for the minimum standards for the working of the 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. I find that the Noticee has indulged in manipulative transactions so as to facilitate its clients to manipulate the market and also failed to take 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".

- 5.12 In view of the above, I find that the Noticee has indulged in manipulative transactions which resulted in influencing the price of the scrip. Such an act was not only detrimental to the investors' interest but also led to interference with the fair and smooth functioning of the market. Looking into the violations committed by the Noticee, I am satisfied that it is necessary to impose a penalty on the Noticee. I have noted that the enquiry officer has recommended imposition of a penalty of suspension of six months on the said broker. However, considering the fact that Regulation 4(a) of PFUTP Regulations is not applicable to the facts and circumstances of the case and only the charges under the provisions of Code of Conduct as specified in Schedule II under Regulation 7 of Stock Brokers Regulations are established against Noticee, I am of the view that a penalty of suspension of certificate of registration of the Noticee for a period of 15 days may act as a deterrent for such actions.

6.0 ORDER

- 6.1 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 Jayantilal Khandwala and Sons Private Limited, a registered broker, Bombay Stock Exchange Ltd. (BSE) with SEBI Registration No. INB010998038 for a period of 15 days.
- 6.2 This order shall come into force immediately on the expiry of 21 days from the date of this order.

Place: Mumbai
Date: May 23, 2007

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