

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

ORDER UNDER REGULATION 13 OF THE 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 SMART INVESTMENT CONSULTANTS, MEMBER, NATIONAL STOCK EXCHANGE AND STOCK BROKER REGISTERED WITH SEBI.

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- 1.0 M/s Smart Investment Consultants (hereinafter referred to as “the 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 230660824.
- 2.0 NSE, vide its letter dated 19.08.2003, informed SEBI that it expelled the broker as a member on 01.05.2003 for its failure to meet the capital requirements of continued admittance to the trading/clearing membership of the Exchange/Clearing Corporation and thereupon the broker ceased to be a member of NSE w.e.f. 01.05.2003.
- 2.1 In view of the above, SEBI, vide order dated 09.09.2003, 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.
- 2.2 The Enquiry Officer, acting in accordance with regulation 16 (2) of the Enquiry Regulations issued show cause notice dated 19.09.2003 to the broker advising it to show cause as to why certificate of registration

granted to it as a stock broker should not be cancelled. The broker vide letter dated 09.10.2003 replied to the said show cause notice. Thereafter, on 31.10.2003, the Enquiry Officer submitted his report recommending cancellation of the certificate of registration granted to the said broker, on finding the broker not being a member of the stock exchange.

2.3 I note that adequate opportunity had been given to the said broker in terms of regulation 16 of the Enquiry Regulations. Therefore, I am satisfied that the requirements of natural justice have been fulfilled and I proceed further in the matter.

3.0 I have considered facts of the matter, report of the Enquiry Officer and other material on record. The following issue arises for consideration:

3.1 Whether, the said broker violated the conditions of registration.

4.0 I note that NSE vide its letter dated 19.08.2003, informed SEBI that it expelled the broker as a member on 01.05.2003 for its failure to meet the capital requirements of continued admittance to the trading/clearing membership of the Exchange/Clearing Corporation and thereupon the broker ceased to be a member of NSE w.e.f. 01.05.2003.

5.0 Further, I also note that the broker vide letter dated 09.10.2003, in reply to the show cause notice dated 19.09.2003 issued by the Enquiry Officer, confirmed that it had been expelled from the NSE w.e.f. 01.05.2003 and submitted that it has closed down its business and it has no objection for cancellation of certificate of registration by SEBI.

5.1.1 In this regard, I note that Rule 4 of the SEBI (Stock brokers and Sub Brokers) Rules, 1992 (hereinafter referred to as “the Brokers Rules”) states as under:

“Conditions for grant of certificate to stock broker

4. The Board may grant a certificate to a stock broker subject to the following conditions, namely :-

- (a) he holds the membership of any stock exchange;
- (b)
- (c)
- (d)
- (e)”

5.1.2 I note that the Enquiry Officer in his report has found that the member ceased to be a member of the NSE with effect from 1st May, 2003 and hence its certificate of registration is liable to be cancelled.

5.1.3 I agree with the findings of the Enquiry Officer and find that the said broker violated one of the conditions subject to which registration has been granted to it viz. that it shall be a member of a recognized stock exchange.

5.2 I note that Regulation 25 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 provides as under :

Liability for action in case of default

25. A stock broker who –

- (a) fails to comply with any conditions subject to which registration has been granted;
- (b) contravenes any of the provisions of the Act, rules or regulations;
- (c)
- (d)
- (e)”

shall be dealt with in the manner provided under the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

I therefore find that the said broker has failed to comply with basic requirement of being a member of a stock exchange, basing on which the registration is granted. Therefore, the registration of the broker is liable to be cancelled.

- 5.3 I further note that regulation 13(1) (b) of Enquiry Regulations 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. As per clause (b) of Sub-regulation (6) of Regulation 13 of the Enquiry Regulations, the Board or Member may impose major penalty where the intermediary is guilty of violation of conditions of registration.

6.0 Therefore, in exercise of powers under Section 19 of the SEBI Act read with Regulation 16(5) of the Enquiry Regulations, I hereby cancel the certificate of registration bearing No. INB 230660824 granted to M/s Smart Investment Consultants. This order shall come into effect immediately.

DATE: 14.01.2004
PLACE: MUMBAI

T M NAGARAJAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA