

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 13(6)(b) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M/S GIRNAR CONSTRUCTIONS PVT LTD.

WTMN/44/MRD/6/04

1. M/s. Girnar Constructions Pvt. Ltd (hereinafter called as GCPL) was a member of OTC of India Ltd. (hereinafter called 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 200501339.
2. It has been brought to the notice of SEBI that GCPL was declared defaulter by OTCEI on December 09, 2001 and was not readmitted. An enquiry officer was therefore appointed vide order of the member dated February 26, 2004 read with order dated February 27, 2004 to conduct enquiry against GCPL in terms of Regulation 16(1) read with chapter III Provision 15(C) of the SEBI (procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred to as "enquiry regulations").
3. The enquiry officer acting in accordance with Regulation 16 (2) of the Enquiry Regulations issued a notice dated April 06, 2004 to GCPL to show cause within 15 days from the date of receipt of the notice why necessary order under the above stated provisions should not be passed for canceling the certificate of registration granted to GCPL as member of OTCEI. The show cause notice issued was sent to OTCEI for serving the same to GCPL. OTCEI vide its letter dated April 29, 2004 have informed that the said notice was sent to the entity but had returned undelivered. The enquiry officer thereafter submitted his report recommending cancellation of the registration given to GCPL.
4. I have considered the facts of the matter, report of the Enquiry Officer and other material on record. 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.
5. I find that GCPL was granted certificate of registration as a member broker of OTCEI. However from December 09, 2001, GCPL was declared a defaulter by OTCEI. Since GCPL has been declared a defaulter as per article 137-B1(B) (iii) of OTCEI and was further not readmitted, it ceased to be a member of OTCEI. Membership of an exchange is a precondition for granting certificate of registration as broker. GCPL is thus in violation of the condition subject to which GCPL was granted certificate of registration by SEBI.
6. Regulation 27 of SEBI (Stock -brokers & sub-brokers-liability for action under the enquiry proceeding Regulation) provides that

A stock broker or a sub-broker shall be liable for 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 certificate of registration as a stock broker or a sub-broker, as the case may be, if he -

 - i) ceases to be a member of a stock exchange; or
 - ii) has been declared defaulter by a stock exchange and not readmitted as a member within a period of six months.
7. 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. I therefore find that the said broker has failed to comply with basic requirement of being a member of a stock exchange. Therefore, the registration of the broker is liable to be cancelled.
8. 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 read with Regulation 16 of the Enquiry Regulations 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, summary procedure may be followed, without holding an enquiry.
9. Therefore, in exercise of powers conferred upon me 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 200501339 granted to M/s. Girnar Constructions Pvt. Ltd. This order shall come into effect immediately.

Date : June 30, 2004

Place : MUMBAI

T.M.NAGARAJAN

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA