

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST SHRI BIMAL KUMAR BARARIA, MEMBER OF CALCUTTA STOCK EXCHANGE.

1.0 BACKGROUND OF THE CASE :

- 1.1 Shri Bimal Kumar Bararia, (hereinafter referred to as the broker) is a member of Calcutta Stock Exchange (hereinafter referred to as CSE) and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) vide registration no. INB 030657115.
- 1.2 An inspection of books of accounts, documents and other records of the broker was conducted from 13th to 20th December 1999 covering the period from April 1998 to December 1999. A copy of the inspection report was forwarded to the broker by SEBI vide its letter dated 28.4.2000 requiring the broker to reply within 21 days. The broker submitted his reply vide letter dated 15.5.2000. On not being satisfied with the reply of the broker vis-a-vis the inspection report, an enquiry officer was appointed vide Order dated 19.07.2002 to conduct an enquiry into the contravention/s alleged to have been committed by the broker.

2.0 ENQUIRY REPORT AND RECOMMENDATION :

- 2.1 The enquiry officer, after conducting the enquiry as per the procedure laid down in SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the said regulations") submitted a report dated 27.12.2002. The enquiry officer has concluded that the broker had committed irregularities pertaining to delay in making payment to the clients, non maintenance of "know your client" forms, trading in NSE without being a member or sub-broker of a member of NSE, issuance of contract notes of CSE for the transactions done on NSE, contract notes do not bear client acknowledgement on duplicate copies, non issuance of contract notes to Aniruddh Sharma, failure to report off the floor transactions to the stock exchange, non maintenance of document register, non segregation of client's and own funds and non payment of SEBI's fees. The enquiry officer recommended that the registration of the broker be suspended for a period of four months.

3.0 SHOW-CAUSE NOTICE AND HEARING :

- 3.1 Pursuant to the submission of Enquiry Report, a show cause notice dated 7.2.2003 was issued to the broker along with a copy of the enquiry report which was acknowledged by the broker on 14.02.2003. However, the broker neither submitted a reply nor sought a personal hearing in the matter. However, I have perused the replies submitted by the broker vide his letters dated 15.05.2000 and 20.11.2002. Hence, I shall proceed to examine the issues based on the material available on record.

4.0 ISSUES FOR CONSIDERATION :

1. Allegation and reply :

Delay in making payment to the clients –

As regards the charge relating to the delay in payment to the clients beyond 48 hours from the date of payout, regarding which there were two instances of Shri Vishwanath Rathore for Rs. 44,500/- and M/s. Arihant Stocks for Rs. 61,171.90/-. In the case of Mr. Rathore, it was submitted by the broker that the party had not come to collect the payments. The delay is as under :

Client name	Amount due (Rs.)	Payment date	Due date	Period of delay
Vishwanath Rathore	44,500	03.06.98	27.04.98	1 month & 7 days
		23.09.98		nearly 5 months
		19.03.99		nearly 11 months
Arihant Stocks	61,171.90*	02.04.98	09.05.98*	5 weeks
			*	

* opening balance on

** paid only Rs. 60,000

Finding :

Then, in the case of M/s. Arihant Stocks, out of an amount payable 61,171.90/- an amount of Rs. 60,000/- was paid and it was submitted by the broker that the balance of 1171.90 was not paid due to earlier bad deliveries. However, the transactions for which the earlier bad deliveries had taken place due to which the balance amount was withheld was not furnished. Although, it was claimed that the balance of Rs. 1171.90 was paid, the date of payment and the proof of payment were not furnished. In view of this, it is concluded that in the aforesaid 2 cases there was a delay in making

payment to the client beyond 48 hours and therefore the delay is in contravention of circular No. SMD/SED/CIR/93/23321 dated 18.11.93 issued by SEBI and I hold the broker guilty on this count.

2. Allegation and reply :

Non maintenance of "Know your Client" Forms

It was admitted by the broker that he could not produce the " Know your Client" Form in the case of Mr. Aniruddh Sharma to the inspecting team.

Finding :

Client identification is important since that makes it easier for the audit team to identify the clients behind the transactions. Details like bank account, PAN number, introducer etc would establish the credentials of the clients and would be relevant to determine whether the member had acted in good faith and without negligence before doing business for a client. This would establish the credentials of the clients and would help the broker in acting diligently in doing business for his clients. Failure to fill up client registration forms properly or non maintenance of the same is in contravention of the circular no.SMD-1/23341 dated 18.11.93, SMD/POLICY/IECG/1-97 dated 11.2.97 and SMD/POLICY/CIR/5-97 dated 11.4.97.

Therefore, I hold the broker guilty on this count and I agree with the findings of the Enquiry Officer in this regard.

3. Allegation and reply :

Trading in NSE without being a member or sub-broker of member of NSE.

The terminal of Mehra Capital Markets Ltd., NSE member, was installed in the premises of the member and this terminal was used to trade on NSE between 1.4.99 and 3.9.99 to the extent of Rs. 19 crores. The broker replied that he has taken the NSE terminal from Mehra Capital Markets Limited for doing their transactions in NSE system. The broker has also submitted that they had done transactions for their clients regarding some shares which were having low liquidity / or not traded in CSE. Since the broker was having the terminal of Mehra Capital Markets Limited, as a client, the agreement was to be made by them and they had not entered into any agreement with the broker for the same.

Finding :

It is clear that the broker had not only done proprietary trades but also executed transactions on NSE for ultimate clients without becoming a registered sub broker of Mehra Capital Markets Ltd. Further, the volume of such trades is as high as 19 crores. This is highly irregular and in contravention of section 12 of SEBI Act and SEBI circulars SMD-1/3118 dated 27th Dec'93 and SMD/POLICY/CIR-3/98 dated 16th Jan'98 as the member had not become a registered sub-broker of NSE by entering into an agreement specifying the rights and liabilities between a broker and a sub-broker. Therefore, I hold the broker guilty on this count and agree with the findings of the enquiry officer in this regard.

4. Allegation and reply :

Issuance of contract notes of CSE for the transactions done on NSE.

The broker submitted that for the transactions done on NSE he had issued contract notes of CSE which is not in order. The broker said that he had issued the contract note of CSE due to lack of knowledge.

Finding :

The broker, not being a registered sub-broker of NSE could not have issued the Confirmatory Memos of the main broker of NSE. As the trades are not executed on CSE, he is also not in order in issuing the contract notes of CSE. I don't see any reason to differ with the findings of the enquiry officer in this regard and I hold the broker guilty of having violated the provisions of Clause B (2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

5. Allegation and Reply :

Contract Notes do not bear Client Acknowledgement on Duplicate Copies.

It was denied by the broker that none of the contract notes contain client acknowledgement on the duplicate copies.

Finding :

On perusal of Annexure – I of the Inspection Report which contains copies of 3 contract notes with Acknowledgements of clients, it is observed that copies of contract notes contain the initials of the client but it does not contain the date of Acknowledgement. As per SEBI circular dated 18.11.93, the member brokers shall issue the contract notes to a client within 24 hours of the execution of the contract. In the absence of the date on the Duplicate copy of the contract note, it is not known whether the member broker had issued the contract note, within 24 hours of the execution of the contract. Therefore, I hold the broker guilty on this count and agree with the findings of the enquiry officer.

5. Allegation and reply :

Non issuance of contract note to Mr. Anirudhha Sharma

As regards, non issuance of the contract note to the aforesaid client for the settlement period 29.05.98 to 11.06.98, the broker admitted that it was a mistake and submitted that no commission was charged.

Finding :

A contract note has to show the brokerage separately. If the contract note itself is not issued as admitted by the broker, charging or non charging of brokerage is secondary and the same cannot be a ground for non – issuance of contract note. Contract note is a primary document evidencing the contract between the parties. In the absence of a proper contract note, the client does not have any recourse in law to enforce the obligation arising out of the transactions. There would be difficulties in resolving the disputes in the absence of a valid contract note or for reference of dispute to the arbitration by the stock exchange. In view of the above, it is clear that the member by not issuing the contract note to the client Mr. Aniruddh Sharma had contravened the provisions of SEBI which is in violation of circulars dated 11/02/99, 11/04/97 and 18/11/93 and clause B (2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (SB & SB) Regulations, 1992, therefore, I agree with the findings of the enquiry officer in this regard.

6. **Allegation and reply :**

Failure to report Off the Floor Transactions to the Exchange.

The broker has admitted that off the floor transactions prior to 6.9.99 were not reported to the stock exchange. The inspection report furnishes the following instances of unreported off the floor transactions :

Settlement No.	Scrip	Transaction		
		As per Sauda Book	Reported to CSE	Unreported
9899003	ITC	221,500	169,600	51,900
9899003	RIL	189,600	149,100 *	40,500
9899003	SBI	50,750	39,200	11,550
The transactions referred in point 3 are unreported off-the-market deals				

* after adjusting for deliveries

The broker submitted that part of the above transactions were reported to CSE and some were not reported.

Finding :

From the above, it can be seen that there is under reporting of these off the market transactions in view of the differences in transactions between the Sauda Book and the value reported to the stock exchange. A broker is required to report his off the floor transactions to the exchange so that the exchange would have a true and fair assessment of the net worth of a member having regard to the volume and value of the transactions undertaken by him which are not through the screen based trading system of the exchange. This will enable the exchange to gauge the exposure of the member outside the trading system and put in place the necessary risk containment measures.

It is therefore, established that the member had acted in contravention of Rule 4 (b) of SEBI (SB & SB) Rules, 1992 and SEBI Circular SMD/RCG/CIR(BKG)293/95 dated 14th March, 1995 in conducting off the floor transactions which were not reported to the Calcutta Stock Exchange as per the details mentioned above and therefore I hold the member guilty on this count.

7. **Allegation and reply :**

Time Stamping of the order not done

In reply to the allegation that the time stamping of the orders was not done, the broker submitted that for the trades done on the CSE, both time of order placement and the order execution time is printed on the contract note.

Finding :

It is observed from one of the copies of contract note as per Annexure I to the Inspection Report, which shows time of placement of order for Tata Elxsi and also its execution time. It is therefore, concluded that for trade on CSE the member has shown both the time of placement of order and order execution time. Therefore, I agree with the findings of the enquiry officer in concluding that the broker has shown both the time of placement of order and order execution time on the contract notes issued. Therefore, I hold the broker not guilty on this count.

8. **Allegation and reply :**

Non maintenance of Document Register

Though the member was maintaining the document Register, the same was not maintained properly by not mentioning the full particulars of securities received and delivered.

Finding :

The document register was not maintained properly mentioning the full particulars of securities received and delivered, therefore, the same is in contravention of Rule 15 (1) (g) of SCR Rules, 1957 and Regulation 17 (g) of SEBI (SB & SB) Regulations, 1992. Therefore, I hold the broker guilty on this count.

9. **Allegation and reply :**

Non segregation of clients' and own Funds

With regard to meeting of certain expenditure, which is not client related, from clients' account, the explanation of the broker that this expenditure was met after making payment to client from the balance funds is not satisfactory. It is admitted by the broker that the following expenditure was met from the clients' account.

Date	Amount Paid (Rs.)	Purpose of payment
01.07.98	6,600	Staff Salary
22.06.98	1,085	Printing & Stationery
22.06.98	1,331	Telephone charges
01.06.98	7,600	Staff Salary

Findings :

These expenses are not client related and therefore, cannot be said to be in conformity with the SEBI Circular SMD/SED/CIR/93/23321 dated 18th November, 1993 which clearly lays down as to what are the expenses that can be met from the client's account. Debiting of client's account for the transactions which are not client related defeat the very purpose of maintaining clients' account separately. The credit balances of client's account are in the nature of trust and the broker is not in order in meeting other expenses which are not client related from such account. The funds in the client's account cannot be applied for any purpose other than what is permissible under the circulars issued by SEBI. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. Therefore, the conduct of the broker is highly unbecoming and the same is violative of SEBI Circular SMD/SED/CIR/93/23321 dated 18th November, 1993 and I hold the broker guilty on this count.

10. **Allegation and reply :**

Non Payment of SEBI fees

It was replied by the broker that the turnover fees to the SEBI could not be paid earlier as the matter was under litigation.

Finding :

Non payment of the requisite fees to SEBI is in contravention of Rule 4 (d) of SEBI (SB & SB) Rules, 1992 read with Regulation 10 (1) of SEBI (SB & SB) Regulations, 1992. Therefore, I direct the broker to pay the fees to SEBI at once.

In view of my findings mentioned herein above, I feel that the charges against the broker have been established as is evident on record. After taking all the facts and circumstances of the case and also gravity of violations into account, I feel that a penalty of suspension for a period of four months would be adequate and sufficient in this case.

11.0 **ORDER :**

- 11.1 Therefore, in exercise of the powers conferred upon me by Section 4 (3) of SEBI Act, 1992 read with Regulation 13(4) of the said regulations, I, G. N. Bajpai, Chairman, Securities and Exchange Board of India hereby pass an order suspending the certificate of registration of Shri Bimal Kumar Bararia from acting as a stock broker for a period of four months.

This order shall come into force with effect from three weeks from passing of this order.

PLACE: MUMBAI

DATE : 22-Apr-2003

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA