

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 Shri Suresh Kumar Almal, (Registration No: INB030071816), Member of Calcutta Stock Exchange.

1.0 BACKGROUND

- 1.1 Shri Suresh Kumar Almal (hereinafter referred to as SKA) is a member of Calcutta Stock Exchange registered with SEBI as a stock broker having registration no. INB030071816.
- 1.2 Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an inspection of the books of accounts and other documents of SKA for the financial year 2001-2002 and observed following irregularities allegedly committed by the broker:
 - (a) Non-maintenance of Order book
 - (b) Non-maintenance of Margin Deposit Book
 - (c) Non-issuance of contract notes to some clients
 - (d) Not filling up client member agreement and client registration forms properly
 - (e) Dealing as unregistered sub-broker
 - (f) Non-segregation of clients funds from own funds.

2.0 Appointment of the Enquiry Officer

- 2.1 Thus, SEBI vide order dated November 13, 2003 appointed an Enquiry Officer 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 violations by SKA, if any, of
 - a) Section 12 of the SEBI Act, 1992,
 - b) Regulation 7 read with Code of conduct as specified in Schedule II of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992,
 - c) Regulation 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992,
 - d) SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993,
 - e) SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997,
 - f) SEBI Circular No.SMD/Policy/Circular/3-97 dated March 31, 1997,
 - g) SEBI Circular No.Sub-broker/Cir/02/2001 dated January 15, 2001,
 - h) Bye-laws, Business rules and regulations of the Stock Exchange.

- 2.2 The Enquiry Officer after conducting the Enquiry in terms of the Enquiry Regulations found that SKA has violated the provisions of Section 12 of SEBI Act, 1992, Regulation 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and the SEBI Circulars No. SMD/SED/Cir/93/23321 dated November 18, 1993 and SMD/POLICY/IECG/1-97 dated February 11, 1997 and submitted his Enquiry Report dated September 28, 2004, recommending a minor penalty of suspension of the Certificate of Registration of SKA for a period of one month.

3.0 Show Cause Notice, personal hearing and reply of SKA

- 3.1 In terms of Regulation 13(2) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing penalty) Regulations, 2002, a copy of the said Enquiry Report was forwarded to the broker along with a Show Cause Notice dated October 01, 2004 advising him to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on him. The said show cause notice was delivered to SKA and was also acknowledged by him. However, no reply was received from the broker and therefore a reminder dated October 26, 2004 was issued to SKA which too was delivered to SKA, but the broker did not reply to the notice.

3.2 Despite the fact that SKA did not pay any heed to the show cause notices, an opportunity of personal hearing was granted to the broker in adherence to the principles of natural justice on April 12, 2006 which was attended by the representative of SKA wherein he was given seven days time to file written submissions. However, SKA filed written submissions through a letter dated May 09, 2006 which was received on May 16, 2006.

4.0 Consideration of the Issues and findings

4.1 I have carefully considered the facts and circumstances of the case. I have also considered the Enquiry Report and the submissions of the broker.

4.2 As regards the findings of the Enquiry Officer, I note following as most significant observations :

- a) With regard to the charge of non-maintenance of the Order Book in violation of SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997, Enquiry Officer, having examined the reply submitted by the sub-broker has observed that on the basis of the submission of SKA that more than 95% of transactions were done in proprietary account and since there are few clients, a lenient view may be taken.
- b) With regard to the charge of non-maintenance of Margin Deposit Book in violation of Regulation 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, the Enquiry Officer found that since there is no allegation that SKA has failed to pay the margin to the stock exchange or failed to collect margin from the clients, a lenient view may be taken.
- c) With regard to the charge of non issuance of contract notes to client Shri Rabindra Kumar Chokhany for transactions done on September 21, 2001 for settlement numbers 2001469, 2001471 and 2001472 in violation of SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997 and Regulation 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, the Enquiry Officer observed that issue of contract notes to the clients is a substantive obligation on a stock broker and therefore SKA's submission that the clients did not come and take the contract notes is untenable.
- d) With regard to the charge of not filling up client member agreement and client registration forms properly in violation of SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997, the enquiry Officer observed that considering the technical nature of these allegations, a lenient view may be taken.
- e) With respect to the charge of dealing as unregistered sub-broker by executing huge transactions for clients, with Murari Securities Ltd., Member – NSE on behalf of its clients in violation of SEBI Circular No. SMD/SED/Cir/93/23321 dated November 18, 1993 and Section 12 of SEBI Act, 1992, the Enquiry Officer, after taking into account the submission of SKA that since there was no business in Calcutta Stock Exchange, in few instances where regular clients requested for execution of trades, he executed the trades in NSE and also that he enrolled himself as the client of M/s. Murari securities Ltd. and not as a sub-broker, found that SKA has thus admitted that he acted as unregistered sub-broker.
- f) With regard to the charge of non segregation of client's funds from own funds, the Enquiry Officer after taking into account submission of SKA that he has only 5 -6 active clients who have very small volume of transactions and that after inspection, he has opened a separate account with HDFC Bank, observed that a lenient view may be taken.

4.3 I note that the Enquiry Officer, on some of the allegations after considering the submissions of SKA, has opined that a lenient view may be taken with regard to these allegations and I on the basis of the material available before me find no reason to differ with the Enquiry Officer in this regard. However, with regard to the charges of non issuance of contract notes to some clients and dealing as unregistered sub-broker, I in agreement with the Enquiry Officer, find the broker guilty, as these violations are serious in nature and deserve appropriate penalty.

4.4 With regard to the allegation of not issuing contract notes to client Shri Rabindra Kumar Chokhani for transaction done in settlement no. 2001469, 2001471 and 2001472, SKA in its written submission filed after personal hearing before me on May 09, 2006 has reiterated that duplicate contract notes in these transactions were erroneously filed in another file and as such could not be produced at the time of inspection. SKA has also submitted before the Enquiry Officer that in few cases the contract notes were kept with himself as the clients did not come and take the same. These submissions of SKA are clearly untenable as it is the responsibility of a broker to comply with all the requirements in letter and spirit and any failure on his part will naturally attract penal consequences. Thus, I hold SKA guilty of violating the provisions of SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997 and Regulation 17 (1) (k) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

4.5 With regard to the charge of dealing as unregistered sub-broker, SKA in its reply dated May 09, 2006 has submitted that he transacted with M/s. Murari Securities Ltd. as a client and not on behalf of the clients. However, it was further submitted that at times there were simultaneous transactions with a few clients but those were off market deals and not the transactions on behalf of the clients. I note that Section 12 (1) of SEBI Act, 1992 states that no stock broker or sub-broker shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from SEBI. Thus, in terms of the said section, before doing the transactions on behalf of the clients, SKA should have got registered as a sub-

broker of M/s. Murari Securities Ltd. Having failed to do so, I hold SKA guilty of violating the provisions of Section 12(1) of SEBI Act, 1992.

5.0 ORDER

- 5.1 Now therefore, I, having considered the nature and gravity of the charges established , the facts and circumstances of the case, the mitigating factors as explained above, and the submissions made by the sub-broker thereto, in exercise of the powers conferred upon me under section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by the Enquiry Officer and Imposing Penalty) Regulations, 2002, hereby suspend the Certificate of Registration of Shri Suresh Kumar Almal, member of Calcutta Stock Exchange having SEBI registration no. INB030071816 for a period of one month.
- 5.2 This order shall come into force after 21 days from the date of the order.

DATE: 29.06.2006

PLACE: MUMBAI

T. C. NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA