

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST Shri VIDYUT DEVENDRA KUMAR, MEMBER BSE, REGISTRATION No. INB 01300018 FOR IRREGULAR TRANSACTIONS IN THE SCRIP OF V.B. DESAI FINANCIAL SERVICES LTD.

BACKGROUND

1. Shri Vidyut Devendra Kumar (hereinafter referred to as “the Broker”) is a member of the Stock Exchange, Mumbai (BSE) and is registered with Securities and Exchange Board of India (hereinafter referred to as “SEBI”) vide registration No. INB 01300018.
2. SEBI vide order dated 28.01.2003 appointed an Enquiry Officer under the provisions of Regulation 5 of SEBI (procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred to as the said “Regulations”) to inquire into the alleged irregular transactions in the scrip of V.B. Desai Financial Services Ltd (hereinafter referred to as VBF) done by the Broker and for the alleged violation of clause A (1) (2) and B (3) (v) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers & Sub - Brokers) Regulations, 1992 (hereinafter referred to as “ Stock Broker Regulations”).

ENQUIRY REPORT AND RECOMMENDATION

3. The enquiry officer, after conducting the enquiry as per the procedure laid down in the said Regulations, submitted a report dated August 06, 2004.

4. The Enquiry Officer found that the Broker has not exercised due care and caution and the conduct of the Broker is in violation of SEBI circular SMD/Policy/IECG/1-97 dated 11.02.97, SMDRP/Policy/Cir/5-97 dated 11.04.97 read with SMD-1/23341 dated 18.11.93, SMD/SUD/CIR93/23321 dated 18.11.93, SMDRP/Policy/Cir-35/98 dated 04.12.98 and SMDRP/Policy/Cir-07/99 dated 04.02.2000. However, there was no material to suggest that the Broker had violated Clause B (3) of the Code of Conduct as specified in Schedule II read with regulation 7 of Broker Regulations. The Enquiry Officer, after taking into account the gravity of the charges established and the facts and circumstances of the case, had recommended a minor penalty of 'Censure' against the Broker.

SHOW-CAUSE NOTICE AND REPLY

5. A Show Cause Notice (SCN) dated August 25, 2004 bearing the reference No. IVD/ID 1/PKN/SS/18904/04 was issued to the Broker along with a copy of the Enquiry Report, calling upon him to show cause, in terms of Regulation 13(2) of the Regulations, as to why action as recommended by the Enquiry Officer should not be taken against him.
6. The Broker replied to the above said SCN vide his letter dated 23.09.2004 and stated that the non compliance with the circular was only due to the human error and the records have been updated for all the clients. Further as to the margin, the Broker stated that the margin was collected in advance in the form of shares worth more than Rs.12 lacs as against their margin of Rs.8 lacs and hence did not violate circular SMD/SED/CIR/93/23321, SMDRP/Policy/CIR/-35/98 and SMDRP/Policy/CIR-07/99. Further, the Broker made averments that he holds good reputation in the market and has never indulged in any practice which could endanger the market safety. The Broker stated that he would take all the precautions before registering any new client and hence requested the withdrawal of all the charges.

CONSIDERATION OF ISSUES AND OBSERVATIONS

7. I have considered the facts of the case, the findings of the Enquiry Officer and the reply of the Broker to the show cause notice.
8. I observe that there was sudden spurt in volumes traded in the scrip of VBF on BSE which recorded high of 50,300 shares on 26.11.99. Prior to this period the volumes traded were very low in the region of 500 – 1000 shares per day. Together with the jump in volumes, the prices too had recorded high although there was no company announcement or change in economic fundamentals of the company. The price of the shares which was just Rs. 4/- on 04.10.99 had shot up to Rs 31.35 on 27.12.99.

In view of the unusual movements in the price of the share and volumes traded, an investigation was conducted in the matter and it revealed that Mr Kamlesh J Shroff who is the nephew of PR Shroff, MD of VBF, had sold the shares of VBF held by promoters and directors in off market deals through Maxworth Finlease Pvt Ltd. (MFL), a broking firm in which Mr Kamlesh Shroff was a Director. The purchasers in turn sold the shares so bought from Mr Kamlesh in the market whereas Mr Kamlesh Shroff was simultaneously buying at the other end which resulted in creation of artificial volumes and rise in prices. Kamlesh and entities associated with him bought 879,500 shares of VBF, in the aforesaid period, constituting 63.52% of the traded volumes and sold 891,800 shares, constituting 64.41% of the traded volumes. Further, it is not in dispute that the Broker had executed transactions in the scrip of VBF for his client Mr Kamlesh Shroff, besides proprietary trades in the name of his wife Smt Vaishali Vidyut shah.

The transactions details executed by the Broker in the scrip of VBF are:

Client	Sett.No.	Buy	Sell	Net
Maxworth Finlease(I) Pvt. Ltd	36	50200	0	50200
Vaishali Vidyut Shah	39	12000	0	12000
Vaishali Vidyut Shah	40	2500	6800	-4300
Vaishali Vidyut Shah	41	0	3500	-3500
Vaishali Vidyut Shah	42	500	1500	-1000
Vaishali Vidyut shah	43	2800	3700	-900
Vaishali Vidyut Shah	44	0	500	-500
Vaishali Vidyut Shah	45	0	800	-800
Vaishali Vidyut Shah	46	3000	3300	-300
Vaishali Vidyut Shah	52	0	700	-700
Kamlesh J Shroff	40	10000	0	10000
Kamlesh J Shroff	42	30000	0	30000
Kamlesh J Shroff	43	6900	0	6900
Kamlesh J Shroff	47	5000	0	5000
Kamlesh J Shroff	7	36400	0	36400
	Total	159300	20800	138500

Out of the aforesaid, the transactions executed by the broker for his wife and the profits made thereof are as follows:

Client	Sett. No.	Buy	Rate	Amount	Sell	Rate	Amount	Net
Vaishali Vidyut Shah	39	12000	19.40	232800	0	-	-	12000
Vaishali Vidyut Shah	40	2500	27.04	67600	6800	27.11	184348	-4300
Vaishali Vidyut Shah	41	0	-	-	3500	31.14	108990	-3500
Vaishali Vidyut	42	500	23.95	11975	1500	27.43	41145	-1000

Shah								
Vaishali Vidyut Shah	43	2800	21.66	60648	3700	21.80	80660	-900
Vaishali Vidyut Shah	44	0	-	-	500	21.29	10645	-500
Vaishali Vidyut Shah	45	0	-	-	800	18.90	15120	-800
Vaishali Vidyut Shah	46	3000	18.78	56340	3300	18.57	61281	-300
Vaishali Vidyut Shah	52	0	-	-	700	18.50	12950	-700
			Total	429363			515139	

From the above table, it may be seen that the Broker had bought and sold 20,800 shares in the name of his wife in the aforesaid settlement and made a profit of Rs. 85,776/-. It was alleged against the Broker that the execution of the aforesaid proprietary trades when the clients were placing huge buy orders, is improper and amounts to misutilisation of the information relating to the clients orders for his personal benefit. While it cannot be denied that the Broker had proprietary trades in which he had bought and sold 20,800 shares in the name of his wife and made a profit of 85,776 ₹ , however, he denied making use of the investment related information of the client for personal gain in violation of clause B (3) of the Code of Conduct.

From the material on record I note that the first purchase for the client namely MFL was made in settlement no 36 whereas the first proprietary trade by the Broker was executed in settlement no 39, 21 days after the purchase by the client. The average price at which the client had bought in settlement 36 was Rs.10/- whereas the average price where the proprietary purchases were made was Rs. 19.40/-. In addition, it is seen

that between sett no 40 – 46, the personal trades of the Broker had a net sale position of 12,000 shares whereas the client Mr Kamlesh Shroff had a purchase position of 88,300 shares during the same period. Under the circumstances, it is difficult to conclude that the Broker was acting in tandem with Mr Kamlesh Shroff or that he had made use of investment related information of the client for his personal gain. On the contrary, the Broker and the client had taken contrary position between settlement no. 40 and 46. In view of the absence of any material on record, I hold that the Broker had not violated clause B (3) of the Code of Conduct as specified in Schedule II read with Regulation 7 of Stock Broker Regulations.

9. On the issue of non collection of margins, I find from the materials on record that the Broker had received 1, 35, 000 shares of VBF in the margin account as per the copy of the inward register produced. I note that broker had accepted the very same shares (VBF) towards margin in which the client was executing transactions. The Broker could have insisted on cash, FDs or Bank Guarantee as margin instead of the illiquid scrip of VBF. It is well known that VBF is illiquid scrip. The very fact that the Broker had ended up with a recovery claim of Rs. 30 lacs against the client goes to show that he had not collected margins properly to secure his position in case of default by the client. I am, therefore, convinced that there is non compliance of circular SMD/SUD/CIR/93/23321 dated 18.11.93, SMDRP/Policy /Cir-35/98 dated 04.12.98 and SMDRP/Policy /Cir-07/99 dated 04.02.00 on the part of the broker.
10. I further note that the Broker knew that Mr Kamlesh was simultaneously buying and selling in the scrip of VBF, the only relevant and relied upon document is the statement of Mr. Kamlesh Shroff himself who is also a delinquent. It is difficult to attribute knowledge to the Broker of what Mr Kamlesh was doing in the scrip of VBF (other than through the Broker) only on the basis of the statement of a co-delinquent who is the main

person who dealt in the scrip through various brokers and in off market transactions without any independent and corroborative material. The explanation offered by the Broker that he had obtained client introduction forms and entered into member client agreements with Mr. Kamlesh before he started executing transactions for him is devoid of any evidence. The Broker's reply that these forms were obtained but were misplaced does not seem satisfactory. Had he obtained KYC (Know your client forms) and did some due diligence on the client, he would have noticed that the client is related to the promoters of the company. Further, Mr Kamlesh Shroff, was the sole proprietor of the broking firm, Maxworth Finlease Pvt. Ltd before its conversion into a corporate entity and a member of BSE. Mr Kamlesh & MFL had shared a common address with VBF, the company whose shares were being transacted heavily by them. With some due diligence on the client who also happens to be the broker of the same exchange (although the card was inoperative), he could have verified the antecedents and links of the client to the promoter group of VBF. Under the circumstances, it can reasonably be concluded that the Broker did not exercise due care and caution while admitting Mr Kamlesh as his client and the conduct of the Broker is in violation of SEBI circular SMD/Policy/IECG/1-97 dated 11.02.97 and SMDRP/Policy /Cir /5-97 dated 11.04.97 read with SMD-1/23341 dated 18.11.93. I am, therefore, convinced that it is a fit case to impose a minor penalty of 'Censure' against the broker as recommended by the Enquiry Officer.

ORDER

11. In view of my observations and considering the gravity of the charges, I feel that a minor penalty of 'Censure' would be adequate in the facts and circumstances of the case. Therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of said Regulations, I hereby impose a minor penalty of

'Censure' against shri Vidyut Devendra Kumar, Member, Stock Exchange, Mumbai.

12. This order shall come into effect after the expiry of 21 days from the date of this order.

DATE :DECEMBER 30, 2005

MADHUKAR

PLACE : MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA