

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s.RIGHT FINSTOCK PVT. LTD., MEMBER – AHMEDABAD STOCK EXCHANGE, SEBI REGISTRATION NO. INB020916939 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 Right Finstock Pvt. Ltd. (hereinafter referred to as the 'broker') is a member of Ahmedabad Stock Exchange, (hereinafter referred to as 'ASE') 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 INB020916939.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial years 1999-2000 and 2000- 2001, till the date of inspection was carried out by SEBI during Jan 2001. 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. After considering the broker's reply dated May 9, 2001 an Enquiry Officer (hereinafter referred to as "EO") was appointed vide Order dated July 24, 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 September 25, 2003 was issued to the broker under Regulation 6 (1) of the said regulations. The broker replied vide letter dated October 13, 2003 and requested to consider its reply dated 9.5.2001. It further stated that it has taken steps to rectify the irregularities. The Enquiry Officer conducted the Enquiry based on the reply dated 9.5.01 and submitted his report dated August 6, 2004 recommending a major penalty of suspension of certificate of registration for a period of four months on the broker.

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 August 23, 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.
- 3.2 Since no reply was received, another letter dated September 15, 2004 was issued to the broker stating that it has been given one last opportunity to make its submissions latest by September 22, 2004. An opportunity of personal hearing was granted to the broker on October 25, 2004.
- 3.3 Since the broker did not appear for the hearing on the said date, another opportunity was granted to him on March 21, 2006. Mr.Rajen C Shah replied vide letter dated March 20, 2006 stating that he has resigned as Director of the company on 11.6.03 and Mr Hemant Shah has been appointed as Whole Time Director.
- 3.4 Ahmedabad Stock Exchange, vide letter dated March 20, 2006 intimated that Shri Rajen Shah did not accept the letter stating that he is no more the Director of the company but has given the address of Mr. Purvesh Parikh who is the concerned person of Right Finstock and therefore the Stock Exchange had delivered SEBI's letter to Shri Purvesh Parikh which was received by his wife Mrs. Zalak P Parikh.
- 3.5 Mr Parikh vide letter dated 20.3.06 requested for 20-25 days time to know the whole matter and give reply but has not submitted any reply as on date. An opportunity of personal hearing was granted to the broker on April 7, 2006. The broker did not appear on the said date.

4.0 CONSIDERATION OF ISSUES

- 4.1 I have carefully considered the findings of the Inspection, Enquiry and the material available on record and find as under :
- 4.2 (a) **Contract Notes did not bear pre-printed serial numbers on an annual basis and there was no client acknowledgement**

The Enquiry Officer concluded that the broker did not maintain contract notes with pre-printed serial numbers on an annual basis and had not maintained the counterfoils of contract notes issued and hence violated Rule 15(2)(b)

of SCR Rules, 1957 and Regulations 17(1) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The broker submitted that it has now started generating numbers on the contract notes on an annual basis. Attempts were also being made to obtain acknowledgement of clients on the contract notes without fail and the contract notes are being issued within 24 hours to the clients. I find that the broker admitted the violation, however, since he stated that the discrepancies were rectified, a lenient view is taken in the matter.

(b) **Client Registration and Agreement Forms of old clients were not produced and new forms were incomplete**

The broker submitted that on account of internal management appraisals and for effective and result oriented operations, the firm had gone in internal management changes for day to day affairs. Consequently, all old clients ceased to operate through them and new clients were enlisted. However, by the time of inspection, client registration and agreement form was obtained only for new clients. The Enquiry Officer did not find the broker's explanation acceptable as the broker is required to maintain all his books of accounts and records for a minimum period of 5 years. Further, the Enquiry Officer did not find the broker's explanation that on account of ignorance the clients have not filled up the forms properly tenable as it is the responsibility of the broker to ensure that all the client registration forms are complete in all respects. The Enquiry Officer found that Client identification is important since it makes it easier for audit trail to identify the clients behind the transactions. The Enquiry Officer found the broker guilty of violating SEBI Circular SMD/POLICY/Cir/5-97 dated April 11, 1997. The Client Registration and Agreement forms are basic documents calling for details like bank account, PAN Number etc. and are important and essential to establish the credentials of the clients and also to keep audit trail in case of default. Hence, I agree with the findings of the Enquiry Officer. However, this being a technical and procedural default, substantive punishment on the broker may not be warranted.

(c) **Payment of Office Expenses from Client's Account No.223, Central Bank of India**

The broker admitted the allegations and replied that some mistakes had taken place on account of oversight and inadvertent drawing of cheques from client's account and the same were signed in a routine manner. The EO found that operation of clients' account for transactions which are not client related defeat the very purpose of maintaining clients' account separately. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse. The EO, therefore, found the broker guilty of violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993. I do not find the broker's explanation that the payments were made inadvertently from the clients' account tenable as I note from the inspection report that the clients accounts were used for making payments like BSE Deposit, Salary, Conveyance etc. Further, there have been more than one instance of such drawals from clients' account. Repeated instances suggest that the mistakes were not due to inadvertence or oversight and hence this is to be viewed very seriously.

(d) **Delay in security pay-out from the pool account on many occasions.**

The broker admitted the allegation and stated that on account of change in internal management and change of various staff members, the delay in delivery of security has taken place. It appears that Mr Milan Shah, representative of the broker had submitted during the enquiry proceedings that SEBI inspection was conducted immediately within 15 days of the change in the management of the company. The EO found that SEBI inspection was conducted during the 3rd week of January 2001 whereas the instances of delay in securities pay out were pertaining to the period October to December 2000. In view of this, the EO found the broker guilty of violating SEBI Circular SMDRP/POLICY/CIR/11-99 dated 7.5.99. I note that the delay in pay out of securities as brought out in the inspection report pertain to the period November 1999 – January 2000 and October to December 2000. Hence, I find no reason to differ with the findings of the EO.

(e) **Dealing with NSE/BSE brokers as unregistered sub-broker**

The broker submitted that the dealing had taken place inadvertently under the mistaken view that since they were members of the stock exchange, dealing as sub-broker was permissible. The EO found that as the broker has admitted to having acted as unregistered sub-broker he has violated Section 12(1) of SEBI Act, 1992, Rule 3 of SEBI (Stock Broker & Sub-Brokers) Rules, 1992 and SEBI Circular SMD/POLICY/CIR-11/97 dated 21.5.1997. I agree with the finding of the Enquiry Officer as the interpretation taken by the broker is devoid of merit and as per Section 12 of the SEBI Act, registration is required to as sub-broker.

(f) **Non payment of turnover fees to SEBI**

The broker submitted that in view of the pending litigation before the Hon'ble Supreme Court between BSE Brokers Forum, Bombay & Other Vs. SEBI challenging the levy of the turnover tax in question, majority of the share brokers all over India have deferred payment of the fees. It stated that there was no intention of committing any

deliberate and intentional breach of the provisions of the SEBI (Stock Broker & Sub-Brokers) Regulations, 1992. The EO found that the matter has been settled by the Supreme Court and hence the broker has to pay the turnover fees as per the SEBI Circular. I find that the broker has so far not paid the fee due to SEBI.

4.3 The EO further stated that during enquiry proceedings, Shri Milan Shah, representative of the broker submitted that subsequent to SEBI inspection they have discontinued dealing with NSE and BSE brokers and complied with all the SEBI requirements such as pre-printed contract notes, client registration forms, segregation of broker and client account etc. However, the broker has not submitted any material evidence in this regard nor has he appeared for the personal hearing on the scheduled date. In the absence of any proof to suggest that the broker has rectified the discrepancies, I am inclined to agree with the findings of the EO.

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 one month is 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 the said Regulations, I hereby suspend the certificate of registration of M/s.Right Finstock Pvt. Ltd., Member – Ahmedabad Stock Exchange bearing SEBI Registration No. INB 020916939 for a period of one month. This order, however, shall be without prejudice to SEBI's right to recover the turnover fees from the broker.

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

Place: Mumbai

Date: 11.5.06

T.C. NAIR

WHOLE TIME MEMBER

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