

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 AKSHAY S. DALAL, SUB BROKER, SEBI REGN. NO.INS010142516 OF MEHTA VAKIL & CO.(P) LTD. MEMBER, BSE, REGISTRATION No. INB 01142516, FOR IRREGULAR TRANSACTIONS IN THE SCRIP OF M/S. V.B.DESAI FINANCIAL SERVICES LTD.

BACKGROUND

1. Shri Akshay S Dalal, (hereinafter referred to as sub broker) is a sub broker of Mehta Vakil & Co P. Ltd.,(hereinafter referred to as "the Broker"), member of Bombay Stock Exchange (hereinafter to be referred as BSE) and is registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide registration No. INB 01142516.
2. SEBI had conducted an investigation into the alleged price manipulation in the scrip of M/S. V B Desai Financial services Ltd. (hereinafter to be referred as 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 sub broker in the mentioned scrip.

ENQUIRY REPORT AND RECOMMENDATION

4. The enquiry officer, after following the procedure laid down in the "Enquiry Regulations", submitted a report dated July 30, 2004. The enquiry officer recommended that a penalty of suspension of 30 days be imposed against the sub broker.
5. The Enquiry Officer found that the sub-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(2) of the code of conduct as specified in Schedule II read with Regulation 15 of SEBI (Stock Brokers & Sub – brokers) Regulations,1992 (hereinafter referred to as "Stock Broker Regulations")

SHOW-CAUSE NOTICE

6. A Show Cause Notice (SCN) dated 18th August, 2004 was issued to the sub-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 him.
7. Allegations: The allegations against the sub broker are that he 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 sub broker was alleged to have bought 19,400 shares and sold 800 shares in the aforesaid period for his client Tupis Finance and Investment Ltd. 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 Financial and Investments was connected to the Directors of the company. Mr Kamlesh Shroff was the nephew of Mr. PR Shroff, MD of VBF and also the director of Maxworth Finlease Pvt Ltd. (MFL). Mr Kamlesh Shroff, MFL and the client namely Tupis Finance and Investment Ltd all have the same address as that of the company namely VBF. Mr Kamlesh Shroff was also one of the directors of Tupis Finance & Investments Ltd. which was the client of the sub broker It was further alleged that the sub broker had dealt with for a client who was known to be associated with the promoters of the company since the sub broker was earlier registered as sub broker of MFL. It was further alleged that the sub broker had executed the transaction for the client even before he was registered as sub broker to Mr Mehta Vakil and Co P. Ltd on 14.01.00.

REPLY TO THE SHOW CAUSE NOTICE AND HEARING

8. The sub broker replied to the said SCN vide letter dated 30th August, 2004 and mentioning therein his submissions and clarifications in detail.
9. The sub broker submitted that he was working as a 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 him. The sub broker further submitted that he 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. The sub broker submitted that he was allowed to work after entering into agreement dated 4th December 1998.
10. The sub broker further submitted that he had not deliberately violated Section 12(1) of SEBI Act, 1992 and Rule 3 of Stock Brokers Rules. 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 it.

11. 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. Since, the sub broker has not requested for an opportunity of personal hearing, the same has not been granted. Since I have considered the written submissions filed by the sub broker vide his letter dated 30 August, 2004 , I am , therefore, convinced the principles of natural justice have been complied with and there is no need to grant an opportunity of personal hearing.

CONSIDERATION OF ISSUES AND OBSERVATIONS:

12. I have considered the facts of the case, the findings of the Enquiry Officer and the reply of the sub 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 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.
13. In view of the unusual movements in the price of the share and volumes traded, I observe that Mr Kamlesh J Shroff who was the nephew of PR Shroff , MD of VBF had sold the shares of VBF held by promoters and directors in off market deals through 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. Mr. Kamlesh Shroff 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.
14. I observe that the sub broker had executed transactions in the scrip of VBF for his client namely Tupis Finance & 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.
15. I observe that the sub broker was granted certificate of registration as sub broker of Mehta Vakil & Co. by SEBI vide its certificate dated 14.01.2000 whereas the aforesaid transactions had commenced from 3rd January 2000. Prior to this period, the sub broker was registered sub broker of MFL whose operations have been suspended by SEBI. This was the same broking firm in which Mr. Kamlesh J Shroff was the Executive Director and Mr. Kamlesh J Shroff was also one of the directors of Tupis Finance & Investment Ltd, the client for whom the sub broker had traded in the scrip of VBF.
16. I further observe that under the circumstances, wherein the client for whom the sub broker had traded was the Executive Director of the same broking firm with whom the sub broker was earlier registered as sub-broker (MFL) and having regard to the common address of Kamlesh Shroff, MFL, the client of the sub- broker i.e. Tupis Finance & Investment Ltd. and the company VBF whose shares were being traded, it can reasonably be concluded that the sub broker is executing transactions in the scrip of VBF knowing well that Mr Kamlesh Shroff is related to the promoters of the company. In a short span of 18 days covering 3 settlements, he purchased 19400 shares and sold 800 shares of VBF which is otherwise illiquid scrip and without there being any change in economic fundamentals or major company related developments. This should have aroused the suspicion of the sub broker as to the motives of the client particularly when there were reasonable grounds to believe that the clients are related to the promoters of the company whose shares were being dealt with. Hence, it cannot be said that the sub broker has exercised due skill and diligence for transactions in the scrip of VBF for a client who was linked with the promoters of the company against the background of unusual movements in the volumes traded and price of the scrip.
17. 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.

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18. 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.”

19. I further note that Clause A(2) of Code of conduct of Stock Broker Regulations reads as follows:

“A (2) Exercise Of Due Skill And Care: A sub-broker, shall act with due skill, care and diligence in the conduct of all investment business”

20. I further find that between 3rd and 20th January 2000, the sub broker had acted as an unregistered sub broker of Mehta Vakil & Co. Pvt. Ltd. It is true that the sub broker was earlier acting as sub broker of MFL member BSE. When the broking license of MFL was suspended, the sub broker had entered into a bilateral agreement dated 04.12.98 with Mehta Vakil & Co Pvt. Ltd. and started transactions through it as its sub broker. Mehta Vakil & Co Pvt. Ltd had sent the application for registration of Mr. Akshay S Dalal as their sub broker on 01.11.99. The fact that Mr. Akshay Dalal was already a SEBI registered sub broker of MFL, does not dispense with the legal requirement of obtaining a separate registration as sub broker to Mehta Vakil & Co Pvt Ltd and, therefore mere entering into a bilateral agreement with Mehta Vakil & Co Pvt Ltd cannot be a mitigating circumstance. I further observe that it is only on 01.11.99 that the application for acting as sub broker of Mehta Vakil & Co Pvt Ltd was submitted to BSE before he was finally registered as sub broker to Mehta Vakil & Co Pvt Ltd vide SEBI certificate dated 14.01.2000. In view of the above, I hold that the sub broker has violated the provisions of section 12 (1) of SEBI Act, 1992, Rule 3 of Stock Broker Rules and clause A (2) of the Code of Conduct as specified in Schedule II read with Regulation 15 of Stock Broker Regulations. I am, therefore, convinced that it is a fit case to impose a minor penalty of suspension for a period of 30 days as recommended by the enquiry officer in the facts and circumstances of the case.

ORDER

21. 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 Shri Akshay S Dalal as a sub broker for a period of Thirty days.

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

Place: Mumbai	MADHUKAR
Date: 06.01.06	WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA	