

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM : V. K. CHOPRA, WHOLE TIME MEMBER**

In the matter of trading by Shailesh Shah Group of brokers including Pankaj D Shah, M/s Shailesh Shah Securities Pvt. Ltd., M/s Dolat Capital Markets Pvt. Ltd. and M/s Nirpan Securities Pvt. Ltd

Order No.WTM/VKC/ID6/92/2007.

DATE OF HEARING: 03.04.2007

APPEARANCES:

FOR BROKERS:

1. Shri Vinay Chauhan, Advocate
2. Shri Aditya Bhansali, Advocate
3. Shri Shailesh D. Shah, Director, Shailesh Shah Securities Pvt. Ltd.
4. Shri Ashish D. Jhaveri, Employee, Shailesh Shah Securities Pvt. Ltd.

FOR SEBI

1. Mrs Barnali Mukherjee, DGM, SEBI
2. Shri Deepesh M.U, 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 The Shailesh Shah Group consists of four broking entities covering nine membership cards in major exchanges i.e. National Stock Exchange (NSE), Bombay Stock Exchange (BSE), Delhi Stock Exchange (DSE), Ahmedabad Stock Exchange (ASE), Calcutta Stock Exchange (CSE) and OTC Exchange of India

Ltd. (OTCEI). While three of the broking entities are corporate entities viz. Shailesh Shah Securities Pvt. Ltd., Dolat Capital Market Pvt. Ltd. and Nirpan Securities Pvt. Ltd., the fourth one is an individual membership in the name of Shri Pankaj D Shah (INB 031068118), a broker of CSE. The group is commonly managed by four brothers namely Shri Pankaj D. Shah, Shri Shailesh D Shah, Shri Rajendra D Shah, Shri Harendra D Shah, sons of Shri Dolatrai Amritlal Shah, who act as directors of most of the entities of corporate group. The other directors in their companies are their family members. All the four entities are part of Shailesh Shah Group.

- 1.2 M/s Dolat Capital Markets Pvt. Ltd has memberships in NSE (INB 230710031), BSE (INB 101207350), DSE (INB 50710038), ASE (INB 20710035) and OTCEI (INB 200710036) and its directors are Pankaj D Shah, Shilpa R Shah, Harendra D Shah, Bakul A Desai, Nirupama P Shah, Harsha H Shah, Vaibhav P Shah.
- 1.3 M/s Nirpan Securities Limited has memberships in NSE (INB 230648336 – capital market and INF 230648336 – Derivative Segment) and directors are Harendra D Shah, Shailesh D Shah, Pankaj D Shah, Rajendra D Shah, Rajul S Shah.
- 1.4 Shailesh Shah Securities Pvt. Limited (INB 011064558) is a member of BSE and its directors are Shailesh D Shah, Harendra D Shah, Pankaj D Shah, Rajendra D Shah.
- 1.5 During the course of enquires initiated by SEBI into the market behaviour during February / March 2001, it was observed that the pay-outs of Shailesh Shah Group of companies were to the extent of about Rs.220 crores indicating large sales made by the group. The group made significant sales in NSE in the scrips of Wipro, Pentamedia Graphics, Infosys, DSQ Software, Global Tele, HFCL on the particular days of Market fall i.e. on February 23, March 1 and March 2, 2001. It was also observed that Shailesh Shah Group had entered into number of matched

trades involving large quantities of shares between its different cards at the same exchange. The group had large sales and carry forward positions in both NSE and BSE during the period till first week of March 2001. The sales and carry forward positions were concentrated in index scrips such as Reliance, ITC, Infosys, Hindustan Lever etc., during the above period. In view of above facts as also since the group operated through large number of broking concerns spread across various exchanges, Securities and Exchange Board of India (hereinafter referred to in short as “the Board”) conducted investigation into their dealings to ascertain as to whether any provisions of Securities and Exchange Board of India Act, 1992 or various rules and regulations framed there under have been violated.

1.6 The Board, after considering the Interim Investigation Report, appointed an Enquiry Officer vide Order dated September 17, 2001 to conduct an enquiry in respect of the violations allegedly committed by Shailesh Shah Group under the provisions of Regulations 4(b) & (c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, (hereinafter referred to in short as “PFUTP Regulations”), Regulation 7 read with clause A(3), (4) and (5) of the Code of Conduct for Stock Brokers under SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to in short as “Stock brokers Regulations”) and Rules, Regulations and Bye-laws of Stock Exchange.

1.7 On completion of final investigations, SEBI vide Order dated February 19, 2002 advised the Enquiry Officer to take into account the findings of the final investigation report while enquiring into the violations mentioned in the Order dated September 17, 2001.

2.0 ENQUIRY PROCEEDINGS

2.1 Enquiry Officer had conducted the enquiry in accordance with the provisions of the 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”). He had served a show cause notice dated October 10, 2001 along with interim investigation report and advised all the entities to show cause as to why an action under Regulation 25 of Stock brokers Regulations should not be recommended to be imposed on them. The brokers vide their letter dated December 10, 2001 requested the Enquiry Officer to furnish a copy of the Enquiry Report as well as a complete set of all the documents relied upon by him to substantiate the allegations contained in the Show Cause Notice dated October 10, 2001. The Enquiry Officer vide letter dated January 4, 2002 forwarded a copy of the Enquiry Order to them. Further, an opportunity of personal verification of the documents was also given and this process was carried out by them on February 11, 2002.

- 2.2 The brokers filed their reply dated February 13, 2002 to the show cause notice issued by the Enquiry Officer and at their request an opportunity for personal hearing was granted on March 11, 2002. Subsequent hearing in the matter took place on March 19, 2002.
- 2.3 After duly conducting the enquiry, the Enquiry Officer submitted a report dated May 06, 2002 wherein he observed that Shailesh Shah Group had not been found guilty of violation of the provisions of the Act / Regulations mentioned in the Order dated September 17, 2001 as stated in paragraph 1.6 above.

3.0 SHOW CAUSE NOTICE

- 3.1 The Board however disagreed with the above findings of the Enquiry Officer and considered the matter for imposing a higher penalty for the reasons stated hereunder:

“It was shown in the investigation report that several matched / synchronised trades involving large quantities of shares between the group’s different cards at the same exchange (NSE & BSE) in scrips like

Global Tele, Hindustan Lever, Himachal Futuristic and DSQ software have been executed thereby violating SEBI circular SMDRP/Policy/cir/32/99 dated September 14, 1999 and Regulation 4(b) & (c) of SEBI (Prohibition of Fraudulent and Unfair Practices relating to Securities Market) Regulations, 1995. The Enquiry Officer found the group not guilty (4.1.2 of the Enquiry Report) considering your submission that the group was reducing its gross exposure to save depository costs and avoid pay-in and pay-out of funds and securities. However the competent authority do not agree with the findings of the enquiry officer as the four broking entities are separate legal entities in the eyes of law and huge number of structured / matched deals executed by these entities are manipulative in nature as brought out during the course of investigation.”

- 3.2 In view of what is mentioned hereinabove, Show Cause Notices dated June 08, 2006 were issued to the entities of Shailesh Shah Group viz. Shailesh Shah Securities Pvt. Ltd., Dolat Capital Markets Pvt. Ltd. and Nirpan Securities Pvt. Ltd and Shri Pankaj D Shah advising them to show cause as to why the penalty as considered appropriate including suspension / cancellation of the registration and / or prohibiting them from accessing capital market for a specific period should not be imposed on them. They were also advised to send their reply to the Show Cause Notice along with the documents, if any within 15 days of the receipt thereof.

4.0 REPLY TO SHOW CAUSE NOTICE BY FOUR ENTITIES OF SHAILESH SHAH GROUP

- 4.1 The Shailesh Shah Group entities responded to the show cause notice vide their letters dated July 18, 2006 and asked for a copy of the final Investigation report. An opportunity to inspect the final Investigation report was given to them. The

inspection of records was finally carried on December 6, 2006. A copy of the final Investigation report was also provided to them.

4.2 However, after the inspection they sought the details of trade log and order log of matched deals. This request was not accepted since the relevant information as available on record was provided to them and in fact they had earlier agreed that those deals were done by them to reduce the combined exposure of the group. Further during the pre-enquiry proceedings before the Enquiry Officer, they admitted having entered into the matched trades in order to net off the open positions in the different broking cards of the group, so as to reduce the transaction costs involved.

4.3 Finally, all the four broking entities of the group submitted similar replies vide their letters dated March 1, 2007 wherein they inter-alia stated as follows:

4.3.1 The principles of natural justice are not followed in not providing trade log and order log.

4.3.2 They dealt only on behalf of group companies and family members.

4.3.3 Enquiry officer has given clean chit to them with regard to the allegations.

4.3.4 The group is involved in arbitrage business.

4.3.5 All the transactions were done at the end of the settlement period, showing that the transactions were merely to adjust the gross exposure and not to effect the market in any manner.

4.3.6 Even though the entities are separate legal entities, these companies are having a common controlling hub and the management is also controlled by the same family.

4.3.7 The transactions carried out by them were done in good faith in ordinary course of business.

4.3.8 The trades as a percentage of total volumes executed on that particular exchange on that particular date would work out to approximately less than even one percent. Further, these trades were executed at the market

price without any intention to sweep the order book- both on buy and sell side and these trades would not have in any way impacted the market.

- 4.3.9 The final investigation report states that on most of the occasions the broker's share in the total decline in the prices of the scrip was not significant, keeping in view the extent of fall in the prices of the scrip during a particular day and the time slot. Further the above positions relate to individual exchange positions. Further, since the member's trading is of arbitrage business across various exchanges, the impact would be neutralized after considering the positions across all the exchanges.
- 4.3.10 SEBI circular dated September 14, 1999 was not violated as all the transactions were executed and the screen based mechanism of the exchanges and as such no violation of PFUTP Regulations had taken place in the matter. The reason for squaring off the trades by executing matched trades was with a view to save depository costs and to avoid pay-in and pay out of the securities.

5.0 HEARING

- 5.1 All the four entities of Shailesh Shah Group requested for personal hearing and they were accordingly advised to attend the personal hearing before me at SEBI's Head office at Mumbai on April 03, 2007. Shri Shailesh D Shah, director of M/s Shailesh Shah Securities Pvt. Ltd and Shri Ashish D Jhaveri, Employee of Shailesh Shah Securities Pvt. Ltd attended the hearing along with their Advocate Shri Vinay Chauhan and Aditya Bhansali and re-iterated the submissions they had already made in their reply to show cause notices. They also requested time to file their written submissions and accordingly they were given 7 days time to file additional written submissions. All the four entities submitted separate written replies on April 10, 2007 on the same lines. Further, they had produced the details of the trading in the scrips for the year 2001-02 in comparison to the trades alleged as matched trades.

6.0 CONSIDERATION OF ISSUES & FINDINGS

- 6.1 I have carefully examined the Enquiry Report, Show Cause Notices, Replies of the Shailesh Shah Group and submissions made at the time of hearing and proceed to deal with the same as under:
- 6.2 The charges levelled against Shailesh Shah Group was that they executed several synchronised / matched trades involving large quantities of shares between their different cards at the same exchange and carried forward large sales positions mainly on index scrips, at both NSE and BSE and the resultant impact on the prices of shares in the market. The Enquiry Officer found them not guilty under the provisions of Regulations 4(b) & (c) of the PFUTP Regulations and Regulation 7 read with clause A (3), (4) and (5) of the Code of Conduct for Stock Brokers under Stock brokers Regulations.
- 6.3 The Competent Authority disagreed with the above findings of the Enquiry Officer and considered the matter for imposing a higher penalty because of the fact that the four broking entities of the group are separate legal entities in the eyes of law and huge number of structured / matched deals executed by them are manipulative in nature.
- 6.4 During the course of hearing as well as in their written submission, the group entities submitted that the entire charge against them is based on execution of mere 13 transactions over three different days. In their submission, they have given the details of the volume of trades on three days in the scrips of DSQ Software, Global Tele, HFCL, Hindustan Lever. It appears from these details that the total percentage of their volume in above referred scrips was ranging from 0.55% and 3.76%. Apart from the above, they had also given their trading

turnover in the month of February 2001 as also annual trading turn over during the financial year 2000-2001.

Monthly volume of trades of February 2001 in which the alleged trades have taken place

Name of the scrip	Alleged Trades (Qty)	Total quantity traded in the year in particular scrip	% of alleged trades to total trades
DSQ Software	201150	18227043	1.10
GTL	174160	9207593	1.89
HFCL	368990	13310105	2.77
HLL	200000	8778119	2.28

Annual volume of trades for the financial year 2000-2001

Name of the scrip	Alleged Trades (Qty)	Total quantity traded in the year in particular scrip	% of alleged trades to total trades
DSQ Software	201150	164137820	0.12
GTL	174160	156528528	0.11
HFCL	368990	94745138	0.39
HLL	200000	48639641	0.41

- 6.5 The contention of the Noticee that their trading percentage in the scrips of DSQ, Global Tele, HFCL, Infosys and Wipro for the relevant months and year were miniscule, does not absolve them from the seriousness of the charges since analysis done in view of the price fall in the aforementioned scrips, were specific to the dates 23/02/2001 and 01/03/2001 to 06/03/2001. In view of this, the comparison of monthly and annual trades given by the group does not evidently have any relevance. I have also examined the instances of matched trades executed between the entities in the group.
- 6.6 Matched trades executed between Dolat Capital Markets Pvt. Ltd. and Shailesh Shah Securities Pvt. Ltd., the two membership cards of the group were noticed by BSE. A few such instances are given below:

Scrip : DSQ Software Ltd. ; Date : March 1, 2001.

Ord No	Counter Party Code	Qty	Price	Client Code	Buy Or Sell	Client Type	Trade Type	Trade Time	Machine No
88459	D0648	500	376.1	2501	S	C	L	10:35:30	9
88747	D0648	150	368.05	2501	S	C	L	11:29:21	9
89215	D0648	500	367.6	2501	S	C	L	01:49:24	9
80106	D0648	200000	353.7	2501	S	C	L	02:50:44	11

Scrip : Global Tele ; Date : February 23, 2001

Trade No	Order No	Counter Party Code	Qty	Price	Client Code	Buy Or Sell	Client Type	Trade Type	Trade Time	Machine No
163184	19862	648	40000	455.4	2501	S	C	L	03:05:24	4

Scrip : Hindustan Levers ; Date : March 01, 2001

Order No & Order Price	Trade Time	Qty	Rate/ Range	Previous Trade Rate	Subsequent Trade Rate	Diff in Price (Rs)
80105	14:49:51	199800	232.15	200 @ 232.15	300 @ 232.05	-
80105	14:50:00	200	232.15	200 @ 232.05	200 @ 232.15	-

Scrip : Himachal Futuristic ; Date : March 01, 2001

Order No	Trade Time	Qty	Rate/ Range	Previous Trade Rate	Subsequent Trade Rate	Diff in Price (Rs)
Time Slot : 2:46 to 2:57						
80107	2:54:04	100000	671.40	25 @ 671	31 @ 671	0.40
80108	2:55:26	100000	667.40	86 @ 688	200 @ 666.70	0.60
80359	1:39:02 1:39:29	79990	648.40- 645	10 @ 648.	20 @ 648.10	3.40
80360	1:39:25	89000	646.40	21 @ 646.25	21 @ 646.25	-

- 6.7 Further, there were few matched trades executed at BSE between Shailesh Shah and Dolat Capital Markets Pvt. Ltd. which were referred in preliminary investigation report and details whereof are given hereunder:

Scrip Name	Date	Time	Qty	Price
HFCL	23.02.2001	15:24:47	56415	743.60
Wipro	23.02.2001	15:07:18	13885	2554.00
HFCL	02.03.2001	13:39:02	79990	648.40
HFCL	02.03.2001	13:39:25	89000	646.40
RIL	02.03.2001	15:14:36	55000	418.70
Pentamedia	02.03.2001	15:14:00	50000	142.80

- 6.8 Apart from the trades executed at BSE, the following instance of matched trades were noticed at NSE, between the two memberships Nirpan Securities Pvt. Ltd., and Dolat Capital Markets Pvt. Ltd.

Trade date	Scrip	trd_time	Trd Price	Trd qty	Buy ord_entry time	Sell ord_entry time	%variation betw order price<P
5-Mar-01	GLOBAL TELE	14:51:20	264.70	70000	14:51:20	14:51:20	(0.09)
5-Mar-01	GLOBAL TELE	14:51:32	265.30	64160	14:51:32	14:51:32	0.13

- 6.9 I have noted from the above tables that while the brokers Shailesh Shah Securities Pvt. Ltd., Nirpan Securities Pvt. Ltd. and Dolat Capital Markets Pvt. Ltd. were involved in the impugned transactions, there was no transaction executed by Shri Pankaj D Shah. With regards to the above transactions, the group had admitted that their transactions were negotiated deals. They however maintained that there is no pattern in execution of the alleged matched/synchronised deals since the trades were not continuous or in series or at stepped up prices or at step down price. They further stated that they have not violated SEBI Circular SMDRP/POLICY/CIR/32/99 dated September 14, 1999 as all trades were executed on the screen based mechanism of the exchanges.
- 6.10 The relevant portion of the SEBI Circular dated September 14, 1999 reads as "*All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in Circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism*

of the exchanges just like any other normal trade". The circular further states that "The above decision was taken as negotiated deals avoid transparency requirements, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner".

- 6.11 It is clear from the extracts from the SEBI circular that all the trades have to be put as normal trade in the price and order matching mechanism of the exchanges. Hence, in negotiated deals, no artificial matching of the trades to outsmart the system is permitted.
- 6.12 The main question to be decided in this case is whether the trades were normal, since they were executed in screen of the exchanges and whether such trades were matched artificially to create artificial market.
- 6.13 The Enquiry Officer had made a reference about the circulars dated March 31, 1997, August 4 & 12, 1998 and January 14, 1999. Circular dated March 31, 1997 with regard to 'negotiated deals'. It states that "all negotiated deals on the stock exchanges would compulsorily result in delivery of securities". SEBI Circular dated August 4, 1998 lays down the definition of negotiated deals and gives the guidelines for disclosure, reporting and settlement of negotiated deals. SEBI Circular dated August 12, 1998 communicates the effective date for the SEBI circular dated August 4, 1998, while circular January 14, 1999 lays down the applicable price bands and execution mechanism for negotiated deals.
- 6.14 It has been observed from the earlier circulars as mentioned in the above paragraph that the negotiated deals should compulsorily result in delivery. Shailesh Shah Group admitted that they had executed few negotiated trades as per the provisions of SEBI Circulars. It is also an admitted fact that they had squared off the trades by executing matched transactions. It is as such established that no

delivery of shares had been taken place and they failed to comply with the basic requirement (i.e. compulsory delivery of securities) of the circulars on negotiated deals.

- 6.15 Shailesh Shah Group had taken a stand that since they had two memberships on the same exchange; they had carried out such transactions to save depository cost and to avoid pay-in and pay-out of funds and securities. The group entities also stated that their transactions were arbitrage business done through their various broking entities and in the process of arbitrage, different sets of traders built-up positions in different cards which, at times, may be opposite to each other. As per their submissions, by executing matched trades within the group at the prevailing market rate can not be considered as manipulative trades. At the same time, it is seen that there was no actual delivery in these trades and it was apparently done with a purpose to avoid delivery. A trade that is entered into, to avoid delivery can not be treated as a genuine trade. Such trades would lead to a host of complex irregularities like booking profit or loss for tax purposes, manipulative trades etc in the securities market. The Circulars on negotiated deals were framed with an explicit purpose of avoiding misuse of the negotiated deals in the securities market. In the instant case, the group had misused this facility (which has to be essentially delivery based), to avoid delivery of securities arising out of their trades. Such wayward behavior from registered market intermediary need to be viewed seriously in the interest of the securities market. Hence, I am of the view that the trades of the group were against the principle laid down for negotiated deals as discussed in the SEBI Circulars. However, viewed from the relevant legal position, I feel that no case of manipulation has been brought out against Shailesh Shah group and there is no sustainable evidence on record to prove the charges levelled against them under the provisions of PFUTP Regulations. Considering this and all other aspects of the case, I am of the view that a minor penalty of 'censure' against the Shailesh Shah Group entities except Pankaj D Shah, will act as a deterrent for such transactions in future.

7.0 ORDER

- 7.1 Therefore, 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 'censure' to the Shailesh Shah Group entities viz. Shailesh Shah Securities Pvt. Ltd. (INB 011064558 - PAN no. AAECs3607E), M/s Dolat Capital Markets Pvt. Ltd. (INB 230710031 - NSE, INB 101207350 - BSE, INB 50710038 - DSE, INB 20710035 - ASE and INB 200710036 - OTCEI and PAN no. AAACD1518M) and Nirpan Securities Pvt. Ltd. (INB 230648336 – capital market and INF 230648336 – Derivative Segment of NSE and PAN No. AAACN1329A).

Place: Mumbai

Date: August 16, 2007

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