

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/s. ARP SHARES (P) LTD,

SEBI REGISTRATION NO. INS 010727738

SUB BROKER AFFILIATED TO UPSE SECURITIES LTD.,

MEMBER, STOCK EXCHANGE, MUMBAI.

WTM/VKC/MIRSD/ 18/06

DATE OF HEARING: 25.07.2006

APPEARANCE :

FOR NOTICEE : Mr.Sandeep Gupta, Compliance Officer

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. ARP Shares (P) 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. INS010727738.
- 1.2** Inspection of the books of accounts, documents and other records maintained by the sub-broker for the period from April 1, 2002 to March 31, 2004 was carried out by M/s. Nripendra & 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 28.03.2005 and his comments thereto were received vide reply dated 11.04.2005 and vide letter dated 16.04.2005, it submitted corrigendum to its reply dated 11.04.2005.
- 2.0 Enquiry Proceedings**
- 2.1** An Enquiry Officer (EO) was appointed vide SEBI Order dated 06.09.2005 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 19.09.2005 in terms of Regulation 6(1) of the said Regulations was issued to the sub-broker along with a copy of the relevant extract of the inspection report. The sub-broker vide its letter dated 14.10.2005 submitted its written reply along with supporting documents.
- 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 07.12.2005 which was attended by Mr.Sandeep Gupta, Compliance Officer and Director of the sub-broker, who made oral submissions reiterating its written reply. The sub-broker further filed additional reply with some documentary evidence in support of its contention vide its letter dated 19.12.2005.
- 2.4** The EO after conducting the enquiry in terms of the said regulations submitted his report on 28.12.2005 recommending a penalty of suspension of the registration of the sub-broker for a period of one month.
- 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 05.01.2006, 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 28.01.2006 submitted its reply that it had stopped its business for clients with effect from 01.04.2004 and there is no investor complaints against the sub-broker till date. It further submitted that there had not been any loss to the investors or corresponding gain to the sub-broker and moreover, it had been always complied with the SEBI Rules and Regulations and shall abide in future also.

3.3 An opportunity of personal hearing before me was given to the sub-broker on 25.07.2006. The Compliance Officer of the sub-broker, Mr.Sandeep Gupta appeared for the hearing and made his submissions reiterating the submissions given in his written reply dated 28.01.2006.

4.0 Consideration of issues:

4.1 I have carefully considered 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:

4.1.1 Recording clients transactions as self transactions:

The EO found that the sub-broker had entered all the transactions executed on behalf of clients as self- purchase and self sale and held that the sub-broker had not exercised due skill and care in connection with its dealings with clients and hence, guilty of violating Code of Conduct as prescribed in Clauses A(2) to A(5) of Schedule II read with Regulation 7 of SEBI (Stock Brokers and Sub- Brokers) Regulations, 1992. The EO found that due to the said practice, 99.45% of trading is shown as self trading which is far from truth and quite serious since the sub-broker is providing a safe hideout to number of clients who do not wish to be seen on papers to avoid tax or other implications on the part of the clients. The sub-broker had given a reply that for the last several years, it had limited clients and were never interested in increasing the same and all such existing clients were family members except two and even the said two clients had negligible transactions. In support of its contentions, the sub-broker had enclosed an affidavit dated 28.01.2005 deposed by its compliance officer Mr.Sandeep Gupta deposing that it had stopped clients business with effect from 01.04.2004 and hence, the client transaction turnover of 0.55% is genuine. I find a discrepancy in the affidavit as it was stated to be verified on 28.01.2005 but the Stamp paper was dated 28.01.2006. I am of the view that there is no proof other than the affidavit of the Compliance officer of the sub-broker that there are no clients and it had stopped client business with effect from 01.04.2004. Moreover, the inspection had been conducted for the period prior to 01.04.2004 and the sub-broker had deposed in the affidavit that it had stopped dealing with clients with effect from 01.04.2004. So it is apparent that earlier to the date of the affidavit, the sub-broker had transactions with clients. Hence, I am not inclined to take a lenient view.

4.1.2 Fund based activities:

The EO found that the sub-broker had engaged itself as principal in business other than that of securities and otherwise than as broker and held the sub-broker had violated provisions of Rule 8(1)(f) and Rule 8(3)(f) of Securities Contracts (Regulation) Rules,1957. The sub-broker had replied that the transactions referred to in the inspection report do not pertain to the money of the clients and moreover, the client business has been stopped from 01.04.2004 and there is no chance of placing the investor funds anywhere. It further stated that it had already given an undertaking to the EO that it shall not indulge in any such activities. As discussed earlier, the inspection of records were from the period 01.04.2002 to 31.03.2004 and the sub-broker had stopped clients business from 01.04.2004, i.e, after the inspection period. I am of the view that the sub-broker had indulged in fund based activities and it was admitted by the sub-broker. I have, therefore, no reason to differ with the findings of the EO and not inclined to take a lenient view.

4.1.3 Non segregation of clients and its own funds:

The EO found that the sub-broker had not segregated its own funds from that of its clients funds and held that the sub-broker had violated Clause A(5) of Code of conduct 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. The broker had replied that no funds of the clients were used for its purpose. It further submitted that the client business was mainly of the family members except two and the total client business had been stopped from 01.04.2004. It is apparent that the sub-broker had admitted that it had not segregated its own funds from the clients fund. I am of the view that even though the sub-broker has few clients, it is expected that the sub-brokers should maintain separate accounts for its clients to prevent misuse of the clients fund and this measure had been implemented by SEBI as an investor protection measure. I am inclined to take a lenient view since there has been no investor complaint against the sub-broker and also there is no finding of misuse of client funds.

4.2 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 certificate of registration of the sub broker for a period of seven 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. ARP Shares (P) Ltd., a sub-broker affiliated to UPSE Securities Ltd., member of the Stock Exchange, Mumbai and registered with SEBI bearing Registration No. INS010727738, for a period of seven 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

DATE : 04.12.2006

V.K.CHOPRA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA