

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : V. K. CHOPRA, WHOLE TIME MEMBER

Against M/s Victory Financial Services Ltd, Broker, National Stock Exchange (NSE) in the matter of M/s Information Technologies (India) Ltd.}

DATE OF HEARING: 19.02.2007

APPEARANCES:

FOR NOTICEE:

1. Shri. Shyam Mehta, Advocate
2. Shri. Aditya Bhansali, Advocate
3. Shri. V K Ahuja, Director, M/s Victory Financial Services Ltd
4. Shri. Ajay , Director, M/s Victory Financial Services Ltd

FOR SEBI:

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri. Vir Sahab Singh, Manager, SEBI
3. Shri. Mohamed Rahaz P.M., Legal Officer, SEBI

ORDER

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

1.0 BACKGROUND

- 1.1 M/s Usha Services and Consultants Ltd. was incorporated on September 20, 1976 as a wholly owned subsidiary of Usha India Ltd {formerly Usha Rectifiers Corporations (India) Ltd}. This company was initially engaged in the business of software development, consultancy services and financial services. In December 1993, the company changed its name to Information Technologies India Ltd (hereinafter referred to in short as "ITIL") and was engaged in the business of software developments. ITIL is a part of Usha Group Companies and Shri Anil Rai and Shri Vinay Rai are its promoter directors.
- 1.2 Securities and Exchange Board of India (hereinafter referred to in short as "SEBI") conducted investigation into the affairs relating to buying, selling and dealing in the shares of ITIL on observing a steep rise in the price and volume of the scrip. The investigation inter alia revealed that the broker, M/s Victory Financial Services Ltd (hereinafter referred to as "Noticee") with SEBI Registration No. INB230903037 was the major broker who had substantially traded in the scrip on behalf of promoter/their front companies.

2.0 ENQUIRY PROCEEDINGS.

- 2.1 After considering the Investigation Report, SEBI appointed an Enquiry Officer vide Order dated July 18, 2002 to enquire into the violations allegedly committed by the Noticee under the provisions of Regulation 4(a) to (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to in short as "PFUTP Regulations") and Regulation 7 read with schedule II, clause A(3) and A (4) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as "Stock brokers Regulations").
- 2.2 A show cause Notice dated August 29, 2002 was issued to the Noticee and the same was replied by them vide letter dated October 31, 2002. Noticee denied their association with the clients and the company ITIL and stated that they had not violated any of the provisions of Regulation 4(a) to (e) PFUTP Regulations and clauses A(3) and A (4) of Stock brokers Regulations
- 2.3 The Enquiry Officer, after conducting enquiry in accordance with the provisions 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") submitted a report dated September 30, 2003. The Enquiry Officer in his report recommended a penalty of suspension of registration of the Noticee for a period of four months.

3.0 SHOW CAUSE NOTICE

- 3.1 Pursuant to the receipt of the Enquiry Report, Show Cause Notice dated February 13, 2004 was issued to the Noticee along with copies 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 them.

4.0 REPLY TO THE SHOW CAUSE NOTICE

4.1 Noticee in its reply dated March 18, 2004 to the show cause notice submitted as under:

- 4.1.1 The show cause notice does not disclose the provisions of Act / Rules / Regulations that the Noticee had violated. However, the Noticee stated that the show cause notice issued by the Enquiry Officer specified the violations of the provisions of sub-clause 3 and 4 of clause A in Schedule II of the Code of Conduct read with Regulation 7 of SEBI Stock Brokers Regulations and Regulation 4 (a) to (e) of PFUTP Regulations.
- 4.1.2 NSE imposed a penalty of Rs 15 lakhs on the Noticee for the violations committed in the matter of ITIL and a similar penalty of Rs 25 lakhs was also imposed against M/s Lloyds Credits Ltd. However, no action was taken by SEBI against M/s Lloyds Credits Ltd. considering the above action of NSE. According to Noticee, SEBI and NSE had taken separate action against them for the same violation.
- 4.1.3 Regarding the charge of linkage between Usha Group entities and the Noticee, they submitted that their director Shri. V. K. Ahuja had earlier done his Article-ship from Bansal & Company which was auditing company of the Usha Group. After qualifying the Chartered Accountancy Examination, Shri. Ahuja became a working partner of Bansal & Company. Further, he had resigned from Bansal & Company in 1989 i.e. more than 15 years back and as such he had no direct or indirect connection with Usha Group in that regard. Further, as an auditor of Pukhraj Holding (P) Ltd. there has never been any necessity or need to investigate into the association of Pukhraj Holdings (P) Ltd. with the Usha Group. As per the Client Registration Form and Client Agreement by each of the Client, it is not possible to identify as to what group they belong to, if any. It is further stated that the charge of aiding the promoters for manipulation is a serious charge with serious consequences and the Enquiry Officer can not proceed to recommend penalty merely on the basis of "preponderance of probability".
- 4.1.4 Regarding the statement recorded by the investigating authority about their knowledge and linkage with the Usha Group which was relied by the Enquiry Officer, the Noticee stated that the remote connection of the Director with the Usha Group can not in any way imply that the Noticee is aware about the relationship of the client connected with Usha Group and their intention behind the trades such as manipulating the price and creating artificial volume in the scrip of ITIL.
- 4.1.5 The Noticee submitted that there is no legal bar for having a same contact person who places orders on behalf of 2-3 clients.
- 4.1.6 The Noticee stated that they have no connection with the clients whatsoever and have not traded in their account or through their friends and relatives during the relevant period. The Noticee disputed the data relied upon by the Enquiry Officer to prove the cross deals by stating that the Enquiry Officer himself was not sure about the data relied upon. It is further stated that the trades executed by them were during the period from January 19, 2000 and February 22, 2000 and they had not done any cross deals between March 21, 2000 and March 27, 2000 when the price was moved from Rs. 1819/- to Rs 2325/- at NSE. They have also stated that there was no unusual or extraordinary increase in ITIL scrip by quoting some of the prices of software companies like Infosys, Satyam, Wipro and Zeetele.
- 4.1.7 The Noticee stated that the transactions alleged as cross deals by the Enquiry Officer constitute only 3.26% of the total volume of the ITIL scrip traded during that period on NSE. In all 1,28,200 shares of ITIL have been traded through their terminal as against the total 39,28,900 shares traded on NSE during the period January 03, 2000 to February 22, 2000. Thus the volume of 3.26% traded in a span of eight settlements, is negligible and can not be said that it could have created artificial volume in the market.
- 4.1.8 The Noticee stated that they have not indulged in any manipulative or fraudulent transaction. They had complied with all the provisions of the Act and the Rules, Regulations issued by the Government, SEBI, the Stock Exchanges from time to time as applicable. They stated that they obtained KYC forms from the clients and executed Member Client Agreement with them.
- 4.1.9 The Noticee stated that their transactions on behalf of the client were genuine and there was no element of deceit which according to them is an underlying factor to attract Regulation 4 of PFUTP Regulations. Further, in order to attract the said section they stated that the intention is relevant and as such an element of guilty intention is also involved. They also stated that the investigating authority alleged that the Noticee aided the promoters of Usha Group in manipulating the market whereas the Enquiry Officer charged them under the provisions of Regulation 4 of PFUTP Regulations. According to them aiding and abetting the promoters to manipulate the scrip is different from that of the violations of Regulation 4 of PFUTP Regulations.

- 4.1.10 The Noticee stated that there is nothing on record to show that they had dealt in the shares on behalf of the clients intentionally to facilitate them to indulge in manipulation and as such the charge of manipulation can not be sustained against them.

5.0 PERSONAL HEARING

- 5.1 An opportunity of personal hearing was given to the Noticee before me at SEBI's Head Office at Mumbai on February 19, 2007. The directors of the Noticee, Shri V K Ahuja and Shri. Ajay attended the hearing along with their Advocates Shri. Shyam Mehta and Shri. Aditya Bhansali. They reiterated the submissions they had already made in their reply to the Show Cause Notice and also sought time to file written submissions in the matter. The written submissions were filed vide their letter dated February 28, 2007 wherein they inter alia stated as under:
- 5.1.1 That there are two charges against them and the first charge is that when different clients had the same telephone number and there was a common contact person giving instructions on their behalf, it should have aroused the suspicion and the Noticee should have exercised caution. That the second charge is that the Noticee had executed cross deals for the same clients viz. Pukhraj Holdings Ltd. appearing on both the buy and sell sides and due to these cross deals the price moved from Rs. 1819/- to Rs 2325/- at NSE between March 21 and 27, 2000.
- 5.1.2 That nothing was visible at that point of time to suspect the bonafides of the clients and that in any case in the absence of any material known to them no suspicion could arise. Further, they stated that common phone number and common contact person for three companies does not mean that the transactions by these companies were effected in a concert manner.
- 5.1.3 That they were carrying out the trades on behalf of their clients as per their instructions in the ordinary course of business without being aware of their sinister intent or design.
- 5.1.4 That SEBI has produced the trade log of NSE which admittedly shows a different dealer ID no. against the transactions and the said trade log do not establish that the impugned transactions were executed by the Noticee. That this error goes to the very root of the matter and renders the trade log wholly unreliable and the burden was on SEBI to produce better evidence to establish that the impugned trades belonged to the Noticee.
- 5.1.5 That the penalty of suspension for a period of four months is extremely harsh and not commensurate with the alleged violations. In a similar case, against a broker viz. Bharat and Co. and Bharat Bhusan Equity Trades Ltd., SEBI has only imposed a penalty of 'censure' on them.

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 I have carefully examined the findings of investigation, enquiry report, show cause notice and reply of the Noticee.
- 6.2 The company, ITIL was incorporated on September 20, 1976 as Usha Services and Consultants Ltd., wholly owned subsidiary of Usha India Ltd. {formerly Usha Rectifiers Corporations (India) Ltd}. This company was initially engaged in the business of software development, consultancy services and financial services. ITIL came out with its initial public issue on January 14, 1993 for 25,00,000 shares of Rs 10/- each at a premium of Rs 30/- each. The issue was undersubscribed to the extent of 20,57,300 shares as a result whereof it devolved on the underwriters who had taken up 3,64,600 shares and the balance was subscribed by the promoters. As a result of this, promoters, directors, relatives and group companies were holding about 92% of the post issue capital of the company.
- 6.3 After the issue, the total paid up value of the share capital of the company stood at Rs 6.10 crores (61,00,000 shares) and share premium amount at Rs 7.5 crores. In December 1993, the company changed its name to Information Technologies India Ltd (ITIL) and was engaged in the business of software developments.
- 6.4 The price of ITIL scrip was trading at Rs 469.35 on January 03, 2000 and it moved up to the highest level of Rs 2999 on March 09, 2000 recording thereby an increase of Rs 2529.65 or 539% in a period of only two months. During this period the daily trading volume in the scrip had risen from 80,200 shares on January 03, 2000 to a high of 1,73,400 on February 22, 2000 i.e. an increase of about 2 times. Prior to January 2000, however, the daily volumes in NSE were only about 8,000 shares which spurted to a daily volume of about 80,000 shares on January 03, 2000 and further to 1,73,000 shares during the investigation period. Similarly, the price of the scrip in BSE on January 03, 2000 was Rs 462.40 which increased to the highest level of Rs 2940/- on March 09, 2000. Thereafter the price of the scrip fell to Rs 1800/- on March 21, 2000 before going up again to reach a high of Rs 2,600/- on April 03, 2000. The price of the scrip once again started falling to reach Rs 1661/- on April 20, 2000.
- 6.5 ITIL was a part of the Usha group of companies promoted by Shri Vinay Rai and family. The following companies are also the promoter / group / associate companies of ITIL:
1. Pukhraj Holdings Pvt. Ltd.

2. RKKR Agencies Pvt. Ltd.
3. Utility Tradelinks Pvt. Ltd.
4. Sumac Iron & Steels Pvt. Ltd.
5. New Age Commercial Pvt. Ltd.
6. Ambika Ferro Alloys Pvt. Ltd.
7. Vedant Steel Casings Pvt. Ltd.
8. Deep Traders and Advances Pvt. Ltd.
9. Eureka Machineries Pvt. Ltd.
10. Arunoday Vinimay Pvt. Ltd.
11. Anjali Flat Rolled Sheets Pvt. Ltd.
12. Amit Share Trading Private Ltd.
13. Parvati Casting Pvt. Ltd.
14. KRP Consultants Pvt. Ltd.
15. Tauruas Portfolio Ltd.
16. Decent Dealers and Advances (P) Ltd.
17. Varren Financial Services (P) Ltd.
18. Classic Dealers and Advances (P) Ltd.
19. Aquarius Steels Pvt. Ltd.

I find that with the exception of M/s KRP Consultants Pvt. Ltd. and M/s Aquarius Steels Pvt. Ltd., the Noticee had transacted for all the above companies. All the above companies were interconnected as all are group companies as also some of the companies were operating from the same office as under:

- Three of the above companies namely Pukhraj Holdings Pvt. Ltd., Sumac Iron & Steel, Arunoday Vinimay Pvt. Ltd. were operating from Usha Bhavan, A-41, Mohan Co-op. Estate, Mathura Road, New Delhi – 110 044.
- Both M/s Bansal & Co (auditors of various companies of the Usha Group) and Pukhraj Holdings were operating from the same premises of M/s Bansal & Co at E-5, Himalaya Houes, 23 Kasturba Gandhi Marg, New Delhi – 110 001.

6.6 As is quite clear from above details, all the clients of the Noticee were linked with ITIL. The next issue to be decided is whether the Noticee was aware that its clients were all associated with ITIL. This aspect was examined by the Enquiry Officer who came to a clear conclusion that the Noticee was aware that the clients for whom they have traded in ITIL scrip belonged to the Usha Group. In support of his contention, he relied upon the statement dated April 15, 2002 of Shri. V. K. Ahuja, Director of Noticee who had stated that M/s Pukhraj Holding Pvt. Ltd. is one of the client of his Audit Firm and it had also traded in the shares of ITIL through them. He had further stated that he had carried out the audit of the company upto the financial year 1999-2000 and he signed the balance sheet of M/s Pukhraj Holdings for the year ending March 2000, when there were large investments of the company in ITIL. In response to a query on his association with Shri. Vinay Rai of Usha Group, he stated that he was earlier a partner in Bansal & Co. who were auditors of various companies of the Usha Group such as Usha Rectifier Corporation Ltd. and Usha Microprocessors Ltd.

6.7 The Enquiry Officer had also pointed out that Shri V.K Ahuja signed the balance sheet of M/s Pukhraj Holdings as an auditor for the year ending March 2000 and as per the annexing schedule relating to investments, there were large investments in ITIL by Pukhraj Holdings. In view of this, it is reasonable to conclude that the Noticee was aware that Pukhraj Holdings Pvt. Ltd. is a significant shareholder in ITIL, a company promoted by the Usha Group. Further, the contact persons for Pukhraj Holdings were Shri. Satish Garg and Shri. P K Rao. Shri Ahuja in his statement also stated that he knew Shri. Satish Garg when he was working with Bansal & Co., Chartered Accountants as a partner in the said firm. In the client registration form signed by Shri. Satish Garg, the office address was shown

as Usha House. Further, Shri. P. K. Rao was the contact person of the three entities of Usha Group viz. New Age Commercial Pvt. Ltd., Arunoday Vinimay Pvt. Ltd. and Vedant Steel Casting P Ltd. Both Shri. P. K. Rao and Shri. Satish Garg had common telephone nos. as 6959000 and 6959500.

6.8 In this regard, it may be relevant to refer to the statement dated December 18, 2001 of the Noticee in response to Question No. 11 of Enquiry Officer as to whether he has verified the identities of these clients and whether he is aware of any interconnections or relation amongst these clients. The member replied as under:

"Yes, we have verified their identities. We were aware of some interconnection which are evident from Annexure II like R P Sharma is a Director / Contact person in Sumac Iron and Steel Ltd. and Anjali Flat and Roll Pvt. Ltd., and Shri P. K. Rao is a Director / contact person in Vedant Steel Casting Pvt. Ltd., New Age Commercial Pvt. Ltd., Arunoday Vinimay Pvt. Ltd. Radha Bhallabh is a contact person in Deep Traders and Advances P Ltd., Classic Dealers and Advances Pvt. Ltd., Eureka Machinery Pvt. Ltd."

6.9 To another question (Qtn. No. 13) the Noticee was asked about transactions in which he was both the buyer and the seller for the same client when the scrip rose from Rs. 2182 on February 21, 2000 to Rs 2925 on March 9, 2000, the member replied as under:

"we are aware that such transactions have taken place but at the relevant point of time, the dealers operating the terminals and taking orders from the client did not realize the implication of

these transactions. The matter was taken up by the disciplinary action committee of the NSE on October 19, 2000 who have imposed penalty of Rs 15,00,000/-."

6.10 In view of these facts, the Enquiry Officer confirmed that the Noticee was aware of the interconnection of the entities. He also observed that when there was common telephone number and same contact persons who were giving instructions on behalf of different clients to deal in the ITIL scrip. In fact, this should have aroused the suspicion of the Noticee who could have exercised caution while trading heavily in the ITIL scrip. The Noticee did not agree to this view and stated that it is a flawed reasoning. He also stated that it is a common practice to share telephone, fax and other infrastructure facilities for various operational reasons and because of this it can not be said that they are part of Usha group.

6.11 In the instant case, the personal contacts of the Director of the Noticee with the persons related with ITIL and related entities should be read together with their pattern of trading which has been explained in the succeeding paragraphs. Considering the fact that the fundamentals of the scrip were not strong and the scrip was considerably illiquid, any prudent stock broker like Noticee could have doubted the intention of the clients and stopped trading for them. Instead, the Noticee continued trading in such big quantities which resulted in building up of artificial volumes and price in the scrip. Further, the Noticee admitted that there has never been any necessity or need to investigate into the association of Pukhraj Holdings (P) Ltd. with the Usha Group and it is not possible to identify as to what group they belong to, if any as per the Client Registration Form and Client Agreement by each of the Client. In this connection, it would be relevant to refer the following extracts of the order dated September 18, 2003 passed by the Hon'ble Securities Appellate Tribunal in the matter of Madhukar Sheth Vs SEBI (Appeal No.46 of 2002):

"Before executing series of transactions for his client, any prudent broker would have gone a bit far to ascertain the goings around and also would have normally assessed the financial capability of the person for whom he was trading....."

.....The Appellant's submission that he had taken client registration form, entered into agreement etc. by itself was not sufficient. Exercise of due diligence in ongoing transactions is a continuous process and it is not a one time measure to be adhered to while taking up the first transaction. The appellant's submission that it was B's dishonesty that created the problem did not absolve him of his failure to discharge his duties as a prudent broker....."

.....On the basis of the material available on record, it was difficult to conclude that the appellant had exercised due skill and care in dealing with 'B'. It was not that the appellant had carried on only few trade transactions for 'B' for a short period. He had transacted in huge volumes for 'B' and the association dated back to August 2000. If the appellant could not see any design or pattern in the transactions which 'B' was executing through the appellant during the period, then the appellant certainly deserved to be blamed for being indifferent and unconcerned and for that reason he was at fault for the failure to exercise due skill and diligence....."

.....It is true that a broker cannot act of his own against the instructions of the client. But no one can compel him to be a party to manipulate the market. No doubt a broker is supposed to protect the interest of his client, but he is also expected to protect the interest of the securities market in which he operates. It is his duty to ensure not to be a party to any market manipulation and that the market in which he operates is run on a health and non-manipulative basis."

6.12 The following are the details of trades executed by the Notice at NSE:

Item	Details	(% to total in NSE)
Settlement No.	1999039 to 2000023	-
Gross Purchases (Qty)	1,513,400	24.12%
Gross Sales (Qty)	1,443,700	23.01%
Net Purchases (Qty)	69,700	8.79%

- 6.13 From the above table it is clear that the purchase and sale transactions in ITIL scrip were highly concentrated with the Noticee. I find that several cross deals were executed by the Noticee in ITIL scrip at NSE. The settlement wise details of cross deals in NSE are given hereunder:

Settlement No.	Qty of Cross deals in ITIL
2000004	200
2000006	54,600
2000007	39,500
2000008	33,900
2000009	150,100
2000010	166,300
2000011	119,000
2000012	43,700
2000013	138,400
2000014	46,600
2000015	70,000
2000016	79,100
2000017	291,700

- 6.14 In reply to these details, the Noticee stated that the Enquiry Officer has relied upon wrong data of cross deals as the Dealer ID No 3084 does not belong to them and disputed 455 transactions in the nature of cross deals. They admitted Dealer ID No 9991 and confirmed that only 41 transactions were executed by them on behalf of their clients. The Enquiry Officer had examined the disputed 455 transactions. He found that an error was crept in so far as Dealer ID No 3084 is concerned. He observed that apart from the dealer ID which the Noticee is disputing, there were number of other details of the transactions including date, time, quantity, price. More importantly the name of the Noticee M/s Victory Financial Services Ltd. is appearing both as buying and selling member in 455 transactions. The Enquiry Officer also observed that the Noticee could not adduce any evidence to rebut the other details of the transactions to suggest that these trades were not carried out by them. The statement dated December 18, 2001 of Shri. V. K. Ahuja does not dispute these transactions and infact in reply to Question No. 13, he had admitted that he was aware of such transactions but blamed it on the dealers.
- 6.15 The Enquiry Officer has also observed that between Settlement No. 1999030 and 2000023, the gross purchases of the Noticee constituted 24.12% of the trades in the Exchange and gross sales constituted 23.01%. Further, the Noticee had also paid a penalty of Rs 15 lakhs to the exchange for the irregular transactions. In view of the above, he concluded that it is not open to the Noticee to claim that 455 out of 496 transactions do not belong to them on the only ground that the dealer ID number is different without denying other trade details including that of their name appearing in the trade logs of the exchange as buying and selling broker. He also observed that there are number of transactions with common client code A91 (Arunoday Vinimay and P47, A7, P18 as per the trade logs of the Exchange).
- 6.16 In view of details given hereinabove, the Enquiry Officer held that the Noticee had executed cross deals for the same client appearing on both buy and sell side and due to these cross deals the price had moved from Rs 1819 to Rs 2325 at NSE between March 21, 2000 and March 27, 2000 where Pukhraj Holdings Ltd. was both the buyer and seller. In addition there were number of transactions in which the same client was the buying and selling client in the cross deals as per the trade logs of the Exchange.
- 6.17 The Noticee disputed 455 transactions during the course of hearing before me and in their post hearing written submission, they stated that the burden was on SEBI to produce better evidence to establish that the impugned trades belonged to them. The Enquiry Officer concluded that the entire trades were executed by the Noticee and also admitted that the dealer ID mentioned in the Annexure to the show cause notice was an error. As it is not appropriate to rely upon the data containing an error, I have considered the admitted 41 transactions in the nature of cross deals.
- 6.18 Even going with these admitted 41 transactions in the nature of cross deal, I find that the Noticee had executed both buy and sell orders for a quantity of 12,8200 ITIL shares from January 19, 2000 to February 22, 2000 as a consequence whereof the price increased from 680 on January 19, 2000 to Rs 2040/- on February 22, 2000. In this context, I observe that the Hon'ble SAT while upholding the findings of Adjudicating Officer in deciding the similar issue in Appeal No 100 of 2006 (Ask Holdings Private Limited Vs SEBI), observed as follows.

The buyer and the seller were the appellants themselves and these trades were executed primarily with a view to artificially increase the trading volumes in the scrip of the Company. Artificial increase in the volumes of a scrip has the adverse effect on the innocent investors of the market who get induced to buy the shares because they seldom have knowledge about the scrip and follow the herd mentality while trading. The adjudicating officer was, therefore, right in holding that the appellants had violated the provisions of Regulation 4 of the Securities & Exchange Board of India (Prevention of Fraudulent & Unfair Trade Practices relating to Securities Market) Regulations, 1995. The allegations are rather serious and the appellants by indulging in artificial trades had polluted the stock market.

6.19 In the instant matter the buyer and the seller broker was the Noticee himself as well as the buyer client and seller client. Considering the relationship of Noticee and their clients with ITIL, it can be concluded that these trades were executed primarily with a view to create artificial market in the ITIL scrip and which clearly proves their intention and linkage. The other brokers like M/s Bharat Bhusan & Co and M/s Bharat Bhusan Equity Traders Ltd were not involved in this kind of transaction and what they have violated is code of conduct prescribed for the brokers under Stock Brokers Regulation and as such only censure was given to them. The Noticee had also contended that no action was taken by SEBI against the broker, M/s Lloyds Credit Ltd. who were also involved in the matter. In this regard, I find that the said broker had discontinued its trading with effect from February 22, 2000 and also had surrendered the membership card with NSE on March 21, 2002. Since, M/s Lloyds Credit Ltd is no more a trading broker of the exchange, no action is required to be taken against them.

6.20 The above stated artificial increase in price and volumes of ITIL shares would induce the innocent investors to buy / sell their stocks because of such false appearance of trading in shares. Such an act is detrimental to the interest of investors and the orderly development of the securities market. This aspect has already been discussed by the Hon'ble SAT in the matter of Ketan Parekh Vs SEBI. The relevant observation made by SAT in this regard is reproduced as below:

"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."

6.21 Further, I am of the view that several synchronization of trades in the nature of cross deals cannot be treated as mere coincidence. In such cases, prices and quantities had been negotiated outside the system and orders had been executed simultaneously. I find that all the aforementioned transactions give an impression that these were all synchronized and traded to create artificial market, otherwise there was no possibility of such perfect matching of quantity price, etc. The said issue was already discussed by the Hon'ble Securities Appellate Tribunal (SAT) in Appeal Nos 54 to 57 of 2002 in the case of Nirmal Bang Securities (P) Ltd. vs. SEBI. While examining the issue of synchronized trades, the Hon'ble SAT observed as under:

"BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit." (emphasis not supplied)

6.22 Keeping in mind the dicta of the SAT as reproduced above; I see no reason to take a different view. Further, I observe that the standard of proof required in a proceeding of this nature is at variance with the standard of proof required in criminal cases. It is sufficient if the preponderance of probabilities suggests towards the indulgence of the delinquent in the misconduct. The strict rules of Evidence Act and proof beyond reasonable doubt are not applicable to a proceeding of this nature. The Supreme Court's decision in Gulabchand vs Kudilal AIR, 1966, SC 1734 and the decision of the Special Court for trial of offences relating to transactions in securities in the matter of National Housing Bank versus ANZ Grindlays Bank, 1998 (2) LJ 153 is relied upon in this regard.

6.23 In view of this, I find that the Noticee has put these trades with a view to create misleading appearance of trading which tampers with price discovery mechanism of stock exchange and is against the concept of transparency. The synchronized cross deals entered into by the Noticee abetted in creating artificial price and volumes in ITIL scrip and may also induce the innocent investors of the market. Thus, the Noticee through these dealings in ITIL the scrip has violated the provisions of Regulation 4 (a) to (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995, which provides that,

4. 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;
 - (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;
 - (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;

6.24 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".

6.25 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 registration of Noticee for a period four months. Having considered all aspects of the matter, I am of the view that a penalty of suspension of registration of the Noticee for a period of two month may act as a deterrent for such actions.

7.0 ORDER

7.1 Taking into account all facts and circumstances of the case and in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of suspension of certificate of registration of M/s Victory Financial Services Ltd, Broker, National Stock Exchange with SEBI Registration No. INB230903037 for a period of two months.

7.2 This order shall come into force immediately on the expiry of 21 days from the date of this order.

Place: Mumbai
Date: June 07, 2007

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