

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: RAJEEV KUMAR AGARWAL, WHOLE TIME MEMBER**

ORDER

UNDER REGULATION 28(2) READ WITH REGULATION 38(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN RESPECT OF M/S M. BHIWANIWALA & CO., A STOCK BROKER (SEBI REG. NO. INB030049211), A MEMBER OF THE CALCUTTA STOCK EXCHANGE LIMITED (CSE).

IN THE MATTER OF G .R. INDUSTRIES AND FINANCE LTD.

Appearances:

For Noticee: Mr. Mahesh Bhiwaniwala

For SEBI: Mr. Santosh Shukla, Joint Legal Advisor

Mr. Mrityunjaya Behera, Assistant General Manager

Ms. P. L. Leena Shree, Assistant Legal Adviser

1. The Securities and Exchange Board of India ('SEBI') had conducted investigation, for the period January 1, 2004 to February 28, 2005 ('investigation period'), into the irregular trading in the scrip of G. R. Industries and Finance Limited ('Company') having its shares listed at the Calcutta Stock Exchange Limited ('CSE').
2. During the investigation period, four stock brokers viz: Shyamlal Sultania, Bubna Stock Broking Services Ltd., Ashok Kumar Kayan and M. Bhiwaniwala & Co. ('the noticee') had traded substantially in the shares of the Company. Their cumulative trades accounted for 83.30% of the total volumes traded in the scrip at CSE during the investigation period. The noticee had traded in 18, 59,901 shares of the Company during the investigation period. The noticee had also contributed in a significant way in raising the price of the scrip from ₹2 on daily basis to ₹170.20.
3. Pursuant to the investigations, the enquiry proceedings under the provisions of Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (*since repealed*) read with Securities and Exchange Board of India (Intermediaries) Regulations, 2008 ('Intermediaries Regulations') were initiated to enquire into the alleged violations of provisions of regulations 4(2) (a), (e) and (o) of the Securities and

Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ('PFUTP Regulations') and clauses A(1),(2),(3),(4) and B(4)(a) of the Code of Conduct of Stock Brokers specified in Schedule II read with regulation 7 of the Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992 ('Stock Broker Regulations') by the noticee.

4. After completing the proceedings, the Designated Authority (DA) submitted his Report dated March 14, 2011 ('Report') in terms of regulation 27 and 38(2) of the Intermediaries Regulations. In the Report the DA *inter alia* found that:-

- (a) Out of 18,59,901 shares (both buy and sell) traded by the noticee for its clients, trades in 10,65,598 shares (57.29% of the total trades executed by the noticee for its clients) were cross deals, wherein the noticee was both the buying stock broker as well as the selling stock broker.
- (b) The noticee had traded 30,100 shares in its own account during the initial period of the price rise in the scrip. After executing the trades in its own account, the noticee had transferred the same shares through off market deals to its clients.
- (c) The cross deals done by the noticee for its clients were reversed by the noticee between its set of clients on the same day at a higher price than the price at which the initial transactions took place. Thereby, the net obligations at the end of the day became nil which ultimately contributed to creation of artificial volumes and systematic price rise. The following table illustrates such reversal of trades:

Transaction Date	Trade No.	Buy Client	Bought Qty'	Rate ↔ (₹)	Sell Client	Sold Qty'	Net Obligation at end of the day
14.10.04	552	5413	1600	6.20	5011	1600	Nil
	558	5011	1600	6.25	5413	1600	
-do	553-554	6919	1650	6.25	5011	1650	Nil
	559	5011	1650	6.25	6919	1650	
-do-	555	5368	600	6.15	5011	600	Nil
	560	5011	600	6.25	5368	600	
-do-	556	5370	625	6.30	5011	625	Nil
	561	5011	625	6.25	5370	625	
	557	5367	650	6.25	5011	650	Nil
	562	5011	650	6.25	5367	650	
18.10.04	573	1645	5000	6.50	5011	5000	Nil
	575	5011	5000	6.70	1645	5000	
	574	1646	2500	6.50	5011	2500	Nil
	576	5011	2500	6.70	1646	2500	
			25250			25250	

- (d) Both the buy and the sell orders were placed simultaneously and that while there was only a single client who was selling, the sell order was matched by a buy order from a

set of clients. The clients codes of the clients placing the buy orders were also arranged in a seriatim in ascending order which is very unlikely until and unless it is pre arranged/premeditated. Such trading pattern has been illustrated as per the following table:

Sl.No	Trade Date	Trade Nos. From-To	Buy Clients Codes From – To	Qty' Bought	Sell Client Codes	Qty' Sold
1.	14.10.04	555-557	5367- to 5370	1875	5011	1875
2.	18.10.04	573-574	1645- to 1646	7500	5011	7500
3.	2.11.04	704-712	1682- to 1689	19500	5033	19500
4.	9.11.04	760-766	1705- to 1709	32500	5011	32500
5.	12.11.04	802-820	1731- to 1744	38,600	5011	38600
6.	6.1.05	988-990	1568- to 1570	2100		2100
7.	7.1.05	1026-1028	1593- to 1595	3300	5300	3300
8.	14.1.05	1218-1222	2279- to 2282	20000	5300	20000

- (e) This pattern of trading is not plausible in an online order matching system until and unless the sequence is fed specifically in the system manually. The noticee had admitted such trading pattern and had submitted that it was not aware of this type of trading pattern being reflected in the system.
- (f) The trades of the noticee had significantly contributed in the progressive price rise of the scrip from ₹ 2.25 on a daily basis to ₹ 170.10. The following table illustrates such price rise of the scrip:

Date	Previous Day price(₹)	Opening Price (₹)	Highest Price at which traded(₹)	Exchange Volume	Volume created By the broker		% increase in share price
					B	S	
09.9.04	2.00	2.25	2.25	500	500	0	0.12%
10.9.04	2.25	2.60	2.60	10000	4200	0	15.5%
27.9.04	6.50	6.50	6.50	12700	6000	6000	-
29.9.04	6.40	0.00	6.20	51100	3250	3250	-
30.9.04	6.10	5.90	5.90	6800	0	6800	-
4.10.04	5.90	6.00	6.00	6800	3400	3400	1.69%
8.10.04	6.30	6.50	6.50	900	900	900	3.1%
12.10.04	6.50	6.50	6.50	78500	20000	20000	-
14.10.04	6.50	6.50	6.50	351450	10250	15250	-
18.10.04	6.50	6.50	6.75	64900	52500	52500	3.8%
26.10.04	6.50	6.20	6.25	9300	2500	2500	-
29.10.04	6.50	6.60	6.55	209300	16900	16900	0.76%
2.11.04	6.55	6.60	6.70	28500	19500	19500	2.29%
3.11.04	6.65	6.70	6.70	103400	100000	100000	0.75%
9.11.04	6.55	6.85	6.85	32500	32500	32500	4.5%
10.11.04	6.85	6.55	7.85	112200	6,650	6850	14.59%
12.11.04	7.85	0.00	9.40	79100	38600	38600	19.74%

19.11.04	9.00	8.20	8.60	250600	16000	16000	4.87%
7.12.04	24.35	0.00	29.20	300	200	0	19.91%
15.12.04	47.00	54.00	54.00	1000	1000	0	14.89%
24.12.04	85.00	95.10	95.10	3000	3000	3000	11.88%
27.12.04	95.10	105.10	105.10	20000	20000	20000	10.51%
28.12.04	105.15	95.20	98.90	2500	2500	2500	3.88%
30.12.04	108.40	115.40	115.40	10000	10000	10000	6.45%
31.12.04	115.40	125.40	125.50	25000	25000	25000	8.75%
3.1.05	125.50	137.00	137.00	10000	10000	10000	9.16%
5.1.05	151.90	167.75	169.10	27000	21000	21000	11.32%
6.1.05	169.05	170.00	169.70	73300	0	22100	0.38%
7.1.05	169.55	170.00	169.70	46500	3300	3300	0.08%
10.1.05	169.70	169.30	162.55	50800	0	4500	-
11.1.05	162.65	170.00	165.80	113950	19650	24500	1.93%
12.1.05	165.75	170.10	170.10	1132301	23800	23800	2.62%
14.1.05	170.05	170.00	170.10	77199	10200	10200	0.02%

- (g) The noticee helped its clients to off load shares at low rates and buy the shares at high rates. The noticee had also helped its clients to reverse the transactions at high rates and has enabled its clients to gain undue benefits/profits. Through this pattern of trading the noticee, its clients and some of directors of the Company have managed to retain their holdings in the Company. In addition, the certain clients of the noticee, in connivance with it, had also booked loss to avail some tax benefits.
- (h) Nearly more than 50% of the trades done by the noticee were cross deals, therefore, in such large scale cross deals the noticee also acted as the counter party stock broker for the trades executed through its terminal. The noticee had executed pre-determined/ pre-mediated trades for its clients using the exchange mechanism to make them appear normal market trades thereby creating artificial volume in the scrip during the initial period of price rise by mere buy and sell transactions without taking any positions at the end of the day.
- (i) By executing such large volume of cross deals and indulging in manipulative transactions the noticee had distorted the market equilibrium and created false market in the scrip that affected normal price discovery mechanism in the stock exchange and had also failed to maintain high standards of integrity as a stock broker.
- (j) The noticee colluded with the directors of the Company and other stock brokers to facilitate price rise, creation of artificial volume and executing trades for its clients by providing them the facility of reversing their transactions subsequently, with same set of clients with whom the transactions were entered into initially, thereby enabling them to book profits/loss to avail some tax benefits.
- (k) The noticee indulged in off market deals for its clients by transferring its own trades to its clients account at back office level and further issuing contract notes to its clients.

- (l) The noticee dealt with its clients in spite of being aware of the inter linkages between its clients among themselves, with other stock brokers trading in the scrip and also with the directors of the Company. The noticee had deliberately colluded to indulge in large scale price manipulation and creation of artificial volume in the scrip using the exchange mechanism.
 - (m) Admittedly, the noticee was unable to produce the KYC of its clients and could not substantiate its claim of loss of KYC records.
 - (n) It is of too much of coincidence that in large volume of the trades executed by the noticee, the buyer and seller were readily available with the noticee to facilitate the execution of its trades. The trades of the noticee were clearly building up artificial volume in the scrip and the cross deals of the noticee impaired the genuine price discovery in the scrip thereby misleading genuine investors.
5. Based on his findings as recorded in the Report, the DA has found that the noticee violated the provisions of regulations 4(2) (a), (e) and (o) of the Securities and Exchange Board of India PFUTP Regulations and clauses A(1),(2),(3),(4) and B(4)(a) of the Code of Conduct of Stock Brokers specified in Schedule II read with regulation 7 of the Stock Broker Regulations and has recommended that the certificate of registration of the noticee be suspended for a period of three months.
 6. After considering the Report, a Show Cause Notice ('SCN') dated March 18, 2011 was issued to the noticee under regulation 28(1) and regulation 38(2) of the Intermediaries Regulations enclosing therewith with a copy of the Report and calling upon it to show cause as to why the penalty recommended by the DA or as considered appropriate by the Board should not be imposed upon it. The noticee was also advised to inform whether it desired to avail an opportunity of personal hearing. The noticee did not respond to the SCN despite service thereof upon it. However, in the interest of natural justice, an opportunity of personal hearing was granted to the noticee on November 07, 2012 which was later postponed to December 04, 2012 on its request. On December 04, 2012 Mr. Mahesh Bhiwaniwala, authorised representative of the noticee appeared before me and submitted that the noticee was earlier debarred for a period of three years, hence, a lenient view may be taken in the matter.
 7. I have carefully considered the Report, the SCN issued pursuant thereto, submissions of the noticee and other relevant materials available on record. The noticee has not disputed the findings and observations of the Designated Authority as recorded in the Report dated March 14, 2011. I have perused the Report and note that the noticee was aware of the interlink amongst its clients themselves, with other stock brokers trading in the scrip and also with the directors of the Company and it had deliberately executed the cross trades for its clients that

resulted in generation of artificial volume in the scrip of the Company and artificially raised the price of the scrip from ₹2.00 to ₹170.20 during the investigation period without any corresponding change in the fundamental of the Company.

8. I further note that the trading of the noticee continued for long time that too in scrip with no change in the fundamentals of the Company. The noticee had entered into both buy and sell orders in its terminal and those trades form large volume. The noticee was instrumental in the price manipulation of the scrip. The trades executed by the noticee and pattern of trading adopted by it as found in the Report were not genuine and the noticee deliberately colluded with the directors of the Company and other stock brokers and employed the device to facilitate price rise and creation of artificial volume in the scrip of the Company.
9. I have considered the oral submission made by the authorised representative of the noticee with regard to past actions taken against it. I note that with respect to noticee's dealings in several small cap stocks, SEBI, vide *interim* order dated September 29, 2005, restrained it from buying, selling and dealing in securities, in any manner, either directly or indirectly, till further directions. The said order was subsequently confirmed vide order dated January 12, 2006 and then vacated vide final order dated August 11, 2008. The proceedings initiated against the noticee for appropriate action under section 12(3) of the SEBI Act in respect of the said subject matter was disposed by SEBI, vide order dated July 7, 2009, without imposing any further penalty as the noticee had already been debarred in the matter in view of the *interim* order and the confirmatory order dated September 29, 2005 and January 12, 2006, respectively. I note that the subject matter of present proceedings is different from that of the earlier case. Therefore, the debarments undergone pursuant to the said *interim* and confirmatory order cannot mitigate the charges and allegations in the present case. The enforcement action against the noticee in the earlier case also indicates that the noticee has committed repeated default.
10. In the facts and circumstances as found in the Report, I find no reason to interfere with the findings of the DA. I note that the noticee had indulged in fraudulent and unfair dealings and had not taken due care and diligence in observance and compliance of the statutory requirement in conduct of its business as a stock broker. I, therefore, find that the noticee has violated regulations 4(2) (a), (e) and (o) of the PFUTP Regulations and clauses A(1),(2),(3),(4) and B(4)(a) of the Code of Conduct of Stock Brokers specified in Schedule II read with regulation 7 of the Stock Brokers Regulations.
11. The prohibited activities and types of contraventions as found by the DA in this matter definitely have potential to disturb the market integrity and disturb the fair, equitable and

efficient functioning of securities market. Such transactions pose threat to the market integrity and orderly development of security market. I, therefore, am satisfied that it is necessary to secure the proper management of the activity of the noticee. In my view, considering the facts and circumstances of this case and taking into account the interests of the investors, suspension of certificate of registration of the noticee for three months as recommended by the Designated Authority will be commensurate with the contraventions found in this matter.

12. I, therefore, in exercise of the power conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992, read with regulations 28 (2) and 38(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the noticee, M/s M. Bhiwaniwala & Co. [Registration No. INB 030049211], Member, the CSE for a period of three months.
13. A copy of this order shall also be served upon the noticee and CSE in accordance with regulation 30 of the SEBI (Intermediaries) Regulations, 2008.
14. This order shall come into force immediately on expiry of twenty one days from the date of this order.

DATE: April 5th, 2013

PLACE: MUMBAI

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**