

WTM/KMA/NRO/IVD/276/07/2010

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN RESPECT OF CONSORTIUM SECURITIES PRIVATE LIMITED

Date of hearing: April 16, 2010

Appearance:

For Consortium Securities Private Limited:	Mr. Somashekhar Sundaresan, Advocate Mr. P.S. Kalra, Chairman Mr. Madan Mohan Singh, Joint Managing Director Mr. Bikramjeet Singh Kalra, Authorised Representative,
For Securities and Exchange Board of India:	Mr. Achal Singh, Deputy General Manager Mr. Vijayakrishnan G., Deputy Legal Adviser Mr. T. Vinay Rajneesh, Legal Officer

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI), vide order dated April 22, 2002 read with subsequent orders dated July 22, 2003 and January 16, 2004, initiated enquiry proceedings against the stock broker namely, Consortium Securities Private Limited [Member, National Stock Exchange of India Limited (NSE)], under the provisions of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (since repealed), *inter alia* in respect of the alleged violations of the provisions of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the Stock Brokers Regulations) and 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). Consortium Securities Private Limited is hereinafter referred to as the Broker. The allegations leveled against the Broker, as mentioned in the Enquiry Report are as follows:

"1. that the broker carried out synchronized transactions, wherein the order quantity, rate and time were matched with the counter party brokers Classic Shares & Stockbrokers Ltd. and NH Securities Ltd. who were trading on their own account. In these transactions the broker's clients were Panther Fincap & Management Services Ltd., broker's associate firm Omega Finhold Ltd., and Alliance MF as detailed in the notice.

CSL was also alleged to have executed synchronized transactions by way of cross deals where both buyer and seller are its clients. Alliance Mutual Fund was the selling client and broker's associate firm Omega Finhold (P) Ltd., Rekhi Holdings Ltd. were the buying clients as detailed in the notice.

It is alleged that the aforesaid transactions are manipulative in nature and are in violation of Regulations 4(c)(d) and 6(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Clause A(3) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations, 1992.

2. that the broker transacted as unregistered sub-broker of M/s. Vikram Kenia, Bang Equity Broking (P) Ltd. and Mafatlal Securities Ltd. in violation of Section 12(1) of SEBI Act, 1992 and Rule 3 of SEBI (SB&SB) Rules, 1992 read with SEBI Circular SMD/Policy/Cir3/98 dated 16th January, 1998. It was also alleged that Nirmal Bang's BSE terminal was installed in broker's office.

3. that the broker received refund brokerage of Rs.9.72 lakhs (in the financial year 2000-01) from Palombe Securities & Finance Ltd. for the transactions done by clients introduced by the broker to Palombe. By receiving refund brokerage from Palombe, broker made himself liable for any default made by these clients to Palombe. It was, therefore, alleged that the broker did not exercise due care and diligence in terms of Clause A(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB&SB) Regulations, 1992.

4. that Omega Finhold (P) Ltd., broker's associate firm, transacted with the broker, as its sub broker, without obtaining SEBI Registration. It was alleged that by transacting with Omega, the broker violated SEBI Circulars SMD-1/3118 dated 27th December, 1993 read with Section 12(1) of SEBI Act, 1992 and Rule 3 of SEBI (SB&SB) Rules, 1992.

Further, broker's NSE terminal was installed at the office of Palombe Securities & Finance Ltd. and the broker paid it Rs.32.43 lakhs during the period April 2000 to December 2000 as refund brokerage. It is, therefore alleged that Palombe also was

acting as broker's un-registered sub broker, which is also in violation of the aforesaid provisions.

5. *that the broker delayed transferring the securities lying in its pool account to its client's demat account beyond the prescribed time limit of 6 days, which is in violation of SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated 1st February, 2001. The instances of such delays are as detailed in the notice.*

6. *that the broker used the undelivered securities lying in its pool account for making delivery towards pay-in of the next settlement. Apart from not transferring securities to the beneficiary's account within 6 days, the said securities were allegedly used for making delivery towards pay-in for the next settlement as detailed in the show cause notice which is in violation of SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated 1st February, 2001.*

7. *that the broker did not collect margins from its clients, including Ketan Parekh entities, at the rate of 10% of their net open position, which is in violation of SEBI Circular SMDRP/Policy/Cir-33/2000 dated 27th July, 2000.*

8. *that broker did not maintain record of the time when client had placed order and the same information has not been reflected in contract notes issued to its clients, which is in violation of SEBI Circular SMD/POLICY/IECG/1-97 dated 11th February, 1997.*

9. *that the client agreement with broker's clients namely Chitrakoot Computers (P) Ltd., Goldfish Computers (P) Ltd. and Nakshatra Software (P) Ltd. were dated 20th December, 2000, whereas it is alleged that they have commenced trading through broker prior to that date which is in violation of SEBI Circulars SMD-1/23341 dated 18/Nov/1993,1993,SMD/POLICY/IECG/1-97 dated 11/Feb/1997 and SMDRP/POLICY/CIR/5-97 dated 11/Apr/1997."*

2. The Enquiry Officer, vide report dated November 24, 2004 recommended the suspension of the certificate of registration of the Broker for a period of thirty days. In respect of the alleged synchronized and cross deals, the Enquiry Officer had observed that, such transactions were highly irregular and defeat the purpose of normal order matching system in the price discovery process in the stock exchange. It was also observed that the said trades were artificial in nature and were prohibited under Regulations 4(c),(d) and 6(a) of the PFUTP Regulations and Clause A(3) of the Code of Conduct as specified in Schedule II of the Stock Brokers Regulations. The Enquiry Officer had also found that:

- i. the Broker had delayed transfer of securities beyond the stipulated period, in contravention of SEBI circular dated February 1, 2001.
- ii. by not collecting the requisite margins, the Broker was guilty of contravening SEBI Circular dated July 27, 2000.
- iii. the Broker had contravened the SEBI circular dated February 11, 1997, by not maintaining the record of the time when the client had placement of orders. However, the Enquiry Officer has observed that the same may be treated as a minor procedural irregularity.

3. As far as the other allegations are concerned, the Enquiry Officer observed that the same were not established or difficult to conclude that the Broker had contravened the relevant provisions of law. Thereafter, SEBI issued a notice dated December 3, 2004 advising the Broker to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed against it. The Broker, vide letter dated January 14, 2005 filed its reply to the said show cause notice. Subsequently, opportunities of hearing were granted to the Broker by SEBI on March 15, 2005, December 16, 2005 and June 1, 2007. The Broker had appeared before my predecessor on June 1, 2007 and had made submissions. It had also filed written submissions dated July 26, 2007. Thereafter, the Broker had filed application for consent order, in terms of SEBI circular dated April 20, 2007. In view of the said application, the present proceeding was kept in abeyance and the same was subsequently resumed pursuant to the rejection of the application filed by the Broker for consent order. Thereafter, Mr. Somashekhar Sundaresan, Advocate represented the Broker before me on April 16, 2010. The learned counsel made elaborate submissions on lines of the reply/written submissions of the Broker in the matter. Mr. P.S. Kalra, Chairman, Mr. Madan Mohan Singh, Joint Managing Director, Mr. Bikramjeet Singh Kalra, Authorised Representative of the Broker were also present during the hearing.

4. I have considered the Enquiry Report, the reply/written submissions of the Broker, the submissions made by the learned counsel on behalf of the Broker and other material available on record. As the Enquiry Officer had either exonerated or found it difficult to conclude the Broker guilty in respect of certain violations, as stated above, only those charges which were found to have violated by the Broker are being considered in this order. One of the findings of the Enquiry Officer was that the trades of the Broker were artificial in nature and were prohibited under Regulations 4(c),(d) and 6(a) of the PFUTP Regulations and Clause A(3) of the Code of Conduct as specified in Schedule II of the Stock Brokers Regulations. The alleged synchronized transactions of the Broker are given below :

Table I

Sr. No.	Date	Scrip	Qty	Rate	Buy			Sell		
					Broker	Client	Order Time	Broker	Client	Order Time
1.	2.1.01	HFCL	22,406	1263.50	Classic	Classic	10:30:53	CSL	Panther	10:30:53
2.	13.2.01	HFCL	30,500	984.50	Classic	Classic	15:00:17	CSL	Panther	15:00:17
3.	5.3.01	HFCL	10,715	519.50	Classic	Classic	14:22:41	CSL	Panther	14:22:41
4.	9.2.01	Zee	97,442	237.85	CSL	Panther	12:51:28	Classic	Classic	12:51:26
5.	9.2.01	Zee	89,426	237.85	CSL	Panther	12:51:46	Classic	Classic	12:51:46
6.	9.2.01	Zee	10,574	237.85	CSL	Panther	12:52:11	Classic	Classic	12:52:11
7.	15.1.01	Zee	62,950	229.30	Classic	Classic	15:25:56	CSL	Panther	15:25:56
8.	22.1.01	Zee	33,306	267.50	NH Sec	NH Sec	12:16:38	CSL	Panther	12:16:38
9.	4.1.01	Adani	74,981	604.00	CSL	Panther	10:29:25	Classic	Classic	10:29:25
10.	4.1.01	Adani	24,981	604.00	CSL	Panther	10:29:33	Classic	Classic	10:29:34
11.	8.3.01	Adani	5,000	516.50	Classic	Classic	16:02:13	CSL	Panther	16:02:13
12.	14.3.01	Adani	51,500	342.60	CSL	Omega	15:07:29	CSL	Panther	15:07:30
13.	1.12.00	Global Tele	24,007	-	CSL	Alliance Mutual	15:15:42	NH Sec	NH Sec	15:15:50

Further, it was also alleged that some of the trades of the Broker were cross deals, as given below:

Table II

Sr. No.	Date	Scrip	Qty.	Rate	BUY		SELL	
					Client	Order Time	Client	Order Time
14.	3.1.01	ITC	42,747	920	Omega	10:19:58	Alliance	10:19:58
15.	3.1.01	ITC	30,568	920	Omega	10:20:59	Alliance	10:20:59
16.	30.1.01	Stropical	39,366	847	Omega	9:56:25	Alliance	9:56:25

17.	30.1.01	Stropical	38,074	846	Omega	9:56:52	Alliance	9:56:52
18.	30.1.01	Stropical	39,300	846	Omega	9:57:19	Alliance	9:57:19
19.	30.1.01	Stropical	39,210	845.5	Omega	9:57:32	Alliance	9:57:54
20.	30.1.01	Stropical	39,336	845.5	Omega	9:57:54	Alliance	9:58:05
21.	30.1.01	Stropical	39,995	846	Omega	9:58:05	Alliance	9:58:20
22.	30.1.01	Stropical	9,993	846	Omega	9:58:20	Alliance	9:58:20
23.	30.1.01	Stropical	36,625	808	Rekhi	10:17:56	Alliance	10:17:56
24.	30.1.01	Stropical	39,134	808	Rekhi	10:18:30	Alliance	10:18:30
25.	30.1.01	Stropical	39,650	808	Rekhi	10:19:32	Alliance	10:19:32
26.	30.1.01	Stropical	39,060	808	Rekhi	10:20:00	Alliance	10:20:00
27.	30.1.01	Stropical	37,128	807	Rekhi	10:20:30	Alliance	10:20:30
28.	30.1.01	Stropical	36,759	805	Rekhi	10:21:41	Alliance	10:21:41
29.	30.1.01	Stropical	35,391	805	Rekhi	10:22:18	Alliance	10:22:18
30.	30.1.01	Stropical	37,164	805	Rekhi	10:22:41	Alliance	10:22:41
31.	30.1.01	Stropical	35,360	805	Rekhi	10:23:31	Alliance	10:23:31
32.	30.1.01	Stropical	36,160	805	Rekhi	10:24:10	Alliance	10:24:10
33.	30.1.01	Stropical	33,770	805	Rekhi	10:28:21	Alliance	10:28:21
34.	30.1.01	Stropical	37,406	805	Rekhi	10:28:46	Alliance	10:28:46
35.	30.1.01	Stropical	13,659	805	Rekhi	10:29:42	Alliance	10:29:42
36.	1.2.01	HFCL	99,000	1,155	Omega	9:41:32	Alliance	9:41:32
37.	7.2.01	ITC	99,000	858	Omega	9:53:31	Alliance	9:53:31
38.	7.2.01	ITC	99,000	859	Omega	9:53:46	Alliance	9:53:46

5. The Enquiry Officer observed that when the buyer and seller were entities of the same group, it was difficult to say that the said trades were genuine and that the same were highly irregular and defeated the normal order matching system in the price discovery process in the stock exchange. According to the learned counsel appearing for the Broker, the mere fact that the Broker was executing trades purely in its capacity as a stock broker, on behalf of its client, Panther Fincap & Management Services Limited, by itself does not justify or substantiate the charge of synchronized trade or circular trade, in the absence of cogent evidence that could suggest that the Broker had really intended to indulge in synchronized circular trading. He further stated that there was no collusion on the part of the Broker and that the said trades were matched by the computerized order matching system, in the ordinary course of business. He also stated that there was nothing on record to substantiate the allegation that the PFUTP Regulations had been violated. The learned counsel also drew my attention to the fact that the transaction listed at serial No.13 in Table I at paragraph 4 above, was a transaction on behalf of Alliance Mutual Fund. According to the counsel, the alleged synchronized transactions constituted only 0.003% of the total traded quantity of the Broker during the

relevant period. It was also submitted before me that the alleged synchronized transaction accounted only 1.13% of the total trades executed in the year 2001 by the Broker for Panther Fincap & Management Services Limited. The counsel further pointed out that Regulations 4(c) and 4(d) of the PFUTP Regulations would not be applicable in the present case as there was no reference in the Enquiry Report as to whether there was any impact on the share price due to the transactions of the Broker. He further stated that in order to invoke Regulation 4(c) of the PFUTP Regulations, one has to indulge in any act which should result in the reflection of price of the securities based on transactions that are not genuine trade transactions. He added that for penalizing a person under Regulation 4(d) of the PFUTP Regulations, it has to be proved that the intention of the trade was not to effect the transfer of beneficial ownership but was to inflate, depress or cause fluctuation of market price of the securities. According to him, nothing to this effect was discussed or examined in the Enquiry Report.

6. I note that thirteen transactions (as mentioned in Table I at paragraph 4 above) were allegedly synchronized. As mentioned above in this order, the transaction at sr. no.13 was executed on behalf of Alliance Mutual Fund. Further, the trade at sr. no.12 was executed by one of the associates of the Broker, Omega Finhold Private Limited and that the said transaction was a part of the Automated Lending and Borrowing Mechanism (ALBM) transaction. According to the learned counsel, the transaction under ALBM cannot be considered for the purpose of manipulation. In respect of other transactions, the allegation was that the Broker had executed eleven trades during a span of two months. The counsel contended that though, there were eleven trades, the same were not continuous in nature and no pattern could be observed in those trades so as to create a suspicion in the mind of the Broker, at the time of placement of orders. I note that the said trades of the Broker were in the shares of Himachal Futuristic Communications Limited, Zee Telefilms Limited, Adani

Exports Limited and Global Telesystems Limited. The number of alleged synchronized transactions were eleven (excluding the two mentioned above). The said trades were not continuous in nature. For instance, in the case of Himachal Futuristic Communications Limited, the Broker had executed three trades for its client, Panther Fincap & Management Services Limited. The first trade was executed on January 2, 2001, the second on February 13, 2001 and the third on March 5, 2001. Similarly, in the scrip of Zee Telefilms Limited, the trades were on January 15, 2001 (1 trade), on January 22, 2001 (1 trade) and on February 9, 2001 (3 trades). Similar was the nature of its trades in the scrip of Adani Exports Limited, wherein four trades were executed on January 4, 2001, on March 8, 2001 (two trades) and on March 14, 2001. Thus, from the trades mentioned in Table I, it can be seen that the Broker was not continuously trading. Though, the buy and sell side clients may be of the same group and that the said transactions were synchronized in nature and had facilitated the shifting of positions by one Ketan Parekh entity to another, it is to be determined whether, in the facts and circumstances of the case, the Broker had deliberately set up such trades. Considering the number of transactions and the nature of its trades, it becomes difficult to establish that there was manipulative intent on the part of the Broker in respect of the said transactions. Further, it was the case of the Broker that the alleged synchronized trades constituted only 0.48% of the total trades executed by it on behalf of Panther Fincap & Management Services Limited. As submitted by the learned counsel, there was no finding in the Enquiry Report to the effect that the trades of the Broker had resulted in the reflection in the price of securities or were intended to cause fluctuation in the market price of the securities. Considering the totality of the facts and circumstances of the case, I am of the view that the Broker would be entitled for a benefit of doubt in respect of the aforesaid synchronized transactions.

7. In respect of the allegation of cross deals (trades given in Table II at

paragraph 4 above), it was submitted before me that, the transactions at sr nos. 36 to 38 were not made by the Broker. In respect of other transactions, it was contended that the same were executed on January 31, 2001 and not on January 30, 2001 as stated in the Enquiry Report. In respect of the said transactions, it was submitted that they were made on behalf of Alliance Mutual Fund and that the said trades resulted in deliveries. It was also stated that no action was taken by SEBI against the said Mutual Fund in respect of the same. It was also contended that SEBI would not be justified to allege any wrongdoing on the basis of a single transaction. In the absence of any violation on the part of the said Mutual Fund, it was argued that the Broker cannot be held guilty of contravening the provisions of the PFUTP Regulations. Further, it was submitted by the counsel that the Auditors (M/s G. Jai & Associates) appointed by SEBI to inspect the books of accounts and other records of the Broker for the period commencing from April 1, 2000 to August 31, 2002 (covering the period of transactions mentioned in this Order) stated in their report "*There are no negotiated deals/off market deals entered by the Trading Member during the period of our inspection*". According to the counsel, as per the said report, the Broker was not involved in any trade at a price different from the market price. SEBI, vide Circular dated September 14, 1999 advised that all negotiated deals (including cross deals) shall be executed only on the screens of the stock exchange in the price and order match mechanism of the stock exchange just like any other normal trade. In the instant case, I note that group companies of the Broker namely, Omega Finhold Private Limited and Rekhi Holdings Limited were the counter party clients in the transactions with Alliance Mutual Fund. The impugned transactions were executed on the trading platform of the stock exchange like normal transactions. The Enquiry Report had no mention that the cross trades executed by the Broker was intended to inflate, depress or cause fluctuation in the market price of the securities. Considering the totality of the facts and circumstances of the case, the Broker is entitled for benefit of doubt in respect of the manipulation pursuant to the cross deals.

8. In respect of the allegation of delay in transfer of securities beyond the stipulated period, it was submitted by the counsel that the authorization letters in respect of all the clients were submitted to the Enquiry Officer and that he had considered all such letters except in the case of Shivam Portfolio Management Private Limited. He further stated that the Enquiry Officer accepted the submissions of the Broker in respect of the said violation, except in the case of Shivam Portfolio Management Private Limited. The contention of the Broker was that the authority letter obtained from Shivam Portfolio Management Private Limited was also included in the compilation of authority letters, but the copy so annexed was not entirely legible and therefore the same was not scrutinized by the Enquiry Officer. During the course of hearing, relevant document pertaining to Shivam Portfolio Management Private Limited was shown. It was submitted that though the same was not very legible, the benefit afforded by the Enquiry Officer in respect of other clients should also be available in the case of Shivam Portfolio Management Private Limited also. I note that the allegation of delay in transfer of securities was made in nine instances. The delay varied from eight to thirteen days. All other instances (except the one mentioned above) where the delay varied from eight to thirteen days, were condoned by the Enquiry Officer as he had accepted the authorization letters filed in that regard. I note that in the case of Shivam Portfolio Management Private Limited, there was a delay of nine days in transferring securities. It was the submission of the Broker that it had showed the file pertaining to Shivam Portfolio Management Private Limited, to the Enquiry Officer. The same was produced before me during the course of hearing. In view of the above, it would be difficult to conclude that the Broker had violated the SEBI Circular dated February 1, 2001 in respect of the delay in transfer of securities.

9. In respect of the allegation of non collection of margin, it is submitted that the Enquiry Report merely alleged that the Broker had failed to collect 10%

margin from its clients without indicating specific instances/cases. However, I note that the Enquiry Officer had observed that the Broker, vide letter dated June 3, 2003 had admitted that it had not collected margin from clients at the rate of 10% as the said clients were trading with it prior to the coming of force of NSE Circular dated August 8, 2002. The Enquiry Officer had observed that, in terms of the SEBI Circular dated July 27, 2000, margins shall be collected which shall not be less than 10% of the open position of any client at any point of time. Further, the Enquiry Officer found the Broker to have violated the SEBI Circular dated July 27, 2000. I cannot disagree with the findings of the Enquiry Officer in this regard. In the hearing before me, the learned counsel for the Broker submitted that at present, the collection requirement is left to the discretion of the stock broker, in terms of SEBI Circular dated February 23, 2005. The contention of the learned counsel was that even if the action of the Broker was in violation of the Circular dated July 27, 2000, considering the facts and circumstances of the case and the subsequent circular dated February 23, 2005, it may not be considered as a serious charge for imposing penalty of suspension of the certificate of registration. He further contended that the action of the Broker did not create any risk to the system and that the Broker did not commit any default to the stock exchange. In respect of the allegation that the Broker had not maintained a record of time for placement of orders, the learned counsel submitted that the alleged violation occurred at a time when there was no screen based trading. It was also contended that the format of contract note of NSE did not have a provision for reflecting the time of placement of order. However, I note that, in terms of SEBI Circular dated February 11, 1997, a stock broker should maintain record of the time when the client had placed the order and reflect the same in the contract notes. Thus, by not mentioning the time of placement of orders, the Broker had violated the aforesaid circular. The Enquiry Officer observed that the non compliance of the said circular by the Broker was to be treated as a minor procedural irregularity considering the explanation of the Broker.

10. In view of the above, it is established that the stock broker violated SEBI Circulars dated July 27, 2000 and February 11, 1997, as stated above. It was the contention of the learned counsel that, if the Broker is not found guilty of market manipulation, the other violations does not call for a penalty of suspension of the certificate of registration. In the facts and circumstances of the case, I do not consider the present one a fit case to impose the penalty of suspension of the certificate of registration of the Broker for a period of thirty days, as recommended by the Enquiry Officer. Considering the totality of the case, in the interest of justice and equity, I dispose of the present enquiry proceedings, as ordered hereinbelow:

11. In view of the foregoing, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby advise the stock broker namely, Consortium Securities Private Limited (Registration No. INB 230877239.), Member, National Stock Exchange of India Limited, to exercise caution in its dealings as a stock broker. The said stock broker is further directed to strictly comply with all statutory requirements that govern its functions in the securities market.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: MUMBAI
Date: JULY 5, 2010