

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 M/s Mithani Securities Pvt. Ltd., sub-broker (Registration No: INS 010596935), affiliated to M/s SKSE Securities Pvt. Ltd., SEBI Regn. No.INB 011076032.

1.0 BACKGROUND

- 1.1 Mithani Securities Private Limited is a sub broker having SEBI Registration No.INS 010596935) (hereinafter referred to as the sub-broker), affiliated to M/s SKSE Securities Pvt. Ltd., Member Stock Exchange, Mumbai (BSE) having SEBI registration No.INB 011076032.
- 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) Regulation 15 read with Code of Conduct as specified in Schedule II of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.
 - b) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993.
 - c) SEBI Circular No.SMD-1/23341 dated November 18, 1993.
 - d) SEBI Circular No.SMD/MDP/Cir/043/96 dated August 5, 1996.
 - e) SEBI Circular No.SMD/Policy/Cir-11/1997 dated May 21, 1997.
 - f) SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated February 1, 2001.
 - g) 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 three months against the sub-broker.

3.0 Show Cause Notice and reply

- 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 27, 2004 and while reiterating most of the submissions made before the Enquiry Officer, interalia submitted that its conduct was bonafide. It is however noted that in the context of the allegation of non-maintenance of separate accounts for clients, maintenance of running accounts with clients and non-delivery of the securities to the clients, which are essential responsibilities of a broker or sub-broker, the sub-broker claimed to have done the same as per the instructions of the clients. But it could not produce any proof supporting the said claim. It merely submitted that Rajkot, from where it is operating is a small town lacking facilities of communication and most of the time the clients were making their communication orally. 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 the confirmation memos in violation of the Circular No.SMD /Policy/Cir-11/97 dated May 21, 1997, Enquiry Officer, having examined the reply submitted by the sub-broker has concluded that duplicate confirmation memos did not bear pre-printed serial numbers. Enquiry Officer also found that the dates were not mentioned on the memos and therefore and it could not be ascertained whether the memos were issued to the clients within the prescribed time. I also find that the sub-broker has not confirmed to Enquiry Officer as to whether the relevant serial numbers are maintained on the duplicate memos and whether the serial numbers are generated on an annual basis.
- b) The Enquiry Officer also found that the sub-broker had not entered into agreement with its clients, nor collected registration forms. The sub-broker when asked about this by the Enquiry Officer, without rebutting the same stated that henceforth it shall enter into agreements with the clients. The Enquiry Officer thus has rightly concluded that the sub-broker had violated SEBI Circular No.SMD/Policy/Cir-11/97 dated May 21, 1997. The Enquiry Officer further found that the sub-broker has paid brokerage to some of their clients in violation of the Code of Conduct.
- c) The Enquiry Officer further found that the sub-broker has not maintained separate bank accounts for clients and for his own dealings. The Enquiry Officer concluded that the defence of the sub-broker that he did so with the consent of the client is not acceptable and hence the sub-broker violated SEBI Circular No.SMD/Policy/Cir-11/97 dated May 21, 1997.
- d) Further, it was found by the Enquiry Officer that the sub-broker maintained running account of clients and made payment and delivered the securities only on payout, as against the stipulated time of 2 days. Enquiry Officer further found that the sub-broker did not deliver the securities within the stipulated time of 2 days in 30 cases in violation of Clause B(1) of Code of Conduct specified in Schedule II and the SEBI Circular No.SMD/Policy/Cir-11/97 dated May 21, 1997. Enquiry officer has further found that the sub-broker paid brokerage to some of its clients in violation of the Code of Conduct and also transferred funds from the account of one client to another in violation of the above circular.

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 M/s. Mithani Securities Pvt. Ltd., sub-broker (Registration No: INS 010596935), affiliated to M/s SKSE Securities Pvt. Ltd for a period of three months.

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

DATE: 05/01/2006

PLACE: Mumbai

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

- 5.3 It has been brought to my notice that inadvertently this order could not be served upon the sub-broker till date. Therefore in the interest of justice, the effective date of this order is hereby extended for another 21 days from today.

DATE:25/01/2006

PLACE: Mumbai

MADHUKAR

WHOLE TIME MEMBER

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