

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 MANGAL KESHAV SECURITIES LTD., MEMBER, THE STOCK EXCHANGE, MUMBAI AND NATIONAL STOCK EXCHANGE SEBI REGISTRATION NO. INB010977431 AND INB230977432.

1.0 BACKGROUND

- 1.1 M/s. Mangal Keshav Securities Ltd., (hereinafter referred to as "the broker") is a member of The Stock Exchange, Mumbai ("BSE") and National Stock Exchange (NSE) registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INB010977431 and INB230977432.
- 1.2 Inspection of the books of accounts, documents and other records of the broker was carried out by SEBI for the period 2003-04 and certain irregularities found to have been committed by the broker were observed.

2.0 ENQUIRY PROCEEDINGS

- 2.1 In view of the above, an Enquiry Officer (EO) was appointed under Regulation 5(1) of SEBI (Procedure for Holding Enquiry) Regulations, 2002 (hereinafter referred to as the "said Regulations") to inquire into the irregularities 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 18.11.04 recommending for imposition of a minor penalty of censure on the broker.
- 2.2 A copy of the Enquiry Report was sent to the broker on 25.11.04, 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.
- 2.3 The broker replied vide letter dated 15.12.04. The broker submitted that it has been carrying on the activities as market intermediary since the last 65 years with due diligence, fairness and in accordance with the provisions of law. It further stated that the minor lapses on its part as pointed out in the inspection report were purely technical and procedural lapses having no adverse impact on the interest of investor or functioning of the securities market and therefore no penalty is warranted.

3.0 CONSIDERATION OF ISSUES

- 3.1 I have carefully considered the findings of inspection, Enquiry and the submissions made by the broker. Though the inspection report lists a number of violations alleged to have been committed by the broker, the EO has found the broker guilty of only four violations. I have noted the significant points as under:

a) **Irregularities at BSE**i) **Dealing with unregistered sub-broker**

It has been alleged that Olympia Securities Services (OSS) had acted as unregistered sub-broker of the broker. The broker submitted that the allegation did not arise from the inspection report of the auditor and that associate concern of OSS was a registered member of NSE and OSS itself was a registered sub-broker of BSE through Pioneer Intermediaries Ltd. The broker submitted that OSS was initially registered as a client to execute its proprietary trades and subsequently it became a registered sub-broker of the broker w.e.f 3.1.01. The EO found that pay-in and pay-out obligations were received from and delivered to as many as 101 DP IDs which goes to show that OSS was not merely executing proprietary trades but was also trading for the ultimate clients through the broker. As these trades were executed prior to 3.1.01 i.e. before OSS became a registered sub-broker, the EO found that the action of the broker in dealing with such unregistered intermediaries was not in conformity with SEBI Circulars SMD/STG/2652/95 dated July 13, 1995. SMD/OPG/AA/1020/96 dated March 14, 1996, SMD/MDP/CIR/043/96 dated August 5, 1996 and SMD/POLICY/CIR/3-97 dated March 31, 1997. Subsequent application to SEBI for registration as a sub-broker does not validate retroactively the trades executed prior to its registration as such.

ii) **Non-segregation between client and own Bank Accounts**

It has been alleged that there were 14 instances wherein the clients account was used for making payments which are not client related. Out of these, 10 instances relate to meeting telephone expenditure from this account and the remaining relate to payment of interest or withdrawal of petty cash etc. The broker submitted that through oversight while subscribing to ECS facility for payment of the telephone bill, the client's bank account number was mentioned instead of the proprietary account. Similarly, payment of interest, petty cash etc was an inadvertent accounting mistake. The EO found that utilization of the clients' account for the transactions which are not client related defeat the very purpose of maintaining clients' account separately. The objective of opening and maintaining a separate account for the clients' funds is to segregate and identify them separately and prevent its misuse so that they are beyond the reach of the broker. The broker has, therefore, violated SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

iii) **Unauthorised trading terminal at the premises of "Om Investcare"**

The broker submitted that the said trading terminal was installed prior to the issuance of SEBI Circular dated 22.10.01. The trading terminal which was installed in May 2001 was deactivated in February, 2002 to comply with SEBI Circular. The EO observed that he did not understand as to why the trading terminal was not disconnected immediately after the issuance of SEBI Circular in October 2001. The broker is not justified in continuing to have the trading terminal at "Om Investcare" beyond 22.10.01 and until February 2002 despite SEBI's instructions to the contrary.

b) **Irregularities at NSE**

i) **Non-segregation of client and own Accounts**

It has been alleged that there were 21 instances wherein the clients account was debited for payments which were not client related in contravention of SEBI's Circular on the subject. The broker submitted that except for payment of SEBI fees, the other amounts were recovered from the clients and therefore paid from the clients account. The broker submitted that the broker had earned brokerage which was credited to the clients account and not withdrawn regularly. As regards fixed deposit of Rs.75 lacs made on 2.8.01, it was submitted that Shri Paresb Bhagat, one of the directors had a credit balance in his proprietary account and in order to meet the margin liability a fixed deposit was made from the amount lying to the credit of his client. The EO found that no documents or trading details, extracts of ledger account of the said client were filed for the relevant period together with calculation of margin liability as on 2.8.01. The date on which the said FDR was pledged with the exchange was also not furnished. The EO further found that there is no justification to meet the SEBI fees from the clients' account. Payment of service tax is the obligation of the broker and hence has to be met from the company's account. Further, the broker has not transferred periodically the brokerage from the clients account to the firm's account and met his establishment expenditure from the said account.

3.2 With regard to other charges like time stamping of orders not being done, not obtaining acknowledgement of clients on the duplicates of contract notes, discrepancies in the maintenance of clients database, transfer of trades between clients, audit certificates regarding margins not being obtained from sub-brokers, the EO did not find the broker guilty of violation of any Rules.

4.0 On a careful perusal of the charges, findings of inspection and enquiry and the submissions made by the broker, I have no substantive reason to differ with the findings of the EO.

5.0 ORDER

5.1 Now, therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby censure M/s. Mangal Keshav Securities Ltd., member, BSE and NSE, bearing SEBI Registration Nos. INB010977431 and INB230977432.

5.2 This order shall come into force with immediate effect.

PLACE: MUMBAI

DATE : 13.1.06

MADHUKAR

WHOLE TIME MEMBER

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