

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 KAILASH NARAYAN BHANGDIA, MEMBER, NATIONAL STOCK EXCHANGE HAVING SEBI REGISTRATION NO. INB230909317.

1.0 BACKGROUND

- 1.1 M/s. Kailash Narayan Bhangdia, (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. INB230909317.
- 1.2 Inspection of the books of accounts, documents and other records of the broker was carried out by SEBI for the period 2000-01, 2001-02, 01.04.2002 to 30.09.2002 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 November 5, 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 07.05.04 recommending for imposition of a minor penalty of suspension of certificate of registration of the broker for a period of one month.
- 2.2 A copy of the Enquiry Report was sent to the broker on 15.09.04, 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 16.09.04 enclosing the original certificate of registration for cancellation. The broker surrendered its certificate of registration as broker trading/self clearing membership on the cash segment of the NSE. The broker requested SEBI to dispense with the procedure laid down in Regulation 16 of the SEBI(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 while processing its request for surrender of certificate of registration.

3.0 CONSIDERATION OF ISSUES

- 3.1 I have carefully considered the findings of inspection, Enquiry and the submissions made by the broker and my observations are as follows :

a) **Multiple Authorised Signatories**

It has been alleged that the signature appearing on the contract notes which were to be signed by the authorized signatories were different from each other. The broker submitted that in the absence of the officer authorized to sign on the contract notes, other senior staff who were authorized to sign on contract notes have signed because the dispatch of contract notes could not be postponed due to the absence of an authorized signatory.

The EO found from the inspection report that the signature of the authorized signatory on the contract notes were not similar. Further, the broker has himself admitted that in the absence of the authorized signatory, senior staff who were authorized to sign on contracts have signed. However, the broker failed to produce any documentary evidence to prove that these senior staff were authorized to sign the contract notes. In view of the same, the EO found the broker guilty of violating SEBI Circular No.SMD/MDP/CIR/043/96 dated August 5, 1996.

b) **Dealing with un-registered sub-brokers**

It has been alleged that the broker dealt with unregistered sub-brokers viz. M/s. Pratap Securities and M/s. Ohm Shakti Securities Ltd. The broker submitted that the said entities were permitted to use the terminals to do jobbing and trade on their personal account. However, they mis-utilised the broker's faith and traded for some of their friends and relatives.

The broker has himself admitted to having dealt with entities who have acted as unregistered sub-brokers. The broker's explanation that the said entities traded without his knowledge cannot be accepted as a prudent broker is expected to deal with due care and diligence in the conduct of his business. By not doing so, the broker has

violated not only the provisions of SEBI Circular No.SMD/Policy/Circular/3-97 dated March 31, 1997 but also the Code of Conduct as prescribed in Clause A(2) of Schedule II of SEBI (Stock Brokers and sub-brokers) Regulations, 1992. It is pertinent to note that the broker has also been fined by NSE to the tune of Rs.50,000/- for similar violations.

c) **Transfer of scrips from Pool Account to Broker's Beneficiary Account**

It has been alleged that the broker had given instructions for the transfer of securities from the pool account to its beneficiary account. The broker submitted that the transfers were due to the acceptance of shares towards margin and request received from the clients for non-transfer to their beneficiary account due to heavy charges of Rs.25/- per transaction irrespective of the quantity. The EO found that the broker had not submitted any documentary evidence in support of his contention to prove that these transfers were at the request of his clients in lieu of margins. The broker has, therefore violated SEBI Circular No.SMD/SED/Cir/93/23321 dated 18.11.93.

d) **Mis-utilisation of clients' money**

It has been alleged that there were many instances where the money was transferred from the broker's account to the clients' account and vice versa. The broker submitted that at times to meet exigencies of the situation, funds were transferred from group accounts to normal accounts, from normal accounts to client accounts and there from to the clearing account. The reversal had to take place to pay back these short gap finance arrangements. Thus, the broker admitted the violation. The EO found that a fine of Rs.1,00,000/- and Rs.5000/- have been levied on the broker by NSE for similar violations of their regulations.

It was further alleged that the broker mis-utilised clients' money. Though the broker denied the allegation, the EO after perusing Annexure 16 of the inspection report which pertains to the above allegation found that it is clearly established that the broker had mis-utilised the clients money for his own benefit and hence held him guilty of violating SEBI Circular No.SMD/SED/Cir/93/23321 dated November 18, 1993.

e) The EO observed that the broker has violated several provisions of the SEBI Circulars and thereby violated the Code of Conduct as prescribed in Clause A(2) and (5) of Schedule II of the SEBI(Stock Brokers and Sub-brokers) Regulations, 1992. Though some of the violations are technical in nature and monetary penalty has been imposed by NSE for certain others, the EO found that dealing with unregistered sub-broker and mis-utilisation of clients' money deserve a serious view on account of the gravity of charges involved. The EO opined that these two violations are serious as they are detrimental to the interest of investors at large. The EO, therefore recommended a minor penalty of suspension of certificate of registration for a period of one month.

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. I have also noted that the broker had surrendered its membership to the NSE. NSE had approved the same in May 2003 and sent the application to SEBI for cancellation of certificate of registration. However, since enquiry proceedings were pending against the broker, SEBI had not initiated summary proceedings for cancellation.

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 suspend the certificate of registration of M/s.Kailash Narayan Bhangdia, Member, NSE bearing SEBI Registration No. INB230909317 for a period of one month.

5.2 This order shall come into force on expiry of 21 days from the date of this order.

PLACE: MUMBAI

DATE : 2.2.06

MADHUKAR

WHOLE TIME MEMBER

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