

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 AGAINST M.J. SHAH AND COMPANY, SUB BROKER REGISTRATION No. INS010172422 IN THE MATTER OF MANGALYA EXPORTS LTD.

BACKGROUND

1. M/s M.J. Shah and Company is a sub broker registered with Securities and Exchange Board of India (hereinafter referred to as "SEBI"). The sub broker was affiliated to Shri Vidyut Devendra Kumar (hereinafter referred to as "the Broker") who is a member of the Stock Exchange, Mumbai (hereinafter to be referred to as BSE).
2. SEBI conducted an investigation into the affairs relating to buying ,selling and dealing in the shares of Mangalya Exports Ltd. (hereinafter referred to as "MEL") for the period 17.05.2000 to 21.07.2000. Investigation revealed that MEL had been a continuously loss incurring company with a very small volume of turnover. The price of the scrip went up from Rs.96/- to Rs.194/- in a month's time in May-June 2000 and then declined to the same level of Rs.96/- in June-July 2000. Based on the Investigation Report, SEBI vide order dated 19.03.2004 appointed an Enquiry Officer under the provisions of Regulation 5 of SEBI (procedure for holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred to as the said "Regulations") to inquire into the alleged violations of SEBI (Stock Brokers & Sub - Brokers) Regulations, 1992 (hereinafter referred to as " Stock Broker Regulations") committed by the sub broker.

3. ENQUIRY REPORT AND RECOMMENDATION

4. The enquiry officer, after conducting the enquiry as per the procedure laid down in the said Regulations, submitted a report dated August 30,2005
5. The Enquiry Officer found that the Sub broker has not exercised due care and caution and the conduct of the sub broker is in violation of Clause A (2) of the Code of Conduct as specified in Schedule II read with regulation 15 of Stock Broker Regulations. The Enquiry Officer therefore recommended a minor penalty of 'Censure' against the sub broker.

6. SHOW-CAUSE NOTICE AND REPLY

7. A Show Cause Notice (SCN) dated September 16, 2005 was sent to the sub Broker along with a copy of the Enquiry Report, calling upon to show cause, in terms of Regulation 13(2) of the Regulations, as to why action as recommended by the Enquiry Officer should not be taken against it.
8. The sub broker replied to the above said SCN vide letter dated October 3, 2005 and further submitted that it was acting as sub broker for more than 20 years and Mr. Ashish Suresh Shah, proprietor of M/s Rushil Enterprise has been dealing with it for more than 10 years. Their pay in of funds and securities were always in time and it was a small broker and pleaded for the withdrawal of charges.

9. CONSIDERATION OF ISSUES AND OBSERVATIONS

10. I have considered the facts of the case, the findings of the Enquiry Officer and the reply of the sub broker to the show cause notice.
11. I observe from the enquiry report that the only issue for consideration is whether the sub broker had violated the code of conduct prescribed for the sub brokers.I observe that the sub broker had admittedly executed order in the scrip of MEL for its client M/s Rushil Enterprise whose proprietor is shri Ashish Suresh Shah. The total shares purchased were 11,000 and the quantity sold was 11,200 shares. I further observe from Enquiry report the buy and sell client is the same in all the above transactions. Thus the client viz, Rushil Enterprises has been the buy and sell client and has transacted through different sub-brokers and brokers.
12. I also observe from the enquiry report that circular trading was done by Ashish Suresh Shah in the name of his proprietary firm Rushil Enterprises under different client codes. I further observe the finding of the enquiry officer that there is nothing on record to prove that the sub-broker acted in concert with the client or that the sub broker is aware of the manipulative activities of the client regarding the circular trades. However the enquiry officer finds that the steady rise in the price of illiquid scrip should have alerted the sub-broker and put him on caution while executing the trades. I am therefore, in agreement with Enquiry Officer that the sub broker violated Clause A (2) of the Code of Conduct as specified in Schedule II read with regulation 15 of Stock Broker Regulations and it is a fit case to impose a minor penalty of censure against the sub broker as recommended by the Enquiry Officer.
13. 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 said Regulations, I hereby impose a minor penalty of 'Censure' against M.J. Shah and Co.

DATE : 31.01.2006
PLACE : MUMBAI

MADHUKAR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA