

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER REGULATION 28(2) OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 AGAINST MOONGIPA SECURITIES LIMITED IN THE MATTER OF BRUSHMAN INDIA LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation in respect of the unusual rise in the share price of Brushman (India) Limited (hereinafter referred to as the company) from Rs. 15/- to Rs. 33.80 during the period January 30, 2001 to June 29, 2001. It was *inter alia* observed that a total of 3,28,366 shares were traded at the Delhi Stock Exchange Limited (hereinafter referred to as DSE) during the above period. Though, the company was listed at other stock exchanges, the shares were not traded in such exchanges. It was also revealed that 99.80% of the total volume at DSE was concentrated between two stock brokers namely, Esha Securities Limited and Moongipa Securities Limited (hereinafter referred to as the Broker). It was revealed that the aforesaid stock brokers had traded in the shares of the company *prima facie* with an intention to create a false impression of volume and trading and had thereby indulged in market manipulation and rigging the share price. It was also observed that the Broker had entered into off market transactions in the shares of the company and the same were not reported to DSE and that it had failed to exercise due diligence, skill, care and integrity in the conduct of its business. In view of such findings, it was alleged that the

Broker had contravened Regulation 4(a),4(b) and 4(c) of 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), Clauses A (1) to A(5) of the Code of Conduct specified for stock brokers under Schedule III of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Broker Regulations), SEBI Circulars dated March 14, 1995 and August 5, 1996 and DSE Bye Law nos. 348 and 349. Thereafter, SEBI appointed an Enquiry Officer, vide order dated August 24, 2004 in terms of the 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker.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 Enquiry Officer submitted the Report dated July 27, 2005 recommending the suspension of the certificate of registration of the Broker for a period of four months. The Enquiry Officer found that the Broker had violated Regulations 4(a), 4(b) and 4(c) of the PFUTP Regulations and Clauses A(1) to A(5) of the Code of Conduct specified for stock brokers under Schedule III of the Broker Regulations. The Enquiry Officer also found that the Broker guilty of violating SEBI Circulars dated March 14, 1995 and August 5, 1996.

2. Subsequently, SEBI sent a notice dated July 28, 2005 to the Broker advising it to show cause as to why the penalty recommended by the Enquiry Officer should not be imposed against it. The Broker, vide letter dated August 12, 2005 *inter alia* stated that no confession/admission by Esha Securities Limited can be used to hold it guilty of any offence. According to the Broker, it would be wrong to hold violation of Regulation 4 of the PFUTP Regulations simply because there were only two interested traders in the shares of the company. In respect of the trades of Mr. Vimal Mehta, the Broker stated that it was not aware of his dealings through Esha Securities Limited. According to it,

the fact that Mr. Vimal Mehta was its director is insufficient to show any collusion with it to rig the share price. With regard to the joint account of Mr. R. L. Tiwari, the Broker stated that the same was totally irrelevant and insufficient to show any real connection with the concerned persons in respect of the alleged offence. It further stated that a stock broker cannot be expected to 'quiz' his clients on their sales and purchases and that such an obligation cannot be said to fall within the scope of exercising due diligence, skill and care. It is submitted that no off market transactions were entered into by it. According to the Broker, even assuming that it had not reported the same to DSE, no conclusion of collusion to manipulate the shares can be reached. It also contended that it had placed orders both above and below the last traded price. The Broker added that the ingredients of Regulation 4 of the PFUTP regulations were not satisfied in the present case. The Broker also stated that for the same very same subject matter, DSE had already levied a monetary penalty on it. According to the Broker, under Regulation 13(2) of the Enquiry Regulations, the show cause notice can only be issued by the Chairman or the Whole Time Member, after considering the Enquiry Report. Thereafter, vide letter dated November 13, 2006, while reiterating its earlier submissions *inter alia* stated that the findings of the Enquiry Officer were based on conjectures and surmises. Subsequently, an opportunity of personal hearing was granted to the Broker before my predecessor on November 13, 2006. Mr. Abdulla Hussain, as authorized by the Broker appeared before my predecessor and made submissions. Mr. Sanjay Jain, director of the Broker was also present during the hearing. The Broker was *inter alia* directed to file its shareholding pattern. While conveying its inability to produce the shareholding pattern of Esha Securities Limited, the Broker, vide letter dated November 17, 2006 had *inter alia* given a list of its top 50 shareholders as on January 1, 2001. Considering the nature of violations and also the allegation of misuse of stock exchange mechanisms, SEBI was of the view that the penalty recommended by the Enquiry Officer

needed to be enhanced and subsequently, a notice dated September 24, 2009 was issued to the Broker advising it to show cause as to why a higher penalty to that recommended by the Enquiry Officer and as considered appropriate by SEBI should not be imposed against it. Thereafter, the Broker, vide letter dated October 12, 2009 *inter alia* stated that such a recommendation was without the authority of law. According to the Broker, there is no scope to issue a fresh show cause notice either under the provisions of the Enquiry Regulations or under the Intermediaries Regulations. Thereafter, an opportunity of hearing was afforded to the Broker before me on December 18, 2009. Mr. Abdulla Hussain, as authorized by the Broker appeared before me and made submissions. Mr. Sanjay Jain, director of the Broker was also present during the hearing. The Broker had also filed its written submissions dated December 18, 2009 during the hearing, reiterating its earlier submissions.

3. I have considered the Enquiry Report, the oral as well as the written submissions made on behalf of the Broker and other material available on record. The Enquiry Officer found that the Broker had violated Regulation 4(a), (b) and (c) of the PFUTP Regulations, Clause A(1), (2), (3), (4) and (5) of the Code of Conduct for stock brokers specified under Schedule II of the Broker Regulations and SEBI Circulars dated March 14, 1995 and August 5, 1996. In respect of the charge of violating DSE Bye Law nos. 348 and 349, the Enquiry Officer observed that DSE had already punished the Broker and opined to take a lenient view.

4. The fact that the share price of the company increased from Rs. 15/- to Rs. 33.80 during the period January 30, 2001 to June 29, 2001 is not in dispute before me. It is also not in dispute that 99.80% of the total volume at DSE in the shares of the company was concentrated between the Broker and Esha Securities Limited. The volume of the Broker on the sell side had accounted for

96.94% of total volume at DSE. The trade details of the Broker and Esha Securities Limited in the shares of the company during the relevant period are given below:

Name	No. of shares bought	No. of shares sold	Gross	Net
Moongipa Securities Limited	10024	318321	328345	-308297
Esha Securities Limited	317101	10021	327122	307080

5. It was found that the Broker had bought 10,024 shares of the company and sold 3,18,321 shares of the company. These transactions are not denied. It was also alleged that the Broker and Esha Securities Limited had entered into a number of synchronized/structured deals in the shares of the company during the relevant period, as given below:

Date	Order Time	Selling Broker	Buying Broker	Order Time	Quantity	Price (Rs.)	Time gap between placement of orders (in seconds)
14/2/2001	12:25:08	Moongipa	Esha	12:25:23	38000	17.8	15
22/2/2001	13:31:34	Moongipa	Esha	13:31:39	48500	17.4	5
1/3/2001	10:26:04	Moongipa	Esha	10:26:10	4000	20.7	6
1/3/2001	10:26:25	Moongipa	Esha	10:26:27	1500	20.65	2
1/3/2001	10:27:25	Moongipa	Esha	10:27:36	700	20.7	11
15/3/2001	12:19:08	Moongipa	Esha	12:19:14	1200	22	6
16/3/2001	13:59:57	Moongipa	Esha	14:00:07	25000/280000	20.45	10
28/3/2001	12:41:50	Esha	Moongipa	12:41:54	10000	19.35	4
				12:42:03			13
				12:42:23			33
				12:42:35			45
30/3/2001	14:21:59	Moongipa	Esha	14:22:33	19000	18.9	34
30/4/2001	13:09:47	Moongipa	Esha	13:10:25	2500	20.9	37
30/4/2001	13:10:35	Moongipa	Esha	13:10:44	2500	20.9	9
30/4/2001	13:10:59	Moongipa	Esha	13:11:04	1700	20.9	5
30/4/2001	13:11:32	Moongipa	Esha	13:11:41	1000	20.9	9
30/4/2001	13:11:51	Moongipa	Esha	13:11:54	1000	20.9	3
30/4/2001	13:12:08	Moongipa	Esha	13:12:20	2500	20.9	12
16/5/2001	10:42:08	Moongipa	Esha	10:42:28	100	23.8	20
6/6/2001	13:18:14	Moongipa	Esha	13:18:13	5000	29	1
6/6/2001	13:18:32	Moongipa	Esha	13:18:30	5000	29.2	2
28/6/2001	15:39:57	Moongipa	Esha	13:40:01	5000	33.8	4

6. It can be seen from the above table that the time difference between the orders is negligible. It is pertinent to note that out of the total volume of 3,28,266

shares of the company traded during the relevant period, around 99.80% of the volumes were contributed by the aforesaid stock brokers. The synchronized/structured deals entered into by the aforesaid stock brokers were more than 50% to the total volumes. The above table would establish the same. The Broker had not denied the execution of such transactions. The Broker contended that the increase in the share price took place only after the Extraordinary General Meeting of the company wherein it was revealed that the company was expanding its line of business in collaboration with a foreign firm. I am unable to accept the submissions in this regard. If the increase in share price was consequential to the news of the company's expansion with a foreign partner, it would have attracted more investors to deal in the said scrip. Contrary to this, it is noted that the aforesaid stock brokers were mainly dealing in the shares of the company for a small set of clients, one of whom (Mr. Vimal Mehta) was its director. If there was any genuine interest in the scrip, then there would not be any need for placing a synchronized /structured deal, as had happened between the Broker and Esha Securities Limited. Mr. Vimal Mehta had simultaneously purchased and sold 200 shares of the company on May 14, 2001 at the rate of Rs. 22.40/-, though the shares were previously traded on April 30, 2001 at the rate of Rs. 20.90/-. The said client had also purchased and sold 100 shares on May 16, 2001 at the rate of Rs. 23.80/-, wherein the buying stock broker was Esha Securities Limited and the selling stock broker was the Broker. The said trade was synchronized in nature. There were numerous synchronised trades executed between the Broker and Esha Securities Limited, as given in the Table at paragraph 3 above. Considering these facts, it is highly improbable that the Broker was unaware of the transactions of its own director executed through the other stock broker. The synchronized/structured deals of the Broker are not isolated instances as it is already mentioned that more than 50% of the total traded volumes have been executed in this manner between the aforesaid stock brokers. It was found that in many instances, the orders

were placed at short intervals of time, at either identical prices or with only a negligible difference. It can be observed from the above table that the said orders were placed at predetermined prices, thereby rigging the share price. The trades of the aforesaid stock brokers should be seen in the light of the fact that the other stock brokers were dealing in negligible quantities in the shares of the company during the relevant period. Most of such stock brokers were found to have traded for one or two shares only during the entire investigation period and the highest quantity traded (excluding the Broker and Esha Securities Limited) was for 1200 shares. Thus, the trades of the Broker and Esha Securities Limited involved substantial quantities. They had placed orders at very short intervals of time. In many instances, orders were placed either at identical prices or with only a negligible difference and the quantity to be bought or sold was also the same. The manner and method of the order placement would indicate that the said orders were entered at predetermined prices at short gaps so as to ensure matching of trades. The trades of the Broker and Esha Securities Limited were instrumental in artificially fixing the share price of the company during the relevant period. It was also noted that in certain instances even when an order was entered by another stock broker, the Broker and Esha Securities Limited placed their synchronized orders at the same price, the details of which are given below:

S. No.	Stock Broker	Order time	Date	Buy or Sell (B&S)	Quantity of shares	Rate (Rs.)
1.	VH Securities	11:04:46	22.2.2001	S	500	17.8
	Moongipa	13:41:34		S	48500	17.4
	Esha	13:41:39		B	48500	17.4
2.	NAM Securities	11:14:24	28/6/2001	S	39998	34
	Moongipa	15:39:57		S	5000	33.8
	Esha	15:40:01		B	5000	33.8
3.	065	11:43:02	14.2.2001	S	200	17.9
	Moongipa	12:25:08		S	38000	17.8
	Esha	12:25:23		B	38000	17.8

7. Needless to say, the trades of the Broker and Esha Securities Limited created misleading appearance of trading as it was found that none other than themselves were significantly interested in dealing in the said scrip. The Broker

had also traded for one of the directors of the company. The facts of the case clearly establishes that the Broker was involved in the synchronized/structured deals in the shares of the company during the relevant period. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Ketan Parekh Vs SEBI *inter alia* observed:

"..... As already observed 'synchronisation' or a negotiated deal ipso facto is not illegal. A synchronised transaction will, however, be illegal or violative of the Regulations if it is executed with a view to manipulate the market or if it results in circular trading or is dubious in nature and is executed with a view to avoid regulatory detection or does not involve change of beneficial ownership or is executed to create false volumes resulting in upsetting the market equilibrium..... Any transaction executed with the intention to defeat the market mechanism whether negotiated or not would be illegal. Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available.The nature of the transaction executed the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn."

8. Further, in the matter of Triumph International Finance Limited Vs SEBI, SAT, vide order dated May 4, 2007 *inter alia* observed “ *It is the broker who plays a pivotal role in synchronizing the trades with the counter broker and match the same through the exchange mechanism by punching the buy and sell orders simultaneously. It is true that the brokers act on the advice of their clients but it is they who actually implement the game plan. It is inconceivable that such large number of trades could have matched on the screen without the appellant as the buyer's*

broker being a party to the game plan. Since the buy and sell orders were punched into the system simultaneously in such large numbers and they all matched, we cannot believe that it was a coincidence and the only inference that can be drawn is that there was a prior meeting of the minds before the trades were executed and this disturbs the true price discovery mechanism of the exchange. The appellant is only feigning innocence which plea in the circumstances cannot be accepted.A unique feature of the stock exchange is the anonymity of the buyer and the seller. Unlike other moveable properties, shares are normally bought and sold by the unknowns who never get to meet. They execute the trades through their brokers and the shares are traded at a price determined by the exchange mechanism based on the demand and supply. It must not be forgotten that every trade establishes the price of the scrip and when the two brokers punch in the buy and sell orders simultaneously at a predetermined price which they fix and match the trades on the screen of the system they are obviously interfering with the fair price discovery process of the exchange and this would amount to manipulation and benchmarking the price. Such trades are prohibited by the unfair trade practices regulations framed by the Board. The system is such that no buyer can insist that he must buy shares from a particular seller and nor can a seller insist that he must sell his shares to a particular buyer.”

9. It is noted in the present case that a series of synchronized transactions were executed between the same set of stock brokers over a period of time. The share price had also increased during investigation period and that the said stock brokers were found to have traded for 99.85% of the total volumes. Therefore, it can be easily inferred that their trades had impacted the share price during the relevant period. It is also noted that the director of the Broker, Mr. Vimal Mehta had entered into non genuine transaction as in certain trades he was found to be on both the buy and sell side and the said transactions were executed by the Broker and Esha Securities Limited. One such trade was executed in a synchronized manner. This synchronized trade was one among

the various other synchronized trades executed by the Broker. In such circumstances, the contention that there were several orders placed by it, which were not matched with Esha Securities Limited has little merit.

10. It can be seen that the aforesaid stock brokers were placing order for substantial number of shares wherein, the quantity, share price were exactly matching with each other with a small difference in the time of placing the orders. The method and manner of such order placements which resulted into trades would *inter alia* indicate that the intention of the Broker was to create a false appearance of trading in the shares. The said transactions artificially raised the share price of the company during the relevant period. From the above mentioned observations, it is clear that the Broker has indulged in market manipulation. The fact that the Broker had entered into synchronized trades is clear from the integrated trade log and order log mentioned above. It is also to be noted that, one of the clients of the Broker who had dealt in the shares of the company during the relevant period was Mr. Kapil Kumar, managing director of the company. In the facts and circumstances and considering the material available on record, it is established that the Broker had violated the provisions of Regulation 4 (a), (b) and (c) of the PFUTP Regulations. In respect of the allegation of violation of the provisions of Code of Conduct, it was submitted that the finding of manipulative trading and of failure to take care, exercise of due diligence and skill cannot co-exist. The said submission is without any merit. It is a mandatory requirement for a stock broker to comply with certain norms while dealing as a stock broker. The very fact that the Broker had consistently entered into synchronized trades with the same stock broker for a fairly long period and which had resulted in the artificial price increase and misleading appearance, would clearly establish that the Broker had failed to maintain the required standards of integrity, fairness, skill and care in the conduct of its business. This is a case wherein it was found that the Broker in

the course of its trades (including in synchronized trades), had traded not only for the managing director of the company but also for its own director. Further, delivery obligation in respect of one of its clients (M/s Bhartiya Investment) was met by none other than the managing director of the company. The investigation had found that M/s. Bhartiya Investment (one of the clients of the Broker) had sold 14,700 shares of the company during settlement no. 2001006 and the shares in respect of the said transaction had not come from M/s. Bhartiya Investment but from the demat account of Mr. Kapil Kumar (the managing director of the company). Therefore, the submissions of the Broker in this regard are liable to be rejected. Further, any manipulative act detrimental to the interest of the investors is prohibited under Clause A (3) and A (4) of the Code of Conduct prescribed for stock brokers. An intermediary who fails to perform such mandatory duties deserves to be penalized in accordance with law. Therefore, the violation of Clauses A(1) to A(5) stands established in the present case. I note also note that the Broker had purchased and sold shares of Kesoram Industries for Bhartiya Investment during January-July 2001 in off market and had not reported these transactions to DSE in violation of SEBI circular dated March 14, 1995 and August 5, 1996. The said violation cannot be treated as trivial in the facts and circumstances of the case.

11. I note that SEBI had issued a notice dated September 24, 2009 to the Broker contemplating enhancement in the penalty. The submission made by the Broker in this regard is that the said show cause notice was without any authority of law and in violation of the principles of natural justice. The said contention is liable to be rejected. The show cause notice had mentioned the reasons for the proposed enhancement of the penalty. The Broker was afforded an opportunity to make submissions in respect of the said show cause notice. Further, an opportunity of hearing was also granted to it by SEBI. The contention that the recommendation of the retired whole time member is without

authority and such enhancement of penalty is not contemplated either under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 or under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 is without any merit. In this regard, I note that the decision to issue the aforesaid show cause notice for enhancement of the penalty was taken by then whole time member pursuant to the personal hearing held on December 5, 2006. Subsequently, the matter was also placed before me. The said decision to enhance the penalty was further communicated to the Broker by SEBI, vide the aforesaid show cause notice dated September 24, 2009. The provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008 empower SEBI to take action including passing of appropriate direction. As brought out in the preceding paragraphs, the grave violations of the provisions of the law, by the Broker had warranted the issuance of the supplementary show cause notice proposing increase in penalty, commensurate with the violations committed. Therefore, it cannot contend that the same was in violation of the principles of natural justice. Therefore, the contention of the Broker that the supplementary show cause notice is bad in law needs only to be rejected. The Broker further stated that the recommendation itself was flawed as the alleged admission by the third party already formed part of and was the basis of the enquiry report. I do not see any merit in this argument. Independent of any admission made by Esha Securities Limited before the Enquiry Officer, the case against the Broker stands established on the basis of the material available on record. Further, it is also mentioned in the show cause notice dated September 24, 2009 “ Considering the investigation report, the enquiry report and other material available on record, SEBI is of the view that the penalty recommended against you is not commensurate with the alleged violations and the same needs to be enhanced” .

12. On a consideration of the case in its totality, I am of the view that a penalty of suspension of the certificate of registration of the Broker for a period of five months would meet the ends of justice. The present case has been initiated under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. Since, the said Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, this order is being passed under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries Regulations), 2008.

13. In view of the foregoing, 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, suspend the certificate of registration of the stock broker, Moongipa Securities Limited (Registration Number INB 050719332), Member, Delhi Stock Exchange Limited for a period of five months.

14. 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: FEBRUARY 20, 2010