

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST ARCHNA Khandelwal, MEMBER, CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030033510 UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**1.0 BACKGROUND**

- 1.1 Archna Khandelwal (hereinafter referred to as the 'broker') is a member of the Calcutta Stock Exchange (hereinafter referred to as 'CSE') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB030033510.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the period 2001-2002 was carried out by SEBI, during July 01-02, 2002. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 APPOINTMENT OF ENQUIRY OFFICER

- 2.1 Inspection Report was forwarded to the broker on completion of inspection. After considering its reply dated 21.8.2002, an Enquiry Officer (hereinafter referred to as "EO") was appointed vide order dated December 4, 2003 under Regulation 5(1) of SEBI (Procedure for Holding enquiry by enquiry officer and imposing penalty) Regulations, 2002 (hereinafter referred as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.
- 2.2 A Show Cause Notice dated January 12, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker submitted its reply dated 09.2.04 and appeared for personal hearing before the enquiry officer on 24.2.04. The enquiry officer conducted the enquiry in terms of the said Regulations and the broker was given a fair and reasonable opportunity to make its submissions.
- 2.3 After considering the reply and the submissions made at the time of personal hearing, the Enquiry officer submitted his report dated 22.6.04 recommending suspension of registration of the broker for a period of six months.

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 June 30, 2004, in terms of Regulation 13(2) of the said Regulations calling upon 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 broker replied to the SCN vide reply dated 23.8.2004 and gave explanations on the issue of turnover fees. With regard to the other findings of the EO, the broker did not furnish any reply and therefore, the broker's reply dated 21.8.02 is taken into account.

4.0 CONSIDERATION OF THE ENQUIRY REPORT

- 4.1 I have carefully considered the findings of the Inspection, Enquiry and the submissions made by the broker and find as under :

4.2 a) Non-maintenance of Order Book

The EO found that as per SEBI Circular No.SMD/POLICY/IECG/1-97 dated 11.2.97, the broker should maintain record of time when the client has placed order. This information is to be maintained by the broker in the order book. Such order book helps in audit trail and also for verification as to whether the member has charged right price with reference to time of placing order. The broker has thus failed to maintain order book as per the abovementioned circular. The broker stated that as the orders received were generally over phone, they were immediately fed into the trading system and therefore, no order book was maintained. I find that maintenance of order book must be strictly complied with and cannot be a matter of convenience of the broker. Maintenance of order book helps in audit trail and receiving and confirming orders over telephone without any record would defeat the purpose.

b) Non-execution of Client Registration Forms

The EO held the broker guilty of violation of SEBI Circular dated 11.2.97 as the broker had admitted to the mistake. The broker did not deny the allegation but stated that they have initiated steps to rectify the defects.

However, I find that there is no documentary evidence on record to prove that the rectification has been done.

c) Non-segregation of client's money and own funds in client account.

The EO found that as per SEBI Circular No.SMD/SED/Cir/93/23321 dated 18.11.93, it is compulsory for brokers to keep the money of their clients in a separate account and their own money in a separate account. Certain instances are given in the inspection report which shows payments had been received from and paid to certain brokers of CSE which are not backed by any transaction. In view of the above, the EO found the broker is guilty of violation of circular dated 18.11.93. This is also in violation of bye-laws of CSE in respect of client broker relationship which mandates such segregation of funds. The broker has stated that as most of the clients had not deposited margins and many clients have made delayed payments in respect of their obligation, she had to fund the transactions. I note that the purpose of maintaining separate accounts for client's funds and own funds is to prevent misuse of client's funds by the broker. In the instant case, the broker has not denied using client's funds.

d) Dealing as a unregistered sub-broker.

The EO found that the broker had given evasive reply and had not categorically denied that it had dealt with unregistered sub broker. The EO found that the broker had done transaction with Shradhha Stock Broking Pvt Ltd., member NSE on behalf of its clients without being registered as a sub broker of this member of NSE. The EO therefore found the broker guilty of violation of circular No.SMD/POLICY/CIRCULAR/3-97 dated 31.3.97 and the same is also contrary to Section 12 of SEBI Act. I note from the findings of the EO that the broker had not denied the charge but stated that for transactions in NSE, they ask their clients to route through their sister concern Archana Securities Ltd. The broker stated that there had been one or two transactions for shares listed in BSE which had been executed through the said broker. I have noted from the inspection report that the broker has done huge transactions with Shradhha Stock Broking Pvt. Ltd., Member, NSE on behalf of its clients without being registered as a sub-broker of this NSE Member which is in violation of Section 12 of SEBI Act. However, the inspection report does not contain details of such transactions. Hence it is not clear whether the clients of the broker routed their transactions through the sister concern viz. Archana Securities or whether the broker dealt as unregistered sub-broker. Further, it is not known whether Archana Securities is a registered sub-broker. Hence, in the absence of any material evidence, I am inclined to give a benefit of doubt to the broker.

e) Collection of margin from clients

The EO found from the inspection report that the broker had not collected margins from its clients and hence found it guilty of violation of SEBI Circular dated 4.2.2000. The broker stated that it always asks the clients to pay margins but they generally do not pay. I find that the broker has not refuted the allegation. The broker should have ensured collection of margins before executing transactions for its clients instead of pleading helplessness and ineffectiveness. Non-collection of margins would put the broker at risk in the event of default by clients and hence it is crucial to collect margins.

f) Off the floor / cross deals

The EO found that as per SEBI Circular dated 14.9.99, negotiated deals etc are prohibited. Off the floor transactions are also in violation of the said circular dated 14.9.99. As the broker had not denied entering into off the floor transactions listed below, the EO found it guilty of violating the above cited circulars.

Name of the broker/client	Name of the scrip	Buy/ Sell	Qty	Dt of transaction
Man Mohan Damani	Novartis India	Buy	3000	11.2.02
Man Mohan Damani	Associated Cements	Buy	10000	30.1.02
Man Mohan Damani	Digital Equipment	Buy	200	18.2.02
Man Mohan Damani	Trigyn Tech	Buy	11600	18.2.02
Man Mohan Damani	Associated Cement	Sell	500	8.2.02
RL Agarwal Capital Markets Ltd.	Zee Tele	Sell	11000	7.12.01

The broker stated that the transactions had been reported to the exchange. I note that cross deals avoid transparency requirements and hinder the price discovery mechanism of the exchange. Further, investors do not have benefit of the best possible price and militate against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner.

g) Non-payment of Turnover fees to SEBI

The EO, after considering the reply of the broker dated 21.8.02, wherein it had stated that it had not paid turnover fees as the matter was subjudice, found that the Hon'ble Supreme Court has disposed off the petition challenging brokers registration fee vide judgment reported in (2001) 3 SCC 482. The Hon'ble Calcutta High Court has dismissed the petition filed by some brokers, vide its judgement dated 22.4.2004 in WP No.548/2002. The EO therefore found the broker liable to pay the fees as per the regulations. However, I find that the broker vide letter dated 23.8.04 stated that it had already authorized Calcutta Stock Exchange to pay the turnover fee amounting to Rs.2,55,778/- as calculated by the broker, to SEBI and had enclosed a copy of the said letter alongwith letter dated 28.3.03 addressed to SEBI. It appears that the broker received a letter from SEBI dated 2.12.03 calculating the turnover fee at Rs.4,50,855/-. The broker contended that it had requested for details of the calculations but no response was received from SEBI. The broker has vide letter dated 23.8.04 indicated its inclination to pay the balance amount of the turnover fee if the details are given to it and requested to waive the interest element as the delay in payment was not due to its fault. In the circumstances stated above, if there is still any default in the payment, separate action may be initiated in accordance with SEBI Regulations.

- 4.3 As regards the allegation of non-maintenance of Margin Deposit Book, the EO has not recorded any adverse finding against the broker.
- 4.4 It is also noted that the broker vide reply dated 9.2.2004 has stated that it has surrendered its membership. However, The EO found that no such request seems to have been received by SEBI through CSE and hence did not record any findings. I find that the broker vide reply dated 23.8.04 stated that it has discontinued business with effect from 26.8.02 and that it has surrendered its membership on 26.8.02 and sent the original certificate to SEBI for cancellation of registration. In case such a request has been received, separate proceedings will be initiated for cancellation of certificate of registration.
- 4.5 On a careful consideration of the findings of the EO and the submissions made by the broker, as discussed above, I have no reason to differ with the findings of the EO. However, in the facts and circumstances of the case, a penalty of suspension of certificate of registration of the broker for a period of three months would be adequate.

5.0 ORDER

- 5.1 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation 2002, I hereby recommend suspension of certificate of registration of Archana Khandelwal, member Calcutta Stock Exchange (INB030033510) for a period of three months.
- 5.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai

Date: 11.5.06

T.C.Nair

Whole Time Member

Securities and Exchange Board of India