

SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/TCN/ /MIRSD/ /06

CORAM: Dr.T.C. NAIR, WHOLE TIME MEMBER

Against Mudit Garg, Sub- broker, SEBI registration No.INS231262119 (affiliated to Bansal Sharevest Services Limited, Member, National Stock Exchange of India Limited.)

DATES OF HEARING: 27.04.2006 and 09.05.2006

Appearances:

For noticee: Shri Virenda Ganda, Advocate,

Shri P.K Bansal

Shri R K Mehrotra

For SEBI: Shri P K Kuriachan, General Manager

Shri Rajesh Gujjar, Assistant General Manager

Ms Sakkeena.P.V. Legal Officer.

ORDER

(Under Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002)

1.0 FACTS

- 1.1 Securities and Exchange Board of India (hereinafter referred to as SEBI) on receiving information regarding the illegal trading being conducted by M/s Bansal Sharevest Services Limited (hereinafter referred to as BSSL), member National Stock Exchange of India Limited (hereinafter referred to as NSE) , vide Order dated July 17, 2003, ordered inspection of BSSL and its affiliated sub-brokers. The Inspection of the books of accounts and other documents of BSSL and its affiliated sub-brokers was carried out during the period July 21-23, 2003 simultaneously at its different offices viz, two offices at Mumbai, and other offices at Bhuj, Kolkata, Mathura and Bangalore. The inspection brought out many instances of illegal trading and other irregularities conducted by BSSL and its sub-brokers
- 1.2 Shri Mudit Garg, a SEBI registered sub-broker having SEBI registration No.INS231262119, affiliated to BSSL (hereinafter referred to as sub-broker) was one among the sub-brokers covered under the said inspection.
- 1.3 The inspection revealed that the sub-broker failed to maintain the following books of accounts and other records in violation of Regulation 17 read with Regulation 15 of the SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations)
 - a) Register of transactions (Sauda Books Prior to 1.4.2003)
 - b) Clients Ledger
 - c) General Ledger
 - d) Journals
 - e) Cash book
 - f) Bank Pass Book
 - g) Documents Register including particulars of shares and securities received and delivered.
- 1.4 The inspection further revealed that even the sauda sheets which were maintained by the sub-broker were from 1.04.2003 only and the records of the previous financial years were not produced. Further, the sub-broker did not co-operate with the inspection team and did not provide the required information to it in violation of Regulation 21 read with regulation 16 of the Broker Regulations.

2.0 Appointment of the Enquiry Officer

- 2.1 Therefore, vide order dated November 24, 2003, an Enquiry Officer was appointed by SEBI under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) to enquire into the affairs of the sub-broker on the violations observed during the Inspection. Subsequently for administrative reasons, the proceedings of the Enquiry was transferred from the then Enquiry Officer to another Enquiry Officer vide Chairman's Order dated September 30, 2004. The Enquiry was initiated to inquire into the alleged violations/ contraventions provisions of Regulation 17 read with regulation 15 & Regulation 21 read with regulation 16 of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992 and the various, rules, regulations and bye-laws of the Stock Exchanges by the sub-broker.
- 2.2 The Enquiry Officer issued a Show Cause Notice in terms Regulation 6 (1) of Enquiry regulations vide letter dated July 28, 2004 communicating the charges.
- 2.3 As no reply was received from the sub-broker, in adherence to the principles of Natural Justice, and in terms of the Regulation 9 of the Enquiry Regulations, an opportunity of personal hearing was granted to the sub-broker on October 28, 2004, when Shri Mudit Garg appeared personally and submitted the following:
- 1) That he had not received the show cause notice dated July 28, 2004. He further submitted that he was a student doing Engineering in Bangalore and used to go to the office to do programming and assignments related to his studies.
 - 2) Shri Mudit further submitted that his father and brother Shri Sumeet Garg were in charge of the day to day activities of the firm and hence he was not in a position to reply to the charges of the notice.
- 2.4 The Enquiry Officer, having considered the findings of the inspection, the oral submissions made before him during personal hearing, found the contention of Shri Mudeet Garg that he was not involved in the sub-broking activities and his father and brother were managing the same, not satisfactory. The Enquiry Officer further observed that the claim of Shri Mudit Garg that he was an engineering student and used to go to the office for programming purposes and other assignments relating to his studies, is also a lame excuse which will not absolve him from his liability, as the registration as sub-broker was in his name.
- 2.5 Therefore the Enquiry Officer concluded that the violations committed by Shri Mudit Garg, such as non production of books of accounts and other documents as mentioned in para 1.3 supra is in violation of Regulation 17 read with Regulation 15 (2) of the broker Regulations, have to be viewed seriously. On the basis of the above findings and conclusions, the Enquiry Officer recommended the major penalty of the cancellation of the certificate of registration of the sub-broker vide his Enquiry Report dated December 22, 2004.

3.0 Show Cause Notice and Reply

- 3.1 A show cause notice dated January 11, 2005 along with a copy of the said Enquiry Report was issued to the sub-broker under Regulation 13(2) of the Enquiry Regulations informing the sub-broker about the Enquiry Officer's recommendation and advising 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 The sub-broker submitted his reply to the said show cause notice vide letter dated February 07, 2005 and while reiterating the submissions made before the Enquiry Officer submitted interalia the following:
- a) as the sub-broker has not received the show cause notice dated July 28, 2004, he is not in a position to answer the charges leveled against the sub-broker.
 - b) that the period taken by SEBI to issue show cause notice after inspection i.e., one and a half years, is unreasonably long and it is still not certain that when the matter will be adjudicated upon finally.
 - c) that the principal broker BSSL has been prohibited from buying, selling or dealing in securities in the Stock Exchanges or outside the Stock Exchange with immediate effect till the completion of the inspection and determination of action on receipt of the report, since July 2003, and after that the business of the sub-broker has also been closed down.
 - d) that the penalty recommended by the Enquiry Officer is not justifiable under the broad provisions of sections 11B, 11(1), 11(4) and 11(4) (d) .The sub-broker further submitted that the factors on which the quantum of penalty to be determined as per section 15 J of SEBI Act do not even remotely justify the penalty of cancellation of sub-broker ship as recommended by the Enquiry Officer.
 - e) that the sub-broker also cited some of the orders of SEBI either warning has been issued or a lesser amount of penalty has been imposed on the parties.

f) the sub-broker also requested for a personal hearing.

3.3 A personal hearing was granted to the sub-broker on April 27, 2006 when sub-broker was represented through its Advocate. Since the arguments could not be completed, hearing was adjourned to May 09, 2006 and on May 09, 2006 the Advocate representing the sub-broker concluded his oral submissions wherein he by and large reiterated the submissions already available on record. The copies of the relied upon judgments were also submitted.

4.0 Consideration of the Issues and Findings

4.1 I have carefully considered the facts and circumstances of the case, Inspection Report, the Enquiry Report and other materials available on record. I have also considered the submissions made by the sub-broker during the personal hearings before me on April 27, 2006 and May 09, 2006.

4.2 Before considering the case on its merits I shall first deal with the legal issues raised by the broker during the personal hearing before me.

a) As regards the argument that the penalty recommended by the Enquiry Officer is not justifiable under the broad provisions of SEBI Act under sections 11B, 11 (1), 11(4), 11(4) (d) and 15J, I find that there is no merit in this submissions as the procedure for taking action against the broker/sub-broker under the Enquiry Regulations is a different procedure which has no relation with the above sections of the SEBI Act. Further, Section 15J of the SEBI Act deals with the factors to be taken into consideration while imposing monetary penalty by the Adjudicating Officer in Adjudication Proceedings, and can not be strictly relied upon under the present Enquiry Proceedings.

b) Regarding the submission that the show cause notice has been issued after a long gap from the date of inspection, it may be stated that examination of such voluminous inspection reports is a time consuming process and therefore no specified time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market.

4.3 Now I shall deal with the factual issues raised by the sub-broker as under :

I find that the main allegation against the sub-broker in the inspection report was that the sub-broker had failed to maintain the following statutory books of accounts and other records which was a mandatory requirement of an intermediary like sub-broker and thereby violated Regulation 17 read with Regulation 15 (2) of the broker Regulations.

- a) Register of transactions (sauda Books Prior to 1.4.2003)
- b) Clients Ledger
- c) General Ledger
- d) Journals
- e) Cash book
- f) Bank Pass Book
- g) Documents Register including particulars of shares and securities received and delivered.

4.4 I have examined the materials available on record and I could not see any satisfactory explanation on the part of the sub-broker with regard to this allegation. Instead the sub-broker has given lame excuses like the father and brother of the sub-broker were the persons looking after the business and the sub-broker used to go to the office for his study purposes. Since the registration is in the name of the sub-broker, his father and brother, can at the best, be considered to be his agents and in accordance with principle of principal- agent relationship, Shri Mudit Garg, being Principal, is liable for the acts of omission and commission of his agents. Therefore, I, in agreement with Enquiry Officer, hold the view that such kind of lame excuses will not help the sub-broker in absolving the liability and the penalty imposed on him.

4.5 I further find that the sub-broker also failed and neglected in submitting the necessary documents and information to the inspecting authority except sauda sheets and contract notes issued to the clients. Even the sauda sheets maintained by the sub-broker were from 1.04.2003 onwards only and the records of the previous financial years were not produced.

4.6 Further, I have noticed from the Inspection as well as the Enquiry Reports that the sub-broker did not co-operate with the inspection team and did not provide the required information to it in violation of Regulation 21 read with regulation 16 of the Broker Regulations.

- 4.7 The copies of the following judgments have been submitted by the sub-broker during personal hearing before me.
- 1) Appeal Nos. 52, 53 and 54 of 2001 Anand Rathi and others Vs Securities and Exchange Board of India, [2002] 47 CLA 292 (SAT)
 - 2) Appeal No 20/2001 Sterlite Industries (I) Limited Vs Securities and Exchange Board of India [2001] 45 CLA (SAT)
 - 3) Appeal No 59/2003-Sumedha Fiscal Services Limited VS Securities and Exchange Board of India. SAT Judgment dated 20.10.2004
 - 4) Appeal No 112/2003- Intec Shares & Stock Brokers Limited Vs Securities and Exchange Board of India, SAT judgment dated 13.12.2004
 - 5) Appeal No 399/2004- Atul Kanodia & Co Vs Securities and Exchange Board of India- SAT judgment dated 11.05.2005
 - 5) Appeal No 6/2006- M/s Bhupendra Meghji Bheda Vs Securities and Exchange Board of India- SAT Judgment dated 16.01.2006
 - 7) Appeal No 26/2006- Devichand Hansraj Oswal VS Securities and Exchange Board of India –SAT judgment dated 8.2.2006
 - 8) Appeal No 25/2006- Joindre Capital Services Limited Vs Securities and Exchange Board of India- SAT judgment dated 8.2.2006
 - 9) Appeal No 44/2006- Bharati Thakkar India Securities Private Limited vs. Securities and Exchange Board of India- SAT judgment dated 21.02.2006
 - 10) Appeal No 46/2006- Rolex Finvest Private Limited vs Securities and Exchange Board of India – SAT judgment dated 22.06.2006
 - 11) Appeal No. 83/2004- Sameer C Arora vs Securities and Exchange Board of India- [2004] 63 CLA 38 (SAT)

4.8 I have carefully perused these judgments, and I find that these judgments have no relevance with the instant case. The instant case is a unique one wherein the sub-broker in utter disregard to the mandatory requirements of law and without any justification or explanation, failed to maintain the statutory books of accounts, records and documents in violation of the provisions of the Broker Regulations. Further the sub-broker tried to disown his responsibility and exhibited a casual attitude which is not expected from a registered intermediary in the securities market, by submitting that even though the registration is in his name and his father and brother were responsible for the day to day activities of the firm and he was visiting the office occasionally for the purpose of his studies. Therefore the sub-broker does not deserve to continue in the serious activities of a securities market intermediary.

4.9 Having considered the Inspection Report and the Enquiry Report, the Show Cause Notices, and the oral and written submissions made before me during the personal hearing and the voluminous copies of various judgments, I do not find any substance in the arguments of the sub-broker and am of the view that sub-broker has failed to put forth any plausible defence in its favor to avoid the penalty.

4.10 On the basis of the foregoing discussion, I do not find any reason to differ with the findings and recommendations of the Enquiry Officer and hold that the sub-broker has violated Regulations 17 read with Regulation 15(2) and Regulation 21 read with Regulation 16 of the Broker Regulations.

5.0 ORDER

5.1 Now, therefore in exercise of the powers conferred upon me under Section 19 of SEBI Act, 1992 read with Regulation 13 (4) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and imposing penalty) Regulations, 2002, I hereby cancel the Certificate of Registration of the Mudit Garg, Sub- broker, SEBI registration No.INS231262119 (affiliated to Bansal Sharevest Services Limited).

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

DATE: 27.06.2006

PLACE: MUMBAI

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA