

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: Dr. T.C.NAIR, WHOLE TIME MEMBER****IN THE MATTER OF SUPER FINVEST SERVICES PVT. LTD. . INS230912532, SUBBROKER AFFILIATED TO LSE SECURITIES LTD, MEMBER OF NATIONAL STOCK EXCHANGE OF INDIA LIMITED.****Date of hearing :** July 14, 2006**Appearances****For Noticees :** Shri S K Sharma, Director, Super Finvest Services Pvt. Ltd.**For SEBI :** Shri P.K.Kuriachan, General Manager**ORDER****(UNDER REGULATION 13(4) OF SEBI (PROCEDURE FOR HOLDING ENQUIRY BY ENQUIRY OFFICER AND IMPOSING PENALTY) REGULATIONS, 2002 IN RESPECT, TO M/S SUPER FINVEST SERVICES PVT LTD., (INS 230912532), SUB-BROKER AFFILIATED TO LSE SECURITIES LTD, MEMBER OF NATIONAL STOCK EXCHANGE.****1.0 Background**

- 1.1 M/s. Super Finvest Services Pvt. Ltd., (hereinafter referred to as the sub broker) affiliated to LSE Securities Ltd. (hereinafter referred to as LSE), a proprietary concern is a member of the National Stock Exchange of India Limited (hereinafter referred to as the "NSE") and is registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as a sub broker under Section 12 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") with registration number INS230912532.
- 1.2 SEBI conducted an inspection of the books of accounts, documents and other records maintained by the sub broker under Regulation 19 of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as the "Stock Broker Regulations") for the period February 2, 2001 to November 30, 2002 and the same was carried out by M/s. Sharma Bhatia & Co, Chartered Accountant.
- 1.3 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 for his comments on April 30, 2003 and the sub-broker furnished his reply vide letter dated October 24, 2003.

2.0 Appointment of Enquiry Officer

- 2.1 On completion of the inspection and after considering the reply of the sub-broker, an Enquiry Officer was appointed vide Order dated January 03, 2004 under the provisions of Regulation 5(1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'the Enquiry Regulations') to enquire into the alleged irregularities/ violations committed by the sub-broker. The Enquiry Officer issued a show cause notice dated February 23, 2004 in terms of Regulation 6 (1) of the Enquiry Regulations to the sub-broker.
- 2.2 The said notice provided the details of the provisions of law and the violations alleged to have been committed by the sub broker and also calling upon it and explain why penalty should not be recommended for the aforesaid violations. The sub broker was also advised that if it desired a personal hearing it may indicate the same. The sub-broker replied to the said show cause notice vide its letter dated May 20, 2004. The sub-broker did not avail the opportunity of personal hearing before the Enquiry Officer.
- 2.3 On completion of the enquiry, the Enquiry Officer vide his report dated October 07, 2004 has recommended a penalty of suspension of Certificate of Registration granted by SEBI to the sub broker for a period of three months under regulations 13 (1) (a) (iv) of the Enquiry Regulations.

3.0 Show Cause Notice and Sub-Brokers' submissions

- 3.1 Based on the recommendations of the Enquiry Officer, a show cause notice dated October 18, 2004 was issued to the sub-broker under Regulation 13(2) of the Enquiry Regulations asking it to show cause as to why the penalty as considered appropriate should not be imposed upon it. A copy of the Enquiry Report was also forwarded to the sub-broker with the said show cause notice. The said show cause notice was served on the sub-broker through LSE and the LSE has confirmed having delivered the notice to the sub broker on October 26, 2004.

3.2 Since no reply was received from the sub-broker, a reminder dated November 17, 2004 was issued to the sub broker advising him to make submissions latest by November 24, 2004 failing which it would be presumed that they have no explanation to offer and the SEBI Board shall be free to take such action in the matter as it deems fit on the basis of the available information / records. The letter was sent by NSE to the sub broker and the exchange had confirmed having delivered the same vide its letter dated December 08, 2004. However, the sub broker failed to submit his reply even after the above reminder.

4.0 Opportunity of personal hearing

4.1 Vide letter dated June 14, 2006, an opportunity of personal hearing was granted before the Whole Time Member on July 14, 2006 at 11.00 a.m. at the New Delhi, Northern Regional office of SEBI. Shri S. K. Sharma, Director of the sub broker appeared in person and reiterated the submissions made before the Enquiry Officer. In addition to this, Shri Sharma also submitted that it is now not working as a broker of LSE, but operating as sub-broker on NSE through LSE and its transactions at present are very low.

4.2 Subsequent to aforesaid personal hearing, the sub-broker has also re submitted his earlier reply dated May 14, 2003 and the same has been taken into consideration while recording the findings.

5.0 Consideration of Issues

5.1 I have carefully considered the Enquiry Report, the show cause notice issued to the sub broker and the reply of the sub broker and my findings are as under :

(a) Non segregation of Clients Funds and own Funds

The Enquiry Officer found that there were some instances where the clients' funds were directly diverted to the sub broker's own bank account for its own use. I have noted the submission made by the sub broker that non-segregation of the own funds and clients' funds do not affect the liabilities of clients. The clients have given their consent authorizing the sub broker to keep the funds as margin / value for their future dealings. It further submitted that the clients' funds are repayable on demand and are repaid on time and that nothing is due to them.

The Enquiry Officer has found that payment to clients on demand or obtaining consent from clients does not absolve the sub broker to maintain strict segregation between clients' account and its own account. I agree with the findings of Enquiry Officer and I find that the sub broker has deviated from main issue of segregating clients' funds from own funds. The sub broker cannot absolve himself from the responsibility of maintaining a strict segregation between the clients' account and its own account by taking the plea that clients' funds are repayable on demand. I further note that the amounts to the credit of clients' accounts are in the nature of trust. The funds in the clients' accounts cannot be used for any purpose other than what is permissible. The objective of opening and maintaining a separate account for the clients' funds is to segregate and identify them separately and to prevent its misuse so that they are beyond the reach of the broker. Not maintaining a separate clients' account is, therefore, in violation of the provisions of SEBI Circular no. SMD/SED/Cir/93/23321 dated November 18, 1993 which makes it compulsory for all the brokers to keep their clients' money in a separate account than their own account and clause A (2) of the Code of Conduct for sub-brokers specified under regulation 15 of the Stock Broker Regulations which casts a responsibility on the sub broker to exercise due skill, care and diligence in the conduct of all investment business. However, since there is no finding of misuse of client funds by the sub broker, I am inclined to take a lenient view.

(b) Non- Maintenance of Client Database

The Enquiry Officer found that the sub broker has not maintained the client database in the prescribed format as required in terms of SEBI Circular no. SMD/Policy/cir/11-97 dated May 21, 1997 which requires the broker /sub broker to provide for the client details as and when the need arises. The Enquiry Officer has recorded the finding that the sub broker has admitted the charge that it did not maintain the said records and could not produce the supporting document i.e. the Client Registration Form and Agreements at the time of inspection.

I have considered the reply of the sub broker that they did collect client registration forms from many of their clients subsequent to inspection and for future they have made it a point to deal with clients only after getting client registration forms. During the course of personal hearing before me, it was submitted that the sub broker is now not working as a broker at LSE but operating as sub-broker on NSE through LSE and its transactions at present are very low. I am in any case of the view that that the sub broker was obliged to enter into agreements and maintain the database of their clients / investors in the prescribed format as stated in the circular no. SMD/POLICY/CIR/5-97 dated April 11, 1997.

(c) Non maintenance of Books of Accounts and records in the prescribed manner

Regarding the charge of non-maintenance of books of accounts and records in the prescribed manner, the Enquiry Officer has found that the sub broker has not maintained the following books of accounts:-

- i) Document Register
- ii) Client Ledger and broker ledger
- iii) DTR register which is an official record containing details of the daily matched transactions of a member entered with the other members on the floor of the exchange.

I have noted the submission made by the sub broker that they are taking steps to rectify the irregularities noticed during the inspection. The sub broker has instructed their accountant to be more careful in the future and hence a lenient view was prayed for. The Enquiry Officer has also noted several other irregularities observed during the inspection where the sub broker has not disputed the findings of Enquiry Officer. However they have given the assurance that all care will be taken in the future. I am of the view that document register is a primary record which contains particulars regarding the securities received and delivered by the sub broker vis-à-vis particular clients. I therefore find that the sub broker by not maintaining the proper books of accounts has violated the provisions of regulation 17 (1) (g) of the Stock Brokers Regulations and Rule 15 of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as SCRA). I am, therefore not inclined to take a lenient view in this regard.

(d) Dealing with Unregistered Sub broker / Non Co-operation during Inspection

As regards the charge of dealing with an unregistered sub-broker/non-cooperation during inspection, the inspecting authority revealed that the sub broker was not charging brokerage which indicated that it was dealing through the sub broker further for his clients. Further all the bank details were not furnished by the sub broker to the inspection team for inspection. The sub broker refused to cooperate with the inspection team in their further investigation too. In this respect, the sub broker submitted that the names of the banks which were mainly being operated were given to the inspectors and therefore the bank details with petty transactions were not informed. The sub broker further submitted that it had fully co operated with the inspection team and they had stopped dealing with the unregistered sub-broker and that all dealings with the unregistered sub-broker were done in the good faith. I agree with the findings of the Enquiry Officer that it is the duty of the sub broker to produce to the inspecting authority such books and other documents in its custody or control and furnish the same with all the required statements and information as the said officer may require. Further it appears that most of the transactions by the sub broker with its end clients were done through sub broker M/s. S.K. Sharma & Co. which was a unregistered till July 26, 2001 and therefore no record of any Purchase bill/ Sale bill, confirmation notes were shown. I note that the sub broker has admitted the charge of dealing with the unregistered sub broker. Regarding the charge of non-co-operation during the inspection was concerned, as the same cannot be crystallized. I am inclined to give benefit of doubt.

(e) Non Issuance of Confirmation Memos

Regarding the charge of non-confirmation memos it has been submitted that the sub broker has issued confirmation memos to various clients but in some cases acknowledgement copies of such memos were not readily available. The Enquiry Report states that no duplicate copies/counterfoils of the confirmation notes were maintained by the sub broker. The sub-broker failed to provide to the inspection team any document or record which could confirm that confirmation notes were issued within 24 hours of the execution of the transactions. Although the sub broker has disputed this charge, the sub broker has not produced any evidence before me to prove its contention. Since mere denial will not suffice the purpose, I agree with the findings of the Enquiry Officer. I am, therefore of the view that the sub broker has violated the directions issued by SEBI vide circular dated May 21, 1997, January 16, 1998 and Para B (2) of Schedule II specified in regulation 15 of the Enquiry Regulations.

- 5.2 Having regard to the gravity of the charges established and in the absence of mitigating factors, I agree with the findings and recommendations of the Enquiry Officer. However, in view of the facts and circumstances of the case and that I have granted benefit of doubt on the charge of non co-operation of the sub broker, I am of the view that a minor penalty of suspension of certificate of registration for a period of 15 days is sufficient to have a deterrent effect on the sub-broker.

6.0 Order

- 6.1 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 Enquiry Regulations, I hereby impose a minor penalty of 'Suspension of Certificate of Registration' on M/s. Super Finvest Services Pvt. Ltd., sub broker of affiliated to LSE Securities Ltd. (INS 230912532), Member of NSE, for a period of 15 days in terms of Regulation 13(1)(a)(iv) of Enquiry Regulation.
- 6.2 This order shall come into effect on expiry of 21 days from the date of this order.

Place : Mumbai

T.C. Nair

Date : December 27, 2006

**Whole Time Member
Securities and Exchange Board of India**