

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 A NITIN CAPITAL SERVICES 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 movement 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 A Nitin Capital Services Ltd. is hereinafter

referred to as the Broker for the purpose of brevity. The trade details of the aforesaid stock brokers in the shares of STIL are given below:

Name of the Broker	Quantity Bought (shares)	Percentage	Quantity Sold (shares)	Percentage
Delhi Securities Ltd.	9000	26.50	16100	47.42
Broker	11100	32.69	13100	38.58
Agroy Finance & Investment Ltd.	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 and sold 11,100 and 13,100 respectively. The said trades accounted for 32.69% and 38.58% respectively of the total buy and sell volume in the shares of STIL at DSE during the period under consideration. The aforesaid trades were executed by the Broker on behalf of its clients namely M/s. Rajkar Electricals and Electronics Ltd. and FNS Consultants Pvt. Ltd. (hereinafter referred to as Rajkar and FNS respectively). The details of such trades are mentioned below :

Date	Qty (shares)	Total Volume at DSE (Shares)	% to the total volume	B/S	Client	Closing price (Rs.)	% change
16.08.00	2000	5050	99	B	Rajkar	325	
16.08.00	3000			B	FNS		
17.08.00	2000	4200	48	S	Rajkar	329	1.22
18.08.00	1900	1900	100	S	FNS	336	2.08
21.08.00	1900	1900	100	B	FNS	350	4.00
22.08.00	4200	7000	60	B	Rajkar	368	4.89
23.08.00	4200	7300	58	S	Rajkar	395.55	6.96
28.08.00	5000	5000	100	S	FNS	436	2.03

- 1.6 It was observed that the director of FNS, Shri Mukesh Gupta was the client of Delhi Securities Ltd. It has been alleged that the Broker had executed synchronized trades with other members viz. M/s Agroy Finance & Investments Ltd. and Delhi Securities Ltd.
- 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. However, the Broker had not filed any reply before the Enquiry Officer. The Broker had also failed to appear for hearing before the Enquiry Officer despite the opportunity given to it.
- 2.2 The Enquiry Officer vide report dated May 31, 2005 recommended to impose a minor penalty of censure on the Broker. The Enquiry Officer had inter alia observed that there were concentrated trading in the shares of STIL amongst the members of DSE including Agroy Finance and Investments Ltd., M/s. Delhi Securities Limited and the Broker.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

- 3.1 Pursuant to the Enquiry Officer, 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 February 1, 2006 inter alia stated that it had carried out trades in the shares of STIL during the period from August 16, 2000 and September 28, 2000 in the normal course of stock broking business as per the instructions of its clients. The Broker stated that it had not violated any of the provisions of the FUTP Regulations and the

Broker Regulations. The Broker clarified that it had not made any attempt to create liquidity / volumes in the shares of STIL. The Broker further stated that the ex- parte enquiry report was in violation of the principles of natural justice. The Broker stated that it had not entered into any synchronized trading and that it had not facilitated in creating artificial volume in the shares of STIL. It was further explained that the traded value of orders in the shares of STIL was insignificant and that it did not derive any advantage or gain from the price rise or fall in the shares of STIL. The Broker also stated that it was not aware of the counter party clients and that there was no question of creating any artificial volume in the market. It further added "Our transactions were matched on trading system and as such to impute motives or to allege synchronization of trades is not correct and as such is emphatically denied". The Broker asserted that it had acted honestly and genuinely. In view of the submissions, the Broker requested to drop the proceedings.

- 3.3 While examining the Enquiry report, 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. Vide the said letter, the Broker was also granted an opportunity of personal hearing. Further, the show cause notice was again sent to the Broker by SEBI and the said letter was delivered to the Broker through DSE and DSE, vide letter dated March 28, 2007 forwarded the acknowledgment received from the Broker, to SEBI. However, no reply has been received from the Broker to the said show cause notice by SEBI, so far.
- 3.4 Though the Broker was granted opportunities to file its reply and personal hearing, it has 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 reply of the Broker dated February 1, 2006 and other materials available on record.
- 3.5 The Broker contended that the exparte enquiry report is bad and also in violation of all the principles of natural justice as no opportunity of hearing was provided to it. In this context, I note that the Enquiry Officer granted an opportunity of hearing to the Broker on November 26, 2004 and the same was communicated to the Broker through DSE on November 2, 2004. As the Broker failed to appear the Enquiry Officer granted another opportunity of hearing on April 11, 2005, vide letter dated March 16, 2005. The said letter was acknowledged by one Shri Shankarlal on March 24, 2005 on behalf of the Broker. Despite the said opportunities, the Broker failed to appear before the Enquiry Officer. It is in this context of Broker's failure to cooperate with the enquiry proceedings that the Enquiry Officer proceeded to finalize the proceedings based on the materials available on record. Therefore, the contention of the Broker that the Enquiry Report was in violation of the principles of natural justice is without merit.
- 3.6 I note that the price of the shares of STIL which were allowed to trade at DSE on August 16, 2000 at Rs.300/- increased to Rs.460/- on September 28, 2000. During the said period, the trades of the stock brokers including the Broker had accounted for approximately 94% of the total volume in the shares of STIL at DSE. The trades executed by the Broker in the shares of STIL during the above period accounted for 32.69% (buy) and 38.58% (sell) of the respective total volumes in the shares of STIL. The Broker had executed trades in the shares of STIL on August 16, 2000 to August 18, 2000, August 21, 2000 to August 23, 2000 and on August 28, 2000 (i.e. seven trading days). During the said period the price of the shares of STIL had increased from Rs.300/- to Rs.436/- The trades in the shares of STIL were made at a time when the said shares were trading at a low volume at DSE.
- 3.7 From the table at 1.4, it can be seen that the Brokers trades accounted for 99%, 48%, 100%, 100%, 60%, 58% and 100% respectively on August 16, 2000, August 17, 2000, August 18, 2000, August 21, 2000, August 22, 2000, August 23, 2000 and August 28, 2000. The said trades were executed by the Broker at a higher price (varied from 1.22% to 6.96%) than the previous day's closure.
- 3.8 Thus, it is fairly established that at the time when there was low trading volumes in the shares of STIL, either the majority or the entire transactions in the said shares were executed by the Broker on behalf of its clients. I further observe that one Shri Mukesh Gupta was the director of FNS (the client of the Broker). The said Shri Mukesh Gupta was found to be the client of Delhi Securities Ltd. and was executing trades in the shares of STIL. Thus, the clients were connected to each other.
- 3.9 Thus, the trades of the Broker accounted for 48% 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 16, 2000 to August 28, 2000, to the exclusion of August 24, 2000 and August 25, 2000. The shares (STIL) traded at DSE on the said dates (August 24, 2000 and August 25, 2000) were 100 and nil respectively. 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 for the purpose of creating artificial volume and price interfered with the fair price discovery system.

With low traded volume at DSE, the price of the shares of STIL increased from Rs.300/- to Rs.436/- within short span of time (seven trading days) inter alia due to the trades executed by the Broker.

3.10 In the facts and circumstances, it can be seen that the trades of the Broker inter alia created misleading appearance of trading in the shares of STIL and thereby created artificial volume / price detrimental to the interest of the investors. Thus, the trades executed by the Broker interfered with fair price discovery system at the exchange. The transactions executed by the Broker could not be said to be genuine, as the shares were circulated between the closely connected clients.

3.11 I note that the Broker had executed synchronized trades in the shares of STIL with Delhi Securities Ltd. (member, DSE). In this context, DSE had furnished the trade log details (for August 18, 2000) in the shares of STIL. From the said trade log details, I observe that the Broker had placed a sell order for 1200 shares @ Rs.336/- at 3:48:16 hrs. Immediately after 2 seconds, Delhi Securities Ltd. placed the buy order for 1200 shares @Rs.336/- per share at 3:48:18 hours. Subsequently, Delhi Securities Ltd. placed a buy order for 700 shares @Rs.336/- per share at 3:49:08 hrs. Thereafter, the Broker placed a sell order for 700 shares @ Rs.336/- at 3:49:09 hrs. The details of the such transactions are mentioned below :

Buy qty	Buy time	Buy price	Buying Member	Sell qty	Sell time	Sell price	Selling member
1200	03:48:18	336	D128	1200	3:48:16	336	D184
700	3:49:08	336	D128	700	3:49:09	336	D184

The aforesaid trades entered into between the Broker (Member Code D184) and Delhi Securities Ltd. (member code D128) indicate matching of the timing, price and quantity of the shares so traded. The trades of the said Brokers on August 18, 2000 had accounted for 100% of the total volume at DSE and the traded price (Rs.336 per share) was 2.08% higher than the previous day's closure price. In this context, it is pertinent to note the reply (dated February 1, 2006) of the Broker "Our transactions were matched on trading system and as such to impute motives or to allege synchronization of trades is not correct and as such is emphatically denied". It is true that the brokers act on the advice of their client and that in a normal trade executed through the exchange mechanism, the broker may not be aware of the counter party. However, considering the facts and circumstances of the present case, wherein the trades in an illiquid scrip were executed between common set of brokers and clients regularly at a higher price, I have no doubt to hold that the Broker was aware of the counterparty. It is the broker who executes the trade by punching the buy / sell order. It is noted in the instant case that the Broker had executed the aforesaid synchronized trades at a price higher (2.08%) than the previous day's closure price. In this context, I note that every trade establishes the price of the scrip and by executing buy and sell orders at a pre determined price, it interferes with the fair price discovery process of the exchange.

3.13 In the present case, the clients were connected to each other. The series of trades including the aforesaid synchronized trades executed in the shares of STIL undoubtedly created a misleading appearance in the shares of STIL, artificial volume and price to the detriment of genuine investors. The Broker had a duty not only towards its client but also towards the securities market.

3.14 As observed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI.

"The word 'synchronize' according to the Oxford dictionary means "cause to occur at the same time; be simultaneous". A synchronized trade is one where the buyer and seller enter the quantity and price of the shares they wish to transact at substantially the same time. This could be done through the same broker (termed a cross deal) or through two different brokers. Every buy and sell order has to match before the deal can go through. This matching may take place through the stock exchange mechanism or off market. When it matches through the stock exchange, it may or may not be a synchronized deal depending on the time when the buy and sell orders are placed. As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium..... Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. 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. The nature of the transaction executed the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

3.15 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."

3.16 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. Above all, the trades were executed at a higher price for the same clients. Therefore, the Broker cannot distance himself from the trades, which in the circumstances were found to be executed only for the purpose of creating misleading appearance of trading in the shares of STIL.

3.17 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."

3.18 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.

3.19 In the facts and circumstances, the concentrated level of trading including the synchronized trading in the shares of STIL (an illiquid scrip at the time of the Broker's trades) for the purpose of creating a misleading appearance of trading in the shares of STIL, artificial volume / price within a short period of time cannot be compatible with anything other than an attempt to manipulate the market.

3.20 In the facts and circumstances it is fairly established that the Broker has violated Regulations 4 (a) to (c) of the FUTP Regulations.

3.21 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.

- 3.22 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.
- 3.23 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.
- 3.24 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 that 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 A Nitin Capital Services Ltd., (Registration no. INB 050720634), Member, The Delhi Stock Exchange Association Ltd for a period of two months.
- 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: 24-5-07