

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. T. C. NAIR, WHOLE TIME MEMBER**

**IN THE MATTER OF DINESH KUMAR MODI & CO, MEMBER, THE
CALCUTTA STOCK EXCHANGE ASSOCIATION LTD. WITH SEBI
REGISTRATION NO. INB030741610**

**IN THE SCRIPS OF AKSHAY FISCAL SERVICES LTD. AND ASHIKA CREDIT
CAPITAL LTD.**

Date of hearing : 23-05-2008

Appearance of the parties

For M/s. Dinesh Kumar Modi & Co.:

Shri Dinesh Kumar Modi

For the Securities and Exchange Board of India:

1. Shri Jayanta Jash, General Manager
2. Shri Mrityunjaya Behera, Manager

ORDER

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

1. This common order would dispose of the enquiry proceedings initiated against M/s. Dinesh Kumar Modi & Co. in the matters of Akshay Fiscal Services Ltd. and Ashika Credit Capital Ltd. Brief facts of the case are as under:

The Securities and Exchange Board of India ('SEBI' for short) had conducted investigations into the alleged excessive speculative transactions in some of the finance/investment, bio-tech and info-tech companies which were listed at the Calcutta Stock Exchange (hereinafter referred to as "CSE"). Akshay Fiscal Services Ltd. (Akshay) and Ashika Credit Capital Ltd. (Ashika) were two such

companies where widespread speculative trading was reported to SEBI by the CSE. In view of the above, trading in the shares of the said two companies were subjected to investigations by the SEBI for the period July to October, 2001 (hereinafter also referred to as 'the investigation period') to find any possible violations of the provisions of the SEBI Act, 1992 and the rules and regulations framed thereunder. The investigations revealed that M/s. Dinesh Kumar Modi & Co. (hereinafter referred to as 'noticee' or 'broker'), a member of the CSE and registered with the SEBI with registration no. INB030741610, had dealt in the shares of the above said companies and found that -

- a) most of the trades of the noticee in the shares of Akshay and Ashika were cross deals executed on a single terminal,
- b) the noticee had simultaneously placed both the buy and the sell orders for its clients for the same quantity and price,
- c) there were matching of trades of select brokers at the exchange
- d) by executing such deals, the broker was able to generate a trading volume of 8,15,000 shares which was around 11% of the total trades in otherwise illiquid scrip of Akshay thereby rigging the price from Rs.14.50/- to Rs.45.40/- during the investigation period.
- e) by executing such trades, the broker was able to generate a trading volume of 2,36,400 shares which was around 6% of the total trades at CSE in the otherwise illiquid scrip of Ashika, thereby rigging the price of the scrip from Rs.24/- to Rs.39.70/- during the investigation period.

2. As it was prima facie found that the noticee had acted in a manner contravening the relevant provisions of the PFUTP Regulations and Broker Regulations while dealing in the scrips of Akshay and Ashika, an enquiry was ordered by the SEBI to inquire into its dealing in the said scrips vide order dated 18-09-2004, appointing an Enquiry Officer in terms of Regulation 5 of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 ('Enquiry Regulations').

3. I note that the Enquiry Officer had issued separate show cause notices dated 04-10-2004 under Regulation 6 of the Enquiry Regulations to the noticee in the enquiry proceedings initiated in the scrips of Akshay and Ashika. The findings of the investigation as relevant to the case were enclosed along with the respective show cause notice issued to the noticee. The noticee had submitted its reply vide letters dated 19-10-2004 to the enquiry officer. After completing the enquiry in terms of the Enquiry Regulations, the Enquiry Officer in his Report to the Board found that the noticee violated the provisions of Regulation 7 of the Broker Regulations read with Clauses A (1), (2), (3) & (5) and B (4) (a) of the Code of Conduct prescribed for stock brokers mentioned under Schedule II of the said regulations and Clauses (a), (b), (c) and (d) of Regulation 4 of the PFUTP Regulations while dealing in the scrips of Akshay and Ashika. Vide separate Enquiry Reports (both dated 19-12-2006), the Enquiry Officer had recommended that the certificate of registration of the noticee be suspended for a period of 6 months in each of the two matters.
4. Thereafter, show cause notices dated 28-12-2006 were issued to the noticee in terms of Regulation 13 (2) of the Enquiry Regulations enclosing a copy of the enquiry reports in each of the two matters. The show cause notices required the noticee to show cause as to why action as recommended by the enquiry officer in his enquiry report in the relevant matter be not imposed. In reply to the said show cause notices, the noticee submitted its replies dated 09-05-2007 and in the personal hearing on 23-05-2008, the noticee was represented by its proprietor, Shri Dinesh Kumar Modi who made submissions.
5. In the scrip of Akshay, I find from the trade data that the brokers, viz. Mukesh Dokania & Co, Swadha Securities Pvt. Ltd., S. K. Jhunjhunwala and the noticee had traded substantially in the scrip. The details (per table below) with respect to select brokers in the said scrip from Settlement No. 2002115 to 2002129 would

indicate that the noticee has contributed 10% on the total buy and 11% of total sell of shares of Akshay at the exchange.

Name of the broker	Buy Qty	% of member's buy to total buy (3811706)	Sale Qty	% of member's sale to total sale (3811706)
Mukesh Dokania & Co	1223701	32%	1492100	39%
Swadha Securities P. Ltd.	915050	24%	1403701	37%
S.K. Jhunjhunwala	821000	22%	121000	3%
Dinesh Kumar Modi & Co	395000	10%	420000	11%
Total	3354751	88%	3436801	90%

It is observed from the above data submitted by CSE that the select brokers had generated approximately 90% of the volume in the shares of Akshay for the period under scrutiny. The average price of the scrip has consequently increased from Rs.3.20/- in Settlement No.2002115 to Rs.47.50/- in Settlement No. 2002129 (period - between July 2, 2001 to October 12, 2001) without any change in the fundamentals of the company. I find that all the trades of the noticee were cross deals on behalf of its clients.

6. I note that the enquiry officer has found that on majority of the occasions, the orders placed by the noticee in the exchange were matched with select brokers in terms of order quantity, price and time. Hence, the delivery obligation was either negligible or nil from the noticee's side. Such trading pattern had impacted the price/volume of the scrip which in turn was responsible for the price rise.
7. From the material on record, it appears that the broker and the clients had executed the trades so as to match amongst themselves, which would result in no delivery to the exchange. Such cross deals entered into by the noticee over a long period in time would create artificial volumes and attract public interest in the scrip. Therefore, by the aforesaid acts, the noticee was instrumental in affecting the price of the scrip and created a false appearance of trading in the scrip. Since

the trades did not result in delivery of shares or payment of money, it is inferred that the transactions were not genuine trade transactions not intended to transfer any beneficial ownership of the shares. By the above said acts, the noticee was not fair in his conduct of business and also did not exercise due care and diligence and had indulged in unfair and deceptive practices thereby upsetting the equilibrium of the scrip in the market. The Enquiry Officer found that the noticee has therefore violated the provisions of Regulation 7 of the Broker Regulations read with Clauses A (1), (2), (3) & (5) and B (4) (a) of the Code of Conduct prescribed for stock brokers mentioned under Schedule II of the said regulations and Clauses (a), (b), (c) and (d) of Regulation 4 of the PFUTP Regulations. I agree with the findings of the Enquiry Officer.

8. In the scrip of Ashika, I find that the average price of the scrip at the exchange was Rs.5.05/- during Settlement No.2002115 (02/07/2001-06/07/2001) which had shot up to Rs.43.70/- during the 3rd week of October 2001 with substantial increase in the trading volumes at the exchange. From the data obtained from the CSE for the relevant period, it was observed that major trading in the scrip was by Swadha Securities Pvt. Ltd., Mukesh Dokania & Co., Prakash Nahata & Co. besides the noticee. It was observed that during settlement No. 2002115 (02/07/2001-06/07/2001) to 2002130 (15/10/2001-22/10/2001) a total of 18,77,376 shares were purchased and the same quantity of shares were also sold resulting in no delivery obligations. I note that the investigations had further revealed that the noticee along with other brokers of CSE viz. Mukesh Dokania & Co and Dinesh Kumar Modi had transacted in 3341800 shares of the company for their clients through matched trades that were synchronized in terms of order price, quantity and time. The volumes so generated by such synchronized and circular trading were nearly 88% of the total trading on the exchange during the relevant period. The member wise analysis of trading data in respect of the above scrip from the Settlement No. 2002115 to 2002130 is given below:

Name of the broker	Buy Quantity	% of member's buy to total buy (18,77,376)	Sale Quantity	% of member's sale to total sale (18,77,376)
Swadha Securities	6,05,000	32%	6,05,000	32%
Mukesh Dokania	9,47,700	50%	9,47,700	50%
Dinesh kr. Modi	1,18,200	6%	1,18,200	6%
Total	16,70,900	88%	16,70,900	88%

From the above table, it is noticed that the noticee had traded around 6% of the total traded volumes. The noticee's date wise transactions in the said scrip is as follows:

Date	Name of the broker	Buy Qty	Buy Price	Sale Qty	Sale Price
07/08/2001	DINESH KUMAR MODI & CO	10000	24.0	10000	24.0
05/10/2001	DINESH KUMAR MODI & CO	70000	39.6	70000	39.6
08/10/2001	DINESH KUMAR MODI & CO	38200	39.7	38200	39.7

The noticee has generated substantial volumes only on three trading days in the said scrip on behalf of very few clients. Top 2 buyers viz. Topgrain Corporate Services (70,000 shares) and Zen Stock & Share Broking Ltd. (38,200 shares) and 3 sellers viz. Classic Capital Markets Ltd. (70,000 shares), Pawan Jain (38,200 shares) and Namita Jain (10,000 shares) have generated 91.54% and 100% of the member's total buy and sale respectively. It was observed that the most of the trades of the noticee are client to client trades executed on a single terminal of the broker (cross deals). A scrutiny of trades of the noticee will show that through matching and synchronized trades at his own terminal the member had generated significant volumes of 2,36,400 shares in three days.

9. I find that the concentrated trading by the aforesaid brokers in the said scrip was responsible for its price rise substantially. The noticee has also admitted that it had executed cross deals for its clients on a single terminal. The noticee has replied that all orders were placed only on the instructions of their clients. All the transactions were cross deals wherein the buyer and seller belonged to the same broker and the volumes contributed by such trades by the broker is quite

significant which created artificial rise in volume and price. Further, such trades did not result in delivery of shares or payment of money as they were squared off. By executing such trades for their clients in this scrip, the noticee had not acted with the required diligence and was not fair in its conduct as a stock broker and had indulged in unfair and deceptive practices thereby upsetting the equilibrium of the scrip in the market. The Enquiry Officer has found the noticee to have violated the provisions of Regulation 7 of the Broker Regulations read with Clauses A (1), (2), (3) & (5) and B (4) (a) of the Code of Conduct prescribed for stock brokers mentioned under Schedule II of the said regulations and Clauses (a), (b), (c) and (d) of Regulation 4 of the PFUTP Regulations. I concur with the findings of the enquiry officer. For the reasons above said, I find that the acts of omission and commission of the noticee are in contravention of the provisions of the Broker Regulations and the PFUTP Regulations.

10. In view of the above, I find that the noticee had contravened the provisions of clauses (a) and (b) of Regulation 4 of the PFUTP Regulations and Regulation 7 read with sub-clauses (1), (2) and (4) specified in Schedule II of the Broker Regulations, while dealing in the scrips of Akshay and Ashika. I note that the enquiry officer has recommended a penalty of suspension of the noticee's certificate of registration as a stock broker for a period of 6 months each in the two separate enquiry proceedings initiated against it. However, after carefully examining the reply of the noticee, the mitigating factors (percentage of trading and the number of days traded by the noticee) explained in the course of the personal hearing and the facts and circumstances of the case, I am of the considered view that the noticee failed to exercise due diligence for which a penalty of *censure* would meet the ends of justice.
11. Now, therefore, in exercise of powers conferred upon me under Section 19 of the SEBI Act, 1992 and Regulation 28 (2) of the SEBI (Intermediaries) Regulations, 2008, I hereby censure M/s. Dinesh Kumar Modi & Co, SEBI Registration No. INB030741610. The broker is further directed to be careful in future while

dealing with its clients. Any repetition of such instances shall be dealt with seriously.

DATE: 09-01-2009

PLACE: MUMBAI

DR. T. C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA