

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

Coram: T.C. NAIR, WHOLE TIME MEMBER

In the matter of ABHIPRA CAPITAL LTD.

WTM/TCN/MIRSD/57/06/11

Hearing: Not sought for

ORDER

(Under Regulation 13(4) of SEBI (Procedure of Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002)

- 1.1** Abhipra Capital Ltd. (hereinafter referred to as broker), a body corporate, is a member of National Stock Exchange (hereinafter referred to as NSE) registered with Securities and Exchange Board of India (hereinafter referred to as SEBI) as a stock broker, bearing registration no. INB 230815035 and also a stock broker with Bombay Stock Exchange (hereinafter referred to as BSE) with SEBI registration number INB 010815034 and Over the Counter Exchange of India (hereinafter referred to as OTCEI) with SEBI registration no. INB 200815034. The broker is also a Depository Participant with NSDL and an RBI approved Money Changer.
- 1.2** During July 2001, SEBI carried out an inspection of books of accounts and other documents maintained by the broker for the period of 1999-2000 and 2000-2001 under Regulation 19 (1) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations). During the inspection, several irregularities/violations found to have been committed by the broker were noticed.
- 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 January 28, 2003.
- 2.2** A Show Cause Notice (hereinafter referred to as SCN) dated April 01, 2003 was issued to the broker under Regulation 6 (1) of the Enquiry Regulations. The broker submitted its reply vide letter dated April 21, 2003. The broker was also granted the opportunity of personal hearing on June 19, 2003 and July 08, 2003 by the Enquiry Officer. After considering the submissions of the broker, the Enquiry Officer submitted his report dated November 03, 2003 recommending a warning to the broker.
- 2.3** The competent authority after considering the report, vide its order dated October 28, 2004 remitted back the matter to the enquiry officer for enquiring into the violation of Rule 8(3) (f) of Securities Contract (Regulation) Rules, 1957 by the broker. The Enquiry Officer issued a SCN dated January 21, 2006 under Regulation 6 (1) of Enquiry Regulations to the broker. The broker vide its letter dated February 04, 2006 sought some time to file the reply. It also asked for a copy of the Enquiry Report dated November 03, 2003 for submitting its reply. This request of the broker regarding extension of time was given by the Enquiry Officer but the other request seeking a copy of enquiry report was declined. The broker submitted its reply vide its letter dated April 11, 2006. After considering the reply of the broker, the Enquiry Officer submitted its supplementary report dated April 28, 2006 recommending the same penalty as was recommended in his previous report.
- 2.4** A SCN dated June 20, 2006 was issued to the broker along with a copy of Enquiry Reports dated November 11, 2003 and April 28, 2006, in terms of Regulation 13(2) of the Enquiry Regulations calling upon it to show cause as to why appropriate penalty as recommended by the Enquiry Officer should not be imposed against it. The broker replied to the said SCN vide its letter dated July 06, 2003.

3. Consideration of Issues

3.1 I have carefully considered the facts of the case, the findings of the Enquiry Officer and the submissions of the broker. My findings are as follows;

(a) Irregularities in maintenance of Order Book

Regarding the findings that the broker has not maintained the order book, the broker submitted that the time of placing the order was duly maintained in the system. As per the procedure laid down by SEBI in its Circular No. SMD/Policy/IECG/1-97 dated February 11, 1997, the broker should maintain the record of time when the client has placed the order. This has to be maintained by the broker in the form of order book. Therefore, it is necessary for the broker to comply with the requirement of maintaining registers as per the SEBI Regulations/ Circulars.

The order book as submitted by broker was being maintained in the computer. The Enquiry Officer being satisfied with the reply of the broker had not held the broker guilty on this charge. I agree with the above findings of the Enquiry Officer as the charge is very technical and procedural, hence, I am inclined to take a lenient view.

(b) Irregularities in maintenance of Contract Note

With regard to the finding that the order time is not reflected in the contract notes the broker raised the objection that it was not an allegation in the inspection report. The broker replied to this charge by saying that the order time is available in the system and it was issuing a contract note in the format prescribed by NSE under Regulation 3.5, which did not have the provision of putting order time in the Contract Note. Further the broker submitted that NSE Regulation in Annexure II contained specimen of contract note, a copy of the same was produced before the Enquiry Officer. In addition it was stated that in the on-line trading environment, order time is same as the time of order placement in the system, because of this NSE would have found that the previous practice has become redundant.

