

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR.T.C.NAIR, WHOLE TIME MEMBER

IN THE MATTER OF

VIVENASRI FINANCIAL SERVICES LTD.

MEMBER - HYDERABAD STOCK EXCHANGE LTD.

SEBI REGISTRATION NO. INB061156031

DATE OF HEARING: 15.5.06 & 13.6.06

APPEARANCES:

FOR NOTICEES: NONE

FOR SEBI : Since Noticee did not appear hearing had not taken place.

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

- 1.1 Vivenasri Financial Services Ltd. (hereinafter referred to as the 'broker') is a member of Hyderabad Stock Exchange, (hereinafter referred to as 'HSE'), and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB061156031.
- 1.2 SEBI conducted investigation into the affairs related to buying, selling and dealings in the shares of Zodiac Clothing Company Limited and found that the broker alongwith two other entities viz. Newfin Financial Services Pvt. Ltd. and Harsh Pranav Securities Pvt. Ltd. indulged in structured deals, cross deals and circular trading.
- 1.3 In view of the above, SEBI initiated proceedings under Section 11(4) and 11B of Securities and Exchange Board of India Act, 1992 read with Regulation 11 of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.
- 1.4 During the course of personal hearing before the Chairman, SEBI, the broker admitted to having indulged in cross and structured deals and also circular trading in the scrip of Zodiac and that the said manipulations were committed as the broker required liquid cash for its business.
- 1.5 In view of the above, SEBI issued directions dated August 25, 2003 prohibiting the broker from buying, selling and dealing in securities, in any manner, directly or indirectly, for a period of five years, for the reasons stated therein.
- 1.6 An Enquiry Officer was appointed vide Order dated November 14, 2003 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred as the 'said regulations') to enquire into the possible violations of Regulation 25 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 by the broker.
- 1.7 A Notice dated March 31, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker, however, neither replied to the aforesaid show cause notice nor requested to be heard in person. Hence the EO proceeded with the enquiry exparte based on the material available and submitted his report dated July 23, 2004 recommending a major penalty of suspension of certificate of registration of the broker for a period of 5 years.
- 1.8 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated July 29, 2004, in terms of Regulation 13(2) of the said Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The broker was granted 15 days time to submit its reply. The broker replied vide letter dated September 10, 2004.
- 2.1 I have carefully considered the findings of Inspection, Enquiry Report and the submissions made by the broker and my observations are as under :
- 2.2 The EO found that the only issue for consideration was whether the broker contravened any of the provisions of the Act, rules or regulations framed thereunder. He found that the broker was instrumental in the cross deals, structured deals and circular trading in the scrip of Zodiac. The broker admitted the violations committed by it and hence was found to have violated Regulation 4(a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices in the Securities Market) Regulations, 1995. The broker was given sufficient opportunity to present its case during the proceedings under Section 11(4) and 11B of Securities and Exchange Board of India Act, 1992. Further, the broker did not appeal against the

directions passed by SEBI which emphasizes that the broker violated the provisions of Regulation 4(a), (b), (c) and (d) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices in the Securities Market) Regulations, 1995.

- 2.3 The broker replied that its company did the alleged acts during the year 2000. However, sub-section 11(4) of the Act was inserted with effect from 29.10.2002 and therefore any act allegedly done before 2002 cannot be a subject matter for SCN u/s.11(4). Therefore, the SCN is ab-initio, null and void. The broker further stated that the enquiry by SEBI into the SCN dated March 31, 2004 was held under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002. All the acts alleged to have been done by the stock broker were during the period upto February 2001. The membership card of Hyderabad Stock Exchange was acquired only in March 2001. Under the Regulation no enquiry can be conducted for some misconduct allegedly committed before coming into force of the said Regulations. Further the share broker came into existence only in March 2001. Any act or misconduct allegedly done by the company viz. Vivenasri Financial Services Ltd. cannot be a reason for penalizing the share broker. The broker requested for a personal hearing in the matter.
- 2.4 I note that the broker has time and again admitted to having committed the alleged violations. So there is no dispute on that score. Coming to the broker's contention that any act allegedly done before 2002 cannot be a subject matter for SCN u/s.11(4), it is to be noted that the directions and SCN issued u/s. 11(4) is not the issue under consideration in the present order. If the broker was aggrieved by the directions issued u/s 11(4) he should have preferred an appeal with the SAT when the said directions were passed in August 2003. However, the broker did not do so. The present order is pursuant to the enquiry proceedings and is in no way connected to the directions dated August 2003.

2.5 The second contention of the broker was that under the Enquiry Regulations, no enquiry can be conducted for some misconduct allegedly committed before coming into force of the said Regulations in 2002. It is pertinent to note here that Regulation 23 of the Enquiry Regulations stipulates as under :

- (1) Notwithstanding amendment of the regulations as specified in regulation 21, anything done or any action taken including any proceeding for inspection or investigation or enquiry commenced or any notice issued under the said regulations before the commencement of these regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.
- (2) In particular and without prejudice to the generality of the provisions of sub-regulation (1) –
 - (i) an enquiry proceeding initiated by the Board under the relevant Regulations and pending before the Board before the commencement of these regulations shall be conducted and completed under the relevant Regulations as if those are not amended as specified in regulation 21;
 - (ii) any order appointing an enquiry officer under the relevant Regulations and pending before such enquiry officer immediately before the commencement of these regulations shall be deemed to have been ordered under the corresponding provisions of these regulations.

Thus, it is clear from the above that notwithstanding when the acts of omissions or commissions were committed, action initiated before the coming into force of the Regulations shall be deemed to have been taken under the corresponding provisions of the Regulations. In this case, though the alleged acts of violations have been committed before the coming into force of the Regulations, action has been initiated after the coming into force of the Regulations and hence cannot be said to be null and void as claimed by the broker.

- 2.6 Coming to the last contention of the broker that the share broker came into existence only in March 2001 and therefore any act or misconduct allegedly done by the company viz. Vivenasri Financial Services Ltd. cannot be a reason for penalizing the share broker, it is to be noted that it is the company viz. Vivenasri Financial Services Ltd. which is registered as a share broker which means that the company diversified its activities and entered share broking business. Thus, the company cannot be independent of its activities and hence cannot be isolated from its share broking business. Since the SEBI Registration is in the name of the company, there is no reason why it cannot be penalized for its share broking activities. Further, thorough investigation into the role of the broker in the market manipulation in the scrip of Zodiac has been conducted and it has been found that the broker was instrumental in the cross deals, structured deals and circular trading in the scrip and the broker has also admitted the violations committed by it.
- 2.7 Lastly, I note that despite requesting for personal hearing, the broker did not bother to appear before me on the scheduled dates granted to him.
- 3.1 On a careful consideration of the findings of the EO and the submissions made by the broker, as discussed above, I have no reason to differ with the findings of the EO.
- 3.2 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002, I hereby suspend the certificate of registration of Vivenasri Financial Services Ltd., Member Hyderabad Stock Exchange bearing SEBI

Regn.No.INB061156031 for a period of 5 years from September 15, 2003 which is equivalent to the period for which the broker was prohibited from buying, selling and dealing in securities vide directions dated August 25, 2003..

5.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: 8.8.06

T.C.Nair

Whole Time Member

Securities and Exchange Board of India