

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

**IN THE MATTER OF TWENTY FIRST CENTURY (INDIA) LIMITED
In respect of Deepak Jhunjunwala**

(SEBI Registration No. INB 031070411)

Date of hearing: August 26, 2010

Appearances

For Noticees: Mr. Vinay Chauhan, Advocate
Mr. Pravin Panwar, Consultant

For SEBI: Mr. N. Sunil, Assistant General Manager
Mr. Pradeep Kumar, Legal Officer

ORDER

Under Regulation 28(2) read with Regulation 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 dealing in the shares of Twenty First Century (India) Limited (hereinafter referred to as 'TFC') for the period from November, 2001 to April, 2002, *inter-alia*, to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 (hereinafter referred to as 'PFUTP Regulations'). During the period of investigation, the scrip of TFC was listed on Calcutta Stock Exchange (hereinafter referred to as 'CSE'),
2. Investigation revealed, significant increase in the price and volume of the scrip of TFC. The price of the scrip increased from ₹2.50 in November, 2001 to a high of ₹53 as on January 12, 2002, i.e. an increase of about 2,000%. Subsequently, the price of the scrip came down to ₹3.50 as on April 30, 2002. As per the findings of investigation conducted by SEBI, the rise in price of the

scrip was not supported by any improvement in the fundamentals or any corporate actions of TFC. It was revealed that the trading was highly concentrated within top 10 stock brokers who had traded in the scrip. The said stock brokers were found to be engaged in self trades which led to increase in volumes. This trading had accounted for 81.25% of gross purchases, 82.63% of gross sales, 2.18% of net purchases and 2.37% of net sales. It was revealed that inspite of such trading concentration, the net purchase and sales was very small. Because of this, the brokers had no delivery positions to the exchange on most of the days.

3. From the data provided by CSE, it was found that the trades were structured in nature and the brokers traded in the scrip were engaged in cross deals for their clients. Such cross deals were nearly 90% to 97% of the total trades entered by the said brokers. During the course of investigation, it was *inter alia* revealed that the broker viz. Deepak Jhunjhunwala (hereinafter referred to as 'noticee') registered with SEBI as stock broker, bearing SEBI registration no. INB 031070411 had indulged in various cross deals while trading for his clients, which created artificial volume and price rise in the scrip of TFC.
4. Based on the findings of investigation, SEBI initiated enquiry proceedings as against the noticee in terms of SEBI (Procedure for Holding Enquiry by 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 dated March 11, 2008, read with subsequent order dated February 24, 2009. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of the PFUTP Regulations and the Code of Conduct specified under Schedule II of SEBI (Stock Brokers and Sub-Broker) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). As the Enquiry Regulations were repealed with effect from the notification of SEBI (Intermediaries) Regulations, 2008, the Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated January 29, 2010, in terms of Regulation

27 of SEBI (Intermediaries) Regulations, 2008, recommending thereby a prohibition to take up any new assignment for a period of one month to the noticee for violating the provisions of Regulation 4(a) and (d) of PFUTP Regulations read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Clauses B (4) (a) and (b) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of Broker Regulations.

5. Subsequently a show cause notice dated February 23, 2010 (hereinafter referred as SCN') under Regulation 28 of SEBI (Intermediaries) Regulations, 2008, was issued by SEBI to the noticee, asking it to show cause as to why the appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed. The noticee was advised to reply to the SCN, within twenty one days from the date of 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 SCN.
6. The noticee replied to the SCN vide letter dated May 04, 2010 and intimated about his application for settlement of proceedings by way of consent order. SEBI, however did not agree to settle the proceedings by consent as the terms offered by the noticee were not adequate and finally rejected the application. Pursuant to such rejection of application an opportunity of personal hearing was granted to the noticee on July 23, 2010. However, the noticee sought an adjournment for the date of hearing. The request of the noticee was acceded to and the personal hearing was adjourned to August 18, 2010. However, this time again the noticee sought adjournment. Before proceeding further, one last opportunity of personal hearing was granted to the noticee on August 26, 2010. On the date fixed Mr. Vinay Chauhan, Advocate and Mr. Pravin Panwar, Consultant appeared for the noticee and made submissions. The representatives of the noticee also sought ten days time to file written submission which was granted to them. In the mean time

SEBI received a letter of noticee on August 26, 2010 replying thereby to the SCN. Noticee vide his letter dated August 27, 2010 submitted his written submission along with some documents and the same has been taken on record. The submissions of the noticee in brief are:

- Had not executed cross deals and synchronized deals on behalf of the clients with a view to influence the price or volume of the scrip of TFC.
- Transactions in the scrip were carried out in the ordinary course of business on the order matching mechanism of the exchange, at the prevalent market price and pursuant to the instructions of the clients. The trades entered were genuine and were delivery based.
- No relationship/ nexus/ connections with other brokers who had traded in the scrip during the investigation.
- Had not executed proprietary trades in the scrip of TFC.
- At CSE there are very few active brokers and there is high degree of possibility of their trades matching within themselves.
- Trade and order log provided is unreliable and incomplete as the order numbers are not in sequence. Further, the same do not provide the counterparty details.
- There is a delay of 8 years in the issuance of the SCN and now it is impossible to trace the records pertaining to the transactions in the scrip of TFC.

7. I have carefully considered the SCN, reply of the noticee, written submissions and the material available on record. The Enquiry Officer has found the noticee guilty of violating the provisions of PFUTP Regulations and Broker Regulations. Taking note of these, the issues arise for my consideration are:

- a. Whether the noticees had executed cross deals in the scrip of TFC?
- b. Whether the noticee had violated Clauses B (4) (a) and (b) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of Broker Regulations?

- 8.** Whether the noticees had executed cross deals in the scrip of TFC?
- a.** I note that the total purchase of the noticee in the scrip was 31,33,413 shares constituting 17.53% of the total market volume and total sale was 31,37,692 shares constituting 17.55% of the total market volume. It is seen that the noticee had executed cross deals, for a total traded volume of 30,49,107 shares constituting about 17.06% of the total market volume in the scrip of TFC. This constituted 97.24% of the total trading of the noticee. The net purchase by the noticee in the scrip was 23,300 shares constituting only 0.13% of the total net volume of the market.
 - b.** The noticee has argued that the trades in the scrip were carried out in the ordinary course of business on behalf of the clients. The noticee has also raised doubt on the data provided. It is seen that the noticee had never raised any doubt on the data before the Enquiry Officer.
 - c.** Upon consideration of the argument of the noticee, I have perused the data provided to the noticee and note that the trade time given in the data is not coming properly and the same do not show the complete details of the ultimate clients. However, this does not distract me from the fact as to whosoever the client might have been, these were his clients doing huge cross trades when the prices of the scrip were going up.
 - d.** I agree with the Enquiry Officer that no unknown person can trade continuously for number of days over a period of time through cross deals. I note that such trades of noticee contributed to the increased volume in the market. All this is not possible without the active involvement of the broker as the trading in the scrip contributed 97.24% of the total trading of the noticee and where the net delivery position to the exchange remained negligible on most of the trading days. Taking note of this, it can be said that the trades of the noticee in the scrip were to create false impression about the demand in the scrip.

- 9.** Whether the noticee had violated Clauses B (4) (a) and (b) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of Broker Regulations?
- a.** I note from the Enquiry Report that on few instances the noticee had entered the client code as 'self' which shows that the noticee had done self/ proprietary trades in the scrip. I have seen the instances of the same and note that on some occasions the client code is coming as 'self'.
 - b.** The noticee has argued that the said trades were in effect the trades of his clients and he used the self code as the clients did not have the requisite margin. Further, it has been submitted that after execution of the trades, the requisite deliveries/ payments were made to the respective clients. Considering the submission of the noticee, I note that he should not have allowed his clients to trade in the market unless they had requisite margin to trade.
 - c.** I note the submission of the noticee before the Enquiry Officer that they had to generate brokerage to keep afloat and therefore, they cannot be choosy when some clients approach them and propose to make transactions. To this, I agree with the opinion of Enquiry Officer that if stock brokers are not careful and allow their systems to be misused, manipulations cannot be eliminated from the market. Further, I am of the view that the noticee should have used the respective client code for the trades of his client.
 - d.** Seeing the sequence of events, I note that the noticee by his own admission had encouraged the sale/ purchase of securities with the object of generating brokerage. In view of this, the violation of Clause B (4)(a) of the Code of Conduct prescribed for Stock Brokers in Schedule II under Regulation 7 of Broker Regulations stands established as against the noticee.
- 10.** As regards delay and latches, I note that there is no time limit on disposal of a proceeding of this nature nor the delay can justify exoneration.

- 11.** In the facts and circumstances of the case, I find that the noticee had dealt in the scrip of TFC in a manner detrimental to interest of investors. Such acts of noticee threaten the market integrity and orderly development of the market and call for regulatory intervention to protect the interest of investors.
- 12.** 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.
- 13.** 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 prohibit Deepak Jhunjunwala (SEBI Registration No. INB 031070411) (PAN: ACHPJ4399J) to take up any new assignment for a period of one month.
- 14.** This order shall come into force on expiry of twenty one days from the date of this order.

DATE : 01.12.2010
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA