

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V. K. CHOPRA, WHOLE TIME MEMBER

Against M. S. Consultancy Services, Sub-Broker of ACME Shares and Stock Pvt. Ltd. (now Apex Stock Brokers Pvt. Ltd.), Broker, Bombay Stock Exchange Ltd. (BSE) in the matter of MOH Ltd.

DATE OF HEARING: 09.02.2007

APPEARANCES:

FOR THE NOTICEE:

1. Miss. Rachna Vats, Advocate
2. Miss. Anagha Subramaniam, 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 as MOH Granites Ltd and was engaged in processing, mining and export of granites. The name of the company was changed to MOH Ltd. in the year 2000 when the company decided to enter information technology area. The company had come out with its public issue of 67,00,000 shares at par in August 1996 to part finance granite project located at Mahesana in Gujarat. However, 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 went up steeply from a level of Rs.240.50 on August 01, 2000 to Rs.799/- on September 19, 2000 when trading volumes were more than 10,000 shares. Earlier to this, the price of MOH scrip had fallen to Rs 223/- from Rs 270/- during June 01, 2000 to July 26, 2000 when daily trading volumes were few hundred shares.
- 1.3 An internal investigation in the matter carried out by BSE revealed that the price and volume of MOH scrip were manipulated by certain connected entities by entering into fictitious transactions in the nature of circular trading. It was observed that there was no cogent reason for the price of the scrip to go up so steeply keeping in view financial performance of the company. BSE had imposed a special margin of 25% w.e.f. August 10, 2000 and this 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 and circumstances, Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation in the matter. Investigations inter alia revealed that M. S. Consultancy Services (hereinafter referred to as "Noticee"), a Sub-broker (SEBI Registration INS010530116) of M/s. Acme Shares and Stock Pvt. Ltd. (member of BSE) had dealt for his client Mahavir Investments, a partnership firm having Ms. Varsha V Gandhi and Ms. Falguni N. Shah as partners. Investigations revealed that the Noticee facilitated these clients to manipulate MOH scrip.

2.0 ENQUIRY PROCEEDING

- 2.1 After analyzing 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 his dealing in MOH scrip and possible violations 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 his letter dated October 30, 2003 submitted its reply thereon. The Proprietor of the Noticee, Shri Mahendra Thakkar attended the hearing before the Enquiry Officer on December 30, 2003.

- 2.3 The Enquiry Officer, after conducting an enquiry in accordance with the provisions of Enquiry Regulations 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. He recommended suspension of certificate of registration of the Noticee for a period of two months.

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, enclosing therewith a copy of the Enquiry Report to show cause as to why the action, 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 proprietor of Noticee, Shri Mahendra Thakkar in his letter dated December 18, 2006 responded to show cause notice as under:
- 4.1.1 That the transactions of his client Mahavir Investments were normal transactions and he always fulfilled his obligations and commitments.
- 4.1.2 That it is for the investors to decided to trade in a particular scrip irrespective of whether trading was justified by fundamentals of the company.
- 4.1.3 That he had merely acted as agent of the client and carried out the orders in the usual course of sub-broking business.
- 4.1.4 That he was not aware if the client had any intention to do any undesirable activity.
- 4.1.5 That BSE which had the primary responsibility for monitoring transactions did not consider his dealings as manipulative.
- 4.1.6 That the volume of trading compared to market volume was not substantial. As regard 7601 MOH shares received by his client from third party, Shri Jitendra Shah, he admitted that the said shares were received as per the market practice prevalent at that time. He stated that except this, the client always took delivery/gave delivery from their demat account/broker pool account.
- 4.1.7 That as per the instructions of his client, shares of Jitendra Shah were tendered in settlement. Regarding payment of sales consideration to third parties, he submitted that the payments were made as per written permission of his client.
- 4.1.8 That there was no motive or any manipulative intention on his part. He further added that the penalty proposed is too harsh and disproportionate to the alleged violations.

5.0 HEARING

- 5.1 An opportunity of personal hearing was given to the Noticee advising him to appear for a personal hearing before me at SEBI's Head Office at Mumbai on February 09, 2007. Miss Rachna Vats and Miss Anagha Subramaniam, advocates appeared on behalf of the Noticee and reiterated the submissions already made in the reply to Show Cause Notice

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 After examining the enquiry report, show cause notice as also submissions of the Noticee, the facts of the case as observed are given hereunder:

- 6.2 The price of the MOH scrip started suddenly going up 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 volume at the exchange 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%

- 6.3 The aforesaid brokers had dealt for their sub brokers who executed trades in MOH shares for their clients and details thereof are given hereunder:

Name of the broker	Name of the sub broker	Ultimate Client
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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.S.Consultancy	Mahavir Investments

6.4 The Noticee had purchased 3,275 shares (constituting 4.40% of the total purchases at the exchange) and sold 10,650 shares (constituting 14.30% of the total sales at the exchange) on behalf of his client Mahavir Investments. It was also observed that 7601 shares of MOH had moved from the demat account of one Shri Jitendra J. Shah directly to the pool account of the broker Acme Shares & Stock Pvt Ltd. against the sale position of his client Mahavir Investments, instead of directly going to the account of Mahavir Investments.

6.5 Shri. Virag K Gandhi, husband of Ms. Varsha V Gandhi (one of the partner of Mahavir Investments) in his statement recorded on April 15, 2002 admitted that Shri Jitendra J. Shah (a friend of his uncle) of Ahmedabad had given him 7601 MOH shares to him which they sold. He further stated that all the dealings in MOH were their own speculative/jobbing transactions based on rumors floating in the market. The settlement wise positions of Mahavir Investments are as follows:

St.21 (-) 7601	Shares received from the demat a/c of Jitender Shah
St.23 (+) 50	This position was closed out in auction
St.26 (+) 590	These shares were retained in the pool a/ c of the Noticee
St.27 (-) 4	These shares were retained in the pool a/ c of the Noticee

6.6 The trade log and order log analysis revealed that the clients mentioned in the table at paragraph 6.3 above had generated most of the volumes in this scrip during the period under investigation. The shares, against the net deliverable position of the clients, had come from the account of Shri Jitendra J. Shah, which shows that the clients have sold the shares without owning them. Apparently, the clients had not used their own demat account in order to camouflage their identity and to hoodwink the investigators. This also shows that the clients are connected to each other and the Noticee was aware of the same and had aided and abetted the manipulative operations of his client.

6.7 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 had purchased and sold shares at 8% higher than the previous day's closing trades. In fact it was done 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, pointing out clearly to circular trading since the scrip was highly illiquid. In fact, once the trade was executed at one rate, the clients then traded among themselves to ensure that the price is maintained at this level. In this manner, they managed to move the price to a level of Rs.799 with number of trades in a short time. There was no basis either through fundamentals or otherwise for such a hike in price particularly since the profits 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 the scrip fell 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 bonafide investors would have suffered losses as a result of this manipulation by few entities. It reveals that the above clients including the client of the Noticee, in connivance with Shri Jitendra J. Shah, had artificially manipulated the price of MOH scrip to unrealistic levels. The Noticee had in this way aided and abetted his client to execute manipulative trades.

6.8 I find that the main charges against the Noticee are his failure to observe integrity, exercising due skill and care and facilitating manipulation and mal-practices while executing trades in MOH scrip for his clients.

6.9 The Enquiry Officer observed from the trading records that Noticee allowed his client to trade in highly illiquid scrip like MOH continuously at a time when the prices thereof were regularly going up. The client had sold and delivered the shares from the third party's account in the first few transactions in MOH scrip and Noticee was fully aware of this as per his own admission. Such incidents should have alarmed the Noticee and he should have asked his client to stop trading in MOH scrip. Instead, the Noticee continued executing the transactions repeatedly in the MOH scrip till February 18, 2001. It is pertinent to mention that at that relevant time, BSE was taking many steps like levying special margins and consistently reversing circuit filter levels during the period of investigation, which should have sent a clear signal to the market about suspicious trading in MOH scrip. The client of the Noticee was trading only in this particular scrip and the pattern of his trading was suspicious. These details should have been enough to raise concern for a prudent and responsible sub-broker like Noticee. The stock market system depends a lot on such 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 from 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 corrective action against the suspicious dealings of his client, the Noticee in fact tried to reap benefit out of the artificial market.

- 6.10 I find that that the Noticee had made payments to third party including Jitendra Shah, who had delivered MOH shares on behalf of his client, Mahavir Investments. Another instance of third party payment of the Noticee was an amount of Rs. 70 lac on October 25, 2000 to Shri. Apurvakumar Soni and others. The Enquiry Officer had observed that there are number of such instances in the Ledger account of the client of the Noticee.
- 6.11 I find that that the annual income of his client, Mahavir Investments as per the client introduction form was only Rs 67,000/- per annum. However the total business of the client during the period under investigation had run into several crores and no satisfactory answer was given by the Noticee for allowing the client to deal in such large quantity especially when the client commenced dealing with the Noticee in April 2000 only. 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 Further, in the process of perpetuating these artificial trades, Noticee also failed to exercise proper skill, care and diligence, as required for a sub-broker. The Noticee had made payment to third parties including Shri Jitendra Shah who had delivered MOH shares on behalf of his client, Mahavir Investments. I also find that Noticee had made large payments to various third parties. These aspects will go to show that the Noticee used the account of his client Mahavir Investment to disguise the identity of unregistered clients. From the trading pattern of the Noticee, I find that the Noticee allowed his client to deal in an illiquid scrip like MOH in large quantity without exercising due care and diligence. The quantity traded by the client of the Noticee clearly distorted the market equilibrium. The Noticee further failed to verify the bonafides and financial worthiness of the client. In view of such acts, I find that Noticee failed to observe the clauses of Code of Conduct by not maintaining 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.

- 6.13 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 meaningless and the regulatory function would be jeopardized. It is to be noted that indulgence of the Noticee in such transactions which are prohibited can not be allowed as these transactions have a detrimental effect on the functioning and integrity of the securities market.
- 6.14 I have noted that the Enquiry Officer has recommended imposition of a penalty of suspension of two months on the Noticee. While the Enquiry Officer has proposed a penalty of suspension for a period of two months, I am of the view that suspension for a period of one month will act as a deterrent for similar transactions.

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 M.S. Consultancy Services (SEBI Registration No. INS010530116 - PAN No. AAZPT3285B) 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: AUGUST 09, 2007

V. K. CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA