

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 13 of the of Securities and Exchange Board of India (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 in the matter of enquiry against S. K. Goenka & Co., erstwhile Member of Calcutta Stock Exchange and stock broker registered with SEBI.

CO/123/MIRSD/09/2003

- 1.0 Shiv Kumar Goenka (Trade Name: S. K. Goenka & Co.) (hereinafter referred to as "the said broker") was a member of the Calcutta Stock Exchange (hereinafter referred to as "CSE") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration No. INB 030055313.
- 2.0 CSE, vide its letter dated 14.5.2002, informed SEBI that they declared the said broker as a defaulter for non-payment of dues and that he ceased to be a member of CSE w.e.f. 28.01.2002.
- 2.1 In view of the above, SEBI, vide order dated 28.02.2003, appointed an Enquiry Officer under the SEBI (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") to hold an enquiry under Chapter III of the enquiry regulations.
- 2.2 The Enquiry Officer, acting in accordance with regulation 16 (2) of the enquiry regulations issued show cause notice to the said broker on 17.03.2003 advising him to show cause why his registration as a stock broker should not be cancelled. The said broker did not reply to the show cause notice. The Enquiry Officer submitted his report on 16.06.03.
- 2.3 I note that adequate opportunity had been given to the said broker in terms of Regulation 16 of the enquiry regulations and that the requirements of natural justice have been fulfilled and I proceed further in the matter.
- 3.0 I have considered the facts of the matter, report of the enquiry officer and other material on record. The following issue arises for consideration:

3.1 Whether, the said broker has violated the conditions of registration.

- 3.1.1 I note that CSE vide its letter dated 14.5.2002 has forwarded to SEBI details of defaulter brokers of their exchange. On perusal of the said details, I note from the Annexure to the said letter that the said broker was declared defaulter on 28.01.2002 for default in pay-in. No date of cessation of membership was indicated and therefore CSE was called upon clarify the status of membership of the said broker. CSE vide their letter dated 13.11.2002 informed that the Committee in its meeting held on 28.01.2002 declared the said broker as defaulter, suspended and expelled the said broker from membership of the Exchange and their membership cards were forfeited.
- 3.1.2 I note that the said broker has not challenged the validity of the Civil Suit filed by CSE for recovery of dues or the validity of the decision of CSE to expel them from the membership of the exchange. Therefore the decision of CSE remains valid and so I agree with the finding of the enquiry officer that the said broker has ceased to be a member of CSE w.e.f. 28.01.2002.
- 3.1.3 In this regard, I note that Rule 4 of the SEBI (Stock brokers and sub brokers) Rules, 1992 (hereinafter referred to as "the broker regulations") states that :

"Conditions for grant of certificate to stock broker

4. The Board may grant a certificate to a stock broker subject to the following conditions, namely :-
- (a) he holds the membership of any stock exchange;
 - (b) he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member;
 - (c) in case of any change in the status and constitution, the stock broker shall obtain prior permission of the Board to continue to buy, sell or deal in securities in any stock exchange;
 - (d) he shall pay the amount of fees for registration in the manner provided in the regulations; and
 - (e) he shall take adequate steps for redressal of grievances of the investors within one month of the date of the receipt of the complaint and keep the Board informed about the number, nature and other particulars of the complaints received from such investors.

- 3.1.4 I note that the enquiry officer in his report has found that since CSE has declared the said broker a defaulter for non payment of dues to the Exchange and since the said broker has ceased to be a member of the exchange w.e.f. 28.01.02, his certificate of registration is liable to be cancelled.
- 3.1.5 I agree with the findings of the enquiry officer and find that the said broker has violated Rule 49a) of the Broker Regulations which is one of the conditions subject to which registration has been granted to him his registration as a stock broker is liable to be cancelled.
- 3.2 I note that Regulation 25 of the broker regulations provides that :

Liability for action in case of default

25. A stock broker who –

- (a) fails to comply with any conditions subject to which registration has been granted;
- (b) contravenes any of the provisions of the Act, rules or regulations;
- (c) contravenes the provisions of the Securities Contracts (Regulation) Act or the rules made thereunder;
- (d) contravenes the provisions of the Depositories Act, 1996 or the rules made thereunder;
- (e) contravenes the rules, regulations or bye laws of the stock exchange,

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Procedure for Holding Enquiry by enquiry Officer and Imposing Penalty) Regulations, 2002.

I therefore find that the said broker fails to comply with basic requirement of being a member of a stock exchange, basing on which the registration is granted. Therefore, the registration of the broker is liable to be cancelled.

- 3.3 I further note that Regulation 13(1)(b) provides for major penalties which include cancellation of certificate of registration. In this regard, I note that in terms of Regulation 15(c) of the enquiry regulations it is not necessary to hold an enquiry under the provisions of Regulation 13 where a stock broker ceases to be a member of a recognized stock exchange or has been declared defaulter in relation to the transactions at such exchange, rather, summary procedure under Regulation 16 may be followed. However, Regulation 13(6) of the enquiry regulations provides that the Board or member shall impose major penalties where the intermediary is guilty of violation of conditions of registration.
- 4.0 Therefore, in exercise of powers under Section 4(3) of the SEBI Act read with Regulation 16(5) of the enquiry regulations, I hereby cancel the certificate of registration bearing No. INB 030055313 granted to Shiv Kumar Goenka (Trade Name : S K Goenka & Co.) This order shall come into effect immediately.

Place: Mumbai

Date: 10th September, 03

G N BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA