

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 against M/s Bipin R Vora, Member, the Stock Exchange Mumbai, having SEBI Regn. No. INB 01004416 in the matter of alleged manipulation in the scrip of M/s Malvica Engineering Ltd.

1.0 BACKGROUND

- 1.1 Bombay Stock Exchange (BSE) vide their letter dated July 11, 2001 and subsequent letter dated February 14, 2002 forwarded their Investigation Reports in the scrip of M/s Malvica Engineering Ltd. (MEL) for the period of December 20, 1999 to March 31, 2000 and August 07, 2000 to August 31, 2001 respectively to SEBI. BSE vide its letter dated July 11, 2001 also informed that a fine of Rs.25,000/- each has been imposed interalia upon four brokers of the exchange for entering into fictitious deals and creating volumes in the said scrip of MEL.
- 1.2 M/s Bipin R. Vora (hereinafter referred to as the broker), member, BSE is a SEBI registered broker having SEBI Regn: INB 01004416 was among the brokers who were fined Rs. 25,000/- each by BSE for entering into fictitious deals and creating volumes in the scrip of MEL.
- 1.3 After examining the aforesaid investigation reports of BSE, Chairman, Securities and Exchange Board of India (SEBI) vide his order dated August 31, 2002, ordered investigation into the alleged irregularities in the trading in the scrip of MEL for the aforesaid two periods i.e. December 20, 1999 to March 31, 2000 and August 7, 2000 to August 31, 2000 (hereinafter referred to as relevant period).

- 1.4 It is also noted from the investigations conducted by BSE and SEBI that MEL had in March 1999 forfeited 37,63,500 shares which were held by the public on account of non-payment of call money. It was also found that MEL reissued 35,14,100 shares in December 1999 to 46 allottees.
- 1.5 It was further found that MEL had itself extended loans to certain individuals to subscribe and get allotment of those reissued shares of MEL and thus had in fact financed the subscription of its own shares. These allottees were M/s Mayekar Investments Pvt. Ltd. (Mayekar), M/s K.P. Investment Consultancy (K.P.), Shri Pankaj A Desai, Shri Dilip A Desai, Ms. Kirtida P Desai (Brother and wife of Shri Pankaj A Desai) and other members of Desai family. It was also found that after the said allotment, some of these entities viz. Mayekar and K.P. and Shri Dilip A Desai, alongwith other allottees indulged in creating the artificial volume in the scrip of MEL at BSE by conducting matched trades among themselves. Shri Pankaj A Desai was the director of Mayekar whereas Ms. Kirtida P Desai, the wife of Shri Pankaj A Desai was the proprietor of K.P.
- 1.6 Investigations further revealed that another group of clients consisting of M/s Harvic Management Services (I) Ltd. (HMS) and M/s Havmore Financial Services (I) Ltd. (HFS) alongwith its directors and their relatives who were allotted reissued shares and were having substantial holdings in MEL had also indulged in creating artificial volume in the scrip of MEL at BSE. It was also observed that HMS, the Sub-Broker with M/s B M Gandhi Securities Pvt. Ltd. (BMGS) executed its trades through different brokers including M/s Bipin R Bora and conducted matched trades with HFS. As all the three directors namely Shri Kalpesh Chawla, Shri Hemang Jangla and Shri Himanshu Chawala, of both the entities namely HMS and HFS were common, it was noted that in fact,

there was no change in beneficial ownership of the shares so traded and all these transactions were not genuine transactions.

- 1.7 The investigations further revealed that during August 7, 2000 to August 31, 2000 the price of the scrip touched a high of Rs 11.10 on August 14, 2000 and a low of Rs. 5.00 on August 31, 2000. Due to the non genuine trades executed by the aforesaid entities the volume of the scrip was increased artificially from 100 shares on August 4, 2000 to 1,19,500 shares on August 7,2000 and 1,59,500 shares on August 08, 2000.
- 1.8 The investigations conducted by SEBI interalia revealed that the volume in MEL was increased substantially in the period from December 1999 to January, 2000 (from 100 shares on December 20, 1999 to 1,50,800 shares on January 7, 2000). The price of the scrip increased from Rs. 8.95 on December 20, 1999 to Rs. 20.15 on January 12, 2000.
- 1.9 The investigations further found that M/s Bipin R Vora, the broker herein had directly executed the trades for Mayekar, K.P. and HMS, the clients of its sub-broker M/s Sai Investcorp Pvt. Ltd. (hereinafter referred to Sai Investcorp). It was also observed that through these very trades executed through the broker, these clients indulged in non genuine transactions and created artificial volume in MEL. Therefore, it was observed that having executed these large trades in an illiquid scrip like MEL within a short span of time, which resulted in creation of artificial volumes, the broker failed to exercise due skill, care and diligence in the conduct of its business and violated the provisions of clause A(1)(2) (3)(4) and (5) of the Code of Conduct for brokers specified in Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-Broker) Regulations, 1992.

2.0 Appointment of the Enquiry Officer

- 2.1 Therefore, vide order dated July 24, 2003, an Enquiry Officer was appointed by SEBI under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the affairs of the broker in the matter of alleged manipulation in the scrip of MEL and possible violations of the provisions of Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) by the said broker.
- 2.2 The Enquiry Officer issued a Show Cause Notice dated October 16/20, 2003 under Regulation 6(1) of the Enquiry Regulations to the broker advising it to reply within 15 days from the date of the said Show Cause Notice. In terms of Regulation 6(2) of the Enquiry Regulations while annexing the extract of the relevant portion of the findings of the investigations conducted by SEBI, so far as they relate to the broker including the alleged violations and the charges levied, the copies of the other documents relied on by SEBI viz. copy of the statement of Shri Shithanshu Vora (authorized representative of the broker) dated May 28, 2002 and a copy of the statement of Shri Ashish Ganatra (authorized representative of Sai Investcorp, the sub-broker) dated January 14, 2003; relevant trade and order log details of the broker were also enclosed with the show cause notice. The broker was advised to indicate whether it desires to have any personal hearing before the Enquiry Officer.
- 2.3 The Broker replied to the said Show Cause Notice vide letter dated November 03, 2003 and submitted inter alia the following:

1. that neither the broker itself nor its sub-broker were directly related to the said transactions carried out by the entities mentioned in the Show Cause Notice. Since the broker is in full time broking business catering to retail clients & sub-brokers, its focus is to carry out duties as broker with due care & diligence.
 2. that the broker has done purely delivery business during the period December 20,1999 - March 31,2000 on behalf of its sub-broker Sai Investcorp who in turn had done business on behalf of its clients during the course of its business. The broker's sole purpose was to carry out broking business in a transparent & efficient manner.
 3. that as alleged by SEBI, the trades of Mayekar, the client of its sub-broker Sai Investcorp were indeed directly done through its terminals in its own office but the same were done as per the understanding with the sub-broker & also in order to exercise due care & diligence over the conduct of business. It was further submitted that the broker and its family members have done only broking business.
 4. the broker also requested for a personal hearing before the Enquiry Officer.
- 2.4 The Enquiry Officer granted a personal hearing to the broker as per Regulation 9 of the said regulations on December 18, 2003 when Shri Shitanshu B Vora (for the broker) and Shri Ashish Ganatra (for the sub-broker, Sai Investcorp) appeared and reiterated most of the submissions made earlier in the reply to the Show Cause Notice. Thereafter, the broker made its written submissions vide letter dated January 30, 2004 where it inter alia made an additional submission that on receipt of letter from the Surveillance Department of Bombay Stock Exchange in the

year 2000-2001, the broker had instructed the sub-broker Sai Investcorp to stop the business with the ultimate client Mayekar and the said sub-broker had stopped business with client, Mayekar in March 2000 itself.

2.5 The Enquiry Officer, having considered the findings of the investigation regarding the allegation of contravention of the regulations by the broker and its oral and written submissions made before him, found the following:

1. The broker had traded during the period December 20, 1999 to March 31, 2000 in MEL constituting about 8% of gross purchases in the scrip and over 17% of the gross sales in the scrip and the net sale position of the broker was 24.38%.
2. During the relevant period the broker had bought 55,400 shares and sold 1,57,600 shares on behalf of Mayekar and bought 22,400 shares and sold 28,300 shares on behalf of K.P.
3. The broker has dealt on behalf of HMS and Mayekar and placed large buy and sell orders in MEL during August 2000.
4. Further, with regard to the letter dated January 30, 2004 wherein the broker had stated that it had instructed its sub-broker Sai Investcorp to stop the business with the ultimate client Mayekar and that Sai Investcorp stopped its business with Mayekar in the month of March, 2000 itself, the Enquiry Officer found that the sub-broker Sai Investcorp continued to deal with Shri Dilip A. Desai the brother of Shri Pankaj A. Desai, the proprietor of Mayekar. Enquiry Officer further found that the broker continued to deal with HMS subsequently.

5. The broker was aware that the two clients Mayekar and K.P. were related to each other and Shri Pankaj A Desai was representing both i.e. Mayekar and K.P. and he admitted this fact in his statement dated May 28, 2002 before investigating officer.
6. During the Enquiry proceedings however, the broker tried to disassociate himself from the aforesaid joint statement. However, on finding that the said statement was jointly signed by the representative of the broker and sub-broker, the Enquiry Officer in the absence of any proof in support of the said claim of disassociation, concluded that there remains no doubt that the broker was aware that the two parties dealing in MEL were related to each other.
7. Even though the ultimate client Mayekar was a client of sub-broker Sai Investcorp, it was noted from the trading that the broker had directly dealt with Mayekar.
8. Sai Investcorp also submitted that Mayekar placed orders directly with the broker and the broker could not satisfactorily explain the circumstances under which the orders from the client of the sub-broker were directly entertained bypassing the sub-broker.
9. The Enquiry Officer has also found that the broker has indulged in matched transactions for Mayekar, K.P. and HMS.

2.6 In the light of the above, the Enquiry Officer concluded that the aforesaid matched trades executed by the broker between related parties were non-genuine trades and were executed by the said entities/clients to create artificial volumes in MEL. Enquiry Officer thus found that in executing these trades, the broker failed to exercise due care and

diligence in violation of Clauses (1) (2) (3) (4) and (5) of Part A of Schedule II of Regulation 7 of the Broker Regulations and submitted his Enquiry Report dated March 11, 2004 and recommended major penalty of suspension of the Certificate of Registration of the broker for a period of four months.

3.0 Show Cause Notice and Reply

- 3.1 A copy of the said Enquiry Report along with a show cause notice dated March 24, 2004 was issued to the broker under Regulation 13(2) of the Enquiry Regulations informing about the Enquiry Officer's recommendation and advising it to show cause as to why action as may be considered appropriate should not be taken against it.
- 3.2 The broker submitted its reply dated March 31, 2004 and while reiterating most of the submissions made before the Enquiry Officer submitted interalia the following:
- a) that the show cause notice is illegal, null and void ab-initio as the Regulations under which it is issued were notified in the year 2002 whereas the alleged trades in MEL took place in the years 1999-2000. It further stated that no delegated legislation can have retrospective effect unless the power to make rules with retrospective effect is given in the Act itself under which the Regulations are framed. The Enquiry Regulations are clearly penal in nature and can not be given retrospective effect.
 - b) that the penalty proposed is too harsh and totally disproportionate to alleged violations of the Regulation or for any failure to exercise due skill, care etc.

- c) that the show cause notice has been issued by Deputy General Manager, Investigations Dept., SEBI who is not a competent authority to issue show cause notice in terms of sub-regulation 13(2) of the Enquiry Regulations and therefore the show cause notice is ultra vires of his powers.
- d) that it has never traded for itself and merely acted as brokers and executed the orders placed by client. So long the client made payments and gave deliveries for the shares bought/sold, a broker is not obliged to look any further. A broker does not have any investigative machinery under his control to gather all the intelligence, which the present show cause notice supposes him to be in possession of. Whether scrip is liquid or illiquid, whether volumes are genuine or artificial or manipulated and reflects false state of affairs etc., a broker cannot know while executing the orders placed by clients.

3.3 The broker submitted additional reply to the show cause notice vide its letter dated April 15, 2004 wherein the broker while reiterating most of the submissions made earlier, made following additional submissions :

- i) that the Enquiry Officer was appointed after 3 years from the dates of transaction in MEL and therefore the show cause notice suffers from a great delay and therefore barred by limitation.
- ii) that the copies of the investigation report of BSE and SEBI were not furnished to the broker.
- iii) that SEBI has not issued any show cause notice to the sub-broker Sai Investcorp.
- iv) that the transactions were delivery based. There was no bad delivery in respect of shares sold/delivered in the market. There was no default of any kind in dealings and no default – monetary

or with respect to delivery of shares – occurred from its sub-broker. The broker further has not participated in auction of the scrip of MEL and has not done any off floor transaction. Further, it has not taken any financing activity in the dealings in the scrip of MEL.

- v) that it had no privity in law with Mayekar and Harvic Management Consultancy Services (I) Limited who were constituents of the sub-broker.
- vi) that there is no rule that the clients of the sub-broker cannot place orders directly to the main broker. As long as the sub-broker accepts the trades, contract notes and honours the financial obligations of the clients the question of bypassing the sub-broker does not arise as the trades carried out are within the knowledge of the sub-broker who has to interact with his clients for post trade consequential activities of collection of shares, payment (to/from) value added services etc.
- vii) the broker also requested for a personal hearing.

3.4 A personal hearing was given to the broker before the then Whole Time Member Shri A.K. Batra on May 25, 2004, when the broker attended the hearing and filed written submissions.

3.5 As, (Shri A.K. Batra) the then WTM resigned before passing of the final order a new Whole Time Member, Shri Madhukar took charge of the matter and in adherence to the Principles of Natural Justice, granted personal hearing to the broker on January 13, 2006. Shri Madhukar, having examined the Enquiry Report, reply and other oral as well as written submission of the broker, passed the order dated January 25, 2006, agreeing with the findings and recommendations of Enquiry Officer and thereby suspended the certificate of registration of the broker for a period of four months.

- 3.6 Feeling aggrieved by the said order dated January 25, 2006, the broker filed an Appeal No.30/2006 before the Securities Appellate Tribunal (SAT). The SAT vide order dated February 13, 2006 while allowing the appeal and setting aside the impugned order of SEBI, remanded the matter back to SEBI for a fresh decision in accordance with law after passing a speaking order. SAT also directed the appellant to appear before SEBI on March 6, 2006 for further proceedings.
- 3.7 As directed by SAT, an opportunity of personal hearing was granted to the broker before me on March 6, 2006. During the personal hearing the representatives of the broker made oral as well as written submissions. While reiterating most of the submissions already on record, interalia the following additional submissions were made on behalf of the broker :
- i) that the show cause notice has been issued for violation of the provisions of clause A (2) of Code of Conduct for sub-brokers as specified in the Schedule II (Regulation 15) (Stock Brokers and Sub-Brokers) Regulations, 1992, and as the noticee herein is not a sub-broker, the show cause notice is void ab initio.
 - ii) that the show cause notice has not been issued by a competent authority. A Deputy General Manager(DGM) who had conducted investigation has issued the show cause notice whereas, under Regulation 13 of the Enquiry Regulations only the Chairman or a Member can issue the show cause notice after considering the Enquiry Report. Therefore, the SCN is void ab initio. Further issue of show cause notice by the investigating officer is bad in law as much as no one can be a judge of his own cause. Further, as officer of the rank of General Manager (GM) was the Enquiry Officer, the DGM who has issued the show cause notice and is

lower in rank than GM, can not decide on the Enquiry Report of the higher Officer.

- iii) that the Enquiry Officer has concluded that the broker has failed to exercise due diligence and has violated clauses (1) (2) (3) (4) and (5) of Part A of Schedule II of Regulation 7 the Broker Regulations. The show cause notice has been issued for violating the provisions of clause A(2) of Code of Conduct for sub-brokers as specified in the Schedule II (Regulation 15) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The Whole Time Member, SEBI in order dated January 25, 2006 had travelled beyond the show cause notice and held the broker guilty of violating clauses (1) (2) (3) (4) and (5) of Part A of Schedule II of the Broker Regulations.
- iv) that vide order dated January 25, 2006 the Member had imposed a major penalty whereas no major penalty can be levied for violation of clause A(2) of Code of Conduct for sub-brokers as specified in the Schedule II of Regulation 15 of Broker Regulations.
- v) that no proof has been given by SEBI in alleging that brokers' net sales position was nearly 25% of the total net sales in MEL at the exchange. Further, all these transactions were executed for the clients of sub-broker and not for its own clients. It was also alleged that SEBI has not given any material to prove its charge that all these clients were associated with each other.
- vi) that with regard to the charge that the broker bypassed the sub-broker and executed the trades for the clients of the sub-broker directly, it is submitted that a sub-broker is an agent of a broker and indirectly all the clients of a sub-broker become the clients of the broker and they can trade directly with the broker.
- vii) that every transaction in the exchange is a matched transactions and no evidence was adduced by the Enquiry Officer in support of

the charge that these transaction between different clients were matched transactions.

- viii) that no hearing took place before the then Whole Time Member, Shri Madhukar on January 13, 2004 as mentioned in the order dated January 25, 2006.

4.0 Consideration of the Issues and Findings

- 4.1 I have carefully examined the facts and circumstances of the case, investigation reports, the Enquiry Report and other material on record. I have also considered the oral as well as written submission made by the broker including the Written Submissions of the broker filed during the personal hearing before me on March 6, 2006. I find that the hearing was held before Shri Madhukar, the then Whole Time Member on January 13, 2006 and due to typographical error the year has been mentioned as 2004.
- 4.2 Before considering the case on its merits I shall first deal with the legal issues raised by the broker, as under :
- a) As regards the attack on the very legality of the show cause notice and the present proceedings under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (Enquiry Regulations) with respect to the trades executed in the year 1999-2000 and discrepancy of the contents of the show cause notice and findings of the Enquiry Officer are concerned, I find that there is no merit in these submissions in as much as the procedure for taking action against the broker/sub-broker was very much part the SEBI (Stock Brokers and sub-Brokers) Regulations, 1992 and vide Enquiry Regulations, 2002, the procedures for enquiry against all the intermediaries registered with SEBI including

the broker/sub-broker, which was available in the respective regulations, was consolidated in one Regulation i.e. Enquiry Regulations in order to streamline the procedure. Further, assuming, without admitting the argument of the broker on rule against retrospective law, I wish to record that as the very name suggests, these regulations provide for the procedure for enquiry and there can be no doubt that a law which is procedural in nature, can be given retrospective effect. Further there is a saving clause in the Enquiry Regulations which save all the action including investigations initiated earlier.

Though in the show cause notice dated March 24, 2004, inadvertently certain incorrect provisions were mentioned, I am of the view that the show cause notice was forwarded to the broker in terms of Regulation 13(2) of the Enquiry Regulations enclosing therewith the Enquiry Report which had explicitly stated as to what the Enquiry Officer had found against the broker and what explanation is expected of him. Merely inadvertent wrong mentioning of certain provisions in the show cause notice can not be used by the noticee to avoid disciplinary action. Thus the broker can not be allowed to go scot free as long as the copy of the Enquiry Report, which was the part of the said show cause notice, had clearly mentioned not only the findings but also the charges against the broker that it had violated the provisions of Clauses (1), (2) (3) (4) & (5) of Part A of the Schedule II of the Regulation 7 of the Broker Regulations. The purpose of the show cause notice is to inform the noticee the charges and material proposed to be relied upon against his so that he may offer his explanation/defense against the charges. This purpose, in my view is achieved in the present case and the technical objections raised by the broker will not help him in avoiding the disciplinary action as it is established

from the records and his replies submitted to SEBI from time to time that he had implicitly understood the contents of the charges mentioned in the show cause notice and had also replied to them to SEBI.

- b) As regards the submission that the show cause notice has not been issued by the competent authority in terms of Regulation 13 of Enquiry Regulations, I wish to state that this again is very technical objection and seems to have been raised to divert the focus from the default misdeeds committed by the broker. Board, like any other organization, functions through its officers and it is not possible that every document/letter of Board is signed by the Chairman/Member only. Therefore, for administrative convenience, while keeping the decision making powers with themselves, Chairman/Members do involve their officers who help them in the working of the Board. In this case also, due to administrative convenience, though the show cause notice was issued under the signature of a DGM, it was clearly mentioned in the notice that the broker was required to submit the reply to the Board which was the decision making authority. As long as the order is passed by the competent authority who examines the Enquiry Report, show cause notice issued and replies received from the delinquent/broker before passing the order, the delinquent/noticee can not be allowed to raise frivolous objections on technicalities in order to avoid action which he is liable to face due to his defaults/violations. Having said so and having not even the slightest doubt on the acceptability on the above preposition, let me put on record that Board in exercise of powers conferred upon it under Section 19 of the SEBI Act, in delegation of the powers, has authorized an officer of the rank of Deputy general Manager(DGM) to sign/issue show cause notices on behalf of the Board in Enquiry Proceedings.

As is clear from the above that the signatory of the show cause notice was not the decision making authority and was not going to pass the order in the matter the other issues raised by the broker viz. he was below in rank than that of the Enquiry Officer (GM) also do not hold water.

- c) As regards the plea of delay and laches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market.

4.3 Now I shall deal with the factual issues raised by the broker as under :

- a) As regards the submission that no action has been taken against the sub-broker, I wish to state that this can not be an excuse to avoid action and can not preclude SEBI from taking any action against the broker as long as it is established that all the dubious trades in question were executed by the broker. Broker being a member of the exchange carries with it more responsibility and is expected to be more careful and diligent in its dealings. Broker is a professional and it is its duty to ensure that no manipulation takes place through its trading. Further, in case the registration of the broker is cancelled or suspended, the registration of its sub-

brokers also gets cancelled or suspended automatically and the sub-broker also faces the disciplinary action.

- b) I also note that BSE being a self regulatory organization and first level regulator had, through its in-house surveillance system, noticed these very dubious trades executed by certain entities through its members (brokers) and after examining the role played by them in such trades issued show cause notices. Having examined their replies including the reply of M/s Bipin R Vora (broker), BSE found that the broker herein, by indulging in these fictitious trades which created artificial volumes, had violated Bye-laws nos. 355 (a) and 357(ii) of the BSE Bye-laws. Bye-law no. 357 of BSE provides as under :

Bye-law 357 : “ A member shall be deemed guilty of unbusinesslike conduct for any of the following or similar acts are omissions namely –

(ii) if he makes a fictitious transactions or gives an order for the purchase or the sale of the securities the execution of which would involve no change of ownership or executes such order with knowledge of its character ; “

and imposed a fine of Rs. 25,000/- upon broker M/s Bipin R Vora.

I also note that Shri Pankaj A Desai the director of Mayekar, one of the client for which the broker had executed the trades, in his statement dated October 01, 2002 made before SEBI, admitted that his companies namely Mayekar and K.P. Investments (who executed their trades through the broker) were appearing on both sides of the transactions and thus created artificial volumes.

- c) As regards the proof of 25% net sales executed by the broker during the relevant period, I wish to state that the broker is aware of the total trades executed by him. SEBI had obtained the total sales position from BSE and the figure was intimated to the broker in the show cause notice dated October 16/20, 2003 issued by the Enquiry Officer.
- d) As regards the alleged association of the clients who conducted non-genuine trades and created artificial volumes in MEL, I find from the facts as set out herein above that all these clients were allotted the forfeited shares by MEL and some of them were even financed by MEL for the said subscription, is an ample proof of their association. From the joint statement of the broker and sub-broker dated May 28, 2002 it is ample clear that the broker was aware of the relationship of the clients i.e. Mayekar, its director Shri Pankaj A Desai, his brother Shri Dilip A Desai and M/s K.P. Investments Consultancy (Proprietor Ms. Kirtida P Desai- wife of Shri Pankaj A Desai).

As recorded hereinabove, these were the persons who were financed and allotted the forfeited shares of MEL and who all indulged in non-genuine trades in MEL. Further from the reply to the show cause notice submitted by the broker to BSE it is very clear that broker after raising all such technical pleas as he is raising before SEBI, had submitted that hence forth it will take extra care while entering into transactions of thinly traded scrip of B Group and more particularly during no delivery period.

- e) I also note that the broker has submitted in its written submission that after the receipt of the letter from BSE in this regard in the

year 2000-2001 he instructed its sub-broker Sai Investcorp not to deal with Mayekar. In this regard I find that the letter referred to above was in fact a show cause notice dated September 18, 2000 issued by BSE under **Bye-law no. 357** which resulted in imposition of a fine of Rs. 25,000/- upon the broker for these very transactions being examined by SEBI.

- f) I also note that all the relevant trade details were forwarded by the Enquiry Officer with the show cause notice dated October 16/20, 2003 and therefore broker can not allege that no material in support of the charge was furnished to him.
- g) With regard to the assertion that every transaction on the exchange is a matched transaction, I state that it is true that matching of trade is required in execution of each trade but if most of the trades were matched by two/related parties only who invariably appeared on either side of the trade (buy/sell) then those trades are not trades simplicitor, but are non-genuine trades executed for creating artificial volumes and thereby giving mislead appearance of the trades to lure the general innocent investor to fall in the trap.
- h) I am in total agreement with the submission, though made in different context, of the broker and recorded in para -3.7 (vi) above, that a sub-broker is an agent of the broker. The broker has further submitted that all the clients of a sub-broker are the clients of the broker and thus they can trade directly through broker. If that is so and is rightly so, as a natural corollary, the broker is directly liable for the acts of omission and commission of its sub-broker and its clients and if those clients have created artificial volumes through non-genuine trades among themselves, the

broker who executed the said trades, will have to take the burn/face the consequence for its failure to exercise due skill and care which resulted in manipulation of the volumes.

- i) From the facts on record as stated hereinabove and are within the knowledge of the broker due to disciplinary action taken against it by the BSE and also the details forwarded by the Enquiry Officer vide his show cause notice as well as the enquiry report forwarded by SEBI, there can not be any dispute with regard to the fact that the broker had traded substantially on behalf of Mayekar, K.P. and HMS and also for Shri Dilip A Desai, the brother of Shri Pankaj A Desai, proprietor, Mayekar and placed large buy and sell orders in the scrip during the period August 2000.

- j) I further note that the broker traded for M/s Mayekar investments Private Limited, M/s K P Investments, M/s Havmore Financial Services (I) Ltd. and M/s Harvic Management Services (I) Limited whose trades had created huge artificial volume in the scrip of MEL during the relevant period, as shown in the table below. It may be mentioned that all these details of the trades have been extracted from the trade and order log forwarded to the broker by the Enquiry Officer along with the show cause notice.

Structured Deals Executed on August 8, 2000:

Order Number (Buy)	Order Qty (Buy)	Trade Price	Time of placing order(Buy)	Buy TM Clg. No.	Buy Client Name	Order Number (Sell)	Order Qty (Sell)	Time of placing order(Sell)	Sell TM No.	Sell Client Name	Total Traded Quantity
3700200000006079	20000	10.1	10:12:35	37	HMSI L	60100100000005147	5000	10:11:30	601	HFSI L	15000
		10.25				60100100000005146	5000	10:11:20	601	HFSI L	
		10.5				60100100000005145	5000	10:11:10	601	HFSI L	
62301400000010554	5000	10.25 - 10.35	10:41:07	623	HFSI L	3700200000006088	5000	10:27:10	37	HMSI L	5000
62301400000010555	5000	10.25 - 10.35	10:27:16	623	HFSI L	3700200000006088	5000	10:42:55	37	HMSI L	5000

Order Number (Buy)	Order Qty (Buy)	Trade Price	Time of placing order(Buy)	Buy TM Name	Buy Client Name	Order Number (Sell)	Order Qty (Sell)	Time of placing order(Sell)	Sell TM Name	Sell Client Name	Total Traded Quantity
60100400000005246	20000	10	15:18:11	601	MIPL	3700200000006161	20000	15:21:21	37	KPI	20000
3700200000006162	25000	9.9	15:23:19	37	KPI	60100400000005250	3000	15:23:47	601	MIPL	17000
						60100400000005251	5000	15:24:07	601	MIPL	
						60100400000005252	1000	15:24:15	601	MIPL	
						60100400000005253	2000	15:24:22	601	MIPL	
						60100400000005254	1000	15:24:35	601	MIPL	
						60100400000005255	2000	15:24:51	601	MIPL	
						60100400000005256	2000	15:25:26	601	MIPL	
						60100400000005257	1000	15:25:36	601	MIPL	

Structured Deals Executed on August 9, 2000:

Order Number (Buy)	Ordered Qty (Buy)	Trade Price	Time of placing order(Buy)	Buy TM No.	Buy Client Name	Order Number (Sell)	Order Qty. (Sell)	Time of placing order(Sell)	Sell TM NO.	Sell Client Name	Total Traded Quantity
60100900000005109	10000	10.2	10:19:03	601	HFSIL	3700200000006203	5000	10:17:05	37	KPI	10000
						3700200000006204	5000	10:17:19	37	KPI	

Structured Deals Executed on August 10, 2000:

Order Number (Buy)	Ordered Qty (Buy)	Trade Price	Time of placing order(Buy)	Buy TM No.	Buy Client Name	Order Number (Sell)	Order Qty. (Sell)	Time of placing order(Sell)	Sell TM NO.	Sell Client Name	Total Traded Quantity
37300200000006106	5000	9.2	10:19:03	601	HFSIL	3700200000006415	5000	14:02:08	37	MIPL	5000

It is clear from the above tables that the broker's trading for the aforesaid related entities resulted in matching of the trades and creation of artificial volumes in the scrip of MEL.

- k) Further with regard to the fact that the broker had dealt directly with the ultimate clients of the sub-broker bypassing sub broker, I note that broker has not disputed this and has rather stated that sub-broker is an agent of the broker and broker can entertain the clients of the sub-broker directly. Therefore I find that the broker has knowingly overlooked the fact that the clients who, while executing their trades directly through the broker, appeared on both sides of the trades and thereby failed to exercise due diligence, care and skill which was one of the sacrosanct duties of the broker.

As regards the submission that the broker did not know the counter party, it may be stated that Hon'ble Securities Appellate Tribunal in **Appeal No. 57/2002- Nirmal Bang Securities Ltd. Vs. SEBI** has held as under :

“ when the parties decide to synchronize the transactions, the argument that screen based trading ensures anonymity of the counter party is devoid of merit. In synchronized trading, intention is implicit.”

It is further stated that reversal of trades which are in the nature of circular trades have definitely created artificial volumes in the market and the argument that the counter party was not known, can not be given any weightage as quantities placed for buy and sell orders are also same.

- l) I further note that the intention behind all these trades during August 2000 by the entities who were allotted reissued shares of MEL, some of whom were even financed by MEL itself, was to create artificial volume and to dispose of the reissued shares in the market which were forfeited by MEL due to non-receipt of call money. The broker being aware of the relationship between Mayekar and K.P., executed large matched trades between them, during no delivery period in the thinly traded scrip of MEL, cannot shirk his responsibility of the need for being careful and cautious in such deals. These very trades which matched not only with respect to the time but also with respect to the quantity should have roused a reasonable doubt in the mind of a professional like a broker. Instead of stalling these non-genuine trades, the broker facilitated and became a party to such trades. SEBI being entrusted with the responsibility of not only to protect the interest of the investors but also to promote the development of and to regulate the securities market, has to make the market place efficient and clean wherein all the participants are expected to play their role diligently and professionally

within the four corners of the system and nobody may be allowed to hijack the system for his own benefit and then claim ignorance. I note that during August 2000, broker's gross purchase was 87000 shares and gross sale was 89300 shares constituting 11.30% and 17.40% of the total gross purchases and sales in the market respectively, by any yardstick is substantial to implicate the broker for said non genuine trades.

m) I also note that for the role played by MEL financing the purchase of its own shares to manipulate the market, SEBI vide its order dated April 28, 2004 had debarred MEL and its directors from accessing the securities market for a period of three years. Further, for the aforesaid transactions, SEBI had vide its order dated April 27, 2004 debarred the ultimate client M/s Havmore Financial Services Ltd. and its directors namely Shri Hemanshu Chawalla, Shri Kalpesh Chawalla and Shri Hemang Jangla for a period of two years. On an appeal (Appeal No.134, 134A, 134B, 134C/2004), SAT having agreed with the findings of SEBI reduced the period of debarment from two to one year. Similarly, vide order dated April 28, 2004 SEBI had debarred Shri Pankaj A Desai and his other family members including K.P.Investments, who had indulged in creating the artificial volumes in MEL, for a period of two years. The registration of M/s Harvic Management Securities (I) Ltd. the sub-broker of M/s. B M Gandhi Securiteis Ltd., who even though was a sub-broker itself, traded as client through many brokers including M/s Bipin R Vora and alongwith Mayekar, K.P. and Havemore Financial Services Ltd., created artificial volumes, was cancelled vide SEBI order dated January 25, 2006. All these entities accepted the said verdict and are undergoing such debarment/ cancellation.

4.4 Having examined the Enquiry Report, the Show Cause Notices, replies of the broker available on record and the oral and written submissions

made before me during the personal hearing, I do not find any substance in the arguments of the broker and am of the view that broker has failed to put forth any plausible defence in its favor and against the findings of the Enquiry Officer. In view of this I do not find any reason to differ with the findings and recommendations of the Enquiry Officer and hold that the broker, while indulging the trades in question for the related entities who while indulging non-genuine trades, created artificial volumes in the scrip of MEL, has failed to exercise due diligence, care and skill in violation of Clauses (1) (2) (3) (4) and (5) of Part A of Schedule II of the Broker Regulations.

5.0 ORDER

5.1 Now, therefore in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby suspend the registration of M/s. Bipin R Vora, member, The Stock Exchange Mumbai, having SEBI Registration No.INB01004416, for a period of four months.

5.2 This order shall come into force after 21 days form the date of this order.

DATE:March 22, 2006

PLACE: MUMBAI

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA