

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER
AGAINST M/s RAMABEN SAMANI FINANCE PRIVATE LIMITED
IN THE DEALINGS IN THE SCRIP OF GUJARAT FISCON LIMITED

Date of hearing: September 26, 2006

Appearances :

For Noticees: Ms. Sudha B Vithani, Director
 Shri Ashok Jain, Advisor
 Shri Junaid, Employee

For SEBI: Shri P.K.Bindlish, General Manager
 Shri Atul Agarwal, Manager
 Ms. Kshama Chavan, Legal Officer

ORDER

(Under Regulation 13(4) Of SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002 against M/s Ramaben Samani Finance Pvt. Ltd., Member, BSE.

1.0 Background

- 1.1 Gujarat Fiscon Ltd. (hereinafter referred to as "GFL"), a public limited company is engaged in the business of leasing, ICD/Bill discounting, project and management consultancy. The shares of the company are listed on the Vadodara Stock Exchange, Ahmedabad and the Bombay Stock Exchange Ltd. (BSE). However, the scrip was being traded on BSE in B2 Group and later was shifted to T Group w.e.f. October 1, 2001 as a part of surveillance measure. The delivery in the scrip was transferred to compulsory demat with effect from 24th September, 2001 i.e. after the period of investigation.
- 1.2 SEBI conducted investigations into the buying, selling and dealings in the scrip of GFL for the period from July 31, 2000 to December 15, 2000 (hereinafter referred to as the "investigation period") on the basis of an investor complaint alleging that the promoters of the captioned company along with a handful of brokers had artificially created volumes in the scrip.
- 1.3 During the investigation period, it was observed that the price of the scrip rose from Rs.60 on July 31, 2000 to Rs.104 on December 15, 2000 and had touched a high of Rs.113 on November 27, 2000. It was alleged that the aforesaid trades were by a set of brokers/sub brokers and their clients known to each other who acted in concert and most of the traded volumes were squared off. It was further alleged that these brokers abetted their clients in creating artificial volumes.
- 1.4 M/s Ramaben Samani Finance Pvt. Ltd. (hereinafter referred to as "RCF"), member of BSE is registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as Stock broker under Section 12 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") with registration number INB 011054534. It was found that during investigation period that RSF was a major broker in terms of traded volume in the scrip of GFL. RCF traded on behalf of Shri Heerachand Salecha (hereinafter referred to as Shri Salecha) in the name of client Shri Kishorekumar K Vasa. The settlement wise traded volume is as follows :

Settlement No	Gross Purchase	Gross Sale	Net/Purchase Sale
24	2900	2900	0
25	8600	8600	0
26	9500	9500	0
27	16200	16200	0
28	12100	12100	0
29	14000	14000	0
30	10200	10200	0
31	9000	9000	0
32	8000	8000	0
33	4000	4000	0
34	1900	1900	0
35	7000	7000	0
36	3600	3600	0
37	3100	3100	0
38	4200	4200	0
Total	114,300	114,300	0

- 1.5 Investigations further revealed that RSF used three different client codes i.e. 4131, 28, 30 for the same client, Shri Vasa. Shri Vasa was introduced by Shri Hiralal B Vara, who was alleged to be the representative of Shri Salecha. Further Shri Vara had filled up the Know Your Client (KYC) form of Shri Vasa with RSF at the instance of Shri Salecha and all the trades by Shri Vasa through RSF were on behalf of Shri Salecha. Further, order resulting into 149 trades of RSF spread over 20 days were matched with those of broker M/s. Bhagwandas Bhogilal & Co., trading for client Shri Jatin R Shah. These matched transactions were also squared off. All the aforesaid artificial volumes led to price rise in the scrip of GFL.
- 1.6 In view of the above findings, it was alleged that the aforesaid are prohibited under Regulation 3 and 4 (a-d) of SEBI (Prohibition of Fraudulent Unfair Trade Practices relating to Securities Market) Regulations, 1995 (hereinafter referred to as "FUTP") and also in violation of Clause A (2-4) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Stock Brokers Regulations).

2.0 Enquiry Proceedings

2.1 In view of the findings of investigation, an Enquiry Officer was appointed, vide Order dated August 24, 2004, under Regulation 5 (1) of the 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 violations by the RSF. A show cause notice dated December 30, 2004 was issued to RSF, under Regulation 6(1) of the Enquiry Regulations, 2002, communicating the charges against it. It was alleged that RSF had violated the provisions of Regulation 4 (a-c) of the FUTP Regulations and clauses A (2), A (3) and A (4) of the Code of Conduct as specified in Schedule II of the Regulation 7 of the Stock Brokers Regulations.

2.2 RSF replied to the aforesaid show cause notice, vide its letter dated February 9, 2005 and made submissions. In terms of Regulation 9 of the Enquiry Regulations, an opportunity of hearing before the Enquiry Officer was granted to the RSF on April 4, 2005, wherein Ms. Sudha B. Vithani, Director, RSF reiterated the submissions made by RSF vide the aforementioned letter dated February 9, 2005.

2.3 On completion of enquiry, the Enquiry Officer submitted his report dated June 28, 2005, recommending suspension of certificate of registration for a period of three months to RSF.

3.0 Show Cause Notice, Reply and Hearing

3.1 On the basis of the recommendation of the Enquiry Officer, a show cause notice dated July 04, 2005 was issued to RSF under Regulation 13 (2) of the Enquiry Regulations, asking it to show cause as to why appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed upon it. A copy of the Enquiry Report was also forwarded to RSF along with the said show cause notice.

3.2 RSF replied to the show cause notice, vide letter dated August 06, 2005 and, inter-alia, made the following submissions :

- i. *Out of the total volume traded, RSF's volume was just 16.41%*
- ii. *RSF denied knowing Shri Heerachand Salecha. It subsequently found that Shri Salecha is the main originator of the volume in the scrip. It is understood that SEBI had imposed a penalty upon Shri Salecha for creating volume in the scrip of GFL.*
- iii. *RSF expressed his ignorance that Shri Hiralal Vara had acted upon the instruction of Shri Salecha.*
- iv. *RSF denied of buying and selling, otherwise dealing in securities in fraudulent manner.*
- v. *RSF stated that it was not the beneficiary of this cartel and it was not the intention to induce the sale purchase of securities. Further it did not intend to effect the transfer of beneficial ownership nor did it enter to operate as device to inflate, depress or cause fluctuation in the market price of securities.*
- vi. *RSF admitted that opening of 3 client accounts was by mistake and that it had voluntarily disclosed the same in its reply. It failed to produce the duplicate contract notes duly signed by Shri Kishore Vasa, as the same are misplaced and not traceable. As regards banking transactions, RSF issued cheques as demanded by Shri Vasa.*

3.3 An opportunity of personal hearing in the matter before me was given to RSF on September 26, 2006 at SEBI Head Office, Mumbai.

4.0 Consideration of Issues

4.1 I have carefully examined the facts and circumstances of the case, the investigation report, enquiry report and the submissions of RSF. The issues for consideration are:

- (i) Whether the trades in GFL during the period of investigation, July 31 to December 15, 2000 constitute artificial trading, leading to price manipulation;
- (ii) Whether RSF is guilty of violation of securities regulation as alleged on account of the trades done on behalf of its client. My findings in this regard are as under :

4.2 The Enquiry Officer found that RSF traded 114,300 shares of GFL on both buy and sell side during the period of investigation, totaling 228,600 shares. RSF had entered three different client codes for the same client namely, Shri Kishore Kumar

Vasa for the aforesaid trades as under :

Date	No. of Shares Traded	Client Code
06.09.00	2800	28
04.09.00 to 19.09.00	27,200	30
20.09.00 to 15.12.00	198,600	4131
Total	228,600	

I note that RSF admitted that these 3 client codes were mistakenly punched by them. However, it is difficult to accept that different client codes were used for the same client by mistake, a mistake which could occur a few times, but if it were to occur over a period of time then the motive of RSF was clearly under suspect.

- 4.4 As regards production of copies of contract notes purportedly done on behalf of their client Shri Kishore Vasa, I note that RSF did not produce the same either to the Investigation Officer or to the Enquiry Officer. RSF admitted that they failed to produce the duplicate contract notes signed by Shri Vasa as the same are misplaced and not traceable. A reference is drawn to Regulation 17 (1) (i) read with Regulation 18 of Stock Brokers Regulations which states about maintenance of counterfoils or duplicates of contract notes issued to clients. Further SEBI Circular No. SMD/MDP/CIR/043/96 dated August 1996 requires the brokers to maintain counterfoils or duplicates of contract notes signed by the client, for period of 5 years. Regulation 9 of PFUTP Regulations, 1995 makes it mandatory for brokers to furnish such records as may be required by the investigating officer. I have noted that despite the undertaking on May 27, 2004 to furnish the duplicate of contract notes (signed by Shri Vasa) to the Investigation Officer on May 28, 2004, RSF has not done so.
- 4.5 Further, I note that Shri Kishorekumar Vasa, submitted that all the transactions in his name were done by Shri Salecha only. Shri Vasa stated that Shri Salecha had lured him by offering him a job in return of signing the KYC form at the office of the broker, Ramaben Samani. Through this KYC form of Shri Vasa, Shri Salecha entered into trades through Ramaben Samani. An affidavit dated May 29, 2004 to that effect was also submitted by Shri Vasa. The Enquiry Officer after perusal of the affidavit of Shri Vasa and the statement of Shri Vasa, concluded that Shri Salecha had mis utilized the identity of Shri Vasa to perpetuate the aforesaid trades. The conduct of RSF in giving 3 different client codes for Shri Vasa's trades in GFL and not producing the duplicate of contract notes, clearly points out the fact that RSF is not innocent as claimed in its submission.
- 4.6 The Enquiry Officer has observed from the statement of Shri Vasa that no contract notes of the trades done through RSF were ever issued by RSF to Shri Vasa. Further no payment by cheque / cash was ever made by RSF to Shri Vasa. However, I note that RSF in its submission on one hand stated that there were no banking transaction between Shri Vasa and them and on the other hand they have stated that they did issue the cheques as demanded by Shri Vasa. The submission made by RSF is contradictory. I further note that RSF failed to produce evidence to suggest that the payments were made to Shri Vasa out of these number of transactions undertaken by it for Shri Vasa. It can be concluded that the money was going to some other entity / person, and which was none other than Shri Heerachand Salecha.
- 4.7 I further note that RSF had entered into 149 trades spread over 20 days which ultimately got matched with the same counter party broker i.e. M/s Bhagwandas Bhogilal & Co. who was dealing for Shri Jatin R. Shah. In addition to this all transactions have been squared off and no delivery has been taken or given in any of the settlements. I am of the view that these transactions were for the purpose of creating artificial volumes to manipulate the price of shares which RSF under all obligations could not prevent by exercising due skill and care in its dealings.
- 4.8 I note that on the quality of evidence required in these proceedings, the Hon'ble Supreme Court in AIR 1999, SC2047 held that *strict rules of evidence are not applicable to these enquiry proceedings. The only requirement of law is that allegation must be established by such evidence acting upon which a reasonable person acting reasonably and objectively may arrive at a finding upholding the gravamen of the charges against the delinquent.*
- 4.9 I find several evidences such as punching of orders from three different client codes for one client, non-issue of contract notes, no proof of payment made or received to/ from Shri Vasa, etc. uphold the gravity of the charges against RSF. From the facts of the case, it is therefore found that RSF has aided and abetted Shri Salecha and thereby dealt in securities with the intention of artificially raising the prices of GFL. There is enough material to suggest that trading done by RSF have induced transaction in GFL shares by other investors in violation of Regulation 4(a) of FUTP Regulations. The involvement of RSF in assisting Shri Salecha has thus resulted in transactions, which were not genuine, but for creating a false and misleading appearances of trading in GFL thereby reflecting inflated prices of the shares of GFL during the investigation period. The said conduct on the part of RSF is in violation of Regulation 4(b) and 4(c) of FUTP Regulations, 1995 which provided as under :

4. No person shall-

- (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

- 4.10 As regards, the volumes in the scrip, RSF's volume works out to be 17.4% of the total trading. By looking at overall trend in the trading pattern in GFL, the percentage of trading by RSL is quite substantial. With this figure, it will be difficult to accept that RSF was not responsible for the artificial price rise in the shares of GFL during the period of investigation, which is prohibited in terms of Regulation 4 (c) of FUTP Regulations. Further, I have noted the findings of Enquiry Officer that the broker has admitted their lapses with regard to non maintenance of order book, discrepancies in issuing confirmation memos, delay in making payment to clients, dealing with unregistered sub-broker etc.,
- 4.11 I have also noticed that due to non co-operation of RSF the purpose for which the clients created artificial volumes in the scrip could not be established. Further, I note that RSF did not cooperate with the investigating agency and produced false documents. On careful perusal of the charges and the findings as recorded above, I find that RSF has also violated the provisions of Clauses A(2), (3) & (4) of the Code of Conduct as specified in Schedule II read with Regulation 7 of Stock Broker Regulations. After considering all the above submissions, I am of the view that a minor penalty of suspension of certificate of registration for fifteen days would be adequate and sufficient to meet the ends of justice.

5.0 ORDER

- 5.1 Now 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 the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose penalty of 'Suspension of the Certificate of Registration for a period of fifteen days on M/s Ramaben Samani Finance Pvt. Ltd., Member BSE. I have further noted that in the matter of AKL Soft and Infosys Ltd., vide order dated June 22, 2007, the certificate of registration of Ramaben Samani has been suspended for a period of fifteen days. This period of suspension of certificate of registration in the present would run concurrently.
- 5.2 The order shall come into effect on the expiry of 21 days.

PLACE: MUMBAI

DATE: 22.06.2007

T C NAIR

WHOLE-TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA