

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/s. AGARWAL SHARES & STOCK BROKERS PVT. LTD.

MEMBER, UTTAR PRADESH STOCK EXCHANGE

SEBI REGISTRATION NO. INB 101040138

WTM/VKC/MIRSD/10/09/06

DATE OF HEARING: 25.07.2006

APPEARANCE :

FOR NOTICEE : No one appeared

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 Agarwal Shares & Stock Brokers 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. INB101040138.
- 1.2 Inspection of the books of accounts, documents and other records maintained by the broker was carried out by SEBI Officials during July, 2004. 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 14.02.2005 and his comments thereto were received vide reply dated 26.02.2005.

2.0 Enquiry Proceedings

- 2.1 An Enquiry Officer (EO) was appointed vide SEBI Order dated 24.09.2005 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 04.11.2005 in terms of Regulation 6(1) of the said Regulations was issued to the broker. The broker vide its letter dated 23.11.2005 raised some preliminary objections and requested for extension of time for 2 months to file its reply which was refused vide letter dated 30.11.2005. The broker vide letter dated 12.12.2005 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 09.01.2006 which was attended by Mr. Atul Mittal, Director, who made oral submissions reiterating the written submissions. Further, vide letter dated 19.01.2006, the broker submitted a copy of UPSE letter dated 16.01.2006, certifying that no investor grievance is pending against the broker, in his support.
- 2.4 The EO after conducting the enquiry in terms of the said regulations submitted his report on 28.02.2006 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 submissions

- 3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated 29.05.2006, 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 10.06.2006 submitting that a lenient view may be taken considering the facts that a heavy fire broke out in UPSE building on 15.04.2004 which destroyed their documents and UPSE had already imposed a fine of Rs.5,000/- for the same violations. Moreover, it reiterated that it had produced the order of SEBI in the matter of M/s. Atma Ram Kejriwal & Co wherein a lenient view had been taken by giving a warning to that broker for the similar type of violations.

3.3 An opportunity of personal hearing before me was given to the broker on 25.07.2006 which was not availed by the broker.

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 The charge in the Inspection Report (IR) was that the broker was unable to produce contract notes for the year 1999-00 & 2000-01. For the years 2001 onwards, the broker had produced only copies of the contract notes for the months of March – December 2002 and May – June 2004. The following were the discrepancies observed, as tabulated below:

Table - I

Order Time	Exec. time	Particulars	Date	Settl. no	Serial no	Stamp	Client Ack.	Trade No.
N.A	N.A	Sumeet Agarwal	27/03/02	005	N.A	N.A	Sig. by diff. person	N.A
N.A	N.A	Vimal Kapoor	5/04/02	011	N.A	N.A	Yes	N.A
N.A	N.A	Suman Sapra	29/4/02	027	N.A	N.A	N.A	N.A
N.A	N.A	R K Sapra	29/4/02	027	N.A	N.A	N.A.	N.A

N.A	N.A	Prakash Lal Sapra	29/4/02	027	N.A	N.A	N.A	N.A
N.A	N.A	Anand Patak	3/5/02	030	N.A	N.A	N.A	N.A
N.A	N.A	Prakash Lal Sapra	29/4/02	027	N.A	N.A	N.A	N.A
N.A	N.A	Satish Chaduvedi	24/05/04	037	N.A	N.A	Yes	N.A
N.A	N.A	Anand Patak	17/05/04	032	N.A	N.A	Yes	N.A
N.A	N.A	Seema Agarwal	1/6/04	043	N.A	N.A	Yes	N.A
N.A	N.A	Anand Patak	24/5/04	037	N.A	N.A	Yes	N.A
N.A	N.A	Seema Agarwal	25/6/04	061	N.A	N.A	Yes	N.A
N.A	N.A	Dr. P C Rastogi	18/6/04	056	N.A	N.A	Yes	N.A
N.A	N.A	Anand Patak	27/4/04	019	N.A	N.A	Yes	N.A
N.A	N.A	Anand Patak	29/4/04	021	N.A	N.A	Yes	N.A
N.A	N.A	Anand Patak	17/5/04	019	N.A	N.A	Yes	N.A
N.A	N.A	Rajender (UPSE)	7/5/04	026	N.A	N.A	N.A	N.A
N.A	N.A	Dr. P.C. Rastogi	6/5/04	025	N.A	N.A	Yes	N.A
N.A	N.A	Rajesh Swaroop	3/5/04	B23 (Off Mkt.)	N.A	N.A	N.A	N.A
N.A	N.A	Agarwal Share	19/5/04	B014	N.A	N.A	N.A	N.A
N.A	N.A	Dr G S Seth	13/4/04	010	N.A	N.A	N.A	N.A
N.A	N.A	Anand Patak	30/4/04	001	N.A	N.A	N.A	N.A
N.A	N.A	Rajender (UPSE)	19/4/04	B014 (Off Mkt.)	N.A	N.A	N.A	N.A

N.A. – Not Available

4.1.1.1 The EO found from the above table that in 23 instances, pre-printed serial number were not mentioned on the contract notes. The broker replied that honouring the obligations of the contract notes was of prime importance; having pre-printed serial numbers does not matter as long as the obligation arising out of the contract have been duly met and that there is no complaint against him in this regard. The broker further submitted that the requirement for pre-printed serial number was made mandatory vide the 1996 circular, whereas the broker had commenced operations in 1998. When the broker itself was aware of the 1996 Circular and it started its business much later, there was no justification for not complying with the said Circular. Therefore, I have no reason to differ with the findings of the

EO that SEBI made it mandatory for Stock brokers to have pre-printed contract notes to ensure that it is not possible to insert contract notes at a later date, thus rendering dispute redressal impossible. It is an investor protection move by the regulator and the Hon'ble SAT in its order dated 30.05.2003 in Appeal No. 22 of 2003 of Radar Securities Ltd. vs SEBI, ruled that *"The fact that there were no complaints against the Appellant does not absolve it from the legal consequences for its omissions and commissions as a stock broker"*. I concur with the findings of EO and hold that the broker had violated SEBI Circular no. SMD/MDP/CIR/043/96 dated 05.08.1996 in respect to the aforesaid 23 contract notes.

4.1.1.2 The EO found that the contract notes did not contain time of placement of order and time of execution of order and also the trade number and order number were also not mentioned on the contract notes. The broker replied that the requirement for printing trade/order number on the contract note was introduced in 1997, whereas the broker had commenced operations in 1998. I agree with the findings of the EO that the broker's contention is absolutely baseless since if one were to accept it, then the broker will not be required to comply with the provisions SEBI (SB&SB) Regulations, 1992 as it came into force in 1992, whereas the broker had commenced its operation in 1998. The Hon'ble SAT in its order dated 30.05.2003 in Appeal No. 22 of 2003 of Radar Securities Ltd. vs SEBI, ruled that *"The receipt of the order from the client and execution of order by broker are not one and the same. Stamping the receipt time is important from the investor protection angle as it has a bearing on the transaction rate. Failure to do so is a matter of concern"* and I therefore hold the broker guilty of violation of SEBI Circular no. SMD/POLICY/IECG/1-97 dated 11.02.1997 and Clause B (2) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, in respect of the aforesaid 23 contract notes, for not mentioning order time and trade number.

4.1.1.3 The EO found that the duplicates of the contract notes were not acknowledged by the clients in 11 of the 23 contract notes mentioned in Table-I. The broker had replied that contract notes were issued to clients or their authorized persons within 24 hrs of execution of contract and further stated that most of the Contract notes were delivered to client by hand and in some cases, when client was not available, these were sent by post within stipulated time. The EO found that the objective of the regulator in specifying client acknowledgement is to ensure that the client accepts the obligations that arise out of the contract and in the absence of such a requirement, a member may issue contract notes in the name of a client, even if the client has not placed any order with the member, and proceed to demand money/securities from the client. Client acknowledgement on the counterfoil of the contract note would preclude such a possibility. However, in the absence of any investor complaint or any other irregularity observed by inspection team, the EO took a lenient view and I have no reason to differ from the findings of the EO.

4.1.1.4 The EO found that contract notes/sale – purchase bills were not issued in the following instances:

Table - II

Trans date.	Clg no.	Cl. Name.	Scrip	No of share.
2/12/2002	175	Agarwal shares	S.Star info	5000
2/12/2002	175	Mahesh C. Shukla*	SBI	3
3/12/2002	175	Mahesh C. Shukla*	SBI	50
3/12/2002	175	Dr P. C. Rastogi	Silverline	200
3/12/2002	175	Agarwal Shares*	Parekh Platinum	500
9/12/2002	180	Mansingh*	Reliance	1000
9/12/2002	180	Mansingh*	Reliance	1000
9/12/2002	180	Mansingh*	Reliance	1000
9/12/2002	180	Mansingh*	Reliance	-500
9/12/2002	180	Mansingh*	Reliance	-500
9/12/2002	180	Mansingh*	Reliance	-1500
9/12/2002	180	Mansingh*	Reliance	-500

9/12/2002	180	Hari Shanker Tewari*	MRPL	-2000
13/12/2002	184	Udai Gupta *	Tata Chemicals	100
13/12/2002	184	Udai Gupta *	Tata Chemicals	-100
13/12/2002	184	Udai Gupta*	Tata chemicals	-22
13/12/2002	184	Udai Gupta *	Tata Chemicals	-78
16/12/2002	185	Sarvodaya Shares	Tata Chemicals	484
17/12/2002	186	M.L. Sayani *	NIIT	2000
17/12/2002	186	M.L. Sayani *	NIIT	3000
17/12/2002	186	M.L. Sayani *	NIIT	-2000
17/12/2002	186	M.L. Sayani *	NIIT	-3000
17/12/2002	186	M.L. Sayani *	Polaris Soft	2500
17/12/2002	186	M. L. Sayani *	Polaris Soft	-2500
18/12/2002	187	Upendra Kumar *	Allahabad Bank	1000
18/12/2002	187	Sarvodaya Shares	BSES	-103
18/12/2002	187	Sarvodaya Shares	BSES	-197
19/12/2002	188	Sarvodaya Shares	BPCL	-100
19/12/2002	188	Sarvodaya Shares	ROLTA	-100
19/12/2002	188	S.N. Gupta *	SBI	2000
19/12/2002	188	S.N. Gupta *	SBI	2000

** Instances where no contract notes were issued.*

The broker had replied that fire accident in its premise was the cause for not being able to produce contract notes. The EO had observed that the broker had made available to the Inspection team, copies of contract notes for certain periods, which included those pertaining to December 2002 and on the contrary the broker had contended that contract notes for the cited trades were issued but copies could not be produced as they were destroyed in fire and since the trades mentioned in table II pertain to December 2002, it was not possible to accept the broker's claim that contract notes pertaining to these trades were also destroyed in the fire and found the broker guilty of violating

Clause B (2) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, in respect of the 59 transactions mentioned in Table-II. Apparently, there is a conflict in the broker's submissions as pointed out by the EO.

- 4.1.2 The EO found that there were irregularities in maintenance of member-client agreement and Client registrations and the broker had only member-client agreement pertaining to only one of its 568 clients and even that was not according to the prescribed format and was also not witnessed and out of the 23 Client registrations inspected, all the details in the form were not filled and all document were not collected and no date was mentioned. The broker had replied that the lack of records were due to the fire accident and stated that short comings in missing client agreement form had not affected any transaction with clients. The client registration is an important requirement and establishes the identity and the credentials of the client, so that unscrupulous persons are not introduced posing a risk to the market. This measure seeks to strengthen the integrity of the market, thereby ensuring investor protection. Similarly, member-client agreement also provides standardized rights and obligation between the two parties, which serves as a record for any dispute in future which is again an investor protection measure and merely because there are no investor complaints/dispute, it does not absolve the broker of the legal consequences of its failure to comply with regulatory requirements. I concur with the finding of the EO that though the records may have been lost in fire, the incompleteness of the available records leads to the conclusion that the broker had violated the provisions of SEBI Circular Nos.SMD/POLICY/IECG/1-97 dated 11.02.1997 and SMDRP/POLICY/CIR/5-97 dated 11.04.1997, for not entering into agreement with clients and for the irregularities in client registration.

4.1.3 The EO found that the broker had transacted with three entities who were acting as sub brokers, but were not registered as such and on perusal of the sample of the Demat statement of those entities in the Inspection Report which shows receipt /delivery of shares from/to different demat ids as detailed below:

1) Sarvodya Shares & Stock Brokers (P) Ltd

Settlement No.	Date	DP ID	No. of shares	Scrip
P/B 205/P/4	16.01.03	10167947	50	Global Tele Systems
P/B 222/P/5	06.02.03	10700028	100	Reliance Industries
P/B 226/P/4	12.02.03	10114226	50	HPCL
P/B 226/P/2	12.02.03	10114226	50	RCFT
P/B 226/P/1	12.02.03	10114226	100	TELCO
P/B 005/P/2	02.04.03	10343945	150	Reliance Industries

2) Agarwal Shares

This entity was also a sub broker of Siddhi Shares & Stock Brokers, member BSE having SEBI registration date as 01.04.2001 and registration no INS010961212 and the entity was alleged to be dealing with the broker as an unregistered sub broker. The delivery/receipts to/from clients could not be checked from the records maintained by the broker as it did not maintain separate accounts for its transactions done on BSE with Agarwal shares and the dealings done by Agarwal Shares through the broker on UPSE. The EO found that the Inspection Report mentioned that the broker had admitted that Agarwal shares was dealing with it on behalf of its clients.

3) D V Prasad

Settlement No.	Date	DP ID	No. of shares	Scrip
P/B N25/P/2	29.06.01	10415146	10	HDFC
P/B N25/P/1	29.06.01	13771598	30	HDFC

P/B R02/P/1	05.07.01	10345762	10	Tata Tea
P/B 261/P/6	26.02.02	10399960	28	ITC
P/B 261/P/7	26.02.02	10345762	12	ITC
P/B 281/P/5	30.03.02	10345762	10	Satyam Computers

The broker had submitted in its reply that all these three entities were registered with it as clients and they traded as clients; hence there was no violation. The EO found that the broker did not furnish the client registrations or member client agreements of these entities as proof. I agree with the finding of the EO that the perusal of demat transfer statement show receipt/delivery of share from/to different demat ID. There can be no presumption except that these entities were acting as sub brokers, without having registration, moreso, in the absence of evidence to support the broker's contention that these entities were its clients, the above presumption stands proved. Therefore, I hold the broker guilty of violating SEBI Circular No. SMD/POLICY/CIR/3-97 dated 31.03.1997 for their dealing with unregistered sub-broker in respect to the cited entities.

- 4.1.4 The EO found that the broker had acted as sub broker to NSE and BSE members without being registered as sub broker to the NSE and BSE members as detailed below, besides issuing contract notes of UPSE to its clients for these trades.

Name of the sub broker/member	Exchange	Trading since
1. M/s. SPFL Securities Ltd	Member NSE	1998
2.M/s J V Stock Broking (P) Ltd.	Sub broker of Siddhi Shares & Stock Brokers, member BSE and SPFL Securities Ltd, member NSE	20/4/2001
3.Agarwal Shares	Sub broker of Siddhi Shares & Stock Brokers, member BSE	26/4/2001

The broker had submitted in its reply that it was registered as a broker and there was no violation as such. The EO found that the SEBI circular No. SMD/Policy/Cir-3/98 dated 16.01.1998, requires that members of a stock exchange executing transactions of their clients in another stock exchange, through the members of that exchange, are to be treated as a sub broker of the latter and by implication, it prohibits members of one exchange from executing transactions of their client through the members of other exchange, without obtaining registration as a sub-broker of the latter and to illustrate; if the broker defaulted to its client when trading in NSE/ BSE, the broker's clients would neither have recourse to NSE/BSE, as the broker is not a member of NSE/BSE, nor will they have recourse to UPSE, as the trades do not pertain to UPSE. It is precisely to address such situation SEBI came out with the cited circular as a means of investor protection but this circular was not applicable if the trades were for the proprietary account of the broker. The EO further found that the copies of the 36 sample of contract notes showed UPSE contract notes issued by the broker to its client for the trades done in BSE and NSE and the Ledger statement of the broker for the period April 2000 to March 2001, showed large volumes of trade done with SPFL Securities Ltd and therefore, violation of Section 12 of SEBI Act, 1992, Rule 3 of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992 and SEBI Circular No. SMD/Policy/Cir-3/98 dated 16.01.998 by the broker is established with regard to SPFL Securities Ltd. By transacting in securities outside the trading system of UPSE, the broker had also violated SEBI Circular SMDRP/POLICY/CIR-32/99 dated 14.09.1999 which prohibits all trades outside the trading system of the exchange, other than spot transactions. I have no reasons to differ with the findings of the EO and I am not inclined to take a lenient view in this regard considering the seriousness of the violation.

4.1.5 The EO found that all the trades that were done for clients with unregistered sub-brokers and members/sub-brokers of other Exchange, were done outside the trading system of UPSE. The broker replied that there was no malafide intention to carry out these trades. I agree with the findings of the EO that the SEBI Circular SMDRP/POLICY/CIR-32/99 dated 14.09.1999 prohibits all trades outside the trading system of the Exchange, other than spot transactions. This circular overrides the earlier circular SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995, which requires reporting of all trades done off-the-trading floor of the Exchange. It is self evident that the 1999 Circular pertains to the online system, which replaced the earlier manual cry system. The broker had also admitted that it had carried out the activity of trading outside the trading system of UPSE with Sarvodya Shares & Stock Brokers Ltd., Agarwal Shares, D.V. Prasad, SPFL Securities Ltd., J.V.P. Stock Broking Ltd., which is prohibited by SEBI Circular SMDRP/POLICY/CIR-32/99 dated 14.09.1999. I, therefore, hold the broker guilty of violating the aforesaid provisions.

4.1.6 The EO found that there were irregularities pertaining to segregation of bank account by the broker and utilized the funds in the client account for its business expenses and also the broker had transferred funds from its client account to its business account and vice versa and the broker had deposited client's cheques in its business a/c and also vice versa. The broker had replied that the delay in realization of client cheques and the shortening of settlement cycle to T+3 as the reasons for utilizing client funds and pointed out that there was no complaint in this regard and also emphasized that payment had also been made from its a/c to clients a/c. The EO had given the following table based on the information provided in the Inspection Report at Annexure 4 & 5:

Table - III
Deposit / withdrawal from client a/c to business a/c of ASS
for the period April 2002 to March 2004

No.	Date	Cheque Number	Amount	
			Deposited in client a/c	Withdrawn from client a/c
1	06/05/02	942128		35,000
2	24/05/02	942129		22000
3	29/08/02	942131		49000
4	03/09/02	942132		46000
5	11/09/02	942133		147000
6	04/10/02	942134		8000
7	08/10/02	942135		25000
8	17/10/02	942136		10000
9	21/10/02	942137		60000
10	13/11/02	942139		55000
11	16/11/02	942140		74000
12	03/12/02	942141		83000
13	10/12/02	942142		63000
14	12/12/02	942144		109000
15	13/12/02	942142		24000
16	24/12/02	942146		20000
17	26/12/02	942147		12000
18	31/12/02	942148		27000
19	04/01/03	859264	46000	
20	20/01/03	857273	190000	
21	28/01/03	942156		554000
22	05/02/03	44851	160000	
23	05/02/03	44853	49000	
24	06/02/03	-	385000	
25	19/02/03	942162		25000
26	19/02/03	942161		10000
27	21/02/03	044860	48000	
28	12/03/03	942167		30000
29	22/03/03	942168		100000
30	24/03/03	942169		18000

31	28/03/03	044875	500000	
32	31/03/03	44876	65000	
33	07/04/03	044879	215000	
34	28/04/03	675601		21000
35	02/06/03	675603		200000
36	04/06/03	675604		36000
37	13/06/03	223575	330000	
38	30/06/03	675613		52000
39	08/07/03	223584	41000	
40	10/07/03	223587	250000	
41	21/07/03	223591	180000	
42	04/08/03	675621		4000
43	18/08/03	223600	13500	
44	25/08/03	675627		78000
45	04/09/03	938332	650000	
46	09/09/03	638334	56000	
47	11/09/03	938336	60000	
48	17/09/03	938339	5000	
49	07/10/03	938345	150000	
50	17/10/03	938354	110000	
51	23/10/03	938358	89000	
52	12/11/03	938376	150000	
53	20/11/03	938380	550000	
54	27/11/03	638953		30000
55	28/11/03	650851	30000	
56	03/12/03	650855	70000	
57	06/12/03	650859	60000	
58	22/12/03	638962		50000
59	29/12/03	638967		105000
60	07/01/04	638968		50000
61	12/01/04	650879	390000	
62	15/01/04	650884	70000	
63	21/01/04	656887	90000	
64	28/01/04	650888	45000	
65	07/02/04	650894	235000	
66	16/02/04	783236	200000	
67	18/02/04	783238	70000	
68	19/02/04	783239	20000	
69	26/02/04	783240	41000	
70	03/03/04	783245	10000	

71	04/03/04	783246	150000	
72	05/03/04	783249	12000	
73	13/03/04	783250	4000	
74	16/03/04	783252	71000	
75	24/03/04	650905		20000

On perusal of the above table, I agree with the finding of the EO that deposits had been made from the broker's business account to client account but that does not absolve the broker from its mandatory requirement to segregate these two into separate accounts. Though the cheques take some days for clearance and since the problem is perennial, the broker could have devised other means to collect money in advance from its client, so as to meet the obligations with the clearing corporation/house. Moreover, interchangeable use of funds, between client and business a/c, tantamounts to mis-utilization of client's funds and I agree with the finding of the EO that the broker had violated SEBI Circular no. SMD/SED/Cir/93/23321 dated 18.09.1993 in respect of the instances in table III and since the broker had admitted the charge of depositing client's money in the business a/c, that charge was also established and I am not inclined to take a lenient view.

4.1.7 The EO found that the broker made and received payments to/from clients in cash and also cash was withdrawn from client account. The broker had replied that the delay in cheque clearance was the reason for resorting to cash transaction with clients. I agree with the view of the EO that though the constraint is genuine, it does not absolve the broker of its regulatory obligation and besides, withdrawal of cash from clients a/c constitutes mis-utilization of clients account, which is in violation of SEBI Circular no. SMD/SED/Cir/93/23321 dated 18.09.1993. The following are such instances:

No.	Date	Cheque Number	Cash	
			Withdrawn from client a/c	Deposited to client a/c
1	02.04.04	650906	29,000	
2	28.04.04	Cash		2,000
3	01.05.04	Cash		2,00,000
4	21.05.04	650911	20,000	

In view of the above, I hold the broker guilty of violating the aforesaid provisions and not inclined to take a lenient view in this regard.

- 4.1.8 The EO found that the broker made payment and received funds from entities with whom there was no transaction in securities. These instances were:

S. N. Newatiya

Date	Particulars	Debit	Credit	Balance
08.04.2003	Being Cheque received 601234		5000.00	20000.00 Cr
04.12.2003	Being Cheque issued 650856	65000.00		45000.00Dr
05.12.2003	Being Cheque received 643399		65000.00	20000.00Cr

Jairam Dubey & Co.

Date	Particulars	Debit	Credit	Balance
08.11.2002	Being Cheque issued 859232	11000.00		11000.00Dr.
14.11.2002	Being Cheque received 072385		11000.00	

S. K. Maheshwari

Date	Particulars	Debit	Credit	Balance
15.01.2003	Being Cheque issued 859270	25000.00		25000.00Dr
16.01.2003	Being Cheque issued 859272	25000.00		50000.00Dr
27.01.2003	Being Cheque received 263762		50000.00	

Ajay Securities

Date	Particulars	Debit	Credit	Balance
26.03.2004	Being Cheque issued 783254	12000.00		12000.00Dr
29.03.2004	Being Cheque issued 783255	58000.00		70000.00Dr

Mahadev Prasad Gupta

Date	Particulars	Debit	Credit	Balance
01.08.2002	Being Cheque issued 6251	20000.00		20000.00 Dr
05.09.2002	Being Cheque received 260572		20000.00	

Mayank Goel

Date	Particulars	Debit	Credit	Balance
04.12.2002	Being Cheque issued 859241	15000.00		15000.00Dr
28.01.2003	Being Cheque received		15000.00	

The broker had replied that the aforesaid were not fund based activity as there was no interest component, but liquidity provided. I agree with the view of the EO that normally, this reply would have been acceptable but in the context where the broker was regularly withdrawing money from client's a/c to replenish its business a/c, such liquidity provisioning by the

broker was not justified and found that the broker had violated Rule 8(1)(f) and 8(3)(f) of SCR Rules, 1957, which prohibits any other activity other than broking, by a stock broker. I am, therefore, not inclined to take a lenient view in this regard.

- 4.1.9 The EO found that there were irregularities pertaining to client's securities viz in respect of the transactions done by the broker for its clients through SPFL Securities Ltd., J.V. Stock Brokers (P) Ltd., clients were asked to make the deliveries in the personal demat account of Mr. Atul Mittal, Director of ASS; a/c no 10000502 maintained with SPFL Securities Ltd and for trades done with Agarwal Shares on BSE, deliveries of securities were received in the broker's DP a/c with SHCIL and Mr., Atul Mittal's DP a/c interchangeably and also that the broker had pledged 1,000 shares of IndusInd Bank belonging to its client, with UPSE for meeting its capital adequacy requirements. The broker replied that its clients preferred to have their securities with the broker's demat account to save demat transaction and custodian charges. I agree with the findings of the EO that SPFL Securities Ltd. was a member of NSE and Agarwal Shares was a sub broker of Siddhi Shares & Stock Brokers, member BSE and as such the broker's transactions with SPFL Securities Ltd. and Agarwal Shares were prohibited, as already discussed earlier and per se the contracts notes issued by the broker to its clients for the trades with SPFL Securities Ltd and Agarwal Shares were invalid, whereby, the broker's clients will not have the investor protection measures in the form of exchange arbitration, trade guarantee fund, etc., based on these contract notes. To compound the irregularity, the broker had received the securities pertaining to these trades in the DP a/c of Mr. Atul Mittal, instead of its own DP a/c. It is clear that the broker had attempted to hide these illegal trades from scrutiny, hence did not receive it in its own DP a/c and the broker had also not disputed pledging 1,000 IndusInd shares of its client, with UPSE, for meeting its capital adequacy which shows the grave misconduct on the

part of the broker. Hence I am not inclined to take lenient view in this regard and hold the broker guilty of violating the aforesaid provisions.

4.1.10 The next charge was that there was delay in delivery of securities to client in the following instances, based on random check.

Settlement no.	Name of the sub broker / client	Security	Quantity	Date of Transaction	Date of delivery
S/B/107/S/1	ManSingh	NIIT	100	22.08.02	03.09.02
S/B/107/S/2	ManSingh	SSI	500	22.08.02	26.09.02
S/B/111/S/1	ManSingh	Himachal Futuristic	500	27.08.02	30.09.02
S/B/111/S/2	ManSingh	Himachal Futuristic	400	27.08.02	30.09.02
S/B/115/S/1	ManSingh	Computech Intl.	100	02.09.02	26.09.02
S/B/013/S/1	Pareek Pigments & Chemicals	HLL	1000	15.04.03	06.05.03
S/B/061/S/4	D V Prasad	MOH India	10000	17.06.02	02.01.03
S/B/062/S/1	D V Prasad	MOH India	50000	18.06.02	02.01.03
S/B/078/S/1	D V Prasad	MOH India	10000	10.07.02	02.01.03
S/B/078/S/10	D V Prasad	Universal Medi	2000	10.07.02	02.01.03
S/B/080A/S/4	D V Prasad	E.Star Info	1000	19.07.02	02.01.03
S/B/085/S/2	D V Prasad	Dyna Cons.	500	19.07.02	02.01.03
S/B/085/S/3	D V Prasad	E.Star Info.	1000	19.07.02	02.01.03
S/B/085/S/4	D V Prasad	MOH India	10000	19.07.02	02.01.03
S/B/085/S/11	D V Prasad	Ranchi Software	5500	19.07.02	10.01.03
S/B/085/S/12	D V Prasad	Shalibhadra In	2000	19.07.02	10.01.03

The broker had replied that these clients had debit position with the broker, and hence deliveries of these securities were withheld till the payments were received. The EO found that the broker had not provided

any evidence to substantiate its contention that these clients had debit position viz the broker and also noted that the broker had not maintained proper client wise stock records and moreover, the names of clients could not be matched with the DP a/c numbers as the broker did not provide the relevant information and found that the broker had violated SEBI circular Nos. SMDRP/Policy/Cir-05/2001 dated 01.02.2001 and SMD/SED/CIR/93/23321 dated 18.11.93, in delaying delivery of securities to its clients. I agree with the view of the EO and not inclined to take lenient view.

4.1.11 The broker had further submitted that since it was penalized by UPSE for a fine of Rs. 5,000 after an inspection, it should not be penalized again. In this regard, I concur with the EO in citing the ruling of the SAT order dated 29.01.2003 in the appeal No. 88 of 2002 in the matter of Kinglet Finlease & Securities Ltd. wherein SAT had ruled that SEBI is empowered to suspend certificate of registration granted to stock broker independent of any action taken by Stock Exchange against broker for not acting in accordance with the bye-laws of the Exchange and SAT held that penalty imposed by the Exchange did not preclude SEBI from imposing penalty under its regulations, based on the same set of facts. UPSE has inspected the member for the same period and levied a penalty of Rs. 5,000 on the member. Even after this episode, the inspection by SEBI in July 2004 revealed glaring non-compliances by the member which cannot be taken lightly.

4.2 I have considered the reply of the broker where it had cited the previous order of the Board in M/s. Atma Ram Kejriwal & Co, in which a lenient view was taken and only warning had been given to the broker. On a perusal of the case, I find no comparison can be made on facts since facts

of that case are different from this case. I am, therefore, of the view that the case cited by the broker has no relevance to the instant case.

- 4.3 I have considered the reply of the Broker that a lenient view may be taken and suspension of registration for one day or warning may be given instead of suspension of registration for one month. The violations committed by the broker are serious and I have no reasons to differ with the EO. In the fact and circumstances of the case, this is a fit case to impose the penalty as recommended by the EO.

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 on Agarwal Shares & Stock Brokers Pvt. Ltd., member, UPSE, bearing SEBI Registration No. INB101040138, for a period of one month.
- 5.2 This order shall come into force immediately on expiry of twenty one days from the date of this order.

PLACE: MUMBAI

DATE : 26.9.2006

V.K.CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA