

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

**IN THE MATTER OF HORNIC INVESTMENT PVT. LTD, MEMBER, THE
NATIONAL STOCK EXCHANGE OF INDIA LTD. SEBI REGN NO.
INB230814839 IN THE SCRIP OF EIDER INFOTECH LTD.**

Date of hearing: October 14, 2008

Appearances:

For Noticees: Shri Anil Daga, Director
Shri Kamlesh Mehta, Consultant

For SEBI : Shri P.K.Bindlish, Chief General Manager
Shri Gautam Kumar, Legal Officer
Ms. Kshama Wagherkar, Legal Officer

ORDER

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

1.1 Eider Infotech Ltd. (hereinafter referred to as "EIL") was incorporated as a public limited company in 1990. The shares of EIL were listed for trading at National Stock Exchange of India Limited (hereinafter referred to as "NSE"), Bombay Stock Exchange Ltd (hereinafter referred to as "BSE"), Ludhiana Stock Exchange (Regional) (hereinafter referred to as "LSE"), Ahmedabad Stock Exchange (hereinafter referred to as "ASE"), Delhi Stock Exchange (hereinafter referred to as "DSE") and Calcutta Stock Exchange (hereinafter referred to as "CSE") at the time of investigation.

1.2 Securities and Exchange Board of India (hereinafter referred to as "SEBI") had conducted an investigation for the period December 1999 to March

2000 (period-I) and April 2000 to August 2000 (period-II) [hereinafter both the periods referred to as “the relevant period”] into the buying /selling/dealing in the scrip of EIL. Investigation revealed that trading in the scrip of EIL was not very active at both BSE and NSE during the relevant period. It was found that only 200 shares at BSE and 1,800 shares at NSE were traded during the period January 1998 to August 1999. During September 1999 to March 2000, 6,500 shares and 3,04,200 shares were traded at BSE and NSE respectively. During September 2000 and March 2001 the trading at BSE was nil whereas 26,295 shares were traded at NSE.

1.3 Investigation further revealed that on November 24, 1999, the closing price of EIL at NSE was Rs.32, which touched a high of Rs. 292 by the end of the first week of January 2000 and came down to Rs. 228 by second week of January 2000. By 11th February 2000, the price reached its highest of Rs.800. Correspondingly volumes had gone up in November 1999 from average volume of 490 shares to 4,030 shares in January 2000. Volumes started to decrease in March 2000. Further, during investigation period II, around April 12, 2000 when the scrip was trading at about Rs. 500, the scrip was suspended by NSE till April 26, 2000 due to non compliance of listing agreement.

1.4 It was further found that during period-I, M/s Eider Infotech Ltd. and their associates/group companies played a major role in the price movement. From the trading records and bank records, it was found that EIL and its group companies directly funded the brokers and other entities who had significantly traded in the scrip during period-I. The

bank records, revealed the flow of funds on a continuous basis from group or associate company of EIL to the accounts of brokers/sub-brokers etc.

- 1.5 It was alleged that Hornic Investments Pvt. Ltd. (hereinafter referred to as “the broker”) a member of NSE entered into cross deals for one share each on 7 occasions at a price lower than the last traded price on behalf of its clients. It appeared that the deals executed by the broker were intended to distort the market equilibrium and violated the provisions of Regulation 4(a) (b) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulation, 1995 (hereinafter referred to as “PFUTP Regulations”). It was also alleged that the broker was guilty of violating the provisions of Clauses A(1), A(2) and A(4) of the Code of Conduct as prescribed for the stock brokers contained in Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “Stock Broker Regulations”).
- 1.6 In view of the above findings of investigations, SEBI vide order dated July 2, 2002 appointed the Enquiry Officer to enquire into the contraventions/ violations of the broker. The Enquiry Officer conducted the enquiry in terms of the then SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the “Enquiry Regulations”) and found that the broker by executing the trades was responsible for steep price and violated the provisions of Regulation 4 (a) (b) and (d) of the PFUTP Regulations and Clause A(1) to A(4) of the Code of Conduct as specified in Schedule II

read with Regulation 7 of the Stock Broker Regulations. The Enquiry Officer submitted its report dated November 3, 2003, recommending a minor penalty of Censure.

- 2.1 Based on the recommendations of the Enquiry Officer, a show cause notice dated November 11, 2003 was issued to the broker under Regulation 13(2) of the Enquiry Regulations asking it to show cause as to why appropriate action should not be initiated including penalty as recommended and imposed upon it by the Enquiry Officer .
- 2.2 The broker vide letter dated December 01, 2003 replied to the said show cause notice and inter alia submitted that :
 - i. Since the obligations were fulfilled and transactions were completed, it was not open to SEBI to initiate inquiry at this stage especially when there was no complaint made against HIPL. Further, NSE had already imposed a penalty of Rs. one lakh which was paid by them so another proceeding on the same facts would amount to double jeopardy.
 - ii. The trades for the said clients were executed on the NEAT screen of NSE and order matching mechanism of NSE during official trading hours. The clients wanted to sell their holding in the scrip and exit at lower price. The said clients only traded for three days and only for 7 shares. Further the volume was bare minimum of 1 share hence could not have caused any impact on trading of the scrip as a whole. The broker added that these trades were not

proprietary trades and that it had no connection with EIL.

Following are the trade details of the said clients :

Date	Open Rs.	High Rs.	Low Rs.	Close Rs.	Volume in no of Shares	Volume in Rs('000)
07.07.00	764.00	764.00	764.00	764.00	5	38
10.07.00*	800.00	800.00	642.10	642.10	3	21
11.07.00*	590.75	64.00	539.40	540.00	8	49
12.07.00	496.80	496.80	453.60	453.60	2	9
14.07.00*	417.35	417.35	417.35	417.35	1	4
17.07.00*	384.00	384.00	352.00	352.00	2	7
18.07.00	368.00	370.00	368.00	370	2	7

** Trades in question were executed on these dates.*

iii. The broker submitted that it had exercised due care and skill which a man of ordinary prudence and caution would exercise under the similar circumstances. The fact that the number of shares traded were only 7 and traded on different dates show that there was no intention to artificially raise or depress the price of the scrip of EIL.

iv. It had acted only on the instructions of the clients and denied that it had done anything that could influence the price or volume of the scrip of EIL. Further though it paid the penalty imposed by NSE, NSE did not annul the transactions. In view of the submissions made, HIPL urged SEBI to drop further proceedings and not impose a penalty of censure on it.

2.3 Due to change in the competent authority, the matter was put afresh before me. Accordingly, an opportunity of personal hearing was granted to the broker on September 13, 2007. However the same was postponed due to administrative difficulty. Another opportunity of hearing was

granted to the broker on October 14, 2008 wherein the authorized representative of Hornic Investment attended the hearing and filed their reply dated October 01, 2008 during the hearing reiterating their earlier reply dated December 01, 2003.

3.1 I have carefully considered the investigation report, the Enquiry Report, the show cause notice, the reply of the broker and the written submissions. 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:

3.2 I note that during the relevant period, the broker had entered into the cross deals for one share each on seven occasions at a price lower than the last traded price. The broker traded on behalf of their ultimate clients namely Shri Heeralal Chopra (Heera Zaveri and Sons and Shri Kalpesh Shah). Further, the broker had executed certain cross deals wherein the buy and sell dealer and the client was same in seven instances as under :

Date	Time	Price	Qty.	Buy Trade Member	Buy dealer	Buy Account	Sell Trade Member	Sell Dealer	Sell Account
10-Jul-2000	11:12:39	702.9	1	Hornic Investment Pvt. Ltd.	7042	3702	Hornic Investment Pvt. Ltd	7042	3702
11-Jul-2000	10:54:19	590.75	1	Hornic Investment Pvt. Ltd	7042	4101	Hornic Investment Pvt. Ltd	7042	4101

Date	Time	Price	Qty.	Buy Trade Member	Buy dealer	Buy Account	Sell Trade Member	Sell Dealer	Sell Account
11-Jul-2000	11:27:04	539.4	1	Hornic Investment Pvt. Ltd	7042	4101	Hornic Investment Pvt. Ltd	7042	4101
11-Jul-2000	15:29:47	540	1	Hornic Investment Pvt. Ltd	7042	4101	Hornic Investment Pvt. Ltd	7042	4101
14-Jul-2000	13:22:54	417.35	1	Hornic Investment Pvt. Ltd	7042	4101	Hornic Investment Pvt. Ltd	7042	4101
17-Jul-2000	12:32:41	384	1	Hornic Investment Pvt. Ltd	7042	4101	Hornic Investment Pvt. Ltd	7042	4101
17-Jul-2000	15:26:23	352	1	Hornic Investment Pvt. Ltd	7042	4010	Hornic Investment Pvt. Ltd	7042	4101

From the above table, it is observed that the cross deals executed by the broker between July 10, 2000 and July 17, 2000 were for one share and on behalf of the same client. As can be seen, the client is the same person for both buy and sell transactions and the transaction was entered from the same terminal of the broker which is more evident from the dealer ID. It is pertinent to note here that both dealer ID and the client code are common in respect of the above transactions.

3.3 With regard to the above transactions, the broker submitted that their client wanted to sell 25 shares of EIL at the available rate. Since there were no buyers to buy these shares, the clients would have entered such type of deals to influence the mindset of general investors to buy the shares. The broker expressed his view that the ultimate clients would have had malafide intentions behind these transactions.

3.4 I note that all the transactions were executed for a single share at successively lower prices. The modus operandi in the artificial trades

was by placing the buy and sell order for 1 share each at successively lower rates for the same client. While the trade log shows that the client ID is the same for the buy and sell transactions, the broker submitted that the ultimate clients were Shri Hiralal Chopra and Shri Kalpesh Shah who is stated to be an employee with the former.

3.5 I note that placing of such transactions in a single share at successively lower rates than the last traded price is irregular without there being change in the economic fundamentals of the company. These type of trades goes to show that there was no trading interest generally by the investors and with low trading volumes, the share prices were manipulated. Further, I note that these clients are connected and have an employer-employee relationship and the real trade appears to be for the benefit of the employer, Shri Hiralal Chopra. I find that these trades appear to be with a view to set the prices or benchmark the prices at a desired level and lure the common investor to trade. Therefore, the broker managed to manipulate the price with very low trading volume due to lack of liquidity and depth in the market in the aforesaid manner of executing trades. I further note that the broker had paid a penalty of Rs. One lakh to NSE for these irregular trades which are in violation of regulation 4(a),(b) and (d) of PFUTP Regulations.

3.6 The broker contented that since it had already been penalized by NSE with a monetary penalty, any further penalty in the present proceeding would amount to double jeopardy. I find that there is no merit in the contention of the broker in view of the order passed by the Hon'ble SAT in the matter of *Kinglet Finlease and Securities Ltd (2003)*, wherein it was

held that the broker was penalized by an exchange can still be proceeded against by SEBI for violation of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 on the same set of facts.

- 3.7 From the chronology of events, facts and circumstances, I find that the broker did not trade in the scrip during period-I. No connection has been established between the broker and EIL. Further there are no allegations of receipt of funds from the management of EIL and also there are no proprietary trades by the broker. I am of the view that the broker ought to have been more careful while dealing substantially in illiquid scrip like EIL. The broker should have exercised more due care, skill and diligence while acting on behalf of client as trading in illiquid scrip may induce innocent investors into trading in the scrip.
4. 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 read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby Censure Hornic Investments Pvt. Ltd., SEBI Registration no 230814839 to the effect that the broker should be careful in future and exercise due skill, care and diligence in the conduct of its affairs as a capital market intermediary. I also direct Hornic Investments Pvt. Ltd. to note that any instances of violation or non-compliance of the SEBI Act and Rules and Regulations in future shall be dealt with stringently.

DATE : 15.01.2009

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

