

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In the matter of order under Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposition of penalty) Regulations, 2002 against Shyam Sunder Dalmia

1. Shyam Sunder Dalmia (hereinafter referred to as "the said broker") is a member of the Calcutta Stock Exchange Association Limited (hereinafter referred to as "the Exchange") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under Certificate of Registration No. INB 030077614.

Inspection of books and records

2. An inspection of the books of accounts and other records of the same broker was carried out by SEBI during the month of November 2001. The inspection related to the period Financial Year 2000-2001 and 2001-2002 (upto September 30,2001). In the course of inspection the following irregularities / deficiencies were noticed:
 - a. Order book was not maintained by the said broker.
 - b. Margin deposit book was not maintained by the said broker.
 - c. Client-Member Agreement forms and client registration forms were not properly maintained.
 - d. The said broker had entered into transactions with two stock brokers – Dalmia Securities Ltd. member NSE and Nangalia Stock Broking Pvt. Ltd. member, BSE. The latter entities were not registered with SEBI as sub brokers and hence the said broker has dealt with unregistered sub brokers.
 - e. The said broker had failed to collect upfront margin from clients.
 - f. The said broker had entered into transactions with other members of the Exchange and settled trades with them outside the Exchange mechanism.
 - g. The said broker had entered into matching transactions.

Enquiry

1. The findings of the inspection were communicated to the said broker vide letter dated 22.05.2002 and they submitted their comments on 14.06.2002. Since, the comments were found to be unsatisfactory, vide order dated 22.01.2003, Chairman, SEBI appointed an Enquiry Officer to enquire into the irregularities mentioned in the Inspection Report. The Enquiry Officer issued a notice to the said broker on 03.02.2003. The said broker submitted his reply to the notice on 28.02.2003 and thereafter the enquiry officer also gave an opportunity of being heard in person to the said broker. Subsequently, on 07.05.2003 the Enquiry Officer submitted his report to SEBI recommending that the Certificate of Registration granted to the said broker may be suspended for a period of one year.

Show Cause Notice

2. Show Cause Notice was issued to the said broker on 26.05.2003 forwarding the copy of the Enquiry Officer's Report also requiring him to submit his reply within 15 days of receipt of the notice. The said broker submitted his reply to the show cause notice vide his letter dated 10.06.2003. In his reply the said broker has made the following submissions:

1. With regard to the allegation that he is not maintaining order book and margin register, the said broker submitted that:

The Enquiry Officer has rejected the submission made by them by stating that the order book should contain the time at which order has been placed by the client. It is also mentioned that SEBI Circular dated 11.02.97 have been violated. The said circular does not deal with the requirement to maintain the order book. Although the Enquiry Officer has recorded their submissions that majority of the transactions were on their account and that the NSE had done away with the need to maintain an order book, the Enquiry Officer had rejected the same without any reason.

2. With regard to the allegation that margin register was not maintained, the said broker submitted that :

The record of margin deposited has been maintained in electronic form and the download is regularly generated and kept in physical form. Regulation 17(1)(k) does not prescribe any form in which the margin deposit book has to be maintained.

3. With regard to the allegation that the client registration forms have not been properly filled up, the said broker submitted that :

The instances of the so called deficiencies noted in the client

Registration forms are all insignificant and non material and as such do not warrant such a severe penalty as suspension of registration for a period of one year. The standard application form and the template of the member client agreement were also duly recorded. The requirements such as recording of permanent account number referred to by the enquiry officer had also been met.

4. With regard to the allegation that he had dealt with unregistered said brokers, the said broker submitted that:

It was pointed out to the enquiry officer that they have never dealt with the broker mentioned in his show cause notice viz. Dalmia Securities Ltd. on NSE and BSE and Nangalia Securities Pvt. Ltd. on BSE in any capacity that could be said to constitute sub broking activities. There was no relationship of broker – sub broker between them and either of the entities and as such no charge on those grounds was maintainable.

5. With regard to the allegation that he had not collected upfront margins from the client, the said broker submitted that :

No supporting material was provided by the Enquiry Officer in furtherance of the allegation. A margin collection report for the year 2000-2001 was given to the Enquiry Officer. Although the Enquiry Officer has recorded that a member of a stock exchange should voluntarily agree to forego margin collection without prejudice to his liability for deposit of margin with the Exchange, the Enquiry officer has found them guilty of violating the bye-laws of CSE and thereby Rule 4 (b) of the SEBI (Stock Brokers and Sub Brokers) Rules, 1992.

6. With regard to the allegation that he had entered into transactions with other members of the Exchange and settled trades amongst themselves without involving the Exchange mechanism, the said broker submitted that:

Although it was submitted clearly that the transactions referred to by the Enquiry Officer principal to principal transactions which could not be considered as violated of SEBI's Circular banning negotiated deals, the Enquiry Officer has merely interpreted the circular to hold that its provisions have been violated. Further, reporting of transactions to the Exchange as required under law had been duly effected.

7. With regard to the allegation that he had entered into matched transactions, the said broker submitted that :

The Enquiry Officer has levelled a finding of there being a synchronized / matched trade, which is possible if there is a simultaneous entry of corresponding orders for matching quantities and matching price. This finding of the Enquiry Officer is unsustainable in the facts and circumstances of the case. They mentioned that the enquiry officer has proceeded to come to a finding that was not even contained in the original show cause notice from the enquiry officer, and as such is not maintainable for the levy of such a severe penalty.

Personal Hearing

2.3 The said broker had also requested for an opportunity of personal hearing and accordingly an opportunity of personal hearing before me was granted to the said broker on 22.07.2003. On the said day, S. Binani representative of the said broker appeared before me along with Shri Somashekar Sunderesan and Niyati J. Mehta, Advocates. The said broker made oral submissions and also submitted written submission on 04.08.2003. The following are the submissions made by the said broker:

1. With regard to the allegation that he is not maintaining order book and margin register, the said broker submitted that:

The SEBI Circular dated 11.02.1997 provides that a broker member should maintain a record of time when the client places the order. However, it was submitted that Regulatory Authorities themselves have found this requirement to be redundant. An amendment to the Regulations of NSE has been made whereby maintenance of order book has been made optional at the discretion of the broker and this amendment is within the knowledge of SEBI. Therefore, this charge is not a material one that warrants any severe regulatory penalty. Further, although they are not members of NSE, NSE itself operates out of Calcutta and there can be no reason to treat a broker who is not a member of NSE differently. There is also no investor complaint on this ground and the reliance on the Code of Conduct to highlight the importance of maintaining an order book is misplaced.

2. With regard to the allegation that margin register was not maintained, the said broker submitted that :

The margin deposit statement containing details of margins deposited by them with the stock exchange is downloaded and maintained in printed form. Regulation 17(1)(k) only provides that every stock broker shall keep and maintain the margin deposit book but does not prescribe any particular format or structure for the contents of such book. The SAT in (2003) 45 SCL 122 has also found that the failure to maintain information regarding margin deposit in a book form cannot be considered as a grave violation to warrant penalty of suspension of Certificate of Registration.

3. With regard to the allegation that the client registration forms have not been properly filled up, the said broker submitted that :

A total of five instances of alleged deficiencies have been mentioned by the Enquiry officer in his report. Of these five instances it is alleged that in the case of two clients details of values of portfolio held and annual income not given. In another two instances adhesive stamps were not affixed on the first page rather these were affixed on the subsequent page. Circular dated 11.04.1997 of SEBI intended that collection of details at pts. 9, 10 and 11 (viz. annual income, permanent account no. and market value of the portfolio) are optional and the broker may at his discretion waive the requirement in cases where he is personally satisfied about the risk profile of the client. As for affixation of stamps, there is no obligation of any nature in any law requiring that the stamp should be affixed on their first page.

4. With regard to the allegation that he had dealt with unregistered said brokers, the said broker submitted that:

The Enquiry Report merely states that they had transactions with Dalmia Securities Ltd. on NSE and BSE and Nangalia Securities Pvt. Ltd. on the BSE. Neither the inspection report nor the enquiry report alleges that the aforesaid two entities acted as sub – brokers. It was expressly pointed out vide their letter dated 10.06.2003

that all their transactions with the aforesaid two brokers were in the nature of two firms acting on proprietary basis with each other i.e. the relationship was that of a client – broker and not that of a sub broker.

5. With regard to the allegation that he had not collected upfront margins from the client, the said broker submitted that :

The upfront margin collection report tendered during the personal hearing shows that they had collected margins from clients except in occasional cases where the clients were primarily affiliates and associate concerns or relatives whose creditworthiness was extremely well known to them. In any even, at no point of time did they default in the deposit of margin with the stock exchange. Further the allegation of violating circular dated 04.02.2000 cannot be levelled against them since there is no allegation in the show cause notice that the margin payable in any statement would have worked out to more than Rs.1.00 lakh.

6. With regard to the allegation that he had entered into transactions with other members of the Exchange and settled trades amongst themselves without involving the Exchange mechanism, the said broker submitted that:

The enquiry officer has ignored submissions made by them vide letters dated 28.02.2003 and 10.06.2003 wherein it was expressly stated that the transactions were principal to principal and were not transactions otherwise ought to have been carried out on the floor of the Exchange. In fact, the transactions were spot delivery transactions within the meaning of the term MSCRA. In each of the instances listed in the enquiry report, the transactions were spot transactions which were not banned by the circular dated 14.09.1999.

7. With regard to the allegation that he had entered into matched transactions, the said broker submitted that :

Two instances of alleged matching transactions have been listed in the enquiry report. It is submitted that the inspecting team has recorded in the basic inspection report that there were no matching i.e. synchronized transactions, on our part.

Even in two case dealt with in the enquiry report, the transactions cannot be said to be synchronized transaction. This is because in the case of Zee, the sale was for 80,010 shares while the purchase was for Rs.75,005 shares. For synchronised transaction to be put in place with a view to reverse the same in the next settlement, the quantity of share would have to be similar. In the case of HFCL too it will be noted that the purchase was for 50,000 shares whereas the sale was for 90,000 shares. So also while the purchase was on February 28, 2001, the sale was on March 9, 2001.

All these transactions were transactions culminating from placement of orders in the ordinary course of business in the screen based online trading system where the electronic trading mechanism automatically matches with the different players in the market. Merely because a particular purchase and a particular sale in the same stock get matched with the transactions amount to a synchronized transaction. Therefore, no allegation of violating SEBI Circular on the Code of Conduct can be alleged.

Consideration of Issues

3. I have considered the facts of the case, the reply of the said broker dated 10.06.2003 and submissions before me on 22.07.2003 and written submissions dated 04.08.2003. The following issues arise for consideration:

1. Whether the said broker has violated provisions of the SEBI (Stock Broker and Sub broker) Regulations, 1992 and directions/circulars issued by SEBI under Section 11 of the SEBI Act, 1992.

1. Whether the broker was not maintaining order book and margin register

I note that although the requirement to maintain an order book is not laid down in any Regulation or Rule, SEBI's circular dated 11.02.1997 requires a stock broker to maintain a record of the time of placement of order and this requirement is of great importance in order to consider whether the broker has executed an order placed with them at the best price and whether he had acted diligently. The record of time of placement of order is normally maintained in the order book and this book becomes a very important means of management and control for the broker in relation to compliance with statutory requirements. It is pertinent to note that although the broker has sought to prove that maintenance of order book is not a statutory requirement, he has not established that the records of time of order has been maintained by him elsewhere. This cannot be treated as a minor violation since the requirements sought to be fulfilled by maintaining the order book are of great importance. In view of the above, I find that the said broker has acted in violation of SEBI's circular dated 11.2.1997.

2. Whether margin deposit book was not maintained?

3.1.2.1 I note that the in the course of inspection, it was noted that the margin deposit book was not maintained by the said broker. In his reply dated 10.6.2003 and in the course of hearing before me and in the subsequent written submissions, the said broker has stated that a statement containing the details of the margins deposited by them with the stock exchange is downloaded and maintained in printed form. They have also stated that Regulation 17 (1) (k) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as the "broker regulations") that a stock broker is required to keep and maintain the margin deposit

book, but does not prescribe any particular format or structure for the contents of such book. The said broker has also referred to the finding of the Securities Appellate Tribunal (SAT) in *Radar Securities Vs SEBI* (2003) 45 SCL 122 that failure to maintain information regarding margin deposit in a book form cannot be considered as a violation grave enough to warrant a penalty of suspension.

2. In this regard, I note that Regulation 17 of the broker regulations provides that:

"17(1) Every Stock Broker shall keep and maintain the following books of account, records and documents, namely –

(a)...

(k) Margin deposit book..."

Admittedly, the said broker has not maintained a margin deposit book, showing the margins paid by them rather he has downloaded the data from the stock exchange and retained a print of the same. I note that stock exchanges are required to maintain a margin deposits book under Rule 14 (6) of the Securities Contracts (Regulation) Rules, 1957. The requirement of brokers maintaining a margin deposit book under regulation 17 (1) (k) of the broker regulations is therefore separate from that of the stock exchange. This separate responsibility to maintain margin deposit register has been cast on brokers and stock exchanges to ensure that verification of one with the other is possible. Therefore, the responsibility to maintain the deposit register separately by stock brokers cannot be treated as an insignificant one. I find that the said broker has acted in violation of Regulation 17 (1) (k) of the said regulations.

3.1.4 Whether the client registration forms have not been properly filled up?

3.1.4.1 I note that as per the inspection report Client Member Agreement and Client Registration Forms were not being filled up in a proper manner. The inspection report has noted 5 instances of such deficiencies and the deficiencies noted included non mentioning of details of value of portfolio, details of employment, details of annual income and affixing of adhesive stamps on plain paper instead of on stamp paper. In this regard, the said broker has submitted that collection of details such as value of portfolio, annual income and employment is optional and the broker may at his discretion wave such requirement. He has also submitted that there is no obligation cast on him under any law requiring that adhesive stamps should be affixed on the stamp paper alone. In this regard, I observe that some of the details that were not obtained by the said broker in respect of its clients were not exempted by SEBI vide Circular dated 11.4.97. For instance no exemption was given regarding details such as details of employment, annual income and value of portfolio. Therefore, I find that by not obtaining the above details, the said broker has failed to comply with the directions of SEBI given vide Circular dated 11.2.97 and 11.4.97.

5. Whether the broker had dealt with unregistered said brokers?

1. I note that the inspection report has observed that the said broker has done transactions with M/s. Dalmia Securities Ltd on NSE and BSE and with M/s. Nangalia Stock Broking Pvt. Ltd. on BSE but the latter are not registered with SEBI as sub-brokers. In this regard, the said broker has submitted that there is no allegation that the two entities mentioned above dealt with them as sub brokers. They have confirmed that their transactions with the said entities were in the nature of two firms acting on the proprietary basis. I accept the explanation of the said broker that they have acted with the above entity on a proprietary basis and not as part of the broker client relationship. Therefore, I find that the charge that the said broker has entered into transactions with unregistered sub broker is not sustainable.

3.1.6 Whether the he had not collected upfront margins from the client?

3.1.6.1 The enquiry report has merely stated that the said broker is not collecting any upfront margin from his client. In the enquiry report, the enquiry officer has merely reiterated this observation. In his reply, the said broker has submitted that no supporting material was provided by the enquiry officer in furtherance of the allegation. In the course of submissions before me, the said broker submitted a margin collection report which showed that they had collected margins from clients except in occasional cases where the clients were affiliates or relatives whose credit worthiness was not in doubt. It was also submitted that there was never any default from their end in deposit of margin. In the absence of specific instances where the said broker has failed to collect margins or that he had inadequate margins, it is difficult to hold that the said broker has violated SEBI Circulars dated 18.11.93 and 4.2.2000 as also proviso to bye law 231 of the bye laws of the exchange which stipulates that a broker should deal in securities only on receipt of a minimum margin of 20% of the price of the securities.

6. Whether the broker entered into transactions with other members of the Exchange and settled trades amongst themselves without involving the Exchange mechanism?

1. I note that the following instances of negotiated deals were mentioned in the inspection report.

Name of the broker	Date of Transaction	Scrip name	Buy/Sell	Quantity	Rate (Rs.)	Total (Rs.)
Harish Chandra Biyani	13.4.2000	RIL	Sell	15000	306.10	4591500
D.K. Singhanian	24.4.2000	HFCL	Buy	50000	840.00	42000000
Pradeep Kayan & Co.	24.4.2000	HFCL	Buy	25000	9840.00	21000000

In his reply, the said broker has submitted that the transactions referred to were principal to principle transactions which could not be treated as in violation of SEBI's Circular banning negotiated deals. Further, in the course of personal hearing before me, the said broker has submitted that the transactions were spot transactions which were not banned by the circular dated 14.9.99. I note that SEBI vide Circular dated 14.9.99 has banned negotiated deals, cross deals etc. with the objective of ensuring that all orders were executed through the stock exchange mechanism through a transparent manner and in view of the fact that trades outside the stock exchange tended to interfere with the price discovery mechanism. However, spot transactions are permitted to be done outside the stock exchange mechanism. It has not been conclusively established that the transactions were not spot transactions and therefore I give the benefit of doubt to the said broker.

7. Whether the broker had entered into matched transactions?

3.1.7.1 It is noted that the enquiry officer has examined two transactions by the said broker with Mehta & Ajmera to arrive at a conclusion that the said broker had indulged in the synchronized trading. In his reply and written submissions, the said broker has submitted that for a charge of synchronized trading / matched transactions to sustain, it must be shown that the quantities and the price should be similar. The trades in the scrip of Zee Tele that have been noted by the enquiry officer involved both sell and buy transactions. As observed in the inspection report, these transactions are as under :

Member Code	Trade Date	Trade Time	Trade No.	Order No.	Buy/Sell	Qty.	Price	Counter Party Code
D0150	23.11.2000	10:46:08	1765622	931219464	S	80010	278.7	D0281
D0150	23.11.2000	10:46:08	1765623	931219464	S	80010	278.7	D0281
D0150	23.11.2000	10:46:08	1765624	931219464	S	80010	278.7	D0281
D0150	23.11.2000	10:46:08	1765625	931219464	S	80010	278.7	D0281
D0150	24.11.2000	12:50:45	1774213	990966551	B	75005	282.7	D0281
D0150	24.11.2000	12:50:45	1774214	990966551	B	75005	282.7	D0281

I note that 4 transactions on 23.11.2000 and two transactions on 24.11.2000, by the said broker having the same order No., the same quantity of shares and the same price were matched with Mehta & Ajmera. The enquiry officer has observed that such transactions which were put through C-star trading system of the CSE were not possible unless the price, quantity and time were pre determined by the two brokers. I find from the above that the said broker has indeed indulged in matched transactions / synchronized trading with Mehta & Ajmera.

In this regard, Item (4) of the Code of Conduct for stock brokers was contained in Schedule II to the broker regulations provides that :

(4) Malpractices : A stock broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stock broker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

In view of the above, I find that the said broker has violated the Code of Conduct and thereby Regulation 7 of the Broker Regulations.

I find that the said broker has violated provisions of the broker regulations and acted in contravention of the directions of SEBI vide circulars dated 11.2.1997 and 11.4.1997.

3. I find that the said broker has not only failed to maintain records and books as required of him under the Broker Regulations, but he has also indulged in manipulative practices in the capital market. It is necessary in the interest of investors and in order to ensure proper regulation of the said broker as an intermediary that the certificate of registration granted to him be suspended. The enquiry officer has recommended that the suspension may be for a period of 1 year in view of the observation that the said broker has indulged in acts that were detrimental to the smooth functioning of the market. In this regard, I find that although the said member has acted in violation of the regulations these violations are not sufficient for imposition of major penalty such as suspension of registration of one year. Moreover, three of the alleged violation have not been established. In view of the same, I am of the considered opinion that a penalty of suspension of registration for 3 months would suffice in the circumstances.

Order

4. Therefore, I, in exercise of powers conferred on me under Regulation 13(2) of the Enquiry Regulations read with Section 19 of the SEBI Act, hereby suspend the certificate of registration bearing No.INB030077614 granted to M/s. Shyam Sundar Dalmia for a period of 3 months.

This order shall come into effect 21 days from date of the order.

Date: 5th December, 2003

Place: Mumbai

A K BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA