

SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI

Coram: V.K. CHOPRA, WHOLE TIME MEMBER

In the matter of

**R.B.S. SRIVASTAVA, MEMBER,
U.P. STOCK EXCHANGE ASSOCIATION LTD.
SEBI REGISTRATION NO. INB 100830714**

WTM/VKC/MIRSD/08/09/06

Date of hearing : 25-07-2006

Appearances

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** Rasik Bihari Sharan Srivastava (P) Ltd., trade name RBS Srivastava Share & Stock Broker, (hereinafter referred to as “broker”) is a proprietary entity and is a broker of Uttar Pradesh Stock Exchange Association Ltd. bearing SEBI Registration No. (INB 100830714).
- 1.2** Securities and Exchange Board of India (hereinafter referred as SEBI) carried out an inspection of the books of accounts of the broker under Regulation 19 (1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred as the Broker Regulations) for the period of April 01, 1998 to October 31, 1999.

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 28 of Broker Regulations as saved by the saving clause provided in Regulation 23 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 16, 2001.

2.2 Show Cause Notice (hereinafter referred as SCN) dated March 27, 2001 was issued to the broker. The broker submitted its reply vide letter dated May 07, 2001. An opportunity of hearing was also given to the broker on June 26, 2001 by the Enquiry Officer, but the broker did not attend. After considering the reply of the broker, the Enquiry Officer proceeded with the enquiry and submitted his report dated August 16, 2001 recommending a major 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 August 23, 2001, under sub regulation (1) of Regulation 29 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (prior to amendment of 2002) 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 submitted its reply vide letter dated September 10, 2001. The broker in its reply to the SCN had submitted that it had not received any intimation regarding the hearing fixed by the Enquiry Officer on June 26, 2001. The Chairman, SEBI considered this fact and remitted the case back to the enquiry officer vide order dated November 19, 2001.

2.4 Accordingly an opportunity of personal hearing was granted to the broker on December 2, 2003 by the enquiry officer but the broker has neither appeared on this date nor any communication was sent by the broker in this regard. Again an

opportunity was given to the broker on December 19, 2003 but the broker did not appear for this also. In view of this, the Enquiry Officer had proceeded with *ex-parte* and submitted his report dated August 31, 2004 with the same recommendations and penalty as was proposed in the previous Enquiry Report dated August 16, 2001 of suspension of certificate of registration for a period of 6 months.

2.5 A copy of the Enquiry Report was issued to the broker along with a SCN dated September 24, 2004, 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 September 15, 2004 and September 30, 2004.

2.6 The broker was given an opportunity of personal hearing before me on July 25, 2006. None appeared on behalf of the broker.

3. Consideration of Issues

3.1 I have carefully considered the Inspection Report, Enquiry Reports, SCN to the broker and its replies dated September 15, 2004 and September 30, 2004 and find as follows:

(a) Carry Forward transactions

With regard to the findings that the broker has carried out certain transactions which are suspected to be illegal carry forward transactions, the broker submitted that these are its regular transactions and there is no badla charges in the transactions. In its reply dated September 15, 2004 the broker had reiterated that the trades were on behalf of their clients and there is no system of carry forward transactions in the U.P. Stock Exchange and it did not undertake any of such transactions.

The Enquiry Officer in his report, unsatisfied with the submission of the broker found it guilty for indulging in carry forward transactions. The Enquiry Officer found that the alleged transactions have been carried out in highly liquid scrips with same parties and this establishes their structured nature and aimed at carry forward transactions. He found that SEBI in order to prevent undesirable speculation in securities, directed the stock exchanges vide its letter dated December 13, 1993 that all transactions in all securities shall be settled at the end of each settlement by delivery and payment and no carry forward of any transactions shall be allowed. But later on by SEBI Circular No. SMD/SED/3703/95 dated October 16, 1995 revised the carry forward system and introduced it subject to certain conditions and precautions. It was further found by the enquiry officer that UPSE did not satisfy the conditions stipulated by SEBI circular dated October 16, 1995 and therefore carry forward transactions was not allowed in this exchange. By this Enquiry Officer concluded that carry forward transaction by the member are illegal in terms of sub-section (2) of section 16 of Securities Contract (Regulations) Act, 1956 and SEBI Circular No. SMD/SED/3703/95 dated October 16, 1995.

I have perused the transactions executed by the broker, it is clear that the broker had reversed the trades in two settlement cycles. The broker had selected some very liquid scrips for doing these transactions so as to avoid any suspicion. I have considered the reply of the broker, which it had submitted while giving the reply to SCN under Regulation 13 (2) of Enquiry Regulations but I do not find any merits in this. I find that the broker has abused the process of screen based trading at the exchange. It had settled its trades on the last day of trading and on the very next day it had opened up it again in new settlement period with the same broker and with the same amount of shares. Carry forward charges is also there in these transactions. The submission of the broker that these trades were of the clients and not of it's own, finds no merit as no proof of same has been placed before me.

In view of the above discussion I agree with the findings of Enquiry Officer that the broker was involved in illegal carry forward transactions and I hold broker guilty on this charge.

(b) Arbitration between Member and Non -Members

With regard to the finding that there were some arbitration cases pending in UP Stock Exchange involving member and the investors and that the broker had violated the bye laws of UPSE, the broker submitted that it had taken action within the norms prescribed and extended full co-operation. It further submitted that the matters were stayed by the civil court. I have noted that the inspection report had referred three cases of arbitration. It appears that two cases were filed by the clients and one case was filed by the broker against a client. The broker has stated that it had approached the civil court in respect of cases filed against him and the court had granted stay of the arbitration proceedings. In its reply dated September 15, 2004 the broker has submitted that one case has been decided in its favour. However, the broker has not furnished any copy of the order/stay order. In the other case it appears that the matter is pending with the arbitration committee as noted from the inspection report. In view of this, it would not be proper to impose any penal action on the broker.

- 3.2** I have noted that the matter was remitted back to the enquiry officer on the contention of the broker that he has not been given a hearing by the enquiry officer. However despite reasonable opportunity given by the Enquiry Officer again, the broker failed to appear for hearing. This shows either careless attitude or dilating tactics on the part of the broker, which should be viewed very seriously.
- 3.3** In the facts and circumstances of the case, I am of the view that a penalty of suspension of certificate of registration for a period of one month 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 suspension of certificate of registration for a period of one month on RBS Srivastava Share & Stock Broker member UPSE Ltd., bearing SEBI Registration No. (INB 100830714).

4.2 This order shall come into force immediately on expiry of 21 days from date of this order.

Mumbai

Date: 19-09-2006

**V.K. Chopra
Whole Time Member
Securities and Exchange Board of India**