

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Order under Regulation 16(5) and 13(1)(b) 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 Inder Kumar Daga, erstwhile member of OTCEI and stock broker registered with SEBI.

WTMN/20/MIRSD/6/04

1.0 Inder Kumar Daga (hereinafter referred to as "the said broker") was a member of OTC Exchange of India (hereinafter referred to as "OTCEI") and a stock broker registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration No. INB 200916110.

2.0 OTCEI, vide its letter dated 26.12.03, informed SEBI that they had expelled the said broker w.e.f. 22.12.03 and he ceased to be a member of OTCEI w.e.f. 22.12.03.

2.1 In view of the above, SEBI, vide order dated 21.01.04 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 to the said broker on 08.03.04 advising him to show cause why his registration as a stock broker should not be cancelled. The said broker failed to reply to the said show cause notice.

2.3 Thereafter, on 07.04.04, the Enquiry Officer submitted his report. In his report the Enquiry Officer observed that OTCEI had expelled the said broker w.e.f. 22.12.03. Therefore, the Enquiry Officer has recommended cancellation of the certificate of registration granted to the said broker, as the said broker ceased to be a member a recognized stock exchange.

2.4 I note that adequate opportunity had been given to the said broker in terms of Regulation 16 of the Enquiry Regulations and that he has chosen not to avail such opportunity. 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 the 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 has violated the conditions of registration.

3.1.1 I note that OTCEI vide its letter dated 26.12.03 informed SEBI that they have expelled the said broker w.e.f. 22.12.03 and that he has ceased to be the member of the Exchange with effect from 22.12.03.

3.1.2 I note that no reply or communication was received from the said broker.

3.1.3 I note that Rule 4 of the SEBI (Stock brokers and sub brokers) Rules, 1992 (hereinafter referred to as "the broker regulations") states that :

"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) ..."

3.1.4 I note that the Enquiry Officer in his report has found that the said broker ceased to be a member of OTCEI w.e.f. 22.12.03, hence his certificate is liable to be cancelled.

3.1.5 In view of the above, I agree with the findings of the Enquiry Officer and find that the said broker has 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.

3.2 I note that Regulation 25 of the broker regulations provides that :

"Liability for contravention of the Act, rules or the regulations.

25. A stock broker or sub-broker who contravenes any of the provisions of the Act, rules or regulations framed thereunder shall be liable for any one or more of the following actions-

- (i) Monetary penalty under Chapter VIA of the Act.
- (ii) Penalties as specified under Securities and Exchange Board of India (Procedure for Holding Enquiry by enquiry Officer and Imposing Penalty) Regulations, 2002 including suspension or cancellation of certificate of registration as a stock broker or a sub-broker.

(iii) Prosecution under section 24 of the Act."

Further Regulation 27 of the broker regulations provides that:

"Liability for action under the Enquiry Proceeding Regulations.

27. A stock broker or a sub-broker shall be liable for any action as specified in the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker, as the case may, if he-

(i) ceases to be a member of a stock exchange."

I therefore find that the said broker has ceased to qualify himself to hold the registration as a stock broker since the basic requirement of being a member of a stock exchange, based on which the registration was granted to him is no more complied with. Therefore, the registration of the broker is liable to be cancelled.

3.3 I further note that Regulation 13(1) (b) 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. However, Regulation 13(6) of the Enquiry Regulations provides that the Board or member shall impose major penalties where the intermediary is guilty of violation of conditions of registration.

4.0 Therefore, in exercise of powers under Section 19 of the SEBI Act read with Regulation 16(5) of the Enquiry Regulations, I hereby cancel the certificate of registration bearing No. INB 200916110 granted to Inder Kumar Daga. This order shall come into effect immediately.

DATE : 22.6.04
PLACE: MUMBAI

T M NAGARAJAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA