

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER REGULATION 28 (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST M/S M. BHIWANIWALA & CO. IN THE MATTER OF BACHHAT INVESTMENT & FINANCE LIMITED

1. In the wake of unusual price movement noticed in the shares of Bacchhat Investment & Finance Limited (hereinafter referred to as the company) listed on Calcutta Stock Exchange Association Limited (hereinafter referred to as CSE), Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into the buying, selling and dealing in the shares of the company, for the period March 01, 2004 to March 31, 2004 (hereinafter referred to as the relevant period). It was *inter alia* observed that the average share price of the company increased from Rs.12.25/- (minimum on March 01, 2004) to Rs.81.10/- on March 31, 2004, a rise of 562%. It was *prima facie* observed that two stock brokers viz. M/s. Ballabh Das Daga and M/s. Bhiwaniwala & Co. (members, CSE) collectively executed almost the entire trades (97%) in the shares of the company during the relevant period at CSE with the connivance of various clients and thus, *inter alia* created misleading appearance of trading in the securities. It was observed that M/s. Bhiwaniwala & Co (hereinafter referred to as the Broker) executed trades involving 70,100 shares of the company during the relevant period, which constituted approximately 35% of the volume in the shares of the company at CSE. The majority (96%) of the trades of the Broker were in the

nature of cross deals. It was further found that the trades of the Broker were executed in the price range of Rs.12.25/- to Rs.81.10/.

2. The investigation conducted by SEBI observed that the Broker purchased the shares of the company at successively higher prices with SELF code. In the facts and circumstances, it was alleged that the Broker violated Regulations 4(2)(a), 4(2)(e) and 4(2)(o) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as the PFUTP Regulations) and Clauses A(1) to A(4) and B(4)(a) of the Code of Conduct specified in Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations). Thereafter, vide order dated September 10, 2007 read with a subsequent order dated November 23, 2007, SEBI appointed an Enquiry Officer under the then provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker. The Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 was repealed with the notification of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. The Designated Authority (hereinafter referred to as the Enquiry Officer), submitted the Enquiry Report dated April 22, 2009 recommending the suspension of the certificate of registration of the Broker for a period of three months. Subsequently, SEBI issued a notice dated April 27, 2009 to the Broker to show cause as to why the penalty as recommended by the Enquiry Officer or as it considered appropriate should not be imposed upon it. A copy of the Enquiry Report was also forwarded to the Broker along with the said notice. The Broker was also advised to inform SEBI, whether he desired to avail an opportunity of hearing. The Broker vide letter dated May 18, 2009 requested to adjust the recommended

penalty against the period of suspension undergone (three years) by it, in terms of SEBI orders dated September 29, 2005 and January 12, 2006.

3. I have considered the Enquiry Report, the subsequent show cause notice issued to the Broker, the letter of the Broker dated May 18, 2009 and other material available on record. A perusal of the above mentioned documents, indicate the following facts:

- i) The average share price of the company increased from Rs.12.25/- to Rs.81.10/- (a rise of 562%).
- ii) Almost the entire trades (97%) in the shares of the company at CSE were executed by the stock brokers namely, M/s. Ballabh Das Daga and M/s. Bhiwaniwala & Co. (Broker)
- iii) The trades of the Broker in the shares of the company accounted for 35% of the total volume at CSE.
- iv) Majority (96%) of the trades of the Broker were in the nature of cross deals.
- v) The trades of the Broker were in the price range of Rs. 12.25/- to Rs.81.10/.

4. The investigation conducted by SEBI observed that the aforesaid unusual price movement was not supported by the fundamentals of the company. Besides, as per the Auditor's Report, the company had a net loss of Rs. 4490.81 for the year ended 2003 and a marginal profit of Rs 39,879.76 for the year ended 2004. The details of the transactions of the Broker were provided to it by the Enquiry Officer along with the show cause dated May 16, 2008. The Enquiry Officer also considered the same while giving his findings and recommendation. The trading pattern of the Broker indicates that most of the trades of the Broker in the shares of the company were client to client. The Broker had also executed the trades in the SELF code [12,000 shares (17% of

the Broker's volume)]. Besides, the Broker had placed simultaneously buy and sale orders of same quantity at the same prices which ultimately lead to the price rise.

5. The investigation conducted by SEBI observed that the majority of the trades (83%) of the Broker were on behalf of the following clients:

- i) Anushree Tradelink Private Limited [34,300 shares (49% of the Broker's volume)],
- ii) Abhinandan Fintex (P) Limited [12,000 shares (17% of the Broker's volume)],
- iii) Chandravati Gandhi [4,000 shares (6% of the Broker's volume)],

6. Thus, it is evident from the above discussions, that the Broker by its trades, majority of which were on behalf of the above mentioned select set of clients, was able to create misleading appearance of trading in the shares of the company at CSE during the relevant time. The pertinent factor to be noted here is that almost the entire trades (96%) of the Broker were in the nature of cross deals, each being executed at a price higher than its previous price. The Broker also executed trades under SELF code. The trades of the Broker also created artificial increase in the share price of the company. Thus, *inter alia* the Broker allowed its clients to trade substantially in the shares of the company and thereby, created misleading appearance of trading in the shares of the company. The very nature of the trades (cross deals) makes it evident that there was an active involvement of the Broker in these transactions. The series of cross deals would *inter alia* establish that trades in the shares of the company (during the relevant period) executed by the Broker were only for the purpose of giving a misleading appearance of trading in the shares of the company. Considering the nature of the trades executed by the Broker, it certainly cannot be concluded that it was an innocent party in the episode. The

fact that most of the trades in the shares of the company were executed amongst few clients makes it apparent that there was not much trading interest in the shares of the company during the relevant period and that the trades which took place were only for the creation of misleading appearance of trading and for the artificial increase in the share price. The Enquiry Officer observed that *“On the scheduled hearing, MBC has reiterated that even though he was aware that these trading were cross deal in nature, he had given more weightage for earning brokerage. As a broker he had concentrated on his trading to get maximum brokerage ignoring the SEBI Regulations”*. Thus, the Broker had contravened the provisions of Clause B (4) (a) of the Code of Conduct specified under the provisions of the Brokers Regulations.

7. Besides, in terms of clauses A (1) to (4) of the Code of Conduct specified under the provisions of the Brokers Regulations, a stock broker shall not *inter alia* create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. It is the mandatory duty of a stock broker to maintain high standards of integrity, promptitude and fairness and he shall also act with due skill, care and diligence in the conduct of his business. In the present case, it is already established that the trades of the Broker created misleading appearance of trading and further led to the manipulation of the price of the shares of the company. Instead of maintaining the Code of Conduct, the Broker became a party to such manipulation in the shares of the company to the detriment of genuine investors. An intermediary who fails to perform such mandatory duties deserves to be punished in accordance with law, in the interest of investors in the stock market.

8. Though, the copy of the Enquiry report was provided to the Broker, no effort has taken by the Broker to controvert the findings observed therein, despite sufficient opportunities. In the absence of any material or specific

submission refuting the allegations, I hold that the Broker was responsible in executing manipulative trades in the nature of cross deals. This kind of a trading pattern had depicted a false picture that the shares of the company were being actively traded in the market. The Broker failed to controvert the findings of the Enquiry Officer. In the facts and circumstances and considering the materials available on record, it is established that the Broker had violated the provisions of Regulations 4(2)(a), 4(2)(e) & 4(2)(o) of the PFUTP Regulations and clauses A(1) to A(4) and B(4)(a) of the Code of Conduct specified under Schedule II of the provisions of Securities and Exchange Board of India (Stock Brokers and Sub- Brokers) Regulations, 1992.

9. The only plea made by the Broker in its letter dated May 18, 2009 was to adjust the recommended penalty against the period undergone by it, in terms of SEBI orders dated September 29, 2005 and January 12, 2006. I note that the ex-parte ad interim order dated September 29, 2005 was passed by SEBI in respect of dealings in the shares of various companies (including Subh Laxmi Projects Limited) against various stock brokers including the Broker. The said ex-parte order was subsequently confirmed by SEBI, vide order dated January 12, 2006. The period of investigation covered in the said orders was March 2005 to September 2005. The dealing of the Broker in the shares of the company (Bacchhat Investment & Finance Limited) was not a subject matter in the aforesaid orders. Moreover, the period of investigation covered under the present proceeding is between March 01, 2004 and March 31, 2004. In view of the above, I am unable to accept the plea of the Broker to adjust the recommended penalty against the period of prohibition undergone by the Broker in terms of the aforesaid orders. I note that the Enquiry Officer has recommended that the certificate of registration of the Broker be suspended for a period of three months. Taking into consideration all the facts and circumstances of the case and the available material on record, I am of the considered view that to meet the ends of justice, the certificate of the Broker

has to be suspended as ordered herein below. I note that the present case has been initiated under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Subsequently, in 2008, the aforesaid Regulations were repealed by the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Therefore, this order is being issued under the relevant provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

10. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28 (2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the stock broker M/s. M. Bhiwaniwala & Co. [Registration No. 030049211], Trading Member, The Calcutta Stock Exchange Association Limited, for a period of one month.

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

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

Place: Mumbai
Date: July 29, 2009