

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF M/S FINCAP PORTFOLIO LTD.

SEBI REGISTRATION NO.: INB230876533.

IN THE SCRIP OF M/S DCM SHRIRAM CONSOLIDATED LIMITED.

DATE OF HEARING: 26.02.2007

Appearances:

For Noticee : Shri Rajesh Bharadwaj, Authorised Representative.

For SEBI : Shri. P.K. Nagpal, Executive Director,
Ms. Kshama Chavan, Legal Officer.

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

- 1.1 M/s Fincap Portfolio Ltd (hereinafter referred to as 'FPL') is a Member of the National Stock Exchange of India Ltd (hereinafter referred to as 'NSEIL'), and is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as Stock Broker, bearing Registration No. INB230876533.

- 1.2 SEBI conducted investigation into the buying, selling and dealings in the scrip of DCM Shriram Consolidated Limited (hereinafter referred to as 'DCM') for the period from March 12, 2001 to April 24, 2001 *inter alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'), SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations') and Regulations and Bye Laws of the Stock Exchange of which it is a broker. The trading details of the persons who had traded in the scrip were collected and analyzed along with the data of the volumes contributed by the entities. From these details it was found that the two groups - HB Group and CFL group - which are interconnected, had purchased and sold more than 90% of the total market volume of DCM during the investigation period.
- 1.3 The investigation revealed that between March 12, 2001 and April 24, 2001 the scrip was traded in 6 settlements in Settlement Nos. 11-16 for a period of 27 days during which 8,75,137 shares were traded out of which 8,61,461 shares accounting for 98.44% of the market volume was traded during 10 days and the price of the scrip went up from Rs. 49.50/- on March 14, 2001 to Rs. 64.50/- on April 20, 2001 and closed at Rs. 59.75/- on April 24, 2001.
- 1.4 There were 9 clients viz. Taurus Mutual Fund, CFL Securities Ltd., Gloria Investments Ltd., H B Stockholdings Ltd., Ivory Securities Ltd., Penwell Traders Ltd., H B Portfolio Ltd., Alaknanda Capital Services Pvt. Ltd and Har Sai Investments Ltd. who had purchased 8,21,069 shares accounting for 93.82% of the market volume. It was also observed that Taurus Mutual Fund was the major net purchaser.

- 1.5 There were 14 clients viz. Tropical, Har Sai Investments Ltd., CFL Securities Ltd., Gloria Investments Ltd., H B Stockholdings Ltd., H B Portfolio Ltd., Ivory Securities Ltd., Penwell Traders Ltd., Alaknanda Capital Services Pvt. Ltd., Shri Lalit Bhasin, H. C. Bhasin & Sons (HUF), Ms. Anju Bhasin, Ms. Mamta Kapur and RRB Securities Ltd. who sold 8,37,293 shares accounting for 95.68% of the market volume.
- 1.6 Investigation also revealed that the above entities were related / connected to one another as detailed hereunder:
- i) **H B Group:** The trading Member H B Securities Ltd. and Fincap Portfolio Ltd. and the Clients - Taurus Mutual Fund, H B Stockholdings Ltd., H B Portfolio Ltd., Shri Lalit Bhasin, H. C. Bhasin & Sons (HUF), Ms. Anju Bhasin, Ms. Mamta Kapur, RRB Securities Ltd., Har Sai Investments Ltd., Alaknanda Capital Services Pvt. Ltd., and Ivory Securities Ltd., were all related / connected to each other in one way or the other (common address/shareholder/director/promoter/subscriber to MOA etc.).
 - ii) **CFL Group:** The trading Member CFL Securities Ltd. and Tropical have a common Director – Shri Milan Dalal.
 - iii) **Connection between HB Group & CFL Group:** In his statement Shri Milan Dalal, Director of CFL Securities Ltd. and Tropical has stated that his family and Bhasin family (HB Group) know each other for three decades.
- 1.7 It was observed in the investigation that the major buying and selling in the scrip was generated by two groups i.e. H B Group and CFL Group. The clients of both these groups have together sold 6,98,362 shares which accounted for 79.80% of the market volume and together purchased 6,74,669 shares accounting to 77.09% of the market volume during the investigation period. Gloria Investment Ltd. and Penwell Traders Ltd. have together purchased 1,46,400 shares accounting for 16.73% of the market

- volume and sold 1,38,931 shares accounting for 15.88% of the market volume during the period of investigation. This makes the purchase and sale by these entities more than 90% of the total market volume of DCM during the investigation period.
- 1.8 The investigation found that these trades were structured and in many of the instances shares were ultimately transferred to Taurus Mutual Fund. FPL purchased / sold the shares for its clients Ivory Securities Ltd. (hereinafter referred to as 'Ivory') and Alaknanda Capital Services Pvt. Ltd. (hereinafter referred to as 'Alaknanda') alleged to be part of HB Group.
- 1.9 It is alleged that FPL had violated Clause A (1) to (5) of Code of Conduct as specified in Schedule II of Broker Regulations, 1992, read with Regulations 4 (a) to (d) of the PFUTP Regulations as applicable.
- 1.10 In view of the above, vide order dated August 2, 2004 an Enquiry Officer was appointed to enquire into the dealings of FPL in the scrip of DCM, for the aforesaid allegations.
- 2.1 A Show Cause Notice (hereinafter referred to as SCN) was issued vide letter IVD/ID1/PKN/SS/18424/04, dated August 19, 2004 to FPL by the Enquiry Officer communicating thereby the allegations in respect of the transactions in the scrip of DCM, in terms of Regulation 6(1) of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulation').
- 2.2 FPL vide letter dated September 24, 2004 replied to the SCN and submitted that they have no connection with the entities comprising HB Group and CFL Group and the trades have been executed on behalf of their clients Ivory and Alaknanda in the normal course.

- 2.3 An opportunity of hearing was given to FPL on January 24, 2005, by the Enquiry Officer. Shri Vishal Suneja, Director of FPL appeared before Enquiry Officer on the said date and denied the allegations.
- 2.4 After considering the replies and submissions made by FPL, the Enquiry Officer submitted his report dated March 31, 2005. The Enquiry Officer found that FPL violated the provisions of Clause A (2) of Code of Conduct as specified in Schedule II of Stock Broker Regulations. The Enquiry Officer recommended a minor penalty of 'Censure' on FPL for the violation of the Code of Conduct for Stock brokers committed by it.
- 2.5 In terms of Regulation 13(2) of the Enquiry Regulations, SCN dated May 27, 2005 along with a copy of Enquiry Report was issued to FPL, calling upon FPL to show cause as to why appropriate action as recommended by the Enquiry Officer should not be taken against it. FPL submitted its reply to the said show cause notice, vide letter dated June 15, 2005.
- 2.6 FPL submitted that it neither had a direct or indirect relationship with the various companies mentioned as alleged nor is there a cross holding in the capital of any of the aforesaid companies which can influence the investment decisions of the clients. It further submitted that the relationship was that of a client and stock-broker and nothing more.
- 2.7 FPL submitted that during the Investigation Period it has only traded on behalf of two clients, namely Ivory and Alaknanda, and total trades executed on their behalf were for an aggregate quantity of 1,23,323 equity shares, which forms only 7.05% of the total volume of 17,50,274 equity shares transacted in the scrip during the Investigation Period. Hence FPL submitted that the total trades executed on behalf of the aforesaid clients

are insufficient to either influence the market price or disturb the market equilibrium.

- 2.8 FPL admitted that the deal executed by it on behalf of Ivory and Alaknanda on April 24, 2001, is a cross deal. However it submitted that even if the aforesaid transaction can be categorized as cross deal there is nothing illegal, as the price paid by the buyer to the seller was the prevailing market price of DCM scrip, and there was delivery by the seller and the trade between them was done strictly in accordance with Rules and Regulations of NSEIL.
- 2.9 An opportunity of hearing before me was granted to FPL on February 26, 2007, at SEBI's Head Office – Mumbai. On the said day, FPL failed to attend the hearing.
- 3.1 I have carefully considered the findings of investigation, the SCN issued, replies filed, Enquiry Report and other submissions made by FPL.
- 3.2 I find that the major buying and selling in the DCM scrip was generated by HB Group and CFL Group, whose clients together sold 698362 shares accounting to 79.80% of the market volume and together purchased 674669 shares accounting to 77.09% of the market volume during the period of investigation. Further, Gloria Investments Ltd and Penwell together purchased 146400 shares accounting for 16.73% of the market volume during the period of investigation and sold 138931 shares accounting for 15.88% of the market volume during the period of investigation. Thus the total purchase and sale by these entities was more than 90% of the total market volume of DCM during the investigation period.

3.3 I find that the price of the scrip went up from Rs.49.50 on March 14, 2001 to Rs. 64.50 on April 20, 2001 and closed at Rs. 59.75 on April 24, 2001. Prior to the investigation period the company's shares were thinly traded on the exchanges with an average daily volume of 1000 shares and the price of the scrip had fallen from Rs.73.5 on February 09, 2001 to Rs.48 on March 13, 2001 i.e. a fall of 35% in one month.

3.4 I agree with the findings of Enquiry Officer that FPL was involved in 10 structured deals because of the following reasons:

- a) The buy order and sell orders were punched almost at the same time and also buy/sell order price/quantity were almost matching (see Table-1 given at page no. 8 of Enquiry Report).
- b) Ivory purchased through FPL 19,970 shares @ Rs.54-55 on March 21, 2001; 10,000 shares @ Rs.63 on April 11, 2001 and 25,000 shares @ Rs.61-62 on April 19, 2001. The respective selling clients for these purchases were HB stockholding through broker - HB securities Ltd., HB Portfolio through broker – Birla Sun Life and CFL securities Ltd. (Proprietary accounts).
- c) Ivory sold these shares subsequently through FPL 13,000 shares @ Rs. 59.50 on April 17, 2001; 19,970 shares @ Rs. 64 on April 24, 2001 and 15,845 shares @ Rs. 62 on April 24, 2001. The respective buying clients were Taurus Mutual Fund, Alaknanda through FPL and Penwell traders Ltd. through Aman Portfolio Ltd.

All these transactions took place by way of structured deals.

3.5 I find that FPL had also executed 1 cross deal for 19970 shares where Alaknanda and Ivory were the buying and selling clients respectively.

3.6 Synchronized / structured trade is a kind of transaction where the seller and buyer execute the trade for almost same quantity and price at almost the same time. Such deals create misleading appearance of trading and

manipulate the price and volume of the scrip and interfere with normal price discovery mechanism of stock exchange. In this regard the observations of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in *Ketan Parekh vs. SEBI, Appeal No. 2/2004 decided on July 14, 2006* are relevant, which is reproduced below:

"A synchronized transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium. Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties."

- 3.7 From the trade details given above it is clear that the buy order and sell orders were punched almost at the same time and also buy/sell order price/ quantity were also almost matching, indicating that the said transactions were structured deals, which were intended to create artificial market.
- 3.8 I find that the argument put forth by FPL that, there was no means of knowing whether any entity controlled by the client is simultaneously entering any contract order elsewhere, for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable.

It cannot be coincidental that on so many occasions their trades for the clients in respect of price, quantity and time of placing buy and sell orders would match contributing to such major volumes of trades in the market. This issue was already settled by the Hon'ble SAT in *Appeal Nos. 54 to 57 of 2002 in the case of Nirmal Bang Securities (P) Ltd v SEBI*, wherein in addition to the above reasoning it was observed that in synchronized trading intention is implicit :

"...BEB has been charged for synchronized deals with First Global. I have examined the data provided by the parties on this issue. I find many transactions between BEB and FGSB. There are many instances of such transactions. I find the scrip, quantity and price for these orders had been synchronized by the counter party brokers. Such transactions undoubtedly create an artificial market to mislead the genuine investors. Synchronized trading is violative of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes. The argument that the parties had no means of knowing whether any entity controlled by the client is simultaneously entering any contra order elsewhere for the reason that in the online trading system, confidentiality of counter parties is ensured, is untenable. It was submitted by the Appellants that it was not possible for the broker to know who the counter party broker is and that trades were not synchronized but it was only a coincidence in some cases. Theoretically this is OK. But when parties decide to synchronize the transaction the story is different. There are many transactions giving an impression that these were all synchronized, otherwise there was no possibility of such perfect matching of quantity price etc. As the Respondent rightly stated it is too much of a coincidence over too long a period in too many transactions when both parties to the transaction had entered buy and sell orders for the same quantity of shares almost simultaneously. The data furnished in the show cause notice certainly goes to prove the synchronized nature of the transaction which is in violation of regulation 4 of the FUTP Regulations. The facts on record categorically establish that BEB had indulged in synchronized trading in violation of regulation 47 of the FUTP Regulations. In a synchronized trading intention is implicit."

In another case of *Triumph International Finance Ltd. vs. SEBI*, (Appeal no. 35 of 2002, decided on May 04, 2007) the Hon'ble SAT had observed that:

“It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and matches the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. In the trades now in question the buyer, the seller and CSFB and the seller's broker have already been found guilty. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted.”

- 3.9 The explanation of Shri Vishal Suneja is not satisfactory. However there is no material on record by which it can be concluded that the broker i.e. FPL had colluded with other brokers and clients for executing the said transactions. I agree with the findings of Enquiry Officer in this regard.
- 3.10 However, the method and manner of execution of these transactions by the broker and the attendant circumstances leaves no doubt that the broker had failed to exercise due skill and care while executing the trades on behalf of its clients Ivory and Alaknanda, as observed by E. O., since the trades executed by FPL were in the nature of synchronized/structured trades. Had FPL been more diligent, such irregularities could have been prevented.

3.11 Hence, I find that FPL failed to exercise due skill and care in executing these transactions as a stock broker, which resulted in the violation of Clause A (2) of Code of Conduct as specified in Schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

4.1 Now, therefore, in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the Enquiry Regulations, 2002, I hereby impose a minor penalty of 'Censure' on M/s Fincap Portfolio Ltd. member of the NSEIL, bearing PAN - AAACF1889P.

4.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: 30.012008

**T.C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**