

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF SHOW CAUSE NOTICE DT. SEPTEMBER 26, 2002 ISSUED UNDER SECTION 11 B OF SEBI ACT, 1992 READ WITH REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 1995 TO M/s. FORTUNE EQUITY BROKERS (I) LTD., MEMBER NSE.

1.0 BACKGROUND

1.1 During the period January-March 1998 it was observed by SEBI that there was spurt in price and volume movement in the scrip of Nedungadi Bank Ltd. (hereinafter referred to as 'NBL'). It was also observed that the scrip was attracting unusual interest and movement in price and volume. Preliminary investigations conducted by SEBI revealed that the scrip was attracting unusual interest and there was abnormal movement in price and volumes during January to March 1998. An analysis of the price volume behavior revealed that the scrip which was being traded around Rs.56/- on 15.1.98 moved up to Rs.91.90/- on 25.3.98. This price rise was coupled with increased volumes. On 18.2.98, a total of 2,54,400 shares were traded on BSE as against volume of only 15,000 shares traded in the month of January 1998.

2. INVESTIGATIONS BY SEBI

1. On the basis of the preliminary findings of SEBI, formal investigation was ordered on 01.07.98. The analysis of trading details from NSE revealed that M/s Good Fortune Advisory Services Pvt. Ltd. (hereinafter referred to as 'GFAS'), a NSE broker was the main seller at NSE which sold 4,81,300 shares of NBL on net basis during the relevant period.
2. Investigations with the broker revealed that the two major clients of GFAS were Goshar Group (comprising of Naval D Goshar, Pankaj Goshar, Kamal Champsi, Nutanben Champsi Goshar, Sakar Hirji, Corporate Services, Chandan Estate) and Shah Group comprising of (Anurang Tulsyan, Pankaj Shah, Aamy Shah). Both the Goshar group and Shah group were introduced to GFAS by one Shri Ashit Kerawala who in turn was introduced to GFAS by Fortune Financial Services which is a sister concern of GFAS.

2.3 Investigations also revealed that Shah Group and Goshar Group purchased shares of NBL from Shri R K Banthia and his associates in spot and sold them through GFAS at NSE.

The sale position of the clients of GFAS was as follows :

Goshar Group - 3,76,000

ML Shah Group - 1,05,300

2.4 On a scrutiny of the records, it was noted that the shares sold by the Goshar Group and Shah group were through the 'special term' i.e. equivalent to all or none of BSE, which suggests that the purchaser had to buy the full quantity offered at the price predetermined by the seller. Otherwise he was not allowed to buy in part or at the price different from that offered by the seller. In the regular market, trading took place through order matching system and quantity offered could be purchased in small lots by large number of buyers whose price fell within the specified range.

2.5 Scrutiny of distinctive numbers of the shares delivered through exchange by the buying and selling members revealed that whatever shares were sold by Banthia and his associates on spot basis to the Goshar Group and Shah Group were bought back by Shri

Banthia and his associate concerns, when these shares were sold by GFAS through the exchange.

2.6 Investigations further brought out that out of 4,81,300 shares of NBL sold by Goshar Group and Shah Group at NSE, 4,00,800 shares got matched with the buy orders of Banthia & his associates put through First Custodian Fund. Thus, 81% of the shares of NBL (sold by Banthia and his associates in spot to Goshar Group and Shah Group) put through the exchange system by Goshar Group and Shah Group matched with specific buy orders of First Custodian through synchronized/matched trades for their clients, Banthia Group. In view of the above, it was observed that these transactions were financing transactions, but given a color of purchase / sale of shares of NBL at the exchange.

2.7 When asked as to why these shares of Goshar Group and Shah Group were sold only in the 'special term' category (equivalent to 'all or none category' in BSE) and not in the regular market, Shri Nimish C Shah, Director of GFAS in his statement recorded on 22.9.98 replied that it was done on the instructions of their clients Shri Pankaj D Goshar. Further details collected revealed that Goshar Group had purchased shares from Banthia and his associates on spot and later sold it through GFAS.

2.8 From the delivery statement of the Exchange and perusal of the distinctive numbers of shares delivered by the buying and selling brokers, it was observed that most of these shares sold by Goshar group have been picked up by First Custodian Fund India Ltd. an associate of Shri Banthia. Shri Goshar while admitting in his statement before SEBI that he bought these shares from Banthia & his associates on spot basis informed that he was not aware as to in what category these shares were sold as the same was left to the option of broker i.e. GFAS.

2.9 Details collected from ML Shah Group, revealed that they were clients of Banthia & his associates at BSE and bought the shares of NBL on spot basis at BSE through Shrikant Mantri and Harvest Deal Securities and sold them on NSE through GFAS. This group consists of Shri M.L.Shah, Aamy Shah and Anurag Tulsyan. As per the statement of Shri ML Shah recorded by SEBI, they had dealt in these shares only through GFAS and had not dealt directly with Shrikant G Mantri or Harvest Deal Securities. He further informed that they deployed their surplus funds only in those scrips where there was arbitrage opportunities. They stated that GFAS was investing their funds and informed them that there was arbitrage opportunity in the scrip of NBL and that is how they had dealt in this scrip. They further stated that they were not aware as to how exactly the transaction of NBL was done by GFAS.

2.10 The above details clearly indicated that GFAS was entirely responsible for buying shares on spot from Mantri group on behalf of his clients belonging to ML Shah Group /Goshar Group. These shares were sold back by GFAS in 'special term' category which facilitated Banthia & his associates to match with their sell orders.

2.11 It was observed that Goshar group and Shah group was interested in lending funds only and not interested in purchase of shares of NBL. On the other hand, Banthia & his associates were in need of money and they took short term loans from the Goshar group and Shah group against the security of the NBL shares. The loan amount was given by showing purchase of these shares by Goshar group and Shah group on spot. The interest to be charged against the loan was adjusted by adding it in the sale price. It was also observed that in most of the transactions, the interest worked out to 1.8 to 2% per month.

2.12 It was therefore seen that these transactions done by GFAS were actually financing transactions, but given a colour of regular purchase / sale of shares through exchange system. It was also observed that by putting orders at higher price in the illiquid scrip the price was also taken up. It was also observed that these actions of GFAS also facilitated fictitious, non-genuine trades through circular trading with Banthia and his associates.

3.0 SHOW CAUSE NOTICE

3.1 In light of these findings of the Investigations conducted by SEBI, a Show Cause Notice DT. 26.09.02 was issued to GFAS, under Section 11B of SEBI Act, 1992 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 asking them as to why they should not be reprimanded for the aforesaid conduct.

4.0 REPLY TO THE SHOW CAUSE NOTICE

1. GFAS vide letter dated October 21, 2002 replied to the said show cause notice and informed that the name of the company has been changed to Fortune Equity Advisory Services Pvt. Ltd. (hereinafter referred to as FEAS) w. e. f. 26.04.00. Incidentally as on date the name of the entity is Fortune Equity Brokers (India) Ltd. (hereinafter referred to as FEBL). While denying the charges FEAS vide its letter dt. 21.10.02 sought time till 30.11.02 for giving detailed reply. Further vide its letter dt. 05.11.02 sought certain documents/statements relied upon by SEBI while issuing the show cause notice. Further vide letter dt. 21.11.02 FEBL submitted its reply to the show cause notice.

4.2 While reiterating the requirement of documents/ statements relied upon by SEBI, FEBL denied that it had violated any of the provisions of the SEBI Act read with Regulation 11 of SEBI (FUTP) Regulations 1995, as alleged in the show cause notice.

4.3 FEBL further submitted that as they are NSE broker, allegations/observations made in the show cause notice are irrelevant and do not pertain to them. Further it was stated that FEBL sold the said shares of NBL at NSE on instructions of their clients. All these deals were genuine deals supported by contract notes and delivery. It was also submitted that they did not have any knowledge or even idea as to who were the purchasers.

4.4 FEBL further submitted that they not aware of the source of purchase of shares of NBL by our clients. We have merely acted as brokers and sold the shares of NBL as per our client's instructions. We received deliveries from our clients and forwarded to the Clearing House, which were duly accepted and till date there is no objection from anywhere. We submit that all the deals/trades were genuine, supported by contract notes and delivery.

4.5 FEBL further denied that the subject transactions were financing transactions, or were given a colour of purchase/sale of shares of NBL at the Exchange. We submit that there is no basis even in the SCN for the said allegation. The trades or transactions were carried on in accordance with the Rules and Regulations of NSE read with the Guidelines and Circulars issued by SEBI. It was also submitted that no adverse inference can be drawn against them on the basis of the statements made by others to which they do not get an opportunity to cross verify/examine.

6. FEBL further denied that its actions facilitated fictitious/non-genuine trades through circular trading with others as alleged in the SCN or at all. It was also stated that they did not get any direct or indirect benefit from the said trades.

5.0 PERSONAL HEARING

5.1 As requested by FEBL the copies of the statements of Shri Nimish Shah, Shri Pankaj Goshar and Shri G.M. Shah recorded by SEBI during its investigations were forwarded to FEAS vide letter dt. 05.02.03 before giving them an opportunity of personal hearing on 27.2.02. The personal hearing was attended by Shri J T Poonja, Chairman of FEAS, Shri Nimish Shah, Managing Director of FEAS, Shri S H Merchant and Shri Chakrapani Misra, Advocates and Shri S V Haribhakti, Chartered Accountant. While denying all the allegations, it was submitted on behalf of FEAS that they have unblemished record so far and therefore, the show cause notice issued against them may be discharged.

6. CONSIDERATION OF THE ISSUE

1. I have carefully considered the findings of the investigation report, the show cause

notice issued, and oral and written submissions made on behalf of FEBL during the personal hearing and observe that-

- a. The allegations levelled in the show cause notice are serious in nature and if proved, will not warrant mere reprimand as indicated in the show cause notice but will call for an action under SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations") as the entity herein is a SEBI registered Broker and the allegations indicate the possible violation of the Broker Regulations.

(b) Broker Regulations are complete code in itself which also provide for the disciplinary mechanism against the erring Broker registered with SEBI. Therefore, it would be proper to appoint an Enquiry Officer within the provisions of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations").

6.2 The order appointing the Enquiry Officer shall be issued separately. The said Enquiry Officer would proceed with the matter a fresh, without being influenced, in any manner whatsoever, with the observations made hereunder, by following the procedure as laid down in the said Enquiry Regulations.

7. ORDER

1. Having regard to the above, I, in exercise of the powers conferred upon me under Section 4(3) of the SEBI Act, 1992, read with Sections 11 and 11B of SEBI Act, 1992, hereby direct that an enquiry be conducted against M/s Fortune Equity Brokers (I) Ltd. in terms of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 for the alleged violation of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

G.N. BAJPAI

Chairman

Securities and Exchange Board of India

Dated : July 24, 2003

Place : Mumbai