

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13 (4) READ WITH REGULATION 13 (6) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**IN THE MATTER OF M/S.N.P.C. SHAREBROKERS PVT. LTD.**

1.0 M/s N.P.C. Sharebrokers Pvt. Ltd. (hereinafter referred to as 'the said broker') is registered with SEBI as a broker - SEBI Registration no. INB 101000233 and is a member of Uttar Pradesh Stock Exchange (hereinafter referred to as 'the UPSE').

1.1 During inspection of the books of account, records and other documents of the said broker undertaken by SEBI on 17.3.2001 under Regulation 19(1) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992(hereinafter referred to as 'the said regulations') for the period April, 1999 to February, 2001 following violations were pointed out :-

- Dealing as sub-broker of the DSM Stock Brokers (P) Ltd., SPFL Securities Ltd. and J. V. Stock Broking Ltd., all members of the National Stock Exchange (NSE) without registration as sub-broker by SEBI.
- The said broker has delayed payment and delivery of securities to the clients.
- The said broker had not paid fees to SEBI from 1992 – 1993 to 1998 – 1999.
- The contract notes issued by the said broker do not bear preprinted serial number and do not have time stamping.
- The said broker had not maintained the client registration forms and agreements.
- The said broker has carried out off-the-floor transactions with the above mentioned NSE members but had not reported the same to the UPSE.
- The said broker had done carry forward transactions on UPSE which are being in violation of Central Government Notification No.S.O./2561 dated 27.6.69 read with SEBI Circulars SMD/SED/93-30727 dated 13.12.93 and SMD/SED/3703/95 dated 16.10.95.

2.0 After considering the inspection report and the comments of the said broker thereon, it was decided to conduct an enquiry into the affairs of the said broker, in terms of Regulation 28 of the said regulations. Accordingly, vide order dated May 13, 2002, Shri. S.V. Krishnamohan was appointed as an enquiry officer for holding an enquiry into the contraventions by the said broker of the provisions of the rules, regulations, notification and directives as mentioned in the said order.

2.1 The enquiry officer issued a show cause notice dated August 26, 2002 to the said broker under regulation 28 (2) of the said regulations. Since SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty), Regulations, 2002 (hereinafter referred to as 'the Enquiry Proceeding Regulations') commenced on 27.09.2002 the enquiry officer conducted the proceedings under the said Enquiry Proceedings Regulations.

2.2 After considering the replies of the said broker and submissions made on its behalf during personal hearing before him, the enquiry officer submitted the enquiry report dated December 31, 2002.

2.3 The enquiry officer in his report recorded his findings as under –

- a) The said broker had dealt with DSM Stock Brokers (P) Ltd., SPFL Securities Ltd. and J. V. Stock Broking Ltd., all members of the National Stock Exchange (NSE). On the basis of the submissions of the said broker that in most of the cases such dealings were for his proprietary trades, the Enquiry Officer has observed that there were few trades which were not proprietary trades and that the said broker is taking steps for application for registering a sub-broker suggest that he had acted as unregistered sub-broker for the above mentioned members of the NSE in respect of some transactions.
- b) In the show cause notice nine instances of delay in making payments to the clients and one instance of delay in delivery of securities to the clients was cited. The said broker had explained that the clients who had traded frequently through it had authorized it to keep the money towards future margin requirements and for future purchases. The said broker had submitted authorization letters from 3 clients. However, in following cases no authorization letter has been submitted –

Client Name	Amount	Pay in date	Payment to client
Col. Kishan Singh	1,937.50	02.09.99	18.10.99
	14,421.70	09.09.99	18.10.99
D. N. Mehta	57,670.00	21.02.00	28 - 31.03.00
Krishna Kumari	50,505.00	01.04.99	03.05.99
Sanjay Gupta	79,724.25	01.02.00	27.03.00

In the case of one client Ms. Neelam who purchased MRPL shares on 10.05.00 the shares were delivered on 27.06.00 after a delay of one and a half months. No authorization letter was filed in support of the contention that the client had authorized the broker to retain shares for future sale.

- c) Regarding failure of the said broker in payment of turnover fees to SEBI, the Enquiry Officer has found that although the member had not paid the fees at the time of inspection due to pendency of litigation, he had subsequently paid the fees and this may be viewed leniently.
- d) Regarding pre printed serial numbers on contracts notes the submissions of the said broker that it is not possible to have pre-printed serial numbers on the contract notes which are generated electronically, have not been found satisfactorily by the Enquiry Officer.
- e) Regarding not stamping time of placement of order by the client on the contract note, the Enquiry Officer has found that there had been default by the broker in not stamping the time of placement of the order on the contract note.

- f) The Enquiry Officer has found that the said broker had shown few registration forms to the inspecting team and that it had undertaken steps to maintain client registration forms in case of all the clients in future. It is found that only 9 client agreement forms were available with the broker at the time of inspection.
- g) Regarding carrying out off- the- floor transactions with the above mentioned NSE members without reporting the transactions to the UPSE, the said broker had submitted that it was due to ignorance and misinterpretation of the SEBI Circular.
- h) Regarding indulging in unauthorised carry forward transactions the Enquiry Officer has mentioned certain such transactions in this regard in the Enquiry Report as reported by Inspection team as under-

	Qty	Date	Rate	Scrip	Contra Broker	Qty	Date	Rate
1	-200	15.01.01	153	ACC	K.Bajaj Share Br	200	16.01.01	153.15
2	-200	22.01.01	161	ACC	Svarn Stockdeal	200	23.01.01	161.50
3	-2050	29.01.01	63	RELE	SDL Share & Stock	2050	30.01.01	63.15
4	-150	08.01.01	370	DSQS	V.V. Investors	150	09.01.01	371.00
5	100	02.01.01	1290	HIFU	Hari Investment	-100	03.01.01	1294.75
6	-200	22.01.01	202	HIND	ML Bothra	200	23.01.01	202.50
7	-100	29.01.01	204	HIND	ML Bothra	100	30.01.01	204.60
8	200	08.01.01	44.90	JAIN	Rahul Kr. Investr	-200	09.01.01	45.05
9	300	08.01.01	45	JAIN	Vinod Kr. & C	-300	09.01.01	45.00
10	-850	08.01.01	206	LT	SDL Share & Stock	850	09.01.01	206.15
11	-400	15.01.01	199	LT	Amit Jindal	400	16.01.01	199.60
12	-250	08.01.01	287	PESO	Prashant Jain	250	09.01.01	282.00
13	-2700	15.01.01	60	RELE	S.K. Jindal Share	2700	16.01.01	60.20
14	-1100	22.01.01	63	RELE	Anupama Dalmia	1100	23.01.01	65.50
15	1500	22.01.01	63.25	RELE	Manish & Co	1500	23.01.01	65.45
16	-1650	28.08.00	48	RELE	Shyam Lal Agg.	1650	29.08.00	48.00
17	-1550	28.08.00	48	RELE	Keshav Fincon	1550	29.08.00	48.00
18	1900	05.07.99	187	RIL	Mauzampur Fin	-1900	06.07.99	187.00
19	1400	05.07.99	187	RIL	Atul Kanodia	-1400	06.07.99	187.00
20	3150	05.07.99	313	LT	Deep Kr. Aggarwal	-3150	06.07.99	313.00

The said broker had submitted that they are not carry forward transactions but normal transactions in the ordinary course of business and that these transactions do not fall under the purview of carry forward transactions. The enquiry officer has not accepted the explanation of the said broker being contrary to the legal position of the carry forward transactions. The enquiry officer has found that the members of UPSE were not authorised at the relevant time to transact carry forward transactions in securities. He has found that the nature of these transactions are such that the broker had squared off his outstanding positions on the last day of settlement and reopened the same on the first day of next settlement with the same member on a mutually decided rate which is in the nature of carry forward charges. These transactions are in the nature of carry forward transactions and are in violation of Central Government Notification No.S.O. / 2561 dated 27.6.69 issued under Section 16(1) of Securities Contracts (Regulation) Act, 1956 and SEBI circular no.SMD/SED/93/30727 dated 13.12.93 and SMD/SED/3703/95 dated 16.10.95.

2.4 In view of these facts and findings, the enquiry officer in terms of Regulation 13 (1) b) of SEBI Enquiry Proceedings Regulations, recommended that the certificate of registration of the said broker be suspended for a period of four months.

3.0 The enquiry report was considered and in terms of Regulation 13(2) of SEBI Enquiry Proceedings Regulations, a show cause notice no. SMD/DBA-I/Enq/AM/3245/03 dated February 7, 2003, was issued to the said broker enclosing therewith a copy of the enquiry report calling upon it to show cause as to why the penalty as recommended by the enquiry officer should not be imposed upon it. It was also advised to reply to the same together with the documents if any, that it may choose to rely upon in support of its reply, within 15 days of the receipt of the same, failing which it would be presumed that it has no explanation to offer. The said broker was also advised to intimate its desire of personal hearing along with its reply. The said show cause notice was served through the UPSE on the said broker.

3.1 The said broker has not replied to the show cause notice despite receipt thereof within the time stipulated in the show cause notice. Therefore, the matter is proceeded ex parte.

4.0 Findings –

4.1 I have considered the findings and recommendations of the enquiry officer as contained in the enquiry report and the relevant material available on record. The issues in the matter and my findings thereon are as under –

A) Dealing as a sub-broker of NSE members without obtaining certificate of registration from SEBI to act as a sub-broker

In view of the submission of the said broker that it is now taking steps for application for registering a sub-broker, I find that the said broker had acted as sub-broker of the NSE members as mentioned in the Enquiry Report in respect of some transactions during the period of inspection. Section 12 (1) of the Securities and Exchange Board of India Act, 1992 (the Act) provides that no stock broker, sub-broker etc. 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 the Act. Rule 3 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992 provides that no stock broker or a sub-broker shall buy, sell, deal in securities unless he holds a certificate granted by the Board under the Regulations. Since the said broker has acted as sub-broker of NSE members in some transactions as found by the enquiry officer, it has violated Section 12 of the SEBI Act, 1992 and Rule 3 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992.

B) Delay in payment of money and in delivery of securities to clients.

It is found by the Enquiry Officer that the said broker had delayed the payments to 3 clients and delivery of securities to one client as mentioned above. In terms of clause B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said regulations, a stock broker is under obligation to make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by the clients. Vide SEBI circular no.SMD/SED/CIR/93/23321 dated 18.11.93 it has been provided that the stock broker shall make payment to their clients or deliver securities purchased within two working days of pay out unless the client has requested otherwise. By delaying the payment and delivery of securities to clients, the said broker has violated clause B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said regulations.

C) Contract Notes not bearing pre- printed serial numbers

I agree with the findings of the Enquiry Officer in this regard. Vide SEBI Circular no.SMD/MDP/CIR/043/96 dated 5.8.96 it has been advised that contract notes should have pre printed serial numbers. The stock exchanges have been advised to bring to the notice of all the members through a circular with an advice that serious view will be taken if such deficiencies are observed during the course of future inspections of the brokers.

D) Time stamping of contract notes not done

I find that the said broker has admitted the default and submitted that the same had been rectified and the contract notes now bear both time of placement of order and the time of execution of the order. In this regard the said broker has violated SEBI Circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997.

E) Non maintenance of client registration and agreement forms

In response to SEBI's letter dated February 28, 2001, seeking copies of client registration forms and member-client agreement of top five clients, the broker did not furnish the copies of client registration forms and member client agreement, further, only 9 client agreement forms were available with the broker at the time of inspection. A broker should maintain the client agreement form and client registration form in respect of all the clients.

Client identification is important since that makes it easier for the audit trail 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. Not filling up of the client registration forms properly or non maintenance of the same is in contravention of SEBI Circular SMD-1/ 23341 dated 18th November, 1993, SMD/POLICY/IECG/1-97 dated 11th February, 1997 and SMD/POLICY/Cir/5-97 dated 11th April, 1997. As per statutory requirements as stipulated in SEBI Circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997, the stock brokers are required to maintain a database of their clients. It has been further prescribed vide circular no SMD/POLICY/CIR/5-97 dated April 11, 1997 that it would be the responsibility of the broker to provide for clients details as and when need arises. For this purpose a uniform format of client Registration Form and Broker- Client Agreement has been developed by SEBI and provided to all the stock exchanges with advise to implement the said requirement with immediate effect and complete the client registration before May 31, 1997. The said broker has not taken the client registration forms duly filled in and hence violated the SEBI circulars SMD/POLICY/CIR/1-97 dated February 11, 1997 and SMD/POLICY/CIR/5-97 dated April 11, 1997.

F) Off the floor transactions

A Stock 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. 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.

The said broker has violated SEBI Circular SMD/RCG/CIR(BKG)293/95 dated 14th March, 1995 in conducting off the floor transactions which were not reported to the UP Stock Exchange.

G) Unauthorized carry forward transactions

On perusal of the inspection report wherein certain instances of the carry forward transactions by the said broker have been illustrated, it is apparent that the said broker had squared off his outstanding position with certain members on the last day of the settlement period. These transactions were re-opened on the first day of the next settlement pending with the same contra-party members on a mutually decided rate which reflected carry forward charges. The nature and the pattern of

transactions indicate the instances of carry forward transactions being entered into by the said broker. Bye-law 20 of the UPSE, provides that the dealing in securities shall be permitted on the exchange as provided in the Bye-laws and Regulations. Save as so provided, no other dealings are allowed. Further, in terms of Government Notification No. S.O. 2561 dated June 27, 1969 issued by the Central Government in exercise of the powers conferred upon it by Sub-section (1) of section 16 of SC(R)A, no person in the territory, to which the said Act applies, shall save with the permission of the Central Government, enter into any contract for the sale or purchase of the security other than the spot delivery contract or contract for cash or hand delivery or special delivery in any securities as is permissible under the said Act and the Rules, bye-laws and Regulations, of a recognized Stock Exchange. In this context, it may be noted that in terms of the Gazette Notification no. 1/62/SE/81 dated February 2, 1983, issued by the Government, the overall period for the performance of hand delivery contracts in active scrips has been extended to three months from the date of the initial contract as compared to the earlier Government Notification which provided for hand delivery contracts to be completed within a period of 14 days following the date of the contract. By granting this extension however, the suspension imposed by the Government vide its Notification dated June 27, 1969 on forward trading was not withdrawn. Yet, to prevent undesirable speculation in securities, SEBI directed the Stock Exchanges vide its letter dated December 13, 1993 that henceforth all transactions in all securities should be settled at the end of each settlement, by delivery and payment and no carry forward of any transactions shall be allowed. Further, SEBI in order to protect the interest of investors and to regulate the stock market, introduced a revised carry forward system vide its circular letter no. SMD/SED/3703/95 dated October 16, 1995, subject to certain conditions and precautions. However, as UPSE did not satisfy the conditions stipulated therein, even the revised carry forward system was not permitted on the Exchange and hence the members of UPSE are not allowed to carry forward any transactions from one settlement period to another. It is thus clear that carry forward transaction by UPSE members is illegal in terms of sub-section 2 of section 16 of SC(R) A and the Government Notification dated February 2, 1983 and the SEBI circulars dated December 13, 1993 and October 16, 1995. Hence, in view of the said broker having clearly violated the provisions of laws quoted above and the SEBI circulars and directives regarding the carry forward transactions issued under SC(R) A, it is guilty of having violated the provisions of para A(5) of the Code of Conduct prescribed in Schedule II read with Regulation 7 of the Regulations and Rule 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992. In view of the same, it is liable for action under Regulation 25(1) of the said Regulations.

In the light of provisions of law and Central Government Notification no. 1/62/SE/81 dated February 2, 1983, the contracts to carry forward the transactions from one settlement to another settlement are not permissible on UPSE and such transactions are illegal in terms of sub-section 2 of section 16 of SC(R)A. It has been observed that in terms of the said notification dated February 2, 1983, carry forward transactions were permitted only on the Stock Exchanges of Mumbai, Calcutta, Delhi, Madras and Ahmedabad, and in no other Exchange. The revised carry forward system circulated to all the Stock Exchanges by SEBI vide circular letter no. SMD/SED/3703/95 dated October 16, 1995 was not introduced in the UPSE. Hence, carry forward transactions carried on UPSE are illegal and are in contravention of the provisions of the SC(R)A. It is to be noted that indulgence of the said broker in the transactions which are prohibited can not be allowed on the ground of coincidence or otherwise, especially when such transactions are likely to have a detrimental effect on the development and regulation of the securities market. Further, the lapses and discrepancies cannot be ignored on the ground that they are unintentional, mechanical or technical as every stock broker is under obligation to comply with the provisions of the Act and the Rules and Regulations made thereunder as also the circulars and guidelines issued by the Board from time to time. It is also imperative that all the members of the stock exchange shall adhere to the bye-laws of the Exchange. I hold that any kind of speculative transactions without any checks and balances, and if not, backed by delivery/payment, are likely to act as detrimental to the securities market.

Rule 4 (b) of the SEBI (Stock Brokers and Sub Brokers) Rules, 1992 provides for one of the conditions for grant of certificate to a stock broker that he shall abide by the Rules, Regulations of the stock exchange of which he is a member. Regulation 7 of the said Regulations provides that the stock broker holding the certificate shall at all times abide by the Code of Conduct as specified in Schedule II. Further, Clause A (5) of Schedule II provides that a stock broker shall abide by all the provisions of the Act and the Rules, Regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him. In view of the above observations, I find that the said broker is guilty of having violated the provisions of clauses A(5) and B(1), of the Code of Conduct as specified in Schedule II read with Regulation 7 of the Regulations and Rule 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992, regulation 17 (1) (k) of the said regulations and SEBI directives contained in the circulars as found hereinabove. In view of the same, the said broker is liable for action under regulation 13 (1) (b) of the SEBI Enquiry Proceedings Regulations.

5.0 I find that the said broker has committed violations as observed above and has not taken due care and diligence in observance and compliance of the statutory requirement in conduct of its business as a stock broker. I find that the said broker has violated the condition of registration specified in rule 4 (b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992. I find that the penalty as recommended by the enquiry officer may be reasonable in terms of regulation 13 (1) (b) (ii) read with regulation 13 (6) (b) of the Enquiry Regulations. Looking into the violations committed by the said broker, I am satisfied that it is necessary to secure the proper management of the stock broker and also in the interest of the securities market that a penalty of suspension of certificate of registration for a period of four months is reasonable. Therefore, in exercise of the powers conferred upon me by virtue of sub section (3) of section 4 of the Securities and Exchange Board of India Act, 1992 read with regulations 13 (4) and 13 (6) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 I hereby order that the certificate no. INB 101000233 of M/s N.P.C. Sharebrokers Pvt. Ltd. , a member of Uttar Pradesh Stock Exchange be suspended for a period of four months.

5.1 This order shall come into effect after three weeks from the date of this order.

DATE : 25th April, 2003.

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA