

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 ATMARAM KEJRIWAL & CO., MEMBER, UTTAR PRADESH STOCK EXCHANGE ASSOCIATION LTD., SEBI REGISTRATION NO. INB100362712

1.0 BACKGROUND

1.1 M/s. Atmaram Kejriwal & Co. (hereinafter referred to as "the broker") is a member, Uttar Pradesh Stock Exchange Association Ltd., ("UPSE") registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with Registration No. INB100362712.

1.2 An Inspection of the Books of Accounts, documents and other records maintained by the broker was carried out for the period from 01.04.2000 to 30.09.2002 by M/s. Gupta & Shah, Chartered Accountants appointed by SEBI in terms of Order dated 31.05.02. Certain irregularities / contraventions of the SEBI Regulations were observed during the said inspection:

2.0 ENQUIRY PROCEEDINGS

2.1 An Enquiry Officer (EO) was appointed vide Order dated December 5, 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 07.10.04 and recommended a minor penalty of 'warning' to the broker.

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 18.10.04, in terms of regulation 13(2) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the said regulations'), advising to show cause as to why the penalty as recommended by the Enquiry Officer should not be imposed. The broker was granted 15 days time and the broker failed to reply within the time granted. One more opportunity was given to the broker vide letter dated 17.11.04 wherein the broker was asked to make its submissions by 24.11.04. The broker replied vide letter dated 22.11.04 and sought further time of 15 days to make its submission since the proprietor of the firm, Nisha Kejriwal was on bed rest.

3.2 I note that the extended time sought by the broker has already elapsed and no further replies have been received from broker's side.

4.0 CONSIDERATION OF ISSUES

4.1 I have carefully examined the facts and circumstances of the case and also considered the Enquiry Report. I find that adequate opportunity was given to the broker in accordance with the provisions of SEBI (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

4.2 My findings in respect of the charges are as under:

4.2.1 Whether the broker failed to maintain Books of Accounts:

It was found during the Enquiry that the broker did not produce the following books and records for the financial years 2000-2001, 2001-2002 and 2002-2003:

1. Margin Deposit Book
2. Order Book
3. Written Consent of Clients in case of transactions with them on principal to principal basis.

Regarding the above, the broker submitted that the Margin Deposit Book & Order Book were being maintained regularly after the inspection. It was further submitted that it had neither caused any wrongful gain to him nor any wrongful loss to any investor or anybody else.

The above submissions of the broker clearly suggest that it has admitted that it did not maintain Margin Deposit Book, Order Book till the time of inspection. Further the broker has chosen to remain silent on the non-maintenance of written consent of clients in case of transactions with them on principal to principal basis in tacit admission of the charge and has violated provisions of Regulation 17 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and the directives of SEBI issued vide circular no SMD/ Policy/ IECG/1-97 dated Feb 11, 1997.

4.2.2 Whether there were irregularities with respect to the contract notes

Following discrepancies were observed in the Contract Notes issued by the broker:

- i. Form A was used to issue Contract Notes for all transactions done on behalf of clients.
- ii. The Contract Notes issued by the broker were not having pre-printed serial numbers.
- iii. The SEBI Registration No., time of placement of order and time of execution of order, trade number and order number, were not indicated in the Contract Notes.

The broker submitted that their main volume of business relates to own trading and client transaction was hardly 1%. It was stated that Contract notes were generated by computer and accordingly SEBI Registration No. and serial no. was not printed. It was further submitted that the points raised in the show cause notice were being taken care of. It may be noted that UPSE vide circular no. UPSE / 97- 98 dated December 1, 1997 informed members that the facility of time stamping of order execution had been made available in the vector software used in UPSE on line trading and that the members were advised to make use of the same.

The broker has admitted the discrepancies in the contract notes as alleged in the show cause notice and has violated directives of SEBI issued vide circular no. SMD /MDP/ CIR /043/96 dated August 5, 1996. & SEBI Circular no. SMD/POLICY/ IECG/1-97 dated February 11, 1997.

4.2.3 Whether the broker failed to obtain information for the Know Your Client Form

It was found that in most of the cases proof for income and/or identity/Unique client code was not obtained by the broker. The broker submitted that the necessary information regarding annual income and proof of identity of the client were being maintained. It was reiterated that there was hardly any business of clients. The broker submitted that the requisite details of clients wherever missing were being obtained. Later, in the reply to the Enquiry Officer, the broker stated that the details were being maintained. Therefore it is clear that as on the date of inspection the necessary details were not being maintained. Further, as rightly pointed out by the Enquiry Officer, the defence of small volume of client's business does not obviate maintenance of necessary details.

The above clearly suggest that the broker has violated directives of SEBI issued vide circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997 as well as the provisions of Rule 4(b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and the provisions of Para A (5) of Code of Conduct specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

4.2.4 Whether the broker failed to Use Unique Client Code at the time of entry of orders in the system

It was found that the Unique Client Codes were not used at the time of entry of orders in the system. The broker submitted that the introduction of client code was based on the concept of monitoring the clients more closely. In their case, there were hardly any clients and so there was no practical application of the client code and could be ignored.

The broker has admitted non-usage of unique client code for all clients. The small volume of client business cannot be used as an excuse for non-usage of Unique Client Code. The broker has therefore violated directives of SEBI issued vide circular no. dated SMDRP/Policy/ CIR-39/2001 dated July 18th, 2001.

4.2.5 Whether the member failed to segregate client funds from own funds

It was found that the broker was maintaining a separate bank account with Standard Chartered Grindlays Bank (No. 29315555) for clients' fund, but almost all the transactions were routed through his own account maintained with the same Bank (No. 62305000810). The broker submitted that the client bank account was maintained. However, there being hardly any transactions of the client the use of client bank account did not arise.

The above clearly indicates that the broker has admitted that it had failed to segregate client funds from own funds though separate accounts had been opened. This is in violation of directives of SEBI issued vide circular no SMD/SED/CIR / 93/233231 dated November 18, 1993.

4.2.6 Whether there was delay in payments/delivery

- i. It was found that in three cases i.e. R C Chaturvedi, Sherry Madan and Archana Gupta payments were delayed to the clients and no record of instructions given by the clients for retention of funds were maintained by the broker.

The broker submitted that the payments/deliveries had been settled with the consent of the clients and the alleged delay was only on their instructions. It was reiterated that the volume of transaction with the clients was negligible.

The broker has failed to submit any proof of the instructions given to him for retention of payments/deliveries to the Inspection Authority as well as the Enquiry Officer and has apparently violated provisions of Rule 4(b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and the provisions of Para A (5) of Code of Conduct specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 as well as directives of SEBI Circular No. SMD/SED/ CIR/93/23321 dated Nov 19, 1993.

4.2.7 Whether the broker failed to appoint Compliance Officer

It was found that the broker had not appointed a compliance officer. The broker, during the course of Enquiry submitted that Sh. Vinod Kumar Sharma was their compliance officer and that the requirement was complied with. However, having regard to the negligible business, appointment or non appointment of a compliance officer had no bearing/effect on his working and for all practical purposes the owner of the firm could always be considered as a compliance officer.

The broker did not indicate any date of appointment of the compliance officer, who appears to have been appointed subsequent to the date of inspection. It is binding on any broker to appoint a Compliance Officer and the broker has therefore violated provisions of Regulation 18A of SEBI (Stock Brokers & Sub-Brokers) Regulations, 1992.

4.2.8 Whether the broker entered into direct money transactions between members

It was found that the broker was involved in lending/borrowing of funds from Enigma Finance Service and Keshav Fincon Ltd. In its reply dated 25.3.2003, the broker had only submitted that they were in touch with the concerned members and hoped to receive the amounts soon. However, later in the reply to the Enquiry officer, the broker denied that any lending transactions were executed and stated that the debit and credit with the intention to buy and sell had been duly accounted for.

The broker failed to satisfactorily prove that they had not lent funds to the named entities. Further, their reply dated 25.3.2003 shows that amounts due from the said entities to the broker which they had failed to account for. The broker has violated provisions of Regulation 8(1) (f) and 8(3) (f) of SC(R) Rules, 1957.

4.2.9 Whether the broker entered into negotiated deals

It was found that on 11.9.2000 700 ACC shares were purchased by ATMARAM at Rs.113.30 from M/s Vikalp Securities, but on that date lowest & highest rate as per the U P Stock Exchange were Rs.116.25 and Rs.123.00. The broker in reply to the above submitted that there was no volume of the deals and such isolated transaction having no monetary significance needed to be ignored.

The broker has failed to offer satisfactory explanation to rebut the charge. ATMARAM has not refuted the charge and has apparently violated directives of SEBI issued vide Circular No. SMDRP/Policy /Cir -32/99 dated September 14, 1999.

- 4.3 In the light of the foregoing, I agree with the findings of the enquiry officer and there is no additional material to come to a different conclusion.

- 4.4 Since 'warning' is no longer a recognized penalty under the SEBI (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, another minor penalty of like nature, 'censure', may be imposed in terms of Regulation 13(1) (a) (i) of the (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

5.0 ORDER

5.1 Now therefore, the aforesaid reasons and in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby i Section 19 of the SEBI Act read with Regulation 13(4) of the said Regulations, I hereby warn M/s. Atmaram Kejriwal & Co., member, Uttar Pradesh Stock Exchange Association Ltd., having SEBI Registration No. INB100362712 and direct him to be more cautious in future in its dealings with securities and to adhere to the provisions of SEBI Act, 1992 and the Rules and Regulations made thereunder. Any future lapse on its part in complying with the said provisions would invite stringent action.

5.2 This Order shall come into force with immediate effect.

PLACE: MUMBAI
DATE : 27.12.2005

MADHUKAR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA