

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: V.K. CHOPRA, WHOLE TIME MEMBER

In the matter of

M/s. KISHORE SECURITIES PVT. LTD., MEMBER,

U.P. STOCK EXCHANGE ASSOCIATION LTD.

SEBI REGISTRATION NO. INB 101023837

WTM/VKC/MIRSD/12/09/06

Date of hearing : 26-07-2006

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** M/s Kishore Securities Pvt. Ltd. (hereinafter referred to as "broker") is a corporate entity and is a broker of Uttar Pradesh Stock Exchange Association Ltd. (hereinafter referred to as UPSE) bearing SEBI Registration No. (INB 101023837).
- 1.2** Securities and Exchange Board of India (hereinafter referred to as SEBI) ordered 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 to as the Broker Regulations), to be carried out by M/s Nripendra & Co., Chartered Accountants (hereinafter referred to as inspecting authority).
- 1.3** SEBI had informed the broker about the inspection vide its letter dated September 13, 2002. The broker did not turn up to produce its records. Several reminders were issued to the broker by the inspecting authority but the broker did not submit the records for inspection. Hence the inspection authority submitted its report to SEBI stating about the non-cooperation of the broker.
- 2. Enquiry Proceedings**
- 2.1** In view of the above, 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 June 03, 2003.
- 2.2** Show Cause Notice (hereinafter referred to as SCN) dated July 16, 2003 was issued to the broker under Regulation 6 (1) of the Enquiry Regulations. The broker had not replied to this SCN. An opportunity of personal hearing was also given to the broker on September 16, 2003. At this hearing the representative of the broker appeared and submitted the reply dated September 16, 2003. After considering the reply of the broker, the Enquiry Officer proceeded with the enquiry and submitted his report dated November 07, 2003 recommending a major penalty of suspension of certificate of registration of the broker for a period of one year. The Enquiry Officer had also observed in his report that the broker was declared as defaulter by UPSE on March 22, 2003. UPSE had also informed of its having declared the broker as defaulter vide its letter dated December 05, 2003.
- 2.3** A SCN dated April 13, 2004 was issued to the broker along with a copy of the Enquiry Report in terms of Regulation 13(2) of the Enquiry Regulations. The show cause also alleges that the broker having been declared defaulter and having not been readmitted to membership of the exchange within six months, he has been ceased to be a member of UPSE and therefore violated one of the conditions, subject to which registration as stock broker was granted to him viz. the broker shall be a member of a recognized stock exchange. In view of the same the broker has been called upon to show cause as to why the penalty of cancellation of registration should not be imposed.
- 2.4** Further as required under Regulation 16 of Enquiry Regulations, an officer was appointed for conducting summary proceedings against the broker. The officer issued SCN dated June 11, 2004 to the broker under Regulation 16 (2) of Enquiry Regulations calling upon it to show cause as to why the certificate of registration granted to broker should not be cancelled under the provisions of Chapter III of Enquiry Regulations read with Regulation 27 (ii) of Broker Regulation and Rule 4 of SEBI (Stock Brokers and Sub-Brokers) Rules 1992.

- 2.5** The broker vide letter dated June 28, 2004 replied to the show cause notice dated April 13, 2004 issued by the Board and notice dated June 11, 2004 issued by the Enquiry Officer. The Enquiry Officer submitted her report dated August 9, 2004 under Regulation 16 (4) recommending cancellation of certificate of Registration of the broker. UPSE on July 30, 2004 had again confirmed the non admission of the broker to the exchange.
- 2.6** Further an opportunity of personal hearing was granted to the broker on July 26, 2006 by SEBI. The broker had neither appeared nor sent any communication.

3. Consideration of Issues

- 3.1** I have carefully considered the Inspection Report, Enquiry Reports, SCNs to the broker and its reply dated June 28, 2004 and find as follows:

- 3.1.1** The Enquiry Officer found that the broker has not cooperated with the inspection authority, it was stated by the broker that it was aware about the inspection and the representative of the broker had confirmed the receipt of correspondence. It also confirmed that he is aware of its obligations as a stock broker on inspection by SEBI.

I have considered the fact that the inspecting authority had written several letters to the broker, some of these were dated September 16, 2002, January 03, 2003 and April 09, 2003. In addition to this they also tried to contact the broker through telephonically. I have noted the fact that SEBI and UPSE also followed up with the member advising it to extend cooperation and furnish all the information and material required by the inspection authority.

The agent of the broker had appeared before the Enquiry Officer and submitted that the books of account were duly submitted with the inspection authority. It was also stated through the reply of the broker that it had met the inspecting authority 3-4 times. But the broker had failed to submit any proof of the same.

From the above, I find that sufficient opportunities have been given to the member, but it failed to produce its books of accounts and records before the inspecting authority. The contention of giving satisfactory replies to the queries of inspecting authority is not sustainable, in light of the repeated follow-ups done by SEBI and UPSE.

I have noted the submission of the broker that it has been declared defaulter. The broker should not have taken this as a defence for non-production of books of account, records and information required for conducting inspection.

The Enquiry Officer further found that earlier also the broker had failed to produce its books of accounts before the inspection authority during 2001-02 for which it was issued a warning. This fact was further confirmed by the broker's representative at the time of personal hearing before the Enquiry Officer. The reasons given by the broker on this point were vague and unconvincing as reported by the Enquiry Officer.

Non-cooperation with the Regulator is a very serious mis-conduct on the part of the broker. Taking into consideration all these facts I, agree with the findings of Enquiry Officer that the broker has not cooperated with the inspection authority, whereby the broker has violated Regulation 21 (1) & (2) of Brokers Regulations. I have therefore no hesitation in concurring with the recommendation of the Enquiry Officer regarding suspension of certificate of registration of the broker for a period of one year.

- 3.1.2** As regards the findings of the Enquiry Officer in the summary proceedings, the broker submitted that it was declared defaulter by UPSE on adjudication of three cases which were time barred. The broker in addition to it submitted that the claim decided against it was of about Rs.1.9 Lacs and its security with UPSE was about Rs. 2.0 Lacs. The broker also indicated its incapacity to start his bussiness again. The Enquiry Officer further found that the order dated March 22, 2003 made by the administrator of UPSE, by which the broker was declared as defaulter refers to a SCN dated February 06, 2003 issued by UPSE to the broker. The broker had not replied to the said show cause notice. It is relevant to note that the broker had not raised the above said defense prior to June 28, 2004 i.e reply to the SCN issued by the Enquiry Officer under regulation 16 (2) of the Enquiry Regulations.

In these circumstances it appears that it is an after thought of the broker. I have noted that the broker has been declared defaulter by the Stock Exchange and has not been readmitted as a member within a period of six months, and thereby the broker is liable for action under Regulation 27 (ii) of Broker Regulations and Rule 4 (a) of SEBI (Stock Brokers and Sub Brokers) Rules, 1992. The UPSE had informed SEBI on December 5, 2003 about the expulsion of the broker on March 22, 2003. UPSE further confirmed the non-admission of the broker to the membership of the exchange vide its letter dated July 30, 2004. Therefore I agree with the findings of the Enquiry Officer that the broker had been declared as defaulter and it has not been re-admitted within a period of six months and as a consequence the broker ceased to be a member of UPSE. Hence I agree with the recommendation of the Enquiry Officer.

- 3.2** In the facts and circumstances of the case, I am of the view that this is a fit case for cancellation of Certificate of Registration of 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 cancel the certificate of registration of M/s Kishore Securities Pvt. Ltd., member, UPSE Ltd., bearing SEBI Registration No. INB 101023837.

4.2 This order shall come into force with immediate effect.

Mumbai

Date: 28th September, 2006

V.K. Chopra

Whole Time Member

Securities and Exchange Board of India