

MO/30/MIRSD/12/03

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 NAM SECURITIES LTD., MEMBER, DELHI STOCK EXCHANGE.

1. M/s NAM Securities Ltd. is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 050771030 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 in the month of December 2000. During the inspection, several irregularities were found committed by the member.
2. The findings of the inspection were forwarded to the member vide letter dated 20.02.2001 advising the member to give its comments, if any. The member vide letter dated 13.03.01 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 order dated 31.01.2003 to enquire into the following allegations of violations against the member:
 - (a) Clause A(5) & B(2) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.
 - (b) Directives issued by SEBI vide circular nos. SMD/MDP/CIR/043/96 dated 05/08/96, SMD/POLICY/IECG/5-97 dated 11.04.97; SMD/POLICY/IECG/1-97 dated 11/2/97 and SMD/SED/CIR/93/23321 dated 18/11/93.

- (c) Rules, Regulations and Byelaws of DSE.
- (d) Rule 15(1)(g) of Securities Contract (Regulation) Rules, 1957 read with Regulation 17(1) (g) of SEBI (Stock Brokers and Sub Brokers) Rules 1992.
- (e) Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992.

3.1 The Enquiry Officer submitted her report on 30.06.2003. In her report, taking into account the irregularities that have been established against the member, the Enquiry Officer recommended suspension of certificate of registration of the member for a period of three months. The Enquiry Officer found that the member committed the following violations:

- 3.1.1 The contract notes did not bear pre-printed serial numbers on them but were generated on settlement basis through computer software.
- 3.1.2 The contract notes were not issued within stipulated time.
- 3.1.3 Non issuance of contract notes by the member in some transactions.
- 3.1.4 Duplicates of the Contract Notes were not acknowledged by the clients.
- 3.1.5 Terms and conditions as well as SEBI Registration Number were not mentioned on the contract notes issued.
- 3.1.6 Dealing with unregistered sub brokers.

3.1.7 Delay and short payment of SEBI fee.

3.1.8 Non- maintenance of client data base.

4.1 In terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations') a show cause notice dated 10.07.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on him. 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.

4.2 The member vide letter dated 10.08.2003 replied to the said show cause notice. The member, inter alia, made the following submissions to the said show cause notice:

4.2.1 The member submitted that it had not violated any provisions of SC(R) Rules, 1957, SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 or any rules, regulations, byelaws of the exchange and SEBI, justifying recommendation by the Enquiry officer of the most serious action of suspension of certificate of registration for a period of three months.

4.2.2 The member submitted that it issued each contract note serially numbered, in accordance with the Act, Rule and Regulation. In the findings it was admitted by the Enquiry Officer that the computer generated serial numbers are also acceptable provided they run continuously from 1st day till last day of the financial year. Settlement wise generated serial number does not preclude possibility of manipulation as contract note can always be inserted /

taken out between two settlements. Whereas during inspection of two years' accounts, there was not a single case of insertion / deletion of the contract note. Insertion / deletion of the contract note pre- requires insertions / deletion of a trade which never happened. Just on mere assumption of possibility of insertion / deletion of the contract note, which had never taken place, recommending a penalty of suspension is unlawful and unjustified.

- 4.2.3 With regard to the allegation of non issuance of contract notes within a stipulated time, the member submitted that reprint of contract notes at the time of inspection in trades for DSE were for the following clients:

Mr. B K Chawla, Fortune, Ashwani Goyal & Sons, Vineet Khanna, Ashok Arora, S K Khemka. All of them requested for reissue of contract notes because of dim prints on the contracts notes originally given, vide their written communication (copy of the said letter were given to the inspecting team alongwith the letter dated 13.03.01 and to the EO vide letter dated 17.04.03). Inspecting team was made to satisfy for the reissue of contract notes since 4 of the clients were present in the office during the day of inspection. Mr. Ashwani Goyal being one of the person named in the list to whom the contract notes was reissued is a director in the company who was personally present all the times and giving answer to the query of the inspecting team. Mr. Vineet Khanna, B K Chawla and Ashok Arora were the regular jobbers / arbitrageurs who were also present in the office at that time. Later on when the query was raised vide letter dated 20.02.2001 the request letters already with them were filed vide their reply dated 13.03.01.

The member stated that at no point of time it was asked to produce the dim printed contract notes either by the inspecting team or by the enquiry officer vide letters dated 20.02.01 and 24.02.03 and neither was it asked by the enquiry office during the personal hearing of the company director held on 07.04.2003.

Regarding the contract notes dated 14.02.000 the member submitted that none of the contract notes were pertaining to DSE. Further, it stated that these were contracts notes for the trades on NSE in which case objections were received along with the details of the trades which all belonged to NSE trades and in which case the reply was given in NSE inspection letter which was accepted and no charges were established by the EO vide their letter dated 04.07.03. The member submitted that the observations on trades during NSE inspection were inter mixed those for DSE inspection. In the light of the above, on admission of each client personally admitting the fact of having received the contract notes well ontime, there is not violation of bye law no. 246A (4) of DSE and provision of clause b(2) of schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

4.2.4 With regard to the allegation that the acknowledgement of the clients was not obtained on duplicates of the contract notes issued, the member submitted that that the contract notes were invariably issued and acknowledged by all the clients. The member stated that the acknowledgement of the contract notes by the clients was invariably completed in due compliance to the rules and regulations of the stock exchange and SEBI. However, the Enquiry Officer stated non production of the contract notes led to non verification of the said submission and brokers contention is not sustainable. The member further submitted that the copies of the contract notes duly

acknowledged were also produced at the time of inspection. The fact can be proved from the reference at various places made by the team in their report, to the contract notes all of which bear acknowledgement from the client. The member further submitted that when it was agreed that the contract notes were duly acknowledged from the client but alleged that the same were not produced at the time of inspection. In that case it is required to please take a lenient view of the matter.

4.2.5 With regard to the allegation that the terms and conditions as well as SEBI registration number were not mentioned on the contract notes, the broker submitted that each contract note issued by them bears SEBI registration number as well as terms and conditions printed overleaf. The finding that when the inspection team made the observation regarding absence of terms and condition and SEBI registration number, it was presumed that such observation must have been made upon examination of original documents and not photocopies of the same. The member submitted that the said presumption was wrong due to the fact that the photocopy of the contract note given to the inspecting team was not during their inspection but before that in response to SEBI letter dated 04.11.2000.

4.2.6 With regard to the allegation that the member was dealing with unregistered sub brokers, the member submitted that there was only one sub broker viz. Share Plaza who were carrying on trades in NSE only. Later on they started few trades on DSE as proprietary trades. The fact that Share Plaza was carrying on proprietary trades was already stated vide their letter dated 07.04.03 in reply to EO's letter dated 24.02.03 and personal statement on 07.04.03 before EO. The clarification was given to know as to whether in proprietary trades, obtaining of broker –

client agreement and client information form was enough, which was already obtained from Share Plaza.

The member further submitted that as per provisions contained in the relevant law the provision and the circulars on the subject was sufficient compliance, when the broker client agreement was obtained for carrying on proprietary trades. However, as abundant precaution sub broker registration on DSE was also obtained; which was not required as per subsequent interpretation of the relevant rules, regulations and provisions of the stock exchange and SEBI. The member further submitted that it has discontinued business on DSE since July 2001.

4.2.7 With regard to the allegation of non maintenance of client data base the member stated that in reply dated 13.03.2001 it was submitted that there was no transaction with Mr. L S Darbari in DSE. The fact omitted from the findings. As regard inspection on sample basis and deriving conclusion on mere possibilities it is submitted that there were less than 30 clients on DSE and the entire client data base was contained in single file which was produced and verified by the inspection team.

4.2.8 With regard to the allegation that there was delay in payment of SEBI fees, the member submitted that, there was neither a delay nor shortfall in payment of fees to SEBI. Vide SEBI circular SMD/DBA-II/ Cir-01/178/03 dated 03.01.03 stating that the facility of payment of 50% of principal fees payable by them in conformity with SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 amended as on February 20, 2002 read with SEBI circular dated 28.08.2002 and 30.09.2002 would not be available after 31.03.2003. Whereas they had already paid SEBI fees in excess of

total amounting to Rs. 1,05,584/- as per details in their reply dated 10.08.2003.

- 5 The member was given an opportunity of hearing on 19.09.2003. Shri Ashwani Goyal, Whole Time Director of the member appeared and made submissions
- 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 10.08.2003. On appreciating the facts and circumstances of the case my findings are as under:
 - 6.1 With reference to the contract notes, the contract notes did not bear pre printed serial nos. but were generated on settlement basis through computer software, I find that the member admitted that the contract notes did not bear pre printed serial nos. for the financial year and were generated on settlement basis. I note the enquiry officer's view that the computer generated serial nos. are also acceptable provided they run continuously from 1st day till last day of the financial year. Further that settlement wise generated serial nos. do not preclude possibility of manipulation as contract note can always be inserted / taken out in between the two settlements. However, I also take note of the member's submission that during inspection of two years accounts there was not a single case of insertion / deletion of the Contract Note. Therefore, I take a lenient view of the charge.
 - 6.2 With reference to the allegation that duplicates of the Contract Notes were not acknowledged by the clients, the member submitted that each contract note was printed in duplicate and acknowledgment was obtained invariably in all the cases, since they had very little client base and most of the clients

make transaction while they visit their office. The delivery of contract notes was made by hand or post as prescribed in the rules framed by SEBI. In case of hand delivery, each contract note was duly acknowledged by the recipient those sent by post, proof of dispatch was kept with them.

I find that the member had not produced the same before the inspecting team and hence there is a possibility that the member had procured it later. Therefore the act of the member of non production of such contract note during the inspection led to non verification of the said allegation and member's contention is not sustainable. There is a possibility of subsequent obtention of contract notes. This is not in conformity with SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.93 and SMD/ MDP/CIR/043/96 dated 05.08.96 as well as bye laws 246 A (4) of DSE and provision of Clause B(2) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

6.3 With reference to the allegation that the terms and conditions as well as order time were not mentioned on the contract notes, I find that the member admitted its mistake and during the hearing the member submitted that the photocopies of the contract notes were taken on one side therefore the terms and conditions which were on the backside of the contract note were not found. The member submitted that the error has been rectified. Therefore, I take a lenient view of the charge.

6.4 As regards the allegation of non-issuance of contract notes in some transactions the member submitted that these contract notes were issued invariably for all the transactions done on the same day. Even in the instances quoted in the inspection report, the contract notes were well issued and acknowledge by the clients. I find that adequate time was given to keep the books / documents ready and they should have been readily available to the inspection team on the inspection date. Hence reply of the

broker in this regard cannot be accepted. The possibility of the contract notes having been printed subsequently cannot be ruled out. Non issuance of contract notes for purchase / sale of securities to a client within 24 hours of the execution of the contract is a breach of DSE bye law 246 A (4) as well as para A(5) and B(2) of Code of Conduct specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub brokers) Regulations, 1992.

- 6.5 In respect of allegations relating non issuance of contract notes within stipulated time the broker claimed that they were issuing contract notes well within time of transaction taking place and contract notes were given / sent to the clients as per rules and byelaws prescribed by SEBI and the stock exchange. I find that the claim of the broker that it was merely taking reprint of the contract for 5th, 6th and 7th of December 2000 on the date of inspection due to earlier prints being dim has been contradicted by the inspection team. They have indicated that no such explanation was made to them at the time of inspection and that he broker had in fact admitted the delay in issuance of contract note within stipulated time. Alleged 'dim' printed contract notes were produced neither at all the time of inspection nor at the time of enquiry hearing. Copy of the cancelled contract notes should be preserved if the reprint is being taken by the broker.

Further, I find that the submission in respect of contract notes of 14.03.2000 is not acceptable as adequate as time was given to the broker to keep the books and records ready for the inspection team. I agree with Enquiry Officer's view that inspection day was not meant for locating or tracing the documents. They should have been readily available to the inspection team. Therefore, I find that the brokers act is in violation of bye law no. 246A of DSE and provision of clause B(2) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

6.6 With regard to the allegation that the member had dealt with unregistered sub broker the member submitted that during the period covered under inspection they had only one sub broker viz. M/s Share Plaza. The said firm was originally carrying on business only at NSE and obtained SEBI registration as sub broker. It had obtained client registration form filled as required for carrying proprietary trades. In addition the said firm has obtained SEBI registration as sub broker with it where they were multiple members of DSE and NSE.

I find that the member has admitted that the sub broker M/s Share Plaza was not registered with SEBI for DSE operations at the time of inspection. It is amply clear since the registration is dated 27.02.2001. However, the contention that there was ambiguity as to whether separate registration was required for carrying on trades on DSE and so there was delay in obtaining of separate registration is not acceptable and further that it had been dealing only proprietary trades is not acceptable as separate registration was later obtained. The member had been trading as DSE member since 1990 and got his membership of NSE in 1995. It should have known the requirements of Rules, Regulations and Bye Laws of the stock exchange as well as SEBI directives. Ignorance of law is no excuse hence the member contention is rejected. Therefore the member had violated the provisions of SEBI Circular No. SMD-1/3118 dated 27.12.93, SMD/MDP/Cir/043/96 dated 05.08.96 and DSE circular dated 13.08.96 as well as provisions of para A(5) of Code of Conduct in Schedule II under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

6.7 With regard to the allegation that there was non maintenance of client data base the member submitted that it had been maintaining the client broker agreement and client data base in all the cases. During inspection all the copies of the client broker agreement and client data base were produced. Since Mr. L S Darbari was not their client on DSE and did not carry even a

single transaction on DSE as such. Hence, a client broker agreement in case of L S Darbari is not required.

I find that during the inspection the member had stated that the said form was not traceable at the time of inspection and the same was made locatable later on. The possibility of the form being obtained subsequently cannot be ruled out. However, as there is nothing contrary on record to prove it otherwise a benefit of doubt can be given to the member on this count.

7. In the light of the above findings I am of the view that the violations committed by the member are small and technical except for the violation that the member had dealt with unregistered sub broker. Therefore, I am of the considered view that a token penalty of suspension of certificate of the member for a period of 15 days would suffice in the present case so as to serve as a serious warning to be careful in future.
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 NAM Securities Ltd., member, DSE for a period of fifteen days. This order shall come into force after 3 weeks from the date of the order.

	A. K. BATRA
Date : 05.12.2003	WHOLE TIME MEMBER
Place : MUMBAI	SECURITIES AND EXCHANGE BOARD OF INDIA