

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: Dr. T.C. NAIR, WHOLTE TIME MEMBER

AGAINST M/s. SREE GANESH ENTERPRISE, SUB BROKER

SEBI REGN. NO. INS 010623721 AFFILIATED TO SUBHKAM

SECURITIES PVT. LTD.

ORDER

UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULAITON 2002 IN THE MATTER OF SREE GANESH ENTERPRISE, SUB BROKER AFFILIATED TO M/s SUBHKAM SECURITIES PVT. LTD.

1.0 Background

- 1.1 SEBI conducted investigation into the buying, selling and dealing in the scrip of Datanet Systems Ltd. (hereinafter referred to as 'DSL') for the period November 6, 2000 to January 5, 2001 (hereinafter referred to as "investigation period"). The shares of DSL are listed on the Bombay Stock Exchange Ltd., Bangalore Stock Exchange and Hyderabad Stock Exchange.
- 1.2 On the basis of findings of investigation, it was alleged that Sree Ganesh Enterprises, Share & Stock Broker (hereinafter referred to as "the sub broker") affiliated to M/s. Subhkam Securities Pvt. Ltd. had traded in the scrip of DSL through M/s. Century Consultants Ltd., member of BSE without being registered with Century Consultants as a sub broker and thereby violated section 12 of SEBI Act, 1992 (hereinafter referred to as "the Act") read with the SEBI

(Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Stock Brokers Regulations).

2.0 Enquiry Proceedings

2.1 Pursuant to the findings of investigation, an Enquiry Officer was appointed vide order dated November 14, 2003 under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”) to enquire into the alleged contraventions observed during the investigation.

2.2 A show cause notice dated December 7, 2004 in terms of Regulation 6(1) of the Enquiry Regulations was issued to the sub broker communicating the charges alleged. The sub broker vide its letter dated December 29, 2004 replied to the show cause notice. An opportunity of hearing was granted to the sub broker by the Enquiry Officer and the sub broker was advised to attend the hearing before the Enquiry Officer on August 8, 2006. Shri Rajesh P. Shah and Shri Jayant Thakur, authorized representatives of the sub broker attended the hearing and reiterated the submissions made vide its aforesaid letter dated December 29, 2004.

2.3 After completion of enquiry, the Enquiry Officer submitted his report dated August 30, 2006 recommending minor penalty of censure to the sub broker.

3.0 Show Cause Notice and Sub brokers submissions

3.1 A copy of the enquiry report was sent to the sub broker along with a show cause notice dated September 7, 2006 in terms of Regulation

13(2) of the Enquiry Regulations, advising the sub broker to show cause as to why action should not be taken against it as recommended by Enquiry Officer or any other action as considered appropriate by the Board.

3.2 The sub broker vide letter dated nil replied to the show cause notice and inter alia submitted as under:

- i. The sub broker was duly registered much before the date of transaction in question and the same has been accepted in the report of the Enquiry Officer.
- ii. There is no requirement of a fresh registration every time when there is change in its affiliation with the broker. The step of obtaining registration with SEBI is totally different from the step of changing affiliation from time to time with the main broker.
- iii. Section 12 of the Act does not get attracted at the time of the change of main broker and hence even if one were to assume that there was any short coming in the process of change of the sub broker there is no violation of Section 12.
- iv. There have not been any complaints whatsoever from any investor or an other person with regard to the transactions in question.
- v. A formal procedure regarding change of broker was introduced after the transactions in question. The sub broker through its main broker submitted the papers relating to change of name of main broker which was misconstrued as a fresh application for registration. It further submitted that it

- had not sought for afresh registration at all and indeed the law also does not require a fresh registration for this purpose.
- vi. Further it is denied that it was an unregistered sub broker. By sending the due notification to SEBI for change of affiliated broker, its registration does not get lost or lapse. The fact of due notification and recording of change of broker is wrongly equated with the basic requirement of registration itself. The process of notification and record of change of broker is not the procedure and requirement of Section 12 and hence any alleged shortcoming in this regard cannot at all be treated as violation of section 12.

4.0 Consideration of Issues and findings

- 4.1 I have carefully examined the investigation report, enquiry report, the show cause notice issued to the sub broker and the reply of the sub broker. My findings are as under:
- 4.2 The issue that arises for consideration in the matter is whether the sub broker had acted as an unregistered sub broker to Century Consultants Ltd. I note that the sub-broker had traded in the scrip through Century Consultants Ltd., stock broker of BSE. The sub broker has a gross purchase of 145769 shares and gross sales of 108400 shares which amounted to 75.81% and 69.81% upto gross purchase and sale done by Century Consultants Ltd. during the investigation period. The main clients of the sub-broker were Sree Ganesh Caplease Services Pvt. Ltd and Caplon Securities Pvt. Ltd. Out of 145769 shares purchased by the sub broker, 115600 shares were purchased by Shri Ganesh Caplease Service Pvt. Ltd. Out of

the sale of 108400 shares by the sub-broker, 75600 shares were sold by Caplon Securities Pvt. Ltd.

- 4.3 I note that the sub broker has claimed that during the investigation period it had filed its application for transfer of its sub broking activity from Subhakam Securities Pvt. Ltd. to Century Consultants Ltd. I however find that when the alleged trades were undertaken the sub broker was not registered as sub broker of Century Consultants. This was in clear violation of section 12 of SEBI Act which prohibits a person to act as market intermediary without registration. Section 12 further inter alia mandates that a sub broker shall not buy, sell or otherwise deal in securities except under, and in accordance with the conditions of certificate of registration obtained from the Board in accordance with the Regulations under SEBI Act.

In the given case, I find that at the relevant time the sub broker was having certificate of registration to act as sub broker of Subhakam Securities only and not of Century Consultants. It is noted that the Sree Ganesh Enterprise was registered as a sub-broker and was affiliated to Subhakam Securities Pvt. Ltd. but the alleged trades were executed through another broker Century Consultants Ltd. The act of the sub broker to deal for Century Consultants as its sub broker was thus clearly in violation of Section 12 of SEBI Act.

- 4.4 The sub broker submitted that there was no requirement of taking additional registration for affiliating with another broker. The said contention made by the sub-broker is untenable in view of the fact that Section 12 of the SEBI Act, prohibits a person from acting as a

sub broker without obtaining certificate of registration from SEBI. The certificate of registration issued by SEBI is valid for execution of transactions through Subhakam only. I further note that Stock Broker Regulations state that an application for obtaining registration as a sub broker shall be submitted to the stock exchange of which the broker is a member. Further it is pertinent to note that prior to the amendment of Stock Brokers Regulations in 2006, if a sub broker wanted to change its affiliation to another stock broker, it had to surrender its certificate of registration. However as per the SEBI (Stock Brokers and Sub Brokers) (Second Amendment) Regulations, 2006, no fresh certificate of registration needed to be obtained by the sub broker if it merely changed its affiliation from one stock broker to another stock broker being a member of the same stock exchange.

4.5 I have also noted that as per the SEBI sub broker database, registration of Sree Ganesh Enterprises, as a sub broker affiliated to Subhakam Securities Pvt. Ltd has been cancelled on November 27, 2003. Further the registration of Century Consultants Ltd. has also been cancelled vide SEBI's order dated June 12, 2003.

4.6 I note that the sub broker inspite being aware of the provisions of SEBI Act acted as an unregistered sub broker which would be prejudicial to the interest of the interest of the investors who deal with such unregistered sub brokers. Having going through the facts and circumstances of the case, it is clear that at the relevant point of time, the sub broker was not having certificate of registration to act

as a sub broker to Century Consultants Ltd. and having acted as such has contravened the provisions of Section 12 of the SEBI Act, 1992.

5.0 Order

5.1 Therefore, in exercise of the powers conferred upon me by virtue of Section 19 read with Regulation 13 (4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby “Censure” Sree Ganesh Enterprise, Share & Stock Broker, SEBI Registration no. INS010623721 affiliated to Subhakam Securities Pvt. Ltd. I also direct Sree Ganesh Enterprise to note that any instances of violations or non-compliance of the provisions of Securities and Exchange Board of India Act and the Rules and Regulations framed there under, in future, shall be dealt with stringently.

Date: 22.08.2007

T. C. NAIR

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA