BEFORE THE SECURITIES APPELLATE TRIBUNAL

MUMBAI

Appeal No. 54 of 2002

Nirmal Bang Securities Pvt. Ltd. Appellant

Vs.

The Chairman

Securities and Exchange Board of India Respondent

Appeal No. 55 of 2002

M/s.Bang Equity Broking Pvt. Ltd. Appellant

Vs.

The Chairman

Securities and Exchange Board of India Respondent

Appeal No. 56 of 2002

M/s. Bama Securities Ltd. Appellant

Vs.

The Chairman

Securities and Exchange Board of India Respondent

Appeal No. 57 of 2002

M/s. Bang Securities Pvt. Ltd. Appellant

Vs.

The Chairman

Securities and Exchange Board of India Respondent

Appearance:

Shri Janak D. Dwarkadas, }

Senior Advocate, }

Shri Shyam Mehta, }

Advocate }

Shri Somasekhar Sundaresan, }

Advocate }

Ms. Farzana Mojgani, }

Solicitor } For Appellants

Shri Rafiq Dada }

Senior Advocate }

Shri Kumar Desai, }

Advocate }

Ms. Daya Gupta }

Advocate }

Shri J. Ranganayakulu, }

Jr. Legal Adviser, SEBI }

Shri Anindya K. Das, }

Manager, SEBI } For Respondent

ORDER

These four appeals are directed against the Respondent's composite order Appellants passed on 30.7.2002. The order is under regulation 29(3) of t Exchange Board of India (Stock Brokers and Sub Brokers) Regulations, 1992 Regulations) read with regulation 13 of the Securities and Exchange Board of of Fraudulent and Unfair Trade Practices relating to Securities market) Regu FUTP Regulations). According to the Respondent (SEBI) "the index mo exchanges showed excessive volatility especially during mid February to mid the context of "apprehensions of possible attempts by certain entities to disto discovery and manipulate the securities market" SEBI carried out a preliminar find out the role of various entities including the Appellants. Accordin preliminary investigations revealed that the Appellants had indulged transactions in the scrips of some companies (stated in the impugned c transactions prima facie appeared, inter alia, to have been carried out to artifi prices" of the scrips of the said companies. In that context on 18.4.2001 SEBI order debarring the Appellants from undertaking any fresh business as stock brokers till further order. A post decisional hearing was given to the Appella and thereafter an interim order confirming the exparte order was passed on same day an Enquiry Officer was appointed. The Enquiry Officer issued a sho the Appellant on 10.9.2001. He also issued a second show cause notice to th The Enquiry Officer submitted his report on 22.5.2002. The Enquiry Off observed inter alia that:

A. Nirmal Bang Securities Pvt. Ltd.(NBS):

1. Indulging in large trading transactions in the selective scrips with a vi artificially the prices of these securities between mid February and mi a concerted manner with BEB. These scrips are of Global Tele, HFCI Satyam, DSQ Software, Zee Telefilms and Reliance Industries.

2. Dealing with unregistered sub brokers, Money Growth Investments a Investments

3. Indulging in short sales after 8.3.2001 in violation of SEBI Circular d

A. Bang Equity Broking Pvt. Ltd. (BEB):

1. Indulging in large trading transactions in the selective scrips with a vi artificially the prices of these securities between mid February and mi concerted manner. NBS was acting in concert with BEB in effecting l transactions in the scrips of Global Tele, HFCL, Infosys, Satyam, DS Telefilms. The trading by BEB in Global Tele, HFCL, Infosys, Satya and Zee Telefilms in which BEB had significant sales between mid F March were found manipulative.

2. Two lakh shares of Global Tele were sold when share prices registere

3. Indulging in synchronised trades with First Global Stock Brokers (FG price, quantity etc were matched and which in turn is a manipulative p

4. Dealing with Palombe, an unregistered sub broker.

5. Indulging in short sales after 8.3.2001 in violation of SEBI Circular d

A. Bama Securities Ltd (Bama):

1. Indulging in large trading transactions in the selective scrips with a vi artificially the prices of these securities between mid February and mi concerted manner. The trading by Bama in Global Tele in Settlement Settlement No.11, Satyam in Settlement No. 11, are considered signif trading by Bama on 23rd February, 1st March, 2nd March 2001 are ve manipulative.

2. When share prices registered substantial fall – there were 11 sales in t were considered significant.

3. Bama was acting in concert with Bang Securities (BSL/BSPL) for inc simultaneous sales in the scrips of Infosys, Reliance and Satyam on th

A. Bang Securities P. Ltd. (BSL/BSPL):

Indulging in large trading transactions in the selective scrips with a artificially the prices of these securities between mid February and concerted manner. The trading by BSL in Global Tele, HFCL, Rel were considered significant sales for the depression in the share price

The Respondent, in the light of the findings of the Enquiry Officer issued a sh the Appellants on 30.5.2002. They responded to the same by filing replies submissions and filed written submissions also. The Respondent adjudicated n the conclusion that the Appellants "have indulged in large trading transactio depress the market artificially in a concerted manner, (indulged) in short sa trading, trading in particular time slots when the share prices registered subst of large transactions through unregistered sub brokers". In the light of the Respondent held the Appellants guilty of violating the Code of Conduct specif of the Stock Broker Regulations and regulations 4(a) to (d) of FUTP Regula cancellation of the Appellants' registration with SEBI. Claiming to be aggr order the Appellants preferred the present appeals under section 15T of t Exchange Board of India Act, 1992, (the SEBI Act) praying inter alia that order dated 30.7.2002 be set aside.

Shri Janak Dwarkadas, learned Senior Counsel appearing for the Appellan profile of the Appellants in each of the appeals. He submitted that the Ap no.54/2002 (NBS) and 55/2002 (BEB) are corporate members of Bombay (BSE) with three membership rights. Appellant in appeal no.56/2002 (Bam National Stock Exchange and Appellant in appeal no. 57/2002 (BSPL) is Appellants in appeal no.54/2002 and 55/2002. The Appellant companies are p management of the family members of Shri Nirmal Bang, namely Shri Del Kishore Bang. There are over 100 sub brokers registered under these entities – NBS , 20 of BEB and 35 of Bama providing service to over 10000 retail in country. According to the Appellants during the year 2000-2001, their annu was to the tune of Rs.57,196 crores. Learned Senior Counsel submitted th merely act as brokers for their various clients and transact in securities on th giving them any advice as to what securities to buy or sell, that they simply e for the sale or purchase of securities placed with them by their clients with contributing to the investment decisions of their client in any manner. submitted that SEBI has not bothered to recognise the Appellants' position. orders of the clients as the clients' agents, the Appellants can not be held to price manipulation, that the Respondent has not made any attempt to find alleged transactions were all proprietary transactions or transacting for Dwarkadas submitted that according to the Respondent's theory Bulls are g bad. He submitted that a market cannot operate without a buyer and a seller, t to condemn those who sell the shares. Learned Senior Counsel submitte provided several built in safeguards to regulate the market and it is for SEBI t safeguards were not observed, that carrying on transactions without flo

regulations and by adhering to the safeguards cannot be viewed as a v
requirements in position.

Learned Senior Counsel referred to the list of dates and events furnishe
submission of the Appellants and submitted that in 1999-2000 there was
boom in the information technology communication and entertainment stock
over the world, that this resulted in buoyancy in the price of ICE stocks, that t
stocks rose inter alia on NASDAQ as well as on the Stock Exchanges in Indi
period the prices of these ICE stocks touched all time higher figures. He subm
companies whose prices, the Appellants are accused of artificially depressing,
part of the unprecedented boom in prices during the period. Learned Senior C
during the period March 2000 –2001 the upward trend in the prices of the ICE
global meltdown and the prices of these shares fell rapidly during this perio
registered a fall of over 60% during this period, that even in India the pric
crashed and the Sensex registered a fall of around 28% during this period, tha
the Appellants are accused of depressing, also witnessed a fall in prices in t
trend. He submitted that on 28.2.2001, on presentation of Union Budget, the S
points. The share prices reacted to the market sentiment and rose, including t
referred to in SEBI's order, but SEBI has not charged any person in the contex
by 176 points. But Sensex fell by 171 points on 2.3.2001. According to tl
Counsel this fall was due to sell off by foreign funds in Technology, Media an
and profit warning by Oracle, the world's second largest software company
media, that the Respondent took note of the said fall and commenced investig
the reasons for the fall in the market, though it did not consider to carry out an
the sudden spurt of Sensex by 176 points on 28.2.2001. He submitted that SEE
in such a manner, as if it is mandated to carry out investigations etc., only whe
fall and not when the prices move up even if such movement is artificial
Counsel stated that on 13.3.2001 "Tehehlka" revelations led to overall dep
sentiment owing to political instability. He submitted that the Respondent
circumstances leading to the fall in price of scrips, which was a general p
decided to charge the Appellants responsible for depressing the market without

Learned Senior Counsel having stated the scenario as aforesaid made the follow

Limitation:

The impugned order has been passed in violation of Regulation 29(3) of t
Regulations, that Regulation 29(3) requires SEBI to pass the requisite orders
the receipt of the reply to the show cause notice from the noticee. He s

requirements under Regulation 29(3) are mandatory and no relaxation is availa

Even where a personal hearing has been sought, it is incumbent on SEBI process and make the Order within the aforesaid period of 30 days. But S follow the mandatory requirement of regulation 29(3) in the Appellants' case. show cause notice dated 30th May, 2002 was issued to all the Appellants inclu replied to the aforesaid notice vide its letter dated 12th June, 2002. This reply SEBI on 12th June, 2002. Bama did not seek any personal hearing in the ma Bama did not appear before the Chairman, SEBI at the hearing afforded by the and availed by the other Appellants. Consequently, as far as Bama is concerne show cause notice was required to be passed not later than 11th July, 2002 in Regulation 29(3). The impugned order is however dated 30th July, 2002. Th Bama is concerned the impugned order has been passed in violation of the s (3). The provisions of Regulation 29(3) being mandatory the failure to comp will vitiate any order passed in violation thereof. In view of the aforesaid, the i vitiated at least qua Bama. In the impugned order, the Respondent has come that all the Appellants were acting in concert to artificially depress the price in this regard, the findings against the Appellants are therefore not severable common order against all the Appellants in spite of the requests of the Appell all individually and separately and to pass separate orders in respect of e clubbing all the Appellants together and rendering a finding in the impugned Appellants acted in concert to artificially depress the price in the scrip, the im become inseverable. Consequently, if the impugned order is vitiated qua Bam violation of the said Regulation 29(3), the impugned order can not survive q Appellants and must be set aside in toto. In support of the submission this Trib Atul Kanodia Vs. SEBI ((2002) 46 CLA 251 (Sat) was cited.

Cancellation of Registration of the Appellants not permissible

SEBI is not empowered to cancel the registration of the Appellants on the bas rendered in the impugned order. From the impugned order it is clear that SE Appellants guilty of having violated the provisions of the Stock Brokers R FUTP Regulations and the impugned order has been passed by SEBI, under R the Stock Brokers Regulations and Regulation 13 of the FUTP Regulati empowered or entitled to cancel the registration of the Appellants on the groun the aforesaid Regulations. The penalty of cancellation of registration of S Broker can be imposed by SEBI only on the grounds stipulated under Regul Stock Brokers Regulations that:

i. if the stock broker/sub-broker violates any provisions of the insider tr
or take over regulations; or (ii) if he is guilty of fraud or is convicted
offence; or (iii) if his membership of the Stock Exchange is cancelled
Exchange.

In the instant case, the Appellants have not been charged with or found gu
aforesaid. Therefore, SEBI is not entitled or empowered to cancel the r
Appellants.

Regulation 13 of the FUTP Regulations provides that:

> "The Board may, in the circumstances specified in Regulation
> prejudice to its powers under Regulation 12, initiate action f
> cancellation of registration of an intermediary holding a certifica
> under section 12 of the Act.
>
> Provided that no such certificate shall be suspended or cancelled unl
> specified in the Regulation applicable to such intermediary is complie

It is apparent that though Regulation 13 empowers SEBI to initiate action
cancellation of registration of an intermediary, which would include a stock br
it does not provide for the situations in which the registration may be suspende

The situation under which the registration of a Stock Broker – Sub-Broker ma
cancelled by SEBI are prescribed in Regulation 26 of the Stock Brokers Regul
of necessity, in deciding whether the registration of a Broker / Sub-Broker ca
cancelled in a given situation, aid must be taken of the provisions of the said
this regard, it be noted that the FUTP Regulations, were made in 1995 w
Brokers Regulations, were made in 1992 i.e. prior to the notification of F
which shows that while framing the FUTP Regulations the law-makers were
event deemed to be aware of the pre-existing Stock Brokers Regulations.
proviso to Regulation 13 must be read harmoniously with the provisions of th
26. The Stock Broker Regulations provide for suspension of registration of Stc
Brokers in Regulation 26(1) in certain situations. Regulation 26(1)(v) specifi
the suspension of registration in the event of a Broker / Sub-Broker indulging i
price rigging in the market (which is the charge / finding against the Appella
case). Regulation 26(2) provides for the penalty of cancellation of registration.
(ii) provides for the cancellation of registration in the event of a Stock Brc
being found guilty of fraud. Hence it is clear that though market manipulation

covered by the FUTP Regulations, different penalties are prescribed for ma
and fraud by Regulation 26 of the Stock Broker Regulations. Thus, it is cl
intermediary – such a Broker / Sub-Broker – is found guilty of violating the F
the penalty which may be awarded would depend upon whether the violation
within Regulation 26(1) or Regulation 26(2) of the Stock Broker Regulation
manipulation and fraud are both covered by the FUTP Regulations, market ma
suspension of registration, fraud entails cancellation of registration. The diffe
of suspension and cancellation have obviously been provided for on the basis
of the charge / violation. The charge of fraud, being more serious tha
manipulation, therefore entails cancellation of registration while market ma
suspension of registration. As far as the Appellants are concerned, the charge
the Appellants is that of market manipulation, i.e. violation of Regulation
Regulations. This would be covered by Regulation 26(1)(i)(v) of the Stock B
and not by Regulation 26(2). Accordingly, there was no question of canceling
the Appellants and the impugned order is therefore clearly ultra vires and
Regulation 13 of the FUTP Regulations, uses the word "intermediary". An in
include merchant bankers, portfolio managers, mutual funds, venture capitalis
issue, share transfer agents, under-writers, foreign institutional investors, etc
the intermediaries separate Regulations have been framed by the Legislature
that each of these Regulations which apply to the different intermediaries, c
such as Chapter VI of the Stock Broker Regulations, providing for eventua
which the registration of the intermediary can be suspended or cancelled. An e
different Regulations in respect of the different intermediaries will show that t
consciously provided for specific situations in which the registration of a partic
may be cancelled or suspended. These provisions are intermediary-specific and
It is apparent that while prescribing the situations / eventualities in which the
intermediary may be cancelled or suspended, the Legislature has taken into
functions of the intermediary, the likelihood, ability, and possibility of
committing a particular violation, the consequences on the intermediary, e
whereas Regulation 26 of the Stock Broker Regulations merely provides for
registration of a Stock Broker / Sub-Broker for market manipulation, Regulati
(Foreign Institutional Investors) Regulations, 1995 provides for cancellation of
FII for indulging in market manipulation.

An analysis of the provisions of Regulations 25 and 26 will show that Regulati
provision conferring upon SEBI the general power to impose the penalty
cancellation of registration, Regulation 26 prescribes the situations, condition
penalty of suspension or cancellation of registration may be imposed. In other

26 contains the guidelines to be followed by SEBI while imposing a penalty cancellation of registration and such penalties imposed by SEBI **is** strictly in the provisions of Regulation 26. This is further born out by the fact that Regula the situations listed in Regulation 25(1). This is the only harmonious constru placed on Regulations 25 and 26 and the only construction by which t Regulations 25 and 26 will be given full effect to and rendered workable. This Regulation 25 from being rendered unconstitutional.

No Artificial Depression of Prices by the Appellants

Artificial depression not established

Apart from intention, it has also to be established as a fact that the depression i securities was artificial. Hence, it will have to be shown that the depression in an unreal or a fake or a temporary one. In the instant case, it is absolute depression in share prices was an unreal or a fake or a temporary one. In the absolutely clear that the depression in the share prices was a real and genuine by such factors like unprecedented boom in the Information Technology, Co Entertainment stocks, (ICE stocks) all over the world, an irrational exumber the various stocks and global indices touched all time high figures, that th witnessing a meltdown post March 2000 and prices of the ICE stocks started f NASDAQ registered a fall of over 60% between March 2000 to March 20 markets and Korean markets also fell between 25% to 40% during thi consonance with the Intentional trends, Indian share prices also fell and the S fall of around 28% during this period. Various Indian Companies had over ADR's of various Indian IT companies like Infosys, Wipro, Satyam (Relevan fell in line with the fall of Global prices. Factors particular to Indian markets v Calcutta Stock Exchange; Madhavpura Bank Scam; financial problems of Ke selling by FIIs; large selling by Indian Institutions; issues of Corporate Gover stocks; Gujrat Earthquake ; fears of economic slowdown; downward revisio India in the MSCI Emerging markets index; the UTI debacle ; the sudden wi from the ALBM segment etc. as reported by SEBI and Newspapers.

If SEBI does not admit the above factors responsible then it has to prove its v go by surmises and conjunctures.

One fact alone establishes that the depression in the share prices of the concer an artificial one but was a real one. The prices of shares continued a downwar 15th March 2001 upto August 2001. If, as alleged, the depression in the pri

and brought about by the alleged acts of the Appellants, then on and after when the Appellants broking operations were suspended, the trend would have

Before SEBI can accuse a person of causing an artificial depression in the pric must also determine how much of the fall in the price was artificial and how n and what proportion of the fall can be attributed to a particular person / transac

It was impossible for the Appellants to have depressed the prices of the concer of the following: Referred to the following chart showing the equity ca capitalization of the concerned scrips together with the average traded vol stocks.

Stock	Equity Capital	Price 15-Feb	Market Cap	Average volume BSE	Average volume NSE	Ap Vo
	Rs.Crs.	Rs.	Rs.Crs.	No. of Shares	No. of Shares	No Sha
Global Tele	43.72	642	2,806	52,84,591	75,09,931	
HFCL	78.82	1002	7,897	65,23,179	1,00,05,673	
DSQ Software	30.55	457	1,396	45,44,178	87,50,937	
Zee Telefilms	41.25	244	10,065	1,32,91,975	1,63,99,270	1
Wipro	46.50	2943	68,424	8,91,076	7,83,576	
Satyam Comp.	56.24	378	10,629	1,36,41,985	1,82,03,321	1
MTNL	630.00	182	11,466	27,54,052	27,37,317	
SBI	526.30	244	12,841	21,65,460	28,50,512	
Infosys	33.08	6497	42,984	6,42,255	7,35,470	
Sterlite Opticals	27.95	768	4,293	9,29,737	5,62,615	

By way of illustration referred to Global Tele, that against a capital of Rs.43 capitalisation was Rs.2806 crores, which indicates that the share was heavi transacted by the Appellant was just 2.86% of the total volume. No inference the basis of the data that such a small percentage of trade was responsible f market. SEBI has not bothered to find out who are the persons who trad 97.15%, that it is not stated as to whether 2.85% was purchase or sale, that SI as to whether the Appellants were doing proprietary transactions or for clients.

All the stocks listed above have a huge market capitalization and substantia
FIIs and Indian Financial Institutions and are highly liquid and actively trade
Indian Institutions like UTI have come to play a very important role in the Indi
and market movements to a large extent are determined by the buying and sel
FIIs & Indian Institutions. FII volumes are 5%-10% of the total volumes and a
40% of the total delivery volumes at the exchange. FIIs had cumulative sales
on February 28, 2001, March 1, 2001 and March 2, 2001. Any attempt to dep
the said shares "artificially" would result in an immediate buying from the var
SEBI over the years has put in a number of safeguards in terms of limits on i
broker can carry, global limits across scrips on individual brokers, high / low
each stock on any trading day etc.

Requisite intention not established

Before a person can be held guilty of violating Regulation 4(a) of the FUTP Re
be established that the transaction in securities were effected or entered into wi
artificially depressing the prices of securities. This intention will have to be det
on a consideration of the factors: (a) that the role played by the intermediary
instance, that, they operated a discount broking house; that they did not contro
investment decisions of their clients; that if such an intermediary were to only
its constituents, it cannot be held guilty of depressing the price artificially or
market conditions e.g. whether the share price was already falling before the sa
(c) the nature of sales, i.e. short sales, sales against previous purchases, sales
limit order sales etc., (d) previous positions in the scrip (e) subsequent positio
previous and subsequent volumes of the member in the relevant scrip, (g)
other scrips, (h) motive (i) general trading pattern of other market particip
general sentiment in the market.

The fact that the Appellants did not have any such intentions is clear from
markets were already falling since January 2001 and continued to fall even
2001; that most of the sales of the Appellants were either against previous
delivery, all sales were limit order sales, the Appellants were also net buyers d
period. On a particular day in a particular settlement, there are several instance
of the Appellants had net sales in a scrip, the other Appellants had net purch
scrip. The Appellants were overall net buyers in the market especially in inde
during the relevant period. No motive has been established by SEBI.

Net sales methodology flawed

For holding a person guilty of violating Regulation 4(a), it must be establ specific transactions effected or entered into by a person caused a depressior scrip. In other words, SEBI must identify those specific transactions of a pers depressed the price of the scrip. SEBI cannot hold a person guilty of violatin on the basis of the net sales of the person either at the end of the day or settlement. In the instant case, this is exactly what SEBI has done. SEBI has net sales of the Appellants and concluded that these net sales led to an artifi prices of the concerned scrips. This approach of SEBI is absurd for the reasc are to be the criteria for holding a person guilty of market manipulation, a pers a large quantity of shares which actually results in the artificial depression of but covers up these sales by purchasing the same after the price has fallen ar purchase position, will not be guilty of artificial depression of prices. On person who has been holding a huge quantity of shares of a particular scrip fo time finds that the market is falling and decides to sell the whole lot of shares net sale position for himself, will be held guilty of artificially depressing pr findings of the Chairman, SEBI in this regard are that "the findings are given market fall therefore there is no need to give a finding for every instance that i The co-relation between the price movement and fall is self-explanatory from t says there is a fall in the market and therefore it need not explain. Sales delivery. So how Appellants are benefited, that SEBI has to show this.

> "the net sale position is not altered whether there is a delivery". Sl sales. In fact actual delivery of shares indicates the bonafides of the A
>
> "I found that the member did not deny the sales but only stated tha deliveries, which in any case will not alter the net sales position". I the Appellant sold, so it is necessary to correlate the sale.
>
> "as already stated, it is not necessary that every time the finding on cc the transactions and the fall should be given."
>
> The aforesaid "findings" are fallacious and in fact demonstrates the to arrive at a sound factual finding.

The concerned scrips are traded on both NSE and BSE. All market participant trade on both the exchanges. NSE had twice the traded volumes of the BSE. aggregate net sales of both BSE & NSE, are required to be considered wh percentage net sales of the Appellants. This is more so because both the excha settlement period and lot of shifting of positions used to take place on th

settlement period in view of the carry forward margin requirement.

Aappellants' net sales had no impact on prices.

Far from causing any depression in the share price, the net sales of the Appel no impact on the prices of the concerned scrips. This is clear from the discuss be seen that the Enquiry Officer (EO) as well as the Respondent have deliber overlooked all the relevant and material facts, which were obviously incon with a view to achieve the pre-determined objective of holding the Appellants set below completely demolish the findings in the Enquiry Report and the Impu

Specific submissions on the Enquiry Report and the Impugned Order

Net positions of NBS and BEB

The scrip-wise analysis of the same is given below:

Global Telesystems

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Net Position	% of net of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
1046	05.2.01	09.2.01	670	696	630	+70,406	+8.2%
1047	12.2.01	16.2.01	632	655	609	+28,449	+3.2%
1048	19.2.01	23.2.01	615	624	439	-40,052	-4.6%
1049	26.2.01	02.3.01	443	454	312	-3,50,315	-17.9%
1050	05.3.01	09.3.01	306	312	225	+254,782	+14.1%
1051	12.3.01	16.3.01	210	241	206	+17,870	+1.3%

The settlement-wise positions given above are admittedly net positions f without taking into account the opening positions. Hence, the finding of SEBI, position of 70,406 shares in S.No.1046 was reduced to 28,449 shares in S.No. In fact, these were separate purchases made in two different settlements. NBS shares in Settlement No.1046. But price fell from Rs.670 to Rs.630. Same is th No.1047. In Sett. 1048 NBS was selling but price was falling, but BEB was p price fell. The data shows that the price movement was independent of the fac Appellants were purchasing or selling S.No.1048 while NBS had a net sale

BEB had a net purchase of 2,210 shares. Similarly, on 27th Feb,2001, 1st Ma March, 2001 between NBS and BEB, one had a net sale while the other had a clearly shows that the two entities were not acting in concert.

The Finding of the Respondent that there was a conversion of a purchase position in S.No.1048 is erroneous in as much as after selling 40,052 shares, N purchaser to the tune of 58,803 shares between S.No.1046 to S.No.1048 Appeal).

On the basis that the net sales of NBS of 40,052 shares in S.No.1048 represen sales at BSE and the price fell by Rs.170 from Rs.609 to Rs.439 in that settler of NBS accounted for a fall of only Rs.7.82.

It is further clear that the net sales of NBS accounted for a miniscule 4.6% c shows that there were huge net sales by others, which accounted for 95.4% of t

Settlement No.1049:

Date	Closing price Rs.	Change in prices Rs.	% change in price	Net position for t day Nirmal Bang
26.2.2001	416	(-) 23	-5%	(-)3,88,000
27.2.2001	354	(-) 62	-16%	(-)1,05,545
28.2.2001	405	(+) 51	+16%	(+) 7,044
1.3.2001	372	(-) 33	-8%	(-)54,396
2.3.2001	312	(-) 60	-16%	(+)2,39,609

The finding of the Respondent that NBS was a net seller in 4 out of the 5 day erroneous. NBS had net sales only on 3 out of the 5 days. This shows that th simply repeated what the Enquiry Officer has stated without application of m that the net sales of NBS of 3,50,315 shares in S.No.1049 represents 17.9% BSE and the price fell by Rs.127, from Rs.439 to Rs.312 in that settlement, the accounted for a fall of only Rs.22.74. Similar figures for BEB would acc Rs.11.88.

All the sales of NBS and BEB were pursuant to limit orders. This fact can be the Order Book. In other words, NBS and BEB specified the price at which t to sell the shares to willing buyers. The limit prices were within +/- -0.5%

market prices. The significance of a limit order is that if a person is desir depressing the price, his natural and most obvious action would be to either without any limit or more likely to offer large number of shares for sale at a than the prevailing market price. This is not the case in respect of even a sing of either NBS or BEB. Both the Enquiry Officer and Chairman have conven ignored this aspect of the matter. Not a single sale transaction of NBS or BEB the lower circuit filter rate and SEBI has not produced a single such instance. T further ignored the fact that the price of the scrip fell from Rs.670 to Rs.6 inspite of NBS and BEB being net purchasers in S.No.1046 and S.No.104 further ignored the fact that by the end of S.No.1048 (from S.No.1046), the had fallen by Rs.231, to Rs.439 when NBS had a net purchase of 58,803 shar net purchase of 8,237 shares. In other words, the share price during S.No.1046 by 35%, when NBS and BEB were net buyers. This shows that there was no co the Appellants' transactions and the fall in the share prices. SEBI further ignor S.No.1050 and S.No.1051, both NBS and BEB had large net purchases ins share price fell from Rs.312 to Rs.206 i.e. by Rs.106 or by 34%. Once agai there was no co-relation or linkage between the transactions of the Appellants price of the share. On 2nd March 2001, when NBS purchased 2,39,609 shares Rs.60 i.e. by 16% and hit the lower circuit filter. Similarly, on 28th February and BEB had a combined purchase of 14,739 shares only, the price went up by upper circuit filter. Once again this establishes that there was no co-relation o the transactions of the Appellants and the fall in the price of the scrip.

The above instances clearly show that the findings of SEBI are wholly r erroneous.

All the net sales considered by SEBI include sales on behalf of clients, which the instructions of the clients. SEBI has not bothered to distinguish betwee proprietary sales and has treated them on par. This action is clearly untenable. view of the fact that SEBI has nowhere alleged that the Appellants were acti their clients nor that these client trades were actually proprietary trades of the case of BEB, all the sales were on behalf of clients.

HFCL

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Our Net Position	% of net of BSE

			Rs.	Rs.	Rs.	Nirmal Bang		
1044	22.1.01	26.1.01	1,241	1,300	1,269	-46,225	-5.0%	
1045	29.1.01	02.2.01	1,250	1,264	1,027	-16,257	-0.7%	
1046	05.2.01	09.2.01	1,000	1,039	965	+16,375	+1.0%	
1047	12.2.01	16.2.01	950	1,019	909	-20,173	-1.9%	
1048	19.2.01	23.2.01	910	923	743	+69,761	+6.7%	
1049	26.2.01	02.3.01	740	752	605	+16,852	+0.7%	
1050	05.3.01	09.3.01	585	625	326	+18,015	+0.5%	
1051	12.3.01	16.3.01	301	322	214	+22,820	+0.6%	

Significantly, the Enquiry Officer has not found NBS and BEB guilty of artif the price of this scrip. Despite this, the Respondent has concluded that NBS ar the price of this scrip by acting in concert.

From the above table, it is clear that in 3 of the settlements, the net positions were exactly the opposite. In 4 settlements, NBS and BEB had net purchase BEB has net purchase position in 6 out of 8 settlements. NBS and BEB have position only in one settlement i.e. S.No.1047. This fact clearly established th were not at all acting in concert to depress the price of the scrip. Admittedly, in the entire net sales of NBS were against delivery and the entire net sales of I previous purchases. In S.No.1047, the price of the scrip fell by Rs.41. Accord can be attributed to NBS and BEB is 6.9% of Rs.41 i.e. Rs.2.83, which is S.No.1049, while BEB was a net seller, NBS was a net purchaser. This clear Appellants had no intention of depressing the price of the scrip. In S.No.1 combined sale position of 2.8% and the price fell by Rs.138. Accordingly, th attributed to NBS and BEB is 2.8% of Rs.138 i.e. Rs.3.86, which is agair S.No.1048, when NBS and BEB were both net purchasers, the price fell by Rs.909 to Rs.743, a fall of 18.26%. This shows that there was no co-rela Appellants' transactions and the fall in the share prices. Similarly in S.No.105 NBS and BEB were net purchasers, the price fell from Rs.605 to Rs.214, (65.45%). This shows that there was no co-relation between the Appellants' tra fall in the share prices.

All the sales of NBS and BEB were pursuant to limit orders. In other word specified the price at which they were offering to sell the shares to willing prices were within +/- 0.5% of the prevailing market prices. The significance

that if a person is desirous of artificially depressing the price, his natural a action would be to either make huge sales without any limit or more likely to c of shares for sale at a price much lower than the prevailing market price. It is that this is not the case in respect of even a single sale transaction of either N the Enquiry Officer and the Respondent have conveniently ignored this aspect a single sale transaction of NBS or BEB were executed at the lower circuit filte

All the net sales considered by SEBI include sales on behalf of the clients, wh on the instructions of the clients. SEBI has not bothered to distinguish betwee proprietary sales and has treated them on par. This action is clearly untenable. view of the fact that SEBI has nowhere alleged that the Appellants were actir their clients nor that these client trades were actually proprietary trades of the case of BEB, all the sales were on behalf of clients.

Infosys Tehnologies

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Our Net Position	% of net of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
					6,860		
1046	05.2.01	09.2.01	6,777	6,777	6,406	+1,796	+1.0%
1047	12.2.01	16.2.01	6380	6,537	6,254	+7,139	+4.8%
1048	19.2.01	23.2.01	6260	6,343	5,598	-2,687	-1.0%
1049	26.2.01	02.3.01	5,730	6,330	4,940	-18,600	-6.4%
1050	05.3.01	09.3.01	4,700	5,315	4,817	-9,549	-3.3%
1051	12.3.01	16.3.01	4,738	4,990	4,694	-42,013	-12.6%

The net sales of 18,600 of NBS in S.No.1049 were fully delivered. In S.No. the scrip fell fromRs.5,598 to Rs.4,940 i.e. by Rs.658. On this basis, the net NBS accounted for only Rs.42.11 of the fall. In S.No.1049, while NBS was was a net purchaser. This clearly militates against any intention on the part of depress the price of the scrip.

The sale of 42,013 shares by NBS in S.No.1051 was backed by delivery. The f

S.No.1051 was Rs.123. Consequently, the fall is attributable to NBS would be S.No.1046 and S.No.1047, when NBS and BEB were net purchasers, th Rs.6,860 to Rs.6,254, a fall of Rs.606. This shows that there is no co-rela transactions of the appellants and the fall in the price of the scrip. In S.No.104 2,687 shares, the price fell by Rs.656 whereas in S.No.1049 when NBS sold price fell by Rs.658 only. This again shows that there was no co-relation betv by NBS and the fall in prices. In S.No.1050 when NBS sold 9,549 shares, Rs.123 and in S.No. 1051, when NBS sold 42,013 shares, the price fell by again shows that there is no co-relation between the net sales by NBS and the SEBI's own showing, the net sales of BEB of 162 shares in S.No.1051 const net of BSE and yet an allegation of acting in concert with NBS is made on the This establishes that the fall is natural and not artificial. In S.No.1048, the amounting to 2,687 shares were equivalent to only 1% of the net of BSE. Her totally 2,66,013 shares were sold by others. Similarly in S.No.1049, while shares, 2,72,025 shares were sold by others. So also, in S.No.1050, while the c of NBS and BEB were 10,774 shares, the net sale of others was 2,78,589. In the combined net sales of NBS and BEB were 42,175 shares, the net sa 2,91,261. In total, while NBS and BEB sold 73,005 shares in 4 settlements o of 11,07,888 were sold by other market participants. If the figures of NS account, the percentage net sale of NBS and BEB would be miniscule. Her NBS and BEB were net sellers only to a small extent and the major net sa market participants.

The submissions regarding limit orders, non-distinguishing of client and prop the absence any sales at the lower circuit filter levels reiterated.

Satyam Computers

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Our Net Position	% of net of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
1043	15.01.01	19.01.01	386	421	418	-70,086	-2.2%
1044	22.1.01	26.1.01	424	430	414	+2,41,352	+9.2%
1045	29.1.01	02.2.01	400	428	415	+2,813	+0.1%
1046	05.2.01	09.2.01	400	412	372	-224,803	-5.6%

1047	12.2.01	16.2.01	375	387	365	+289,734	+9.5%	
1048	19.2.01	23.2.01	361	376	318	-35,040	-1.6%	
1049	26.2.01	02.3.01	321	353	263	-344,378	-8.2%	
1050	05.3.01	09.3.01	250	280	229	+305,263	+10.2%	
1051	12.3.01	16.3.01	230	264	237	-78,831	-1.6%	

The settlement-wise position given above are admittedly net positions for the s taking into account the opening positions. Hence, the finding of the Res purchase position of 2,41,352 shares in S.No.1044 were reduced to 2,813 shar incorrect (Page 68 of the Appeal). In fact, these were separate purchases mad settlements.

The net sales of NBS in S.No.1046, 1048 and 1051 were either against prev against delivery. The net sales of BEB in all the settlements were either purchases or for delivery. Besides, all sales of BEB were on behalf of its client

In S.No.1046, when NBS was a net seller, the price of the scrip fell from I Thereafter, in S.No.1047, when NBS was a net purchaser, the price still fell. A when NBS was a net buyer, the price fell further by Rs.34. Thereafter, in S.Nc NBS and BEB were net sellers, the price went up by Rs.8/-. This clearly shov co-relation between the transactions of the appellants and the movement in the This also shows that NBS and BEB were not acting in concert. Out of the 9 s above, NBS and BEB had different positions in 5 settlements, common purch settlements and common sale positions in 2 settlements. In S.No.1046 and 1 which it is alleged that NBS effected net sales with a view to depress the pric seen that BEB had net purchases. This clearly militates against the imputatio to the appellants to depress prices. It has been held by the Respondent that NE in concert in S.No.1048 and 1051 to bring down the prices as they were both n settlements. The Respondent completely overlooked the fact that in S.No.105 scrip closed at a figure higher than the closing price in S.No.1050. The Respon that the net purchases in S.No.1047 and 1050 were to cover the net sale settlements. He has conveniently ignored the fact that the net sales in S.No.10 against previous purchases.

The particulars of the net sales of NBS and BEB viz-a-vis the net sales participants are that

S.No.	**Our Sales**	**Sales by**

		other market parti
1046	-2,24,803	-37,89,536
1047	+	-30,49,830
1048	-1,17,590	-20,72,410
1049	-3,44,378	-38,55,354
1050	+	-29,92,775
1051	-1,15,053	-48,11,884

DSQ Software

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Our Net Position	% of net of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
					415		
1046	05.2.01	09.2.01	410	446	418	+321,012	+57.2%
1047	12.2.01	16.2.01	415	463	423	+415	+0.1%
1048	19.2.01	23.2.01	424	433	369	-14,298	-3.1%
1049	26.2.01	02.3.01	375	398	304	+132,300	+19.8%
1050	05.3.01	09.3.01	300	318	212	+15,195	+0.6%
1051	12.3.01	16.3.01	195	195	145	+4,020	+0.1%

Significantly, neither the Enquiry Officer nor the Respondent has found that ei effected transactions in the shares of this scrip with the intention of cau depression in the price of this scrip or that the transactions effected by NBS caused a depression in the price of this scrip. In fact, as far as BEB is concerne has not even confirmed the findings of the Enquiry Officer. The only conclusic Officer are that NBS unwound its net purchases and that BEB was also simu shares of this scrip.

The finding of the Enquiry Officer and the Respondent that the net purchases S.No.1046 were unwound in the subsequent S.No.1047 and 1048 is incorrect has wrongly stated that this fact was admitted by the Appellants. The net posi statement contained in the report of the Enquiry Officer are the net positions basis of the purchases and sales in a particular settlement without taking opening position in the settlement. In view of this, the net positions of +41

S.Nos.1047 and 1048 do not reflect the unwinding of previous purchases. Th the findings that the net purchases in S.No.1046, which stood at 52.6% of the down to 0.1% of the net purchase position in S.No.1047, which shows that NB shares in this settlement than the shares it sold. These facts have been conver the Enquiry Officer as well as the Respondent.

Both the Enquiry Officer as well as the Respondent have failed and neglect trend in the price of this scrip with reference to the transactions of NBS ar essential to determine whether these transactions caused any depression, artif in the price of the scrip. In fact, this is the single most important factor, whic be considered by SEBI. The approach of SEBI for reaching conclusions unwinding of previous purchases *de hors* the effect of the transactions on the p misconceived and erroneous. The reasons for adopting this approach are ob evident from the following that even if the finding of the Enquiry Officer an that NBS unwound previous purchases in S.No.1047 is to be accepted, it is s price of the scrip has risen during this settlement as compared to the previous that the purported unwinding of previous purchases did not cause any depress the scrip.

In S.No.1049, 1050 and 1051, the price of the scrip registered a substantial being a net purchaser in each of these settlements. Instead of appreciating t Enquiry Officer and the Respondent have stated that the net purchases in these to be seen against the background of unwinding previous purchases. The w SEBI is flawed. The Enquiry Officer and the Respondent have both failed to a of the six settlements under consideration, NBS had net sales only in one. In NBS was a net purchaser, BEB was a net seller. This completely demolishe BEB was simultaneously selling shares of this scrip. The net sales of BE insignificant in comparison with the total volumes of the scrip on the BSE. The constituted 0.5% and 0.1% of the net of BSE in S.No.1047 and 1048 respect net sales of BEB in S.No.1048 were only 606 shares. These net sales could ne effect on the price of the scrip. In fact, also, the net sales of BEB did not cau price of the scrip. This is clear from one fact alone and that is that when BEB S.No.1047, the price of the scrip rose. The submissions regarding li distinguishing of client and proprietary trades and the absence of any sales at filter levels reiterated.

Zee Telefilms

Settlement	Date	Date	Opening	High	Closing	Our Net	% of net

Number	From	To	price	Price	price	Position	of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
					254		
1046	05.2.01	09.2.01	252	260	230	-52,205	-1.8%
1047	12.2.01	16.2.01	229	247	231	-21,936	-0.7%
1048	19.2.01	23.2.01	234	240	210	-141,699	-1.6%
1049	26.2.01	02.3.01	215	215	136	+209,795	4.37%
1050	05.3.01	09.3.01	125	147	115	+37,013	0.3%
1051	12.3.01	16.3.01	113	156	144	-87,183	-1.1%

Date	BEB Net	Closing Price	Price
16.2.2001		231	
19.2.2001	+63,025	229	
20.2.2001	+105,925	232	
21.2.2001	-41,500	237	
22.2.2001	-257,590	235	
23.2.2001	-52,640	210	
26.2.2001	+18,865	192	
27.2.2001	-95,510	165	
28.2.2001	-850	171	
01.3.2001	+23,135	162	
02.3.2001	-27,660	136	

With regard to trading in this scrip, the main findings are against BEB. A concerned, the only finding of the Enquiry Officer as well as the Respondent is that NBS and BEB were simultaneously selling in S.No.1048 and 1049, they to be acting in concert. As against BEB, the Enquiry Officer has come to the can be reasonably concluded that the purchases in S.No.1050 when the closing could be with a view to cover the earlier short sales and / or taking advantage after hammering down the prices." The Respondent has merely substituted the with the word "was". Both the Enquiry Officer and the Respondent have not in support of the finding of "hammering down the prices" by BEB. As such, Enquiry Officer and the Respondent have both proceeded on the presu hammered down the price of the scrip without coming to any independent re

in that regard.

An examination of the above tables will clearly show that the transactions of N not cause any depression in the price of the scrip. In fact, these transactions impact at all on the price of the scrip. In S.No.1047, the price of the scrip despite net sales of NBS to the tune of 21,036 shares and net purchases of B 1,44,340 shares. Thereafter, despite NBS being a net purchaser in S.No.10 2,09,795 shares, the price of the scrip registered a substantial fall. Subseque NBS and BEB were both net purchasers in S.No.1050, the price of the scrip Significantly, in S.No.1051, when both NBS and BEB were net sellers, the rose. These facts clearly establishes that neither NBS nor BEB caused any fall scrip much less hammered the price of the scrip. In S.No.1047 and 1049, bo had different positions. When NBS had net sales, BEB had net purchases an completely demolishes the charge/finding that NBS and BEB were acting in net sales of NBS and BEB taken together were insignificant when compared and consequently could never have had any impact on the price of the scrip. Officer and the Respondent have stressed on the fact that on 23rd and 27th March 2001, when BEB was a net seller the price of the scrip registered a fall. Officer and the Chairman, SEBI have ignored the fact that the price of the scri even when BEB was a net purchaser on 19th & 26th February and 1st March 2 that the transactions of BEB did not have any effect on the price of the scrip r in a depression in the price of the scrip. Another significant fact is that relatively large net purchase position on 20th February 2001 and a relatively l on 22nd February 2001, the price of the scrip barely moved. Further, on 21st F 28th February 2001, the price of the scrip in fact rose despite the net sales relevant facts have been conveniently ignored and overlooked by the Enquir Chairman, SEBI. It is clear that they have deliberately turned a blind eye to confronted with all this facts both Enquiry Officer as well as the Responden incredible findings as follows(in confirmation of the finding of the EO) that :

> "As already stated, it is not necessary that every time the findi between the transactions and the fall should be given. It is to be kep whole enquiry is with regard to depression in share prices caused member" (Page 36 of the Impugned Order).
>
> "In cases of this nature when there is a series of transactions over a cannot be determined with mathematical accuracy the extent of the

members trade. What is to be seen is the overall trading behaviour o proportion of his sales to the exchange net sales should be taken int the view that we should see as to what is the contribution of the mem as a whole in the market whether the purchases are on account of co short sales" (Page 46 of the Impugned Order).

The submissions regarding limit orders, non-distinguishing of client and prop the absence of any sales at the lower circuit filter levels reiterated.

Wipro

Settlement Number	Date From	Date To	Opening price	High Price	Closing price	Our Net Position	% of net of BSE
			Rs.	Rs.	Rs.	Nirmal Bang	
					2,713		
1046	05.2.01	09.2.01	2,755	2,985	2,938	+16,153	+4.8%
1047	12.2.01	16.2.01	2,930	3,074	2,828	-4,359	-2.2%
1048	19.2.01	23.2.01	2,820	2,889	2,501	+3,171	+1.9%
1049	26.2.01	02.3.01	2,550	2,637	2,079	-10,229	-3.96%
1050	05.3.01	09.3.01	2,001	2,315	1,935	+12,005	5.1%
1051	12.3.01	16.3.01	1,890	1,950	1,660	+265	0.1%

Though the Enquiry Officer concluded the trading pattern in the scrip significant net sales with a view to depress the prices except in S.N NBS and BEB had net sales, the Respondent did not confirm th Impugned Order. The Respondent has completely ignored this f reasonable conclusion can be that the Respondent has not agreed wi the Enquiry Officer. In this view of the matter, the Appellants are nc findings of the Enquiry Officer.

Trading by BAMA on 23rd February, 1st & 2nd March 2001.

The Enquiry Officer and the Respondent both came to the conclusion that the Bama on 22nd, 23rd and 28th February, 1st and 2nd March in the scrips of Gl HFCL, Satyam, Silverline, Zee and Wipro showed that Bama was a consist also unwound the previously built purchase positions and created fresh net s

can be said to have contributed to the artificial depression of prices of these relevant period.

According to the Enquiry Officer and the Respondent, Bama was a consiste scrips on 22nd, 23rd and 28th February and 1st and 2nd March, 2001 as under:

Scrip	22-Feb	23-Feb	28-Feb	1-Mar
Global Telesystems	(10,577)	(163,155)	36,939	(41,385)
HFCL	50,480	33,699	(27,086)	(27,893)
Satyam	(194,626)	42,254	306,214	(171,620)
Silverline	(41,920)	(63,020)	(144,930)	(139,598)
Wipro	855	2,413	(55)	(15,068)
Zee Telefilms	164,460	27,194	(64,563)	(117,316)

On the basis of the aforesaid data, the Respondent and the EO concluded consistent net seller in the above scrips on the above dates.

The above figures were supplied by Bama to the EO on the basis of the data first Show Cause Notice. The net positions on each day have been computed the opening purchase/sale positions and do not represent the net positions only being so, it is apparent that Bama was not a net seller as alleged but was a several days. For eg. On 23rd February 2001, Bama was a net purchaser in Sa on 1st March 2001, Bama was a net purchaser in Silverline; and on 2nd March a net purchaser in HFCL, Silverline and Zee Telefilms. It is obvious that bot Respondent have erred while analyzing the data and have overlooked the afore

It is submitted that the entire approach of the EO and the Respondent, of judg basis of net sales is misconceived and erroneous. All the findings rendered b Respondent on the basis of the net sales methodology are vitiated. Wh transactions of Bama, SEBI ought to have considered the fact that Bama ha shares of these scrips on the days in question and that Bama was not only selli a relevant factor required to be considered when determining whether Bama transactions with the intention of hammering the prices of the scrips. Both Respondent have failed to consider this fact.

It is also imperative for SEBI to determine the impact of the sales on the p before coming to the conclusion that these sales could be said to have c

artificial depression of prices of these scrips. No such exercise was carried ou or the Respondent. In fact, the prices of the scrips have not even been referr show cause notices or in the Impugned Order. No attempt whatsoever h establish that the prices of the scrips had fallen. This alone vitiates the findir the Respondent. There has also been no attempt to show that the depression i scrips, if any, was indeed artificial and both the EO and the Respondent have assumption that the prices of the scrips had fallen and that such a fall was artifi

It is clear from the findings of the EO and the Respondent that no correlatio sale position of Bama and the alleged artificial depression of prices o established. Both of them have concluded that the net sales position of Bam have contributed to the artificial depression of prices of these scrips during the This finding is clearly speculative and vague and can never form the basis of against Bama. When faced with the submission that no such correlation has both the EO and the Respondent concluded that it was not necessary that eve on correlation between the transactions and the fall should be given.

Despite the fact that all the aforesaid submissions of Bama were contained i show cause notices, the same have been totally ignored b y the EO and the arriving at the final conclusions. This shows the prejudiced mind of SEBI and intention of holding Bama guilty irrespective of the facts of the case.

Sales in Select Time Slots

The particulars of the transactions in respect of which the Respondent has fou causing a fall in the prices of the scrip by selling in specified time slots are as t

Scrip	Date	Time from	Time to	Minutes	Quantity	% of market	F p
Global Telesystems	23-Feb-01	15:04	15:14	0:10	85,655	11.68%	(1
Global Telesystems	2-Mar-01	12:33	12:41	0:08	49,315	9.74%	(1
Satyam	1-Mar-01	14:13	14:33	0:20	155,744	5.01%	(1
Satyam	2-Mar-01	10:57	11:05	0:08	62,714	3.97%	(1
Satyam	2-Mar-01	13:17	13:53	0:36	63,979	2.56%	(1
SSI	2-Mar-01	13:41	13:54	0:13	9,955	14.79%	(2
SSI	2-Mar-01	12:32	13:01	0:29	19,450	11.13%	(7

Wipro	1-Mar-01	13:33	13:41	0:08	9,026	15.46%	(1
Zee Telefilms	23-Feb-01	12:26	12:35	0:09	76,279	2.33%	(8
Zee Telefilms	1-Mar-01	12:53	13:56	1:03	129,478	6.52%	(8
Zee Telefilms	2-Mar-01	12:00	12:22	0:22	116,932	7.04%	(1

It is to be noted that the E.O. did not find Bama guilty of selling shares wit artificially depressing the prices of the scrips to induce the sale or purchase of other person. The E.O. has simply concluded that net sales of Bama in thee tir fall in the share prices. The report of the E.O. which Bama was called upon itself failed to make out a case of any violation of the prohibition contained FUTP Regulations. The report was liable to be discarded exfacie on this g Respondent before whom this argument was raised, realising this inherent Enquiry Report, exceeded his jurisdiction by holding that these net sales of Ba **deliberately to depress the prices of the scrips.** It is therefore, clear that th gone beyond the report of the E.O. Not only this, it is also apparent that the Re Bama guilty of a charge, which was not made by the Enquiry Officer.

The very graphs relied upon by the Enquiry Officer reveal a completely p unscientific and irrational approach on the part of the Enquiry Officer. In attempt to reach a pre-meditated conclusion or a case of misplaced wisdom by established by the fact that the Enquiry Report does not contain any informa with regard to either the quantity or price or the sellers responsible for the fall very same scrips during the other time slots plotted on the graph. The Enquir contain any information whatsoever with regard to the purchases, if any, mac before or during the concerned time slots. In fact, from charts appearing here apparent that within the very same time slots in which Bama is alleged to hav the alleged intention of depressing the prices, Bama also purchased shar however appears to have done is to deliberately withhold the information v purchases made during the time slots by Bama and tabulate "the net sales po impression to the reader that Bama was only a seller and not a purchaser of th these time slots. The Enquiry Report does not contain any information with r sellers, if any, the quantity and the price at which such sellers also sold the s same scrip during the very same time slots during which Bama is alleged to ha the price of the scrips. The Enquiry Report does not take into account the ma well as the other factors which could have lead to either a general fall in the p or a fall in the prices of the scrip in this particular segment of the market wh segment-wise indices popularly known as BSE Index or Mindex. The Enquiry not take into account the fact whether there was any means rea or motive on th

allegedly causing a fall in the prices of the scrips which would have been easil determined if Bama had purchased the shares of the very same scrips s allegedly caused a fall in the prices thereof. The Enquiry Report also c extremely significant fact, namely, that whereas Bama did sell the shares me table during the indicated time slot, Bama also purchased shares of other comp segment during the same time slot. Enclosed herein and marked as Annexu showing the different purchases made by Bama during the same time slot. This not only were the sales driven by market prices but also that the purchases segment were also at the market determined prices. If the intention, as held b (but not by the Enquiry Officer) was to deliberately depress the prices of the would not have simultaneously acquired shares of other scrip in the same s determined prices during the same time slot. The Enquiry Report further c significant fact, namely that during the said time slots Bama purchased shares companies. This information was deliberately overlooked by SEBI though ava logs. This militates against any allegation / charge of any intention of Bama to of scrip much less to depress them artificially. The Enquiry report further ov and every sale was a limit order sale, the limit being in the range of 0.5% of All the sales were executed as per the limit orders.

Analysis of time slots

The following analysis will clearly establish that the sales of Bama impact on the price of the scrip, much less cause any fall / depression

i)**23rd February '01**

Global Telesystem

Time: 15:04 to 15:14

Price fell by Rs.18.65 from Rs.457 to 438

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200102231327097	300	453.00	15:05:52	15:06:07			
200102231340940					6521	450.01	
200102231341857					20599	448.02	

200102231280548	100	447.00	15:06:58	15:06:58		
200102231325974					300	445.40
200102231320707	10	445.00	15:07:28	15:07:28		
200102231345924					50000	444.00
200102231311249	1000	442.00	15:08:39	15:08:39		
200102231275361					100	441.23
200102231356040	50	442.00	15:09:30	15:09:30		
200102231359429	50	443.00	15:10:11	15:10:11		
200102231359738	50	443.90	15:10:38	15:10:38		
200102231368207	50	441.25	15:11:59	15:11:59		
200102231369114	100	441.00	15:12:12	15:12:12		
200102231356834	5	440.00	15:12:54	15:12:54		
200102231376357	50	439.00	15:13:50	15:13:50		
200102231377229					20000	438.00
200102231378908	100000	439.74	15:14:23	15:14:23		
200102231379097	100	440.00	15:14:26	15:14:26		

Apart from sales there were also purchases made by Bama during this time uniformly spread out throughout the time slot. Before the first sale transact price had already fallen from Rs.457 to Rs.450 i.e. Rs.7 out of a total fall of R period from 15:08:39 to 15:13;50, Bama was a continuous purchaser, inspite o of the scrip fell. After every sale transaction of Bama, the price of the scrip almost the same – it moved up / down by only a rupee i.e. 0.20% of the prev the sale transaction of 20,000 shares in the period from 15:14:00 to 15:14:08 scrip rose. 50000 shares were traded in 33 second from 15:07:33 to 15:08:06 were traded in 8 seconds from 15:14:00 to 15:14:08. This is indicative of the d of the scrip. It also shows that the trades were between willing buyers and prevailing market prices. Any fall in price cannot be attributed to the seller.

It is clear from the above that there is no co-relation between purchases / sales movement in share price. This indicates the depth in liquidatory of the scrip.

ii)**2nd March '01**

Global Telesystem

Time: 12:33 to 12:41

Price fell by Rs.12.90 from Rs.330 to 317

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103020764670	100	328.80	12:34:41	12:34:41			
200103020786247	100	325.40	12:36:11	12:36:11			
200103020791513					50000	320.39	
200103020805710					15	317.25	
200103020807073	500	318.00	12:41:27	12:41:29			

The price of the scrip was already falling when Bama sold 50,000 shares. By t of the scrip had already fallen by about Rs.10. After the sale of 50,000 shares b of the scrip remained almost unchanged. In the 4 minutes after the sale of 5 price had moved only by about Rs.2.39 i.e. 0.74%.

The sales and purchases were uniformly spread out throughout this time slot.

iii)**1st March '01**

Satyam Computers

Time: 14:13 to 14:33

Price fell by Rs.17.65 from Rs.333 to 315

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103011239131	50	332.50	14:15:42	14:15:42			
200103010794985	50	332.50	14:15:44	14:15:44			
200103011184900	200	332.50	14:15:44	14:15:44			
200103011241115					150	331.50	
200103011246832					200	331.60	
200103011184456	200	331.00	14:17:45	14:17:46			
200103011251660					1000	330.00	
200103011255062	100	329.90	14:18:49	14:18:49			
200103011275317	200	332.25	14:22:59	14:22:59			

200103011276396	500	332.70	14:22:59	14:22:59		
200103011276746	50	332.25	14:23:10	14:23:17		
200103011258565	200	330.00	14:25:26	14:25:26		
200103011256768	25	329.85	14:25:32	14:25:32		
200103010983473	300	328.00	14:25:59	14:26:18		
200103011243574	50	327.60	14:26:19	14:26:19		
200103010737582	50	327.60	14:26:19	14:26:19		
200103011293812					200	328.70
200103011295406					500	329.00
200103011295532	50	328.00	14:27:36	14:27:36		
200103011300134	50	327.73	14:27:57	14:27:57		
200103011300601	50	326.15	14:28:26	14:28:26		
200103011304023	50	325.10	14:28:47	14:28:47		
200103011304713					77961	325.02
200103011191399	500	325.00	14:28:48	14:28:48		
200103011307208	25	323.00	14:29:13	14:29:13		
200103011307596					1000	321.05
200103011308362	50	322.80	14:29:24	14:29:24		
200103011308736					600	322.50
200103011310444					1000	322.60
200103011312279					5000	321.05
200103010583294	100	320.00	14:30:14	14:30:14		
200103011315834					100	319.00
200103011319104					96006	317.75

After one of the largest sale transactions of 77,961 shares, there was no change of the scrip. After the other large sale transaction of 96,006 shares, there was v in the price of the scrip. The sale of these shares was at the average rate of Rs.3 minutes thereafter, the price of the scrip was Rs.315.

During the periods when the price of the scrip registered the latest fall of F continuous purchaser (Bama had insignificant sales prior to these periods). W from Rs.333 to Rs.325, Bama was a net buyer to the extent of 125 shares. 7 sold within 7 seconds, which is indicative of the fact that the trades were betwe and willing sellers. It also reflects the depth and liquidity of the scrip.

iv)**2nd March '01**

Satyam Computers

Time: 10:57 to 11:05

Price fell by Rs.12.20 from Rs.298 to 286

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103020359977					500	297.49	1
200103020356895					20	298.00	
200103020367822	20	296.00	11:00:30	11:00:30			
200103020375050					5000	295.04	
200103020379158					200	292.55	
200103011546973	25	292.00	11:01:43	11:01:43			
200103020322064	200	291.00	11:01:51	11:01:51			
200103020139520	500	290.00	11:02:02	11:02:02			
200103020168259	100	290.00	11:02:02	11:02:02			
200103020283549	200	290.00	11:02:03	11:02:03			
200103020217637	10	289.00	11:02:04	11:02:04			
200103020383631	1000	288.80	11:02:23	11:02:23			
200103020383828	200	288.80	11:02:25	11:02:25			
200103020385548					200	286.18	
200103020389146					45026	286.52	
200103020392602	200	287.45	11:03:52	11:03:52			
200103020394248	100	287.80	11:04:07	11:04:07			
200103020397663	100	287.00	11:04:40	11:04:40			
200103020397592					15623	287.02	
200103020398480					300	286.10	
200103020399354					1000	286.00	

Apart from sales, there were also purchases made by Bama during this tim uniformly spread out throughout the time slot. After the first two sales transac the scrip actually rose. Between the period from 11:01:43 to 11:02:25, Bama purchaser, inspite of which the price of the scrip fell. After the largest sale tra shares in the period from 11:03:19 to 11:03:26, the price of the scrip rose. 15,623 shares by Bama, the price fell by less than a rupee. This shows tha

impact on the price of the scrip. During the period when the share price registe
fall from Rs.297.49 to Rs.22286.18, Bama had purchases of 2,255 shares. Hen
Bama during this period, were only 3,665 shares. When compared with the
Bama of 65,214 shares during this time slot, it is seen that the net sales of
period when the shares registered the maximum fall, were insignificant. SEB
during this time slot, the price of the scrip registered a fall of Rs.12.2. From th
clear that when the share price fell from Rs.297.49 to Rs.286.18 i.e. by Rs.11.3
Bama were 3,665 shares, which is insignificant. According to SEBI, the net
62,714 shares constituted 3.97% of the market. On this basis, 3,665 shares wou
0.23% of the market. It is therefore clear that when the share price fell by Rs.1
of Bama were only 0.23% of the market. It is clear from the above that even
shares of Satyam within 7 seconds, had no impact on the market price of the
price rose. This indicates the depth and liquidity of the scrip.

v)**2nd March '01**

Satyam Computers

Time: 13:17 to 13:53

Price fell by Rs.12.85 from Rs.280 to 267

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103020932830					500	279.75	
200103020935465	100	279.65	13:18:53	13:18:53			
200103020937137	500	280.00	13:18:53	13:18:53			
200103020944086					100	280.55	
200103020948389	500	280.50	13:19:49	13:19:54			
200103020961160					100	277.90	
200103020961358					500	278.50	
200103020963342	260	278.50	13:23:14	13:23:14			
200103020979429	500	278.05	13:27:49	13:27:49			
200103020987307	50	276.20	13:30:10	13:30:10			
200103021000571	200	274.50	13:33:52	13:33:52			
200103020996365					200	274.35	
200103021005619	5,000	274.99	13:35:06	13:35:07			

200103021015912	1,000	274.89	13:37:51	13:37:51		
200103021036928	500	276.00	13:43:32	13:43:32		
200103021035966	500	275.05	13:44:20	13:44:20		
200103021042941	20	275.50	13:45:23	13:45:23		
200103021044099	1,000	275.75	13:45:35	13:45:35		
200103021060951					2,500	273.64
200103021063019					5,000	272.53
200103020747051	20	271.00	13:51:27	13:51:27		
200103020578969	50	271.00	13:51:27	13:51:27		
200103021007512	5,000	271.00	13:51:28	13:51:29		
200103021064782					70,299	270.04
200103021065419	20	270.00	13:51:41	13:51:41		
200103021067738					300	268.55
200103021071400	200	268.95	13:53:01	13:53:01		
200103021075430	100	268.95	13:53:58	13:53:58		

Apart from sales, there were also purchases made by Bama during this tim uniformly spread out throughout the time slot. The latest and only significant Bama of 70,299 shares had no impact whatsoever on the price of the scrip scrip did not change at all. From 13:17:13 to 13:51:33 (before the sale of 7 when the price of the share fell from Rs.282 to Rs.270, Bama was a net bu 6,300 shares. After the sale of 70,299 shares, during this time slot, the price After the purchase of 5,000 shares at 13:51:28, the price of the scrip fell. S purchase of 1,000 shares at 13:45:35, the price of the scrip fell. This clearly was no correlation between the transactions of Bama and the movement in the

vi)**2nd March '01**

SSI

Time: 12:32 to 13:01

Price fell by Rs.71 from Rs.1101 to 1030

	BUY				SELL		
Order	Total	Average	Start	End time	Total qty	Average	S

	Qty	rate	time			rate	t
200103020803796					500	1071.39	1
200103020805447					10000	1070.00	
200103020819153	10	1065.00	12:44:35	12:44:35			
200103020831870					9000	1062.21	
200103020848913	25	1054.00	12:52:40	12:52:40			
200103020852567					5	1048.10	
200103020856801	10	1050.00	12:55:19	12:55:19			
200103020859198	10	1040.00	12:57:50	12:57:50			

Apart from the sales, there were also purchases made by Bama during this tim uniformly spread out throughout the time slot. By the time Bama's first sal place, the price of the scrip had already fallen by Rs.30. This fall can th attributed to Bama. It also shows that the price was already falling before E first sale transaction in this time slot. The sales of Bama did not have any sig the price of the scrip. After Bama sold 10,000 shares at 12:41:18 at the averag after 4 minutes the price of the scrip was about Rs.1065. Similarly, after Bama at 12:47:48 at the average rate of Rs.1062, after almost 8 minutes the price about Rs.1050. The percentage fall comes to 0.93% and 1.13% respe insignificant. This is without taking into account the transactions of other mar the intervening periods. During the period between 12.52 and 12.58, though purchaser, the price of the scrip continued to fall.

vii)**2nd March '01**

SSI

Time: 13:41 to 13:54

Price fell by Rs.28 from Rs.1033 to 1005

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103021070827					10000	1010.62	1
200103021078802	50	1005.00	13:54:48	13:54:48			

200103021079417					5	1006.00

By the time, Bama sold 10,000 shares, the price of the scrip had already falle
Obviously, Bama cannot be held responsible for the fall in the share price. The
declined. Apart from sales, Bama had also purchased shares of this scrip dur
Even if it is assumed (without admitting) that Bama's sale of 10,000 shares c
fall by Rs.5.62, this fall is less than 0.5%, which is totally insignificant. Desp
the price of the scrip rose to Rs.1016 at about 13:57. This shows that Bama'
no impact on the price of the scrip.

viii)**1st March '01**

Wipro

Time: 13:33 to 13:41

Price fell by Rs.15

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103011091685	100	2541.63	13:35:44	13:35:44			
200103011096686					4128	2522.41	
200103010244645	2	2515.00	13:37:29	13:37:29			
200103011101887					5000	2500.60	

Just as in the other cases, apart from sales there were also purchases by Bam
slot, which was uniformly spread out throughout the time slot. Even after
shares in this scrip, the price fell. Significantly, these purchases were of very
100 shares and 2 shares. After the sale of just 2 shares, the price of the sc
Rs.15. This clearly establishes that the price of the scrip was falling due to
and not due to the transactions of Bama. In the period between Bama's first
sale, the price of the scrip had already fallen by Rs.19. This was before even
single sale transaction. This shows that the price of the scrip was already fa
traded price of the scrip is taken at Rs.2500, a fall in price of Rs.15 is onl

totally insignificant. Coupled with the fact that this scrip was extremely liq large volumes, the fall in price by Rs.15 was not at all unusual.

ix)**1st March '01**

Zee Telefilms

Time: 12:53 to 13:56

Price fall by Rs.8.95

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103010953046					500	173.25	1
200103010956501					500	173.15	1
200103010960525	10	173.00	12:55:51	12:55:51			
200103010965739	100	172.95	12:57:20	12:57:20			
200103010970970	1000	172.55	12:58:51	12:58:51			
200103010825864	200	171.50	13:00:31	13:00:31			
200103010686143	10	171.00	13:03:44	13:03:44			
200103010992233	200	170.90	13:05:46	13:05:46			
200103010998502	300	171.00	13:09:43	13:09:43			
200103011011428					34448	170.00	
200103010471763	500	169.00	13:11:56	13:11:56			
200103011013448					500	169.00	
200103011015752	500	169.45	13:12:55	13:12:55			
200103010272796	100	168.60	13:13:08	13:13:08			
200103011022048	100	168.45	13:14:59	13:14:59			
200103011027995	1000	169.20	13:17:04	13:17:04			
200103011031102	50	169.00	13:18:07	13:18:07			
200103011044769					2500	166.00	
200103011050071	200	166.00	13:24:35	13:24:35			
200103011054592					500	166.00	
200103011055411					500	165.75	
200103011062476					200	166.20	
200103011071378					100	167.17	

200103011083849	5000	168.00	13:33:15	13:33:18		
200103011097345	50	167.00	13:37:43	13:37:43		
200103011103164	500	167.50	13:39:39	13:39:39		
200103011108332	200	167.00	13:41:34	13:41:34		
200103011124772	100	167.00	13:48:00	13:48:00		
200103011128094	50	166.00	13:51:47	13:51:47		
200103011136077					2500	166.21
200103010446964	500	165.00	13:53:55	13:53:55		
200103010224307	1000	165.00	13:53:55	13:53:55		
200103011082701	100	165.10	13:53:55	13:53:55		
200103011141482					99000	16.05
200103011116349	500	165.00	13:53:57	13:53:57		
200103011142075					550	165.00
200103011146762	550	165.00	13:55:34	13:55:34		
200103011086577					500	164.64

Apart from sales, there were also purchases made by Bama during this tim uniformly spread out throughout the time slot. The two major sale transactic 99,000 shares did not have any impact at all on the price of the scrip. The s moved after these sales. The price of the scrip fell during the period wl continuous purchaser. Though Bama was a net buyer from 12.53 to 13.10 ar the price of the scrip continued to fall. It is seen that the price of the s irrespective of the nature of the transaction of Bama i.e. whether it was a sa This clearly establishes that the decline in the price of the scrip was due to r and not due to the transactions of Bama.

ix)**23r^{d} February '01**

Zee Telefilms

Time: 12:26 to 12:32

Price fell by Rs.8.35 from Rs.228 to Rs.220

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t

200102230349791	10915	226.20	12:27:44	12:27:47		
200102230140708	10	225.00	12:28:10	12:28:10		
200102230518566	100	225.10	12:28:10	12:28:10		
200102230695006					99000	225.02
200102230682257	60	225.00	12:28:14	12:28:14		
200102230697472	200	223.90	12:28:52	12:28:52		
200102230698033					1000	223.75
200102230700697	200	224.00	12:29:44	12:29:44		
200102230700811	100	224.00	12:29:46	12:29:46		
200102230705467	1000	222.50	12:31:10	12:31:10		
200102230707239	2000	222.90	12:31:39	12:31:39		
200102230708358	200	222.45	12:31:56	12:31:56		

Neither of the two sale transactions had any impact whatsoever on the price after the sale of 99,000 shares, the price of the scrip remained unchanged. In the scrip fell steadily during the period when Bama was purchasing the shares the transactions of Bama had no impact on the price. Significantly, after Bama purchase of 10,915 shares, the price of the scrip fell marginally by Rs.120. that Bama's transactions did not affect the price of the scrip and that the p market sentiments. During the period that Bama traded in the shares of this s by only Rs.3.75 out of the fall of Rs.8.35 attributed by SEBI during this time p Bama sold shares of this scrip, the price had already fallen. Apart from purchased shares during this time slot.

2nd March '01

Zee Telefilms

Time: 12:00 to 12:22

Price fell by Rs.11.65 from Rs.150 to Rs.138

	BUY				SELL		
Order	Total Qty	Average rate	Start time	End time	Total qty	Average rate	S t
200103020646954	100	149.80	12:01:07	12:01:07			

200103020651953	200	149.75	12:03:21	12:03:21		
200103020660118					25000	148.80
200103020686361					1000	145.87
200103020701918					40538	145.16
200103020702181					361	144.95
200103020704266	100000	143.75	12:16:59	12:16:59		
200103020707935					87680	143.00
200103020686171					10000	142.59
200103020709997					5000	142.88
200103020696148	1000	140.75	12:19:21	12:19:21		
200103020705077	100	141.00	12:19:21	12:19:21		
200103020711086	5000	139.90	12:19:24	12:19:29		
200103020713343	50	140.00	12:19:24	12:19:25		
200103020714384					35599	140.05
200103020714799					18204	139.90

Apart from sales, there were also purchases made by Bama during thi transactions were uniformly spread out throughout the time slot. The p continuously fell irrespective of whether Bama purchased or sold shares. purchased shares, the price continued to fall. In fact, despite Bama's relative transaction of 1,00,000 shares, the price of the scrip fell. The sales of Bama h on the price of the scrip. After the sale of 40,538 shares, the price fell Similarly, after the sale of 87,680 shares, the price fell by only Rs.0.41 and 35,599 shares, the price fell by only Rs.0.15. Significantly , after the sale of price rose by Rs.0.29. The above facts clearly shows that the transactions of Ba the price of the scrip and that the price was ruled by market sentiments. The the transactions were executed indicate the tremendous depth and liquidity of the trades were between willing buyers and sellers at price discovered through trading mechanism.

Concerted action by BAMA and BSPL

Both, the Enquiry Officer and the Respondent have come to the conclusion tha were acting in concert with each other to artificially depress the share price Reliance on 1st March 2001 and of Satyam Computers on 2nd March 2001. Th

been justified ostensibly on the basis of the following sale transactions of Bam

Date	Scrip	Bama	BSPL
01.03.01	Infosys	15000	2490
01.03.01	Reliance	85917	2,09,0(
02.03.01	Satyam Computers	4,79,961	17,300

As far as Infosys and Reliance are concerned, the aforesaid finding is ex contrary to the other findings of the Enquiry Officer and the Respondent. I officer and the Respondent have come to the conclusion that the tradi Appellants in Infosys and Reliance on 1st and 2nd March 2001 did not sh pattern that could be said to have hammered down the prices of these scrips. I the transactions of the Appellants in the scrips of Infosys and Reliance on 1 2001 could not be said to have hammered down the prices of these scrips, the no question of the Appellants including Bama and BSPL acting in concert to a the prices of these scrips on 1st and 2nd March 2001. The finding of the Enqui Respondent in this regard is therefore not only unsustainable but is perverse. Reliance is concerned, the price of the scrip rose from Rs.415 to Rs.440 on 1st price of this scrip therefore did not fall on 1st March 2001. Hence there w holding the Appellants guilty of depressing the price of the shares of Relia 2001, artificially or otherwise. Though this fact was noted by the Re conveniently ignored and overlooked. It is apparent that SEBI acted with a pr with a view to find the Appellants guilty. Even otherwise, it is clear that the E the Respondent have reached the conclusion of guilt without making any atte determine whether in fact the transactions of the Appellants had any impact o scrips. Both of them have reached their conclusions merely on the basis of Bama and BSPL had net sales in respect of these scrips on the same day. I submissions of the net sales methodology and the impact price are reiterated. I both the Enquiry Officer and the Respondent have ignored relevant facts a arriving at their respective conclusions of guilt. They have based their concl extraneous considerations.

Both, the Enquiry Officer and the Respondent have not bothered to analyse t of either Bama or BSPL on 1st and 2nd March 2001 to ascertain whether the concert. Both, the Enquiry Officer and the Respondent have conveniently ign

both Bama and BSPL had also purchased shares of these scrips on the afore case of Satyam Computers, they failed to appreciate that the net sales of BSP and therefore insignificant for the purpose of concluding that BSPL was acti Bama. Once again, it is submitted that the Enquiry Officer and the Respon relevant facts and have based their conclusions on baseless and unwarra surmises and conjectures.

The Respondent has simply copied the findings of the Enquiry Officer and rep in the impugned order. This shows a total non-application of mind on the par SEBI.

Dealings on behalf of Shankar Sharma

Significantly, neither the EO nor the Respondent has found that BEB was awa the trades on behalf of Shankar Sharma were synchronized. In fact both h circumstances surrounding the transactions should have aroused `the suspicio fact implies that both the EO and the Chairman have accepted that BEB had r the trades were synchronized. Unless the client informs the broker that a synchronized, there is no way for the broker to know that the trade is sync because in the screen based trading system, the identity of the counterpa revealed. In fact, his identity is never revealed. On SEBI's own showing in th and the Order of the Respondent , knowledge is an integral constituent of SEBI had any doubt as to whether Shri Nirmal Bang had knowledge of these t to have questioned him in that regard. However, SEBI did not do so and no Nirmal Bang was recorded by SEBI. So also, SEBI ought to have carried out i Palombe to ascertain who executed the trades and whether such a person / s w were synchronized and whether BEB was informed / aware of the same. Howe do this. These facts clearly establish that SEBI was convinced that Shri consequently BEB had no knowledge of these trades. In any event an adverse drawn against SEBI for failing to obtain appropriate statements from Shri Ni as Palombe. In view of the above, it must be presumed in favour of BE knowledge of the impugned trades on behalf of Shankar Sharma.

Even if it is assumed without admitting that the trades were synchronized as c by SEBI, BEB cannot be held guilty of having violated the FUTP Regulatio BSE Bye-laws since BEB was not aware that the transactions were s knowledge is an essential ingredient of the offences provided for in the FU well as the said BSE Bye-laws quoted by SEBI.

SEBI has found BEB guilty of violating Regulations 4 (c) and 4(d) of the FU executing the purportedly synchronized trades. Even if it is assumed without trades were synchronized, the trades do not violate the aforesaid Regulatio inter alia, for the reasons that:

Regulation 4(c) prohibits acts and which result in reflection of prices of s transactions that are not genuine trade transactions. It is not the case purportedly synchronized trades were not at market prices or that these trades the market prices of the said scrips. This being so, it is not the case of SE established by SEBI that these trades resulted in a reflection of the prices which are not related to market prices. In view of the aforesaid these trad Regulation 4(c). Regulation 4(d) prohibits transactions in securities not i transfer of beneficial ownership but intended to operate only as a device to cause fluctuation in the market prices of securities. Significantly it is not the c there any finding that these purportedly synchronized trades were intende device to depress or cause fluctuation in the market price of the said scrips SEBI is only that the trades were synchronized and were not genuine and we effect transfer of beneficial ownership. It is submitted that this is not enough t of violating Regulation 4(d) and in the absence of SEBI establishing tha intended to operate only as a device to depress the market price of the scrip these trades are in violation of Regulation 4(d) cannot be sustained.

Bye-law 357(iii) of the BSE Bye-laws provides that if a broker purchases or assist or knowingly is a party to any purchase or sale of securities for the pu the equilibrium of the market or bringing about a condition of demoralisa prices will not fairly reflect the market value, it will amount to prejudicial bus case of SEBI that these trades upset the equilibrium of the market or brought of demoralisation in which the prices did not fairly reflect the market val established this. In view of this Bye-law 357(iii) has not been violated by B from the fact that BEB had no knowledge that the sales were purportedly synch 357(ii) of the BSE bye-laws defines fictitious dealings and transactions in pu securities the execution of which would involve no change of ownership or t orders for the purchase or sale of securities **with the knowledge of the transactions.** It is clear that knowledge is an essential ingredient of the offenc BEB did not have any knowledge of the purportedly synchronized trades. C can not be said to have violated the said Bye-law 357(ii).

The EO and the Respondent have overlooked the fact that these trades were screen based system, the price discovery is achieved by a matching of "best bu

orders. For instance, if a client wishes to purchase X quantity of shares at a lim will be executed at the market price or the limit price, which is lower. The vice for a seller. Further, with the variety of safeguards in place such as circuit broker-wise limits etc. in a screen based trading system, a buy or sell order of u or at rates exceeding the circuit filter limits cannot even be booked on the scre if placed, will be rejected outright. Neither the EO nor the Respondent have m examine and place on record material, which would indicate that the alle transactions were at prices unrelated to the market. The finding of the EO an that the quantum of the transactions i.e Rs.50 crores per month, should suspicion of BEB is also baseless. Each of the scrips listed by the Enquiry (trading volumes and all trades have been carried out on the screen based tradin transparent manner at the prevailing market price. The total volume of trans Bang group at that time was about Rs.90,000 crores per annum. Henc transactions on behalf of Shankar Sharma w as too insignificant to arouse susp

Relationship with Palombe Securities And Finance Ltd.

The EO found that the trading terminals of NBS, BEB and BSPL were install Palombe. He further found that the activities of Palombe were analogous to sub-broker in the securities market. On this basis, he concluded that BEB through an unregistered sub-broker (Palombe is not a registered sub-broker) lack of due diligence, exercise of due skill and care expected of a registered Code of Conduct applicable to broker (page 319 of volume II). The Responde the findings of the EO verbatim in his order. It is significant to note that t against the Appellants is one of "lack of due diligence, exercise of due skill an a registered broker as per the Code of Conduct applicable to brokers". It is sub neither the report of the EO nor the order of the Respondent identity the rele Rule of the Code of Conduct applicable to brokers, which is alleged to ha Secondly, assuming while denying that Palombe was acting as a sub-broke unregistered sub-broker merely entails a penalty of Rs.25,000 under the Stoc laws. If such an activity were a prohibited /banned activity, the imposition of a would not have been provided for in the Stock Exchange Bye-laws. Thirdly, i as 22nd October, 2001 that SEBI vide its policy circular advised all Stock E trading Terminal only at the members Registered Office, Branch Office an Sub-broker's Offices. The said circular goes to state that:

"Trading terminals granted earlier in places other than mentioned above sho immediately."

The said circular further goes on to advise the Stock Exchanges to amer suitably to take action against broker who mis-utilise or permit misutilisatio terminal for unregistered sub-broking activities and to amend its bye-laws to from dealing with sub-brokers, who are not registered with SEBI. This circul that prior to the issuance of the same, there was no rule or regulation barring t the terminal installed at the premises of Palombe was prior to 22nd Oc Appellants cannot be accused of lack of due diligence, skill or care. In any installation of trading terminal in the premises of an unregistered sub-broker d result in evidence of lack of due diligence, skill or care on the part of brok instant case, the Appellants cannot be said to have caused any prejudice to the in respect of the trades executed by Palombe on behalf of its own clients, it wa the Appellant who had issued the contract notes.

Another charge made by the EO and echoed by the Respondent is that it was Appellants that Palombe was a person whom brokerage could be shared in ter to Bye-Law 218(a) or that Palombe was not a disqualified person for sharing b of the proviso to Bye-Law 218(a). This charge is ex facie baseless and misco Bye-Law 218 it is abundantly clear that the Appellants were entitled to shar Palombe, even if Palombe was purportedly a sub-broker. For the sake of c Laws 218(a) and (b) are reproduced below:

> A member may share brokerage with remisier, authorized clerk or own exclusive employment. He may similarly share brokerage with introducing a constituent provided such person:
>
> a. Is not one with whom members are forbidden to do business under th and regulations of the exchange.
>
> b. Is not a remisier, authorized clerk or employee in the employment of
>
> c. Does not advertise in public press or in any other manner that he is ac
>
> d. Does not act as a broker within a distance of fifty miles of the city of
>
> e. Does not pass contracts in his own name or issue price lists or pamph business in securities if working within a distance of fifty miles of the
>
> f. Does not issue price list or pamphlets or circulars in respect of busine other than its own constituents if acting as broker beyond the distance

the city of Bombay.

From Bye-Law 218(a), it is apparent that a broker may share brokerage introducing a constituent pro vided such person is not disqualified under Cla Bye-Law 218(a). Even if it is assumed without admitting that Palombe was broker, a sub-broker is not a person disqualified under Clauses (i)to (vi) of Accordingly the Appellants were entitled to share brokerage with Palombe. C EO and the Respondent have alleged that it was not shown by the Appellant not a disqualified person for sharing brokerage in terms of the proviso to Bye submitted that it is not for the Appellants to show that Palombe is not a disqu sharing brokerage but it is for SEBI to show that Palombe is a disqualified p brokerage under one or more of clauses (i)to (vi) of Bye-Law 218(a). he b clearly on SEBI. It is obvious that, being unable to discharge this onus, SEB the onus into the Appellants. The finding of the EO and the Respondent in thi perverse.

Other Charges

The Enquiry Officer and the Respondent have concluded that the Appellants Code of Conduct prescribed In Schedule II of SEBI (Stock Brokers Regulations, 1992. In this regard the following are the specific findings that (a dealt with 2 and 1 unregistered sub-brokers respectively. (b) BEB dealt synchronized manner. (c) NBS & BEB violated the circular dated 7th March short sales, to the extent of Rs.2.31 crores and Rs.3.05 crores respectively. have client registration forms in respect of five clients and had not issued confirmation notes in respect of one of its clients viz: M/s. Indore Composite P

As far as (b) is concerned, it has already been dealt with above and shown t baseless and erroneous. As far as (a), (c) and (d) are concerned, the charges / f trivial a nature to warrant any punishment. With specific reference to (a), it i NBS had 56 registered sub-broker and Bama had 35 registered sub-brokers were not aware that these three persons were acting as sub-brokers and in fa had executed client registration forms. Moreover, there was nothing to prever from registering these 3 parties as their sub-brokers – this would have bee asking. Also, there was nothing to gain for NBS and Bama by not register brokers. With specific reference to (c), first and foremost the majority of sh sub-brokers and only a small percentage were by direct clients of NBS and E that a broker cannot supervise every transaction of his sub-broker. Secondly

volume of the trades are insignificant as compared to the overall volumes of N the extent of compliance has been more than 95%. Thirdly, the contravent clients and not on the proprietary account of NBS and BEB. Finally, it is s short sales were not attributable to any willful default or neglect on the part but were purely technical and unintentional. With specific reference to (d), tha clients, it was found that client registration forms were not available only in r of BSPL and BSPL had not issued confirmation notes in the case of only one BSPL has had no dispute with any of its aforesaid clients nor was their any def

In view of the above, even assuming without admitting that the charges / find penalty of cancellation of registration is certainly not commensurate contraventions. Even the Enquiry Officer has recommended that a lenient respect of the absence of client registration forms

Certain statements made by SEBI in its Written submissions were also Appellants. On the Respondents statement that "Two of the Bang entities had breach of the SEBI circular dated 22nd October 2001 by having their tra Palombe's office and allowing Palombe to execute trades on the said t submitted that "This is not only a new argument, but also absurd, and total r mind. The Appellants were prohibited from trading with effect from 19th April dated 19th April 2001 passed by the Chairmen, SEBI under section 11B of these circumstances the Respondent is now accusing the Appellants of comm SEBI circular issued more than five months thereafter, i.e. 22.10.2001" The Written Submission that "all the time slots, which are identified and given i notice are time slots where net sales of Bama in the time slot was preceded by this allegation is false and represents a new element of a charge, never levelle Respondent has also not produced any evidence.

Referring to the Respondent's submission with reference to time slot (ref. 23.2.2000) that "This is typographical error in Enquiry Report and Chairma timings of the time slot, the time slot is 12.26 to 12.35 and not 12.26 to 12.3 submitted that the Respondent is now acknowledging errors in the impugned the Respondent has clearly acknowledged non application of mind. The Respc changing the purchase and sale quantities to press the charge.

With reference to the Written Submission on specific instances listed i Appellants have submitted that the Respondent suggests that the Appellants picked up certain scrips and analysed the trading pattern of Bama only in thos

mischievous and malafide suggestion since it is the Respondent who had pick to make allegations of artificial price depression against Bama. It was in charges that the Appellants submitted an exhaustive explanation and analysis clearly establishing that their transactions did not artificially depress the price apparent that SEBI is now relying on the findings of the Enquiry Officer an Chairman, SEBI. This is obviously because the Respondent has now rea impugned order, the Chairman, SEBI has not found Bama guilty of artificia prices of the scrips and therefore the Respondent is attempting to impose the i making general and wide ranging allegations.

The authorities cited by the learned Senior counsel:

i. Bareilly Electric Supply co. Ltd. V Workmen & Ors. AIR 1972 SC 3 question of the requirement of the Respondent producing evidence to charges – when it is claimed that Evidence Act is not applicable, that that the principles of natural justice are not to be complied with.

ii. Videocon International Vs. SEBI (2002)4 CLJ 402(SAT)

In the absence of reasonably good evidence to support, charge of ma which is a very serious charge, can not stick on the Appellant Co surmises and conjunctures.

Regulation 4(a) of the FUTP Regulation attracts only if the transactio induce any other person to sell or purchase scuriti3es. To attra intention of the party is relevant – and element of mensrea is also inv

iii. Hansraj Guipta & Ors. V Dehra Dun – Mussoorie Electric Tramway 1940 Privy Council 98)

Party alleging fraud must prove it by cogent evidence.

The party alleging fraud is bound to establish it by cogent evidence not be accept as proof. Unless therefore the proved circumstances with the hypothesis of the person charged with fraud having acted i can not be accepted as affording sufficient proof of fraud.

iv. Gulabdchand V Kudilal (AIR 1966 SC 1734)

The Indian Evidence Act applies the same standard of proof in civil c

It makes no difference between cases in which charges of a frauc character are made and cases in which such charges are not made. Bu that the courts will not, while striking the balance of probability presumption of honesty or innocence or the nature of the crime or frai

v. Varanasaya Sanskrit Vishwa Vidyalaya a& Anr. V Dr. Rajkishore Tr

Concept of acting in concert - using strong language not sufficient. I is not enough to state in general terms that there was collusio particulars. General allegations are insufficient even to amount to an or which only court ought to take notice, however strong the langua are couched may be, and the same applies to undue influence and coe

vi. A.N. Parasuraman Etc. State of Tamil Nadu (AIR 1990) SC 40

(cited in the context of interpretation of regulations 25 and 26 Regulations)

It is well established hat determination of legislative policy and form conduct are essential legislative functions which can not be de permissible is to leave to the delegated authority the task of implemer the Act, after the legislature lays down adequate guidelines for the e uncanalised, unlimited and arbitrary power can not be exercised by th

vii. State of Kerala V M. K. Krishnan Nair (AIR 1978 SC 747)

There is ample authority for the proposition that where two construc that one which leads to unconstitutionality must be avoided and the to take provision constitutional should be adopted, even if strainir necessary.

viii. British Airways Plc V Union of India (AIR 2002 SC 391)

(on harmonious construction)

It is a cardinal principle of construction of a statute that effort sh construing the different provisions so that each provision will have i event of any conflict, a harmonious construction should be given. principle of harmonious construction is that effect shall be given to so as to make it workable. A particular provision can not be picked u

to defeat another provision made in that behalf under the statute.

ix. Ranjit Thakur V Union of India (AIR 1987 SC 2386)

(on quantum of penalty and bias)

The sentence has to suit the offence and the offender. It should no unduly harsh. It should not be so disproportionate to the offence conscience and amount in itself to conclusive evidence of bias. proportionality, as part of the concept of judicial review would ensu aspect which is, otherwise, within the exclusive province of Cou decision of the Court even as to sentence is an outrageous defiance sentence would not be immune from correction. Irrationality a recognized ground of judicial review.

The penalty imposed must be commensurate with the gravity of th that any penalty disproportionate to the gravity of the misconduct wo Art. 14 of the Constitution. The point to note and emphasise is tha legal limits.

x. Atul Kanodia V SEBI ((2002) 46 CLA 251 (Sat)

(on the requirement of adhering to 30 days period in terms of reg passing orders)

Regulation 29(3) of the Stock Broker Regulations has specifically pu pass the order of suspension or cancellation. It is a mandatory re SEBI cannot ignore but adhere to. Taking into consideration th mandatory provisions of regulation 29(3) and the fact that the order w the prescribed time limit of 30 days SEBI's order was set aside.

Shri Rafiq Dada learned Senior Counsel appearing for SEBI submitted that limbs of the charges against the Appellants are that of (i) market manipulation trading (iii) short sales and (iv)transactions with unregistered sub brokers.

Shri Dada explained the circumstances leading to the issuance of the impugn developments preceding the same. Learned Senior Counsel referred to the passed by SEBI on 18.4.2001. He submitted that the Appellants in the cont interim order had submitted written submissions, describing them as "the Ban is no denial that the Appellants are Nirmal Bang companies. He referred to p

written submissions and stated that the Appellants have extracted therein the cl were required to answer. He referred to the first show cause notice dated 4.6.2(that the facts stated therein were not contested by the Appellants, that only th is in dispute. He also referred to the 2nd show cause notice dated 25.1.2002 furnished therein in support of the charge of short sales, synchronised trading that the Appellant had indulged in short sales even after banning the short sal referred to the data and submitted that there is evidence of synchronised transa is incredible, that the transactions were effected not once but several tin remarkable coincidence. He submitted that the scope of the order is confine those two show cause notices. Shri Dada also stated that show cause noti Appellants are common, the charges are with reference to the manipulation dealing in common scrips, during the common period, that technically th separate legal entities but in reality they are one and the same and they acte Respondent made the following further submissions:

The main points in the Show Cause Notice, Enquiry Report and the

Chairman's Order can broadly dealt with under the following captions:

i. Synchronised Deals with Shri Shankar Sharma which were fictitious in na

ii. Relationship between Bang entities and Palombe Securities and Finance L

iii. Short sales by NBS & BEB after the ban on short sales.

iv. Manipulative Trading by each of the Bang Entities.

Synchronised Deals with Shri Shankar Sharma which were fictitious in na

BEB has executed transactions, which are dubious in nature and made with a v the market and avoid detection and to vitiate the transparency and fairness of t market. These transactions were executed on behalf of Shankar Sharma, a Global Stock Broking Private Ltd. (FGSB), member BSE and NSE and w FGSB acting on behalf of its proprietary sub-broker Vriddhi Confinves (Vriddhi). Shri Shankar Sharma is the Director of both the firms FGSB and also client of BEB. Thus BEB and FGSB were acting in concert and had ind trades. The approximate value of such trades executed through the member 20-02-2001 to 02-03-2001 is in excess of Rs.50 crores. Further instances transactions for the month of 1st January to 19th February, 2001 and 5th Mar

2001 were brought out in Show Cause Notice dated January 25, 2002. The tot transaction during the period January to March of 2001 was Rs.200 crores. T and price for these orders had been synchronised by the counter party br circular trades, which were highly irregular in nature and violative of a transparent norms of trading in securities. BEB and FGSB were artificially which did not involve change of ownership and thereby creating false vol upsetting the market equilibrium. It was contended that there are no means of any entity controlled by the client is simultaneously entering any contra order the online trading system, confidentiality of counter parties is ensured and it the broker to know who the counter party broker is. Enquiry Officer has fo much of a coincidence over too long a period in too many transactions where the transaction (BEB on behalf of Shri Shankar Sharma and FGSB on behal entered buy and sell orders for the same quantity of shares almost simultar amount of such transaction during the period January to March of 2001 was most of the instances, the gap between the order placement and its matching the complete order quantities got matched. In view of the close proximity punched by both the parties in the system, these transactions between BEB a termed as synchronized transactions. Both the parties to the transactions hac sell orders for the same quantity of shares almost simultaneously. There is no these shares since purchase and sale quantity is exactly the same and by the sa of the above it is clear that FGSB and BEB were acting in concert with each into in the synchronised deals between the period 1st January, 2001 and aggregating to approximately Rs.200 crores which did not involve change thereby created a false volumes resulting in upsetting the market equilibrium. are per se manipulative and are regarded as such not only in India but world ov

Relationship between Bang Entities and Palombe.

Investigations reveal that Bang Entities have a close nexus with a non-des entity Palombe. Trading terminals of Bang Entities are installed at the of Palombe has been used by various established broking entities to put their trac circumvent trading limits and avoid detection. Palombe ostensibly introduced trading with Bang entities, which include Shankar Sharma of FGSB, who introduced by CSL Securities Consortium (hereinafter referred to as "**CSL**" through BEB on the introduction of Palombe even though its own DSE terminals are installed at the office of Palombe. The arrangement between Shankar Sharma by way of passing of brokerage to Palombe and synchronisat is indicative of a close nexus between them and their acting in concert. It is

for broking concerns to route their proprietary trades through other broke brokerages. The instant arrangement appears even more intriguing since th been passed on an shared between different entities. This complex arrangeme of a collusive nexus to circumvent and avoid detection of concentration market practices. Whereas Palombe has described the payment of 50% bro business done by such clients as "introductory fees", Shankar Sharma ha "Remissier charges". The true nature of sharing of brokerage is being disguis names but the fact remains that the payments have been made to Palomb responsibility in the trading of clients introduced by them. Bang entities m payment of approximately Rs.1.4 crores during 2000-2001 @ 50% brokera done by various clients introduced by Palombe. This translates into a business Rs.2800/- crores by Bang Entities for clients introduced by Palombe. This important percentage.

The trading terminals of BEB, "BSL" and "NBS" (i.e. 3 out of the 4 Bang Ent at the office of Palombe. Its main business is jobbing and investment on introducing clients to other brokers and sub brokers and earning sub brokers does jobbing and investments on NSE through Bama and BSL and on the BSE NBS. It also trades through Consortium and on the DSE through CSL. Two of had committed a clear breach of the SEBI circular dated 22nd October, 200 trading terminals in Palombe's office and allowing Palombe to execute tr terminals.

Palombe has introduced various clients such as Shankar Sharma, CSL and othe front entities for the Ketan Parekh Group to the Bang Entities. For the trad clients Palombe received sub brokerage fees from Bang entities. In the case Shankar Sharma through Bang Entities during the period 1st April 200 to Palombe passed on part of sub brokerage received from BEB to CSL since th Shankar Sharma to Palombe. The introductory brokerage accrued to Palom trades done by Shankar Sharma through BEB was approximately 30 lakhs f 2001 and therefore their trades routed by Shankar Sharma through BEB duri approximately Rs.600 crore.

The placement of terminals belonging to the Bang entities at a location outside office i.e. Palombe's office and permitting Palombe to carry on business o definitely goes beyond mere sharing of commission for introducing clients. F clear that the relationship of Bang Entities with Palombe definitely goes beyon commission for introducing clients. The activities of Palombe may be consid

to the activity of a sub broker in the securities market but were much more th
the Bang Entities had dealt with through unregistered sub broker which amou
diligence, exercise of due skill and care expected of a registered broker as
conduct applicable to the brokers.

Short Sales by NBS & BEB after the ban on short sales.

NBS and BEB indulged in short sales between 8th March, 2001 and 31st M
extent of Rs.2.31 crores and Rs.3.05 crores respectively in breach of SI
SMD/RPD/Policy/CIR–13/2001 dated 7th March 2001. Instances of intra day s
short sales of NBS and BEB can be seen from the Chartered Accountant
September 2001 which is based on documentary evidences such as Cumulativ
wise client wise position, Demat Holding Statements etc. submitted by ther
inspection conducted by the BSE. Copy of the report filed in the proceedings w

The Appellants contention that the client was permitted to sell only when
purchase position with any other exchange is not correct in view of the clear
Chartered Accountant, that the transaction in respect of corresponding purchas
statement, purchase position on other exchange have been excluded. The short
the Chartered Accountant are in breach of SEBI Circular. It is found that NBS
Circular dated 7th March 2001 on short sales to the extent of Rs.2.31 crores
respectively

Manipulative trading by each of the Bang Entities

Trading by Bama Securities Ltd.

Bama has indulged in large trading transactions and has created significant
scrips that either form part of stock indices or were momentum scrips inclu
Global Tele, HFCL, Infosys and Satyam with a view to depress artificially t
securities between mid February and mid March in a concerted manner. M
were on proprietary account and on behalf of Bang Securities. The Enquiry Of
the details of the trading pattern of Bama in the individual scrips and has come
that the trading in the scrip of Global Tele in Settlement No.8, HFCL in
Satyam in settlement no 11 are significant. Bama has built significant sale p
scrips on specific dated i.e. February 23, March 1st and 2nd of 2001. Bama to
essentially on its own account and on behalf of its proprietary sub brok

manipulative trading with a view to hammer the scrip prices.

Enquiry Officer found that Bama was a consistent net seller, and had a previously built purchase position and created fresh sales position especial Global Tele, HFCL, Satyam, Silverline, Zee Telefilms and Wipro on the cruc 23rd, 28th February, 1st and 2nd March of 2001. Enquiry Officer has come to t Bama have contributed to the artificial depression of prices of these scrips d period.

Scrip	22-Feb	23-Feb		28-Feb	1st-Mar		
	Closing Position	Net for the day	Closing Position	Closing Position	Net for the day	Closing Position	Net the
Global Tele	(10577)	(152578)	(163155)	36939	(78324)	(41385)	(58
HFCL	50480	(16781)	33699	(27086)	(807)	(27893)	435
Satyam	(194626)	236880	42254	306214	(477834)	(171620)	(66
Silverline	(41920)	(21100)	(63020)	(144930)	5332	(139598)	548
Wipro	855	1558	2413	(55)	(15013)	(15068)	(42
Zee	164460	(137266)	27194	(64568)	(52753)	(117316)	178

The table given in the Show Cause Notice dated September 10, 2001 co pertaining to purchases, sales made by Bama on the specific dates. The above from the said tables. The Enquiry Officer and the Respondent have consider sales, opening and closing position of Bama on the specific dates. From the tab seen that Bama was net seller in Global Tele on all the days i.e. on 23rd Feb March 2001. Regarding the scrip of HFCL, Satyam, Wipro and Zee, Bama had of 3 days. The impugned order clearly establishes that the net sales of the Ba Mid February and mid March when compared with the net at the exchange wa contended that basis of net sales taken by Enquiry Officer and Chairman is erroneous. When there is substantial market fall it is more logical to examine particular period (settlement/day/time slot) to understand the trading behavi methodology gives the trading behaviour of the member during the (settlement/day/time slot). The Enquiry Officer in the Enquiry Report conclusion that such sales had resulted in artificially depressing the prices of th

Sales in Concert with Bang Securities

Bama has built up position in several scrips in concert with BSPL to mani prices. Net sales position in Global Tele. HFCL, Infosys, Reliance, Satyam Wipro, Zee Tele, HCL Tech, DSQ Software, Aptech, etc. were taken by the 2nd March, on own account and for Bang Securities. It may be noted that BSI of NSB and BEB. Enquiry officer has found that to the extent of the tradin Reliance on 1st March and Satyam Computers on 2nd March, BSPL and Bam acting in concert with each other to artificially depress the share price. The s Report (Page 92) referred by the Appellant pertains to analysis of trading pa certain scrips including Infosys, Satyam, etc. for the date 22nd, 23rd, 28th Feb March, 2001. The finding of Enquiry Officer is specific to trading pattern of I page no 103 of Enquiry Report the Enquiry Officer has analysed the trading Bama and BSPL on 1st and 2nd March of 2001 and have come to conclusic Bama Securities were acting with each other artificially depress the share price

Sales in Time Slots

During mid February to mid March 2001 when the index movements of showed excessive volatility there were apprehensive of possible attempts by distort the true price discovery and manipulate the securities market. It was se sudden and abrupt intra-day price movement in the scrips including ind momentum scrips. The time slots were identified when the price of the sc sudden fall and the trading pattern of the members during the time was analys member(s) responsible for the fall. The analysis includes their sales, purchase slot and their net position prior to the time slot i.e. whether member has alread scrip. It may be noted the time slots identified and given in the Show Cause where net sales of Bama in the time slot was preceded by short sale. The sale in Bama had contributed to the decline in the share prices. Enquiry Officer has ob had sales, including short sales in the specified time slots as given in the sl taking into account the quantum of shares sold, the fall in prices of the share slots, the percentage of members sales to the market and the duration of the concluded that the following are significant transactions in support of the member had sales including short sales during specific time bands and caused by these sales.

Scrip	Date	Time	Time To	Minutes	Sales	%

		From				mar
Global Tele	23-2-01	15:04	15.14	0.10	85655	11.6
Global Tele	2-3-01	1233	12.41	0.08	49315	9.74
Satyam	1-3-01	14.13	14.33	0.20	155744	5.01
Satyam	2-3-01	10.57	11.05	0.08	62714	3.97
Satyam	2-3-01	13.17	13.53	0.36	63979	2.56
SSI	2-3-01	13.41	13.54	0.13	9955	14.7
SSI	2-3-01	12.32	13.01	0.29	19450	11.1
WIPRO	1-3-01	13.33	13.41	0.08	9026	15.4
Zee Tele	23-2-01	12.26	12.32	0.09	76279	2.33
Zee Tele	1-3-01	12.53	13.56	1.03	129478	6.52
Zee Tele	2-3-01	12.00	12.22	0.22	116932	7.04

Enquiry Officer has observed that the purchases in some other counters in t relevant as the issue being examined is whether the member was selling in t during the specified time slot when the prices of these scrips had fallen. Furth whether such purchases made during the time slot when the price had fallen the short sales, in which case, it would be taking advantage of the fall in price down the price earlier. It is not correct to say that there is deliberate attem information regarding purchases of Bama during the time slot. The purchases a during the time slot were considered to arrive at net sales figure. The purchases made during the time slot was available with appellant and the same his submissions. In all the time slots, which are given in Show Cause Notic sold before it has pressed further sales in the time slot. The information re sellers, their sales and purchases during the time slots during which Bama wa caused a fall in price of the scrips is irrelevant. The sales by other major selle period has been separately investigated by SEBI. The investigation was conc the impact of trading pattern of Bang Entities on the prices of the shares and given in Show Cause Notice is relevant only to Bang entities.

Specific instances listed in the Enquiry Report and Chairman Order with selected time slots were dealt with that:

(i) Global Telesystems – 23rd February

Scrip	Date	Time band	Short Sell (Qty)	% of short sale to	Diff in op-cl pri

				market Qty)	
Global tele	23/2/01	15:04-15:14	85655	11:68	(18.65)

The show cause notice has given the net position during the time band, which after considering both purchases and sales made by the member during the re Bama has purchased 11865 shares and sold 97520 shares during the time slot.

The Appellant has claimed that the purchases were uniformly spread out dur but it can be seen from the data given in the Appellant's submission that quar and sales were different.

The Appellant has argued that before the first sale transaction of Bama, the pr by Rs. 7/-. In this regard it is to be noted that the Appellant has not consider price and had merely taken average price for the sale transaction of 6521 sha average price the Appellant has concluded that price of the scrip has fallen b first sale transaction, that during the time slot Bama has sold 97520 shares wh factor.

The Appellant has argued that between the period from 15:08:39 to 15:13 continuous purchaser. During the said time period Bama has merely purcha Whereas, just before and after the aforesaid time band Bama has sold 50000 and 20000 shares (15:14:00) respectively.

The Appellant has argued that after every sale transaction, the price of the remained same. This interpretation of the Appellant is not correct. The data giv to his transaction only and merely shows that his next trade (purchase) was exe which was after 15 seconds.

The Appellant has argued that order of 50000 shares and 20000 shares that tr and 8 seconds respectively is indicated of the depth and liquidity of the scr should consider change in price which resulted in execution of 50000 shares t of his trades. The next trade of Bama was purchases of 1000 shares at Rs.442 below then the average rate at which trade of 50000 shares were executive. T the correlation between sale by Bama and the movement in share prices.

(ii) Global Telesystems – 2nd March

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the o cl price

Global tele	12:33-12:41	49315	9.74	(12.90)

The Appellant purchased 700 shares and sold 50015 shares during the time sl price dropped by Rs.12.90.

The Appellant has argued that the price of the scrip has already fallen by ab Bama sold 50000 shares. The Appellant has further argued after the sale of price almost remained same. In the four minutes of the sale the price has Rs.2.39/- This interpretation of the Appellant that after the sale of 50,000 sha The data presented by the Appellant merely shows that his subsequent Rs.318.00 at 12:41:27.

The Appellant argued that sale and purchase were uniformly spread out thro slot, that during the time slot the appellant had purchased 700 shares and had s This shows that quantum of sales and purchases in the time slot is not uniform are far in excess of the purchases.

Satyam Computers – 1st March, 2001

Scrip	Time band	Short Sell (Qty)	% of short sale to market sell	Diff in the op-cl during the band
Satyamcomp	14:13-14:33	155744	5.01	(17.65)

The Appellant has argued that after one of the largest sale transactions of 77 was no change at all in the price of the scrip.

In this regard it was submitted by the Respondent that the said sale transaction took placed at 14:28:47 hours at Rs. 325.02. The order number for t 200103011304713. The order number of subsequent trade of 500 shares was 2 From the order number it can be concluded that this purchase order was placed sale order for 77961 shares was placed. Subsequent order after the sale order which resulted in purchase of 25 shares at Rs.323.00 was placed on 14:29:13 analysis clearly shows that the sale transactions resulted in fall in price.

The Appellant has argued that after the sale transactions of 96006 shares there the price of the scrip. This interpretation of data by the Appellant is not corre between the end of execution of the relevant trade (14:31:59 hours) and the en is just over 1 minute. During this time period the Appellant can themselves

price has dropped to Rs.315. This shows that there was a price drop after transaction.

The Appellant has argued that during the periods when the price of the sc largest fall of Rs.4 Bama was a continuous purchasers, that the Appellant has quantum of fall without giving the time period he is referring to and is an basis.

The Appellant has argued that when the price fell from Rs.333 to Rs 325, Bam to the extent of 125 shares. According to the Appellants' data, when the scr Rs.333 to Rs.325, Bama was a net seller of 77336 shares and not a net buyer may be noted that the Bang entities have not disputed SEBI's data at any time.

The Appellant has argued that execution of 77961 shares in several second depth and liquidity of the scrip. The depth in the market at a point of time depe supply and demand in the market. It should be noted that it took 57 seconds 96006 shares.

(iv) Satyam Computers – 2nd March, 2001

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the op-cl p
Satyamcomp	10:57-11:05	62714	3.97	(12.20)

The Appellant has argued that apart from sale, there were also purchases mad this time slot, which was uniformly spread out throughout the time slot. The Appellant is not correct. During the relevant time slot, Bama had purchased sold 67869 shares. Even if the data provided by the Appellant is accepted, 2665 shares and sold 67869 shares, that the quantum of sales and purchase ar the sales are far in excess of the purchases.

The Appellant has argued that after the first two sale transactions the price of rose. From the data provided by the Appellant it can be seen that after first two of 500 and 20 shares at average rate of Rs. 297.49 and Rs. 298.00 respec purchased 20 shares at an average rate of Rs.296.00 which is lower than tl Bama has sold 20 shares previously. There SEBI's allegations are correct.

The data given in the submissions only shows that purchase of 200 shar executed at 11:03:52, 26 seconds after Bama sold 45026 shares and the avera

was higher than the average sale price. It was submitted by the Respondent th slot 10:57 hours to 11:05 hours of March 2nd, 2001 Bama had net sale of 627 around 3.97% of the shares traded during the period when the scrip price dropp

Satyam Computers – 2nd March, 2001

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the op-cl p
Satyamcomp	13:17-13:53	63979	2.56	(12.85)

During the relevant time slot, Bama had purchased 15520 shares and sold 79 denied that the sales and purchases were uniformly placed during the time further denied that there is no co-relation between the transaction of Bama and the price of the scrip.

After the sale of 70299 shares, the Appellant himself has accepted that the dropped after the said sale.

SSI – 2nd March, 2001

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the op-cl p
Softsoln	12:32-13:01	19450	11.13	(71.00)

During the relevant time slot, Bama had purchased 55 shares and sold 19505 drop during the time slot was Rs.71. It was denied that neither the sales an uniformly placed nor the quantum of sale and purchases were uniform during there was co-relation between the transaction of Bama and the movement i scrip.

(vii) SSI – 2nd March, 2001

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the op-cl p
Softsoln	13:41-13:54	9955	14.79	(28.00)

During the relevant time slot, Bama had purchased 50 shares and sold 10005 sl Bama during the said time slot was around 14.8% of the market sell and the

the same period was Rs.28.

The time slot pertains to 13.41 to 13.54 when the price dropped from Rs.1033 in the scrip to Rs. 1016 at about 1357 shows that earlier price fall was artificia of the sale by Bama.

Wipro – 1st March, 2001

Scrip	Time band	Short Sell (Qty)	% of short sale to market sell	Diff in the op-cl during the band
Wipro	13:33-13:41	9026	15.46	(15.00)

During the relevant time slot, Bama had purchased 102 shares and sold 9128 drop during the time slot was Rs.15. It was denied that neither the sales an uniformly placed nor the quantum of sale and purchases were uniform during t

It is evident from the data (order numbers) provided by the Appellant that the of 2 shares, which was not significant was placed much before the sale order the sale execution of 4128 shares. The buy order was executed only because th to drop by sales of Bama to that level.

Zee Telefilms – 1st March, 2001

Scrip	Time band	Short Sell (Qty)	% of short sale to market sell	Diff in the op-cl during the band
Zeetele	12:53-13:56	129478	6.52	(8.95)

During the relevant time slot, Bama had purchased 12820 shares and sold 14 price drop during the time slot was Rs.8.95. The Respondent denied the Appel neither the sales and purchases were uniformly placed nor the quantum of s were uniform during the time slot.

It was argued by the Appellant that the sale transaction of 34,448 shares and not have any impact at all on the price of the scrip. According to the Res provided by the Appellant clearly shows that the next transaction after the s 34448 shares at average price of 170 between 13.11.29 and 13.11.40 h transaction of 500 shares at Rs.169 at 13.11.56 hrs. Though the data pertains

only still it is clear that the scrip price has dropped after the sale transaction.

(x) Zee Telefilms – 23rd February, 2001

Scrip	Time band	Short Sell (Qty)	% of short sale to market sell	Diff in the o price
Zeetele	12:26-12:35	76279	2.33	(8.35)

There is typographical error in Enquiry Report & Chairman Order regardin slot. the time is 12.26 to 12.35 and not 12.26 to 12.32. The correct time slot wa Cause Notice (12:26 to 12:35) and the Appellant was aware of the same. D time slot, Bama had purchased 37985 shares and sold 306040 shares. The pric time slot was Rs.8.35.

It was argued by the Appellant that after the sale of 99000 shares the price o unchanged. According to the Respondent from data provided by Appellant, i order subsequent to sale of 99000 shares that got executed was purchase of 20(price. From the order number it can be inferred that order placed for purchase much earlier than the order placed for sale of 99000 shares.

Zee Telefilms – 2nd March, 2001

Scrip	Time band	Short Sell (Qty)	% to market sell	Diff in the op-cl p
Zeetele	12:00-12:22	116932	7.04	(11.65)

It was submitted by the Respondent that during the relevant time slot, Bar 106450 shares and sold 223382 shares. The price drop during the time slot Respondent denied the Appellants' version that transactions were uniformly time slot.

The Respondent submitted that the time gap between the sale of 87680 share 100000 shares in 00:01:08 hours and hence inferring about the impact transaction of 100000 shares is not correct.

It may be noted that the data provided by the Appellant shows that every transaction executed by Bama during the time slot is at lower price.

The Appellant in his submission has picked up certain scrip and has stated tha has not found Bang entities individually or collectively guilty of artificial prices of this scrip. The Respondent countering this submission submitted Officer has examined the trading pattern of the member between mid-Februar in totality when the shares prices fell and have come to the conclusion.

Bang Equity Broking Pvt. Ltd. (BEB)

BEB has indulged in large trading transactions and has created significant net s that either form part of stock indices or were momentum scrips including th Tele, Zee Telefilms, HFCL, Satyam Computers, MTNL, Infosys, DSQ Soft and Reliance Industries between mid February and mid March with a view to c the prices of these securities in a concerted manner.

The quantum of net sales in different scrips across various settlements manipulative trading with a view to hammer the scrip prices.

DATE	SCRIPNAME	NET SALES	APPR (Rs. in
23/2/01	Global Tele	186468	8.9
22/2/01	Zee Tele	257590	6.05
27/02/01	Zee Tele	95510	1.7
2/3/01	Zee Tele	27660	0.42
23/2/01	HFCL	32563	2.4
1/3/01	HFCL	21178	1.52
23/2/01	Satyam	138885	4.47
1/3/01	Satyam	79317	2.6
2/3/01	Satyam	28529	0.8
21/2/01	DSQ Soft	32065	1.3
1/3/01	DSQ Soft	12550	0.46
23/2/01	SBI	37370	84
28/2/01	WIPRO	44731	10.86
22/2/01	Reliance Ind	71590	2.97
1/3/01	DSQ Soft	103555	4.4

Enquiry Officer has analysed the details of the trading pattern of BEB in the and have come to the conclusion that BEB had significant sales between mid

March in the scrip of Global Tele, HFCL, Satyam, Infosys, DSQ Software, Z
of Enquiry Officer in individual scrip is that:

(a) **GLOBAL TELE**

	Date	Date	Open	Hi	Close	BE	
Sett No	**From**	**To**				**Buy**	**Sell**	**N**
1043	15-01-01	19-01-01	728	739	734	150,109	142,285	
1044	22-01-01	26-01-01	740	787	732	121,242	122,304	
1045	29-01-01	02-02-01	706	748	673	121,197	132,075	
1046	05-02-01	09-02-01	670	696	630	64,426	61,814	
1047	12-02-01	16-02-01	632	655	609	119,571	116,156	
1048	19-02-01	23-02-01	615	624	439	113,458	111,248	
1049	26-02-01	02-03-01	443	454	313	176,397	357,900	
1050	05-03-01	09-03-01	306	312	226	254,078	86,292	
1051	12-03-01	16-03-01	210	241	206	57,310	55,739	

Dates	**Open**	**High**	**Close**	**Buy**	**Sales**	**Net**	**Mark Sales**
19.02.01	615	624	604.3	55138	7540	47598	5686
20.02.01	605	608.75	582.75	5235	3155	2080	3913
21.02.01	582	582	557.45	10080	10155	-75	3618
22.02.01	554	554	518.5	13075	21293	-8218	4325
23.02.01	519.8	522	438.9	29930	69105	-39175	6261
St No.1048				**113458**	**111248**	**2210**	**2380**
26.02.01	443.1	454	415.8	24746	50880	-26134	6455
27.02.01	420	426.75	353.15	35195	25607	9588	8921
28.02.01	350.1	409.6	404.25	33143	25448	7695	8457
01.03.01	409.6	429.95	372.1	38291	24475	13816	7083
02.03.01	371.7	377	312.6	45022	231490	-186468	5678
St No.1049				**176397**	**357900**	**-181503**	**3659**

Enquiry officer has come to the conclusion that the overall trading pattern b
Tele in settlement Nos.1048 and 1049 with particular reference to settlemer
BEB had net sale of 181503 shares (9.2% of the net at BSE), has contributed
the price. The price of the scrip dropped from Rs.615 to Rs 439 in settlement
Rs.443 to Rs.313 in settlement no.1049. The Enquiry Officer has further obse
the subsequent settlements i.e. settlement no.1050 and 1051 could be to cover
settlement no.1049 and also could be with a view to take advantage of the
trading behaviour is typical of a bear who sells short without possessing shar
bring about a fall in price and take advantage of the fall in prices by making
subsequent days to cover the earlier short sales.

It was further observed that in settlement No.1049, BEB had net sale of 261
Subsequent purchase by BEB on 27/2/01 to 1st March could be with a view
sales on 26/2/01. The price fell from Rs.416 to Rs.372 between 26/2/01 an
sales by BEB on 2/3/01 is quite high at – 186468 shares and the price fell by
to close at Rs.312.

HFCL

	Date	Date	Open	Hi	Close	BEB		
Sett No	From	To				Buy	Sell	N
1043	15-01-01	19-01-01	1180	1222	1211	278,419	357,460	
1044	22-01-01	26-01-01	1241	1300	1269	125221	65,831	
1045	29-01-01	02-02-01	1250	1265	1027	185,845	181,910	
1046	05-02-01	09-02-01	1000	1039	965	421,926	364,162	
1047	12-02-01	16-02-01	950	1019	910	150,764	204,206	
1048	19-02-01	23-02-01	910	923	743	251,746	172,926	
1049	26-02-01	02-03-01	740	759	604	243,291	329,346	
1050	05-03-01	09-03-01	585	625	327	123,647	118,091	
1051	12-03-01	16-03-01	301	322	214	111,383	83,659	

Dates	Open	High	Low	Close	Buy	Sales	Net	M Sa
19.02.01	910	923	836.75	895.65	105192	58739	46453	92
20.02.01	892	903	865	869.2	78592	8020	70572	65

21.02.01	868	868	814	836.15	20491	29123	-8632	53
22.02.01	832	850.9	773.05	826.7	32757	29767	2990	69
23.02.01	822.5	822.5	731.5	742.8	14714	47277	-32563	75
St No.48					**251746**	**172926**	**78820**	**35**
26.02.2001	740	751.95	677.65	688.5	27915	70045	-42130	60
27.02.2001	694	699.5	578.35	578.35	12591	40449	-27858	85
28.02.2001	542.6	670.85	532.1	670.4	102503	100359	2144	99
01.03.2001	690	759	635	718.05	82022	103200	-21178	76
02.03.2001	745.1	755	603.2	604.80	18260	15293	2967	99
St No.49					**243291**	**329346**	**-86055**	**42**

Enquiry Officer has observed that BEB has liquidated the earlier net purchase sales in Settlement No 1047 of -53442 which constituted 5% of the net sales Enquiry Officer has observed that net purchase of BEB in settlement 1048 to price of the scrip has to be examined in totality against the trading pattern of l February and mid march when the share prices fell. BEB had net sales immediately preceding S No 1048 to the extent of -53442. Enquiry Officer conclusion that BEB after having been a seller in the earlier settlement had ta the fall in the price in settlement No 1048 with his purchases. Enquiry Officer though BEB had net purchases in settlement No. 1050 and 1051 to the extent o and the price of the scrip fell by Rs.259 and Rs.87 respectively, these purchas by a huge net sales of 86055 in settlement No.1049, which constituted 3.5% Exchange. The price of the scrip which closed at Rs 605 at the end of settlen fallen to Rs.326 and Rs.214 at the end of settlement No 1050 and 1051 resp Officer has further observed that after considering opening position, BEB ha purchase positions of 90436 in S No 1048 of 4286 in S No1049. Enquiry Of the conclusion that taking into consideration that BEB had significant net sale 1047 and 1049 which constitute - 5% and 3.5% of the net of the Exchange and previously built large purchase position in S No 1049 could have contributed prices of the scrips. His sales on 23/2/01, 26/02/01, 27/02/01 and 1/3/01 we account for this purpose.

INFOSYS

	Date	Date	Open	Hi	Close			BEI
Sett No	From	To				Buy	Sell	N
1043	15-01-01	19-01-01	5860	6800	6779	39,961	36,738	
1044	22-01-01	26-01-01	6950	6988	6778	23,650	18,723	
1045	29-01-01	02-02-01	6610	6924	6860	8,148	18,933	
1046	05-02-01	09-02-01	6777	6777	6406	17,866	17,525	
1047	12-02-01	16-02-01	6380	6537	6254	10,657	10,387	
1048	19-02-01	23-02-01	6260	6343	5598	8,344	8,124	
1049	26-02-01	02-03-01	5730	6330	4940	18,883	17,872	
1050	05-03-01	09-03-01	4700	5315	4817	9,292	10,517	
1051	12-03-01	16-03-01	4738	4990	4694	6,364	6,526	

Enquiry Officer has observed that BEB had net sales in settlement No.1050 a purchases of earlier settlements were unwound.

SATYAM

	Date	Date	Open	Hi	Close			BEI
Sett No	From	To				Buy	Sell	N
1043	15-01-01	19-01-01	386	421	418	539,782	522,635	
1044	22-01-01	26-01-01	424	430	414	239,280	295,684	
1045	29-01-01	02-02-01	400	427	415	286,793	309,978	
1046	05-02-01	09-02-01	400	412	372	386,724	378,780	
1047	12-02-01	16-02-01	375	387	365	541,310	455,547	
1048	19-02-01	23-02-01	361	376	318	277,184	359,734	
1049	26-02-01	02-03-01	321	353	263	424,005	397,648	
1050	05-03-01	09-03-01	250	280	229	267,146	264,781	
1051	12-03-01	16-03-01	230	264	237	140,570	176,792	

Dates	Open	High	Close	Buy	Sales	Net	Ma Sal
19.02.2001	361.25	373.9	372.1	51690	111047	-59357	118
20.02.2001	373.6	376.4	371.6	45680	19040	26640	105
21.02.2001	370	370	343.25	115401	19871	95530	152

22.02.2001	341.9	341.9	337.9	29353	35831	-6478	118
23.02.2001	336.5	336.5	317.75	35060	173945	-138885	111
St No.48				**277184**	**359734**	**-82550**	**607**
26.02.2001	321	331.2	326.2	26165	16670	9495	991
27.02.2001	327.95	331.4	307.65	81585	46070	35515	198
28.02.2001	307	351.8	347	165740	76547	89193	211
01.03.2001	350.9	353	312.65	100858	180175	-79317	183
02.03.2001	311.5	314.7	262.65	49657	78186	-28529	166
St No.49				**424005**	**397648**	**26357**	**858**

Enquiry Officer has observed that BEB had been significant seller, when the p across settlement 1047 to 1051. BEB had net sales of 82550 shares in SNo 10 advantage of the fall in prices and resorted to purchases in subsequent settl 1050. Considering, the opening position, BEB has reduced its purchase positio and had in subsequent settlements viz. S. No. 1049 and 1050, BEB has taken a fall and increased the purchase position which was subsequently in S. No.1

Enquiry Officer has observed that BEB had net sales of 138885, 79317 and February, 1st March, and 2nd March of 2001 respectively when the scrip price Rs.20, 34 and Rs.50 respectively.

DSQ Software

	Date	Date	Open	Hi	Close		BE	
Sett No	**From**	**To**				**Buy**	**Sell**	**N**
1043	15-01-01	19-01-01	373	418	405	192515	192,875	
1044	22-01-01	26-01-01	415	444	429	43,180	40,441	
1045	29-01-01	02-02-01	407	450	415	93,286	93,226	
1046	05-02-01	09-02-01	409	446	418	54,784	54,379	
1047	12-02-01	16-02-01	415	463	423	78,367	81,725	
1048	19-02-01	23-02-01	424	433	369	114,081	114,687	

1049	26-02-01	02-03-01	375	398	304	105,340	105,055	
1050	05-03-01	09-03-01	300	318	212	76,090	66,835	
1051	12-03-01	16-03-01	195	195	145	88,884	81,639	

Dates	**Open**	**High**	**Close**	**Buy**	**Sales**	**Net**	**Ma** **Sale**
19.02.2001	424	433	421.75	17081	10881	6200	420
20.02.2001	423	425.5	417.5	39965	7930	32035	442
21.02.2001	415.5	415.5	405.55	7990	40055	-32065	346
22.02.2001	401.15	404.95	397.95	29310	32295	-2985	502
23.02.2001	395.3	398.05	368.75	19735	23526	-3791	512
Sett **No.48**				**114081**	**114687**	**-606**	**222**
26.02.2001	374.7	398.2	382.75	10190	22965	-12775	470
27.02.2001	385.35	389.7	337.7	30150	15625	14525	679
28.02.2001	336	380	373.95	41935	30580	11355	484
01.03.2001	378	385	361.7	15355	27905	-12550	418
02.03.2001	365.75	365.75	303.85	7710	7980	-270	570
Sett **No.49**				**105340**	**105055**	**285**	**262**

Enquiry Officer has observed that BEB was net seller on 23rd February, 1

March when the scrip price dropped by Rs.52 Rs.12 and Rs.52 respectively. Fr
February, BEB was continuous net seller. In S No 1047 and 1048, BEB had
and -606 respectively.

ZEE TELE

	Date	**Date**	**Open**	**Hi**	**Close**			**BEB**
Sett No	**From**	**To**				**Buy**	**Sell**	**N**
1043	15-01-01	19-01-01	243	263	261	441,118	138,053	
1044	22-01-01	26-01-01	264	294	280	831,480	1,151,725	
1045	29-01-01	02-02-01	269	273	254	921,929	733,219	

1046	05-02-01	09-02-01	252	260	231	232,586	383,094
1047	12-02-01	16-02-01	229	247	231	221,970	77,630
1048	19-02-01	23-02-01	234	241	210	490,560	673,340
1049	26-02-01	02-03-01	215	215	136	175,786	257,806
1050	05-03-01	09-03-01	125	147	117	505,318	461,118
1051	12-03-01	16-03-01	120	157	144	227,241	259,087

Dates	**Open**	**High**	**Close**	**Buy**	**Sales**	**Net**	**Mark Sales**
19.02.2001	234	234.5	229.4	89925	26900	63025	1155
20.02.2001	230	235	232.4	124795	18870	105925	1093
21.02.2001	231	238.65	236.75	216500	258000	-41500	2279
22.02.2001	235.25	240.9	235.25	19805	277395	-257590	1631
23.02.2001	231.7	233.85	210.3	39535	92175	-52640	1636
Sett No.48				**490560**	**673340**	**-182780**	**7797**
26.02.2001	215	215	192.3	29045	10180	18865	1227
27.02.2001	193.05	195	164.95	44625	140135	-95510	1628
28.02.2001	163	177.5	171.25	47930	48780	-850	1511
01.03.2001	174	178	162.3	38476	15341	23134	9336
02.03.2001	164	168	136.35	15710	43370	-27660	1054
Sett No.49				**175786**	**257806**	**-82020**	**6354**

Enquiry Officer has observed that purchase in S No. 1050, when prices of the Rs.125 to Rs.117 are preceded by significant net sales in the earlier settl (182780 shares) and 1049 (82020 shares) when the prices have dropped from and from Rs.215 to Rs.136 respectively. Enquiry Officer has further observed the opening position, BEB had purchase position of 196290 shares was converted into sale position in subsequent settlements (S.No.1049). Enq concluded that the purchases in settlement No 1050 when the closing price was a view to cover the earlier short sales and/or taking advantage of the f

hammering down the prices. Enquiry Officer has observed that the trading p settlement no 1048 reveals that the purchases on 19th February and 20 liquidated on 21st February and fresh sales were made from 21st to 23rd Febru sale of -257590 on 22nd February and -52640 on 23rd February when the pr Rs.25. The purchases on 1st March, 2001 for 23135 shares were for covering had net sales of -95510 on 27th February and -850 on 28th February 2001.

In cases of this nature when there is a series of transactions over a period of determined with mathematical accuracy the extent of the price fall vis a vis th What is to be seen is the overall trading behaviour of the member. Further, it others, what proportion his sales are to the exchange net sales as a whole. Ev was a net purchaser in one particular settlement, it has to be seen as to what is t the demand as a whole in the market whether these purchases are on accour previous short sales.

NBS acting with concert with BEB in effecting large sale transaction Global Tele, HFCL, Infosys, Satyam, DSQ, Zee Tele Films.

Global Tele Systems

	Date	Date	Open	Hi	Close	BEB					
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1048	19-02-01	23-02-01	615	624	439	113,458	111,248	2,210	0.3%	540,929	580,9
1049	26-02-01	02-03-01	443	454	313	176,397	357,900	-181,503	-9.2%	508,790	859,1
1050	05-03-01	09-03-01	306	312	226	254,078	86,292	167,786	9.3%	529,984	275,2
1051	12-03-01	16-03-01	210	241	206	57,310	55,739	1,571	0.1%	234,815	216,9

Enquiry Officer has observed that NSB and BEB have simultaneously cre settlement 1049 constituting 17.9% and 9.2% of net at the Exchange and to th entities have acted in concert to have depressed the share price of Global Tele.

HFCL

	Date	Date	Open	Hi	Close	BEB					
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1046	05-02-01	09-02-01	1000	1039	965	421,926	364,162	57,764	3.7%	581,715	565
1047	12-02-01	16-02-01	950	1019	910	150,764	204,206	-53,442	-5.0%	643,954	664
1048	19-02-01	23-02-01	910	923	743	251,746	172,926	78,820	7.5%	738,323	668
1049	26-02-01	02-03-01	740	759	604	243,291	329,346	-86,055	-3.5%	880,204	863
1050	05-03-01	09-03-01	585	625	327	123,647	118,091	5,556	0.2%	239,986	221
1051	12-03-01	16-03-01	301	322	214	111,383	83,659	27,724	0.7%	245,576	222

Enquiry Officer has observed that in settlement 1047 both NBS & BE simultaneously of 20173 and 53442 shares respectively and together constitut sale at the exchange.

Infosys

	Date	Date	Op	Hi	Cl	BEB					
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1047	12-02-01	16-02-01	6380	6537	6254	10,657	10,387	270	0.2%	62,139	55,0
1048	19-02-01	23-02-01	6260	6343	5598	8,344	8,124	220	0.1%	78,468	81,1
1049	26-02-01	02-03-01	5730	6330	4940	18,883	17,872	1,011	0.3%	148,760	167,
1050	05-03-01	09-03-01	4700	5315	4817	9,292	10,517	-1,225	-0.4%	61,834	71,3
1051	12-03-	16-03-	4738	4990	4694	6,364	6,526	-162	0.0%	23,230	65,2

	01	01									

Enquiry Officer has observed that BEB and NBS had net sales in settlement N covering the period 5/3/01 to 16/3/01 and Enquiry Officer has come to the this extent, BEB can be said to be acting in concert with NBS in artificially de by its sales.

Satyam

	Date	Date	Op	Hi	Cl	BEB				NI	
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1046	05-02-01	09-02-01	400	412	372	386,724	378,780	7,944	0.2%	2,885,180	3,109,9
1047	12-02-01	16-02-01	375	387	365	541,310	455,547	85,763	2.8%	1,553,704	1,263,9
1048	19-02-01	23-02-01	361	376	318	277,184	359,734	-82,550	-3.8%	1,727,274	1,762,3
1049	26-02-01	02-03-01	321	353	263	424,005	397,648	26,357	0.6%	2,435,456	2,779,8
1050	05-03-01	09-03-01	250	280	229	267,146	264,781	2,365	0.1%	925,412	620,14
1051	12-03-01	16-03-01	230	264	237	140,570	176,792	-36,222	-0.7%	459,371	538,20

Enquiry Officer has observed that in settlement No.1048 and 51, both BEB a sellers and to this extent they can be said to be acting in concert to bring down

DSQ Software

	Date	Date	Op	Hi	Cl	BEB					
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1045	29-01-01	02-02-01	407	450	415	93,286	93,226	60	0.0%	754,105	789,0
1046	05-02-01	09-02-01	409	446	418	54,784	54,379	405	0.1%	724,383	403,3
1047	12-02-	16-02-	415	463	423	78,367	81,725	-	-	468,678	468,2

	01	01						3,358	0.5%		
1048	19-02-01	23-02-01	424	433	369	114,081	114,687	-606	-0.1%	479,278	493,5
1049	26-02-01	02-03-01	375	398	304	105,340	105,055	285	0.0%	693,198	560,8
1050	05-03-01	09-03-01	300	318	212	76,090	66,835	9,255	0.3%	379,339	364,1
1051	12-03-01	16-03-01	195	195	145	88,884	81,639	7,245	0.2%	265,517	261,4

Enquiry Officer has observed that NBS and BEB were net sellers together in S

Zee Tele

	Date	Date	Op	Hi	Cl	BEB				NE	
Sett No	From	To				Buy	Sell	Net	% Net	Buy	Sell
1043	15-01-01	19-01-01	243	263	261	441,118	138,053	303,065	5.5%	3,025,558	2,371,68
1044	22-01-01	26-01-01	264	294	280	831,480	1,151,725	-320,245	-6.4%	3,741,297	3,400,06
1045	29-01-01	02-02-01	269	273	254	921,929	733,219	188,710	6.0%	2,833,047	2,853,19
1046	05-02-01	09-02-01	252	260	231	232,586	383,094	-150,508	-5.3%	878,078	930,283
1047	12-02-01	16-02-01	229	247	231	221,970	77,630	144,340	4.5%	456,385	478,321
1048	19-02-01	23-02-01	234	241	210	490,560	673,340	-182,780	-2.0%	1,717,642	1,859,34
1049	26-02-	02-03-	215	215	136	175,786	257,806	-82,020	-1.7%	1,208,299	1,631,11

	01	01									
1050	05-03-01	09-03-01	125	147	117	505,318	461,118	44,200	0.4%	2,643,142	2,606,12
1051	12-03-01	16-03-01	120	157	144	227,241	259,087	-31,846	-0.4%	771,469	858,652

Enquiry Officer has observed that NBS and BEB had net sale simultaneously i and to the extent they are acting in concert.

BEB has indulged in circular trading with an intention to hammer down the p time slot 12.35 hrs to 12.42 hrs on March 2, 2001, BEB has sold 2 lacs shares behalf of BS. The order for sale of 2 lac shares was matched with NBS fo During the time slot BEB had a net sale of 200499 which constitute 53% of th time slot.

Enquiry Officer has come to the conclusion that sale of such a huge chunk member within a span of 7 minutes when the share prices had fallen has contr The prices at which these shares were sold are also in the vicinity of the lowest

BEB has executed transactions on behalf of Shri Shankar Sharma, Director, I Broking Pvt. Ltd., member BSE and NSE which are of dubious nature manipulate the market and avoid detection. This matter has already been preceding pages and, therefore, not repeated here.

BEB has dealt with Palombe, an unregistered sub broker which amounts diligence, exercise of due skill and care expected of a registered broker as conduct applicable to the brokers. This matter has already been discussed in th and, therefore, not repeated here.

BEB has indulged in short sales between 8th March 2001 and 31st March 200

Rs.3.05 crores in violation of SEBI Circular No.SMD/RPD/Policy/CIR-1 March 2001. This matter has already been discussed in the preceding pages a repeated here.

Trading by Bang Securities P. Ltd. (BSPL), Sub-broker

BSPL is a registered sub broker of NBS and BEB. BSPL has indulged

transactions in the selective scrips including the scrip of HFCL, Global Tele Reliance Industries, SBI, Satyam and Infosys with a view to depress artifici these securities between mid February and Mid March in a concerted man significant net sale position on 23rd February, 1st and 2nd March of 2001. BSI for Ketan Parekh Group entities Classic Credit and Landmark and Palombe Se

Enquiry Officer, after analysing the trading pattern of BSPL, has found that BSPL in Global Tele, HLL, Reliance and Satyam are significant for the depre prices. Chairman has also reiterated the findings of the Enquiry Officer.

BSPL and Bama have acted in concert with each other. This matter has alrea in the preceding pages and, therefore, not repeated here.

Trading by Nirmal Bang Securities

NBS has indulged in large trading transactions and has created significant net scrips that either form part of stock indices or were momentum scrips inclu Global Tele, HFCL, Infosys, Satyam, DSQ Software, Zee Tele, Wipro, etc depress artificially the prices of these securities between mid February and concerted manner.

Enquiry Officer has analysed the details of the trading pattern of NBS in ind the findings of Enquiry Officer are given below in details.

(a) **Global Tele**

	Date	Date	Op	Hi	Cl	BEB		
Sett No	From	To				Buy	Sell	N
1043	15-01-01	19-01-01	728	739	734	817,141	734,194	82
1044	22-01-01	26-01-01	740	787	732	710,281	731,341	-21
1045	29-01-01	02-02-01	706	748	673	587,114	633,960	-46
1046	05-02-01	09-02-01	670	696	630	377,204	306,798	70
1047	12-02-01	16-02-01	632	655	609	343,469	315,020	28
1048	19-02-01	23-02-01	615	624	439	540,929	580,981	-40
1049	26-02-01	02-03-01	443	454	313	508,790	859,105	-35
1050	05-03-01	09-03-01	306	312	226	529,984	275,202	25
1051	12-03-01	16-03-01	210	241	206	234,815	216,945	17

Date	Op	Hi	Cl	NBS	
				Buy	Sell
26.02.01	443	454	416	61020	449020
27.02.01	420	427	363	93850	199395
28-02-01	360	410	404	69945	62901
1.03.01	410	430	372	52932	107328
2.03.01	372	377	313	323035	83426

Enquiry Officer has observed that NBS had net sales of 350315 shares, which of net of exchange. Enquiry Officer has come to the conclusion that subseq settlement No.1050 and 1051 could be with a view to cover the earlier short sa large net sales undertaken by the member in the immediately precedin Settlement No.1049, covering the period between 26th February and 2nd Marc the table above, NBS was a net seller in 3 out of 5 days. Earlier, NBS h purchase from S No.1046 at 70406 to 28449 in S No.1047 and in S No.1048 into net sales of 40052 which constituted 4.6% of the net of BSE. It has be there is neither a reduction in net purchase position nor a conversion of purcha sale position as the opening position was not taken into account to arrive at n end of the relevant settlements.

In this regard it was submitted that the opening position is not important as sales in the relevant settlement gives the idea of the trading pattern of the settlement. It has also been argued that NBS had net sales only in 3 out of 5 1049. Even after accepting that NBS had net sales only in 3 days in settlement affect the analysis and the final findings. It is contended that the net sales of N 1048 and 1049 representing 4.6% and 17.9% of the net sales at BSE contribut Rs.7.82 and Rs.22.74 and Rs.22.74 and Rs.11.88 respectively. In this regard that though Enquiry Report and Chairman Order have observed that there between the Appellant's transaction and change in the scrip price, the Appellan his contribution to the change in scrip price is equal to his net at the end of se of net at the exchange for the relevant period is not acceptable.

(b) **HFCL**

	Date	Date	Op	Hi	Cl	BEB	
Sett No	From	To				Buy	Sell
1043	15-01-01	19-01-01	1180	1222	1211	1,072,461	1,063,601

1044	22-01-01	26-01-01	1241	1300	1269	568,795	615,020
1045	29-01-01	02-02-01	1250	1265	1027	908,827	925,084
1046	05-02-01	09-02-01	1000	1039	965	581,715	565,340
1047	12-02-01	16-02-01	950	1019	910	643,954	664,127
1048	19-02-01	23-02-01	910	923	743	738,323	668,562
1049	26-02-01	02-03-01	740	759	604	880,204	863,352
1050	05-03-01	09-03-01	585	625	327	239,986	221,971
1051	12-03-01	16-03-01	301	322	214	245,576	222,756

Enquiry Officer has come to the conclusion that the purchase in Sett.1048 cou
to cover the short sales in the earlier settlements.

(c) **Infosys**

	Date	Date	Op	Hi	Cl	BEB		
Sett No	From	To				Buy	Sell	
1043	15-01-01	19-01-01	5860	6800	6779	171,478	189,504	-
1044	22-01-01	26-01-01	6950	6988	6778	49,999	72,602	-
1045	29-01-01	02-02-01	6610	6924	6860	69,638	57,158	
1046	05-02-01	09-02-01	6777	6777	6406	61,642	59,846	
1047	12-02-01	16-02-01	6380	6537	6254	62,139	55,000	
1048	19-02-01	23-02-01	6260	6343	5598	78,468	81,155	
1049	26-02-01	02-03-01	5730	6330	4940	148,760	167,360	-
1050	05-03-01	09-03-01	4700	5315	4817	61,834	71,383	
1051	12-03-01	16-03-01	4738	4990	4694	23,230	65,243	-

Enquiry Officer has observed that through out the period covering Sett No.104
a net seller. Particularly in Sett 1049 and Sett No.1051, NBS had net sales of 6
the net of BSE respectively. Enquiry Officer has come to the conclusion that N
in sales on the crucial dates when the share prices have fallen which created ar
in prices.

(d) **Satyam**

	Date	Date	Op	Hi	Cl	BEB		
Sett No	From	To				Buy	Sell	
1043	15-01-01	19-01-01	386	421	418	3,247,084	3,317,170	-

1044	22-01-01	26-01-01	424	430	414	3,050,630	2,809,278	2
1045	29-01-01	02-02-01	400	427	415	3,115,273	3,112,460	
1046	05-02-01	09-02-01	400	412	372	2,885,180	3,109,983	-2
1047	12-02-01	16-02-01	375	387	365	1,553,704	1,263,970	2
1048	19-02-01	23-02-01	361	376	318	1,727,274	1,762,314	-
1049	26-02-01	02-03-01	321	353	263	2,435,456	2,779,834	-3
1050	05-03-01	09-03-01	250	280	229	925,412	620,149	3
1051	12-03-01	16-03-01	230	264	237	459,371	538,202	-

Enquiry Officer has observed that that the sales in sett no 1048 and 49 were n deliveries which means that there wee short sales. NBS had created a net sales constituting 8.2% of the net of exchange. The purchases in the settlement 105 appear to be the short covering for previous settlement. In the subseque No.1051), NBS has a net sale of 78831 shares. Enquiry Officer has come to t purchases made in Settlement 1050 were made at lower prices after hammerin by sales including short sales in the previous settlements of 1049 and also wi its earlier sales. The trading pattern of the member is typical of a short selle without possessing the same with a view that the prices will come down in short sales can be covered by purchasing at lower prices. Such sales are spe seen together with other similar trades and trades of other Bang Entities and t the other facts and circumstances including the fact that the said trades did br the price, the said trades have been shown to be manipulative.

(d) **DSQ Software**

	Date	Date	Op	Hi	Cl	BEB		
Sett No	From	To				Buy	Sell	
1043	15-01-01	19-01-01	373	418	405	394348	407,273	
1044	22-01-01	26-01-01	415	444	429	396,955	398,850	
1045	29-01-01	02-02-01	407	450	415	754,105	789,005	
1046	05-02-01	09-02-01	409	446	418	724,383	403,371	
1047	12-02-01	16-02-01	415	463	423	468,678	468,263	
1048	19-02-01	23-02-01	424	433	369	479,278	493,576	
1049	26-02-01	02-03-01	375	398	304	693,198	560,898	
1050	05-03-01	09-03-01	300	318	212	379,339	364,144	
1051	12-03-01	16-03-01	195	195	145	265,517	261,497	

Enquiry Officer has observed that net purchases in settlement 1049 to 105 against the background of unwinding purchases in previous settlement. NE purchases of 321012 in settl.no.1046, which constituted 57.2% of net of BS settlement 1047, NBS had net purchase of 415 shares & settlement 1048, NE 14298 shares constituting 3.1% of the net of exchange.

(F) **Zee Telefilms**

	Date	Date	Op	Hi	Cl	BEB		
Sett No	From	To				Buy	Sell	
1043	15-01-01	19-01-01	243	263	261	3,025,558	2,371,684	6
1044	22-01-01	26-01-01	264	294	280	3,741,297	3,400,066	3
1045	29-01-01	02-02-01	269	273	254	2,833,047	2,853,194	-
1046	05-02-01	09-02-01	252	260	231	878,078	930,283	-
1047	12-02-01	16-02-01	229	247	231	456,385	478,321	-
1048	19-02-01	23-02-01	234	241	210	1,717,642	1,859,341	-1
1049	26-02-01	02-03-01	215	215	136	1,208,299	1,631,119	2
1050	05-03-01	09-03-01	125	147	117	2,643,142	2,606,129	3
1051	12-03-01	16-03-01	120	157	144	771,469	858,652	-

Enquiry Officer has observed that NBS was continuous net seller from sett Subsequent purchases in settlement 1049 & 1050 appears to be towards cover in the earlier settlements. Again, in sett No 1051, there was a net sale of 8701 in concert BEB in effecting large sale transaction in the scrips of Global Tel Satyam, DSQ, Zee Tele Films in the settlements covering mid February and has dealt with the following un-registered sub brokers. Such acts of dealing sub brokers is in violation of the Code of Conduct prescribed under th Regulations.

a. Moneygrowth Investment & Cons Pvt. Ltd.

b. Arihant Stocks Ltd.

Bombay Stock Exchange had imposed a fine of Rs.74,000/- under its bye- law by NBS.

Enquiry Officer has observed that NBS had not exercised due skill and care

the Code of Conduct while dealing with the unregistered sub broker. The f
amounts to tacit admission of having dealt with an unregistered sub broker.

Chairman has agreed with findings of Enquiry Officer that NBS has dealt wi
and Arihant Stock who are not registered sub brokers.

NBS has indulged in short sales between 8th March 2001 and 31st March 20(
Rs.2.31 crores in violation of SEBI Circular No. SMD/RPD/Policy/CIR-1
March 2001.

Market Manipulation:

In the matter of Carole L. Haynes it has been held that 'Market manipulation
practices such as wash sales, matched orders or rigged prices that are int
investors by artificially affecting market activity.

> It further states that "manipulation of securities listed for trading on a n
> makes it unlawful for a person to engage in a series of transactions tha
> apparent activity or raise or depress a stock's price when done for the pu
> others to buy or sell the security."
>
> "To establish a violation it must be shown as it has been in this case
> individuals effected a transaction in a "security registered on a national se
> …… which involved no change in the beneficial ownership thereof, or wi
> on order or orders of substantially the same size, at substantially the s
> substantially the same price, for the sale of any such security, has been
> into by or for the same or different parties."
>
> It also must be established as it has in this matter, that the transaction
> purpose of creating a false or misleading appearance of active trading in"
> a false or misleading appearance with respect to the market" for any such
>
> However, proof of scienter in manipulation cases need not be direct, b
> inferred form circumstantial evidence, including evidence of price m
> activity and other factors. Further proof of manipulation is generally not
> activity, but rather on a course of conduct showing an intentional inte
> normal functioning of the market for a security. Indeed, manipulation is
> of acts, practices, and courses of conduct that deceive the market place:

"proof of manipulation almost always depends on inferences drawn from data. Findings must be gleaned from patterns of behavior, from apparent from trading data. When all of these are considered together, they ingredients in a manipulative scheme designed to tamper with free market

It has also been held that "It is sufficient for the person to engage in a c which operates as a fraud or deceit as to the nature of the Market for the se

It has inter alia been held that the practice of placing orders at or near the order to cause the stock to close at an uptick is violative … "Abse manipulative intent may be inferred from circumstantial evidence."

Scienter as an element of violation has also been discussed in Sterlite Indu v. SEBI [2001] 34 SCL 485. it was held that "Scienter is an element of vi 17(a)(1) of the Securities Act and section 10(b) and 15(c) of the Exc Supreme Court had defined Sceinter as "a mental state embracing manipulative or defraud" "recklessness is sufficient to satisfy the Scienter there are a series of transactions which involve fraudulent/deceit and circumstances so strong such as repeated transactions involving 4 to 5 select dates/select time slots/transactions without intent of delivery/tot trades- the finger of guilt must point out to them totally. An inference mus circumstances and proving of mens rea is not required. SEBI stands by its on non requirement of mens rea to be proved.

Lifting the Corporate Veil

The Respondent repeated and reiterates all that is stated in respect of 'lifting t in the Enquiry Officers Report dated 22nd May, 2002

Impugned Order Is in Breach of Regulations

The purpose for the SEBI and the establishment of SEBI can be found in the SEBI Act. The functions of SEBI and its power to issue directions are found i 11B of the SEBI Act.

Section 11(2)(e) of the SEBI Act, provides that measures that can be taken b alia to prohibit fraudulent and unfair trade practices relating to securities mark (b) of the SEBI Act provides that measures can be taken by the Board fo regulating inter alia the working of stock brokers, sub-brokers who may b

securities market.

The Stock Broker Regulations is a general Regulation, regulating all stock brol brokers and their trading, cancellation or suspension of their certificate of reg of brokers, etiquette, ethics etc. There was no specific Regulation relating unfair trade practices committed by the brokers. SEBI under sections 11 and Act has the power to regulate fraudulent and unfair trade practices and manipu done by any person including inter alia brokers and sub-brokers. When the F came into force with effect from 25th October, 1995 it became a complete Fraudulent and Unfair Trade Practices committed by any person including brokers. The source of SEBI's power to Suspend and cancel the Registration c can be traced to Section 12(3) of the SEBI Act. Regulation 3 and 4 of the F relate to prohibition of dealing in securities in a fraudulent manner and p market manipulation. Regulation 2 (c) defined fraud. FUTP Regulations procedure for investigation etc. Regulation 11 of the FUTP Regulation provic consideration of the report of the Investigating Officer may issue directions compliance with the provisions of the Act, rules and regulations as inte Regulation 12 and may also as per Regulation 13 initiate action for suspension the certificate of registration.

Deciding punishment is based on gravity of the offence and is always left to judicial officer (Suppose the FUTP Regulations had come in first and the Br later). No guidelines are required for deciding the punishment except looking the of the offence. All we are concerned with is cancellation or suspension quantum of punishment may be corrected by the higher court. Where there is no other guidelines can be referred to. One cannot restrict the power under a c go to the brokers regulation.

> SEBI is required to exercise its power to suspend or cancel the R intermediary by taking into account all the relevant facts and circumstan the situation and the objects sought to be achieved.
>
> The ratios of the following case law were cited support the above contenti
>
> Kathi Raning v. State of Saurashtra, AIR 1952 SC 123 Paras 7 & 8 @ pag
>
> N.T.F. Mills Ltd. v. The 2nd Punjab Tribunal, AIR 1957 SC 329 Paras 16 & 336.

Digyadarsan R.R. Varu v. State of AP, AIR 1970 SC 181 Paras 6 & 7 @ F

M. Chhagganlal v. Grater Bombay Municipality, AIR 1980 SC 2009 Para

R.R.Verma v. UOI AIR, 1980 SC 1461 Para.4 @ page 1463

Without prejudice to the aforesaid it was submitted that the procedure t suspension and or cancellation of the registration is found in Re intermediary concerned. It may be noted that even insider trading regulati regulations did not provide for cancellation of registration or suspension an intermediary. If an intermediary is guilty of an offence under the sai procedure for suspension or cancellation of registration of that intermediar basis of relevant regulations applicable to the relevant intermediary c section 13 of the FUTP Regulations, the Board may init suspension/cancellation of registration but no procedure to be followed h for. Therefore both for suspension/cancellation the procedure to be c procedure, one can go to the Regulations of the intermediary concerned.

The Standard of Proof

SEBI is a regulatory Authority and regulates conduct of all intermediarie market. The Appellant being an intermediary could perform in the Security m the SEBI Regulatory jurisdiction. The proceedings that SEBI adopt are adjudic which are civil in nature. SEBI adjudicated proceedings are not criminal proce proceedings, standard of proof is on the basis of "preponderance of prob "beyond reasonable doubt" as required in criminal cases.

Fraudulent or manipulative trading are therefore required to be proved by S basis of "preponderance of probabilities" and not "beyond reasonable doubt". **Vs. Chaturbhuj M. Patel A.I.R. 1976 S.C. page 712.** and **National Housing Grindlays Bank 1998 Volume 11 1998 (2) Law Judgements 153 at page 178**

The enquiry proceedings are adjudicatory proceedings of a civil nature and proceedings and therefore the standard of proof required is not as high as criminal proceedings. Further strict rules of evidence are not applicab proceedings. The charges are required to be established by such evidence, act reasonable person acting reasonably and objectively can conclude that the ch (AIR 1999 SC 2407 - Bank of India v. D. Suryanarayana). None of the trade Bang entities have been disputed. In the circumstances and applying the above

charges as against the Bang entities can be said to have been proved.

Mensrea

The enquiry proceedings being in the nature of adjudicatory proceedings are and not criminal proceedings. Mens reas is not required to be proved before a p guilty of price manipulation or carrying on fraudulent trade practices. Since t the FUTP Regulations and the Broker Regulations are Regulatory enactment required to be proved when a penalty is imposed under an enactment for obligation in adjudicatory proceedings. The rule that mens rea is required to b penalty can be imposed is not attracted. (Directorate of Enforcement v. M/s. M Ltd. AIR 1996 SC 1100.)

Assuming without admitting that mens rea is required to be proved before any FUTP regulation, can be said to have been proved that proof of manipulativ inferred from circumstantial evidence such as evidence from price movemen etc as has been clearly established by SEBI. The manipulative intent has fu from the series of transactions which disclose a clear course of conduct and in proof of sceinter in manipulation cases need not be direct, but rather may circumstantial evidence, including evidence of price movement, trading a factors. Further proof of manipulation is generally not based on a single activi course of conduct showing an intentional interference with the normal functio for a security. Indeed, manipulation is usually the results of acts, practice conduct that deceive the market place:

> "proof of manipulation almost always depends on inferences draw factual data. Findings must be gleaned from patterns of behaviou irregularities, and from trading data. When all of these are conside can emerge as ingredients in a manipulative scheme to designed to market forces". As held in the case of Carole L. Hynes.

<u>Limitation</u>

Regulation 29(3) of the SEBI (Stock Brokers and Sub - brokers) Regulatio "The Board after considering the reply to the show-cause notice, if received possible but not later than thirty days from the receipt of the reply, if any, pas deems fit."

In the present case a common interim order was passed on April 18, 2001 deb

Bang, Mr. Kishore Bang, and Mr. Dilip Bang and Bang Entities from unde business as stock broker or sub-broker till further orders. A common post-c was given to the Bang Entities on 30th April, 2001 at which the Bang entiti oral submissions and the Entities thereafter submitted their common wri pursuant to which a common Order was passed on 4th June 2001 confirming The Show Cause Notices dated 10th September 2001 and 25th January 2002, Bang Entities as joint noticees by the Enquiry Officer and the enquiry proceed him were also in common. SEBI by its order dated 4th June 2001 had appo officer in respect of the Bang Entities. A common Show Cause Notice dated 3(issued to the Bang Entities after the Enquiry Officer submitted his commo May, 2002. A personal hearing was granted to the Bang Entities on 1st J common impugned Order was passed on 30th July 2002 i.e. within 30 days o hearing and therefore the order is passed within the prescribed time limit unde the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

It is the Appellants contention that since Bama Securities did not ask/seek hearing the Order as against Bama is passed in violation of Regul consequentially if the impugned order is vitiated qua Bama on account of a v Regulation 29(3) the impugned order cannot survive qua the other Entities.

The central charge against the Appellants is that they acted in concert in depre various scrips and thereby indulged in market manipulation. In view of th proceedings were taken against the Appellants. It is not disputed that Bama is Group. From the very beginning the Appellants were insisting on separate proc attempt to demolish the charge of concerted action. The impugned order clea Appellants were acting in concert in depressing the prices of various secu hearing in the matter was completed, it was not possible to pass an order even Appellants did not seek for a personal hearing. It is to be noted that lim demurrer. In the instant case since common notices were issued and a ch concert was made, and an oral hearing was granted on the 1st of July 2002, th the period of limitation.

Bama Securities at no time prior to filing of the present proceedings contende not pass any order against Bama Securities on the ground of limitation und Regulation 3. No such ground was alleged at the hearing granted by SEB

Entities on 1st July 2002.

The Tribunal in the case of Doogar & Associates Ltd. V. SEBI has held that expression 'reply' in sub regulation (3) of regulation 40 cannot be restricte reply to the show cause notice. Oral submissions are also to be treated as r order was issued, within 30 days of the completion of the oral submissions submissions were required to be completed. It cannot be said that the order w the time limit prescribed regulation 40(3) of the 1992 regulations." In the pres the proceedings conducted by SEBI against the Bang Entities are commor passing a separate order against Bama Securities doesn't arise and therefore of any delay in passing the impugned Order dated 30th July, 2002, beyond the under section 29(3) doesn't arise as the same was passed within 30 d oral/personal hearing on 1st July 2002.

The ratio of the judgement in Atul Kanodia's case that the period of 30 da reconsidered in view of the following Judgments:

A. Bhaskaranand Agarwal v. State AIR 1998 Sikkim 4.

B. Ganesh Prasad Sah Kesari v. Laxmi Narayan Gupta

   AIR 1985 SC 964.

C. Karnal Leather Karmachari Sanghatan v. Liberty Footwear Co.

AIR 1990 SC 247.

Speculative transactions are per se not illegal. However, speculative transactic the Bang Entities in its entirely in the facts and circumstances of the preser shown to be per se manipulative and illegal transactions, actions in breach of Regulations and Code of Conduct. The cumulative effect of all the transactions order taken together by each one or more of the Bang entities acting alone d each other and/ or others conclusively proves the charge that the Bang entities market manipulation.

Tribunal's Findings:

The impugned order is in relation to the conduct of the Appellants with referen activities in certain scrips during the mid February to mid March 2001.

Index movements of stock exchanges showed excessive voltatility espec
February to mid March, 2001. SEBI carried out preliminary investigation to
of the same. The Appellants were also among some of the brokers/sub broke
investigation. SEBI's preliminary investigation is stated to have revealed th
(Bang Entities) had indulged in large trading transactions in the scrips of Gl
HFCL, Zee Telefilms, Wipro, Satyam Computers, Infosys Technologies, Sil
Reliance Industries, LIC Housing, HCL Technologies etc. Based on a prim
these transactions were carried out by the Appellants to artificially depress the
securities, SEBI passed an exparte order on 18.4.2001 debarring them from
fresh business as stock brokers and sub brokers till further orders. A post
followed. It was on 30.4.2001. Thereafter an interim order was issued on 4.6
the said ex parte order. An Enquiry Officer was also appointed simultaneously
The Enquiry Officer issued a show cause notice on 10.9.2001. During the cou
a second notice was issued on 25.1.2002. He completed the enquiry and subm
22.5.2002. In the light of the findings of the Enquiry officer, SEBI issued a sh
the Appellants on 30.5.2002. The notice was common. But the charges in resp
were separately stated in the notice. The Appellants responded to the same de
The Chairman of SEBI adjudicated the notice and passed an order on 30.7.2
registration of the Appellants, holding that the Appellants had indulged
transactions with a view to depress the market artificially in a concerted ma
short sales and synchronized trading, traded in particular time slots when
registered substantial fall and routed large transactions through unregistered
were accordingly found guilty of violating the code of conduct specified in
Regulations and regulation 4(a) to (d) of the FUTP Regulations.

The Appellants in appeal nos. 54/2002; (NBS); 55/2002; (BEB); and 56/2002
Brokers. While NBS and BEB are members of BSE, Bama is a member of N
appeal no.57/2002 is a sub broker to NBS and BEB. These brokers are stated
sub brokers operating for them, and that they are providing service to o
investors across the country.

The Appellants' annual traded turnover, in the year 2000-2001 according to
Rs.57,196 crores. According to the Appellants despite the large scale operati
years there has not been a single instance of an investor grievance against ther
good business practices. It is an admitted fact that these four Appellants belon
SEBI has alleged that they were acting in concert. Appellants have denied. W
acting in concert or not is a matter, to be decided in the light of the factual inf
examine the same at the relevant context when we proceed further in the matte

The Appellants had claimed that theirs is a "discount broking house", i.e. tl brokers for their various clients and transact in securities on their behalf wit any advice as to what securities to buy or sell. In other words, the Appellants s orders for the sale or purchase of securities placed with them by their clients w or contributing to the investment decisions of the client in any manner. Thi unrebutted by SEBI.

On a perusal of the said charges it is noticed that indulging in large tradi selective scrips with a view to depress artificially the prices of the select sc February to mid March 2001, is a common charge against all the Appellants. have acted in a concerted manner for accomplishing the objective of depressin The Enquiry Officer has linked the charges to violation of two Regulations i Regulations and FUTP Regulations. Stock Broker Regulations has been stat alleging violation of Code of Conduct applicable to the Stock Brokers stipulated therein. FUTP Regulations are stated to have been violated alleging regultion (a) to (d) of the said Regulations.

In the impugned order there is no mention as to which of the clauses of the Co attracted. However, it appears from the discussion in the order that the thrust obligations grouped under Clause A of the Code of Conduct i.e.:

> A. General--(1)Integrity – A stock-broker, shall maintain integrity, promptitude and fairness in the conduct of all his b

1. Exercise of due skill and care: A stock broker shall act with due skill, diligence in the conduct of all his business.

2. Manipulation: A stock broker shall not indulge in manipulative, fraud deceptive transactions or schemes or spread rumours with a view to d equilibrium or making personal gains

3. Malpractices: A stock broker shall not create false market either singl with others or indulge in any act detrimental to the investors or which interference with the fair and smooth functioning of the market. A sto not involve himself in excessive speculative business in the market be levels not commensurate with his financial soundness.

4. Compliance with statutory requirements: A stock broker shall abide b of the Act and the rules, regulations issued by the Government, the Be

Exchange from time to time as may be applicable to him.

The Code of Conduct applicable to Sub brokers is separately provided in S Stock Brokers Regulations. In the said Code under Clause "A" the requirem above have been stipulated. It is noted that sub brokers are attached to s example in the instant case Bang Securities P. Ltd., (BSPL) is a sub broke BEB. Sub brokers are required to obtain registration certificate from SEB activities of sub broker.

Regulation 4 (a) to (d) of the FUTP Regulations, which according to the Appellants have violated is as follows:

No person shall –

a. effect, take part in, or enter into, either directly or indirectly, securities, with the intention of artificially raising or depress securities, and thereby inducing the sale or purchase of secu person;

b. indulge in any act, which is calculated to create a false or mi appearance of trading on the securities market;

c. indulge in any act, which results in reflection of prices of se transactions that are not genuine trade transactions;

d. enter into a purchase or sale of any securities, not intended t of beneficial ownership but intended to operate only as a de depress or cause fluctuations in the market price of securitie

(e)……

The expression "fraud" has been defined in regulation 2(1)(c Regulations as follows:

"Fraud" includes any of the following acts committed by a or with his connivance, or by his agent, with intent to dece thereto or his agent, or to induce him to enter into the contra

1. the suggestion, as to a fact, of that which is not true, by one believe it to be true;

2. the active concealment of a fact by one having knowledge o fact;

3. a promise made without any intention of performing it;

4. any other act fitted to deceive;

5. any such act or omission as the law specially declares to be "fraudulent" shall be construed accordingly.

Explanation.—Mere silence as to facts likely to affect the person to enter into a contract is not fraud, unless the circ case are such that regard being had to them , it is the d keeping silence to speak, or unless his silence is in its speech;"

Before proceeding further I would, at this stage, like to briefly explain regulation 4 of the FUTP Regulation before we test the facts relating to the reference to the regulations.

Chapter II titled "Prohibition of Fraudulent and Unfair Trade Practices rela market" is the core chapter in the FTUP Regulations. Regulation 3 thereun person from buying selling or otherwise, dealing in securities in a fra Prohibition against "market manipulation" is covered by regulation 4. Sub cla regulation 4 referred to in the order have been extracted above. Regulation 5 of misleading statements to induce sale or purchase of securities and regu "unfair trade practices relating to securities"

Chapter III provides for investigation into alleged contravention of the consequential action thereafter. Regulation 7 empowers SEBI suo motu or received by it to cause an investigation to be made in respect of the conduct person buying, selling or otherwise dealing in securities, by an investigatin purposes, namely- (a) to ascertain whether there are any circumstances which person guilty of having contravened any of these regulations or directions issu to investigate into any complaint of any contravention of the regulation, r investor, intermediary or any investors. In terms of regulation 8, in the norm causing an investigation the Board is required to give notice to the person c requirement can be dispensed with for certain reasons specified in the regulat is on the duties and obligations of the person under investigation. In terms of

concerned investigating officer is required to submit the investigation rep
Regulations 11,12 and 13 deal with the follow up action.

> " 11. **Power of the Board to issue directions**:- The Board may, afte
> the report referred to in regulation 10, and after giving a reasonab
> hearing to the person concerned, issue directions
>
> for ensuring due compliance with the provisions of the Act, rules and
> thereunder, for the purposes specified in regulation 12.
>
> 12. **Purpose of directions**:- The purpose for which directions under
> be issued are the following namely:
>
> **(a)** directing the person concerned not to deal in securities in any part
>
> **(b)** requiring the person concerned to call upon any of its officers, o
> representatives to refrain dealing in securities in any particular manne
>
> **(c)** prohibiting the person concerned from disposing of any of the securitie
> contravention of these regulations;
>
> **(d)** directing the person concerned to dispose of any such secu
> contravention of these regulations, in such manner as the Board
> restoring the status-quo ante.
>
> 13. **Suspension or cancellation of registration**:- The Board may, in
> specified in regulation 11, and without prejudice to its power unc
> initiate action for suspension or cancellation of registration of an inte
> g a certificate of registrations under section 12 of the Act;
>
> Provided that no such certificate of registration shall be suspended o
> the procedure specified in the regulation applicable to such interme
> with"

On a perusal of regulation 4 it is clear that prohibition is against market man
clauses (a) to (e). This Tribunal in Videocon case had examined the scope of
follows:

"To attract regulation 4(a) (i) a person should have effected, taken part in, or
directly or indirectly, transactions in securities (ii) the transactions must be wit

such transaction must be to artificially raise or depress the prices of securities the action must be to induce the sales or purchase of securities by any person. T regulation 4(d) are that (i) a person must enter into a purchase or sale of any purchase or sale must not be intended to effect the transfer of beneficial o purchase or sale must be intended to operate only as a device to inflate, fluctuations in the market price of securities. On a perusal of the regulation it of clause (a) is wider than the reach of clause (d). Regulation 4(a) brings not o and seller but even third parties also to its ambit , if they are found in any effecting or taking part in the transactions directly or indirectly. The motive and the effect of the actions is also relevant. Transactions in securities, wit raising or depressing the prices of securities and thereby inducing the sal securities by any person is the pointer in this regard. Artificial action to induc transact in securities is the core theme of regulation 4(d). According to Black "deceit" means " a fraudulent and deceptive misrepresentation, artifice or devi more persons to deceive and trick another, who is ignorant of the true facts, to damage of the party imposed upon". On a careful perusal of the regulation Sundaram pointed out that element of deceit is an underlying factor in t genuine transaction by itself cannot attract the regulation though such a transa in market price variation . Regulation 4(a) attracts only if the transaction intention of artificially raising or depressing the prices of securities so as to person to sell or purchase the securities. The participation need not necessaril be indirect as well.

Prohibition in regulation 4(d) is on entering into transactions for a purcha securities not intended to effect transfer of beneficial ownership but intended o distort the market price of securities. In other words the regulation covers sp Under regulation 4(d) it is not necessary that the action should result in i purchase or sell the securities as in the case of regulation 4(a). It has to be not clauses, the intention of the party is relevant. Therefore an element of involved."

The ingredients of regulation (b) are that one should indulge in an act, calculated to create a false or misleading appearance of trading on the securi planning is not adequate to attract regulation. Action is the triggering poin should be a calculated one. It should be meant to misguide people. As the regu action to create a false or misleading appearance of trading on the marke deliberate intention of the party is implicit. The reference is to positive act. Su by a person cannot be unintentional. Regulation 4(c) attracts if a person in

which results in reflection of prices of securities based on transactions that are transactions. Word indulge according to Websters Encyclopedic Dictionary r an inclination or desire". Here again it is action based. The expression "indulg (b) (c) also gives credence to believe that the action should be an intentional or the market manipulation stated in regulation 4 if one is to be charged it is abs to prove that the person had acted intentionally. It is to be noted that t regulation 4 is on market manipulation. Market manipulation, by its very attributed to any unintentional act. Intention is built in the process.

This Tribunal in Videocon case had examined the extent of evidence require charge of market manipulation and had observed that

> "As stated earlier, in the absence of reasonably good evidence to s market manipulation , which is a very serious one, cannot stick company, merely on surmises and conjunctures .

In this context, with reference to the test of evidence applicable to the domes Dada had referred to the decision in Gulabchand (supra) that "it is wrong to cases such charge must be proved clearly and beyond reasonable doubt". He Hon'ble Bombay High Court in National Housing Bank (supra) in this regard the Hon'ble High Court had reiterated the principle laid down by the Hon'ble Gulabchand's case. This Tribunal is not suggesting for a moment that to p person under regulation 4(a) and 4(d) , the charge must be proved beyond reas nature of evidence required for the purpose was considered by this Tribuna (supra), . In the Sterlite case also the charge was manipulation of the market issued was also identical, but for the tenure of the prohibition. In the said ca Sterlite was represented by Shri Sundaram and the Respondent SEBI by Shri expressed by this Tribunal in the said case are squarely applicable to the pre was held in the said case:

> "Shri Dada had argued about the degree of evidence required in an the one, in contradistinction to the nature of evidence required in crii in a court of law, that in an inquiry like the instant one it is the " probability" that is to be taken into
>
> consideration and not to go by "proof beyond doubt" as requ proceeding.
>
> In this context it is to be noted that Chairman holding the Appellant g

in price manipulation has stated that "creation of false market and p
is a very serious offence". Evidence merely probabalising and ende
the fact on the basis of preponderance of probability is not sufficient t
serious offence of market manipulation. When such a serious offen
and the charge is

established , the fall out of the same is multifarious . The impact o
finding is wide especially in the case of a large public company hav
of investors. The stigma sticks and it also hurts, not the compa
shareholders as well. "Not all the King's horses and all the King
salvage the situation. Mere conjunctures and surmises are not ad
person guilty of such a serious offence. The extent of proof req
delinquent guilty has been explained by the Hon'ble Supreme Court
v. Degala Surya Narayana (AIR 1999 SC 2407) . The Court held:

" strict rules of evidence are not applicable to departmental enquiry
only requirement of law is that the allegation against the delinquer
established by such evidence acting upon which a reasonable person
and objectively may arrive at a finding upholding the gravament of tl
the delinquent officer. Mere conjuncture or surmise cannot sustain tl
even in departmental enquiry proceeding.(emphasis supplied)

In M.S.Bindra v. Union of India, (1998) 7 SCC 310 the Court had
appeal against the removal of an officer from service on doubtful in
mere possibility is hardly sufficient to assume that it would hav
Nandakishore Prasad v. State of Bihar (1978) 3 SCC 366, the Court
the appeal against the removal of an employee from service based on
departmental enquiry viewed that " Before dealing with the contentio
may remind ourselves of the principles in point crystalised by judic
first of these principles is that disciplinary proceedings before a don
of a quasi judicial character; therefore, the minimum requiremen
natural justice is that tribunal should arrive at its conclusion on

the basis of some evidence, i.e. evidential material which with
definiteness points to the guilt of the delinquent in respect of the cha
Suspicion cannot be allowed to take the place of proof even in dom
pointed out by this Court in Union of India v. H.C.Geol (AIR 19
principle that in punishing the guilty scrupulous care must be take
innocent are not punished, applies as much to regular criminal trials

inquiries held under the statutory rules'.(emphasis supplied).

In the context of a disciplinary action against an advocate, the Hon'ble Cou disciplinary authority empowered to conduct the inquiry and to inflict the pun of the body, in forming an opinion must be guided by the doctrine of benef obligation to record a finding of guilt only upon being satisfied beyond rea would be impermissible to reach a conclusion on the basis of preponderance the basis of surmise, conjuncture or suspicion. It will also be essential to consi regarding mens rea . This proposition is hardly open to doubt or debate p regard to the view taken by this Court in L.D.Jaisinghani v. Naraindas N Punja 354: AIR 1976 SC 373 at P. 376 – wherein Ray, CJ speaking for the Court has

> "In any case we are left in doubt whether the complainants version v come forward with considerable delay was really truthful. We think this nature, involving possible debarring of the advocate concer should be of a character which should leave no reasonable doubt Disciplinary Committee had not only found the Appellant guilty but permanently. (In Re An advocate AIR 1989 SC 245)" (emphasis sup

About the test of evidence in a civil proceeding, the following observati Hon'ble Court (Razikram v. J.S.Chauhan - AIR 1975 SC 667: (1975) 4 SCC 7

> " It is true that there is no difference between the general rules of evi criminal cases and the definition proved in section 3 of the Evidence a distinction between civil and criminal cases. Nor does this definitio proof because absolute certainty amounting to demonstration is rarel affairs of life. Nevertheless, the standard of measuring proof p definition is that of a person of prudence and practical good sense.. equally true about proof a charge of corrupt practice which cannot b mere balance of probabilities".(emphasis supplied)

The Hon'ble Supreme Court in yet another case with reference to adjudicati Customs Act and Land Customs Act relating to imposition of penalty on the had held:

> " To such a situation though the provisions of the Code of Criminal Evidence Act may not apply, except in so far as they are statutorily the fundamental principles of criminal jurisprudence and of nat necessarily apply. If so, the burden of proof is on the customs authori

to bring home the guilt to the person alleged to have committed a under the said Acts by adducing evidence" (Ambalal v. Union of In 264).

On application of the standard of evidence required to hold a person guilty of out by the Hon'ble Supreme Court cited above, it is seen that the evidence Respondents is not sufficient to hold the charge against the Appellant. Fr referred to above it is clear that in the absence of reasonably strong evidence (t reasonable doubt), even in a civil proceeding, a person cannot be held gu punishment. Mere surmise, conjucture or suspicion can not sustain the holdir very carefully examined the impugned order and find that the conclusic Respondents holding the Appellant guilty of indulging in market manipulatior of regulation 4(a) and 4(d) of the 1995 Regulations is not substantiated by suff

The Appellants had submitted that the impugned order has been made in provisions of regulation 29(3) of the Stock Broker Regulations, in as much beyond the thirty days' time prescribed in the Regulation and therefore, the or not be sustained. According to the Appellants the show cause notice w Appellants including Bama on 30.5.2002. Bama replied to the show cause not Bama did not seek any person hearing before the Chairman. Consequently concerned the order was required to be passed not later than 11.7.2002. E passed only on 30.7.2002 and therefore as far as Bama is concerned the order h violation of the mandatory requirement of regulation 29(3), that accordingly th is vitiated at least qua Bama. According to the Appellants, since the Responde come to the conclusion that all the Appellants were acting in concert to artifi price in certain scrips, the findings against the Appellants are not severable ar impugned order is vitiated qua Bama, on account of the violation of reg impugned order cannot survive qua the other three Appellants and therefore set aside in toto. The Appellants, in support of the said submission, had cit decision in Atul Kanodia.

According to regulation 27 of the Stock Brokers Regulations no order of pena or cancellation shall be imposed except after holding an enquiry in acc procedure specified in regulation 28. The proviso to the regulation keeps certa purview of the said requirement. The proviso has no application to the presen empowers SEBI to appoint an enquiry officer 'for the purpose of holding regulation 27.'

In terms of regulation 28(7) the Enquiry Officer is required, after taking into ac

facts and submissions made by the Stock Broker, to submit a report t
recommend the penalty to be awarded as also on the justification of the penal
show cause notice. In terms of regulation 29(1) on receipt of the report
Officer, SEBI is required to consider the same and issue show cause no
Broker/Sub Broker as to why the penalty as it considers appropriate should no
regulation (2) requires the Stock Broker/Sub Broker to send to SEBI a reply
notice within 21 days from the date of receipt of the notice. According to sub
Board after considering the reply to the show cause notice, if received, shall a
but not later than thirty days from the receipt of the reply, if any, pass such
fit."

The fact of appointing the Enquiry Officer on 4.6.2001 **and** the Enquiry Offi
report to SEBI on 22.5.2002 is not disputed. On receipt of the enquiry repo
show cause notice to the Appellants on 30.5.2002. Noticees replied to the sl
Except Bama others requested for a personal hearing. They were given pe
1.7.2002. But Bama, though replied to the show cause notice vide its letter
filed on the same day with SEBI did not seek any personal hearing and d
personal hearing on 1.7.2002 with other Appellants. The order was passed on
facts remain undisputed. Now the question is in the light of the provisions o
and the facts stated above, whether the impugned order is vitiated qua Bama
view the answer to the question is in the negative for the reason that the im
combined order against the 4 Bang Entities stated therein and issuance of s
possible only after completing the composite enquiry initiated by the Respond
the enquiry was initiated against them in the light of the investigation carried
they acted in a concerted manner to manipulate the market for certain scrips.
SEBI had passed a common ad interim order on 18.4.2001. A post decisional
to the Bang Entities on 30.4.2001 at which they made common oral submissio
order was passed on 4.6.2001. SEBI vide its order dated 4.6.2001 appointed a
He issued show cause notices on 10.9.2001 and 25.1.2002 to the Bang entitie
and the enquiry proceedings conducted by him were also common. He submit
report to SEBI on 22.5.2002 after enquiry. The central charge, as per the Enqu
the Appellants acted in concert in depressing the price of various scrips and th
market manipulation. In the facts and circumstances of the case it was not poss
segregate Bama's case and issue a separate order. It is noticed that the hearing
1.7.2002 and the order was passed on 30.7.2002 well within the stipulated 30
the absence of any evidence on record to prove the contrary, the date of passi
be accepted as 30.7.2002 as is reflected from the order itself. The ratio in th
case has no application to the case, as in the said case the order was passed by

30 days prescribed in regulation 29(3). In the light of the facts and circumstar my view, the impugned order cannot be said to have been passed beyond 30 vitiated even qua Bama. The Respondent has also prayed to reconsider judgement in Kanodia and had for the purpose cited Bhaskaranand Agarwal V Sikkim 4); Ganesh Prasad Shah Kesari V Laxminarayan Gupta (AIR 1985 SC Leather Karmachari Sanghetan V Liberty Footwear Co. (AIR 1990 SC 427). that reconsideration of Atul Kanodia is called for, for deciding the present case

Yet another major legal issue, agitated by the Appellants is the authority of impugned order cancelling the certificate of registration granted to the Ap regulation 13 of the FUTP Regulations. In this context the order passed by the be looked into, which is extracted verbatim from the order as follows:

> " I, G.N. Bajpai in exercise of powers conferred upon me under sec Act, 1992 read with regulation 29(3) of SEBI (Stock Brokers a Regulations, 1992 read with Regulation 13 of SEBI (Prohibition o Unfair Trade practices relating to Securities Market) Regulations, order cancellation of Registration of M/s. Nirmal Bang Securities Bang Equity Broking Pvt. Ltd. (BEB), Bama Securities Ltd., (BSL) - registered with SEBI and Bang Securities P. Ltd.,(BS), sub broke SEBI with immediate effect."

Section 4(3) referred to by the Chairman, empowers Chairman, SEBI to exerc of the Board, except those reserved for the Boards as determined by the Regu 29(3) as discussed earlier is the power vested in the Board to issue orders to S Brokers, if considered necessary. Regulation 13 of the FUTP regulation is the the cancellation of the certificate of registration has been ordered.

Regulation 13 of the FUTP Regulations is on "suspension or cancellatio According to the said section, "the Board may, in the circumstances specifie and without prejudice to its power under regulation 12, initiate action f cancellation of registration of an intermediary holding a certificate of registra 12 of the Act." The regulation provides that no such certificate of registration s or cancelled unless the procedure specified in the regulation applicable to suc complied with.

Regulations 11 and 12 referred in regulation 13 are as follows:

> " 11. **Power of the Board to issue directions**:- The Board may, afte

the report referred to in regulation 10, and after giving a reasonat hearing to the person concerned, issue directions

for ensuring due compliance with the provisions of the Act, rules and thereunder, for the purposes specified in regulation 12.

12. **Purpose of directions**:- The purpose for which directions under r be issued are the following namely:

(a) directing the person concerned not to deal in securities in any part

(b) requiring the person concerned to call upon any of its officers, o representatives to refrain dealing in securities in any particular manne

a. prohibiting the person concerned from disposing of any of the securit contravention of these regulations;

(d) directing the person concerned to dispose of any such securities ac contravention of these regulations, in such manner as the Board may d restoring the status-quo ante.

Since the parties had relied on the provisions of regulation 25 and 26 of Regulations, it is considered necessary to extract the same also for ready refere

Liability for action in case of default:

25.(1) A stock-broker who-

a. fails to comply with any conditions subject to which registration has been

b. contravenes any of the provisions of the Act, rules or regulations;

c. contravenes the provisions of the Securities Contracts (Regulations) Act, d thereunder;

d. contravenes the rules, regulations or bye-laws of the stock exchange;

shall be liable to any of the penalties specified in sub-regulation (2).

(2) The penalties referred to in sub-regulation (1) may be either-

(a) suspension of registration, after the inquiry, for a specified period; or

(b) cancellation of registration.

Suspension, cancellation of registration

26.(1) A penalty of suspension of registration of a stock-broker may be im

(i) the stock-broker violates the provisions of the Act, rules and regulation

(ii) the stock-broker does not follow the code of conduct annexed at Schec

(iii) the stock broker-

a. fails to furnish any information related to his transactions in securitie the Board;

b. furnishes wrong or false information;

c. does not submit periodical returns as required by the Board;

d. does not co-operate in any enquiry conducted by the Board;

(iv) the stock-broker fails to resolve the complaints of the investors satisfactory reply to the Board in this behalf;

(v) the stock-broker indulges in manipulating or price rigging or cornerir market;

(iv) the stock-broker is guilty of misconduct or improper or u unprofessional conduct;

(vii) the financial position of the stock broker deteriorates to such an ext is of the opinion that his continuance in securities business is not in the in and other stock-brokers;

(viii) the stock broker fails to pay the fees;

(ix) the stock-broker violates the conditions of registration;

(x) the membership of the stock-broker is suspended by the stock exchang

Provided that, the Board for reasons to be recorded in writing may in defaults of the type mentioned above impose a penalty of cancellation of stock-broker.

(2) A penalty of cancellation of registration of a stock-broker may be impo

(i) the stock-broker violates any provisions of insider trading regulat regulations;

(ii) the stock-broker is guilty of fraud or is convicted of a criminal offence

i. cancellation of membership of the stock-broker by the stock exchang

The Appellants have contested SEBI's power under regulation 13 of the FU order cancellation of the registration on the basis of the findings rendered in th According to them SEBI has passed the order for violation of the provisions of Regulations and FUTP Regulations. According to the Appellants penalty registration of Stock Broker/Sub Broker can be imposed only on the three g under regulation 26(2) of the Stock Broker Regulations, that in the insta Appellants have not been charged with or found guilty of indulging in fraud registration can not be cancelled. In this context Shri Dwarkadas had ar referring to the provisions of regulations 25, and 26 of the Stock Broker Re also cited authorities, which I have referred to in the earlier part of this order his arguments, in support of his contention that the penalty of suspension or c imposed as per the guidelines provided in regulation 26 only. In this co regulation 26(1)(v) the learned Senior Counsel had submitted that the specifically provides for the suspension of registration in the event of a l indulging in manipulation or price rigging in the market (which is the charge/f Appellants in the present case), that though market manipulation and fraud ar the FUTP Regulations, different penalties have been prescribed in Regulation manipulation entails suspension of registration, fraud entails cancellation of different punishments of suspension and cancellation have obviously been pr basis of the seriousness of the charge/violation. Referring to the expression ' in Regulation 13, Shri Dwarkadas stated that Stock Brokers and Sub Broker market intermediaries, and there are several market intermediaries (referred t the SEBI Act) and their activities are regulated by separate set of Regulations that an examination of these Regulations will show that SEBI had conscio specific situations in which the registration of a particular intermediary ma suspended, that these provisions are intermediary centric and offence specific,

that while prescribing the situations/eventualities in which the registration o may be suspended or cancelled, the functions of the intermediary commi violation, the consequences on the intermediary etc. have been taken into cons of an example he had cited regulation 23 of the SEBI (Foreign Institu Regulations, 1995 which provide for cancellation of certificate of registrat indulging in market manipulation, that for the same offence, in terms of regu only suspension of certificate of registration has been provided. He had furth the provisions of Regulation 25 are general provisions conferring upon SEBI to impose the penalty of suspension or cancellation of registration, Regulation situations/conditions under which the penalty of suspension or cancellation o be imposed, that Regulation 26 contains the guidelines to be followed by SEI a penalty of suspension or cancellation of registration and such penalties im strictly in accordance with the provisions of Regulation 26. According to him t out of the fact that regulation 26 covers all the situations listed in Regulatio Senior Counsel had submitted that this is the only harmonious construction t on regulations 25 and 26 and the only construction by which the provisions and 26 and the only construction by which the provisions of regulations 25 an full effect and rendered workable.

Shri Rafiq Dada, Learned Senior Counsel for the Respondent counterin submissions on the power under Regulation 13 submitted that Stock Broker general Regulation, regulating the activities of the Stock Brokers and Su provides the consequences that would visit them on violation of the requir therein. He submitted that there was no specific Regulation relating to frau trade practices committed by the Brokers, and till such time the FUTP Regulat in, sections 11 and 11B which provide adequate power to SEBI, were invoke fraudulent and unfair trades practices indulged in by any person including S Sub Brokers, that FUTP Regulations was notified on 25.10.1995. Learne submitted that FUTP Regulations by itself is a complete code relating to Frau Trade practices. It provides for prohibiting the fraudulent and unfair trade prac to person who indulges in the fraudulent and unfair trade practices is provided itself, that it is a self contained regulation and that SEBI's power to imp directions under the said Regulation is not subject to the provisions of any Learned Senior Counsel referred to regulation 13 of the FUTP Regulations a SEBI is empowered to suspend or cancel the certificate of registration intermediary and with a view to avoid repetition, the Regulation has made a the procedure to be followed as specified in the Regulations applic intermediaries, before suspending or cancelling the certificate of registration

terms of section 12 of the SEBI Act. He submitted that deciding punishmer gravity of the offence and that decision is always left to the authorities imp that no guidelines as such are required for deciding the quantum of pun punishment, as provided in the law. According to the learned Senior Cou Regulations by itself is a complete code, no other guidelines need be referred t restrict the power under FUTP Regulations and go to the Stock Broker Regul of his submission he cited certain authorities which I have set out in the earlier Learned Senior Counsel referring to the Appellants' submission that suspension/cancellation of intermediaries the applicable regulation for imposi suspension/cancellation should be those Regulations. Shri Dada subm Regulations is not intermediary specific but it is offence specific and for th provisions of the said Regulations, the penalty provided therein is to be imp penalty provided elsewhere. He had submitted that the fact even insider tradir takeover regulations did not provide for cancellation of registration or suspens of an intermediary, does not mean that if any intermediary is found to be guil insider trading its certificate of registration can not be suspended or cancelled. it is under regulation 13 of the FUTP Regulations such intermediaries car punishment of suspension or cancellation of their certificate of registration Counsel submitted that regulations 25 and 26 of the Stock Broker Regulations curtail the powers of SEBI under regulation 13 of the FUTP Regulations.

I have given considerable thought to the rival contentions on the powers suspension/cancellation of the certificate of registration granted to the interme those intermediaries guilty of violating the provisions of FUTP Regula principles to be followed in inflicting penalties have been provided by the Court in several cases. To quote one such decision is that of Ranjit Thakur's ca 2386) . The Hon'ble Court in the said case has observed that the sentence has and the offender, that it should not be vindictive or harsh and it sh disproportionate to the offence as to shock the conscience and amount in it evidence of bias. The Hon'ble Court had further held that the penalty i commensurate with the gravity of the misconduct and that any penalty dispr gravity of the misconduct would be violative of Article 14 of the Constitution.

SEBI's power to suspend or cancel the certificate of registration of an intern with it flows from section 12 (3) of the SEBI Act. In terms of the said section by order suspend or cancel a certificate of registration in such manner as may the regulations. Provided that no order under this sub section shall be made concerned has been given a reasonable opportunity of being heard." In this

noted that the power to suspend or cancel the certificate of registration is veste
be determined by regulations. The only rider is that before issuing the order,
the concerned intermediary a reasonable opportunity of being heard – i.e.
comply with the rules of natural justice.

FUTP Regulations, in my view is a self contained Regulation. It's object
fraudulent and unfair trade practices relating to securities market. It's scope
restricted only to Stock Brokers and Sub Brokers. Any person indulging i
Unfair Trade Practices relating to Securities Market is amenable to the provis
Regulations. But the power to suspend or cancel the certificate of registration
the entities (intermediaries) mentioned in section 12. The persons, who
certificate of registration can also indulge in fraudulent and unfair trade practic

It is in the said context one is required to consider the scope of regulation 13
SEBI is empowered "to initiate action for suspension or cancellation of
intermediary holding a certificate of registration under section 12 of the Ac
subject to what is stated in the proviso that "no such certificate of registration s
or cancelled unless the procedure specified in the regulation applicable to suc
complied with". The said mandatory provision requiring compliance of the pr
in the relevant regulation is nothing but a reiteration of the requirement of the
12 requiring compliance of the requirements of the principles of natural justi
cross reference to comply with the specific procedure preceding cancellation/
certificate of registration available in the regulations applicable to intermediar
view to avoid undue burdening of the Regulation by repealing those requirem
the FUTP Regulations and such cross references in the Regulations are very
noted that SEBI has now codified the procedure for holding enquiries vi
Exchange Board of India (Procedure for Holding Enquiry by Enquiry Offi
Penalty) Regulations, 2002, and the same is applicable to all intermediaries in
Brokers and Sub Brokers.

I have noted the argument advanced by Shri Dwarkadas that since regulatio
offences for imposing the penalty of suspension and cancellation, the Respor
the guidelines provided in the said Regulation. But I find difficult to agree wi
that for violation of FUTP Regulations, penalty of suspension or cancellatio
registration be made only as per the provisions of regulation 26.

Regulation 26 (1) inter alia provided that a penalty of suspension of regis
broker may be imposed, if a Stock broker violates the provisions of the SE
regulations, and the Stock Broker indulges in manipulating or price rigg

activities in the market. One of the grounds for cancellation provided in reg
"the Stock Broker is guilty of fraud, or if convicted of a criminal offence."

On a careful perusal of the FUTP Regulations, I find that its scope is much wid
26 that it is not confined to manipulating or price rigging or cornering activitie
from the scheme of the FUTP Regulations that it deals with "Fraudulent
Practices". All the unfair trade practices need a not necessarily be fraudule
though all the fraudulent trade practice could be unfair trade practices. In this
noted that the FUTP Regulations has recognised this distinction as cou
Regulation itself. Regulation 3 Prohibits persons buying or selling or oth
securities in a fraudulent manner. Expression "fraudulent" has been defined i
The said definition has been set out in the earlier part of this order. Reg
Prohibition against market manipulation. The Appellants in the instant case h
for violating the said Regulation (4). Regulation (5) is on prohibition of misl
to induce sale or purchase of securities Regulation 6 is on prohibition of unf
relating to securities.

It is thus clear that the FUTP Regulations' coverage is much wider and the o
penalty of suspension/cancellation provided in regulation 26. Regulation 26 is
take care of all the offences under the said Regulations. If the Appellants' stan
penalty of suspension/cancellation can be imposed only in terms of regulation
to a situation whereunder SEBI will not be in a position to award penalty o
Stock Broker or Sub Broker for an offence not covered under regulation 26
argument that that are no guidelines to decide the nature of the penalty in
therefore the provisions as such are arbitrary, in my view, is not tenable. It is
provide alternate penalties to meet several offences and as to what should be
the alternative, is left to the discretion of the authority imposing the penalty
clear from section 24 of the SEBI Act. The said section is extracted below.

> "24(1) Without prejudice to any award of penalty by the adjudicating
> Act, if any person contravenes or attempts to contravene or abets the
> the provisions of this Act or of any rules or regulations made there
> punishable with imprisonment for a term which may extend to one
> or with both".

The legislature has not provided any guidelines except capping the term of im
the maximum fine leviable has not been stipulated. In what circumsta
imprisonment is to be awarded and in what circumstances fine is to be imp
circumstances both imprisonment and fine can be imposed, are left to the discr

No doubt the authority imposing the penalty can not impose the same whims context one has to look for the guidance given by the Hon'ble Supreme Court i case referred earlier – that the penalty imposed must be commensurate with misconduct and that any penalty disproportionate to the gravity of the misc violative of Article 124 of the Constitution.

For the reasons stated above I am of the view that SEBI is empowered to aw suspension or cancellation of the certificate of registration granted to tl establishing violation of the FUTP Regulations. Whether in a particular ca cancellation is warranted would depend up on the offence for which the imposed.

Having come to the conclusion that the impugned order is not time barred competent under regulation 13 of the FUTP Regulations to award penalty of c certificate of registration of Stock Brokers/Sub Brokers now let us examine charges levelled against the Appellants have been established. The Responde enumberated the findings of the Enqquiry Officer based on which the Respond show cause notice to the Appellants. Entitywise charges have been stated reference purpose I have grouped the charges in some cases. Some of th subsequently dropped. In this order, at the appropriate context I have referred t

There is a common charge against all the 4 Appellants that they had indulge transactions in the selected scrips (specifically mentioned in the order) with artificially the prices of these scrips between mid February and mid March 20 manner. In the case of NBS, BEB it has been specifically stated that they acte each other in effecting large scale transactions in the scrips of Global Tele Satyam, DSQ and Zee Telefilms.

NBS has been charged also on two other counts i.e.

i. Dealing with unregistered sub brokers viz. Money Growth Investmen Investments

ii. Indulging in short sales after 8.3.2001 in violation of SEBI circular da

In the case of BEB the other charges are that

(i) Two lakh shares of Global Tele were sold when share prices reg fall.

(ii) Indulged in synchronized trades with First Global Stock Brokers the price, quantity etc were matched and which in turn is a manipulati

iii. Dealing with Palombe, an unregistered sub broker.

iv. Indulging in short sales after 8.3.2001 in violation of SEBI Circular d

In the case of Bama the other charges are:

i. Dealing in securities in a structured manner in time slots.

ii. Acted in concert with Bang Securities (BSL) for indulging in simulta scrips of Infosys, Reliance and Satyam on the specified dates.

In the case of Bang Securities

Apart from the charge that it was indulging in large trading transactions in sele view to depress artificially the prices of those securities, it has also been alleg in concert with Bama for indulging in simultaneous sales in the scrips of Infc Satyam on the specified dates.

It is noted that the four Appellants are owned, managed and controlled by Ba the Appellants themselves have described them as "Bang Entities". The f separate entities in the eyes of law, does not change their basic character of B It can be safely concluded that the controlling mind of these 4 entities are com they had acted in a concerted manner so as to depress the market is a questio we will come later.

The Respondent in its order has stated that the Bang entities have "indulge transactions with a view to depress artificially in a concerted manner", short sa trading, trading in particular time slots when the share prices registered subst of large transactions through unregistered sub brokers and guilty of viola Conduct specified in Schedule II of the SEBI (Stock Brokers and Sub Brok 1992 and Regulation 4(a) to (d) of SEBI (Prohibition of Fraudulent and Unfai Regulations, 1995".

I agree with the Appellants' submission that if the Enquiry Officer's findings of regulation 4 of the FUTP Regulations on the ground that the Appellants brought down the market, to establish the charge the Respondents have tc requisite evidence to show:

(i) that the Appellants' transactions resulted in shares

i. that such fall in price was artificial

ii. that the intention behind effecting such transactions was to r prices

iii. that they thereby induced the sale or purchase of securities b

Market manipulation being a serious charge, the consequences that would visit on proving the charge is quite harsh, reasonably convincing evidence need establish the charge. Surmises and conjuctures are not enough.

The common charge, as stated earlier, applicable to all the 4 Appellants is th large trading transactions with a view to depress the market artificially in a c During the course of the arguments it was stated that "Bulls" & "Bears" op market. According to the Glossary of Capital Market published by SEBI (Ju means "An operator who first buys and then sells shares". An investor who is b feels price will go up in that share or the general market price will rise. A " rising market with abundance of buyers and relatively few sellers" "Bear" m market operator who expects the market price of shares to decline". The term one who has sold shares which he does not possess, in the hope of buying the price, when the market price of the shares come down in the near future." A "B weak or falling market characterised by the dominance of Sellers". It wa Respondent that the Appellants operated in Bear Market. SEBI in its order ha down the Appellants mainly on the ground that they were sellers. SEBI seem the notion that selling in a falling market is a market manipulation. It is not s the intention of the seller that would decide as to whether he was indulging Selling scrips in a falling market, with no intentin of manipulation, in my vi regulation 4.

I have perused the data furnished by the Appellants and the Respondents wit allegation of large trading transactions by the Appellants with a view to depres Appellants have denied the charge of large trading transactions and also concerted action by them. Since I have already set out the data relied on by regards in the context of their respective submissions recorded in the earlier p do not propose to reproduce the same here. I have examined those data wit observation made by the Respondent in respect of the transactions in each s

order. It is seen from the data before me that the percentage of the transactions Appellants with reference to the total transactions in each of the select securitie as to have any material impact on the price of the scrips. This is supported fro furnished by the Appellants (which SEBI has not disputed) in respect of the market capitalization of the concerned scrips together with the average trad select stocks. As per the said information furnished by them volume of trac Appellants as % of the total volume traded on the exchange was – Global Tele 2.55%, DSQ 3.13%, Zee Tele – 3.89%, Wipro – 2.74%, Satyam – 3.45%, MT – 3.89%, Infosys – 4.33%, Sterlite – 3.16%. It is noted that SEBI has in its "index movements of stock exchanges showed excessive volatility espec February to mid March 2001." But it is not even the case of SEBI that there w or complicity between the Appellants and any other brokers to deliberately bri have also perused the transactions effected by the Appellants, as revealed in th me and the price movement. But I do not find any correlation between transactions and the price movements. It is noted that in certain cases when th buying shares, the price of the scrip was falling and in certain cases when the by the Appellants, prices were going up. I have also made an attempt to find was any particular pattern to suggest that the transactions were designed to infl But I could not see any such pattern in the transaction. There were instances fallen when the Appellants were buying, but there were also instances when pr up when the Appellants were selling. It is also seen that the Appellants are bro Securities Ltd.). Their submission is that they are essentially "discount bro capacity as a broker, they merely execute orders placed by various clients, wi to the investment decision of the client in respect of whether or not to acquir whether or not the price at which order is placed appropriate, that no advice provided to any client, which in fact, takes the investment decision without be the Appellants. In this context it is to be noted that in terms of clause B(1 Conduct applicable to Stock Brokers 'A stock broker in his dealings with th general investing public shall faithfully execute the orders for buying and selli the best available market price….'.In the normal course, the Broker acts only client. To prove that the Broker was deciding the transactions for the client, o evidence. SEBI has not produced any evidence to show that the transacti Appellants were in their own account or on clients' account. The learned Senio Respondent had submitted that the Appellants' conduct has to be viewed f conduct. I have not missed this submission. But the material on record do learned Senior Counsel's submission that in the totality of the facts and c Appellants could be considered to have indulged in large trading transactio market.

Undertaking large trading transactions, following the rules and regulations an safety requirements, by itself is not something irregular or undesirable. But i that the motive behind such transaction is to artificially depress the market t manipulation prohibited by the FUTP Regulations. There are two aspects wh in this regard – i.e. whether the traded volume was large enough to have market and (2) whether large transactions that could affect the market was motive of manipulating the market. In this context I would like to state that n depressing the market is a manipulation, but arificially raising the market is als The crucial factor in deciding whether their trading was to manipulate tl underlying intention of the Stock Broker. The test of evidence need not b Intention can not be established that easily in such cases. But there should be and convincing evidence to prove the motive. "Belief" however, benign and g a substitute for evidence. I have already discussed the case of evidence requ charge of manipulation in the case of Videocon. The relevant extract from the already been provided in the earlier part of the order. The scope of regulation FUTP Regulations has also been stated in the earlier part of the order. The t establish the charge of market manipulation is a realistic one. SEBI has failed test. In the absence of adequate evidence to show that the Appellants had indu transaction with a view to depress the market, this charge fails. On mere suspi inference, it can not be held that the Appellant had transacted in securities wi hammering down the price of the scrips. On the contrary the Appellants hac their reply that fall in prices of shares at that time was not peculiar to Indian ma global phenomenon, that the trend noticed in Indian markets was in tune with am not endorsing this view; neither I am ignoring. In any case since the Appell such an agrument, it was for SEBI to disprove that version, which SEBI has like to make it clear in this context that my finding that the charge under dis stick is based only on the basis of the limited material available before me.

Trading by Bama

It has been alleged that the trading pattern of Bama on 22, 23 and 28th Februa March in the scrips of Global Tele, HCL, Satyam, Silverline, Zee and Wipro s was a consistent net seller. The Appellant has questioned the data on the gro do not represent the true position. I do not consider that it is necessary to g further, as the motive of Bama has not been established. In fact the Responder in the matter as could be seen from the statement that "the net sales position of to have contributed to the artificial depression of price of these scrips du period."

The Respondent had alleged that NBS had transacted with two unregister Money Growth Investments and Arihant Investments and BEB with another viz. Palombe. The Appellants have disputed the charge. It seems that SE recognised those three companies as unregistered sub broker. As I could see SEBI had started its investigation into the business transactions in the year 200 must have examined the role of the said so called unregistered Sub brokers. A (d) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (Br broker" means any person not being a member of a Stock Exchange who a stock broker as an agent or otherwise or assisting the investors in buying, sel securities through such stock brokers". In terms of rule 3 "No stock broker o buy sell or deal in securities unless he holds a certificate granted by the Regulations". Procedure for registration is provided in regulation 12 of t Regulations as follows:

12(1). The Board on being satisfied that the sub broker is eligible shall gra Form E to the sub broker and send an intimation to that effect to the stock e exchanges as the case may be;

(2) The Board may grant a certificate of registration to the applicant subject conditions as stated in rule 5

In this context it is to be noted that SEBI is empowered under section 24 of th criminal prosecution against those persons who contravene the provisions of any rules or regulations made thereunder. Violation of the requirements under requiring sub broker to get registered is an offence in terms of section 24 of t that sure that the entities namely Money Growth Investments and Arihant Palombe are unregistered sub brokers why SEBI did not take any action again not produced any evidence to the effect that these entities are unregistered s they had indulged in transactions without getting proper registration fr proceeded against them in terms of section 24, at least. SEBI has not even issued a show cause notice in this matter to them. If there are any reasons f against them, the same has not been stated. The inference that could be drawn that SEBI itself appears to be unsure as to whether those three entities are act sub brokers. If SEBI had any tangible evidence to support the version put in th holding those three entities as unregistered sub brokers, there was no reason proceed against them for violation of the Broker Rules. Since the Appella SEBI's version that those entities are unregistered sub brokers, all the moreit prove that they are unregistered sub brokers. In fact SEBI in its order has gon saying that "It is not shown by the member that Palombe is one such pe

brokerage can be shared in terms of the proviso to bye law 218 (a) of BSE or disqualified person for sharing brokerage in terms of the proviso to the bye la for the Respondent, which has leveled the charge that BEB had transacted which allegedly is an is an unregistered sub broker, to prove the charge Appellant to prove as suggested in the order. About the other two entities NB those entities had represented to it as clients remains unrebutted. There is not substantiate the charge that NBS and BEB had made huge transactions through brokers, so as to view that they had violated the Stock Broker Regulations Respondent.

SEBI banned short sales by its circular dated 7.3.2001. Till 7.3.2001 there was short selling provided it was not meant to manipulate the market. But SEBI with effect from 8.3.2001. This circular was issued as a risk management meas of the then prevailing market condition. Such prohibition was put in positio protect the interests of the investors and the securities market. So violation banning short sales is a very serious matter. The fact that NBS and BEB had sale after 8.3.2001 is born out of records NBS & BEB indulged in short sales and 31.3.2001 to the extent of Rs.2.31 crores and 3.05 crores. The Respo established the charge. The Appellants have only explained the circumstances had short sold the securities. I am not convinced by the explanation . Since th established, there is no escape from the consequences that should visit th flouting the SEBI's direction in its letter dated 7.3.2001.

The charge of selling two lakh shares of Global Tele when share prices regis against BEB has been given up.

BEB has been charged for synchronized deals with First Global. I have e provided by the parties on this issue. I find many transactions between BEB are many instances of such transactions. I find the scrip, quantity and price fo been synchronized by the counter party brokers. Such transactions undou artificial market to mislead the genuine investors. Synchronized trading i prudential and transparent norms of trading in securities. Synchronized trading can create false volumes. The argument that the parties had no means of kno entity controlled by the client is simultaneously entering any contra order reason that in the online trading system, confidentiality of counter parti untenable. It was submitted by the Appellants that it was not possible for th who the counter party broker is and that trades were not synchronized b coincidence in some cases. Theoretically this is OK. But when parties decide t transaction the story is different. There are many transactions giving an imp

were all synchronized, otherwise there was no possibility of such perfect ma price etc. As the Respondent rightly stated it is too much of a coincidence ove in too many transactions when both parties to the transaction had entered buy the same quantity of shares almost simultaneously. The data furnished in the certainly goes to prove the synchronized nature of the transaction which regulation 4 of the FUTP Regulations. The facts on record categorically est had indulged in synchronized trading in violation of regulation 47 of the FUTP synchronized trading intention is implicit.

Bama has been charged for effecting sales in time slots. I have gone through for the purpose, as available on record. The Respondent has established with time slots by Bama had contributed to the decline in the share prices. The follo illustrates the case.

Scrip	Date	Time From	Time To	Minutes	Sales	% mar
Global Tele	23-2-01	15:04	15.14	0.10	85655	11.6
Global Tele	2-3-01	1233	12.41	0.08	49315	9.74
Satyam	1-3-01	14.13	14.33	0.20	155744	5.01
Satyam	2-3-01	10.57	11.05	0.08	62714	3.97
Satyam	2-3-01	13.17	13.53	0.36	63979	2.56
SSI	2-3-01	13.41	13.54	0.13	9955	14.7
SSI	2-3-01	12.32	13.01	0.29	19450	11.1
WIPRO	1-3-01	13.33	13.41	0.08	9026	15.4
Zee Tele	23-2-01	12.26	12.32	0.09	76279	2.33
Zee Tele	1-3-01	12.53	13.56	1.03	129478	6.52
Zee Tele	2-3-01	12.00	12.22	0.22	116932	7.04

I have considered the explanation given by the Appellants. But I am not convi In my view the Respondent has established its case. These transactions in my contributed to the price fall. The Appellant BEB, by the very nature of the t absolve itself of the involvement in the transaction. Intention is reflected fro Appellant. Choosing selective time slots does not appear to be an involuntar saying that these time slot sales were responsible for the market fall. But th contributed to the market fall. The Respondent had observed that Bama ha short sales in the specified time slots as given in the show cause notice. Takin quantum of shares sold, the fall in price of the shares during the time slots h the data support the charge that the member had sales including short sales du

bands and caused fall in the price.

The charge against Bang Securities which is a sub broker is that of indulging to bring down the prices, acting in concert with others, short sale of 2 lakh sha system, receipt of loan of Rs.5 crores from Palombe and sharing of introductor

"The charge of excessive sales to bring down the prices" remains unes examined the data provided in support of the charge which does not establish t as stated earlier, there is no evidence – even an inference to show that t transacting in securities with a view to depress the market. In the absence of a such a serious charge is not to be sustained. For the said reason the charge of also fails. The Enquiry Officer himself has dropped the charge of short sale o Global Telesystem. Similarly the Enquiry Officer has dropped the charge of Rs.5 crores from Palombe. In these circumstances none of the charges Securities P. Ltd., survives.

I have taken into consideration all the relevant facts and explanations/submiss placed befrore me. The charge that the Appellants had indulged in large tra with a view to depress the market artificially in a concerted manner remain From the particulars furnished by the Respondent it is clear that the share pr certain days in the period covered under investigation, and the price fall was and on certain days thereafter. But the Respondent has attributed the cause o fall to the transactions effected by the Appellants. But considering the Ap transactions with reference to total volume of the particular scrip traded at t those days, it is difficult to believe that such a small percentage of trade with volume traded on the stock exchanges would have resulted in such crash in pr even suggested in their order as to whether others were also involved, and if nexus between them and the Appellants, whether the price fall was as as conspiracy and if so who are the other players. The impugned order is silent a who could have contributed to the crash of the market. Perhaps a composite i consolidated order with reference to the market upheaval witnessed during t would have been more rewarding than bringing out truncated orders. It is r orders that is relevant. It is the stuff of the order that matters. In any case sinc has failed to prove with reasonably convincing evidence the charge of artificia market, the said charge can not be sustained. Once the said charge itself fails, whether Bang Entities acted in concert or not becomes academic. The charg unregistered sub brokers by NBS & BEB also fails for the reason stated earlie NBS and BEB had indulged in short sales after 8.3.2001 remains established BEB had indulged in synchronized deals with FGBS also stands established

that Bama's sales in certain picked up time slots had an adverse effect on th established. No charge against BSL has been established.

Respondent has cancelled the certificate of registration of all the Appellant harsh penalty was awarded because of the view it had held that the Appella securities with the intention to depress the market. But since the said central cl be established it is felt that it is not proper to award the penalty of cancellatio registration. Cancellation of Certificate of registration is akin to capital punish intermediary is concerned and therefore the same has to be awarded with great As certain charges have been established against the Appellants, impo commensurate with the gravity of the said charges is justified. They deserve t the proven charges. Taking into consideration all the relevant aspects I am suspension of certificate of registration of NBS for 2 years is adequate. In the Bama suspension for a period of 3 years, in my view is reasonabe. Accordingl by the Respondent is modified to the said extent. The period of suspension cancellation already undergone by th Appellants (NBS, BEB and Bama) will computing the period of suspension now awarded.

Since no charge has been established against Bang Securities Pvt. Ltd, no pena its case. Therefore, that part of the order cancelling the certificate of registratio Securities Pvt. Ltd., is set aside.

The appeals are disposed of in the above lines.

Sd/[

(C.ACHUTHAN)

PRESIDING OFFICER

Place: Mumbai

Date: October 31, 2003

Copy to

1. The Appellant as above
2. The Respondent