

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/s. KESHAV FINCON LIMITED

MEMBER, UTTAR PRADESH STOCK EXCHANGE

SEBI REGISTRATION NO. INB 100955434

WTM/VKC/MIRSD/13/9/06

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 M/s. Keshav Fincon 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. INB100955434.

1.2 Inspection of the books of accounts, documents and other records maintained by the broker for the period from April, 2001 to March, 2003 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 08.09.2003 and his comments thereto were received vide reply dated 20.09.2003.

2.0 Enquiry Proceedings

2.1 An Enquiry Officer (EO) was appointed vide SEBI Order dated 31.03.2004 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 30.04.2004 in terms of Regulation 6(1) of the said Regulations was issued to the broker. The broker vide its letter dated 13.05.2004 requested for personal hearing.

2.3 As per the request of the broker, an opportunity of personal hearing was given to the broker by the EO on 17.09.2004 which was availed by the broker, who made oral submissions reiterating the written submissions. Further, vide letter dated 23.09.2004, the broker submitted copies of few documents in support of his submissions. The broker submitted vide letter dated 30.09.2004 that they do not have anything to submit further in this regard.

2.4 The EO after conducting the enquiry in terms of the said regulations submitted his report on 01.10.04 and recommended a penalty of suspension of the registration of the broker for a period of four months.

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 08.10.04, 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 18.10.04 and further submitted that till date there had not been any complaint or dispute in the knowledge of Stock Exchange or the broker relating to any claim, delay in settlement of account or bad delivery, etc., which would have caused any loss (direct or indirect) to the investors at large and till date all the settlement had been honored by the broker without any delay or grace period. The broker had met all obligations towards investors, clients and the Stock Exchange.

3.2 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 and my findings are as follows:

4.1.1 Sauda Book:

The EO held that the broker violated the provisions of para A(5) of the Code of Conduct specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMDRP/Policy/CIR-39/2001 dated 18.07.2001 since the broker had entered into all the transactions in his own code and later on trades were given to clients and since, all the trades had been entered into order entry level at its own name, it was not verifiable from Sauda book, whether the transactions were given to the clients or the broker and the broker had failed to appreciate the need of the documents mandated by SEBI. The broker had replied that it used to enter into transactions simultaneously on the computer terminal provided by the Exchange and at its back office and it had admitted that it had entered all the transactions in the Exchange terminal using its code and in the back office terminal, the clients code was also entered. The broker further submitted that it was not correct to state that the transaction entered on behalf of client were subsequently noted and hence not possible to identify whether the transactions were entered on behalf of client or the broker. The broker further added that since the transactions were regularly confirmed to the clients, unless back office support for each and every transaction entered on behalf of client existed, it would not had been possible to confirm to the client. I am of the opinion that the main purpose of maintaining Sauda book is to compile the details of all deals transacted by a broker on a day-to-day basis and containing the details like the name of the scrip, name of the client on whose behalf the deals had been done and the rate and quantity of the scrips bought and sold. But the broker failed to maintain the Sauda book as specified by SEBI and the main purpose of expecting the brokers to maintain Sauda book is itself defeated and it is difficult to ascertain from the records of the broker whether the trades are done by the broker on behalf of the client or for itself. Therefore, I hold the broker guilty of violating the above said provisions.

4.1.2 Documents Register:

The EO found that the broker had not maintained document register which is a primary record for securities received and delivered to a particular client or member and the broker had not replied as to which of the documents maintained contained the details, which documents register were expected to provide and found the broker guilty of violating Regulation 17(1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 and Rule 15 of Securities Contracts (Regulation) Rules, 1957. The broker had replied that all the scrips were owned by it except those scrips which were taken from the clients towards margin/security and the scrips held as security on behalf of clients by the broker were duly recorded in a separate margin register. I am of the view 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. Without the document register, it is difficult to ascertain what quantity of scrip belonged to the client and the broker, in a given scrip, at a particular point of time and it could not be analyzed whether the broker had used the scrip delivered by its client to meet his own obligations. Maintaining of margin register separately for the reference of the broker does not absolve the member from maintenance of the document register. Hence, I find that the broker had violated the above said provisions and I am not inclined to take a lenient view.

4.1.3 Order Book:

EO had held that the broker had violated the provisions of SEBI Circular No. SMD/Policy/IECG/1-97 dated 11.02.1997 since the broker had not maintained the order book. The order book would show the time of placement and execution of the order which was very important from the investors' perspective. The broker replied that the contract notes were generated on the back office computer which had simultaneous feeding of transaction at the Stock Exchange terminal also and hence there can be no difference of time of placement of order. I am of the view that the reply given by the broker is not to the point. The charge against the broker is that it failed to maintain order book which has the details of the name of the client, the time of order placed by the client and the time of execution of the order. 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 as provided by the said circular. Hence, I find the broker guilty of violating the aforesaid provisions in this regard.

4.1.4 Contract Notes:

With regard to the charge against the broker that the contract note did not have the order number and time and had no pre-printed serial Nos., the broker had submitted sufficient proof that the contract notes are in order as required by law and the EO had noted the same. Hence, I have no reason to differ with the findings of the EO.

4.1.5 Delay in making payment to clients:

The EO had given benefit of doubt to the broker for the charge that the broker had delayed in making payment to the clients, since the broker had submitted consent letters given by the clients as proof to the EO. However, the EO observed that the consent letters appeared to have obtained at a later stage. The broker had submitted to EO that all the clients were old and established and had regular transactions and there had been no investor complaints against the broker. I have no reason to differ with the findings of the EO.

4.1.6 Dealing as a sub-broker without registration:

The EO found the broker guilty of violation of the provisions of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMD/Policy/CIR-3/98 dated 16.01.1998 by acting as an unregistered broker of M/s. Globe Capital Market Ltd since the broker entered into transactions on National Stock Exchange on its own behalf and later these trades were given to its clients for which contract notes were also issued. The broker stated that the trades were done by him as a constituent and its corresponding purchase/sale was reported to UPSE as off-the-floor transactions. I am of the opinion that the broker had admitted that it had acted as unregistered sub-broker. Moreover, the broker had issued contract notes of UPSE to the clients instead of confirmation notes. I am not inclined to take a lenient view since the broker had violated the provisions of SEBI regulations and circulars by dealing as a sub-broker without registration which is very serious in nature and hold him guilty of violating the aforesaid provisions of SEBI Regulations and Circular.

4.1.7 Dealing with clients money:

The EO found the broker guilty of violating the provisions of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMD/SED/Cir/93/23321 dated 18.11.1993 since the broker had not transferred the clients money to the clients account on daily basis but on adhoc basis and was of the view that the broker had not maintained adequate balance in clients account and high net debit balance reflects outstanding dues from the client which was undesirable and adding to the market risks. The broker had not offered any reply/comment in this regard. I am of the view that the separation of the clients account and the broker's account had been done with a 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, there is no complaint against the broker from the clients and there is no instance of misuse of the clients money by the broker.

4.1.8 Non issuance of confirmation notes:

The EO found the broker guilty of violating the provisions of para B(2) of Schedule II specified under Regulation 15 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 since the broker had not issued confirmation notes for the off-the-floor transactions. The broker had not given any reply to this charge. I have noted that though the broker had not given confirmation notes, he had given contract notes to the clients. The broker had made transactions as unregistered sub-broker and had not issued confirmation notes which is serious in nature. I am not inclined to take a lenient view on the broker for the violation of the above said provisions.

4.1.9 Non collection of margins:

The EO held the broker guilty of violating the provisions of the Circular No.SMD/Policy/Cir-12/2002 dated 17.05.2002 since the broker had not collected the margins from the clients and the EO was not convinced by the brokers reply that it did not collect the margin from its client since clients are quite old, established and had regular transactions and hence accommodation was necessary having regard to the goodwill of the client. The EO was of the view that the broker being a registered intermediary is required to maintain market integrity and expected to follow rules laid down in this regard. I am inclined to take lenient view by considering the brokers reply that there had no instance of delay in the settlement on the part of the broker and no complaint is pending against the broker.

4.1.10 Non compliance of KYC requirements:

With regard to the charge that the broker had entered member-client agreements on plain papers instead of stamp papers and also there were discrepancies in the KYC forms, the EO had noted that the broker had submitted that it will regularize the same and will avoid such irregularities in future. In view of the above, I have no reason to differ with EO.

4.1.11 Execution of off-the-floor transactions:

The EO found the broker guilty of violating the provisions of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 since the broker had not reported the off-the-floor transactions and had not produced any documentary evidence. 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. I am of the opinion that SEBI had prohibited all negotiated and off market deals since it considered the same not transparent and not helpful to price discovery process on the stock exchange mechanism by SEBI Circular No. SMDRP/Policy/Cir-32/99 dated 14.09.1999. 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. The above said circular had been issued so that the Exchange can get the total exposure the broker had in the market and whether it had followed the market norms and laws. 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 of the view that the broker had violated the aforesaid circulars and I am not inclined to take a lenient view in this regard.

4.1.12 Indulging in carry forward transactions:

The EO found the broker guilty of violating the provisions of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMDRP/Policy/CIR-33/2001 dated 21.06.2001 since the broker had indulged in carry forward transactions and had not furnished any documentary evidence to corroborate his contention that UPSE was satisfied with its reply. The broker had replied that the matter is subjudice and had been stayed by the competent court. I am of the opinion that as per Section 20A of the SEBI Act "**Bar of Jurisdiction:** No order passed by the Board or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no Civil Court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the adjudicating officer by, or under, this Act." And Moreover, on perusal of the said order produced by the broker, it is seen that SEBI is neither a party to the suit nor any direction had been passed against SEBI in the said order. So, the said order has no relation to the present proceedings of SEBI. I am of the view that the instances given in the Inspection and Enquiry Report shows that there had been matched trades in consecutive settlements with the counter party broker. The evidence available on record may raise a suspicion that they are carry forward transactions but the evidence is not sufficient to give a conclusive finding. I am, therefore, inclined to give benefit of doubt to the broker in this regard.

4.1.13 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 not given any reason for non appointment of compliance officer except requesting for a sympathetic view in this regard. I am of the view that since the broker had rectified and had appointed a compliance officer during the course of inspection, I am inclined to take a lenient view in this regard.

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 had off-the-floor transactions and had not reported the same which is against the provisions of the of para A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 read with SEBI Circular No. SMD/RCG/CIR/(BKG)/293/95 dated 14.03.1995 and off-the-floor transactions had been prohibited by SEBI Circular No. SMDRP/Policy/Cir-32/99 dated 14.09.1999. 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 penalty of suspension of registration for a period of 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 a period of one month on M/s. Keshav Fincon Ltd., member, UPSE, bearing SEBI Registration No. INB100955434.

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

DATE : 28.9.2006

WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA