

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13(4) OF THE SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002

IN THE MATTER OF M/S B. C. PATEL, MEMBER OF THE SAURASHTRA KUTCH STOCK EXCHANGE

1.0 Background

1.1 Mr. Balakrishna C Parsana, having the trade name of M/s B.C. Patel (hereinafter referred to as 'the said broker') is a member of the Saurashtra Kutch Stock Exchange (hereinafter referred to as the SKSE) and is registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as a stock broker with registration number INB 180225017.

1.2 An inspection was conducted by SEBI of the books of the said broker for the years 1996-97 and 1997-98. The said broker appeared before the inspection team on 13th February 1998, but he did not produce all the books before the inspection team. Since he failed to produce the books at Rajkot, SKSE was advised not to permit the said broker to trade on the exchange unless the books were produced before SEBI. He produced some other books vide his letter dated 10.10.2000 before SEBI, Mumbai. However, the sauda book and the client contract notes were not produced. The said broker undertook to produce these two before SEBI by 25.10.2000, but failed so to do. He did not produce them even till 19.7.2002. Since the non-cooperation with the inspection team prima facie constitutes a violation of regulations 21(1) and (2) and clause A(5) of the Code of Conduct for stock brokers in schedule II read with regulation 7 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the said Regulations), an enquiry was initiated by SEBI against the said broker under the said Regulations to ascertain whether he had contravened the above provisions.

1.3 The Enquiry Officer, conducted the enquiry and after giving an opportunity of being heard to the said broker, and taking into consideration his submissions, submitted a report dated 27.12.2002 to SEBI. The Enquiry Officer in his report found the said broker guilty of violation of regulations 21(1), 21(2), and clause A(5) of the Code of Conduct for stock brokers given in Schedule II read with regulation 7 of the said Regulations. He therefore recommended that the certificate of registration granted to the said broker be suspended for a period of six months.

2.0 Show cause notice

2.1 On perusal of the Enquiry Report, a show cause notice dated March 5, 2003 was issued to the said broker, calling upon him to show cause as to why an appropriate penalty including a penalty as recommended by the Enquiry Officer should not be imposed on him, enclosing therewith a copy of the Enquiry Report. He was also informed that he would be given a personal hearing if so desired by him.

2.2 The said broker filed a reply dated 19.3.2003. In the reply the said broker has submitted as under:

- He has drawn attention to the Enquiry proceedings dated 2.12.2002, wherein it is noted that the said broker had produced almost all books of account except the sauda book and the client contract notes.
- The failure to produce these two books was due to the reason that they were in the possession of "some one who was only assisting (the said broker) in business." It is also alleged that "this person had acted in a deliberate, prescient and willful manner to get (him) ticketed by SEBI for not possessing all the records. This person having learnt about a possible SEBI inspection had mulcted (him) of the said records."
- However, he was in possession of these two books also by 2.12.2002 and had offered them to be inspected by SEBI.
- He has already been punished by suspension of his terminal for the last 4 years.
- Thus, no further punishment is imposable on them.

2.3 Since the said broker did not request for a personal hearing before me, he was not granted one.

3.0 Consideration of Issues

3.1 I have taken into consideration the Enquiry Report, the reply filed by the said broker and other material on record. I now proceed to deal with the issues as under.

3.2 It is evident from the records that the said broker has not produced all the books before the inspection team of SEBI. It is admitted that it was after an elapse of more than 4 years from the inspection that on 2.12.2002 he offered the sauda book and the client contract notes for inspection by SEBI. Due to the elapse of such a lengthy period of time any inspection to be conducted for the years 1996-97 and 1997-98 now is meaningless. Time is of the key essence in any regulatory inspection.

3.3 The explanation of the said broker that he could not produce them because they were in the forcible possession of "some one who was only assisting (the said broker) in business" is far fetched. There is no explanation as to why he did not take action against the said person for 4 years and how suddenly after the enquiry was initiated, he could gain possession of the records. No reason is given for why he did not honour the undertaking he gave to the inspection team that he would produce all the remaining books by 25.10.2000. He has also not made any communication to SEBI expressing his inability to honour his undertaking. Even the name or other particulars of the said other person have not been disclosed by him or reported to SEBI or any other authority even now.

3.4 It is also clarified that he was not suspended earlier. SKSE was only advised by SEBI by a letter dated 10.10.2000 not to allow the said broker to trade on the floor or off the floor of the exchange till he gets books inspected by SEBI at Mumbai.

3.5 As noted by the Enquiry Officer, it is of utmost importance that the broker who is to be inspected by regulatory authorities shall render necessary cooperation and produce all the required books and documents so that the inspection takes place

smoothly. The conduct of the said broker in the instant case shows a deliberate defiance of the law. It is evidently clear that if SEBI is obstructed in its inspections without sufficient cause, it would not be able to fulfill its duties of protection of interests of investors and regulation of the securities markets in a timely and efficient manner.

3.6 A stock broker is expected to maintain high standards of integrity, diligence and fairness in the conduct of his business. He is the primary conduit through which investors' savings can be channelled into the securities market. Non-compliance by a broker with important regulatory measures would lead to erosion of investor confidence in the market.

3.7 In view of all the above factors, I hold that the said broker has violated regulation 21(1) and (2) of the said Regulations and clause A(5) of the Code of Conduct for Stock Brokers laid down in Schedule II read with regulation 7 of the said Regulations.

4.0 Order

4.1 In in light of all the above factors, I consider it necessary that the registration of the said broker should be suspended for a period of six months, as recommended by the Enquiry Officer. Therefore, in exercise of the powers conferred upon me by regulation 13(4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, I hereby impose a major penalty of suspension for a period of six months on the said broker.

4.2 This order shall come into effect on the expiry of three weeks from today.

Dated at Mumbai on this the 25th day of April, 2003.

G.N. BAJPAI

CHAIRMAN

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