

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 Against M/s DRB Securities Private Limited, member, The Uttar Pradesh Stock Exchange Association Ltd, registered with the Securities and Exchange Board of India under certificate of registration no. INB100965933.

1.0 BACKGROUND

1.1 DRB Securities Pvt. Ltd. (hereinafter referred as “the said broker”) is a member of The Uttar Pradesh Stock Exchange Association Ltd. (hereinafter referred to as “UPSE”) and is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) under certificate of registration no. INB100965933.

1.2 An Inspection of the books of accounts of the said broker was conducted by SEBI on March 12, 2001, for the period April 01, 1999 to February 28, 2001. In the course of the inspection, the following violations were observed:

- (a) Irregularities in issuance of Contract Notes
- Contract notes did not bear pre printed serial numbers
 - Contract notes did not bear the time of placement of order and time of execution of order

- Copies of contract notes acknowledged by clients were not maintained
 - Terms and conditions of the contract were not mentioned on the reverse of the contract notes
 - Contract notes for principal to principal trades were not issued in the proper format
- (b) Dealing as sub-broker of members of other stock exchanges, without obtaining registration as sub-broker from SEBI.
 - (c) Dealing with unregistered sub brokers.
 - (d) Entering into unauthorized carry forward transactions.
 - (e) Not reporting off the floor transactions to the stock exchange
 - (f) Not obtaining client registration forms.
 - (g) Non maintenance of segregation between clients account and own account.
 - (h) Engaging in business other than securities business.
 - (i) Delay in making payments to clients.
 - (j) Non collection of margin from clients.
 - (k) Non maintenance of bad delivery registers.
 - (l) Delay in payment of SEBI turnover fee.

1.3 The findings of the inspection were communicated to the said broker for soliciting their comments. Since the said comments were found to be unsatisfactory, an Enquiry Officer was appointed, to enquire into the alleged irregularities and violations committed by the said broker, vide order dated July 19, 2002, under Regulation 28(1) of the SEBI (Stock Broker and Sub Broker) Regulations, 1992 (hereinafter referred to as “the Broker Regulations).

2.0 **ENQUIRY PROCEEDINGS**

- 2.1 The Enquiry Officer issued a show cause notice to the said broker on 26.12.2002, under Regulation 6(1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the “Enquiry Regulations”).
- 2.2 The said broker submitted a reply to the notice, vide their letter dated 13.1.2003. However, they did not appear before the Enquiry Officer for the personal hearing, despite four opportunities being given to them by the Enquiry Officer. In view of the failure of the said broker to appear before the Enquiry Officer, the proceedings were concluded ex-parte’.
- 2.3 The Enquiry Officer submitted his report dated May 30, 2004 to SEBI, with the recommendation that a penalty of suspension of the certificate of registration of the broker, for a period of four months, may be imposed on the said broker.

3.0 SHOW CAUSE NOTICE AND HEARING

- 3.1 A show cause notice dated December 12, 2003 was issued to the said broker, under Regulation 13(2) of the Enquiry Regulations. They were advised to show cause as to why an appropriate penalty should not be imposed on them. The said broker was also advised that in terms of the provision contained in Regulation 13(2) ibid, Chairman or Member of SEBI Board was not bound by the recommendation of the Enquiry Officer and he may enhance the penalty, if so warranted. Considering the seriousness of violations found by the Enquiry Officer, the said broker was also called upon to show cause as to why the certificate of registration granted to him should not be suspended for a period of one year.

- 3.2 The said broker made his submissions in response to the said show cause notice, vide his letter dated 27.12.03.
- 3.3 The said broker was also offered an opportunity to be heard in person, on January 23, 2004 and again on February 12, 2004. The said broker failed to appear for personal hearing on both the dates and also did not submit any reasons for non appearance. In view of the same, I find that a reasonable opportunity to make submissions in respect of the charges against him has been given to the said broker, but he has failed to utilize the same; hence I proceed in the matter, based on his reply to the show cause notice.

4.0 CONSIDERATION OF ISSUES

- 4.1 I have considered the inspection report, enquiry report, the reply of the said broker, and other material on record. My findings on the allegations made against the member-broker are as follows :

4.2 Irregularities with respect to issuance of contract notes

- 4.2.1 Regarding the absence of pre-printed serial numbers on the contract notes, the said broker has stated that although there were no pre-printed serial numbers, they did bear clearing-wise serial numbers. They also submitted that it was not practicable to have pre-printed serial numbers on continuous computer stationery. I find the reply of the said broker to be unsatisfactory; it is definitely possible to have pre-printed serial numbers on any kind of stationery and as far as clearing-wise serial numbers are concerned, they are not a substitute for pre-printed serial numbers running on annual basis. The directive of SEBI to have pre-printed serial numbers on contract notes was issued with the objective of preventing brokers from issuing back-dated contract notes. In view of the above, I find that the

said broker has violated the provisions of SEBI circular dated 5.8.1996 and thereby violated Clause A (5) of the Code of Conduct for Stock Brokers.

4.2.2 The broker has submitted that the time of receipt of order and time of execution was not mentioned on the contract note, as the software used by the exchange was not compatible with the one used by him during the relevant period. Moreover, as per the practice prevalent at that time, the time of receipt of order and its execution, were not being mentioned on the contract notes. I note that SEBI had, vide circular dated 11.2.1997, directed that the time of placement of order and time of execution of order should be reflected on contract notes. This was done so as to enable the clients to ascertain whether the rate charged to him was the same as the rates prevalent on the exchange at the time of the trade. I further note that UPSE, vide its circular dated 1.12.1997, had advised all its members (including the said broker) that the exchange software has been modified to provide for time of placement of order and time of execution of order, on contract notes. In view of the above, I find the explanations of the said broker to be unsatisfactory. Therefore, I find that the said broker has violated the provisions of the aforesaid SEBI circular and thereby violated Clause A (5) of the Code of Conduct for Stock Brokers.

4.2.3 I note that the said broker has not maintained duplicates of contract notes, bearing acknowledgements from clients. In his reply, the said broker has blamed carelessness and oversight on the part of his clients in returning the acknowledged copies, for the absence of these contract notes. I find the reply of the said broker to be unsatisfactory because it was the responsibility of the said broker to have obtained acknowledgements from clients and not vice versa. Therefore, in the absence of any proof regarding timely issuance of contract notes, I find that there is a possibility that the said broker may have failed to issue contract notes within 24

hours from the date of execution of the contract, in violation of SEBI circulars dated 18.11.1993 and 5.8.1996.

4.2.4 I note that the said broker has failed to print the terms and conditions of the contract on the reverse of the contract note. In response to the said allegation, the said broker has stated that they have not printed the terms on the reverse of the contract note, but have brought the same to the notice of their clients through an annexure to the Client Registration Form. The Enquiry Officer had held that the said broker had not produced any proof to substantiate his claim of having conveyed the terms of the contract to his clients. In any case, SEBI's circular dated October 29, 1993 had clearly stipulated that the terms and conditions of the contract are to be printed on the reverse of the contract note. Thus, I find that the said broker has failed to comply with the provisions of SEBI circular dated 29.10.1993 and has thereby violated clause A (5) of the code of conduct for Stock Brokers.

4.2.5 I note that the said broker has issued contract notes in Form A instead of in Form B, for trades done on principal to principal basis. The said broker has mentioned in his reply that the same was due to clerical error and that revised contract notes in the proper format have since been issued. In view of the submissions made by the broker, as also the fact that only one instance of this kind has been pointed out by the inspection team, I would like to grant the benefit of doubt to the said broker.

4.3 **Dealing as sub-broker, without obtaining registration as such**

I note the allegation against the said broker that they had dealt with the members of other stock exchanges, without obtaining registration as sub broker. In his reply the said broker submitted that his trades with 8 members of other stock exchanges were on his own account and that he had not dealt as a sub broker, on behalf of clients. I note that the Enquiry

Officer has held that the volume of trades of the said broker, with members of other exchanges, is substantially high and hence suggests that the said broker has been acting as an unregistered broker. However, in the absence of any documents/material to confirm that the said broker has indeed acted as a sub-broker, I find that the charge has not been conclusively established.

4.4 **Dealing with unregistered sub-brokers**

It has been alleged the said broker has dealt with entities such as Universal Subscription Pvt. Ltd., Samridhi Stock Broker Pvt. Ltd., Naman Securities etc., which are entities that have acted as sub brokers without obtaining registration from SEBI as such. In their reply to the notice issued by the Enquiry officer, the said broker had claimed that these entities were portfolio based investors and not sub brokers. They have also submitted that they can provide confirmation from any of the entities mentioned above, to show that they were only clients and not unregistered sub brokers. In this regard, I note that the said broker has not produced any documentary evidence to prove that the entities mentioned above were not acting as sub brokers, either before the Enquiry Officer or along with his reply to the show cause notice. However, I also find that the allegation regarding the member having traded with unregistered sub-brokers is based merely on the volumes and trading pattern of the transactions with these entities, as also that fact that some of these entities were among the top 20 clients of the member. Hence, in view of the lack of evidence to conclusively state that the member has dealt with unregistered sub-brokers, I am inclined to disregard this allegation.

4.5 **Unauthorized carry forward transactions**

- 4.5.1 The said broker is alleged to have entered into carry forward transactions. In his reply, the said broker has stated that these transactions were done in the normal course of business and were not carry forward transactions.

I find that the said broker had entered into transactions wherein they had closed outstanding positions in certain scrips on the last day of one settlement and re-opened the positions in the next settlement, by entering into reverse transactions in the same scrips, with the same counter parties. I have also noted that the price differential in the two transactions is in the range of carry forward charges prevalent in the market. Details of the said transactions are as under:

Sr. No.	Qty	Date	Rate	Scrip	Contract Broker	Qty	Date	Rate
1	-6300	19.02.01	187	ACC	JV Stock Broker	6300	20.02.01	187.50
2	-2800	19.02.01	187	ACC	Mehra Broker	2800	20.02.01	192.80
3	-6000	19.02.01	187	ACC	Shreeya Stock	6000	20.02.01	187.50
4	2800	31.10.00	178	HIND	Vinod Kumar	-2800	01.01.01	178.75
5	1000	31.10.00	178	HIND	Praveen Kumar	-1000	01.01.01	178.75
6	1800	31.10.00	178	HIND	Anand Inestors	-1800	01.01.00	178.75
7	-500	31.10.00	756	ITC	Lakshmi & Sons	500	01.01.00	758.50
8	-500	31.10.00	756	ITC	Pareek & Co.	500	01.01.00	758.50
9	-1500	31.10.00	756	ITC	Astha Securities	1500	01.01.00	758.50
10	-2600	21.06.99	183	ACC	AG Shares	2600	22.06.99	189
11	100	21.06.99	1091	ITC	R K Rastogi	-100	22.06.99	1108.70
12	-800	21.06.99	1090	ITC	Suman Investors	800	22.06.99	1094.50
13	-300	21.06.99	425	CAST	Mohan & Co.	300	22.06.99	425
14	-500	21.06.99	1090	ITC	Sanjeev Bansal	500	22.06.99	1095
15	7000	04.10.99	194	ACC	V Vishnoi & Co.	-7000	05.10.00	196
16	800	04.10.00	194	ACC	Sahoo Investors	-800	05.10.99	196
17	-2100	04.10.99	49	JAIN	Sangam & CO.	2100	05.10.99	49.50
18	-1100	04.10.99	366	L & T	PR Securities	1100	05.10.99	366.75
19	-400	04.10.99	366	L & T	Arora & Co.	400	05.10.99	375
20	900	04.10.99	245	HIFU	Samridhi	-900	05.10.99	242

4.5.2 Clearly, the above transactions are in the nature of carry forward transactions. Hence, I am unable to accept the explanation of the said

broker. In this regard I note that Bye law 20 of UPSE prohibits any dealings in securities, other than those expressly permitted by the Exchange. In this regard, SEBI had also, vide letter dated 13.12.93, directed all stock exchanges that there shall be no carry forward of transactions from then on. Subsequently, a revised form of carry forward of transactions was allowed on certain exchanges, but UPSE was not included among them. Thus, I find that the said broker has entered into transactions that were prohibited. In doing so, he has violated the provisions of Section 16(2) of the SC(R) Act, 1956, circulars of SEBI dated 13.12.1993 and 16.10.1995, and bye law 20 of UPSE. The said broker has also violated Rule 4(b) of the broker rules and clause A(5) of the Code of Conduct of the Stock Brokers.

4.6 Non-reporting of off-the-floor transactions

I note that the said broker has not reported transactions done by him through members of other stock exchanges, to UPSE. In this regard, the said broker has submitted that they failed to report the transactions to UPSE, on account of wrong interpretation of the relevant SEBI circulars. A broker is required to report transactions undertaken on other stock exchanges, to the stock exchange of which he is a member, so that the latter would have a true and fair estimate of the total exposure of the member, which would in turn allow the exchange to implement suitable risk containment measures. I find that the said broker, having failed to report off the floor transactions to UPSE, has violated the provisions of the SEBI Circular dated March 14, 1995. In addition, he has also violated the provisions of SEBI circular dated September 14, 1999, which specifically prohibited off the floor transactions.

4.7 Failure to obtain client registration forms

I note that the said broker has failed to obtain / maintain client registration forms in respect of several clients. In this regard, the said broker has

submitted that they have not obtained client registration forms only in few instances where clients were known to them or were not available. They have further submitted that in all such cases the registration forms have since been obtained. In this regard, I find that the said broker has not submitted any documents to either the Enquiry Officer or along with his reply to the show cause notice, so as to substantiate his claim of having obtained the client registration forms for all his clients. Moreover, as submitted by the broker himself, he had not obtained the client registration forms from some of his clients. In view of the above, I find that the said broker has violated the directives of SEBI circulars dated 11.02.1997 and 11.04.1997, vide which all brokers were directed to obtain client registration forms from all their clients.

4.8 Non segregation of client/own account

- 4.8.1 I also find that the said broker has credited substantial sums of money received from clients into his own account. In this regard the said broker has submitted that transactions with some of the clients were “non business transactions” e.g. the receipt of Rs.51 lakhs from Shri B N Shukla was in the nature of an unsecured loan and not in the nature of trading transaction.
- 4.8.2 I find that two of the three instances of this kind, reported in the inspection report, were pertaining to Shri B N Shukla. Even if I were to agree with the contention of the broker that these transactions were unrelated to securities business, I find that the said broker has entered into business other than that of dealing in securities with their clients. As stated by the said broker, a sum of Rs.51 lakhs was advanced to Shri B M Shukla as an unsecured loan. This is in violation of Rule 8(3)(f) of the SC (R) Rules, 1957 which stipulates that a member of stock exchange shall not engage in any business other than that of securities.

4.9 **Delay in payment to clients**

4.9.1 I note from the inspection report that there have been several instances of delay in making payments to clients. The following are some of the instances pointed out in the inspection report:

Name of Client	Delay in Payment (in days)	Amount
Anju Bansal	35	1,20,374.00
Accurate Sales Promotion	281	1,15,000.00
Amit Agarwal	86	51,267.00
Anjula Jain	163	9,547.50
Arvind Tandon	79	50,000.00
Arvind Tandon (HUF)	79	50,000.00
Dharmendra P Singh	37	33,968.50
Dinesh Lata Mudit	332	53,432.00
Dinesh Lata Mayank	332	49,790.00
Goodmark Trading Pvt. Ltd.	86	1,20,000.00
Shanti Gandhi	Not paid	Not paid
Sunil Kr. Rastogi	220	1,24,000.00
Sharad Tandon HUF	87	1,00,000.00
Shakar Parvati Deal	91	1,27,000.00
Siddharth Rastogi	220	1,00,155.00
Neelam Rastogi	175	1,01,004.00
Panchratan Traders	261	1,30,000.00
Pinki Gupta	102	23,765.00
Pradeep Kr. Aggarwal	173	1,25,265.00
Safar Sales Pvt. Ltd.	212	1,24,000.00

4.9.2 In their reply, the said broker submitted that many of the clients mentioned above had given an undertaking to keep the amounts in their account, as margin money for future transactions. However, I find that the said broker has not produced any document/undertaking from any of the above clients, to support his claim of having retained the monies at the clients' behest. Hence, I am unable to accept the submission of the said broker in this regard. In view of the above, I find that the said broker has delayed

payments to clients and has therefore violated Clause B(1) Of the Code of Conduct as well as the provisions of SEBI circular dated November 18, 1993, which specified that the broker has to make payments to his clients within 48 hours.

4.10 Non-collection of margins from clients

I note that the said broker entered into transactions without collecting margins from some clients. In this regard, the said broker submitted that only in exceptional circumstances, where alternate arrangements for covering risk were available, they did not collect margin from clients. They further submitted that the exceptions were based on commercial considerations and having regard to the goodwill and standing of the clients. I find that bye law 230 of UPSE bye laws requires the said broker to collect margin from clients. No exception as been provided for, in the bye laws. Further, SEBI had, vide circular dated 04.02.2000, directed that margins should be mandatorily collected from all clients. I find that the said broker, in failing to collect margins from clients, has violated bye law 230 of UPSE and also the provisions of SEBI circular dated February 04, 2000.

4.11 Delay in rectification of bad deliveries

I note that the said broker had failed to maintain the register of Bad deliveries containing details of rectification of bad deliveries. I further note that there has been a delay beyond 15 days in rectification of bad deliveries by the said broker. In this regard, the said broker has submitted that barring few exceptions where rectification was beyond their control, all bad deliveries have been rectified within the stipulated time limit. In this regard, I note that bye law 158 of UPSE bye laws requires brokers to rectify all bad deliveries within a period of 15 days. I find that the said broker has violated bye law 158 of UPSE and thereby violated Rule 4(b) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

4.12 **Delay in payment of SEBI registration fees**

It has been alleged that the said broker, while submitting his turnover figures to UPSE, for calculation of SEBI registration fees, did not include off the floor transactions carried out by him. Thus, the said broker is alleged to have paid less fees than required to be paid by him. It is also alleged that there has been a delay in payment of registration fees. In his reply to the notice by the enquiry officer, the said broker submitted that off the floor transactions should not be included in their turnover since those transactions would be included in the turnover of their counter party brokers on other stock exchange/s. he has further stated that the matter is sub-judice before the Hon'ble High Court of Calcutta and hence no orders may be passed on the same. In this regard, I agree with the findings of the Enquiry Officer that the delay in submission of fees was nominal and that his transactions with members of other stock exchanges need not be included in his turnover, while calculating the registration fees to be paid, as this turnover would form a part of the other members' turnover. Moreover, since the matter is sub judice before the High Court of Calcutta, no finding is made on the issue.

4.13 **Engaging in business other than securities business**

4.13.1 I find that the member had received large sums of money from several parties although no securities transactions were done on their behalf. The details of such receipts are as follows :

Client name	Amount		Amount	
	Date	Paid	Date	Received
Leena agarwal	03.04.00	250000	28.11.00	250000
Kushang Timber Product Pvt. Ltd.	01.04.00	8165368	23.02.01	1000000

K K Chaurasia	10.08.00		24.08.00	
Prem lata Agarwal	01.04.00	300000	01.11.00	50000
Geeta Jajoo	19.04.00	80000	26.05.00	100000
	19.04.00	20000		
Bimal Kumar	07.11.00	250000	24.11.00	250000
	23.11.00	250000	09.12.00	250000
Babu Lal Agarwal	01.04.00	38703.03	11.09.00	100000
			11.09.00	400000
Amit Agarwal	01.04.00	280000	01.11.00	30000
Alok Agarwal			16.02.00	100000

4.13.2 The said broker has submitted that these sums were received from their clients as margin money, for future transactions. However, I am unable to accept the contention of the broker in this regard, especially in view of the fact that they have failed to produce any documents to show that the monies received from these entities were utilized to purchase securities at a later date or that the amounts paid to these entities were on account of securities transactions. Thus, there is a preponderance of probability that the said broker engaged in business other than securities business, thereby violating the provisions of Rule 8(3)(f) of SC(R) Rules, 1957.

5.1 I find that the said broker has

- i. failed to issue contract notes in the manner provided for in the bye laws of rules and regulations of the stock exchange and also the Broker Regulations,
- ii. entered into unauthorized carry forward transactions,
- iii. failed to report off the floor transactions to the stock exchange,
- iv. failed to maintain client registration forms
- v. failed to maintain segregation between their own account and clients' account,
- vi. failed to make timely payments to clients

- vii. engaged in business other than that of securities,
- viii. failed to collect margins from clients,
- ix. failed to rectify bad deliveries in time.

5.2 These acts of omission and commission constitute violations of the bye laws of UPSE, the Broker rules and regulations and also that of the SEBI Act, 1992. Such violations by brokers undermine the efforts of SEBI to ensure an orderly development of the capital markets. In view of the substantial nature of the violations by the said broker I find that the penalty recommended by the enquiry officer is adequate and need not be interfered with.

6.0 ORDER

In view of the above, I, in exercise of powers conferred on me under section 19 of the SEBI Act, 1992, read with Regulation 13(4) of the Enquiry Regulations do hereby suspend the Certificate of Registration No. INB 100965933 granted to M/s DRB Securities Pvt. Ltd. for a period of 4 months.

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

Place: Mumbai
Date : June 21 , 2004

A K BATRA
Whole Time Member
Securities and Exchange Board of India

