

ORDER UNDER REGULATION 13 (4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/s D. AGARWAL & CO., MEMBER, LUDHIANA STOCK EXCHANGE.

1. M/s D Agarwal & Co. is registered with SEBI as a stock broker (hereinafter referred to as 'the member') bearing SEBI registration no. INB 120318311 and is a member of Ludhiana Stock Exchange (LSE). The member is a proprietary concern and Smt. Deepti Agarwal is the proprietor of the said member. An inspection of books of accounts, documents and other records of the member was conducted on 16.01.2001. 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 05.03.2001 advising the member to give its comments, if any. The member vide letter dated 20.04.01 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 22.01.2003 to enquire into allegations of violations against the member, inter alia, of:
 - (a) Violation of section 12 of Securities and Exchange Board of India Act, 1992
 - (b) Violation of Rule 3 & 4 (b) of the SEBI (Stock Brokers and Sub-Brokers) Rules 1992.
 - (c) Violation of Clause A (5) & B (1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers & Sub brokers) Regulations, 1992
 - (d) Violation of the Directives issued by SEBI vide circular nos. SMD/MDP/CIR/043/96 dated 05/08/96, SMD/POLICY/IECG/1-97 dated 11/02/97, SMD/POLICY/CIR/5-97 dated 11/04/97, SMD/(B)/104/22775/93 dated 29/10/93, SMD/SED/CIR/93/23321 dated 18/11/93, SMD/POLICY/CIR-3/98 dated 16/01/98, SMDRP/POLICY/CIR/32-99 dated 14/09/99, SMD/RCG/CIR/(BKG)/293/95 dated 14/03/95, SMDRP/POLICY/CIR-11/99 dated 07/05/99;
 - (e) Rules, regulations, bye-laws and directives of LSE as amended from time to time.
3. The Enquiry Officer submitted her report on 18.07.2003. The Enquiry Officer taking into account the irregularities that have been established recommended suspension of certificate of registration of the member for a period of 1 month. The Enquiry Officer held the member guilty of the following violations:
 - (a) Irregularities in issuance of Contract Notes. The Contract Notes did not contain pre-printed serial number. Order time not mentioned on Contract Notes.
 - (b) Non-segregation of own funds vis-à-vis clients funds
 - (c) Dealing as unregistered sub-broker
 - (d) Non-maintenance of client database
 - (e) Transaction with clients on principal to principal basis
 - (f) Non-reporting of off the floor transactions
4. Consequent upon above, 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 29.07.2003 was issued to the member to show cause as to why the penalty as recommended by the enquiry officer should not be imposed on them. The member was advised to submit his reply, if any, within 15 days of the receipt of the show cause notice failing which it would be presumed that the member 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 19.08.2003 replied to the show cause notice dated 29.07.2003. The member made the following submissions:
 - (a) That as per the guidelines of SEBI, a Stock Broker cannot do any other business other than securities business. In case registration is suspended for one month, it would be left with no source of Income during the said period and would be deprived off its right to cash.
 - (b) That since it has already started complying with all the violations observed by SEBI Inspection team, the member requested to take a lenient view.

The member did not seek any personal hearing while submitting as above.
5. Subsequently, on not being satisfied with the reply, another show cause notice dated 29.10.03 was issued to the member advising it that in terms of the provisions contained in Regulation 13(2), Chairman or Member of SEBI Board is not bound by the recommendation of the Enquiry Officer and he may enhance the penalty if so warranted on merits of the case. The member replied vide letter dated 20.11.2003 reiterating its earlier submissions that "as per the guidelines of SEBI, a Stock Broker cannot do any other business other than securities business. In case registration is suspended for one month, it would be left with no source of Income during the said period and would be deprived off its right to earn".
6. I have carefully examined the facts and circumstances of the case. I have also carefully considered the Enquiry Report, the submissions made by the member vide letter dated 19.08.2003 and 20.11.2003. I find that adequate opportunities were given to the member to put forward its case in adherence to the principles of natural justice. On appreciating the facts and circumstances of the case the findings are as under:

6.1 With respect to irregularities in issuance of contract notes pertaining to pre-printed serial numbers not found on the contract notes and order time not mentioned on the contract notes, I find that the member admitted the said

irregularities before the enquiry officer. Therefore, the member had violated SEBI directives issued vide Circular No.SMD/MDP/CIR/043/96 dated 5.8.96 and Circular No. SMD/POLICY/IECG/1-97 dated 11.2.97 as well as provisions of 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 and directives of LSE issued vide notice dated 10.4.98.

6.2 With reference to non segregation of own funds vis-à-vis client funds, I find that the member admitted that strict segregation between firms money and clients money was not maintained till September 2000. Therefore, the member had violated LSE byelaw 225(d)(l) as well as Rule 4(b) of SEBI (Stock broker and sub broker) Rules, 1992 and provisions of Clause A(5) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers and sub brokers) Regulations, 1992 and Circular No. SMD/SED/CIR/93/2321 dated 18/11/93.

Rule 4 stipulates conditions for grant of certificate to stock-broker. Clause (b) of the said rule states that the stock broker shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member

3. Regarding dealing as unregistered sub broker, the member admitted that they did not seek registration as a sub broker of the members of other stock exchanges to whom it had dealt and have now stopped doing transactions through members of other exchanges after getting the firm registered with SEBI as sub broker of LSE Securities Ltd. Therefore, I find that the member by not registering as sub broker violated provisions of Section 12 of SEBI Act, Rule 3 of SEBI (Stock brokers and sub brokers) Rules, 1992 and directives of SEBI issued vide Circular No.SMD/POLICY/Cir-3/98 dated 16.1.98 as well as provisions of Clause C(4) of Code of Conduct of sub brokers specified in Schedule II read with Regulation 15 of SEBI (Stock brokers & sub brokers) Regulations, 1992 and Clause A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers & sub brokers) Regulations, 1992.

Section 12 of the SEBI Act specifies as under:

12. (1) No stock-broker, sub- broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.

Rule 3 of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 specifies as under:

3. No stock-broker or sub-broker shall buy, sell, deal in securities, unless he holds a certificate granted by the Board under the regulations:

Provided that such person may continue to buy, sell or deal in securities if he has made an application for such registration till the disposal of such application.

Circular No.SMD/POLICY/Cir-3/98 dated 16.1.98 stipulates, inter-alia, that "it is necessary for any person who acts as sub-broker to hold Certificate of Registration as a sub-broker granted by SEBI and accordingly the members of Stock Exchanges who also act as sub-brokers should hold a separate registration with SEBI as a sub-broker. However, presently some of the members of exchanges who are acting as sub-brokers through the members of other exchanges have not obtained separate registration from SEBI to act as sub-brokers. In view of the above It is advised that the members of the stock exchanges who are acting as sub-brokers through the members of other exchanges should obtain Certificate of Registration from SEBI to act as a sub-broker under SEBI (Stock Brokers and Sub-Brokers) Rules & Regulations, 1992".

Clause C (4) of the code of conduct for sub-brokers stipulates that "a sub-broker shall execute an agreement or contract with his affiliating brokers which would clearly specify the rights and obligations of the sub-broker and the principal broker"

Clause A(5) of the code of conduct for the stock brokers specifies that 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.

6.4 With reference to non maintenance of client database for some clients, I find that the member admitted that client registration forms were not obtained in all the cases. Therefore, the member violated directions issued by SEBI vide Circular No.SMD/POLICY/IECG/1-97 dated 11.2.97, SMD/POLICY/Cir/5-97 dated 11.4.97 and LSE directions issued through notice dated 17.12.98 as well as Clause A(5) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers & sub brokers) Regulations, 1992.

6.5 Regarding transaction with clients on principal to principal basis, the member submitted that they are taking consent of each client for issuing Form B. I find that the member is following a system which lacks transparency where the investor is not sure that the order is executed at the best possible price and therefore the member by not issuing the contract note in the appropriate form i.e. Form A violated directives issued by SEBI vide Circular No. SMD(B)/104/22775/93 dated 29.10.93 as well as provisions of Clause A(5) of Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock brokers & Sub brokers) Regulations, 1992.

6.6 Regarding conducting of off the floor transaction by the member, I find that the total turnover (in crores) of the member during the year 1999-2000 and 2000-2001 is as follows:

Year	Off the Floor Transaction Re to the exchange (Rs. In crores)
1999-2000	681.67
2000-01 (till 31.12.2000)	11.66

From the Enquiry Report, I find that the member entered into the following cross deals:

Sr. No.	Date	Scrip	Qty	Sold by	Bought by
1.	1.12.99	Clariant	25	Avinash Gupta @ 225	Anupam Agg. @ 226.00
2.	1.12.99	Novartis India	35	Avinash Gupta @ 117	Anupam Agg. @ 1180.00
3.	6.4.99	Asian Paints	10	Avinash Gupta @ 229	Anupam Agg@ 230.00
4.	6.4.99	Gujarat Ambuja	100	Avinash Gupta @ 288	Anupam Agg @ 290.00
5.	6.4.99	Proctor & Gamble	25	Avinash gupta @ 895	Anupam Agg @ 900.0
6.	6.4.99	RIL	250	Avinash Gupta @ 124	Anupam Agg @ 125.00

I find that the member carried out lot of business with its clients on principal to principal basis. Some instances are tabulated below:

Date	Client	Scrip	Qty.
4.8.2000	Pushp Marketing Co. Ltd.	Zee Telefilms	300
3.8.2000	Anita Singla	Silverline	1000
13.1.2000	Jagdish Chandar Mangal	HLL	100
12.10.99	Sanjay Jain	Gramophone Co. Ltd.	500
7.7.99	Sukanya Ripal	Tata SSL	500
24.7.2000	Geena Singla	Silverline	1050
15.2.2000	Avinash Gupta	SBI	1500
15.2.2000	Aman Bansal (HUF)	SBI	4700
13.1.2000	Krishan Kr. Mangal	HLL	100
4.8.2000	Krishan Chand	Zee Telefilms	1500
4.8.2000	Sita Devi	Zee Telefilms	2550

6.6.1 I find that the member admitted the above instances. SEBI vide Circular dated 14.09.1999 banned all negotiated deals, cross deals etc. which include Off-the-floor transactions also. In the said circular it had been notified that all negotiated deals shall be permitted only if the said deals are executed on the screens of the Exchange i.e. the price and order match mechanism of the Exchange like any other normal trade.

6.6.2 The said decision was taken as negotiated deals/cross deals are devoid of transparency requirements. They also do not contribute to price discovery at the stock exchange depriving the investors of the benefit of best price. Therefore, such deals militate against basic principals of stock exchange mechanism which is meant to bring large number of buyers and sellers together in a transparent manner. It is apparent from the above that the off the floor transactions were not put in the system of the Exchange by the member. This is in violation of SEBI Circular dated 14.09.1999. This kind of off the floor transactions tamper with price discovery mechanism of the exchange and such trading leads to interference with the fair and smooth functioning of the market. Such deals are also in violation of item 5 of clause A of Code of Conduct read with regulation 7 of Broker Regulations.

1. I have no hesitation to agree with the findings of the Enquiry Officer. The above findings against the member, which include indulging in off the floor transactions and dealing as unregistered sub-broker cannot be taken lightly particularly when the same are in the nature of disturbing the equilibrium of the market and hindering the interest of investors and the development of capital market.
2. 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 D. Agarwal & Co., for a period of one month.
3. This order shall come into force after 3 weeks from the date of the order.

Date : 17.12.03

Place : MUMBAI

A. K. BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

