

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF

M/S GABIN CAPITAL MARKETS LTD.

SEBI REGISTRATION NOS.

INS010809734(BSE) AND INS231016333 (NSE)

AFFILIATED TO COCHIN STOCK BROKERS LTD.,

MEMBER, NATIONAL STOCK EXCHANGE

WTM/TCN/MIRSD/66/12/06

DATE OF HEARING : May 16, 2006

APPEARANCES :

FOR NOTICEE : Shri Ron P Abraham

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 Gabin Capital Markets Ltd., (hereinafter referred to as sub-broker) is a corporate entity registered with SEBI as a broker of Cochin Stock Exchange (INB091127838) and a sub-broker affiliated to Cochin Stock Brokers Ltd., having SEBI Registration Nos. INS231016333(NSE) and INS010809734(BSE) under Section 12 of SEBI Act, 1992.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by the broker during the period 2000-2001, 2001-2002 and from April 2002 till the date of inspection i.e. 24.05.2002 was conducted. 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 November 21, 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 August 10, 2004 was issued to the sub-broker under Regulation 6 (1) of the said regulations. The broker submitted its reply dated 25.08.2004.
- 2.3 The sub-broker was granted an opportunity of personal hearing on November 25, 2004. The sub-broker, vide its letter dated November 22, 2004 requested for another date stating its inability to appear for the hearing on the scheduled date. Accordingly, the sub-broker was granted another date of hearing on December 1, 2004.
- 2.4 After considering the reply and the submissions made at the time of personal hearing, the EO submitted his report dated December 16, 2004 recommending suspension of certificate of registration of the sub-broker for a period of one month.
- 3.1 A copy of the Enquiry Report was sent to the sub-broker along with a show cause notice dated December 22, 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 reply dated 07.01.2005.
- 3.2 The sub-broker was granted an opportunity of personal hearing before me on May 16, 2006 and Mr Ron P Abraham, Director, 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 broker and my findings are as under:
- 4.2 The EO found that the sub-broker had not maintained statutory books like Sauda Book, Margin Deposit Book, Confirmation Memos etc. in the form of hard copy and therefore, did not make it available for inspection. The EO further found that the sub-broker was well informed to make available all the requisite statutory books and hence the sub-broker should have made them readily available. The EO, therefore found the sub-broker guilty of such lapses. I note that the sub-broker had submitted that the required statutory books are in the mode of soft copy but due to some technical problems in the software, hard copies were not taken and that the problems have since been rectified and the books are being maintained

as per the Rules. I further note that the sub-broker has vide its letter dated November 27, 2004 submitted a copy of the sauda book. In this regard, I have noted that the Hon'ble SAT in Radar Securities Ltd. vs. SEBI (Appeal No. 22/2003 dated 30.05.03) held that when a stock broker had deposited margin money with the Stock Exchange and downloaded the data available on the Exchange's computer, it was to be held that broker had maintained effectively record of its margin deposits and failure to maintain information in book form would not be considered as a grave violation of Regulation 17(1) (k) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. In the light of this, I am inclined to consider the reply of the broker and take a lenient view on the above lapse of the broker.

- 4.3 The EO found that the reason given by the sub-broker for not reporting the off the floor transactions was unrelated and cannot be accepted. The sub-broker had stated that it had obtained permission from Cochin Stock Exchange Ltd to apply for sub-brokership through M/s. Vertex Securities Ltd and hence was under the impression that the dealings through them were in order. The sub-broker further stated that as it was a member of NSE and BSE, it thought that there was no need to report the above transactions to Cochin Stock Exchange Ltd. The EO found that all the transactions done by the sub-broker were for his clients and it had issued its own contract notes to them and had not mentioned anywhere in the confirmation memos of the purchase bill/sales bill indicating that these transactions were done through an NSE member. The EO further found that issuing no objection certificate by the member for applying for registration as sub-broker does not exempt the applicant from reporting his off the floor transactions to the exchange. The interests of the investors has to be protected and hence non reporting off the floor transactions has to be taken note of seriously. I note from the submissions of the sub-broker that it was not registered with Vertex Securities for carrying out sub-broking activities. I further note that it is not clear as to whether the sub-broker carried out trades on its own account or for clients. If it is a case of trades being done for clients as found by the EO, then the question of reporting or non-reporting of transactions does not arise as the sub-broker does not fulfil the basic requirement of being a registered sub-broker. Since the broker is guilty of acting as unregistered sub-broker of a member of another exchange, it would not serve any purpose even if the transactions were reported to Cochin Stock Exchange. In view of this, and in order to deal with this charge in totality, it is necessary to view this charge together with the charge of unregistered sub-broker.
- 4.4 The EO found that the sub-broker had applied for SEBI Registration through NSE member on January 01, 2002. However, the sub-broker had commenced trading through M/s. Vertex Securities Ltd. in April, 2001. It is thus very clear that the sub-broking activity was carried on without registration, for a fairly long period. The sub-broker stated that it had started trading with Vertex Securities Ltd. after applying for sub-brokership from SEBI and that it had on receipt of the inspection report, stopped the transactions with Vertex Securities Ltd. I find that as per the broker database, Gabin is not registered as a sub-broker of Vertex Securities Ltd. Merely applying for sub-brokership does not allow the sub-broker to trade. A sub-broker has to necessarily obtain the certificate of registration before commencing trading and therefore, I agree with the findings of the EO and hold the broker guilty of unregistered trading activities.
- 4.5 With regard to the allegations of non maintenance and deficiencies in maintenance of client database, instances of delay in making payment and delivery of securities to clients and Non-segregation of clients funds and own funds, the EO has accepted the explanation of the sub-broker. I have gone through the allegations and the submissions made by the sub-broker in this regard and find no reason to differ with the EO.
- 4.6 In the facts and circumstances of the case, I find that a minor penalty of censure 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) Regulation 2002, I hereby censure M/s. Gabin Capital Markets Ltd. bearing SEBI Registration Nos.INS010809734(BSE) and INS231016333 (NSE) affiliated to Cochin Stock Brokers Ltd.
- 5.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: December 06, 2006

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India