The Enquiry Officer found that there is no column for mentioning order time. The Enquiry Officer further concluded that the broker was right in following the guidelines issued by the NSE and found that this was not an allegation contained in the inspection report.

The SEBI Circular No. SMD/Policy/IECG/1-97 dated February 11, 1997, is required to be seen at this juncture which reads as under:

"The broker member should maintain record of time when the client has placed the order and reflect the same in contract note along with the time of execution of the order."

Taking this into consideration I find that the order time is required to be entered on the contract note by the broker. The broker can not escape the liability simply by saying that the format provided by NSE does not have the column for the placement of order time. However, since there was no investor grievance in this regard and this being a technical irregularity, I am inclined to take a lenient view.

(c) Contract Notes not acknowledged by the clients

With regard to the finding that the contract notes were not acknowledged by the clients, the broker submitted that as per the existing system order confirmation of transaction is online or after the closing of the trade and it used to send all the contract notes on the very same day by post or through courier as no client come to office for collecting the contract note and because of this it is not practically possible to get the acknowledgement of the client on the contract note itself. The broker further stated that the dispatch was made through post by franking machine.

The Enquiry Officer found that the broker had obtained letters of authority from some clients while opening the client accounts to send the contract notes by post. The broker had also furnished its two months dispatch record, before the Enquiry Officer. From this Enquiry Officer found that contract notes were being dispatched on the same day of issuance. Some confirmation letters from clients of having received the contract-notes by clients was also presented before Enquiry Officer.

Being convinced with the submissions, Enquiry Officer stated that it is not necessary to have acknowledgement on the office copy of the contract note and that this can be done if the duplicate office copy of the contract note can be relatable to proof of delivery through post, I agree with these findings and inclined to take a lenient view.

(d) Duplicate contract-notes were not signed by the broker

With regard to the finding that the office/ duplicate contract notes were not signed by the broker, it was submitted by the broker that these were dispatched every day in bulk and there was no requirement that the office copy should be signed by the authorized signatory. The broker further contended that copies given to the clients were duly authenticated and signed and the office copies were usually initialed and due to some human error one office copy might have been remained un-initialed.

The Enquiry Officer after examining the confirmation from Mr. Nitin Maheshwari (client) about receiving the contract-note in the case pointed out in the inspection report, found that there is only one instance stated by the inspection report. He further found that contract notes for the purpose of enforcement by the client are valid if signed on the clients copy. The Enquiry further came to the conclusion that it is of no relevance whether office copy is signed or not. Considering submissions of the broker and findings of the Enquiry Officer I am of the view that a lenient view is required to be taken on this charge.

(e) Non using of pre-printed serial numbers on contract notes.

With regard to the finding that the contract notes were not having pre printed serial numbers the broker submitted that the software it used was common at its place of business. It further stated that the purpose behind pre-printing of the serial numbers is to avoid misuse of contract notes and there was no charge of misuse or non issuance of contract notes against it. The contention of the broker is not correct as the purpose of having pre-printed serial numbers on contract notes is to prevent the possibilities of insertion of contract notes at some later stage for fictitious transactions or transactions not routed through the Stock Exchange. If the number is not pre-printed, it is relatively easy for a broker to insert contract notes at a later date. Therefore this is required to be complied without any default.

The SEBI Circular No. SMD/MDP/Cir/043/96 dated August 05, 1996 is very clear on this issue and the broker cannot escape from liability, simply by saying that this circular was not addressed to brokers.

In light of this discussion, I find that the broker had not used the pre-printed serial numbers as required by the above said circular. Hence I agree with the findings of the Enquiry Officer and hold the broker guilty on this count.

(f) Acting with unregistered sub-broker

With regard to the charge that the broker was acting with unregistered sub-brokers, the broker submitted that these were its clients and not sub-brokers except SM Investments which is its sub-broker. The broker further submitted that it had entered into broker sub-broker agreement but it never dealt with them as sub-brokers because the application of the sub-brokers received by the broker were sent to the stock exchange which returned back.

Enquiry Officer found that the inspection report is silent as to the details of transactions and dealings of the broker with these sub-brokers. Enquiry Officer further found that except broker sub-broker agreement which was entered in the year 1997, nothing was brought on record to show that the broker was dealing with the above entities as their sub-brokers. I therefore agree with the findings of the Enquiry Officer and after a careful consideration of the material on record I am inclined to give benefit of doubt in favour of the broker.

(g) Dealership agreement

It was found that the broker had entered into a dealership agreement with some entities and trading terminals were installed at their places and the responsibility for all recoveries and bad deliveries from clients and all transaction on these terminals would be done by the said dealers and contract notes would be issued under their name only. The broker submitted that it had two types of clients i.e. retail and bulk transacting clients. With bulk transacting clients it had entered in dealership agreement and VSATs were installed on their premises. It was further submitted that these were operating terminals/dealers as defined by the Stock Exchange and the said agreement was entered into to check that the terminal was not misused by said dealer clients. It was stated that these were its clients only and had never acted as sub-brokers. The broker also contended that the Sub-broker agreement prescribed by the Stock Exchange is different and the agreement with these clients was only for this purpose.

The Enquiry Officer had considered the argument of the broker and found that there was no prohibition from installing terminals at the relevant time. SEBI Circular No. SMDRP/Policy/Cir-49/2001 dated October 22, 2001 was issued at a later point of time and the terminals were withdrawn from the said clients before the date of issue of said circular. It was

further found that there is no evidence of transactions done by these entities as sub-broker. I have no reason to differ with the Enquiry Officer.

(h) Installation of V-SATs & Terminals other than Head Office/ Branch Office

With regard to the charge that the broker had installed 6 VSATs at places other than at Head Office/ Branch Office and also the terminals at 19 places in violation of SEBI Circular No. SMDRP/Policy/Cir-49/2001 dated October 22, 2001, the broker submitted that the connectivity was through CTCL to their clients and all these connectivities have been withdrawn before the enforcement of abovesaid SEBI Circular dated October 22, 2001. The Enquiry Officer had considered the contention of the broker that the connectivity through CTCL was withdrawn before the circular came into force. I find that the inspection was ordered for the period of 1999-2000 and 2000-2001 and the circular in question is an *ex-post-facto* law as far as the present violation is concerned. I do not find any reason to differ with the findings of Enquiry Officer and I am inclined to take a lenient view in this regard.

(i) Engaging in Transfer of Securities bought by one Client to the Beneficial Owner account of other client.

With regard to the finding that the broker was transferring securities bought by a particular client to the beneficial owner account of some other client as stated in the first Enquiry Report, the broker submitted that the clients mentioned in this regard had defaulted in payment. It further stated that the relevant securities were transferred from the pool account to the brokers beneficiary account to facilitate the settlement. The broker beneficiary account for this purpose is designated as Broker Capital Beneficiary account (c/o of the client) and this account is not a DP account of its proprietary trades. On receiving the payment at a later date, the securities lying in such account used to be transferred to the respective clients. The broker had produced the financial position statement of the concerned clients. It was contended by the broker that there was no delay once they had received the payment from the client.

The Enquiry Officer after going through the statements submitted by the broker found the debit balances to be true. SEBI Circular No. SMDRP/Policy/Cir-05/2001 dated February 01, 2001 refers to transferring of securities from pool account to beneficiary account. Enquiry Officer further found that the SEBI Circular No. SMD/SED/Cir./93/23321 dated November 11, 1993 provides for an option to choose other risk containment measure so long as the same is not to the detriment of the interest of investors. Further he stated that this circular has expressed a right of lien, set off which has been given to the broker in case of monies standing to the credit of the client and this can be interpreted in cases of securities also.

Since there was no case of investors having been aggrieved by the actions of the broker and the transaction dates were also not mentioned in the report it is difficult to find a violation. Therefore I agree with the findings of the Enquiry Officer and give benefit of doubt in favour of the broker.

(j) Delay in Transfer of Securities

With regard to the findings that there was a delay in transfer of securities in twelve cases to four clients the broker submitted that these clients owed monies to it and because of this the delay was there. It was further submitted that the deliveries were given as soon as the payments were received. The Enquiry Officer further found that out of these, the delay in eleven cases is of three days only and in one case viz. Priya Securities, the delay was for twelve days. In this particular case of delay Enquiry Officer found that the broker had taken authority from the client at the time of account opening.

The SEBI Circular SMD/SED/Cir/93/23321 dated November 18, 1993 provides for making payment to clients within two working days unless the client has requested otherwise. In light of this circular and the documents produced by the broker, the Enquiry Officer found merit in the submissions of the broker in the case of Priya Securities and as far as the other cases are concerned he was not convinced for the reasons given. On perusing the reply of the broker I find that the broker had authority letters from the respective clients. Further it was submitted by the broker that the total value of delayed transfer deliveries is Rs. 1,50,000/- (approx.) which is 0.00048% of the total volume of the business.

I have considered the submissions of the broker regarding the authority given by the clients and the total value but these can not be relied on without any specific proofs. I find no merits in the contention raised by the broker regarding volume as this is against the principles of market regulations and find that the delay of three days has not been properly explained by the broker. I have, therefore, no reason to disagree with the Enquiry Officer.

(k) Irregularities in Maintaining Database

Regarding the irregularities in maintaining the proper database and also not obtained photographs from some of its clients, broker submitted that it had obtained agreements from the clients and regarding photographs it submitted that these clients had DP account with it and their photographs were obtained from them in the DP account opening application. The broker had also produced before the Enquiry Officer the copies of these applications. The Enquiry Officer being convinced, accepted the explanation of the broker.

As regards the non-mentioning of names, signature, annual income of clients, the broker submitted that these details are available in Demat accounts opened by it. Concerning the undated client agreements, the broker submitted that these were invariably dated but due to oversight in some case, these may have slipped. Enquiry Officer found that the broker has admitted this particular lapse and also undertook that this will not occur in future.

In light of this I find that the broker has satisfactorily explained the charges with appropriate proofs except one case i.e. undated client agreement, in which case the lapse has been accepted. I do not find that these lapses call for any penal action.

(l) No payment towards Registration Fee

With regard to the finding that the broker has not paid the SEBI registration fee, the broker submitted that this matter is sub-judice before Calcutta High Court. The broker had also produced a letter from advocate confirming that it is one of the party in the Case No. WP No. 548 of 2002 titled as *Lalit Mohan Vs. Union of India* under serial no. 5.

Therefore I agree with the findings of the Enquiry Officer in this regard that this charge can not be pursued further in view of the *status quo* directed by the Hon'ble High Court of Calcutta.

(m) Acting as money changer

In regard to the violation of Rule 8 (3) (f) of Securities Contract (Regulation) Rules, 1957 a separate enquiry report dated April 28, 2006 has been submitted before me and the issues therein are discussed below:

(i) With regard to the finding that the broker was incurring losses in the business of full fledged money changing, the broker submitted that there was no loss incurred in previous years. The broker further demonstrated the facts, figures and the method of calculation to the Enquiry Officer. The broker has submitted that it had not suppressed this fact from BSE and NSE for obtaining the membership or for continuing the business.

On a perusal of the method of calculation showed to the Enquiry Officer it appears that the broker had not incurred losses in full fledged money changing business. Considering submissions of the broker and findings of the Enquiry Officer I am of the view that a lenient view is required to be taken on this charge.

(ii) With regard to the findings that the broker was taking proprietary position in foreign currency and thereby incurring personal liability on the exchange fluctuations, the broker submitted that it was engaged in issuing traveler cheques and for this the requirement of actual holding of FOREX is very minimum. The Enquiry Officer found that this holding would not result in any speculation.

I find from the report that the enquiry officer has analyzed the issue and came to the conclusion that incurring loss is different from capable of incurring loss. Further the broker has also submitted that stock held by it was meager in comparison to its turnover and incapable of any speculation. Therefore I do not find any reason to differ with the findings of the Enquiry Officer and inclined to take a lenient view on this count.

(iii) With regard to the finding that the broker had given a bank guarantee for Rs. 15 lakhs to AMEX thereby exposed itself to risk of devolvement of bank guarantee, the broker submitted that this bank guarantee had been issued with 100 % margin of fixed deposit of Rs. 15 lakhs from Vyasa Bank. Broker further submitted that a guarantee backed by 100 % margin does not cast upon the broker any financial burden other than the fixed deposit.

In view of this I agree with the observation of the Enquiry Officer that issuance of bank guarantee does not alter the position of the broker.

I have noted the fact that the activities of the broker had not resulted in any loss to any investor in the securities market and also that it had closed down the business of money changing in year 2005 and surrendered the license to RBI. In view of all this I do not find any reason to differ with the findings of the Enquiry Officer.

3.2 In the facts and circumstances of the present case, I agree with the recommendations of the Enquiry Officer.

4. ORDER

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4.1 In view of my observations and findings on the charges and other mitigating factors, I feel that the broker should be more cautious in future while performing its functions. Therefore, in exercise of the powers conferred upon me in terms of section 19 of SEBI Act, 1992 read with Regulations 13 (4) of the said Regulations I warn Abhipra Capital Ltd. to be more cautious in its dealings with securities and adhere to the provision of SEBI Act and the regulations.

4.2 This order shall come into force with immediate effect.

Mumbai

Date:02.11.2006

T.C. Nair

Whole Time Member

Securities and Exchange Board of India