

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.PAWANKUMAR PARMESHWARLAL, MEMBER, BSE, REGISTRATION No. INB O10018813 FOR IRREGULAR TRANSACTIONS IN THE SCRIP OF V.B. DESAI FINANCIAL SERVICES LTD.

1.0 BACKGROUND

- 1.1 M/s. Pawankumar Parmeshwarlal (hereinafter referred to as "the Broker") is a member of the Stock Exchange, Mumbai (hereinafter referred to as "BSE") and is registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI") vide registration No. INB O10018813.
- 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 "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 also for the alleged violation of Code of Conduct as provided in SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 (hereinafter referred to as "FUTP Regulations") and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "the Act")

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 30.07.2004.
- 2.2 The Enquiry Officer found that the alleged transactions were in the nature of finance deal and that the clients of the Broker had acted in concert with the clients of other members and had created artificial volumes in the scrip and these transactions were fictitious in nature. The method and manner of purchase of huge number of shares in the names of the family members of the broker in off market trades which were not reported to the exchange, and more importantly payment for these purchases were made from the clients account of the Broker was highly irregular. In the purchase of 15,000 shares of VBF, norms relating to spot delivery contracts as laid down under section 2(i)(a) & (b) of the Act were not adhered to. The Enquiry Officer, after taking into account the gravity of the charges established and the facts and circumstances of the case, had recommended a major penalty of suspension of Certificate of Registration of the Broker for a period of four months.

3.0 SHOW-CAUSE NOTICE

- 3.1 A Show Cause Notice (hereinafter referred to as "SCN") dated 18.08. 2004 was issued to the Broker along with the copy of the Enquiry Report, calling upon to show cause, in terms of Regulation 13(2) of the said Regulations, as to why action as recommended by the Enquiry Officer should not be taken against him.

4.0 REPLY TO THE SHOW CAUSE NOTICE

- 4.1 The Broker replied to the above said SCN vide letter dated 09.09.2004 and submitted that they had traded in the scrip but had not manipulated pricing anywhere at all. They submitted it was a general market practice to provide temporary finance to the persons requiring immediate finance. This temporary financing was called "Spot Financing". So many Broking Institutions were having such financing schemes.
- 4.2 They further submitted that neither they nor any of their family clients had even one single share of VBF except these financing transactions. In these transactions too, no open position of stock was there, not even for few seconds because the moment it was sold it was completely paid by reducing nominal percentage of 0.50% or so. They further submitted that neither they nor their clients had received any undue advantage.
- 4.3 As regards the finding of the Enquiry Officer that the payment for the purchases was made from the clients account by the broker since none of the purchasers (family members of the broker) had funds in their account, the Broker submitted that clients were frequently trading and their account was operated like a current account, as every now and then they would be required to make payment to the broker for their trades, at times it could be difficult to manage their obligations. As such they would like to keep their accounts and funds with the broker like current A/c.
- 4.4 They further submitted that it might be that somebody made them channel of their wrong deeds, but they had not done any wrong whatsoever from their side. Their intention was one thousand percent clear and was very clean and restricted to financing only. Somebody would have done wrongs with bad intentions, but they should not be penalised for the acts of others. 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. Since I have considered the broker's reply dated 09.09.2004, I am, therefore, convinced that the principles of natural justice have been complied with and there is no need to grant personal hearing 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, SEBI had examined the matter and prima facie found that one 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 Maxwrtth Finlease Pvt Ltd (hereinafter referred to as "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 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 8,79,500 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. I also observe that the broker had sold 5,30,500 shares of VBF in several transactions between settlement no. 37/99 and 07/00 during the period 10.07.00 to 08.09.00 on behalf of his family members. The settlement wise details of the sales in the scrip of VBF by the broker during the aforesaid period were as under:

Client	Relationship with broker	Settlement No	Sold
Kanchan Singhania	Sister	37/99-00	30000
Kanchan Singhania		42/99-00	38500
Kanchan Singhania		45/99-00	50000
Kanchan Singhania		49/99-00	30000
Kanchan Singhania		04/00-01	15000
P.L. Choudary	Father	37/99-00	35500
P.L. Choudary		49/99-00	10000
P.L. Choudary		04/00-01	30000
Sarita Choudary	Wife	38/99-00	20000
Sarita Choudary		40/99-00	18900
Sarita Choudary		42/99-00	25000
Sarita Choudary		04/00-01	15000
Kanta Singhania	Sister	39/99-00	20000
Kanta Singhania		41/99-00	5400
Kanta Sinhania		47/99-00	38000
S.D. Choudhary	Mother	48/99-00	39400
S.D. Choudhary		50/99-00	30000
S.D. Choudhary		51/99-00	25000
S.D. Choudhary		52/99-00	14800
S.D. Choudhary		07/00-01	25000
Pawan Kumar Choudhary (HUF)	Self	53/99-00	15000
Total		5,30,500	

- 5.4 I observe that, although the purchases in the off market deals by the family members of the broker were preceded by the sales by the same persons in the exchange, the payment for the purchases were made from the "clients account of the broker" as none of the individual clients had funds in their account at the relevant time. The detail of the payment to MFL is as under:

Kanta Singhania (Account No. OD 11358)

Purchase From	No. of shares	Amount Paid	Date	Amount recd. from Pawankumar Parmeshwarlal Client	Date of Receipt

				a/c CD 16239 (Bank of India)	
Maxworth Finlease	20000	413250	14.12.99	415000	14.12.99
Maxworth Finlease	5400	181700	27.12.99	180000	27.12.99
Maxworth Finlease	38000	364320	09.02.00	365000	09.02.00

P.L. Choudhary & Co. (Account No. OD 16075)

Purchase From	No. of shares	Amount Paid	Date	Amount recd. from Pawankumar Parmeshwarlal Client a/c CD 16239 (Bank of India)	Date of Receipt
Maxworth Finlease	35500	727300	01.12.99	730000	01.12.99

Sabitary Debi Choudhary (Account No. OD 19131)

Purchase From	No. of shares	Amount Paid	Date	Amount recd. from Pawankumar Parmeshwarlal Client a/c CD 16239 (Bank of India)	Date of Receipt
Maxworth Finlease	39400	1663700	16.02.00	1665000	16.02.00
Maxworth Finlease	30000	1302000	29.02.00	1300000	29.02.00
Maxworth Finlease	25000	500000	08.03.00	500000	08.03.00
	-	428367	09.03.00	435000	09.03.00
Maxworth Finlease	14800	500000	10.03.00	500000	10.03.00
	-	103120	15.03.00	100000	15.03.00

Sarita Choudhary (Account No. OD 19170)

Purchase From	No. of shares	Amount Paid	Date	Amount recd. from Pawankumar Parmeshwarlal Client a/c CD 16239 (Bank of India)	Date of Receipt
Maxworth Finlease	20000	950000	08.12.99	975000	08.12.99
	-	27600	10.12.99	-	-
Maxworth Finlease	18900	400000	23.12.99	540000	23.12.99
	-	142430	13.01.00	-	-
Maxworth Finlease	25000	1000000	04.01.00	1000000	04.01.00
	-	214400	05.01.00	215000	05.01.00
Maxworth Finlease	35000	1500000	27.01.00	1640000	27.01.00
	-	133750	01.02.00	-	-

P.K. Choudhary HUF (Account No. OD 16078)

Purchase From	No. of shares	Amount Paid	Date	Amount recd. from Pawankumar Parmeshwarlal Client a/c CD 16239 (Bank of India)	Date of Receipt
Maxworth Finlease	15000	1000000	18.03.00	1000000	18.03.00
Maxworth Finlease	-	20900	22.03.00	25000	22.03.00

- 5.5 I also observe that there is no material to suggest that the family members of the broker who had purchased the shares in off market trades from MFL had made the payments immediately. As can be seen from the individual accounts of the family members of the brokers as set out above, the payments were made only after receipt of amount from Mr Pawankumar

Parmeshwarlal, Client account CD 16239 with Bank of India. The method and manner of purchase of huge number of shares in the names of the family members of the broker in off market trades which are not reported to the exchange, and more importantly payment for these purchases were made from the clients account is highly irregular. The amounts to the credit of clients accounts are in the nature of trust. The funds in the clients account cannot be applied for any purpose other than what is permissible under SEBI guidelines. The objective of opening and maintaining a separate account for the clients fund is to separate and identify them separately and to prevent its possible misuse so that they are beyond the reach of the broker. It appears that the clients account is replenished after the sales were executed on the exchange on behalf of the family members of the broker. To that extent, there is temporary misuse of clients account of the broker which was used for the purpose of making payment to Maxworth Finlease Ltd. for the off market purchases by the family members of the broker. The conduct of the broker is violative of the provisions of the circular no.SMD/SED/CIR/93/23321 dated 18.11.1993 issued by SEBI.

5.6 I note that Circular No. SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 issued by SEBI mandates Brokers to report all transactions done on spot basis on the same day to the Stock Exchange. A member is required to report his off the floor transactions to the exchange so that the exchange would have a true and fair assessment of the net worth of a member having regard to the volume and value of the transactions undertaken by him which are not through the screen based trading system of the exchange. This will enable the exchange to gauge the exposure of the member outside the trading system and put in place the necessary risk containment measures. The price formation in such transactions are not through the stock exchange price and order matching mechanism and investors do not have the benefit of the best possible price.

5.7 I note that over a period of time between 10.08.2000 and 08.09.2000, when the broker was net seller in the scrip in different settlements and his family members were buying off market from the selling clients and the same set of shares bearing the same distinctive Nos. were delivered in various settlements, it should have aroused the suspicion of the broker regarding artificial volumes.

5.8 I also observe the Enquiry Officer's finding that for the purchase of 15,000 shares of VBF from MFL, the norms relating to spot delivery contracts as laid down under section 2(i)(a) & (b) of the Act, were not adhered to. I note that as per section 2 (i)(a) of the Act, spot delivery contract should result in actual delivery in securities and the payment of the price on the same day of the contract or on the next day after excluding the time taken for dispatch of the securities of the remittance of money through the post, if the parties to the contract do not reside in the same town. The broker vide reply dated 09.09.2004 submitted that he had complied with the said provision and in support thereto attached Annexure - D containing a statement showing details of the payment made for spot purchase of 15,000 shares of VBF for MFL vide cheque No.004189 dated 18/3/2000 for Rs.10,00,000 and cheque No.004190 dated 22/3/2000 for Rs.20,900 and copy of the contract note dated 21/3/2000 and copy of bill no.GC53/353002 dated 25/3/2000 issued by MFL. which clearly shows that Rs.10,20,900 was due to them. I also observe that the statement is not supported by any documentary proof i.e. copy of the bank statement etc. Therefore, the correctness of the contents of the statement is probably doubtful. I also observe from the copy of bill no.GC53/353002 dated 25/3/2000 issued by MFL which clearly shows that Rs.10,20,900 was due to them indicating that payment was not made within the time limit as required under the said provision.

5.9 At this juncture, I note that Regulation of 4 of FUTP Regulations reads as under:

4. No person shall

- (a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of the securities and thereby inducing the sale or purchase of securities by any person;
- (b) indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities markets;
- (c) indulge in any act, which results in reflection of prices of securities based on transactions that are not genuine trade transactions;
- (d) enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuation in the market price of securities;

5.10 I also note that regulation 7 of the Stock Broker Regulations provides as under:-

Stock Brokers to abide by Code of Conduct

7. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

5.11 I further note that Schedule II of the Stock Broker Regulations reads as under:-

A. General

(1) Integrity: A stock broker shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(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.

(3) Manipulation: A stock broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock-broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) 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.

5.12 In view of the above, I am, therefore, convinced that the Broker is guilty of violating the provisions of Regulation 4 of FUTP Regulations, clauses A(1) to (5) of the code of Conduct read with Regulation 7 of Stock Broker Regulations and Circular No.SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 and circular no.SMD/SED/CIR/93/23321 dated 18.11.1993 issued by SEBI. I feel that, in the facts and circumstances of the case, it is a fit case to impose a major penalty of suspension for a period of four months as recommended by the Enquiry Officer.

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 read with Regulation 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, I hereby suspend the Certificate of Registration of M/s. Pawankumar Parmeshwarlal, Member, Stock Exchange, Mumbai for a period of four months

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

DATE : 06-01-2006

PLACE: MUMBAI

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA