

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

Order under Section 19 of the Securities and Exchange Board of India Act, 1992 read with 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 Anil Kumar Aggarwal

1.0. Background

1.1. Anil Kumar Agarwal (hereinafter referred to as "the said broker") is a member of the Uttar Pradesh Stock Exchange (hereinafter referred to as "UPSE") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration No. INB 100950215.

1.2. An inspection of the books of account and other records of the said broker was carried out by SEBI on 13.3.2001. The period in respect of which the inspection was done was 1.4.1999 to 28.2.2001. In the course of inspection, several violations including the following were observed:

1. Contract notes issued by the said broker did not bear pre-printed serial numbers
2. Broker note stamps were not affixed on the contract notes issued by the said broker
3. Time of placement and of execution of order including order number and trade number were not indicated on the contract notes
4. Terms and conditions of the contract notes were not mentioned on the contract notes
5. The said broker had acted as a sub-broker without obtaining registration from SEBI
6. The said broker had indulged in carry forward transactions which had been prohibited
7. The said broker had not reported off-the-floor transactions to the UPSE
8. The said broker had failed to obtain/maintain broker-client agreement forms and client registration forms
9. The said broker had not maintained strict segregation between own account and clients' account
10. There were delays on the part of the said broker in making payments to clients
11. The said broker had failed to pay fees based on turnover to SEBI.

1.3 A copy of the inspection report was forwarded to the said broker on 4.5.2001 and he submitted his comments/explanations to the same vide his letter dated 27.9.2001. As the said comments were found to be unsatisfactory, Chairman, SEBI, vide order dated 19.7.2002 appointed an Enquiry Officer to enquire into the irregularities committed by the said broker and whether the irregularities observed constituted violation of the SEBI Act, SEBI (Stock Broker and Sub Broker) Rules, 1992 (hereinafter referred to as "the rules"), SEBI (Stock Broker and Sub Broker) Regulations, 1992 (hereinafter referred to as "the broker regulations"), Bye laws of UPSE and directives of SEBI.

2.0 Enquiry proceedings

2.1. The Enquiry Officer issued show cause notices dated 26.9.2002 and 25.10.2002 to the said broker, but he failed to submit any reply to the same. Further, an opportunity of hearing was also given to the said broker by the Enquiry Officer, but he failed to avail of the same. The said broker vide notice dated 21.2.2003 sought for change of Enquiry officer, but his request was rejected by the competent authority and again the said broker was granted an opportunity of hearing. However, he failed to appear before the Enquiry officer and make submissions. Consequently, the Enquiry officer, after considering the material on record viz. the inspection report and the comments/explanation of the said broker dated 27.9.2001, submitted his report to SEBI on 30.6.2003 recommending that the certificate of registration granted to the said broker be suspended for a period of 4 months.

2.2. The Enquiry Officer has recommended the penalty of suspension of the certificate of registration for a period of four months based on the following violations:

1. Contract notes issued by the said broker did not bear pre-printed serial numbers
2. Broker note stamps were not affixed on the contract notes issued by the said broker
3. Time of placement and of execution of order were not indicated on the contract notes
4. The said broker had acted as a sub-broker without obtaining registration from SEBI
5. The said broker had indulged in carry forward transactions which had been prohibited

6. The said broker had not reported off-the-floor transactions to the UPSE
7. The said broker had failed to obtain/maintain broker-client agreement forms and client registration forms
8. The said broker had not maintained strict segregation between own account and clients' account
9. There were delays on the part of the said broker in making payments to clients

3.0 Show Cause Notice and Personal hearing

3.1 Show cause notice dated 10.7.2003 was issued to the said broker under Regulation 13 (2) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations"). Thereafter, upon his request, a Hindi translation of the said notice was also sent to the said broker on 12.9.2003. However, the said broker did not submit any reply to the same; instead, vide letter dated 17.10.2003, the said broker requested for a personal hearing in the second week of November, 2003. The same was granted to him on 12.11.2003, but again the said broker failed to appear before me and make submissions. In view of the above, I am of the opinion that sufficient opportunity has been granted to the said broker and the requirements of natural justice have been complied with and therefore I proceed further in the matter based on the material placed before me.

4.0.Consideration of issues

I have considered the inspection report, the comments/explanations of the said broker, the enquiry report and other material on record. The following issues arise for consideration:

4.1.Whether there were irregularities in the contract notes issued by the said broker and whether such irregularities constituted violation of the Broker Regulations

4.1.1.I note that the contract notes issued by the said broker did not contain any serial number, let alone a pre-printed serial number. Absence of pre-printed serial numbers on contract notes permits brokers to avoid chronology in the issue of contract notes and gives scope for abuse. Therefore, absence of pre-printed serial numbers on contract notes was identified as an irregularity and vide circular dated 5.8.1996, SEBI had brought this to the notice of all stock exchanges. The exchange vide its circular dated 5.8.1996 had in turn communicated this directive of SEBI to all its members including the said broker. The explanation of the said broker that the contract notes were issued date-wise on the stationery purchased from the exchange is not satisfactory

4.1.2.I further note that the contract notes issued by the said broker do not mention the time of placement of order and time of execution of order. The record of time of placement and execution of order is relevant to determine whether the broker has ensured the best possible deal for his client. SEBI vide circular dated 11.2.1997 had directed that brokers should maintain a record of the time when the client has placed the order and that the same should be reflected in the contract notes. I also note that vide its circular dated 1.12.1997, the exchange has informed all its members that the facility for time stamping was available in its trading software. The explanation of the said broker that there was no provision in the software of the exchange for time stamping is incorrect and fallacious.

4.1.3.I note that Broker Note Stamps were not affixed on the contract notes issued by the said broker. The said broker has not made any submissions regarding the same.

4.1.4.In view of the observations made in above paragraphs, I find that:

- a. the said broker, by not affixing pre-printed serial numbers on contract notes issued by him, violated the directives of SEBI given vide Circular dated 5.8.1996 and directives of the exchange vide circular dated 5.8.1996.
- b. The said broker by not affixing the time of placement of order and the time of execution of order on the contract notes issued by him violated the directives of SEBI vide Circular dated 11.2.1997 and the directive of the exchange vide circular dated 1.12.1997
- c. The said broker, by not affixing broker note stamps on contract notes issued by him violated Article 5 (b) of Schedule I of the (B)(UP) of the Indian Stamp Act, 1899.

"

4.2.Whether the said broker has acted as a sub-broker without obtaining registration from SEBI

4.2.1.I note that the said broker has been having transactions with the following stock brokers who are members of other stock exchanges:

- a. M B Gandhi , member, The Stock Exchange, Mumbai
- b. Manmohan Gandhi, member, National Stock Exchange
- c. DSM Share Broker, member, National Stock Exchange

4.2.2.The said broker, in his reply has submitted that he has paid brokerage in respect of the transactions with the aforesaid stock brokers.

4.2.3.I find that the said broker should not have dealt with members of other stock exchanges without obtaining registration as a sub-broker. By acting as an unregistered sub broker, the said broker has violated Section 12(1)

of the SEBI Act which provides that No Sub broker shall buy, sell or deal in securities except under, and in accordance with the conditions of the certificate of registration obtained from the Board in accordance with the Regulations made under the Act.

4.4. Whether the said broker failed to maintain Client Registration Forms.

4.4.1. I note that the said broker did not produce Client Registration Forms and Member Client Agreement Forms in respect of their top 5 clients although they were asked to do so by the inspection team vide letter dated 5.2.2001. In his reply, the said broker has submitted that the Client Introduction Forms have been filled and the same are available in his records. Since the said broker has failed to produce the Client Registration Forms and Broker Client Agreements and since he has failed to submit any explanation in this regard, I find that the said broker has failed to maintain Client Registration Forms and Broker Client Agreements.

4.4.2. In this regard, I note that SEBI vide Circular dated 11.2.1997 had directed all stock exchanges to require their members to maintain a database of their clients. Further, vide Circular dated 11.4.1997, SEBI also forwarded the formats in which Client Registration and broker Client Agreement were to be entered into. The said Circular also specified that it would be the responsibility of the broker to provide for details of their clients when called upon to do so. In this regard, UPSE vide its Circular dated 22.4.1997 had advised its members including the said broker to implement the directives of SEBI with immediate effect and complete Client Registration before 31.5.1997. Since the said broker has failed to maintain Client Registration and Broker Client Agreements, he has violated the directives of the stock exchange and directive of SEBI.

4.5. Whether the said broker has indulged in off-the-floor transactions and failed to report them to the stock exchange

4.5.1. I note that from the inspection report that the following transactions of the said broker with members of other stock exchanges have not been reported to the stock exchange.

Broker of other Exchange	Turnover (2000 – 2001)	
M B Gandhi	1,38,503.60	1,38,288.51
Manmohan Gandhi	15,96,858.21	15,97,548.76
Mani Stock Broker	14,18,764.56	14,17,923.90

4.5.2 SEBI vide circular dated 14.3.1995 had directed all stock exchanges to ensure that all brokers report to them all transactions done on a spot basis on the same day and that brokers are required to execute cross deals and negotiated deals through the software of the exchange.

4.5.3 As per Regulation 4.2 of the Regulations of UPSE, all members of the exchange are required to submit on each business day, a statement in respect of the business done by them on the previous business day. This daily business statement is to be submitted as per Form 21 prescribed in those Regulations. Further, UPSE vide Circular No. UPSE/96-97/A&I dated 20.8.1996 had directed all its members to report all transactions done with members of other stock exchanges.

4.5.4 In his reply to the enquiry officer, the said broker has merely mentioned that he has communicated the said transactions to the exchange. No documentary evidence in this regard has been submitted before the enquiry officer or has been submitted before me. In view of the above, there is no ground to differ with the finding in the inspection report and the enquiry officer's report that the said broker has failed to report transactions entered into by him with members of other stock exchanges to UPSE. Therefore, I also find that the said broker has thereby violated the directives issued by UPSE & SEBI and also Regulation 4.2 of the regulations of UPSE.

4.6 Whether the said broker had failed to ensure segregation between their own account and the account of the client maintained with them.

4.6.1 I note from the inspection report that the said broker had accounts in 3 banks viz. i) A/c No.1238 with M/s. Vysya Bank, ii) A/c. No.29386785 with ANZ Grindlays Bank and A/c. No.622-0-502769-1 with M/s. Standard Chartered Bank. It is mentioned in the Inspection report that the said broker has not opened any separate client account with any Bank and that there were numerous instances where he had deposited cheques received from clients into his accounts with ANZ Grindlays Bank and Standard Chartered Bank. The following are the details of such instances:

ANZ Grindlays Bank

Sr. No.	Name of Client	Cheque No.	Date of Deposit	Amount
1.	A.K. Gupta HUF	974029	15.12.2000	2,50,000
2.	A.K. Gupta HUF	974030	18.12.2000	2,50,000
3.	Shikha Jain	022242	21.12.2000	16,029.40
4.	Raj Narayan Gupta	387814	25.7.2000	66,018.10
5.	KK Pandey	318754	26.7.2000	84,927
6.	Shailendra Mohan	388465	23.5.2000	9,292.50
7.	Veena Singh	719935	12.6.2000	4,647
8.	Anju Agarwal	031880	2.7.99	22,540
9.	Amar Prakash Aggarwal	022728	2.7.99	17,613

Standard Chartered Bank:

Sr. No.	Name of Client	Cheque No.	Date of Deposit	Amount
1	Meera Bansal	031157	15.12.2000	2,646
2	Devi Dutt Pahadia	031156	15.12.2000	2,177
3	Anupam Pahadia	031154	15.12.2000	4,644.60
4	Dharmen Pahadia	031158	15.12.2000	126
5	Harsha Rani Urai	031159	15.12.2000	394
6	Ajay Garg Urai	031155	15.12.2000	6,945.80

4.6.2 Bye law 225 A of UPSE Bye laws provides that, "It shall be compulsory for all member brokers to keep the money of the clients in a separate account and their own money in a separate account." In his reply the said broker has submitted that cheques received from clients after depositing in the Bank account are given to the Clearing section of UPSE. The reply of the said broker is not relevant to the allegation, nor does it address the issue. Therefore, I find that the reply of the said broker is not satisfactory

4.6.3 In view of the above, I find that the said broker has failed to maintain segregation of the broker's own account and client's account and thereby violated SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993 and Bye Law 225 A of UPSE Bye laws.

4.7 Whether the said broker has indulged in carry forward transactions which were not permitted.

4.7.1.I note from the inspection report that in several instances, the said broker had squared off his outstanding position with other members of UPSE on the last day of the settlement and had re-opened the same transactions on the first day of the next settlement with the same counter party members at a mutually decided rate. I further note that these transactions were in highly liquid scrips like those of State Bank of India, ACC and Reliance India Ltd. The details of such transactions are as under :

S.NO.	Qty	Date	Rate	Scrip	Contra Broker	Qty	Date	Rate
1	-30	14.9.2000	828	ITC	Naveen Securities	30	15.9.2000	820
2	-50	14.9.2000	832	ITC	Naveen Securities	50	15.9.2000	821
3	50	14.9.2000	831	ITC	Kusum Stock Br	-50	15.9.2000	811
4	100	14.9.2000	58	RELE	A.S. & Co.	-100	15.9.2000	58.15
5	-100	29.11.2000	143.95	ACC	Prashant Jain	100	30.11.2000	141.80
6	-100	29.11.2000	344.50	Satyam	MS Stock Brokers	100	30.11.2000	341
7	1000	11.9.2000	119	ACC	Ganga Narain	-1000	12.9.2000	119.45
8	200	11.9.2000	119	ACC	Mehra Brothers	-200	12.9.2000	119.45
9	-400	11.9.2000	45	Jain	SDL Share & Stock	400	12.9.2000	45
10	-600	11.9.2000	45	Jain	Nikhil Sec	600	12.9.2000	45
11	200	11.9.2000	500	Peso	Multi Stock Br	-200	12.9.2000	502
12	-700	11.9.2000	740	Ranb	Deep K Aggarwal	700	12.9.2000	740
13	-100	11.9.2000	381.75	RIL	Kukki Stock & Sh	100	12.9.2000	388.05
14	100	11.9.2000	620.05	Satyam	Tirubala Finance	-100	12.9.2000	617
15	100	11.9.2000	622	Satyam	HS Stock Br	-100	12.9.2000	619
16	1000	11.9.2000	213	SBIN	HS Stock Br	-1000	12.9.2000	213.40
17	-500	11.9.2000	255	TATE	AS & Co	500	12.9.2000	256.25
18	-1000	11.9.2000	255	TATE	Vinod K & Co	1000	12.9.2000	256.25
19	-100	11.9.2000	443	Silv	SK Jindal Sh	100	12.9.2000	434
20	-300	11.9.2000	255	Tate	DRB Securities	300	12.9.2000	256.25
21	200	10.5.99	1117.55	ITC	Deep K Aggarwal	-200	11.5.99	1098
22	1000	10.5.99	54	LML	JK Jain & Co.	-1000	11.5.99	54.50
23	600	10.5.99	54	LML	Rajratan Finse	-600	11.5.99	54.50
24	800	10.5.99		246LT	Arch Enterprise	-800	11.5.99	246
25	900	10.5.99	54	LML	Geeta Share	-900	11.5.99	54.50

I note that Bye law 20 of UPSE Bye laws prohibits dealings in securities other than those expressly permitted by the Bye laws and regulations of the exchange. Thus, transactions that are not permitted or that are prohibited in any law enforced are also prohibited under Bye law 20. In this regard, I note that the Central Government in exercise of powers conferred on it under Section 16(1) of the Securities Contracts(Regulation) Act, 1956 issued a Gazette Notification NO.SO/2561 dated 27.6.1969 that no person shall save with the permission of the Central Government enter into any Contract for sale or purchase of securities other than spot delivery contracts or Contracts for cash or hand delivery or special delivery as permitted by the Rules, Bye laws and Regulations of a recognized stock exchange. Thereafter, the Central Government vide Notification No.1/62/Securities and Exchange Board of India /81 dated 2.2.1983 provided for an extension of the overall period for performance of hand delivery contracts in active scrips for not more than 3 months from the date of initial contract. SEBI vide its letter dated 13.12.1993 directed all stock exchanges that transactions in all securities shall be settled at the end of

each settlement by delivery and payment and that no carry forward of transactions shall be permitted. Thereafter, although a modified carry forward transaction was permitted on other exchanges by SEBI, the same was not permitted on the UPSE.

4.7.3 In his reply, the said broker submitted that no carry forward transaction took place on the UPSE and that more transactions were undertaken with the brokers mentioned and hence the question of carry forward did not arise.

4.7.4 I find the reply of the said broker to be unsatisfactory and not relating to the charge. As mentioned earlier, the transactions detailed above were closed on the last day of one settlement and opened on the first day of the next settlement with the same counter party broker and with a very small difference in the price. The nature of these transaction clearly establishes that these were carry forward transactions and no rebuttal of the charge has been made by the said broker. In view of the above, I find that the said broker has indulged in carry forward transactions which were not permitted dealings in securities and that he has thereby violated Bye law 20 of the UPSE Bye laws and the directives of SEBI.

4.8. Whether the said broker has delayed making payments to clients.

4.8.1. I note from the inspection report that there were several instances of delay in making payments to clients. Details of the same are as under :

Client	Scrip	Qty	Amount	Due date	Paid on
Satish Kr. Aggarwal	Essel Packing	100	44,269.34	02.09.99	(Not paid till 13.03.01)
	RPL	200	9,379.00	04.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,326.44	04.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,326.44	04.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,326.44	04.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,326.33	04.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,800.12	11.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,962.10	11.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,962.10	11.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,852.36	13.10.99	(Not paid till 13.03.01)
	Essel Packing	25	15,852.36	13.10.99	(Not paid till 13.03.01)
Bhishm Sachdeva	Tata Elix	100	10,300.15	31.08.99	13.10.99
Subhadra Aggarwal	Morgan Stanley	100	979.00	06.09.99	15.12.99
V.K. Jain	Godavari Fert	100	16,750.25	16.02.00	25.03.00
Rama Xport	RCTF	100	1,403.25	05.01.00	09.02.00
Narendra Mishra	(diff bill)	-	25,064.25	20.06.00	11.08.00
	(diff bill)	-	24,598.00	25.09.00	23.11.00
	(diff bill)	-	10,596.25	24.11.00	(Not paid till 13.3.01)
Vinay Aggarwal	RPL	100	5,194.75	15.05.00	(Not paid till 13.03.01)
Archana Aggarwal	RPL	100	5,194.75	15.05.00	(Not paid till 13.03.01)

4.8.2. In his reply, the said broker has submitted that there has been no delay in payments and that wherever moneys were outstanding, the same were margin moneys retained or interest paid on such margin moneys.

4.8.3. I find that the said broker has failed to make payments to clients within the period of 48 hours as directed by SEBI vide its Circular dated 18.11.1993. I further find that by delay in making payments to clients, the said broker has also violated Clause B (1) of the Code of Conduct of Stock Brokers specified in Schedule II of the Broker Regulations.

4.9 Whether the penalty recommended by the Enquiry Officer is to be imposed on the said broker.

4.9.1 I note that Rule 4 of the Broker Rules, 1992 provides that:

"4. The Board may grant a certificate to a stock broker subject to the following conditions, namely:-

(a)...

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange or stock exchanges of which he is a member.

4.9.2 I further note that Clause A (5) of the Code of Conduct for Stock Brokers specified in Schedule II to the Broker Regulations provides that:

"A. General

(1)...

(2)...

(3)....

(4)...

(5) *Compliance With Statutory Requirements:* A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the stock exchange from time to time as may be applicable to him..."

Further, Regulation 7 of the Broker Regulations provides that:-

"Stock Broker to abide by Code of Conduct

7. The Stock Broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II

4.9.3 I note that Regulation 25 of the broker regulations as they stood then provided that:

"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. contravenes the provisions of the Securities Contracts (Regulation) Act or the rules made there under;
- d. contravenes the provisions of the Depositories Act, 1996 or the rules made there under;
- e. contravenes the rules, regulations or bye-laws of the stock exchange.

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."

4.9.4.I note that Regulation 13 of the Enquiry Regulations provides for imposition of minor penalties and major penalties. The minor penalties include warning or censure and suspension of the certificate of registration for a period upto 3 months. The major penalties include cancellation of the certificate of registration and suspension for a period exceeding 3 months. I further find that in case of major penalties sub-regulation 6 of Regulation 13 provides for the circumstances under which major penalties may be imposed. These include violation of the conditions of registration, and failure to obey directions of SEBI passed under Section 11 or Section 11B of the Act.

4.9.5.I have found in Paragraphs supra that the said broker has failed to comply with the Bye-laws and regulations of UPSE and the directives of UPSE and SEBI issued through various Circulars. These constitute violation of one of the conditions of registration viz. that the broker shall abide by the rules, regulations and bye-laws of the stock exchange of which he is a member. I also note that the said broker acted has an un-registered sub broker and thereby violated Section 12 of the SEBI Act and Rule 3 of the SEBI (Stock Broker and Sub Broker) Rules, 1992 and that the said broker has also violated Para A (5) of the Code of Conduct specified in Schedule II to the Broker Regulations and thereby violated Regulation 7 of the Broker Regulations. In view of the above, I find that the recommendation of the Enquiry Officer is not disproportionate.

5.0.Order

5.1.Therefore, I, in exercise of powers conferred on me under Section 19 of the SEBI Act and Regulation 13(4) of the Enquiry Regulations do hereby suspend the certificate of registration No.INB100950215 granted to Anil Kumar Aggarwal for a period of 4 (four) months.

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

Place: Mumbai

Date: 22nd March, 2004

A K BATRA

Whole Time Member

Securities and Exchange Board of India