

WTM/MSS/IVD/ID-8/40/10

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: M. S. SAHOO, WHOLE TIME MEMBER**

IN THE MATTER OF SAI INFO LIMITED – DEALINGS BY VIPUL FINPORT & LEASE LIMITED (NOW AMLAGAMATED WITH RAJENDRA SECLEASE LIMITED)

Date of hearing: 05.03.2010

Appearances:

**For Noticee: Ms. Deepika Vijay, Advocate
Ms. Sunayna Jaimini, Authorised Representative, and
Ms. Tapasya Mittal, Authorised Representative.
For SEBI: Mr. Amitesh Kumar, Asstt. Legal Advisor, and
Mr. Chetan Fumakiya, Manager.**

ORDER

Under Sections 11, 11B and 11(4)(b) of the Securities and Exchange Board of India Act, 1992 and Regulation 11 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

1. Vipul Finport & Lease Limited (VFL), which had allegedly irregular dealings in the shares of Sai Info Limited (SIL) at Bombay Stock Exchange Limited (BSE) during the investigation period (March 15, 2002 - September 03, 2002), amalgamated with Rajendra Seclease Limited (RSL) in terms of approval dated August 8, 2003 of the Hon'ble Delhi High Court. The scheme of amalgamation, *inter alia*, provides: "*As on the date of filing the scheme, no legal proceedings are either pending or launched against the Transferor Companies & the Transferee Company. Albeit, if they are launched in the meanwhile, the same shall be continued and be enforced by or against the Transferee Company.*"
2. Based on an investigation, SEBI issued a show cause notice (SCN) dated July 28, 2009 alleging that RSL (the expression RSL includes VFL) violated the provisions of Regulations 3, 4(a) and (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 and the corresponding provisions of Regulations 3(a) and 4(1), 4(2) (a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (FUTP Regulations) and Section 12 of the SEBI Act, 1992. The SCN called upon RSL to show cause as to why directions in terms of Sections 11, 11B and 11(4)(b) of the SEBI Act, 1992, including debarring RSL from accessing the securities market and from buying, selling or otherwise dealing in securities for an appropriate period of time, should not be passed. RSL, vide letter dated October 13, 2009, submitted reply to the SCN and appeared before me through two authorised representatives and an Advocate on

March 05, 2010 at Delhi. It also made additional written submissions vide letter dated March 15, 2010.

3. I have considered the SCN, the written and the oral submissions of RSL and other material on record.

4. The charges alleged in the SCN are:

4.1 The trades by VFL during March 15, 2002 - April 16, 2002 contributed to fall in price of SIL shares from Rs.165 to Rs.45. Of the 19 trading days during this period, VFL entered sale orders on 11 days. It entered orders at the lowest end of circuit breaker on 5 days. It accounted for 100% of sales in the market on 4 days. Its sales accounted for 40% of total sales in the market during the period. Similarly, trades by VFL during May 6 - 21, 2002 contributed to fall in price of SIL shares from Rs.38 to Rs.11.40. During this period, VFL entered sale orders on all the 12 trading days. It entered orders at the lowest end of circuit breaker on 9 days. It accounted for 100% of sales in the market on 5 days. Its sales (21,712 SIL shares) accounted for 89% of total sales in the market during the period. Thus, VFL sold SIL shares heavily with a view to bring down the price. It even sold SIL shares in the market by acquiring huge volume (34,500) of shares from one Ms. Arti Jain.

4.2 VFL traded on behalf of thirteen clients in SIL shares during the investigation period through a terminal which was given to a sub-broker, Dhanshree Investment by broker Alliance Finstock Ltd. and, therefore, acted as unregistered sub-broker.

5. RSL has made the following submissions:

5.1 VFL was in urgent need of money and, therefore, it sold the shares at whatever price possible.

5.2 The sales by VFL during March 15 - April 16, 2002 were insignificant. The sales during May 6 - 21, 2002 were genuine trade transactions with due deliveries. In the matter of Samir Arora Vs. SEBI, Hon'ble SAT has held that delivery based transactions effected through screen based trading system does not attract Regulation 4 of the FUTP Regulations.

5.3 VFL did not act as a sub-broker. The client codes shown in the trade log attached to the SCN are not of VFL.

5.4 RSL cannot be held liable for the conduct of VFL. Further, this is a charge of fraudulent market manipulation, which is criminal in nature. The criminal liability cannot be fastened on to the transferee (RSL), as laid down by the Hon'ble High Court of Delhi in the matter of Nicholas Piramal India Ltd. Vs. S. Sundaranayagam.

5.5 Notwithstanding the argument at 5.4 above, the proceedings under Sections 11, 11B and 11(4)(b) are preventive and remedial in nature. Hence no preventive directions can be issued as VFL, which is alleged to have committed the violation, is no more in existence as on date.

5.6 This proceeding cannot be used for issuing a penal direction as laid down by Hon'ble SAT in the matters of Sterlite Industries (India) Ltd. Vs. SEBI and Videocon International Industries (India) Ltd. Vs. SEBI. The proposed direction to debar RSL, being penal in nature, cannot be imposed under the instant proceedings.

6. RSL has generally not disputed the transactions. I am, therefore, dealing with each of the five defences of RSL as under:

6.1 It is difficult to believe that VFL was in urgent need of money and wanted to sell the SIL shares at any price. A person trying to sell SIL shares at any price would not acquire the same shares in between, that too, at higher prices. I find that VFL put 36 buy orders for 7,692 SIL shares during the investigation period. In fact, it bought SIL shares on some days at a price higher than its sale price on those days. For example, VFL purchased and sold SIL shares at Rs. 105 and Rs. 90 respectively on April 1, 2002. Similarly, it purchased and sold SIL shares at Rs. 69.60 and Rs. 54 respectively on April 10, 2002. I further find that VFL even acquired huge SIL shares (34,500 from Ms. Arti Jain) during investigation period in the off-market.

6.2 The delivery based transactions effected on screen based trading system may be an indication of non-manipulative trade. In the instant case, the orders and trades by VFL are not that simple. VFL sold SIL shares on many days and at successively lower prices over a period of time. Its sale accounted for 100% of sales on many days and it placed orders at the lowest end of the circuit breaker on many days. It accounted for 89% of total sales during the relevant period. It sold even by acquiring huge volumes of SIL shares in the off-market. This conduct vitiated the delivery based transactions on the screen.

6.3 The client codes referred to in the trade log was perused during the hearing. As rightly claimed by RSL, these are not the client code of VFL. SEBI representative clarified that these are the codes of the 13 clients for whom VFL traded in the trading terminal of Dhanashree Investments. Vide its letter dated October 08, 2008, RSL has admitted that VFL had acted as sub-broker during the investigation period. The demat statement provided by RSL along with the said letter contains trading details of clients in other shares also. The said statement indicates that shares were delivered from the demat account of VFL with the DP, Elite Stock Management Ltd. for these clients. Thus, it is clear that RSL acted as an unregistered sub-broker.

6.4 The scheme of amalgamation makes it clear that if any legal proceedings by or against the transferor company is pending or launched, the same shall be continued and enforced against the

transferee company. Hence RSL is liable for the conduct of VFL. Further, the proceedings under Sections 11, 11B and 11(4)(b) of the SEBI Act are not criminal in nature. The instant proceedings does not attempt to fasten criminal liability on to RSL for the conduct of VFL.

6.5 It has been rightly argued that the proceedings under Sections 11, 11B and 11(4)(b) are preventive and remedial in nature. However, this provision does not become infructuous if the violator of law has amalgamated with another entity. If this argument is accepted, it would promote undesirable activities in the market where an entity would violate a law and later get amalgamated with another entity and escape the consequences of its misdemeanor. However, this can be a mitigating factor at best.

6.6 This proceeding does not lead to imposition of a penalty. Debarring an entity is not a penal action. In the matter of SEBI Vs. Ajay Agarwal, the Hon'ble Supreme Court, while dealing with the nature of the proceedings under sections 11, 11B and 11(4)(b) of the SEBI Act, has held:

"In the instant case, the respondent has not been held guilty of committing any offence nor has he been subjected to any penalty. He has merely been restrained by an order for a period of five years from associating with any corporate body in accessing the securities market and also has been prohibited from buying, selling or dealing in securities for a period of five years.

The word 'offence' under Article 20 sub-clause (1) of the Constitution has not been defined under the Constitution. But Article 367 of the Constitution states that unless the context otherwise requires, the General Clauses Act, 1897 shall apply for the interpretation of the Constitution as it does for the interpretation of an Act. If we look at the definition of 'offence' under General Clauses Act, 1897 it shall mean any act or an omission made punishable by any law for the time being in force. Therefore, the order of restrain for a specified period cannot be equated with punishment for an offence as has been defined under the General Clauses Act."

This makes it abundantly clear that the proceedings under Sections 11, 11B and 11(4)(b) are not criminal or penal in nature, as contended by RSL.

7. In view of the above, I am of the view that VFL was instrumental in manipulating the price of the SIL shares and thereby violated provisions of Regulation 3, 4(a) & (b) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 read with corresponding provisions of Regulation 3(a) and 4(1), 4(2) (a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. VFL, by acting as an unregistered sub-broker, also violated Section 12 of the SEBI Act, 1992. RSL with which VFL has amalgamated is liable for the above conduct of VFL.

8. Therefore, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11, 11B and 11(4)(b) of SEBI Act, 1992, do hereby restrain Rajendra Seclease Limited (PAN:AAACR5692Q) from buying, selling or dealing in the securities market in any manner whatsoever or accessing the securities market, directly or indirectly, for a period of six months from the date of this Order.

9. A copy of this Order shall be served on all recognized stock exchanges and depositories to ensure that Rajendra Seclease Limited does not undertake transactions prohibited in Para 8 above. However, if there are open positions of RSL in F&O segment of recognized stock exchanges, RSL shall be placed in 'square off mode', wherein it would be in a position to only bring down the existing open position at the earliest and cannot create any fresh position for a period of six months from the date of this order.

10. This Order shall come into force with immediate effect.

Date: March 19, 2010

Place: Mumbai

**M. S. SAHOO
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**