

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: G. ANANTHARAMAN, WHOLE TIME MEMBER

ORDER

UNDER REGULATION 13 (4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/S. AGROY FINANCE & INVESTMENT LTD, MEMBER, THE DELHI STOCK EXCHANGE ASSOCIATION LTD. IN RESPECT OF ITS DEALINGS IN THE SHARES OF SHONKH TECHNOLOGIES INTERNATIONAL LTD.

1.0 BACKGROUND

1.1 The shares of Shonkh Technologies International Ltd. (hereinafter referred to as STIL) were listed at the Delhi Stock Exchange Association Ltd. (hereinafter referred to as DSE) on August 10, 2000 and were allowed to trade from August 16, 2000. The shares of STIL were also listed at the Bombay Stock Exchange Ltd. (hereinafter referred to as BSE). It was noticed that the share price of STIL at DSE had increased from Rs. 300/- at August 16, 2000 to Rs. 460/- at September 28, 2000. Thereafter, the share price had reduced to Rs.330/- on October 31, 2000.

1.2 The continuous rise in the price of the shares of STIL is shown below:

Date	Volume at DSE	Closing Price (Rs.)	% change
16.08.00	5050	325.00	
17.08.00	4200	329.00	1.22
18.08.00	1900	336.00	2.08
21.08.00	1900	350.00	4.00
22.08.00	7000	368.00	4.89
23.08.00	7300	395.55	6.96
24.08.00	100	427.15	7.40
25.08.00	0	427.15	0.00
28.08.00	5000	436.00	2.03
29.08.00	0	436.00	0.00
30.08.00	0	436.00	0.00
31.08.00	50	400.45	-8.88
05.09.00	300	427.00	6.22
06.09.00	50	430.00	0.70
07.09.00	0	430.00	0.00
11.09.00	100	431.00	0.23
12.09.00	500	435.00	0.92
13.09.00	0	435.00	0.00
14.09.00	500	440.00	1.14
15.09.00	0	440.00	0.00
22.09.00	500	440.00	0.00
25.09.00	150	440.00	0.00
26.09.00	0	440.00	0.00
27.09.00	100	460.00	4.35
28.09.00	0	460.00	0.00

1.3 In view of the above unusual price movements noticed in the shares of STIL, Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted investigations to look into the possible violation of the provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 1995 (hereinafter referred to as the FUTP Regulations) and Securities and Exchange Board of India (Stock Brokers and Sub-

Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations) and inter alia the role of various intermediaries / entities in respect of the aforesaid price manipulation.

- 1.4 The investigation conducted by SEBI inter alia observed that there was an attempt on the part of certain entities (including stock brokers) to create liquidity / volumes in the shares of STIL at DSE. It was further found that certain stock brokers viz. Agroy Finance and Investment Limited, Delhi Securities Ltd. and A Nitin Capital Services Ltd. (Members of DSE) traded substantially in the shares of STIL during the above period. The aforesaid Agroy Finance and Investment Limited is hereinafter referred to as the Broker for the purpose of brevity. The Broker is also a member of National Stock Exchange of India Ltd. The trade details of the aforesaid stock brokers in the shares of STIL are given below:

Name of the Broker	Quantity Bought (shares)	Percent age	Quantity Sold (shares)	Percentage
Delhi Securities Ltd.	9000	26.50	16100	47.42
A Nitin Capital Services	11100	32.69	13100	38.58
Broker	12000	35.34	2800	8.24
Total of the aforesaid stock brokers	32100	94.53	32000	94.24
Total trades at DSE	33950	100.00	33950	100.00

- 1.5 The Broker bought 12,000 shares (out of 33,950 shares) and sold 2,800 shares (out of 33,950) of STIL at DSE. The said trades of the Broker accounted for 35.34% and 8.24% respectively of the total buy and sell volume in the shares of STIL. The Broker had executed the trades in the shares of STIL on behalf of its clients namely M/s. Baldev Harish Electricals Pvt. Ltd. (hereinafter referred to as Baldev Harish) and M/s.

Harpal Associates Pvt. Ltd. (hereinafter referred to as Harpal). The details of such trades are given below:

Date	Qty. (shares)	Total volume at DSE	% to the total volume at DSE	B/S	Client	Closing price (Rs.)	% change
17.08.00	2200	4200	100	B	Baldev Harish	329	1.22
17.08.00	2000			B	Harpal		
22.08.00	2800	7000	40	B	Harpal	368	4.89
23.08.00	2800	7300	38.35	S	Harpal	395.55	6.96
28.08.00	5000	5000	100	B	Baldev Harish	436	2.03

1.6 It was found that the director of Baldev Harish viz. Shri Baldev Raj, was a client of Delhi Securities Limited (Member, DSE) and executed trades in the shares of STIL. It has been alleged that the Broker had entered into synchronized trades with other members of DSE, namely M/s. Delhi Securities Limited and M/s. A Nitin Capital Services Limited.

1.7 In view of the above, it has been inter alia alleged that the Broker has prima facie violated regulation 4 (a), (b) and (c) of the FUTP Regulations, and Clause A (1) to (5) of the Code of Conduct as specified in Schedule II of the Broker Regulations.

2.0 APPOINTMENT OF THE ENQUIRY OFFICER

2.1 On completion of the investigation, SEBI appointed an Enquiry Officer, vide orders dated June 26, 2003 and September 30, 2004 under regulation 5(1) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 hereinafter referred to as the Enquiry Regulations) to enquire into

the alleged violations committed by the Broker as mentioned above. Accordingly, a notice dated September 28, 2004 was issued to the Broker as to why actions under the provisions of the Enquiry Regulations should not be initiated against it for the alleged contraventions.

- 2.2 The Broker submitted its reply to the said show cause notice and also made his submissions before the Enquiry Officer. The Enquiry Officer vide report dated May 31, 2005 recommended to impose a minor penalty of censure on the Broker. The Enquiry Officer inter alia observed that there were concentrated trading in the shares of STIL amongst the members of DSE including the Broker, M/s. Delhi Securities Limited and M/s. A Nitin Capital Services. It was also observed in the Enquiry Report that, in the absence of the details of the order log or legible copies of the same, it would be difficult to sustain the charge of synchronized trading against the Broker, although it could not be disputed that trading was concentrated between the above three brokers (with a common set of clients) due to a prior mutual understanding which arose out of a possible nexus.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

- 3.1 Pursuant to the Enquiry Report, a notice dated October 21, 2005 was issued to the Broker under regulation 13(2) of the Enquiry Regulations asking it to show cause as to why the action as recommended by the Enquiry Officer should not be taken against it. A copy of the Enquiry Report was also forwarded to the Broker with the said show cause notice.

- 3.2 The Broker vide its letter dated November 02, 2005 inter alia stated that, from the observations of the Enquiry Officer, it was clear that no case of any fault on its part was made out, which called for any disciplinary action. The Broker added that the reprimand had been recommended merely on the ground of concentrated level of trading due to low volumes only at DSE. The Broker clarified that there was no malafide intention on its part and that it was a mere co-incidence that there were low volumes of trading during the period under review. It further requested to drop the proceedings inter alia on the basis of co-operation extended / the details submitted by it. The Broker added that it would be more careful in future.
- 3.3 While examining the Enquiry report, the show cause notice dated October 21, 2005 and the aforesaid reply of the Broker, I observed that the substantial trades executed by the Broker in the shares of STIL and the nature and the pattern of its transactions were prima facie in violation of the provisions of the FUTP regulations and the provisions of the Code of Conduct as specified in the Broker Regulations and thus called for a penalty higher than that recommended by the Enquiry Officer. Accordingly, a notice dated March 1, 2007 was issued to the Broker to show cause as to why higher penalty as considered appropriate should not be imposed on it. A copy of the Enquiry Report was sent to the Broker with the said show cause notice. The Broker was also granted an opportunity of personal hearing on March 20, 2007.
- 3.4 The Broker vide letter dated March 12, 2007 inter alia stated that it had traded in the shares of STIL only on four days and that too in very small volumes. It clarified that the said trades which were executed on behalf of its clients could not be categorized as substantial. The Broker stated that it had not violated the provisions of regulation 4 (a) to (c) of the

FUTP Regulations, clauses A (1) to (5) of the Code of Conduct specified in Schedule II of the Broker Regulations. The Broker further stated that there was no malafide intention on its part and that it was mere coincidence that there were low volumes of trading at DSE during the period under consideration. The Broker requested to take a lenient view in the matter and further assured to be more careful in future.

- 3.5 Though the Broker was granted an opportunity of personal hearing it had failed to avail the same and in the facts and circumstances, I proceed further on the basis of the Enquiry Report, the show cause notices dated October 21, 2005 and March 1, 2007, the replies of the Broker dated November 2, 2005 and March 12, 2007 and other materials available on record.
- 3.6 I note that the price of the shares of STIL which were allowed to trade at DSE on August 16, 2000 at 300/- increased to Rs.460/- on September 28, 2000. As mentioned above, the trades of the aforesaid stock brokers viz. Delhi Securities Ltd. and A Nitin Capital Services Ltd. including the Broker accounted for 94.53% and 94.24% of the total buy and sell volume at DSE in the shares of STIL. The Broker had purchased and sold 12,000 shares 2,800 shares of STIL respectively. The said trades accounted for 35.34% and 8.24% respectively of the total buy and sell volume in the shares of STIL at DSE. The Broker has not disputed the trades made by it. It is a fact that the price of the shares of STIL had increased from Rs.329/- to Rs 436/- during the period of Broker's trades.
- 3.7 The Broker had traded in the shares of STIL on 4 trading days i.e., August 17, 2000, August 22, 2000, August 23, 2000, and on August 28, 2000 on behalf of its clients. The trades executed by the Broker on the

said dates accounted for 100%, 40%, 38.35% and 100% respectively. The said trades were shown in detail in the table shown at para 1.5 above. The price of the shares of STIL increased by 1.22% to 6.96% on the said dates. These trades were made at a time when the shares of STIL were trading at a low volume at DSE.

3.8 It is fairly established that at the time when there were low trading volumes in the shares of STIL, either the majority or the entire transactions were executed by the Broker. I further observe that the promoter and director of Baldev Harish (client of the Broker) viz. Shri Baldev Raj was also a client of Delhi Securities Ltd. Shri Baldev Raj acted as a seller in the shares of STIL with Delhi Securities Ltd., while Baldev Harish was the buyer with the Broker. When the Broker executed trades in the shares of STIL, the total volume traded at DSE was 4200 shares, 7000 shares, 7300 shares and 5000 shares. The corresponding volume of the Broker was 4200 shares (100%), 2800 shares (40%), 2800 shares (38.35%) and 5000 shares (100%). Thus, the trades of the Broker accounted for 38% to 100% of the total volumes. The said trades were executed by the Broker at a price higher than (varied from 1.22% to 6.96%) the previous day's closure price. The Broker had traded continuously in the shares of STIL at DSE from August 17, 2000 to August 28, 2000, to the exclusion of August 18, 2000, August 21, 2000, August 24, 2000 and August 25, 2000. The shares (STIL) traded at DSE on the said dates were 1900, 1900, 100 and nil respectively. Out of the above, trades on August 18, 2000 and August 21, 2000 were executed by stock brokers viz. Delhi Securities Ltd. and A Nitin Capital Services Ltd. As discussed above, on certain days, the trades of the Broker accounted for the total volume at DSE in the shares of STIL and the same were found to be executed at a price which was higher than the

previous day's closure price. In this context, I note that every trade establishes the price of the scrip and accordingly, it matters and the trades executed by the Broker interfered with the fair price discovery system. With low traded volume at DSE, the price of the shares of STIL increased from Rs.329/- to Rs.436/- within short span of time (four trading days) inter alia due to the trades executed by the Broker.

3.9 In view of the fact that the majority of the trading in the scrip of STIL (95%) were concentrated between the Broker and the other members of DSE as mentioned above, the trades of the Broker inter alia created misleading appearance of trading in the shares of STIL and thus created false market and artificial price, which were detrimental to the interest of the genuine investors. Further, I also note that the Director of the Broker viz. Shri. K.M Agrawal in his statement (to SEBI) dated March 21, 2003 admitted that Shri Baldev Raj was placing the orders on behalf of the clients of the Broker. He also stated that the clients had delayed the payments. The above instances show that the Broker was aware that its clients were connected to each other. Without considering the above aspects, the Broker executed trades in the shares of STIL for its clients regularly at a higher price as indicated at para 1.5. The Broker had a duty not only towards its client but also towards the securities market.

3.10 Undoubtedly, the trades executed by the Broker inter alia created artificial volume and price in the shares of STIL. Artificial increase in the volumes of scrip attracts the innocent investors in the market who are trapped in buying such shares otherwise useless and such misrepresentation, besides cheating investors, create financial loss to them. In this context, SAT in the matter of Ketan Parekh vs. SEBI has inter alia observed :

“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.”

- 3.11 The Broker contended that that there was no intention on its part to manipulate the securities market. In the present case, I note that the trades in the shares of STIL during the period under consideration were concentrated (approximately 94%) between the stock brokers named in this order including the Broker and that the clients were connected to each other. It was observed that when the Broker was executing trades for its client viz. Baldev Harish, the director of the said client viz. Shri Baldev Raj was executing the trade at the other end. In the client registration form of Baldev Harish it has been stated that Shri Baldev Raj

was its director. I observe that the proof of manipulation almost always depends on inferences drawn from a mass of factual details. Findings must be gathered from patterns of trading data and the nature of the transactions etc. Several circumstances of a determinative character coupled with the inference arising from the conduct of the parties in a major market manipulation could reasonably lead to conclusion that the Broker was responsible in the manipulation. The evidence, direct or circumstantial, should be sufficient to raise a presumption in its favour with regard to the existence of a fact sought to be proved. As pointed out by Best in “Law of Evidence”, the presumption of innocence is no doubt *presumptio juris*; but everyday practice shows that it may be successfully encountered by the presumption of guilt arising from circumstances, though it may be a presumption of fact. Since it is exceedingly difficult to prove facts which are especially within the knowledge of parties concerned, the legal proof in such circumstances partakes the character of a prudent man’s estimate as to the probabilities of the case. SAT has observed in the matter of Ketan Parekh Vs. SEBI :

“..... Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.”

- 3.12 Presumption plays a critical role in coming to a finding as to the involvement or otherwise of a market participant in any manipulation. Further, any suggestion attributing innocence to the parties involved in such transactions would give rise to an untenable situation where certain other third persons/entities alone would be responsible for the

manipulation and none else. The facts and circumstances would clearly establish that the trades were executed (regularly at a higher price than the previous day's closure) between certain common clients and common set of brokers as mentioned above. The facts and circumstance of the present case, considering the nature of the trades executed by the Broker regularly at a higher price, would establish that it was a necessary party to the manipulation in the shares of STIL during the above period at DSE.

- 3.13 The concentrated level of trading took place in the shares of STIL (an illiquid scrip at the time of the Broker's trades) created a misleading appearance of trading in the said shares, artificial volume / price within a short period of time. The said trades also appear to be not genuine transactions.
- 3.14 In the facts and circumstances it is fairly established that the Broker has violated Regulations 4 (a) to (c) of the FUTP Regulations.
- 3.15 The natural corollary to this issue is whether the Broker had maintained high standards of integrity, promptitude, fairness and exercised due skill, care and diligence in the conduct of its business. In terms of Clauses A 1 to 5 of the Code of Conduct prescribed under the provisions of the Broker Regulations, a stock broker shall not inter alia create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. The Broker shall also maintain high standards of integrity, promptitude and fairness and shall act with due skill, care and diligence in the conduct of his business. It is also a requirement that the Broker shall not inter alia indulge in manipulative transactions with a view to

distort the market equilibrium. He shall also inter alia abide by the provisions of the rules and regulations issued by the Government, SEBI and the stock exchange from time to time as may be applicable to him. The trades of the Broker as explained in detail above would prove that the same created a misleading appearance of trading, artificial volume and price in the shares of STIL by vitiating the price discovery mechanism in the securities market. The Broker traded at a higher price than the previous day's closure for the same clients when there was low volume at DSE. It amply demonstrates that the Broker, instead of maintaining the Code of Conduct as expected of a SEBI Registered intermediary, virtually became a party to the manipulation in the shares of STIL to the detriment of genuine investors.

3.16 A Stock broker is expected to protect the interest of the investors in the securities market in which he operates and it ill behoves him to become a party to any market manipulation. Being an intermediary operating in the securities market, the Broker is required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings as specified in the Code of Conduct of the Broker Regulations (mentioned above). An intermediary who fails to perform such duties has to be punished in terms of the provisions of the Enquiry regulations. In view of the above, it is established that the Broker had violated the above clauses of the Code of Conduct prescribed under the Broker Regulations.

3.17 In the above facts and circumstances, it is fairly established that the trades of the Broker in the shares of STIL created misleading appearance of trading in the said shares and thereby created artificial

volume / price in the said shares. The Broker has also violated the provisions code of conduct of the Broker Regulation.

- 3.18 In view of the above, I hold that the Broker has violated Regulations 4 (a) to (c) of the FUTP Regulations and clauses A (1) to (5) of the Code of Conduct specified in Schedule II of the Broker Regulations and the same calls for a higher penalty than that recommended by the Enquiry Officer, as ordered herein under.

4.0 ORDER

- 4.1 Therefore, in view of the foregoing, I in exercise of powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulation 13 (4) of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby impose a penalty of suspension of the certificate of registration of M/s. Agroy Finance & Investment Ltd, (Registration no. INB 050691937), Member, The Delhi Stock Exchange Association Ltd for a period of one month.
- 4.2 This order shall come into force immediately on the expiry of 21 days from the date of this order.

G ANANTHARAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: 24.5.2007