

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s VKB CAPITAL SERVICES LTD., MEMBER, LUDHIANA STOCK EXCHANGE.

1. M/s VKB Capital Services Ltd. is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 120756233 and is a member of Ludhiana Stock Exchange (LSE). An inspection of books of accounts, documents and other records of the member was conducted on 15.01.2001. During the inspection, several irregularities were found committed by the member.
2. The findings of the inspection were forwarded to the member vide letter dated 20.02.2001 advising the member to give their comments, if any. The member vide letter dated 22.05.01 replied to the said findings of the inspection report. On not being satisfied with the reply filed by the member an Enquiry officer was appointed vide order dated 07.01.2003 to enquire into allegations of violations against the member, inter-alia, to the following:
 - (a) Violation of section 12 of Securities and Exchange Board of India Act, 1992
 - (b) Clause (1) (g) of Rule 15 of Securities Contracts (Regulation) Rules, 1957.
 - (c) Violation of Rule 3 & 4 (b) of the SEBI (Stock Brokers and Sub-Brokers) Rules 1992.
 - (d) Sub-Regulation (1) (g) of Regulation 17 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992
 - (e) Violation of Clause A (5), B(1) & C(4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers & Sub brokers) Regulations, 1992
 - (f) Violation of the Directives issued by SEBI vide circular nos. SMD/MDP/CIR/043/96 dated 05/08/96, SMD/POLICY/IECG/1-97 dated 11/02/97, SMD/POLICY/IECG/5-97 dated 11/04/97, SMD/(B)/104/22775/93 dated 29/10/93, SMD/SED/CIR/93/23321 dated 18/11/93, SMD/POLICY/CIR-3/98 dated 16/01/98, SMDRP/POLICY/CIR/32-99 dated 14/09/99.
 - (g) Rules, regulations, bye-laws and directives of LSE as amended from time to time.
3. The Enquiry Officer submitted her report on 30.06.2003. The Enquiry Officer taking into account the irregularities that have been established recommended suspension of certificate of registration of the member for a period of 3 months. The Enquiry Officer held the member guilty of the following violations:
 - (a) Irregularities in maintenance of Books of Accounts.
 - (b) Irregularities in issuance of Contract Notes. The Contract Notes did not contain pre-printed serial number. Order time not mentioned on Contract Notes
 - (c) Transactions with clients on principal to principal basis.
 - (d) Non-segregation of own funds vis-à-vis client's funds
 - (e) Dealing with members of other stock exchanges
 - (f) Non-maintenance of client database
 - (g) Off the floor transactions
 - (h) Delay in payment of money and delivery of securities
 - (i) Non Payment of full SEBI Registration fee
4. Consequent upon above, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 10.07.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on it. The member was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that the member has no explanation to offer. The member was also asked to intimate along with the reply whether it desired a personal hearing. SEBI did not receive any reply to the show cause notice from the member till date. However, SEBI received a letter dated 12.7.03 from LSE stating that the SCN dated 10.07.03 was handed over to the member.
5. Subsequently, another show cause notice dated 29.10.03 was issued to the member advising it that in terms of the provisions contained in Regulation 13(2), Chairman or Member of SEBI Board is not bound by the recommendation of the Enquiry Officer and he may enhance the penalty if so warranted on merits of the case. However, the member failed to reply to this show cause notice also.
6. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report. I find that adequate opportunities were given to the member to put forward its case in adherence to the principles of natural justice. On appreciating the facts and circumstances of the case the findings are as under:
 - 6.1 With reference to irregularities in maintenance of Books of Accounts, the member admitted that the document register did not bear distinctive numbers. For shares and securities in the physical mode the document register is the primary record and the statutory requirement. Reporting of the distinctive numbers in the receipts issued by them does not absolve the member from maintenance of the document register. Therefore, I find that the member violated Rule 15(1)(g) of Securities Contracts (Regulation) Rules, 1992, Regulation 17 (1) (g) of the SEBI (Stock Brokers and Sub-

Brokers) Regulations, 1992 and provisions of Clause A(5) of Code of Conduct as specified in Schedule II read with Regulations 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

Rule 15 (1) (g) of SC(R) Rules, 1957 specifies as under:

15. Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange

(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years:

(a)

(b)

(c)

(d)

(e)

(f)

(g) Documents register showing full particulars of shares and securities received and delivered.

Regulation 17 (1) (g) specifies as under:

17 (1) Every stock-broker shall keep and maintain the following books of accounts, records and documents namely; -.

(a)

(b)

(c)

(d)

(e)

(f)

(g) Documents register should include particulars of shares and securities received and delivered;

Clause A(5) of the code of conduct for the stock brokers specifies 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.

6.2 With respect to irregularities in issuance of contract notes pertaining to pre-printed serial numbers not found on the contract notes and order time not mentioned on the contract notes, I find that the member admitted the said irregularities. Therefore, the member had violated SEBI directives issued vide Circular No.SMD/MDP/CIR/043/96 dated 5.8.96 and Circular No. SMD/POLICY/IECG/1-97 dated 11.2.97 as well as provisions of Clause A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers and sub brokers) Regulations, 1992 and directives of LSE issued vide notice dated 10.4.98.

6.3 Regarding transaction with clients on principal to principal basis, the member stated that they had only 12 transactions on principal to principal basis in the entire year. Further, the member stated that since in most of these transactions they were buyer of the shares and not the sellers as such these were not short sales. I find that the member by not issuing the contract note in the appropriate form i.e. Form B violated directives issued by SEBI vide Circular No. SMD(B)/104/22775/93 dated 29.10.93 as well as SMD/POLICY/IECG/1-97 dated 11.2.97; Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 and Clause A(5) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers & Sub brokers) Regulations, 1992.

6.4 With reference to non segregation of own funds vis-à-vis client funds, I find that the member admitted that strict segregation was not ensured between own funds and clients funds. Therefore, the member had violated LSE byelaw 225(d)(i) as well as SEBI directive issued vide circular no. SMD/SED/CIR/93/23331 dated 18.11.93, it shall be compulsory for all member brokers to keep the money of the clients in a separate account and their own money in a separate account and Rule 4(b) of SEBI (Stock broker and sub broker) Rules, 1992 and provisions of Clause A(5) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers and sub brokers) Regulations, 1992.

Rule 4 stipulates conditions for grant of certificate to stock-broker. Clause (b) of the said rule states that the stock broker shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member

6.5 Regarding dealing with members of other stock exchanges, the member stated that trading at LSE was confined to a few scrips and moreover, the market at LSE was illiquid. They made only a couple of transactions through S G Stock Services, member, NSE, M B Gandhi & Co, member, BSE and Ashwani Kumar Aggarwal & Co., member, CSE in respect of shares which were not traded on LSE or where the prices were uncompetitive. Therefore, I find that the member acted as an un-registered sub broker in violation of Section 12(1) of SEBI Act, 1992, Rule 3 of SEBI (Stock brokers and sub

brokers) Rules, 1992, Clause C (4) of Code of Conduct of Sub-brokers specified under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations 1992 and Clause A(5) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Circular : SMD/POLICY/CIR-3/98 dated 16.1.98.

Rule 3 of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 specifies as under:

3. No stock-broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the regulations:

Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application.

Clause C (4) of the code of conduct for sub-brokers stipulates that "a sub-broker shall execute an agreement or contract with his affiliating brokers which would clearly specify the rights and obligations of the sub-broker and the principal broker"

6.6 Regarding conducting off the floor transaction by the member, I find that the total turnover (in crores) of the member during the year 1999-2000 and 2000-2001 is as follows:

Year	Off the Floor Transaction Re to the exchange (Rs. In crores)
1999-2000	21.81
2000-01 (till 31.12.2000)	4.20

6.6.1 I find that the member admitted the above instances. SEBI vide Circular dated 14.09.1999 banned all negotiated deals, cross deals etc. which include Off-the-floor transactions also. In the said circular it had been notified that all negotiated deals shall be permitted only if the said deals are executed on the screens of the Exchange i.e. the price and order match mechanism of the Exchange like any other normal trade.

6.6.2 The said decision was taken as negotiated deals/cross deals are devoid of transparency requirements. They also do not contribute to price discovery at the stock exchange depriving the investors of the benefit of best price. Therefore, such deals militate against basic principals of stock exchange mechanism which is meant to bring large number of buyers and sellers together in a transparent manner. It is apparent from the above that the off the floor transactions were not put in the system of the Exchange by the member. This is in violation of SEBI Circular dated 14.09.1999. This kind of off the floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Such deals are also in violation of Clause A (5) of Code of Conduct read with regulation 7 of brokers regulations.

6.7 With reference to delay in payment of money and delivery of securities, the member submitted before the Enquiry Officer that they had taken consent in writing from the clients to retain their credits. I agree with the findings of the Enquiry Officer that these letters were not shown to the inspection team and there is a possibility of these letters having been obtained subsequently. By not making payment and delivery in time, the member violated SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.93, LSE Bye-law 225 (d) (3) and Clause A (5) and B (1) of Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Circular : SMD/POLICY/CIR-3/98 dated 16.1.98.

Clause B (1) of the code of conduct for stock brokers specifies that a stock-broker, in his dealings with the clients and the general investing public, shall faithfully execute the orders for buying and selling of securities at the best available market price and not refuse to deal with a Small Investor merely on the ground of the volume of business involved. A stock-broker shall promptly inform his client about the execution or non-execution of an order, and make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.

8. With respect to non-payment of full SEBI Registration Fee, I find that as against principal of Rs. 257833/- only Rs. 5000/- stood paid by the member and an interest amount of Rs. 162175/- is payable by the member as on June 30, 2003. Short payment of SEBI registration fee is therefore established beyond doubt. The member, therefore, violated Rule 4(d) of SEBI (Stock brokers and Sub-brokers) Rules 1992, Clause A (5) and B (1) of Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Clause (1) and 2 (b) of Schedule III read with Regulation 10 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992

1. Further, I find that LSE vide their letter dated 24.06.2003 submitted that the member Shri Vinod Kumar Bansal, Proprietor, M/s V. Bansal & Co. (SEBI Regn. No. INB 120311112) corporatised his membership ticket to M/s VKB Capital Services Ltd. (INB 120756233). The member has submitted the turnover details to the exchange as per the revised format Annexure A prescribed by SEBI stating that it had fully paid the SEBI turnover fee for first financial year and an amount of Rs. 5000 for the block of 5 years in account of M/s V Bansal & Co.
2. I find that since the benefit of continuity is given by SEBI to those stock brokers who have converted their individual/partnership membership into corporate on or after April 1, 1997, the member has made his representation to SEBI for granting exemption from payment of fee on corporatisation. The Board after taking into account the representation of the member decided that he is not entitled to the said benefit. Therefore, I find the member guilty of short and delayed payment of SEBI registration fee which is in violation of para 1 and 2(b) of Schedule III read with Regulation 10 of broker's regulations.

Rule 4 stipulates conditions for grant of certificate to stock-broker. Clause (d) of the said rule states that the stock broker shall pay the amount of fees for registration in the manner provided in the regulations; and

1. I have no hesitation to agree with the findings of the Enquiry Officer. The above findings against the member, which include conducting off the floor transactions, dealing as unregistered sub-broker cannot be taken lightly particularly when the same are in the nature of disturbing the equilibrium of the market and hindering the interest of investors and the development of capital market.
2. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby suspend the certificate of registration of M/s VKB Capital Services Ltd., for a period of three months. This order shall come into force after 3 weeks from the date of the order.

Date : 17.12.03

Place : MUMBAI

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA