

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11 (4) AND 11 B OF SEBI ACT, 1992 AGAINST SHRI SAMEER K. CHOTAI (TRADE NAME: OM SHARES & SECURITIES), SUB BROKER (SEBI REGISTRATION NO. INS011251019), AFFILIATED TO M P VORA SHARES & SECURITIES LTD. MEMBER, THE STOCK EXCHANGE, MUMBAI

MO/111/MIRSD/10/04

1.0 BACKGROUND

- 1.1 Shri Sameer K. Chotai, operating under trade name Om Shares and Securities and affiliated to M. P. Vora Shares & Securities Ltd., is a registered sub-broker (SEBI Registration No. INS011251019), of the Stock Exchange, Mumbai (BSE) (hereinafter referred to as the sub-broker). Securities and Exchange Board of India (SEBI) had received complaints against certain entities/ persons carrying out illegal trading activities at Porbandar, Gujarat, following which SEBI advised BSE to analyse the turnover data, location of terminals, trading pattern and history/ background of the entities concerned and send their report on the same to SEBI.

2.0 INSPECTION

- 2.1 After analyzing the trade data, in order to establish whether any of the entities have actually indulged in illegal trading, BSE carried out inspections including that of the sub-broker on June 28, 2004. Following the inspection, it was reported by BSE that when their officials visited the office of the sub-broker, a register was found in the hands of one Shri Tejas, brother of the sub-broker. The register contained date-wise details of the trades and when asked for explanation, Shri Tejas and the sub-broker admitted that the register contained the details of trades done illegally by them i.e. without reporting on the BOLT system of the BSE. A photostat copy of the said register signed by the sub-broker has been furnished to SEBI by the BSE.
- 2.2 The BSE further observed as under:
- 2.2.1 the sub-broker had been entering into and executing trades outside the trading mechanism of BOLT provided by BSE and settling such illegal trades in cash on a weekly/ fortnightly/ monthly basis;
 - 2.2.2 comparison of the trades written in the register with the trades executed on the BOLT revealed that none of them were found to be matching;
 - 2.2.3 the sub-broker did not maintain client registration forms and the broker-client agreement;
 - 2.2.4 the sub-broker had not issued confirmation memo in form 'C' to the clients. Instead a memorandum of accounts along with bills were issued;
 - 2.2.5 the sub-broker had not collected margin from any of the clients;
 - 2.2.6 no actual receipt/ delivery of securities took place either in physical or in Demat mode for such illegal transactions.
- 2.3 BSE also reported that the sub-broker indulged in coercive tactics to persuade BSE officials not to report their findings to SEBI. The above, *prima facie*, showed that the sub-broker had indulged in illegal activities that are not in the interest of the investors and which are not conducive to the orderly development and growth of the securities market and that endanger the safety and integrity thereof.
- 2.4 The above *prima facie* reveals that the sub-broker has violated provisions of the Securities and Exchange Board of India Act, 1992, SEBI (Stock Brokers and Sub Brokers) Rules and Regulations, 1992, the Code of Conduct as specified in Schedule II of the SEBI (Stock-Broker and Sub-Broker) Regulations, 1992, various directives/ circulars issued by SEBI and the Bye-laws/ Business Rules/ Regulations of BSE and by virtue of which the sub-broker had ceased to be a fit and proper person in terms of the SEBI (Criteria for Fit and Proper Person) Regulations, 2004. These activities are highly unbecoming of a registered sub-broker and are also in violation of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003.

3.0 SHOW CAUSE NOTICE AND HEARING

- 3.1 In view of the above, a show cause notice dated August 31, 2004 was issued to the sub-broker asking him to show cause as to why interim directions prohibiting him from selling, buying or otherwise dealing in securities should not be passed against him under section 11(4) read with Section 11B of the SEBI Act, 1992 or any other appropriate action as deemed fit should not be taken against him, pending completion of enquiry and passing final orders, if any, under the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.
- 3.2 Along with the show cause notice, a photostat copy of the register containing the details of the trades done illegally and the relevant extracts of the BSE inspection report was furnished to the sub-broker. The sub-broker was advised to furnish his reply along with supporting documents by September 06, 2004 and an opportunity of personal hearing was granted to him on September 15, 2004 at 02:30 p.m.
- 3.3 The sub broker replied to the said show cause notice stating as under:

- 1) That the Inspection Memo dated June 26, 2004 was addressed to Sri Sameer C Kothari and there was no inspection letter on Sameer K Chotai and therefore inspection carried out by BSE team was not legal and therefore the entire inspection is illegal and null & void.
 - 2) He denied entering into and executing trades outside the Stock Exchange mechanism of BSE.
 - 3) That his brother Tejas Chotai was not working with him in any capacity and that the sub-broker was not present when the photocopy of the register was taken.
 - 4) That they maintain client registration forms and broker client agreement. He stated that BSE officials just asked how he was maintaining records and he had explained to them the same. They never asked him for samples of the forms and agreement.
 - 5) That they are issuing confirmation memo to the clients in Form C but on that particular day the stationary was finished by coincidence and in the meantime they were issuing the same on plain paper.
 - 6) That they are collecting the margins from their clients in the form of shares and credit balances in the clients' account.
 - 7) That they have not indulged into any illegal transaction and hence receipt / delivery of securities in physical/ demat mode did not take place of any illegal transactions.
 - 8) That they have not tried to indulge in coercive tactics to persuade BSE officials, but were asking them repeatedly the reason for such sudden inspection with them.
- 3.4 For the handwritten register of the trades undertaken by him, the sub-broker submitted the following explanation:
- ♦ That the practice of their trade in Porbunder city was different and stylish in the sense that they have clients who trade on daily basis which in their local language they call "SATODIYAO" who either come personally or over phone register their indicative rates of trades and ask the sub-broker to keep a watch on the trends of the market, then he keeps watch on such rates and intimate the client that their rates have come and asks the client what is to be done next. Then the clients after making up their minds carry out the trades.
 - ♦ That in the register also the sub-broker has not written much, it was either written by the client or any other person sitting in the dealing room.
 - ♦ That the said book was an approximate order book giving approximate rate and quantity and the sub broker used to inform the clients that the approximate rate has come and used to ask the client whether to execute the trade or not.
 - ♦ That the BSE inspection team did not intimate the sub-broker the very purpose of the inspection. That he was too young and inexperienced businessman of this business and he narrated the whole event to his cousin who was of 45 years of age and had much knowledge and experience and therefore requested him to accompany him to talk to BSE officials to know the outcome of their visit. He further denied that they persuaded BSE officials and offered to settle the matter at a mutually agreeable consideration.

HEARING

- 3.5 The sub-broker was called to appear for the hearing on September 15, 2004, instead *vide* his undated letter received on September 13, 2004, the sub-broker sought an extension of time by 2 weeks for appearing for the personal hearing which was granted to him and the hearing was rescheduled for September 28, 2004 at 05:00 p.m.
- The sub-broker attended the hearing on 28.09.04 wherein he reiterated what he had mentioned in the reply to the show cause notice

4.0 CONSIDERATION OF ISSUES

- 4.1 I have carefully examined the facts and circumstances of the case. I have also considered the reply to the show cause notice and the submissions of the sub-broker. I find that adequate opportunity had been given to the sub-broker in accordance with principles of natural justice.
- 4.2 I find that the sub-broker had been entering into and executing trades outside the trading mechanism of BOLT provided by BSE and settling such illegal trades in cash on a weekly/ fortnightly/ monthly basis and that the sub-broker did not maintain client registration forms and the broker-client agreement. I also note that the sub-broker had not collected margin from any of the clients and no actual receipt/ delivery of securities took place either in physical or in Demat mode for such illegal transactions.
- 4.3 I further note that the register containing date-wise details of the trades of the sub-broker clearly shows that huge volumes of trades were undertaken on 25.06.04 and 28.06.04 outside the trading mechanism of BOLT provided by BSE, which included the scrips of the companies like TELCO, ONGC, MARUTI, ACC etc. to name a few. I find that Shri Sameer Chotai has acted in such a manner that has placed the interest of investors at risk and also jeopardized the trust of investors in the safety and integrity of the securities market. I find that it is necessary in the interest of investors in the securities market to restrain persons such as Shri Sameer Chotai from being associated with the securities market.
- 4.4 I do not find the submissions and reasoning given by the sub- broker to be satisfactory. Considering that the charges against him are serious in nature, an immediate action is called for.
- 4.5 I further note that separate Enquiry proceedings are also being initiated against the sub-broker.
- 4.6 I note that section 11(4) of SEBI Act, 1992 gives me the power to pass orders in the interest of investors or securities market, pending investigation or inquiry. It states as under:

"Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:

- (a)
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities.

5.0 ORDER

- 5.1 Therefore, in exercise of powers under section 11(1), 11(4) and section 11 B of the SEBI Act read with section 19 of the SEBI Act 1992 and order passed thereunder, I hereby order that Sameer K. Chotai, operating under trade name Om Shares and Securities (SEI Registration No. INS011251019), be prohibited from buying, selling or dealing in securities in any manner, directly or indirectly with immediate effect, pending initiation and completion of enquiry proceedings and determination of further appropriate action on receipt of the enquiry report. The Order be served on the above entity through BSE.
- This order will come into effect immediately.

Place: Mumbai

Date: 14.10.04

A K BATRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA