

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 M/S PATANI SECURITIES PVT. LTD., MEMBER, THE STOCK EXCHANGE, MUMBAI, IN THE MATTER OF M/s. VAKRANGEE SOFTWARES LTD.****BACKGROUND**

1. The shares of M/s Vakrangee Software Ltd. (hereinafter referred to as 'VSL') are listed for trading on the Stock Exchange, Mumbai (hereinafter referred to as 'BSE'). On receipt of complaints alleging price manipulation in the scrip of VSL by Shri Harshad Mehta, in connivance with certain entities, SEBI conducted an investigation into the dealings in the shares of VSL.
2. The price volume data of VSL during the period September 1999 to March 8, 2000 was analysed. The share 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, signifying that the price of the VSL scrip had substantially moved upwards during a short span of period.
3. Investigations also revealed that on certain days the price rise 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 several trading days appear to have caused sharp rise in the price of the scrip in a short span of time.
4. Investigations found prima facie involvement of certain brokers and other intermediaries in increasing the shares price of VSL during the aforesaid period. 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.
5. One of the brokers found to have transacted in larges quantities of VSL shares was M/s Patani Securities Pvt. Ltd. (hereinafter referred to as "Patani"). Accordingly, an enquiry was ordered against Patani.

ENQUIRY PROCEEDINGS

6. As per the procedure, show cause notice was served on Patani by the Enquiry Officer (hereinafter referred to as "E.O.") and the replies from Patani were received and considered. Opportunity of hearing was also given to Patani by the E.O. The E.O. submitted his report on October 01, 2003 and the findings of the E.O. are as follows:-

"Patani has misused the circuit filter mechanism and thus violated the provisions of regulation 4(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. Patani has not exercised due diligence and care and has disturbed the equilibrium of the true price discovery mechanism in the price of the scrip of VSL. Patani is guilty of violation of Clause A(2) and A(4) of Code of Conduct specified in Schedule II, compliance of which is mandatory in terms of Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992."

In view of his findings, the E.O recommended that the registration of Patani as a broker of The Stock Exchange, Mumbai, be suspended for a period of 6 months.

SHOW CAUSE NOTICE AND REPLY

7. A show cause notice dated October 15, 2003 was issued to Patani, enclosing a copy of the Enquiry Report. Patani 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.
7. A reply dated October 29, 2003 was submitted by Patani in response to the show cause notice. They denied all the allegations made against them in the report of E.O. Patani also submitted that there was no cause as to why their registration should be suspended for a period of six months, as recommended by the E.O. or otherwise. They also denied that they have not exercised due diligence and care or that they have not taken due care or have disturbed the equilibrium of the true price discovery mechanism in the price of the scrip of VSL.
8. Patani also reiterated their written submissions dated July 16, 2002, August 23, 2002 and January 28, 2003, before the E.O and denied all that were contrary thereto or inconsistent therewith. They denied all the allegations against them.

9. It was submitted that not a single share has been purchased by Patani on their own account. It was further submitted that all the deals were entered into for their known and disclosed client, Mr. Sanjay Kothari, who was trading on behalf of his relatives, Mrs. Shobha Kothari and Mrs. Rita Kothari. It was further stated that SEBI had initiated proceedings and had passed orders against Mr. Sanjay Kothari. Therefore, they said that transactions were clearly not entered by Patani for their own benefit. They submitted that since Mr. Sanjay Kothari has been prohibited by SEBI from accessing the capital market and from dealing in securities for a period of six months, no order should be passed against them on the principles of double jeopardy.
10. Regarding the allegation that their orders were placed on the BOLT system at the very beginning of each trading day, Patani stated that the transactions in question were between the period from December 11, 1999 to February 14, 2000 and that during the said period, there were many other scrips in which, the circuit of 8% was imposed, where orders of huge quantities were placed at 9.55.00 and 9.55.59 i.e. just before the beginning of the trading hour. Details of such scrips also were given. They said that they were not aware as to what action was taken by SEBI in respect of the other scrips. They also pointed out that placing orders on behalf of the client either in huge quantity or in the beginning of the trading hour was legal and proper. They also said that no motives can be attributed to them as they have not committed any misconduct nor have they traded a single share on their own behalf. It was further said that all the market obligations arising out of the trade have been honoured by their clients and there was not a single case of default or outstanding position in the market. They submitted that the report of the Enquiry Officer was erroneous and that the Show Cause Notice issued should be discharged.
11. According to them, they had exercised care and due diligence while placing orders. With respect to quantities of orders, they said, that the same were absolutely insignificant or immaterial. They further said that during the same period, there was euphoria about Technology stocks rising world over. For example Yahoo Company shares went on a rampage from 10\$ to 500\$. Similarly, in India too, same trend was witnessed in these sectors and everyone wanted to trade in these shares for obvious reason. This, they said, justified their submissions and hence no orders were warranted against them. They further submitted that any such order will affect their livelihood and earning.
12. Regarding the allegation that large orders were placed by manipulating the circuit filter mechanism which led to interference with fair and smooth functioning of the market, they submitted that every trader in the stock market was governed by two principles i.e. principle of greed and principle of panic. They also said that every buyer wants to purchase shares so that he can benefit if the price of the shares increase at a later date. On the other hand, every seller wants to sell his shares so that if the prices fall in the market, he should not suffer. They also submitted that a trader would enter his deals depending on his financial capacity in case of purchase and share holding capacity in case of sale. They said that consequently, placing orders of huge quantities cannot be any offence or linked to manipulating the circuit filter mechanism or interfering with the fair and smooth functioning of the market. They also submitted that no motives can be attributed to them for having entered deals for known and disclosed client, against whom SEBI has already passed an order. They said that it would be incorrect to allege that they have aided and/or abetted in creating false market as they have not benefited from the said transaction, except the earning of brokerage. They said that the E.O. had traversed beyond the scope of his enquiry as even the Original Investigation Report does not contain the allegation of aiding and abetting against them.
13. Patani stated that the allegation of their misusing circuit filter mechanism and violating any of the regulations of SEBI is wrongful and untenable. They requested SEBI to discharge the Show Cause Notice issued to them, in the interest of justice and equity. According to them, the balance of convenience and equity were in their favour.

HEARING AND WRITTEN SUBMISSIONS

14. An opportunity of hearing was granted on January 14, 2004 to Patani, which was communicated to them vide letter dated December 30, 2003. On the said date, Shri Amish D Patani of Patani Securities and C D Mehta, Advocate, Dhruv Liladhar, appeared and made their submissions.
15. Pursuant to the hearing, written submissions were furnished by Patani vide letter dated January 27, 2004. In the said letter, it was submitted as follows:
- (a) The E.O. erroneously held them guilty of violation of clause A(2) and A(4) of Code of Conduct as specified in Schedule -II of Regulation 7 of SEBI (Stock-brokers and Sub-brokers) Regulations, 1992. They denied that they were guilty of violation of any of the provisions of the said Regulation and stated that the penalty recommended by the learned Enquiry Officer was unjustified.
- (b) As per Clause A (2), a stock broker is required to act with due skill, care and diligence in the conduct of all his business. They submitted that they have maintained due skill, care and diligence in the conduct of their business, which is evident from the fact that their client on whose behalf the trade was effected was known and disclosed client, who has discharged all the obligations in the market and having no single outstanding obligation to be complied with by him or on his behalf. They also pointed out that the shares which were delivered to their client were held by them from 1999 to March 2003 and therefore, it would be improper to hold that they had violated

provisions of Clause A(2) of the said Regulation 7. As a stockbroker, Patani submitted that they had taken sufficient care that the transactions of known and disclosed client are honoured and they were sufficiently diligent to ensure that deliveries are taken by client and all obligations in the market are honoured.

- (c) They also repeated that during the said period, software was the discovery of the world and that India was one of the leading players in the software boom. Since there was euphoria of acquiring software stocks all round the world, they said their client were also a part of it.
- (d) Further, they also submitted that their Promoter-Director, Mr. Mukesh Patani was honoured / felicitated by the Government of India – Chief Commissioner of Income Tax, Mumbai for the Assessment year 1994-95 to 1998-99 being 22nd highest Income Tax payer in the City of Mumbai. They also produced a copy of the Certificate granted by the Income Tax Department. Further they also said that Mr. Mukesh C. Patani was associated with capital market since 25 years and has good standing with the clients. All this, they said would show that they have taken due skill, care and diligence in the conduct of all their business.
- (e) They also submitted that they had carried out the transactions for payment of their brokerage and that on their own they had never purchased single share in the scrip of VSL. They also mentioned that they had no occasion or reason to suspect the motives of their client in any of the transactions, particularly because the client had honoured all the market commitments and because the client was high net-worth client having sufficient means to honour his market commitment arising out of the trades done on his behalf and the orders put into in the system. Since there was no allegation in this regard as there is no complaint against the client, they said that there was no question of their violating the provisions of clause A(2) of the Regulation 7.
- (f) Regarding the violation of the provisions of clause A(4) of the Regulations, Patani denied the same and submitted that during the relevant period, 49 lakhs of shares were floating in the market with the general public. They said that their client, on a given date, had dealt with a maximum quantity of 1.50 lakhs of shares and by no stretch of imagination dealing of 1.5 lakhs shares as compared to 49 lakhs shares will amount to manipulating the price of shares. According to them, the trading in such an insignificant quantity of shares does not amount to the same being fraudulent or deceptive transactions or distorting market equilibrium or making personal gains. They also said that E.O. has not mentioned anything to show as to how the trading done by their client has affected the market or the price of the scrip and that the finding of the E.O. was erroneous. According to them, any manipulation or deceptive transaction or spreading rumours or distorting market equilibrium must necessarily result in gain or profit, and they said that in their case the same has not arisen. It was also submitted that as their client has held on to the shares from 1999 till March 2003, no motives could be attributed to them as sought to be done or otherwise. They also denied having created false market or indulged in any act detrimental to the investors' interest or which has been interfered with or affected fair and smooth functioning of the market. They also denied having involved in any excessive speculative business in the market beyond reasonable levels not commensurate with their financial soundness. They submitted that there was not a single complaint made or pending against them in any matter from the Stock Exchange and any of their clients, which they said, reflects that all their clients were satisfied in their dealings.

FINDINGS

16. I have carefully considered the findings of investigation, the show cause notice issued by the E.O., the replies by Patani, the submissions during the hearing before E.O., the findings of the E.O. and the reply of Patani to the show cause notice issued pursuant to the submission of Enquiry Report, submissions during the hearing before me and the written submissions as well.
17. I note that Patani has contended that SEBI has not taken the conduct of the complainant Shri Jasmine B. Shah into consideration (on whose complaint SEBI had initiated investigations into the dealings in the shares of VSL) who himself was a speculator and stock manipulator and therefore complaints from such kind of people should not have been taken into consideration. In this regard, I have to state that it is for SEBI to decide whether a complaint has to be accepted or rejected. In the present case, SEBI had examined the price volume data after receiving the complaint from Shri Jasmine B. Shah and it is only on a proper analysis and upon being convinced that there is a prima-facie case that SEBI ordered to investigate the case further; in the instant case, it was on May 9, 2000.
18. I have noted that the broker had transacted in the scrip for mainly two of its clients, namely Rita S. Kothari and Shobha Kothari. The details of transactions of these clients are given below:

Transactions by Rita S. Kothari

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
35/99-2000	35000	--	35000
36/99-2000	15000	--	15000
37/99-2000	--	10000	10000

4-/99-2000	--	5200	5200
45/99-2000	39500	--	39500
3/2000-2001	--	3000	3000
5/2000-2001	--	3800	3800
6/2000-2001	--	6000	6000

Transactions by Shobha S. Kothari

Settlement No.	Gross Purchase	Gross Sale	Net Quantity
34/99-2000	11800	--	11800
35/99-2000	23000	--	23000
36/99-2000	15200	--	15200
38/99-2000	--	15000	15000
39/99-2000	--	200	200
40/99-2000	40000	--	40000
45/99-2000	--	39500	39500
46/99-2000	10600	--	10600
48/99-2000	15000	15000	--
51/99-2000	---	2100	2100
3/2000-2001	--	5000	5000
5/2000-2001	--	2400	2400

19. On an analysis of order log and trade log in the scrip of VSL, I note that Patani had entered in large quantities of purchase orders which are reproduced hereunder:-

Date	Quantity	Rate(Rs.)
12/11/99	150000	43.10
15/11/99	120000	36.50
16/11/99	114000	50.20
17/11/99	49000	54.20
19/11/99	90100	58.50
21/12/99	150000	141.25
22/12/99	106800	152.50
4/2/2000	64000	205.10
7/2/2000	104000	221.45
9/2/2000	40000	258.25
10/2/2000	40000	270.90
14/2/2000	124000	325.25

20. I note that the abovementioned orders were entered into the trading terminal by Patani at the very beginning of the pre-trading session which begins at 09.55.00 and ends at 09.55.59 hrs. I find that Patani placed these large quantities of orders in the pre trading session itself at a rate which was higher than 8% of the previous closing prices, i.e. at an upper circuit filter price permissible for the trading day. The above mentioned orders were placed on behalf of the client of Patani by name Shri Sanjay Kothari, acting on behalf of his relatives by name Ms. Rita S. Kothari and Ms. Shobha Kothari. (I also find that to the query raised by the investigation officer of SEBI to find out whether an order book was maintained, Patani said that it was not maintained as it was practically impossible to do so.)
21. I find that Shri Sanjay Kothari and his family members were also registered with another broking outfit by name M/s Amgis Holdings P. Ltd. I find Shri Sanjay Kothari to have stated to the investigating officials of SEBI that these orders were placed by him at a price 8% higher than the previous closing prices.
22. As regards the charge that Patani placed large quantity of orders in the pre-trading session i.e. between 09:55:00 and 09:55:59 and that patani had placed the said orders on behalf of its clients at a price 8% higher than the previous closing price (at upper circuit filter price), I have observed that
- During the period 12.11.1999 to 14.02.2000, the quantity of orders placed by Patani usually ranged from 40,000 on the lower side (on 09.02.2000 and 10.02.2000) to 1,50,000 on the higher side (on 12.11.1999 and 21.12.1999).
 - The price at which the orders were placed ranged from Rs.43.10 on 12.11.1999, increasing steadily to Rs.325.25 on 14.02.2000. The full details of the orders placed by Patani are as at paras 18 and 19 above.
23. I concur with the finding of E.O. that these orders were of large quantity, considering the fact that the price of the scrip had flared up from Rs.43.10 on 12.11.1999 to Rs.325.25 on 14.02.2000 i.e., within a short span of three months.
24. The Stock Exchanges impose Circuit Filter Mechanism with a view to curb unusual price movement and speculation in the scrip. A price band of 8% in either directions i.e. 8% upward or 8% downward movement was set for the scrips traded in exchanges. Accordingly, the price of the shares of VSL could have moved only by 8% on a trading day in either direction

i.e. upwards or downwards. Any continuous large quantities of purchase or sale orders entered into at the beginning of trading session at a rate which is 8% higher than the previous closing price would definitely upset the equilibrium of the true price discovery mechanism.

25. As regards the volumes traded by the clients of Patani, I have noted that the volumes were ranging from 7.69% of the total volumes traded on BSE, on the lower side (on 19.11.1999) to 49.37% on the higher side (on 12.11.1999). In view of placing such large orders, I note that these orders would have had a definite bearing on the market price, particularly when these orders were placed at upper circuit price right before the trading session was to open.
26. I find that large orders placed by Patani were manipulative and have led to interference in the fair and smooth functioning of the market. I therefore find that Patani, having allowed its clients to trade in such huge quantities and having placed order at successively increasing rates, has been a party to creation of false market in the shares of VSL. In view of the above findings, it is clear that Patani did not exercise due care and diligence while trading on behalf of his clients.
27. I find that the above mentioned transactions have resulted in disturbing the market equilibrium in the scrip of VSL and creation of artificial liquidity and bench marking of prices. I also note that these transactions by the clients were entered with an intention of artificially raising the price of the script by disturbing the market equilibrium. By allowing such reckless trading to its clients, Patani has assisted its client in manipulation of the price of the scrip.
28. As per Clause A (4) of the Code of Conduct specified in Schedule II compliance of which is mandatory in terms of Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, the stock broker shall not create a 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. I concur with the finding of E.O. that the broker did not conduct himself in a manner that is required to adhere to the code of conduct as prescribed in A(2) and A(4) of Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) regulations, 1992.
29. As regards the allegation that Shri Sanjay Kothari was an associate of Shri Deven Mehta or Amgis Holdings Private Limited, I agree with the finding of E.O. that there is no evidence which shows that Shri Sanjay Kothari was an associate of Shri Deven Mehta. In the absence of having any evidence to show that Shri Sanjay Kothari was an associate of Shri Deven Mehta, I give the benefit of doubt to Patani on this account.
30. I also note that SEBI vide its order dated February 19, 2002, had issued directions under section 11B of SEBI Act, 1992 and Regulations 11 and 12 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 prohibiting Shri Sanjay Kothari from accessing the capital market for a period of six months and that Shri Sanjay Kothari shall not deal in securities for a period of six months.
31. In view of above findings, I find that Patani has, by misusing the circuit filter mechanism of the exchange, violated the provisions of Regulation 4(b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulation, 1995. By not having exercised due diligence and care, while dealing on behalf of his clients, Patani has also violated clause A(2) and A(4) of the Code of Conduct specified in Schedule II of Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992.

ORDER

32. Therefore, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with 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 Patani Securities Pvt. Ltd. for a period of six months.
33. This order shall come into force on expiry of three weeks from the date of the order.

PLACE : MUMBAI

DATE : AUGUST 19, 2004

**A.K.BATRA
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA