

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 BETALA STOCK BROKING LIMITED.

1.0 M/s. Betala Stock Broking 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 230909932 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 during November, 2000 under Regulation 28(1) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'the said Regulations') certain violations were observed.

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 30.4.2002 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.

1. The enquiry officer after issuing a show cause notice and considering the reply of the said broker and submissions made on its behalf during personal hearing before him, submitted the enquiry report dated September 20, 2002. In view of the facts and findings as recorded in the enquiry report, the enquiry officer, in terms of Regulation 28 (7) of the said Regulations, recommended that the certificate of registration granted to the said broker be suspended for a period of 12 months.

2. In the enquiry report the enquiry officer has found the said broker having violated the requirements in respect of the requirements of regulations and SEBI directions in respect of the following -

- i. Non maintenance of proper books of accounts and other records,
- ii. Dealing with unregistered sub-brokers,
- iii. Stamp duty not affixed on contract notes,
- iv. Delay in making deliveries to clients,
- v. Proper segregation of clients and own funds not maintained,
- vi. Non maintenance of client data base.

3.0 The enquiry report was considered and in terms of Regulation 29(1) of the said Regulations, a show cause notice dated October 3, 2002 was issued to the said broker. The said broker vide its letter dated October 25, 2002 filed its reply. In the said reply the said broker has submitted *inter alia* as follows:-

a) The documents pertaining to the transactions at Ahmedabad were kept and maintained at Ahmedabad Office of the said broker and the documents pertaining to the transactions at Chennai Office were kept and maintained at Chennai.

b) The size of the volumes traded by a particular client cannot be the basis for concluding that the client was acting as a sub-broker. It is not established in the enquiry that the four entities namely M/s.Jain Trade Link, M/s.Mankaman Inv., M/s.Ramapeer Inv. and M/s.Vinayaga Inv. had their own clients to make them sub-brokers. It is also not established during enquiry that any of the deliveries of securities made or received by the said four entities were relating to the securities existing in the names of some other persons.

c) The proper stamp duty was not affixed on the contract notes due to bona fide mistake. Since inspection it has been affixing requisite stamps. For the contracts for which no stamp was affixed, the consolidated stamp duty has been paid and thus the defect has been cured.

d) Delay in making deliveries to clients' had occurred only 9 instances out of a total of thousand of transactions. Moreover the delay was because of the clients had requested to keep the same with the said broker.

e) The payments were made from the clients account due to oversight. However, the defect was cured subsequently by book adjustments.

f) The client data base was maintained at the Chennai Office of the said broker.

4.0 Hearing

1. An opportunity of personal hearing was given to the said broker on 30.11.2002. Shri R. C. Betala, Promoter of the said broker appeared before me. He submitted that any default on the part of the said broker was on account of oversight and not with any malafide intention. He also filed additional documents. He requested that in view of the submissions, the penalty in the matter may not be imposed.

2. In view of the submission of additional documents by the said broker the books of accounts and the records were further inspected by SEBI on 24.12.02, 26.12.02 and 27.12.02. In the said inspection it was found that the said

broker has maintained the books of accounts and other records except document register which was available at its Ahmedabad Branch. No evidence was found to suggest that the said broker dealt with unregistered sub-brokers. The clients had given their consents for retention of the securities, therefore, the delay could not be attributed to the broker. There is only non segregation of member's funds and client's funds in as much as it has not withdrawn fully the money due to it every time and there is no misutilisation of the client's fund by the said broker.

3. In view of the above findings, another opportunity of hearing was granted to the said broker on 25.3.03. On the said date Shri Roopchand Betala, the promoter of the said broker appeared and made further submissions. During the hearing he submitted the Document Register and requested for inspection of the same and that the penalty as recommended by the Enquiry Officer may not be imposed in the matter.

5.0 Findings –

5.1 I have taken into account the facts and findings recorded in the enquiry officer's report, the oral and written submissions on behalf of the said broker and the relevant material available on record.

5.2 It is noted that as far as misutilisation of funds from client's account is concerned the broker has given contradictory replies. In 2001 it had submitted that it was due to oversight whereas before the Enquiry Officer it was submitted that four of these transactions were related to managerial remuneration and in 2002 these transactions were certified by a Chartered Accountant as amount towards brokerage. Even if this argument is accepted, it is inappropriate to make payments towards forex, telephone rentals etc. from client's account. Such precedence should be sternly disallowed.

5.3 By the circular no. SMD/SED/CIR/93/23321 dated November 18, 1993, 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. Regulation 4.4.12 of the NSE Capital Market Segment – Part A (hereinafter referred to as 'the NSE Regulations'), also suggests that the trading members are under obligation to comply with guidelines issued by SEBI relating to regulation of transactions between clients and brokers. Regulation 4.4.12 of the NSE Regulations provides that in addition to 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 clients account. By the above mentioned circular and regulation 6.1.4 (c) it has been further provided that no money shall be drawn from clients 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.

5.4 I find that the said broker has used the clients money towards the forex, telephone rentals etc. which is in violation of the SEBI circular and the NSE Regulations. In this regard the said broker has violated a 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 I also note that vide SEBI's order dated 22.2.2000 the promoter / director of the said broker Mr.R. C. Betala was prohibited from accessing the capital market for a period of five years in the matter of public issue of Betala Global Securities Ltd. Further, an enquiry against the said broker is pending in case of Cyberspace Ltd. I also note that the said broker was warned in the matter of Sound Craft Industries Ltd.

6. 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 he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member. I find that the said broker has also violated the condition of the certificate of registration as provided in rule 4(b) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

6.1 In view of the above findings, I hold that the said broker has violated –

- (a) Rules 4 (b) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992,
- (b) Clauses A(5) the Code of Conduct as specified in Schedule II read with regulation 7 of the said Regulations,
- (c) SEBI directives as contained in the circulars as found hereinabove,
- (d) The NSE Regulations as found hereinabove.

7.0 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. The requirements regarding segregation of client's money and own funds or dealing with unregistered sub-brokers are provided as measures of risk containment and to provide transparency and fairness in the transactions. The requirements regarding contract notes have been mandatorily provided as a matter of investor protection and to ensure that the business and conduct of the intermediaries are undertaken on the basis of sound business principles.

7.1 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 said broker shall at all times subscribe to the code of conduct as prescribed by the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.

It is to be noted that the violations by a stock broker which is regulated / for the purpose of regulation of its business, can not be allowed on the ground of any alternative practice not approved by the regulator 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 said brokers of the stock Exchange shall adhere to the bye-laws of the Exchange.

8. 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 requirements 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. However, looking into the violations committed by the said broker, I find that the penalty as recommended by the Enquiry Officer is not commensurate with the violations committed by the said broker in this matter. I am satisfied that to secure the proper management of the stock broker and also in the interest of the securities market a penalty of suspension of certificate of registration for a period of three months be imposed. 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 29 of the said Regulations and Regulation 13 of the SEBI (Procedure for Holding Enquiry and Imposing Penalty by Enquiry Officer) Regulations, 2002. I hereby order that the certificate of registration no. INB 230909932 granted to M/s.Betala Stock Broking Ltd., a member of the National Stock Exchange Limited, be suspended for a period of three months.

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

DATE : July, 14, 2003

PLACE: MUMBAI

G. N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA