

SECURITIES AND EXCHANGE BOARD OF INDIA

WTM/TCN/ /MIRSD/ /06

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

Against Sumeet Garg, Sub- broker, SEBI registration No. INS 231127510 (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 on 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 Sumeet Garg, a SEBI registered sub-broker, having SEBI Registration No: INS 231127510, (hereinafter referred to as sub-broker) affiliated to BSSL, was one among the sub-brokers covered under the said inspection.
- 1.3 The Inspection revealed that the sub-broker had provided unauthorized trading terminals to many of its clients through Computer to Computer Link, in violation of Clause D (1) of the Code of Conduct specified under regulation 15 of SEBI(Stock Brokers and Sub-brokers) Regulations, 1992 read with NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000. The details of the unauthorized trading terminals are as follows:

SI No.	Client Name	ID Allotted by Sumeet Garg
1	SBJM Securities	17
2	Dilip Tibrewal	26
3	Kamal Kumar Bagaria	27
4	Ashok Almal	28
5	Sulit	29
6	Uttam Jain	30
7	Anil Securitise	31
8	Fomra Buildres	10
9	Stock Track	14
10	Lala Kedia	15
11	Rajesh Jalan	25
12	Suresh Almal	03

- 1.4 On the basis of the above, the Inspection team concluded that the sub-broker has violated Clause D (1) of the Code of Conduct specified under regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 read with NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000.

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, of Clause D (1) of the Code of Conduct specified under regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 read with NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000 and various, rules, regulations and bye-laws of the Exchanges by the sub-broker.
- 2.2 The Enquiry Officer issued a Show Cause Notice to the sub-broker in terms Regulation 6 (1) of the Securities and Exchange Board of India (Procedure for holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry regulations) vide letter dated July 27, 2004 communicating the charges or the allegations.
- 2.3 The Broker replied to the said Show Cause Notice vide letter dated August 26, 2004 and submitted that no illegal trades had taken place through the terminals to the said clients, and the same can be verified from NSE. The sub-broker further submitted that no client has suffered or felt cheated. The sub-broker also requested for a personal hearing, before the Enquiry Officer.
- 2.4 Accordingly, in adherence to the principles of natural justice the Enquiry Officer granted a personal hearing to the broker as per Regulation 9 of the Enquiry regulations on October 28, 2004 when Shri Sumeet Garg attended the hearing and submitted that registration formalities of transfer of those trading terminals were under the process. The sub-broker activities have been undertaken by the sub-broker for the last 15 months and have not done any illegal activities during the sub broker ship or later.
- 2.5 The Enquiry Officer, having considered the findings of the inspection and the oral and written submissions made by the sub-broker before him, found the following:
- a) from the reply submitted by the broker it is evident that the sub-broker has provided unauthorized trading terminals to the clients.
 - b) the submission of the broker that he is not conducting any sub broker activities will not absolve the sub-broker of the liability of for extending unauthorized trading terminals to its clients.
- 2.6 The Enquiry Officer thus found that the sub-broker has violated Clause D (1) of the Code of Conduct specified under regulation 15 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 read with NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000. The Enquiry Officer further opined that such violations have to be viewed seriously as these violations pose serious threat to the safety and integrity of the market. The Enquiry Officer submitted his Enquiry Report dated December 22, 2004 recommending a major penalty of Suspension of the Certificate of Registration of the sub-broker for a period of 2 years.

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 about the Enquiry Officer's recommendation and advising it to show cause as to why action as may be considered appropriate should not be taken against it.
- 3.2 The broker vide letter dated February 07, 2005 submitted its reply to the said show cause notice and while reiterating those submissions already made before the Enquiry Officer submitted interalia the following:
- a) that no illegal trading had been taken place through the terminals and no client has suffered loss or felt cheated.
 - b) the registration formalities were under process where the terminals were provided to the clients and the sub-broker himself was not carrying any business for the last 15 months and not done any illegal activities during sub-broker ship or later.
 - 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 period taken by SEBI to issue show cause notice i.e, one and a half years is unreasonably long and it still not certain that when the matter will be adjudicated upon finally.
 - e) that the sub-broker also cited some of the orders of SEBI where the parties have been either warned or a lesser amount of penalty has been imposed the parties.
 - f) The sub-broker broker also requested for a personal hearing
- 3.3 A personal hearing was granted to the sub-broker by me 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.

1. the penalty imposed on the sub-broker is not justifiable because the quantum of the penalty is not justifiable under the provisions of section 11B,11(4),11(1) and 11(4) (d) and 15J of the SEBI Act.
2. Preponderance of probabilities alone would not be sufficient for imposing a penalty of this kind.
3. The sub-broker has also submitted the copies of various judgments relied upon by him to corroborate his arguments.

4.0 Consideration of the Issues and Findings

- 4.1 I have carefully examined the facts and circumstances of the case, Inspection Report, the Enquiry Report and other material available on record. I have also considered the oral submissions of 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 broker as under :

The main allegation against the sub-broker was that it had provided unauthorized trading terminals to many of the clients. I find from the inspection report that the following are the details of such illegal and unauthorized trading terminals by the sub-broker.

SI No.	Client Name	ID Allotted by Sumeet Garg
1	SBJM Securities	17
2	Dilip Tibrewal	26
3	Kamal Kumar Bagaria	27
4	Ashok Almal	28
5	Sulit	29
6	Uttam Jain	30
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I also find that the sub-broker has not made any reasonable/satisfactory explanation for this allegation, instead simply stated that it has not provided any unauthorized terminals to any body. Instead of countering or answering the main allegation of unauthorized trading terminals to its clients, the sub-broker simply submitted that no illegal trades have been occurred through his trading terminals. The sub-broker further submitted that the details of these trades could be verified form NSE, but the sub-broker could not produce any such details of the trades.

- 4.4 I have taken note of the copies of following judgments which were submitted 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
- 6) 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)

4.5 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, given some unauthorized trading terminal to the clients in violation of Broker Regulations. Therefore the sub-broker does not deserve to continue in the serious activities of a securities market intermediary.

4.6 I further find that code of conduct specified for a sub-broker under Regulation 15 of the Broker Regulations is of utmost important and to be followed by the sub-brokers without any fail. In the instant case the sub-broker has violated Clause D (1) of the Code of Conduct specified under regulation 15 of Broker Regulations which requires the sub-broker to comply with the rules regulations and bye-laws of the Stock Exchanges, and the sub-broker could not justify the failure on its part, instead he tried to raise some lame excuses which is of no help in absolving the penalty imposed upon him. I further find that the sub-broker has violated NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000 which provides that the trading terminals shall be located only in the main or branch offices of the trading member or in the office of the registered sub-broker of the trading member and further the trading terminal shall be under the direct control of the trading member and be managed either by an authorized employee or a registered sub-broker of

the trading member. To counter this allegation the sub-broker submitted that the registration formalities of the transfer of the terminals are in process. I do not find any merit in this argument also.

4.7 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 broker has failed to put forth any plausible defence in its favor to avoid the penalty.

4.8 In view of this 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 Clause D (1) of the Code of Conduct specified under regulation 15 of Broker Regulations and NSE circular No. 163 Ref. No NSE/MEM/1591 dated April 20, 2000.

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 suspend the registration of registration of Sumeet Garg, sub- broker, INS 231127510, affiliated to Bansal Sharevest Services Limited, (Member, National Stock Exchange of India Limited) for a period of two years.

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

DATE: 27.06.2006

PLACE: MUMBAI

T.C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA

