

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. ENPEE ENTERPRISES PVT LTD., MEMBER BSE.

1. BACKGROUND

1.1 During the period January-March 1998 it was observed by SEBI that there was spurt in the 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

2.1 On the basis of the preliminary findings, formal investigation was ordered on 01.07.98. The analysis of trading details from BSE revealed that Enpee Enterprises, Member BSE (hereinafter referred to as 'Enpee') was the major seller in the scrip of NBL during the relevant period. Enpee sold 5,91,800 shares of NBL on net basis during this period.

2.2 Details obtained from Enpee revealed that Daisy Investments (hereinafter referred to as "Daisy") an associate concern of Enpee, was the main entity which dealt in the scrip of NGL. It was further seen that Shri. Nilesh M Poppat and Shilpa M Poppat were the directors of Enpee and Ms. Manjula M Poppat, mother of Shri Nilish M Poppat, was the director of Daisy. It was also found that Shri Nilesh M Poppat was managing day to day affairs of Daisy Investments.

2.3 Investigations revealed that Daisy had purchased 7,48,400 shares on spot basis, from BSE Broker Rajendra Banthia. Though the spot deals were made through Enpee, most of such deals were not reported to the exchange. It was seen that later on, Daisy sold 7,87,900 shares of NBL in normal market through the system of the exchange from the terminal of Enpee out of which 7,66,500 shares were purchased back by Rajendra Banthia and his associates.

2.4 During the investigations the statement of Shri C K Shah, who was working as Manager with Enpee, was recorded by the investigating officer on 29.08.98 and 01.09.98. Shri Shah admitted that Daisy was never interested in buying the shares of NBL. As stated by Shri Shah, Banthia & his associates were in need of money and for that purpose, they took short-term loans from Daisy Investments against the security of the NBL shares. The loan amount was given by Daisy showing purchase of these shares by Daisy Investment on spot basis. He admitted that the shares of NBL were sold in the regular market by Daisy Investments through Enpee at the exchange and once the sale was completed, amount for buying the shares of NBL on spot, was released to the borrower. He further informed that this was done in view of the fact that each trade at the exchange was guaranteed by Trade Guarantee Fund, and therefore, in the event of failure of the buying client / its broker to pay for the shares purchased, the exchange / clearing corporation would have pay to the seller. This sale of shares of NBL through exchange ensured that Daisy would get back the monies lent to Banthia & his Associates.

2.5 Mapping of distinctive numbers of the shares delivered through exchange to the buying and selling members revealed that whatever shares were sold by Shri R K Banthia to the Daisy on spot basis, reached back to Shri Banthia and his associate concerns through stock exchange mechanism, when Daisy sold those shares through Enpee. Investigations further brought out that out of the 7,87,900 shares of NBL sold by Enpee at BSE, 6,96,000 shares were purchased back by Shri Banthia (4,10,600 shares in the name of Shri S.G. Mantri and 2,85,400 shares in the name of Harvest Deals). Thus 88.34% of the shares sold by Enpee was picked by Shri Banthia & his associate concerns. In fact, it was observed that these shares never went out of the control of Shri Banthia but at the same time funds against the shares were made available to Shri Banthia for a short period. Therefore, it was concluded that these transactions were basically in the nature of financing transactions, but were given the color of regular purchase/sale deals.

2.6 It was further revealed that in order to ensure that Banthia & his associates received back same shares of NBL, Shri Rajendra Banthia used to call Mr. Nilesh Poppat and mention the quantity and price to be put as "order trades" in the terminal of Enpee. Then Shri Banthia would put in the same quantity and price in "quote form" at their terminals. Thus, the orders matched and most of the shares were taken back by Rajendra Banthia/Shrikant Mantri. In other words, the orders were synchronised / matched and logged in such a way that sell orders matched with specific buy orders.

7. As stated above, the deal were routed through the clearing house of the Exchange to ensure that the money lent by Daisy was received back safely through the exchange. The interest to be charged on these loans was adjusted by adding it in the sale price. It was also observed that in most of the transaction, the interest worked out to 1.8 – 2.0% per month. It was further observed that if the price of the scrip falls/increases, then the quantity of shares sold by Daisy was adjusted in such a way that the interest work out to only 1.8 to 2.0 % per month.

2.8 Hence it was found that the transactions done by Enpee were actually financing transactions but were given the color of purchase and 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 Enpee 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 Enpee Enterprises, 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.

4.0 REPLY TO THE SHOW CAUSE NOTICE

4.1 Enpee did not reply to the show cause notice.

5.0 PERSONAL HEARING AND SUBMISSIONS MADE ON BEHALF OF ENPEE

5.1 Before taking a view in the matter, in compliance with the rules of natural justice, Enpee was also granted a personal hearing before me on 27.02.03 which was attended by Shri Nilesh M Popat, the director of Enpee. During the personal hearing he submitted a written submissions and informed that he did not wish to add anything to the submissions made in the written submissions.

5.2 In the written submissions dt. 27.02.03 signed by Shri Nilesh M Popat the director of Enpee it was submitted on its behalf:

1. Daisy Investment was their client for whom it had done a number of transactions. The trading in Nedungudi Bank formed a small portion of its business done with Daisy Investment.
2. As Daisy investment was having funds available with them, they used to purchase stock on spot basis to get a better rate and indulge in arbitrage activities.
3. The spot purchases from Rajendra Banthia on behalf of Daisy Investment was done not only in Nedungudi Bank but also in stocks of other companies.
4. Mr. C.K.Shah was the manager of Enpee Enterprises Pvt. Ltd. who looked after mainly the delivery of Enpee. Mr. C. K. Shah used to sit in Rotunda Bldg., whereas the transactions done in Nedungadi Bank were from the – BOLT at Poddar chamber where Shri Nilesh used to sit and hence Mr. C. K. Shah would not be in position to give a correct picture in the above matter. It was further submitted by Shri Nilesh that as he was abroad at the relevant time, Shri Shah had given the statement on 29 Aug., 1998 and 1 Sept., 1998. It was also submitted that the statement o! Mr. C.K.Shah was mainly his guesswork.
5. The business done on behalf of Daisy Investment was only delivery transactions, i.e. purchase and sale of stock matching to the last detail in Nedungudi Bank. Money used to be debited/received from Daisy Investment for the purchase and credit/payment used to be made to Daisy Investment. The transaction were delivery based transaction and not done with the motive to facilitate, fictitious, non-genuine trade through circular trading.

5.3 In light of these submissions, it was requested on behalf of Enpee that a lenient view be taken and they may be pardoned for any offence done unknowingly and without ulterior motive.

4. Vide said reply, Enpee also submitted an explanatory statement of Shri C K Shah inter alia submitting that Shri Banthia and/or any other person did not give any order to Shri Shah for the purchase and sale of any shares.

6.0 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 Enpee 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 Enpee Enterprises 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