

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/s. MALAY INVESTMENT & FINANCIAL SERVICES PVT. LTD

MEMBER, UTTAR PRADESH STOCK EXCHANGE

SEBI REGISTRATION NO. INB 100830439

WTM/VKC/MIRSD/7/09/06

DATE OF HEARING: 25.07.2006

APPEARANCE :

FOR NOTICEE : No one appeared but filed written submissions

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 M/s. Malay Investment & Financial Services 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. INB100830439.

1.2 Inspection of the books of accounts, documents and other records maintained by the broker for the financial year 2001-02 was carried out by Ramesh C Aggrawal & Co., Chartered Accountants, on behalf of SEBI. Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection. A copy of the findings of the Inspection Report was sent to the broker vide letter dated 02.04.2003 and his comments thereto were received vide reply dated 12.04.2003.

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 15.03.2004 in terms of Regulation 6(1) of the said Regulations was issued to the broker. The broker vide its letter dated 29.06.2004 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 30.07.2004 which was availed by the broker, who made oral submissions reiterating the written submissions. Further, vide letter dated 06.08.2004, 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 29.10.04 and recommended a penalty of suspension of the registration of the broker for a period of one month.

3.0 Show cause notice and the broker's submission

3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated 11.11.04, in terms of Regulation 13(2) of the said regulations, advising the broker to show cause as to why the appropriate penalty including penalty as recommended by the EO should not be imposed. The broker replied vide letter dated 30.11.04 and further submitted that till date there had not been any complaint against the broker and no loss of any nature/kind had been caused to the investors and in view of the judgement of Bombay High Court in SEBI vs Cabot International Corporation, (2004) 51 SCL 307(BOM), minimum penalty should be prescribed since the defaults are too technical in nature.

3.2 An opportunity of personal hearing before me was given to the broker on 25.07.2006. No one appeared for the personal hearing but written submissions of the broker were filed 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 findings are as follows:

4.1.1 Non maintenance of Order Book:

The EO found that the broker did not maintain the order book and had violated the provisions of SEBI Circular No.SMD/Policy/IECG/1-97 dated 11.02.1997 and UPSE Circular No. UPSE/MEM-AUD/2002-03/59 dated 12.08.2002 since the broker had not been maintaining all the details which normally constitute an order book and the electronic format of the order book did not contain all the required details. The broker replied that as per SEBI Circular dated 11.02.1997, the broker is required only to record the time of the placement of the order by the client which should be reflected in Contract Note along with execution time and as per UPSE Circular, it mandates recording time of placement of order and other information. The broker further submitted that the details submitted by it as per the soft copy along with the contract notes establishes the fact that the requirement/content of the order book as per UPSE Circular has been complied with. I am of the view that as per SEBI Circular and UPSE Circular, the order book has to contain the details of the name of the client, the date and time of order placed by the client and the time of execution of the order, which is very important from the investors' perspective. 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 and to ensure that the broker is fair to the investor. The broker is expected to maintain the order book which is a investor protection measure and the broker failed to maintain the order book in terms of the said circular. The soft copy of the order book maintained by the broker shows only the orders placed by the broker and executed on the Exchange but did not show the time when the orders were placed by the clients.

4.1.2 Non maintenance of Documents Register:

The EO found that the broker had not maintained any document register which was a primary record for securities received and delivered to a particular client or member and the scrip ledger only contains number of scrips received, delivered and balance which only gives a consolidated picture which was not adequate and the client wise stock register maintained also did not sufficiently meet the requirement and held the broker violated Regulation 17(1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The broker had replied that Regulation 17(1)(g) provides that in case of dematerialized securities, the Document register should contain the statement of account of the record relating to the receipts and delivery of securities provided by Depository Participants and since, it had dealt only with dematerialized securities during the inspection period, the records had been maintained as per the above regulation. I am of the opinion that the document register is the primary record for shares and securities held by the broker on behalf of his client and for himself and also, it is a statutory requirement. The broker is expected to maintain Document Register to keep a record of shares and securities held by it. Since the broker had produced a copy of the statement of accounts of Depository Participant, I am inclined to take a lenient view.

4.1.3 Non maintenance of Margin Deposit Book:

EO had held that the broker had violated the provisions of SEBI Regulation 17(1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 since the broker had not maintained the margin deposit book and had neither produced the margin deposit book nor informed regarding any electronic maintenance of the same at the time of inspection and the electronic maintenance, if any, seems to be subsequent development which does not absolve the broker from previous violations. The broker replied that the margin ledger was generated from the accounting software and at any point of time it can be segregated to reflect the margin position of the clients and so it can be considered as margin deposit book and if the stock broker had deposited margin money with the Stock Exchange and downloaded details of the same were available on the Exchange computer, it can be treated as maintenance of margin deposit book. The broker also cited the Securities Appellate Tribunal decision in the case of Radar Securities Limited vs SEBI (Appeal No. 22/03) dated 30.05.2003. In this regard, I am inclined to take a lenient view since maintaining margin deposit book in soft form is a sufficient compliance.

4.1.4 Execution of off-the-floor transactions:

The EO found the broker guilty of violating the provisions of SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 and of UPSE issued vide Circular Nos. UPSE/96-97/A&I dated 20.08.1996 and UPSE/MEM-AUD/2002-03/59 dated 12.08.2002 since the broker had not reported the off-the-floor transactions and had not produced any documentary evidence other than some receipts alleged to be issued by UPSE which is neither on the letter heads of UPSE nor bear any stamps of UPSE which was not reliable. The broker replied that UPSE was not in the practice of giving documentary confirmation of filing off-the-floor transactions by the brokers and the same may be verified with UPSE and the circular states that the broker should submit the information of off-the-floor transactions to the Exchange on the same day and it was the duty of exchange to submit the same to SEBI. The broker further submitted that the UPSE circular dated 12.08.2002 provided a penalty of 0.01% of the value of transactions on the member concerned, if off-the-floor transaction were not reported and later it came to the knowledge of the Exchange and since no penalty was levied by the Exchange, it was clear that there was no violation in this regard. I am of the view that as per the above circular, the broker had to report off-the-floor transactions to the Exchange and the broker had not produced any evidence that he had reported the same. Only when the non-reporting comes to the knowledge of the Exchange, action can be initiated. Since the broker had

not reported, the same would not be in the knowledge of the Exchange and hence, action may not have been initiated till now by the Exchange. Moreover, as per SEBI Circular No.SMDRP/Policy/Cir-32/99 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 broker had executed off-the-floor transactions which is against the aforesaid provisions. The transactions pertain to the financial year 2001-02 which is after the passing of the circular dated 14.09.1999. 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 dated 14.09.1999 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 not inclined to take a lenient view in this regard and hold the broker guilty of violating the above said circulars.

4.1.5 Non segregation of own and clients' money:

The EO found the broker guilty of violating the provisions of Rule 4(b) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992 read with SEBI Circular No. SMD/SED/Cir/93/23321 dated 18.11.1993, Bye law 225A of UPSE and UPSE Circular No. UPSE/MEM-AUD/2002-03/59 dated 12.08.2002 since the broker had not been maintaining the line of segregation between the clients account and their own account. The broker had replied that they had never misused the clients funds and had been maintaining proper line of segregation between their account and clients' account. I am of the view that the separation of the clients account and the broker's account had been done with the view to prevent any misuse of the clients money by the broker and it is implemented as an investor protection measure. I am inclined to take a lenient view, since, till date, there is no complaint against the broker from the clients and there is no instance of misuse of the clients money by the broker.

4.1.6 Compliance officer:

The EO found the broker guilty of violating the provisions Regulation 18A of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 since the compliance officer was appointed only during the course of inspection. The broker had replied that the UPSE vide its notice dated 01.10.2003 reminded the members to appoint Compliance Officer and submit the same in the given format which made them to believe that even if the appointment of Compliance Officer was made in 2003, there would be no violation and moreover, the format did not contain the column for the date of appointment of the Compliance Officer which gave the impression that the date of appointment can be the date of filing of the form and so despite the person acting de-jure as a Compliance Officer was appointed in the year 2003 and enclosed the said notice and the format. However, I am of the opinion that the broker had not replied to the point. I am inclined to take a lenient view since the broker had appointed the Compliance Officer subsequently, even though there was no Officer at the time of inspection.

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. In this case, the broker had executed off-the-floor transactions in violation of SEBI Circular dated 14.09.1999, as per which, the said transactions were to be executed on the Exchange, which is a serious violation. The seriousness of the irregularity pointed out above is 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 minor penalty of suspension of registration of the broker for a period of 15 days 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 minor penalty of suspension of registration for a period of 15 days on M/s. Malay Investment & Financial Services Pvt. Ltd., member, UPSE, bearing SEBI Registration No. INB100830439.

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

DATE : 19.9.2006

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