

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

IN THE MATTER OF JINDAL STEEL AND POWER LTD.

In respect of H.B. Securities Ltd.

(SEBI Registration No. INB 230607337)

Date of hearing: November 20, 2009

Appearances

**For Noticee: Mr. Praveen Gupta, Whole Time Director
Mr. Abdullah Hussain, Advocate**

**For SEBI: Mr. A.S. Mithwani, Deputy General Manager
Mr. Marc Lalrohlán, Manager
Mr. Pradeep Kumar, Legal Officer**

ORDER

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

- 1.** Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigations into the buying, selling and dealings in the shares of Jindal Steel and Power Ltd. (hereinafter referred to as 'Jindal') to ascertain any violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 (hereinafter referred to as 'PFUTP Regulations'). The investigation was conducted for the period of August 23, 2000 to October 10, 2000, *inter-alia*, on the reports of market manipulation and irregularities in the trading of the shares of Jindal.
- 2.** During this period, the opening price of the scrip as on August 23, 2000 at National Stock Exchange (hereinafter referred to as 'NSE') was Rs.159.50 and the closing as on October 10, 2000 was Rs.155.10. The scrip touched a high of Rs.174.45 on October 05, 2000 and a low of Rs.137 on September 22, 2000. The volumes traded in the scrip, touched a high of 86,897 shares on October 03, 2000 and further, touched a low of 812 shares on September

14, 2000. At Bombay Stock Exchange (hereinafter referred to as 'BSE') the opening price of the scrip as on August 23, 2000 was Rs.158 and the closing price on October 10, 2000 was Rs.153.15. On BSE, the scrip touched a high of Rs.170 on October 05, 2000 and a low of Rs.135.05 on September 25, 2000. The volumes traded in the scrip on BSE touched a high of 1,741 shares on September 29, 2000 and a low of 116 shares on August 30, 2000.

3. During the course of investigation, it was observed that manipulation in the scrip of Jindal was on account of trades executed by various entities. It was revealed that *inter alia* broker, HB Securities Ltd (hereinafter referred to as 'noticee') was one of the entities who facilitated the manipulation in the scrip of Jindal.
4. Based on the findings of the investigations, SEBI initiated enquiry proceedings against the noticee in terms of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'Enquiry Regulations') by appointing an Enquiry Officer under Regulation 5(1) of Enquiry Regulations vide order November 19, 2003 read with subsequent orders dated December 28, 2004 and December 20, 2005. SEBI appointed the Enquiry Officer, to enquire into the alleged violations of the provisions of PFUTP Regulations and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer submitted her Report dated June 11, 2007 in terms of Regulation 13 (1) of Enquiry Regulations, recommending thereby a penalty of suspension of certificate of registration for a period of five working days to noticee for violating the provisions of Regulation 4 (b) and (c) of PFUTP Regulations and Regulation 7 read with the Code of Conduct specified under Schedule II of the Broker Regulations.
5. Subsequently, a show cause notice dated June 27, 2007 (hereinafter referred to as 'SCN'), 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 the 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 July 25, 2009, and sought a personal hearing. Accordingly, Mr. Praveen Gupta, Whole Time Director of noticee along with Mr. Abdullah Hussain, Advocate appeared before me on November 20, 2009 in Regional Office, Delhi, and reiterated the submissions made vide letter dated July 25, 2009, along with other submissions. Noticee also filed written submissions dated November 20, 2009, which were taken on record. The submissions of noticee in its reply, in brief, are:

- Had not acted in concert with any party. Entities viz. HB Stockholding, HB Portfolio Ltd., HB Securities Ltd., RRB Securities Ltd., Harsai investment Ltd. are listed companies and have professional and independent directors on their boards.
- Had traded only on two days that also a week apart out of a total of 33 days. Percentage of its transactions of 75,000 shares to the gross volumes during the investigation period was 3.98%.
- Transactions in settlement no. 2000040 and 2000041 form only 24.59% and 7.34% of market gross respectively and such minor percentage of the market gross, cannot be said to impact the volumes to any significant extent.
- Prices of the scrip immediately preceding the relevant period and after the period were similar.
- SCN could not have been issued under PFUTP Regulations, as on the date of issuance of SCN i.e. October 21, 2005 and June 27, 2007, SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995, were repealed

and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 were in effect. Further, as no proceedings were initiated under SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995, prior to its repeal on July 17, 2003, no proceeding were saved and no action can sustain under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003.

- Relevant documents relied upon by Enquiry Officer have not been provided. Complete trade and order log for the entire period and copy of the statement of Nitin Kohli of Aman Portfolio have not been provided.
- No intention/ motive to manipulate the market in order to create artificial volumes.
- No investor complaint.

7. I have carefully considered the Enquiry Report, the SCN issued to the noticee, reply dated July 25, 2009 and written submissions dated November 20, 2009. At the outset, I note the contention raised by the noticee that it has not been supplied with the order log and the relied upon documents by Enquiry Officer including the copy of statement of Mr. Nitin Kohli of Aman Portfolio. I observe from the Enquiry Report that documents have been supplied to the noticee. However, I note that no document, which has not been provided to the noticee, is being relied upon in the present proceedings.
8. As regards the contention of the noticee regarding applicability of Enquiry Regulation as the alleged violations for which action was initiated against them took place prior to the Enquiry Regulations. I note that the provisions of Enquiry Regulations merely enunciate the procedure to be initiated and the substantive provisions evoked for the present proceedings are the specific provisions of PFUTP Regulations and Broker Regulations.

9. I note that, there is no dispute that the noticee had entered the trades in the scrip of Jindal on the dates mentioned by the Enquiry Officer. The question remains for my consideration is whether these trades of noticee have created artificial volumes in the scrip of Jindal being structured in nature?
- a. I note from the Enquiry Report that the alleged trades of noticee took place in two settlements i.e. 2000040 and 2000041 consisting of 55,000 shares and 20,000 shares respectively in 11 instances spread over 2 days i.e. October 03 and 09, 2000. The noticee has contended that the Enquiry Report has considered the trade of 7,179 shares which were sold in settlement no. 2000041 as genuine. Further, it has been contended that the transactions have been picked up to suit the Enquiry proceedings. I note from the Enquiry Report that the total contribution of the trades of noticee to the market volume on two days comes to 63.3% and 35.3% on October 03 and 09, 2000 respectively. Further, the 7,179 shares sold by noticee in the market on October 09, 2000, have been considered for total volumes of the trades by the noticee.
- b. I observe that the time difference between the orders placed by noticee is ranging from 0:00:02 to 0:01:09. Further, the percentage of trades of noticee to that of the total NSE volume was as under:

Broker	Settlement No.	Client	Buy	Sell	Gross	Mkt. Gross	% To Mkt. Gross	Net	Mkt. Net	% To Mkt. Net
Fincap Portfolio	2000040	Har Sai Investments	0	55,000	55,000	2,23,616	24.60	55,000	73,631	74.70
H.B. Securities	2000040	RRB Securities	55,000	0	55,000	2,23,616	24.60	55,000	73,631	74.70
Aman Portfolio	2000041	Har Sai Investments	0	19,900	19,900	3,70,206	5.38	19,900	30,593	65.05
H.B. Securities	2000041	RRB Securities	20,000	7,179	27,179	3,70,206	7.34	12,821	30,593	41.91

- c. I note from the Enquiry Report that the price of the scrip prior to the stated two days was high and on these two days i.e. the price showed a decline from Rs.161.65 on September 29, 2000 to Rs.160.15 on October 03, 2000, accompanied with a rise in volumes from 10,201 to 86,897 shares. Further, the price declined from Rs.170.50 on October 06, 2000 to Rs.159.25/- on

October 09, 2000 with a rise in volumes from 33,113 to 56,650 shares. From this, I observe that on the days when noticee executed trades, there was an increase in the buy volumes accompanied by fall in prices mainly on October 09, 2000.

- d. I note that in the alleged trades there was a change in the beneficial ownership as the transactions were delivery based. In view of the above, as regards to the alleged artificial volume generated by the noticee, I find that the supporting details provided by the Enquiry Officer in this regard falls short of establishing the charge. I am inclined to give the noticee benefit of doubt on this count.
- e. However, as regards the charge of structured trades, I note that Enquiry Officer in her report has found a close nexus between the entities viz. H.B. Securities Ltd., Harsai Investments, RRB, HB Portfolio Ltd. However, the noticee in its reply has argued that it was not acting in concert with these entities as these are listed companies and have independent directors on their boards. I have seen the details of the linkages as brought out in the Enquiry Report and the list of directors of RRB, H.B. Stockholding and Har Sai Investments from August 21, 2000 to October 31, 2000.
- f. From these details, I note that Mr. Lalit Bhasin was the common director in all the three said entities. Further, representative of noticee Mr. Praveen Gupta who appeared before me and also before the Enquiry Officer was also a director of Har Sai Investment during the relevant period of time. I note that Har Sai Investment was acting as counter party client of the noticee. I also note that the counterparty broker had entered the client code of RRB while placing order of its client Har Sai Investment. I observe that this order was received from the authorized contact person of Har Sai Investment. This fact points to the close relationship of entities. From this it appears that the noticee was aware of the trading pattern of counterparty client. The relation between these entities can further be substantiated from the fact that all these were sharing common address. I further note that the time difference between

these trades was also not much, the orders appears to be so placed as to match with the quantity of counterparty and appears to be structured in nature.

- g.** Based on the findings above, it can be concluded that the noticee was engaged in structured trades. Thus, I find that the Enquiry Officer has rightly held it guilty of violating the provisions of Code of Conduct prescribed for stock brokers as contained in Regulation 7 of the Broker Regulations.
- 10.** Further, I find no merit in the argument of noticee that action under the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995 can not sustain as against it as these were repealed prior to initiation of proceedings. I note that Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 2003 states about the repeal and saving clause, which reads as under:

- “13. (1)** *The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.*
- (2)** *Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.*
- (3)** *Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations.”*

A reading of this provision makes the position clear and the contention raised by the noticee is hence devoid of any merit and is not maintainable.

- 11.** 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 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]

- 12.** Further, I do not find the mitigating factors as pointed by the noticee, relevant in the present proceedings as this is not a penal proceeding.
- 13.** I am of the view, that in light of what has been stated in para 9 above, it can be concluded that the trades were structured in nature, yet their frequency and volume was not large enough to manipulate the market in a significant way. Considering the violation found to have been committed by the noticee in the present proceedings and the period of investigations, I do not consider it a fit case to impose a penalty of suspension of the certificate of registration for a period of one week as recommended by the Enquiry Officer. In the interest of justice and equity, I dispose of the present Enquiry proceedings as ordered herein below.
- 14.** 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.

- 15.** Taking into consideration, 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, H.B. Securities Ltd. (SEBI Registration No. INB 230607337) (PAN: AAACH 0266Q), 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 : 17.12.2009
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA