

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 Devichand Hansraj Oswal, sub-broker (Registration No: INS230742814), affiliated to M/s PSE Securities Pvt. Ltd., Member of NSE, SEBI Regn. No. INB231098436.

1.0 BACKGROUND

- 1.1 Devichand Hansraj Oswal is a sub broker having SEBI Registration No. INS230742814 (hereinafter referred to as the sub-broker), affiliated to M/s PSE Securities Pvt. Ltd., Member National Stock Exchange having SEBI registration No. INB231098436.
- 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 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.
 - c) SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 read with Code of Conduct as specified therein.
 - d) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.
 - e) SEBI Circular No.SMD-1/3118 dated December 27, 1993.
 - f) SEBI Circular No.SMD/OPG/AA/1020/96 dated March 14, 1996.
 - g) SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997.
 - h) SEBI Circular No.SMD/Policy/Circular/3-97 dated March 31, 1997.
 - i) SEBI Circular No.SMD/Policy/Circular/5-97 dated April 11, 1997.
 - j) SEBI Circular No.SMD/Policy/Cir-11/1997 dated May 21, 1997.
 - k) SEBI Circular No.SMD/Policy/Cir-3/98 dated January 16, 1998.
 - l) SEBI Circular No.Sub-broker/Cir/02/2001 dated January 15, 2001
 - m) SEBI Circular No.SMDRP/Policy/Cir-39/2001 dated July 18, 2001.
 - n) SEBI Circular No.SMDRP/POLICY/CIR-49/2001 dated October 22, 2001.
 - o) 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 the Regulation and the SEBI Circulars as stated vide para 1.2 above and submitted his Enquiry Report dated August 18, 2004, recommending a minor penalty of suspension of the Certificate of Registration for a period of two months 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 August 24, 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 September 15, 2004 and while reiterating most of the submissions made before the Enquiry Officer, inter alia submitted that they have no clientele business and thus the question of maintaining of any sauda book and/or maintaining margin deposit book would be totally uncalled for and they had maintained books of accounts in electronic forms. It was further submitted that since they do not have any clientele business, question of issuing of any contract notes or bills by them to any of their clients or confirmation memo to any of the sub-brokers does not

arise. They also reiterated that non of the transactions were of the floor transactions. They also submitted that the findings of the enquiry report are of the trivial nature and under no circumstances can the punishment of suspension of their certificate for a period of two months be called for and requested to drop all the charges leveled against them. 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 books of accounts and records in violation of the Regulation 21 of the broker Regulations, Enquiry Officer, having examined the reply submitted by the sub-broker has concluded that sufficient notice was given to the sub broker but despite this the sub broker was unable to produce the Sauda Book before the inspection team.
- b) The Enquiry Officer also found that the contract notes received by the sub-brokers of PSE Securities Ltd. did not bear details like trade number, trade time, order number etc. The Enquiry Officer thus has rightly concluded that the above transactions were not executed on the terminals of any exchange but were off the floor transactions in violation of provisions of SEBI Circular SMDRP/POLICY/CIR-32/99 dated September 14, 1999 and SMD/POLICY/CIR-11/97 dated May 21, 1997.
- c) Further, it was found by the Enquiry Officer that the sub-broker has not co-operated with the inspection team and did not explain the nature of his transactions with the brokers/sub-brokers. The Enquiry Officer also found that the sub-broker has to maintain all the books of accounts and records irrespective of the fact whether he was doing agency or proprietary business and therefore concluded that the sub-broker by not cooperating and not fulfilling its obligation is guilty of violating the provisions of Regulation 21 of the Broker Regulation.

4.3 I note that Regulation 17(1) of the Broker Regulations requires that every stock broker shall keep and maintain books of accounts, records and documents namely Sauda Book. Regulation 18 of the Broker Regulations further requires that every stock broker shall preserve the books of accounts and other records maintained under Regulation 17 for a minimum period of 5 years. Regulation 21 also states that :

- (1) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker who is being inspected, to produce to the inspecting authority such books, accounts and other documents in his custody or control and furnish him with the statements and information relating to the transactions in securities market within such time as the said officer may require.
- (2) The stock-broker shall allow the inspecting authority to have reasonable access to the premises occupied by such stock-brokers or by any other person on his behalf and also extend reasonable facility for examining any books, records, documents and computer data in the possession of the stock-broker or any other person and also provide copies of documents and other materials which, in the opinion of the inspecting authority are relevant.
- (3)
- (4) It shall be the duty of every director, proprietor, partner, officer and employee of the stock-broker to give to the inspecting authority all assistance in connection with the inspection, which the stock broker may reasonably be expected to give.

I note that all these Regulations are also applicable to sub-broker as stated in Regulation 16 of the Broker Regulations. I further note that the sub-broker has to maintain all the books of accounts and records irrespective of the fact whether the sub-broker was having any client or not. So long a sub-broker is registered with SEBI, he has to carry out all the obligations required under the Broker Regulations and mere submission by the sub-broker that he was not having any client and was doing only proprietary business will not absolve the sub-broker from his obligations and liability and therefore the sub-broker is guilty of violating the provisions of Regulation 21 of the Broker Regulations.

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 Devichand Hansraj Oswal, sub-broker (Registration No: INS230742814), affiliated to M/s PSE Securities Ltd., member of NSE, SEBI Regn. No. INB231098436, for a period of two months.

5.2 This order shall come into force after 21 days from the date of the order.

DATE: 12-01-2006

PLACE: MUMBAI

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA