

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 ENRICH FINANCE & SECURITIES LTD.,**A MEMBER OF NSE**

- 1.0 M/s Enrich Finance & Securities 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 230813732 and is a member of the National Stock Exchange of India Limited (hereinafter referred to as 'the NSE').
- 1.1 During inspection of the books of account, records and other documents of the said broker undertaken by SEBI for the period April 1999 to 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 :-
- Turnover fees as prescribed in the said Regulations has not been paid .
 - Margin Deposit Book and Order Book were not maintained by the said broker.
 - The said broker has delayed payment of money and delivery of securities to the clients.
 - Contract notes issued by the said broker do not bear pre-printed serial numbers.
 - The said broker had not obtained acknowledgements from clients. Further, on the contract notes, the stamps were not affixed and the contract notes issued by the said broker did not bear the order time.
 - Client data base and registration is not maintained.
 - The said broker had dealt with unregistered sub-brokers.
 - Margins have not been collected from clients.
 - Norms pertaining to Automated Lending and Borrowing Mechanism have been violated in Off-the-floor transactions.
- 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 June 25, 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 The enquiry officer issued a show cause notice dated August 06, 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') came into force on 27.09.2002, the enquiry officer conducted the proceedings under the said Enquiry Proceedings Regulations.
- 2.2 After considering the written reply 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. In view of the facts and findings as recorded in the enquiry report, the enquiry officer in terms of Regulation 13 (1) b) of Enquiry Proceedings Regulations recommended that the certificate of registration of the said broker be suspended for a period of six 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/3242/2003 dated February 07, 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 NSE on the said broker. The said broker vide its letter dated February 19, 2003 confirmed that it had received the said show cause notice on 18/02/03 from NSE Delhi office and requested to take into account the date of receipt thereof.
- 3.1 The said broker has not submitted any contention or denial to the findings and recommendations of the enquiry officer in its reply to the show cause notice despite receipt thereof till date. Therefore, I 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 and the relevant material available on record.

4.0 Findings of the Enquiry Officer-

- 4.1 The Enquiry Officer has given his findings in the Enquiry Report as under –

(i) It is not disputed that the turnover fees is not paid. It can no longer be said that the matter is sub judice since the matter is finally settled by the Hon'ble Supreme Court. The said broker vide its letter dated 2.11.2002 had informed that it is willing to pay the fees and sent a calculation of fees to the Enquiry Officer to verify whether the calculation are in order. This job cannot be undertaken by the Enquiry Officer. It is for the broker to pay the fees as per the said Regulations. Therefore, it is established that by not paying the fees, the said broker has contravened the provisions of regulation 10(1) of the said Regulations.

(ii) The reply of the said broker that no order book is maintained since the orders are received on telephone is not satisfactory. It is a statutory requirement that every member has to maintain an order book showing the particulars as prescribed. Similarly, the member is required to maintain a separate Margin Deposit Book showing the client wise margin collected and non maintenance of the same on the grounds that the clients are limited and that most of them are friends

and relatives is not correct. Non maintenance of margin deposit book and order book which are statutory books is in violation of regulation 17(1) (k) of said Regulations and SEBI Circular No. SMD/POLICY/IECG/1-97 dated 11.02.1997.

(iii) The show cause notice (at Annexure D) has listed out the cases where there was delay in making payments to the clients. The said broker had replied that these clients maintain a running account and requested not to transfer the money to them settlement wise. It was further explained that when they did not receive undertaking, the money was transferred to the respective clients. In cases where no payment is made till date, it was submitted that these clients were maintaining a running account and insisting to keep this money as margin.

The said broker has filed letters from the investors/clients purportedly authorizing it not to make the payments settlement wise. However, in the following cases, no such authorization letters were submitted.

Sr. No.	Name of the client	Amount	Due date	Paid on
1.	Allied Industries Corp	18,740	23/10/1999	25/11/1999
2.	Allied Industries Corp	4,48,056	28/10/1999	25/11/1999
3.	Amulia Lsg & Fin.	12,217.69	22/11/1999	Not paid
4.	Chawla Baldev Raj & Sons (HUF)	107,171	04/02/2000	09/02/2000
5.	Chitra Jain	4,845	22/12/2000	Not paid
6.	C L Gupta & Sons	Continuous credit balance since 14/9/2000, not cleared till date.		
7.	Olympic Polymers	22,76,477	21/09/2000	Not paid
8.	OM Auto Carriers	36,761	19/05/2000	04/07/2000
9.	Wacar Traders	735,765.52	22/09/2000	23/11/2000
10.	Goyal Inv.Ltd.	93,51,520.90	08/03/2000	28,51,520.90 not paid till date.
11.	Jugal Kishor Arora	111,777	24/03/2000	28/03/2000
12.	Majaria Overseas Pvt Ltd	32,631	25/02/2000	04/03/2000
13.	Rajiv Chawla (HUF)	101,352	04/02/2000	09/02/2000
14.	R P A Finvest Pvt Ltd	33,897	14/04/1999	20/04/1999
		58,532	18/04/1999	23/08/1999
15.	R S Aggarwal	514,511	28/07/1999	30/07/1999

In all the aforesaid cases, there has been a delay of more than 48 hours in making the payments to the clients. In some cases, the payment was not made even on the date of inspection. No material was brought forward in the course of enquiry proceedings to suggest that these payments have been made even as of now.

In the case of Chitra Jain, where an amount of Rs.4845 was due as on 22/12/2000 which was not paid till the date of inspection and in the case of Adarsh Jain, where, an amount of Rs.3,74,799 was due since 28/06/2000, the non payment was sought to be justified on the ground that one of their group accounts namely Shri Ravindra Jain was having a debit balance with the broker. This explanation is not satisfactory as these three individuals are separate and the broker could not have set off the amount payable to one investor against the amount receivable from another investor. If it were the same party, acting in the same capacity, the broker perhaps would have been justified in exercising a right to set off from the amount receivable in one account to the amount payable in another account of the same person. He could not have done this in case of two different individuals even though they belong to the same group as claimed by the broker.

Similarly, it was contended that in the case of Goyal Investment Ltd. where an amount of Rs.28,51,520.90 was due to be paid on 08/03/2000 and not paid till the date of inspection, the amount was not paid on the ground that the client had a debit balance with one of the associated company of the broker namely Needful Securities and Credits Pvt Ltd.. The action of the broker in retaining the money to be paid to the investor on the ground that the investor allegedly owes certain amount of money to another associate of the broker is not justified. It is however, noted that the amount of Rs.28,51,520.90 was paid over a period of time between 18.06.01 to 21.06.01 and thereby gradually settling the account to zero as on 21.06.01. Therefore, the amount that was due to be paid on 08.03.00 was paid over a period of time with the final payment being made on 27.06.01 when the account was brought down to zero.

Further, no explanation is forthcoming from the broker in other cases of non payment of money even as on the date of inspection in the cases of Amulia Lsg & Fin for Rs.12,217.69, Chitra Jain for Rs.4,845, Olympic Polymers for Rs. 22,76,477 and Goyal Inv. Ltd. for Rs.28,51,520.90.

(iv) As regards the allegation of not delivering the securities to the clients beyond the period of 48 hours, the said broker had submitted that it had consent from the clients to keep their deliveries because they generally intend to sell the securities in the subsequent settlements and to avoid the expenses of Depositories Participants. However, it was observed that in respect of the following investors, no such letters authorizing the broker to retain the securities were furnished.

Sr. No.	Scrip Name	Quantity	Settlement No	Clients name	Due date of delivery	Actual date del.	of Delay	Remarks
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1.	Indal	500	1999028	R P Agarwal	30/07/99	31/0/99	NA	Transferred to beneficiary account and not given to the client
2.	M R P L	5000	1999028	Sayed Nizam Ali	30/07/99	31/07/99	NA	Transferred to the account of Gian Gupta.
3.	Reliance Industries	2000	1999028	Naresh Goyal	30/07/99	31/07/99	NA	Transferred to the account of Gian Gupta
4.	HCL HP	652	1999039	Vikas Promoters	15/10/99	23/10/99	8	---

As regards the transactions in Indal for 500 shares for which it was alleged that the deliveries were not given to R. P. Agarwal, it was submitted that these shares were sold in the account of R P A Invest on 04.08.99 by Mr. R P Agarwal. An extract of the payout ledger for the period 01.04.99 to 31.03.00 was filed in which it was shown that on 04.08.99 500 shares were sold @ 81.38 for an amount of 40690 which was credited to the ledger account of R P A Invest on 16.08.99. Hence, the explanation of the said broker in this regard may be accepted.

As regards the transactions of 5000 shares of MRPL wherein the shares were credited to the account of Mr. Gyan Gutpa instead of Mr. Syed Nizam Ali who is the investor it was submitted that these shares were transferred to the account of Mr. Gyan Gupta who is stated to be a close friend of the investor. It was submitted that the investor had verbally instructed the Broker to transfer the shares in favour of Mr. Gyan Gupta who has since returned these shares to the investor through the broker. As per the DP statement filed, the transfer back to the investor had taken place on 17.1.00. The explanation of the said broker is not satisfactory. It may be stated here that Mr. Gian Gupta is the Director of the broking firm (the said broker) and it was highly irregular to transfer the shares to the personal account of the director instead of the investor Mr. Syed Nizam Ali. The reverse transaction had taken place only on 17.01.00 which means that the shares belonging to the investor were unjustly held by the broking firm during the intervening period.

As regards the transactions of 2000 shares of Reliance Industries on 30/07/1999 for which the shares were credited into the account of Mr. Gian Gupta instead of Mr. Naresh Goyal who was the purchaser, it was explained that equal number of shares of Mr. Gian Gupta in the immediately preceding settlement were used by Mr. Naresh Goyal, and as such the shares brought on 30/7/1999 was credited to the account of Mr. Gian Gupta. If, this explanation is to be accepted, it has to be seen whether there was a short sale by Mr. Naresh Goyal prior to 30/07/1999. The DP statement of Mr. Naresh Goyal has to show a zero balance on account of Reliance Industries on the day when he was supposed to have short sold. In the absence of the same, it is not known as to whether Mr. Goyal has indeed short sold in the immediately preceding settlement on 30/07/1999 and borrowed the shares from Mr. Gian Gupta. Mr. Gian Gupta's DP statement showing a debit of 2000 shares of Reliance on the relevant date in the immediately preceding settlement has not been furnished. In any view of the matter, this type of borrowing is not envisaged under the Securities Lending Scheme of SEBI wherein the borrowing should take place through an approved intermediary for the purpose. It may further be noted that the shares have been credited to the account of the person who is none other than the Director of the broking firm. In view of the above, the explanation of the member is not satisfactory.

(v) Contract notes –

- a. On the question of contract notes not bearing pre printed serial number, the explanation of the member that the back office software was not generating serial numbers is not satisfactory. As per SEBI Circular No.SMD/MDP/Cir/043/96 dated 5/8/1996, all contract notes should bear pre printed serial numbers and the practice of the member is in contravention of the aforementioned circular.
- b. In respect of the allegation that contract notes not bearing acknowledgement on the duplicate copy, it was replied that the said broker had very few clients and most of them are friends or relatives who do not insist on contract notes. It was further submitted that due to oversight the stamps were not affixed on the contract notes. The enquiry officer has observed that the 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. In view of the above, the enquiry officer has concluded that the said broker was not issuing the contract notes in the manner specified by SEBI which is in violation of Circulars dated 11/02/1997, 11/04/1997 and 18/11/1993.
- c. As regards not affixing the requisite value of stamps on the contract notes, the submission of the said broker that this was due to oversight has not been found acceptable by the enquiry officer. Affixation of the requisite value of stamps on the contract notes is a necessary pre requirement for a valid contract note, under the Indian Stamp Act, 1899 although the defect can be cured by payment of penalty. Issuance of contract notes without proper stamps has been found to be in violation of SEBI Circular No.SMD/MDP/CIR/043/96 dated August 5, 1996.

(vi) As regards non maintenance of client database and registration as per the norms prescribed by SEBI, the Enquiry Officer has observed that the said broker had since rectified majority of the discrepancies as pointed out in the inspection report.

(vii) As regards the allegation that the member had transacted business with unregistered sub brokers, the show cause notice at Annexure "C" lists out the details of cheques received / paid to / from 3rd parties which have been accounted for in the clients' account of Mr. Gian Gupta, Ashish Gupta and Mr. Amish Gupta. It was explained by the member that the debtors of these clients have directly paid into the client's account and these payments were accepted so as to avoid delay in meeting pay in obligations or margin money by these clients. Having regard to the number of such transactions, it is

difficult to hold that the member was dealing with unregistered sub broker as no discerning trading pattern had emerged in dealings with each party. However, it can certainly be said that the member is not in order in accepting third party cheques from the clients and issuing cheques to third parties from the client's account. In the inspection report, it is observed that in the following instances cheques were received/ paid to from third parties that have been accounted for in the clients account.

Gian Gupta			
Date	Amount	Dr/Cr.	Narration
8/5/1999	5,00,000	Dr.	Chq No653 to needful securities
9/7/1999	5,00,000	Cr.	Chq received from Needful securities
16/8/99	60,00,000	Cr.	Chq.received from Gee Gee International
16/9/99	13,00,000	Dr.	Amt transferred to Globe Capital Market(A/c.gian Gupta)
6/10/99	36,00,000	Dr.	Chq No966 to needful Sec N/o.SE
12/11/99	2,50,000	Dr.	Chq 229 to Mr.V S Dahiya
14/12/99	1,50,00,000	Cr.	Chq.received from needful sec.
24/1/2000	20,00,000	Cr.	Chq.received from VAG leasing A/c.of Gian Gupta
5/2/2000	19,50,000	Cr.	Chq.received from Suresh Advani
15/2/2000	19,98,000	Cr.	Chq.received from Suresh Advani
16/2/2000	76,00,000	Cr.	Chq.received from Suresh Advani
22/2/2000	20,00,000	Cr.	--do--
18/2/2000	1,00,00,000	Cr.	Chq received from JND (A/c.Gian Gupta)
Ashish Gupta			
Date	Amount	Dr/Cr.	Narration
21/9/99	20,00,000	Cr.	Pay order received from Kusum Gupta
4/12/99	19,90,000	Cr.	Chq.received from Kavita
18/12/99	2,50,000	Dr.	Chq No.276 to Rekha gupta
27/12/99	9,00,000	Cr.	Chq.received from Hari Kishen
6/1/2000	77,83,000	Cr.	5 cheques received from Rekha Gupta, Kusum Sharma
Similarly between 22/2/2000 to 28/2/2000, 14 cheques of approx Rs.266 lakhs were received from third parties.			
AM Amish Gupta			
Date	Amount	Dr/Cr.	Narration
21/9/99	3,00,000	Cr.	Pay order received from Kaushal Gupta
21/9/99	17,00,000	Cr.	Pay order received from Kaushal Gupta
25/9/99	19,90,000	Cr.	Pay order received from H C Mehta
15/10/99	10,00,000	Dr.	Chq No.980 to Kaushal Gupta
6/01/00	9,80,000	Cr.	Pay order received Kaushal Gupta
6/01/00	20,67,000	Cr.	Pay order received from Meetu Gupta
6/1/00	19,80,000	Cr.	Chq.received from H Malik
28/2/00	10,00,000	Cr.	Chq.received from Jaspal Singh.
1/3/00	20,00,000	Cr.	Chq.received from Jaspal Singh.

As can be seen from the above table, the amount involved is quite high and in some cases, each transaction was above 1 crore. In the account of Mr.Ashish Gupta alone, 14 cheques of approximately Rs.266 lakhs were received from 3rd parties within a period of 1 week between 22/2/200 and 28/2/2000. Similarly, the payments were made to third parties from the clients' account. The client's account was used liberally for receiving payments from third parties and making payments to third parties. This is highly risky and sometimes can be used by operators to disguise the source of funds to finance the securities transactions. The member has not acted diligently in accepting huge receipts as aforesaid in the client's account from third parties and also making payments to third parties from the client's account.

(viii)As regards the allegations that the member has not collected margins as per SEBI Guidelines, it was replied that most of the clients have running account and the broker does not insists on margins, since, most of the clients are friends and relatives. The explanation of the member is not satisfactory. Margins are imposed by the exchange/ SEBI as an important tool for risk containment measures. Collection of margins as prescribed by SEBI guidelines is a risk containment measure which should be strictly adhered to. Non collection of margins are, therefore, in violation of SEBI Circular No. SMDRP/POLICY/CIR-07/2000 dated 4th February, 2000. The margin account of the member had only Rs.66 lakhs as against 107,90,000 due to NSE towards margin money as on 19/03/2001. Margins have not been credited to a separate margin account .

(ix)As regards the allegation that the member had carried out off the floor transactions as detailed in Annexure K to the show cause notice, it was replied that these trades were conducted by Mr.Gian Gupta either as buyer or seller outside the trading system. The member regretted for the same and assured that such type of mistakes will not happen in future. The show cause notice lists out 24 off the floor transactions which are not conducted on the exchange system in which Mr.Gian Gupta, the Director of the broking firm is a party either as buyer or seller. Majority of these trades were conducted on 27/2/2001 and on 28/2/2001 in scrips like Global Tele, Satyam Computers etc. The reply of the member is not satisfactory. "Off the floor" transactions taking place in the market do not impart transparency and fairness on such deals. The price formation in such transactions are not through the stock exchange price and order matching mechanism and investors do not have benefit of the best possible price. Cross deals are transactions wherein both the buyer and the seller belong to the same broker. With a view to regulate such off the floor transactions including cross deals, SEBI had issued a circular dated 14/9/1999 which prohibited off the floor transactions and cross deals except on the screen of the stock exchanges which lend transparency and result in true and fair discovery of prices of securities. It is admitted by the member that these transactions were carried out outside the trading system. It may be noted that in all these transaction the Director of the broking firm is a party and having regard to the price and volumes traded, the value of such transactions is very high. These transactions are not in conformity with SEBI Circular dated 14/9/1999 for the aforesaid reasons.

5.0 Consideration of the issues –

- 5.1 I have taken into account the facts and findings recorded in the Enquiry Report and the relevant material available on record. My findings on the issues in the matter are as follows:-
- 5.2 The enquiry officer has found that the said broker has rectified majority of discrepancies in respect of violation regarding maintenance of client data base and registration forms. I agree with the findings of the enquiry officer in this regard as mentioned above.
- 5.3 The enquiry officer has found that the of transactions as shown in Annexure C to the show cause notice as mentioned hereinabove, suggest that the said broker has accepted third party cheques from the clients and issued cheques to third parties from the client's account. The client's account was used liberally for receiving payments from third parties and making payments to third parties. This is highly risky and sometimes can be used by operators to disguise the source of funds to finance the securities transactions. The said broker has not acted diligently in accepting huge receipts as aforesaid in the client's account from third parties and also making payments to third parties from the client's account. In this regard, I observe that by the circular no. SMD/SED/CIR/93/23321 dated November 18, 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 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 client's account. Regulation 4.4.12 of the NSE Capital Market Segment – Part A Regulations (hereinafter referred to as 'the NSE Regulations') provides that in addition of guidelines issued by SEBI relating to the Regulation of Transactions between Clients and Brokers, the member shall at all times keep the monies of the constituent in a separate bank account. Regulation 6.1.4 (b) of the NSE Regulations provides that it shall be compulsory for all trading members to keep the money of the clients in a separate account and their own money in a separate account. No payment for transactions in which the trading members is taking position as a principal will be allowed to be made from the client's account. By the above mentioned circular and the NSE Regulations, it has also been provided that no money shall be paid into client's account other than the money held or received on account of client's, money belonging to the broker as may be necessary for the purpose of opening or maintaining the account, money for replacement of any sum which may by mistake or accident have been drawn from the client's account and a cheque or draft received by the broker representing in part money belonging to the client and in part money due to the broker. It has been further provided that no money shall be drawn from client's account other than money properly required for payment to or on behalf of the client for or towards payment of a debt due to the member from the clients or money drawn on client's authority or money in respect of which there is a liability of clients to the trading member. Vide circular no. SMD/MDP/CIR/043/96 dated August 5, 1996 it has been directed that in case of deficiency in having separate bank account for clients but not segregating clients funds from the own funds by the brokers, a serious view will be taken.

As found by the enquiry officer, the said broker has accepted huge receipts as aforesaid in the client's account from third parties and also made payments to third parties from the client's account. This is clearly in violation of the above mentioned SEBI circular and the NSE Regulations. As per these provisions, only the money as specified in the aforesaid SEBI circular and NSE regulations can be credited in the client's account and money from the clients' account can be drawn only for the purposes as specified in the said circulars and NSE Regulations. Any other situation is not acceptable for receiving third party cheques in the client's account and for withdrawing money from the clients account. Therefore, I find that the said broker has committed the violation as observed in the enquiry report and has used the clients account / money in violation of the abovementioned SEBI circular and the NSE Regulations. In this regard, I find that the said broker had not acted with due care and had not complied with SEBI circulars and Code of Conduct as specified in Schedule II of the said Regulations. In terms of rule 4(b) of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992, the certificate to a stock-broker is granted subject to the following conditions inter alia that he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member. The said broker has violated the NSE Regulations also and has thus contravened the condition of registration as provided in rule 4 (b) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

5.4 Non-payment of SEBI fees

As per the facts and details available on record and confirmed by NSE, the provisional fee and interest liability of the said broker as on 30.4.03 is Rs.7,49,312/- (Rs.4,66,565/- towards fees and Rs.2,82,747/- towards interest). I observe that the said broker has not paid the fees as specified in the said Regulations. The Hon'ble Supreme Court vide its judgment dated 1.2.2001 in the matter of BSE Brokers Forum Vs. SEBI has upheld validity of Regulation 10 and Schedule III, in respect of levy of fees on stock brokers. I find that the said broker has failed to pay the SEBI turnover fees as required under regulation 10 read with Schedule III of the said Regulations. Regulation 10 requires every stock broker to pay such fees and in such manner as specified in Schedule III of the said Regulations. Regulation 10(2) of the said Regulations provides that where a stock-broker fails to pay the fees as provided in regulation 10, the Board may suspend the registration certificate, whereupon the stock-broker shall cease to buy, sell or deal in securities as a stock-broker. In terms of rule 4 of the Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules, 1992, the Board may grant a certificate to a stock-broker subject to the following conditions inter alia that :

(1) he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member;

(2) he shall pay the amount of fees for registration in the manner provided in the regulations.

Therefore, I find that the said broker has violated the condition of the certificate of registration as provided in rule 4(d) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

5.5 Not maintaining the Order Book and Margin Deposit Book.

5.5.1 Vide SEBI Circular no.SMD/POLICY/IECG/1-97 dated 11.2.97 it has been specified that the brokers shall maintain record of time when the client has placed the order and reflect the same in the contract note alongwith the time of execution of the order. The said broker had submitted that it received orders on telephone, hence no order book was maintained. In terms of Regulation 6.1.1 of the NSE Regulations, every trading member shall comply with all relevant Statutory Acts including the Securities Contracts (Regulation) Act, 1956, Securities Contracts (Regulation) Rules, 1957 and SEBI Act and rules, regulations and guidelines made thereunder and the requirements of directives and guidelines issued by the Central Government and any statutory body. In terms of regulation 6.1.3 (e) of the NSE Regulations every trading member shall maintain order book reflecting inter alia the following :

- i) Identity of the person receiving the order.
- ii) Date and time of the Order.
- iii) Name of the person placing the order.
- iv) Name of the client, description and value of securities to be bought and sold.
- v) Terms and conditions of the order stating particularly the price / rate limit or price / rate related instructions and time limit of the order etc.

As per Clause B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations, it is the obligation of a stock broker that he faithfully executes the orders for buying and selling of securities for clients at the best available market price. The time when the order is placed and the time when the order is executed is very important. The trading system at the stock exchange can only show the time of execution of the order and not the time when the order was placed by the client. I do not find any merit in the submission of the said broker that it received orders on telephone therefore it did not maintain the order book since it is the obligation of the said broker to maintain the order book containing the particulars as mentioned above. Even when the broker received orders over phone it could maintain the said particulars in the order book. The order book is necessary for establishing as to when the order was placed and also the facts as mentioned above namely the name of the client, description and value of securities, terms and conditions of the order etc. These particulars are important to ascertain as to whether the stock broker has acted faithfully with the client, had acted with due skill and care etc. I find that the said broker has not maintained the order book and has violated the above mentioned SEBI circular no.SMD/POLICY/IECG/1-97 dated 11.2.97 and regulation 6.1.3 (e) of the NSE Regulations. In this regard also the said broker has violated the condition for grant of the certificate of registration in terms of rule 4 (b) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

5.5.2 As per SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, it is provided that the brokers shall buy / sell securities on behalf of clients only on receipt of margin of minimum 20% on the price of the securities proposed to be purchased unless the client already has an equivalent credit with the broker. In terms of Regulation 17(1)(k) of the said Regulations a stock broker is required to maintain the Margin Deposit Book. It is the statutory requirement prescribed under the said Regulations and every stock broker is under obligation to comply with it. It is for the safety and integrity of the market and proper regulation of the stock broker. These requirements are required to be complied with compulsorily. The submission of the said broker that it had limited clients and it did not feel need to provide receipts for receiving margin is not acceptable. I find that the said broker has violated the provisions of the above mentioned rule and also the provisions of Regulation 17 (1) (k) of the said Regulations which prescribes the obligation of a stock broker to maintain the Margin Deposit Book.

5.6 Delay in making payments and delivery of securities to clients

In terms of SEBI circular SMD/SED/CIR/93/23321 dated November 18, 1993, which provides for regulation of transaction between clients and brokers, the member brokers are required to make payment to their clients or deliver the securities purchased within two working days of pay out unless the client has requested otherwise. The said circular also provides protection to the brokers in case of failure of the clients to make payment or deliver the securities sold alongwith valid transfer documents within 2 days of contract note having been delivered or before pay-in day / 48 hours contract note having been delivered or before delivery day, as the case may be. The loss on the transaction if any will be met from the margin money of the client. Thus the guidelines contained in

circular provide for protection of the interest of the clients as well as of the stock brokers in case of defaults of the clients. Regulation 4.4.12 of the NSE Regulations suggest that the trading members are under obligation to comply with guidelines issued by SEBI relating to regulation of transactions between clients and brokers.

I agree with the findings of the enquiry officer as recorded in the Enquiry Report. It has been established that there had been delay of more than 48 hours in respect of 15 instances as mentioned hereinabove. There is no material suggesting that the payments were delayed on the instructions of the client in these instances. I also agree with the finding that nothing suggest that the payments have been made even till date. I also agree with the findings of the Enquiry Officer in respect of delay in delivering securities to clients. The type of borrowings suggested in the submissions of the said broker is not contemplated under the Securities Lending Scheme specified by SEBI as found by the Enquiry Officer.

I find that in this regard the said broker has violated the above mentioned SEBI circular and clause B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations which requires a stock broker to make prompt payment in respect of securities sold and arrange for prompt delivery of securities purchased by clients.

5.7 Violations with respect to Contract notes –

SEBI circular no. SMD(B)/104/22775/93 dated 29.10.93 provides that a serious view would be taken if deficiencies in the contract notes such as non-fixing of the stamps on the contract notes, etc. are observed during inspection. In terms of SEBI Circular no.SMD/MDP/CIR/043/96 dated 5.8.96 it has been advised that irregularities regarding contract notes including that the contract notes not having preprinted serial numbers, not affixing of stamps, not maintaining copies of contract notes and not maintaining counterfoils of contract notes without adequate details etc. shall be viewed seriously. It may be mentioned that as per rule 15 (2) (b) of the Securities Contracts (Regulation) Rules, 1957 every stock broker is required to maintain counterfoil or duplicate of contract notes issued to clients. The acknowledgment of the clients on the counter foils is essential for adequate record / information. It was found during inspection and enquiry that the duplicate copies of the contract notes were not acknowledged by the clients. Therefore, it was not possible during inspection to verify as to whether the contract notes were issued within the specified period. Such acknowledgment is required to verify as to whether the stock broker has dispatched the contract notes within 24 hours as stipulated by SEBI circular No. SMD/ SED/CIR/93/23321 dated 18.11.93. The SEBI Circular no.SMD-1/23341 dated 18.11.93 provides that the member broker shall insist on clients to return the duplicate copy of contract notes duly signed by them in token of their having received the contract notes. SEBI circular No. SMD/POLICY /IECG/1-97 dated 11.02.97 requires every stock broker to maintain record of time when the client has placed the order and reflects the same 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 agree with the findings of the enquiry officer as recorded in the enquiry report. I find that as specified in 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. The said broker should have taken care for obtaining the acknowledgement of the clients, stamping the contract notes and having preprinted serial numbers on the contract notes.

5.8 Non collection of margins

I find that the broker has not collected margins from the clients. It has been established that the margin account of the broker had only a balance of Rs.66 Lacs as against Rs.1,07,90,000/- due to NSE towards margin money as on 19.3.01.

As per SEBI Circular no.SMDRP/Policy/Cir-35/98 dated 4.12.98 it is mandatory for the stock brokers to collect margins from clients in all cases where the margin in respect of the client in the settlement, would work out to be more than Rs.50,000/-. The margin so collected is required to be kept separately in the client bank account and utilized for making payment to the clearing house for margin and settlement with respect to that client. Vide circular no.SMDRP/POLICY/CIR-7/2000 dated 4.2.2000, the requirement of collecting margins in respect of the client in a settlement, was increased from Rs 50,000/- to Rs.1,00,000/-. Thus, in all cases where the margin in respect of a client in a settlement would work out to be more than Rs.1,00,000/-, the member brokers shall have to mandatorily collect the margins from the client. I agree with the findings of the Enquiry Officer and hold that the said broker has violated this requirement.

5.9 Off the market transactions

The said broker had submitted before the Enquiry Officer that Mr.Gyan Gupta (the Director of the Broker) had conducted trades outside the stock exchange trading system as a buyer or seller. The said broker had regretted the same. Therefore, I find that the said broker has admitted that it has conducted off the market deals. In respect of the 24 transactions as mentioned in the show cause notice issued by the Enquiry Officer it has been found that the said transactions were not conducted on the stock exchange system. Such transactions are in violation of SEBI circular dated 14.09.1999. By the said circular it was required that all negotiated deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade. I agree with the findings of the Enquiry Officer that the said broker has violated the requirements of the said circular.

6.0 In view of the above observations I find that the said broker is guilty of having violated the provisions of –

- (a) Rules 4(b) and 4(d) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992,
- (b) the Code of Conduct as specified in Schedule II read with Regulation 7 of the said Regulations,
- (c) Regulation 17 (1) (k) of the said Regulations,
- (d) SEBI directives contained in the circulars and the NSE Regulations,

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.

6.1 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. These requirements of contract notes, are the requirements which SEBI has put in place for the purpose of investor protection and to remove certain undesirable practices. Further, the requirements regarding margin collection and prohibiting off the floor transactions are provided as a measure of risk containment and to provide for transparency and fairness in the transactions. The requirements regarding maintenance of records etc. have been mandatorily provided to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principles and to facilitate the regulation of the business of stock brokers through inspections / enquiries by the SEBI.

- 6.2 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 any technicality or otherwise 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 the stock Exchange shall adhere to the bye-laws of the Exchange.
- 6.3 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. Regulation 4.5.1 of the NSE Regulations provides that the trading member shall at all times subscribe to the code of conduct as prescribed by the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.
- 7.0 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. I find that the said broker has violated the condition of registration specified in rule 4 (b) and 4(d) 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 Proceeding Regulations. Looking into the nature and number of violations committed by the said broker, I am satisfied that in the interest of the securities market penalty of suspension of certificate of registration of the said broker for a period of six months will be 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 230813732 of M/s Enrich Finance & Securities Ltd., a member of the National Stock Exchange Limited, be suspended for a period of six months.

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

DATE : 19.5.2003

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA