

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

SECTION 19 OF SEBI ACT, 1992 READ WITH REGULATION 23 OF SEBI(STOCK BROKERS AND SUB BROKERS) REGULATIONS, 1992 READ WITH REGULATION 13(4) OF SEBI(PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, IN THE MATTER OF M/s. VAKRANGEE SOFTWARES LTD. AGAINST M/s. AMGIS HOLDINGS PVT. LTD.

1.0 Pursuant to a complaint from Shri Jasmine B. Shah alleging that there was price manipulation in the scrip of Vakrangee Software Ltd. (hereinafter referred to as 'VSL') by Shri Harshad Mehta in connivance with certain entities, SEBI conducted an investigation. An analysis of the price volume data of VSL during the period beginning from September 1999 to March 8, 2000 was done. Price was found to have increased from Rs.10/- during September, 1999 to Rs.152/- by the end of December 1999 and subsequently to Rs.597/- by March 2000, i.e., the price of the VSL scrip had substantially moved upwards during a short span of period.

1.1 The investigation revealed that on certain days there was a price rise, which was 8% higher (maximum permissible in a day) than the previous closing price with low volumes, and the circuit filter did not even open on certain days, which means the transactions took place at 8% higher than the previous closing price immediately on the opening of the trading session and the price did not come down from that level as the pending buy orders at circuit limit was not fully exhausted. Repeated occurrences of such instances during subsequent trading days appear to have caused sharp rise in the price of the scrip in a short span of time. Detailed investigations were carried out thereafter. As the investigations found about the prima facie involvement of certain brokers and other intermediaries, separate enquiries were held against such entities as per the procedure prescribed under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

1.2. Accordingly, an enquiry was ordered against M/s Amgis Holdings Private Limited, Member, National Stock Exchange of India Ltd. (hereinafter referred to as 'the Amgis') who was one of the brokers who carried out large volume of transactions. As per the procedure, show cause notice has been served on Amgis by the E.O., replies from Amgis were received and considered. Opportunity of hearings were also given to Amgis by the E.O.

1.3. The Enquiry Officer (hereinafter referred to as "E.O.") submitted his report on October 06, 2003. His findings are as follows:-

1. Amgis had carried off-market transactions worth more than Rs.25 lakhs and more than 10,000 shares in volume in many instances and also had issued a contract note in the case of transaction entered between Harsha Pranav and Tanul Trading on October 25, 1999 but not reported the same to any stock exchange. Such activity described above has resulted in the violation of Section 2(i) of the SC(R) Act and the direction given in the circular No.SMDRP/POLICY/CIR-32/99 dated September 14, 1999 banning all the negotiated deals.

2. Amgis was not reporting transactions to the concerned stock exchange thereby violating circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995 which reads as follows:-

"a) *Brokers are required to report all transactions done on a spot basis on the same day.*

b. Brokers are required to report on the same day all transactions adjusted in their books – whether between two clients or whether between a client and the broker as a principal.

The exchange is advised to inform us about the steps taken in this regard not later than April 10, 1995. The exchanges must also send a report to SEBI indicating the trading floor volumes and off-exchanges volumes separately."

3. The transactions entered through Amgis are of large quantities during the period in which the price of the scrip was rising from Rs.10/- to Rs.597/-. Amgis had not exercised the due diligence of adhering to the code of conduct as prescribed in SEBI (Stock Broker and Sub Broker) Regulations, 1992.

4. Amgis is repetitive in violating the provisions governing the stock brokers since he was found to have been suspended for manipulating the price of BPL Limited, Videocon and Sterlite in connivance with Shri Harshad Mehta.

SHOW CAUSE NOTICE.

2.0 A show cause notice dated October 15, 2003 was issued to Amgis whereby a copy of the Enquiry Report was forwarded to them. It was also mentioned therein that the E.O. had recommended for suspension of the registration of Amgis with National Stock Exchange for a period of two years and Amgis was asked to show cause as to why an appropriate penalty should not be imposed by SEBI in terms of Regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

REPLY TO SHOW CAUSE NOTICE.

3.0 A reply dated December 16, 2003 was submitted by Amgis in response to the show cause notice. It was submitted that Amgis was an entity carrying on business in an independent manner and not part of any group nor acted in concert

with any party and also not violated any of the rules / regulations of SEBI. It was submitted that SEBI had implicitly attributed the price rise in VSL to Amgis whereas being a 'high interest' stock, various factors would have contributed to the large volumes in the case of VSL. A chart showing the volumes of transactions in the scrip of VSL along with the price details was produced by Amgis along with its reply. It was also submitted by Amgis that the reason for VSL to be continuously hitting the circuit filter during the particular days could not be attributed to them. Further, they stated that there were no facts, arguments or circumstances to substantiate the same and hence, the allegation by SEBI lacked evidence.

3.1 In respect of the 'off market transactions' alleged against them, Amgis submitted that those transactions were carried out amongst the clients and the role of Amgis was only minimal. It was also stated that they were trading members of NSE and hence, outside the jurisdiction of the circulars relied on in the report of E.O. They also objected to the reference to an earlier matter concerning BPL, Videocon and Harshad Mehta. They submitted that this indicated a pre-disposition on SEBI's part to the case that there was a prejudice against Amgis. It was also stated that Amgis issued a contract note to the client only in one of the alleged transaction and the other trades, they submitted, did not portray that Amgis was in a position of having brokered transaction for the entities and hence, according to them there was no need for adhering to the circulars which were referred in the findings of E.O. They also denied having indulged in any activities to manipulate the price of VSL. It was reiterated that they had issued one contract note and the E.O., according to them should have treated it as one matter where the conditions were not met and penalty should be proposed accordingly.

3.2 They denied the violation of provisions of the code of conduct of SEBI (Stock Broker and Sub Broker) Regulations, 1992. Amgis also submitted that they have not acted in any unfair manner, nor in a manner where their integrity could be questioned. They denied having done any malpractices in the scrip of VSL. They had sought for the opportunity of personal hearing.

HEARING AND WRITTEN SUBMISSIONS.

4.0. An opportunity of hearing was granted on January 14, 2004 to Amgis, which was communicated to it vide letter dated January 09, 2004. On such date, no one appeared on behalf of Amgis. A further opportunity was granted to Amgis on February 23, 2004, vide letter dated February 06, 2004. None appeared for Amgis on that date also. However, a fax was received from Amgis stating that their authorized person was traveling abroad and hence, a further adjournment need be given. Considering the fact that an earlier opportunity has already been granted, I do not find the reason stated for adjournment convincing. Therefore, I proceed to pass this order after considering their reply dated December 16, 2003 to the show cause dated October 15, 2003.

FINDINGS.

5.0 I have carefully considered the findings of investigation, the show cause notice issued by the E.O., the replies by Amgis, the submissions during the hearing before E.O., the findings of the E.O. and the reply of Amgis to the show cause notice issued pursuant to the submission of Enquiry Report.

5.1 I find that :-

i. Amgis had transacted in the scrip of VSL in large quantities during the said period September 1999 to March 2000 mainly on behalf of the following clients:-

- a. Harsha Pranav Securities P. Ltd. (hereinafter mentioned to as "Harsha")
- b. Tanul Trading P. Ltd. ("Tanul")
- c. S. J. Impex
- d. Ami Impex
- e. Niskalp Investment and Trading Co. Ltd. ("Niskalp")

i. Amgis had made a gross transaction of 15,02,800 shares and a gross purchase and a gross sale on behalf of its clients was 7,51,400 shares in VSL and that these transactions were off-market deals.

ii. The details of transactions for these clients are as follows :

A. Transaction between Harsh Pranav Securities Pvt. Ltd. (Harsh) and Tanul Trading Pvt. Ltd. (Tanul)

Settlement No.	Name of the client	Quantity purchased	Quantity sold
42/99	Harsh Pranav Securities P. Ltd.	3,00,000	0
42/99	Tanul Trading P. Ltd.	0	3,00,000

(a) The above mentioned transactions were executed by the Amgis on behalf of two of its clients namely, Tanul (as sellers) and Harsh (as buyers). This transaction, as appearing on the copy of the contract note was dated October 25, 1999. However payment towards this transaction was made on various dates viz. December 7, 1999, December 14, 1999 and December 23, 1999. The delivery of shares had taken place on December 20, 1999 & December 23, 1999. The aforesaid transaction was neither done through stock exchange nor executed as 'spot' deal as required under the provisions of Securities Contract (Regulations) Act, 1956.

(b) Amgis has earlier been suspended for manipulating the price of BPL Ltd, Videocon and Sterlite in connivance with Shri Harshad Mehta.

B. Transactions carried between S. J. Impex and Tanul Trading Pvt. Ltd.

Settlement No.	Name of the client	Quantity purchased	Quantity sold
43/99	S. J. Impex	3,00,000	0
43/99	Tanul Trading P. Ltd.	0	3,00,000

(a) Despite the fact that the transaction was executed by the broker Amgis on behalf of two of its clients, the payment for the above transaction was directly made by S.J. Impex to Tanul Trading on November 11, 1999 (Rs.35 lakhs) and on December 1, 1999 (Rs.70 lakhs). There was no payment made against the delivery within the stipulated time for the above mentioned transaction as required under Section 2(i) of Securities Contract (Regulation) Act nor was it executed through any recognized stock exchange.

(b) S. J. Impex is an associate company of Shri Deven Mehta and the proprietor of the firm was father of Shri Deven Mehta. Shri Deven Mehta was also authorised to appear on behalf of S. J. Impex in response to summons issued to S. J. Impex.

C. Transactions carried between Niskalp Investments and Trading Co. Ltd. (Niskalp) and Tanul Trading P. Ltd.

Settlement No.	Name of the client	Quantity purchased	Quantity sold
07/2000	Niskalp Investment and Trading Co. Ltd.	75,000	0
07/2000	Tanul Trading P. Ltd.	0	75,000

Amgis had carried out this transaction on behalf of two of its clients namely, Tanul (as sellers) and Niskalp (as buyers) on February 10, 2000. This transaction was not done on any stock exchange and it was an off-market deal. Amgis had not paid the consideration received from Niskalp to its client Tanul. The amount that was due to Tanul Trading was Rs.53 lakhs. It is therefore seen that the aforesaid transaction was neither a stock market transaction nor was it a spot deal as required under the SC(R) Act.

D.Transactions of Ami Impex

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
42/99	0	32800	-32800
52/99	6000	500	-5500
02/2000	0	10000	-10000
05/2000	0	3000	-3000
07/2000	0	11600	-11600
09/2000	0	2000	-2000
Total	6000	60000	-54000

As shown in the above table, the Ami Impex had sold 54,000 shares of VSL through its associate broking firm, Amgis as an off-market transaction.

5.2.Regarding the off-market transactions, I find that Amgis had refuted this charge before the E.O. stating that they were just a facilitator of these transactions between the parties and that they had no responsibility to deliver these shares. Amgis, I see, had further contended that it is a registered member broker with NSE and the shares of VSL were listed on BSE, as such it is not bound to report these transactions to NSE as per the circulars of SEBI. Amgis had further mentioned that it was governed by the bye-laws, rules and regulations of NSE and not that of BSE and therefore not liable to report these transactions to NSE.

5.3.I find that Amgis had issued a contract note on October 25, 1999, towards a transaction of 3,00,000 shares sold by Tanul Trading to Harsha Pranav Securities. This fact is not disputed by Amgis also. Having issued a contract note, Amgis was bound to adhere to all the rules and regulations and other provisions governing such contract note and also as a Member of NSE to comply with various provisions and circulars etc. Circular No.SMDRP/Policy/Circular-20/98 dated August 4, 1998 defines a negotiated deal as here under:-

"Definition of negotiated deal: Any transaction which has either a transaction value of not less than Rs.25 lakhs or volume of not less than 10,000 shares and which has been executed at a price not formed through the stock exchange price and order matching mechanism would be termed as a negotiated deal."

5.4 Thus, any broker who deals in transactions worth more than Rs.25 lakhs in value or volumes more than 10,000 shares falls under the definition of a negotiated deal. A further circular No. SMDRP/POLICY/CIR-32/99 dated September 14, 1999 on negotiated deals reads as follows:

"All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges just like any other normal trade"

5.5 I noticed that Amgis had carried off-market transactions worth more than Rs.25 lakhs or more than 10,000 shares in volume in many instances. I note that Amgis issued a contract note in the case of transaction entered between Harsha Pranav and Tanul Trading on October 25, 1999 but not reported the same to any stock exchange.

Section 2(i) of Securities Contract (Regulation) Act, 1956, provides as under :

"Spot delivery contract means a contract which provides for –

- i. Actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day.
- ii. Transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository."

5.6 I concur with the finding of the E.O. that Amgis had carried out the transactions mentioned at paragraph no.5.1 in contravention of the circulars dated March 14, 1995 and September 14, 1999, as well as the provisions of Securities Contract Regulation Act. Regarding the applicability of the circular issued to BSE where the scrip was listed, the contention by Amgis that he was only a member of NSE and hence, the circular was not applicable to it, do not hold good. I find that the E.O. was right in holding that the disclosures required to be made under the circular dated March 14, 1995 was irrespective of the exchange where the scrip was listed. The circulars are addressed to all the exchanges and it does not differentiate between members of different exchanges or the exchanges where scrip was listed etc. The contention of Amgis on non applicability of circulars is therefore not convincing and is devoid of merit.

5.7 I also find that Amgis had entered into large transactions during the period when the price of VSL was rising from Rs.10/- to Rs.597/-. Having violated the Securities Contract Regulation Act as well as circulars of SEBI, Amgis, I find had not exercised due diligence in terms of the code of conduct prescribed under the Regulations. I further find that Amgis has been repetitive in violating the provisions governing the stock brokers since he had been suspended earlier in respect of his involvement in the manipulation of the price of BPL Ltd., Videocon and Sterlite in connivance with Shri Harshad Mehta.

5.8 The argument of Amgis that price rise in VSL is solely attributed to the transaction by Amgis is incorrect. As pointed out by Amgis in its reply, there are several factors that have contributed to the unusual price rise, which triggered a full-fledged investigation. In the course of investigation, the large quantity of transaction entered into by Amgis on behalf of its clients also was observed. This is also one of the factors. Incidentally, the violations committed by Amgis have been subjected to a thorough examination by the E.O. The Regulations, circulars, etc. are meant for the market players to abide by so that fair play is ensured to all the market participants. The submission that Amgis had only entered into one transaction in violation of circular and hence that alone should be considered while deciding on the action proposed is also unacceptable. Previous conduct of the intermediary is very much a factor to be considered while granting a registration also. SEBI, as a regulator while granting registration reposes confidence in the intermediaries that they will not venture into illegal / unfair practices and various criteria are laid down in order to grant registration. A proper sentence is an amalgam of many factors including nature of violation, previous record, both extenuating or aggravating of the delinquent, etc. The previous track record, if shows a good conduct on the part of delinquent, would be a mitigating factor while deciding on the action to be taken. In fact the previous conduct of Amgis, showing violation of SEBI's regulation warrants serious action as the delinquent show the likelihood of repeating mischief again.

6.0 Therefore, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 23 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Regulation 13(4) of SEBI (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 I hereby suspend the certificate of registration of M/s Amgis Holdings Pvt Ltd for a period of 2 years.

6.1 This order shall come into force with effect from three weeks from the date of this order.

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

Place : Mumbai

Date : April 01 , 2004