

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF

M/S M & M CAPITAL & INVESTMENT LTD.

SEBI REGISTRATION NO. INS231199030

AFFILIATED TO COCHIN STOCK BROKERS LTD.,

MEMBER, NATIONAL STOCK EXCHANGE

WTM/TCN/MIRSD/84/01/07

DATE OF HEARING : May 16, 2006

APPEARANCES :

FOR NOTICEE : Shri K.V.Thomas

Shri Jacob George

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&M Capital & Investment Ltd., (hereinafter referred to as MMCIL) is a corporate entity registered with SEBI as a sub-broker affiliated to Cochin Stock Brokers Ltd., having SEBI Registration No.INS231199030 under Section 12 of SEBI Act, 1992.
- 1.2 An Inspection of the Books of Accounts, Documents and other records maintained by MMCIL covering the period from April 2001 to June 06, 2003 was conducted. During the inspection, certain irregularities were found to have been committed by the MMCIL.
- 2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed *vide* order dated January 3, 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.
- 2.2 A Show Cause Notice dated February 23, 2004 was issued to the MMCIL under Regulation 6 (1) of the said regulations. MMCIL submitted its reply dated March 8, 2004.
- 2.3 MMCIL was granted an opportunity of personal hearing on May 11, 2004. The sub-broker appeared before the EO on the said date and made its submissions.
- 2.4 After considering the reply and the submissions made at the time of personal hearing, the EO submitted his report dated December 28, 2004 recommending suspension of certificate of registration of MMCIL for a period of four months.
- 3.1 A copy of the Enquiry Report was sent to MMCIL along with a show cause notice dated January 20, 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. MMCIL replied to the SCN and sought extension of time for four more weeks to submit its reply. Subsequently, MMCIL submitted its reply *vide* letter dated February 25, 2005.
- 3.2 MMCIL was granted an opportunity of personal hearing before me on May 16, 2006. Shri K.V. Thomas and Shri Jacob George appeared on the said date and made submissions on behalf of MMCIL.
- 4.1 I have carefully considered the findings of the inspection, enquiry report and the submissions made by MMCIL and my findings are as under :
- 4.2 It was alleged that MMCIL had executed trades on behalf of its clients through M/s. Maliram Mackharia Finstock Pvt. Ltd, member of National Stock Exchange without being registered as a sub-broker. The EO found that MMCIL had admitted to having traded through Maliram Mackharia Finstock Pvt. Ltd., Member BSE and NSE without having valid registration. The EO noted that MMCIL registered as sub-broker for BSE through Cochin Stock Brokers Ltd. (CSBL) on August 25, 2000 and as sub-broker for NSE on November 01, 2001. However, it continued to trade as an unregistered sub-broker through Maliram Makharia during 2000-2001 as well as 2001-2002. The EO further found that by trading as a sub-broker without a

valid registration for a long period and with considerable volumes MMCIL has violated Rule 3 of the said Rules and Section 12 of the SEBI Act and directives of SEBI issued vide circular No.Sub-Brok/Cir/02/2001 dated January 15, 2001. I note from the reply of MMCIL dated February 25, 2005 that MMCIL got registered with SEBI as a sub-broker affiliated to ISE with Registration No. INS230712833 on September 14, 2000. In the meanwhile, Cochin Stock Exchange decided to set up its own subsidiary for taking up membership with both BSE & NSE and decided to discontinue the connectivity with ISE. During the intervening period between setting up of CSE subsidiary and connectivity loss with ISE, MMCIL was forced to initiate protective measures for trading on behalf of their clients. Therefore, MMCIL entered into agreement with Maliram Makharia for sub-broker trading in NSE and submitted an application for SEBI registration. Subsequent to receiving SEBI sub-broker registration through CSBL at NSE, MMCIL discontinued their association with Maliram Makharia. In view of the facts and circumstances as mentioned above and that MMCIL has subsequently discontinued its dealings with Maliram Makharia and also considering the absence of any investor complaints, I am inclined to take a lenient view in the matter.

- 4.3 It was alleged that that MMCIL had not ensured the maintenance of the mandatory minimum margins by the clients and had not furnished the requisite auditor's certificate on quarterly basis during the period covered under inspection. The EO found that MMCIL had submitted the details of margin required and collected and had also submitted the client specific stock register evidencing the maintenance of the required margin in the form of scrips. In the light of the evidence furnished, MMCIL's contention of collecting the required upfront margin from clients was found acceptable by the EO. The EO, however, found that MMCIL has not furnished an audited certificate on a quarterly basis to the affiliated broker to the effect that margins are collected from all clients and hence, it constitutes violation of the direction issued by SEBI *vide* Circular No.SMDRP/Policy/Cir-6/2001 dated February 01, 2001 and thereby a breach of provisions of Clause A(2) of the Code of Conduct for sub-brokers prescribed under Regulation 15 of the Broker Regulations. I note that MMCIL had stated in its reply dated May 16, 2006 that the requirement of auditor's certificate was made mandatory in February 2001 and that it was complying as per the requirement without any default. In view of the fact that MMCIL was complying with the regulatory requirement of collecting margins from the clients but failed to submit an audited certificate to that effect, which is a technical non-compliance, I am inclined to take a lenient view
- 4.4 It was alleged that MMCIL was dealing with 3 client firms in the name of M/s. Microchip Securities, M/s. High Range Stocks & Investments (P) Ltd and M/s. Trichur Securities. It was further alleged that by executing orders for these firms, MMCIL was actually executing transactions/orders of the clients of these entities. The EO found that MMCIL had entered into agreements with the three entities located in different towns which allowed it to trade for the clients introduced by these entities. MMCIL stated that it was issuing purchase/sale notes, account statements etc. directly to clients and was also receiving confirmation from the clients directly. However, the EO found that the order placement by the clients was routed through the said entities. So also, MMCIL was acting on the instructions of the said entities and ledger accounts were maintained by MMCIL only for them and not for any of the clients introduced by the said entities. MMCIL further stated that the said entities were managers of its branches. However, the EO found that these entities were nowhere referred to as a branch in the agreement. Further, MMCIL did not post any of its staff nor was it meeting the fixed or running costs related to the place and hence found from the above that MMCIL was dealing with un-registered sub-brokers and hence violated SEBI Circular No.SMD/Policy/Circular 3-97 and Clause D(1) of the code of conduct prescribed for sub-brokers under Schedule II read with Regulation 15 of the said Regulations. However, the EO further found that corrective steps were taken by MMCIL and there were no investor complaints arising out of their conduct in the past. The EO also felt that as regards MMCIL's transactions through M/s. Geo Capital & Credit (P) Ltd., considering that the transactions were routed only on few occasions with limited volumes, a lenient view could be taken. I agree with the findings of the EO.
- 4.5 With regard to the other allegations of non-maintenance of books of accounts, records etc., delay in delivery/payment to clients, inadequacy in maintenance of clients database, the EO has accepted the reply of the sub-broker. As regards the allegation of non-reporting of off the floor transactions, the EO has recommended for a lenient view. On perusal of the allegations, material on record and the submissions of the sub-broker, I am inclined to agree with the findings of the EO.
- 4.6 In the facts and circumstances of the case, I find that a minor penalty of censure on M/s. M&M Capital and Investments Pvt. Ltd. would suffice

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 censure on M/s. M&M Capital and Investments Pvt. Ltd., sub-broker bearing SEBI Registration No. INS231199030 affiliated to Cochin Stock Brokers Ltd.
- 5.2 This order shall come into force with immediate effect

Date: 22nd January, 2007

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