

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002, AGAINST M. TIBREWAL & CO., MEMBER, CALCUTTA STOCK EXCHANGE, SEBI REGISTRATION NO. INB030809417.**1.0 BACKGROUND**

- 1.1 M/s. M. Tibrewal & Co. (hereinafter referred to as "the broker") is a member of Calcutta Stock Exchange, Mumbai ("CSE") registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INB030809417.
- 1.2 Inspection of the books of accounts, documents and other records of the broker was carried out during June 17 – 18, 2002 by SEBI for the period 2001-2002 and certain irregularities found to have been committed by the broker were observed.

2.0 ENQUIRY PROCEEDINGS

- 2.1 In view of the above, an Enquiry Officer (EO) was appointed vide SEBI Order dated September 30, 2004 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry) Regulations, 2002 (hereinafter referred to as the "said Regulations") to inquire into the irregularities observed during the inspection of books of accounts of the broker. The EO after conducting the enquiry in terms of the said regulations submitted her report on 10.12.04 recommending suspension of certificate of registration of the broker for a period of 3 months.
- 2.2 A copy of the Enquiry Report was sent to the broker on 16.12.04, in terms of Regulation 13(2) of the said Regulations, advising it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed.
- 2.3 The broker vide letter dated 05.01.05 prayed for a lenient view to be taken in the matter.

3.0 CONSIDERATION OF ISSUES

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

a) Irregularities in the maintenance of the complete client database

It was alleged that the broker was not found to be maintaining the record of time while placing the orders and was also not maintaining any order book resulting in the non compliance of SEBI Circular No.SMD/POLICY/IECG/1-97 dated 11.2.97. The EO found that maintenance of order book is a mandatory requirement. The order book is of much importance as the book contains not only the name of the client placing the order but also records the time of placing the order which is reflected in the contract notes alongwith the time of execution of the order. The order book should also contain the identity of the person placing the order, date and time of order received, name of the client, description, value of the securities to be bought and sold, terms and conditions of the order and the reference number of the contract issued. Hence non-compliance amounts to violation of the SEBI Circular cited supra. The broker stated that the dynamics of the market were such that if he maintained order book while executing the trades there would always be a possibility of rate fluctuation of shares and clients may lose heavily on this account. Further, as he was alone, it was difficult for him to maintain order book and execute trades at the same time. 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.

b) Margin deposit book

The EO found that maintenance of margin deposit book should be strictly adhered to and there should not be any deviation from the same and hence found this to be a violation of Regulation 17(1)(k) of the Broker Regulations. The broker stated that most of the trades were done on their own account and for the trades done on clients' account, all payments due from them were received well before the pay-in date and the CSE download was always maintained by them. Further, they had never defaulted in margin payment to CSE. 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.

c) Member client agreement and client registration forms

The broker was not found to be maintaining the member-client agreement and client registration forms properly in a few instances, amounting to violation of SEBI Circular Nos.SMD/POLICY/IECG/1-97 dated 11.2.97 and SMD/POLICY/CIRCULAR/5-97 dated 11.4.97. The EO observed that the client database was not maintained properly by the broker. The EO found that although the broker provided an explanation as regards their lapses, due note has to be made as regards the very purpose of issuing the relevant circulars of SEBI as well as the rationale for their issuance. By failing to comply with the scheme as formulated by SEBI, there has been a certain amount of failure to exercise due diligence by the broker while carrying out its functions resulting in the violations of the provisions of the above mentioned circulars. The broker submitted that while the errors had been committed unintentionally and due to ignorance, the same had been rectified. However, I find that the broker has not submitted any documentary proof in this regard. 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 and since the same are claimed to have been rectified, no punishment is warranted on the broker.

d) Delayed payment to clients

It was found that the broker did not deliver the securities/make payments to the clients within 48 hours of the payout declared by the exchange for the relevant settlement and in certain cases, payments were found to have been delayed beyond the statutory period resulting in the violation of Clause B(1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the Broker Regulations and SEBI Circular No.SMD/SED/CIR/93/23321 dated 18.11.93. The EO stated that the balances were payable much before April 1, 2001. However, even if April 1, 2001 had been taken as the payable date, in the case of Dynamic Portfolio Services, payments were made after four months while in other cases payments were still due even after one year i.e. as on March 21, 2002. Thus there have been admitted lapses on the part of the broker regarding the delayed payments to their clients and hence this is in violation of Clause B(1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of the Broker Regulations. However, the EO also noted the fact that attempts had been made to rectify these mistakes and that the clients too, in turn did not seem to be affected by the delayed payments which is evidenced by their issuing letters extending cooperation to the broker. The broker stated that the stock market melt down of March 2001 had resulted in a huge price erosion of the stocks and payment crisis and being a small broker, they too had faced scarcity of funds to pay their obligations within the stipulated time frame and hence had approached their clients for their cooperation who in turn agreed to defer the payments of their dues and issued letters to this effect. Copies of the same were enclosed as proof for due perusal. It was further contended by the broker that all the cited persons had extended their cooperation till date and that the entire payment has since been cleared and that they have neither caused any monetary loss to any of their clients nor have they received any monetary benefits for themselves. Although delaying payments to clients is not a desirable feature, keeping in mind the fact that the clients extended cooperation to the broker in a crisis situation and the fact that the broker paid all dues of the clients in due course, a lenient view is taken on lapse on the part of the broker.

e) Dealing with unregistered sub brokers

The EO found that the broker entered into transactions with certain members of the same or other stock exchanges for which contract notes were issued without registering as a sub broker, thereby violating Section 12 of the SEBI Act read with Rule 3 of the Rules and the circulars. These clients were BNK Securities, Member NSE, East India Securities, Member NSE, Grim Credit & Investment, Sub broker of NSE member, Mukul Bhattacharya, Member CSE. The EO, therefore, found that the broker violated Section 12 of the SEBI Act and SEBI Circular Nos. SMD/OPG/AA/1020/96 dated 14.3.96, SMD/POLICY/CIR/03-97 dated 31.3.97 and Sub-brok/Cir/02/2001 dated 15.1.01. The broker confirmed that they had indeed failed to exercise due diligence with regard to this aspect in their statements recorded on 1.7.2002 and 2.7.2002. However, subsequently in their defence, they contended that as far as Mukul Bhattacharya and East India Securities are concerned, all the trades had been done on their self account and in the other two instances, the trades were done inadvertently on behalf of the client as well. In the absence of details of the transactions of Mukul Bhattacharya and East India Securities, it is difficult to ascertain whether they were proprietary trades or otherwise. However, in view of the fact that the broker has admitted his mistakes in the other two instances, I am inclined to agree with the findings of the EO that the violation does exist.

f) Non segregation of client money and own fund:

The EO found that the broker failed to maintain a strict line of segregation between clients' money and own funds resulting in the routing of payment to / from the clients' account to their own account such as payment of telephone bills, loan refunds, office maintenance etc. Thus the clients' funds have been utilized for purposes other than those envisaged vide SEBI Circular SMD/SED/Cir/93/23321 dated November 18, 1993 resulting in the violation of Rule 4(b) of the Rules and Para A(5) of Schedule II specified under the Regulation 7 of the Broker Regulations. The broker submitted that although segregation of the said accounts had been maintained by them on almost all the occasions, on certain occasions, small and negligible emergency payments had been made by them inadvertently. I find that the clients' funds have been used for telephone expenses, loan refund, mobile payments, computer expenses, printing & stationery, sales promotion expenses etc. I note that the purpose of maintaining separate accounts for clients' funds and own funds is to prevent misuse of client's funds by the broker. In the instant case, the broker has not denied using clients' funds and hence I am inclined to agree with the findings of the EO.

- 3.2 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 fifteen days would be appropriate and adequate.

4.0 ORDER

- 4.1 Now, therefore, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby recommend that the certificate of registration granted to M. Tibrewal & Co. bearing SEBI Registration No. INB030809417 be suspended for a period of fifteen days
- 4.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai

Date:16.6.06

T.C. NAIR

WHOLE TIME MEMBER

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