

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF

ADROIT FINANCIAL SERVICES P. LTD.

MEMBER, NATIONAL STOCK EXCHANGE

SEBI REGISTRATION NO. INB230853830

DATE OF HEARING : 14.07.2006

APPEARANCES

FOR NOTICEE : Shri Ajay Kumar Gupta

Shri Yogesh Arya

Shri Vinod Jain

Shri Anoop Kannval

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.

1.1 Adroit Financial Services (hereinafter referred to as the 'broker') is a member of the National Stock Exchange (hereinafter referred to as 'NSE') and is registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI') as a broker under Section 12 of SEBI Act, 1992 with Registration Number INB230853830.

1.2 An inspection of the books of accounts, documents and other records maintained by the broker was carried out by SEBI between June 03 -09, 2003. During the inspection, certain irregularities found to have been committed by the broker were observed.

2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed vide order dated 23.03.2004 under Regulation 5(1) of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as the 'said regulations') to enquire into the alleged irregularities committed by the broker which were observed during the inspection.

2.2 A Show Cause Notice (SCN) No. SK/SCN/Adroit/8842/04 dated 03.05.2004 was issued to the broker under Regulation 6 (1) of the said regulations. The broker submitted its reply dated 09.06.2004. The enquiry officer conducted the enquiry in terms of the said Regulations and after considering the reply and the submissions made by the broker at the time of hearing, the EO submitted its report dated 26.10.04 recommending suspension of registration of the broker for a period of three months.

3.1 A show cause notice dated 03.11.04, in terms of Regulation 13(2) of the said Regulations was issued to the broker 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 broker vide letter dated 22.11.04 requested for extension of time for filing the reply. The broker was granted time upto 02.12.04 vide letter dated 25.11.04. Vide letter dated 02.12.04 the broker was granted further extension of time upto 06.12.04. The broker finally submitted its reply dated 06.12.04.

3.2 The broker was given an opportunity of hearing on 14.07.06. The broker appeared before me on the said date and submitted two box files containing documents in support of his submissions.

4.1 I have carefully considered the findings of inspection, enquiry and the submissions made by the broker and my observations are as under:

4.2 Transactions with clients

a) Transfer of funds between different clients' accounts

The EO found that the broker has accepted that there has been transfer of trades from one client account to another. The EO observed that the broker is expected to maintain proper segregation between different clients' accounts to avoid disputes/complaints which may arise due to such inter-se transfers and adjustments. Thus the broker had violated the

provisions of A(1) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The broker submitted that all the transfer entries had been made to help the client in their genuine difficulty and as a matter of investors' service. The broker further stated that both the clients had given their specific request and consent for such transfer of funds from one client to another client. The broker further claimed that the copies of client requests were shown to the inspection team and the same were also submitted to the EO. I note that the broker has furnished evidences in the form of duly notarized affidavits, client request and consent letters in support of its contention. In view of this, I am inclined to accept the broker's explanation.

b) Delayed delivery to clients

The EO found that the broker violated the provisions of SEBI Circular No.SMDRP/Policy/Cir-05/2001 dated February 1, 2001. The EO further found that the broker violated the provisions of B(1) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992. The broker stated that out of 31 cases as alleged 12 cases were related to Adroit Financial Services Pvt. Ltd. i.e. on the broker's behalf and in pro-account. The said deliveries do not belong to any client and belonged to the broker and hence there was no question of any delay in these cases to any clients. For the balance 19 cases, the broker submitted affidavits, request letters, transaction statement and delivery instruction slips in support of its contention that in none of the cases there was any delay in delivery of shares. In all cases of technical punching errors, the clients confirmed by way of affidavit that they were timely informed and their consent to transfer securities at a later date was taken. The broker further submitted that there was no loss or grievance on the part of the investors. I note that the broker has submitted affidavits from clients in support of its contention. In view of this, I am inclined to give benefit of doubt to the broker.

c) Discrepancies in payments

The EO found that there were few discrepancies pertaining to transaction with clients in terms of payments during the scrutiny of the client's ledger. There were instances wherein payments were made into/transferred from one client account to another, despite credit balances, funds were being deposited by the clients and despite debit balances, payments were made to the client by the broker. The EO found that it was not proper for the broker to adjust his existing liability against the future liability of the client. As per SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 payment has to be made within 2 working days of the pay-out unless the client has requested otherwise. The EO further found that the broker had failed to meet his obligation of making payments to the clients within 2 days of pay out and hence found it guilty of violating the provisions of SEBI Circular No SMD/SED/CIR/93/23321 dated November 18, 1993 and the provisions of Clause A(5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and Rule 4 (b) of SEBI (Stock Brokers and Sub-Brokers) Rules, 1992. The broker stated that in respect of Ambalika Holdings (P) Ltd., despite a debit balance of Rs.1,65,909/- the account was debited by Rs.1,00,000/- as the client had told that it will sell some shares of around Rs.14-15 lakhs and subsequently sold shares of Rs.14,60,396.95 on November 14, 2002. The broker submitted copy of the statement of account and copy of bill dated November 14, 2002 in support of its contention. The broker further stated that it was wrong to state that there were no further transactions in the account till November 19, 2002 and enclosed transaction statement from November 13 to 20, 2002. The broker also submitted an affidavit from the client confirming that the payment was made by the broker on their request as a special case of client service. In view of the documentary evidence produced by the broker, I accept the explanation of the broker.

In respect of AKG Securities and Consultancy Ltd. the EO found that the client ledger of AKG Securities & Constructions Limited, it was observed that despite a credit balance of Rs.49,63,395/- on 8/5/2001, the account was credited with Rs.6,00,000/- on 9/5/2001 and by Rs.2,50,000/- on 17-5-2001. There were no transactions in the client account till 31-5-2001.

It was further observed that despite a credit balance of Rs.42,76,423/- on 18/2/2002, the account was credited with Rs.13,25,000/- on 1/3/2002 and by Rs.11,50,000/- on 21-3-2002. On this, the broker explained that the client had issued the cheques intending to purchase some shares.

The broker stated that it is correct that AKG Securities had a credit balance of Rs.49,63,395/- on May 8, 2001. This account was credited with a Cheque No.639601 for Rs.6,00,000/- on May 9, 2001 and with Cheque No.639602 for Rs.2,50,000/- dated May 17, 2001. The broker also accepted that AKG Securities had credit balance of Rs.42,76,423/- on February 18, 2002. This account was further credited with 4 cheques for Rs.13,25,000/- on March 1, 2002 and with 2 cheques for Rs.11,50,000/- on March 21, 2002. The broker further stated that it was not correct that there were no transactions in the client account and submitted a transaction statement in support of his contention. The broker also enclosed affidavits from AKG Securities confirming that the amounts lying to their credits were towards margin deposits. In view of the affidavit from AKG Securities produced by the broker, it is difficult to hold the broker guilty of the violation as above.

d) Closing Stock

The EO found that as per SEBI circular no. SMDRP/POLICY/CIR-05/2001 dated February 01, 2001, the broker was required to transfer with effect from February 12, 2001, the securities from their respective CM Pool account to the respective beneficiary account of their clients within 6 calendar days after the pay-out day. The time limit of 6 calendar days after

the pay-out day for transferring the balances to the beneficiary accounts of clients was reduced to 4 calendar days or 2 working days, whichever is later with effect from April 2, 2001. The EO found that the broker had violated the provisions of the SEBI Circular no. SMDRP/Policy/Cir-05/2001 dated February 01, 2001.

The broker stated that it had given a clarification that the stocks listed in the inspection report for May 30, 2003 related to the shares lying with the broker towards margin. The broker further stated that it had given the complete list of the closing stock duly segregated client-wise to the EO. The broker enclosed affidavits from its clients whose shares were lying in its stock as on May 30, 2003 and stated that there was not even a single share or scrip which was lying in excess with the broker on the said date. In view of the documentary evidence produced, the broker's explanation may be accepted.

d) Segregation of the client and business account

The EO found from the reply of the broker that in most of the instances either there had been a clerical error or the broker accepted the lapse, implying that there was no clear segregation of client and business accounts as required under the provisions of SEBI Circular No. SMD/SED/CIR/93/23321 dated 18.11.93. Thus the broker had violated the provisions of A (5) of Schedule II specified under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992.

The broker replied to the various allegations as follows :

(i) Oriental Bank of Commerce, Sahibabad – Client Account - Telephone and Electricity Expenses

The broker agreed that certain telephone and electricity expenses were paid from the client account totaling to Rs.46,774/- in 2002-03. The broker, however, stated that the total brokerage of Rs.13,53,090.05 was credited during 2002-03 to the client account and the same was allowed to be withdrawn by the broker from the client account. The broker further stated that the payment of telephone and electricity expenses was lower than the amount of brokerage credited in the account. The broker submitted a statement giving details of various expenses and other withdrawals made by them from the client account on the one hand as well as the brokerage earned and credited to the client account and also produced an affidavit from the directors of the company confirming the same.

(ii) ICICI Bank, Rohini – Client Account

With regard to this account, the broker stated that they had made the payment of Rs.600/- on behalf of their client M/s. Rishu Investment, Proprietor Mr. Bhuvnesh Bansal on request and submitted an affidavit from Rishu Investment in support of their contention.

(iii) Canara Bank, Delhi – Client Account

With regard to the dishonoured cheques of Rs.40,000/- the broker stated that the said cheques were issued by broker's Shakti Nagar branch in favour of the broker's Head Office – Client Account and thus termed as the transaction between branch and head office of the broker and not as transaction between the broker and its client.

(iv) Canara Bank, Bangalore – Client Account

(a) Payment of Expenses

The broker agreed that certain telephone, electricity and other expenses were paid from the client account totaling to Rs.2,14,115.60 during 2002-03. The broker, however,

stated that the total brokerage of Rs.9,02,675.81 was credited during 2002-03 to the client account and the same was allowed to be withdrawn by the broker from the client account. The broker further stated that the payment of telephone and electricity expenses was lower than the amount of brokerage credited in the account. The broker submitted a statement giving details of various expenses and other withdrawals made by them from the client account on the one hand as well as the brokerage earned and credited to the client account.

b) Maintenance of Separate Business Account

The broker stated that since the commencement of operations at Bangalore, the Board of Directors directed the Head Office at New Delhi to incur all the expenses of Bangalore Branch directly. However, with effect from June 2004, on the directions of Board of Directors, a separate Bank Account for had been opened for business purposes with Canara Bank bearing A/c.No.15516.

(v) **Canara Bank (16654), Delhi – Client Account**

(a) **Bank Guarantee Renewal Charges of Rs.77,700/-**

The broker stated that the total money withdrawn in relation to Bank Guarantee Charges directly by Bank was lower than the brokerage of Rs.13.77 lakh credited to the aforesaid account. The broker further stated that they had requested their bankers not to debit such charges from the client account but many time the bankers debit such charges from client account by mistake.

(b) **V-Sat Security of Rs.6,48,305/- and Rs.31,527/-**

The broker stated that the amounts of Rs.6,48,305/- and Rs.31,527/- were refunds of V-Sat security deposit amount received by the broker from NSE in the said account and were not figures relating to expenditure. The broker admitted that the amount was inadvertently deposited in the client account due to clerical error.

(c) **Share Application Money of Rs.8 lakh and Rs.6 lakh**

The broker stated that the above amounts were share application money received from its existing shareholders in the said account. He enclosed a copy of the bank statement showing the credit of Rs.8,00,000/-. The broker admitted that the amount was inadvertently deposited in the client account due to clerical error.

(vi) **Canara Bank (16655), Delhi – Business Account**

(a) **Payment made to client Nidhi Jain on three occasions**

The broker stated that the three payments referred to in the inspection report were made from the business account for installation of lease line and enclosed an affidavit of the client Nidhi Jain confirming that the aforesaid payments were made for setting up of a lease line. The broker further stated that the aforesaid lease line was set up in compliance with the guidelines of the National Stock Exchange.

(vii) **IDBI Bank, DLF Gurgaon, Haryana – Client Account**

(a) **Telephone Expenses of Rs.2716/- and Electricity Expenses of Rs.2261/-**

The broker stated that the above money withdrawn in respect of telephone expenses was much lower compared to the amount of brokerage of Rs.63,67,000/- which was credited by the broker to the aforesaid account. The broker enclosed a statement containing details of brokerage earned and expenses incurred by the branch.

The EO found that in most of the instances the broker had admitted that there had been a clerical error or mistake implying that the requirement of segregation of client and business account was not complied with. I agree with the EO that the broker has in certain cases admitted its mistake and in other cases, the broker produced documentary evidence in the form of affidavits, bank statements, etc.

4.3 On a careful consideration of the findings of the EO and the submissions made by the broker and in the facts and circumstances of the case, a minor penalty of censure on M/s.Adroit Financial Services Pvt. Ltd.

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.Adroit Financial Services Pvt Ltd., bearing SEBI Regn No. INB 230853830.

5.2 This order shall come into force with immediate effect.

Place: Mumbai

Date: 22nd January, 2007

T.C.NAIR

Whole Time Member

Securities and Exchange Board of India