

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 SHRI MENON DA COSTA, MEMBER, INTER CONNECTED STOCK EXCHANGE OF INDIA LTD. AND STOCK BROKER REGISTERED WITH SEBI.

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- 1.0 Shri Menon Da Costa (Trade Name: Menon Stock Investments) (hereinafter referred to as “the broker”) was a member of the Interconnected Stock Exchange of India Ltd. (hereinafter referred to as “ISE”) and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) under certificate of registration No. INB 241124719.
- 2.0 ISE, vide its letter dated 29.05.2003, informed SEBI that the Board of Directors of ISE in its meeting held on May 17, 2003 had declared the broker as defaulter for his failure to meet his pay-in obligations to ISE Securities and Services Ltd. (ISS), a subsidiary company of ISE. Accordingly, the broker ceased to be a dealer of ISE w.e.f 17.05.2003.
- 2.1 In view of the above, SEBI, vide order dated 25.06.2003, 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 26.09.2003 to the

broker advising him to show cause as to why certificate of registration granted to him as a stock broker should not be cancelled. The broker vide letter dated 23.10.2003 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 ISE, vide its letter dated 29.05.2003, informed SEBI that the Board of Directors of ISE in its meeting held on May 17, 2003 had declared Shri Menon Da Costa, as defaulter for his failure to meet his pay-in obligations to ISE Securities and Services Ltd. (ISS), a subsidiary company of ISE. Accordingly, Shri Menon Da Costa ceased to be a dealer of ISE w.e.f 17.05.2003.

5.0 Further, I also note that the broker vide letter dated 23.10.2003, in reply to the show cause notice dated 26.09.2003 issued by the Enquiry Officer, submitted as follows:

- 5.1.1 That he has been prompt in doing his duties as a stock broker till date and has cleared all his dues as on 12.6.2001 including settlement no.2001005.
- 5.1.2 That he had addressed a letter dated 19.3.2003 to the Secretary of the Defaults Committee, ISE, referring to notice given in the newspaper 'Herald' dated 13.3.2003. The broker submitted that in the said letter, he had given explanation in respect of any outstanding dues alleged by the Secretary of the Defaults Committee. The broker further stated that by said publication ISE tarnished his image in public and destroyed the goodwill of his business due to which he incurred loss in his business.
- 5.1.3 That there was a position in ALBM i.e. (in settlement No.2001006) 93150 shares of Satyam Computers, he was asked by ISS to provide a margin for the same and he sold some of his securities and maintained the margin for the same.
- 5.1.4 That when he put an order for selling the said Satyam Computers shares, the said order was rejected by the system because the ISS staff have suspended his terminal. The broker submitted that If the ISS had allowed him to book at least some profits, the same profits would have been kept by him as additional margins for the Satyam Computers.
- 5.1.5 That when he contacted Mr. Ajay Deshpande, Mr. H.B.Mohanty, Mr. V. Shankar of ISE to activate his terminal, they failed to do so, as they were more interested in allowing more losses to be incurred by him. The broker alleged that ISS staff is involved in insider trading.
- 5.1.6 That he had received a letter from ISS office dated 7.11.2002 addressed by Mr. H.B. Mohanty that he has to clear dues amounting to Rs.2,77,598.04. The broker

submitted that he did not understand as to how the said figure was arrived at.

5.1.7 That the points discussed with the ISE staff on 23.4.2001 have been fabricated by them and they have invoked his bank guarantee of Rs.1,50,000/- without having proper evidence.

5.1.8 That he had issued a draft in advance in favour of MTNL, Mumbai for the lease line activation for a period of one year which was delayed by six months and stated that ISS kept his terminal in abeyance from 14.2.2001 to 10.3.2001 for their own personal interest.

5.1.9 That he had invested more than 25 lakhs in ISE-ISS for the year 1999-2000, 2000-2001, 2001-2002, 2002-2003. The broker further alleged that the ISE staff had given him threatening calls that they will put him behind bars if he didn't pay them ALBM dues.

5.1.10 That the Defaults Committee had been misguided by the ISE staff with fabricated documents which resulted in them taking a decision to declare him a defaulter.

5.1.11 The broker denied that any outstanding amount is due from him and stated that Instead ISS owed him an amount of Rs.6,00,000 with interest for the losses of ALBM position for Satyam Computers.

5.1.12 The broker requested for a personal hearing.

6.0 I have considered the submissions of the broker. I find that it is for the broker to contest the action of ISE, if he so desires, in an appropriate forum. The broker has not indicated in his reply that any such action against ISE is pending and also has not disputed with the fact that he had been expelled by ISE w.e.f 17.05.2003. Further, I find that the proceedings against the broker are summary proceedings under Chapter

III of the Enquiry Regulations and the regulations do not provide for any personal hearing. The written submissions are sufficient opportunity for the broker to make out his case in summary proceedings.

6.1.1 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)”

6.1.2 I note that the Enquiry Officer in his report has found that the broker ceased to be a member of ISE with effect from 17th May, 2003 and hence his certificate of registration is liable to be cancelled.

6.1.3 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 him viz. that he shall be a member of a recognized stock exchange.

6.2 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.

6.3 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.

- 7.0 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 241124719 granted to Shri Menon Da Costa (Trade Name: Menon Stock Investments). This order shall come into effect immediately.

DATE: 16.01.04
PLACE: MUMBAI

G N BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA