

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

ORDER UNDER REGULATION 13 (4) 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 POPULAR STOCK AND SHARE SERVICES LTD., MEMBER OF NATIONAL STOCK EXCHANGE AND STOCK BROKER REGISTERED WITH SEBI.

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- 1.0 M/s Popular Stock and Share Services 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 230644232.
- 2.0 NSE, vide its letter dated 08.11.2002, informed SEBI that they have expelled the said broker w.e.f 01.01.2002. Therefore, the said broker ceased to be a member of NSE with effect from 01.01.2002.
- 3.0 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.
- 4.0 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. A copy of the letter dated 8.11.2002 received from NSE informing SEBI of the reason for which the member was declared defaulter was enclosed/furnished with the above show cause notice. NSE vide its letter dated April 09, 2003 informed that the notice dated 17.03.2003 was sent to the member by Registered post. The member replied vide its letter dated 10.04.2003. Thereafter, after considering the submissions of the broker the Enquiry Officer submitted his report on 26.07.03 recommending cancellation of the certificate of registration granted to the said broker, on finding that the broker has ceased to be a member of the stock exchange.
- 5.0 I note that adequate opportunity had been given to the said broker in terms of Regulation 16 of the Enquiry Regulations. The Enquiry Officer in his report dated 26.7.03 considered the brokers reply which was under:
 - 5.1.1 The broker alleged that action of declaring him a defaulter by the National Stock Exchange was arbitrary, high handed and against the principles of natural justice and contended that NSE declared him as defaulter without considering the facts, which are as under:-
 - 5.1.2 That in the month of January 2000, a F.I.R. was lodged by few investors with G.B.C.B. (C.I.D.) against all the concerns/companies of 'Popular Group' including the member under M.P.I.D. (Maharashtra Protection of Interest of Depositors) Act, 1999. Pursuant thereto the directors of the Popular Group were arrested by G.B.C.B. (C.I.D.) on 4th January, 2000.
 - 5.1.3 That pursuant to lodging of the above F.I.R., the officers of G.B.C.B. (C.I.D.), Mumbai sealed and seized not only the premises of the Popular Group of companies but membership card also. Thereafter, the trading membership of the member was suspended by the NSE under its letter dated 4th February, 2000 without disclosing therein the grounds of suspension.
 - 5.1.4 At the time of issue of the abovesaid letter by NSE, the directors of the member were under custody and were released on bail only in the month of March, 2000. Thereafter, on 25th July, 2001 the NSE issued showcause notice to the member for expulsion of the membership.
 - 5.1.5 The member, through the Advocate addressed a letter dated 1st August, 2001 calling upon the NSE to offer inspection of the documents based on which the alleged show cause notice was issued, so as to enable the member to put forward its defence as all the relevant documents and records were sealed by the G.B.C.B (C.I.D.) and the member was not having access to the same.
 - 5.1.6 The NSE granted three weeks time to the member to deposit the deficit sum of Rs.17,93,729.40 on or before 31st October, 2001 under its letter dated 6th August, 2001. The said letter further contained that in the event of failure on the part of the member to deposit the said amount, the said company will be expelled from the Trading Membership with effect from 1st November, 2001.
 - 5.1.7 The member vide letter dated 25th October, 2001 informed NSE, about their helplessness. However, the NSE maintained their contention, requirement and demand for deposit of deficit fee for maintaining the minimum capital balance without considering the circumstances then prevailing, but granted time till 31st December, 2001 under their letter dated 5th November, 2001.
 - 5.1.8 Thereafter, the NSE issued a letter No.NSEIL/SC/5097 dated 1st January, 2002 for expulsion of membership of the member. No opportunity of personal hearing was ever granted by NSE in the matter. The member, therefore preferred Revision/Appeal on 18th January, 2002 against the aforesaid letter of expulsion before the Competent Authority as appointed by NSE. The Competent Authority also did not give any opportunity of personal hearing.

5.1.9 Thereafter the member was in receipt of letter dated 13th May, 2002 and 27th May, 2000 wherein they were informed that their said Revision/appeal was rejected by the Competent Authority. No opportunity for personal hearing was offered even by the Competent Authority, which is also against principles of natural justice and an arbitrary and high handed action.

5.1.10 The broker submitted that in the meantime all the properties of the entire 'Popular Group' and its Directors were attached under Notification No.CII/1/2000/29/POL-12 dated 16th August, 2001 issued by the Principal Secretary (A&S), Home Department, Govt. of Maharashtra.

6.0 The Enquiry Officer forwarded the reply dated 10.4.2003 to NSE for its comments. The NSE vide its letter dated 27.5.2003 stated as under:-

6.1 Subsequent to temporary suspension of the member, vide Rule 13(A) of chapter IV of the Rules of the Exchange on February 04, 2000, Popular Stock & Share Services Ltd., was expelled from membership of the Exchange with effect from January 1, 2002 due to the failure of the trading member in meeting the requirements for continued admittance to trading/clearing membership of the Exchange/Clearing Corporation. Though the member was provided adequate opportunities to meet their membership requirements as well as given opportunities for personal hearings which were adjourned to suit their requirements, the member still failed to meet the membership requirements of maintaining base minimum capital.

6.2 The Exchange/Clearing Corporation stated that they expelled Popular Stock and Share Services Ltd., after considering the below mentioned facts:

- a) Popular Stock and share Services Ltd., was temporarily suspended on February 4, 2000, vide NSE letter dated February 04, 2000. The member was informed vide the said letter that an intimation was received from the Crime Branch of the Police about criminal investigation against them. The Crime Branch had requested that security deposit/bank guarantee deposited by the member with the Exchange should not be released/ returned/ transferred till necessary Court formalities are completed by the crime branch, C.I.D., Mumbai. The member was advised that in view of the above, the Exchange was constrained to temporarily suspend their membership with immediate effect from February 4, 2000. Further the member was also advised to showcause in writing by March 3, 2000 as to why their suspension should not be continued. The member was also notified that in case of failure on their part in this regard, it would be deemed that they did not have valid submissions/defence in this regard and the Exchange would be constrained to take appropriate action, without any further reference and/or notice to the member. No reply was received from the member in the above matter.
- b) The member was asked to showcause personally before relevant authority on January 10, 2001, in respect of continued suspension of their membership vide letter dated January 1, 2001. In response to the same, the member's advocate Mr.Baldev H.Bhalwal requested vide letter dated January, 2001 for adjournment to a later date as the member was unable to showcause personally on January 10, 2001. The relevant authority acceded to the request of the member and the same was intimated to the member vide letter dated January 11, 2001.
- c) The member was also advised to replenish their deposits to meet membership requirements and was reminded once again vide letters dated July 12, 2001 and July 19, 2001. It was specified that in case of failure to showcause personally on a specified date/failure to meet membership requirements the member would be liable for action such as expulsion or compulsory termination of membership as deemed fit by the Exchange. The failure of the member to showcause personally or represent in writing before the specified date would result in ex parte decision of the relevant authority.
- d) The member was asked to showcause personally before the relevant authority on August 3, 2001, as to why they should not be expelled for not meeting with the requirement of continued admission to membership, vide NSE showcause notice dated July 25, 2001. Mr.Subhash Karkhanis and Mrs.Sandhya Karkhanis, Directors of the member appeared before the relevant authority and requested for additional time to pay up the required deposits to meet the membership requirements of the Exchange. The relevant authority decided that the member shall deposit the deficit amount of Rs.17,93,729.40 on or before October 31, 2001 failing which the member be automatically expelled from the trading membership of the Exchange w.e.f. November 1, 2001 without any further reference/notice to them. The decision of the relevant authority of giving time of close to 3 months was intimated to the member vide our letter dated August 6, 2001.
- e) The member failed to fulfill his obligations by October 31, 2001 and in its meeting dated October 31, 2001, based on the request of the member vide their letter dated October 25, 2001, the relevant authority decided to grant them further time for 2 months i.e., till 31st December, 2001 to deposit amount of Rs.18,86,868.94, towards deficit in the deposit, failing which the member would be automatically expelled without any further reference/notice to them. The above decision was intimated to the member vide NSE letter dated November 5, 2001.
- f) As the member failed to fulfill their obligations, it was expelled from the trading/clearing membership of the Exchange/Clearing with effect from 1st January, 2002 vide NSE letter dated January 1, 2002.

7.0 The expelled member had submitted a revision application/appeal dated January 18, 2002 against the expulsion order.

8.0 Vide letter dated February 14, 2002 the member was informed by NSE that revision application would be placed for consideration before the relevant authority in its next meeting and the decision will be conveyed to the member. Accordingly the revision application/appeal was placed before the relevant authority on May 2, 2002 which after a detailed discussion on the case decided to maintain its earlier decision on the expulsion order. The member was informed vide NSE letter dated May 13, 2002 about the rejection of application for revision/appeal against the order of expulsion from the trading membership of the Exchange.

9.0 The Enquiry Officer forwarded the copy of letter dated 27.5.2003 to the broker for its comments. The member vide its letter dated 20.6.2003 responded to the same as under:

- a) The broker submitted that it is not the case that it did not reply to any of the correspondence to the National stock Exchange. It is surprising that its correspondence was completely ignored for the reasons not known to it and best known to NSE. Further the broker argued that it already furnished the Enquiry Officer with copies of all its correspondence under the cover of its letter dated 10th April, 2003. The broker stated that though it requested NSE to intimate it to produce the relevant records as to the above case under MPID, however there was no communication to that effect from NSE and therefore the broker presumed that the NSE was satisfied with its explanation on the subject. The broker further stated that it is also a matter of record that it had to seek opportunity of personal hearing. The broker contended that on such occasions also, it was not asked to produce the above records and it preferred revision/appeal also, but the history was repeated.
- b) The broker stated that such act on the part of NSE is high handed and arbitrary as the fact remains that there is no mala fide or avoidance on its part in discharging the alleged liability towards NSE. The broker submitted that though it intended to discharge the same, all the circumstances were beyond its control. In absence of failure on the part of NSE to either approach the designated court or the competent authority, the broker contended that, its right to hold the membership cannot be snatched away. The broker argued that the Rules, Regulations and Byelaws are not having over riding effect to the provisions of the MPID Act. Therefore, the broker stated that, considering the fact that the NSE membership card is under attachment under the provisions of MPID Act, any matter attached or affecting to the member ship card or our right to membership requires sanction of the designated court constituted under the MPID Act and any act contrary thereto will be unconstitutional and against the principles of established law.
- 10.0 The Enquiry Officer had considered the submissions of the broker and had given it ample opportunity to make out its case. Therefore, I am satisfied that the requirements of natural justice have been fulfilled and I proceed further in the matter.
- 11.0 I have considered the facts of the matter, report of the Enquiry Officer and other material on record. I find that NSE, vide its letter dated 08.11.2002, informed SEBI that they have expelled the said broker w.e.f 01.01.2002. Therefore, the said broker ceased to be a member of NSE with effect from 01.01.2002. Subsequently, the broker filed a revision petition/appeal dated 18.01.2002 against expulsion order. The said revision petition/appeal was dismissed vide NSE letter dated 13.05.2003.
- 12.0 Under Rule 4(a) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992, (referred to as Stock Brokers Rules) one of the conditions of registration as a stock broker is that the broker should be holding the membership of any stock exchange. Under regulation 25(a) of SEBI (Stock Brokers and Sub Brokers) Regulation, 1992 (referred to as Stock Brokers Regulations), a stock broker is liable for action if he fails to comply with any conditions subject to which registration has been granted.
- 13.0 I find that in the month of January, 2000 a FIR was lodged against the member by a few investors under MPID Act, 1999. Pursuant thereto the directors of members company were arrested on 4.1.2000 and premises of member company sealed and seized by Greater Bombay CBCID. The NSE suspended trading membership of member from 4.2.2000. NSE vide its letter dated 8.11.2002 informed SEBI that they have expelled the member w.e.f. 1.1.2002. I find that the member had filed a revision petition/appeal dated 18.1.2002 against expulsion order. The said revision petition/appeal was dismissed vide NSE letter dated 13.5.2003. Thus the said expulsion has become final. Further, I also agree that the Enquiry Officer cannot sit in Judgment against such decision of the exchange. The noticee has thus ceased to be member of NSE w.e.f. 01.01.2002. As the noticee is no longer a member of the exchange he cannot act as a stock broker.
- 14.0 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.
- 15.0 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 the broker shall be a member of a recognized stock exchange.
- 16.0 I find that the said broker failed to comply with basic requirement of being a member of a stock exchange. Hence, his certificate of registration as a stock broker is liable to be cancelled under Rule 4(a) of Stock Brokers Rules read with regulation 25(a) of the Stock Brokers regulations and regulation 15(c) of SEBI (Procedure for Holding Enquiry by Enquiry Officer) Regulation, 2002.
- 17.0 Therefore, in exercise of powers conferred on me by 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 230644232 granted to M/s Popular Stock and Share Services Ltd. This order shall come into effect immediately.

DATE : NOVEMBER 18, 2003

PLACE: MUMBAI

G.N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA