

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER UNDER REGULATION 4(3) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY REGULATIONS), 2002 AGAINST M/S.J.GEETHA, MEMBER OF MADRAS STOCK EXCHANGE AND SUB-BROKER OF THE STOCK EXCHANGE, MUMBAI, WITH SEBI REGISTRATION NUMBER INS 010722317.

CO/60/MIRSD/10/2004

1. M/s.J.Geetha (hereinafter called as "the sub-broker") was a member of Madras Stock Exchange (hereinafter called as "MSE") and a sub-broker affiliated to MSE as a member of the Stock Exchange, Mumbai and registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") under certificate of registration number INS 010722317, having office at Plot No.2157'L' Block, 1st Street, Anna Nagar, Chennai-600 040.
2. SEBI conducted inspection of books of accounts, documents and other records of the sub-broker in the month of June 7, 2002 from the year 2000 till the date of inspection. Several irregularities were noticed during of inspection.
3. An enquiry officer was therefore appointed vide order dated 21.11.03 under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty), to enquire into the contraventions of the following provisions of law:
 - a). SEBI Circular No.SMD/POLICY/CIR-11/1997 dated 21/05/97
 - b). SEBI Circular No.SMD/POLICY/CIR-33/2000 dated 27/07/00
 - c). SEBI Circular No.SMD/POLICY/CIR-12/2000 dated 17/05/02
 - d). SEBI Circular No. SMD/ SED/CIR- 93/23321 dated 18/11/93
 - e). Regulations 15 read with code of conduct as specified in schedule II of the SEBI (stock-broker and sub-broker) Regulations, 1992.
 - f). Bye laws, Rules and Regulations of Stock Exchange.
4. Enquiry officer submitted his report on 13.07.2004 and found that the sub-broker has violated the provisions of SEBI Act Rules and Regulation made there under and recommended a penalty of suspension of registration of the sub-broker for a period of 6 months.
5. A show cause dated July 16, 2004 was sent to the sub-broker enclosing a copy of the enquiry report calling upon to show cause why appropriate penalty including penalty as recommended by the enquiry officer should not be imposed on him.
6. The sub-broker had replied to the show cause vide letter dated August 9, 2004. The sub-broker stated that they were devastated by the magnitude of the punishment recommended by the enquiry officer as they were a very small-broking outfit doing business only for a close circle of friends and relatives and that they had suffered heavy losses in the last 4 years due to the market conditions which have improved only in the last few months. The sub-broker further asserted that as their business has just started picking, to suspend them for a long period of six months will certainly put them out of business and that they will never be able to recover from the same. The sub-broker further contended that the omissions /lapses that have taken place were more than three years ago when they were in a very early stage of business and that there was not much clarity regarding the applicability of the rules and regulations of sub-brokers. The sub-broker affirmed that since then they had taken every effort to ensure that the rules and regulations were followed properly. The sub-broker stated that they do not have complaints from any person against their firm and that they have not done fraud or cheated or misappropriated or caused any loss to any investor who had done business with them. Therefore the sub-broker requested that a more sympathetic view in their case may be taken and to further reduce the severity of the penal action against their firm. The sub-broker reiterated to take all care required to ensure that the errors and omissions that have taken place earlier will not occur again. The sub-broker appealed to condone the omissions that have taken place and to reduce the severity of the penal action proposed to give a chance to survive and continue to do business in full compliance of all rules and regulations.
7. I find that adequate opportunity of hearing was given to the sub-broker in adherence to the principles of natural justice. I have gone through the inspection report, enquiry report, the show cause notice, the reply of the sub-broker and the material available on record and following are the findings on each of the allegations:

a) Non- charging of brokerage:

The enquiry officer contended that in terms of the provisions contained in the bye-laws of the exchange, brokerage shall be charged and collected by the members upon execution of all orders and for non-members in respect of purchase or sale of securities and in terms of clause D (1) of Schedule II under Regulation 15 of SEBI (Stock brokers and Sub-brokers) Regulations, 1992, a sub broker shall always comply with the rules, bye-laws and regulations of the Stock Exchange. The

enquiry officer during the period of inspection found that the sub-broker was in contravention of the provisions of law had not charged brokerage to his clients in several cases. Following are some of the instances.

Con. No.	Date	Client Code	Scrip & Rate	Brokerage by broker	Brokerage by Sub-broker
1567	4.11.01	U001	Polaris/96.00	0.60	0.00
1564	8.11.01	S043	HFCL/62.00	0.35	0.00
1558	7.11.01	V003	ESSAR OIL	0.10	0.00
1557	7.11.01	U001	Silverline/41.00	0.25	0.00
2550	23.5.02	S040	Indian Petro/150	1.13	0.00

The sub-broker in his reply had stated that the error occurred due to a software problem which charges brokerage only one side, in respect of squaring off transaction within the same settlement. The sub-broker had submitted that the problem was identified and corrective action was taken immediately to charge brokerage on both sides in respect of squaring off transaction and that this problem cannot occur in future.

The enquiry officer found the above reply of the sub-broker unsatisfactory as the contention of the broker implies that he had not noticed the problem until it was pointed out by SEBI inspection team. The enquiry officer further asserted that being a small sub-broker it would not be impossible for the broker to verify whether brokerage was being charged to each and every client. The enquiry officer stated that, prudential norms of business demand due diligence on part of the management to avoid loss to business and though, the broker was suffering financial losses by not charging brokerage to its clients, it was surprising to note that the broker never found that it was not charging brokerage to the clients and took corrective action only after it was pointed out by SEBI inspection team.

I agree with the finding of the enquiry officer that, the reason shown by the broker viz., software problem is only an after thought and I therefore find that the broker is guilty of violating the code of conduct prescribed for sub-brokers under SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

b) Non maintenance of deposit of minimum margin by the clients:

The enquiry officer stated that in terms of Circular SMDRP/POLICY/Cir.33/2000 dated July 27, 2000 read with Cir.6/2001 dated February 1, 2001 and consequent instructions issued to its members by the Stock Exchange the members shall ensure that all the clients except Financial Institutions/ Foreign Institutional Investors/ Mutual Funds shall maintain a deposit of minimum margin of not less than 10% of the net open position of a client at any point of time, in form of cash, bank guarantees, Fixed Deposit Receipts or approved securities with a broker at any point of time. The sub-brokers are required to submit an auditor's certificate on a quarterly basis to the affiliated broker to this effect. The enquiry officer found that the sub-broker was in contravention of the above circulars and the specific directions of the stock exchange as the sub-broker did not ensure the maintenance of the mandatory minimum margins by the clients and had not furnished the requisite auditors certificates on quarterly basis during the period covered under inspection. Few instances of the said violation are listed below:

Client name / code	Transaction Date	Value of Nct Open Position	Min. Margin Required	Margin Available
S056	8.4.02	27,976.70	Rs. 2,796/-	Nil
S030	21.6.01	68,899.00	Rs. 6,889/-	Rs. 5,251/-
T001	-do-	33,184.00	Rs. 3,318/-	(-) 3713
G007	27.3.02	15,307.00	Rs. 1,530/-	Nil

The sub-broker in his reply had stated that it was actually doing business only for close friends and relatives and none of its clients were public at large. They also submitted that the broker was not collecting margins earlier, but in view of the mandatory requirement to collect margins, it is now insisting on receiving margin monies from all clients. The sub-broker affirmed that this requirement will be complied with by all clients in future and that it will also arrange for the requisite auditor's certificate on quarterly basis as required by SEBI.

I agree with the finding of the enquiry officer that not doing business with public at large cannot be a ground for not collecting margin from the clients. The requirement of collection of margin is stipulated to insulate the system from the risk of defaults by the clients. I therefore, find that by not complying with the aforesaid circulars and also the directions of the stock exchange/affiliated broker, the broker had committed a breach of code of conduct for sub-brokers prescribed under Reg.15 of SEBI (Stock Broker and Sub-Broker) Regulation, 1992.

c) Delay in delivery of securities:

In terms of Regulation 15(1) (b&d) of SEBI (Stock brokers and Sub-brokers) Regulations, 1992 read with SEBI Circular SMD/POLICY/Cir.11/97 dated May 21, 1997 all the transactions in securities on behalf of the clients of the sub- broker shall be settled by delivery and / or payment, between the contracting parties in accordance with the provisions and bye-laws of the exchange by which the sub-broker is governed. Further, in terms of the Circular SMD/SED / CIR/93/23321 dated November 18, 1993, a member is required to deliver the scrips / make payments due to the clients within 48 hours from the relevant pay out date.

The enquiry officer found the sub-broker of having contravened the above provisions of law as he did not transfer the scrip to the clients' account within the stipulated time of 48 hours from the relevant delivery out date and instead the same were retained in the sub-broker's account. The following are the instances for delayed transfer / retention by the sub-broker:

Client Name	Scrip & Qty.	Date of credit to member's A/c	Due date of credit to Client's a/c	Actual date of credit to Client a/c
T. Subramanian	Dr. Reddy's 30	6.5.2002	8.5.2002	16.5.2002
Thiruvengadam	1000	17.4.2002	19.4.2002	24.4.2002
MVNSS Lakshmi	Sliverline 100	17.8.2001	19.8.2001	5.9.2001
Subhashankar	HCL Tech 25	6.9.2001	8.9.2001	5.10.2001
G. Uma	Sonata Software 50	31.12.2001	2.1.2002	21.1.2002
S. Krishnamurthy	RPL, 100	8.1.2002	10.1.2002	1.2.2002
Rajesh Goel	Welspun, 2000	7.1.02/15.1.02/18.1.02	9.1.02/17.1.02/20.1.02	Retained by broker

There were several similar instances found where the sub-broker failed to credit the amount due to the clients within the stipulated time and the same were lying with the sub-broker for more than one month as on the date of inspection. The following are the instances:

Name / Client Code	Date of Last Trade	Amount due to client
V003	1.2.2002	Rs. 35,011.80
N013	5.11.2001	Rs. 1,01,973.65
K015	16.5.02	Rs. 17,118.30
S030		Rs. 91,131.71
B009		Rs. 39,148.50
T002		Rs. 20,501.70

The sub-broker in his reply had submitted that they had retained the documents / or delivered it later only with the full consent of the clients and based on their instructions given to them. The sub-broker provided letters from its clients regarding the same. The sub-broker submitted that it had not retained any client's shares without their consent and authorization.

I agree with the view of the enquiry officer that in the absence of any documentary evidence filed by the sub-broker in support of their contention that they had obtained written instructions from their clients to retain their securities, no credence to the contention of the sub-broker can be given. I therefore find that the sub-broker guilty of violating the aforesaid provisions of SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992 and the circulars issued by SEBI.

d). Delay in Payments to Clients:

There are several instances where the sub-broker had not credited the amount due to the clients within the stipulated time and that the same were lying with the sub-broker for more than one month as on the date of inspection. The enquiry officer observed that the inspection report had also brought out certain instances of such non payment to the clients and

charged the sub-broker of committing breach of code of conduct for sub-brokers prescribed under SEBI (Stock Brokers & Sub-brokers) Regulation, 1992.

The sub-broker in his reply had submitted, that the payment were not made either at the instructions of the clients or because some of the clients were the relatives of the proprietor of the sub-broker. The sub broker has also submitted that in future it would ensure that adequate documentation is maintained in respect of all cases of delayed payments.

I agree with the enquiry officer that in the absence of any documentary evidence submitted by the sub-broker to the effect that the payments were delayed in terms of the instructions received from the clients; no credence to the contention of the sub-broker can be given. I therefore find the sub-broker guilty of violating the code of conduct prescribed for the sub-brokers under SEBI (Stock Brokers & Sub-Brokers) Regulation, 1992.

e). Non -segregation of clients funds from owned funds:

In terms of Circular SMD/SED/CIR/93/23321 dated November 18, 1993, SMD/POLICY/CIRCULAR/11 -97 dated May 21, 1997, the member should maintain a separate bank account for clients' funds and there should be a clear segregation of clients funds from their own funds. Further, terms of the agreement between the member and the sub-broker, stipulates that maintenance of an exclusive account for the clients for the purpose of receipt and payments is mandatory. The sub-broker was maintaining only one bank account for receipts and payments pertaining to both sub broker and the clients in contravention to the above. Enquiry officer found that the sub-broker had retained the funds of the clients for a longer period and also delayed the transfer of the funds to the clients and there were frequent and huge drawings from the account by the sub broker for self. Following are few such instances:

Date	Particulars	Cheque	Amount Drawn
5.12.01	Self	872620	Rs. 50,000
10.12.2001	Self	872623	Rs. 30,000
11.12.2001	Vikram Software Ltd.	872622	Rs. 5,000
11.12.2001	Self	872624	Rs. 76,000
21.12.2001	Self	872626	Rs. 30,000
24.12.2001	Self	872627	Rs. 18,000
26.12.2001	Self	872629	Rs. 20,000
27.12.2001	Self	872631	Rs. 75,000
28.12.2001	Self	872632	Rs. 35,000
9.3.2002	Self	530658	Rs. 1,30,000
13.3.2002	Self	530662	Rs. 15,000
14.3.2002	Self	530663	Rs. 1,30,000
19.3.2002	Self	530665	Rs. 70,000
20.3.2001	Self	530666	Rs. 5,000
21.3.2002	Self	530667	Rs. 25,000

The sub-broker in his reply had stated that steps were taken to maintain another account in Indian Overseas Bank, Nungambakkam Branch, Chennai – 600 034 A/c No. 16587 which will be used for all expenses and transactions other than client transactions. The sub-broker stated that this account was already available but due to lack of clarity on the issue of applicability of maintaining separate banking accounts with regard to sub-brokers, certain payments relating to establishment were made form the Designated Client Account No. 000905001523 with ICICI Bank Limited. The sub-broker has further submitted that in future he would ensure payment of all establishment expenses out of the Administrative Account only. As regards the cash withdrawals, the sub-broker submitted that they were mainly towards repayment of margin money brought in cash by the member. The sub-broker contended that the margins were payable the very next day of the transaction but the margins were received from clients by cheque and that the clearing time of 2 days taken by the bank necessitated the bringing in of the margin amount by cash in order to meet the pay-in obligation.

I agree with the finding of the enquiry officer that the sub-broker failed to segregate the clients funds from own funds. I find that, the sub-broker committed a violation of the aforesaid circulars issued by SEBI.

f). Habitual default/ delay in payment of margin dues and pay-in dues:

In terms of the provisions of the bye-laws of the stock exchange, transactions done on the floor of the stock exchange are subject to the margin requirements prescribed by the stock exchange, SEBI etc. Failure to pay margins due by a member on the due date would render them liable for suspension from trading. The enquiry officer observed that, the sub-broker failed on several occasions to meet its margin obligations and delayed in meeting its pay-in dues to complete the settlement cycle. The details are as follows:

MARGIN DUES

Date	Amount not paid
9.5.01	Rs. 15409.50
9.6.01	Rs. 118281.00
4.6.01	Rs. 109742.50
29.6.01	Rs. 13211.65
25.7.01	Rs. 7350.00
16.8.01	Rs. 84516.06
27.8.01	25155.81
30.8.01	11973.66
4.9.01	76327.46
10.9.01	37617.41
19.9.01	96677.34
20.9.01	211551.19
21.9.01	26310.41
24.9.01	257140.81
25.9.01	77199.77
26.9.01	47272.35
27.9.01	56572.95
8.10.01	15526.75
10.10.01	1676.47
17.10.01	105465.82
31.10.01	31582.95
1.11.01	79974.66
2.11.01	196638.13
5.11.01	211858.90
6.11.01	161702.80
8.11.01	19787.48
14.11.01	43433.14
15.11.01	42293.66
19.11.01	55284.48
20.11.01	13659.98
22.11.01	44258.10
23.11.01	45364.98
28.12.01	160218.68
6.2.02	61674.80
7.2.02	4396.59
26.2.02	104923.22
27.2.02	111295.49
28.2.02	141461.90
20.3.02	8504.24

SETTLEMENT PAY-IN DUES

Due Date	Amount	Received on
1.3.01	248821.56	2.3.02
9.3.02	1625.75	10.3.01
15.3.01	65247.62	16.3.01
26.4.01	63227.83	27.4.02
3.5.02	109280.44	4.5.01
3.8.01	16542.35	6.8.01
31.8.01	26551.08	1.9.01
6.9.01	110107.92	7.9.01
7.9.01	87097.47	8.9.01
11.9.01	8176.46	12.9.01
20.9.01	64287.67	21.9.01
21.9.01	210285.85	26.9.01

21.9.01	188889.45	4.10.01
25.9.01	14813.75	4.10.01
27.9.01	253673.56	4.10.01
17.10.01	168229.10	19.10.01
1.11.01	6971.21	2.11.01
8.11.01	340971.19	12.11.01
21.11.01	161809.50	26.11.01
23.11.01	17235.38	26.11.01
29.11.01	29588.56	3.12.01
13.12.01	29596.01	14.12.01
18.12.01	41250.58	19.12.01
3.1.02	155580.42	7.1.02
4.1.02	27274.70	15.1.02
7.1.02	24034.30	15.1.02
8.1.02	19231.50	15.01.02
9.1.02	35535.60	15.1.02
11.1.02	17214.20	15.1.02
12.1.02	39000.00	16.1.02
16.1.02	12030.00	16.1.02
28.1.02	121641.50	29.1.02
29.1.02	28483.75	5.5.02
30.1.02	169143.70	5.2.02
31.1.02	9781.03	5.2.02
1.2.02	8035.30	5.2.02
4.2.02	7554.30	5.2.02
13.2.02	175560.85	14.2.02
14.2.02	30473.54	18.2.02
1.3.02	107374.01	11.3.02
4.3.02	407381.41	11.03.02
6.3.02	165367.42	11.03.02

The sub-broker in his reply had stated that in the majority of the instances, the delay was only by one day which is due to the cheque clearance time taken at the bank.

Further the sub-broker in his written submissions had stated that it was a very small brokerage firm and doing business only for close relatives and friends on their request and is not doing any business for public at large. The sub-broker stated that at the time of SEBI inspection, their operations were on a very low level with regard to outside clients and that the process of adapting to various changes in the Rules and Regulations governing the stock market had led to a few lapses. The sub-broker also submitted that it would be certainly taking all necessary steps to rectify any errors/delays that had taken place and ensured that they would comply with all the Regulations. The sub-broker submitted that there was not a single complaint against them by any client or other related party.

The enquiry officer rejected all the submissions made by the sub-broker as there are instances where the delay was more than ten days. Therefore the enquiry officer found the sub-broker guilty of violating the aforesaid circulars and thereby breaching the code of conduct prescribed by SEBI (Stock Broker & Sub-Brokers) Regulations, 1992.

8. Upon considering all the facts of the case and in view of the fact that the sub-broker has admitted almost all the violations, most of which are serious in nature, I agree with the findings of the Enquiry Officer that the above entity violated the following provisions of law:
 - I. Regulation 15, 15(1) (c), Clause C(3) of schedule II of SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 for non complying with the Rules, Byelaws and Regulations of the Stock Exchange.
 - II. Circular SMRD/POLICY/CIR-33/2000 dated 27/07/00 read with circular 6/2000 dated 01.02.2001, for non maintenance of deposit of minimum margin.
 - III. Circular SMD/POLICY/CIR-11/1997 dated 21/05/97, for committing delay in delivery payments to clients.
 - IV. Circular No. SMD/ SED/CIR- 93/23321 dated 18/11/93, for failure to segregate client money and own funds in client account and byelaws of the exchange on client-member relationship.

9. I further note that Regulation 13(1) (b) provides for major penalties which include cancellation of certificate of registration. 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.
10. Therefore, in exercise of the powers conferred upon me by Section 4(3) of SEBI Act, 1992 read with Regulation 13(4) of the Enquiry Regulations, I hereby suspend the certificate of registration granted to M/s. J.Geetha bearing registration number INS 010722317 for a period of six months. This order shall come into force with immediate effect.

Date : 12.10.04

Place : MUMBAI

G.N.BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA