

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST SMT. SUSHILABAI RUNGTA.

1.0 BACKGROUND OF THE CASE :

1.1 Smt. SushilaBai Rungta (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) vide registration no. INB010026717.

1.2 An inspection of books of accounts, documents and other records of the broker was conducted in the first week of December 2000 conducted by SEBI. A copy of the inspection report was forwarded to the broker by SEBI vide letter dated 9.3.2001. The broker submitted its reply 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 25.10.2002 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 (Procedure for Holding Enquiry and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "the said regulations") submitted a report dated 31.01.2003. The extract of the findings of the enquiry officer are reproduced hereinunder -

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"APPRECIATION OF EVIDENCE AND FINDINGS

1) ACCEPTANCE OF DEPOSITS FROM CONSTITUENTS

As regards the allegation that the member has accepted deposits from constituents by paying interest which is violation of Rule 8 (3) (f) of SCR Rules, the member admitted that these were in the nature of deposits at the time of inspection and thereafter they were rectified and placed in Vyaj Badla transaction. However, there was no material to suggest that the member had adhered to the SEBI guidelines on carry forward systems with particular reference to the financier's funding the carry forward transactions being lender of funds should not be permitted under any circumstances to square up their positions till repayment of the loan and the shares received by such financiers against these transactions should be deposited and kept in safe custody of the clearing house of the stock exchange. Unlike fixed interest which was paid by the member on the deposits, in badla transactions, the rate and carry forward charges are determined by the market during the badla sessions.

It was submitted that these deposits were not raised from public at large but from close friends and relatives and all these deposits have since been repaid except in the case of Vanikja Share Traders Pvt. Ltd which is an associate company of the member. The total amount raised by the member in the form of deposits is quite substantial. These are unsecured loans and interest burden would be quite high, although, majority of the depositors are from Rungta's family. The total amount of deposits raised as per the details of the show cause notice is Rs. 1,55,25,950/-

Section 8 (3)(f) of SCR Rules, 1957, reads as under :-

"(3) No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if -

a. xxx

b. xxx

c. xxx

d. xxx

e. xxx

f. he engages either as principal or employee in any business other than that of securities except as a broker or agent not involving any personal financial liability, provided that -

i. the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm,

ii. xxxxxx

iii. xxxxxx

Receipt of deposits with a commitment to pay fixed interest imposes heavy financial burden and in case of default either in the payment of interest or principal would have a bearing on its net worth and operations in the securities

market. As such, restrictions have been placed on a broker under SCR Rules as extracted above, from involving in any personal financial liability. It is stated that all the aforesaid loans have since been repaid except in the case of Vinikja Share Trades Pvt. Ltd. for Rs. 17,87,210/-. The member submitted that it is an associate firm of the member. Though the member claimed that subsequent to the inspection, these deposits have been treated as Vyaj Badla financing, it is not shown whether SEBI guidelines as discussed before is being complied with, which stipulates that shares under the Vyaj Badla have to be deposited with the clearing house. In any view of the matter, the member herself has admitted that at the time of inspection these receipts were treated as fixed deposits with a commitment to pay fixed interest. Therefore, the conduct of the member is in violation of Rule 8 (3) (f) of SCR Rules, 1957.

2) NON MAINTENANCE OF DOCUMENT REGISTER.

As regards, non maintenance of document register, the member replied that they were few transactions with clients and she was maintaining a book in which the delivery and receipt of all shares were being recorded. The details of folio number, delivery challan were given separately.

Although the member is recording the details of receipt and dispatch of securities, as per her reply dated 10.05.2001, it is recorded in a peon book signed by the parties concerned. Though there is some semblance of complying with the Rules, the same is not sufficient compliance with Rule 15 (1) (g) of SCR Rules, 1957 which stipulates that every member of a recognised stock exchange shall maintain and preserve a document register showing full particulars of shares and securities received and delivered. The said register is a statutory book to be maintained for a period of 5 years.

3) NON OBTENTION OF WRITTEN CONSENT FROM THE CLIENTS IN RESPECT OF CONTRACT ENTERED INTO AS PRINCIPALS.

The member admitted that the time of inspection, she did not have the written consent of the client on principal to principal basis, though she claimed that she had their verbal consent. In the course of enquiry proceedings, she reiterated that she had the verbal consent of the client and vide their letter dated 15/1/2003 she submitted letters from the clients confirming principal to principal transactions and that they had no grievance against the member. In view of the ex-post facto confirmation received from the client for the principal to principal transaction, and confirming that they had no grievance in this regard, this allegation may not be viewed seriously.

4) NON PAYMENT OF TURNOVER FEES

As regards non payment of fees to SEBI, the member had submitted a certificate dated 14/11/2002 issued by V N Bhuvania & Co., Chartered Accountants, showing that the total fees payable was Rs. 11,67,880/- and the balance to be paid at Rs. 9,62,880/-. This amount is still to be paid by the member as per her own admission. This is not in compliance with Rule 4 (d) of SEBI (SB & SB) Rules, 1992.

5) NON MAINTENANCE OF MARGIN DEPOSIT BOOK

The member is not maintaining a margin deposit book but she is maintaining a margin account file system and print outs from the terminals which was shown to the inspecting team. Since most of the business was on Vyaj Badla, she informs that there was no occasion to maintain a margin deposit book. The explanation of the member is not satisfactory. Margin deposit book is a statutory book which is to be maintained by every broker and non maintenance of the same would be in breach of Regulations 17 (1) (k) of SEBI (SB & SB) Regulations, 1992.

6) GALA TRANSACTIONS

Shreeji Associates, a client has placed an order for the purchase of 5,000 shares of HDFC on 1st March, 2000. This order was not exposed to the market in the open order electronic system, instead, the member has purchased these shares in her own account and later on sold them and earned an undue profit of Rs. 71,832/-. The member denied having indulged in any gala transaction and stated that at that time the client was sitting near the terminal and wanted the share to be sold at a particular price which was obliged and that he had no complaint against the member.

It may be noted that the shares sold by Shreeji Associated was purchased by the member as under :-

Securities fold for Shreeji Associates on March 03, 2000						
(as shown in Contract Note)						
Order No.	Trade No.	Trade Time	Quantity	Security	Rate Plus Brokerage	Amount @
		00:00:00	5000	HDFC	457.80	2289000.00
Securities bought for Sushila N. Rungta (Own Account) on March 3, 2000						
(As shown in contract note)						
		00:00:00	5000	HDFC	458.00	2290000.00
Securities sold for Sushila N Rungta (Own Account) on March 3, 2000						
(as shown in Contract Note)						
649010365	0018549	09:37:46	549	HDFC	460.00	252540.00
649010365	0018540	09:37:01	100	HDFC	460.20	46020.00

649010365	0018539	09:37:01	1000	HDFC	461.10	461100.00
649010365	0018529	09:37:01	251	HDFC	462.00	115962.00
649010365	0018526	09:37:01	100	HDFC	462.10	46210.00
649010365	0018553	09:57:25	3000	HDFC	480.00	1440000.00

It can be seen from the above, that the securities sold for Shreeji Associates and bought by the member do not contain trade number and trade time. The member has charged brokerage to the client which obviously means that she has not issued contract note on principal to principal basis in form B. Since the order of the client is not exposed to the market, it is not known whether the client has got the best price and it is the obligation of the member to offer the best possible price to its client. However, on the same day the member has sold these shares at different prices and made a profit of Rs. 71,832/-. Aherance to the correct professional conduct in the discharge of one's duties as a member of a stock exchange is the backbone of the capital market system. Any laxity while judging the misconduct which is not bonafide and dishonest would undermine the confidence of the public resulting in the collapse of the capital market system. This is an act of grave professional misconduct. The conduct of the broker is reprehensible and is unbecoming of a broker. Thus, the member has violated Clause A (3) and B (1) of the Code of Conduct as specified in Schedule II read with Regulations 7 of SEBI (SB & SB) Regulations, 1992.

7) ISSUANCE OF FICTITIOUS CONTRACT NOTES

The show cause notice cities 4 instances of issuance of contract notes wherein the member has either ostensibly sold or bought EIH Limited shares. The total value of these transactions is around Rs.2,00,000/-. It is alleged that these transactions are non existent and the contract notes were issued only to facilitate the borrowings by the member.

Date	Scrip	Client	Buy/Sell	Price	Qty	Value
28/2/00	EIH Ltd.	AM Pool	Sell	126.43	402	50,800.74
28/2/00	EIH Ltd.	Govind Kaur	Sell	126.43	402	50,800.74
4/3/00	EIH Ltd.	AM Pool	Buy	128.40	397	50,974.80
4/3/00	EIH Ltd.	Govind Kaur	Buy	128.40	397	50,974.80

The member in here reply stated that these transactions were due to an error in the punching. The explanation of the member is not satisfactory.

As already seen elsewhere in this report, the member has accepted substantial deposits with commitment to pay interest. These deposits are unsecured deposits. It is quite possible that the aforesaid fictitious contract notes were issued in the nature of a "guarantee" to the lender so that in case the member defaults in payment of loan, the lender would enforce his rights under the bilateral contract through the stock exchange mechanism including arbitration, recourse to investor protection fund and other means which would not be available to him in a pure and simple lending by and between the parties. To facilitate this and to infuse a sense of security to the lender, these types of fictitious contract notes appears to have been issued by the member. This is a very serious irregularity having potential risk to the exchange. In case of default by the broker, the client would attempt to enforce his rights through the stock exchange. In the case of issuance of a fictitious buy contract note, it implies that the broker is obliged to deliver the securities stated therein to the 'client' having received payment for the purchase of shares and in the case of fictitious sales contract notes, it implies that the broker having sold securities on behalf of the client is obliged to make payment. In either case, it gives a sense of security to the unsecured creditor and to enforce his rights and obligations through the stock exchange mechanism as he would be an investor in securities. A perusal of the above contract notes reveals that trade time, trade number etc were not reflected in any of these contracts which gives further strength to the allegation that these are fictitious contracts.

8) CONTRACT NOTES DO NOT BEAR PRE PRINTED SERIAL NUMBER.

It was admitted by the member that due to computer snag at the relevant time, certain details were not been reflected in the contract note and the same has since been rectified. Contract notes not bearing pre printed serial numbers is in contravention of SEBI Circular SMD/MDP/CIR/043/96 dated 5/8/1996.

9) CONTRACT NOTES IN FORM A ISSUED FOR CONTRACTS ON PRINCIPAL TO PRINCIPAL BASIS.

It was replied that the member was not aware of issuing contract notes in Form "B" for principal to principal transactions. This is not a valid excuse from a experienced broker. Non issuance of contract notes in Form "B" for principal to principal transactions is in violation to SEBI Circular SMD(B)/104/22775/93 dated 29/10/1993.

10) BROKER NOTE STAMPS NOT AFFIXED ON THE CONTRACT NOTES.

The member replied that consolidated stamps fees was paid to the exchange as per practice. The explanation of the member is not satisfactory. It is seen from the copies of the contract notes that it is printed thereon that consolidated stamped duty paid through clearing house. As per Article 19 (2) of Bombay Stamp Act, 1958, clearance list relating to the transaction for the purchase or sale of a share, scrip, stock, bond debenture stock or other marketable security submitted to a clearing house of the recognized stock exchange under the SCR Act, 1956. Therefore, the reply of the member that consolidated stamp duty was paid through the clearing house may be accepted.

11) TIME STAMPING OF ORDERS

It was replied that due to technical snag in the order, time of placement of order and certain detail were not reflected. The explanation of the member is not satisfactory. As per SEBI circular dated 11/2/1997 the contract note has to reflect the time of placement of order by the clients and non adherence of the same is in violation of the said circular.

12) NON MAINTENANCE OF CLIENT AGREEMENTS.

The reply of the member that majority of the parties are friends and relatives and at the time of inspection, the said file was missing and the same is retracted now. The explanation of the member is not satisfactory.

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. Not filing up of the client registration forms properly or non maintenance of the same is in contravention of SEBI Circular SMD-1/23341 dated 18th November, 1993, SMD/POLOCY/IECG/1-97 dated 11th February, 1997 and SMD/POLICY/Cir/5-97 dated 11th April, 1997.

13) NON SEGREGATION OF BANK ACCOUNT FOR CLIENTS AND OWN TRANSACTIONS

The member replied that there was virtually no client business and denies any misutilization of any clients account. However, she states that due to staff negligence the client's account was not utilized but the same is rectified. She claims that the brokerage and profit is credited to the client's account.

As per the inspection report, the Bank of India account was used for making exchange settlement, payments to and receipt to clients as well as for office administrative expenses.

Debiting of client's account for the transactions which are not client related defeat the very purpose of maintaining clients' account separately. The amounts to the credit of client's account are in the nature of trust and the member is not in order in meeting other expenses which are not client related from such account. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI Guidelines. 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. The broker has met his office expenditure which is highly irregular. This is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated 18th November, 1993.

14. OFF THE FLOOR TRANSACTIONS

The show cause notice at Annexure I cites a number of transactions running into there and half pages of off the floor transactions carried out by the member which are in violation of SEBI Circular dated 14/09/1999. The member, in her reply, stated that these transactions were not reported originally to the stock exchange inadvertently. She further explained that these transactions were obtained due to practical expediency and to realize funds faster.

As per SEBI Circular, SMDRP/Policy/CIR-32/99 dated 14/09/99 all negotiated deals including cross deals shall not be permitted in the manner prescribed in circulars referred therein and all such deals shall be executed only on the screen of the exchange in the price and order matching mechanism of the exchanges just like any other normal trade. It was explained in the said circular that the above decision was taken as negotiated deal avoid transparency requirement, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against basic concept of the stock exchanges which are meant to bring together a large number of buyers and sellers in an open manner.

It is clear from the above circular that there is no complete prohibition against negotiated deals including cross deals. All it requires is that they shall be executed on the screen of the stock exchanges in the price and order mechanism of the exchanges. The member is not in order in executing large number of transactions outside the exchange system. As per the show cause notice, there are 130 such transactions which are executed outside the trading mechanism of the exchange. The value of such transaction is also quite substantial.

In view of the above, it is established that these transactions are not in compliance with SEBI circular SMDRP/Policy/CIR-32/99 dated 14/09/1999."

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 letter dated 28.02.2003 and 21.03.2003. 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 21.03.2003 and also submitted further written submissions vide their letter dated 30.05.2003. I proceed to examine the said replies dated 21.03.2003 and 30.05.2003 of the broker and also my findings as under.

4.0 ISSUES FOR CONSIDERATION :

4.1 ALLEGATION AND REPLY :

With regard to the charge of failure to maintain preprinted serial numbers on the contract notes, the broker submitted vide his letter 21.03.2003 that at the relevant time the office computers had a snag and certain details, though being entered, were not being reflected in the contract notes and in certain cases these details that were entered were not being reflected in the printed contract notes.

4.2 FINDING :

The system of continuous pre-printed serial numbers is to prevent the possible misuse of contract notes such as pre-dating of a contract. It is clear that the broker failed to maintain pre-printed serial numbers on the contract notes and I hold the broker guilty of violating the provisions of clause A (5) of Code of Conduct as contained in Schedule II of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as 'the said regulations') read with the circular no.SMD/MDP/CIR/043/96 dated 5.8.96 issued by SEBI.

5.0 ALLEGATION AND REPLY:

5.1 As regards the charge that the broker has failed to maintain segregation of client's account and also his own account, the broker vide letter dated 21.03.2003 submitted that separate accounts had been opened and it was due to negligence on the part of the staff that the account opened for the clients was not utilized.

5.2 FINDING :

Debiting of client's account for the transactions which are not client related defeat the very purpose of maintaining clients' account separately. The amounts to the credit of client's account are in the nature of trust and the member is not in order in meeting other expenses which are not client related from such account. The funds in the client's accounts cannot be applied for any purpose other than what is permissible under SEBI Guidelines. 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. The broker has met his office expenditure which is highly irregular. This is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated 18th November, 1993.

6.0 ALLEGATION AND REPLY:

6.1 As regards failure to maintain time stamping of orders, the broker submitted vide letter dated 21.03.2003 that this violation does not figure in the notice dated 31.10.2002 issued by the Enquiry Officer and in any case there was a computer snag which has been rectified and the details are now reflected in the contract notes.

6.2 FINDING :

It is noted that the enquiry order dated 24.06.2002 contains the allegation of violations of the provisions of circular dated 11.02.1997. Further, enquiry report dated 31.01.2003 mentions about this violation and a copy of the enquiry report was already served on the broker vide letter dated 07.02.2003 and the broker has been given reasonable opportunity to rebut the allegation. Therefore, the contention of the broker that this violation does not figure in the notice dated 31.10.2002 issued by the Enquiry Officer is untenable and devoid of fact. From the reading of the circular dated 11.02.97, it is clear that it requires the broker to maintain record of time when the client has placed the order and reflect the same in contract notes alongwith time of execution of order and non compliance of the same is in violation of the provisions of clause B (1) of Code of Conduct as contained in Schedule II of the said regulations read with circular no.SMD/POLICY/IECG/1-97 dated 11.2.97 issued by SEBI. As per the Code of Conduct, a broker is required to execute the order at the best available market price. The details in respect of placing of order and the time as to when the order was placed is very important as the client can know whether the broker has executed the order at the best price and also to know whether he is charging the correct price vis-à-vis comparing the same with market price at the time of placing or execution of the order.

7. ALLEGATION AND REPLY :

1. As regards the failure to maintain client registration agreements, the broker vide letter dated 21.03.2003 submitted that the file had been misplaced and the same was located and a sample copy was annexed to the notice dated 31.10.2002 and the entire file was offered to the enquiry officer.

2. FINDING :

The contention of the broker is not satisfactory inasmuch as the broker is required to keep the books, records etc ready for inspection on the given date which the broker failed to do so. This shows the lack of bonafides on part of the said broker. Client identification is important since it is aimed at identifying the clients behind transactions. This would establish the credentials of the clients and would help the broker in acting diligently in doing business for his clients. Failure to fill up client registration forms properly or non maintenance of the same is in contravention of the provisions of clause A (5) of Code of Conduct as contained in Schedule II of the said regulations read with circular no.SMD-1/23341 dated 18.11.93, SMD/POLICY/IECG/1-97 dated 11.2.97 and SMD/POLICY/CIR/5-97 dated 11.4.97 issued by SEBI. Therefore, I hold the broker guilty on this count and I agree with the findings of the Enquiry Officer in this regard.

8.0 ALLEGATION AND REPLY :

8.1 As regards, the failure to report off the floor transactions to the stock exchanges, the broker submitted vide letter dated 21.03.2003 that due to inadvertence the said transactions were not reported originally.

8.2 FINDING :

As per SEBI Circular, SMDRP/Policy/CIR-32/99 dated 14/09/99 all negotiated deals including cross deals shall not be permitted in the manner prescribed in circulars referred therein and all such deals shall be executed only on the screen of the exchange in the price and order matching mechanism of the exchanges just like any other normal trade. It was explained in the said circular that the above decision was taken as negotiated deal to avoid transparency requirement, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against basic concept of the stock exchanges which are meant to bring together a large number of buyers and sellers in an open manner.

It is clear from the above circular that there is no complete prohibition against negotiated deals including cross deals. All it requires is that they shall be executed on the screen of the stock exchanges in the price and order mechanism of the exchanges. It was not in order for the member to execute large number of transactions outside the exchange system. As per the show cause notice, there are 130 such transactions which are executed outside the trading mechanism of the exchange. The value of such transaction is also quite substantial.

In view of the above, it is established that these transactions were not in compliance with SEBI circular SMDRP/Policy/CIR-32/99 dated 14/09/1999 and I hold the broker guilty on this count.

9.0 ALLEGATION AND REPLY :

As regards, accepting deposits from the constituents by the broker, it was submitted by the broker vide letter dated 21.03.2003 that the persons named in the enquiry report were the broker's friends, and / or associates and / or relatives and these persons were keeping their surplus funds with the broker. All the funds were repaid except for the funds of one Vinijya Share Traders Pvt. Ltd. which is an associate concern of the broker.

9.1 FINDING :

Receipt of deposits with a commitment to pay fixed interest imposes heavy financial burden and in case of default either in the payment of interest or principal would have a bearing on its net worth and operations in the securities market. As such, restrictions have been placed on a broker under SCR Rules as extracted above, from involving in any personal financial liability. It is stated that all the aforesaid loans have since been repaid except in the case of Vinikja Share Trades Pvt. Ltd. for Rs. 17,87,210/-. The member submitted that it is an associate firm of the member. Though the member claimed that subsequent to the inspection, these deposits have been treated as Vyaj Badla financing, it is not shown whether SEBI guidelines as discussed before is being complied with, which stipulates that shares under the Vyaj Badla have to be deposited with the clearing house. In any view of the matter, the member herself has admitted that at the time of inspection these receipts were treated as fixed deposits with a commitment to pay fixed interest. Therefore, the conduct of the member is in violation of Rule 8 (3) (f) of SCR Rules, 1957 and I hold the broker guilty in this regard.

10.0 ALLEGATION AND REPLY:

As regards the failure to maintain document register, the broker vide letter dated 21.03.2003 submitted that the broker was basically doing Vyas Badla work and the total number of clients was limited, however, the broker was maintaining a book in which the delivery and receipt of all shares were being recorded.

10.1 FINDING :

As observed by enquiry officer, although there is some semblance of complying with the Rules, the same is not sufficient compliance with Rule 15 (1) (g) of SC(R) Rules, 1957 which stipulates that every member of a recognised stock exchange shall maintain and preserve a document register showing full particulars of shares and securities received and delivered. The said register is a statutory book to be maintained for a period of 5 years and I hold that the broker has failed to comply with the provisions of rule 15 (1) (g) of SC(R) Rules, 1957.

11.0 ALLEGATION , REPLY AND FINDING:

As regards the failure to obtain written consent from the clients in respect of contracts entered into as principals, the broker's letter dated 21.03.2003 does not deal with this since the enquiry officer has recommended that this allegation may not be viewed seriously in view of the submission of letters of the clients by the broker during the course of enquiry. I agree with the findings of the enquiry officer in this regard.

12. ALLEGATION AND REPLY :

As regard the failure to maintain margin deposit book, the broker vide letter dated 21.03.2003 submitted that basically they were doing Vyaj Badla work and there was no occasion to maintain margin deposit book since most of its clients were either family member or friends and there was no complaint from any client.

12.1 FINDING :

The reply of the broker is also not convincing vis-à-vis maintaining the margin deposit book. The broker should have maintained the margin deposit book in order to meet the compliance with the provisions of law. Therefore, I agree with the findings of the Enquiry Officer in this regard. I am fully convinced that the broker is guilty of contravening the provisions of Regulation 17 (1) (k) of the SEBI (Stock Brokers and Sub-Brokers), Regulations, 1992.

13. ALLEGATION AND REPLY :

As regards, indulging in gala transactions the broker vide letter dated 21.03.2003 the broker denied having indulged in any gala transaction and stated that at that time the client was sitting near the terminal and wanted the share to be sold at a particular price which was obliged and that the client had no complaint against the broker.

13.1 FINDING :

As observed from the details of the transactions mentioned in detail on page No. 10 of the enquiry report, the securities sold for Shreeji Associates and bought by the member do not contain trade number and trade time. The member has charged brokerage to the client which obviously means that she has not issued contract note on principal to principal basis in form B. Since the order of the client is not exposed to the market, it is not known whether the client has got the best price and it is the obligation of the member to offer the best possible price to its client. However, on the same day the member has sold these shares at different prices and made a profit of Rs. 71,832/-. Aherence to the correct professional conduct in the discharge of one's duties as a member of a stock exchange is the backbone of the capital market system. Any laxity while judging the misconduct which is not bonafide and dishonest would undermine the confidence of the public resulting in the collapse of the capital market system. This is an act of grave professional misconduct. The conduct of the broker is reprehensible and is unbecoming of a broker. Thus, the member has violated Clause A (3) and B (1) of the Code of Conduct as specified in Schedule II read with Regulations

7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and I do not see any reason to differ with the above findings of the enquiry officer.

14.0 ALLEGATION AND REPLY :

As regards issuance of fictitious contract notes, the broker vide letter dated 21.03.2003 submitted that the transactions referred to in the enquiry report were caused due to a typing mistake and the mistake was realized and the entry was reversed passing on the benefit to the client.

14.1 FINDING :

It is clear that in the 4 instances which was cited on page 11 of the enquiry report, contract notes were issued for those transactions which were non existing. The reply of the broker that it was caused due to a typing mistake is not convincing inasmuch as it is a serious violation having the potential of destroying the integrity of the stock broking community as a whole. As per clause A (1) of Code of Conduct, a broker is required to maintain high standard of integrity, promptitude and fairness in the conduct of his business. The conduct of the broker in issuing fictitious contract notes militates against the said provisions of law which is unbecoming on the part of the broker, therefore I hold the broker guilty on this count.

15.0 ALLEGATION AND REPLY :

As regards, failure to issue contract notes in Form B for principal to principal transactions the broker vide letter dated 21.03.2003 submitted that she was not aware of the requirement in this regard.

15.1 FINDING :

The reply of the broker is not convincing inasmuch as the stock broking activity is a professional business and the broker is supposed to comply with the provisions of law including the circulars issued by SEBI. It may be stated that ignorance of law is no excuse and I find the broker guilty of having violated the provisions of circular No. SMD(B)/104/22775/93 dated 29/10/1993 issued by SEBI.

16.0 ALLEGATION, REPLY AND FINDING :

As regards the charge that broker note stamps were not affixed on the contract notes, the broker replied that the consolidated stamp fee was paid to the exchange which was accepted by the enquiry officer. I do not find any reason to differ with the findings of the enquiry officer in this regard and I hold the broker not guilty on this count.

17.0 ALLEGATION AND REPLY :

As regards non payment of turnover fees, the broker vide letter dated 21.03.2003 submitted that in the light of the notice dated 04.01.2003 issued by BSE the broker has to make payment of 50% of the amount until 31.03.2003 and the broker undertakes to make the payment on or before the due date.

17.1 FINDING :

The broker has submitted an undertaking vide letter dated 27.03.2003 for payment of Rs. 5,83,940/- alongwith interest, within a period of two years and the same has been taken on record.

18.0 CONCLUSIONS :

18.1 In view of the above findings, I am fully convinced that the broker had committed irregularities such as failure to maintain record of time of placing and executing the order, failure to maintain client registration agreement, failure to ensure continuous preprinted serial numbers on the issued contract notes, failure to report off the floor transactions to the stock exchange, indulging in gala transactions, accepting deposits from constituents, failure to maintain document register and margin deposit book, failure to issue contract notes in form B for principal to principal transactions, failure to maintain segregation of accounts and issuance of fictitious contract notes.

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 view of the findings as given in paras 4.0 to 16.0, I conclude that the said broker is guilty of having violated,
 - a. the provisions of clauses A(1), A(3), A(5) and B(1) 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. SEBI directives contained in the circulars as found hereinabove.
 - d. Rule 8 (3) (f) of SC (R) Rules, 1957.
 - e. Rule 15 (1) (g) of SC (R) Rules, 1957.
 - f. Regulations 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

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

18.3 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.

19.0 ORDER :

19.1 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 twelve 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. INB010026717 of Smt. SushilaBai Rungta, a member of the Stock Exchange, Mumbai be suspended for a period of twelve months.

This order shall come into force on the expiry of three weeks from the date of this order.

Place: Mumbai

Date : 25.08.2003

G.N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA