

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. AMGIS HOLDINGS PVT. LTD., 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 were 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 large quantities of VSL shares was M/s Amgis Holdings Pvt. Ltd. (hereinafter referred to as 'Amgis') Accordingly, an enquiry was ordered against Amgis. As per the procedure, a show cause notice was served on Amgis by the Enquiry Officer (hereinafter referred to as 'E.O.'). Replies from Amgis were received and considered. Opportunity of hearing was also given to Amgis by the E.O.
6. The E.O. submitted his report on October 06, 2003. His findings were as follows:-
 - i. Amgis had carried out off-market transactions worth more than Rs.25 lakhs or more than 10,000 shares in volume in many instances and had also 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 transactions carried out by Amgis were in 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 negotiated deals.
 - ii. Amgis had not reported the off-market transactions carried out by them to the stock exchange of which they were brokers (NSE) and had therefore violated the provisions of circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995 which inter alia states 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."
 - iii. The transactions entered through Amgis were of large quantities, during the period in which the price of the scrip was rising from Rs.10/- to Rs.597/-. These transactions led to distortion of the market equilibrium. Further, Amgis had indulged in a malpractice by carrying out banned off-market negotiated deals. Thus, Amgis was guilty of violation of clauses A(1-4) of the code of conduct as prescribed in SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

- iv. This conduct of Amgis in violating the provisions governing the stock brokers was repetitive in nature since its certificate of Registration was suspended in the past also, for manipulating the price of shares of BPL Limited, Videocon and Sterlite, in connivance with Shri Harshad Mehta.

SHOW CAUSE NOTICE

7. 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 Certificate of 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

8. 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 had it acted in concert with any party and had 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.
9. 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 and 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 as far as the other trades were concerned, they submitted the same did not portray that Amgis was in a position of having "brokered" the transactions for the concerned 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 have been proposed accordingly.
10. They denied having violated the provisions of the code of conduct of SEBI (Stock Broker and Sub Broker) Regulations, 1992. Amgis also submitted that they had not acted in any unfair manner or in a manner where their integrity could be questioned. They denied having done any malpractices in the scrip of VSL. They had sought an opportunity of personal hearing.

HEARING AND WRITTEN SUBMISSIONS

11. 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. No one appeared for Amgis on that date also. However, a fax was received from Amgis stating that their authorized person was travelling abroad and hence, a further adjournment needs to be given. Considering the fact that an earlier opportunity had already been granted, the adjournment was not given and I passed the order dated April 01, 2004, after duly considering the reply of Amgis dated December 16, 2003 to the show cause dated October 15, 2003, and ordered for suspension of the certificate of registration of Amgis for a period of two years.
12. Aggrieved by the said order, an appeal (Appeal no. 55 of 2004) was filed by Amgis before the Hon'ble Securities Appellate Tribunal. Upon hearing the interim application, an order dated April 20, 2004 was passed by the Hon'ble Tribunal wherein the order of SEBI was set aside and SEBI was directed to give an opportunity of personal hearing to Amgis, on April 24, 2004, in observance of the principles of natural justice. A corrigendum dated April 23, 2004 was subsequently issued by the Tribunal indicating the date for the hearing to be April 27, 2004.
13. Pursuant to the orders of the Appellate Tribunal, an opportunity of hearing was granted to Amgis on April 27, 2004. On April 27, 2004, Ms. Prarthana Awasthi, Advocate and Mr. Devan Mehta, Director, Amgis appeared before me on behalf of Amgis and made oral submissions. Further, ten days' time was granted to Amgis for filing written submissions. The same were received on May 12, 2004.
14. In their written submissions dated May 12, 2004, the following submissions were made : -

- a) The statements / arguments made by them in their earlier replies, hearings, and other correspondence with SEBI and the Tribunal may also be considered as part of their submission unless the same was contrary to their present written submissions. Accordingly, the relevant grounds of appeal which have been raised before the Tribunal are also considered, which are given below :-
- i) The price fluctuation (in the shares of VSL) had no relation to the acts attributable to Amgis.
 - ii) SEBI has erred in holding Amgis responsible in respect of the contract note issued to his client. In accordance with the bye-laws of the exchange, the member has to fulfill his obligation by issuing a contract note to the non-member with respect to all bargains made for or on their behalf and also when dealing as a principal. There is no mention of any obligation on behalf of the person who is not a member of BSE, who deals in the scrip which is listed on BSE and the applicant is not a member of BSE. It was also said that the contract note issued by it to Harsha Pranav Securities did not fall within the jurisdiction of the bye-laws of BSE.
 - iii) There was no violation of the circular dated September 14, 1999 since Amgis was not a member of BSE and hence could not have executed the transaction on the screens of the exchange like any other normal trades on that exchange. It was also submitted that Amgis was not involved in any negotiated deals as the transactions were between the clients, to which it was not a party.
 - iv) The circular dated March 14, 1995 does not differentiate between the member and the exchange where the scrip was listed.
 - v) That the transaction between the clients of Amgis was in violation of SCR Act, and that Amgis was not responsible for the same since the transactions were between the clients who executed the trades between themselves. It was also said that the role of Amgis was that of providing instructions to the parties to the transaction.
 - vi) That there was an indication of bias to the case as Amgis was outside the authority of the circulars mentioned in the order.
- b) None of the transactions mentioned in the show cause notice were carried out by Amgis as a broker. It cannot be punished for the violation of Regulations since the transactions did not prove in any manner that they had acted as broker.
- c) Amgis submitted that it has not acted as a broker in respect of the alleged transaction and therefore has not issued any contract note. A letter sent to Tanul Trading asking for confirmation of its non-involvement in the trades, as their broker, was produced as an annexure to their written submissions.
- d) Amgis sought similar confirmation from Ami Impex and SJ Impex and the letters sent by them were produced as Annexures. In the said letters, it has been stated that Amgis had not acted as a broker to the off-market transactions of theirs.

FINDINGS

15. I have carefully considered the findings of investigation, the findings of the E.O., reply dated December 16, 2003 of Amgis to the show cause notice issued, submissions made during the hearing held on April 27, 2004 and the written submissions dated May 12, 2004, before me.
16. I further find that :-
- (i) Amgis had transacted in the scrip of VSL in large quantities during the 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")
 - (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

The above mentioned transactions were executed by 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, the payment for the transaction having been made after the period specified under SC(R)A.

B. Transactions carried out 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

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.

C. Transactions carried out 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 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 defined 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.

17. Regarding the contention of Amgis that the provisions of the circular dated March 14, 1995 did not apply in their case as the shares were not listed at NSE, the same was earlier clarified in my order dated April 01, 2004 at para 5.6, where I have observed that the disclosures required under the circular were to be made irrespective of the exchange where the scrip was listed.
18. Regarding the submission of Amgis in its letter dated May 12, 2003 that it has not entered into any transaction on behalf of Tanul Trading, Ami Impex, SJ Impex, Harsha Pranav and Nishkalp Trading as a broker, I find that Amgis in its reply to the show cause notice issued by me had submitted that it had issued a contract note to the client in only one of the alleged transactions and the other trades did not portray them to be the brokers in the transaction. A contradiction in the submissions is noted here. The same was admittedly the position before the E.O. also.

19. Regarding 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 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. 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."

20. 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"

21. I find that most of the transactions mentioned at para 16 above would have been subject to the provisions of the circulars mentioned above. Having not reported the transactions as per the requirement of the circular dated March 14, 1995, I concur with the finding of the E.O. that Amgis had carried out the transactions mentioned at para 16 above in contravention of the said circular. Moreover, by "having facilitated" such transactions outside the exchange mechanism, Amgis is guilty of having violated the provisions of the circular dated September 14, 1999, which specified that no negotiated deals (including cross deals) shall be permitted and that all such deals shall be executed only on the screens of the exchanges just like any other normal trade.

22. Regarding the applicability of the circulars "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, does 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 were 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.

23. I 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 circulars of SEBI, Amgis, I find, had not exercised due diligence in terms of the code of conduct prescribed under the Regulations. Incidentally, I have also noted that Amgis was suspended earlier in respect of its involvement in the manipulation of the price of BPL Ltd., Videocon and Sterlite in connivance with Shri Harshad Mehta.

24. The argument of Amgis that price rise in VSL has been solely attributed to the transactions carried out by Amgis is incorrect. As pointed out by Amgis itself, there are several factors that contributed to the unusual price rise in the shares of VSL which triggered a full-fledged investigation by SEBI. In the course of investigation, the large value transactions entered into by Amgis on behalf of its clients were noticed and investigated. In any case, 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. It is clear that Amgis had facilitated several off market transactions on behalf of its clients, outside the exchange mechanism, in violation of the SEBI circulars.

25. Although Amgis had stated before the E.O. as well as in its reply to the show cause notice, that contract note was issued by it for the deal entered between the clients, Amgis during the hearing has produced undertakings from the clients wherein clients said that Amgis has not brokered the transactions of the clients. I find there is contradiction of facts as opposed to those stated before the E.O. I agree with the findings of the E.O. that there are violations of circulars. Altogether, there were 3 transactions entered into by the clients for which contract notes were issued, the broker now states that he has not brokered the same. In any case, the undertakings were produced at a later date and seem to be an after thought on the part of Amgis.

26. From the aforesaid discussions, I find that

- i. Amgis has executed off-the-floor transactions in huge volumes, that too at the time when the share price of VSL increased from Rs. 10 to Rs. 597. The rise in price of the shares is not being attributed to Amgis in view of the fact

that the said transactions were not carried out on the floor of the exchange. Hence, it cannot be held that it has directly influenced the price of the scrip in the exchange.

- ii. The transactions can not be considered as "spot transactions" as the transactions have not been settled within the time stipulated by the Securities Contracts (Regulation) Act and therefore, the clients are liable for the violations of the provisions of the Securities Contracts (Regulation) Act. It is primarily the failure of the clients and in the absence of adequate evidence, a benefit of doubt is given to Amgis.
- iii. Amgis has claimed that they had not brokered these transactions but had merely facilitated the same. However, Amgis was found to have issued contract notes for some of these transactions. It is unclear as to how Amgis can issue contract notes for the transactions and then claim to have not "brokered" them. Thus, the contention of Amgis that it has only facilitated and not brokered the transaction is devoid of merit and untenable. Whatever name Amgis may want to ascribe to the nature of transactions, in fact and in effect, Amgis has brokered the transaction, as is evidenced by the contract notes issued by it.
- iv. The transactions were clearly and admittedly off-the-floor transactions. Even if the contention of Amgis were to be accepted that they had merely "facilitated" the transactions, I find that being a registered intermediary and a broker of NSE, Amgis had no business being a party to such off-the-floor transactions, especially given that SEBI had explicitly prohibited execution of such transactions outside the exchange mechanism, with the direction that all such transactions be executed on the exchange itself. The matter assumes further seriousness in view of the huge amounts "facilitated" to be traded and the fact that the shares of VSL were not even listed on NSE, of which Amgis was a member. I find that the scrip was listed in BSE and Amgis, not being a Member of BSE, ought to have refrained from entering into transactions off the floor, in such cases.
- v. As stated above, as per SEBI circular dated September 14, 1999, such transactions were compulsorily to be executed on the stock exchange mechanism. The principal object of the said circular was to secure fair and transparent discovery of price. In the case of Amgis, it has executed transactions in huge volumes, that too of large value. Thus, Amgis has violated the provisions of the said circular.
- vi. Having held Amgis guilty of violating the provisions of the circular dated September 14, 1999, a lenient view is taken in respect of the alleged violation of SEBI circular dated March 14, 1995 regarding reporting of off the floor transactions to the concerned stock exchange.

27. In the facts and circumstances of the case, I am of the view that a penalty of suspension of certificate of registration of Amgis Holdings Pvt. Ltd. for four months is adequate.

ORDER

28. In view of the above, I, 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 hereby suspend the certificate of registration of M/s Amgis Holdings Pvt Ltd for a period of four months.
29. This order shall come into force on expiry of three weeks from the date of this order.

PLACE : MUMBAI

DATE : SEPTEMBER 21st, 2004

A.K.BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA