

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

DIRECTIONS UNDER SECTION 11(4) (b) AND 11B OF SEBI ACT, 1992 READ WITH REGULATION 11 OF SEBI (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AGAINST M/S VINAY CAPITAL PVT LTD.**1.0 BACKGROUND**

- 1.1 Pursuant to the receipt of an investor complaint, Securities & Exchange Board of India (hereinafter referred to as SEBI) conducted investigation into the initial public offer and the buying, selling and dealing in the scrip of Vision Organics Ltd (hereinafter referred to as VOL). M/s. Vinay Capital Pvt. Ltd (hereinafter referred to as Vinay Capital) was one of the entities traded in the scrip of VOL.
- 1.2 VOL had come out with an Initial Public Offer (IPO) of 43.50 lakh shares of Rs.10/- each at a premium of Rs.30/- per share which opened for subscription on October 19, 2000. The investigation revealed that as the company was not able to get the issue fully subscribed, it, through Shri Dilip Thakkar, the then director of VOL, approached one Shri Ketan Shah and family to subscribe to the issue with an understanding that the shares allotted will be repurchased with a commission by VOL.
- 1.3 The investigation further revealed that the price of the scrip for the period July 09, 2001 to November 09, 2001 hovered between Rs. 82 to Rs. 132.

The following pattern of price movement during the investigation period was observed:

1. July 19, 2001 to July 31, 2001: price moved from Rs 124 to Rs 84
2. August 01, 2001 to August 10, 2001: price moved from Rs 76.55 to Rs125
3. August 24,2001 to September 10, 2001: price moved from Rs132 to Rs. 85.05
4. September 11, 2001 to September 26, 2001: price moved from Rs. 88.75 to Rs. 111.
5. October 12, 2001 to October 25,2001: Price moved from Rs.86 to Rs. 82.10
6. October 29, 2001 to November 09,2001: Price moved from Rs.85.20 to Rs. 118.80

- 1.4 The investigation further revealed that cross deals and structured deals were executed between selected groups of Trading Members in the scrip having common clients. The investigation further revealed that trading members SDFC Securities Limited, H Nyalchand Financial Services Ltd, Khandwala Integrated Financial Services Pvt. Ltd. and ISE Securities and Services Ltd (hereinafter referred to as trading members) have transacted in the scrip of VOL on National Stock Exchange of India Limited (hereinafter referred to as NSE), in considerable quantities and the transactions by the aforesaid entities constituted a significant portion of the total transactions in the scrip on the exchange. Thus the Trading Members transacted in the scrip of VOL with the view to create an artificial market in the illiquid scrip and also to create an artificial price for the scrip by entering into synchronized and cross-deals.
- 1.5 The investigation further revealed that 63 cross deals (62 deals in the BE segment and 1 deal on the EQ segment) and 77 structured deals (74 deals in the BE segment and 3 deals on the EQ segment) had been done between selected groups of Trading Members having some common clients or promoters who are also linked with VOL. The cross deals were executed at a variation from the Last Traded Price (LTP) in the range of (5.53%) to 5.79%. The structured deals were executed at a variation from LTP in the range of (1.24%) to 5.20%.
- 1.6 Investigation further revealed that Vinay Capital dealt in the scrip of VOL through H Nyalchand Financial Services Ltd., member of NSE and VSE Securities Ltd., member BSE (hereinafter referred to as Nyalchand and VSE) and they also hold 49% stake in SDFC Securities Ltd. (hereinafter referred to as SDFC) Shri Rahul Shah, director of Vinay Capital Ltd. is also director of SDFC Securities Ltd. Nyalchand Financial Services is a corporate trading member on the capital market segment of the Exchange. On perusal of the details of transactions by H. Nyalchand Financial Services, it was seen that Vinay Capital had transacted in the scrip of VOL during the period March 13, 2001 to November 09, 2001. The transactions done on behalf of Vinay Capital were squared up in the same settlement leading to a net nil delivery position for the scrip as shown below:

SN	Segment & Period	SN Start Date	SN End Date	Client Name	Buy Qty.	Sell Qty.	Client Gross Qty.	Mkt. Gross Qty	% of client gross to Mkt. Gross	Client Net Qty	Mkt. Net Qty.	% of client net to mkt. Net
2001141	BE-Account	15-Oct-01	19-Oct-01	Vinay Capital Ltd.	17500	17500	35000	300442	11.65	0	17365	0.00
2001142	BE-Account	22-Oct-01	26-Oct-01	Vinay Capital Ltd.	7000	7000	14000	156866	8.92	0	4310	0.00
2001143	BE-Account	29-Oct-01	2-Nov-01	Vinay Capital Ltd.	16000	16000	32000	720968	4.44	0	2725	0.00
2001144	BE-Account	5-Nov-01	9-Nov-01	Vinay Capital Ltd.	14075	14075	28150	1037444	2.71	0	15084	0.00

- 1.7 The investigation further revealed that the Trading member H Nyalchand Financial Services had entered into a number of structured deals with the broker SDFC Securities Limited. It was observed that there were 20 structured deals executed between the above two TM amounting to 30940 shares constituting 0.72% to the overall market gross quantity on the BE Segment for the period under scrutiny. Vinay Capital was the major client of the Nyalchand Financial Services Ltd and associated to the SDFC Securities Ltd. and Ketan Shah & Co (client of SDFC Securities Ltd).

The following is the summary of the structured deals executed by H. Nyalchand Financial Services:

SDFC Securities Ltd. and H. Nyalchand Financial Services Ltd.

SN	Date From	Date To	Segment	Buy TM	Sell TM	No of Trades	Avg Trd Price	Trd Qty	% to mkt gross for the SN	% to mkt gross for the period
2001127	9-Jul-01	13-Jul-01	BE-Account	SDFC Securities Ltd	H Nyalchand Financial Services Ltd	1	126.25	1665	0.50	0.04
2001141	15-Oct-01	19-Oct-01	BE-Account	H Nyalchand Financial Services Ltd	SDFC Securities Ltd	11	113.59	13650	4.54	0.32
2001142	22-Oct-01	26-Oct-01	BE-Account	H Nyalchand	SDFC Securities	5	100.40	10000	6.37	0.23

SN	Date From	Date To	Segment	Buy TM	Sell TM	No of Trades	Avg Trd Price	Trd Qty	% to mkt gross for the SN	% to mkt gross for the period
				Financial Services Ltd	Ltd					
2001143	29-Oct-01	2-Nov-01	BE-Account	H Nyalchand Financial Services Ltd	SDFC Securities Ltd	2	96.73	5500	0.76	0.13
2001144	5-Nov-01	9-Nov-01	BE-Account	H Nyalchand Financial Services Ltd	SDFC Securities Ltd	1	118.50	125	0.01	0.00
Total						20		30940		0.72

1.8 From the above, the investigation has found that Vinay Capital by executing structured cross and synchronized deals has violated the provisions of Regulation 4 (a), (b), (c) and (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

2.0 SHOW CAUSE NOTICE, REPLY AND THE OPPORTUNITY OF PERSONAL HEARING.

2.1 Accordingly, a show cause notice dated September 29, 2004 was issued to Vinay Capital advising it to show cause as to why suitable directions under regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 read with Section 11(4) (b) and 11B of the SEBI Act, 1992 including a direction to prohibit it from dealings in securities for a particular duration should not be passed against it.

2.2 Vide letter dated November 05, 2004 Vinay Capital forwarded its reply to the said Show Cause Notice, submitting interalia as under:

- a) It is a limited company and as per the shareholding pattern of the company already on record Shri Ketan Shah and his family members together do not hold more than 15% of the paid up share capital of the company. It was further submitted that it was in no way directly or indirectly connected with any of the entities mentioned in the notice i.e. H. Nyalchand Financial Services Limited, Khandwala Integrated Financial Ser. Ltd. and ISE Securities Ltd.
- b) with regard the allegation in the price rise it was submitted that it is a normal phenomena of the market. The prices of any scrip do not remain stagnant and the movement in the price of the scrip over a period of 5 months reflects the alternate bouts of buying and selling and hence, the conclusion reached on the basis of the movement of prices over a period of time is totally erroneous and to suggest we had been indulging in influencing the price of the scrip is totally based on surmises rather than on the facts of the case on record.
- c) with regard to the allegation of creating artificial volume in the market it was submitted that the allegation of price manipulation requires "mens rea" to be present. It was further submitted that the Show Cause Notice only states that transactions were done to create an artificial market without giving any evidence in respect of the same.
- d) With reference to the allegation that NSE reported 63 cross deals and 77 structured deals by Vinay Capital it was submitted that the SEBI Act, 1992 or the Rules or Regulations or the Glossary of terms issued by SEBI has not even defined these terms nor it has heard about such terminology. It was further submitted that on an analysis of the entire data submitted by SEBI it has been observed that entire data does not pertain to Vinay Capital and secondly, in respect of 63 deals it was submitted that two orders where the disclose quantity was less than the quantity entered it has been considered as separate deals which aggregates to 30 deals thus, the number shall reduced to 33 out of which as per data furnished.
- e) it was further submitted that in the case of Vinay Capital there were totally 7 orders entered for purchase of 25,500 shares and which ultimately resulted in trades of 15,400 shares over a period of 20 days in the month of October, 2001 which on average trade basis comes to 2500 shares. In respect of all this transactions the trade took place at the last trade prices. The average gross volumes traded on all this days was approx. 1,10,000 and the aggregate gross volume was 22,15,740 which comes to 0.69% of the gross volumes.
- f) It was again submitted that the regulations as prevailing have made it mandatory to enter all the orders in the online system itself even if the buyer and seller are willing to trade at the market price outside the system and when such orders are entered in the online system at the market price and at the last traded price the same are considered as structured deals so in either case, Vinay Capital is squeezed between devil and deep sea.
- g) With reference to the allegation that transactions done on behalf of Vinay Capital were squared up in the same settlement leading to a nil delivery position for the scrip, it was submitted that the transactions do not per se amounts to violation of Regulation 4(d). It is equally necessary to show the intention was to artificially inflate, depress, or cause fluctuations in the market price of securities.
- h) It was again submitted that Vinay Capital was already holding shares which were allotted to it during the public issue and as an investor it is perfectly legitimate to hedge its portfolio through jobbing. The total gross volume during the period was 22,15,740 over 4 settlement comprising of 20 days and its gross volume was 109150 that is 5.54% of the gross volume which is not significant enough to influence any movement in the price. It is not that it was trading in the scrip without having any delivery and hence, the conclusion reached is totally erroneous. It was further submitted that Vinay Capital has not indulged in any fraudulent activity nor it has committed any fraud. It has not made any unfair gain nor such transactions have resulted into any loss to the investors.

2.3 In adherence to the Principles of Natural Justice, an opportunity of personal hearing was afforded to Vinay Capital on March 01, 2005 and on that day Shri Nithin Parikh the practicing Company Secretary and Shri Ketan Shah director of Vinay Capital appeared and represented Vinay Capital. During the course of hearing Vinay Capital asked time for filing the further written submissions and the same was granted to them. Accordingly Vinay Capital submitted its post hearing submissions vide letter dated March 07, 2005 wherein it reiterated most of the submissions made in its earlier reply and during personal hearing.

3.0 CONSIDERATION OF ISSUES AND FINDINGS

3.1 I have carefully considered the findings of investigation, show cause notice, reply of Vinay Capital, the submissions made before me during personal hearing and also the post hearing written submissions submitted by Vinay Capital.

3.2 I find that the issue of VOL opened on October 19, 2000 and closed on October 21, 2000 and the shares were allotted on November 4, 2000. The shares of the scrip were listed at the Stock Exchange, Mumbai, National Stock Exchange of India Limited, and Vadodara Stock Exchange (hereinafter referred to as BSE, NSE and VSE respectively).

3.3 I also find that the price of the scrip of VOL for the period July 09, 2001 to November 09, 2001 hovered between Rs. 82 to Rs. 132. I find that Vinay Capital dealt in the scrip through H Nyalchand Financial Services Ltd., member of NSE and VSE Securities Ltd., member BSE (hereinafter referred to as Nyalchand and VSE) and also holds 49% stake in SDFC Securities Ltd. Shri Rahul Shah, director of Vinay Capital Ltd. is also director of SDFC Securities Ltd. Nyalchand Financial Services is a

corporate trading member on the capital market segment of the Exchange. I further find that on perusal of the details of transactions by H. Nyalchand Financial Services, it was seen that Vinay Capital had transacted in the scrip of VOL during the period March 13, 2001 to November 09, 2001. The transactions done by Vinay Capital were squared up in the same settlement leading to a net nil delivery position for the scrip.

- 3.4 I further find that the Trading member had entered into a number of structured deals with the broker SDFC Securities Limited and there were 20 structured deals executed between the Trading Members amounting to 30940 shares constituting 0.72% to the overall market gross quantity on the BE Segment for the period under scrutiny. I find that Vinay Capital was the major client of the Nyalchand Financial Services Ltd and associated to the SDFC Securities Ltd. and Ketan Shah & Co (client of SDFC Securities Ltd).
- 3.5 With regard to the submission that the term 'structured deals' has not even been defined under SEBI Act, Rules or Regulations made there under it needs to be noted that the term itself connotes the meaning which any person, more so, who is dealing in the securities market should know. Hence, I consider it as a laboured argument. However, I have observed that number of such deals are not numerous and I have taken a note accordingly.
- 3.6 Thus, from the foregoing discussion, I find Vinay Capital Limited by indulging in the structured and cross deals as discussed above has been guilty of violating the provisions of Regulation 4 (a), (b), (c), (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 which read as under:

4. Prohibition against market manipulation.- No person shall –

(a) effect, take part in, or enter into, either directly or indirectly, transactions in securities, with intention of artificially raising or depressing the prices of securities in the market 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 market;

(c) indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

(d) enter in to a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended only to operate only as a device to inflate, depress, or cause fluctuations in the market price of the securities;

4.0 ORDER

- 4.1 Now therefore, having considered the nature and charges established, the facts and circumstances of the case, the mitigating factors as explained above, and the submissions made by Vinay Capital thereto, in exercise of powers conferred upon me under section 19 of the SEBI Act, 1992 read with Section 11B and 11 (4) of the SEBI Act, 1992 and Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with the relevant provisions of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, I hereby debar Vinay Capital Limited from accessing the securities market for a period of two months.
- 4.2 This order shall come into force with immediate effect.

DATE: 1/2/2006

PLACE: MUMBAI

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA