

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

DATE OF HEARING: 29.11.2006

APPEARANCES:

FOR THE NOTICEE:

1. Shri. Deepak Shah, Advocate.
2. Shri. Jagrut Kotari, Royal Investment.

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 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 entered into the information technology area. The company came 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, information about the implementation of the project was not available.
- 1.2 The shares of MOH are 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 when trading volumes during this period ranged between 100 to 10,000 shares. Prior to this, the price of the scrip had fallen to Rs 223/- from Rs 270 during June 01, 2000 to July 26, 2000 with daily trading volume ranging 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 fictitious transactions in the nature of circular trading. It was also observed that there was no underlying reason for the price of MOH scrip to go up on the basis of financial performance of the company. BSE imposed a special margin of 25% w.e.f. August 10, 2000 which was subsequently increased to 50% w.e.f. 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.
- 1.4 In view of the above facts, Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigations in the matter. Investigations inter alia revealed that the sub broker, M/s Royal Investments, holding SEBI Registration No. INS010275712 (hereinafter referred to as 'Noticee'), had facilitated its client Ms. Bijal Mehta and Ms. Alpa Shah to manipulate MOH scrip by executing trades through the main broker, M/s B. D. Shah Securities Pvt. Ltd. The clients of the Noticee had also dealt in the same scrip in the name of A. M. Investments through another broker, ASK Raymond James prior to the period under consideration.

2.0 ENQUIRY PROCEEDING

- 2.1 After examining 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 for their dealings in the scrip of MOH Ltd. and possible violation of the provisions of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Stock Brokers Regulations").
- 2.2 After conducting an enquiry in accordance with the provisions of Enquiry Regulations, the Enquiry Officer submitted a report dated July 01, 2004 wherein he observed that the Noticee 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 one month.

3.0 SHOW CAUSE NOTICE

- 3.1 Pursuant to the receipt of the enquiry report, a show cause notice dated May 31, 2005 was issued to the Noticee, along with a copy of the Enquiry Report advising them to show cause as to why the action, as recommended by the Enquiry Officer or such other action as may be deemed appropriate should not be imposed on them. A reminder letter dated March 23, 2006 was also sent to the Noticee, who in turn submitted reply to the show cause notice, vide letter dated April 04, 2006.

4.0 REPLY OF THE NOTICEE TO THE SHOW CAUSE NOTICE

- 4.1 The proprietor of the Noticee in his reply denied each and every finding of Enquiry Officer and submitted as under:
- 4.1.1 That he had no overt or covert prior understanding with the counterparty broker or his / their clients to enter into any circular deal in the MOH scrip and that he merely executed the instruction of his client in good faith and in ordinary course of business and therefore it cannot be inferred that he is part of the alleged wrong doing of their clients.
- 4.1.2 That all the orders were entered into the automated trading mechanism of the stock exchange and this would definitely have a bearing on the volumes and market price and as such the alleged trades cannot be singled out to infer that price of the scrip was influenced.
- 4.1.3 That he had done trades for his client M/s A.M. Investment only and that Mrs. Alpa Shah was the proprietor. He added that he had dealt for A.M. Investment only and was unaware of the fact that A.M. Investment had in turn dealt for Mrs. Bijal Mehta and Mrs. Alpa Shah as alleged or otherwise.
- 4.1.4 That all payments towards the trade obligations were settled through A/c payee cheques and proper settlement of the shares purchased or sold by A.M. Investment have taken place and that their trades were regular commercial transactions and he had no intention or motive of price manipulation and of entering into fictitious transactions as alleged.
- 4.1.5 That it is impossible, impracticable and unfeasible for a sub-broker like him to detect and perceive the intention of a client and as such it cannot be termed as any failure on his part to exercise due care, skill and diligence.
- 4.1.6 That the role played by him as an intermediary in the market was only as a sub-broker and that he did not control or influence the investment decision of his client and he executed order of his client in the ordinary course of business and in good faith.
- 4.1.7 That he is not at all part of any group as alleged in the report and that he had not traded in the shares of MOH Ltd. in his proprietary account and that he was never aware of any circular trading as alleged.
- 4.1.8 That his client A.M. Investment were also dealing in other frontline stocks and there was no reason to doubt their trades in MOH.
- 4.1.9 That even the Enquiry Officer had concluded that the trades of his clients were not very large and the client has done mostly delivery based transactions. He added that such a minuscule percentage of volumes coupled with deliveries can never tantamount to manipulation.

5.0 HEARING

- 5.1 The Noticee sought for a personal hearing in his reply to show cause notice. Accordingly, an opportunity of personal hearing was granted to the Noticee and he was advised to attend the personal hearing before me at SEBI's Head Office at Mumbai on November 29, 2006. Shri. Deepak Shah, Advocate and Shri. Jagrut Kotari, proprietor of Noticee attended the hearing. They reiterated their submissions already made in their reply to the show cause notice.

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 I have carefully examined the enquiry report, show cause notice and submissions of the Noticee.
- 6.2 The Noticee had dealt for Ms.Bijal Mehta and Ms.Alpa Shah in the name of AM Investments in MOH scrip. The Enquiry Officer observed that the Noticee purchased 4,190 shares and sold 450 shares on behalf of its client A.M. Investments during the period when the price of MOH scrip was Rs 240.50 on August 01, 2000 which later on shot up to Rs 799/- on September 19, 2000. The Enquiry Officer pointed out the under-noted findings of the investigations in regard to demat account from where the shares were received/delivered on behalf of A. M. Investments.

St.20 (+) 4190	Shares recd in the demat a/c of Sh.Anil Mistry.
St.20 (-) 164	Shares delivered against the sale position of Tanaya Securities
St.20 (+) 5000	Shares received from the account of Sh.Jitender Shah.
St.24 (-) 50	Shares recd from the demat a/c of Sh.Anil Mistry.

St.24 (+) 164	Shares received from demat a/c of Abhilasha Securities
St.25 (-) 400	Shares recd from the demat a/c of Shri.Anil Mistry.

- 6.3 It was observed from the above table that the shares have moved from the demat account of Shri Jitendra J. Shah, Shri Anil Mistry, Tanaya securities and Abilasha Securities. Analysis of the demat account of Shri Jitender Shah revealed that, on August 01, 2000 (the day from which the price started moving up), he had converted 43,000 shares from physical form to demat form and these shares were off loaded in the market. It was also noticed that the shares had moved from the demat account of Shri Jitender 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.
- 6.4 I have examined the statement of Shri Anil Mistry recorded by the investigating authority on January 14, 2003 and find that he is the sole proprietor of AM Investment and Smt Alpa Shah is the sister of his friend Shri Ketan Shah. Smt Alpa Shah requested him to allow her to use his demat account for all her transactions. He stated that he permitted her to use his demat account as she was the sister of his friend and apart from it there was no other specific reason for doing so. Shri Mistry further submitted that he never used to place any orders in MOH scrip and all the transactions done in the name of AM Investments through the broker BD Shah, during the period August – October 2000 were done by Smt Alpa Shah only. He also stated that he had signed all the delivery instruction slips for all the transactions done through his demat account including in MOH scrip.
- 6.5 It is evident from the statement of Shri Anil Mistry that Ms. Alpa Shah had given false and misleading information about her relationship with AM Investments which goes on to prove that Ms Alpha Shah and Bijal Mehta had dealt in MOH scrip in the name of A.M Investment.
- 6.6 Smt Alpa Shah, in her statement recorded on October 23, 2002, submitted that she used to deal with ASK Raymond James and the Noticee. Smt Alpa Shah submitted that she received a tip about MOH scrip from Ms Ruchi/Bhavesh of ASK Raymond James to the effect that the price of scrip would go up whereafter she decided to deal in the scrip. When asked as to why she had sold the shares of MOH first, inspite of the tip that the price would go up, Smt Alpa Shah submitted that she on the other hand felt that the price would not go up and as such sold the shares. On the other hand, Ms Ruchi / Shri Bhavesh of ASK Raymond James denied having given any sort of tip to Smt Alpa Shah as it is against the policy of their firm. From these details, it is clear that Smt Alpa Shah was having connection with Abhilasha Securities which is the sub broker of Tanaya Securities Ltd. Further, Smt Alpa Shah is Smt Bijal Mehta's brother's wife and are related / known to each other.
- 6.7 Smt Alpa Shah submitted in her statement before the Investigating Authority that she did not know Abhilasha Securities. I note from the party ledger of Tanaya Securities maintained with Abhilasha Securities Pvt Ltd., that on October 04, 2000 there was a journal voucher of Rs.1,20,900 where the narration for the entry states "being amount paid to A.M.Investments on behalf of Tanaya Securities". Abhilasha Securities submitted that they had made this payment to A.M.Investments on the instructions of Tanaya Securities. In this regard, I have examined the statement of Shri Gaurang Patel, Director, M/s Tanaya Securities Ltd, recorded on April 15, 2002, when he stated that he neither knew AM Investments nor had authorized the sub-broker, Abhilasha Securities to make the payment to AM Investments on their behalf. He stated that they had received a payment of Rs. 2.5 lakhs and an amount of Rs.1,10,000 was still payable by the said sub-broker to Tanaya Securities. This statement of Gaurang Patel is wrong as it has been clearly proved that Tanaya Securities received shares from the demat account of Shri Anil Mistry of AM Investment. Regarding payment of Rs.1,20,900 made to A.M.Investments from the account of Tanaya Securities, Shri Hiten Mehta who is the husband of Smt Bijal Mehta submitted that he had to make some payment to A.M.Investments. He added further that he had money receivable from Abhilasha Securities and he requested Abhilasha Securities to make payment directly to A.M.Investments from his account. However, he told that he was not aware as to why the payment was made from the account of Tanaya Securities. From the statement of Shri Hiten Mehta it is clear that Smt Alpa Shah and Smt Bijal Mehta were aware of the payment made to AM Investments by Abhilasha Securities.
- 6.8 From the above statements, I find that the persons, who traded in the scrip of MOH, had given contradictory and wrong explanation about their trades in MOH. It is therefore clear from this that their intention was to manipulate the price and volume of MOH shares. However, the role played by the brokers and sub brokers has to be examined independently. In this regard, I find that that the following brokers had contributed for more than 89% of the volume at the exchange during August 01, 2000 when the price of the scrip was Rs 240.50 to September 19, 2000 and the price of the scrip reached to a level of Rs 799/-.

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%

- 6.9 Investigations revealed that the aforesaid brokers had dealt for their ultimate clients through their sub brokers, as per details given hereunder.

Name of the broker	Name of the sub broker	Ultimate Client
Kantilal Mangaldas	Abhilasha Securities	Tannya 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

- 6.10 The Enquiry Officer observed that the clients of the Noticee vide letter dated May 20, 2000 had instructed the Noticee to credit the securities in an account maintained with SHCIL. However, the name of the account holder was not mentioned by the client. 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 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 was getting matched with the sell order of another client in the same group giving clearly an indication of circular trading. This was possible because the scrip was illiquid. 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 a level of Rs.799 continuously. There was no underlying basis or fundamentals for such a hike in price as the profit of MOH for the financial year 2001-2002 had fallen drastically compared to previous financial year 2000-2001. 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 the 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. The genuine investors obviously would have suffered losses. It is quite clear from the above that the clients including the client of the Noticee had artificially manipulated the price of the scrip to unrealistic levels. The Noticee had aided and abetted his client to execute manipulative trades. Considering that the fundamentals of the scrip were not strong and since the scrip was considerably illiquid, any prudent stock broker/sub-broker should have doubted the intentions of the clients and stopped trading for them. Instead, the Noticee continued trading for number of settlements which resulted in building up of artificial market in the MOH scrip.
- 6.11 The explanation of the Noticee that he was acting on the instructions of the client does not seem logical / valid. It is pertinent to mention here that 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 is some thing wrong in the trading in MOH scrip. These details were enough to raise concern for a prudent and responsible sub-broker like Noticee. The stock market system depends a lot on prudence 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 its development as a safe market of international standards. In the instant case the Noticee did not exercise the due skill and diligence expected of him and failed to take any action even though there were enough indications suggesting clearly that the trading in the scrip by the client was not bonafide. Further, instead of taking action against the suspicious dealings of its client, the Noticee in fact tried to benefit out of the artificial market.
- 6.12 The Enquiry Officer observed that the Noticee failed to exercise due care and skill as he facilitated his clients to continuously execute trades in an illiquid scrip. He also observed that the Noticee was dealing with the client for four years, but was not aware that AM Investment was acting as an unregistered sub-broker to Bijal Mehta. The clients of the Noticee had not filled up details relating to income, portfolio giving financial worthiness / soundness of the client. By executing series of transactions for his client, a prudent sub- broker like Noticee should have gone a bit far to ascertain the factual position and also assessed the financial capability of the person for whom he was trading. Since, the fundamentals of the scrip were not strong and the scrip was considerably illiquid, any prudent stock broker/sub-broker could have doubted the intentions of the clients and stopped trading for them. On the other hand, the Noticee continued trading for number of settlements which resulted in building up of artificial market in the MOH scrip. 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."

- 6.13 Further, in the process of perpetuating these artificial trades, Noticee has also failed to exercise proper skill, care and diligence, required of a broker. The Noticee further failed to verify the bonafides and financial worthiness of the client as even admitted by him. As a registered sub-broker, Noticee should have been fully aware of the Rules and Regulations of SEBI. I find that Noticee failed to observe the Code of Conduct as stipulated under the Stock Brokers Regulation 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 trades. The Noticee has thus 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.

- 6.14 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.
- 6.15 I have noted that the enquiry officer has recommended imposition of a penalty of suspension of one month on the Noticee after taking note of the fact that the volume traded by the Noticee on behalf of its client in MOH scrip was not very large. Having regard to all aspects of the case as also low volume of the trading by Noticee in the MOH scrip, I feel a penalty of 15 days, as against the one month, as suggested by the Enquiry Officer, will act as a deterrent for such violations.

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 Royal Investments. (SEBI Registration no. INS010275712 - PAN No. AACPK1192P) for a period of fifteen days.
- 7.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai
Date: July 23, 2007

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