

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF VIPUL BHAGWANDAS SHAH, (PARTNER
ERSTWHILE BHAGWANDAS BHOGILAL & Co.) IN THE SCRIP OF
GUJARAT FISCON LIMITED**

Date of hearing : September 30, 2008

Appearances

For Noticees : Shri Vishal Shah, Authorised Representative

For SEBI : Shri P.K. Bindlish, Chief General Manager
Shri Atul Agarwal, Manager
Ms. Kshama Chavan, Legal Officer

**ORDER UNDER REGULATION 28(2) OF THE SEBI
(INTERMEDIARIES) REGULATIONS, 2008.**

1. SEBI had conducted investigations into the alleged price manipulation in the scrip of Gujarat Fiscon Limited (hereinafter referred to as "GFL") for the period from July 31, 2000 to December 15, 2000 (hereinafter referred to as the "investigation period"). It was revealed that during the investigation period, the price of GFL moved from Rs.60 to Rs.104 respectively and touched a peak of Rs.113.50 on November 27, 2000 on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE").

2. It was found that a cartel of clients and brokers who were known to each other and who also had business relationship traded heavily in the scrip thereby creating artificial volumes in the scrip at BSE. It was found that the top eight members traded 82% of the traded volume. It was alleged that these members abetted their clients in creating artificial volumes.
3. It was alleged that Bhagwandas Bhogilal & Co. (hereinafter referred to as "BBC"), member BSE had aided and abetted the client in manipulation of the price of the scrip and generated artificial volumes in the market.
4. It was alleged that the trades executed by BBC on behalf of its client Shri Jatin Shah were artificial in nature and accordingly BBC was charged to have violated clause A (2),(3) and (4) of Code of Conduct as specified under Schedule II of Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) and Regulation 4 (a) to (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as "PFUTP").
5. During the enquiry proceedings, it was found that BBC was a partnership firm and was dissolved on account of death of one of the partners namely, Shri Bhagwandas Bhogilal Shah. As per the records available it was found that Shri Vipul Bhagwandas Shah and Shri Vijay Bhagwandas Shah were the other partners of BBC before its dissolution. The proceedings were dropped against the

partnership firm BBC vide enquiry report dated November 8, 2005, however the proceedings were initiated against the two partners viz., Shri Vijay Bhagwandas Shah and Shri Vipul Bhagwandas Shah vide further order dated May 16, 2006. During the enquiry proceedings, it was found that one of the partners namely, Shri Vijay Bhagwandas Shah had also expired on June 10, 2006 and therefore the proceedings against him were dropped. In view of the above, the enquiry was proceeded only against Shri Vipul Bhagwandas Shah under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the "Enquiry Regulations").

6. The Enquiry Officer vide his report dated March 26, 2008 found that BBC had violated the provisions of Regulations 4 (a) to (d) of the PFUTP Regulations and clauses A (2), (3) and (4) of the Code of Conduct as specified in Schedule II of Regulation 7 of the Broker Regulations, 1992. Since Shri Bhagwandas Bhogilal and Shri Vijay Bhagwandas Shah who were the partners of the erstwhile firm BBC had expired and the firm has already been dissolved, the Enquiry Officer recommended a penalty of three months debarment of Shri Vipul Bhagwandas Shah from carrying out any activities as intermediary in the intermediary firm or company and other capital market related institutions.
7. In terms of Regulation 13(2) of the then SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the Enquiry Regulations"), a copy of the enquiry report along with show cause notice dated April 03,

2008 was issued to Shri Vipul Bhagwandas Shah requiring him to show cause as to why appropriate action including the action as recommended by the Enquiry Officer should not be imposed upon him.

8. Shri Vipul Bhagwandas Shah vide letter dated April 20, 2008 replied to the show cause notice and requested for additional time for submitting the reply. Accordingly Shri Vipul Bhagwandas Shah submitted his reply vide letter dated nil received by SEBI on May 28, 2008. The reply interalia stated as under:

- i. *He was never an active participant in BBC. None of the documents or agreements relating to the working of the firm was signed by him.*
- ii. *He was not the authorised signatory for any purpose for the bank accounts of BBC.*
- iii. *He did not operate any of the trading terminals at the office of BBC.*
- iv. *None of the clients including Jatin R Shah were introduced by him.*
- v. *The law of partnership clearly states that partner is jointly and severally liable to the firm for any of the acts committed by any of the partners but the same cannot be made applicable here because the alleged charge is in regards to an act which is outside the purview of the business being carried on by a partner of the firm and in the present matter, the alleged is Shri Bhagwandas Bhogilal, the death certificate of whom has already been provided to the authorities.*
- vi. *Clause 45 of the Partnership Deed talks about the liability of the firm which states that partner will be personally and jointly liable for the acts of the firm but the same does not extend to the personal acts of*

the partners. As carrying on any fraudulent activity cannot be the objective of the firm and contract of doing an illegal act is void ab initio in the eyes of the law. So when it comes to execution of such a contract, he cannot be made personally liable for the same and for the same reason liability will not devolve a person.

- vii. The broking firm in which Vipul B Shah was a partner had carried out trades on behalf of clients in good faith in normal course of business, no adverse conclusions can be drawn against him.*
- viii. There is no evidence on record which establishes any intention of aiding and assisting the firm's client in creating artificial market and in the absence of the same such sweeping charges devoid of any basis need to be set aside.*

Apart from the above, Shri Vipul Bhagwandas Shah requested to furnish all the materials / documents relied upon by the Investigating Officer and requested to provide him with the opportunity to cross examine the persons who had deposed before SEBI. Shri Vipul Shah further requested for granting an opportunity of personal hearing before taking any decision in the matter.

- 9. An opportunity of personal hearing was granted to Shri Vipul Bhagwandas Shah on August 8, 2008 before me. However he did not attend the hearing. Another opportunity of hearing was granted to him on September 19, 2008. However vide letter dated September 16, 2008, Shri Vipul Bhagwandas Shah requested to adjourn the hearing as he was out of station till September 22, 2007. Acceding to his request, last opportunity of hearing was granted to

Shri Vipul Bhagwandas Shah on September 30, 2008 wherein Shri Vishal Shah, authorised representative of Vipul Bhagwandas Shah appeared and made submissions. During the course of hearing, he submitted that he may propose to apply for consent terms with SEBI. SEBI vide letter dated October 23, 2008 intimated Vipul Bhagwandas Shah to forward their application for consent terms to SEBI within 15 days from the date of receipt of the letter. However I find that Shri Vipul Bhagwandas Shah has till date not filed any consent application. In view of the above and having complied with the principles of natural justice, I am proceeding ahead based on the material available on record.

10. I have carefully examined the investigation report, enquiry report, show cause notices and the replies/ submission of Vipul B Shah. I note that 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:

- 10.1 The Enquiry Officer has found that Shri Vipul Bhagwandas Shah was the partner in the BBC at the relevant time and as being a partner, he is personally and severally liable for the deeds of the firm under Regulations 13 of the Enquiry Regulations. Therefore I observe that the contention of Vipul Bhagwandas Shah that he can

not be held liable for violations committed by BBC does not hold good.

10.2 I note that Vipul Bhagwandas Shah has contended that the documents relied upon by SEBI had not been provided to him. Further he also stated that he was not provided an opportunity of cross-examination of witnesses. He further contended that non providing of the above documents and opportunity of cross - examinations amounts to the violations of principal of natural justice. I observe that the relevant findings of the investigations relating to erstwhile BBC, copy of the statement of Shri Vipul Bhagwandas Shah along with the details of transactions, copy of the statement of Shri Jatin R Shah and a copy of the Order appointing the Enquiry Officer was communicated to Vipul Bhagwandas Shah along with the show cause notice dated December 30, 2004 and the same was again provided to him along with the show cause notice dated July 18, 2006. Vipul Bhagwandas Shah in his reply to the show cause notice dated July 18, 2006 has also accepted that with the said notice and the documents have also been forwarded to him. Therefore, I observe that the material on which reliance had been placed in show cause notice was provided to Vipul Bhagwandas Shah. It is not necessary to provide the whole investigations report to the entity and providing the relevant portion of investigation report is sufficient compliance with the principal of natural justice.

10.3 Further, the statement recorded by SEBI during the course of investigations is a corroborative evidence along with other

documentary evidences available with SEBI, a copy of which was given by SEBI along with the show cause notice issued to Vipul Bhagwandas Shah. From the material available on record, I am satisfied that there is no merit in the above objection raised by him. Further vide SEBI letter dated July 21, 2008, Vipul Bhagwandas Shah was intimated that he has already been provided with all the documents and materials which were relied upon by SEBI during investigations and that the documents were part of the annexure to the notices issued to him on December 30, 2004 and subsequently on July 18, 2006. He was also intimated that his request for cross examination cannot be acceded to and that he was then given an opportunity of hearing before me. Besides the issue relating to furnishing of documents and cross examination was not raised by him during the said hearing.

10.4 It is an admitted fact that price of the scrip of GFL for the period July 31, 2000 to December 15, 2000 moved from Rs. 60 to Rs. 104 respectively and touched a peak of Rs. 113.50 on November 27, 2000 at BSE. It was found that the aforesaid trades were done by a set of members, sub-brokers and their clients. The top 8 members traded 82% of the traded volume. I also found that these members abetted their clients in creating artificial volumes.

10.5 I note that erstwhile BBC bought 1,26,700 shares of GFL and sold 1,28,500 shares on behalf of its clients. Out of this, 1,26,300 shares were bought and 1,25,900 shares were sold on behalf of the client Shri Jatin Shah. The erstwhile BBC had created a maximum volume

in the scrip i.e. 19.63% and had mainly dealt for Shri Jatin R Shah, who contributed 19.41% of the volume at the exchange and about 99% of the volume of the erstwhile BBC. BBC have also punched two client codes “22211/22111” at BSE trading system for the same client Shri Jatin R. Shah. With regard to punching of two client codes for Shri Jatin R. Shah, Shri Vipul BhagwandasShah submitted that the same was done pursuant to the request of the client.

10.6 It is observed that BBC’s client Shri Jatin Shah’s orders matched in 149 trades over 20 days with the orders of Hirachand Salecha, who traded in the name of Kishorekumar Vasa through member Ramaben Samani Finance. Further Jatin Shah’s orders matched in 119 trades over 18 days with the orders of Hirachand Salecha, who also traded through sub broker Allwin Securities Ltd. Jatin Shah’s orders also matched in 158 buy trades spread over 21 days with the same counterparty Bharati Thakkar, who was dealing for Agarwal Shares & Finance Pvt. Ltd. (Uma Shankar Agarwal), while 81 buy trades spread over 10 days were matching with the same counterparty Unique Stock Broking Pvt. Ltd., code 170.

10.7 I find that during the investigation period, BBC’s client buy order had resulted into the first trade of the day and had also dealt in the closing session as under:

- a. In settlement No. 20 first buy order on behalf of Jatin R Shah was punched for 1000 shares at 10:12:17 a.m. @ Rs. 60.00

- b. In settlement No. 21 first buy order on behalf of Jatin R Shah was punched for 1000 shares at 10:02:18 a.m. @ Rs. 62.00
- c. In settlement No. 22 the broker has purchased 1000 shares on August 21, 2000 @ Rs. 65.00 (closing price of the previous day was Rs. 63.70) on behalf of Jatin R Shah at 10:59:26 a.m. and also purchased 1000 shares @ Rs. 65.10 at 3:25:05 & 3:25:06 on behalf of the same client.
- d. In settlement no. 23 first buy order on behalf of Jatin R Shah was punched for 2000 shares at 10:06:06 a.m. @ Rs. 68.00

10.8 I have noted that during the deposition before the investigating authority, Shri Vipul Bhagwandas Shah had stated that the trading in the scrip was not all that innocent and was fishy. Shri Vipul Bhagwandas Shah who was the partner in the erstwhile firm, had stated that Jatin R. Shah was aware of the facts and that it leaves him in no doubt about Shah's intentions to create artificial volumes in the scrip. He had also stated that it appeared from the trading pattern adopted by Jatin R. Shah that he had misused the trading mechanism provided to him as a client. The broker also did not collect the margins and had let the client scot free in his dealings and hence was not following the due diligence exercise. Shri Vipul Bhagwandas Shah was knowing Shri Umashankar Agarwal and it was in the knowledge of BBC that the manipulations were going on. On almost all days during the said period BBC's client buy order had resulted into the first trade of the day and it had also dealt in the closing session. It is therefore inferred that the client as well as BBC

had interest in the scrip and had done these trades in the scrip to establish the price of the scrip.

10.9 During the investigations, Shri Vipul Bhagwandas Shah, partner of erstwhile BBC, appeared on behalf of BBC and had stated that only one client by the name of Jatin R. Shah had dealt in the scrip of GFL during the period under reference. Shri Vipul Bhagwandas Shah categorically admitted that his client Jatin Shah had punched the orders only on some few stray occasions; otherwise all the orders were punched by him pursuant to and in accordance with his instructions. In view of the above, I can not believe that BBC was not aware of manipulative designs of Jatin R. Shah.

10.10 However, I also find that Shri Vipul Bhagwandas Shah had traded on behalf of the client and no relationship except the broker client relationship has been brought out between BBC and Jatin R Shah. I have also noted that Shri Bhagwandas Bhogilal and Shri Vijay Bhagwandas Shah who were the partners of the erstwhile firm have expired and the firm has already been dissolved. Taking into consideration the facts of the case and nature of violation, I am of the view that a warning is sufficient to have a deterrent effect on the Shri Vipul Bhagwandas Shah.

11. Therefore, in exercise of the powers conferred upon me by virtue of Section 19, read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby warn Shri Vipul Bhagwandas Shah, (PAN No. ARRPS0651B) to the effect

that he should be careful in future and exercise due care and diligence in the conduct of his affairs in the capital market. I also direct Shri Vipul Bhagwandas Shah, to note that any instances of violation or non-compliance with the SEBI Act, Rules and Regulations in future shall be dealt with stringently.

PLACE : MUMBAI

T .C. NAIR

Date : 12.01.2009

WHOLE-TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA