

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: V. K. CHOPRA, WHOLE TIME MEMBER****Against M/s Abhilashaa Securities Pvt. Ltd., Sub-Broker of M/s Kantilal Mangaldas Pvt. Ltd., Broker, Bombay Stock Exchange (BSE) in the matter of MOH Ltd.**

DATE OF HEARING: 24.4.2007

APPEARANCES:

FOR THE NOTICEE:

1. Shri Vinod S Parekh, Advocate

FOR SEBI:

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri Narendra Rawat, Asst. General 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 MOH Ltd, an Ahmedabad based company was incorporated in February 1993 in the name of MOH Granites Ltd and it was engaged in business of granites processing, mining and exporting. The name of the company was changed to MOH Ltd. in the year 2000 when they ventured into the information technology area. The company had earlier come out with public issue of 67,00,000 shares at par in August 1996 to part finance granite project located at Mahesana in Gujarat. However, after the issue no information about the implementation of the project was available.
- 1.2 MOH shares were listed at Bombay Stock Exchange Ltd. (BSE) and Ahmedabad Stock Exchange (ASE). The price of MOH scrip started increasing from a level of Rs.240.50 on August 01, 2000 to a level of Rs.799/- on September 19, 2000 with daily trading volumes ranging between 100 to 10,000 shares. Prior to this, the price of the scrip had fallen to Rs 223/- from Rs 270 between June 01, 2000 to July 26, 2000 when daily trading volume were between 12,500 to 1,23,000 shares.
- 1.3 After an internal investigation in the matter, BSE concluded that the price and volume of the scrip were manipulated by certain connected entities by entering into artificial transactions in the nature of circular trading. It was observed that there was no reason for the price of the scrip to go up to the above level considering the financial performance of the company. BSE imposed a special margin of 25% effective from August 10, 2000 and 50% with effect from September 04, 2000. The daily circuit filter was reduced from normal 8% to 4% from August 10, 2000 in view of abnormal increase in price of the scrip between August 01, 2000 to September 19, 2000.
- 1.4 In view of the above, Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation in the matter. Investigations inter alia revealed that M/s Abhilashaa Securities Pvt Ltd, sub-broker (hereinafter referred to as 'Noticee'), executed trades through the main broker, Kantilal Mangaldas Pvt. Ltd for its ultimate client Tanaya Securities P Ltd (who constituted 99% of the volume of the broker). The Noticee subsequently changed its broker and is now registered with Angel Broking Ltd. under Registration No. INS011209934.

2.0 ENQUIRY PROCEEDING

- 2.1 After considering the Investigation Report, SEBI appointed an Enquiry Officer vide Order dated July 24, 2003 under Securities and Exchange Board of India (Procedure for holding Enquiry by Enquiry Officer and Imposing penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") to enquire into the affairs of the Noticee in its dealing in the scrip of MOH and possible violation of the provisions of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Stock Brokers Regulations").
- 2.2 The Enquiry Officer issued a notice of enquiry dated October 07, 2003 to the Noticee, who in turn vide its letter dated November 07, 2003 filed its reply. The Enquiry Officer, after conducting an enquiry in accordance with the provisions of Enquiry Regulations submitted a report dated December 21, 2004 wherein he observed that the Broker had violated the provisions of Code of Conduct as specified in Schedule II of Regulation 15 of SEBI Stock Brokers Regulations and recommended suspension of certificate of registration of the Noticee for a period of three month.

3.0 SHOW CAUSE NOTICE

- 3.1 Pursuant to the receipt of the said enquiry report, a show cause notice dated May 31, 2005 was issued to the Noticee, along with a copy of the Enquiry Report, to show cause as to why the action, as recommended by the Enquiry Officer or such other action as may be deemed appropriate should not be imposed on the Noticee.

4.0 REPLY OF THE NOTICEE TO THE SHOW CAUSE NOTICE

- 4.1 The Noticee submitted its reply to the said show cause notice, vide letter dated July 5, 2005 wherein they made following submissions:
- 4.1.1 The Noticee executed trades for their clients on very few occasions and that their trades could not have any bearing on the price whatsoever. Consequently they cannot be imputed with having tampered with the prevailing price in the shares of MOH.
 - 4.1.2 None of the impugned transactions were in their personal account or proprietary account and all these trades were executed on behalf of their clients. They are not responsible for any violation as it was their clients who were placing order for purchase or sale.
 - 4.1.3 They have taken due care and diligence and have discharged all their obligations towards the exchanges, arising from these trades.
 - 4.1.4 Regarding trade volume of Tanaya securities being 25% of the total trade volume, Noticee has submitted that there was no restriction prescribed by SEBI or the exchanges with regard to the total percent of trades a broker can execute for each of its clients in particular scrip, except for the exposure limits for the broker.
 - 4.1.5 During the course of transactions, they had no cause to believe that there was any irregularity in Mr Hiten Mehta's transactions.
 - 4.1.6 Regarding placing of the order at 8% above the previous closing, they have submitted that it is their duty to execute the trades for them at the rate instructed by them. Secondly the price of the scrip was going up at that time and as such they had no reason to doubt the authenticity of their clients trades since they were executing trades in accordance with market trend.

5.0 HEARING

- 5.1 The Noticee had asked for a personal hearing in their above reply to show cause notice. Accordingly, an opportunity of personal hearing was granted to the Noticee and they were advised to attend the personal hearing before me at SEBI's Head Office at Mumbai on April 24, 2007. Shri Vinod Parekh, Advocate attended the hearing on behalf of the Noticee. Pursuant to the hearing, the Noticee submitted its written submissions vide their letter dated May 4, 2007 on the following lines:
- 5.1.1 That there was no violation of the provisions of the SEBI Act, 1992 and the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992.
 - 5.1.2 That they carried out the instructions of the clients to execute trades in the scrip of MOH. They are not investment advisors so as to advise their client to trade or not to trade in any particular scrip. Their role is restricted to execute trades on the instructions of the clients and to ensure that the trades are carried out in the permissible and legal manner and that the payment/delivery requirements of the stock exchanges are met with within prescribed time period. Further they did not have any reason to doubt the integrity of their client or their motive in dealing in the scrip of MOH Ltd at that time.
 - 5.1.3 That thirteen transactions were carried out during the span of six weeks out of which six transactions were of 100 shares. Such few and far between transactions cannot possibly have an impact on the continuous rise of price in the scrip as to affect the price to rise or fall, as the case may be, a consistent and pre-determined trading activity is required which is not so in the present matter. Any price rise in the scrip of MOH Ltd cannot be attributed alone to the trading done by them on behalf of and on the instruction of their clients.
 - 5.1.4 That the volume of trading done by a client in any particular scrip cannot be the basis of imputing that the broker and /or client indulged in malpractices or manipulated the price of the scrip. To impute lack of responsibility and due care and diligence on their part is absolutely incorrect and erroneous.
 - 5.1.5 That settlement obligations of the stock exchanges were met with and there was no default by them in meeting pay-in or pay-out settlement obligations. They have taken due care and diligence and have discharged all their obligations towards the exchanges arising from their trades.
 - 5.1.6 That the payment of Rs 1,20,900 made to AM investments on behalf of their clients was done on the instructions of the clients without having knowledge of the dealings between AM Investments and their clients. The payment was made to them by cheque and from the money due by them to the clients arising out of their dealings in shares through them. There was nothing wrong or illegal in this transaction or mode of payment as the money belonged to their client and was paid to AM investments on the instructions of their clients.
 - 5.1.7 As regards placing of the order at 8% above the previous closing, they have submitted that price of the scrip was constantly rising and therefore to ensure that the trade gets executed the orders were placed at a higher price to attract the sellers. This is the common practice of the stock trading to attract the traders at the best possible price prevailing in the market in order to execute trades. Thus to attribute ill intention or suspect wrong motives in perfectly transparent and legal trading activity is to make a travesty of the stock markets and the regulations governing the trading activity.

- 5.1.8 That there was no cause to doubt the trading motive or intention of the clients for placing orders at a higher price as the price of the scrip was continuously going up and if the client was desirous of buying the shares of the MOH, it was need of the hour to place higher bids in order to attract sellers and buyers. The strategy of how and when to trade is entirely of the clients and they as a sub broker have no role to play in it save to put the orders.
- 5.1.9 Most of the transactions executed on behalf of their clients were not more than 100 shares in a particular transaction. Further Noticee was given to understand from their clients that there was a revival in the company and that could have been the reason for the movement in the price/volume of the scrip. They had no reason to doubt such transactions and therefore had observed due care and were satisfied by the explanation of the client.
- 5.1.10 Further there has been no complaint lodged by any client, investor or other broker against them and there is no evidence provided to show that they have acted in concert with any client or other to manipulate prices or create a false market or spread rumors.

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 After examining the enquiry report, show cause notice and submissions of the Noticee, the facts of the case are that the price of MOH scrip started increasing from a level of Rs.240.50 on August 01, 2000 to a level of Rs.799 on September 19, 2000. It was noticed that the following brokers had contributed 89% of the volumes in the scrip during this period.

Name of the broker	Qty bought	% to the total buy volume at the exchange	Qty sold	% to the total sell volume at the exchange
Kantilal Mangaldas Sec Pvt Ltd.	18,939	25.43%	18,939	25.43%
SVS Securities Ltd.	16,248	21.82%	18,807	25.25%
Prabhudas Lilladher	15,134	20.32%	12,970	17.42%
BD Shah Sec Pvt Ltd.	8,451	11.35%	5,002	6.72%
Active Finstock	3,800	5.10%	0	0%
Acme Shares Pvt Ltd.	3,275	4.40%	10,650	14.30%
	65,847	88.42%	66,368	89.12%

- 6.2 The aforesaid brokers had dealt for their ultimate clients through their sub brokers, whose details are also given.

Name of the broker	Name of the sub broker	Ultimate Client
Kantilal Mangaldas	Abhilashaa Securities	Tanaya Securities
SVS Securities	Kunvarji Finstock	Kajol Impex
Prabhudas Lilladher	Jyotish Bhogilal Stk Brk	Shri Parshwa Finance
BD Shah Sec. Pvt Ltd.	Royal Investments	A.M. Investments (Ms. Alpa Shah/Bijal Mehta)
Active Finstock	Kunvarji Finstock	Kajol Impex
Acme Shares Pvt Ltd.	M.M.Consultancy	Mahavir Investments

- 6.3 I find that the Noticee through Kantilal Mangaldas purchased and sold 18,939 shares as per the details given hereunder:

Client	Buy qty	% to the total Buy position of the broker	Sell qty	% to the total sale position of the broker
Noticee	18,839	99.47%	18,839	99.47%

- 6.4 I observe that the Noticee bought and sold identical quantity of MOH shares. It was also observed that MOH shares have moved from the demat account of Shri Jitendra J. Shah directly to the pool account of the main broker, against the sale position of the clients of the broker and not through the account of the respective clients. Thus, it is very clear that the clients who transacted in MOH scrip during the investigation period including the client of the Noticee in connivance with Jitendra J. Shah, had artificially manipulated the price of the scrip, which ultimately caused the price of MOH to move upto unrealistic and alarming levels.

- 6.5 I find that Noticee was trading in the scrip on behalf of Tanaya Securities, while it was receiving orders from one Shri Hiten Mehta. The contracts / confirmation memo and bills were also handed over to Shri Hiten Mehta without actually knowing the relationship of Tanaya with Shri Hiten Mehta. This was corroborated by Shri Yezdi Master, Director of the Noticee in his statement dated October 22, 2002 wherein he submitted that one of their erstwhile Director-Operations, Shri Prakash Pandya had introduced Shri Hiten Mehta who in turn had introduced Tanaya Securities. The orders were executed by Shri Prakash Pandya who used to sit and operate the BOLT terminal. Shri Hiten Mehta used to place the orders on behalf of Tanaya Securities and used to collect the contract notes, deliveries etc. on behalf of Tanaya Securities. No acknowledgement was taken by Noticee from Shri Hiten Mehta for receipt of contract notes. Noticee however submitted that they had taken acknowledgement of Shri Hiten Mehta in their 'Shares Delivery Book/Register' for delivery of shares on behalf of Tanaya Securities.

- 6.6 From the party ledger of Tanaya Securities maintained with Noticee, it was found that on October 04, .2000 there was a Journal Voucher of Rs.1,20,900/-, details whereof on the voucher states "being amount paid to AM Investment on behalf of Tanaya Securities". In response to this, Noticee submitted that they had made this payment to AM Investments on the

instructions of their client Tanaya Securities. However, Noticee could not produce any written instructions from their client about the payment. I find that the client of the Noticee had deliverable position of 164 shares in Settlement. No. 21 of 2000 and these shares were actually delivered from the account of one Shri Anil Mistry which was also used by AM Investment to whom Noticee had made payment of Rs 1,20,900/-.

- 6.7 Shri Gaurang Patel, Director of Tanaya Securities in his statement dated April 15, 2002 submitted that the orders on behalf of them were placed by their other Director Shri Parag Patel and the Noticee did not send them any contract notes/bills. He further stated that they had received a payment of Rs.2.5 lakhs and an amount of Rs.1,10,000/- was payable by Noticee to Tanaya Securities. Regarding payment to A M. Investments, Shri Patel submitted that they were not aware of any A M. Investments nor they had authorized Noticee to make payment to AM Investments on their behalf and added that the said amount was due to them only.
- 6.8 Noticee was confronted with the statement of Shri Gaurang Patel and was asked to clarify the above referred submissions made by Tanaya Securities. In their reply, Noticee reiterated that on behalf of Tanaya Securities, Shri Hiten Mehta used to place the order, receive contract notes/deliveries/bills. However, the Noticee could not clarify the relation between Shri Hiten Mehta and Tanaya Securities.
- 6.9 Shri Hiten Mehta, in his statement to SEBI on October 23, 2002 stated that he had only introduced Tanaya Securities to Noticee and that too on the request of Shri Prakash Pandya. He also added that he had no relationship with Tanaya Securities and also denied having received any contract notes/deliveries on behalf of Tanaya Securities. Shri Hiten Mehta further submitted that while signing the client-introduction form of Tanaya Securities as 'introducer' he claimed to have mentioned there 'on the request of PP'. However, when he was shown a copy of the client introduction form of Tanaya Securities submitted by Noticee where the introducer column was blank and not filled in, he submitted that the form shown to him was not the one signed by him.
- 6.10 Shri Sushil Parikh of Kantilal Mangaldas (the main broker) submitted that they had given a terminal to Noticee and all the transactions in the scrip of MOH were done at that terminal. However, when it was pointed that Noticee had raised the price of scrip by Rs.76.90 by executing four trades for 100 shares each and whether they had questioned Noticee on these trades, he submitted that since the position of Noticee was monitored by his brother Shri Gaurang Parikh he will seek clarifications from him and make submissions by 22.10.02. However, no further clarification was provided by him on this issue.
- 6.11 It was observed from the trade details and the statements that Noticee allowed their client to trade in highly illiquid scrip and that too at a time when the prices were continuously going up. It is a fact that price of the scrip which was Rs. 240.50 on August 01, 2000 shot up to Rs. 799/- on September 19, 2000 in a very short time. During the relevant period Noticee purchased 18,839 shares and sold an identical quantity mainly on behalf of their client, Tanaya Securities. Their purchases and sales on behalf of Tanaya Securities contributed approximately 25% of the total traded volumes on the exchange during the period under consideration. The Noticee stated that these trades were executed by them with the instructions of their client and there was no restriction prescribed by SEBI or the exchange with regard to the total percentage of trades a broker can execute for each client in particular scrip. Noticee added further that the price of the scrip was going up at that time and as such they had no reason to doubt the bonafide of their client's trades as trades were executed in accordance with market trend.
- 6.12 The case against the Noticee is their failure to observe Code of Conduct of stock Brokers. Since the Noticee had executed trades for its client on several days, they should have been aware of their trades. Further, at the relevant time, BSE was taking many steps like levying special margins and consistently reversing circuit filter levels which ought to have sent a strong signal to the market that there was something suspicious in the trading of MOH scrip. Tanaya Securities, client of the Noticee was trading only in this particular scrip and the pattern of trading was clearly not fair and bonafide. In fact, details given above are enough to arouse concern for a prudent and responsible sub-broker like Noticee. The stock market system depends a lot on prudence and alertness of the intermediaries. The brokers/sub-brokers are the first line of monitoring and surveillance in the market. The failure at this level weakens the fundamentals of the system and harms development of the market as safe in line with international standards. In the instant case the Noticee did not exercise due skill and diligence expected of them and failed to take any action even though there were strong indications clearly pointing out that the trading in the scrip by the client was not fair and bonafide. Instead of taking action against the dubious dealings of its client, the Noticee in fact tried to benefit out of the artificial market.
- 6.13 It is also seen from the analysis of the trade log and Order log during the period, August 01, 2000 to August 21, 2000 that on most of the days, the clients of the Noticee had purchased and sold shares at a rate of 8% higher than the previous day's closing trades and that too among themselves in such a way that the buy orders of one client were getting matched with the sell order of another client in the same group giving thereby an indication of circular trading. This was possible because the scrip was illiquid and once the trade was executed at this rate, the clients then traded among themselves to ensure that the price of the level is maintained at this rate. In this way, they managed to take the price to an abnormal level of Rs.799 by trading continuously for several days. There was no basis or fundamentals for such a hike in price as the financial performance of MOH for the financial year 2001-2002 had fallen drastically when compared to previous year. By executing such artificial trades and giving an appearance of genuine trading in this scrip, the innocent investors were induced to start trading in this scrip. It has been observed from the price and volume data after the investigation period that the price of MOH scrip came down to Rs 36.45 on March 2001 (face value Re 1/-), Rs 22.65 in April 2001, Rs. 10.40 in May 2001, Re 1 in August 2001 and went down further to Re 0.20 in December 2001 clearly revealing how genuine investors would have suffered losses. It is evident that number of clients including the client of the Noticee, in connivance with Shri Jitendra J. Shah, had artificially

manipulated the price of the scrip to unrealistic levels. The Noticee aided and abetted his client to execute manipulative trades during the relevant period in the illiquid scrip.

- 6.14 I also find that the Noticee has taken a plea that their broker was duty bound to inform them about the pre-cautions to be taken by sub-brokers as they were new in the business. This shows that the sub-broker is trying to shift the blame on the main broker whereas it is their (Noticee's) responsibility to have taken all precautions in regard to the conduct of the clients while dealing with them.
- 6.15 Further, in the process of perpetuating these artificial trades, Noticee has failed to exercise proper skill, care and diligence, required of a Sub-broker, which is clear from the trading pattern of the Noticee for its client, settlement of transactions, allowing the client to deal in an illiquid scrip like MOH Ltd. in large quantity at BSE etc. The percentage of quantity traded by Noticee during the period under consideration was high enough to distort the market equilibrium of the scrip. Further, I find that Noticee has accepted delivery of shares from third party and has allowed one Shri Hiten Mehta to use the account of their client Tanaya Securities for buying, selling and giving / receiving payments without express consent of their client. As a registered sub-broker, Noticee was fully aware of the Rules and Regulations of SEBI and by failing to comply them, the Noticee had failed to observe the clauses of Code of Conduct by not maintaining the standards of integrity, promptitude and fairness required of a sub-broker. Further by entering such manipulative transactions on behalf of its client, Noticee created artificial market which led to interference with the fair and smooth functions of the market mechanism of the stock exchanges. The Noticee has as such violated the provisions of Clause A (1) & (2) and D (4) & (5) of code of conduct specified under Regulation 15(1)(b) of SEBI (Stock Brokers and Sub brokers) Regulations, 1992 which are extracted hereunder:

A. GENERAL

(1) INTEGRITY: A sub-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all investment business.

(2) EXERCISE OF DUE SKILL AND CARE: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business.

D. SUB-BROKERS VIS-À-VIS REGULATORY AUTHORITIES.

(4) MANIPULATION: A sub-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.

(5) MALPRACTICES : A sub-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the public interest or which leads to interference with the fair and smooth functions of the market mechanism of the stock exchanges. A sub-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

- 6.16 Under section 11 of the SEBI Act, SEBI can take steps to protect the interests of investors and to regulate the securities market inter alia by registering and regulating the working of stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures initiated by SEBI for regulation of the stock brokers would be rendered ineffective and the regulatory function would be jeopardized. It is to be noted that indulgence of the Noticee in the transactions which are prohibited can not be allowed as these transactions have a detrimental effect on the functioning and integrity of the securities market.
- 6.17 I have noted that the enquiry officer has recommended imposition of a penalty of suspension of three months on the Noticee. However, considering the submissions made by the Noticee that the transactions were not substantial on a gross basis at BSE, I feel a penalty of one month, as against the three months, as suggested by the Enquiry Officer, will act as a deterrence for such acts.

7.0 ORDER

- 7.1 Taking into consideration all facts and circumstances of the matter and in exercise of the 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 minor penalty of suspension of certificate of registration issued to the sub-broker M/s Abhilashaa Securities Pvt. Ltd. (SEBI Registration no. INS011209934 and PAN No. AADCA8279K) for a period of one month.
- 7.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai

Date: July 17, 2007

V. K. CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA