

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

IN THE MATTER OF P. N. VIJAY FINANCIAL SERVICES PVT. LIMITED

**In respect of Chanakya Stock Broking Services Pvt. Limited
[SEBI Registration No. INB 230884937]**

ORDER

Under Regulation 28(2) read with Regulation 38 (2) of Securities and Exchange Board of India (Intermediaries) Regulations, 2008

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received complaint from one Brig. Mr. R.S. Anand (Retd.) (hereinafter referred to as the 'client') regarding certain malpractices done by P.N. Vijay Financial Services Pvt. Limited (hereinafter referred to as 'PNV'), a Portfolio Manager to whom he had assigned the management of his portfolio of shares. On receipt of the complaint, SEBI conducted an inspection of the books of account and other records of PNV, during the year October, 2005.
2. As a matter of further scrutiny in this regard, SEBI also conducted an inspection of the broker with whom PNV was dealing, namely, Chanakya Stock Broking Services Pvt. Limited (hereinafter referred to as 'noticee'), a Stock Broker, bearing SEBI Registration no. INB 230884937, member, National Stock Exchange (hereinafter referred to as 'NSE'). The period for the inspection was from June 01, 2004 (i.e., when the client opened his account with PNV) to September 01, 2005 (when the shares were finally delivered back to client after closure of his account).
3. The inspection by SEBI into the functioning of the noticee *inter alia* revealed various irregularities such as delay in the transfer of securities to the beneficial owner account etc. and other non-compliances by the noticee of the Regulations and circulars issued by SEBI. Subsequently, SEBI initiated enquiry proceedings in terms of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the 'Enquiry Regulations') as against the noticee, by appointing an Enquiry Officer under Regulation 5(1) of the Enquiry Regulations vide order dated October 09, 2006 read with subsequent orders dated December 03, 2008, March 15,

2011 and May 22, 2012. The Enquiry Officer enquired into the alleged violation of the SEBI Circulars bearing nos. SMD/SED/CIR/93/23321 dated November 18, 1993, SMDRP/Policy/Cir-49/2001 dated October 22, 2001 and MRD/Policy/AT/Cir-19/2004 dated April 21, 2004 and the provisions of the Clauses A(1), A(2) and A(5) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the SEBI (Stock Brokers and Sub-Broker) Regulations, 1992 (hereinafter referred to as 'Broker Regulations'). The Enquiry Officer/ Designated Authority (hereinafter referred to as the 'Designated Authority') submitted his Report dated August 27, 2012 under the SEBI (Intermediaries) Regulations, 2008 and found the noticee guilty of violating the provisions of Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations read with the SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004 and recommended that the certificate of registration of the noticee be suspended for a period of one week.

4. Subsequently, a show cause notice (hereinafter referred to as 'SCN') dated September 11, 2012 was issued by SEBI to the noticee under Regulation 28(1) of the SEBI (Intermediaries Regulations), 2008, asking it to show cause as to why appropriate penalty including penalty as recommended by the Designated Authority should not be imposed upon it. The noticee was advised to reply to the SCN, within twenty one (21) days from the date of receipt thereof. It was also informed that in case of failure to reply, it would be presumed that the noticee had no explanation to offer and that SEBI shall be free to take such action as it deems fit. A copy of the report by the Designated Authority was also forwarded to the noticee along with the SCN.
5. The noticee replied to the SCN vide letter dated September 25, 2012, also stating that it does not desire for personal hearing. The submissions of the noticee in brief are:
 - The delay in transferring the securities into client's account is neither intentional nor with a motive to benefit out of it.
 - The records/ letters should not be treated as false as it followed the instructions/ strategy as written down in the said letters.
6. Given the facts and circumstances of the case, I note that the noticee has not requested

for any personal hearing before me. In view of this, I find that the principles of natural justice have been duly complied with, in the present matter as the reply of the noticee has been considered although the noticee has not desired for a personal hearing. Thus, I find it appropriate to proceed further in the matter. I have considered the report of the Designated Authority, the SCN issued to the noticee and the material available on record. Having considered the above, the issue that arises for my consideration is: Whether the noticee has violated the provisions of Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations read with the SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004?

7. Whether the noticee has violated the provisions of Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations read with the SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004?
 - a. The Designated Authority in its report has found that the noticee had delayed the transfer of securities to the beneficiary account in violation of the SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004 which requires transfer of securities from the pool account of the stock broker to the respective beneficiary account of the clients within one working day after the pay-out date. The circular also states that the securities lying in the pool account beyond the stipulated one day, shall attract a penalty. I agree with the view of the Designated Authority that there was a statutory mandate under the SEBI Circular dated April 21, 2004, to transfer the securities from the pool account of the broker to the beneficiary account within one working day from the pay-out date.

The noticee in its reply has submitted that the delay was neither intentional nor with a motive to take benefit out of it. It has also been said that the noticee had instructions from its clients to retain the shares and due to this constraint, the shares were not transferred to the client within one working day after the pay-out date. The noticee, in its reply, has relied on the authority given to him by his client for retaining the shares to meet the margin/ future obligations. The relevant part of the authority letter, as cited in

his reply dated September 25, 2012, is extracted hereunder for the purpose of reference:

"5. We request you to retain Securities in your Demat account for our margin/ future obligations at both the Exchanges, unless We instruct you to transfer the same to our account."

Having read the above clause, I am of the view that the same does not permit the noticee to retain all the securities of the client in the broker's pool account, even if, the requirement of margin, if any, has exceeded the impending obligations. I note that the mandate under the SEBI Circular dated April 21, 2004 is compulsory in the interest of investors and the same cannot be negated otherwise by virtue of an authorization limited for margin purposes as claimed by the noticee. I also agree with the finding of the Designated Authority that the said authorization was executed by the noticee on June 01, 2004 i.e., pursuant to the SEBI circular dated April 21, 2004, in order to evade the requirements of the said circular. At this stage, I observe that the noticee has not produced anything on record to show that the securities were kept by it for margin purposes. Rather, the noticee has admitted that the shares were not kept as margin in the exchange. Therefore, I do not find merit in the argument of the noticee.

It is seen from the report of Designated Authority that the delay in the transfer of securities happened in the case of 29 scrips. The said delay was ranging from 82 - 243 days. I note that the said delay in the transfer of securities was admitted by the director of the noticee in his statement to SEBI. Therefore, I agree with the findings of the Designated Authority and find the noticee guilty of violating the Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations read with SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004.

- b.** It is also one of the findings of the Designated Authority, that the noticee had created false/ backdated records in order to cover up certain lapses on the part of the noticee/ PNV. In this regard, I note that the report of the Designated Authority refers to certain letters/ annexures exchanged between the noticee, PNV and the client with respect to the transfer of shares into the account of the client.

The noticee, in its reply has submitted that the contents of these letters are not false and it has complied with the instructions and followed the strategy, as stated in the said

letters. In this regard, I have perused the findings of the Designated Authority with respect to the statement of the director of the noticee dated December 14, 2005. The relevant extracts of the statement have been reproduced below for reference:

"I would like to mention that we had not received any direct instruction from Brig. Anand for keeping the shares with us in our depository. In fact the instruction was received by PNV".

*"In the case of Brig. Anand, there were some lapses on part of PNV who **in order to cover up his lapses had created a records of correspondences** between Chanakya and PNV. I must admit all these letters were created records at the request of PNV".*

Having considered the above admission of the noticee, it is immaterial whether the contents of the subject letters were false or not. Whereas the director has admitted that records were created, I am left with no option but to concur with the findings of the Designated Authority. Therefore, I find the noticee guilty of violating the provisions of Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations.

- c. The Designated Authority has also given a finding that the noticee has delivered the shares to the client from the account of PNV and Shyam Sunder Investment Pvt. Limited in fourteen scrips i.e., accounts other than that of the noticee. I observe that Designated Authority has noted that the instances of such transfer of shares were quite considerable. The noticee in its reply has admitted the transfer from the account of another client. The reason given by the noticee for such transfer was that, it occurred due to the mistake on the part of its employees. Had the instances been very few, one could accept the explanation of the noticee. However, there were several instances of such transfers. Therefore, the same has to be viewed seriously and cannot be condoned. Therefore, I find the noticee guilty of violating the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations.
8. In view of the above, I find the noticee guilty of violating the provisions of Clauses A(1) and A(2) of the Code of Conduct for Stock Brokers as specified in schedule II under Regulation 7 of the Brokers Regulations read with SEBI Circular bearing no. MRD/Policy/AT/Cir-19/2004 dated April 21, 2004.

9. I note that pursuant to the notification of the SEBI (Intermediaries) Regulations, 2008, the Enquiry Regulations have been repealed and in terms of Regulation 38(2) of the SEBI (Intermediaries) Regulations, 2008, notwithstanding such repeal, any enquiry commenced under the Enquiry Regulations, shall be deemed to have been commenced under the corresponding provisions of SEBI (Intermediaries) Regulations, 2008.
10. I, therefore, in exercise of the powers conferred upon me in terms of Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulation 28(2) of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008, hereby suspend the certificate of registration of the noticee namely Chanakya Stock Broking Services Pvt. Limited bearing SEBI Registration No. INB 230884937 [PAN: AABCC 1079K] for a period of one week.
11. This order shall come into force on expiry of twenty one days from the date of this order.

Date: February 05, 2013
Place: Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA