

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 MEHTA VAKIL & CO.PVT.LTD. MEMBER BSE, REGISTRATION No. INB 01979634 FOR IRREGULAR TRANSACTIONS IN THE SCRIP OF M/S. V.B.DESAI FINANCIAL SERVICES LTD.

BACKGROUND

1. Mehta Vakil & Co.Pvt.Ltd. (hereinafter referred to as “the Broker”) is a member of Bombay Stock Exchange (BSE) and is registered with Securities and Exchange Board of India (hereinafter referred to as “SEBI”) vide registration No. INB 01979634.
2. SEBI had conducted an investigation into the alleged price manipulation in the scrip of M/S. V B Desai Financial services Ltd. (VBF) during the period between October 1999 and May 2000.
3. Pursuant to the above, vide order dated 28.01.2003, an Enquiry Officer was appointed under Regulation 5(1) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the “Enquiry Regulations”) to enquire into the alleged irregular transactions done by the broker in the said mentioned scrip.

ENQUIRY REPORT AND RECOMMENDATION

4. The enquiry officer, after issuing a show cause notice dated 01.10.03 to the broker communicating the detailed allegations in respect of its transactions in the scrip of VBF and other violations incidental thereto and considering the

letter of reply dated 6th November, 2003 from the broker, completed the enquiry as per the procedure laid down in the "Enquiry Regulations" and submitted a report dated July 30, 2004. The enquiry officer recommended that a penalty of suspension of 15 days be imposed against the broker.

5. The Enquiry Officer found that the Broker has violated Section 12(1) of SEBI Act, 1992, Rule 3 of SEBI (Stock Brokers & Sub – Brokers) Rules, 1992 (hereinafter referred to as "Stock Broker Rules") clause A(5) 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 "Broker Regulations") besides contravention of SEBI Circular SMD/3118 dated 27.12.93, SMD/policy/Cir/3-97 dated 31.03.97 and SMD/policy/Cir-11/97 dated 21.05.97.

SHOW-CAUSE NOTICE

6. A Show Cause Notice (SCN) dated August 18, 2004 was issued to the Broker along with a copy of the Enquiry Report, calling upon to show cause, as to why action as recommended by Enquiry Officer, should not be taken against it.
7. Allegations: The allegations against the broker are that it had traded in the scrip of VBF between 3rd January and 21st January 2000 in Settlement No.42 to No.44 for Tupis Finance and Investments during the period when there was price manipulation in the scrip. The transactions were executed by its sub broker Akshay S Dalal for a client Tupis Finance & Investment Ltd, whose director Mr. Kamlesh J Shroff was the nephew of the MD of VBF. The sub broker is alleged to have bought 19,400 shares and sold 800 shares during the said period for this client. It was alleged that there was price manipulation in the scrip of VBF between October 1999 and May 2000 and that the client of Sub broker namely Tupis Finance and Investments is connected to the Directors of the company. Mr Kamlesh Shroff is the nephew of Mr. PR Shroff,

MD of VBF and also a common director in both Maxworth Finlease Pvt Ltd, (MFL), member , BSE and Tupis Finance and Investment Ltd. It was further alleged that the sub broker had executed the transaction for the client even before he was registered as sub broker to the broker on 14.01.00.

REPLY TO THE SHOW CAUSE NOTICE AND HEARING

8. The Broker replied to the said SCN vide letter dated 7th September, 2004 and mentioning therein its submissions and clarifications in detail along with the documentary evidence.
9. The broker submitted that Shri.Akshay Dalal was working as SEBI registered sub broker with stock broker Shri. Kamlesh Shroff in 1998. Shri Kamlesh Shroff was suspended by the Bombay Stock Exchange. The said broker gave no objection certificate to Shri Akshay Dalal. The broker further submitted that it was under a bonafide belief that if a sub broker has registered himself with SEBI through another stock broker then the sub broker requires no fresh registration through the broker. He was allowed to work after entering into agreement dated 4th December 1998. A copy of the agreement was also enclosed.
10. The broker further submitted that at no point of time they deliberately violated Section 12(1) of SEBI Act, 1992, Rule 3 of Stock Brokers Rules, 1992, clause A(5) of the code of conduct as specified in Schedule II read with Regulations 7 of SEBI "Broker Regulations" besides SEBI Circular SMD/3118 dated 27.12.93, SMD/policy/Cir/3-97 dated 31.03.97 and SMD/policy/Cir-11/97 dated 21.05.97.
11. Further it was submitted that the client of the sub broker executed only four trades and that too only in two settlements covering a period of only 18 days i.e., from 3.1.2000 to 21.1.2000 and thereafter stopped dealing with him.

12. It was further submitted that the client of the sub broker had bought only 19,400 shares and sold 800 shares during the said period. These trades took place during the limited period of 18 days between 3.1.2000 to 21.1.2000 which was after the period of the alleged price manipulation in the scrip of (VBL) which took place between 4.10.1999 to 27.12.1999 and further submitted that the trades from its terminal took place only in a subsequent period i.e 3.1.2000 to 21.1.2000 and contended that therefore it can not be called as price manipulation. Since, the Broker has not requested for an opportunity of personal hearing before me, the same has not been granted.

CONSIDERATION OF ISSUES AND OBSERVATIONS:

13. I have considered the facts of the case, the findings of the Enquiry Officer and the reply of the Broker. 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 leap in volumes the prices too had recorded high despite there being 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.
14. I also observe that investigation of SEBI found 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, 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.

15. I note that Mr. Kamlesh J.Shroff and entities associated with him bought 879,500 shares of VBF, during the said period constituting 63.52% of the traded volumes and sold 891,800 shares constituting 64.41% of the traded volumes. I also observe that Mr. Akshay S Dalal, sub broker of the broker had executed transactions in the scrip of VBF for his client namely Tupis Finlease & Investments, between 3rd and 21st January 2000 in settlement no 42-44. He had bought 19,400 shares and sold 800 shares on behalf of the client during the aforesaid period. It is noted that certificate of registration was granted to Mr. Akshay S. Dalal as sub broker of the broker by SEBI vide its certificate dated 14.01.2000, whereas the aforesaid transactions had commenced from 3rd January 2000. Prior to this period, Mr.Akshay S.Dalal was registered as sub broker of Maxworth Finlease Pvt Ltd. who had suspended operations.

16. At this juncture, I note that Sec. 12(1) of SEBI Act reads as under

“Registration of stock broker, sub-broker, share transfer agents etc. 12.

(1) No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.

Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock- broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was

necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.”

17. I also note that Rule 3 of Stock Broker Rules reads as follows:

“Not to act as stock-broker or sub-broker without registration

3. No stock-broker or sub-broker shall buy, sell, and 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.”

18. I further note that Clause A(5) of Code of conduct of Stock Broker Regulations reads as follows:

“Compliance with Statutory Requirements: 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.”

19. When the broking license of MFL was suspended, the sub broker had entered into a bilateral agreement dated 04.12.98 with the broker and started transactions through him as its sub broker. The broker had sent the

application for registration of Mr Akshay S Dalal as its sub broker on 01.11.99 to BSE. Mr. Akshay Dalal was finally registered as sub broker to Stock Broker vide SEBI's certificate dated 14.01.2000. Although the transactions in the scrip of VBF were undertaken by the sub broker from 03.01.00 onwards, it can be seen that he had commenced transactions in securities as unregistered sub broker of the broker from 04.12.98 itself in view of the bilateral agreement with the latter. Hence I note that the trades entered by the Broker on behalf of the sub broker before the date of certificate of registration as sub broker, is in violation of section 12 (1) of SEBI Act, 1992, Rule 3 of Stock Broker Rules, 1992, clause A (5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of Stock Broker Regulations, 1992 besides contravention of SEBI circular SMD/3118 dated 27.12.93, SMD/policy/Cir/3-97 dated 31.03.97 and SMD/Policy/Cir-11/97 dated 21.05.97.

20. I observe that insofar as irregular transactions in the scrip of VBF by Mr Kamlesh Shroff and others, it can be seen that the 4 trades in two settlements in January 2000 were executed by the sub broker who appears to have knowledge of the client being associated with the promoter of the company in view of the fact that he was earlier a registered sub broker of MFL in which Mr Kamlesh J Shroff was a director. There is no material on record to suggest that the broker is aware of the relationship that its sub broker had with his client who is a close relative of the MD of VBF. Therefore, I hold that the broker is not guilty of this charge. Since I have already held the broker guilty of violating the provisions of Sec. 12(1) of SEBI Act read with Rule 3 of Stock Broker Rules and Clause A(5) of the code of conduct and also the directives issued by SEBI, I am therefore, convinced that it is a fit case to impose penalty of suspension as recommended by the Enquiry Officer.

ORDER

21. In view of my above observation and considering the gravity of the charges, a penalty of suspension of the certificate of registration of the Broker for a period of fifteen days 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 Enquiry Regulations, I hereby suspend the certificate of registration of Mehta Vakil & Co. Pvt.Ltd. for a period of fifteen days.
22. 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