

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 Shri Hasmukhrai Baldev, sub-broker (Registration No: INS010582919), affiliated to M/s SKSE Securities Ltd., Member of The Stock Exchange, Mumbai

1.0 BACKGROUND

- 1.1 Shri Hasmukhrai Baldev is a sub broker having SEBI Registration No. INS010582919) (hereinafter referred to as the sub-broker), affiliated to M/s SKSE Securities Ltd., Member of The Stock Exchange, Mumbai
- 1.2 Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an inspection of the books of accounts and other documents of sub-broker and observed certain irregularities allegedly committed by sub-broker, in violation of the following:
 - a) Section 12 of the SEBI Act, 1992
 - b) Rule 3 and 5(b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.
 - c) Regulation 15 read with Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.
 - d) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.
 - e) SEBI Circular No.SMD-1/23341 dated November 18, 1993
 - f) SEBI Circular No. SMD/MDP/CIR/043/96 dated August 5, 1996.
 - g) SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997.
 - h) SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997.
 - i) SEBI Circular No. SMD/POLICY/CIRCULAR/11-97 dated May 21, 1997.
 - j) SEBI Circular No.SMDRP/Policy/Cir-39/2001 dated July 18, 2001.
 - k) SEBI Circular No.SMD-1/3118 dated December 27, 1993.
 - l) SEBI Circular No.SMD/OPG/AA/1020/96 dated March 14, 1996.
 - m) SEBI Circular No.SMD/Policy/Circular/3-97 dated March 31, 1997.
 - n) SEBI Circular No.SMD/POLICY/CIRCULAR/11-97 dated May 21, 1997.
 - o) SEBI Circular No.SMD/Policy/Cir-3/98 dated January 16, 1998.
 - p) SEBI Circular No.Sub-broker/Cir/02/2001 dated January 15, 2001
 - q) SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated February 01, 2001
 - r) SEBI Circular No. SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.
 - s) Bye-laws, Business Rules and Regulations of the Stock Exchange.

2.0 Appointment of the Enquiry Officer

- 2.1 SEBI vide order dated March 01, 2004 thus appointed an Enquiry Officer under Regulation 5 of SEBI (Procedure for holding Enquiry by Enquiry Officer and Imposing penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the violations, if any, of SEBI (Stock Broker and Sub- Broker Regulations) 1992 (hereinafter referred to as Broker Regulations), the above mentioned SEBI Circulars and the Bye-Laws, rules and regulations of the Stock Exchange.
- 2.2 The Enquiry Officer after conducting the Enquiry in terms of the Enquiry Regulations found that the sub-broker has violated SEBI Circular No. SMD/Policy/Cir-11/97 dated May 21, 1997, Code of Conduct for sub-brokers as prescribed in A-2 of schedule II r/w Regulation 15 of Broker Regulations and SEBI Circular No.SMD/1/3118 dated December 27, 1993 and submitted his Enquiry Report dated September 9, 2004, recommending a minor penalty of suspension of the Certificate of Registration for a period of one month against the sub-broker.

3.0 Show Cause Notice and reply of the Sub-broker

- 3.1 A copy of the said Enquiry Report was forwarded to the sub-broker along with a Show Cause Notice dated September 15, 2004 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. The sub-broker replied vide letter dated October 14, 2004 and while reiterating most of the submissions made before the Enquiry Officer, interalia submitted that he has filled up all the form and agreement in full details as soon as it came to his knowledge that such agreement was mandatory. With regard to the allegation of dealing with unregistered sub brokers (Pragati Fin Stock Pvt. Ltd. and Vikas Kothari), it was submitted that they are his clients and he has entered into client agreement with them. He also submitted an affidavit in this regard. He further submitted that he will take steps to rectify deficiencies which are purely procedural in nature without any malafide intention. The sub-broker also requested for a personal hearing.

4.0 Consideration of the Issues and findings

- 4.1 I have carefully considered the facts and circumstances of the case. I have also considered the Enquiry Report and the submissions of the sub-broker. As regard the request of personal hearing by the sub-broker, I note that the same is not mandatory in terms of the relevant Enquiry Regulations. I also find that adequate opportunity of hearing has been given by the Enquiry Officer to the sub-broker in accordance with the principles of natural justice before recommending the penalty as aforesaid. Also after getting the copy of the Enquiry Report, the sub-broker submitted written statement, wherein it reiterated mostly the same points which were already considered by the Enquiry Officer. Hence, I do not find any reason for granting a personal hearing.
- 4.2 As regards the findings of the Enquiry Officer, I note following as most significant observations :
- a) With regard to the charge of non-maintenance of client agreement and registration form, Enquiry Officer, having examined the reply submitted by the sub-broker has concluded that since no justified reasons have been furnished for not executing the agreements with the clients, the sub broker has violated SEBI circular no. SMD/Policy/Cor-11/97 dated May 21, 1997. The Enquiry Officer also observed that the sub-broker has failed to act with due skill, care and diligence in the conduct of his business and thus has violated the provisions of Code of Conduct for sub-brokers as prescribed in A-2 of Schedule II read with Regulation 15 of Broker Regulations.
 - b) The Enquiry Officer having not accepted the reply of the sub-broker on the allegation of dealing with unregistered sub-brokers further found that since the family relationship with the demat account holders from whom shares have been received has not been explained by the Pragati Finstock and Vikas Investment, the sub-broker is guilty of violation of the provisions of SEBI Circular No.SMD/1/3118 dated December 27, 1993.

5.0 ORDER

- 5.1 Now therefore, I, having considered the nature and gravity of the charges established , the facts and circumstances of the case, the mitigating factors as explained above, and the submissions made by the sub-broker thereto, in exercise of the powers conferred upon me under section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002, agree with the recommendation of the Enquiry Officer and hereby suspend the Certificate of Registration of Shri Hasmukhrai Baldev, sub-broker (Registration No: INS010582919), affiliated to M/s SKSE Securities Ltd., member of The Stock Exchange, Mumbai for a period of one month.
- 5.2 This order shall come into force after 21 days from the date of the order.

DATE: 10-01-2006

PLACE: MUMBAI

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA