

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER
AGAINST ANIL DHAWAN & CO., MEMBER OF DELHI STOCK EXCHANGE
ASSOCIATION LTD (INB 050080215)
ORDER

[Under Regulation 13(4) of SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002]

DATE OF HEARING: FEBRUARY 26, 2007

APPEARANCES:

For Noticees : Shri. ANIL DHAWAN, Proprietor of Anil Dhawan & Co.

For SEBI : Shri. P. K. KURIANCHEN, General Manager
Shri. RAJESH GUJJAR, Assistant General Manager
Ms. KSHAMA CHAVAN, Legal Officer

1 Anil Dhawan & Co. (hereinafter referred to as “Anil Dhawan”) is a member of the Delhi Stock Exchange Association Ltd. (hereinafter referred to as “the DSE”) and is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) as stock broker under Section 12 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the Act”) with registration number INB 050080215.

2 SEBI conducted inspection of the books of accounts, documents and other records maintained by Anil Dhawan for the period from April 2000 - October 2002 under Regulation 19 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the “Stock Brokers Regulations”) and the same was carried out

by M/s G. Jai & Associates, Chartered Accountants (hereinafter referred to as “Inspection Authority”). Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection. A copy of the Inspection Report was sent to Anil Dhawan vide letter dated January 23, 2003 and his comments thereto were received vide reply dated February 17, 2003.

3 Pursuant to the above, an Enquiry Officer was appointed by SEBI vide order dated December 11, 2003 in terms of Regulation 5 of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”) to examine the alleged irregularities / violations committed by Anil Dhawan.

4 A show cause notice dated May 25, 2004 in terms of Regulation 6(1) of the Enquiry Regulations was issued to Anil Dhawan advising it to reply to the allegations within 14 days. The said notice referred to the inspection report of SEBI containing the details of violation of various provisions of law. Anil Dhawan vide letter dated July 14, 2004 replied to the aforesaid show cause notice and also requested for grant of personal hearing. An opportunity of hearing was granted to Anil Dhawan before the Enquiry Officer on August 2, 2004. Shri Anil Dhawan, proprietor, appeared before the Enquiry Officer and made submissions. The Enquiry Officer submitted his report dated November 30, 2004 recommending a penalty of suspension of certificate of registration for a period of four months.

5 A show cause notice dated December 20, 2004 was issued to Anil Dhawan in terms of Regulation 13 (2) of the Enquiry Regulations along with a copy of the enquiry report, advising it to show cause as to why the appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed upon it. A copy of Enquiry Report was also forwarded to Anil Dhawan with the said show cause notice and the same was served on Anil Dhawan through the Delhi Stock Exchange.

6 Anil Dhawan vide letter dated January 03, 2005 replied to the show cause notice, which is dealt with hereinafter in the relevant findings.

7 An opportunity of personal hearing was granted to Anil Dhawan before me on July 14, 2006. However no one appeared on behalf of Anil Dhawan. Another opportunity of hearing was granted to Anil Dhawan on February 26, 2007 at the regional office of SEBI, New Delhi wherein Shri Anil Dhawan, proprietor appeared before me and made submissions.

8 I have carefully examined the inspection report, enquiry report and the reply of Anil Dhawan. My findings are as under :

(a) Non maintenance of books of accounts: The Enquiry Officer found that Anil Dhawan has not been maintaining books and records in compliance with Regulation 17 of SEBI (Stock Broker and Sub Brokers) Regulations 1992 (hereinafter referred to as "Broker Regulations"). It has been found that Anil Dhawan only passed a consolidated entry of net amount payable/receivable to/from DSE by debiting/crediting Gupta Securities and crediting/debiting settlement account with the amount of pay-in/pay-out at the end of the settlement and that daily transactions were not downloaded/posted in any accounting software. The Enquiry Officer was of the view that Anil Dhawan had virtually relinquished all their rights and obligations of usage of trading terminals in favour of Gupta Securities for a fixed brokerage, and ultimately Gupta Securities executed all trades. Anil Dhawan submitted that all sale and purchase transactions on own account done by them were also recorded in the books of account, which have been commented by the inspecting agency in para 8.00 of the inspection report and that had Anil Dhawan not recorded all the transactions in the books of accounts, inspectors would not have been able to comment on those transactions. Further he submitted that the satisfactory comments of the inspectors in para 8.00 and para 14.00 of the inspection report proves that all transactions have been recorded in their books of accounts and day book maintained by them and serves the purpose of register of accounts. However, I find that para 8.00 and para 14.00 of

the inspection report does not give satisfactory comments supporting Anil Dhawan's submission. I find that para 8.00 of the inspection report only shows those deals not reported by Anil Dhawan to the exchange and this does not confirm that Anil Dhawan had maintained the books of accounts. Further, in para 14.00 it is clearly stated that matching list is the only record saved by the trading member and there are no other statement of net obligations received from DSE that is available with the trading member for the purpose of verification. Anil Dhawan submitted that, 'just because they have not maintained the cover page of the documentary evidence containing the accounting entry on a piece of paper in addition to the accounting entry entered in the books of accounts, it should not be concluded that "vouchers" have not been maintained'. I find this not convincing and it is merely an excuse to escape liability of not maintaining vouchers for accounting entries. Further, I find that the accounts have been written at a later date from the bank statements for the purpose of finalization of the balance sheet and there was no system to ensure daily updation of their account. Furthermore, Anil Dhawan was registered with DSE and the net position at the end of the day was zero as is evident from the daily matching list. I also find that few deliveries of insignificant value were necessitated due to their inability to square off the transactions, either by mistake or due to computer technical fault and therefore, did not find any need to maintain a stock register or an order book. It is the statutory obligation of a broker to maintain proper books of account in respect of transactions executed in this capacity. I, therefore, find that Anil Dhawan has violated the provisions of Regulation 17(1) and 18 of the Stock Brokers Regulations.

(b) Non-segregation of own and client bank account: The Enquiry Officer found that no separate client account was being operated by Anil Dhawan and all transactions with the only client Gupta Securities were being routed through the clearing account maintained by Anil Dhawan with Canara Bank. The clearing account was used for purposes other than clearing/client transactions like meeting business expenses of Anil Dhawan. Furthermore, loan transactions were routed through this account and on two occasions payment to client was made by Anil Dhawan from his own fund account and these payments were subsequently received back in Anil

Dhawans own account. Anil Dhawan submitted that since they had only one client and as there was no proprietary trading, no separate account was maintained as all transactions belonged to the client Gupta Securities and that there had been no misuse of clients funds. I find that having only one client and not misusing the clients fund is no excuse for not maintaining a separate client account. However, since there is no finding of misuse of client funds, I am inclined to take a lenient view.

(c) Irregularities with respect to Member – Constituent Agreement and Know Your Client Form: The Enquiry Officer found that Anil Dhawan provided their trading terminals to Gupta Securities for a fixed monthly brokerage. That all transactions on DSE during the period covered by inspection were executed by Gupta Securities. Further, the agreement was signed between Anil Dhawan and Gupta Securities with the following irregularities.

- I. Agreement was not in the specified format as required by SEBI. The agreement was undated and there was no witness signature.
- II. No financial statement and other documents to know the financial status of Gupta Securities.
- III. No Client Registration Application form as per “Know your Client” requirement from Gupta Securities.

Anil Dhawan has submitted that they were charging fixed monthly brokerage from their only client Gupta Securities, i.e. Rs. 50, 000 per month, gradually reduced to Rs. 10, 000 per month and therefore it was not a fixed brokerage. He further submitted that there were no two agreements with Gupta Securities as mentioned in the Show Cause Notice and that one was the agreement and the other was an affidavit dated July 27, 2000 which was required by DSE during the inspection of their books for the year 1999-2000. Anil Dhawan submitted that the agreement entered into with Gupta Securities may not be in the specified format but it is a legal document entered into with Gupta Securities and can withstand any scrutiny under the law. I find that there exist a broker and client relationship between Anil Dhawan and Gupta Securities as per the agreement submitted by Anil Dhawan. However, I find that the agreement is not in the specified format and Anil Dhawan has failed to maintain adequate

information in the client registration form and has thus violated SEBI directives vide Circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997, Circular no. SMD/POLICY/CIR/5-97 dated April 11, 1997 and DSE Circulars no. 30/97 dated March 17, 1997 and no. 40/97 dated May 28, 1997. Thus, I also find that Anil Dhawan has acted in violation of provisions of Rule 4(b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and para A(5) of Schedule II specified under Regulation 7 of the said Broker Regulations. However, considering the technical nature of the violations, I am inclined to take a lenient view.

(d) Non Collection of Margins: The Enquiry Officer found that there has been no separate margin account of Gupta Securities maintained by Anil Dhawan. No separate margin calculations with reference to gross exposure of client were available to them. Further, no evidence was available with Anil Dhawan to ensure that they had been periodically submitting the certificate in respect of margin collection from the constituent to DSE within the stipulated time. Anil Dhawan submitted that maintenance of separate margin account is only an accounting treatment of the client account maintained in the client ledger and a client account showing a credit balance is equal to the margin account of the client. However, Anil Dhawan has admitted that there has been no separate margin account of Gupta Securities as he was their only client and all margin and gross exposures related to him. Since there was only one client and there was no finding of non collection of margin, I am inclined to take a lenient view on the above.

(e) Delay in Delivery of Securities: The Enquiry officer found that Anil Dhawan had transferred shares to their own beneficiary account from the pool account instead of transferring the same to the account of Gupta Securities. Further that certain deals of payouts received in the pool account during the period April 1, 2000 to March 31, 2002 were given in the show cause notice to show that the shares received on payout from the exchange in their pool account were never delivered to the account of Gupta Securities within two days of the date of payout and also that client securities were kept by Anil Dhawan in their own beneficiary account. Anil Dhawan submitted that

there has been no delay in delivery of securities to the client without a valid mandate received in writing from the client which states that they can hold securities of the client as margin against his future trading and hence withholding the securities of the client against a written mandate of the client does not amount to any violations in this regard. Anil Dhawan has admitted that they were doing purely jobbing operations and a few deliveries emanating were accidental and not intentional and that this was because of their inability, at times, to square off all the transactions due to human error or computer technical error. Thus, I find that Anil Dhawan failed to meet their obligation of delivering securities to the clients within two days of payout and has violated provisions of Rule 4(b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992, para A (5) of the Code of Conduct specified under Regulation 7 of the said Broker Regulations and SEBI directives issued vide SEBI Circular no. SMD/SED/CIR/93/23321 dated November 18, 1993.

(f) Non maintenance of Order Book: The Enquiry Officer found that in respect to maintenance of the order book, confirmed order instructions were not obtained before placing the order on system and that order confirmation/modification or cancellation slips or copies thereof were not provided to Gupta Securities. Further, no trade confirmation slips were available with Anil Dhawan. Anil Dhawan has admitted that since all the transactions were of the nature of jobbing and no carry forward or delivery based transactions were undertaken, the maintenance of order book etc. was found unnecessary and irrelevant. He submitted that a few deliveries undertaken were that of residual shares left unsquared at the end of the day, either due to human error or computer malfunction. Anil Dhawan further submitted that all orders of the client were directly entered into the DSE software and a matching list containing all the orders could be generated from the system and that the matching list contains the track of all the orders entered into the system and is a satisfactory record of all the orders entered into the system. I find that Anil Dhawan has admittedly not maintained an order book. However, since a matching list containing all the orders could be generated from the system providing a satisfactory record of all the orders entered into the system, I am inclined to take a lenient view on the above.

(g) Non Issuance of Contract Notes: The Enquiry Officer found that contract notes had not been issued to Gupta Securities as per the mutual agreement between Anil Dhawan and Gupta Securities, which resulted in contravention of various provisions of SEBI/DSE relating to issuance of contract notes to the client and also to the Delhi Stamp Act with regard to stamp duty payable on the contract notes. Anil Dhawan submitted that the requirement regarding contract notes was met by Clause 7 of the agreement between them and Gupta Securities which states that dispatching the matching list to Gupta Securities would serve as a contract and consequently no separate contract notes would be issued by the member to Gupta Securities. He submitted that in case of any dispute the demands of the law were fully met by the relevant clause in the agreement, as it was legally binding on both of them and that a contract note in the specified form served the same purpose. I find that it is obligatory on Anil Dhawan's part by law to issue contract notes to the client for transactions executed on their behalf and that an agreement between Anil Dhawan and Gupta Securities cannot discharge or release them from such requirement and duty and further that this raises concerns regarding stamp duty payable on the contract notes. Therefore, I find that Anil Dhawan has violated directives of SEBI issued vide SEBI Circular no. SMD(B)/104/22775/93 dated October 29, 1993 and provisions of para B(2) of Schedule II under Regulation 7 of the said Broker Regulations.

(h) Non-reporting of Off Market Transactions: The Enquiry Officer found that off market deals done by Anil Dhawan through Marck Securities (trading on NSE) on their own trading account were not reported to the Delhi Stock Exchange. It was submitted by Anil Dhawan that off market transactions on their own trading account was for a small amount of about 2.20 lakhs (Two lakhs and twenty thousand only). Anil Dhawan submitted that the transactions through Marck Securities were not off market transactions as these were duly done on the NEAT system of NSE on their own account. I agree with the submission of Anil Dhawan that the transactions through Marck Securities were not off market as these were done on the NEAT system of NSE. Off market transactions are transactions that have taken place outside

the exchanges, whereas in the present case though the transactions did not take place on DSE, it took place on NSE, and I find that this does not constitute an off market transaction as found by the Enquiry Officer. Therefore, I am inclined to take a lenient view on the above.

(i) Dealing with Unregistered Sub-broker: The Enquiry Officer found that Anil Dhawan has debited/credited all pay-ins/pay-outs on DSE during the period covered in inspection to Gupta Securities. Further, records relating to the ultimate client codes entered while executing the trades was not available with them. In the absence of records of ultimate client code it became difficult for the Inspection Authority to ascertain whether Gupta Securities had entered trades on DSE on his own account or on account of its ultimate clients. The Enquiry Officer further found that financial statements of Gupta Securities were not made available by Anil Dhawan to enable the Inspection Authority to know the ultimate treatment of trades and to compare networth with volume of trades. Anil Dhawan submitted that they had debited/credited all payins/ payout to Gupta Securities as he was their only client and there was no proprietary trading. He further submitted that the deliveries as a percentage of total turnovers were negligible and that he had under no circumstances dealt with an unregistered sub-broker. From the findings of the inspection and the enquiry report I find that there is little evidence to ascertain that Gupta Securities was acting as an unregistered sub-broker and therefore, I am inclined to take a lenient view.

(j) Non maintenance of Unique Client Code: As recommended by the Enquiry Officer in view of Anil Dhawan now having provided the Unique Client Code and PAN numbers of Gupta Securities, I am inclined to take a lenient view.

(k) Usage of Dealers ID: The enquiry officer found that Anil Dhawan had placed trading terminals at the office of Gupta Securities i.e. a place other than the head office, branch office or registered sub-brokers office and further that Anil Dhawan did not allow the Inspecting Authority to physically verify the location of the trading

terminals. Anil Dhawan submitted that the terminals were provided by DSE and that if there was any breach of regulation, which they were unaware of, Delhi Stock Exchange was fully within its right to inform them and disconnect the terminals. He further submitted that the terminals were placed at their office premises which was shared by them with Gupta Securities for which mutually agreed rent included in the brokerage was paid by the client and as such a part of the office premises belonged to them and the terminals were never placed at a location other than their own office. I agree with the enquiry officer that the onus of ensuring compliance with the Regulations while dealing in securities is on the broker itself and not on the Exchange of which he is a member. Therefore, I find Anil Dhawan's contention that the Exchange should have disconnected the terminals if it was not legal to operate them from a given location unacceptable. Anil Dhawan further submitted that the terminals were placed at 3/4, Asif Ali Road, New Delhi with the permission and knowledge of DSE and that the office premises were shared by Anil Dhawan and Gupta Securities for which mutually agreed rent included in the brokerage was paid by them and as such a part of the office premises belonged to Anil Dhawan and the terminals were never placed at a location other than their own office. However, I find that Anil Dhawan has not produced any documents substantiating or authenticating that the terminals were placed at their office premises which was shared by them with Gupta Securities for which mutually agreed rent included in the brokerage was paid by the client. Thus in the absence of such evidence by Anil Dhawan, I find that Anil Dhawan has violated directives of SEBI issued vide circular no. SMDRP/Policy/Cir-49/2001 dated October 22, 2001.

(l) Non-payment of SEBI turnover fees: As recommended by the Enquiry Officer in view of Anil Dhawan now having paid their SEBI turnover fees that he was earlier liable for during inspection, I absolve Anil Dhawan from the said charges.

(m) Demat Accounts: The Enquiry Officer found that Anil Dhawan has generally transferred shares received on payout to his own beneficiary account from the pool account instead of transferring the same to the account of Gupta Securities. Further,

that Anil Dhawan showed ignorance about the demat account number of Gupta Securities. The Enquiry Officer found the deliveries in the pool account were from a number of demat accounts and Anil Dhawan was unable to name the beneficiary account holders of these demat accounts indicating the control of Gupta Securities on operation of Anil Dhawans pool account. I agree with the enquiry officer that had Gupta Securities been a client the deliveries should have been received from only one demat account of Gupta Securities instead of many unidentified demat accounts. Further, I find that Anil Dhawan had produced a statement of holding of its beneficiary account as on December 16, 2000 received from Globe Capital Market Limited. Anil Dhawan contended that the shares were transferred to their beneficiary account instead to the account of Gupta Securities and that their statement of transactions of beneficiary account was provided by them. He also submitted that the demat account mentioned in the show cause notice belonged to the beneficiary accounts of Marck Securities (P) Ltd., member DSE and NSE and were utilized to arrange for the short fall in deliveries arising out of their inability, on a few occasions to square off all the transactions at the end of the day. Anil Dhawan submitted that Gupta Securities was a jobber trading through them on DSE and any delivery transaction on the Exchange was purely accidental and not incidental. Considering the submissions made, I am inclined to take a lenient view on the above.

12. I have further noted the submissions made by the broker that there is no willful violation of the provision of the SEBI Act by it and the irregularities reported are of the nature of clerical lapses. Further, that it has not violated any provision resulting in the loss to the investor and that there are no complaints by an investor against him.

13. After considering all the above facts and circumstances of the case, I am of the view that a minor penalty of suspension of certificate of registration for a period of seven days would be adequate to meet the ends of justice.

ORDER

- 14.** Now, therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a minor penalty of suspension of certificate of registration for a period of seven days on Anil Dhawan & Co., broker, DSE (INB050080215).
- 15.** This order shall come into force immediately on the expiry of twenty one days from the date of this order.

Date: 14.05.2008

Place: Mumbai

T. C. Nair
Whole Time Member
Securities and Exchange Board of India