

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 DISHA CAPITAL SERVICES LTD., MEMBER, NATIONAL STOCK EXCHANGE AND STOCK BROKER REGISTERED WITH SEBI.

CO\190\MIRSD\01\2004

1. M/s Disha Capital Services Ltd. (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 230877738.
2. NSE, vide its letter dated 09.08.2002, informed SEBI that the broker was declared defaulter by it on 01.04.02 and the cessation of membership of the broker came into effect from 01.04.02 due to the reason of failure by the broker in meeting the capital requirements for continued admittance to the trading/clearing membership of the Exchange/Clearing Corporation.
 1. In view of the above, SEBI, vide order dated 28.02.2003, 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. The Enquiry Officer, acting in accordance with regulation 16 (2) of the Enquiry Regulations issued show cause notice dated 21.08.2003 to the said 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 replied vide letter dated 23.09.2003. Thereafter, on 07.11.2003, 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.
 3. I note that adequate opportunity had been given to the 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. I note that NSE vide its letter dated 09.08.2002 informed SEBI that the broker was declared defaulter by it on 01.04.02 and the cessation of membership of the broker came into effect from 01.04.02 due to the reason of failure by the broker in meeting the capital requirements for continued admittance to the trading/clearing membership of the Exchange/Clearing Corporation. On perusal of the said details, I note that the said broker ceased to be a member of NSE with effect from 1.4.02.
4. I have also noted that the broker vide letter dated 23.09.2003, in reply to the show cause notice dated 21.08.03 issued by the Enquiry Officer, submitted that it was expelled from the membership of the Exchange on account of non-payment of Rs. 13.15 lakhs being the deficit amount in the base minimum capital required to be maintained at the Exchange. The broker further submitted that it had sent a proposal vide its letter dated 3.5.02 and 14.5.02 stating that it is in a position to make good the deficit in the base minimum capital and requested for the revocation of the expulsion from the membership of NSE and also that the Exchange in the meeting held on 4.01.03 had agreed to reinstate the broker subject to certain conditions.
5. I find that NSE vide letter 23.5.2002, in response to the broker's letter dated 14.05.02, informed the broker that it had till then received two claims from the investors against the broker one from Major S K Singh for non-receipt of securities of Rs. 1.75 lakhs and another one from M/s Kartik Share Traders for non-receipt of funds to the extent of 42.15 lakhs. NSE advised the broker to resolve these investor's claims before considering its request further. I find no evidence to suggest that the broker's expulsion was revoked by NSE and it appears that NSE did not accede to the request of the broker to consider the revocation of the expulsion. This in result would mean that the broker is no longer a member of NSE since 1.4.02.
6. I have considered facts of the matter, report of the Enquiry Officer and other material on record. The following issue arises for consideration:

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

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

1. 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."

1. I note that the Enquiry Officer in his report found that the broker ceased to be a member of NSE with effect from 1st April, 2002 and hence its certificate of registration is liable to be cancelled.
2. 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.

1. 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

1. 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.

1. 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.

1. Therefore, in exercise of powers under Section 4(3) of the SEBI Act read with Regulation 16(5) of the Enquiry Regulations, I hereby cancel the certificate of registration bearing No. INB 230877738 granted to M/s Disha Capital Services Ltd. This order shall come into effect immediately.

Date: 16.01.04

Place: Mumbai

G.N. BAJPAI

Chairman

Securities and Exchange Board of India