

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

IN THE MATTER OF CYBERSPACE LTD.

**In respect of Madhukar Chimanlal Sheth
Sebi Registration No. INB010588010 (PAN: ANXPS1972P)**

Date of hearing: November 1, 2010

Appearances

For Noticee: Mr. Madhukar Chimanlal Sheth

For SEBI: Mr. Biswajit Choudhury, Deputy General Manager
Ms. Sakkeena PV, Assistant Legal Adviser
Ms. Vasudha Goenka, Assistant Legal Adviser
Mr. Siddharth Dachalwal, Manager

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 M/s Cyberspace Ltd. (hereinafter referred to as 'CSL' / 'Company') for the period from October, 1999 to March, 2001 (hereinafter referred to as the 'period of investigation'), *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, 1995'). During the period of investigation, the scrip of CSL was listed on National Stock Exchange (hereinafter referred to as 'NSE'), the Bombay Stock Exchange (hereinafter referred to as 'BSE'), the Delhi Stock Exchange (hereinafter referred to as 'DSE') and the Uttar Pradesh Stock Exchange (hereinafter referred to as 'UPSE').

2. The scrip of CSL was trading at around Rs.1,200/- per share in the month of September 2000. Pursuant to the sub-division of the equity shares from Rs.10/- to Rs.2/-, the price was proportionally reduced to Rs.186/- with effect from September 26, 2000. Since then, the price of the scrip moved in the range of Rs.190/- to Rs.147/- till February, 2001. Thereafter, M/s. Century Consultants Ltd. (hereinafter referred to as 'CCL'), a company related to CSL, member of NSE and BSE defaulted and the price of the scrip of CSL fell everyday by 16% (Lower Circuit).
3. Investigations further revealed that Madhukar Chimanlal Sheth (hereinafter referred to as 'Madhukar'/'noticee'), a member of Bombay Stock Exchange (hereinafter referred to as 'BSE') traded in the scrip of CSL on behalf of his clients, Vandana Srivastava and Kamal Infosys (hereinafter individually referred to by their names and collectively referred to as the 'clients'). It was alleged, *inter alia*, that the noticee made payments for sale transactions to the clients prior to the payout at the exchange, and aided and abetted his clients in the alleged manipulation of trading in the scrip by financing the clients. Further, it was alleged that the client registration forms of the clients were not complete.
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 November 5, 2007. SEBI appointed the Enquiry Officer, to enquire into the alleged violation of the provisions of Regulations 4(a), 4(b), 4(c) and 4(d) of the PFUTP Regulations, 1995 read with corresponding Regulations 3, 4(1), (2) (a), (b), (d), (e), (g), (n) and (o) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003') and Clauses A(1), A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Broker) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). As the Enquiry Regulations were repealed with the notification of SEBI (Intermediaries) Regulations, 2008, the Enquiry Officer/

Designated Authority (hereinafter referred to as the 'Enquiry Officer') submitted his Report dated June 16, 2009, in terms of Regulation 27 of SEBI (Intermediaries) Regulations, 2008, recommending thereby that the noticee be issued a *warning* for violating of the Code of Conduct specified under Schedule II of the Broker Regulations.

5. Subsequently a notice dated July 1, 2009 (hereinafter referred as SCN') under Regulation 28 of SEBI (Intermediaries) Regulations, 2008, was issued to the noticee, asking it to show cause as to why action as recommended by the Enquiry Officer or a higher penalty should not be imposed on noticee. 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 notice replied to the SCN vide letter dated August 24, 2010. Further, an opportunity of personal hearing was granted to the noticee before me on November 1, 2010. On the scheduled date, the noticee appeared before me and made submissions. The noticee has, *inter alia*, submitted as under:
 - i. The noticee has not been provided all documents that have been relied on.
 - ii. There is no connection or nexus between the noticee and the company, and the noticee and clients.
 - iii. Payments to the clients were made prior to the actual payout from BSE, but the same is not banned anywhere in law. Moreover, a client can be financed for purchasing shares but not for selling shares.
7. I have carefully considered the Enquiry Report, the SCN issued to the notice along with the reply thereto and other material available on record. At the outset, I note that all the documents that are relied upon have been provided to the noticee. I also note that the Enquiry Officer has afforded benefit of doubt to the noticee in respect of the allegation of violation of PFUTP Regulations, 1995 read with PFUTP Regulations, 2003. Thus, the issues that arise for my consideration are:

- i. Whether the noticee made payments for sale transactions to the clients prior to the payout at the exchange, and thereby, aided and abetted the alleged manipulation of trading in the scrip by financing them?
 - ii. Whether the client registration forms of the clients were incomplete and whether the noticee violated the Code of Conduct for Brokers under the Broker Regulations
- 8. Whether the noticee made payments for sale transactions to the clients prior to the payout at the exchange, and aided and abetted the clients in the alleged manipulation of trading in the scrip by financing them?**
- i. I note that the noticee had executed transactions in the scrip of CSL in BSE, during the Investigation Period, on behalf of the clients. The noticee had made payments to both the clients prior to the date of pay-out at BSE.
 - ii. I further note that the noticee has submitted that he executed only sale transactions as per instructions of the clients and these clients had honoured the delivery obligations. I have perused the material on record and find merit in the submission of the noticee that the sale transactions were all delivery based. I also note that the noticee has executed a total of 4 transactions on behalf of the clients, amounting to an aggregate of 3,59,000 shares, whereas the total market volume was around 3 crore shares during the investigation period. Further, I find that there is no apparent connection or nexus between the clients and the noticee, other than regular business relationship between a client and broker.
 - iii. In the absence of any further evidence, I agree with the findings of Enquiry Officer that the allegations of violation of Regulations 4(a), 4(b), 4(c) and 4(d) of the PFUTP Regulations, 1995 read with corresponding Regulations 3, 4(1), (2) (a), (b), (d), (e), (g), (n) and (o) of PFUTP Regulations, 2003 against the noticee do not stand established.

9. Whether the client registration forms of the clients were incomplete and whether the noticee violated the Code of Conduct for Brokers under the Broker Regulations?

- i. I find that the information filled in the Client Registration Forms is not complete. It must be noted that the aforesaid information is basic in nature. Hence, it is imperative for the broker to have collected such basic information before dealing with the clients. The Client Registration Form is devised to obtain certain useful information about a client to enable the stock broker to know about the client including their credibility before dealing with them. Client identification and other details are also important since they make it easier for the audit trail to identify the clients with the assistance of details like bank account details, residential address, date of birth, educational qualification, annual income etc. These provide inputs as regards the credentials of the clients.
 - ii. I further note that in settlement no. 169, the delivery obligations of Vandana Srivastava were met by CCL. The same has not been disputed by the noticee.
 - iii. In view of the foregoing, I agree with the Enquiry Officer and find that the noticee has violated and Clauses A(1), A(2) and A(5) of the Code of Conduct specified under Schedule II read with Regulation 7 of the Broker Regulations for failure to exercise due care, diligence and promptitude in collecting details of the client and for accepting third party delivery with respect to delivery obligations of its client.
- 10.** 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.
- 11.** 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 Madhukar Chimanlal Sheth (Sebi Registration No. INB010588010 PAN: ANXPS1972P) to be cautious in its future dealings and exercise due care and diligence in the conduct of his affairs as a securities market participant. Further, any future instance of violation or non-compliance by him with the SEBI Act and Rules and Regulations framed there under shall be dealt with stringently.

DATE : 2-MAY-2011
PLACE: MUMBAI

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA