

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER**

ORDER

UNDER REGULATION 28(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008 IN RESPECT OF VIJAY GROWTH FINANCIAL SERVICE LTD., MEMBER, HYDERABAD STOCK EXCHANGE, SEBI REGN NO. INB 061059037 IN THE SCRIP OF FORTUNE INFORMATICS LTD.

- 1.1 Securities and Exchange Board of India (SEBI) had conducted investigations into the dealings in the scrip of Fortune Informatics Ltd. (hereinafter referred as 'FIL') for the period from October 01, 1999 to July 31, 2000. The shares of FIL were listed on Hyderabad Stock Exchange (hereinafter referred to as "HSE") and Calcutta Stock Exchange (hereinafter referred to as "CSE").
- 1.2 During the investigations, it was found that the price in the scrip of FIL on HSE moved from Rs. 64 in October 1999 to Rs.106 in December 1999 and from December 06, 1999, it moved sharply and reached Rs. 654.92 on January 05, 2000 and went up to Rs. 665 on February 11, 2000. Subsequently, it came down to Rs. 55.75 on July 31, 2000.
- 1.3 It was alleged that Vijay Growth Financial Services Ltd. (hereinafter referred to as "VGF"), member of HSE traded with the unregistered sub brokers viz., M/s Subecha Securities Pvt. Ltd. (hereinafter referred to as 'Subecha') in the scrip of FIL on behalf of its clients thereby violating SEBI Circular SMD/POLICY/CIR/3-97 dated March 31, 1997 read with section 12(1) of the SEBI Act, 1992, Rule 3 of the SEBI (Stock Broker and Sub Broker) Rules, 1992.
- 2.1 On the basis of findings of investigation, an Enquiry Officer was appointed, vide order dated September 19, 2005, to conduct enquiry in respect of the violations/contraventions alleged to have been committed by VGF. The enquiry officer conducted enquiry in terms of the then SEBI (Procedure for Holding Enquiry by the Enquiry

Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") and submitted his report dated November 30, 2005 recommending 'Censure' to VGF.

- 3.1 Based on the recommendations of the Enquiry Officer, a show cause notice dated February 27, 2008 was issued to VGF under Regulation 13(2) of the Enquiry Regulations asking it to show cause as to why the penalty as considered appropriate by the Enquiry Officer should not be imposed upon it. A copy of the Enquiry Report was also forwarded to VGF with the said show cause notice. However no reply was received from VGF.
- 3.2 An opportunity of hearing was granted to VGF on September 1, 2008 before me in terms of Regulation 13(1) of Enquiry Regulations. However no one appeared on behalf of VGF.
- 4.1 Having complied with the principles of natural justice, I am proceeding ahead on the basis of material available on record. I have carefully considered the Enquiry Report and the show cause notice issued to VGF. I note that though the Enquiry Regulations were repealed with effect from the notification of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, anything done and any action taken under the said enquiry regulations shall be deemed to have been done or taken or commenced under the corresponding provisions of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008. In view of the above, the issue to be decided is whether VGF has traded with unregistered sub broker namely Subecha.
- 4.2 I note that SEBI vide its circular No. SMD/Policy/Cir-3/97 dated March 31, 1997 and SEBI/SMD/Policy/Cir 3/98 dated January 16, 1998 mandated that the members of one exchange for dealing through members of another exchange have to necessarily register themselves as sub brokers of the other member. In this regard, reference is drawn to Section 12 of the SEBI Act, which states as under:

"No stock broker, sub broker,and such other intermediary who may be associated with the securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a

certificate of registration obtained from the Board in accordance with the regulations made under this Act."

Apart from the above, I note that circular dated March 31, 1997 inter alia states as under :

"No broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI. It shall be the responsibility of the broker to ensure that his clients are not acting in the capacity of a sub broker unless he is registered with SEBI as a sub broker or his recognized by the stock exchange as a remisier."

The subsequent circular dated January 16, 1998, inter alia states as under:

"It has been decided that the members of the stock exchange executing transactions of their clients through the members of others exchanges are to be treated as a sub broker. In terms of Rule 3 of SEBI (Stock Brokers and Sub brokers) Rules, 1992, read with Section 12 of the SEBI Act, no stock broker or sub broker shall buy, sell and deal in securities unless he holds a certificate granted by the Board under the regulations. Thus, it is necessary for any person who acts a sub broker to hold a certificate of registration as a sub broker granted by SEBI and accordingly the members of the stock exchanges who also act as sub brokers should hold a separate registration with SEBI as a sub broker. However, presently some of the members of exchanges who are acting as a sub brokers through the members of other exchanges have nor obtained separate registration from SEBI to act as the sub brokers."

- 4.3 The above circular was issued to provide a means of redressal in case of default when a member of one exchange traded through the member of other exchange. In the instant case, if Subecha Securities defaulted to its clients when trading in HSE through VGF then the clients' of Subecha Securities would neither have recourse to HSE as Subecha Securities is not a member of HSE nor will they have recourse to BSE, as the trades do not pertain to BSE. The circular clarifies a legal position that any sub broker is required to be registered, irrespective of the fact that it is a broker on some other exchange.

- 4.4 After perusing the material available on record, I note that VGF has been under winding up and therefore the show cause notices were handed over to the Official Liquidator. From the enquiry report, I find that the Official Liquidator of VGF has not replied to the show cause notices issued to VGF.
- 4.5 It is also observed that the show cause does not furnish any material /information/ data to evidence that Subecha, an unregistered broker traded on behalf of their clients. I am of the view that the case is squarely covered by the judgment of the Hon'ble SAT in its order dated May 30, 2003 in the matter of *Radar Securities vs. SEBI* wherein it was held that "*in absence of reasonable evidence it is not possible to subscribe to the Respondents' version holding the Appellant guilty of trading with unregistered sub brokers/ unapproved remisiers*".
- 4.6 Therefore having gone through the facts and circumstances of the case, I am of the considered view that ends of justice will be met by imposing a penalty of censure to Vijay Growth Financial Services Ltd.
- 5.1 Therefore, in exercise of the powers conferred upon me by virtue of Section 19, read with Regulation 28(2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008, I hereby 'Censure' Vijay Growth Financial Services Ltd., SEBI Registration no 061059037 and PAN No. AACV6838J to the effect that he should be careful in future in the conduct of its affairs as a capital market intermediary. I also direct VGF 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 thereunder, in future, shall be dealt with stringently.

DATE : 09.01.2009

PLACE : MUMBAI

**T.C.NAIR
WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA

