

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 ORBIS SECURITIES LTD. (NOW KNOWN AS INDIA BULLS SECURITIES LTD.), MEMBER, NATIONAL STOCK EXCHANGE HAVING SEBI REGISTRATION NO. INB230875632.

1.0 BACKGROUND

- 1.1 M/s. Orbis Securities Ltd. (now known as India Bulls Securities Ltd.) (hereinafter referred to as "the broker") is a member of National Stock Exchange, ("NSE") registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INB230875632.
- 1.2 Inspection of the books of accounts, documents and other records of the broker was carried out by SEBI for the period 01.04.2000 to 31.08.2002 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 vide SEBI Order dated December 16, 2003 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 21.06.05 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 30.06.05, 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 nil received in SEBI on 2.8.05 and requested that the minor penalty of censure for technical and procedural violations be discarded and the show cause notice be discharged.

3.0 CONSIDERATION OF ISSUES

- 3.1 I have carefully considered the findings of inspection, Enquiry and the submissions made by the broker and note significant points as under :

a) **Order time not entered in the contract notes**

The broker stated that the proforma prescribed for contract notes does not contain a column for time of placement of order. The broker submitted that the contract notes issued by them were in the format specified by NSE and at par with the standard format followed by the industry and participants. The EO observed that time of placement of order and time of execution are not one and the same. The order time relates to placement of order by the client and the trade time is one which refers to execution of the transaction by the broker. The EO therefore found the broker guilty of violating SEBI Circular No.SMD/POLICY/IECG/1-97 dated 11.2.97.

b) **Dealing with unregistered sub-brokers, Manjula Investments and Market Wizards**

The broker submitted that Market Wizards and Manjula Investments started trading as clients on 11.4.01 and 1.4.01 respectively. In November 2001, the broker came to know that they were working for other clients and immediately thereafter i.e. on November 7 & 8, 2001 the broker forwarded their application for registration as sub-brokers and since then they are registered with SEBI.

The EO found the broker's contention that he applied for registration after he came to know that these entities were trading for other clients contrary to the material on record. As per the inspection report, the applications were filed only after the issue was pointed out in the NSE inspection even though they were trading with the broker since a long time. The EO found from the inspection report that after trading for 3 months with Manjula Investments, the broker entered into sub-broker agreement on 18.7.01 but the application for sub-broker registration was filed only on 8.11.01. Similarly, the broker was trading with Market Wizards for 7 months before

entering into sub-broker agreement on 7.11.01 and the application for sub-broker registration was filed on the same day. As per SEBI database, Manjula Investments became the registered sub-broker on 14.7.03 and Market Wizards on 18.2.03. The EO found the broker guilty.

c) **Traded as a sub-broker before obtaining SEBI Registration**

It has been alleged that the broker was executing transactions for his clients on the BSE since 16.11.01 through M/s. SP Jain Securities Pvt. Ltd., member BSE before obtaining SEBI registration. The broker submitted that the application for registration was submitted on 12.11.01 and the registration was obtained in the year 2002. The EO found the broker guilty of violating SEBI Circular No.Sub-brok/Cir/02/2001 dated 15.1.01 and SEBI Circular No.SMD/OPG/AA/1020/96 dated 14.3.96.

d) **Misuse of Client Account**

It has been alleged that though the broker was operating separate client accounts for transactions relating to clients, on certain occasions, the client's account was used to the tune of Rs.8,03,43,154/- for purposes other than those specified and allowed under the SEBI Circular No.SMD/SED/Cir/93/23321. The broker denied that there was any misuse of client's money. The broker submitted that own funds to the extent of Rs.10.77 crores was transferred from business account to client's account during the relevant period and the alleged expenses were met out of the said amount of Rs.10.77 crores. Since the alleged expenses of Rs.8.03 crores was less than the amount transferred from the business account to the client's account, it cannot be said that there was any misuse of client's account.

The EO observed that SEBI has prescribed that the broker should clearly segregate his own funds from clients' funds and to open separate bank accounts for clients as well as for its own funds. SEBI has also prescribed as to what money can be paid into the client's accounts and what expenses can be met out of the clients' accounts. The EO found that while it is true that expenses have been met out of the clients' account to the tune of Rs.8.03 crores, which is in contravention of SEBI Circular dated 18.11.93, considering that the broker had transferred an amount of Rs.10.77 crores to the client account as evidenced by copies of letters from HDFC Bank and Citi Bank, the contravention may not be viewed seriously in the absence of any customer complaints and this may be treated as procedural irregularity.

e) **Misrepresentation regarding Portfolio Services through Advertisements**

It has been alleged that the broker through the advertisements has conveyed that the broker is rendering Portfolio Management Services to the clients. It has further been alleged that the broker advertised without obtaining SEBI Registration and Advertisement issued was not in conformity with Regulation 7 read with Clauses A(5), C (4) and (5) of Code of Conduct as specified in Schedule II of SEBI (Stock Brokers & Sub-brokers) Regulations, 1992 and SEBI Circular No.SMDRP/Policy/CIR-49/2001 dated 22.10.2001. The broker submitted that all the advertisement were released only after copies of the same were filed before the NSE. NSE did not raise any objection to the proposed advertisement except in one occasion on 21.7.03 when it was stated that the notice was inadequate.

The EO found that in the absence of any evidence with regard to actual carrying on Portfolio Management Services by the broker, it would be difficult to conclude that the broker was rendering Portfolio Management Services on the basis of the contents of the advertisement alone. However, it is not in dispute that the broker has not obtained prior permission from the stock exchange before issuing the advertisements. Merely furnishing of copies of the proposed advertisement to the stock exchange is not sufficient compliance to the requirement of obtaining prior permission.

f) As regards the other allegations like non-maintenance of margin deposit book, register of accounts of sub-brokers, absence of pre-printed serial numbers in contract notes, un-acknowledged contract notes, stamping of originals of contract notes, difference in client account code, discrepancies in the member-client agreements, irregularities in allotment of Unique Client Codes, permitting clients to trade before registration, non-distribution of corporate benefits promptly, allegations arising out of advertisements in the press, the EO after considering the explanations of the broker did not find it guilty 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. Orbis Securities Ltd. (now known as India Bulls Securities Ltd.), Member, NSE bearing SEBI Registration No. INB230875632.

5.2 This order shall come into force with immediate effect.

PLACE: MUMBAI

DATE : 2.2.06

MADHUKAR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA