

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

IN THE MATTER OF KWALITY DAIRY INDIA LTD.

IN RESPECT OF SANJAY BIYANI

(SEBI REGISTRATION NO. INS 011099418)

Date of hearing: September 23, 2009

Appearances:

For Noticee: Shri Sanjay Biyani

**For SEBI: Shri Jai Prakash, Presenting Officer,
Shri A.S. Mithwani, Deputy General Manager
Shri Srikesh Bhat, Manager, and
Shri Pradeep Kumar, Legal Officer**

ORDER

Under Regulation 28 (2) read with 38(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation during February 5, 2003 to June 6, 2003 (hereinafter referred to as investigation period) into the trading in the shares of Kwaliti Dairy India Ltd. (hereinafter referred to as 'KDIL'), a company listed on the Bombay Stock Exchange (hereinafter referred to as BSE), the Delhi Stock Exchange (hereinafter referred to as DSE) and the Calcutta Stock Exchange (hereinafter referred to as CSE).
2. The investigation revealed that Shri Sanjay Biyani (hereinafter referred to as 'SB'); a sub-broker trading through the main broker MPSE Securities Ltd. (hereinafter referred to as

- 'MPSESL') had entered into circular/ reversal trades with another sub-broker of MPSESL viz. M/s. Sunil Shares and Securities Ltd. (hereinafter referred to as SSS) which created artificial volume in the shares of KDIL. SB had traded on his own account, while SSS had traded on behalf of its client Abhishek Khare (hereinafter referred to as AK).
3. It was therefore alleged that the said sub-broker SB had violated Regulation 4 (a), (b), (c) & (d) of the SEBI (Prohibition of Fraudulent Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations') (since repealed) read with corresponding provisions of the SEBI (Prohibition of Fraudulent Trade Practices Relating to Securities Market) Regulations, 2003 laid down in Regulation 4(1) and 4(2)(a), (b), (e), (g) and (n) and Regulation 7 read with the Code of Conduct for Stock Brokers, specified in Schedule II of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as 'Brokers Regulations').
 4. Thereafter, vide order dated July 30, 2004, SEBI appointed Enquiry Officer, to enquire into the alleged violations by SB under Regulation 5 (1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed). The SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 was repealed with the notification of SEBI (Intermediaries) Regulations, 2008. The enquiry, therefore, continued under the Intermediaries Regulations. The Designated Authority (hereinafter referred to as 'enquiry officer') vide enquiry report dated December 12, 2006 recommended the suspension of the certificate of registration of the said sub-broker SB for a period of fifteen days.
 5. Subsequently, a notice dated December 28, 2006 was issued to SB enclosing therewith a copy of the enquiry report to show cause as to why the penalty as recommended by the enquiry officer or any other action considered appropriate by the Board should not be imposed upon him.
 6. SB replied to the said notice vide his letter dated January 24, 2007. An opportunity of personal hearing was granted to SB on January 4, 2008 before the then Whole Time Member. SB attended the hearing and also filed written submissions vide his letter dated January 4, 2008. Further as per the request of SB for the trade details of KDIL from

April 24, 2003 to June 6, 2003, the same were provided to him during the course of the hearing. SB made further written submission vide his letter dated January 17, 2008. Subsequent to change in the authority, another opportunity of personal hearing was granted to SB before me on September 23, 2009, for which Shri Sanjay Biyani appeared and made oral submissions. SB *inter alia* submitted as under:

- (i) Vide order dated September 14, 2006 the Adjudicating Officer has imposed a penalty of Rs.10,00,000/- on the same set of transactions. The present proceedings thus amount to 'double jeopardy', which is not permissible in law.
- (ii) The Enquiry Report violates the principles of natural justice. The proceedings suffer from great delay which is not even explained in the Enquiry Report.
- (iii) The volume of trades was insignificant. Further, without taking/ giving delivery of shares it is not possible to influence the price in a scrip. In SB's case only 1000 shares of KDIL were deliveries based on a single day.
- (iv) SB did not know the names of counter brokers or clients. The orders were matched by the BOLT system. He did not enter into any kind of circular, structured and synchronized trading with anyone. He did not have any professional or commercial dealing with SSS or the client AK. The Enquiry Officer has recorded that there is no apparent nexus between SB, SSS and AK. Further, he did not receive or pay money to any third party in the matter of the KDIL transactions.
- (v) The Enquiry Officer has relied upon selective data.
- (vi) Trading details with regard to the scrip of KDIL were provided during the course of hearing. Such details cannot be taken on record at this stage as the Hon'ble WTM is to pass the order based on the papers and documents relied on by the Enquiry Officer as available to him during the Enquiry Proceedings.
- (vii) The primary responsibility for monitoring transactions is of the stock exchanges. However, BSE never considered the spurt in price or volume of trading as unusual.
- (viii) The Enquiry Officer failed to apply the doctrine of proportionality in the recommendation of penalty.

7. I have considered the enquiry report, the SCN, replies, oral as well as written submissions and other material available on record.
8. I note that around 25% of the traded volume in the scrip of KDIL during the period of investigation was due to circular/ reversed trades among different groups of clients and brokers. Out of these trades the circular/ reversal of trades by SB and SSS comprised of 7,30,654 shares accounting for approximately 21.50% of the total traded quantity at BSE during the entire period of investigation. The artificial volume generated through these circular deals/ reversal of trades was mainly during April 23, 2003 to June 6, 2003 and the volume on most of the days was around 20-25% of the day volume and on some days between 30-40%. Out of the total 4,239 trades by MPSESL at the BSE, 4,116 trades were executed between SB and SSS, thereby contributing to 97% of the total number of trades executed by MPSESL.
9. Now I proceed to deal with the arguments of SB, as stated in para 6 above.
 - (i) I note that SEBI Act empowers SEBI to initiate a single proceeding or a combination of proceedings like 11B, adjudication, enquiry, prosecution etc., as may be warranted to deal with the violations of the SEBI Act, Rules and Regulations made thereunder. These proceedings have different objectives. For example, adjudication penalizes the accused by way of monetary penalty whereas enquiry enables directions against registered intermediaries. I therefore do not find any illegality in SEBI initiating both enquiry and adjudication proceedings against the noticee.
 - (ii) Though the matter ought to have been disposed of expeditiously, the proceedings as such do not suffer from great delay as contended by the noticee. I note that the transactions were carried out in April-June 2003. The investigation was conducted thereafter by SEBI. An enquiry officer was appointed vide SEBI order dated July 30, 2004. The matter was then transferred to another enquiry officer vide SEBI order dated December 28, 2004. However, due to

administrative exigencies, another enquiry officer was appointed vide SEBI order dated December 20, 2005, who after conducting enquiry in terms of the Broker Regulations submitted enquiry report on December 12, 2006. It is noted that the proceedings have been conducted in adherence with the principles of natural justice and after affording the sub-broker a fair opportunity of hearing at all the stages before various enquiry officers.

- (iii) I note that there were reversal of trades / circular trades between SB and SSS. These trades were done by SB on his own account and SSS trading for its client Abhishek Khare. SB was buying and SSS was selling the shares of KDIL followed by reversals where SB was selling and SSS was buying almost the same quantity during the day. Such trading happened continuously for 32 trading days involving a total of 7,30,654 shares, as can be noticed as under. The trades were matched within 0-34 seconds with squaring-off of transactions on the same day. I further note that delivery based transactions are not essential for influencing the price or volume of the scrip.

Date of transaction	Buy qty. by SB as a client	Sell qty. by SSS for AK	Buy qty. by SSS for AK	Sell by SB as a client
23.04.03	6000	6000	6000	6000
24.04.03	10000	10000	9900	9900
25.04.03	10000	10000	10000	10000
28.04.03	10000	10000	10000	10000
29.04.03	5000	5000	4999	4999
30.04.03	8000	8000	7000	7000
02.05.03	13000	13000	13000	13000
05.05.03	10000	10000	9500	9500
06.05.03	12000	12000	12000	12000
07.05.03	12500	12710	12500	12500
08.05.03	10400	10350	10500	10500
09.05.03	12500	12500	12500	12500
12.05.03	19601	19601	19400	19400

13.05.03	17500	17655	17500	17500
14.05.03	20000	19745	20000	20000
15.05.03	12500	12655	8500	8500
16.05.03	15399	15399	15400	15400
19.05.03	5000	5100	5000	5000
20.05.03	12500	12445	12490	12490
21.05.03	12375	12430	12400	12400
22.05.03	15000	14795	15000	15000
23.05.03	17500	17600	17500	17500
26.05.03	12000	12000	12000	12000
27.05.03	12500	12500	12500	12500
28.05.03	10000	10200	10000	10000
29.05.03	12500	12250	12500	12500
30.05.03	12500	12455	12500	12500
02.06.03	7000	7045	7900	7900
03.06.03	5000	5000	5000	5000
04.06.03	10000	10000	10000	10000
05.06.03	10000	10000	10000	10000
06.06.03	10000	9770	10000	10000
Total – 32 days	368275	368205	363489	363489

- (iv) Further, the trades done by SB in the scrip of KDIL were matched with counter party, SSS within 0-34 seconds with squaring-off of transactions on the same day. For instance, the details of the orders placed by SB on April 23, 2003, wherein its orders got matched with that of SSS within a time difference of only 0 to 2 seconds are given below:

Sr. No	Trade No	Buy Order No	Member Code	Counter Party Code	Qty	Price	Trade Date	Time	Buy Time	Sell Time	Time Diff	Sell Order No.	Buy Client Code	Sell Client Code
1	27	29603000000062288	D0296	D0296	100	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
2	28	29603000000062288	D0296	D0296	5	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
3	29	29603000000062288	D0296	D0296	95	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
4	30	29603000000062288	D0296	D0296	10	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
5	31	29603000000062288	D0296	D0296	90	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
6	32	29603000000062288	D0296	D0296	15	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
7	33	29603000000062288	D0296	D0296	85	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
8	34	29603000000062288	D0296	D0296	20	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
9	35	29603000000062288	D0296	D0296	80	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
10	36	29603000000062288	D0296	D0296	25	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
11	37	29603000000062288	D0296	D0296	75	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
12	38	29603000000062288	D0296	D0296	30	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
13	39	29603000000062288	D0296	D0296	70	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
14	40	29603000000062288	D0296	D0296	35	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
15	41	29603000000062288	D0296	D0296	65	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
16	42	29603000000062288	D0296	D0296	40	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
17	43	29603000000062288	D0296	D0296	60	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
18	44	29603000000062288	D0296	D0296	45	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
19	45	29603000000062288	D0296	D0296	55	10.70	23/04/03	10:23:19	10:23:19	10:23:18	0:00:01	29603700000015262	30A029	37TTTL
20	146	29603700000015307	D0296	D0296	250	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
21	147	29603700000015307	D0296	D0296	50	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
22	148	29603700000015307	D0296	D0296	200	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
23	149	29603700000015307	D0296	D0296	100	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
24	150	29603700000015307	D0296	D0296	150	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
25	151	29603700000015307	D0296	D0296	150	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
26	152	29603700000015307	D0296	D0296	100	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
27	153	29603700000015307	D0296	D0296	200	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
28	154	29603700000015307	D0296	D0296	50	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
29	155	29603700000015307	D0296	D0296	250	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
30	156	29603700000015307	D0296	D0296	250	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
31	157	29603700000015307	D0296	D0296	50	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
32	158	29603700000015307	D0296	D0296	200	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
33	159	29603700000015307	D0296	D0296	100	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
34	160	29603700000015307	D0296	D0296	150	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
35	161	29603700000015307	D0296	D0296	150	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
36	162	29603700000015307	D0296	D0296	100	10.40	23/04/03	12:24:32	12:24:29	12:24:31	0:00:02	29603000000062346	37TTTL	30A029
37	168	29603000000062380	D0296	D0296	150	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
38	169	29603000000062380	D0296	D0296	50	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
39	170	29603000000062380	D0296	D0296	100	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
40	171	29603000000062380	D0296	D0296	100	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
41	172	29603000000062380	D0296	D0296	50	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
42	173	29603000000062380	D0296	D0296	150	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
43	174	29603000000062380	D0296	D0296	150	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
44	175	29603000000062380	D0296	D0296	50	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
45	176	29603000000062380	D0296	D0296	100	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
46	177	29603000000062380	D0296	D0296	100	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
47	178	29603000000062380	D0296	D0296	50	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
48	179	29603000000062380	D0296	D0296	150	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
49	180	29603000000062380	D0296	D0296	150	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
50	181	29603000000062380	D0296	D0296	50	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
51	182	29603000000062380	D0296	D0296	100	10.40	23/04/03	13:06:21	13:06:21	13:06:19	0:00:02	29603700000015312	30A029	37TTTL
52	183	29603000000062381	D0296	D0296	300	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTL

53	184	29603000000062381	D0296	D0296	5	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
54	185	29603000000062381	D0296	D0296	295	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
55	186	29603000000062381	D0296	D0296	10	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
56	187	29603000000062381	D0296	D0296	290	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
57	188	29603000000062381	D0296	D0296	15	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
58	189	29603000000062381	D0296	D0296	285	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
59	190	29603000000062381	D0296	D0296	20	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
60	191	29603000000062381	D0296	D0296	280	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
61	192	29603000000062381	D0296	D0296	25	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
62	193	29603000000062381	D0296	D0296	275	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
63	194	29603000000062381	D0296	D0296	30	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
64	195	29603000000062381	D0296	D0296	270	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
65	196	29603000000062381	D0296	D0296	35	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
66	197	29603000000062381	D0296	D0296	265	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
67	198	29603000000062381	D0296	D0296	40	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
68	199	29603000000062381	D0296	D0296	260	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
69	200	29603000000062381	D0296	D0296	45	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
70	201	29603000000062381	D0296	D0296	255	10.35	23/04/03	13:06:55	13:06:55	13:06:55	0:00:00	29603700000015313	30A029	37TTTTL
71	202	29603700000015316	D0296	D0296	358	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
72	203	29603700000015316	D0296	D0296	22	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
73	204	29603700000015316	D0296	D0296	336	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
74	205	29603700000015316	D0296	D0296	44	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
75	206	29603700000015316	D0296	D0296	314	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
76	207	29603700000015316	D0296	D0296	66	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
77	208	29603700000015316	D0296	D0296	292	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
78	209	29603700000015316	D0296	D0296	88	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
79	210	29603700000015316	D0296	D0296	270	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
80	211	29603700000015316	D0296	D0296	110	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
81	212	29603700000015316	D0296	D0296	248	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
82	213	29603700000015316	D0296	D0296	132	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
83	214	29603700000015316	D0296	D0296	226	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
84	215	29603700000015316	D0296	D0296	154	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
85	216	29603700000015316	D0296	D0296	204	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
86	217	29603700000015316	D0296	D0296	176	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
87	218	29603700000015316	D0296	D0296	182	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
88	219	29603700000015316	D0296	D0296	198	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
89	220	29603700000015316	D0296	D0296	80	10.35	23/04/03	13:15:02	13:15:02	13:15:02	0:00:00	29603000000062386	37TTTTL	30A029
90	252	29603000000062423	D0296	D0296	100	10.35	23/04/03	13:42:16	13:42:15	13:42:13	0:00:02	29603700000015328	30A029	37TTTTL
91	253	29603000000062423	D0296	D0296	100	10.35	23/04/03	13:42:16	13:42:15	13:42:13	0:00:02	29603700000015328	30A029	37TTTTL
92	254	29603000000062423	D0296	D0296	100	10.35	23/04/03	13:42:16	13:42:15	13:42:13	0:00:02	29603700000015328	30A029	37TTTTL
93	255	29603000000062423	D0296	D0296	100	10.35	23/04/03	13:42:16	13:42:15	13:42:13	0:00:02	29603700000015328	30A029	37TTTTL
94	256	29603000000062423	D0296	D0296	100	10.35	23/04/03	13:42:16	13:42:15	13:42:13	0:00:02	29603700000015328	30A029	37TTTTL

- (v) SB has further contended that due the nature of the screen based trading, they did not know the names of counter party brokers or clients. As seen from the table above, SB has entered into synchronized/ structured deals on so many instances that no reasonable person would come to the conclusion that these were conducted among unknown parties in an anonymous fashion.

- (vi) SB has further contended that the Enquiry Officer has relied on selective data and not the entire trade volume data in the scrip of KDIL. I note that the trade details with regard to KDIL were provided to SB during the course of hearing on January 4, 2008. SB was given a chance to examine the same. Vide letter dated January 17, 2008 SB submitted that these documents should not be relied on since the order should be passed based on the papers and documents relied upon by the Enquiry Officer. However, I find no merit in this contention as SB was given ample time to examine the same and file his reply. I further note that after SB was provided with the said documents, they had also been granted another opportunity of hearing on September 23, 2009.
- (vii) SEBI has been empowered to initiate proceedings irrespective of whether the exchanges have taken any action with regard to the scrip and dealings therein. I note that the noticee has relied upon certain orders of SEBI to strengthen their arguments. I have considered the same and find that the facts of the present case are different from those cases as the trades executed by SB were proprietary trades.

Upon considering the submissions of the sub-broker SB, I am of the opinion that, had the trades executed by them been genuine, the possibility of such repeated perfect matching would not have been possible. In screen based trading, such perfect matching between two entities is not possible without collusion. Greater the number of synchronized trades, the larger are their chances of not being genuine in nature. Accordingly, it is bound to adversely affect the market equilibrium. Further, the trades between SB and SSS constituted a substantial proportion of the total traded volumes.

10. Therefore, I find that the said transactions are in violation of Regulation 4 (a), (b), (c) & (d) of the PFUTP Regulations, which read as under:

4. No persons shall

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

(b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities markets;

(c) indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuation in the market price of securities.

11. The basis of holding these trades as synchronized trades is in conformity with the principles as given by the Securities Appellate Tribunal (SAT) in the case of **Nirmal Bang Securities (P) Ltd. Vs SEBI** in which SAT has enumerated the basis for establishing the charge of matched trades viz., complete matching of order time, order quantity and order rate over a period of time.
12. In the process of perpetuating these structured trades, SB also failed to exercise proper skill, care and diligence, required of that of a sub-broker. By indulging in the aforesaid acts, SB did not maintain the standards of integrity, promptitude and fairness required from a broker.
13. I note that the impugned transactions have been executed by the noticee acting as a sub-broker of MPSESL. Accordingly, SB should have been charged with the violation of Regulation 15 read with of the Code of Conduct for Sub-brokers, as specified in Schedule II of the Broker Regulations. The SCN, however, alleges that the said transactions were in violation of Regulation 7 read with of the Code of Conduct for Stock-brokers, as specified in Schedule II of the Broker Regulations. Regulation 7 states that a *stock-broker* holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II of the said Regulations. Regulation 15, on the other hand, lays down that a *sub-broker* shall, inter alia, abide by the Code of Conduct specified in Schedule II of the Broker Regulations. Further, the Code of Conduct for Stock-brokers and the Code of Conduct for Sub-brokers both enumerate similar qualities like integrity, exercise of due skill and care, fairness to clients and so on. Thus, while one applies to stock-brokers and the other applies to sub-brokers, the two provisions are similar. Moreover, the Supreme Court of India in the case *BSE Brokers Forum Vs. SEBI* opined that,

“It is a well established principle in law that so long as the impugned power is traceable to the concerned statute, mere omission or error in reciting the correct

provision of law does not denude the power of the authority of taking a statutory action so long as its action is legitimately traceable to a statutory power governing such action.”

In view of the same, the present proceedings against the noticee cannot be said to have been vitiated.

14. Regulation 15 of the Broker Regulations *inter alia* reads as under:

15.(1) *The sub-broker shall-*

(a)...

(b) *abide by the Code of Conduct specified in Schedule II;*

15. The provisions contained in Schedule II *inter alia* provide that a sub-broker shall fulfill its obligations in a prompt, fair, and professional manner and at all times shall exercise due diligence, ensure proper care and exercise independent professional judgment. These provisions in the Code of Conduct are quite clear in their import and stipulate certain norms to which the behaviour of the brokers must conform while transacting their business. Persons who operate in the market as SEBI registered intermediaries are expected and required to maintain high standards of integrity, promptitude and fairness in the conduct of the business dealings. People, who indulge in manipulative, fraudulent and deceptive transactions, or abet the carrying out of such transactions which are fraudulent and deceptive, should be suitably penalized for the said acts of omissions and commissions.

16. From the facts detailed above on cumulative basis, it is established that SB has indulged in creating a false or misleading appearance of trading on the securities market and has entered into trade transactions which are not genuine and therefore is guilty of violating the provisions of Regulation 4 (a), (b), (c) & (d) of the SEBI (Prohibition of Fraudulent Trade Practices Relating to Securities Market) Regulations, 1995. By not carrying out their business operations in accordance with the provisions of law, they are also guilty of violating the provisions of Regulation 15 read with of the Code of Conduct for Sub Brokers, as specified in Schedule II of the Broker Regulations.

17. Coming to the quantum of penalty, I note that SB has submitted that the Enquiry Officer failed to apply the doctrine of proportionality in the recommendation of penalty.

On perusal of the case, the penalty of suspension of the certificates of the sub-broker for a period of fifteen days as recommended by the enquiry officer appears to be reasonable.

18. I note that pursuant to the notification of the Intermediaries Regulations, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the Intermediaries Regulations, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of Intermediaries Regulations. Therefore, this order is being passed under SEBI (Intermediaries) Regulations, 2008.
19. I, therefore, in exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992, read with Regulation 28(2) of the SEBI (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the sub-broker, Shri Sanjay Biyani, sub-broker of the Madhya Pradesh Stock Exchange Securities Ltd. (Registration No. **INS 011099418**); [PAN No. – ACIPB4120E] be suspended for a period of 15 days only.
20. This order shall come into force immediately on expiry of twenty one days from the date of this order.

DATE : 09.12.2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA