

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 GOPALDAS GOENKA (TRADE NAME : SURYASHRI SECURITIES), MEMBER, INTER CONNECTED STOCK EXCHANGE OF INDIA LTD. AND STOCK BROKER REGISTERED WITH SEBI.

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- 1.0 Shri Gopaldas Goenka (Trade Name : Suryashri Securities) (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 241101519.
- 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 24.10.2003 replied to the said show cause notice. Thereafter, on 28.11.2003, the Enquiry Officer submitted his report recommending cancellation of the certificate of registration granted to the 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 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.

5.0 The broker vide letter dated 24.10.2003, in reply to the show cause notice dated 26.09.2003 issued by the Enquiry Officer, submitted as follows:

5.1.1 That due to bad market conditions in share market he was not able to collect his money from his customers, he had applied to ISE for sale / transfer of our Membership Card.

As per their advice he had advertised two times in Economic Times for sale of his Membership Card.

5.1.2 That he had received letter from ISE dated 22.1.2003 for recovery of outstanding amount due Rs. 57,199.67 and immediately he sent his reply to them on 27.1.2003. The broker stated that this due amount also was standing due to ISE's fault, after checking their statements he claimed bills which was not given to him and then he debited his party.

5.1.3 The broker further submitted that he had accepted ISE's dues and to clear their dues, he had requested them to adjust the amount against his deposit with them and if that is not possible they can adjust against his FD with Vysya Bank which was at maturity stage at that time. The broker alleged that even after such request made more than 2-3 times by letter and phone, they created atmosphere as if he is a defaulter and added him in defaulter list.

6.0 I have considered the submissions of the broker. I find that the broker did not object to the proposed cancellation of certificate of registration. He only requested for help in transferring his membership card. As on 17.05.03, the broker ceased to be a dealer of ISE and consequently not eligible for holding registration with SEBI. I find that the broker has also not disputed the fact that he had been expelled by ISE w.e.f 17.05.2003.

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 241101519 granted to Shri Gopaldas Goenka (Trade Name : Suryashri Securities). This order shall come into effect immediately.

DATE: 16th January 2004
PLACE: MUMBAI

G N BAJPAI
CHAIRMAN
SECURITIES AND EXCHANGE BOARD OF INDIA

