

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

IN THE MATTER OF APPLICATION SUBMITTED BY CD EQUISEARCH PVT. LTD. FOR REGISTRATION AS A PORTFOLIO MANAGER UNDER SEBI (PORTFOLIO MANAGERS) REGULATIONS, 1993.

- 1.0 CD Equisearch Pvt. Ltd., (hereinafter referred to as "the applicant") is a registered stock broker with Securities and Exchange Board of India (hereinafter referred to as "SEBI") and also a member of Bombay Stock Exchange (hereinafter referred to as 'BSE'). The applicant submitted an application dated 18.01.2003 for registration as a portfolio manager under regulation 3 (1) of SEBI (Portfolio Managers) Regulations, 1993 (hereinafter referred to as 'the said regulations').
- 2.0 While processing the application under Regulation 6 of the said regulations, it was noticed that BSE, in its investigation report had identified the applicant as one of the five brokers who had introduced unlisted shares of Designs Auto Systems Ltd. in the market. The conduct of the applicant which is an intermediary registered with SEBI under section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'the Act') indicates lack of due diligence on its part. The matter is being investigated by SEBI for taking further action in terms of the provisions of the Act, and the Regulations framed thereunder.
- 3.0 In view of the above, the applicant, prima facie, could not be considered as a "fit and proper person" within the meaning of Regulation 6 (j) of the said regulations, therefore, the said application of the applicant was rejected on this ground. Thereafter, a letter dated 19.06.2003 was issued to the applicant informing it about the rejection of the application as a portfolio manager. In the interest of natural justice, an opportunity of hearing was granted to the applicant before me on 09.07.2003 in the matter.
- 4.0 The representatives of the applicant appeared before me on 09.07.2003 and made submissions vis-à-vis the application dated 18.01.2003 for registration as a portfolio manager. The applicant also submitted a letter dated 08.07.2003, inter alia, contending, as follows –
1. That they are merely victims of a system failure and upon such a fraud being discovered, and the request made by BSE to bring in the old shares, they had put in extra efforts to get the old shares from the clients and 13,23,400 old shares were brought back by them to replace the so called unlisted shares.
 2. That they had done normal due diligence like they generally do for all clients and also verified the holding of the shares of the client for the scrip and the ISIN of the shares.
 3. The Governing Board of BSE vide its order dated 10.04.2003 stated that since the identity of the unlisted shares was lost as the ISIN allotted to these new shares was the same of the old listed shares, it would not be possible for the brokers to imagine that some of these shares were actually new unlisted shares. Therefore, brokers were not at fault.
 4. The episode appears to be well planned out scheme by the company to defraud investors and exploited a loophole in the system.
- 5.0 Subsequently, the applicant submitted a letter dated 28.07.2003 informing SEBI to the effect that it would like to withdraw the said application dated 18.01.2003 for registration as a portfolio manager and requested SEBI to do the needful in this regard. The said letter dated 28.07.2003 has been taken on record.
- 6.0 I have perused the material available on record and carefully considered the application, facts and circumstances of the case, the reply and submissions made by the applicant.
- 7.0 In this regard, I note that Regulation 6 of the said regulations provides for consideration of application which is reproduced as under :-
- "6 (1) For considering the grant of certificate to the applicant, the Board shall take into account all matters which it deems relevant to the activities relating to portfolio management.
- (2) Without prejudice to the generality of the foregoing provisions, the Board shall consider whether –
- (a) the applicant is a body corporate;
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)
 - (g)
 - (h)
 - (i)
 - (j) the applicant is a 'fit and proper person';

(k) grant of certificate to the applicant is in the interest of investors.”

8.0 In view of the ongoing investigation vis-a-vis the role of the applicant in introducing unlisted shares of Design Auto Systems Ltd. in the market, I am of the opinion that granting of certificate of registration to the applicant would not be in the interests of investors. I am also of the opinion that the applicant is not a 'fit and proper person' for the purpose of granting certificate of registration as a portfolio manager.

9.0 For the reasons stated above, the applicant does not fulfill the requirements laid down in clauses (j) and (k) of sub-regulation (2) of regulation 6 of the said Regulations. Therefore, the application dated 18.01.2003 of the applicant for grant of certificate of registration as a portfolio manager is hereby rejected.

10.0 A copy of this order shall be communicated to the applicant.

G. N. BAJPAI

CHAIRMAN

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Date : 25th August, 2003

Place : Mumbai