

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 16(5) of the of Securities and Exchange Board of India (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 read with Section 19 of SEBI Act, 1992 in the matter of enquiry against M/s Esskyyennr Securities Pvt. Ltd.

WTMO/12/MIRSD/10/2003

Background

1. M/s Esskyyennr Securities Ltd. (hereinafter referred to as "the said broker") was a member of National Stock Exchange of India (hereinafter referred to as NSE) and registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as a stock broker under certificate of registration No. INB 230875838.
1. NSE vide its letter dated 02.07.2003 informed SEBI that the said broker has been expelled from the membership of the exchange on 01.07.2003.

Enquiry Proceedings

1. In view of the above, SEBI, vide order dated 06.08.2003, appointed an Enquiry Officer under the SEBI (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as the "Enquiry Regulations") to enquire into the possible violation of Regulation 15(c) of the Enquiry Regulations.
1. The Enquiry Officer, acting in accordance with regulation 16 (2) of the enquiry regulations issued show cause notice to the member on 11.09.2003 advising him to show cause why his registration as a stock broker should not recommended to be cancelled. There was no reply to the show cause notice from the member. Thereafter, on 13.10.2003, the enquiry officer submitted his report under Regulation 16(3) of the enquiry regulations recommending cancellation of the certificate of registration granted to the member. In the report the enquiry officer has found that the said broker ceased to be a member of NSE on 01.07.2003 and that as he is no long a member of a recognized stock exchange, he cannot act as a stock broker.
2. I note that adequate opportunity had been given to the member 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.

Consideration of Issues

2. I have considered the facts of the matter, report of the enquiry officer and other material on record. The following issue arises for consideration:
 1. **Whether, the said broker has violated the conditions of registration?**
 1. I note that NSE vide its letter dated 02.7.2003 has forwarded to SEBI details of members of their exchange who have been expelled. On perusal of the said details, I note that the said broker was expelled from membership with effect from 01.07.2003. I also note that the said broker has ceased to be a member of NSE w.e.f. 01.07.2003.
 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 as under :

"Conditions for grant of certificate to stock broker

1. 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.

1. I note that the enquiry officer in his report has found that since NSE has expelled the said broker and since the member has ceased to be a member of a recognized stock exchange of w.e.f. 01.07.2003, his certificate of registration is liable to be cancelled.
2. I agree with the findings of the enquiry officer and find that the member has violated Rule 4(a) of the broker rules which is one of the conditions subject to which registration has been granted to him.

1. Whether the Certificate of Registration granted to the said broker is liable to be cancelled?

1. I note that Regulation 25 of the broker regulations provides that :

Liability for action in case of default

1. 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.

- 1. I therefore find that the member having failed to comply with basic requirement of being a member of a recognized stock exchange is liable to be proceeded against the Enquiry Regulations. The enquiry officer has also recommended that the Certificate of Registration be cancelled.
- 2. 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 expelled by the 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.
- 3. In view of the above, I find that the Certificate of Registration granted to the said broker is liable to be cancelled.

Order

- 1. Therefore, in exercise of powers under Section 19 of the SEBI Act read with Regulation 16(5) of the Enquiry Regulations, I hereby cancel the certificate of registration bearing No. INB 230875838 granted to Esskynn Securities Ltd.

This order shall come into effect immediately.

DATE : November 06, 2003.

PLACE: MUMBAI

T M NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA