

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/s. AKRITI SECURITIES PVT. LTD.,

SEBI REGISTRATION NO. INS 010751134

SUB BROKER AFFILIATED TO UPSE SECURITIES LTD.,

MEMBER, STOCK EXCHANGE, MUMBAI.

WTM/VKC/MIRSD/14/06

DATE OF HEARING: Not availed.

ORDER

(UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002)

- 1.1** M/s. Akriti Securities Pvt. Ltd. (hereinafter referred to as "the sub-broker") is a sub-broker affiliated to UPSE Securities Ltd., member of the Stock Exchange, Mumbai and registered with SEBI as a sub-broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INS010751134 and the sub-broker is also a member of the Uttar Pradesh Stock Exchange ("UPSE").
- 1.2** Inspection of the books of accounts, documents and other records maintained by the sub-broker for the period commencing from 01.04.2001 to 31.03.2003 was carried out by J.N.Sharma & Co., Chartered Accountants, on behalf of SEBI. Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection. A copy of the findings of the Inspection Report was sent to the sub-broker vide letter dated 24.07.2003 and his comments thereto were received vide reply dated 06.09.2003.
- 2.0 Enquiry Proceedings**
- 2.1** An Enquiry Officer (EO) was appointed vide SEBI Order dated 09.01.2004 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 sub-broker.
- 2.2** A show cause notice dated 22.07.2004 in terms of Regulation 6(1) of the said Regulations was issued to the sub-broker. The sub-broker vide its letter dated 30.08.2004 submitted its written reply.
- 2.3** As per the request of the sub-broker, an opportunity of personal hearing was given to the sub-broker by the EO on 30.08.2004 which was attended by Mr. Kumar Anand Agarwal, Director of the sub-broker, who made oral submissions reiterating the written submissions.
- 2.4** The EO after conducting the enquiry in terms of the said regulations submitted his report on 30.11.2004 recommending a penalty of suspension of the registration of the sub-broker for a period of one year.
- 3.0 Show cause notice and the sub-broker's submission**
- 3.1** A copy of the Enquiry Report was sent to the sub-broker along with a show cause notice dated 06.12.2004, in terms of Regulation 13(2) of the said regulations, advising the sub-broker to show cause as to why the appropriate penalty, including penalty as recommended by the EO should not be imposed.
- 3.2** The sub-broker vide letter dated 27.12.04 requested for 60 days time to submit its reply along with documentary evidence and vide letter dated 27.02.2005, requested for 60 more days further and submitted its reply with documents vide letter dated 25.05.2005. In its reply, the sub-broker contended that few of the circulars applied only to the brokers and sub-brokers and further submitted that SEBI Circular No. SEBI/MRD/DOPS/CIR-11/2005 dated 12.05.2005 which stipulates that the subsidiaries of the registered Stock Exchanges, who are registered as stock brokers and their registered sub-brokers shall also comply with the provisions of the SEBI (Stock Brokers and Sub-Brokers) (Amendment), Regulations, 2003 with effect from 01.06.2005 and it is updating its operating systems in order to prepare itself for the post 01.06.2005.

3.3 An opportunity of personal hearing before me was given to the sub-broker on 26.07.2006, which was communicated vide letter dated 13.07.2006. Vide letter dated 21.07.2006, the sub-broker requested for another date for appearance due to its Director's ill health. Vide letter dated 26.09.2006, the sub-broker submitted that on 02.08.2006, the Board of Directors in its meeting decided to resign the trading rights as broker of UPSE and also to resign its trading rights as sub-broker affiliated through UPSE Securities Ltd, member of Stock Exchange, Mumbai and enclosed all the relevant documents along with the Board Resolution dated 02.08.2006. It further submitted that its reply dated 25.05.2005 may be treated as their final submission. It further submitted that it is in the process of final and complete exit from the Stock broking/sub-broking activities. The sub-broker further requested to take into consideration a genuine intention and operations to deliver its duties as sub-broker and not to impose any penalty.

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 sub-broker thereto and my findings are as follows:

4.2 I have noted that the sub-broker had given in its reply for most of the charges that the referred circulars is meant only for the brokers and not the sub-brokers. I am of the view that the said contention of the sub-broker cannot be sustained since the said circulars issued by SEBI applies both to the brokers and sub-brokers irrespective of whether it is addressed brokers or sub-brokers. Moreover, clause 2 of the Tripartite Agreement entered between the broker, sub-broker and the client says, *"The stock broker, sub-broker and the client agree that they shall abide by all the statutory responsibilities and obligations imposed on them by rules, regulations and/or any other rules or regulations applicable to the stock brokers, sub-brokers and the clients in general either framed by SEBI or by the relevant stock exchange and/or any Government circulars."*

4.2.1 Non maintenance of Order Book:

The EO found that the sub-broker did not maintain the order book and had violated the provisions of SEBI Circular No.SMD/Policy/IECG/1-97 dated 11.02.1997. The EO found that the sub-broker had not filed any documentary evidence in support of its contention that it had maintained order book. The sub-broker had contended that the above said circular applies only to the brokers and not sub-brokers. I am of the view that as per SEBI Circular the order book has to contain the details of the name of the client, the date and time of order placed by the client and the time of execution of the order, which is very important from the investors' perspective. Recording time of placement of order by the client is very crucial to ensure that the brokers will not take undue advantage of price variations in the market and to ensure that the brokers are fair to the investor. The sub-broker is expected to maintain the order book which is a investor protection measure and the sub-broker failed to maintain the order book in terms of the said circular. Therefore, I am not inclined to take a lenient view.

4.2.2 Contract notes/Confirmation notes were not serially pre-numbered:

The EO found that the sub-broker had not issued the Contract notes with pre-printed Serial Nos. and found him guilty of violating SEBI Circulars bearing Nos. SMD/(B)/104/22775/93 dated 29.10.1993 and SMD/MDP/CIR/043/96 dated 05.08.1996. The sub-broker had replied that sub-brokers cannot issue Contract Note and they issue purchase/sale note (Confirmation note) as provided under Regulation 15(B)(2)(c) of SEBI (Stock Broker and Sub-broker) Regulations 1992. I have noted the reply of the sub-broker to the EO that the contract notes and confirmation notes are not printed and so are not pre-numbered and to save the cost, they do not have printed contract notes/confirmation notes and the same were generated through computer software and were serially numbered. So the sub-broker knows well that the confirmation notes must be serially numbered. I am of the view 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 measure made by the regulator. So, I am not inclined to take a lenient view.

4.2.3 Non maintenance of Margin Deposit Book:

The EO had held that the sub-broker had violated the provisions of SEBI Regulation 17(1) (k) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 since the sub-broker had not maintained the margin deposit book and it had not produced any documentary evidence in support of its contention. The sub-broker had replied that it is maintaining margin deposit book for internal management purpose and had produced a copy of the same for the financial year under inspection. On perusal of the same, it is seen that the enclosed copy pertains to the ledger in the name of Akriti Securities Pvt. Ltd, broker registered with UPSE which contains details of the margin received/paid towards UPSE Securities. It is clear that the broker is not maintaining separate margin deposit register for the sub-broking concern. The margin deposit register should also contain the margin paid by the clients to the sub-broker. But the sub-broker had not maintained the same. I am of the view that the collection of margin is a risk management measure and the purpose of collecting margins is in the interest of the broker/sub-broker so that he does not become liable to meet the payment obligations in the event of default by the client and he is expected to collect margins in the form of securities, money, FDRs, etc. It is apparent that the sub-broker had not maintained the margin deposit register.

4.2.4 Non maintenance of Documents Register:

The EO found that the sub-broker had not maintained any document register and held the sub-broker had violated Regulation 17(1)(g) of SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The sub-broker had replied that the said regulation was not meant for sub-brokers and moreover, for internal management purpose, it was maintaining statement of accounts and other records relating to receipt and other delivery of securities provided by the Depository Participants in respect of dematerialized securities. But the sub-broker had not produced any proof in support of its contentions. I am of the opinion 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. The broker is expected to maintain Document Register to keep a record of shares and securities held by it. Since the sub-broker had not produced a copy of the statement of accounts of Depository Participant, I am not inclined to take a lenient view.

4.2.5 Non segregation of clients and its own securities:

The EO found that the sub-broker had not segregated its own securities from that of its clients securities and held that the sub-broker had violated SEBI Circular No. SMD/SED/Cir/93/23321 dated 18.11.1993. The sub-broker had replied that the said circular was meant for brokers and not sub-brokers and though it does not maintain separate account for client securities and proper accounts were maintained to distinguish such securities from its own securities. I am of the view that SEBI had issued such a direction only to prevent misuse of the securities of the clients by the brokers/sub-brokers. Though the sub-broker had replied that the securities are distinguished through proper accounts, it had not produced any documentary evidence in support of its contention and I am not inclined to take a lenient view.

4.2.6 Carrying transactions in its own name instead of Clients name:

The EO found that the sub-broker had carried out all the transactions in its own name instead of clients name resulting in violation of Code of Conduct prescribed under SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The sub-broker had given a vague reply that it had carried out the transactions as per provisions of Regulation 15(B)(2). The sub-broker had not given any satisfactory reply in this regard.

4.2.7 Non maintenance of Unique Client Code:

The EO found that the sub-broker had not allotted Unique Client Code to its clients and failed to obtain client registration forms resulting in violation of SEBI Circulars bearing Nos.SMD/Policy/Cir-39/2001 dated 18.07.2001 and SMD/Policy/Cir/5-97 dated 11.04.1997. The sub-broker had replied that the circular stipulates that the sub-broker should collect and maintain PAN or substitute client details at the back office. It further submitted that the same had been collected and maintained by it and enclosed some of the registration forms. The Circular dated 18.07.2001 stipulates that all investors should have a Unique ID as a risk management system and it is mandatory for all the brokers to use unique client codes for all the clients. And for this purpose, it stipulated to collect PAN number or other details like passport number/driving license number/voter ID number and place and date of its issue in the absence of PAN number. Moreover, Circular dated 11.04.1997 stipulates the uniform model client registration forms as a consequence of Know Your Client norm. On perusal of the enclosed forms, it is seen that 5 out of 19 forms did not contain the photos of the client and full set of the client registration form is not enclosed. Member-client agreement is not produced.

4.2.8 Delay in delivery of securities and money to its clients:

The EO found that the sub-broker delayed in delivery of securities to the clients and also delayed in payments to the clients resulting in violation of SEBI Circulars bearing Nos.SMDRP/Policy/Cir-05/2001 dated 01.02.2001 and SMD/SED/Cir/93/23321 dated 18.11.1993. The sub-broker replied that the referred circular is meant for brokers and not sub-brokers and it had delivered the securities and made payment to its clients in time. The sub-broker had not produced any documentary evidence in support of its contention and I am not inclined to take a lenient view.

4.2.9 Contract notes not stamped and signed:

The EO found that the contract notes of the sub-broker were not stamped and not signed by the sub-broker or its representative and held the sub-broker had violated SEBI Circular Nos. SMD(B)/104/22775/93 dated 29.10.1993 and SMD/MDP/Cir/043/96 dated 05.08.1996. The sub-broker had given a reply that the said circular was meant for brokers and not sub-brokers and further submitted that sub-brokers cannot issue/sign contract notes. I am of the view that the EO had used the term contract notes instead of confirmation notes. The sub-broker cannot be evasive on the ground of minor technicalities and shrug off its liabilities/responsibilities which it owes towards the clients. Hence, I am not inclined to take a lenient view in this regard.

4.2.10 Misuse of clients money:

The EO found that the sub-broker had misused the clients money for its own purposes and held the sub-broker had violated the provisions of SEBI Circular No. SMD/SED/Cir/93/23321 dated 18.11.1993. The sub-broker had replied that the

inspecting authority had not found a single instance where alleged misutilisation of fund of client had been done by it. I am of the view that the separation of the clients account and the broker's account had been done with the view to prevent any misuse of the clients money by the broker and it is implemented as an investor protection measure. On perusing the inspection report, it is clear that instances were given regarding cash received from the clients had either been carried as cash in hand for a long time or deposited in brokers bank account. So, there had been chances of misusing the clients money since there had been no proper checks of the money of the client. I am inclined to take a lenient view, since there is no instance of misuse of the clients money by the sub-broker.

4.3 I have also noted the submission of the sub-broker that it had decided to resign the trading rights as broker of UPSE and also to resign its trading rights as sub-broker affiliated through UPSE Securities Ltd, member of Stock Exchange, Mumbai and perused all the documents enclosed by the sub-broker in this regard. The sub-broker may get the Certificate of Registration forwarded to SEBI through UPSE for cancellation in accordance with Regulations. I find that till date, the membership has not been cancelled.

4.4 On a careful perusal of the charges and the findings as recorded above, I am of the view that a minor penalty of suspension of Registration for a period of fifteen days would be adequate and sufficient to have a deterrent effect on the sub-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 minor penalty of suspension of Certificate of Registration of M/s. Akriti Securities Pvt. Ltd., a sub-broker affiliated to UPSE Securities Ltd., member of the Stock Exchange, Mumbai and registered with SEBI bearing Registration No. INS010751134, for a period of fifteen days.

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

PLACE: MUMBAI

V.K.CHOPRA

DATE : 08.11.2006

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA