

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(1) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, IN THE MATTER OF SHASHIKANT M.DAMANI

1.0 BACKGROUND

- 1.1 Shashikant M.Damani (hereinafter referred to as “the Broker”) is a member of the Stock Exchange , Mumbai (hereinafter referred to as BSE) and is registered with Securities and Exchange Board of India (hereinafter referred to as “SEBI”). His registration no. is INB010026511.
- 1.2 SEBI conducted an inspection of the Broker through M/s K S Aiyar & Co. Chartered Accountants from 20.12.1999 to 04.01.2000 and the period covered under the inspection was 01.04.1998 to 30.09.1999 under the provisions of Regulation 19(1) of SEBI (Stock Brokers and Sub Brokers) Regulations 1992. The inspection of SEBI pointed out certain irregularities alleged to have been committed by the Broker.
- 1.3 Pursuant to the above, vide an order dated January 31, 2003 , an Enquiry Officer was appointed by me under Regulation 5 (1) of SEBI (Procedure for Holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “the said Regulations”) to enquire into possible violations, inter alia, of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 by the Broker .

2.0 ENQUIRY REPORT AND RECOMMENDATION :

- 2.1 The enquiry officer, after conducting the enquiry as per the procedure laid down in the said Regulations submitted a report dated 08.01.2004.
- 2.2 The Enquiry Officer found that the Broker has violated Rule 4 (b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 , Clause (k) and (m) of Sub regulation (1) of Regulation 17 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 , Clause A(5) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 , Bye laws, Rules and Regulations of Bombay Stock Exchange and the various directives/circulars issued by SEBI from time to time. In the light of the above, the Enquiry Officer Recommended that the registration of the Broker be suspended for a period of Six (6) months .

3.0 SHOW-CAUSE NOTICE:

- 3.1 A Show Cause Notice dated 23rd January 2004 bearing the reference no. MIRSD/DPS-1/Enq/RG/1582/2004 was issued to the Broker along with a copy of the enquiry report, calling upon to show cause, in terms of Regulation 13(2) of the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 as to why action as considered appropriate should not be taken against him. The Broker was given a period of 15 days to submit his reply and was asked to indicate whether he desires a personal hearing. There after two reminder letters dated 19/02/2004 and 10/03/2004 respectively were sent to the Broker asking him to submit his reply.

4.0 REPLY TO THE SHOW CAUSE NOTICE :

- 4.1 The Broker acting through M/s. Mohanlal Jain & Co., Chartered Accountants , asked for some time (5-7 days) for submitting their reply on the pretext that their client has shifted his residence to Bhilai. As the time

already given had elapsed, SEBI did not consent to the request and expressed the desire to proceed ex parte.

- 4.2 As per a letter bearing no date which was received by SEBI on 10.03.2004, the Broker , again being represented through his Chartered Accountant, expressed his desire to be personally heard in the matter. The Broker also requested for personal hearing, vide his letter dated 22.03.2004. Vide letter dated 07.04.2004 , the Broker gave para wise reply to the charges leveled against him by the Enquiry Officer and again expressed his desire for personal hearing. The Broker refuted all the finding and allegations of the Enquiry Officer and stated that he is not guilty of any of the charges as specifically mentioned in the Show Cause Notice .

5.0 HEARING :

- 5.1 In compliance with the principle of natural justice an opportunity of personal hearing was given to the Broker at 4.00 p m on 26.05.04 wherein the Broker himself appeared along with Mr. Mohanlal Jain, a Chartered Accountant , and made his submissions reiterating his earlier stand.

6.0 CONSIDERATION OF ISSUES AND FINDINGS :

- 6.1 I have considered the facts of the case, the findings of the Enquiry Officer, the reply of the Broker to the show cause notice and submissions made by him in the personal hearing held on 26.05.04.
- 6.2 As to the allegation that the Broker has failed to report Principal to Principal trades pertaining to settlement No. 17 of 1998-99, I note the following instances as per the inspection report :

Contract No.	Client	Scrip	Quantity	Rate	B/s
F/17/13/12	Rajiv Gupta	Reliance Ind.	1100	153	S
F/17/16/16	Rajiv Gupta & Co.	Reliance Ind.	1100	150	B
F/17/17/18	Singhania Bros. Pvt. Ltd.	Ballarpur Ind.	5000	25	B
		Balrampur	1250	131	B
		Bata India	1000	183	B
		BOC India	800	44	B
		CESC Ltd.	1100	30	B
		Hind.Develp	7000	11	B
		Hind. Lever	100	1652.3	S
		Hind Lever	500	1652.5	S
		Hind. Motor	14300	10	B
		Indian Petro	700	56	B
		Ispat Ind.	1850	7	S
		ITC Bhadrachalam	2300	255	B
		Jai Prakash Ind.	5200	10.5	B
		Kesoram Ind.	1800	21	S
		Master Shares	2100	13	S
		Phillips India	300	127	B
		Shaw Wallace	500	34	B
		SAIL	16200	8.5	B
		Tinplate	1000	5	B

The Broker did not dispute the fact that some of these trades did not result in delivery and were squared off during the settlement. The Broker vide his letter dated nil received by SEBI on 16.05.2000 stated that he has failed to show the Sauda register copy reflecting the said transactions to the auditors. It was alleged that the Broker has shown the copies to the auditors later, however no such copy was brought on record. The Broker further contended that Form No. B and the approval required in writing from the client for principal to principal transactions was duly obtained. It was stated that it was difficult to get the consent immediately since most of the clients were upcountry clients. Therefore, there was a delay in

reporting to BSE. I do not accept the contention of the Broker. Delay in obtaining consent from the clients cannot be a ground for non reporting the same to the Exchange. What is to be reported is not consent but the value and volume of trades. Further as per circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999 the Broker is supposed to route all the transactions through the trading screen. Therefore, these transactions are off market and amounted to negotiated deals and unreported. Therefore, I have no reason to believe that the transactions were reported to the Exchange and that they were reflecting in the sauda. I hold the Broker guilty of violating the circulars SMDRP/POLICY/CIR-32 /99 dated September 14, 1999 and SMD / RCG / BKG /293/95 dated March 14, 1995.

6.3 As to the unauthorized use of the terminal by the client, I find that the terminal at 1205, Phiroze Jeejeebhoy Towers was used by Ramesh Maheshwari, a client , for his own trading. Broker stated that the said client was operating from his temporary office in the BSE premises and that he was expecting shortly a permanent allotment from BSE and that it was given for the promotion of his business. He further added that he wanted to inform BSE the permanent location of the terminal once his client got BSE's approval. I find that the Broker has not brought on record the proof of his client operating from the temporary premises of BSE. It was not stated as to whether the said client had subsequently got permanent allotment from BSE and whether he had informed BSE at that point of time. The Broker ought to have obtained the permission of BSE for allotting the terminal to the client and for operation of the said terminal by the client at such an address. I therefore hold broker guilty of illegally and unauthorisedly permitting his client to operate trading terminal without approval from BSE. This is in violation of stock exchange rules and bye laws.

6.4 With regard to the allegation that broker was dealing with unregistered sub brokers, the Broker stated that he was not aware of the law that a

member of other stock exchange if deals through member of other stock exchange for his clients, he should be treated as a sub broker. Following are the instances where the Broker dealt with unregistered sub brokers:

Serial No.	Name
1.	Singhanian Bros. Member of Calcutta Stock Exchange
2.	Rajiv Gupta and Co., Member of Ludhiana Stock Exchange
3	Shivam Securities, Member Patna Stock Exchange
4	Samir Kedia, member of Calcutta Stock Exchange
5	Ratnakar Stock Pvt. Ltd., Member of Ahmedabad Stock Exchange
6.	S. P. Gupta & Co., Member of Ludhiana Stock Exchange.

I find that it is not mentioned in the inspection report the details of the transactions undertaken by the said sub brokers through the Broker for their clients. Broker stated that the most of these members were doing their own trading through him. I have noted that the Broker had already sent registration papers of some of the above members to register sub brokers. It has not been brought on record whether any action had been proposed or taken against the above entities for acting as unregistered sub brokers. Therefore, I am of the view that the charge is not completely established in view of the facts and circumstances that the details of transactions undertaken by the above entities as sub brokers through the Broker were not available on record, and therefore a benefit of doubt can be given to the member.

- 6.5 With regard to the charge that the Broker failed to implement arbitration award, the Broker stated that there is no such award pending. It is not brought on record anywhere whether any such arbitration award is pending for execution. It is also not clear from the record whether such award had become a decree or the awardee had made a complaint for non payment. Therefore, I give a benefit of doubt to the Broker.

- 6.6 With regard to the charge that Broker failed to meet the margin deposit, the Broker stated that he had maintained margin money account in the ledger and assured that a separate margin deposit book will be maintained thereafter. I am of the view that this is a substantial compliance of the requirement.
- 6.7 With regard to the charge that the Broker failed to maintain register of accounts of the sub broker, the Broker has stated that the entities with whom he dealt as above (table in para 6.4) were understandably not his clients and hence the same was not maintained. In view of the finding in para 6.4 as stated above, a benefit of doubt is given to the Broker.
- 6.8 With regard to the charge that the Broker had failed to maintain document register, the Broker admitted that it was not properly maintained and attributed the reason to shifting of his office. It was further admitted that the register was incomplete with respect to date and distinctive numbers for the period 01.04.1999 till the date of inspection. I am not convinced that it was due to the clerical staff leaving the job in between. I, therefore, hold that the Broker failed to maintain proper document register.
- 6.9 With regard to the charge that the Broker failed to maintain order book, the Broker stated that most of his clients were up country clients and they send the order by fax or on telephone. The circular dated 11-02-1997 stipulates as under:
- “the Broker should maintain record of the time when the client has placed the order and reflect the same in contract-note along with the time of execution of the order. All the stock exchanges are advised to implement the above with immediate effect”.
- I have noted that such details as required by the circular dated 11.02.1997 are not available from the Exchange itself and further, there is no provision for incorporating the order time in the format of the contract

note. I also note that the Broker has assured that he would maintain the order book to the extent possible in the manner required. I, therefore, am of the view that the Broker can not be held guilty of not maintaining proper order book .

6.10 With regard to the charge that broker failed to enter into agreements with sub brokers, the Broker stated that he was not aware of the fact that those entities should be treated as sub brokers. However, in view of the finding as in para 5.4, I am of the view that benefit of doubt may be given to the Broker in this regard.

6.11 With regard to the charge that the Broker misused his clients accounts, the Broker has stated that the head “stock exchange expenses” is for the purpose of obtaining chukada slip on behalf of their clients and that the said chukada gets converted into award and the amount is received, is credited to the client account again. The Broker stated that he had not utilized the same for his own business purpose. The Broker failed to produce the proof of the same. It has not been brought on record whether the amount was credited back to the client account or not. The Broker further stated that the bank guarantee commission was wrongly debited by the bank to the client account instead of his individual account. The Broker failed to prove that the wrong withdrawal from the client account was subsequently rectified by debiting his individual account or otherwise. The Broker has admitted that he had used clients funds during the period April – June 1999, to the tune of Rs.18,224 due to oversight. Since the amount involved is not very significant, taking a liberal view, a benefit of doubt may be given to the Broker .

6.12 With regard to the charge that there was a delay in payment of funds to the clients, the Broker stated that he obtained consent from his clients in writing to hold their credit balance in order to avoid delay in payment. From the Annexure III of the Inspection report I have noted that there are

27 instances of delay of more than 50 days. Delay in some cases were upto 245 days. I find that this is in violation of Circular no. SMD/SED/CIR/93/23321 dated 18.11.93, which required the payment to be made within 2 working days of pay-out unless the client has requested otherwise. I also find that the Broker failed to bring on record the consent in writing obtained from his clients. Therefore, I hold the Broker guilty of delaying the payments to the clients.

6.13 With regard to delay in delivery of securities it is noted that there are 22 instances of delay in delivery of securities to the client as given in Annexure IV to the inspection report. The delay was ranging from 2 to 38 days. The Broker stated that he has not dispatched the securities to the clients on instructions from his clients to avoid loss of shares in transit. He stated that his clients instructed that securities would be collected by themselves at their leisure. He stated that this would not be repeated in future. It is noted that the Broker has not produced any proof of having received written communication from client instructing him to hold the securities beyond 48 hours. The Broker ought to have delivered the securities within 48 hours as per the existing guidelines of SEBI. I therefore hold the Broker guilty of not delivering the securities within 48 hours. This is in violation of Circular No. SMD/SED/CIR/93/23321 dated 18.11.93.

6.14 With regard to the charge that the Broker failed to collect margins from the clients, the Broker stated that margin was in fact collected in their regular running account. He stated that he could not show the separate amount as margin in their account. The Broker has failed to produce any proof of having collected the margins regularly. It is noted in the inspection report that broker used to pay the margin to the Exchange as per his requirements but did not specifically collect from his clients. Inspection report recorded that the Broker informed that the credit balance lying in the clients accounts are adjusted towards margins. However, in the

absence of any specific instance of non compliance as far as collecting margin is concerned, I take a liberal view and give benefit of doubt to the Broker.

6.15 With regard to the charge that the Broker failed to obtain broker client agreements from 73 clients out of 153 clients, the Broker stated that he had in fact obtained all the agreements from all the clients but could not produce before the inspecting authority on account of their shifting the premises. The Broker assured that they would collect the agreements in future. The reply of the member is not satisfactory. The Broker is supposed to keep all the necessary records and documents ready for the inspection of the auditors. The Broker also failed to bring on record the proof for obtaining agreements from all the clients. I therefore hold that this is an after thought of the Broker and hold that the Broker is guilty of not obtaining the agreements in almost 50 per cent of his clients.

6.16 With regard to contract notes the following are the findings:

- i. that the contract notes not having pre printed serial numbers, the Broker stated that the pre printed stationery was exhausted and that he had placed order for the same. He stated that instead of failing to issue any contract note he issued contract notes without pre printed number. The explanation of the Broker is not satisfactory. It is observed from the inspection report that the Broker failed to issue contract notes with preprinted serial number from 01.04.1998 to 31.03.1999. It is beyond comprehension to accept that it took one year for the Broker for obtaining pre printed stationery from the market. I therefore hold the Broker guilty on this count.
- ii. that duplicate contract notes were not acknowledged by the clients, it is noted that no instances were given by the inspection team. However, it is noted that the Broker has started pasting the

acknowledged copy on the copy of the acknowledgement. To this effect a benefit doubt can be given to the Broker.

- iii. that the order time was not reflected on the contract note, the Broker stated that the BOLT at that time did not have system that prints order time. It is the responsibility of the Broker to see that the order time is reflected on the contract note. It is essential because it safeguards the system from misuse by unscrupulous elements. Since there is nothing on record to prove that it was not a systemic problem, benefit of doubt is given to the member.
- iv. that the contract notes were not issued in the appropriate format and no PAN number was mentioned, the Broker stated that his clients had given him application for PAN number as submitted to Income Tax Dept. and conducted the transactions on that basis. The Broker stated that they started putting PAN number on the contract notes. This explanation can be accepted.
- V. that one of the contract notes is missing, the Broker admitted that it was missing. Since, this is an isolated single case a lenient view can be taken.

6.17 With regard to delay in submitting the audited accounts and net worth certificate, the Broker stated that the date of filing IT Returns in the respective years was extended till 31.12.1998 and 31.12.1999 respectively, therefore, the certificates based on this finalized audit accounts were filed with BSE subsequently. This explanation is accepted.

7.0 ORDER

7.1 From the aforesaid, it has been established that the Broker has violated Rule 4(b), Clause (k) and (m) of sub regulation (1) of Regulation

17 and Clause A(5) of the Code of Conduct as specified in schedule II read with Regulation 7 of the SEBI (Stock Brokers and Sub Brokers) Regulations,1992 , Bye laws, Rules and Regulations of the BSE and the following directives issued by SEBI vide SMD/MDP/CIR/043/96 dated 05.08.96; SMD-I/23341 dated 18.11.93; SMD/Policy/CIR/5-97 dated 1.04.97; SMD/Policy/CIR-35/98 dated 11.12.98; SMD/RCG/CIR/(BKG)293/95 dated 14.03.95; SMDRP/Policy/Cir-32/99 dated 14.09.99 and SMD/SED/Cir/93/23321 dated 18.11.93 .

7.2 In View of the above and considering the gravity of the charges, a minor penalty of suspension of the certificate of registration of the Broker for a period of 3 (three) months would be adequate. Therefore, I , in exercise of the powers conferred upon me in terms of Section 4(3) of the SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing penalty) Regulations, 2002, hereby suspend the certificate of registration of Shashikant M. Damani for a period of 3 (three) months.

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

G. N.BAJPAI
CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

PLACE : MUMBAI.

DATE : September 10 , 2004