

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In the matter of directions under Section 11 (4) (b) read with Section 11B of the Securities and Exchange Board of India Act, 1992 to Shri Sanjay Bansal regarding illegal trading in securities

WT/MO/15/EFD/12/03

Background

1. Shri Sanjay Bansal (hereinafter referred to as "the said broker") is a member of The Guwahati Stock Exchange and a member of The Inter Connected Stock Exchange of India (hereinafter referred to as ICSE). He is also a stock broker registered with SEBI under Registration No. INB 131037112 and a sub broker registered with SEBI under Registration No. INS 231297511.

Inspection by SEBI

2. The Securities and Exchange Board of India (hereinafter referred to as SEBI) received information that Sunil Kayan(Trade Name :Sunil Kumar Kayan & Co.) (hereinafter referred to as "Sunil Kayan"), a stock broker registered with SEBI under Registration No.INB030668917 was indulging in illegal trading in securities. Whole Time Member, SEBI, vide order dated 13.8.2003 directed that an inspection of the office of Sunil Kayan be undertaken by SEBI. Pursuant to the order, inspection of the office of Sunil Kayan at 8, Lyons Range, Kolkatta – 700001 was undertaken on 14.8.2003.

1. In the course of inspection, it was noted that three trading terminals of the National Stock Exchange (hereinafter referred to as NSE) were being operated in the office of Shri Sunil Kumar Kayan. The inspecting officials were informed that two of the three trading terminals were given by the said broker.

2. It was also noted that there were around 40 persons present in the office of Sunil Kayan at the time of inspection and that these persons fled the premises upon seeing the inspection team.

3. The inspection team also made the following findings :

1. The trading terminals given to Sunil Kayan by the said broker were unauthorised.
2. Sunil Kayan had extended unauthorised trading terminals to various persons or entities.
3. Sunil Kayan had traded in certain scrips in quantities of one or two shares and such orders constituted around 70% of his total trades. Many such transactions entered into by Sunil Kayan on his own account as well as on account of his wife /others were found to be squared off by the end of the day. The net amount receivable in such transactions was between Rs.0.70 to Rs.4.33.
4. Handwritten /printed papers found in the office of Sunil Kayan showed that he had transacted in futures and options without having a valid registration from SEBI as a trading / clearing member on the Futures & Options segment of NSE.
5. The sauda confirmation slips obtained from the office of Sunil Kayan showed that after entering into contract in Futures & Options for an official 'market lot', he had split the trades amongst his clients in lots less than official 'market lot'.
6. Trade details obtained from the office of Sunil Kayan showed transactions that did not have any trade number or trade time and order nos. of NSE.
7. Handwritten papers found in the office showing details of cash received and paid from / to clients indicated that many such receipts / payments were beyond limits permitted for cash transactions under the Income Tax Act.
8. A note book found in the office of Sunil Kayan indicated unexplained turnover and some difference amounts on a daily basis. The contents of the note book remain unexplained on account of non co-operation from Sunil Kayan's office.

4. On the basis of the above, the inspection team concluded prima facie that:

1. Sunil Kayan used trades executed by him on the trading terminals as bench marks for prices of the scrips and based on these prices; larger trades were executed outside the stock exchange mechanism.
2. Besides indulging in unauthorised trading in Futures & Options, Sunil Kayan indulged in trades in Futures & Options outside the Stock exchange mechanism.
3. Sunil Kayan entered into off the floor transactions in securities and not reported them to the stock exchange.
4. The said broker had placed two terminals of NSE at the disposal of Sunil Kayan and had thereby aided and abetted him in his illegal activities.

Interim Order

3. Based on the above findings, vide order dated 20.8.2003, the said broker and Sunil Kayan have been restrained from buying, selling or dealing in securities in any manner pending completion of inspection and determination of further appropriate action.

Post Decisional Hearing

4. A post decisional hearing was granted to the said broker on 9.9.2003. The said broker appeared before me and was also assisted by Shri J.J. Bhatt, Advocate. In the course of hearing, the said broker made written submission and also oral submissions.

1. The written submissions in brief are as under :

1. *The noticee is a member of Gauhati Stock Exchange and in that capacity he became a member of ICSE. ICSE's subsidiary company, ISESS, is a member of the NSE. The noticee is a SEBI registered sub-broker affiliated to ISESS w.e.f. 21st March 2002. ISESS provided CTCL Terminals to the notices for carrying out his stock-broking business and for executing trades on the NSE and ISES monitors notice, inter alia, for settlement obligations. The notice has paid SEBI Turnover fee as required and in time.*
2. *The noticee's track record of business activities with the ISESS/ICSE has remained excellent. The noticee has observed all regulations about pay-in / pay-out with ISESS. The noticee mainly caters to the requirements of small to medium retail investors and contributes his mite for the spread of equity cult among investors. The daily average turnover in terms of value was about Rs.2 crores and the notice has about 80 clients base. There has not been a single complaint so far by any one against the noticee.*
3. *The main charges against the noticee are that (i) he without the intimation/permission of the ISESS installed two CTCL terminals in the office of Sunil Kayan(which is situated in the adjoining building), (ii) the noticee acted in concert with Mr. Sunil Kumar Kayan and allowed him to transact business in NSE. The noticee submits his explanation for the aforesaid charges as under :*

i. The noticee's main administration, surveillance and trading terminal is in his own office at 16 India Exchange Place, Room No.30, 3rd Floor, Calcutta - 1.

ii. The above office has about 70 sq. ft. carpet area and it was a very small place to accommodate multiple trading terminals/other logistic support equipments and for sitting space for investors / clients.

iii. The two CTCL terminals (No.G2911 & G02915) were installed through LAN cable in the office of Sunil Kayanat 8, Lyons Range, Ground floor, Calcutta 1 which is within the distance of about 200 metres from the address mentioned at (i) above. These terminals were functioning under the supervision and control of the noticee and more as a branch office. The cable for the two terminals was extended in the month of December 2002. Prior to that, they were operational from the main office of the noticee. The noticee's employees / user viz. Mr. Vinay Kumar Sharma and Sunil Kahr whose names were registered for these terminals with ISESS nad consequently with NSE used to personally sit and operate from the said branch office. The controlling mind for the aforesaid two terminals was that of the noticee as he could also operate them from his own office - In fact ID s of these two terminals could be used from the office of the noticee and consequently the said two terminals could be logged off at any point of time.

iv. It is pertinent to note that all trades of clients that were carried out through the aforesaid two terminals were in the normal and usual course of business during official trading hours. Margins, collected from clients and all commitments / obligations flowing there from in terms of money and demat shares were fulfilled, inter-se and qua ISESS.

v. The noticee submits that he was not aware that he was required to inform ISESS about functioning of the two terminals from the office of Mr. Sunil Kumar Kayan. The noticee has ODIN Software system which is duly approved by NSE /ISESS in terms of which multiple trading terminals /IDs could be made functional from the different localities. Many brokers are using ODIN system as the said technology permits multifunctional-cum-multilocational flexibility through LAN/V-SAT/Leaseline/ISDN and user friendly facilities.

vi. (a) The noticee confirms that he has not given two terminals to Mr. Sunil Kumar Kayan for him to operate for his clients. The said two terminals that were located in Mr. Kayan's office were used by the employees of the notice for carrying out trades of the noticee's clients (whose 'know your client forms' copies were collected by SEBI team on 14th August 2003). The noticee carried out some of the clients trades from the branch office in the respective client codes. Mr. Sunil Kumar Kayan was one of the clients of the noticee. (Some clients could be routing their business through more than one broker /sub-broker). It is factually inaccurate to say that Mr. Kayan was allowed to do trading on behalf of his clients. Further, it is also not true that the noticee was acting in concert with Mr. Kayan. Mr. Kayan's trades (as a client of the noticee) were done in his name / code by the noticee and inter-se obligations settled. The dealings of Mr. Kayan as a client in the normal and usual course of the noticee cannot be termed as "acting in concert" as the noticee's business is to execute trades on the NSE for his clients. The noticee submits that of the total turnover, the value of turnover from the said two terminals was about 7.5% to 10% which is very low.

(b) The noticee submits that he had nothing to do if "Mr. Sunil Kumar Kayan was trading on behalf of his clients". The noticee is concerned with his clients and as aforesaid after obtaining the necessary forms, he executed trades of his clients and issued his bills with their code and maintained their accounts in the ledger. The noticee's privity with his clients was separate and independent of privity Mr. Sunil Kumar Kayan had with his clients, if any. Mr. Sunil Kumar Kayan was not allowed and did not do any trading for his clients - The trades executed from the said two terminals operating from Mr.

Sunil Kumar Kayan's office were that of clients of the noticee. Accordingly, the prima facie findings of the SEBI investigating denied.

(c) The noticee submits that he has not engaged himself in unauthorized broking business or extended trading terminal to any third party for such party's use. There is no financial loss to the investors.

(vii) In the above perspective, the noticee not informing the location of two terminals at the office of Mr. Sunil Kumar Kayan's office could not be considered as a serious lapse warranting suspension / debarring the noticee from his business. In fact, in these days of internet trading, it is anytime, anywhere trading and what is therefore important is broker ID and client ID. The location of terminal has lost its relevance.

vii. The preliminary findings are based on wrong appreciation of facts and law and deserve to be rejected. The noticee submits that the conclusions do not disclose or establish any violation of any of the provisions of and Act/law. The noticee respectfully submits that he has not violated section 12 of SEBI Act, 1993 and section 19 of Securities Contract (Regulation) Act nor assisted in violation of section 12 of SEBI Act.

1. The noticee observes from the order dated 20.8.2003 that one GSM Securities Ltd., has extended NSE's terminal to Sunil Kayan but they have not been debarred from trading but, in their case the order states that "the matter be referred to NSE for necessary action under their bye-laws". Thus for the same type of lapse they have been presently let-off while against the noticee a penal action has been taken forthwith. The noticee respectfully submits that this is highly unfair, inequitable and against all canons of natural justice and equity.
2. The noticee states that the alleged lapse is technical and / or venial lapse. The noticee states that no harm or prejudice has been caused to either the clients or the NSE / ISESS or to any other person due to the alleged lapse. The noticee has not gained from the alleged lapse. The noticee states that it is not guilty of conduct which is contumacious or dishonest or has acted in conscious disregard of the regulation or any norm.
3. The noticee states that the penalty of debarring him from dealing in securities in any manner directly or indirectly pending completion of inspection is extremely harsh. The findings are based on conjectures and assumptions and made with pre-decided mind. This is evident from the bias approach and discriminatory treatment meted out to the noticee as aforesaid. The noticee states that penalty must be commensurate with offence and the principle of proportionality has been given a go-bye in the instant case. The noticee states that it would be most unfortunate that for a first minor lapse, the noticee would be saddled with a major penalty. The noticee states and submits that the ends of justice would be met if he is let off with a warning and/or his case is referred to the ISESS/NSE (in the same manner as GSM Securities Ltd's case was referred to NSE). The noticee respectfully submits that there is no justification for any penalty, much less the major penalty of restraining the noticee from dealing in securities with immediate effect. In the circumstances, debarring the noticee from his stock-broking business has led to the miscarriage of justice.
4. The noticee submits that there is no wilful default on his part in discharging his obligations and responsibilities. The actions of the noticee were bonafide and in good faith.
5. It is settled law, pursuant to several decisions of Securities Appellate Tribunal, that there has to be a nexus between the (Appellant's) alleged action and the measure adopted by SEBI in the form of directions under section 11 of SEBI Act. The noticee prays that he be permitted and allowed to resume his stock-broking business as and by way interim relief with immediate effect.

1. The oral submissions, in brief were as under :

1. He is a member of the Gauhati Stock Exchange and by virtue of the same; he is a sub broker of ISE Securities, which is a member of NSE. Therefore, he was operating terminals of NSE. Since he did not have adequate space in his office premises, he installed two terminals in the office premises of Sunil Kumar Kayan and these were linked by cable to his office. These terminals were operated by his employees. He submitted that the administrative terminal was located in his office which was less than 200 mtrs away and details of his employees who were operating the terminals were registered with ICSE. He also submitted that this was an arrangement done by him to meet increasing business requirements and on an understanding with Sunil Kayan that he would not charge rent. He stated that he was unaware of any requirement that NSE had to be intimated regarding the location of the terminals.
2. The said broker submitted that it was factually incorrect that the clients of Sunil Kayan did business through his terminals. He denied that he acted in concert with Shri Sunil Kumar Kayan. He also submitted that the business through the terminals located in the office of Sunil Kumar Kayan was negligible and any way he had met all obligations to clients. He stated that the NSE terminal does not have much relevance, rather what is relevant is the broker ID and his ID was used for trades executed on behalf of his clients alone. He also submitted that these terminals were no longer working in the office of Shri Sunil Kumar Kayan.
3. The said broker submitted that there was no violation of Section 12 of the SEBI Act or Section 19 of the SCR Act and irregularity, if any was only in not informing NSE about the location of the terminal. The prohibition on trading imposed on him was disproportionate to this irregularity.
4. The said broker submitted that he had not acted in concert with nor had he aided Sunil Kayan in his activities and all his transactions were regular in nature. He requested that proceedings against him may be separate from those against Shri Sunil Kumar Kayan.
5. In response to a query from me, as to whether one broker ID can be used across several terminals, the said broker replied in the affirmative and also submitted that he had obtained permission from ISE Securities in

this regard.

- 6. In response to a further query from me as to whether Sunil Kayan is his client, the said broker replied in the affirmative and stated that the latter had closed down his business as a stock broker and was now doing part of his business through him.*
- 7. In response to a query from me as to why his clients ran away upon seeing the inspection team, he submitted that they did so because they got scared.*
- 8. In response to a query as to whether, Sunil Kayan was using his terminals, the said broker replied in the negative and stated that the terminals were used by his employees viz. Vinay Kumar and Kahar. However, he stated that there are clients who are common to Sunil Kayan and he.*
- 9. In response to a query as to whether he was aware that illegal trading was being carried on and why he allowed his terminals to be used for the same, the said broker stated that he used to see only the details of the pay-in / pay-out of the terminals.*

Consideration of Issues

1. I have considered the facts of the case, the reply and submissions of the said broker. The following issues arise for consideration:
 - i) Whether the said broker had permitted Sunil Kayan to utilise in an unauthorised manner, trading terminals of NSE allotted to him.
 - ii) Whether the said broker had aided and abetted Shri Sunil Kayan in carrying on the illegal trading in securities.

1. The above issues are dealt with as under :

- 1. Whether the said broker had permitted Sunil Kayan to utilise in an unauthorised manner, trading terminals of NSE allotted to him.*

I note that two of the three trading terminals of NSE in the premises of Shri Sunil Kayan were allotted to the said broker. Admittedly these terminals were installed in the office of Shri Sunil Kayan. The said broker has also admitted that he had not informed either ISESS or NSE about the terminals being installed in the office of Shri Sunil Kayan. The said broker has submitted that these terminals were functioning under his supervision and control and were installed in the office of Shri Sunil Kayan since he did not have adequate space to accommodate the terminals in his own office. He has also stated that he controlled the use of the terminals by his employees through the controlling terminal situated in his office. He has further stated that he was not aware that he was required to inform ISESS about the functioning of the two terminals from the office of Shri Sunil Kayan.

I find that the said broker has located trading terminals of NSE allotted to him in Shri Sunil Kayan's office without informing NSE or ISESS. He has also provided the services of two of his employees to Shri Sunil Kayan to operate the said terminals. Therefore, I find that the said broker has given unauthorised access to his trading terminals to Shri Sunil Kayan.

- 2. Whether the said broker had aided and abetted Shri Sunil Kayan in carrying on the illegal trading in securities.*

I note that in the course of the inspection of the premises of Shri Sunil Kayan, around 40 persons were observed to be trading from the said office. The said broker has submitted that trades were carried out through the said terminals only for his clients and not for clients of Shri Sunil Kayan. On the other hand, he has also stated that there may be clients who are common to both Shri Sunil Kayan and him. It is also observed that Shri Sunil Kayan himself was a client of the said broker and several transactions had been carried out in his name. Further examination is necessary in order to ascertain whether the terminals were used by the clients of Shri Sunil Kayan to facilitate illegal trading. However, prima facie it appears that the said broker had allowed the clients of Shri Sunil Kayan to trade through his terminals.

It has been noted that Shri Sunil Kayan had utilised the terminals to ascertain prices of securities which were then taken as benchmark for trading in the same securities outside the stock exchange mechanism. Having been in control of the two terminals through the administrators terminal in his office, the contention of the said broker that he was not aware of the trading practices of Shri Sunil Kayan is frivolous and not acceptable.

In view of the above, I find that prima facie the said broker has aided and abetted Shri Sunil Kayan in carrying on his illegal trading in securities.

Order

2. I find that it is necessary in the interest of investors and the securities market to prevent the said broker from carrying on activities related to the securities' market until completion of the inspection. Therefore, I, in exercise of powers conferred on me under Section 11(4) (b) read with Section 11B and Section 19 of the SEBI Act do hereby confirm the order dated 20.8.2003 and direct Shri Sanjay Bansal having certificate of registration No.INB131037112 as a Stock Broker and certificate of registration No. INS231297511 as a Sub Broker, not to buy, sell or deal in securities in any manner, directly or indirectly, pending completion of inspection and determination of further appropriate action on receipt of the report.

Date : 9th December, 2003

T M Nagarajan

Place : Mumbai

Whole Time Member

