

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 SHUBHAM & CO. MEMBER, UTTAR PRADESH STOCK EXCHANGE, SEBI REGISTRATION NO. INB100378618

1.0 BACKGROUND

- 1.1 Shubham & Co. (hereinafter referred to as "the broker") is a member of Uttar Pradesh Stock Exchange ("UPSE"), and is registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with Registration No. INB100378618.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker was carried out for the period April 2000 to September 2002 by J.N. Sharma & Co., Chartered Accountants. Certain irregularities found to have been committed by the broker were observed during the said inspection.

2.0 ENQUIRY PROCEEDINGS

- 2.1 In view of the above, an Enquiry Officer (EO) was appointed vide Order dated No. MIRSD-98/03-04 dated 05.12.2003 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 her report on 30.11.04 recommending for imposition of a minor penalty of warning on 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 20.12.04, 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.

4.0 CONSIDERATION OF ISSUES

- 4.1 I have carefully examined the facts and circumstances of the case and also considered the Enquiry Report and the submissions made by the broker. I find that adequate opportunity was given to the broker in accordance with the said Regulations. I have noted the significant points, as under :
- a) It has been alleged that the broker failed to maintain order book. The broker in its reply furnished vide letter dated 3.01.05, submitted that as far as allegation relating to non maintenance of order book is concerned, it has denied that it had not maintained the order book. The inspection team had not pointed out this disorder to them and there had been no complaint from any investor or client against them. The Enquiry Officer is of the view that the broker has failed to substantiate their contention regarding maintenance of order book with any documentary evidence despite having been advised to do so hence the broker has apparently violated provisions of SEBI Circular No.SMD/POLICY/ECG/1-97 dated 11.2.97.
- b) Regarding non-maintenance of margin deposit book / margin records and thereby violating Regulation 17(1)(k) of the broker Regulations is concerned, the broker submitted that margin deposit was properly maintained by it in respect of margins given to the exchange and the margin receipts were duly credited to the respective margin in their books of account and also formed part of the soft copy of margin deposit book being maintained by it. The enquiry officer found that the broker has failed to substantiate its claim producing any documentary evidence.
- c) On the allegation of non maintenance of document register, in terms of Regulation 17(1)(g) of Broker Regulations, the broker submitted that the document register was maintained by it electronically in the form of soft copy, and it was also preparing reconciliation statement from time to time on regular basis which was available for inspection but were never asked by the inspecting authorities. The enquiry officer found that master stock register submitted by the broker does not show all the details regarding movement of stocks and reconciliation statements prepared by the broker were also not produced for verification.
- d) As regards non – segregation of member's own scrips from those belonging to the clients is concerned, the broker submitted that an accounting software was regularly maintaining a stock register whereby various scrips received from the clients as well as various scrips allocated to the clients were properly segregated. The Enquiry officer found that the master stock register enclosed by the broker does not show the actual trail of stock movement resulting in non-segregation of own / client scrips and

therefore has violated directives of SEBI issued vide circular No.SMD/SED/CIR/93/23321 dated 18.11.93, SMD/RP/Policy/Cir-11/99 dated 7.5.99 and SMD/RP/Policy/Cir-05/2001 dated 1.2.2001..

- e) On the charge of non issuance of confirmation memo, the broker replied that it was issuing only confirmation memos having all particulars and since the contents of both contract notes and confirmation memos were the same, it was issuing confirmation memos to its clients. The enquiry officer is of the view that the broker has failed to produce even a single copy of confirmation memos issued by it.
- f) Regarding the charge of violation of SEBI directives issued vide circular no. SMD/POLICY/IECG/1-97 dated 11.2.97 and SMD/MDP/Cir-043/96 dated 5.8.96 alongwith provisions of para A(5) of Code of Conduct as specified in Schedule II under Regulation 7 of the said regulations by not obtaining agreement from clients, the broker submitted that it did not do any trade of any client before filling up the necessary registration form and executing client's agreement. The enquiry officer finds that the broker failed to produce agreements executed with clients before the inspecting authority, also the copies of agreements submitted by it show that they are not on stamp paper, making their enforcement difficult.
- g) As far as the allegation of non appointment of compliance officer is concerned, the broker has replied that it had appointed the compliance officer. The enquiry officer found that the letter enclosed by the broker shows that it bears a date in the year 2003, whereas the inspection had been concluded much prior to that.
- 4.2 With regard to the other charges/allegations, like non allotment of unique client code, delay in delivery of securities and payments to clients and non-monitoring of client to client position of funds. the Enquiry Officer after considering the reply of the broker found that they are minor and trivial in nature and recommended for a lenient view. On the issue of non-payment of SEBI turnover fee in full, the enquiry officer found that the broker has not paid the interest in full in terms of SEBI(Interest Liability Regularization Scheme), 2004 and recommended for a review.
- 5.0 The Enquiry Officer has stated that she was appointed as Adjudication officer in the same matter where most of the allegations indicated in para a) to g) above are also covered and a monetary penalty of Rs.1.60 lakhs was imposed on the broker. SEBI is empowered to take up both the proceedings and there is no bar for imposing penalty in the enquiry proceedings because of penalty already imposed in Adjudication. The enquiry officer has however recommended for a minor penalty of warning on the broker in the enquiry proceedings. In the facts and circumstances of the case, I do not find any fresh grounds to take a different view and therefore I agree with the findings of the Enquiry Officer and a warning to the broker would be sufficient and meet the ends of justice.

6.0 ORDER

- 6.1 Now, therefore, in exercise of powers conferred under upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby warn Shubham & Co., Member, Uttar Pradesh Stock Exchange, having SEBI Registration No. INB100378618 and direct it to be more cautious in future in his dealings with securities and to adhere to the provisions of SEBI Act, 1992 and the Rules and Regulations made thereunder. Any future lapse on the part of the broker in complying with the said provisions would invite stringent action.
- 6.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: 12.1.06

Madhukar

Whole Time Member

Securities and Exchange Board of India