

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. VSS/AO- 177/2009]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR
HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING
OFFICER) RULES, 1995**

In respect of

**M. G. Capital Services Ltd.
(PAN. AAACM6670R)**

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation into trading in the scrips of Aarti Industries Ltd., Aarti Drugs Ltd., Havells India Ltd., Jindal Polyester Ltd., Kajaria ceramics Ltd., KRBL Ltd., Lyka Labs Ltd., Nirma Ltd., Opto Circuits Ltd. and Tasc Pharmaceuticals Ltd. for different periods between April 2003 and March 2004. The trading pattern in these scrips was investigated together because National Stock Exchange (hereinafter referred to as ‘**NSE**’) observed synchronized deals/circular trading by a group of certain clients and brokers across these scrips.
2. The role of the brokers/sub-brokers and their clients who had traded in these scrips were scrutinized. It was observed during the investigation that some of the brokers/sub-brokers and their clients

had indulged in synchronization of deals/circular trading in the shares of these scrips in such a manner that led to creation of artificial volumes and impacted the price of these scrips. The entities found to have been involved in the alleged manipulation and against whom action was initiated are as under:-

Sl. No.	Client's Name	Broker	Name of the scrip/s traded
1	Ahimsa Leasing & Finance (P) Ltd	Integrated Master Securities P. Ltd.	Aarti Drugs, Havells and Lyka labs
2	Bela H. Kayastha	M G Capital Services Ltd.	Aarti Drugs, Aarti Industries, Havells, Tasc Pharma and Lyka labs
3	Dadia Devang	Pranav Securities P. Ltd. Sanghavi Salva Stockbrokers Ltd.	Aarti Industries, Aarti Drugs, Havells, Lyka Labs, Nirma, Opto Circuits, Tasc Pharma, Jindal Poly and KRBL
4	Dharmesh K Sheth	Sanghavi Savla Stockbrokers Ltd.	Aarti Industries, Aarti Drugs, Havells, Jindal Ploy, Lyka Labs, Nirma, Opto Circuits and Tasc Pharma.
5	Modi Hobart Ltd	Allied Financial Services P Ltd.	Aarti Drugs, Havells and Lyka labs
6	Narender Nath	Mansukh Securities & Finance Ltd.	Aarti Drugs and Havells
7	Nirav M Shah	PSJ Securities P. Ltd.	Aarti Drugs, Havells, Tasc Pharma and Lyka labs
8	Nirmal Pareek	Capman Capital Markets Ltd.	Aarti Drugs and Havells
9	Shailesh S Jhaveri	PSJ Securities P. Ltd.	Aarti Industries, Aarti Drugs, Havells and Opto Circuits
10	Tejash D Ghelani	Sanchay Finvest Ltd.	Aarti Drugs and Havells,
11	Kohinoor Services Ltd.	Agory Finance & Invest Ltd.	Kajaria Ceramics Ltd.
12	Neelam S K Bansal	Singhal Cpital Services Ltd.	Kajaria Ceramics Ltd.

- It was alleged that one of the brokers, viz., M. G. Capital Services Ltd. (hereinafter referred to as **"Noticee/MG"**), Member of NSE who traded in the scrip of Aarti Industries Ltd. (hereinafter referred to as **"AI"**), Aarti Drugs Ltd. (hereinafter referred to as **"AD"**), Havells India Ltd. (hereinafter referred to as **"Havells"**), Tasc Pharmaceuticals Ltd. (hereinafter referred to as **"Tasc"**) and Lyka

Labs Ltd. (hereinafter referred to as “**Lyka**”) on behalf of Ms. Bela H Kayastha (hereinafter referred to as ‘**Bela/Client**’) had violated the provisions of regulations 4(1), 4(2)(a), 4(2)(b), 4(2)(e), 4(2)(g) and 4(2)(n) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”) and clauses A(1), A(2), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II read with regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations (hereinafter referred to as “**Brokers Regulations**”), and therefore, liable for monetary penalty under sections 15HA and 15 HB of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”).

APPOINTMENT OF ADJUDICATING OFFICER

4. Mr. Piyoosh Gupta was appointed as Adjudicating Officer vide order dated September 17, 2007 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violations of provisions of SEBI Act, PFUTP Regulations and Brokers Regulations.
5. Consequent upon the transfer of Mr. Piyoosh Gupta, the undersigned has been appointed as the Adjudicating Officer vide Order dated November 19, 2007

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-5/VSS/RK/126583/2008 dated May 26, 2008 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry

should not be held against the Noticee and penalty be not imposed on the Noticee under sections 15HA and 15 HB of SEBI Act for the alleged violation specified in the said SCN.

7. The Noticee vide its letter dated nil received by me on August 12, 2008 replied to the SCN detailing the transaction done for the client, details of the brokerage earned, reason for trading in these scrips and denied the allegations made against it.
8. In the interest of natural justice and in order to conduct an inquiry as per rule 4 (3) of the Rules, the Noticee was granted an opportunity of hearing on February 26, 2009 at SEBI, Northern Regional Office, New Delhi vide notice dated February 4, 2009. Mr. Amit Gupta, Authorized Representative appeared on behalf of the Noticee (hereinafter referred to as “AR”) on February 26, 2009 and submitted as under:

In continuation to our reply undated, we are making the submissions as per letter dated February 26, 2009. It is submitted that during the year 2003, we did not have any system to identify as to whether the client was indulging in any synchronized trading or circular trading or any other fraudulent activity. The said client has not only traded in the scripts mentioned in the SCN but also other scripts during the investigation period. A copy of the KYC obtained from the client and the details of turn over of the client during this period of investigation will be submitted to you on or before March 15, 2009.

We have not received any reply from them probably because the operator is no longer with us and the client is no longer a client with us. However, we will furnish a copy of the notice issued to them by us in this regard on or before March 15, 2009.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :

- a) Whether the Noticee had violated regulations 4 (1), 4(2) (a), 4(2)(b), 4(2)(e), 4(2)(g) and 4(2)(n) of PFUTP Regulations in relation of these five scrips?
 - b) Whether the Noticee had violated clauses A(1), A(2), A(3), A(4) and A(5) of Code of Conduct for Stock Brokers as specified in Schedule II read with regulation 7 of Brokers Regulations?
 - c) Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15 HA and 15 HB of SEBI Act?
 - d) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?
10. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP Regulations and Brokers Regulations, which reads as under:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely: -

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device

to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) ...

(d) ...

(e) any act or omission amounting to manipulation of the price of a security;

(f) ...

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

(h) ...

(i) ...

(j) ...

(k) ...

(l) ...

(m)...

(n) circular transactions in respect of a security entered into between intermediaries in order to increase commission to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security;

(o)

Stock-Brokers to abide by Code of Conduct.

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

Code of Conduct for Stock Brokers

A. GENERAL

(1) INTEGRITY: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) EXERCISE OF DUE SKILL AND CARE: A stock-broker, shall act with due skill, care and diligence in the conduct of all his business.

(3) MANIPULATION: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) MALPRACTICES: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) COMPLIANCE WITH STATUTORY REQUIREMENTS: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

11. The charges against the Noticee in relation to its trading in the scrip of AI, which was investigated for the period from September 03, 2003 to October 22, 2003, have been made based on the following;

- The price of the scrip rose from Rs.110.35 to Rs.168.35 (52.56% increase in 13 trading days). The price of the scrip dropped after October 22, 2003 and was ranging between Rs.160.70 to Rs.135.30. The price once again started rising from Rs.147.60 on November 27, 2003 and went up to Rs.232.15 on December 23, 2003.
- The total traded quantity of the scrip on NSE during the period of investigation was 41,44,558 shares.
- The Noticee along with other brokers/clients contributed 4.67% of the total traded quantity in the scrip.
- Out of 35 trading days during the period of investigation the Noticee had traded for 7 days in the shares of AI on behalf of Bela.

- Total traded quantity of the Noticee on behalf of its client in the scrip of AI during the period of investigation was 61,200 shares (1.47% of the total traded quantity during the period of investigation).
 - Out of 61,200 shares, 48,875 shares (79.86%) were traded by the Noticee in 13 structured deals
 - These structured deals were 1.18% of the total traded volume of the scrip during the period of investigation.
 - All the deals done by the Noticee with the other brokers/clients matched within a time difference of 0 to 02 seconds.
12. The charges against the Noticee in relation to its trading in the scrip of AD, which was investigated for the period from October 21, 2003 to February 27, 2004, have been made based on the following;
- The price of the scrip rose from Rs.79.00 to Rs.113.95 (44% increase in 15 trading days). The closing prices of AD registered a fall from Rs.113.95 to Rs.67.30 during the period December 23, 2003 to February 06, 2004. The price of the scrip increased to Rs.70.00 on February 09, 2004 and was ranging between Rs.70.00 to Rs.77.95 during February 09, 2004 to March 05, 2004.
 - The total traded quantity of the scrip on NSE during the period of investigation was 95,09,104 shares.
 - The Noticee along with other brokers/clients contributed 24.73% of the total traded quantity in the scrip.
 - Out of 92 trading days during the period of investigation the Noticee had traded for 67 days in the shares of AD on behalf of Bela.
 - Total traded quantity of the Noticee on behalf of its client in the scrip of AD during the period of investigation was 2,34,571 shares (2.46% of the total traded quantity during the period of investigation).

- Out of 2,34,571 shares, 1,87,670 shares (80.01%) were traded by the Noticee in 49 structured deals
- These structured deals were 1.03% of the total traded volume of the scrip during the period of investigation.
- All the deals done by the Noticee with the other brokers/clients matched within a period of less than one minute.

13. The charges against the Noticee in relation to its trading in the scrip of Havells, which was investigated for the period from July 16, 2003 to October 27, 2003 and January 13, 2004 to February 27, 2004, have been made based on the following:

- The price of the scrip went up from Rs.116 (July 21, 2003) to Rs.305.20 (December 30, 2003) showing a rise of 163.10% in 115 trading days. The closing price of the scrip registered a fall from Rs.154.20 to Rs.118.85 during the period from January 13, 2004 to February 27, 2004. The price of the scrip fell further to Rs.106.35 on March 26, 2004.
- Total traded quantity of the scrip on NSE during the period of investigation was 1, 46,10,130 shares.
- The Noticee along with other brokers/clients contributed 69.66% to the total traded quantity in the scrip.
- Out of 127 trading days during the period of investigation the Noticee had traded for 122 days in the shares of Havells on behalf of Bela.
- Total traded quantity of the Noticee on behalf of its client in the scrip of Havells during the period of investigation was 8,09,198 shares (5.53% of the total traded quantity during the period of investigation).
- Out of 8,09,198 shares, 5,63,713 shares (69.66%) were traded by the Noticee in 262 structured deals

- These structured deals were 3.86% of the total traded volume of the scrip during the period of investigation.
 - All the deals done by the Noticee with other brokers/clients matched within a period of less than one minute.
14. The charges against the Noticee in relation to its trading in the scrip of Tasc, which was investigated for the period from August 04, 2003 to February 27, 2004, have been made based on the following:
- The price of the scrip rose from Rs.11.10 to Rs.54.40 (390% increase). The closing price of the scrip registered a fall from Rs.54.05 to Rs.41.00 during the period December 16, 2003 to February 27, 2004.
 - Total traded quantity of the scrip on NSE during the period of investigation was 1,71,66,234 shares.
 - The Noticee along with other brokers/clients contributed 11.92% to the total traded quantity in the scrip.
 - Out of 144 trading days during the period of investigation the Noticee had traded for 72 days in the shares of Havells on behalf of Bela.
 - Total traded quantity of the Noticee on behalf of its client in the scrip of Havells during the period of investigation was 5,57,273 shares.
 - Out of 5,57,273 shares, 3,59,167 shares (64.45%) were traded by the Noticee in 54 structured deals
 - These structured deals were 2.09% of the total traded volume of the scrip during the period of investigation.
 - All the deals done by the Noticee with other brokers/clients matched within a period of less than one minute.

15. The charges against the Noticee in relation to its trading in the scrip of Lyka, which was investigated for the period from October 21, 2003 to December 31, 2003, have been made based on the following:
- The price of the scrip went up from Rs.39.85 to Rs.87.15 from November 28, 2003 to December 11, 2003 (118.70% increase in 10 trading days). The closing price registered fall from Rs.78.45 on December 12, 2003 to Rs.62.95 on January 12, 2004. The price of the scrip fell further to Rs.40.45 on February 12, 2004.
 - Total traded quantity of the scrip on NSE during the period of investigation was 2,48,69,802 shares.
 - The Noticee along with other brokers/clients contributed 4.78% to the total traded quantity in the scrip.
 - Out of 52 trading days during the period of investigation the Noticee had traded for 10 days in the shares of Lyka on behalf of Bela.
 - Total traded quantity of the Noticee on behalf of its client in the scrip of Lyka during the period of investigation was 6,71,714 shares.
 - Out of 6,71,714 shares, 41,274 shares (6.14%) were traded by the Noticee in 9 structured deals
 - These structured deals were 0.16% of the total traded volume of the scrip during the period of investigation.
 - All the deals done by the Noticee with other brokers/clients matched within a period of less than one minute.
16. It is observed that the Noticee had executed transactions for Bela. I find that the investigation did not establish any link (a) between the Noticee and its client (b) between the Noticee and other brokers who had traded in these three scrips (c) between the Noticee and clients of other brokers who had traded in these five scrips (d) between Noticee and the company/directors of AI, AD, Havells, Tasc and

Lyka. I also find from the trading details of the Noticee that the transactions of the client were not the cause of price rise.

17. This finding is substantiated by the following observations made in investigation report/s:

(a) Para 6 of the Investigation Report of AI:

All the deals done by these clients matched within a period of less than one minute however the LTP analysis does not indicate these trades have influenced price.

(b) Para 6 of the Investigation Report of AD:

All the deals done by these clients matched within a period of less than one minute however the LTP analysis does not indicate these trades have influenced price.

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Further, on perusal of the trade and order log it is observed that the order quantity entered by the counterparty client did not match exactly. Also, the orders got split into many trades with same order numbers.

From the details available it is observed that the trades were matching among these clients as counterparties and the clients were squaring of their positions.

(c) Para 8.6 of the Investigation Report of Havells :

All the deals done by these clients matched within a period of less than one minute however the LTP analysis does not indicate these trades have influenced price.

.....

Further, on perusal of the trade and order log it is observed that the order quantity entered by the counterparty client did not match exactly. Also, the orders got split into many trades with same order numbers.

From the details available it is observed that the trades were matching among these clients as counterparties.

(d) Para 6 of the Investigation Report of Tasc:

All the deals done by these clients matched within a period of less than one minute however the LTP analysis does not indicate these trades have influenced price.

.....

From the details available it is observed that the trades were matching among these clients as counterparties.

(e) Para 6 of the Investigation Report of Lyka:

All the deals done by these clients matched within a period of less than one minute however the LTP analysis does not indicate these trades have influenced price.

.....

Further, on perusal of the trade and order log it is observed that the order quantity entered by the counterparty client did not match exactly. Also, the order got split into many trades with same order numbers.

From the details available it is observed that the trades were matching among these clients as counterparties..

18. It is true that the trades executed by the Noticee for its client have matched on the screen. In the screen based trading mechanism prevailing in the stock markets in India, a trade between a buyer and seller has to match on the screen before it can be executed. Merely because a trade has matched both in regard to price and quantity at the same time, it cannot lead to the conclusion that the Noticee had knowledge of any game plan of the clients or counterparty brokers. There is no material on record to allege that, in the first instant, the clients had any game plan or manipulative intent and collusion amongst themselves and in the second instant, the Noticee knew about any such game plan of his client and colluded with the client in the manipulation.
19. Taking into consideration the above and the submissions of the Noticee, I find that there is no apparent connection and/or link between the client and the Noticee, between the Noticee and other broker who had traded in these five scrips, between the Noticee and client of other brokers who had traded in these five scrips and between Noticee and the company/director of AI, AD, Havells, Tasc and Lyka. Further, there is no material on record to establish the alleged manipulative role played by the Noticee. The broker had merely acted as agent for the client and carried out its orders on the screen based trading mechanism of the exchange, cannot be charged with manipulation. There is also nothing on record regarding the proprietary trading, if any, done by the Noticee in AI, AD, Havells, Tasc and Lyka during the investigation period. I am of the view that merely based on certain conjectures one cannot come to the conclusion that the Noticee had played a role in the manipulation in the trading. There has to be some corroborative material on record to prove the allegation of manipulation. Making an allegation of manipulation against an entity merely on the ground of having

executed transactions for the clients is rather far fetched. Therefore, as the allegations of manipulation and failure to abide by the Code of Conduct have been arrived at based on wrong presumptions, the conclusion is bound to be wrong.

ORDER

20. In view of the foregoing, the alleged violation of the provisions of PFUTP Regulations and Brokers Regulations by the Noticee, as specified in the SCN does not stand established and the matter is, accordingly, disposed of.
21. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **November 05, 2009**
Place: **Mumbai**

V.S.SUNDARESAN
ADJUDICATING OFFICER