

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 in the matter of enquiry against M K Jain, Member, Vadodara Stock Exchange

1.0 Background

- 1.1 M K Jain (Trade Name: M/s. M.K. Jain & Co.) (hereinafter referred to as “the said broker”) is a member of the Vadodara Stock Exchange (hereinafter referred to as “the exchange”) and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) under certificate of registration No.INB190401910.
- 1.2 An inspection of the books of account and other records of the said broker was conducted by SEBI in February 1997. In the course of inspection, the following irregularities were noted:
 - 1.2.1 Irregularities in issuance of contract notes
 - 1.2.2 Misuse of the exchange mechanism for guaranteeing payment in off-the-market transactions
 - 1.2.3 Non-reporting of off-the-floor transactions to the exchange
- 1.3 The findings of the inspection were communicated to the said broker on February 2, 1998 and SEBI received his reply dated March 05, 1998. Since the reply of the said broker was not found to be satisfactory, the then Chairman of SEBI vide order dated 22.4.1998, directed that an Enquiry be conducted into the alleged violations by the said broker.

2.0 Enquiry Proceedings

2.1 The Enquiry Officer issued a show cause notice to the said broker on 7.8.1998 to which the said broker responded vide his letter dated 23.9.1998. The said broker submitted that the exchange had suspended his membership and had wrongfully declared him to be a defaulter. The said broker also requested that requirement of personal hearing may be dispensed with. The Enquiry Officer submitted his report to SEBI on 14.12.1998 recommending that the certificate of registration of the said broker may be suspended for a period of 6 months. Thereafter, in terms of Regulation 29(1) of the SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 (hereinafter referred to as "the broker regulations") a show cause notice dated 22/12/98 was issued to the said broker. The said broker vide his letter dated 8/1/1999 replied to the show cause notice and sought an opportunity for personal hearing. Accordingly, the then Chairman of SEBI granted an opportunity of hearing on 16.2.1999. In the course of hearing, the said broker submitted that he could not respond to the show cause notice since he did not have access to his office where he maintained his records. He also informed the Chairman that the Hon'ble High Court of Gujarat vide order dated 18.12.1998 had granted him access to his office records and therefore pleaded that he be given another opportunity to present his case. The then Chairman acceded to his request and remanded the matter to the enquiry officer.

2.2 Pursuant to the same, the Enquiry Officer issued a fresh show cause notice dated 11.7.99 to the said broker to which he replied vide letter dated 5.8.1999. Further, the Enquiry Officer also granted an opportunity of personal hearing to the said broker. In the course

of hearing, the said broker submitted that VSE had declared him as a defaulter on 24.8.1998 and that thereafter his office located in the exchange premises was sealed. He further submitted that he contested the matter in a court of law which permitted him the use of his office; the exchange still did not permit him the use of his office and therefore he approached the High Court of Gujarat, which directed VSE to give him an opportunity of hearing in respect of their show cause notice dated 17.8.1998 and that any order to be passed on the basis of the said show cause notice should be placed before the court. He submitted that the governing board of VSE gave him an opportunity of hearing on 10.4.1999 but is yet to pass an order. He submitted that since the matter was sub-judice time of two months may be given to file a detailed reply in the matter.

- 2.3 The Enquiry Officer considered the submissions of the said broker and in his report dated 28.2.2001, recommended that the registration of the said broker may be cancelled after the formalities in respect of declaration of default of the said member are completed, and provided that the said broker is not re-admitted to the membership of the exchange within a period of 6 months from date of declaration of default.

3.0 Show cause notice

- 3.1 Show cause notice was issued to the said broker on 19.3.2001. In his reply dated 26.4.2001, the said broker submitted that he was unable to produce any further documents since his office remained sealed. He also submitted that he was unable to appear for a personal hearing before the Chairman since he had met with an accident and was temporarily bed ridden. He further stated that he

has prayed before the Hon'ble High Court of Gujarat to direct that the Committee appointed by it vide order dated 7.2.2000 (hereinafter referred to as "the committee") and which after hearing him submitted its report on 2.1.2001, to re-hear the matter of his being declared as defaulter and that no action may be taken until disposal of the matter by the High Court. Further on 8.7.2001 the said broker forwarded copy of the order of the Gujarat High Court dated 22.6.2001 directing the Committee to re-hear the said broker on points including the validity of the decision of the Board of the exchange declaring the said broker as a defaulter. In view of the above, he requested that his membership may not be cancelled.

3.2 Vide letter dated 18.5.2002, VSE forwarded a copy of the order dated 12.4.2002 of the High Court of Gujarat in the above matter rejecting the application made by the said broker on the ground that it was not necessary for the court to go into the merits of the case and that there was no case to review and recall the order dated 22.6.2001. Thereafter, an opportunity of personal hearing on 16.9.2002 was granted to the said broker but vide letter dated 9.9.2002, the said broker requested for a postponement. Accordingly, hearing was postponed to 26.10.2002.

3.3 The said broker appeared before me on 26.10.2002 and made submissions. He was also given 7 days time to make further submissions and he made such submissions on 30.10.2002. In his submissions, the said broker submitted that :

3.3.1 The order declaring him defaulter be revoked and he may be permitted to withdraw from the membership of VSE.

3.3.2 He was ready to pay the amount due from him to the exchange after deducting amounts that have been debited to him wrongfully. The amount payable by him to VSE came to Rs.2,22,500/-.

- 3.3.3 The amount of the deposits retained by the exchange such as deposit in cash, deposit on account of sub broker and deposit for office may be adjusted from the dues and after such adjustment the net amount payable by him to the stock exchange would be Rs.15,965/-. He was ready to pay this amount.
- 3.3.4 The stock exchange may be directed to deliver all shares due to him which are lying with the exchange or which have been transferred in their name.
- 3.3.5 His belongings including furniture in the Office which has been sealed by the stock exchange may be released to him.

4.0 Consideration of issues

I have considered the facts of the matter, the submissions made by the said broker and note that the following issues arise for consideration:

- 4.1 Whether the said broker has ceased to be a member of VSE and thereby violated one of the conditions of registration.
- 4.1.1 I note that the Governing Board of VSE has declared the said broker as defaulter in its meeting held on 24.8.1998. This was communicated to the said broker vide letter dated 24.8.1998. Thereafter, vide letter dated 1.4.1999 VSE informed the said broker that as per the directions of the High Court of Gujarat in appeal from order no.97/99, he may appear before the Governing Board on 10.4.1999. Accordingly, the said broker appeared before the Governing Board and made submissions and thereafter the Governing Board vide order dated 10.4.99 confirmed their earlier order dated 24.8.98.

4.1.2 The said broker filed a Civil Application No.1336/1999 challenging the findings of the counsel of management and the Hon'ble High Court in its Order dated 7.2.2000 constituted a committee to hear the matter again. The said committee consisted of an Officer of SEBI, one retired District Judge and an Executive Director of the stock exchange. The committee in its order dated 2.1.2001 came to the finding that the said broker had failed to make payment of his obligation in time, that his cheques were dishonoured and that he had not paid sufficient amounts in time towards settlement of his liabilities, therefore the committee was of the opinion that the said broker is not entitled to any of the reliefs claimed by him.

4.1.3 The said broker preferred a Civil Application No.150/2001 against the findings of the committee and the Hon'ble High Court vide order dated 22.6.2001 directed that :

4.1.3.1 The committee which heard the said broker shall re-hear him on the points mentioned in the application including the question of validity of the decision of the Board declaring him to be a defaulter.

4.1.3.2 The committee shall decide the dispute afresh and it will be open to them to arrive at the same conclusion after hearing the same broker.

The committee after re-hearing the said broker vide order dated 21.12.2001 confirmed the declaration of the said broker as a defaulter to be valid and legal declaration.

4.1.4 The said broker filed a Civil Application No.299/2002 challenging the decision of the committee but the same was

rejected by the Hon'ble High Court vide order dated 12.4.2002.

4.1.5 Thereafter, the said broker appeared for a personal hearing on 28.10.2002 and submitted that he would like to withdraw from the membership of VSE and that the order declaring him as a defaulter may be revoked. He also submitted that he was ready to pay the amounts due from him to the exchange after adjusting the amounts payable to the stock exchange. The said letter was forwarded to VSE for their consideration.

4.1.6 VSE, vide their letter dated 26.8.2003 informed that the request of the said broker had been considered by the Governing Board in its meetings held on 19.7.2003 and 23.8.2003 and it was decided not to readmit the said broker as a member of the exchange. The said broker was also informed of the decision vide letter dated 26.8.2003.

4.1.7 In view of the above, I find that the said broker having been declared as a defaulter and not having been re-admitted within a period of 6 months, has ceased to be a member of VSE. Therefore, the said broker has violated one of the conditions of registration viz. Rule 4(a) of the SEBI (Stock Brokers and Sub Brokers) Rules, 1992 (hereinafter referred to as "the broker rules") in terms of which he shall hold the membership of a stock exchange.

4.1.8 I have considered the submissions dated 30.12.2002 as also the requests of the broker which are found to be beyond the scope of these proceedings.

4.2 In view of the finding that the said broker has violated one of the conditions of registration, he is liable for action in terms of Regulation 25 of the Broker Regulations which 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

shall be dealt with in the manner provided under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2003.

4.3 Regulation 13(6) (b) of the Enquiry Regulations provides that a major penalty such as cancellation of certificate of registration may be imposed where the intermediary is guilty of violation of conditions of registration.

5.0 Order

5.1 Therefore, I, in exercise of powers conferred on me under Section 4(3) of the SEBI Act read with Regulation 13 (4) of the enquiry regulations, do hereby cancel the certificate of registration bearing No. INB190401910 granted to Shri M.K. Jain.

This order shall come into effect from 21 days of the date of the order.

Date : January 30, 2004
Place: Mumbai

G.N. BAJPAI
Chairman
Securities and Exchange Board of India