

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M/S. S. N. SUREKHA & CO., MEMBER, CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030605019

MO/21/MIRSD/12/2005

1.0 BACKGROUND

1.1 M/s. S. N. Surekha & Co. (hereinafter referred to as "the broker") is a member, Calcutta Stock Exchange, ("CSE") registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INB030605019.

1.2 Inspection of the books of accounts and other records of the broker was carried out by SEBI for the financial year 2001-2002. The following irregularities were observed during the said inspection:

- a) Non-maintenance of Order Book and Margin Register
- b) Irregular maintenance of client registration forms.
- c) Delayed payments to clients.
- d) Non-segregation of client's funds and own funds.
- e) Trading in unlisted securities by issuing contract notes in Form 'A'.
- f) Executing off the floor transactions.
- g) Non redressal of Investors' grievances.
- h) Non- payment of fees to SEBI.

2.0 ENQUIRY PROCEEDINGS

In view of the above, an Enquiry Officer (EO) was appointed vide SEBI Order dated November 13, 2003 under Regulation 5 of SEBI (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'said regulations') to enquire into the alleged contraventions observed during the inspection of books of accounts of the broker. The EO after conducting the enquiry in terms of the said regulations submitted his report on 10.06.04 and recommended suspension of registration of the broker for a period of one month.

3.0 SHOW CAUSE NOTICE AND THE BROKER'S SUBMISSIONS

3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated 14.06.04, in terms of regulation 13(2) of the said Regulations, advising to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed. The broker replied vide letter dated 15.07.04 and submitted that the violation committed were mostly technical in nature, unintentional and due to ignorance. He further stated that they are left with no business because the volumes in CSE are negligible. He further stated that all necessary precautions would be taken to prevent any further recurrence.

4.0 CONSIDERATION OF ISSUES

I have carefully examined the facts and circumstances of the case, the Enquiry Report and the submissions of the broker. I find that adequate opportunity has been given to the broker in accordance with principles of natural justice.

The findings in respect of the charges are as under:

1. Whether the broker failed to maintain order book and margin register

The broker in the written reply and during the course of Enquiry submitted that they receive the orders from the clients over the telephone and hence it is not possible to maintain the order book. The explanation of the broker is not satisfactory and maintenance of statutory books cannot be left to the convenience of the broker. I agree with the finding of the Enquiry Officer that the broker had failed to maintain the order book as required under the Rules and Regulations. Regarding not maintaining the margin register, the broker submitted that they maintain only the CSE margin statement download in lieu of margin register and that the violations, if any, which were noted, were technical in nature and not intentional. The reply of the broker is accepted in view of the order of the Hon'ble SAT in Radar Securities Ltd. vs. SEBI (Appeal No. 22/2003 dated 30.05.03) wherein it was held that when a stock broker had deposited margin money with the Stock Exchange and downloaded the data available on the Exchange's computer, it was to be held that broker had maintained effectively record of its margin deposits and failure to maintain information in book form would not be considered as a grave violation of Regulation 17(1) (k) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992.

2. Whether the broker failed to segregate clients money and own funds

During the inspection it was found that the broker was not maintaining separate client account. The broker submitted that due to ignorance, clients account was not maintained separately, but in no case they utilized clients' funds for any unauthorized purposes. They had never defaulted in payment to stock exchange. It was submitted that necessary corrective measures to maintain separate client account is being made. The amounts to the credit of clients' accounts are in the nature of trust. The funds in the clients' accounts cannot be applied for any purpose other than what is permissible under SEBI Guidelines. The objective of opening and maintaining a separate account for the clients' funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. Not maintaining a separate clients' account is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated 18.11.93. However, absence of any defaults in meeting payment obligations to clients as per Inspection Report is considered as a mitigating factor.

3. Whether the broker dealt in unlisted securities by issuing contract notes in form 'A'

During the course of inspection it was found that the broker had transacted in unlisted securities and issued contract notes in Form A for these transactions. Contract Notes in Form 'A' are to be issued by brokers for transactions that are executed for securities listed in a Stock Exchange of which he is a member. The broker submitted that since both buyer and seller approached to execute the trades, few transactions in unlisted securities were executed. It is noted that there are eight transactions by the broker in unlisted securities by issuing contract notes in Form 'A'. The bye laws 331 & 336 of the Calcutta Stock Exchange also declares such contracts to be void and any member shall be deemed to be guilty of unprofessional conduct for such dealings.

4. Whether the broker executed off the floor transactions

During the inspection it was found that the broker had indulged in off the floor transactions. The broker had submitted that since the volumes in CSE had gone down drastically and as there were no adequate buyers and sellers affecting the depth in the market, on few occasions when both buyers and sellers approached at the same time, off the floor transactions were executed. It is noted that there were ten instances of not reporting off the floor transactions to CSE which is in violation of SEBI circular no. SMD/RCG/Cir/BKG/293/95 dated March 14, 1995 and also the Bye Laws 332 & 334 of the CSE. Further, in terms of SEBI Circular dated 14.09.99, such transactions could not have been executed except on the floor of the exchange. I agree with the findings of the Enquiry Officer. Further, it may be noted that off the floor transactions taking place in the market do not impart transparency. The price formation in such transactions is not through the Stock Exchange price and order matching mechanism and investors do not have the benefit of the best possible prices. Cross deals are transactions wherein both the buyer and seller belong to the same broker. With a view to regulate such off the floor transactions including cross deals, SEBI had issued a circular dated 14.09.99 which prohibited off the floor transactions and cross deals except on the screen of the Stock Exchanges which lend transparency and result in true and fair discovery of prices of securities.

5.0 With regard to the other charges at Item Nos.b), c), g) and h) of paragraph 1.2, the Enquiry Officer has not given any adverse findings against the broker. In view of the explanations furnished by the broker, I am inclined to agree with the findings of the Enquiry Officer.

6.0 ORDER

6.1 The Enquiry Officer has recommended minor penalty of suspension of registration of the broker for a period of 1 month. There are no mitigating factors to take a lenient view having regard to the nature and gravity of the charges established. It is difficult to agree with the contention of the broker that the irregularities are merely technical in nature.

6.2 Now, therefore, in exercise of the powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the Enquiry Regulations, I hereby impose minor penalty of suspension of the certificate of registration on M/s. S. N. Surekha & Co., member, Calcutta Stock Exchange, having SEBI Registration No. INB030605019, for a period of one month.

This Order shall come into effect on the expiry of 21 days from today.

Place: Mumbai

Date: 21/ 12/ 2005

**MADHUKAR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**