

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST SHRI VIJAY VYAS, MEMBER, MPSE.

- 1.0 Shri Vijay Vyas is a member of Madhya Pradesh Stock Exchange (hereinafter referred to as MPSE) and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) vide registration no. INB 070158614.
- 1.1 An enquiry officer was appointed vide Order dated 18.02.02 for conducting enquiry into the affairs of Shri Vijay Vyas, member of MPSE, vis-à-vis his dealings in the scrip of Eonour Software Ltd (hereinafter referred to as ESL) and possible violation of the provisions of the following :-
- (a) Rules, Bye-laws and Regulations of Madhya Pradesh Stock Exchange.
- (b) Provisions of the Securities and Exchange Board of India Act, 1992, the Securities and Exchange Board of India (Stock Brokers and sub Brokers) Regulations, 1992.
- (c) Provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade practices relating to Securities Market) Regulations, 1995.

2.0 Background and investigation by SEBI :

- 2.1 ESL was originally incorporated on May 06, 1992 in the name of Mikugura Software Limited with its registered office located in Indore, Madhya Pradesh. The main object of the company was to develop system software and application software. In January 1996, ESL came out with a public issue of 12,50,000 shares of Rs. 10/- each at a premium of Rs.20/- per share aggregating to Rs. 375 lac. As per the prospectus, the shares of Mikugura Software Ltd. were proposed to be listed at M. P. Stock Exchange (MPSE) and Ahmedabad Stock Exchange (ASE).
- 2.2 ESL was taken over by Shri R. Karthik from its previous promoters in the month of November 1999. Shri R. Karthik in terms of Regulation 10 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 made an open offer to the shareholders of ESL and paid Rs. 33/- per share for the fully paid up shares and Rs. 8.25 per share for the partly paid up shares of ESL. These were evident from the open offer document made in line with the provisions of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 1997. The name of Mikugura Software Ltd, following the takeover, was changed to Eonour Software Ltd. The shares of ESL are listed on Ahmedabad Stock Exchange (ASE), Madras Stock Exchange (MSE), The Stock Exchange, Mumbai (BSE) and M. P. Stock Exchange, which is the regional exchange of ESL. Listing of the shares at MSE and BSE was done after the takeover by the new management. After the takeover, the registered office of ESL changed from Indore to Chennai.
- 2.3 The public holding in ESL excluding Other Body Corporates is approximately 6.3 lac shares constituting approximately 21% of the paid up capital of ESL. Further, out of total 1248 shareholders, only 4 shareholders were holding approximately 79% of the equity capital. This shows that the shares of company are in limited hands.
- 2.4 It was observed that 5 shareholders collectively were holding 26,12,700 shares constituting approximately 87% of the paid up share capital of ESL as on February 10, 2000. It was also observed that Shri Karthik R. the main promoter of the company was holding 22,44,200 shares of ESL constituting approximately 75% of the paid up capital of ESL.
- 2.5 A perusal of the trading details from December 01, 1999 to July 31, 2000, shows that no trading was reported at ASE during the said period. However at M. S. E., the scrip was listed on February 28, 2000 and the trading permission was granted on February 29, 2000. The first trade on the exchange was reported on March 06, 2000 at a price of Rs. 419/-. The total quantity traded, during the period under investigation, at the exchange was only 1,500 shares and the highest price it touched at the exchange was Rs. 492/-. The scrip of ESL was not traded at NSE during the period June 2000 to December 2000.
- 2.6 Substantial quantity of shares were traded at Madhya Pradesh Stock Exchange during the period December 01, 1999 to March 14, 2000. After March 14, 2000 no trades were reported at the exchange. Incidentally, it is observed that the scrip was listed on the Stock Exchange, Mumbai, on March 13, 2000. From the price volume details as submitted by MPSE, it is observed that the price of the scrip, which was Rs. 31.50 on December 01, 1999 rose to Rs. 401/- on March 09, 2000. Prior to November 1999, the scrip of ESL was not actively traded and the scrip was considered highly illiquid. In the Madhya Pradesh Stock Exchange, prior to December 1999, the scrip was thinly traded and the price was in the range of Rs. 18/- to Rs. 30/- per share.
- 2.7 At The Stock Exchange, Mumbai the first trade was reported on June 12, 2000 (although listed on March 13,2000) and the price was Rs. 520/- which went up to Rs. 634.75 on July 07, 2000. It was noticed that the clients were connected to each other. It is observed that a total of 2,22,600 shares were traded on the exchange. The maximum quantity traded on the exchange on a particular day during the period was 11,700 shares on June 22, 2000. It was observed that the total purchases/quantity traded during the aforementioned period were 2,22,600 shares.
- 2.8 At M. P. Stock Exchange, a total of 2,47,100 shares were traded during the period December 01, 1999 to March 14, 2000. It was observed that trading in the scrip was concentrated among 7 brokers of the exchange who have traded in the scrip during the period December 1999 to March 2000 and their names along with their positions are under:

Name of Broker	Purchases	%age of Total	Sales	%age of Total	Gross
Mohan Malpani, dent, President, MPSE	65,900	26.67	66,300	26.83	132200
Shaifali Khajanchi	65,600	26.55	65,500	26.50	131100
Ravindra Khajanchi	57,100	23.10	56,800	22.99	113900

Dilip Bhandari	30,100	12.18	30,100	12.18	60200
Vijay Vyas	23,100	9.34	23,100	9.34	46200
Anil G. Bhandari	4,000	1.61	4,000	1.61	8000
Sharad Bhandari*	1,300	0.52	1,300	0.52	2600
Total	2,47,100	100.00	2,47,100	100.00	494200

* Sharad Bhandari has also traded in the scrip prior to December 1999.

- 2.9 It is observed from the trading details collected that all the trading done in the scrip during the aforementioned period has been contributed by the above mentioned brokers only. The scrip price had moved from Rs. 31/- on December 01, 1999 to Rs. 402/- on March 09, 2000. These brokers, without actually taking or giving delivery, have jacked up the price of the scrip at M. P. Stock Exchange. They have also reversed the position amongst themselves and indulged in rampant "Circular Trading" in the scrip so as to register artificial volumes and also to jack up the price of the scrip. The brokers have done the trades in their own account.

3.0 Role of Shri. Vijay Vyas :

- 3.1 Shri Vijay Vyas is a proprietary member of M. P. Stock Exchange and he traded in his own account. All of his transactions were squared off in nature. The trading details of Shri Vijay Vyas are as under:

Name of Broker	Sett.	Purchases	Sales	Net	Gross
Vijay Vyas	39	4,000	4,000	0	8,000
	40	12,300	12,300	0	24,600
	41	6,800	6,800	0	13,600
Total		23,100	23,100		46,200

- 3.2 The member was squaring off his position at the end of the settlement which was confirmed by him during the investigation. During the course of investigation /enquiry, Shri Vijay Vyas was asked that the price of the scrip had moved up from Rs. 31/ in December 1999 to Rs. 400/- in March 2000 and why it should not be inferred that he alongwith other members of the exchange were responsible for creating artificial market and jacking up the price. In reply to this, Shri Vijay Vyas stated, "I would like to put it on record that I have never indulged in any kind of trading which is in contravention of SEBI or Exchange rules and regulations. Further, as far as I remember I have traded only in three/four settlements whereas the trading in the scrip was very regular. I have only taken the advantage of the price difference between the buy and sell in the scrip. He stated that if he had indulged in price manipulation or circular trading, he would have continuously traded in the scrip and not in three or four settlements alone" He was asked to comment on the fact that almost 10% of the exchange volume were contributed by him and why it should not be inferred that he was responsible for the price and volume rise and also creation of artificial volumes at the exchange. In reply to this, Shri Vijay Vyas stated that at the time of executing the transactions, he failed to notice that his volumes are so high. He further added that the total trading volume of the exchange was not available to him. It was observed that almost all his transactions were squared off at the same rate without any profit or loss and he was asked to explain the reasons for same. In reply to this, Shri Vijay Vyas stated that most of the time transactions were squared off at the end of the day and that he did not want to keep the position open overnight.

4.0 ENQUIRY REPORT AND RECOMMENDATION :

- 4.1 The enquiry officer, after conducting the enquiry as per the prescribed procedure submitted a report dated 08.8.03 and recommended a penalty of suspension of certificate of registration of the broker for a period of three months.

5.0 SHOW-CAUSE NOTICE, HEARING AND BROKER'S REPLY

- 5.1 Pursuant to the submission of enquiry report, a show cause notice dated 01.09.03 was issued to the broker along with a copy of the enquiry report. The broker submitted a reply vide letter dated 10.9.03. An opportunity of personal hearing was granted to the broker on 10.10.03. The broker appeared before me and admitted having committed mistakes and pleaded for a lenient view in the matter. He also submitted that he was doing only jobbing activities and there was no intention on his part to commit such mistakes. The broker vide his letter dated 10.9.03, inter alia, submitted that due to his trading no one has lost nor gained directly and he had not earned any profit out of the price rise. He further submitted that he was not linked with any one of the company and he has done the transaction solely for getting brokerage from such tradings.

6.0 CONCLUSIONS

- 6.1 I have carefully considered the material available on record and also the submissions made by the broker vide his letter dated 10.9.2003. My findings are as follows :-
- 6.2 Shri Vijay Vyas had traded in the scrip of ESL on his own account. Shri Vyas executed a total purchases of 23,100 shares and sale of 23,100 shares from Settlement No.39 to 41 without any delivery of shares. Shri Vyas has submitted that trading in the scrip was regular at MPSE and he therefore decided to earn some jobbing difference. He had not executed any transactions for the clients. He further submitted that he used to square off the transactions in the same settlement and he executed similar transactions in other scrips as well. However, he admitted that he was aware that trades were being executed by some other brokers in the same scrip.
- 6.3 Shri Vijay Vyas submitted that he has never indulged in any kind of trading which is in contravention of SEBI or Exchange rules and regulations. He stated that if he had indulged in price manipulation or circular trading he would have continuously traded in the scrip and not in three or four settlements alone. He further stated that at the time of executing the transactions he failed to notice that his volumes are so high as the trading volumes of the Exchange were not available to him.
- 6.4 Shri Vyas submitted that the trades done by him in the scrip were genuine and he neither made any personal profit out of the said trades nor caused any loss to any investor. He further stated that the price of the scrip was moved from Rs 50/- to 110/- during the period and the same was a normal movement.

- 6.5 I find that the submissions of Shri Vyas are not convincing inasmuch as he had traded mainly on his own account in the scrip of ESL alongwith few other brokers of MPSE. The scrip price has moved from Rs.31/- in December 1999 to Rs.400/- in March 2000. Prior to November 1999 the scrip was not actively traded and the scrip was highly illiquid. A set of brokers, who without actually taking or giving delivery have artificially created the volumes and raised the price of the scrip to an abnormal level by indulging in circular trading. It is significant to note that all these brokers have executed transactions on their own account. There is no merit in the contention of Shri Vyas as his trading in the scrip constituted approximately 10% of the trading volume at the exchange and most of his transactions were matching with other brokers who were also trading in the similar manner. The trading pattern of the member clearly suggested that he was very much a party to the cartel formed by the brokers. It was also noted and confirmed by the member that in almost all the transactions he did not earn any profits but the price of the scrip was continuously going up and had touched Rs. 400/- in March 2000. This clearly suggests that the transactions were entered into at successive higher prices by Shri Vijay Vyas in collusion with other members of the exchange. The price rise in the scrip was too steep to go unnoticed by any member and especially when the member was not making any profits or losses. It is evident that the broker has failed to exercise due care, skill and diligence in his dealings. It was seen that all the other brokers were squaring off their positions on the same day and they have also traded in a manner in which no one has made profit and still managed to jack up the price of the scrip.
- 6.6 The investigation report has brought out that many of the transactions of these brokers have matched with that of other brokers. Though Shri Vyas has stated that the price of the scrip was moved from Rs 50/- to 110/- only during the period he was trading, I find the said price rise is very substantial keeping in view of the artificial trading done by few brokers in MPSE.

- 6.7 The scrip has been made liquid by putting artificial volumes and price by few brokers including Shri Vyas. These brokers have entered into continuous speculative transactions without any genuine interest in giving or taking delivery of shares. This has resulted in creation of artificial volumes and price rise in the scrip which has otherwise attracted no interest from the general investors.

- 6.8 I find that only few brokers in concert indulged in circular trading i.e. buy and sell transactions with each other, squaring off positions and reversing trades either on the same day or same settlement, making the net receivables and deliverable positions either nil or in negligible quantities and created a false and misleading appearance of trading on the securities market in the scrip of ESL. Since there were very few active brokers in MPSE and the price of the scrip which is illiquid had been rising phenomenally, Shri Vyas was aware that the price was moving up because of the jobbing done by few brokers including himself and not because of any enthusiasm from the general investors. Therefore, he should have stopped doing jobbing in the said scrip immediately.

- 6.9 In view of the above conclusions, I find that Shri Vyas has, therefore, failed to exercise due skill and care and violated Clause A(1) to (4) of the Code of Conduct as contained in Schedule II read with of Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992. The said clauses A(1) to (4) read as follows :

A(1) A stock broker, shall maintain high standards of integrity, promptitude, and fairness in the conduct of all his business.

A(2) A stock broker shall act with due skill, care and diligence in the conduct of all his business.

A(3) A stock broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

A(4) A stock broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

- 7.0 Shri Vijay Vyas has also indulged in acts calculated to create a false and misleading appearance of trading in the scrip of ESL and entered into purchases and sale of securities not intended to effect transfer of beneficial ownership but to inflate the price of the scrip. The conduct of the broker is in violation of Regulation 4(b) and 4(d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. Regulations 4(b) and 4(d) read as follows :-

"4. No person shall -

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

(d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the market price of securities."

- 7.1 Regulation 7 of the said Regulations provides that the stock broker holding the certificate shall at all times abide by the Code of Conduct as specified in Schedule II. Further, Clause A (5) of Schedule II provides that a stock broker shall abide by all the provisions of the Act and the Rules, Regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him. In view of my conclusions mentioned hereinabove, I am convinced that the said broker is guilty of having violated,

- (a) the provisions of clauses A(1) to A(4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992,

(b) the provisions of Regulation 4(b) &(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

In view of the above, I do not see any reason to differ with the findings of the enquiry officer except the quantum of penalty. I am also convinced that the said broker is liable for action under regulation 13(1)(b) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

7.2 Under section 11 of the SEBI Act, SEBI can take measures to protect the interests of investors and to regulate the securities market, inter alia, by registering and regulating the working of stock brokers. Further, the Code of Conduct specified in Schedule II of the said Regulations also provides for the minimum standards for the working of the stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures taken by SEBI for regulation of the stock brokers would be rendered nugatory and the regulatory function would be jeopardized. It is to be noted that indulgence of the said broker in the transactions which are prohibited can not be allowed especially when such transactions are likely to have a detrimental effect on regulation of the securities market.

8.0 **ORDER :**

8.1 I find that the said broker has committed violations as observed above and has not exercised due care and diligence in the observance and compliance of the statutory requirements pertaining to the conduct of his business as a stock broker. Looking to the aforesaid violations committed by the said broker, I am convinced that, in the interests of the securities market and in order to safeguard its integrity, penal action is warranted. I am satisfied that a penalty of suspension of certificate of registration for a period of two months would be adequate and would meet the ends of justice.

8.2 Therefore, in exercise of the powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 13 (4) and 13 (6) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby order that the certificate of registration no. INB 070158614 of Shri Vijay Vyas, a member of the Madhya Pradesh Stock Exchange be suspended for a period of two months.

This order shall come into force on the expiry of three weeks from the date of this order.

DATE : 29.10.03

PLACE: Mumbai

A K BATRA

MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA