

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation into 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, its shares were not traded there. It was also revealed that 99.80% of the total volume at DSE was concentrated between two stock brokers namely, Esha Securities Limited (hereinafter referred to as the Broker) and Moongipa Securities Limited. 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 *inter alia* 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) and 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). 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Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed) to enquire into the alleged violations committed by the Broker.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 May 31, 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 Regulation 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 August 23, 2005 to the Broker advising it to show cause as to why the penalty recommended by the Enquiry Officer should not be imposed on it. However, SEBI did not receive any reply from the Broker. Subsequently, an opportunity of personal hearing was granted to the Broker by my predecessor on December 5, 2006. During the course of the said hearing Mr. Raj Kumar Kedia, Director of the Broker submitted that the transactions were actually loan transactions in the garb of securities transactions. Thereafter, Mr. Raj Kumar Kedia submitted an affidavit *inter alia* affirming that the Broker had purchased the shares of the company during January 30, 2001 to June 29, 2001 on its behalf and on behalf of its clients. 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 should be enhanced. Subsequently, a notice dated September 24, 2009 was issued to the Broker advising it to show cause as to

why a higher penalty than that was recommended by the Enquiry Officer and penalty as considered appropriate by SEBI should not imposed against it. As the Broker had not submitted any reply to the said show cause notice, a reminder was sent by SEBI on October 27, 2009. Thereafter, the Broker, vide letter dated October 30, 2009 *inter alia* stated that the show cause notice dated September 24, 2009 was without any authority of law and in violation of the principles of natural justice. The Broker further stated that it had purchased the shares of the company on account of its own investments and for its clients. It added that the submissions made by its director before my predecessor was on account of his depression. The Broker contended that the Intermediaries Regulation cannot be made applicable to the present case, where the investigation and 'adjudication' process have been completed under the provisions of the Enquiry regulations. Subsequently, an opportunity of hearing was granted to the Broker on December 18, 2009. Though, the said letter was acknowledged by the Broker, it failed to appear for the hearing. Thereafter, the Broker vide letter dated December 18, 2009 informed that Mr. Raj Kumar Kedia, Director was under depression and unable to appear before me. It was stated that they had already given their submissions, vide their letter dated October 30, 2009 and do not want to make any additional submissions.

3. I have considered the Enquiry Report, the Broker's letter dated October 30, 2009 and other material available on record. The fact that the share price of the company was 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 disputed that 99.80% of the total volume at DSE in the shares of the company was concentrated between the Broker and Moongipa Securities Limited. It was found that the Broker had bought 3,17,101 shares of the company which accounted for 96.56% of the total purchases whereas Moongipa Securities Limited had sold 3,18,321 shares of the company which accounted for 96.54% of the total sales, during the investigation period. It was alleged that the Broker

and Moongipa 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 12:42:03 12:42:23 12:42:35	10000	19.35	4 13 33 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

4. It was found that in many instances, the orders were placed at short intervals of time, for same quantity 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 investigation conducted by SEBI observed that the Broker had traded in the shares of the company in the following manner:

Client	Buy	Sell
Self	278500	10000
Mr. Vimal Mehta	26501	21
Mr. R L Tiwari	12100	-

5. I note that the Broker had not denied the execution of the aforesaid trades. The investigation conducted by SEBI noted that one of the clients of the

Broker, Mr. Vimal Mehta acting as a client of the Broker and also through Moongipa Securities Limited 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/-. It is pertinent that Mr. Vimal Mehta was the director of Moongipa Securities Limited at the relevant point of time. 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 the Broker and the selling stock broker was Moongipa Securities Limited. The pertinent factor is that the trades of Mr. Vimal Mehta were the only trades in the shares of the company on those days. It was also noted that in certain instances even if an order was entered by another stock broker, the Broker and Moongipa Securities Limited entered their synchronized orders at the same price. The details of such trades are given below:

S. No.	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

6. The method and manner of placing such orders which resulted in trades would *inter alia* indicate that the intention of the Broker was to create a false appearance of trading in the shares. The trades of the Broker also established a price. It is also to be noted that the majority of its trades were in its proprietary account. The Hon'ble Securities Appellate Tribunal in the matter of Triumph International Finance Limited Vs SEBI (Order dated May 4, 2007) had *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."

7. Further, it is pertinent to note that though, the financial position of the Broker was not strong during the relevant period and that its pay-in/margins to DSE were found to have been delayed many times during 2001, the Broker continued to trade (during February to July 2001) not only for its clients but also on its own account (2,68,500 shares), value of which was around Rs.50,00,000/-. On a perusal of the ledger account of Mr. Vimal Mehta (the client of the Broker) in the books of the Broker for the period April 1, 2001 to June 30, 2001 indicates that he had traded only in the shares of the company. Interestingly, the Broker had not maintained the client introduction form of the client, Mr. R.L. Tiwari. The said client had not traded in the shares of other

companies. From the client introduction form of Mr. R. L. Tiwari maintained by the depository participant (Jammu & Kashmir Bank), it was noted that the address of the said client was 18/12, WEA, Karol Bagh, New Delhi, which was same as that of Moongipa Securities Limited. He was found to have been introduced by Mr. Sanjay Jain, Director of Moongipa Securities Limited. It is pertinent to note that, Mr. R. L. Tiwari had maintained a bank account (No. 9005) with the UCO Bank, Delhi High Court Branch. The said account was a joint account, where Mr. R. L. Tiwari, Mr. Pintu Lal Yadav, Mr Ramu with Mr. Sanjay Jain (Director of Moongipa Securities Limited) were the holders. From the above discussions, the following emerge:

- i. The share price of the company had increased substantially during the investigation period.
- ii. Though, the financial position of the Broker was weak during the investigation period, it had purchased substantial number of shares of the company.
- iii. The trades of the Broker and Moongipa Securities Limited in the shares of the company during the investigation period accounted for 99.80% of the total market volume at DSE.
- iii. The Broker had entered into structured/synchronized trades.
- iv. Most of the shares purchased by the Broker were in its own account.
- v. The other two clients of the Broker were Mr. Vimal Mehta and Mr. R.L . Tiwari
- vi. Mr. Vimal Mehta was one of the directors of Moongipa Securities Limited.
- vii. The Broker had not maintained the client introduction form of Mr. R.L. Tiwari, who was closely connected to Moongipa Securities Limited

8. Thus, it is observed that only two stock brokers were dealing in the shares of the company during the relevant period. The manner and method of the trades would clearly establish that their intention was not bonafide. The fact that they have entered into synchronized trades is clear from the integrated trade log and order log mentioned above in this order. They executed number of such trades. Such large number of trades could not have matched without the Broker being a party. As the buy and sell orders were placed in the system almost simultaneously (as mentioned in the table at paragraph 3) in such large numbers and they all matched, in the facts and circumstances it cannot be said that it was a coincidence. The only inference that can be drawn in this regard is that there was a prior understanding between the aforesaid stock brokers. Moreover, it is also clear from the magnitude of the trades undertaken by the Broker, that it had acted in fraudulent manner to rig the price of the company. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Ketan Parekh Vs. SEBI, inter alia* observed:

"..... 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."

9. The Broker had also entered into off market deals and the same were

not reported to DSE, as required under the SEBI Circular dated March 14, 1995. The investigation conducted by SEBI found that 4000 shares bearing distinctive numbers from 1576001 to 1580000 delivered by Bhartiya Investment during DSE Settlement No. 2000045 (29.1.01 to 2.2.01) were purchased by the Broker in its own account. Later, during DSE settlement no. 2001004 i.e. from 16.4.01 to 20.4.01, 4000 shares bearing distinctive numbers from 1576001-1580000 were again delivered by Bhartiya Investment and were purchased by the Broker in its own account. That these shares were not delivered in market by the Broker, as is apparent from distinctive number details provided by DSE, implies that the Broker had delivered the said shares in off market back to Bhartiya Investment. Thus, there was no change in beneficial ownership of such shares. The said off market transactions were not reported to DSE, thereby the Broker had contravened the SEBI Circular dated March 14, 1995. Further, a perusal of the contract note issued to Care Traders Private Limited showed that the same were issued as a stock broker and the brokerage had been charged in Form A though the said transaction was found to be principal to principal and the contract note should have been issued in Form B. The said act of the Broker was in violation of the SEBI Circular dated August 5, 1996. What is more disturbing is that, during the visit of the officials of SEBI to the address of the said client (M/s Care Traders Private Limited), it was observed that no such company was seen operating from the said premises. I also note the observation of the Enquiry Officer, in respect of the submissions of the Broker that *"We admit all the charges made in the show cause notice against the company. It is admitted that we made some mistakes unknowingly and unintentionally but we never cheated any investor"*. The Broker had not controverted the findings of the Enquiry Officer. Its main submission in the letter dated October 30, 2009 was that the enhanced penalty is not warranted for the reasons stated therein. Thus, the acts of the Broker resulted in the artificial rise in the share price of the company during the relevant period, as it had involved in trades which accounted for 96.56% in the buy side. Needless to say, it

created misleading appearance of trading in the market. The Broker was a part of the non genuine trade executed by Mr. Vimal Mehta. Therefore, in the facts and circumstances of the case, I do not have any hesitation to hold that the Broker had violated Regulation 4 (a), (b) and (c) of the PFUTP Regulations.

10. Further, the next issue is whether the Broker had maintained high standards of integrity, promptitude, fairness and exercised due skill, care and diligence in the conduct of their business. In terms of Clauses A(1), A(2), A(3), A(4) and A(5) of the Code of Conduct specified under the provisions of the Brokers Regulations, a stock broker shall not *inter alia* create false market or indulge in any act detrimental to the investors' interest or which leads to the interference with the fair and smooth functioning of the securities market. It is the mandatory duty of a stock broker to maintain high standards of integrity, promptitude and fairness and he shall also act with due skill, care and diligence in the conduct of his business. In the present case, it is already established that the trades of the Broker created misleading appearance of trading and further led to manipulation of the price of the shares of the company. Instead of maintaining the Code of Conduct, the Broker became a party to such manipulation in the shares of the company to the detriment of genuine investors. The Broker had also not maintained client registration form in respect of one of its clients, Mr. R. L. Tiwari. It is already established that the Broker had violated various statutory provisions. It was a necessary party to the non genuine trade executed by Mr. Vimal Mehta. The said trade was executed in a synchronized manner. Thus, the acts of the Broker are in disregard to the norms governing the functioning of a stock broker. An intermediary who fails to perform such mandatory duties deserves to be punished in accordance with law, in the interest of investors in the stock market. Therefore, the acts of the Broker were in contravention of Clauses A(1) to A(5) of the Code of Conduct specified for stock brokers under Schedule III of the Broker Regulations. I note that SEBI had issued a notice dated September 24, 2009 to the Broker

contemplating enhancement of 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 has little merit. I note that the said 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. 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. Thus, the supplementary show cause notice cannot be said to be bad in law. 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. Independent of what the representative of the Broker stated before my predecessor, the case merits an increase in the penalty than that recommended by the Enquiry Officer. Even in the show cause notice dated September 24, 2009 it was stated “ 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” . Accordingly, SEBI had issued the said show cause notice. The Broker also contended that the provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 is not applicable to the present case as the investigation and ‘adjudication’ process have been completed under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. This is liable to be rejected. First of all, the enquiry proceedings would come to an end only after an order is passed by the Competent Authority. Further, in terms of Regulation 38 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, an enquiry

commenced under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is deemed to have taken place or commenced under the corresponding provisions of Securities and Exchange Board of India (Intermediaries) Regulations, 2008. Therefore, I reject the contention of the Broker in this regard. 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.

11. 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, Esha Securities Limited, Member, Delhi Stock Exchange Limited (Registration No. INB 050719036) for a period of five months.

12. 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