

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF NARESH CHAND CHANDAK, MEMBER,
CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB031038913
IN THE SCRIP OF BOMBAY DYEING AND MANUFACTURING CO. LTD.**

Date of hearing: October 17, 2008

Appearances:

For Noticee : None appeared

For SEBI : Shri Suresh Gupta, General Manager
Ms. Kshama Wagherkar, Legal Officer

ORDER

**UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE
BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.**

1. The scrip of Bombay Dyeing and Manufacturing Co. Ltd. (hereinafter referred to as "Bombay Dyeing") witnessed significant price rise accompanied with rise in volumes during the period May-June 2000. The price of the scrip which was in the range of Rs. 40 to Rs. 45 during beginning of May 2000 went to Rs. 100 during August, 2000 and subsequently to Rs. 120 during October 2000. The shares of Bombay Dyeing were listed on Bombay Stock Exchange Ltd. (BSE), National Stock Exchange (NSE), Calcutta Stock Exchange, Delhi Stock Exchange and Madras Stock Exchange.
2. In view of the above, Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted investigation into buying, selling and dealing in the scrip of Bombay Dyeing during the period

October 1999-October 2000 *vide* order dated November 15, 2000.

3. It was alleged in the investigation report that Shri Naresh Chand Chandak (hereinafter referred to as “the Broker”), member, Calcutta Stock Exchange (hereinafter referred to as the “CSE”) having SEBI Registration No. INB031038913 had entered into transactions in the shares of Bombay Dyeing through M/s. Bluechip Capital Market Pvt. Ltd. (hereinafter referred to as “Bluechip”) which were done neither on the stock exchange nor in accordance with the provisions of Securities Contracts (Regulation) Act, 1956.
4. Pursuant to the findings of the investigation, an Enquiry Officer was appointed by SEBI *vide* order dated March 10, 2003 under the then Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the “Enquiry Regulations”) to enquire into possible violations of the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, Securities Contracts (Regulation) Rules, 1957 and SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 by the said broker. The Enquiry Officer conducted enquiry in terms of enquiry regulations and found that the broker had violated the provisions of Section 2(i) and 13 of the Securities Contracts (Regulation) Act, 1956 and also Clause A(5) of the Code of Conduct as mentioned in Schedule II read with Regulation (7) of SEBI (Stock Brokers and Sub brokers) Regulations, 1992 and Rule 4 of SEBI (Stock Brokers and Sub Brokers) Rules, 1992. The Enquiry Officer submitted his report dated September 17, 2004 recommending a suspension of the certificate of registration of the broker for a period of three months.

5. A show cause notice dated October 5, 2004 was issued to the broker in terms of Regulation 13(2) of the Enquiry Regulations calling upon it to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed on it. A copy of the Enquiry Report was also forwarded to the Broker alongwith the said show cause notice.
6. The broker *vide* letter dated November 1, 2004 stated that the transactions entered into by him were proprietary and none of the trades were on behalf of any client. Further the broker stated that he was no longer doing stock broking business and requested to give 4 weeks time to reply to the show cause notice. The broker also showed interest in attending the hearing before the competent authority. Accordingly, opportunities of personal hearings were granted to the broker before the competent authority on March 10, 2005, September 12, 2006 and October 22, 2007. However, I note the broker on all the said occasions, on one pretext or the other sought postponement of the hearing.
7. Due to change in the competent authority, the matter was put up afresh before me. Accordingly, an opportunity of personal hearing was granted to the broker before me on October 17, 2008. However, the broker *vide* its letter dated October 1, 2008 informed that he will be unable to attend the hearing and requested to postpone the date of hearing. While communicating the said date of hearing, the broker was informed that if he failed to appear, the matter would be decided based on documents available on record. I am of the view that sufficient opportunity of hearings have been granted to the broker which he has not availed. Having complied with the principles of natural justice, I am

proceeding ahead with the material available on record.

8. I have carefully considered the investigation report, the Enquiry Report, the show cause notice issued to the Broker, the various submissions of the Broker and other material available on record. Though the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said enquiry regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. My findings are as under:
 - 8.1 I note that there was a rise in the price of scrip of Bombay Dyeing during the period May 2000 - October 2000. It was observed that during the aforesaid period the price rose from Rs. 40 during the beginning of May 2000 and went to Rs.100 during August 2000 and subsequently to Rs.120 during October 2000.
 - 8.2 I note that the broker who is a member of the Calcutta Stock Exchange was one of the clients of Bluechip. Bluechip had purchased the shares of Bombay Dyeing through the brokers of BSE viz., M/s Oracle Securities Pvt. Ltd. (hereinafter referred to as 'Oracle') and M/s V. J. Fin Securities Pvt. Ltd. (hereinafter referred to as 'VJ') and NSE member M/s. BPS Securities Pvt. Ltd. (hereinafter referred to as 'BPS') on its own account as well as on behalf of its client viz., Shri Niraj Kumar Balasaria, Shri Naresh Chand Chandak and M/s. Mega Resources Ltd.

- 8.3 From a perusal of the transactions of the broker in the scrip during settlement No A-53/1999-2000 to A-08/2000-2001, I note that Bluechip had built a purchase position in the name of the broker for 5,00,000 shares of Bombay Dyeing through the BSE brokers Oracle and VJ. Out of these 5,00,000 shares, 2,50,000 shares were sold from the account of the broker during settlement no. A-06/2000-2001. Further, 2,00,000 and 50,000 shares were sold during settlement no. A-07/2000-2001 and A-08/2000-2001 respectively. I note that these transactions were not reflected in the books of the BSE brokers *viz.*, Oracle and VJ. Also from the demat account statements received from Dalmia Securities Ltd, the depository participant of Bluechip, I note that Bluechip had not received/ delivered the above shares to the broker
- 8.4 I find that during Settlement No. A-09/2000-2001 and A10/2000-2001, Bluechip purchased 80,000 and 1,65,000 shares respectively for the broker. These transaction were also not seen in the books of the BSE stock brokers. At the end of settlement no. A-12/2000-2001, the broker had a position of 2,45,000 shares. During the settlement no. A-13/2000-2001 & A-14/2000-2001, Bluechip sold 25,000 and 70,000 shares respectively and in settlement no. A18/2000-2001, sold 1,15,000 shares from the account of the broker. These transactions were not seen in the books of accounts of the BSE stock brokers and hence I find that the same were not done on any exchange. Thus at the end of settlement no A-18/2000-2001 the broker had a purchase position of 35,000 shares.
- 8.5 I note that the broker has admitted in his written statements before the Investigating Authority of having undertaken the alleged transactions. The issue is whether these transactions were undertaken

in compliance of appropriate provisions of law. It is noted that Bluechip had not given contract notes to the Broker for the said transactions. Moreover, from the demat account details received from Dalmia Securities Ltd., the Depository Participant of Bluechip, it is noted that Bluechip had not taken/ given delivery of shares to the broker. I have also noted that the broker neither gave delivery of shares that he sold nor did he take delivery of shares purchased by him through Bluechip.

8.6 As brought out above, I find that the transactions have not been done on any exchange. Further, the transactions undertaken by the broker do not come within the purview of 'spot transaction' as the broker has neither delivered shares that he sold nor received the shares that he purchased. Section 2(i) of the Securities Contracts (Regulation) Act, 1956 defines spot transactions as:

(i) *"spot delivery contract" means a contract which provides for, –*

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

8.7 I observe from the investigation report that the broker has done the above transactions as client of Bluechip i.e. he has done proprietary

trading. However, I find that these transactions have not been done on any recognized stock exchange. In this regard, Section 13 of the Securities Contracts (Regulation) Act, 1956 stipulates that:

“If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or area and thereupon every contract in such state or area which is entered into after the date of notification otherwise than between members of a recognized stock exchange in such State or area or through or with such member shall be illegal”.

8.8 The broker being a member of Calcutta Stock Exchange and Calcutta being a notified area has violated the above provisions as he has not done the transaction with Bluechip on any recognized stock exchange. I find that this is evident from the fact that Bluechip has not issued any contract notes for the transactions done with the broker. Thus, the transactions have not been done in accordance with the provision of Securities Contracts (Regulation) Act, 1956 as stipulated above.

8.9 From the facts and circumstances of the case, I agree with the findings of the Enquiry Officer that the transactions of the broker are neither in the category of “spot transactions” nor have they been done on any stock exchange. By indulging in these transactions as aforementioned, the broker has violated Section 2(i) and Section 13 of the Securities Contracts (Regulation) Act, 1956 along with clause A(5) of the Code of Conduct as mentioned in Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 and Rule 4 of SEBI (Stock Broker and Sub-broker) Rules, 1992 read with Regulation 6A of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. I

note that since Rule 4 of SEBI (Stock Broker and Sub-broker) Rules, 1992 has been rescinded w.e.f September 7, 2006, a corresponding provision has been incorporated in the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992, w.e.f September 07, 2006 as Regulation 6A, I therefore hold the sub broker guilty of the violating the aforesaid provision.

- 8.10 Having regard to the nature and gravity of the charges established and the facts and circumstances of the case and also that the investigation report is silent regarding the payment aspect of the trades, I am of the considered view that ends of justice will be met by imposing a penalty of warning.
9. In view of the foregoing, I, 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 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 hereby warn the stock broker Shri Naresh Chand Chandak, Member, Calcutta Stock Exchange, SEBI Registration No. INB031038913 to be more cautious in the conduct of its business and to adhere to and comply with all statutory provisions while carrying out its activities in the securities market.

Date : 28.11.2008
Place : Mumbai

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