

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF
INDIA**

Coram: Dr. T.C. NAIR, WHOLE TIME MEMBER

In the matter of NAPA PAPERS LTD.

Against Sh. Ajay R. Vakheria, Santosh Bansal, Classic Financial Services, Sh. Ulhas C. Paymaster, Sh. Bhavesh Parekh, Sh. Vijay Mehta, Sh. Rajratan R. Mohta, Sh. Radheshyam Khandelwal, Sh. Gopal Jhunhunwala, Hi-Tech Gears and Shreyas S. Morakhia.

ORDER

(UNDER SECTION 11 B OF S.E.B.I. ACT, 1992)

1. The shares of M/s Napa Papers Ltd. (hereinafter referred to as NPL) were listed on the Stock Exchange, Mumbai (hereinafter referred to as BSE/Stock Exchange) on September 14, 1995. On the basis of price volume data of the trading in the above scrip at the Stock Exchange it was observed that there was an unusual movement in the price of the scrip from Rs. 9.50/- to Rs. 70.00/- within a short span of 17 trading days during the period of September 25, 1995 to November 01, 1995.
2. On receiving complaints and information from the stock-exchanges regarding the unusual price movement of the scrip, an investigation was ordered by Securities and Exchange Board of India (hereinafter referred to as SEBI). Pending investigations SEBI passed directions vide letter dated March 27, 1996 to BSE to impound the auction and close out proceeds so that manipulators do not walk away with ill gotten gains.
3. The investigation report was submitted on December 17, 1996. Investigations revealed that some persons had bought large quantity of NPL shares and

accumulated the same to manipulate and raise the prices of the scrip. They later offered the shares in auction at higher prices to book huge profits.

4. After considering the findings of the investigation SEBI passed appropriate orders. By the order the exchange was directed to transfer the auction and close out proceeds retained by it to the Investor Protection Fund (hereinafter referred to as IPF) of the exchange. It was also directed that any person and entity aggrieved by transfer of auction and close out proceeds to IPF could make written representations to SEBI either directly or through the exchange. It was further stated that the representations received will be dealt with by a committee to be set up by SEBI and the report of this committee will be considered for final decisions on such representations.
5. Accordingly a Committee was constituted by SEBI to consider representations received from these aggrieved brokers and investors vide order dated December 24, 1996. BSE through its notice dated December 24, 1996 invited written representations from aggrieved parties within 15 days from the date of notice. Pursuant to this notice, written representations from 12 persons were received by SEBI. The Committee issued a notice of personal hearing to those persons from whom written representations were received. The hearing was conducted on January 16, 1998 and only 7 persons appeared before the said Committee. The Committee after considering the representations and submissions made at the time of personal hearing submitted its report.
6. I have considered the representations made by the claimants and the recommendations of the Committee and other material on record. Accordingly, I pass the following orders with respect to the following entities:

- a. **Sh. Ajay R. Vakheria**, a Stock Broker (hereinafter referred to as broker), BSE vide his representation dated October 06, 1996

submitted that his clients have purchased shares of NAPA Papers Ltd. at and around Rs.50/- per share for the purpose of taking delivery of the shares. It was further submitted that by valan no. 17 dated November 13, 1995 BSE declared the standard rate for the shares of NAPA Papers Ltd. to be Rs.39/- and accordingly the difference of purchase price and standard price being Rs.11/- (i.e Rs.50/- – Rs.39/- = Rs. 11/-) per share was deposited by broker, without collecting the same from his clients. It was submitted that it had deposited the difference as mentioned above from its own funds. BSE vide its notice no. 6948/96 dated December 24, 1996 declared the close out price as Rs.69/- for the said scrip and it retained the difference between standard price and the close out price. The broker claimed an amount of Rs.11/- per share being the difference between purchase price and standard price which was paid from its own funds. The committee found merit in the submissions of the broker.

However as I find that the broker has not given specific details of volume of transaction, I direct BSE to verify the number of shares purchased by this broker at the relevant period. After verifying the facts BSE may refund the amount of Rs.11/- per share multiplied by the total number of shares (i.e. Rs.11/- X no. of shares).

- b. Sh. Santosh Bansal**, an investor who vide his representation dated January 08, 1997 submitted that he had offered 2000 shares of the abovesaid scrip in auction on March 30, 1996 through M/s. DCM Financial Services Ltd. at BSE, who in turn offered the same through M/s. Vikram Kenya. He claimed the money in full in respect of the above offer. The investor had not appeared before the committee to present its case.

The Committee while expressing its view that auction rate/close out rate was a result of artificial market conditions felt that

the benefit of it could not be granted to anyone. It was also concluded that offerers in auction were entitled only to standard rate and not the auction rate/close out rate. The Committee was of the view that in cases where the offerer in auction had acquired the shares (i.e. acquisition price) at a rate higher than the standard rate an additional amount to the extent of difference between acquisition price and the standard price should be paid to the offerer. The committee recommended that in determining the cost of acquisition of those shares following criteria shall be ensured:

1. The offerer had acquired the above said scrips through Stock Exchange price matching mechanism. In respect of shares acquired outside the price matching mechanism the cost of acquisition shall be taken as equal to price at which these were offered to public in public offering by the company.
2. If the offerer had acquired the above said scrips at a price higher than what was offered and accepted in auction then the cost of acquisition shall be worked out on the basis of first in and first out (FIFO) principle.

I accordingly direct BSE to release the amount to Sh. Santosh Bansal, calculated at standard rate for the above said 2000 shares subject to the verification by BSE as to the adherence of the above criteria. BSE may further verify the actual number of shares offered at auction by Sh.Santosh Bansal.

- c. **Classic Financial Services**, based in Ahmedabad submitted its representation vide letter dated December 26, 1996. It submitted that it had purchased 5000 shares of Napa Papers Ltd. @ Rs.11/- on May 15, 1995 in Settlement no. 9514 on behalf of its client. It sold the

same shares on October 18, 1995 at Rs.18/- per share in Settlement No. 16. Since the delivery of the shares purchased was not received it could not deliver the shares in settlement No. 9516. Hence, the undelivered sale position was auctioned at Rs.71/- per share. It was further submitted that in September, 1996 they received 3800 shares from BSE in respect of their purchase position and the remaining 1200 shares were squared off at the rate of Rs.9/- per share.

The Committee was of the view that the sale position in settlement No. 16 in respect of which delivery could not be given, should not be considered at par with ordinary short selling since the broker sold 4800 shares in settlement No. 16 in anticipation of receiving delivery in regard to its purchase of 5000 shares in settlement No. 14. The Committee has recommended that the sale position in settlement No. 16 should not be closed out @ Rs. 71/- per share which the investigation report had indicated to be a rigged price. Instead the Committee recommended that it should be closed out at the standard price of the settlements, and the difference between Rs. 71/- and the standard price, which has been transferred to the investor's protection fund be released to the claimant.

I agree with the recommendations of the Committee subject to the factual position being verified by the BSE. I further direct the payment to be made as discussed earlier is subject to the verification of the identity of the selling as well as purchasing clients. In case BSE finds out that the purchasing client in settlement No. 14 and selling client in settlement no.16 are two different persons then no payment shall be made to the claimant. The same shall be paid only when the purchasing and selling clients are one and the same.

- d. Sh. Ulhas C. Paymaster** vide representation dated January 08, 1997 submitted before the committee that he purchased a total of 75,200 shares. The same were put for auction vide BSE notice dated April

02, 1996. Further he received 53,600 shares only out of 75,200 shares. For the balance of 21,600 shares credit was given to him at a standard rate of Rs.39/- whereas his acquisition cost of those shares was in the region of Rs.50/- per share approximately. It was further submitted that in addition to the above for a quantity of 20,800 shares 'no auction offer' was received by BSE and therefore, this position was closed out at Rs.70.25/- per share. It was claimed that credit was given to it only @ Rs.36.22/- per share which was the average standard price of settlement no. 16 and 17 (B16 and B17) as against the acquisition cost of approximately @ 50/- per share.

The Committee was of the view that the money cannot be released in any case based upon auction price or close out price as these were the rigged prices. The Committee therefore recommended that it should be compensated to the extent of cost of acquisition into relevant settlements. If the total purchases in the relevant settlements have been more than the closed out portion, average purchase price in respect of close out position shall be computed based upon FIFO (First In First Out) principle.

I agree with the recommendation of Committee, since it ensures that the claimant did not suffer real loss. The BSE shall further verify the total number of shares purchased by claimant, total number of shares of which delivery was granted at standard rate of Rs.39/-, total number of shares of which delivery was not granted, closed out price, acquisition price, average standard price of B16 and B17. BSE shall after verifying the above facts release the amount to claimant to the extent of acquisition price.

- e. **Sh. Jayantilal Raichand Khandar**, Member, Bombay Stock Exchange (BSE), vide its representation dated January 07, 1997 submitted that it had offered 40,000 shares of Napa Paper Ltd. @ Rs.69.50/- per share. Further it delivered only 15,400 shares and the

remaining 24,600 shares were settled internally in the auction offer. Further it is stated that as per the BSE notice 6948/96, a credit based upon standard price i.e., Rs.39/- per share was given to it. This broker claimed the difference between auction rate and standard rate for 40,000 shares. Since the auction rate is Rs.69.50/- per share and the standard rate is Rs.39/- per share, it has claimed a total amount of Rs.12,20,000/-.

The committee was of the view that offerer is entitled to the standard rate and not to the auction rate/closing out rate as these rates were based on rigged price. The committee recommended that the difference between acquisition price and standard price shall be released in case the acquisition cost of the shares is more than the standard price.

I agree with the recommendation of the committee and the money shall be accordingly released. Further, I direct BSE to verify the total number of shares offered, the price at which they were offered, the total number of shares delivered and the number of remaining shares settled in the auction offer. I further direct to arrive at the acquisition price before releasing the money as indicated above. The acquisition price shall be determined as per the twin principles dealt with as in the case of Sh Santosh Bansal.

- f. Sh. Bhavesh Parikh** of Universal Securities and Management Services, Mumbai, vide its representation dated January 09, 1997 submitted that he had purchased 82,100 shares of NAPA Papers Ltd. at prices ranging from Rs.29/- to Rs.49/-. He stated that it had received only 7,500 shares and the remaining 74,600 shares were pending for delivery. It was submitted that he had filled the following auction on the premise that persons having carried forward position can offer their position in auctions. He offered 20,000 shares @ Rs.65/-, another 20,000 shares @ Rs.68/-, another lot of 20,000 shares

@ Rs.69/- and another set of 10,000 shares @ Rs.60.50. It was unclear about the status of his offers and it is presumed that the offers were accepted and claimed and instead of releasing money based upon auction price, the release was based upon standard price.

The committee was of the view that auction price cannot be given since it was the outcome of market manipulation. The committee recommended that if acquisition cost of shares offered in auction were more than the standard rate additional amount to the extent of difference between acquisition price and standard price may be released. I agree with the recommendation of the Committee and the money to the extent of difference between acquisition price and standard price shall be released. I direct BSE to calculate the acquisition price on the basis of the principles prescribed by me in the case of Sh. Santosh Bansal above. The BSE shall also verify the total number of shares purchased by the claimant and the prices at which they were acquired, number of shares delivered to the claimant and the remaining number of shares undelivered, the fact of offering in the auction at four lots at the above mentioned prices, the status as to whether the offer was accepted before arriving at the calculation of acquisition cost of shares offered in auction.

- g. Sh. Vijay Mehta**, Member BSE vide its representation dated January 08, 1997 submitted that his auction offer of 2,000 shares of Napa Paper Ltd. was accepted @ Rs.70/- per share. He received money statement from BSE for a quantity of 1,100 shares amounting to Rs.77,000/- and for the balance 900 shares the part payment of which was Rs.63,000/- was to be made through Kaplis to be collected from members on delivery of shares. It was further submitted by him that the shares could not be delivered due to postal delay. He claimed to have received credit only for Rs.77,000/- for the 1,100 shares. Subsequently, in the accounts statement credit received in balance

sheet for 2,000 shares was reversed and a sum of Rs.1,40,000/- was debited to his account presuming that he had received credit for full Rs.1,40,000/-. Hence, it has claimed that this has resulted in excess debit of Rs.63,000/- which he was entitled to.

The committee was of the view that this case did not appear to be the case where money being impounded on the order of SEBI. Hence the committee had not made any recommendation but suggested that the grievance of this member could be represented before BSE and if any factual errors are found by BSE the same may be rectified at its end. I also consider it appropriate along the line of recommendations and I grant leave to this claimant to agitate his grievance before BSE, which may decide the same as per the provisions of law.

h. Sh. Rajratan R. Mohta, broker BSE vide its representation dated January 06, 1997 submitted that it had done arbitrage business in the scrip of NPL. It claimed that it was selling the said scrip in BSE and buying it at Delhi Stock Exchange and Jaipur Stock Exchange (hereinafter referred to as DSE and JSE respectively). It was further submitted that without auction at DSE and JSE he was unable to deliver the scrip in BSE. The broker stated that it sold 1,10,000 shares in BSE at rates varying from Rs.22/- to Rs.39/- against its purchase positions in DSE i.e., 29,900 shares and JSE which was 80,100 shares. It was claimed that the rate at which the auction was closed out in BSE was unjustified. The broker through this representation sought for a refund of Rs.41,97,550/- collected by BSE from it towards auction price.

The committee considered the representation of the claimant and it was observed that it could not get the delivery of the shares purchased in DSE and JSE and as a result of its outstanding sell position at BSE was auctioned. In other words, its outstanding sale

position was auctioned on its failure to deliver shares as per the bye-laws of BSE. In view of this it was concluded by the Committee that it is a case of short selling in BSE.

The committee was of the view that the auction in BSE was perfectly in order since non-delivery at one exchange giving rise to auction at another exchange was a commercial risk which the market participant like claimant was deemed to be aware of. The committee recommended that as far as the auction in DSE was concerned, if the purchase position of claimant was closed or auctioned, it should be given credit by an amount which shall not be less than the acquisition price of the above said scrip in DSE. The said acquisition price of shares in DSE shall be calculated on the basis of FIFO principle.

I further direct the concerned Stock Exchange to verify the number and the rates of shares sold by this claimant in BSE and the purchase position of claimant in DSE and JSE, respectively.

- i. **Sh. Radheshyam Khandelwal**, broker BSE, vide his representation dated January 09, 1997 submitted that one of his clients Mantri Kata & Co. who was a member of JSE sold 6,200 shares of Napa Papers Ltd. through him. As the Stock Exchange stopped the auction of the shares they could not make payment for difference. The broker claimed Rs.2,75,000/- against which his client had paid only Rs.1,75,000/-. The broker by way of his representation claimed remaining Rs.1.00 lakh from his client Mantri Kata & Co.

The committee expressed its view that the claim of Shri. Khandelwal was against his client. As regards the shares sold in BSE, if the delivery of the same could not be given, the same had to be auctioned or closed out as per the bye laws of BSE. Committee insisted that the short seller should face consequences of short selling and accordingly it was recommended that the representation be rejected.

I agree with the findings of the committee that this being a case of short seller and is liable to face the consequences of short selling. Hence, its representation is rejected.

- j. **Sh. Gopal Jhunhunwala** vide his representation dated June 10, 1997 submitted that he had purchased 38,100 shares on behalf of his client at an average price of Rs. 48/-. It had paid Rs. 9/- per share being the difference between the purchase price and standard price. The outstanding purchase positions of 38,100 shares were auctioned. Further he could not give offer against his outstanding position in view of the notice no. 406/96. As per his statement the entire quantity was offered by the following brokers and the quantity of shares to be received and received are as under:

Name of Broker	Clearing No.	Quantity to be received	Quantity received
Damodar Sabu	142	6900	Nil
G.R.Pandya	22	8000	8000
Hem Securities	248	600	600
Jayant Khandar	286	2200	2200
Ladhuram Panalal	401	400	400
Milan Mahendra	460	3500	3500
Vikram C. Kenia	716	2600	2600
Sheiles H. Bajaj	755	14300	Nil

It was submitted that full payment of Rs. 14,85,900/- was made towards its outstanding purchase position and claimed that it had not received 21,200 shares from the offerer members. It was stated that BSE had allowed netting of outstanding purchase position against offers made in the auction by its unilateral decision vide notice No. 2461/96. The broker stated that losses have been suffered

since it was denied from making an auction offer against its outstanding purchase position.

The committee was of the view that the member should have taken up its cause with BSE for not being allowed to participate in the auction where, others having outstanding purchase position were allowed. The committee further expressed that if the purchase price in respect of his outstanding purchase position was really higher than the standard price can be refunded to him.

After considering the factual position, I find no reason to differ with the recommendation of the Committee and I, direct the difference between purchase price and standard price with respect to the purchase position at “close out” be given to this claimant. The purchase price shall be computed based upon FIFO principle. I further direct BSE to verify the number of outstanding purchase positions and the rate at which shares were acquired before arriving at the difference between the acquisition price and standard price.

k. Hitech Gears Ltd. (hereinafter referred to as Hitech) vide its representations dated January 06, 1997 and January 13, 1997, submitted that Yogi Pharmacy Ltd. the mastermind behind the price rigging in the equity shares of NPL Hitech had advanced an Inter Corporate Deposit (ICD) of Rs.40.00 lakhs to Yogi Pharmacy Ltd. It has claimed that Yogi Pharmacy Ltd. had mis-utilised this money for price rigging. It was further brought to the notice of the committee by Hitech that a winding up petition has been filed by it against Yogi Pharmacy Ltd. for non payment of dues of Rs.30.00 lakh.

The Committee found that Hitech has not dealt with the scrip of NPL and there were no claims filed by Hitech and Yogi Pharmacy Ltd. in pursuance of notice of BSE. It is also not the case of Hitech that its money has been impounded by BSE; hence there is no

question of the money being refunded from investor's protection fund to Hitech.

- I. **Sheryas S. Morakhia**, broker BSE, claimed to have sold 31,300 shares for his client Sh. Arvind Jain. He claimed to have delivered 7,900 shares. Hence it is stated that the remaining 23,400 shares were auctioned at the rate ranging from Rs.70/- to Rs.80/-. It was submitted that his client could not give delivery since the latter did not receive delivery from JSE. The broker requested that Rs.11,98,800/- which had been transferred in this regard to Investors Protection Fund be released.

The Committee was of the view that there is no merit in the representation of this member since its outstanding sale position has been closed out/auctioned in accordance with the bye-laws of BSE. The Committee found that operators doing multiple exchange business should be ready for these kinds of commercial risks. I find no reason to differ with the recommendation of the Committee of rejecting the claim of the broker.

7. The Committee has further found that a matter is pending in High Court of Rajasthan, Jaipur Bench. I have perused the certified copy of the order of High Court in the matter of *Mohd. Yakil Vs. Jaipur Stock Exchange* in which SEBI was a party. This matter had been dismissed as withdrawn in the year 2000 and no order was made against SEBI which could preclude me from passing this order.
8. In view of this, I hereby direct BSE to refund the money expeditiously to the above mentioned parties as per my order, along with interest accrued in Investor Protection Fund against the respective entities covered by this order. I further direct that in cases where money is to be released as per this order to the brokers, BSE shall ensure that same is released to the ultimate clients and shall obtain

proof of payments to clients by the brokers. BSE shall also forward a report of compliance showing the total balance amount left with BSE after the payment, relating to this case, to SEBI within a week after the payments.

Dated: 19.12.2007
Place: Mumbai

T.C. Nair
Whole Time Member
Securities and Exchange Board of India