

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: DR.T.C.NAIR, WHOLE TIME MEMBER

IN THE MATTER OF

SINGHI FINLEASE PVT. LTD.,

MEMBER - BANGALORE STOCK EXCHANGE,

SEBI REGISTRATION NO. INB081068331

DATE OF HEARING: 15.05.2006/13.06.2006

APPEARANCES:

FOR NOTICEE: Ralph C. Robert

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. Singhi Finlease Pvt. Ltd. (hereinafter referred to as the 'broker') is a member of Bangalore Stock Exchange, (hereinafter referred to as 'BgSE') is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a Stock broker under Section 12 of SEBI Act, 1992 with Registration Number INB081068331.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker for the financial years 2000-01, 2001-02 and for the period April 1, 2002 to June 24, 2002 was carried out by SEBI. During the inspection, certain irregularities found to have been committed by the broker were observed.
- 2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed vide Order dated December 1, 2003 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.
- 2.2 A Notice dated June 15, 2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker submitted its reply vide letter dated June 29, 2004 and July 9, 2004. Further, Shri.Ralph C Robert appeared before the EO on behalf of the broker and made submissions. After considering the reply of the broker the EO proceeded with the enquiry and submitted his report dated October 30, 2004 recommending a major penalty of suspension of certificate of registration of the broker for a period of four months.
- 3.1 A copy of the Enquiry Report was sent to the broker along with a show cause notice dated November 4, 2004, in terms of Regulation 13(2) of the said 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 replied to the said show cause notice vide letter dated November 22, 2004.
- 4.1 An opportunity of personal hearing was granted to the broker. Shri Ralph C Robert appeared before me for the personal hearing and made his submissions on behalf of the broker.
- 5.1 I have carefully considered the findings of the inspection, enquiry report and the submissions made by the broker. My observations are as under :

5.2 (a) Non-mentioning of record of time of placement of order by the client.

The EO found that the broker had not mentioned the record of time when the client had placed the order and hence found the broker guilty of violation of SEBI Circular No.SMD/Policy/IECG/1-97 dated February 11, 1997. The broker replied that the record of time when the client placed the order may not be there but the time of execution was always there on the contract note. I note that the time of placement of order by the client and time of placement of order by the broker into the system are two different things. SEBI Circular dated February 11, 1997 stipulates that the broker should maintain record of time when the client has placed the order and reflect the same in the contract notes. Since the broker has not done so, there is non compliance of the SEBI Circular cited supra.

(b) Non-segregation of clients' funds and own funds

It is alleged that the broker maintained a single common bank account for receipts and payments pertaining to proprietary and client trades. The establishment expenses like salary, loans etc are met from this account. There was no segregation of clients' funds and broker's own funds. This is in violation of SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993.

The EO found that for the period of inspection, the client transactions were to the tune of Rs.64,867,456.50/- for the financial year 1999-00 and Rs.2,516,036/- for the financial year 2000-01. For a single client in the financial year 2000-01, in four transactions, the value of Rs.2,516,036/- appeared quite substantial. The EO further found that against the background of delayed payments to the clients and meeting the expenditure which is unrelated to clients from the common bank account, non segregation of funds is a matter of concern and is in violation of SEBI Circular SMD/SED/CIR/93/23321 dated November 18, 1993.

The broker while admitting that there was no separate bank account for the clients, submitted that there were hardly any client trades and in fact there are no client trades since April 2000 as the BgSE card was obtained primarily to trade in securities on behalf of Shri. Dinesh Singh and his family members. It was submitted that Shri. Dinesh Singh, Director of Singhi Finlease Pvt Ltd, is an industrialist who is mainly into mining. For his own proprietary trades, he had set up M/s. Singhi Finlease Pvt Ltd and the few trades of the clients were also persons who were his close relatives and friends.

I note that the amounts to the credit of clients' accounts are in the nature of trust. The funds in the client's account cannot be applied for any purpose other than what is permissible under SEBI Guidelines. The objective of opening and maintaining a separate account for the client's funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. If the clients' account is inoperative, it means that there is no segregation between clients' funds and own funds and all the income and expenditure is met from the general account. I, therefore agree with the findings of the EO. However, since there is no evidence of using client funds for his own purposes by the broker, substantive punishment may not be warranted.

(c) Violation of Rule 8(3)f of SCR Rules, 1997

It was alleged that the broker had advanced funds to other members of the exchange and also non members which is in violation of Rule 8(1) (f) and Rule 8 (3) (f) of Securities Contracts (Regulations) Rules, 1957, as detailed in the showcause notice. The EO found that the bank statements of the broker revealed that there were frequent flow of funds to various other members of the exchange and these financial transactions were not backed by any transaction in securities.

The broker replied that these advances were non interest bearing to the respective persons who are well known to them. The broker admitted that the company had engaged in some transactions where it had advanced amounts to members and others for short period of time. The broker further submitted that no further amounts were advanced after the inspection in May 2001.

I note that the broker had received substantial amounts and also paid substantial amounts to fellow brokers without there being corresponding transactions in securities. The broker has not given any satisfactory explanation as to why such substantial flow of funds had taken place without there being corresponding transaction in securities. It is also noticed that no collateral security was obtained for such huge funds.

The preponderance of probabilities, therefore, suggests that the broker was involved in transactions which are not permissible under the law and has therefore violated Regulation 8(3)(f) of SCR rules, 1957.

(d) Non payment of fees to SEBI

The EO found that the broker had not paid the turnover fees to SEBI and hence found it guilty of violation of Regulation 10 read with Schedule III of SEBI (SB & SB) Regulations, 1992 and SEBI Circular No.SMD/Policy /Cir-19/1999 dated March 28, 2002.

The broker while admitting that the turnover fees had not been paid, submitted that the amount of turnover fees to be paid as reflected in their books was lower than that stated in the statement provided by SEBI and had to be reconciled. Hence, the same was not paid.

I note that subsequently, the broker has paid the turnover fees and enclosed a copy of the DD No.825376 drawn on ING Vysya Bank Ltd. In case, there is a shortfall in the payment, separate action may be initiated in accordance with the Regulations.

(e) Non-collection of margins

It was alleged that the member had dealt with M/s. Mallya & Co (alias Maco Securities) and M/s. Agrahar Securities without collecting margins which is in violation of SEBI Circular No.SMDRP/Policy/Cir-19/1999 dated July 2, 1999.

The EO found that the transactions with M/s. Mallya & Co were the proprietary investments of the broker. Since the broker vide its letter dated July 23, 2004 filed a letter from Maco Securities confirming that the broker was a client of Maco Securities for its proprietary transactions on NSE, the EO concluded that it was not correct to allege that the broker had failed to collect margins. As regards non collection of margins from Agrahar Securities, the broker submitted that he would file the necessary documents and details of margins collected for the financial year 1999-2000 but failed to do so. In the absence of any explanation from the broker in this regard, the EO concluded that the broker did not collect margins from M/s. Agrahar Securities for the above referred transactions.

In case of M/s. Agrahar Securities, I agree with the EO that since the broker has failed to file the necessary documents and details of margin collected etc., for the financial year 1999-2000 as promised, he is guilty of violating SEBI Circular No.SMDRP/Policy/Cir-19/1999 dated July 2,1999.

(f) Unauthorised carry forward transactions

The EO found that various brokers of BgSE were accommodated by the broker to carry forward their positions in an unauthorized manner. These brokers included M/s. Suresh Prabhu, Abinandan Apex, Sumanth Securities, Uday Stocks, Maco Securities, Hungi Stocks and Sharavu Securities. The broker accommodated the aforesaid fellow brokers of the exchange to carry forward their positions in several scrips across settlements for continuously long periods. Such accommodation by the broker enabled the other brokers to temporarily avoid meeting their obligations to the exchange for pay in or deliveries. The EO found that these unauthorized carry forward transactions, prior to the introduction of Modified Carry Forward System (MCFS) in the BgSE with effect from settlement No.1 dated April 30, 2000, were in violation of Central Government notification No.SO/2561 dated June 27, 1969 under Section 16(1) of SCR Act, 1956 read with SEBI Circular SMD/SED/93-30727 dated December 13, 1993 and SMD/SED/3730/95 16/10/1995 and Clause A(1)(5) of the Code of Conduct as specified in the Schedule II read with Regulation 7 of SEBI (Stock Brokers &Sub-Brokers) Regulations, 1992. The broker did not offer any explanation in the proceedings regarding the above irregularity but blatantly denied the same.

As the broker has not given any valid explanation to justify that he had not committed the irregularity it can be concluded that he is guilty of the violations cited supra. A bare denial is not a justification of his innocence. I, therefore, agree with the findings of the EO.

- 5.3 Considering the seriousness of the violations found to have been established against the broker, I am of the view that a minor penalty of suspension of certificate of registration of the broker for a period of one month would be appropriate in the interests of the investors and the safety and integrity of the securities market.
- 6.1 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of the said Regulations, I hereby impose a minor penalty of suspension of certificate of registration on M/s.Singhi Finlease Pvt. Ltd, Member Bangalore Stock Exchange bearing SEBI Registration No. INB081068331, for a period of one month.
- 6.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai

Date: 12.10.2006

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India