

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 TOWER CAPITAL AND SECURITIES PVT. LTD., MEMBER, NATIONAL STOCK EXCHANGE OF INDIA LTD., (NSE) HAVING SEBI REGISTRATION NO. INB230599736

MO/58/MIRSD/12/2005

1.0 BACKGROUND

- 1.1 Tower Capital and Securities Pvt. Ltd. (hereinafter referred to as “the broker”), is a member of National Stock Exchange of India Ltd. (hereinafter referred to as “NSE”) and a Stock Broker registered with Securities and Exchange Board of India (hereinafter referred to as “SEBI”) having SEBI registration no. INB230599736.

2.0 INSPECTION AND ENQUIRY

- 2.1 An inspection of books of accounts, documents and other records of the broker was conducted for the period 2001-02, 2002-03 (till February 2003). During inspection, certain irregularities were observed. Based on the same, vide order dated 21.11.03, an Enquiry officer was appointed under Regulation 5 of SEBI (Procedure for holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002 (hereinafter referred to as the “said regulations”), to enquire into the contraventions, if any, as specified in the said order.
- 2.2 The Enquiry Officer, after conducting the Enquiry as per the procedure laid down in the said regulations, submitted his report on

27.05.04 and recommended that the broker be warned in respect of the violations observed inter-alia not maintaining the client details in respect of CSFB India Securities Pvt. Ltd. and thereby violating the provisions of SEBI circular no. SMD/Policy/IECG/1-97 dated 11.02.97, SMD/Policy/Cir/5-97 dated 11.04.97 and Regulation 4.3.1 of NSE (WDM) Trading Regulations.

3.0 SHOW CAUSE NOTICE AND BROKER'S SUBMISSIONS

3.1 A show cause notice dated 02.06.04, was issued (through NSE) to the broker in terms of regulation 13(2) of the said Regulations advising it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it.

3.2 The broker replied to the said show cause notice vide its letter dated 16.06.04, stating that the inspection had been a great learning experience for them and they strengthened their internal processes to prevent the recurrence of any such inadvertent lapses. Further, the broker stated that the lapses were more technical in nature and had been found as a rare exception in circumstances that were beyond their control. The broker further stated that since the lapses were unintentional and technical in nature, the same be condoned.

4.0 CONSIDERATION OF ISSUES :

4.1 I have carefully examined the facts and circumstances of the case. I have also considered the Enquiry Report and the broker's reply to the show cause notice issued to it. I find that adequate opportunity had been given to the broker in accordance with principles of natural justice.

4.2 I have noted that the Enquiry Officer after considering the submissions of the broker found that the broker is not guilty of:

- 1) Failure to obtain acknowledgement of clients in some of the contract notes and failed to mention PAN nos. in a few contract notes of value exceeding Rs. 10 lakhs.
- 2) Shortcomings in client database.
- 3) Routing through client bank account, transactions not pertaining to clients.
- 4) Non obtaining acknowledgements by the clients on some contract notes and in some cases and non mentioning of date of acknowledgement.
- 5) Indulging in off the floor transactions in listed securities.

4.3 However the Enquiry Officer held that the broker failed to produce any client registration form/ agreement/ empanelment details in respect of M/s CSFB India Securities Pvt. Ltd. on whose behalf the broker executed trades during the year 2002-03.

I find that, in respect of the above allegation, the broker submitted during the course of Enquiry that based on their understanding they had assumed that CSFB was a registered FII and accordingly interpreted SEBI's circular reference SMD/Policy/Cir/10-97 dated May 20, 1997 and the circular NSE Ref. No. NSE/MEM/00285 dated July 01, 1997, that client registration and broker client agreement was not required in case of SEBI register FII. The broker further submitted that they had made every effort to request CSFB to send the member client agreement, it was also submitted that the last trading with CSFB was on 28.11.2002 which was even prior to the date of inspection.

The broker vide their additional reply dated April 12, 2004 filed a letter dated March 5, 2003 written by them to CSFB Securities India Ltd. for client registration form / agreement / empanelment.

4.4 I find from the submissions made by the broker, it is clear that the broker failed to obtain client registration form/ agreement / empanelment etc. from CSFB Securities India Ltd, thereby the broker

has violated the provisions of SEBI circular no. SMD/Policy/IECG/1-97 dated February 11, 1997, SMD/Policy/Cir/5-97 dated April 11, 1997 and Regulation 4.3.1 of NSE (WDM) Trading Regulations. The broker had submitted that they were under the impression that the said entity is a registered FII and as such the said circulars, requiring to obtain client registration were not applicable, which is not tenable as there is no such exemption for registered intermediaries as interpreted by the broker. It was also submitted by them that they made lot of efforts to get the client agreement with CSFB and in this regard a letter dated March 5, 2003 was written by them to CSFB for client registration form / agreement / empanelment. I note that the Enquiry Officer made a finding to the effect that no correspondence was filed before him by which it could be proved that broker made efforts since the only letter which is filed was written only on March 5, 2003 and the broker itself was saying that they stopped trading with CSFB w.e.f. November 28, 2002.

- 4.5 In view of the above, I agree with the finding of the Enquiry Officer that the broker violated the provisions of SEBI circular no. SMD/Policy/IECG/1-97 dated February 11, 1997, SMD/Policy/Cir/5-97 dated April 11, 1997 and Regulation 4.3.1 of NSE (WDM) Trading Regulations.

I have further noted that the broker dealt with CSFB, an entity which was under suspension for a period of 2 years w.e.f. 18.04.01 vide order dated 13.06.02 of SEBI. The broker submitted that in the absence of the client registration form they could not verify the details of CSFB whether such entity was under suspension or otherwise, however, they confirmed that whatever deals carried out by CSFB India Securities Pvt. Ltd were on their own account. I do not agree with this submission of the broker. It is the duty of every intermediary to follow the regulatory discipline since the order against CSFB was posted on SEBI's website and the same is widely published. I note that the Enquiry Officer found that the transactions executed by the

broker for CSFB were for its proprietary investments/ account. I therefore agree with the recommendation of the Enquiry Officer that it is a fit case for imposing a minor penalty.

5.0 ORDER

5.1 In view of the above and in light of submissions made by the broker and in the interest of the investors and safety and security of the capital market, I, 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, hereby warn Tower Capital & Securities Pvt. Ltd., to be cautious in future in its dealings with securities and adhere to the provisions of SEBI Act, 1992 and the Rules and Regulations made thereunder. Any future lapse on their part in complying with the said provisions would invite stringent action.

5.2 This Order shall come into effect immediately.

Place: Mumbai
Date : 30.12.2005

MADHUKAR
Whole Time Member
Securities and Exchange Board of India