

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST C.P. SIKARIA & CO., MEMBER, CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB031037915 UNDER REGULATION 13(4) SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002**1.0 BACKGROUND**

1.1 C.P. Sikaria & Co. (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 INB031037915.

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 the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 APPOINTMENT OF ENQUIRY OFFICER

2.1 On completion of inspection, the Inspection Report was forwarded to the broker vide letter dated July 26, 2002. However, instead of replying to the findings of inspection, the broker moved the Hon'ble Calcutta High Court and sought a stay. The broker vide letter dated 09.8.2002, requested for a copy of the statement of its authorized representative Shri Ravi Shankar Sikaria recorded on July 11, 2002 i.e. after the inspection. Accordingly, Eastern Regional Office, SEBI, vide letter dated August 16, 2002 furnished a copy of the same to the broker. An Enquiry Officer (hereinafter referred to as "EO") was appointed vide order dated March 15, 2004 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 April 29, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker submitted its reply dated June 10, 2004. 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, the Enquiry officer submitted his report dated 30.9.04 recommending suspension of registration of the broker for a period of 3 years.

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 6, 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 submitted its reply vide letter dated October 18, 2004.

4.0 CONSIDERATION OF THE ENQUIRY REPORT

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4.1 I have carefully considered the findings of Inspection, Enquiry Report and the submissions made by the broker and my observations are as under :

4.2 a) Not registered as sub broker

The EO found that the broker has done transactions on behalf of clients with Essar Stock and Securities and Nakamichi Securities in NSE without obtaining registration as sub-broker of these brokers of NSE. The broker has also transacted in BSE on behalf of clients with A. Chhotaria & Co. and R L Agarwal Capital Markets, members of CSE, without obtaining registration as sub-broker of these members. Hence the EO found that the broker violated Section 12 of SEBI Act, 1992 and SEBI Circular No. SMD/POLICY/CIRCULAR/3-97 dated March 31, 1997, SEBI Circular No. SMD/OPG/AA/1020/96 dated March 14, 1996, SEBI Circular No. Sub-brok/Cir/02/2001 dated January 15, 2001 and Rule 3 of SEBI (Stock Brokers and Sub Brokers) Rules, 1992. The broker vide reply dated 18.10.04 stated that the terms of the SEBI Circular under reference unfortunately escaped their attention and that they were under the impression that, they, being member of one exchange, they could deal with members of the other exchanges on behalf of clients for which contract notes were not required to be issued. During the course of inspection they came to know precisely about the terms of the circular under reference and hence stopped such transactions immediately. The broker stated that they would ensure that in future such transactions will be done after due compliance with the SEBI Circular under reference. The broker expressed regret for the lapses which occurred due to ignorance occurring through inadvertence in sifting information accurately from the rich and voluminous body of instructions and circulars which have been issued. I note that the broker has admitted to having acted as a sub-broker without obtaining registration for the same. Section 12 of SEBI Act expressly forbids dealings as sub-broker without registration. Ignorance of law is no excuse and cannot be taken as defence. However, the broker's submission that he stopped dealing as sub-broker immediately after inspection is considered as a mitigating factor while deciding the quantum of penalty.

b. Not making payments of funds and delivery of shares within the prescribed period

The EO found that the broker has not made the payment of funds and delivery of shares to the clients within the prescribed time period of 48 hours which is in violation of SEBI Circular No. SMD/SED/CIR/23321 dated November 18, 1993 and Code of Conduct Clause B (1) under Regulation 7 of Securities and Exchange Board of India (Stock Brokers and Sub-Brokers) Rules and regulations, 1992.

I have noted from the inspection report that there was delay in payment to clients in 5 cases and 11 cases of delay in delivery of shares to clients. The EO found that the broker accepted in the statement before SEBI inspection team that the delays were 'due to ignorance' and hence found that the broker has violated the aforesaid Regulations and Circulars. I note that the broker cannot plead ignorance of the Regulations/Circulars and use it as a defense. However, considering that the delays are marginal, ranging from 4-10 days and that there are no complaints from the concerned clients on delayed payments/delivery of securities, the matter may not be required to be viewed very seriously.

c. Failure to maintain segregation between own funds and clients funds

The EO found that the broker has not maintained clear cut segregation between own funds and funds belonging to the clients. The broker opened an account with HDFC bank, through which all his client related transactions were routed. It has been observed that there have been certain payments/receipts from/to his clients' account which are not related to client transactions in CSE, which were in violation of SEBI Circular No. SMD/SED/CIR/93/ 23321 dated November 18, 1993. Instances of such transactions are given in the table below.

DATE	DETAILS	AMOUNT (Rs.)
9.4.2001	Essar Stock & Securities- Member NSE	5,65,396
17.4.2001	R L Agarwal Capital Markets- Member, CSE	75,308
9.4.2001	Withdrawn by proprietor for returning loan of Companion Securities Ltd.	5,00,000
10.4.2001	Withdrawn by proprietor for own use	50,000
17.4.2001	Withdrawn by proprietor for returning	1,00,000

	loan of Shanti Devi Gupta	
17.4.2001	Withdrawn by proprietor for own use	25,000
13.7.2001	Withdrawn by proprietor for paying interest on loan to Mathoni Tea Co.	50,000
16.5.2001	Nakamichi Securities -member NSE	74,387
25.5.2001	R L Agarwal Capital markets- member CSE	65,518
	TOTAL	1505609

The broker stated that no margin was collected by it from few clients and therefore it had to introduce its own funds in clients account. The pay-in/pay-out to/from CSEA, members of other exchanges partly represented money belonging to clients and partly its own funds. Thus only payments/receipts to/from clients, CSEA, members of other exchanges and own funds were passed through such account for compelling reasons and no other payments and receipts have been made through client account. It is seen from the above table that the broker has used the funds to repay loans etc. and hence the broker's explanation is not acceptable. I find that the objective of maintaining separate accounts for clients' funds and own funds is to ensure that there is no misuse of the clients' funds. In the instant case, the broker has not maintained a clear cut segregation and has used clients' funds for other purposes. This needs to be viewed very seriously. I, therefore, hold the broker guilty of the SEBI Circular cited supra.

d. Failed to collect margins from clients

The EO found that the broker had not maintained the margin register and not collected margins as required. The EO further found that the broker accepted it in the statement made before SEBI inspection team. This is in violation of SEBI Circular No. SMD/POLICY/CIR-33/2000 dated July 27, 2000, SEBI Circular No. SMD/Policy/Cir-12/2002 dated May 17, 2002. & SEBI Circular No. SMDRP/Policy/Cir-7/2000 dated February 04, 2000 & SEBI Circular No. SMDRP/Policy/Cir-06/2001 dated February 01, 2001 The broker submitted that it had collected margins except in case of few of its clients. However margin ledger was not maintained separately. It worked in good faith and most of the clients were well known to it. It further stated that it had the bonafide belief that collection of margins related to discharge of liability by members and as it was liable for payment obligations to the exchange, there was no question of any default in this respect. From the broker's reply it is clear that it had failed to collect margins. Non-collection of margins would put the broker at risk in the event of default by clients. He also failed to maintain margin register, which is in violation of Regulation 17(1)(k) of SEBI(Stock Brokers and Sub-Brokers) Regulations, 1992.

e. Non co-operation during inspection

The EO found that the broker had not cooperated with the SEBI inspection team at the time of verification of its books and records and did not provide necessary copies/other details sought, in respect of investor complaints. As per the Inspection report, there were 5 investor complaints against the broker for which they refused to submit any details before the inspection team stating that the matter was sub-judice though there was no court order restraining it from furnishing the details to SEBI. The EO found that SEBI is a regulatory body set up to protect the interest of investors. In case of any complaint by investor, it has every right to seek explanation and scrutinize the books and records of any intermediary. Non-submission of documents by the broker is very serious in nature. The EO, therefore found that the broker violated Regulation 21 of the SEBI (Stock-Brokers and Sub-Brokers) Regulations, 1992.

The broker stated that all records were made available and the papers relating to the five instances mentioned, formed the brief for their suits before the courts and it was not free to pursue these matters. I agree with the findings of the EO that SEBI has been set up as a regulatory body with the primary objective of protecting the interests of the investors and hence SEBI has the right to examine any matter involving investors' grievances. As there was no prohibitory order from the court, the broker should not have refused to submit the document sought by the inspection team.

f. Non-redressal of the investors' complaints

The EO found that the broker had not redressed the complaints for the following 5 clients:

1. M/s Subh Shree Commercial Co. Ltd.
2. M/s MKN Investment Pvt. Ltd.
3. Mahendra Kumar Nahata
4. Premlata Nahata
5. Madhulika Nahata

i) The EO found that in the case of M/s Subh Shree Commercial Co. Ltd. and M/s MKN Investment Ltd., the said clients had invested Rs. 10 lakhs and Rs. 5 lakhs in vyaj badla which the broker had refused to refund on the grounds that these clients had incurred a loss in speculative transactions executed with it.

It was observed from the client ledgers of M/s. Subh Shree Commercial Co. Ltd. and M/s. MKN Investment Pvt. Ltd. that the broker transferred Rs. 10 lacs and Rs. 5 lacs from the vyaj badla account to the share transaction account on 2.4.2000 and 22.4.2000 respectively.

The broker could not produce any written authorization from these clients for transferring the aforesaid amounts from their vyaj badla account to their share transaction account. Further, no documentary evidence was shown by the broker whereby these clients had authorized the broker to buy and sell securities on their behalf.

ii) The investors Mahendra Kumar Nahata, Madhulika Nahata and Premlata Nahata had allegedly given advance loans of Rs. 13 lakhs, Rs. 5 lakhs and Rs. 5 lakhs respectively to the broker which it had refused to return back on account of loss in speculative transactions which the aforesaid clients had executed with it.

The broker could not show any documentary evidence whereby these clients had instructed the broker to buy and sell securities on their behalf. As per the statement given by the broker, no client registration form had been maintained in respect of Premlata Nahata, one of the complainants.

For further scrutiny of the alleged share transactions, which the broker claimed that these clients had executed with it, the inspection team sought copies of client registration forms, sauda book, contract notes, difference bills, demat account statement etc. However, the broker refused to submit the same to SEBI. As per the statement given by the broker, it was unable to submit copies of the aforesaid documents since the matter was sub-judice. Hence, the EO found that the broker had violated Rule 4 (e) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992. Also he had not redressed investor complaints pending against him. I find that, subsequently, the broker vide letter dated 16.3.06 stated that all the five complaints mentioned above stand withdrawn and submitted copies of letters from the aforesaid entities stating that all the court proceedings have been settled by mutual consent and steps were being taken for withdrawal of proceedings in the courts and hence the complaint is of no substance now. I find that the broker's submission that since the matter was subjudice, he was unable to furnish copies of documents to the enquiry officer was not justified as there was no prohibition to do so from the court. There was only a pending dispute between the broker and his clients. The broker submitted during oral hearing that the disputes have now been settled out of court. I find that in terms of agreement dated 24.1.06 between the broker and Shri Mahendra Kumar Nahata, the broker paid a sum of Rs.2,50,000/- to Shri Nahata towards full and final settlement of his claim. I further find that Shri.Nahata is the Director of MKN Investment Pvt Ltd. and Subhshree Commercial Company and also appears to be related to the other two complainants viz. Premlata Nahata and Madhulika Nahata. I find that the agreements between the above complainants and the broker bear reference to the "said settlement" which appears to be the one made between the broker and Shri.Nahata. This shows that the conduct of the broker forced his clients to go to court and he had to pay them consideration for withdrawing their complaints.

g. Non-payment of turnover fees

The EO found that the broker has not paid the prescribed turnover fees to SEBI, which has been admitted by the authorized person of the broker in his statement dated July 11, 2002 which is in violation of Regulation 10 of SEBI (Stock Brokers and Sub-Brokers) regulations, 1992. I find that the broker vide letter dated 16.3.06 enclosed its communication to SEBI wherein it had stated that out of a total sum of Rs.5,69,163 payable on account of principal

and interest as per the fee liability statement, a sum of Rs.3,00,000 was payable directly by CSEA. The balance amount of Rs.2,69,163/- has been paid vide DD No.306235/- dated 9.11.04 enclosed with letter dated November 9, 2004. In view of this, I find that there is no case warranting punishment. However, if there is a deficit in the payment of turnover fees, separate proceedings may be initiated in terms of the Regulations.

h. Not maintaining the client registration forms in the prescribed format

The EO found that there were deficiencies in the case of 6 clients in the maintenance of the client registration forms like proof of identity, date of agreements, etc. and in one case the agreement and registration forms were not kept which are in violation of SEBI Circular No. SMD/SED/Policy/IECG/1-97 dated February 11, 1997 and SEBI Circular No. SMD/POLICY/CIRCULAR/5-97 dated April 11, 1997.

The EO found that the broker accepted in his statement before the SEBI inspection team that this discrepancy was 'due to ignorance'. The EO, found that the broker violated the aforesaid SEBI Circulars. I find that the broker stated vide letter dated 18.10.04 that due to oversight or ignorance of staff a document or two may be wanting or not filled properly. I find that the client broker agreements help in identifying the clients and hence have to be maintained systematically.

i. Not maintaining the order book

The EO found that the broker has not maintained the Order book in violation of SEBI Circular No. SMD/ Policy/IECG/1-97 dated February 11, 1997. The broker explained that it received the orders on telephone and confirmed the execution of the same to its clients on phone and it is difficult to maintain the order book at the time of trading as it consumes some time. The EO found that broker has failed to maintain order book. 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 the provisions of SEBI Circular dated February 11, 1997

j. Not maintaining the margin deposit book

The EO found that the broker has not maintained the margin register and is only maintaining the margin statement downloaded from the system which is in violation of SEBI circular No. SMD/POLIOCY/IECG/1-97 dated February 11, 1997. No clarification or explanation has been offered by the broker in this regard. I find that since the broker is maintaining margin statement downloaded from the system, it may be treated as sufficient compliance. 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.

4.3 On a careful consideration of the findings of the EO and the submissions made by the broker, I find that out of nine charges discussed above, utilizing the clients' monies for his own purposes, non-cooperation during inspection and failure to redress investor grievances are to be viewed very seriously. In most of the other cases, the broker had either rectified the deficiencies or the violation was technical and minor. In the facts and circumstances of the case, I am, therefore of the view that a major penalty of suspension of certificate of registration of the broker for a period of six months would be appropriate and 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 impose a major penalty of suspension of certificate of registration of C.P. Sikaria & Co., member Calcutta Stock Exchange (INB031037915) for a period of six months.

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

Place: Mumbai

Date: 22.5.06

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India