

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 M/s ANSH PORTFOLIO KENDRA PVT. LTD., MEMBER, DELHI STOCK EXCHANGE.

1. M/s Ansh Portfolio Kendra Pvt. Ltd., is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 051002838 and is a member of Delhi Stock Exchange (hereinafter referred to as DSE). An inspection of books of accounts, documents and other records of the member was conducted on December 05 & 06, 2000. During the inspection, several irregularities were found committed by the member.
2. The findings of the inspection were forwarded to the member vide SEBI letter dated 20.02.2001 advising the member to give its comments, if any. The member vide letter dated 26.03.01 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 SEBI order dated 31.01.2003 to enquire into the following allegations of violations against the member:
 - a. Rule 15(1) (g) of Securities Contracts (Regulation) Rules, 1957 read with Regulation 17(1) (g) of SEBI (Stock Brokers and Sub Brokers) Regulations 1992.
 - b. Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992.
 - c. Clause A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
 - d. Directives issued by SEBI vide circular nos. SMD/MDP/CIR/043/96 dated 05/08/96, SMD/POLICY/IECG/1-97 dated 11/2/97 and SMD-1/3118 dated 27/12/93.
 - e. Rules, Regulations and Byelaws of DSE.
3. The Enquiry Officer after conducting the enquiry as per the procedure prescribed under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said Regulations') submitted her report to the Board on 28.07.2003. The Enquiry Officer, taking into account the irregularities that have been established against the member, recommended suspension of certificate of registration of the member for a period of one month. The Enquiry Officer found that the member committed the following violations:
 - 3.1 Irregularities in maintenance of Books of Accounts – Document register of stock register maintained by the member did not contain particulars (distinctive nos. etc.) of securities received and delivered by the concern
 - 3.2 Irregularities in issuance of contract notes are as below:
 - (a) The serial numbers were not pre-printed on the contract notes
 - (b) Form 'A' contract note was issued for principal to principal transactions instead of Form 'B'
 - 3.3 Off-the-floor transactions
 - 3.4 Dealing with unregistered sub-broker
 - 3.5 Delay in delivery of securities
4. In terms of regulation 13(2) of the said Regulations a show cause notice dated 06.08.2003 was issued to the member to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed on it. The member was advised to submit its reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that it has no explanation to offer. The member was also asked to intimate along with the reply whether it desired a personal hearing. The member vide letter dated 21.08.2003 replied to the said show cause notice. The member, inter alia, made the following submissions to the said show cause notice:
 - 4.1 Regarding the allegation that the member did not maintain the books of accounts (Document register) properly i.e. the register did not contain particulars (distinctive nos. etc.) of securities received and delivered by it, the member submitted that by the Enquiry Officers observation in the Enquiry Report it would appear that it was not maintaining the document register *et-all*, which will be an incorrect inference. Member stated that the document register including particulars of shares and securities received and delivered for demat shares (constituting bulk of transactions) was being maintained in compliance to Regulation 17 (1) (g). It stated that in case of physical securities (forming a minor quantity) also, the register was maintained, only the distinctive number records, although linked with the document register, were being maintained separately. The member contended that It did not result into any compromise in terms of investor servicing or in its internal control mechanisms.
 - 4.2 With reference to the allegation that there are certain irregularities in issuance of contract notes, the member submitted that pre-printing of serial nos. in the contract notes will not serve the purpose since many a times transactions relating to a single clients for particular day may run into more than one page. In case of some of the clients, the contract note runs into scores of pages for some of the days. Pre-printing of serial no.

will generate multiplicity of serial numbers for a single contract note leaving little control with the member. Further, the member stated that it is difficult for an intermediary to assess number of contract notes that will be consumed in a particular period with any degree of accuracy. The member contended that the fact that stock exchanges change guidelines for starting number from time to time, makes the practice of preprinting of serial numbers a wasteful exercise.

4.3 The member submitted that the transactions involving 'Principal to Principal' dealings constituted a fractional percentage i.e. 0.04% (Rs 30.6 lakhs of the total turnover of Rs 734.01 crores). The member further submitted that the said transactions did not entail any loss of revenue to SEBI and that the transactions were carried out at the then prevailing market rates.

4.4 With regard to the allegation of conducting off-the-floor transactions, the member admitted that there were a few cases by oversight and the exposure taken by it in such transactions was very negligible as compared to over all trading volumes.

4.5 Regarding the allegation that the member had dealt with unregistered sub-broker, the member stated that the interests of the investor were not harmed, it had carried out an advertisement in the Sandhya Danik Newspaper on 13th August, 2003 published locally from Sirsa, inviting complaints if any against M/s Dishant and Company.

4.6 Regarding the allegation that the member delayed in delivery of securities, the member submitted that the Enquiry Officer has recorded it as a violation even though it had submitted consent letters from all the clients.

5. The member was given an opportunity of hearing on 15.09.2003. Shri Sunil Kumar Gupta, Shri Shankar Somani, Directors of the member and Shri Ravi Kumar Varanasi, Advocate appeared and made submissions. During the course of personal hearing the member was granted seven days time to file their written submissions. The member submitted its written submissions vide letter dated 19.9.2003 bringing out the oral submissions made during the personal hearing. The member while quoting the various provisions of SEBI Act, 1992 and the regulations framed thereunder maintained that the entire proceedings of the present show cause notice, which are initiated on the basis of the Enquiry Report dated 20th December 2002, are without jurisdiction, without authority of law and are liable to be forthwith dropped/withdrawn.

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 21.08.2003, oral submissions made during the course of personal hearing and written submissions made vide its letter dated 19.09.2003. On appreciating the facts and circumstances of the case my findings are as under:

1. With reference to the allegation about irregularities in maintenance of Books of Accounts, it is observed that the document register of stock register maintained by the member did not contain particulars (distinctive nos. etc.) of securities received and delivered by it, I find that the member had admitted that the document register did not bear distinctive numbers. It is well known that for shares and securities in the physical mode the document register is not only the primary record of transactions but also an important statutory requirement. In light of the said findings, the member's statement that the register was maintained but the distinctive number records linked with the document register were being maintained separately and the same did not result into any compromise in terms of investor servicing or in the internal control mechanisms of the member is not convincing and acceptable. I find that the member failed to satisfy the inspection team and the Enquiry Officer that the register was maintained properly. Therefore, I find that the member's conduct is in violation of Rule 15 (1) (g) of Securities Contracts (Regulation) Rules, 1957, Regulation 17(1) (g) of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and provisions of Clause A (5) of Code of Conduct as specified in Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

Rule 15 (1) (g) of Securities Contracts (Regulation) Rules, 1957 stipulates as under:

15. Books of account and other documents to be maintained and preserved by every member of a recognised stock exchange

(1) Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years:

(g) Documents register showing full particulars of shares and securities received and delivered.

Regulation 17 (1) (g) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 stipulates as under:

17 (1) Every stock-broker shall keep and maintain the following books of accounts, records and documents namely; -.

(g) Documents register should include particulars of shares and securities received and delivered;

Clause A (5) of Code of Conduct as specified in Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 stipulates as under:

A (5): Compliance with Statutory Requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him.

6.2 With reference to the allegation that serial numbers were not preprinted on contract notes and Form A contract note issued for principal to principal transactions, the member submitted that *"pre-printing of serial nos. in the contract notes will not serve the purpose since many a times transactions relating to a single clients for particular day may run into more than one page. In case on some of the clients, the contract note runs into scores of pages for some of the days. Pre-printing of serial no. will generate multiplicity of serial numbers for a single contract note leaving little control with the member. Further, the member stated that it is difficult for an intermediary to assess number of contract notes that will be consumed in a particular period with any degree of accuracy"*. A contract note is an important and basic document in the hands of the investors in evidence of transaction entered by the broker on his behalf. In any dispute with the broker it is the contract note that comes to the rescue of the investor. Therefore, any lapse with respect to contract note cannot be taken lightly. Clause (a) of section 15F of SEBI Act, 1992 prescribes penalty if broker fails to issue contract notes in the form and manner specified by the stock exchange of which he is a member. The provision further buttresses the importance of the contract notes. Pre-printing of serial numbers on the contract notes provides transparency and leaves no scope for tampering of the contract notes. Therefore, I do not accept the reply of the member and I find that the member had violated provisions of SEBI Circular no. SMD/MDP/CIR/043/96 dated 5.8.96 in terms of which the irregularities/deficiencies relating to contract notes were observed therein. The said Circular directs that the stock broker shall maintain contract notes in proper manner, which includes that they should consist of pre-printed serial numbers. It also amounts to violation of para A(5) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulation, 1992.

6.2.1 Regarding 'Principal to Principal' transactions the member admitted that the dealings constituted a fractional percentage i.e. 0.04% (Rs 30.6 lakhs of the total turnover of Rs 734.01 crores). The member further submitted that the said transactions did not entail any loss of revenue to SEBI and that the transactions were carried out at the then prevailing market rates. I find that the inspection team picked up the following transactions:

S. No.	Date	Client	Scrip	QTY.	Rate	Brokerage
1	27.04.2000	Mannit Finvest	Videocon Intl.	-5000	50.50	-
2	20.4.99	SL Somani HUF	BPL	2000	313.05	0.05
3	20.4.99	Satish Singal HUF	BPL	2000	313.05	0.05
4	23.4.99	S L Somani HUF	BPL	-2000	389.00	0.10
5	23.4.99	Satish Singal HUF	BPL	-2000	389.00	0.10

It is found that the member issued contract notes in Form 'A' instead of Form 'B'. Further, it did not obtain written consent from clients for these transactions and charged brokerage on these transactions which was subsequently stated to have been refunded to the clients and did not report these transactions to the exchange. Therefore, it is clear that the member had violated SEBI Cir. No. SMD(B)/104/22775/93 dated 29.10.93 as well as SMD/POLICY/IECG/1-97 dated 11.2.97; Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules. Further, it also amounts to violation of clause A(5) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Regulation, 1992.

6.3 The member while admitting non-reporting of off-the-floor transactions submitted that it so happened due to oversight. I do not consider the member's explanation convincing and find that it had violated SEBI directives issued vide circular No. SMD/RCG/CIR/(BKG)/293/95 dated March 14, 1995, DSE circular no. 37/95 dated 15.6.95, Rule 4(b) of SEBI Rules and provisions of para A(5) of Schedule II specified under regulation 7 of SEBI Regulations.

6.4 The inspection team during their inspection found that the member was dealing with one M/s Dishant & Co. since 1.4.99. It is to be noted that the inspection was conducted in December, 2000. The member had also admitted that he had been dealing with unregistered Sub-broker. Therefore, I find that the member had violated SEBI Circular No. SMD-I/3118 dated December 27, 1999 and Circular no. SMD/MDP/CIR/043/96 dated August 5, 1996, DSE Circular dated 13.8.96 as well as provisions of para A (5) of Schedule II specified under Regulation 7 of SEBI Regulations.

6.5 Regarding delay in payment of securities, I find that the member had not produced the consent letters before the inspecting team and hence there is a possibility that the member had procured it later. The act of the member for non-production of such letters during the inspection led to non verification of the said allegation. Therefore, the member's contention is not sustainable. There is a possibility of subsequent obtention of the said letters. This is not in conformity with bye law 246 A (3) of DSE and Clause A (5) and B(1) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

6.6 The member contended that the entire proceedings of the present show cause notice, which are initiated on the basis of the Enquiry Report of the Enquiry Officer being Report dated 20th December 2002, are without jurisdiction, without authority of law and are liable to be forthwith dropped/withdrawn. There is no substance in this argument of the member. The Enquiry Proceeding regulations have been framed in exercise of the powers conferred by Section 30, read with sub section 3 of Section 12 and Section 19 of SEBI Act, 1992. Section 12(3) of the SEBI Act stipulates that the Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by Regulations. Section 19 of the Act states that the Board may, by general or special order in writing delegate to any

member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary. Section 30 of the Act empowers the Board to make regulations consistent with this Act and the rules made thereunder to carry out the purposes of the Act. Majority of the provisions of the enquiry proceeding regulations were already prevalent before the enquiry proceeding regulations came into force in various intermediary regulations. The similar regulations with respect to enquiry in various intermediary regulations were compiled in the form of enquiry proceeding regulations for the sake of administrative convenience. This is evident from the Schedule of the Enquiry Proceeding regulations whereby the enquiry regulations prevalent in various intermediary regulations were omitted.

6.7 In view of the aforesaid provisions, it is clear that the Enquiry Proceeding Regulations were framed in terms of Section 12(3) of SEBI Act, 1992 and the Board derives the power to suspend or cancel a certificate of Registration of a stock broker, by order, as per the said provision. Therefore, the argument of the member that the entire proceedings of the present show cause notice, which are initiated on the basis of the Enquiry Report dated 20th December 2002, are without jurisdiction, without authority of law is untenable.

7. In the light of the above findings, it is clear that the member admitted its own lapses. The violations regarding entering into principal to principal transactions, off the floor transactions and non maintenance of Document register are serious violations. I have no hesitation to agree with the findings and recommendation of the Enquiry Officer. Hence, I am of the considered view that a penalty of suspension of certificate of the member for a period of one month is fully justified.

8. Therefore, in exercise of the powers conferred upon me by Section 19 of SEBI Act, 1992 read with sub-regulation (4) of Regulation 13 of the said Regulations, I hereby suspend the certificate of registration of M/s Ansh Portfolio Kendra Pvt. Ltd., member, DSE for a period of one month.

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

PLACE: MUMBAI

12th November, 2003

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA