

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

T.G.FINANCIAL CONSULTANTS PVT. LTD.

MEMBER, UTTAR PRADESH STOCK EXCHANGE

SEBI REGISTRATION NO. INB 100978235

WTM/VKC/ /MIRSD/ /06/3/08

DATE OF HEARING: 25.07.2006

APPEARANCE :

FOR NOTICEE : Mr.Sarvesh Dubey, Authorised Person

FOR SEBI : Shri P. K. Kuriachen, General Manager

ORDER

(UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002)

- 1.1 T.G.Financial Consultants Pvt. Ltd. (hereinafter referred to as "the broker") is a member of the Uttar Pradesh Stock Exchange ("UPSE") registered with SEBI as a stock broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INB100978235.
- 1.2 Inspection of the books of accounts, documents and other records maintained by the broker for the period from February, 2001 to September 2002 was carried out by V. Khanna & Company, Chartered Accountants, on behalf of SEBI. Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection. A copy of the Inspection Report was sent to the broker vide letter dated 18.12.2002 and his comments thereto were received vide reply dated 24.01.2003.

2.0 Enquiry Proceedings

- 2.1 An Enquiry Officer (EO) was appointed vide SEBI Order dated 11.12.2003 under Regulation 5 of SEBI (Procedure for holding enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'said regulations') to enquire into the alleged contraventions observed during the inspection of books of accounts of the broker.
- 2.2 A show cause notice dated 22.03.2004 in terms of Regulation 6(1) of the said Regulations was issued to the broker. The broker vide its letter dated 27.04.2004 submitted its written reply.
- 2.3 As per the request of the broker, an opportunity of personal hearing was given to the broker by the EO on 30.08.2004 which was attended by Mr.Madhu Dubey, the Director of the broker, who made oral submissions reiterating the written submissions. Further, vide letter dated 07.09.2004, the broker submitted copies of few documents in support of his submissions.
- 2.4 The EO after conducting the enquiry in terms of the said regulations submitted his report on 29.11.04 and recommended a penalty of suspension of the registration of the broker for a period of six 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 06.12.04, in terms of Regulation 13(2) of the said regulations, advising the broker to show cause as to why an appropriate penalty including penalty as recommended by the EO should not be imposed.
- 3.2 The broker replied vide letter dated 24.12.04 and submitted as under:
 - The alleged violations were found to be in the nature of technical lapses and the broker had no intention to violate any Provisions, Rules, Regulations, Directives of SEBI or of the concerned Stock Exchange.
 - No loss were caused to any of the investors or any grievance from any of the clients is received.
 - It had already stopped its trading activity in the UPSE and gave a undertaking that it will not resume trading activity before ensuring about non occurrence of any such contravention as alleged.

- 3.3 An opportunity of personal hearing before me was given to the broker on 25.07.2006. Mr. Sarvesh Dubey, the authorized person of the broker appeared and also handed over his written submissions along with some previous orders of SEBI taking a lenient view for similar violations in similar circumstances.

4.0 **Consideration of issues**

- 4.1 I have carefully examined the facts and circumstances of the case, the inspection report, the Enquiry Report and the submissions of the broker thereto and my observations are as follows:

- 4.1.1 The broker contended that the show cause notice was issued under SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 which came into force with effect from September 27, 2002, hence the laws prevailing at the time of initiation of inspection shall apply and the laws which came into existence subsequent to the date of inspection cannot be made applicable. EO found no merit in the same in view of the provisions of Regulation 23 of the said Regulations. I agree with the EO in this regard since Regulation 23(1) clearly states that

"notwithstanding amendment of the regulations as specified in regulation 21, anything done or any action taken including any proceeding for inspections or investigation or enquiry commenced or any notice issued under the said regulations before the commencement of these regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations". Therefore, I hold that the said Regulation is applicable to the present case.

- 4.1.2 The first two charges leveled against the broker in the show cause notice was that the contract notes issued by the broker did not bear pre printed serial numbers and the record of time of placement of order and the time of execution of the order which is in violation of SEBI Circular Nos.SMD/MDP/Cir/043/96 dated 05.08.1996 and SMD/POLICY/IECG/1-97 dated 11.02.97. The broker had replied that contract notes were bearing computer generated serial numbers as these contracts were generated by the computers and the contract notes were bearing the record of time of placement of order and the time of execution of the order since the date of modification of the software being used by the UP Stock Exchange. The broker further submitted that prior to the modification of the said software, the broker should not be treated as in default. The EO found that the broker failed to furnish the date of the modification of the software by UP Stock Exchange and that the software provided by the UP Stock Exchange did not provide for printing of serial numbers or record of time of placement but the above said information like record of time of placement of order etc., were required under law to be mentioned in the contract notes and the broker's claim that the software of UP Stock Exchange did not provide for the same was not tenable and held the broker violated the above said circulars. I am of the view that the logic of having pre-printed serial numbers on contract notes is to prevent the possibility of insertion of contract notes at a later stage for fictitious transactions or transactions not routed through the Exchange. If the number is not pre-printed and generated on an annual basis, it is relatively easy for a broker to insert contract notes at a later date. Similarly, recording time of placement of order by the client is very crucial to ensure that the broker will not take undue advantage of price variations in the market. Considering the broker's submissions that it had rectified the software, I am inclined to take a lenient view.

- 4.1.3 The next charge was that the broker did not collect margins in two cases in violation of SEBI Circular Nos. SMDRP/Policy/Cir-07 dated 04.02.2000, SMDRP/Policy/Cir-33/2000 dated 27.07.2000, SMDRP/Policy/Cir-06/2001 dated 01.02.2001 and SMDRP/Policy/Cir-12/2002 dated 17.05.2002. The broker replied that the two instances mentioned in the show cause notice pertain to the very close relative of its director. EO found that the aforesaid circulars do not provide any exemption from collecting margins from the close relatives of the directors of the broker. Therefore, EO found the reply furnished by the broker unsatisfactory and held him guilty of violating the provisions of the above said SEBI Circulars. I find that since there was only two instances of non collection of margins and considering the broker's submissions that the said clients were his close relatives, I am inclined to take a lenient view on the broker.

- 4.1.4 With regard to the charge that there was delay in making payment to clients and did not deliver the securities within 48 hours of the pay-out which was in violation of clause B(1) of the Code of Conduct as specified in Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub brokers) Regulations, 1992 and SEBI Circular No.SMD/SED/Cir/93/23321 dated 18.11.1993, the broker replied that general authority was given by the clients who are either the family members of the directors or close family relatives of the directors to keep the funds/delivery on their behalf in order to meet the future obligations, if any, till further instructions. The broker also submitted that there was no complaint from any of the clients that there was a delay in payment of funds or delivery of securities. Vide letter dated September 7, 2004, the broker furnished EO, the letters of authority issued by some of its clients which also cover the cases indicated in the show cause notice except that of Shri B.N.

Mehta. In view of the satisfactory reply received from the broker and the copies of documents furnished by it, EO was not inclined to hold the broker guilty of violation of the above charge. Since the broker had given satisfactory reply with sufficient proof, I agree with the view of the EO.

- 4.1.5 With regard to the charge that no member-client agreements were entered into by the broker resulting in violation of SEBI Circular No.SMD/Policy/Cir/5-97 dated 11.04.1997, the broker replied that it entered into member-clients agreements with all the clients and the same might be verified. EO found that the inspection report clearly indicated that in none of the cases, the broker entered into member-client agreement and the broker did not furnish any documentary evidence in support of its claim. EO held the broker guilty of violation of the aforesaid circular. The concept of "Know Your client" was introduced with a view that brokers should maintain the database of their client so that it will be the broker's responsibility to provide client's details as and when the need arises. The member-client agreement is pre-requisite for execution of trades and is an investor protection measure. In the absence of member-client agreement, the investor would not be able to take legal recourse for default by the broker since the agreement contains the terms and conditions to be followed between the client and the broker. As the broker failed to show evidence that he executed member-client agreements with the clients, I am not inclined to take a lenient view on the broker.
- 4.1.6 The show cause notice charged that there were 15 instances in which the broker entered into off the floor transactions with M/s. Nikhil Securities resulting in violation of SEBI Circular No.SMDRP/Policy/Cir-32/1999 dated 14.09.1999. The broker replied that all off-the floor transactions were reported to the UP Stock Exchange and the same might be verified. EO found him guilty of violation of the above said circular of SEBI since no documentary evidence was given by the broker in support of his claim. As per Circular dated 14.09.1999, *"All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade"*. The screen based trading was introduced so that there may be greater transparency, better price discovery, reduction in transaction cost and benefits the investors. The off the floor transactions tends to avoid transparency requirements, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner. It is clear from the above circular that the issue is not of reporting to Stock Exchange as such but execution of such transactions on the Stock Exchange only and not off the Stock Exchange. Hence, I am of the view that the broker had violated the said circular and I agree with EO and not inclined to take a lenient view.
- 4.1.7 With regard to the charge that there was non segregation of clients funds and own funds in violation of SEBI Circular No.SMD/SED/Cir/93/23321 dated 18.11.1993 and SMD/MDP/Cir/043/96 dated 05.08.1996, the broker replied that it obtained a general authority from the clients and all the clients were relatives of the directors and there was no complaint from any of its clients in this regard. EO found no merit in the contention of the broker. The broker cannot claim that it need not comply with the circulars issued by SEBI in the interest of investors since the clients happen to be the relatives of its directors and held the broker guilty of violating the provisions of the aforesaid circular. However, since there was no finding of misuse of clients funds, I am inclined to take a lenient view.
- 4.1.8 With regard to the charge that the broker did not appoint any compliance officer resulting in violation of Regulation 18A of SEBI (Stock Brokers and Sub brokers) Regulations, 1992, the broker replied that one Shri. Pawan Dubey was appointed as compliance officer by the broker. Vide its letter dated 07.11.2004, the broker furnished a copy of the letter addressed to the UP Stock Exchange in support of its contention. EO did not find him guilty of violation of the above said regulation and I have no reason to differ with EO.
- 4.1.9 As per the show cause notice, the broker did not include off market transactions, about 15 instances of off the floor transactions with M/s.Nikhil Securities, while calculating the registration fees paid to SEBI which was in violation of Rule 4(d) of SEBI (Stock Brokers and Sub brokers) Rules, 1992, Regulation 10 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and SEBI Circular No.SMD/Policy/Circular/07/2002 dated 28.03.2002. The broker replied that the matter of calculation of turnover fees was subjudice before 'the competent court of law' and till the matter was decided by the said court, it cannot be treated as in default. The broker did not give the details of the matter or the court before which litigation, if any, was pending. EO found that the reply given by the broker and the issue in question did not appear to be connected in any manner and held the broker guilty of violating the aforesaid provisions of law. I am of the view that a separate summary proceedings can be taken up against the broker, if the payment of fee is still not made.
- 4.1.10 With regard to the charge that the broker had not transferred the securities to the clients account within 48 hours of payout and instead transferred to the margin account of M/s. Nikhil Securities without the consent of the clients resulting in violation of SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated 01.02.2001, the broker replied that a general consent from the client was taken for holding and utilization of margin of the scrip and the same might be

confirmed from the clients. EO found him guilty of violating the aforesaid circular of SEBI since no documentary evidence was produced by the broker. I am of the view that the broker had diverted securities purchased on behalf of clients without the clients authority. The above said circular stipulates that the clearing member should transfer securities from pool a/c to the beneficiary a/c within 6 days and that beyond this period the securities would not be eligible for pledging or stock lending unless transferred to beneficiary account. Hence, I am inclined to hold the broker guilty of violating the provisions of the aforesaid circular.

4.1.11 As per the show cause notice, there were serious irregularities in the maintenance of sauda book by the broker resulting in violation of Regulation 17(1)(a) of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992. The broker replied that the sauda book was maintained properly and the same might be verified. In the absence of any documentary evidence to support the claim of the broker, EO was not inclined to agree with the contentions of the broker and found him guilty of violating the aforesaid provision of law. I am of the view that the broker had not given satisfactory reply for the entry of various codes "A", "NISE", "RS", "SU" etc in the transactions placed by the broker as verified from the trade dumps available from UPSE and in the Suda books, it is recorded as the broker's transactions. Hence, I am not inclined to take a lenient view.

4.1.12 With regard to the charge that no separate record for unique client code allotted to the clients was maintained by the broker resulting in violation of SEBI Circular No.SMDRP/Policy/Cir-39/2001 dated 18.07.2001 and Regulation 18 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992, the broker replied that records were being properly maintained for unique client code allotted to the clients and that there were only very few clients and all of them were the family members or close relatives of its directors. EO was not inclined to agree with the contentions of the broker and found the broker guilty of violating the aforesaid circular. Unique Client Code had to be allotted to the clients as per the above said circular and the broker cannot escape the liability by saying that the clients were family members or close relatives of its directors and hence I am not inclined to take a lenient view.

4.2 I have considered the written submissions of the broker where it had cited the previous orders of the Board, in which a lenient view was taken and only warning had been given to the broker, in the similar circumstances and violations of the regulations and circulars of SEBI. I am of the opinion that no comparison can be made on facts since facts can vary from each and every case depending upon the circumstances and moreover, I am of the view that the broker executed off the floor transactions with M/s. Nikhil Securities Ltd which is against the provisions of the of SEBI Circular No.SMDRP/Policy/Cir-32/1999 dated 14.09.1999 and did not include those transactions in the calculation of turnover fees to SEBI which is a serious violation of SEBI (Stock Broker and Sub Broker) Regulation, 1992 and regulation 10 of the said Regulation provides for the suspension of the registration of the broker in case of the violation of the said provision. Moreover, the broker had not entered into member-client agreement in respect of the cases pointed out by the inspection team and did not produce any documents in support that it had entered into agreements with the clients. The seriousness of some of the irregularities pointed out above are not the same as in other cases cited by the broker. For the above stated reasons, the cases quoted by the broker have no relevance to the instant case.

4.3 On a careful perusal of the charges, and the findings as recorded above, I am of the view that a penalty of suspension of registration for one month would be adequate and sufficient to have a deterrent effect on the broker.

5.0 ORDER

5.1 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 impose a penalty of suspension of registration for one month on T.G.Financial Consultants Pvt. Ltd., member, UPSE, bearing SEBI Registration No. INB100978235.

5.2 This order shall come into force immediately on the expiry of twenty one days from the date of this order.

PLACE: MUMBAI

V.K.CHOPRA

DATE : 31.8.2006

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA