

SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: Dr. T. C. Nair, Whole Time Member

Name of the noticee : M/s. Ramaben Samani Finance Pvt. Ltd.

Date of Hearing : 17-07-2006

Appearance of parties

For the noticee : Ms. Sudha B. Vithlani, Designated Director

Shri Ashok Jain, Advisor

Shri Junaid

For SEB : Shri P. K. Bindlish, General Manager

Shri Pradeep Bhowmik, Manager

ORDER

UNDER REGULATION 13 (4) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s. RAMABEN SAMANI FINANCE PVT. LTD., MEMBER, THE STOCK EXCHANGE, MUMBAI (SEBI REGISTRATION NO. INB 011054534) IN THE MATTER OF M/S. AKL SOFT AND INFOSYS LTD.

WTM/TCN/ID3/ 35/06 /2007

Background

1. M/s. AKL Soft and Infosys Ltd. (hereinafter referred to as AKL) incorporated as M/s. AKIL Plastics Ltd. on 06.04.95 with the main object of manufacturing plastic components for industrial, commercial and domestic applications. Later, the objects of the company was substituted to providing education in the field of software, development, marketing of software and other related services vide a resolution dated 05.04.99 and the name was changed to its present name on 01.03.00. The scrip was listed at The Stock Exchange, Mumbai (hereinafter referred to as BSE), The Madras Stock Exchange and The Coimbatore Stock Exchange. The scrip was listed at BSE on 10.07.96.
2. An investigation was conducted into the trading in the scrip of AKL for the period 31.01.03 to 04.04.03 (hereinafter referred to as the investigation period). During the investigation period it was noticed that the scrip had opened at Rs.8.60 on 31.01.03 and closed at Rs.1.80 on 04.04.03, touching an intra-day high of Rs.9.55 on 03.02.03. Apart from this, the scrip had traded in the region of Rs.8-9 till 12.02.03. Out of the 41 trading days during the period of investigation on which the scrip was traded, the scrip had touched the upper circuit limit on one day and the lower circuit on 32 days.
3. During the period of investigation, the ultimate clients of M/s. Ramrakh R. Bohra and M/s. Ramaben Samani Finance Pvt. Ltd. (hereinafter referred to as the member or RSF), M/s. ASK Holdings Pvt. Ltd. (hereinafter referred to as ASK) and Shri Vinod Khetan had contributed a substantial volume in the scrip of AKL. ASK had purchased net total of 15,66,001 shares accounting for 30.97% of the total issued share capital of AKL and 79.37% of the total floating stock. Shri Vinod Khetan had sold a total of 15,57,405 shares constituting 30.80% of the total issued share capital of AKL and 78.93% of the total floating stock.
4. It was brought out by the investigation that RSF had dealt with Shri Vinod Khetan in the scrip of AKL with the knowledge that ASK and Shri Khetan were putting these transactions in the exchange mechanism as part of their trading strategy to tide over a financial crises faced by ASK. But the said finding was refuted by RSF in its submission before the Investigation Officer. It was also submitted by the Member that the deliveries and the money for the transactions used to come from the accounts of Shri Khetan only. But, the existence of a relationship between Shri Khetan and Shri Ashok Kumar Jain, Director ASK was within the knowledge of RSF.
5. In view of the aforesaid findings of the investigation, it was alleged that the member had failed to exercise due care and diligence in dealing with the client Shri Khetan in the scrip of AKL and by virtue of its knowledge of the relationship between Shri Ashok Kumar Jain and Shri Khetan had aided and abetted the client in creation of artificial volume in the scrip of AKL. Therefore, the member had violated the provisions of Clause A (2), (3) & (4) of the Code of Conduct for Stock Brokers as specified in Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992 and Regulation 4 (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.
6. An Enquiry Officer was appointed by SEBI, vide an order dated 18.09.04, to inquire into the aforesaid violations and recommend appropriate penalty against the member. The Enquiry Officer after inquiring into the violations noticed against the

member submitted a report dated 10.03.05 wherein it was concluded as follows:

"I have carefully gone through the submission made by the member. In view of the finding arrived at above, I conclude that the member influenced the price of the scrip of the company and therefore violated Regulation 4(b), (c) & (d) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995.

The member has also violated the code of conduct as prescribed in Clause A (2) of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992 as it failed to exercise due skill and care as was expected of it.

The transactions entered into by the member have interfered with the normal price discovery mechanism of the stock exchange in so far as they have created an artificial market for the scrip. Further, the actions of the said broker has led to a situation which has eroded the credibility and posed a threat to the integrity of the securities market. It is necessary in the interest of the investors and for the safety and integrity of the securities market the persons particularly intermediaries who indulged in such fraudulent and manipulative practices be dealt firmly."

7. In view of the aforesaid conclusions, the Enquiry Officer recommended a penalty of suspension of certificate of the member for a period of three months.

Show cause notice, reply and hearing

8. After considering the Enquiry Report, a show cause notice dated 22.03.05 was issued to RSF charging it with violating the provisions of Code of Conduct contained in Clause A(2) of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992 and the provisions of Regulation 4(b), (c) and (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. A copy of the Enquiry Report was also appended to the show cause notice. It was also mentioned that, if the member had anything to reply to the findings of the Enquiry Report, it may do so within 15 days of the receipt of the notice.

9. RSF submitted its reply to the show cause notice vide a letter dated 08.04.05. The submissions made by RSF in response to the show cause notice are as under:

- Though the price of the scrip ranged from Rs.9.55 to Rs.1.80 during the period of investigation, the clients for RSF had traded in a narrow range of Rs.9.55 to Rs.8-9. This goes to show that RSF could not make out the intention of its client and it had no mechanism to counter check the trades of the client.
- All necessary steps have been taken to ensure compliance with the SEBI Guidelines in relation to client introduction, entering trades through the BOLT and clearing/ settlement of the trades.
- It has been submitted by the client himself that he had allowed his name to be used by ASK for carrying out the transactions which goes to affirm the innocence of RSF in the whole scheme of things.
- The client Shri Vinod Khetan had traded in many other scrips apart from AKL and had always been a net seller of shares through RSF.
- All the transactions entered into in the scrip of AKL were a planned scheme between clients who had an understanding among themselves resulting in a loss to the member. Therefore, it would be unfair to hold RSF guilty of violating the provisions of Regulation 4 (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Clause A (2) of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992.

10. RSF was thereafter given an opportunity of appearing before me and making their submissions if any, on 17.07.06. RSF appeared before me on the said date and reiterated their earlier submissions. Pursuant to the hearing, a letter dated 21.07.06 was submitted by RSF enclosing the ledger statement of Shri Vinod Khetan and other details. In the said letter, RSF had also submitted that they had been penalized to the extent of Rs.25,000 by BSE and Rs.75,000 by SEBI for the nature of violations which is currently under inquiry. Further, a letter dated 14.08.06 was sent by RSF requesting a cross examination of all the parties whose statements were relied upon by SEBI in levying the charge against it.

Consideration of Issues

11. I have carefully considered the findings brought out in the enquiry report, the replies submitted by RSF in response to the show cause notice and its submissions before me during the personal hearing.
12. The Enquiry Officer in his report dated 10.03.05 has concluded that RSF has violated the provisions of Regulations 4 (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Clause A (2) of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992.

13. The member had performed all the sale transactions for Shri Vinod Khetan during the investigation period. A total of 15,57,405 shares have been sold by the member on behalf of Shri Khetan over 43 settlements. This had constituted about 30.80% of the total issued share capital and 78.93% of the total floating stock of AKL. This by no means can be termed as an insignificant proportion in terms of the total market volumes. Also, these transactions have not been entered into on one single day but have been spread over a period of three months.
14. A member operating in the stock market is expected to exercise care in executing transactions on behalf of its clients. A reasonable view to be taken in favour of RSF in the present circumstances would have been possible had these trades been performed in a shorter span of time and are of insignificant proportions. When transactions constituting huge portions of total day's trade are executed over a long period, especially in an illiquid scrip such as AKL, is expected to ring alarm bells in the minds of the member. The result should have been the suspension of activities in that scrip by the member. None of these remedial measures seems to have been adopted by the member more so, the member does not even seem to have realised that there is something undue happening in relation to the trades of Shri Khetan. This has led to a series of synchronised deals being executed between Shri Khetan and ASK. The member having exercised no caution in restraining Shri Khetan had only aggravated the already murky scenario enabling the clients to continue matching their trades over a period of three months.
15. Any reasonable conclusion on observing such a behaviour of the member would only be that of the member willingly turn a blind eye to the misuse of the market mechanism through its network, thereby, aiding and abetting Shri Khetan and his associate to execute the series of dubious transactions in the scrip of AKL. To this extent, I am in agreement with the conclusion drawn by the Enquiry Officer in this regard.
16. Such a shoddy performance of its activities by a market intermediary, whom SEBI has entrusted with the responsibility of ensuring that the trades entered through the market are proper and without any ulterior considerations, cannot be treated lightly. SEBI with a view to prescribing a minimum standard of performance for the market intermediaries, has prescribed the Code of Conduct to be adopted by them. Any activity that they are to perform in the market has to be guided by the said Code and has to be in the broader interest of the market and its participants i.e., the investors. The conduct of RSF in the present case seems to be in utter disregard to the set code for the brokers as prescribed by in SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
17. Therefore, I have no doubt in concurring with the Enquiry Officer that RSF has violated the provisions of Regulations 4 (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and Clause A (2) of Schedule II read with Regulation 7 of SEBI (Stock Broker and Sub-brokers) Regulations, 1992.
18. At this point, I also note the submission made by RSF that they have already been penalized by BSE and SEBI for the said violations. I have also perused the order dated 11.04.05 passed by Adjudicating Officer, SEBI whereby a penalty of Rs.75,000/- has been imposed upon RSF for violating the provisions of Regulations 4 (b), (c) & (d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995. The current proceedings against the member are not only for the violations under FUTP Regulations but also for their lack of diligence in upkeep of the standards of conduct. This violation has a wider ramification for the continued functioning of the member and cannot be viewed myopically within the purview of the current context only. So also, the conduct of the member has to be viewed in the sense of overall market wellbeing which augurs well for the investors interests. In such a perspective, the monetary penalty already levied upon the member cannot be a sufficient deterrent in enforcing the parameters for better conduct. Therefore, I feel it would be appropriate to levy further penalty in the nature of suspension of Certificate of Registration of the member.
19. As regards, the quantum of penalty/ period of suspension I gathered from the investigation report that the Enquiry Officer has recommended a period of three months. Since the member already having suffered a monetary penalty of Rs.75,000/- imposed by SEBI, I feel it would be harsh if a further penalty of 3 month's suspension as recommended by the Enquiry Officer is imposed. Therefore, I propose to reduce the period of suspension from three months to 15 days.

Order

20. In view of the findings brought out herein above, in exercise of powers conferred upon me under Section 19 of the SEBI Act, 1992 read with Regulation 13 (4) of SEBI (Procedure for Holding Inquiry by an Enquiry Officer and Imposing Penalty) Regulations, 2002 and Regulations 11 and 13 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, I hereby direct that the Certificate of Registration of M/s. Ramaben Samani Finance Pvt. Ltd., Member, the Stock Exchange, Mumbai (SEBI Registration No. INB 011054534) be suspended for a period of 15 days.
21. The order shall come into force after a period of three weeks from the date of this order.

PLACE: MUMBAI

DATE: 22.06.2007

T C NAIR

WHOLE-TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA