

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR. K. M. ABRAHAM, WHOLE TIME MEMBER

ORDER UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST NEWAGE SHARES & STOCK BROKERS PRIVATE LIMITED IN THE MATTER OF DATAPRO INFORMATION TECHNOLOGY LIMITED

Date of hearing: March 6, 2009

Appearance:

For Newage Shares & Stock Brokers Private Limited : Mr. Ashish Aggarwal, Advocate
Mr. Akhil Chadha, Company Secretary

For Securities and Exchange Board of India :Mrs. Barnali Mukherjee, General Manager
Mr. Vijayakrishnan. G, Deputy Legal Adviser

1. Shares of Datapro Information Technology Limited (hereinafter referred to as the company) are listed at Bombay Stock Exchange Limited (hereinafter referred to as BSE). Department of Company Affairs, vide letter dated September 29, 1999 forwarded a copy of the complaint of one Anand Mody to Securities and Exchange Board of India (hereinafter referred to as SEBI), in which it was *inter alia* alleged that certain irregularities had been committed by the company and its share transfer agent viz. SRG Infotech Limited. Some of the allegations are delay in transfer of shares, offloading of shares of the company by its promoters/directors particularly during June and July 1999. In view of the above, SEBI ordered an investigation in respect of the buying, selling and dealing in the shares of the company for the period June 1, 1999 to January 31, 2000 (hereinafter referred to as the period of investigation). The

investigation conducted by SEBI *inter alia* observed that the stock broker namely Newage Shares & Stock Brokers Private Limited (trading member, OTC Exchange of India) dealt heavily in the shares of the company at BSE during the period of investigation through the stock broker viz. Integrated Master Services Private Limited. Newage Shares & Stock Brokers Private Limited is hereinafter referred to as the stock broker for the sake of brevity. During the course of investigation, SEBI through letter/summons sought various details/information with regard to the shares of the company which were dealt by the stock broker during the period of investigation. Some of the summons was dated May 9, 2003, July 25, 2003, August 18, 2003. The stock broker failed to provide information despite repeated reminders.

2. In view of the failure of the stock broker to provide details/information (as sought by SEBI) which was vital for the due process of investigation, SEBI initiated enquiry proceedings under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) and appointed an Enquiry Officer, vide order dated March 31, 2004 read with a subsequent order dated July 14, 2004 to enquire into the alleged violations committed by it. Pursuant to affording an opportunity to the stock broker to make its submissions, the Enquiry Officer, vide report dated May 18, 2005, recommended the suspension of the certificate of registration of the stock broker for a period of one month. The Enquiry Officer observed that the stock broker *inter alia* violated the provisions of Regulation 18 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 and the provisions of Section 11C(3) of the Securities and Exchange Board of India Act, 1992. According to the Enquiry Officer, the stock broker also violated Clause A (5) of the Code of Conduct specified under the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992.

3. Subsequently, a notice dated August 24, 2005 was issued by SEBI to the stock broker asking it to show cause as to why the penalty as recommended by the Enquiry Officer or deemed appropriate should not be imposed against it. As the said show cause notice was returned undelivered, the same was again issued to the stock broker at its alternate address. The stock broker, vide letter dated December 14, 2008 *inter alia* stated that there was a raid by the Income Tax Department on the premises of SRG Infotech Limited, its directors and the companies, in which they were the directors, on August 6, 1999. According to it, the Income Tax Department seized various records such as books of accounts, registers, files, computer data etc. The stock broker contended that though SRG Infotech Limited and its directors had requested the Income Tax Department to return the documents, the latter had not provided the same, till the date of its reply. In support of the said contention, the stock broker enclosed copy of letters dated July 5, 2004 and January 31, 2005 written by SRG Infotech Limited to Income Tax Department. It also enclosed a copy of the letter dated January 22, 2004 written by one Ashok Agarwal to the Income Tax Department. The stock broker further requested SEBI to consider its earlier replies (during the time of the enquiry) as a part and parcel of its submissions. The stock broker added that, it had not committed any willful default and that the non production of documents was for reasons beyond its control. Thereafter, an opportunity of hearing was granted by SEBI to the stock broker on March 6, 2009. Mr. Ashish Aggarwal, Advocate appeared on behalf of the stock broker on the said date and made submissions on the lines of the reply of the stock broker dated December 14, 2008. Mr. Akhil Chadha, Company Secretary was also present during the time of the hearing. The learned counsel further submitted that his client stopped functioning as a stock broker since 2004.

4. I have considered the Enquiry Report, the post enquiry show cause notice issued to the stock broker, its oral as well as written submissions and other materials available on record. The fact that the stock broker failed to submit the required information to SEBI during the course of investigation, is not disputed. I note that SEBI *inter alia* vide its summons dated May 9, 2003 advised the stock broker to furnish the details of its purchase and sale of shares of the company during the period of investigation, as stated therein. Thereafter, number of summons was issued by SEBI to the stock broker for certain information as stated therein. Even prior to the said summons, SEBI had sought information from the stock broker, vide letter dated March 20, 2001. The contention of the stock broker is that it could not comply with the said directive of SEBI because of the seizure of documents by the Income Tax Department during the raid conducted by it on August 6, 1999. Before examining the issue of non production of details/information by the stock broker, I, note that the stock broker was one of the major sellers in the shares of the company, during the period of investigation. The stock broker purchased 35,500 shares and sold 3,27,100 shares of the company during the relevant period at BSE. Needless to say, the stock broker indulged in both buy and sale transactions at prices ranging from Rs.10/- to Rs.15/-. It is also noted that one M.M. Miglani having his address at 611/18, Joshi Road, Karol Baugh, New Delhi-5 introduced both the stock broker and erstwhile Arihant Equity Fund Limited (another stock broker) to Integrated Master Securities Private Limited. Arihant Equity Fund Limited also dealt in large volumes in the shares of the company during the period of investigation. Both these entities (stock broker and Arihant Equity Fund Limited) shared the common address i.e. 33, LGF Babar Road, Near Bengali Market, New Delhi. Besides, they also had a common managerial person. The linkages between the stock broker and the said Arihant Equity Fund Limited are explained in detail by the Enquiry Officer in his report. The reply of the stock broker dated December 14, 2008 that *“there was an Income Tax raid on the*

premises of SRG Infotech Ltd., its directors and the companies in which they were directors on August 6, 1999. During the raid various documents, books of accounts, registers, files, computer data, hard disks etc were seized by the department including that of Newage Shares & Stock Brokers Pvt. Ltd.” indicates that the stock broker is also connected to SRG Infotech Limited. The facts/transactions of the case are not disputed before me. Large number of shares of the company were purchased/sold during the relevant period by entities closely connected to each other, as stated above. There was price variation in the shares of the company during the period of such trades. It was in this background, SEBI sought certain details/information from the stock broker which was necessary to ascertain whether there was any manipulation in the shares of the company. The said details were sought by SEBI, through its various summonses. Details are given below:

Date	Name /Address	Mode of dispatch	Description	Remarks
20/3/2001	New Age shares and Stock Broking Ltd. 33 LGF Babar Road, Near Bengali Market, New Delhi –1	Courier	Letter	Sought time for one more month from 6/4/2001
12/11/01	Through broker – Integrated 33 LGF Babar Road, Near Bengali Market, New Delhi –1		Letter seeking information	No reply
12/11/01	New Age shares and Stock Broking Ltd 33 LGF Babar Road, Near Bengali Market, New Delhi –1	Courier		No reply
23/9/02	New Age shares and Stock Broking Ltd 33 LGF Babar Road, Near Bengali Market, New Delhi –1	Regd A/d	Summons for information	Returned undelivered – “left without address”
9/5/03	New Age shares and Stock Broking Ltd 33 LGF Babar Road, Near Bengali Market, New Delhi –1	Regd A/d	Summons for information	Returned undelivered – No such person
9/5/03	New Age shares and Stock Broking Ltd 33 LGF Babar Road, Near Bengali Market, New Delhi –1	courier	Summons for information	No reply
25/7/03	New Age shares and Stock Broking Ltd Address of Sanjeev Bansal- S337, 2 nd Floor, Greater Kailash I, New Delhi – 110 048.	Regd A/d	Summons for information	Returned undelivered
18/8/03	Through OTCEI		Summons for	Time sought for one

			appearance	more month
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5. Admittedly, the information sought by SEBI was not provided by the stock broker. It is not the case of the stock broker that it had not received any of the summons of SEBI. I note that, in one of its letters dated September 26, 2003 (to SEBI), the stock broker, in reference to the summons dated September 18, 2003 stated that the Income Tax Department seized its files and records during its raid on August 6, 1999. It is obvious that the stock broker had acknowledged the receipt of some of the summons. As noted by the Enquiry Officer, the fact of Income Tax raid was first reported to SEBI only on September 26, 2003. However, the first letter seeking information/details was addressed to the stock broker by SEBI as early as in March 20, 2001. Besides, if, the documents were seized by the Income Tax Department on August 6, 1999, as claimed by the stock broker, it could have given information for the subsequent period i.e August 1999–January 2000 (part of the investigation period). Even that was not provided by the stock broker. The stock broker contended that though SRG Infotech Limited requested the Income Tax Department to return the documents, the latter did not provide the same. Apparently, no request was made by the stock broker to the Income Tax Department to provide the documents so as to comply with the directive/summons of SEBI. I note that SRG Infotech Limited, vide letter dated July 5, 2004, requested the Income Tax Department to provide the seized materials for making a reply in the enquiry proceedings initiated by SEBI against it. From the copy of the letters furnished by the stock broker (in its reply), I note that no such request was made by the stock broker to the Income Tax Department. It could have requested the Income Tax Department to provide at least the certified copy of the documents sought by SEBI, in order to comply with various summons issued by SEBI under Section 11C(3) of the Securities and Exchange Board of India Act. Apparently no such effort was taken by the stock broker. Being an intermediary functioning in the securities

market, it is one of the mandatory duties of the stock broker to co-operate with the investigating authority of SEBI. In the present matter, number of letter/summons were issued to the stock broker seeking the information/ details of its trades in the shares of the company during the period of investigation. The stock broker neglected its statutory duties. It is the duty of the stock broker to co-operate/assist the investigating authority of SEBI in its effort to ascertain trade irregularities/manipulation. Moreover, it is difficult for SEBI to find out manipulation, if any, in respect of securities market transactions, without the timely receipt of details/information. Therefore, the intention of the stock broker was only to subvert the process of investigation. I note that the non compliance of summons/letter was committed by an entity none other than an intermediary functioning in the securities market and registered with SEBI. Though, the stock broker claimed that the documents were seized by the Income Tax Department, no genuine steps were taken by it to obtain atleast the copies to comply with the directions of SEBI. The non compliance by the stock broker cannot be ignored as of little significance especially considering the proximity of the entities that traded in the shares of the company and the relationship between the share transfer agent of the company and the stock broker. In this regard, it is pertinent to mention that timely submission of information is very important for concluding investigation proceedings and non co-operation by an entity would affect this and hence prove detrimental to the interest of investors and the protection of the securities market. The contention of the stock broker that the information sought was delayed is not acceptable as the first letter sent to the stock broker was dated March 20, 2001 i.e. within fourteen months of the period of investigation. Failure to submit information/details on the part of a securities market intermediary has to be viewed seriously as it hampers SEBI from carrying on its statutory duty of investigating into market irregularities. It is obvious that there was a deliberate attempt on the part of the stock broker to obstruct the investigations.

6. In the facts and circumstances of the case, it is established that the stock broker failed to comply with the summons issued under Section 11C(3) of the Securities and Exchange Board of India Act, 1992. The stock broker, thus, also violated Clause A (5) of the Code of Conduct specified in Schedule II of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992, as observed by the Enquiry Officer. The violations on the part of the stock broker call for a penalty as ordered herein under.

7. In view of the foregoing, I, 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, hereby, suspend the certificate of registration of the stock broker viz. Newage Shares & Stock Brokers Private Limited (Registration No. INB 200894434), trading member, OTC Exchange of India for a period of seven days.

8. This order shall come into force immediately on expiry of twenty one days from the date of this order.

K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai

Date: March 16, 2009