

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

Coram: SH. V.K. CHOPRA, Whole Time Member

In the matter of
DILIP SHAH, MEMBER,
U.P. STOCK EXCHANGE ASSOCIATION LTD.
SEBI REGISTRATION NO. INB 101088715

WTM/VKC/MIRSD/5/09/06

Date of hearing : 26-07-2006

Appearance

For Noticee : Party did not appear
For SEBI : Mr. P. K. Kuriachen, General Manager

ORDER

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

1.1 Dilip Shah (hereinafter referred to as "broker") is a corporate entity and is a broker of Uttar Pradesh Stock Exchange Association Ltd. bearing SEBI Registration No. (INB 101088715).

1.2 An inspection of the books of accounts of the broker was carried for the period April 01, 2001 to July 05, 2003 through Ramesh Agrawal & Co., Chartered Accountants appointed by Securities and Exchange Board of India (hereinafter referred to as SEBI). During the inspection, several irregularities / violations were found to have been committed by the broker.

2. Enquiry Proceedings

2.1 Upon considering the findings of inspection, an Enquiry Officer was appointed under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the Enquiry Regulations) vide order dated March 31, 2004.

2.2 A Show Cause Notice (hereinafter referred to as SCN) dated May 10, 2004 was issued to the broker under Regulation 6 (1) of the Enquiry Regulations. The broker submitted its reply vide letters dated May 29, 2004. The broker had also availed the opportunity of personal hearing on November 02, 2004. After considering the reply of the broker, the Enquiry Officer proceeded with the enquiry and submitted his report dated November 17, 2004 recommending a penalty of suspension of certificate of registration of the broker for a period of six months.

2.3 A copy of the Enquiry Report was issued to the broker along with a SCN dated February 09, 2005, in terms of Regulation 13(2) of the Enquiry Regulations calling upon it to show cause as to why appropriate penalty including the penalty as recommended by the Enquiry Officer should not be imposed on it. The broker had replied to the said SCN vide its letter dated February 24, 2005.

2.4 The broker was also given an opportunity of personal hearing before me on July 26, 2006. But on the designated date no one was present on behalf of the broker. However written submissions dated July 21, 2006 were filled.

3. Consideration of Issues

3.1 I have carefully considered the Inspection Report, Enquiry Report, SCN to the broker, its replies dated February 24, 2005 and written submissions dated July 21, 2006. My finding are as follows;

(a) Non maintenance of Order Book

Regarding the findings that the broker has not maintained the order book, the broker replied that the orders were simultaneously punched in computer as and when received. The order book as submitted by him was being maintained in the computer. The Enquiry Officer being satisfied with the reply of the broker had not held the broker guilty on this charge. I agree with the above findings of the Enquiry Officer as the charge is very technical and procedural, hence, I am inclined to take a lenient view.

(b) Non maintenance of Document Register

With regard to the findings that the broker had not maintained the document register, the broker stated that they are maintaining stock register which shows movement of scrips. It was further submitted by the broker that the document register and the stock register are one and the same thing. I find that document register is a primary record which contains the particulars of securities received or delivered by the application of Regulation 17 (1) (g) of Broker Regulations, 1992. However, the broker had produced the copy of the record at the time of hearing before the Enquiry Officer; hence, I am inclined to take a lenient view.

(c) Non maintenance of Margin Deposit Book

With regard to the findings that the broker had not maintained the Margin Deposit Book, the broker submitted that the margins collected from clients were directly credited in their current account. This explanation of the broker is further supported by the production of the copy of the record at the time of hearing before the Enquiry Officer. In view of this, action on the broker is not warranted.

(d) Collection of Margin from the Clients

Enquiry Officer found that the broker had not maintained the minimum margin from its clients and instead of it, a general authority was obtained from all the clients having running account to keep the fund payout to meet the day-to-day margin and funds pay-in subsequent settlements. The broker submitted that adequate systems have been adopted for taking due care of margin requirements considering small investor clients. The broker has produced such authorization at the time of hearing. By taking into consideration of these and the fact that there was no finding of default to the exchange by the broker by not collecting margins from the clients, I am inclined to take a lenient view on this issue

(e) Carry Forward Transactions

With regard to the findings that the broker has carried out certain transactions which are suspected to be unauthorized carry forward transactions, the broker submitted that there is no system of carry forward transactions in the U.P. Stock Exchange and it did not undertake any such transaction. The broker at the time of hearing submitted that the transactions noted by the inspection authority are coincidence as there were less number of brokers at Uttar Pradesh Stock Exchange and because of this less number the likelihood of matching of transactions is high. This may give the picture of unofficial carry forward transactions.

I have perused the data showing the list of suspected carry forward transactions. But the data available is insufficient to conclusively prove the charge of carry forward transactions. Hence, I am inclined to give benefit of doubt to the broker.

3.2 In the facts and circumstances of the case, I am of the view that a penalty of censure would be adequate and act as a deterrent on the broker.

4. 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 SEBI (Procedure of Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002, I hereby impose a penalty of censure on Dilip Shah., member, UPSE Ltd., bearing SEBI Registration No. INB 101088715.

4.2 This order shall come into force with immediate effect.

Mumbai

Date: 6.9.2006

V.K. Chopra

Whole Time Member

Securities and Exchange Board of India