

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 Aakash Stocks & Shares Pvt. Ltd., erstwhile Member of Madras Stock Exchange and stock broker registered with SEBI.

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- 1.0 Aakash Stocks & Shares Pvt. Ltd. (hereinafter referred to as "the said broker") was a member of the Madras Stock Exchange (hereinafter referred to as "MSE") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration No. INB 040682136
- 2.0 MSE, vide its letter dated 15.5.2002, 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 MSE w.e.f. 10.12.2001.
- 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 13.03.2003 advising them to show cause why their registration as a stock broker should not be cancelled. The said broker submitted his reply to the show cause notice vide letter dated 14.06.2003.
- 2.3 Thereafter, on 23.07.2003, the enquiry officer submitted his report. In his report the enquiry officer observed that MSE had declared the said broker as defaulter pursuant to the decision of the council of management of MSE dated 10.12.2001. As the said broker had not challenged the decision of the council before the appropriate forum, the enquiry officer has found that the declaration of default by the exchange holds good. Therefore, the enquiry officer has recommended cancellation of the certificate of registration granted to the said broker, as the said broker ceased to be a member a recognized stock exchange.
- 2.4 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 therefore 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 MSE vide its letter dated 15.05.2002 informed SEBI that the said broker was declared defaulter on 10.12.2001 and that they have ceased to be the member of the Exchange with effect from 10.12.2001.
- 3.1.2 I note that the said broker in his reply to the show cause notice issued by the enquiry officer has made the following submissions :
- 3.1.2.1 That an extract of the minutes of the meeting of the council of management of MSE held on 21.08.2001 and 10.12.2001 show that they have been declared as defaulter for non payment of amounts due to Mr. Suresh Bhatia, Mrs. Sudha Iyappan and Shri L. Suresh.
- 3.1.2.2 That the council was wrong in its assessment of dispute and had taken a wrong decision based on incomplete and unsupported facts.
- 3.1.3 In this regard, I note that the enquiry officer had forwarded the reply of the said broker to MSE for their comments and MSE vide its letter dated 07.05.2003 had submitted that :
- 3.1.3.1 That the council of the Exchange had declared the said broker as a defaulter only after affording them an opportunity to be heard and the managing director of the said broker had appeared before the council in its meeting held on 21.08.2001 and presented their case.
- 3.1.3.2 That with respect to the complaint of Shri Suresh Bhatia the complainant had submitted a statement of account showing a sum of 6,13,553 as due from the member from September 1998 and also made allegation regarding manipulation of records by the member with a view to reduce their liability. In the meeting of Investor of Grievances Redressal Committee

(IGRC) held on 21.04.2001 Shri Suresh Bhatia sent a letter by fax stating that the matter could be settled amicably and that the committee may take a decision to release his amount expeditiously. Later Shri Suresh Bhatia attended another meeting of the IGRC on 29.08.2001 wherein he stated that he had not availed any loan from the said broker and that the amount of Rs.2.5 lakhs mentioned in the statement of accounts submitted by the said broker was only for purchase of shares. He also submitted that while payments made by the said broker to him were promptly reflected from the statement of accounts, payments made by him were not so reflected and cheques issued by the said broker which were returned by the bank due to insufficient funds were shown as paid.

3.1.3.3 That in respect of the complaint of Smt. Sudha Iyaapan the representative of the complainant had attended the meeting of the IGRC on 29.08.2001 and stated that subsequent to making the complaints she had received Rs.30,000 by cash and securities valued at Rs.1,48,712.25. Thus a sum of Rs.2,56,287.75 was due from the said broker.

3.1.3.4 That with respect to the complaint of Shri L. Suresh the complainant vide letter dated 21.08.2001 had informed MSE that he had given time till March 2002 to make the payment due to him.

3.1.3.5 That Shri R. A. Ravichandran, Managing Director of the said broker attended the meeting of IGRC held on 29.08.2001 and although he promised to settle the above complaints amicably the same was never done.

3.1.3.6 That Shri Ravichandran, has admitted that the said broker has done number of off-market transactions but the same were not reported to the stock exchange.

3.1.4 The said broker vide their letter dated 14.06.2003 responded to the submissions of MSE and stated that:

3.1.4.1 In respect of the complaint of Shri Suresh Bhatia, the council had no clear idea as to what was the amount in dispute and the final decision was taken without correctly ascertaining the amount outstanding.

3.1.4.2 In respect of the complaint of Smt. Sudha Iyaapan, the complainant had raised extraneous issues to present brokers in poor light. The letter of the complaint clearly establishes that they had been making payments to her and in any way their deposit with the Exchange and their claim from other brokers pending before the Exchange matches the amount claimed by the complainant.

3.1.4.3 In respect of the complaint of Shri L. Suresh, since the council in its meeting held on 21.08.2001 had suggested that the complainant can directly deal with the said broker, the complaint was closed, there was no justification in considering the amount due to the complainant while declaring them as defaulters.

3.1.5 I find that amounts are owing to Shri Suresh Bhatia and Smt. Sudha Iyapan and their complaints remain unresolved. Therefore, I agree with the finding of the enquiry officer that the representation of the said broker against the decision of MSE declaring him as defaulter does not merit consideration.

3.1.6 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) ..."

3.1.7 In view of the above, 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) ...
- (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, based on which the registration was granted to him. 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 040682136 granted to Aakash Stocks and Shares Pvt. Ltd. This order shall come into effect immediately.

Date : 26th September, 03

Place: Mumbai

G.N. BAJPAI

Chairman

Securities and Exchange Board of India