

# **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 M/S. SHILPA STOCK BROKERS PVT. LTD, MEMBER BSE, SEBI REGISTRATION No. INB 011057438 FOR IRREGULAR TRANSACTIONS IN THE SCRIP OF V.B. DESAI FINANCIAL SERVICES LTD.**

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### **1.0 BACKGROUND**

- 1.1 M/s. Shilpa Stock Brokers Pvt. Ltd. (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 011057438.
- 1.2 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 transactions in the scrip of V.B. Desai Financial Services Ltd. (hereinafter referred to as VBF) done by the Broker alleged to be in violation of clause A (2) and B(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 “Stock Broker Regulations”).

### **2.0 ENQUIRY REPORT AND RECOMMENDATION**

- 2.1 The enquiry officer, after conducting the enquiry as per the procedure laid down in the said Regulations, submitted a report dated August 16, 2004.
- 2.2 The Enquiry Officer, after taking into account the gravity of the charges established, the facts and circumstances of the case, had recommended a minor penalty of suspension of the Certificate of Registration for a period of one month against the Broker.

3.0 **SHOW-CAUSE NOTICE**

- 3.1 A Show Cause Notice (SCN) dated August 18, 2004 bearing the reference No. IVD/ID 1/PKN/SS/18254/04 was issued to the Broker along with a copy of the Enquiry Report, calling upon 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 it.

4.0 **REPLY TO THE SHOW CAUSE NOTICE**

- 4.1 The Broker replied to the said SCN vide letter dated 08.09.2004 and reiterated its submissions already made vide its letter dated 16.10.2003 submitted in reply to the SCN dated 01.10.2003 issued by the Enquiry Officer. The Broker, inter alia, submitted that at the time of effecting the transactions in question, they were not aware that the said transactions were effected on behalf of the said Mr. Kamlesh Shroff and when enquiries were made from the said sub-broker they were informed that the said transactions were effected for and on behalf of one Mr. Mayur Khenderkar.
- 4.2 The Broker further submitted that a broker is concerned with whether the sub-broker meets his pay-in obligation or not, and in no way concerned from where the sub-broker arranged funds. They further submitted that they received the cheques only from the said sub-broker, the cheques might have been drawn by the said Mr. Kamlesh Shroff, however, at that

time they had no knowledge that the said Mr. Kamlesh Shroff was concerned with the said scrip, apart from that the cheques were received against the pay-in obligation of the said sub-broker for the respective settlement, and not towards the transactions only in the scrip of VBF. They submitted that though they commenced business from 24<sup>th</sup> June, 1999, they had always been cautious in their trades, and there was no occasion to doubt bonafides of the said sub-broker or genuineness of the transactions effected by the said sub- broker.

- 4.3 They further submitted that they relied on proviso to Rule (3) of SEBI (Stock –brokers and Sub-brokers) Rules, 1992 (hereinafter referred to as “said Rules”) and derived impression that after entering into a Member – Sub broker agreement they could start business with the sub-broker and accordingly, after entering into the Member-Sub-broker Agreement with the said sub-broker on 18<sup>th</sup> November, 1999 they started effecting business for and on behalf of the said sub-broker.
- 4.4 They submitted that the Enquiry Officer failed to appreciate the fact that they obtained the certificate of registration from SEBI only on 24<sup>th</sup> June, 1999 and the transaction in question was during November, 1999 to May, 2000 and that they were not expert in the stock trading business, however, they took all the due care and caution in their business.
- 4.5 They further submitted that the Enquiry Officer failed to appreciate the fact the at the time of Pay-out the sub-broker may bring direct cheques from his clients to save time, or can also arrange for funds from the market to meet his pay-in obligation. When they received the said four cheques they were not at all aware as to who is Mr. Kamlesh Shroff, nor they were aware that he was in any way connected with VBF. Apart from that the said cheques were towards pay in obligation, which also included various other scrips.

- 4.6 They vehemently denied that they were indulged in the alleged misconduct or any act of commission or of omission which would amount to misconduct, or which would render them liable for penalty. They also sought an opportunity of personal hearing in the matter.

5.0 **CONSIDERATION OF ISSUES AND OBSERVATIONS**

- 5.1 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. I observed that the broker sought for an opportunity of personal hearing in the matter. I note that the broker has filed written submissions vide its letter dated 08.09.2004 which has been taken on record. I am convinced that there is no need to grant an opportunity of personal hearing inasmuch as I have taken into consideration the submissions made by the broker vide the said letter, therefore, the principles of natural justice have been complied with in the matter.
- 5.2 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.
- 5.3 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 one Mr Kamlesh J Shroff who is the nephew of Mr. P. R 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 Shroff while Mr Kamlesh Shroff was simultaneously buying at the other end which resulted in creation of artificial volumes and rise in prices. Mr. Kamlesh Shroff and entities associated with him bought 8,79,500 shares of VBF, in the aforesaid period, constituting 63.52% of the traded volumes and sold 8,91,800 shares, constituting 64.41% of the traded volumes.

5.4 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.”

5.5 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.”

5.6 I note that clause A (2) of the Code of Conduct of Stock Broker Regulations reads as under:

A (2) Exercise of due skill and care: A stock broker shall act with due skill, care and diligence in the conduct of all his business.

5.7 I also note that Circular No. SMD/POLICY/CIRCULAR/3-97 dated 31.03.1997 issued by SEBI mandates that no Broker shall deal with a person who is acting as a sub-broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub-broker unless he is registered with SEBI as sub-broker or is recognized by the Stock Exchange as a remisier

5.8 I observe that the trades were done by the broker for its sub broker, Jalaram Enterprises wherein the client was Mr Kamlesh J Shroff in the scrip of VBF between 8/12/1999 and 31/5/2000.

The transaction details are given in table below.

| Sett. No.    | Buy           | Sell          | Net           |
|--------------|---------------|---------------|---------------|
| 36           | 100           | 50000         | -49900        |
| 37           | 65500         | 0             | 65500         |
| 38           | 10300         | 5500          | 4800          |
| 39           | 26200         | 26200         | 0             |
| 40           | 10000         | 0             | 10000         |
| 41           | 2700          | 2200          | 500           |
| 42           | 16700         | 5000          | 11700         |
| 43           | 4200          | 0             | 4200          |
| 45           | 33000         | 0             | 33000         |
| 46           | 36600         | 16900         | 19700         |
| 47           | 13200         | 900           | 12300         |
| 48           | 1800          | 0             | 1800          |
| 49           | 25300         | 6900          | 18400         |
| 50           | 14200         | 0             | 14200         |
| 51           | 17600         | 0             | 17600         |
| 52           | 10800         | 0             | 10800         |
| 53           | 7500          | 0             | 7500          |
| 7            | 0             | 500           | -500          |
| 8            | 500           | 500           | 0             |
| 9            | 0             | 600           | -600          |
| <b>Total</b> | <b>296200</b> | <b>115200</b> | <b>181000</b> |

5.9 I note, from the above table, that the broker had executed transactions in the scrip of VBF for his sub broker M/s Jalaram Enterprises. It is the case of the broker that he had obtained certificate of registration from SEBI only on 24.06.99 and was relatively new to the securities business at the relevant time. Jalaram Enterprises, the sub broker who had executed the trades for the client Mr. Kamlesh J Shroff, had started dealing in securities with the main broker from 18.11.99, although the certificate of registration was granted to Jalaram Enterprises only on 07.02.2000. It was fairly conceded by the broker that he had started dealing with Jalaram

Enterprises from 18.11.99 although the sub broker was granted certificate of registration by SEBI on 07.02.2000 but the broker added that it was under the impression that since the bilateral agreement between the broker and Jalaram Enterprises was already signed, he could permit Jalaram Enterprises to deal in securities through it. I agree with the finding of the Enquiry Officer that the conduct of the broker was not in order in permitting Jalaram Enterprises to deal in securities from 18.11.99 itself although the certificate of registration to the sub broker was granted only on 07.02.2000, thereby the Broker had violated the provisions of Section 12 (1) of SEBI Act, 1992 read with Rule 3 of Stock Broker Rules and clause A (2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of Broker Regulations and SMD/POLICY/ CIRCULAR/3-97 dated 31.03.1997.

- 5.10 I note that the contention of the Broker that they were not aware that the said transactions were effected on behalf of the said Mr. Kamlesh Shroff and that even when enquiries were made from the said sub-broker they were informed that the said transactions were effected for and on behalf of one Mr. Mayur Khenderkar. There is no evidence on record to substantiate the contention that they had made proper inquiry in this regard. The evidence on record speak otherwise. It is not in dispute that the broker had accepted cheques issued by Mr Kamlesh Shroff on 5 occasions although it was submitted that this was done to avoid delay in meeting the payment obligations to the exchange. Why would the broker accept cheques directly from the client of the sub broker unless he knows him? Further, when a cheque for Rs 15 lacs issued by Mr Kamlesh for his transactions in settlement no 47 was dishonored by the bank, the broker had accepted another cheque dated 24.03.2000 for Rs 12 lacs from Mr Kamlesh J Shroff. Under the circumstances, it cannot be said that the broker is totally unaware of sub-broker's client Mr Kamlesh J Shroff who was dealing in the scrip of VBF. The value and volume of the transactions are also quite high as at least in one settlement alone the broker had

received payment to the extent of Rs.15 lacs as aforesaid. Therefore, the preponderance of probability suggests that the broker knew the client Mr.Kamlesh Shroff who had traded heavily in the scrip and indulged in price manipulation.

- 5.11 In view of my above observations, I am, therefore, convinced that it's a fit case to impose penalty of suspension as recommended by the Enquiry Officer which would be adequate in the facts and circumstances of the case.

6.0 **ORDER**

- 6.1 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 suspend the Certificate of Registration of M/s. Shilpa Stock Brokers Pvt. Ltd., Member, Stock Exchange, Mumbai for a period of one month.
- 6.2 This order shall come into effect after the expiry of 21 days from the date of this order.

**DATE :DECEMBER 30, 2005**

**PLACE : MUMBAI**

**MADHUKAR**

**WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

