

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s.SUBHASH BAHETI & CO., MEMBER - CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030762110 UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002.

1.0 **BACKGROUND**

- 1.1 M/s Subhash Baheti & Co. (hereinafter referred to as the 'broker') is a member of 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 INB030762110.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial year 2001- 2002 was carried out by SEBI during June 13 – 14, 2002. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 **ENQUIRY PROCEEDINGS**

- 2.1 On completion of inspection, the Report was forwarded to the broker for his comments. After considering the broker's reply dated September 11, 2002 an Enquiry Officer 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.
- 2.2 A Notice dated March 22, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. No reply was submitted by the broker in response to the aforesaid show cause notice. On perusal of the postal acknowledgment receipt and the letter dated March 25, 2004 received from CSE, the Enquiry Officer observed that the show cause notice was received by the broker and hence proceeded with the enquiry based on the reply dated September 11, 2002 submitted by the broker. The Enquiry officer submitted his report dated September 28, 2004 recommending a major penalty of suspension of certificate 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 October 01, 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 was granted time upto November 15th, 2004 to submit its reply. The broker vide letter dated November 11, 2004 sought extension of time upto November 30, 2004 for filing its reply and replied vide letter dated November 15th, 2004.

4.0 **CONSIDERATION OF ISSUES**

- 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 At the outset I have noted that the broker in its letter dated October 16, 2004 stated that he could not file the reply and participate in the hearing before the Enquiry Officer as during that period, the proprietor was suffering from severe illness. Copies of medical certificate were furnished in this regard. Since there is no dispute that the show cause notice issued by the Enquiry Officer was not received, the broker could have informed the Enquiry Officer about his illness and sought time from him for filing reply and appearing for hearing, which he failed to do so.
- 4.3 a) **Non-maintenance of order book and margin book**

The Enquiry Officer found the broker guilty of violating the provisions of SEBI Circular dated February 11, 1997 by not maintaining the order book as stipulated under the Circular. The broker submitted that it received orders over telephone and also confirmed the execution of orders over phone to the clients. 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. I, therefore, agree with the findings of the Enquiry Officer and hold the broker guilty of violation of SEBI Circular cited supra.

Further, the Enquiry Officer found that the broker did not maintain margin book and guilty of violation of Regulation 17(1)(k) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The broker submitted that deposits received

from the clients were recorded separately in margin ledgers, the deposits were given to exchange, margin statements were downloaded from the exchange and maintained the same.

In this regard, I have noted that the Hon'ble SAT in Radar Securities Ltd. vs. SEBI (Appeal No. 22/2003 dated 30.05.03) held that when a stock broker had deposited margin money with the Stock Exchange and downloaded the data available on the Exchange's computer, it was to be held that broker had maintained effectively record of its margin deposits and failure to maintain information in book form would not be considered as a grave violation of Regulation 17(1) (k) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. In the light of this, I am inclined to consider the reply of the broker and take a lenient view on the above lapse of the broker.

b) **Delayed payment / delivery to the clients**

The Enquiry Officer found the broker delayed payments and deliveries of securities and hence was guilty of violating the SEBI Circular dated November 18, 1993. SEBI Circular cited above stipulates that "Member brokers shall make payment to their clients or deliver the securities purchased within two working days of pay-out unless the client has requested otherwise". The broker stated that clients issued instructions to it to hold their shares as the said shares were sold by them before the due date of pay out. Though the inspection report mentions about four instances of delayed payment/delivery, I find that the broker vide his reply dated November 15, 2004 submitted a letter from only one client viz. Mr. Prakash Ladha requesting not to deliver his shares as he desires to sell them in the next settlement. No such documentary evidence in respect of other clients was furnished by the broker. However, I have noted from the inspection report that the delay in delivery of shares was two days. Further, in the absence of any instance of investor complaint against the broker on account of this, imposition of substantive punishment on the broker may not be called for.

c) **Client member agreement and client registration forms not duly filled in**

With regard to the above finding of the Enquiry Officer, the broker submitted that out of the 11 instances mentioned, seven persons have not started dealing with them. In support of this contention, the broker submitted a certificate from the auditor confirming that these 7 entities have not dealt with the broker. In respect of the other four clients, the broker submitted that the deficiencies have been rectified and enclosed copies of the same. The purpose of Regulations is not punitive but corrective in nature. As the broker has taken necessary steps to correct the discrepancies, I am inclined to take a lenient view on the above lapse of the broker.

d) **Non segregation of client / own funds**

As per the inspection report, it is alleged that the broker has not maintained separate accounts for clients fund and its own funds and that the broker made certain payments such as electricity charges, telephone charges, printing and stationery expenses, motor car expenses, etc., from the clients accounts. The broker in its reply dated September 11, 2002 accepted its fault that it did not maintain separate accounts for clients funds and own funds. Hence the Enquiry Officer found the broker guilty of violating the SEBI Circular dated November 18, 1993. However, vide its reply dated November 15, 2004 which is subsequent to the Enquiry proceedings, the broker stated that it had always kept the clients funds separately from its own funds and is also maintaining separate Bank Account for keeping the clients funds and due to some clerical mistakes, cheques were issued from client account, which cannot be accepted as a justification. The purpose of maintaining separate account is to avoid misuse of clients money and in this case the broker has admitted that he used the client funds for his own payments. This should be viewed seriously.

- e) On the allegation of non payment of turnover fees to SEBI, the Enquiry Officer observed that he cannot give any finding on the ground that the broker had stated that the matter was subjudice and neither the inspection report nor the broker's reply gave any details of the court case. During the hearing held on March 21, 2006. the broker submitted a copy of the letter dated November 10, 2004 addressed to SEBI whereby it has stated that out of the total dues, a sum of Rs.7,98,678/- shall be remitted on its account to SEBI by CSEA Ltd, and for the balance sum of Rs.7,64,470/-, it had sent the demand drafts. In case there is any shortfall in the payment, separate action may be initiated in accordance with SEBI Regulations. As regards the allegation that the broker acted as sub-broker without SEBI registration, the Enquiry Officer recommended for a benefit of doubt on the ground that the inspection report did not give any details of the transactions entered into by the broker on behalf of the alleged client.

- 4.4 In the facts and circumstances of the case, and in the light of the judgements of Hon'ble Securities Appellate Tribunal in similar cases, I am of the view that a minor penalty of suspension of certificate of registration of the broker for a period of 15 days in this matter would be appropriate and sufficient.

ORDER

- 5.1 Now, therefore, in exercise of powers delegated to me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby impose a minor penalty of suspension of certificate of registration of M/s. Subhash Baheti & Co., Member, Calcutta Stock Exchange, with Registration Number INB030762110 for a period of 15 days.

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

Place: Mumbai

Date: 11.5.06

T.C. NAIR

WHOLE TIME MEMBER

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