

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST NAGARMULL KEJRIWAL, MEMBER, CALCUTTA STOCK EXCHANGE.

CO/174/ISD/2003

1. Nagarmull Kejriwal is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 030041111 and is a member of Calcutta Stock Exchange (CSE). An inspection of books of accounts, documents and other records of the member was conducted on 19.06.2002. During the inspection, several irregularities were found committed by the member.
2. The findings of the inspection were forwarded to the member vide letter dated 25.6.02 advising the member to give his comments, if any. The member vide letter dated 29.6.02 replied to the said findings of the inspection report. On not being satisfied with the reply filed by the member an Enquiry officer was appointed vide order dated 08.08.2002 to enquire into allegations of violations against the member as specified therein.
3. The Enquiry Officer submitted his report on 31.07.2003. In his report, taking into account the gravity of irregularities that have been established, the EO recommended suspension of certificate of registration of the member for a period of 4 months. The Enquiry Officer held the member guilty of the following violation:
 - 3.1 That the member had carried out transactions with Shri Sanjay Khemani, member, CSE, outside the price and order matching mechanism of CSE. By not executing the aforesaid transactions on the trading system of CSE, the member violated SEBI Circular SMDRP/POLICY/CIR-32/99 dated 14th September, 1999 which was notified by CSE to its members vide its notice dated 16th September 1999. Further, the transactions done outside CSE hamper the ability of the exchange in monitoring the risks undertaken by its members, their net worth, capital adequacy etc. therefore, such transactions of the member are irregular and are prohibited under Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and are also in violation of Clause A(1), (4) & (5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 and Rule 4(b) of SEBI (Stock Brokers and Sub-brokers) Rules 1992.
4. Consequent upon above, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 07.08.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on him. The member was advised to submit his reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that the member has no explanation to offer. The member was also asked to intimate along with the reply whether he desires a personal hearing.
5. The member vide letter dated 23.08.2003 replied to the show cause notice dated 07.08.2003. The member made the following submissions:
 - (a) *That he is an aged person of around 81 years, and that this was his first fault in his life and assured that such violation of SEBI Rules and Regulations will not occur in future. He further requested to forgive him.*The member did not seek any personal hearing while submitting as above.
6. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report and the submissions made by the member vide letter dated 23.08.2003. On appreciating the facts and circumstances of the case the findings are as under:
 - 6.1 I find that the member indulged in the following off-the-floor transactions with another member of CSE, Shri Sanjay Khemani as under

6.1.1 GLOBAL TELE

Date of Transaction	Member's Buy/Sell	Quantity	Difference Amount (As per bill)
16.2.2001	SELL	35000	5292000
22.2.2001	BUY	35000	
2.2.2001	SELL	25000	
8.2.2001	BUY	25000	1542500
19.1.2001	BUY	20000	
24.1.2001	SELL	20000	
12.1.2001	SELL	10000	686500
15.1.2001	BUY	10000	
23.2.2001	SELL	40000	
28.2.2001	BUY	40000	6688000

6.1.2 HFCL

Date of Transaction	Member's Buy/Sell	Quantity	Difference Amount (As per bill)
16.2.2001	SELL	40000	8358000
22.2.2001	BUY	40000	
2.2.2001	SELL	35000	4714500

7.2.2001	BUY	35000	
30.1.2001	SELL	10000	1714500
1.2.2001	BUY	10000	
30.1.2001	SELL	35000	6044500
1.2.2001	BUY	35000	
12.1.2001	SELL	45000	5741500
15.1.2001	BUY	45000	

6.1.3 ZEE TELEFILMS

Date of Transaction	Member's Buy/Sell	Quantity	Difference Amount (As per bill)
19.1.2001	BUY	30000	1356000
23.1.2001	SELL	30000	
23.2.2001	BUY	30000	2046000
23.2.2001	SELL	30000	

6.2 I find that the member admitted the above instances. It is also noticed that the quantity and value of such transactions is also quite high. SEBI vide Circular dated 14.09.1999 banned all negotiated deals, cross deals etc. which include Off-the-floor transactions also. In the said circular it had been notified that all negotiated deals shall be permitted only if the said deals are executed on the screens of the Exchange i.e. the price and order match mechanism of the Exchange like any other normal trade.

6.3 The said decision was taken as negotiated deals/cross deals are devoid of transparency requirements. When such high value and volumes of trades are conducted outside the official market, its ripple effects can be felt on the price formation on the screen based system as the prices therein does not represent a true and fair reflection of the price discovery process. These transactions deprive the investors of the benefit of best price as they would not be aware of the large scale unauthorized transactions taking place outside the market system which if executed on the screen based system would have an impact on the demand and supply of the shares and the prices. Therefore, such deals militate against basic principals of stock exchange mechanism which is meant to bring large number of buyers and sellers together in a transparent manner. It is apparent from the above that the off the floor transactions were not put in the system of the Exchange by the member. This is in violation of SEBI Circular dated 14.09.1999. This kind of off the floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Such deals are also in violation of item 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations and attracts Regulation 4(a) and (b) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 1995.

7. I have no hesitation to agree with the findings of the Enquiry Officer. The above findings against the member cannot be taken lightly particularly when the same are in the nature of disturbing the equilibrium of the market and hindering the interest of investors and the development of capital market. I have also considered the request of the member made vide letter dated 23.08.03 to forgive him once. It is felt that age is not a criterion for deciding quantum of penalty, as already stated it is the interest of investors and the development of capital market which are the ultimate objectives of a market regulator. The aforesaid objectives form primary criteria in the administration of justice. I have also noted that the member himself admitted the alleged violations committed by him, therefore, I consider the Enquiry Officer's recommendation of penalty of certificate of registration for a period of four months as fully justified.

8. I am satisfied that this is a fit case to impose major penalty suspending the registration of the member. Therefore, in exercise of the powers conferred upon me by Sub Section (3) of Section 4 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby suspend the certificate of registration of Nagarmull Kejriwal (INB 030041111) for a period of four months.

9. This order shall come into force after 3 weeks from the date of the order.

G.N. BAJPAI

Place: Mumbai

CHAIRMAN

Date : 20.10.03

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