

SECURITIES AND EXCHANGE BOARD OF INDIA**ORDER**

AGAINST M/s.DHANANJAY SECURITIES, MEMBER - CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB031141139 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. Dhananjay Securities (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 INB031141139.

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 pursuant to the Order dated May 17, 2002 during July 17 - 18, 2002. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.0 ENQUIRY PROCEEDINGS

2.1 The Inspection Report was forwarded to the broker on completion of inspection. The broker submitted its reply dated September 14, 2002. An Enquiry Officer (hereinafter referred to as "EO") was appointed vide Order dated November 13, 2003 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.

2.2 A Notice dated August 6, 2004 was issued to the broker under Regulation 6 (1) of the said regulations enclosing therewith a statement of the findings of the inspection and the contraventions alleged to have been committed by the broker. The broker vide its letter dated November 23, 2004 submitted its reply to the Enquiry Officer reiterating its earlier reply dated September 14, 2002. Further, the broker also expressed his inability to attend the personal hearing before the Enquiry Officer because of financial constraints. Hence, the Enquiry Officer proceeded with the enquiry based on the findings of the inspection report and considering the reply dated September 14, 2002 of the broker. The Enquiry officer submitted his report dated February 10, 2005 and recommended a major penalty of cancellation of the certificate of registration of 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 February 16, 2005, 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 said show cause notice vide letter dated March 8, 2005.

4.0 PERSONAL HEARING

4.1 An opportunity of personal hearing was granted to the broker on April 12, 2006 in Kolkata. Shri P K Bagla appeared before me for the personal hearing and made his submissions on behalf of the broker.

5.0 CONSIDERATION OF ISSUES

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

5.2 a) Non maintenance of statutory books

The EO found the broker guilty of violating the provisions of SEBI Circular dated February 11, 1997 by not maintaining the order book. The broker submitted that it received orders from clients over telephone and also confirmed that no order book was maintained by it. However, it submitted that it issues contract notes for all transactions and gets confirmation of clients within 24 hours of execution of trade. 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 SEBI Circular cited supra.

b) Non-maintenance and deficiencies in maintenance of client database agreements and registration forms

The EO found that the client agreements were executed on plain paper and photographs were not pasted on it and hence they cannot be accepted as valid legal documents. The EO, therefore, found the broker guilty of violating the provisions of SEBI Circular No.SMD/Policy/IECG/1-97 dated February 11, 1997. The broker submitted that the deficiencies pointed out had since been rectified. However, he has not submitted any documentary evidence in support of his contention. Hence, I am inclined to agree with the views of the EO.

c) Delayed payment / delivery to the clients

The EO found that the broker delayed payments and deliveries of securities for a period ranging from 3 to 29 days and hence found the broker guilty of violating SEBI Circular dated November 18, 1993. The broker submitted that in the cases pointed out by the inspection team, it had instructions from its clients to hold back payment against their margin / obligation for future trades they wanted to do through the broker. In one case, it had sold certain shares out of its investment portfolio directly to the said client and since it was a sale transaction, no contract note was issued. The explanation of the broker is not tenable as it has not submitted any documentary evidence to prove that the clients had instructed it to hold payment/securities. Further, the broker's submission that it had sold certain shares out of its investment portfolio directly to the client and therefore contract notes were not issued is not valid as the broker has to mandatorily issue contract notes in such cases as per the Bye-laws of the stock exchange.

d) Dealing as unregistered sub-broker

The EO found that the broker had dealt with NSE member without obtaining proper registration as a sub-broker and hence found the broker guilty of violating SEBI circular No.SMD/POLICY/CIR/3-97 dated March 31, 1997. The broker submitted that it had done a few transactions on NSE for its clients without being registered as sub-broker. However, after the deficiency was pointed out, it had stopped dealing in NSE for its clients. Since the broker has admitted its lapse, I have no reason to differ with the findings of the EO. I find that such a conduct is in violation of Section 12 of the SEBI Act.

e) Non- payment of turnover fee

The broker submitted that it had not paid turnover fees as the matter was subjudice and the EO accepted the broker's submissions. However, I find that the broker, vide its letter dated April 18, 2006 has submitted that it has paid Rs.7,50,000/- to SEBI vide its letter dated November 11, 2004 towards fee liability under SEBI Interest Liability Regularisation Scheme, 2004. I find that the broker has submitted a copy of the letter with the details of the payment made to SEBI. In case there is any shortfall in the payment, separate action may be initiated in terms of the Regulations.

f) Off the floor transactions

The EO found the broker guilty of violation of the provisions of SEBI Circular No.SMD/MDP/CIR/043/96 dated August 5, 1996 as he had not reported certain transactions to the stock exchange. The broker submitted that it had done a few off the floor transactions which it had not reported to the CSE as it was not aware of the byelaws of the exchange regarding off the floor transactions. However, the broker submitted that in future it would report all such transaction to the exchange. I note that ignorance of legal requirements is not an excuse and cannot be used as defense.

5.3 As per the said Regulations, a major penalty of cancellation of certificate can be imposed when the broker is guilty of fraud, market manipulation, insider trading etc. None of the charges fall under such category and considering the violations found to have been committed by the broker, imposition of penalty of cancellation of certificate of registration would be grossly excessive and disproportionate. Therefore, in the facts and circumstances of the case, I am of the view that a penalty of suspension of certificate of registration of the broker for a period of one month would be sufficient and meet the ends of justice.

6.0 ORDER

6.1 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 impose a minor penalty of suspension of certificate of registration of M/s.Dhananjay Securities, Member - Calcutta Stock Exchange, with Registration Number INB031141139, for a period of one month.

6.2 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**