

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER****UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST SANGHAVI BROTHERS BROKERAGE LIMITED.****1.0 BACKGROUND OF THE CASE :**

- 1.1 Sanghavi Brothers Brokerage Limited (hereinafter referred to as the broker) is a member of Bombay Stock Exchange (hereinafter referred to as BSE) and registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) with registration no. INB010992132.
- 1.2 An inspection of books of accounts, documents and other records of the broker was conducted in the month of December, 2000 and also in the months of January and February, 2001. A copy of the inspection report was forwarded to the broker by SEBI vide letter dated 20.3.2002. The broker submitted its reply vide his letter dated 17.04.2002 and on not being satisfied with the reply of the broker vis-a-vis the inspection report, an enquiry officer was appointed vide Order dated 19.7.2002 to conduct an enquiry into the contravention/s alleged to have been committed by the broker.

2.0 ENQUIRY REPORT AND RECOMMENDATION :

- 2.1 The enquiry officer, after conducting the enquiry as per the procedure laid down under SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as "the said regulations") submitted a report dated 17.12.2002. The enquiry officer has concluded that the broker had committed irregularities pertaining to failure to issue contract notes, failure to maintain client registration agreement, failure to ensure continuous preprinted serial numbers on the issued contract notes, failure to mention time stamping of orders, non-segregation of own funds from that of client's funds, delay in transfer of demat scrips from members pool account and failure to obtain client's acknowledgement on duplicate copies of contract notes.. The enquiry officer recommended that the registration of the broker be suspended for a period of one month.

3.0 SHOW-CAUSE NOTICE AND HEARING :

- 3.1 Pursuant to the above, a show cause notice dated 07.02.2003 was issued to the broker along with a copy of the enquiry report. The broker submitted a reply vide his letter dated 03.03.2003 and a further reply dated 7.4.2003. Pursuant to the broker's request through letter dated 21.3.2003, an opportunity of personal hearing was granted to the broker on 30.04.2003. The representatives of the broker appeared before me and reiterated the submissions made in their letter dated 03.03.2003. The gist of the submissions made by the broker is as follows:

- Delay of 7 days in delivery of shares to M/s Master Consultancy was after taking his express consent.
- Contract notes were not issued for carry forward transactions as the settlement bill gives the complete details.
- Preprinted numbers on annual basis were not given on the contract notes since the software vendor did not provide the facility. Now it is being done.
- Time stamping of orders was not done in contract notes since the BSE download does not provide this facility.
- Regarding non-maintenance of client agreements, the broker states that this is being implemented now.
- Regarding non-segregation of own funds and clients funds, the broker has submitted that the amount drawn from clients account for own purpose was very small compared to the turnover and there were only two such instances pointed out by the Enquiry Officer which were probably due to non-availability of the authorized signatory.
- Delay in transfer of securities from the pool account was due to introduction of the new concept of demat trading at that time which was not fully understood. Now there is no such lapse.
- Client acknowledgement with date and time are now obtained.

4.0 Consideration of the issues

- 4.1 I have taken into consideration the enquiry report and the submissions made by the said broker in his reply and at the personal hearing. My findings are as given below.
- 4.2 *Delay in delivery of shares :*

The Enquiry Officer (E.O., for short) has found that in respect of one client, Master Consultancy there was a delay of 7 days in delay in delivery of securities. While admitting the same, now the said broker has produced a letter from Master

Consultancy alongwith his reply dated 03.03.2003 purportedly authorizing him to withhold delivery of shares as they intended to sell the same and has stated that since he was authorized to do so by the client, he is not guilty of any violation. I find that this submission was never put forth before the E.O. I have perused copy of the letter and find that it is undated. In view of these circumstances, I conclude that the present submission of the said broker is an after thought and is unacceptable. I therefore, hold him guilty of violation of clause B (1) of the Code of Conduct for stock brokers given in Schedule II read with regulation 7 of the said Regulations and of SEBI circular SMD/SED/CIR/93/23321 dated 18.11.1993, which requires delivery of securities to clients within two working days. I hold him guilty of violation of byelaw 247A(3) of the BSE Byelaws which also provides for the same.

4.3 *Non-issuance of contract notes :*

The E.O has found that the said broker did not issue contract notes for carry forward transactions. The said broker has stated that traditionally no contract were issued for such transactions as they are reflected in settlement wise bills. However, I find that there is no exception from issuing contract notes in respect of carry forward transactions. Thus, I hold him guilty of violation of clause B(2) of the Code of Conduct for stock brokers given in Schedule II read with regulation 7 of the said Regulations and of SEBI circular SMD/SED/CIR/93/23321 dated 18.11.1993. I hold him guilty also of byelaw 247A(4) of the BSE Byelaws.

4.4 *Contract notes without pre-printed serial numbers on annual basis :*

While admitting the same, the said broker has submitted that pre-printed serial numbers on annual basis were not given in the contract notes issued by him because their software vendor did not provide the facility. I hold that this is not a valid excuse since, SEBI circular No. SMD/MDP/CIR/043/96 dated 05.08.1996 categorically provides that brokers have to issue contract notes having pre-printed serial numbers on annual basis. I hold him guilty of violation of the said circular.

4.5 *Client acknowledgement not obtained :*

The E.O. has found that some clients had not mentioned the date of acknowledgment while signing the acknowledgement copy of contract notes, which has not been disputed by the said broker. Therefore, I hold him guilty of violation of SEBI Circular No. SMD-1/23341 dated 18.11.1993. Moreover, since he has not maintained the duplicate copies of the contract notes in the manner required he has also violated rule 15(2)(b) of the Securities Contracts (Regulation) Rules, 1957 and regulation 17(1)(i) of the said Regulations.

4.6 *Time Stamping of orders :*

The E.O. has found that the time of placement of order by the client has not been mentioned by the said broker in the contract notes issued by him. In his reply also, the said broker states that it is not possible to do so since, the exchange does not provide for time of the order in the trade file being downloaded by the brokers. However, it has to be noted that the broker is required to mention the time when the client placed the order and not the time when he places the order in the trading terminal, and therefore his reply does not address the issue. SEBI circular No. SMD/POLICY/IECG/1-97 dated 11.02.1997 is quite unambiguous on this point. It is undisputed that the time when the client placed the order has not been given in any contract note issued by him during the inspection period. I therefore, hold him guilty of violation of the above circular.

4.7 *Non-maintenance of client agreement:*

It is not disputed that the said broker was not maintaining client agreements with all his clients. Non-maintenance of client agreement is a violation of SEBI Circulars No. SMD/POLICY/CIR-5/97 dated 11.4.1997. These requirements are specified to keep tab of trading activities of the client to monitor compliance with the SEBI Regulations relating to Unfair and Fraudulent Trade Practices, Prohibition of Insider Trading and Substantial acquisition of shares and Takeovers, and therefore the violations thereof cannot be considered as merely technical. I therefore hold the said broker guilty of violation of the above SEBI Circular.

4.8 *Non-segregation of own funds and client funds:*

It is not disputed that the following two payments were made from the client account (Bank of India A/c No. 19966)

Cheque No.	Amount	Paid to
622876	Rs. 7,500/-	BSE – Late pay-in charges.
303003	Rs. 50,000/-	Bank of India, FDR for guarantee margin.

The said broker submits that the amount of the above payments is insignificant as compared to the brokerage accumulated in that account. He has orally submitted that the payments were probably made when the authorized signatory was not

available. However, it is seen that the client account has been used for own purposes as mentioned above, in contravention of the mandatory norms given in SEBI circular No. SMD/SED/CIR/93/23321 dated 18.11.1993 and in byelaw 247A(1) of the BSE Byelaws. In view of the utmost importance of measures to prevent misuse of client's funds, the submissions of the said broker are unacceptable. I therefore, hold him guilty of violation of the above SEBI circular and byelaw.

4.9 *Delay in transfer of demat securities from pool account :*

It is not disputed that there were transactions apart from the 31 transactions on proprietary account, where there was a delay in transferring demat securities from the pool account. SEBI circular No. SMDRP/POLICY/CIR-11/99 dated 07.05.99 requires that the balances in broker's pool account should be brought down to zero within 15 days. The broker's explanation for the delay that demat was a new concept at that point of time is unacceptable because 15 days is a reasonable period compliance within which is not difficult. I therefore, hold him guilty of violation of the above said SEBI circular.

5.0 **CONCLUSIONS :**

5.1 In view of the above, I do not see any reason to differ with the findings of the enquiry officer. I am fully convinced that the broker has committed irregularities as found above.

5.2 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 terms of rule 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992 one of the conditions for grant of certificate of registration is that the broker shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member. In view of the findings as given in paras 4.2 to 4.9, I conclude that the said broker is guilty of having violated,

(a) the provisions of clauses A(5), B(1) 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) rule 15(2)(b) of the Securities Contracts (Regulation) Rules, 1957 and regulation 17(1)(i) of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992,

(c) the condition of registration specified in Rule 4(b) of the SEBI (Stock Brokers and Sub-brokers) Rules, 1992,

(d) SEBI directives contained in the circulars as found hereinabove.

In view of the same, the said broker is liable for penalty under regulation 13(1)(b) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

5.3 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.

6.0 **ORDER :**

6.1 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 one month 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 010992132 of M/s. Sanghavi Bros. Brokerage Ltd., a member of The Stock Exchange, Mumbai be suspended for a period of one month.

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

PLACE: MUMBAI

DATE : 18.06.2003

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA