

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF

M/s. AKSHAYA & CO,

SEBI REGISTRATION NO. INS 010799513

SUB BROKER AFFILIATED TO MSE FINANCIAL SERVICES LTD.,

MEMBER, STOCK EXCHANGE, MUMBAI.

WTM/TCN/MIRSD/80/01/07

DATE OF HEARING: 16.05.2006

APPEARANCE :

FOR NOTICEE : Mr.M.A.A.Annamalai, 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** M/s. Akshaya & Co. (hereinafter referred to as "the sub-broker") is a sub-broker affiliated to MSE Financial Services Ltd., member of the Stock Exchange, Mumbai and registered with SEBI as a sub-broker under section 12 of SEBI Act, 1992 with SEBI Registration No. INS010799513.
- 1.2** Inspection of the books of accounts, documents and other records maintained by the sub-broker for the period from April, 2000 to May, 2002 was carried out by SEBI. Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection.
- 2.0 Enquiry Proceedings**
- 2.1** An Enquiry Officer (EO) was appointed vide SEBI Order dated 21.11.2003 under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as 'said regulations') to enquire into the alleged contraventions observed during the inspection of books of accounts of the sub-broker.
- 2.2** A show cause notice dated 29.01.2004 in terms of Regulation 6(1) of the said Regulations was issued to the sub-broker along with a copy of the relevant extract of the inspection report dated 07.06.2002. The sub-broker vide its letter dated 20.02.2004 submitted its written reply.
- 2.3** As per the request of the sub-broker, an opportunity of personal hearing was given to the sub-broker by the EO on 12.04.2004 which was attended by Mr.M.A.A.Annamalai, proprietor of the sub-broker, who made oral submissions reiterating its written reply. The sub-broker further filed some documentary evidence in support of its contention vide its letter dated 19.04.2004.

2.4 The EO after conducting the enquiry in terms of the said regulations submitted his report on 30.07.2004 recommending a penalty of suspension of the registration of the sub-broker for a period of two months and also issuance of a warning.

3.0 Show cause notice and the sub-broker's submission

3.1 A copy of the Enquiry Report was sent to the sub-broker along with a show cause notice dated 09.08.2004, in terms of Regulation 13(2) of the said regulations, advising the sub-broker to show cause as to why the appropriate penalty, including penalty as recommended by the EO should not be imposed.

3.2 The sub-broker vide letter dated 27.08.04 requested for extension of 15 days time to submit its reply since it was collecting documents and information and vide letter dated 13.09.2004, submitted its reply.

3.3 An opportunity of personal hearing before me was given to the sub-broker on 16.05.2006. The proprietor of the sub-broker, Mr.M.A.A.Annamalai appeared for the hearing and made his submissions reiterating the submissions given in his written reply dated 13.09.2004.

4.0 Consideration of issues

4.1 I have carefully considered the facts and circumstances of the case, the inspection report, the enquiry report and the submissions of the sub-broker thereto and my findings are as follows:

4.1.1 Acting as an unregistered sub-broker:

The EO found that the sub-broker had acted as sub-broker without valid registration from SEBI. Also the EO found the sub-broker guilty for dealing with a member of another Exchange as a sub-broker without obtaining registration from SEBI violating the provisions of Rule 3 of the said Rules read with Section 12 of the SEBI Act and the Code of Conduct as prescribed for sub-brokers under Schedule II of the SEBI (Stock Broker and Sub-brokers) Regulations, 2002. I have noted the findings of the EO that the sub-broker had been executing trades on behalf of his clients through M/s. Arihant & Co for the years 2000-01 and 2001-02 without having valid registration from SEBI to act as sub-broker and some of the instances in which such trades were executed are as follows:

TABLE-I

The details of the contracts of M/s. Arihant & Co to the sub-broker are as under:

Purchase/Sale Note No. & Date	Name of the Scrip	Qty	Rate	Amount
F/2001002/04/000001/ 4.4.01	Annamalai Finance Ltd.	5200	Rs.4.35 & Rs.3.85	Rs.20,520
Bill date 20.1.01 & cont. date 16.1.2001	Bank of Madura	300	Rs.243.25	Rs.72,973.50
Bill Date 27.1.01 & Cont. Date 25.1.01	Bank of Madura	650	Rs.271.00	Rs.1,69,950
Bill date 13.1.01 & cont.date 11.1.01	Punjab Anand Foils	50	Rs.85.40	Rs.4,269.87

TABLE-II

The corresponding confirmation for the aforesaid contracts issued by the sub-broker to their clients is as under:

Name of the Client	Contract Note No. & Date	Scrip	Qty.	Rate	Amount
R.M. Venkatachalam	910/4.4.01	Annamalai Finance	5200	Rs.3.90 & 4.40	Rs.19,740
Rajashekar G	111/16.1.01	Bank of Madura	300	Rs.240.20	Rs.72,060
Indira Srinivasan	190/25.1.01	Bank of Madura	400	268.30	Rs.1,07,320
			250	268.30	Rs.67,075
Yogeswaran	92/11.1.01	Punjab Anand Foils	50	Rs.84.95	Rs.4247.50

The sub-broker had given a reply stating that it is a registered sub-broker and it did not have NSE Terminal: it had only BOLT Terminal through MSE Financial Services Ltd. and did not have trading arrangement with any other Exchange. The sub-broker further submitted that physical delivery transactions were not allowed by BSE for the members of the Regional Exchanges, who undertook deals through their subsidiaries and its clients did not have accounts with any other broker/sub-broker. However, due to pressure from the clients, it dealt as unregistered sub broker through M/s. Arihant & Co. and the transactions numbered only 8 during 2000-01 and 3 during 2001-02 and 0 during 2002-03. It further submitted that some of the transactions were on account of its own trading and the clients were either its relatives or close business associates. It had also cited the order of the WTM dated 18.05.2004 in the matter of Bakliwal Investment where a lenient view was taken by the Member in the similar circumstances. While the sub-broker had admitted that it had acted as unregistered sub-broker, I am of the view that no comparison can be made on facts since facts can vary from each and every case depending upon the circumstances and hence, the case quoted by the sub- broker have no relevance to the instant case.

4.1.2 Inadequacy of maintenance of clients database:

The EO found that the sub-broker had not maintained the client registration forms and therefore, held the sub-broker had not complied with SEBI Circular dated 11.02.1997 which requires the brokers to maintain database of the client in the format prescribed by SEBI and also enter into an agreement with each of the clients under the concept of Know Your Clients. The sub-broker had not given any specific reply. The EO found that in 8 instances, the details such as photograph of the client, PAN No., name of the introducer, etc were not available in the database maintained by the sub-broker and had not maintained the requisite client agreement as a legally valid document or on a plain paper. I am of the view that the client registration is an important requirement and establishes the identity and the credentials of the client, so that unscrupulous persons are not introduced posing a risk to the market. This measure seeks to strengthen the integrity of the market, thereby ensuring investor protection. Similarly, member-client agreement also provides standardized rights and obligation between the two parties, which serves as a record for any dispute in future which is again an investor protection measure. It is apparent that the sub-broker had failed to maintain database of the client.

4.1.3 Non segregation of clients and its own funds:

The EO found that the sub-broker had not segregated its own funds from that of its clients funds and held that the sub-broker had violated Regulation 15(1)(c) of SEBI (Stock Broker and sub Broker) Rules and Regulations, 1992 read with SEBI Circular No. SMD/Policy/Cir-11/97 dated 21.05.1997, prescribing an agreement between the member and the sub-broker stipulating maintenance of an exclusive account for the clients for the purpose of receipts and payments. The sub-broker had replied that the SEBI (Stock Broker and sub Broker) Rules and Regulations, 1992 did not stipulate maintenance of separate bank account for clients' funds by a sub-broker. It further submitted that clients' funds were not used for proprietary trading and the consolidated bank account was having more of own funds than was required to meet the clients' obligations and even on the date of segregation, i.e., 07.11.2002, consolidated bank account had a balance of Rs.3,84,298/97 against a client obligation of Rs.1,36,448/-. The sub-broker further submitted that when it was pointed out that separate bank account had to be maintained, the same requirement was complied with by opening an account. I am of the view that the separation of the clients' account and the broker's account had been done to prevent any misuse of the clients' money by the broker and it is implemented as an investor protection measure. The requirement was complied with subsequently by the sub-broker and as there was no finding of misuse of clients' funds, I am inclined to take a lenient view.

4.2 As the sub-broker was an unregistered one, there were very few transactions undertaken by it. Hence, on a careful perusal of the charges and the findings as recorded above, I am of the view that a minor penalty of censure would be adequate and sufficient to have a deterrent effect on the sub-broker.

5.0 ORDER

5.1 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 the said Regulations, I hereby impose a minor penalty of censure on M/s. Akshaya & Co., a sub-broker affiliated to MSE Financial Services Ltd., member of the Stock Exchange, Mumbai and registered with SEBI bearing Registration No. INS010799513.

5.2 This order shall come into force with immediate effect.

PLACE: MUMBAI

DATE : 18/01/2007

T.C.NAIR

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA