

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: SHRI V.K.CHOPRA, WHOLE TIME MEMBER

IN THE MATTER OF

M/S PRAVEEN KUMAR & CO.

SEBI REGISTRATION NO. INS010726516

AFFILIATED TO UPSE SECURITIES LTD.,

MEMBER, THE STOCK EXCHANGE, MUMBAI

WTM/VKC/MIRSD/22/06

DATE OF HEARING : July 25, 2006

APPEARANCES :

FOR NOTICEE : Shri Praveen Kumar, Proprietor

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 Praveen Kumar & Co., (hereinafter referred to as sub-broker) is registered with SEBI as a sub-broker affiliated to UPSE Securities Ltd., having SEBI Registration No.INS010726516 under Section 12 of SEBI Act, 1992.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the sub-broker during the period February 24, 2001 to

September 30, 2002 was conducted by SEBI. 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 December 11, 2003 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.
- 2.2 A Show Cause Notice dated June 4, 2004 was issued to the sub-broker under Regulation 6 (1) of the said regulations. The sub-broker requested for extension of time upto one month for submitting its reply vide letter dated June 19, 2004.
- 2.3 The EO vide letter dated July 19, 2004 granted an opportunity of personal hearing to the sub-broker and also advised it to file its submissions before or on the said date. The sub-broker appeared before the EO on the said date and submitted its reply dated July 28, 2004, personally during the hearing.
- 2.4 After considering the reply and the submissions made at the time of personal hearing, the EO submitted her report dated October 14, 2004 recommending a major penalty of suspension of certificate of registration of the sub-broker for a period of four months.
- 3.1 A copy of the Enquiry Report was sent to the sub-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 EO should not be imposed on it. The sub-broker replied to the SCN vide letter dated December 8, 2004.

- 3.2 The sub-broker was granted an opportunity of personal hearing before me on July 25, 2006. Shri Praveen Kumar, Proprietor appeared on the said date and made submissions on behalf of the sub-broker.
- 4.1 I have carefully considered the findings of the inspection, enquiry report and the submissions made by the sub-broker and my findings are as under :
- 4.2 It was alleged that all the transactions which were entered into and executed on behalf of the clients were dealt with and recorded as 'Self Purchase' and 'Self Sale'. Though the contract notes were being issued in 'Form A' which also contained the element of brokerage charged from the clients, the same had been entered in the books as principal to principal basis. The sub-broker stated that for all the transactions executed for the clients, brokerage has been charged and hence it is wrong to level them as executed on principal to principal basis. The sub-broker enclosed copies of the bills issued for such transactions showing brokerage charged. The EO found that the sub-broker failed to maintain high standards of integrity and fairness in the conduct of its business and hence held the sub-broker guilty of violating the provisions of Para A(1) of Schedule II specified under Regulation 15 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992 as well as the directives of SEBI issued vide Circular No.SMD/Policy/CIR-3/98 dated January 16, 1998. I note that since brokerage has been charged as claimed by the sub-broker, the transactions cannot be recorded as self sale and self-purchase. The sub-broker has not given any justification on this issue and hence I agree with the findings of the EO.
- 4.3 It was alleged that the sub-broker failed to maintain order book. The sub-broker submitted that the orders were received over phone and electronically punched showing all requisite details and enclosed a specimen copy of the order book. The EO found that the annexure

produced by the sub-broker did not contain all the requisite details which comprise the order book such as name of person placing the order, receiving the order etc and hence found the sub-broker guilty of violating Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997 as also provisions of Regulation 17 of the Brokers Regulations and Rule 15 of Securities Contracts (Regulation) Rules, 1997. I note that the circular cited above stipulates that the broker member should maintain record of time when the client has placed the order and does not include details like name of person placing the order etc. I note that the time is mentioned in the annexure produced by the sub-broker and hence am inclined to take a lenient view in this regard.

- 4.4 It was alleged that there were irregularities in the confirmation memos/contract notes. The sub-broker stated that all sub-brokers were under obligation to issue purchase/sale notes for all transactions and hence they were also issuing purchase/sale notes only and not contract notes. The sub-broker further stated that since the system of using 'Unique Client Code' was made mandatory in the later part of 2002, all transactions were recorded as 'Self Purchase' and 'Self Sale' and did not cause any financial loss to the clients. The EO found that the use of 'Unique Client Code' was made mandatory in October 2001 and not in the later part of 2002 as submitted by the sub-broker. The sub-broker does not get absolved of all obligations of disclosures, fairness, integrity by recording the transactions as 'self purchase' and 'self sale' or by not issuing contract notes. I agree with the findings of the EO that by not adhering strictly to the statutory requirements, the sub-broker has violated SEBI Circular No.SMD(B)/104/22775/93 dated October 29, 1993 and SMD/Policy/CIRCULAR/11-97 dated May 21, 1997.
- 4.5 It was alleged that the sub-broker had not maintained client database. The sub-broker denied the allegations and stated that the client database

had been submitted as per the directives of UPSE Securities Ltd. in January 2003 in its format. The sub-broker further stated that all the agreements with clients were executed timely and as per requirements of law and were in existence. The EO found that in its earlier reply to the findings of the inspection report, the sub-broker had submitted that all the clients registration in which mistakes were pointed out, had been corrected and duly attested copies of all rectified client registration forms were sent. The EO found the sub-broker's submissions before him to be an after thought. The EO found that the sub-broker had violated the provisions of Regulation 15 and 17 of the Brokers Regulations as well as directives issued vide SEBI Circular No.SMD/POLICY/IECG/1-97 dated February 11, 1997, SMD/POLICY/CIR/5-97 dated April 11, 1997 and SMD/POLICY/CIRCULAR/11-97 dated May 21, 1997. I note from the submissions of the sub-broker that it had subsequently rectified the discrepancies and hence no penalty is warranted.

- 4.6 It was alleged that the sub-broker delayed in making delivery/payment of funds/securities. The sub-broker stated that there had not been any delay of payment or delivery of securities to clients. The sub-broker further stated that the said clients had given the authority for retaining the same to be collected as per client's convenience so that they are able to do their dealing conveniently and need not rush every time to make the payment or comply with margin requirements on their purchase of shares. The EO found that the consent letters from all the clients were apparently not available with the sub-broker at the time of inspection and only a few authorization letters were attached. The EO found that the sub-broker violated directives of SEBI issued vide SEBI Circulars No.SMD/SED/CIR/96/23321 dated November 18, 1993, SMD/MDP/Cir/043/96 dated August 5, 1996 and SMDRP/Policy/Cir-05/2001 dated February 1, 2001 and provisions of para B(1) of Schedule II specified under Regulation 15 of SEBI (Stock Brokers and Sub-Brokers)

Regulations, 1992. I note that the sub-broker has submitted copies of affidavits of all the clients stating that they have no complaints or grievances against the sub-broker and that their dealings with it have been satisfactory. In view of this, I am inclined to take a lenient view.

4.7 It was alleged that the sub-broker had not segregated clients' funds from own funds and that all the funds were managed through the client account. Payments towards business expenses and personal expenses had been made from the client account. The EO found that the sub-broker had admitted to non-segregation of client and own funds. The sub-broker's explanation that single pool account was maintained to avoid demat charges was not found tenable by the EO. The EO found that the sub-broker had violated SEBI directives issued vide Circular No. SMD/SED/CIR/93/23321 dated November 18, 1993 and SMD/POLICY/CIRCULAR/11-97 dated May 21, 1997. I note that the sub-broker had stated that though the client account and own funds had not been segregated, it was always endeavoured that at no point of time expenses/withdrawal exceeded the brokerage earned. I further note that the sub-broker stated that the system of having one account was to avoid demat charges for transferring securities from client account to sub-broker account. The sub-broker further stated that at no point the securities or money of the clients had been utilized for its personal purpose. I agree with the EO that the sub-broker's explanation of maintaining single pool account to avoid demat charges is not tenable. The intent of prescribing segregation of funds is to prevent misuse of clients' funds. However, in the instant case, neither there are complaints from clients nor are there any finding of misuse of client funds/securities. I am, therefore, inclined to take a lenient view.

4.8 It was alleged that the sub-broker had not submitted the correct turnover data. The EO did not find the reply of the sub-broker satisfactory and

found that the sub-broker had not exercised due diligence as required vide Regulation 15 read with Clause A2 of the Code of Conduct for sub-brokers. I note that the sub-broker had submitted that the transactions done during the no delivery period were not taken into account by UPSE Securities Ltd. Only the quantity of the shares were taken into account and not its value. The sub-broker further enclosed a reconciliation statement. This implies that there was a variation in the figures submitted by the sub-broker and hence I agree with the findings of the EO.

- 4.9 It was alleged that the sub-broker had not implemented the unique client code. The EO found that the sub-broker was not using unique client code prior to October 1, 2002 and hence had violated SEBI Circular No.SMDRP/Policy/CIR-39/2001 dated July 18, 2001. I note that the circular cited supra stipulates that it would be mandatory for all brokers to use unique client codes for their clients and does not specifically include sub-brokers. However, I note that in any case, the sub-broker has started using unique client code from October 1, 2002 and hence I am inclined to take a lenient view.
- 4.10 It was alleged that the sub-broker has not appointed Compliance Officer. The EO found the sub-broker guilty of violating the provisions of Regulation 18(A) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The sub-broker stated that Compliance Officer had already been appointed but due to lack of knowledge, the name was not communicated to UPSE Securities Ltd. Hence, I am inclined to give the benefit of doubt to the sub-broker.
- 4.11 In the facts and circumstances of the case, I find that a minor penalty of suspension of certificate of registration for a period of fifteen days would be adequate and appropriate.

5.0 ORDER

- 5.1 Now, therefore, in exercise of powers conferred upon me in terms of Section 19 of SEBI Act, 1992 read with Regulation 13(4) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations 2002, I hereby impose a minor penalty of suspension of certificate of registration of M/s. Praveen Kumar & Co., sub-broker bearing SEBI Registration No.INS010726516 affiliated to UPSE Securities Ltd., Member, The Stock Exchange, Mumbai, for a period of fifteen days.
- 5.2 This order shall come into force on the expiry of 21 days from the date of this order.

Place: Mumbai
Date:December 07, 2006

V.K.CHOPRA
Whole Time Member
Securities and Exchange Board of India