

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

CO/B/ /EO

IN THE MATTER OF M/S SURINDER SECURITIES PVT. LTD.,

A MEMBER OF UPSE

1.0 M/s Surinder Securities Pvt. Ltd. (hereinafter referred to as 'the said broker') is registered with Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a broker - SEBI Registration No.INB 10933034 and is a Member of the 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 for the period 1st April, 1999 to 28th February 2001 conducted on 16th March, 2001 under regulation 19(1) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992(hereinafter referred to as 'the said Regulations') following violations were observed :-

- The said broker had executed certain transactions on behalf of the clients namely, Manish Dubey, Ram Kumar, Shyam Rawat and Abhayajeet Sharma for which no contract note was issued and only bills for the difference were issued.
- The said broker had not charged brokerage for the transactions mentioned in the inspection report
- For the transactions with Clients for the year 1999-2000, the said broker had not obtained Client Registration forms and Member – Client Agreement.
- The said broker had not operated the separate clients' account though it was opened (in Punjab National Bank at Kanpur) and thus not maintained segregation of funds between members and clients' account.
- The said broker did not pay the turnover fee for the years 1996-97, 1998-99 and 1999-2000 and for the years 1995-96 and 1997-98, there was a delay in the payment of fees which is in violation of Rule 4(d) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and Schedule III as specified under Regulation 10(1) of the said Regulations.

Payable for the year	Turnover * (in lacs)	Amount paid	Due Date	Date of remittance
1995-96	- (1996-97)	5000	1.10.95	27.06.96
1996-97	109.30(97-98)	DUE	1.10.96	Not Paid
1997-98	249.04(98-99)	5000	1.10.97	10.11.98
1998-99	98.16 (99-00)	DUE	1.10.98	Not Paid
1999-00	247.18 (00-01)	DUE	1.10.99	Not Paid

* Turnover of the previous year on basis of which fee for the particular year was calculated.

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 July 19, 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 and directives as mentioned in the said order.

2.1 Since SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty), Regulations, 2002 (hereinafter referred to as 'the Enquiry Proceeding Regulations') came into force from 27.09.2002 the enquiry officer conducted the proceedings under the said Enquiry Proceedings Regulations and issued a show cause notice dated December 16, 2002 to the said broker under regulation 6(1) of the said Enquiry Proceedings Regulations.

2.2 After considering the said brokers written reply vide its letter dated 24.1.03 and oral submissions made on its behalf during personal hearing before him on 7.7.03, the enquiry officer submitted the enquiry report dated February 28, 2003. In view of the facts and findings as recorded in the enquiry report, the enquiry officer, having regard to the gravity of the irregularities, 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 Enquiry Proceedings Regulations, a show cause notice no. SMD/DBA-I/Enq/AM/068(m)/2003 dated March 24, 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. The said broker vide its letter dated April 04, 2003 submitted that it had given reply to the charges so there is no need to reply again for the same. It has further submitted that there were no clients. Only few clients have done business and they have to do so because either they are Government Officers or very close to them. Therefore, it is not the irregularity deliberately made. As regards non payment of registration

fees it is stated that it had got a stay from the Court regarding payment of turnover fees and would deposit the fees after decision of the Court.

3.1I proceed in the matter taking into account the findings and recommendations of the enquiry officer as contained in the enquiry report, the submissions of the said broker as recorded by the enquiry officer in the Enquiry Report, the reply dated 4.4.2003 of the said broker and the relevant material available on record.

4.0 Findings –

4.1 My findings are as under:-

i) NON ISSUANCE OF CONTRACT NOTES

The Enquiry Officer has concluded that the said broker was not issuing the contract note in the manner specified by SEBI. Contract notes 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 obligations arising out of the transaction. 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. The difference bills issued by the member are not a substitute for a valid contract note which contains important features like pre-printed serial numbers, time stamping of orders showing the time of placement of order and time of execution of order, etc. I find that the said broker has violated Clause B (2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations. The said clause provides that the stock broker shall issue without delay to his client a contract note for all transactions in the form specified by the stock exchange. By SEBI circular no. SEBI No. SMD/(B)/104/22775/93 dated 29/10/1993 it was advised that SEBI will take a serious view if the deficiencies inter alia with respect to non issuance of contract notes to clients etc. are observed during the SEBI inspections. By the circular no.SMD/SED/CIR/93/23321 dated 18/11/1993 , the SEBI has specified the norms regarding Regulation of Transactions Between Clients and Brokers and it has been made compulsory for all the brokers to issue contract notes for purchase / sale of securities to their clients within 24 hours of the execution of the contract. By the said circular the exchanges had been advised to make necessary provisions in their bye-laws and regulations for the purpose of regulation of transactions between clients and brokers as per the norms specified in the said circular. Bye-law 228(6) of the UPSE Bye-laws provides that the members shall issue the contract notes for purchase / sale of securities to a constituent within 24 hours of the execution of the transaction. SEBI circular No. SMD/POLICY /IECG/1-97 dated 11.02.97 requires every stock broker to maintain record of time when the client placed the order and the same shall be reflected in the contract note along with the time of execution of the order. It was directed that the stock exchange will initiate immediate action on the same. This requirement has to be fulfilled without any deviation. I find that this is a mandatory requirement and has to be complied with by every stock broker. I find that as per clause A of the Code of Conduct for stock brokers as specified in Schedule II of the said Regulations, it is the duty of every stock broker to exercise due skill, care and diligence in the conduct of all his business. I find that by not issuing contract notes to its clients as found during inspection and enquiry, the said broker has violated the said Regulations, above mentioned SEBI circulars and bye-law 228(6) of the UPSE Bye-laws.

ii) UNAUTHORISED CARRY FORWARD TRANSACTIONS

I observe that Annexure II to the show cause notice issued by the Enquiry Officer cited 15 transactions which were in the nature of carry forward transactions. In all these instances, the transactions were closed on the last day of the settlement and were re-opened on the first day of the subsequent settlement. They are in the nature of carry forward transactions and as such not permissible under law. 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 of the Exchange. 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. 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. 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. 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 the aforesaid carry forward transactions by the said broker were illegal in terms of sub-section (2) of section 16 of SC(R) A and the Government Notifications dated June 27, 1969 and February 2, 1983 and the SEBI circulars dated December 13, 1993 and October 16, 1995. Hence, the said broker has clearly violated the provisions of law quoted above and the SEBI circulars and directives regarding the carry forward transactions issued under SC(R) A. Consequently, the said broker is also guilty of having violated the provisions of para A (5) of the Code of Conduct specified in Schedule II read with Regulation 7 of the said Regulations and Rule 4(b) of the SEBI (Stock

Brokers and Sub Brokers) Rules, 1992. 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.

iii) NON MAINTENANCE OF CLIENT REGISTRATION FORMS AND MEMBER-CLIENT AGREEMENTS

I agree with the findings of the enquiry officer that maintenance of client registration forms and client agreement forms is not dependant on the volume of transactions. They are required to be maintained in respect of each client. 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. Non filling up of the client registration forms properly or non- maintenance of the same is a contravention of SEBI Circular SMD/POLICY/Cir/5-97 dated 11th April, 1997 for which the said broker is held liable.

iv) NON SEGREGATION OF CLIENTS' FUNDS AND OWN FUNDS

I agree with the findings of the Enquiry Officer that 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. If the clients' account is inoperative, it means that there is no segregation between clients' funds and the broker's own funds and all the income and expenditure is met from the general account. I find that the said broker has violated the requirements as stipulated in circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 vide which the SEBI has specified the norms regarding Regulation of Transactions Between Clients and Brokers and it has been made compulsory for all the brokers to keep the money of the client in a separate account and their own money in a separate account. Further, it has been stipulated that no payment for transactions in which the member broker is taking a position as a principal will be allowed to be made from the clients account. Bye-law 225A of UPSE Bye-laws provides that the member shall keep the monies of the constituent in a separate bank account and his own money in a separate account. I find that the said broker has violated the said SEBI Circular and UPSE Bye-laws in this regard.

v) NON PAYMENT AND DELAY IN PAYMENT OF FEES TO SEBI

I observe that on the question of payment of turnover fees, the said broker had not filed a letter or certificate from the UPSE certifying the turnover and the calculation of fee payable on the said turnover. Further, it is not denied that there was delay in the payment of fees for the years 1995-1996 and 1997-1998. However, the enquiry officer, instead of giving his findings on this charge, has referred to Regulation 15(b) of the Enquiry Proceedings Regulations, in terms of which summary proceedings can be initiated for non payment of registration fees. As suggested by the enquiry officer, summary proceedings shall be initiated against the said broker separately.

5. 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 findings as given in paras 4.1 (i) to (iv), I conclude that the said broker is guilty of having violated,
 - a. the provisions of clauses A(5) and 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,
 - b. the condition of registration specified in Rule 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992,
 - c. Sub-section (2) of section 16 of SC (R)A, Government notifications dated June 27, 1969 and February 02, 1983,
 - d. SEBI directives contained in the circulars and the UPSE Bye-laws 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.

1. Under section 11 of the SEBI Act, SEBI can take measures to protect the interests of investors and to regulate the securities market inter alia by registering and regulating the working of stock brokers. The directives contained in the SEBI circulars are the measures for regulating the working of the stock brokers. Further, the Code of Conduct specified in Schedule II of the said Regulations also provides for the minimum standards for the working of the stock brokers. If the regulatory requirements are violated by the stock brokers without attracting any action, the measures taken by SEBI for regulation of the stock brokers would be rendered nugatory and the regulatory function would be jeopardized. It is to be noted that indulgence of the said broker in the transactions which are prohibited can not be allowed especially when such transactions are likely to have a detrimental effect on regulation of the securities market. Further, 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 every Stock Exchange shall adhere to the bye-laws of the Exchange.
5. I find that the said broker has committed several 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. 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 as recommended by the enquiry officer 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 of registration no. INB 10933034 of M/s. Surinder Securities Pvt. Ltd., a member of the Uttar Pradesh Stock Exchange, be suspended for a period of four months.

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

DATE : 13th May, 2003

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA