

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 M/s McCliff SECURITIES LTD, MEMBER OF NATIONAL STOCK EXCHANGE AND STOCK BROKER REGISTERED WITH SEBI.

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- 1.0 M/s McCliff Securities Ltd. (hereinafter referred to as "the said broker") was a member of the National Stock Exchange (hereinafter referred to as "NSE") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration No. INB 230855534.
- 2.0 NSE, vide its letter dated 07.11.2002, informed SEBI that they declared the said broker as a defaulter for failure in meeting the capital requirements for continued admittance to the trading/clearing membership of the exchange/clearing corporation with effect from 01.08.02. Therefore, the said broker ceased to be a member of NSE with effect from 01.08.02.
- 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 dated 17.03.2003 to the said broker advising him to show cause why his registration as a stock broker should not be cancelled. The said broker did not submit any reply to the show cause notice. Thereafter, on 21.7.2003, the Enquiry Officer submitted his report recommending cancellation of the certificate of registration granted to the said broker, on finding the broker not being a member of the stock exchange.
- 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 he has chosen not to avail such opportunity. Therefore, I am satisfied 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 violated the conditions of registration.

- 3.1.1 I note that NSE vide its letter dated 28.05.2002 forwarded to SEBI details of defaulter brokers of their exchange. On perusal of the said details, I note that the said broker was declared defaulter for failure in meeting the capital requirements for continued admittance to the trading/ clearing membership of the exchange/clearing corporation on 01.08.02 and had not been admitted again. I also note that the said broker has ceased to be a member of NSE w.e.f. 01.08.2002.

- 3.1.2 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)
- (c)
- (d)
- (e)"

- 3.1.3 I note that the Enquiry Officer in his report has found that since NSE declared the said broker a defaulter for failure in meeting the capital requirements for continued admittance to the trading/ clearing membership of the exchange/clearing corporation w.e.f. 01.08.2002, his certificate of registration is liable to be cancelled.

3.1.4 I agree with the findings of the Enquiry Officer and find that the said broker has violated one of the conditions subject to which registration has been granted to him viz. that he shall be a member of a recognized stock exchange.

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)
- (d)
- (e)"

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 has failed 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 230855534 granted to M/s McCliff Securities Ltd. This order shall come into effect immediately.

Date : 26th September, 2003

Place: Mumbai

G.N. BAJPAI

Chairman

Securities and Exchange Board of India