

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/S. ACTIVE FINSTOCK PRIVATE LIMITED, MEMBER, THE STOCK EXCHANGE, MUMBAI, (SEBI REGISTRATION NO. INB 010849331) IN THE MATTER OF VISION TECHNOLOGY INDIA LIMITED.

BACKGROUND

1. M/s Vision Technology India Limited (herein after referred as 'VTIL') was incorporated in 1992 as a public limited company. It has been promoted by Shri B.S. Ranga and B. Ranga Vasanth. The company came out with a public issue in 1994 and was listed on BSE on 10th May 1994. The company is involved in the business of processing of Cine and Television films, video films, etc. It owns and operates a full-fledged motion picture laboratory in Bangalore. The company is also involved in undertaking marketing support services for various companies and manufacturing and marketing various consumer goods and durables.
2. The scrip of VTIL is listed on The Stock Exchange, Mumbai (BSE), Madras Stock Exchange (MSE), Ahmedabad Stock Exchange (ASE) and Jaipur Stock Exchange (JSE) apart from Bangalore Stock Exchange (BgSE), being the regional exchange of the company.
3. Securities and Exchange Board of India received a complaint from one Shri A. K. Puri alleging *inter-alia* that the company, *inter-alia*, is ignoring the provisions of Companies Act, 1956, Securities Contract (Regulations) Act, 1956, Listing Agreement executed with the exchanges. It also stated that the price of the scrip had gone up substantially. Based on the complaint, the exchanges were requested to furnish details relating to trading in the scrip and details about the preferential allotment made by the company.
4. The case was initiated by Securities and Exchange Board of India based on the investigation carried out by the stock exchanges for the period December 01, 1999 to March 31, 2000. During the said period, a sudden spurt in the price and volume of the captioned company was observed by BSE. From 30.11.1999 to 07.03.2000, the price of the scrip increased from Rs.14.00 to Rs.650.00 and thereafter there was a fall in the price of the scrip. Trading in the scrip during this period was observed mainly at BSE and BgSE. BgSE further informed that the exchange had imposed a special margin of 100% in the scrip of VTIL w.e.f. January 13, 2000 and the same was imposed till the end of investigation period i.e. March 31, 2000.
5. While carrying out investigation, SEBI observed that M/s. Vivenasri Financial Services Ltd. (herein after referred as 'VFSL') and M/s. Harsha Pranav Securities Pvt. Ltd. (herein after referred as 'HPSPL') were predominant traders in the scrip of VTIL during the period October 99 to March 2000. It is observed that these clients have enrolled themselves with many brokers of BSE and/or their sub-brokers and traded in the scrip of VTIL at the same point of time. M/s. Active Finstock Private Limited (herein after referred as 'Active' or "the member" Regn. No. INB 010849331) was one of the top members who dealt in the scrip on the basis of gross purchases and gross sales during the period December, 1999 to March 2000 on BSE. Active has placed orders on behalf of M/s. Consent Financial Services Pvt. Ltd. (hereinafter referred to as CFSPL). CFSPL, in turn, placed orders on behalf of VFSL.

ENQUIRY REPORT AND FINDINGS

6. Based on the above, SEBI vide order dated 12.12.02 had ordered for an enquiry in respect of Active, for trading in the shares of VTIL. The Enquiry Officer had submitted his report on the above matter on 02.07.04 stating that:
 - a. Active is not guilty of violating the provisions of Regulation 4 (a), (b) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995.
 - b. But, Active had placed large buy orders on behalf of VFSL and CFSPL, and had acted on behalf of clients without collecting margins from them. In view of the above findings, Active has not adhered to the Code of conduct as prescribed in Schedule II of Regulation 7 of the SEBI (Stock Brokers & sub-brokers) Regulations, 1992 and

Therefore, the Enquiry Officer recommended a penalty of suspension of certificate of registration of Active for a period of forty five days.

SHOW CAUSE NOTICE AND REPLY

7. Pursuant to the above, a notice dated 06.07.04 was issued to Active asking them to show cause as to why its certificate of registration should not be suspended for a period of forty-five days. Active had replied vide its letter dated 20.07.04 to the said show cause notice. The submissions made by Active in its reply are as follows:

i. The transactions in the scrip of VTIL were negligible in comparison to the total trade done by the member. The omission to collect margins would therefore have not resulted in any breach of their obligations towards the Exchange. Also, no investor has suffered any loss because of this technical infraction.

ii. Since the member used to obtain the consent of the client prior to execution of the transactions, clients invariably had credit balances with them as they used to maintain running accounts with us. Also, shares of few companies were kept with them by CFSL for sales. In any case, there was no contravention of any substantive law by virtue of the said infraction.

In view of the above, the member has submitted that no penalty be imposed on them.

ISSUES FOR CONSIDERATION

8. I have considered the recommendations in the Enquiry report and have also noted the submissions of Active pursuant to the said report. I have noted that the Enquiry officer has not found the member guilty of violating the provisions of Regulations 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995. This, I feel has been done on the basis of lack of any evidences to show nexus/linkages, between the member and the clients or between the member and VTIL, and also because of the fact that large buy orders have been placed by the client even in other scrips. Thereby, I am in agreement with the conclusion of the Enquiry officer of finding the member not guilty of violating the provisions of Regulations 4(a), (b) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 1995.
9. Now the issue that needs to be considered and decided upon is whether the member has committed any violation by not having collected any initial margins from the clients.
10. SEBI had vide its circular dated 18.11.93 specified that a member shall collect a minimum margin of 20 percent of the price of securities proposed to be bought/sold. So also, SEBI Circular SMDRP/Policy/Cir-35/98 dated 04.12.98 specifies that it shall be mandatory for member-brokers to collect margins from clients in all cases where the margin in respect of the client in the settlement would work out to more than Rs.50,000/-. Active in the present case, by its own admission, has not collected initial margins from its clients. But it has submitted that the client invariably had credit balances with it as the client used to maintain running account with Active, thereby obviating the need for a separate initial margin. The circular as cited above makes it mandatory for Active to collect initial margins from its clients to the extent specified. There is no discretion allowed to Active in deciding to collect/not to collect any margins from its clients.
11. From the above, it could be seen that the member has violated the circular of SEBI as regards collection of initial margins from its clients. This act of the broker shows lack of care and diligence in the performance of their activities and results in violation of Schedule II (Code of Conduct for Stock Brokers) prescribed under Regulation 7 of SEBI (Stock Brokers & sub-brokers) Regulations, 1992.
12. Code of conduct violations and the lack of due diligence on the part of the broker cannot be treated in the same light as any other violation for, the implications of such violations could be far more serious and wide ranging to the business of the broker and the general investors.
13. Such violations of the brokers have to be dealt with appropriately, for avoiding future recurrence. These actions though might not appear to be serious and trivial to warrant any action, can have serious repercussions on the functioning of the stock exchanges and might threaten their settlement mechanism. These occurrences would cause an erosion of the confidence of the investors in the stock exchanges.
14. I observe that Enquiry Officer had examined the issues, in detail, in the present case based on the investigation report and replies filed by Active and recommended for suspension of the certificate of registration of Active for a period of 45 days. I find no substantive grounds to differ with the finding of the enquiry officer. Therefore, I am inclined to agree with the recommendation of the Enquiry Officer to suspend the certificate of registration of Active for a period of forty-five days.

ORDER

15. Taking in to account the nature of violations that has been committed by M/s. Active Finstock Private Limited, I am of the view that the penalty of forty-five days recommended by the Enquiry Officer needs to be sustained. Therefore, in exercise of the powers conferred upon me by virtue of Section 19 of the Securities and Exchange Board of India Act, 1992 read with regulations 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby direct that the SEBI Certificate of Registration No. INB 010849331 of the member, Active Finstock Private Limited be suspended for a period of forty-five days.

16. This order shall come into force after a period of three weeks from the date of the order.

Place: Mumbai

Date: 25.01.06

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA