

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF

M/S NILESH SHARE BROKERS LTD., SUB-BROKER,

SEBI REGISTRATION NO. INS 231141636

AFFILIATED TO HSE SECURITIES LTD.,

MEMBER, NATIONAL STOCK EXCHANGE

WTM/TCN/MIRSD/65/12/06

DATE OF HEARING : May 15, 2006

APPEARANCES :

FOR NOTICEE : Rupesh Morsaria, Director

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. Nilesh Share Brokers Ltd., (hereinafter referred to as the 'sub-broker') is a sub-broker affiliated to HSE Securities Ltd., having SEBI Registration No. INS231141636 for trading in NSE.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the sub-broker was conducted by SEBI for the period 01.04.2001 to 16.06.2003. During the inspection certain irregularities were found to have been committed by the sub-broker.
- 2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed vide order dated January 8, 2004 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred as the 'said regulations') to enquire into the alleged irregularities committed by the sub-broker which were observed during the inspection.
- 2.2 A Show Cause Notice dated April 29, 2004 was issued to the sub-broker under Regulation 6 (1) of the said regulations. The sub-broker submitted its reply dated July 27, 2004 and also requested for personal hearing before the EO.
- 2.3 The sub-broker was given an opportunity of personal Hearing before the EO on October 5, 2004. The sub-broker appeared for the hearing on the said date. The EO conducted the enquiry in accordance with the terms of the said regulations and the sub-broker was given a fair and reasonable opportunity to make its submissions.
- 2.4 After considering the reply and the submissions made at the time of personal hearing, the EO submitted the enquiry report dated November 5, 2004 recommending suspension of certificate of registration of the sub-broker for a period of 15 days.
- 3.1 A copy of the Enquiry Report was sent to the sub-broker along with a show cause notice dated February 17, 2005, 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 EO should not be imposed on it. The sub-broker replied to the show cause notice vide reply dated March 05, 2005 putting forth its submissions.
- 3.2 The sub-broker was given an opportunity of personal hearing before me on May 15, 2006. The sub-broker appeared before me on the said date and made its submissions.
- 4.1 I have carefully considered the findings of inspection, enquiry report and the submissions made by the sub-broker during the personal hearing before me and my findings are as under:
- 4.2 The EO found that there were hardly any entries in the margin money account. The sub-broker replied to the EO stating that they had been authorized by their clients who had running accounts with them to voluntarily retain funds/securities till the same were asked for as this would suffice the requirement of 10% upfront margin. The EO found that the sub-broker had not collected the stipulated margin money. However, the EO further noted that since there were no complaints from investors, the violation was not a serious one. I note that the objective of SEBI Circular No.SMDRP/POLICY/Cir.33/2000 dated July 27, 2000 read with Cir.No.6/2001 dated February 1, 2001 is to protect the interests of the investors and promote

the healthy functioning of the capital market. I, therefore, agree with the EO that the absence of investor complaints may be considered as a mitigating factor and the violation may not be viewed seriously.

- 4.3 The EO found that the sub-broker had not allotted the unique client codes serially. The sub-broker replied that allotment had been made on the choice of clients subject to availability to honour the sentiments of the clients. The EO found that the sub-broker had committed a technical violation of Rule 15 of SEBI (Stock Broker and Sub-Broker) Rules and Regulations 1992 read with Code of Conduct for sub-brokers. I note from the sub-broker's reply dated March 5, 2005 that subsequent to the observations made by the inspection team, the sub-broker had discontinued the system of allotting unique client codes as per the choice of the clients with effect from April 16, 2002. In view of this, no severe action is warranted.
- 4.4 The EO found that the sub-broker had admitted to having traded on the floor of BSE to cater to the needs of its clients and the total volume of such trades was merely Rs.3.99 lakhs. The sub-broker further stated that it had stopped executing such trades and had submitted its application for sub-brokership which is pending. In view of this, the EO found that the sub-broker had violated Rule 3 and Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Rules and Regulations, 1992 read with Code of Conduct for sub-brokers. I note that the sub-broker has admitted its mistake. Further, considering the meager volume of such trades and the fact that the sub-broker has stopped executing such trades, no severe penalty is warranted.
- 4.5 The EO found that the sub-broker had not only failed to segregate the clients' funds but had also mis-utilised the funds for meeting office expenses. The EO further found that the sub-broker had taken remedial steps and stopped using clients' funds from May 2002. I note that the sub-broker has admitted its mistake and taken corrective steps to rectify the same. In view of this, a lenient view may be taken in this regard.

5.0 ORDER

- 5.1 Now, therefore, in exercise of powers conferred upon me in terms of Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002, I hereby censure M/s. Nilesh Share Brokers Ltd., sub-broker having SEBI Registration No. INS231141636 affiliated to HSE Securities Ltd., Member National Stock Exchange.
- 5.2 This order will come into force with immediate effect.

Place: Mumbai
Date: December 06, 2006

T.C.NAIR
Whole Time Member
Securities and Exchange Board of India