

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF CYBERSPACE MULTIMEDIA LIMITED

IN RESPECT OF SURENDRA KUMAR DUGAR & CO.

(SEBI Registration No. INB 030064911)

Date of hearing: October 09, 2009

Appearances

**For Noticees : Mr. Surendra Kumar Dugar, Proprietor,
Mr. J. P. Rathi, Employee of Surendra Kumar Dugar & Co.**

**For SEBI : Mr. Lamber Singh, Manager
Mr. Pradeep Kumar, Legal Officer**

ORDER

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

- 1.** Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into buying, selling and dealing in the scrip of Cyberspace Multimedia Ltd. (hereinafter referred to as 'Cyberspace') for the period September 18, 2000 to December 8, 2000, on the possibility of price manipulation in the scrip. During this period, the price of the scrip increased from Rs.8.00 on September 18, 2000 to Rs.60.00 on December 8, 2000. The scrip of the Cyberspace during the relevant period was listed on Bangalore Stock Exchange (hereinafter referred to as 'BgSE'), Bombay Stock Exchange (hereinafter referred to as 'BSE') and Calcutta Stock Exchange (hereinafter referred to as 'CSE').
- 2.** The investigation *prima facie* revealed that persons connected with the company, its directors, major shareholders and their affiliates had tried to manipulate the price of the scrip. It was further revealed that the brokers of CSE were found trading on BSE through the brokers of BSE. It was revealed

that some clients have placed large buy-orders majority of which were deleted after a small part is executed, by adopting this methodology, some entities had tried to create buying depth in the scrip which attracted other investors in the scrip.

3. Surendra Kumar Dugar & Co. (hereinafter referred to as 'noticee'), registered with SEBI as stock broker, bearing Registration no. INB 030064911 and member of CSE while trading through Active Finstock Pvt. Ltd. on BSE, off-loaded shares allotted to it and its family in the private placement prior to Initial Public Offer (hereinafter referred to as 'IPO'). Noticee was found to have created buying depth in the scrip by placing huge buy orders and deleting them afterwards on the terminal provided to it by Active Finstock Pvt. Ltd. It also found that while trading in self account noticee had bought 1,83,449 shares and sold 3,38,479 shares on CSE, further on BSE it bought 7,16,069 shares and sold 6,65,379 shares. These quantities were in addition to what it had bought and sold for its clients on BSE and CSE. The dealings of the noticee have been summarized in the table mentioned below:

Table A

Clients	CSE			BSE		
	Bought	Sold	Net	Bought	Sold	Net
Self A/c	1,83,449	3,38,479	-1,55,030	7,16,069	6,65,379	50,690
Budhmall Dugar	-	3,13,000	-3,13,000	-	-	-
BMD Financial Pvt. Ltd.	-	3,06,800	-3,06,800	-	6000	-6000
BMD Estates Pvt. Ltd.	340	3,20,340	-3,20,000	7000	-	7000
Madhu Dugar	-	30,500	-30,500	-	-	-
Mahaveer Plaza Pvt. Ltd.	2336	1,57,915	-1,55,579	-	55,661	-55,661

4. Based on the findings of the investigations, SEBI vide order dated November 05, 2003, appointed an Enquiry Officer under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations'), to enquire into the alleged violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') and Regulations 7 read with Clause A (1), (2), (3), (4) and (5)

of the Code of Conduct specified under Schedule II of the SEBI (Stock Brokers and Sub-Broker) Regulation, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer submitted his report dated May 02, 2005 in terms of Regulation 13(1) of Enquiry Regulations recommending thereby a penalty of censure to noticee for violating the provisions of Regulation 4(a) and 4(b) of PFUTP Regulations and Regulations 7 read with Clause A (3), (4) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations.

5. Subsequently, a Show Cause Notice (hereinafter referred to as 'SCN') dated May 25, 2005, under Regulation 13(2) of Enquiry Regulations was issued by SEBI to the noticee, asking it to show cause as to why the appropriate penalty including penalty recommended by the Enquiry Officer should not be imposed. The noticee was advised to reply to the SCN, together with the documents that it may choose to rely upon in support of his reply within fifteen days of the receipt thereof. It was also informed that in case of failure, it would be presumed that it had no explanation to offer and SEBI shall be free to take such action in the manner as it deemed fit. A copy of the Enquiry Report was also forwarded to the noticee along with the said SCN.
6. The noticee replied to the SCN vide its letter dated June 16, 2005 and sought a personal hearing. Accordingly, Mr. Surendra Kumar Dugar, proprietor of noticee and Mr. J.P. Rathi, employee of the noticee, appeared before me on October 09, 2009, and reiterated the submissions made vide letter June 16, 2005, along with other submissions. The submission of noticee *inter alia* are as under:
 - Had not acted along with other brokers during its trading in the scrip.
 - Was doing jobbing and for proving charging under Regulation 4(b) of PFUTP Regulations, it is necessary to prove that the huge volume of transactions of noticee were calculated to create false/ misleading appearance of trading, which the SCN failed to provide.
 - Had entered similar transaction in other scrip's also.
 - Transactions were not entered with aim of creating artificial volumes.

- Shares of related entities were sold by it pursuant to the instructions by clients in its capacity as broker.
- The transactions entered by it were in nature of squaring off which shows that these were jobbing transactions.
- All relied upon documents have not been furnished to it in consonance with principles of natural justice.
- In Regulation 4 of PFUTP Regulations, intention is relevant, and it is required to prove that the person had acted intentionally.
- Transacted in ordinary course of business and the same have not been resulted in artificially increasing/ decreasing the price of the scrip.
- There are some mitigating factors.

7. I have carefully considered the Enquiry Report, the SCN issued to the noticee and the reply dated June 16, 2005. I note that the Enquiry Officer has relied upon the statement of the noticee, show cause notice dated June 08, 2004 issued to noticee and annexure thereto. In compliance with the principals of natural justice, I am not relying on any other document which is not on record and has not been provided to the noticee. After having examined the available material, the issue arises for my consideration is: whether the noticee has indulged in acts which were in violation of Regulation 4(a) and (b) of PFUTP Regulations and Regulations 7 read with Clause A (3), (4) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations?

8. Whether the noticee has indulged in acts which were in violation of Regulation 4(a) and (b) of PFUTP Regulations and Regulations 7 read with Clause A (3), (4) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations:

- a. I note that during the period of investigations there was steady increase in the closing price which went upto Rs.60 as on December 08, 2000. Large volumes were also observed in the scrip of Cyberspace on the days it was

traded. During this period, the noticee in its own account bought 8,99,518 and sold 10,03,858 shares of Cyberspace at BSE. I note that in addition to this trading noticee had also traded for its clients as stated in Table A above.

- b. I have seen that the noticee was a client of Active Finstock Pvt. Ltd., who had provided a trading terminal to noticee stated to be under Memorandum of Understanding between BSE and CSE. I note that the Enquiry Officer has noted the pattern of trading of noticee i.e. placing huge buy orders and deleting them immediately, in the process a small quantity of the order was executed. I have noted from the Enquiry Report that the orders were placed by the noticee on the terminal provided, which were subsequently deleted by it. I have seen such pattern of trading of noticee over a period of time and on sample basis trading of October 03, 2000 has been brought out below for ready reference:

Mem ber Code	Tr ade ID	Buy/ Sell	Ty pe	Price	Qty.	Avg. Qty.	A U D	Cacl	Date and Time	Er r.	Order ID
36	9B	L	10.15	100000	100000	A	30	2000-10-03:11:45:44	0	3600900010001935	
36	9B	L	10.2	100000	100000	A	30	2000-10-03:11:46:08	0	3600900010001936	
36	9B	L	10.25	100000	100000	A	30	2000-10-03:11:46:36	0	3600900010001937	
36	9B	L	10.4	100000	100000	A	30	2000-10-03:11:48:00	0	3600900010001938	
36	9B	L	10.5	100000	100000	A	30	2000-10-03:11:48:24	0	3600900010001939	
36	9B	L	10.6	100000	100000	A	30	2000-10-03:11:48:41	0	3600900010001940	
36	9B	L	0	94500	94500	D	30	2000-10-03:11:49:12	0	3600900010001935	
36	9B	L	0	98000	98000	D	30	2000-10-03:11:49:14	0	3600900010001936	
36	9B	L	0	97300	97300	D	30	2000-10-03:11:49:16	0	3600900010001937	
36	9B	L	0	99000	99000	D	30	2000-10-03:11:49:18	0	3600900010001938	
36	9B	L	0	98100	98100	D	30	2000-10-03:11:49:20	0	3600900010001939	
36	9B	L	0	99000	99000	D	30	2000-10-03:11:49:21	0	3600900010001940	
36	9B	L	10	100000	100000	A	30	2000-10-03:11:49:48	0	3600900010001948	
36	9B	L	11	100000	100000	A	30	2000-10-03:11:59:45	261	3600900010001949	
36	9B	L	12.1	100000	100000	A	30	2000-10-03:12:00:16	261	3600900010001950	
36	9B	L	0	96500	96500	D	30	2000-10-03:12:00:33	0	3600900010001950	
36	9B	L	11.5	0	100000	U	30	2000-10-03:12:20:02	0	3600900010001949	
36	9B	L	12.1	0	100000	U	30	2000-10-03:15:22:42	0	3600900010001949	

From the above, it is noted that on October 03, 2000 the noticee had entered orders for 1,00,000 shares each between from 11:45:44 to 11:48:41 and immediately thereafter from 11:49:12 to 11:49:21, it deleted 6 pending orders

for the shares ranging from 90,500 to 99,000 from each of the said orders. Further, just after 27 seconds of this, noticee again enters an order for 1,00,000 shares. I have also seen that noticee at 12:00:16 entered order for 1,00,000 shares and immediately after 17 seconds i.e. 12:00:33 the remaining order of 96,500 shares was deleted. From the above extract, it can be seen that the noticee had placed buy orders for 9,00,000 shares and deleted orders for 6,82,400 shares.

- c. I note that this pattern of trading has been repeated by noticee over a period of time during the relevant period. I note that by adopting the pattern, noticee has tried to create an impression of liquidity in the market. I observe that noticee has managed to successfully sell 12,23,880 shares out of 14,90,000 shares allotted to it and its associates. In the process, it placed large number of buy orders and immediately cancelled these. An obvious explanation of its action of placing such buy orders and canceling them could be that it wanted to create an impression in the market that there is a rapid movement in the scrip.
- d. The noticee has however, argued that it was doing jobbing and arbitrage transactions in the scrip, thereby was trying to make profits from differences in prices between the two markets. The noticee along with its reply has also attached a list showing the pattern of trading in scrip's other than Cyberspace. I note that the list of scrips attached with the reply of the noticee is comprised of highly liquid scrips unlike Cyberspace.
- e. I observe that the explanation of the noticee is not very convincing for the following reasons:
 - Arbitrage transactions are generally successful in highly liquid scrip's where an anomaly in prices can immediately be encashed in a riskless manner. In an illiquid scrip like Cyberspace, it was taking a position in one exchange and hoping that within a few seconds or a couple of minutes he will be able to off-set the position in another exchange, since he could not do it, he cancelled the order. In almost all such

cases, he did cancel the order. I note that not a single example of successful arbitrage has been seen in the scrip that the noticee could manage using the strategy adopted by noticee.

- It is quite a coincidence that he decided to arbitrage in a scrip in which it and its associates were allocated a large number of shares and intended to offload these.
- Noticee placed mostly buy orders and deleted them had it been a genuine arbitrage, there would have been equal instances of placing and deleting sell orders also which in reality are very few.

9. In view of above, I agree with the findings of the Enquiry Officer and conclude that the noticee who was a broker and was in the business of securities should have realized the effect of placing huge buy orders and later on deleting them. I note that such acts of the noticee had distorted the market equilibrium by misleading appearance of trading on the exchanges. Hence, the acts of the noticee are in violation of Regulation 4(a) and (b) of PFUTP Regulations read with Regulation 13 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003. In turn the noticee has also contravened the provisions of Regulations 7 read with Clause A (3), (4) and (5) of the Code of Conduct specified under Schedule II of the Broker Regulations.

10. I note that the element of *mens rea* as argued by noticee is not important to be proved in the offences of this kind as has been held by the Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs. Shriram Mutual Fund and Another* (2006 (5) SCC 361), where the Hon'ble Court has observed:

"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the

defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not.”
[Emphasis supplied]

11. Further, I do not find mitigating factors relevant in the present proceedings as this is not a penal proceeding.
12. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of SEBI (Intermediaries) Regulations, 2008.
13. Taking into the facts and circumstances of the case, 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 warn the noticee, M/s Surendra Kumar Dugar & Co., Member, Calcutta Stock Exchange (SEBI Registration No. INB 030064911), to be careful and cautious in the conduct of its business and to adhere to and comply with all the statutory provisions while carrying out its activities in the securities market.

DATE : DECEMBER 02, 2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA