

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Section 4(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 13 of the of Securities and Exchange Board of India (Procedure for holding enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 in the matter of enquiry against Ashok Makker, member Ludhiana Stock Exchange.

CO/211/MRD/03/2004

1.0 Background

- 1.1 Shri Ashok Makker (hereinafter referred to as the said broker) is a member of Ludhiana Stock Exchange (hereinafter referred to as LSE) and a stock broker registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) under certificate of registration No. INB120593218.
- 1.2 An inspection of the books of accounts and other records of the said broker was ordered by SEBI vide its order dated 21.12.2000. The Northern Regional Office of SEBI at Delhi (hereinafter referred to as NRO) vide their letter dated 22.12.2000 advised the said broker to furnish information relating to the inspection and also informed that the inspection would be conducted on 19.1.2001. The said broker vide his letter dated 3.1.2001 informed that on account of ill-health, he would not be able to appear for inspection. Subsequently, the said broker appeared before the inspecting officials on 18.1.2001 and informed that he was unable to obtain the books for inspection and that he would do so at the earliest. Thereafter, NRO, vide letter dated 6.2.2001 informed the said broker that the inspection would be carried out on 26.2.2001. The said broker replied vide letter dated 17.2.2001 stating that his doctor had advised rest for 2 months and that another date be given in April or May, 2001. The said

broker vide another letter dated **17.7.2001** informed that his trading terminal had been deactivated from 7.6.1999 onwards.

NRO, vide letter dated 2.8.2001 advised him to submit pre-inspection information relating to the inspection. The said broker did not respond to the said letter and did not submit the documents / records sought by SEBI.

1.3 It was alleged that the submissions of the said broker vide letter dated 17.7.2001 were factually incorrect. As per information available with SEBI, the trading terminal of the said broker, although deactivated on 7.6.1999, was reactivated on 23.9.2000. Thereafter, it was again deactivated on 5.3.2001. Further, it was also noted that the said broker had not been redressing investor grievances and had also defaulted in payment of margins and pay-in obligations to LSE.

1.4 In view of the above, vide Order dated 31.5.2002, an Enquiry Officer was appointed under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulation") to enquire into the alleged irregularities committed by the said broker.

2.0 Enquiry Proceedings

2.1 The Enquiry Officer issued a notice to the said broker on 26.8.2002 and the said broker appeared before the Enquiry Officer and made his submissions. In his submissions before the Enquiry Officer, the said broker submitted that he had not received the letter 2.8.2001. He also submitted that the period of inspection was shown as 1.4.1999 to 31.3.2000 whereas his trading terminal had been deactivated between 7.6.1999 and 31.3.2000. He, therefore, stated that no false information was submitted to SEBI. The said broker also made submissions regarding non-redressal of investor grievances.

- 2.2 The Enquiry Officer after considering the submissions of the said broker submitted his report to SEBI on 30.11.2002 recommending a major penalty of suspension of certificate of registration for a period of 4 months. In his report, the Enquiry Officer has found that :
- (i) the said broker had failed to co-operate with the inspection team of SEBI.
 - (ii) the said broker has failed to redress investor grievances.

3.0 Show cause notice and Hearing

- 3.1 Pursuant to the submission of the Enquiry report, a show cause notice was issued to the said broker on 7.2.2003 advising him to show cause why appropriate penalty should not be imposed on him.
- 3.2 In his reply dated 22.2.2003, (received by SEBI on 5.3.2003), the said broker submitted that the enquiry was based on the period 1.4.1999 to 31.3.2000 but the Enquiry Officer has gone beyond the period i.e. he had considered matters after 31.3.2000 and that the same was arbitrary and beyond the scope of the order appointing him. He, therefore, requested that the matter be looked into again.
- 3.3 SEBI vide letter dated 6.5.2003 advised the said broker that his reply was unsatisfactory and that the same had not addressed the findings in the enquiry report. He was further advised that grave irregularities including non cooperation with inspecting officials, providing mis leading information to SEBI and non-redressal of investor grievances were alleged and in view of the same it was proposed to enhance the period of suspension to 9 months from 4 months recommended by the Enquiry Officer.

3.4 In this regard, the said broker vide letter dated 28.5.2003 requested time to file reply and he filed the detailed reply vide letter dated 11.6.2003.

3.5 In his reply, the said broker submitted the following :

3.5.1 In respect of the finding regarding submission of false information to SEBI, the said broker quoted from the report of the Enquiry Officer as under:

“In view of the above, the allegation that the member submitted false information to SEBI in this regard it is not correct having regard to the statement that the terminal was deactivated from 7.6.1999 in the financial year 1999-2000 as evidenced by his letter dated 17.7.2001 and the deactivation continued till 31.3.2000.”

3.5.2 In respect of the finding that there had been non-redressal of investor grievances the said broker referred to and enclosed letter of LSE dated 5.6.2003, wherein, it mentioned that the exchange had set aside the proceedings and award of the investor grievance committee and as such the said complaints were to be heard afresh. He, therefore, submitted that there was no default on his part.

3.6 No personal hearing was sought by the said broker.

4.0 Consideration of issues

I have considered the facts of the matter, the report of the Enquiry Officer, the submissions and the reply of the said broker and other materials on record. The following issues arise for consideration:

4.1 Whether the said broker had submitted false information to SEBI in respect of the period during which his trading terminal had been active.

4.1.1 I note that the said broker vide his letter dated 17.7.2001 informed SEBI that his terminal was deactivated from 7.6.1999 onwards. In this regard, it is alleged that the said information was not correct and that the said broker's terminal was active between 23.9.2000 and 4.3.2001 and therefore the said broker had submitted false information. The said broker in his replies and submissions submitted that the terminal was deactivated for 10 months i.e. 7.6.1999 to 31.3.2000. In this regard, he submitted a certificate from LSE dated 29.12.2000 to the effect that the terminal had been deactivated from 7.6.1999 to 12.10.2000 and a further certificate dated 11.10.2002 stating that the terminal had been deactivated from 7.3.2001 till date. From the above, the Enquiry Officer concluded that the terminal had remained non active during the period 5.6.1999 to 22.9.2000 and that during the financial year 1999-00, the trading terminal was deactivated continuously from 7.6.1999 to 31.3.2000.

4.1.2 In view of the above, I find that the said broker had not made any mis representation or submitted any false information to SEBI regarding the period during which his trading terminal was active / non active.

4.2 Whether the said broker had failed to redress investor complaints.

I note that the status of redressal of complaints from various investors is as under :

Date	Complainant	Details	Status
15.10.99	Harprakash Singh	200 Bol & 300 IFCI Shares not delivered. Non payment of Rs.62,670	Pending
25.10.99	J.P. Singh	Non payment of Rs.76,000	Pending
29.06.99	Mr. Raman Kumar Arya	Non payment of Rs.5.11 lacs	Pending
15.10.99	Sukhjot Singh	Cheques dishonoured	Pending
19.04.00	Ashwani Malhotra	Payment and delivery not made	Pending
13.05.00	Neelkanth Share & Stock Broker	Cheques for Rs.1 lac dishonoured	Pending
29.02.00	Satinder Singh	Non payment for sale of shares	Pending
01.09.99	Jaswinder Singh	Non payment of Rs.28,000 440 shares of J.K. Leatherite not delivered	Settled on 6.6.00

Complaints against Mayank Financial Services (P) Ltd.-Sub broker of the said broker.

19.4.00	Ashwani Malhotra	Payment and delivery not made	Pending
28.4.00	Darshan Singh	Payment and delivery not made	Pending
11.4.00	J. S. Segal	Non Payment for sale of 100 Silver line	Pending
17.4.00	Rekha Dhingra	Non payment of Rs.208,322.03	Pending
15.10.99	Sukhjot Singh	Cheques for Rs.41,225 dishonoured	Not settled within stipulated time
-	Shamlal	Non payment of Rs.79,576	Not settled within stipulated time.

4.2.1 In respect of the complaint of Shri Harprakash Singh, the said broker produced delivery challans dated 23.6.2000 towards delivery of 100 shares of IFCI and delivery challan dated 31.3.2000 towards 200 shares of Bank of Punjab before the Enquiry Officer. In this regard, the Enquiry Officer observed that the delivery challan did not appear to have been issued chronologically i.e. Challan No.768 was issued prior to Challan No.766. Further, the Enquiry Officer observed that the signature of Shri Harprakash Singh on both the challans was substantially different. In respect of non payment of Rs.62,670/- to Shri Harprakash Singh, the said broker had submitted that this amount was due on account of sale of 300 shares of SBI @ Rs.208.90 and that he deposited Rs.10,000 as directed by the Investor Grievance Committee (IGC) of LSE.

- 4.2.2 In respect of the complaint by Shri J.P. Singh, the said broker submitted that the same was before the IGC of LSE and that he deposited Rs.22,000/- towards the said complaints and 2 other complaints.
- 4.2.3 In respect of the complaint by Shri Raman Kumar Arya for non payment of Rs.5.11 lakhs, the said broker submitted that the complainant is a relative of his and that the amounts were taken as loans. In this regard, the Enquiry Officer observed that no documentary or other evidence had been submitted by the said broker to prove that the said amount was taken as loan.
- 4.2.4 In respect of the complaint filed by Shri Sukhjit Singh, the Enquiry Officer observed that the said complaint had been settled but there was a delay of more than 2 years in redressal of the complaint.
- 4.2.5 In respect of the complaint filed by Shri Ashwani Malhotra, the Enquiry Officer observed that the dispute was pending with the IGC.
- 4.2.6 In respect of the complaint filed by M/s. Neelkanth Share and Stock Broker regarding dishonor of cheque for Rs.1 lakh, the said broker submitted that he had paid the amount due in full and final settlement. However no documentary evidence was submitted in this regard.
- 4.2.7 In respect of the complaint filed by Shri Satinder Singh, it is observed by the Enquiry Officer that the name of the complainant was wrongly mentioned and that there was no payment due to him.
- 4.2.8 In respect of the complaint filed by Shri Jaswinder Singh, the said broker has submitted before the Enquiry Officer that the complaint has been settled by payment. However, it is noted that the complaint was settled after almost 1 year.

4.2.9 In respect of the complaint filed by Shri Darshan Singh, the said broker has submitted that the matter is pending before the IGC.

4.2.10 In respect of the complaint filed by J.S. Sehgal, the said broker has submitted that the sale of 100 shares of Silverline Technologies for which there has been a alleged delay of payment, has twice resulted in bad deliveries and the transaction was closed by The Stock Exchange, Mumbai with a penalty of Rs.1.6 lakhs. In this regard, the said broker has further submitted that he had sold 120 shares of Indian Shaving Co. on behalf of Mr. Lakhbeer Singh, brother in law of the complainant and that he had adjusted the amounts receivable from the complainant towards the amount to be paid to Mr. Lakhbeer Singh. The Enquiry Officer has found that this set off was not in order.

4.2.11 In respect of the complaint filed by Ms. Rekha Dhingra, the said broker denied that any payment was due to her. He further submitted that her Late husband used to deal in securities through him but the said broker failed to submit details of the transaction by her husband. Further, the said broker submitted the statement of account showing an amount of Rs.4827.97 payable by the complainant as on 31.3.2000. However, the Enquiry Officer found that the said statement of account showed a series of large debits with remark, "Net difference bill" and that the said broker did not file any details of the transactions which necessitated the net difference. Therefore, the Enquiry Officer has held that the said complaint remained unresolved.

4.2.12 In respect of the complaint by Sukhjit Singh and Shamlal, the said broker admitted that there was delay but he submitted that the same was on account of bad deliveries and disputes.

4.2.13 In view of the above, I find that there have been instances of delay in resolving Investor Grievances and further instances where Investor Grievances have not been resolved at all.

4.3 Whether the said broker failed to co-operate with the inspection ordered by SEBI.

I note that the said broker has denied the receipt of SEBI's letter dated 2.8.2001 seeking pre-inspection information. The Enquiry Officer observed that there was no acknowledgement available in the material on record to prove that the said letter was indeed received by the said broker. However, I also note that the said broker did not take any effort to submit the information required by SEBI sought by earlier letters dated 22.12.2000 and 6.2.2001.

In view of the above, I find that the said broker has not co-operated with the inspecting officials of SEBI.

4.4 Whether in view of the findings above, the said broker had violated any of the provisions of the SEBI (Stock brokers and Sub brokers) Regulations, 1992 and SEBI (Stock brokers and Sub brokers) Rules, 1992.

4.4.1 I note that Regulation 21(1) of the SEBI (Stock brokers and Sub brokers) Regulations, 1992 (hereinafter referred to as "Broker Regulations") provides that a stock broker is required to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.

4.4.2 I further note that Clause B(1) of the Code of Conduct of Stock Brokers laid down in Schedule II of the Broker Regulations provides that a Stock broker shall make prompt payment in respect of securities sold and arrange for prompt delivery in respect of securities purchased by clients.

4.4.3 I also note that Rule 4(e) of the SEBI (Stock brokers and Sub brokers) Rules, 1992 (hereinafter referred to as “Broker Rules”) provides that one of the conditions subject to which a stock broker is granted registration is that he shall take adequate steps for redressal of grievances of investors within one month from the date of the complaint. I further note that by failing to co-operate with the inspection Broker violated Regulation 21(1) and (4) of the Broker Regulations.

4.4.4 In view of the above, I find that the said broker has violated Rule 4(e) of the Broker Rules, Clause B(1) of the Code of Conduct for Stock brokers and thereby Regulation 7 of the Broker Regulations and also Regulation 21(1) of the Broker Regulations.

4.5 Whether the penalty recommended by the Enquiry Officer is appropriate?

4.5.1 I note that Regulation 25 of the Broker Regulations provides that any violation of the regulations is to be visited with a penalty provided under the Enquiry Regulations. Regulation 13(1) of the Enquiry Regulations provides that the penalties that may be imposed may be major or minor penalties, major penalties including suspension of the certificate of registration for a period more than 3 months.

4.5.2 I further note that the circumstances under which major penalties may be imposed includes that the intermediary (in this case the stock broker) is guilty of the violation of the conditions of registration. As found supra the said broker has violated one of the conditions of registration viz. that he shall redress investor grievances within one month. Further, I note that the said broker has not co-operated with the inspecting authority. In the light of the above, I find that the recommendation of the Enquiry Officer is appropriate in the facts and circumstances of the case.

5.0 Order

In view of the above, I, in exercise of the powers conferred on me under Section 4(3) of the SEBI Act and Regulation 13(4) of the Enquiry Regulations do hereby suspend the certificate of Registration No.INB120593218 granted to Shri Ashok Makker, member Ludhiana Stock Exchange for a period of 4 months.

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

Place: Mumbai

Date: 24.03.04

G N BAJPAI

CHAIRMAN

Securities and Exchange Board of India