

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, IN RESPECT OF CSL SECURITIES PRIVATE LIMITED

Date of hearing: October 29, 2009

Appearance:

For CSL Securities Private Limited:

Mr. Somashekhar Sundaresan, Advocate
Mr. P.S. Kalra, Director
Mr. Harveer Singh Kalra, Authorised Representative,
Mr. Madan Mohan Singh, Authorised Representative

For Securities and Exchange Board of India:

Mr. Amarjeet Singh, Chief General Manager
Mr. Achal Singh, Deputy General Manager
Mr. Vijayakrishnan G., Deputy Legal Adviser
Mr. Apoorv Garg, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated April 22, 2002 read with subsequent orders dated July 22, 2003 and January 16, 2004, initiated enquiry proceeding against the stock broker namely, CSL Securities Private Limited [Member, Delhi Stock Exchange Association Limited (DSE)], under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed), in respect of the alleged violations of the provisions of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Stock Broker Regulations) and the Securities and Exchange Board of India

(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as the PFUTP Regulations). CSL Securities Private Limited is hereinafter referred to as the stock broker. The allegations leveled against the stock broker in the show cause notice issued by the Enquiry Officer dated March 31, 2003, in brief, are as follows:

- a. The stock broker had entered into synchronized transactions, wherein the order quantity, rate and time were matched with the counter-part. Besides, some of these transactions were alleged to be fictitious as the buyer and seller was the same entity namely Rekhi and Omega Finhold Private Limited, which were stock broker's associate firms. It was alleged that the aforesaid trades were manipulative in nature and are in contravention of Regulation 4(c), 4(d) and 6(a) of the PFUTP Regulations and Clause A(3) of the Code of Conduct specified for stock brokers under Schedule II of the Stock Broker Regulations.
- b. The stock broker had transacted with the stock brokers namely, M/s. Vikram Kenia Securities, Bang Equity Broking Private Limited and Mafatlal Securities Limited without being registered as a sub broker with SEBI, *prima facie* in violation of Section 12(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as SEBI Act), Rule 3 of Securities and Exchange Board of India (Stock Brokers and Sub- brokers) Rules, 1992 (hereinafter referred to as the Rules) read with SEBI Circular SMD/Policy/ Cir-3/98 dated January 16, 1998. It was also alleged that the Bombay Stock Exchange Limited terminal of Bang Equity Broking Private Limited was installed at the office of the stock broker.
- c. Omega Finhold Private Limited (an associate of the stock broker) had transacted with the stock broker as its sub broker without having SEBI Registration and thereby *prima facie* violated SEBI circular SMD-1/3118 dated December 27, 1993 read with Section 12(1) of the SEBI Act and Rule 3 of the Rules.
- d. The stock broker installed its DSE terminal at the office of Palombe Securities and Finance Limited and had paid Rs. 5.78 lakhs during the period April 2000 to December 2000 as refund brokerage. Therefore, it was alleged that Palambo Securities and Finance Limited acted as an unregistered sub broker of the stock

broker in violation of SEBI circular dated December 27, 1993 read with Section 12(1) of the SEBI Act and Rule 3 of the Rules.

e. The stock broker did not collect margins from its clients including 'Ketan Parekh entities' at the rate of 10% of their net open position, which was in violation of SEBI circular SMDRP/ Policy/ Cir-33/ 2000 dated July 27, 2000.

f. The stock broker did not maintain record at the time when the client had placed order, and the same information was not reflected in the contract issued to its clients, which are in violation of SEBI circular SMD/Policy/IECG/1-97 dated February 11, 1997.

g. The conduct of the stock broker was unbecoming of a stock broker and it did not exhibit high standards of integrity, fairness and professionalism of a registered intermediary in its dealings and violated Clause A(5) of the Code of Conduct specified for stock brokers under Schedule II of the Stock Broker Regulations read with Regulation 7 thereof and Rule 4(b) of the Rules.

2. The Enquiry Officer, vide report dated November 24, 2004, while recommending suspension of the certificate of registration of the stock broker for a period of fifteen days, *inter alia* observed as follows:

a. *"When there is continuous matching of order time down to the last second over a series of huge value transactions, there are good and sufficient reasons besides preponderance of profitability to conclude that these trades are not genuine."*

"In so far as transactions at Serial Nos. 6 to 17 are concerned, taking into account the absence of order time for both buy and sell orders which is an important consideration in the allegation of synchronized trades and relying on, benefit of doubt is given to the broker and these transactions are not treated as synchronized trades under the circumstances." "These transactions are highly irregular and defeat the purpose of normal order matching system in the price discovery process in the exchanges and would also be in violation of Regulation 4 of PFUTP Regulations."

b. In respect of transacting with unregistered sub brokers (M/s. Vikram Kenia, Bang Equity Broking Private Limited and Mafatlal Securities Limited), the Enquiry Officer *inter alia* observed “*Thus, it is necessary for any person who acts as sub broker to hold a certificate of registration as a sub broker granted by SEBI and accordingly the member of stock exchanges who also act as sub brokers should hold a separate registration with SEBI as a stock broker.*”

c. In respect of the charge of non collection of margins, the Enquiry Officer found the stock broker guilty of contravening SEBI Circular dated July 27, 2000.

d. With regard to the non maintenance of record of placement of orders, the Enquiry Officer found that the stock broker violated SEBI the circular dated February 11, 1997. The Enquiry Officer, however, taking into account the explanation of the stock broker, observed that the same may be treated as a minor procedural irregularity.

3. The Enquiry Officer further observed that the charge of transacting with unregistered sub broker (Omega Finhold Private Limited) could not be established against the stock broker. The Enquiry Officer had also observed that it was difficult to conclude that Palombe Securities and Finance Limited were acting as an unregistered sub broker of the stock broker.

4. Subsequently, SEBI issued a notice dated December 3, 2004 advising the stock broker to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed against it. The stock broker, vide letter dated January 13, 2005 filed its reply to the said show cause notice. The reply of the stock broker is being considered in the later part of this order. Thereafter, an opportunity of hearing was granted to the stock broker by my predecessor on March 15, 2005, December 16, 2005 and June 1, 2007. The stock broker had appeared on June 1, 2007 and had made its submissions. It also filed written submissions dated July 26, 2007. Subsequently, the stock broker had filed an application for consent order, in terms of SEBI circular dated April 20,

2007. In view of the said application, the present proceeding was kept in abeyance and the same was subsequently resumed pursuant to the rejection of the said application. Thereafter, Mr. Somashekhar Sundaresan, Advocate represented the stock broker before me on October 29, 2009. The learned counsel made elaborate submissions in the matter. Mr. P.S. Kalra, Director, Mr. Harveer Singh Kalra and Mr. Madan Mohan Singh, authorised representatives of the stock broker were also present during the hearing. The learned counsel further requested that the reply/written submissions already filed by the stock broker in the matter be also considered.

5. I have considered the Enquiry Report, the reply/written submissions of the stock broker, the submissions made by Mr. Somashekhar Sundaresan, the learned advocate on behalf of the stock broker and other material available on record. As the stock broker was not found guilty in respect of the allegation of synchronized trades, by the Enquiry Officer, the learned counsel did not make any submission in respect of the same. With regard to the cross deals and the alleged violation of the PFUTP Regulations, the stock broker contended that the same were in the ordinary course of stock broking activities. The learned counsel further contended that there was no pattern in the execution of cross deal and there were only 5 trades during a period which extended upto fifty days. The alleged cross deals executed by the stock broker are given below:

Sr. No.	Date	Scrip	Qty.	Rate	BUY		SELL	
					Client	Order time	Client	Order time
1.	4.1.01	Global Tele	7490	831.00	Rekhi	14:55:22	Rekhi	14:55:22
2.	13.2.01	RIL	5000	403.00	Omega	14:46:49	ISF Sec.	14:46:49
3.	15.1.01	Infosys	5000	5845.00	Omega	9:52:49	Omega	9:52:49
4.	15.1.01	Infosys	10000	6365.00	A. Channa	9:52:47	Amira Foods	9:52:47
5.	22.2.01	HFCL	75000	816.50	Amira Foods	9:50:11	A.Channa	9:50:11

6. The learned counsel contended that the transaction of 5,000 shares of Infosys Technologies Limited on January 15, 2001 shown in the show cause notice was actually related to the purchase by Alliance Capital and not by Omega (Omega Finhold Private Limited). He further stated that, in the alleged transaction dated February 13, 2001 for 5,000 shares of Reliance Industries Limited, the buyer was M/s. Dimension Investments and not Omega Finhold Private Limited. The learned counsel contended that the Enquiry Officer had traversed beyond the show cause notice, as the violations alleged in the show cause notice was Regulation 4(c), 4(d) and 6(a) of the PFUTP Regulations, whereas the Enquiry Officer found that the stock broker had violated Regulation 4 of the PFUTP Regulations. I note that the show cause notice alleged the violation of Regulation 4(c), 4(d) and 6(a) of the PFUTP Regulations. However, the Enquiry Officer observed that the stock broker violated Regulation 4 of the PFUTP Regulations. In the facts and circumstances of the case, I agree with the contention of the learned counsel in this regard and therefore, I do not consider it necessary to deal with the findings of the Enquiry Officer with regard to the violation of Regulation 4(a) and 4(b) of the PFUTP Regulations. Besides, the learned counsel vehemently contended that in order to make a charge of Regulation 4(c) and 4(d) of the PFUTP Regulations, SEBI has to prove that:

- i) the trades of the stock broker resulted in the reflection of prices of the securities based on transactions which are not genuine.
- ii) the stock broker had entered into a purchase or sale of any securities, not intended to affect the beneficial ownership but is intended to operate only as a device to inflate, depress or cause fluctuation in the market price of the securities.

These necessary ingredients, according to the learned counsel, were absent in the findings of the Enquiry Report. He submitted that there was no findings in

the Enquiry Report to indicate that the trades of the stock broker had resulted in the reflection of prices of securities. He also denied the observation of the Enquiry Officer that there was no change in beneficial ownership in respect of the cross deals executed by the stock broker. The learned counsel contended that the stock broker was acting as such and its only earning was the brokerage. He further brought my attention to the fact that 5 transactions (cross deals) constituted only 0.43% of the stock broker's total turnover during the relevant financial year. He also submitted before me that there were no findings in the Enquiry Report that the clients of the stock broker (in respect of the cross deals) belonged to 'Ketan Parekh group'. He also pointed out that the scrips involved in the cross deals were highly liquid scrips such as Global Tele Systems Limited, Infosys Technologies Limited, Reliance Industries Limited, Himachal Futuristic Communications Limited. I note that the total number of cross deals executed by the stock broker were five in number which were spread over a period of almost forty eight days. Out of the five trades, only one trade (on January 4, 2001 in the scrip of Global Tele Systems Limited) was executed between the same entity. The trades were not found to be continuous. It was not brought out in the Enquiry Report that such trades of the stock broker had resulted in any reflection in the prices of securities or were intended to cause fluctuation in the market price of the securities. The observation of the Enquiry Officer is *"Under the circumstances, it cannot be said that the broker had acted in good faith and without negligence while executing these transactions."* Besides, there is no observation in the Enquiry Report that the parties to the trades belonged to the same group, except for one trade, where the buyer and seller were one and the same. In the absence of these details, it cannot be conclusively held that there was no change in the beneficial ownership in respect of the said trades at sr. nos. 2 to 5 at table mentioned in paragraph 5 above. There was no change in the beneficial ownership in respect of the trade at sr. no. 1 in the table at paragraph 5 above. Contention of the

learned counsel is that there was not even a whisper in the Enquiry Report that the trades of the stock broker had influenced either the volume or the price of the shares. There was no finding in the Enquiry Report that the said trades were executed as a device to inflate, depress or cause fluctuation in the market price of the securities. Considering the totality of the facts and circumstances of the case, the stock broker is entitled for a benefit of doubt in respect of the cross deals executed by it.

7. One of the allegations leveled against the stock broker is that it had acted as an unregistered sub broker for the stock brokers namely, M/s. Vikram Kenia Securities, Bang Equity Broking Private Limited and Mafatlal Securities Limited. The fact that the stock broker had dealt with the said stock brokers is not disputed before me. The contention of the stock broker is that since it is a member of a 'stock exchange', it would not come under the strict definition of the term 'sub broker', in terms of Rule 2(f) of the Rules. I am unable to accept the contention of the stock broker in this regard. I note that the stock exchanges had brought to the notice of SEBI that its members were executing transactions of their clients through the members of other stock exchanges. They had expressed their difficulties which arose out of the said transactions, since the same were purely "off the floor" in nature. It was also informed that they had to declare some of their members who had acted as sub brokers, as defaulters, since they had defaulted to the investors on the transactions done through the members of other stock exchanges, although the respective members did not default to the parent stock exchange. It was in this context, the stock exchanges had sought the intervention of SEBI in the matter. In view of the difficulties and after discussing the matter with major stock exchanges, SEBI had issued a policy guideline in the form of a Circular (SMD/POLICY/CIR/3/98 dated January 16, 1998). In terms of the said circular, it was advised that the members of stock exchanges who are acting as sub-brokers through the members of other

exchanges should obtain certificate of registration from SEBI to act as sub broker under the provisions of the Stock Broker Regulations and the Rules. In the facts and circumstances, I do not have any hesitation in holding that the stock broker had violated Section 12 of SEBI Act, Rule 3 of the Rules read with SEBI circular dated January 16, 1998.

8. The stock broker did not dispute the allegation of non collection of margin and thereby violated SEBI Circular dated July 27, 2000. The contention of the learned counsel was that it may not be considered as a serious charge for imposing the penalty of suspension of the certificate of registration. He also relied upon the judgments of the Hon'ble Securities Appellate Tribunal in this regard. In respect of allegation of non maintenance of record for the placement of orders, the learned counsel submitted that the same was not a requirement under the Bye laws of DSE. However, I note that, in terms of SEBI Circular dated February 11, 1997, a stock broker should maintain record of the time when the client had placed the order and reflect the same in the contract notes. Thus, by not mentioning the time of placement of orders, the stock broker had violated the aforesaid circular. According to the learned counsel, in the facts and circumstances of the case, once the stock broker is not found guilty of market manipulation, the other violations does not call for imposing a penalty of suspension.

9. In view of the above, it is established that the stock broker violated Section 12 of Securities and Exchange Board of India Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Rules, 1992 (since rescinded) and Securities and Exchange Board of India circular dated January 16, 1998. The stock broker also violated the circulars dated July 27, 2000 and February 11, 1997 issued by the Securities and Exchange Board of India. In view of the above, the stock broker has violated

Clause A(5) of the Code of Conduct specified for stock brokers under Schedule II of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. Considering the violations as found to have been committed by the stock broker in the present case and the case in its totality, I do not consider this a fit case to impose the penalty of suspension of the certificate of registration for a period of fifteen days as recommended by the Enquiry Officer. In the interest of justice and equity, the enquiry proceeding initiated against the stock broker is disposed of as ordered herein under.

10. In view of the foregoing, in exercise of the powers conferred on 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, the stock broker namely, CSL Securities Private Limited (Registration No. INB 050988832), Member, Delhi Stock Exchange Association Limited is warned for the aforesaid violations committed by it.

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

Place: Mumbai

Date: November 30, 2009