

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

AGAINST M/s.N K TIWARY, MEMBER - CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030879612 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. N K Tiwary (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 INB030879612.

1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial year 2002- 2003 was carried out from June 11-12, 2003 by SEBI pursuant to the Order dated May 19, 2003. 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. An Enquiry Officer (hereinafter referred to as "EO") was appointed vide Order dated March 31, 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 Notice dated April 30, 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 submitted its reply vide letter dated June 28, 2004 and Shri Arun Kumar Chatterjee, authorized representative of N K Tiwary appeared for a personal hearing on September 23, 2004 before the Enquiry Officer. 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. The Enquiry officer submitted its report dated October 11, 2004 and recommended a minor penalty of suspension of certificate of registration of the broker for a period of three 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 18, 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 said show cause notice vide letter dated November 1, 2004.

4.0 PERSONAL HEARING

4.1 An opportunity of personal hearing before me was granted to the broker on April 12, 2006. Shri N K Tiwary appeared for the personal hearing and made his submissions before me.

5.0 CONSIDERATION OF ISSUES

5.1 I have carefully considered the findings of the Inspection and Enquiry, the submissions made during the personal hearing and my observations are as under :

5.2 Non maintenance of order book, margin deposit book, deficiencies in issuance of contract notes etc.**a. Order Book**

The EO found that the broker should maintain record of time when the client has placed the order. This information is to be maintained by the broker in the order book. However, the broker did not maintain the order book. The broker submitted that the orders from the clients were placed immediately in the C STAR System with respective client code and the details of the time of order were available in the record in soft form. 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. However, since the broker has been maintaining the same in soft form, it can be taken as substantial compliance.

b. Margin Deposit Book

The EO found that the broker did not maintain margin book but in lieu of the same he was maintaining the margin statement downloaded from the Exchange System and hence found it guilty of violation of Regulation 17(1)(k) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The broker submitted that the margin record data was available from the books of account. It further submitted that during the whole year, the margin cases would not

exceed may be 10 and therefore, it appeared impractical to keep a separate register for just 10 accounts. The numbers were few because there were very few clients and almost all of them were having very low turnover. I find from the findings recorded by the EO that the broker was maintaining the margin statement downloaded from the Exchange System. I find this to be sufficient compliance and in this regard note the Judgement of the Hon'ble SAT in *Radar Securities Ltd. vs. SEBI* (Appeal No. 22/2003 dated 30.05.03) wherein it 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.

c. Contract notes were not signed

The EO found that in some instances the duplicates of contract notes did not bear the signature of authorized signatory, for certain transactions the contract notes were not issued to the clients by the broker, contract notes did not bear running serial numbers, etc, the broker did not maintain any dates on the receipts of the contract notes whereby it became difficult to ascertain whether the contract notes were delivered within 24 hours of the execution of the order and for the transactions done through Nakamichi Securities Ltd. on the NSE, the broker issued memo of confirmation to clients. The broker submitted that these lapses were clerical errors and that it had taken necessary steps to avoid recurrence of the errors in future. As the broker has accepted the mistakes and as contract notes are primary documents of utmost importance in the event of arbitration, I am inclined to agree with the findings of the EO that the broker had violated Regulation 17(1) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Rule 15(2) of Securities Contracts (Regulation) Rules 1957.

5.3 Client broker agreement/ client registration forms not duly filled in

The EO found that the client broker agreements and client registration forms maintained by the broker were not being filled up properly and hence found it guilty of violating SEBI Circular No.SMD/Policy/IECG/1-97 dated February 11, 1997. The broker submitted that most of the omissions were on family accounts and that the clerical lapse was that ID support was not obtained. The broker further submitted that he was fully satisfied about the identity of his clients. 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.

5.4 Delayed payment / delivery to the clients

The EO found that the broker is required to make payments to the clients within 48 hours of the pay-out declared by the exchange for the relevant settlement. However, it was observed during the inspection that the broker maintained running accounts and payments had been made well beyond the statutory period. The EO found that in some cases the delay in making the payments was more than 3 to 9 months. The EO, therefore, found the broker guilty of violating the SEBI Circular dated November 18, 1993 and Clause B(1) of the Code of Conduct read with Regulation 7 of SEBI (Stock Brokers and Sub-brokers) Rules and Regulations, 1992. The broker enclosed copies of letters received by it from its clients requesting to withhold payment/delivery of securities until a demand is raised by them. In view of this and in the absence of any pending complaints from the clients, the benefit of doubt may be given to the broker.

5.5 Off the floor transactions

The EO found that the broker violated the provisions of SEBI Circular no.SMD/MDP/CIR/043/96 dated August 5, 1996 by not reporting the details of certain transactions which it had undertaken to the stock exchange. The broker submitted that it had inadvertently done a few transactions. However, there was no intention of avoiding margins. The biggest deal of the lot was that of 40000 Globe Stocks @ 44 valued at 17,60,000 against margin of 10,50,000 with the CSE. The BMC was enough to take care of the margin requirement of all the trades. I find that the reply submitted by the broker is untenable as it is mandatory on the part of the broker to report off-the-floor transactions to the exchange irrespective of the margins maintained by them. It is to be noted that off the floor transactions do not impart transparency. The price formation in such transactions is not through the Stock Exchange price and order matching mechanism and hence investors do not have the benefit of the best possible prices. I, therefore, agree with the findings of the EO.

5.6 Dealing with unregistered sub brokers

The EO found that the broker cannot carry out transactions with the members of other exchanges without being registered as sub-brokers and thus violated SEBI circular No.SMD/POLICY/CIR/3-97 dated March 31, 1997 by dealing with Shri Nakamichi, P D Mathran, VG Capital who are not registered as sub-brokers. The broker submitted that since there was no business in CSE, it had to work as sub broker as the only other option available to it was to quit business altogether which would have rendered it jobless. I find that the broker has not denied the charges and hence, agree with the findings of the Enquiry Officer and hold the broker guilty of violating not only SEBI Circular cited supra but also the Code of Conduct as prescribed in Clause A(2) of Schedule II of SEBI (Stock Brokers and sub-brokers) Regulations, 1992 and Section 12 of the SEBI Act.

5.7 Non segregation of client / own funds

The EO found that the broker has made/received certain payments/receipts through his CSE clients' account which do not pertain to transactions done at CSE. These payments/receipts have been made by the broker to his clients who

have transacted with it at BSE. The EO, therefore, found the broker guilty of not complying with the provisions of SEBI circular dated November 18, 1993. The broker submitted that these payments/receipts were made by the broker to its clients who have transacted with him at BSE and further that its account books clearly indicated funds and security position of each of the client. The broker also stated that since it takes three days to realize the payment through clearing channel, they had to keep their own funds in clients' account to complete the pay-in on time. I find that the amounts to the credit of clients' accounts are in the nature of trust. The funds in the clients' accounts cannot be applied for any purpose other than what is permissible under SEBI Guidelines. The objective of opening and maintaining a separate account for the clients' funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. Not maintaining a separate clients' account is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated 18.11.93.

5.8 Delay in payment of turnover fee

The broker, vide its letter dated November 10, 2004 stated that it has paid the turnover fee to SEBI vide DD No. 119452 dated 10.11.04 for Rs,5,00,000/- and DD No.377037 dated 10.11.04 for Rs.1,27,245/- by availing the benefit of amnesty scheme available under SEBI (Interest Liability Regularisation) Scheme, 2004. In case, there is a shortfall in the payment, separate action will be initiated in terms of the provisions of Regulations.

5.9 On a careful consideration of the findings of the EO and the submissions made by the broker, I find that out of the nine charges discussed above, the broker has been found guilty of four violations. Taking the facts and circumstances of the case into consideration, I find that a minor penalty of suspension of certificate of registration of the broker for a period of one month would be appropriate and adequate.

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 for a period of one month on M/s.N K Tiwary, Member, Calcutta Stock Exchange, with Registration Number INB030879612.

6.2 This order shall come into force on 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