

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF NIRAJ KUMAR BALASARIA, MEMBER,
CALCUTTA STOCK EXCHANGE SEBI REGISTRATION NO.
INB030037115 IN THE SCRIP OF BOMBAY DYEING AND
MANUFACTURING CO. LTD**

Date of hearing : October 17, 2008

Appearances:

For Noticee : Shri Niraj Kumar Balasaria

For SEBI : Shri Suresh Gupta, General Manager,
Mrs. 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 (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 Niraj Kumar Balasaria (hereinafter referred to as "the Broker"), member Calcutta Stock Exchange (hereinafter referred to as the "CSE") having SEBI Registration No. INB030037115 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 the 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 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 28, 2004 recommending a suspension of the certificate of registration of the broker for a period of one year.

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 along with the said show cause notice.
6. The broker *vide* letter dated October 19, 2004, stated that he had entered into the transactions as an individual with other stock brokers and not as a member of any stock exchange and that he was under the impression that formalities like reporting to the exchange or issuance of contract notes were the duty of broker only. He admitted that some of his acts could be seen as violations but they were not intentional and had arisen due to lack of knowledge.
7. Due to change in the competent authority, matter was put up afresh before me. Accordingly, an opportunity of personal hearing was granted to the broker before me on October 17, 2008 wherein Shri Niraj Kumar Balasaria appeared before me and made submissions.

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 relevant 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 is 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. Finsecurities 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 I note that during settlement no. A-07/2000-2001, Bluechip had purchased 50,000 shares of Bombay Dyeing on behalf of the broker through the BSE brokers Oracle & VJ. During settlement No. A-10/2000-2001, Bluechip purchased 2,50,400 shares on behalf of the broker and gave delivery of 1,95,400 shares to the broker. Further, during settlement no A-11/2000-2001, Bluechip purchased another 2,00,000 shares on behalf of the broker. Also, during settlement no. A-13/2000-2001, Bluechip purchased 96,448 shares and sold 1,448 shares on behalf of the broker. Thus, at the end of this settlement, Bluechip had built a purchase position of 2,00,000 shares in to the account of the broker. During settlement no A-14/2000-2001, Bluechip sold 70,000 shares from the account of one of their other clients *viz.* Shri Naresh Chand Chandak and purchased the same amount of shares in the account of the broker. I note that the aforesaid transactions except the transactions of settlement No. A-13/2000-2001 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, I note that Bluechip had not received/delivered the above shares to the broker except for the delivery of 1,95,400 shares and 2,00,000 shares which were reflected as credited in the demat account of Niraj Kumar Balasaria on June 14, 2000 and June 23, 2000 respectively.

8.4 In this regard, the broker submitted that he had nothing to do with the transactions and violations of Bluechip and that he had acted as the client of Bluechip. I note 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 the 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 the notification otherwise than between members of a recognized stock exchange in such state or area or through or with such member shall be illegal.”

8.5 Thus, I find that the broker being a member of the Calcutta Stock Exchange and Calcutta being a notified area has violated the above provision of law as he has not done transaction with Bluechip on any recognized Stock Exchange. I further observe that Bluechip has not issued any contract notes for the transactions done with the broker. Thus the transactions have been done in violation of Section 13 of the Securities Contracts (Regulation) Act, 1956.

8.6 I note that the broker had stated to have acted in the capacity of a client/ investor and his transactions were executed by Bluechip as a sub broker. It is pertinent to note that even though he may have acted as a client, the fact that he is a trading member of Calcutta Stock Exchange cannot be overlooked. I further note that in most of the transactions as mentioned above, the delivery was not taken and hence the transactions do not come under the purview of “spot transactions”. Thus, this amounts to be a violation of Section 2(i) of the Securities Contracts (Regulation)

Act, 1956 which 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 therefore 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 therefore 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 note that the broker has admitted in his reply to the SCN and also in his written submissions before the Investigating Authority of having undertaken the alleged transactions in his proprietary capacity. The issue to be considered in this regard is whether these transactions were undertaken in compliance with the relevant provisions of law. I find from the records that Bluechip has not issued contract notes to the broker for the transactions. From a perusal of demat account statement received from Dalmia Securities Ltd., the Depository Participant of Bluechip, it is observed that the Bluechip had not given delivery of the shares to the broker.

- 8.8 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.
9. 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.
10. Now therefore 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, I hereby warn the stock broker, Shri Niraj Kumar Balasaria, Member, Calcutta

Stock Exchange, SEBI Registration no. INB030037115 to be more cautious in the conduct of its business and to adhere to and comply with all the statutory provisions while carrying out its activities in the securities market.

Place: Mumbai
Date : 28.11.2008

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