

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: Dr. T.C. NAIR, WHOLE TIME MEMBER
IN THE MATTER OF M/s. TROPICAL SECURITIES & INVESTMENTS
PRIVATE LIMITED, SEBI REGISTRATION No. INB010993738 IN THE
SCRIP OF M/S DCM SHRIRAM CONSOLIDATED LIMITED

Date of hearing: March 09, 2007

Appearances:

For Noticee: Shri Bhupen Dalal, Advocate
Shri Milan Dalal, Director
Shri Deepak Shah, Accountant

For SEBI: Shri. P.K. Nagpal, Executive Director
Mr. Amol Hogade, Manager

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING
ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY)
REGULATIONS, 2002 READ WITH REGULATION 28(2) OF THE SEBI
(INTERMEDIARIES) REGULATIONS, 2008

1. This order will dispose of the Enquiry proceedings initiated by the Securities and Exchange Board of India (hereinafter referred to as "SEBI") against M/s Tropical Securities & Investments Pvt. Ltd. (hereinafter referred to as 'TSL'), Member, Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') into their dealings in the shares of M/s. DCM Shriram Consolidated Ltd. (hereinafter referred to as 'DCM').

2. SEBI conducted an investigation into the dealings in the scrip of DCM for the period March 12, 2001 to April 24, 2001 (hereinafter referred to as 'relevant period') to ascertain *inter alia* whether provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'), SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations') had been violated or not.

3. Investigations revealed that two allegedly interconnected groups - HB Group and CFL group had purchased and sold shares of DCM that accounted for more than 90% of the total traded volume of DCM during the relevant period. The clients of both these groups had cumulatively sold 6,98,362 shares accounting for 79.80% of the market volume and had cumulatively purchased 6,74,669 shares accounting for 77.09% of the market volume during the relevant period.

4. Investigations further revealed that during the relevant period the scrip was traded on NSE in 6 settlements i.e. in Settlement No. 11 to Settlement No. 16. A cumulative of 8,75,137 shares of DCM were traded over a period of 27 days of which, 8,61,461 shares accounting for 98.44% of the total trades in the scrip of DCM were executed on 10 days. During this period the price of the scrip increased from Rs. 49.50 on March 14, 2001 to Rs. 64.50 on April 20, 2001 and closed at Rs. 59.75 on April 24, 2001.

5. It was also indicated by the investigations that TSL which is a part of the CFL group had sold shares of DCM on the National Stock Exchange India Ltd. (hereinafter referred to as 'NSE') through Rosy Blue Securities Ltd. (hereinafter

referred to as 'Rosy Blue'). Further, while the total purchases of TSL amounted to 0.01% of the total market volume in the scrip of DCM, the total sales by TSL of DCM shares accounted for 23.95% of the total market volume of the scrip on NSE. It is alleged that during the relevant period TSL sold 2,09,569 shares through Rosy Blue by way of 23 structured deals.

6. On the basis of this investigation report, SEBI appointed an Enquiry Officer vide order dated August 2, 2004 to enquire into the dealings of TSL in the scrip of DCM for violation of Regulation 4(a) to 4(d) of PFUTP Regulations and Clauses A (1) to A (5) of the Code of Conduct as specified in Schedule II of Stock Brokers Regulations.

7. Vide letter dated August 19, 2004 a Show Cause Notice was issued to TSL communicating the appointment of the Enquiry Officer, the findings of the SEBI investigations and the alleged violations by TSL. TSL was thereby required to show cause why appropriate recommendation should not be made against it.

8. TSL vide letter dated September 13, 2004 replied to the said Show Cause Notice and submitted that TSL's holdings in DCM were sold in the market for price ranging from Rs.61 to Rs.64. Further, it was indicated by TSL that they had no intention of creating artificial volumes or manipulating the price in the scrip of DCM or indulging in any violation of SEBI Regulations and Rules and making improper benefits out of their dealings in the DCM scrip.

9. The Enquiry Officer granted an opportunity of personal hearing in the matter on December 20, 2004 where TSL was represented by its Director, Shri Milan Dalal. Shri Dalal submitted that while TSL had relations with the HB

Group for over three generations, they were not involved in manipulating the price and volume in the scrip of DCM. He further submitted that the dealings undertaken by TSL in the scrip of DCM were merely for the purpose of tiding over a temporary financial crunch and possible default at NSE that TSL and its associate CFL Securities Ltd were facing.

10. Based on the evidence and materials available on record and after consideration of replies and submissions made by TSL, the Enquiry Officer found TSL guilty of violating Regulations 4 (a), (b), (c) and (d) of PFUTP Regulations and the Clause A (1), (2), (3) and (5) of Code of Conduct as specified in Schedule II of under Regulation 7 of Stock Broker Regulations. On the basis of the aforesaid findings, the Enquiry Officer vide his report dated January 31, 2005 recommended that the registration of TSL be suspended for a period of one year.

11. Accordingly, a Show Cause Notice under Regulation 13(2) of the Enquiry Regulations was issued to TSL on May 27, 2005 enclosing therewith a copy of the Enquiry Report. Vide the said Show Cause Notice, TSL was *inter alia* advised to show cause as to why action, as considered appropriate should not be taken against them.

12. Vide reply dated June 20, 2005 to the said Show Cause Notice, TSL submitted that during the relevant period they had undertaken transactions in the DCM scrip only on few days and that too at prevailing market rates. They also submitted that they had not gained from these transactions. The purpose and intention behind these transactions was to create liquidity by selling the shares of DCM to tide over the financial crunch they were facing. TSL also submitted that all trades in the scrip were genuine delivery based trades. They

further submitted that these trades were executed by them in their capacity as a client of Rosy Blue and they are unaware as to the conduct of Rosy Blue at the time of when the buy/ sell orders were placed by them on NSE.

13. An opportunity of personal hearing was granted to TSL in the matter on March 9, 2007 wherein TSL was represented by its Director, Mr. Milan Dalal, its Accountant, Mr. Deepak Shah and its Advocate, Mr. Bhupen Dalal.

14. I have carefully considered the investigation reports, Enquiry reports, Show Cause Notices issued by SEBI and replies thereof. I have also considered the submissions made before me during the personal hearing, written submissions made thereafter and other materials available on records. I note that the main issues for consideration are as follows:

- Whether TSL is in violation of the PFUTP Regulations for their dealings in the scrip of DSL?
- Whether TSL is in violation of the Code of Conduct specified for Stock Brokers under the Brokers Regulations 1992?

15. I find that the scrip of DCM was thinly traded. Prior to the investigation period the average daily volume in the scrip was 1,000 shares and the price of the scrip had fallen from Rs.73.50 on February 09, 2001 to Rs.48.00 on March 13, 2001 i.e. a fall of 35% in one month. However, during the investigation period, price of the scrip rose from Rs.49.50 on March 14, 2001 to Rs. 64.50 on April 20, 2001 and closed at Rs. 59.75 on April 24, 2001.

16. I find that as of March 13, 2001, TSL held 1,64,524 shares of DCM in its own account. Further, in an off market transaction on April 13, 2001, TSL

purchased 49,400 shares of DCM from their associate concern Pursharth Trading Company Ltd. increasing their holding to 2,13,924 shares.

17. Subsequently, during the relevant period, TSL sold 2,09,569 shares of DCM through Rosy Blue as follows:

- a. In Settlement No. 14, on April 10, 2001 TSL sold 50,000 shares which were purchased by HB Stockholding through HB Securities Ltd.
- b. In Settlement No. 15, on April 11, 2001, TSL sold another 50,000 shares which were purchased by Taurus Mutual Fund for its Star Share scheme through 2 brokers
- c. During Settlement Nos. 16, TSL sold 1,09,524 shares of DCM which were purchased by CFL Securities Ltd. on their own account.

18. Details of the trades executed by TSL are given in the Table below:

Trade Number	Buy-Sell Order Time Difference	Buy Order Quantity	Sell Order Quantity	Buy Order Price	Sell Order Price
200104100447654	0:01:08	200	25000	64.5	64.5
200104100448026	0:00:10	50	25000	64.5	64.5
200104180609360	0:00:00	25000	25000	62.25	62.25
200104180610546	0:00:00	25000	25000	63	63
200104180611035	0:00:01	25000	25000	62.75	62.75
200104190390574	0:00:02	25000	25000	61	61
200104190397598	0:00:00	9000	9000	61	61
200104240113332	0:00:01	524	524	63.5	63.5
200104110499733	0:00:39	25000	25000	62	62
200104110504135	0:00:14	25000	25000	62.5	62.5
200104100448979	0:00:36	5000	25000	64.5	64.5
2001041004493394	0:00:48	5000	25000	64.5	64.5
200104100449809	0:00:58	5000	25000	64.5	64.5

Trade Number	Buy-Sell Order Time Difference	Buy Order Quantity	Sell Order Quantity	Buy Order Price	Sell Order Price
200104100450129	0:01:08	5000	25000	64.5	64.5
200104100450511	0:01:17	5000	25000	64.5	64.5
200104100450983	0:01:29	5000	25000	64.7	64.5
200104100451805	0:00:42	5000	25000	64.7	64.7
200104100451806	0:00:47	5000	25000	64.7	64.7
200104100451807	0:00:42	5000	25000	64.7	64.7
200104100453162	0:01:41	5000	25000	64.7	64.7
200104100453490	0:01:51	5000	25000	64.7	64.7
200104100453920	0:02:02	5000	25000	64.7	64.7
200104100454513	0:02:16	300	25000	64.7	64.7

19. From the above transactions it can be seen that there is no/ negligible time difference between the placement of the buy and sell orders. Further in majority of the trades, the price quoted by brokers of both the parties is identical.

20. It is highly improbable that the transactions in the scrip of DCM were mere coincidences as it is unlikely that two unknown entities trade continuously, exclusively with each other, by putting simultaneous/ near simultaneous buy and sell orders, contributing significantly to the total volumes in the market without any sort of pre mediation or prior understanding. The fact the scrip of DCM was illiquid leads me to conclusion that the matched transactions undertaken by TSL through Rosy Blue were executed with prior understanding and active participation of the parties and were intended to structure their respective trades.

21. In light of the above, I therefore agree with the findings of Enquiry Officer that TSL was involved in structured deals. I find that TSL has been involved in

creation of artificial volumes in the scrip of DCM by entering into transactions which were structured, non-genuine and created a false appearance of trading in the market. In addition, TSL also misused the stock exchange mechanism by helping CFL to meet its financial obligations through the aforesaid structured trades. Therefore, I hold TSL guilty of violating Regulation 4(a), 4(b), 4(c) and 4(d) of PFUTP Regulations.

22. I am also in agreement with the findings of the Enquiry Officer that TSL, by indulging in synchronized and fictitious deals, has failed to exercise due skill and care as a stock broker. TSL thus violated Clauses A (1) to (5) of the Code of Conduct for Brokers as specified in Schedule II of the Stock Brokers Regulations read with Regulation 7 of Broker Regulations 1992.

23. Synchronized / structured trade is a kind of transaction where the seller and buyer execute the trade for almost same quantity and price at almost the same time. Such deals create misleading appearance of trading and manipulate the price and volume of the scrip and interfere with normal price discovery mechanism of stock exchange.

24. In this regard, I would like to refer and rely upon the decision in *Dlugash v. SEC* (373 F.2d 107 at 109, 2nd Circuit (1967)) later reiterated in *Todd & Co. Inc.*, (46 S.E.C. 314 at 319 (1976)) wherein the US Court observed that rapidly rising prices in absence of any demand for securities are well known symptoms of manipulative transactions. These decisions were quoted favorably by the Hon'ble Securities Appellate Tribunal (SAT) in Appeal No. 20 of 2001 in the case of *Sterlite Industries (I) Ltd. v. SEBI* and Appeal No. 23 of 2001 in the case of *Videocon International Ltd v. SEBI*.

25. The said issue has also been dealt by the Hon'ble SAT in Appeal Nos. 54 to 57 of 2002 in the case of *Nirmal Bang Securities (P) Ltd. v. SEBI* wherein the Tribunal observed that, "*Synchronized trading is in violation of all prudential and transparent norms of trading in securities. Synchronized trading on a large scale can create false volumes... In synchronized trading intention is implicit.*" (Emphasis added.)

26. SAT in Appeal No.2 of 2004 in the case of *Ketan Parekh v. SEBI* also observed that a synchronized transaction would be illegal if, "*It is executed with the intention to manipulate the market or if it results in circular trading or is dubious in nature and ... does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium.*" SAT also noted that the intention to manipulate the market can be inferred from the attending circumstances including the nature of transaction executed, frequency with which the transactions are undertaken, value of the transactions, whether they involve circular trading, real change of beneficial ownership, the conditions then prevailing in the market etc.

27. It may not be out of place to cite the judgment of the Hon'ble Supreme Court in the recent case of *Chairman, SEBI vs Shriram Mutual Fund* wherein Hon'ble Court *inter alia* held:

"Penalty is attracted as soon as contravention of the statutory obligation contemplated by the Act is established and, therefore the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts

penalty under the provisions of the Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not."

28. In view of the principle laid down by the Hon'ble Supreme Court, I do not find any merit in the contention of the TSL that the aforesaid violations were not committed by them with any *malafide* intention. The aforesaid principle clearly states that once it is established that violation has been committed, penalty must follow. The only question that requires determination by the competent authority is the quantum of penalty.

29. In view of the above, it would be in the interest of justice if a penalty of suspension of the certificate of registration is imposed on TSL for aforesaid violations. However, the penalty of suspension of certificate of registration for a period of one year as recommended by the Enquiry Officer is excessive. I am of the view that a penalty of suspension of certificate of registration for a period of six months would have a deterrent effect on the TSL.

30. Therefore, in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the Enquiry Regulations, 2002 and Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008 I hereby impose a penalty of suspension of the Certificate of Registration of M/s. Tropical Securities & Investments Pvt. Ltd. having SEBI registration no. INB010993738 for a period of six months.

31. This order shall come into effect on expiry of 21 days from the date of this order.

Date: 14.1.09
Place: Mumbai

T. C. Nair
Whole Time Member
Securities and Exchange Board of India