

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF EMMKAY SHARE & STOCK BROKERS LTD, MEMBER OF DELHI STOCK EXCHANGE, INB 050987735

Date of hearing : July 14, 2006

Appearances:

For Noticees : Shri Lavkush Sharma

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 against Emmkay Share & Stock Brokers Ltd, Member of Delhi Stock Exchange, SEBI Registration No. 1NB 050987735)

1.0 Background

1.1 M/s Emmkay Share & Stock Brokers Ltd. (hereinafter referred to as "Emmkay") is a member of Delhi Stock Exchange (hereinafter referred to as "DSE") registered with SEBI as a stock broker under Section 12 of the SEBI Act, 1992 (hereinafter referred to as the "Act") having SEBI registration number INB 050987735.

1.2 Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted inspection of books of accounts, documents and other records maintained by the broker for the period from April 01, 2000 – October 23, 2002 (hereinafter referred to as "inspection period"). The said inspection was carried out by S. Tholia & Co., Chartered Accountants on behalf of SEBI. Certain irregularities / contraventions of SEBI Rules and Regulations were observed during the said inspection. A copy of the inspection report was forwarded to Emmkay vide SEBI letter dated January 28, 2003. However no reply or comments were received from Emmkay.

2.0 Enquiry Proceedings

2.1 An Enquiry Officer (hereinafter referred to as "EO") was appointed by SEBI vide order dated January 03, 2004 under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as "Enquiry Regulations") to enquire into the alleged contravention observed during the inspection of books of accounts of Emmkay.

2.2 A show cause notice dated May 20, 2004 in terms of Regulation 6(1) of the Enquiry Regulations was issued to Emmkay. Vide letter dated July 12, 2004 Emmkay submitted its reply. An opportunity of personal hearing was given to Emmkay by the EO on October 25, 2004 wherein Shri Hari Om Maheshwari attended the hearing and made submissions.

2.3 The EO after completion of enquiry submitted his report dated November 30, 2004 and recommended a penalty of suspension of the certificate of registration of Emmkay for a period of three months.

3.0 Show cause notice and Reply

3.1 In terms of Regulation 13(2) of the Enquiry Regulations, a show cause notice dated December 20, 2004 was issued to Emmkay advising it to show cause as to why the penalty as considered appropriate including the penalty recommended by the EO should not be imposed upon it. A copy of the Enquiry Report was also forwarded to Emmkay with the said show cause notice. However no reply was submitted by Emmkay.

3.2 Emmkay was granted an opportunity of personal hearing before me on July 14, 2006. Shri Lavkush Sharma, ex-employee of Emmkay appeared in person and made oral submissions. At the time of personal hearing before me, Shri Lavkush Sharma reiterated the submissions made before the EO.

4.0 Consideration of issues

4.1 I have carefully examined the facts of the case, the inspection report, the enquiry report and the submissions of Emmkay and my findings are as under :

4.1.1 Non maintenance of Documents Register

The EO found that Emmkay failed to maintain the Document Register which is a primary record for securities received and delivered to a particular client and member. I have noted the submissions of Emmkay that while trading was compulsory under the demat mode there was no physical delivery and therefore there was no requirement of maintenance of record of securities received /delivered.[r1] I am of the view that Emmkay by not maintaining the Document Register has violated the provisions of Regulation 17 (1) (g) of SEBI (Stock Broker and Sub Brokers) Regulations, 1992 (hereinafter referred to as "the Stock Broker Regulations") and Rule 15 of Securities Contracts (Regulations) Rules, 1957 (hereinafter referred to as SCCR). I am of the opinion that the Document Register is the primary record for shares and securities held by Emmkay on behalf of his client and for himself and also, it is a statutory requirement. Emmkay is expected to maintain Document Register to keep a record of shares and securities held by it. Since the Emmkay had produced transaction ledger of their depository account, I am inclined to take a lenient view.

4.1.2 Non segregation of client and own funds

The EO has found that Emmkay had not maintained separate client account in accordance with SEBI circular no. SMD/SED/CIR/93/23321 dated November 18, 1993 and Byelaw no. 264A (1) of the Delhi Stock Exchange. A few instances in this regard are given below:-

PNB Shakti Nagar – Client A/c

Type of Payment	Date	Cheque No.	Amount
Telephone Exp	22.4.2000	634765	1500.00
Service Tax	15.12.2000	642119	14175.00
Bank Charges	31.12.2000	JV-3112	25150.00
Installment for Car	16.02.2001	JV3-1602	9000.00
Installment for Car	16.02.2001	JV3-1403	9000.00

Canara Bank A/c no. 2847 – Client A/c

Type of Payment	Date	Cheque No.	Amount
Insurance	7.3.2001	110836	16440.00

Emmkay submitted that the client account and own account were maintained separately. PNB Shakti Nagar was their general account and the Canara Bank A/c no. 2847 was their client account and Canara Bank A/c no. 2846 was their general account. By mistake, they issued a single cheque from Canara Bank A/c no. 2847 during the year which would be taken care of in the future. It further submitted that the amount is insignificant and well within the amount of brokerage and own profit in the trading of shares which broker was entitled to transfer from client accounts to its own accounts. Since Emmkay has admitted the above lapse and has assured of being careful in future, the EO has recommended dropping of the above charge. I agree with the recommendation of EO.

4.1.3 Non maintenance of Order Book

The EO found that Emmkay had not maintained an Order Book for recording time when the client placed an order and also failed to reflect the same in contract note along with time of executing the order. As a result of not maintaining the Order Book, the following information was not available on the records of Emmkay:

- (i) Identity of the person placing the order.
- (ii) Date and time of order receiving.
- (iii) Name of the person receiving the order.
- (iv) Details of any modification or cancellation, if any,
- (v) Reference no. of the contract note issued.
- (vi) Serially numbered orders.

Emmkay submitted that the requirement of keeping the Order Book was not practical as the time consumed in recording the Order was bound to result in loss of trade itself in view of fast changes in the bargain rates. It further submitted that there have never been any dispute with the client in this regard and that they will maintain the record once they commence the trading. The EO has held that Emmkay has violated the provision of SEBI circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997 which statutorily requires the broker to maintain the Order Book. I am of the view that the Order Book shows the time of placement and execution of the order which is very important from the investor's perspective. Recording of time of placement of order by the client is very crucial to ensure that the broker will not take undue advantage of price variation in the market and to ensure that the broker is fair to the investor. The broker is expected to maintain the Order Book which is an investor protection measure and therefore by not maintaining the Order Book as per the aforesaid circular, I find Emmkay guilty of violating the aforesaid circular. I have also noted the contention of Emmkay that keeping the order

book was not practical as it is time consuming in recording the order which would result in loss of trade. This contention of Emmkay is not convincing and is not acceptable.

4.1.4 Non production of Margin Deposit Book

It is alleged that Emmkay did not make the Margin Deposit Book available to the inspection team for verification. I have noted that Delhi Stock Exchange has levied a penalty on Emmkay for default in margin deposits amounting to Rs. 1,03,500/- during the financial year 2000-2001. Emmkay submitted that the margin account was maintained in the computerized accounting software which could be verified by the inspecting officials. They further submitted that since the account was maintained in the soft copy they felt that there was no need to duplicate the records by maintaining a physical register separately. I agree with the findings of the EO that Emmkay did not produce any documentary evidence in support of its contention that margin deposit books were being maintained in computerized accounting form. I am of the view that by not maintaining the margin deposit book, Emmkay has violated the provisions of Regulation 17 (1)(k) of the Stock Broker Regulations. However, considering the submission of Emmkay that soft copy was maintained, I am inclined to give a benefit of doubt to Emmkay.

4.1.5 Contract Notes

The EO has found that Emmkay failed to issue contract notes in the format prescribed by the exchange. I have noted that the following discrepancies were observed by the inspecting team during the course of inspection of the contract notes :

- (i) Jurisdiction was stated as Delhi instead of Mumbai
- (ii) Name of the authorized signatory was not given
- (iii) Value of stamps affixed on 1st copy was not mentioned
- (iv) Name of the person signing the contract note was not written
- (v) The contents of the back page of the contract note was in the old format.

The EO has also found that the contract notes issued to the client by Emmkay were not numbered on annual basis but were being generated on a daily basis. Further that dated acknowledgements were not obtained from the clients. In case of hand delivery of contract notes and no dispatch register or proof of sending the same was being maintained, in case of contract notes sent by ordinary post. In absence of the above, it could not be commented whether the contract notes were delivered to the client within 24 hrs of the execution of the transaction. I have noted the submissions of Emmkay that corrective steps will be taken as and when they commence the operations. As regards the delivery and dispatch of contract notes to the clients within 24 hrs most of the clients collected the contract notes at the end of the day. I have also noted that there is no complaint against Emmkay from any of the clients in this regard. I agree with the findings of the EO and find that Emmkay has admitted to the discrepancies in the contract notes with respect to mentioning of name of signatory, value of stamps, serial number on contract notes initializing on annual basis, etc. I find that Emmkay has apparently violated the provisions of SEBI circular no. SMD/MDP/CIR/043/96 dated August 05, 1996 which states that the contract notes issued by the broker to their clients should be stamped, signed by authorized persons, where pre-printed serial nos. and members maintain counterfoils of contract notes with adequate details and Delhi Stock Exchange circular dated August 13, 1996. As most of the above are procedural and technical irregularities and that there are no investor complaints on the same, I am inclined to take a lenient view.

4.1.6 Insufficient margin collection from clients

The EO has found that Emmkay had not collected sufficient margins from its clients in conformity with SEBI circular no. SMDRP/POLICY/CIR-35/98 dated December 4, 1998. The scrutiny of their client ledger showed that the client account had debit balance and the amount was transferred from the client account to the margin account through a journal voucher, creating a fake margin balance in client margin account. Emmkay, on the other hand, submitted that clients did not pay separate cheques for margins and instructed them to debit their running account. As the clients did not pay cash margin they held their shares as margin. The accounts of the clients were debited as per the instructions of the clients. If payment was not received, the amount remained debited to clients' account. Emmkay denied the observation that the journal entry was fake. I find that Emmkay has admitted that there have been cases of delay in depositing the margin money with the exchange for which Delhi Stock Exchange has also penalized them. However by considering the reply of Emmkay, I am inclined to give a benefit of doubt.

4.1.7 Failure to make payment / delivery to clients within a prescribed time.

The EO has found that Emmkay had failed to ensure that payments /delivery to clients were made within a prescribed time. I have noted that the inspection team has pointed out instances where Emmkay has apparently failed to ensure payment / delivery to clients within a prescribed time. After going through the inspection report, I find that there have been few cases

where payments were made to the clients in more than 48 hrs of payout day and authorization letter from these clients to maintain a running account has not been obtained. Further cases were observed where delivery of scrips made to some other beneficiaries accounts other than clients who ordered purchase of scrips (i.e. third party delivery of securities). I have noted the submissions made by Emmkay that the cases specified in the show cause notice and the inspection report where payment to the clients had been made much beyond 48 hrs were their regular running clients with running balances. Payments and delivery of shares were made to and from clients accounts as a matter or routine except in cases where a regular client instructed them to withhold its credit / delivery since he intended to enter into further transactions. They were obliged to act upon such advices since doing otherwise would cause delay in payment / delivery of shares. The delivery of scrips to some other beneficiary account other than that of the clients ordering the purchase of the scrip had been done on the advice of the client. I agree with the finding of the EO that Emmkay has not provided any consent letter from the client for withholding payments / delivery though they were specifically advised to produce supporting documents during the enquiry proceedings. Therefore, I find no reason to differ with the findings of the EO and therefore the contention of Emmkay in this regard cannot be accepted. I know that SEBI has vide circular no. SMDRP/POLICY/CIR-5/2001 dated February 01, 2001 stipulated that full payments / delivery to clients needs to be completed with 4 calendar or two working days of payout, whichever is earlier unless express written approval has been obtained from the clients. However considering the submissions of Emmkay and that there are no investor complaints, I am not inclined to take a lenient view.

4.1.8 Non maintenance of Know Your Client/Member Constituent Agreements.

Regarding the above charge, it has been alleged that Emmkay has failed to maintain Member Constituent Agreements and client registration form with respect to 72 clients out of 165 clients. Emmkay submitted that deficiencies pointed out were procedural errors and shall be taken care of in future. It further submitted that the observations regarding client agreements in respect of 72 clients were incorrect. The EO has noted that Emmkay has admitted to the discrepancies in Know Your Client / Member Constituent Agreements and that it failed to produce the client agreements before the EO. I therefore find that Emmkay has violated the provisions of SEBI circular no. SMD/POLICY/IECG/1-97 dated February 11, 1997 which advised all the stock exchanges to introduce the concept of "Know Your Client" and ask their member brokers to maintain the database of their clients. Further, the brokers were required to maintain client details in the format suggested by SEBI i.e the Client registration form and broker client agreement form vide its circular no. SMD/POLICY/CIR/5-97 dated April 11, 1997. I therefore agree with the findings of the EO.

4.1.9 Dealing with unregistered sub broker

The EO has found Emmkay guilty of violating the provisions of SEBI circular no. SMD/POLICY/CIR/3-97 dated March 31, 1997 which states that no broker shall deal with a person who is acting as a sub broker unless he is registered with SEBI and it is the responsibility of the broker to ensure that his client is not acting in the capacity of a sub broker unless he is registered with SEBI as a sub broker. The EO has found that Emmkay had been receiving the securities into its accounts against sales made by the clients viz. Suraj Investments – New Delhi, Rakesh Gupta, Ravi Associates, Mahalaxmi Trading, Pramod Ghai, U. S. & Co. from the demat account numbers other than the demat account numbers of their clients which showed that they have been dealing with unregistered sub brokers. It was further found that Emmkay had delivered securities ordered for purchase by their clients viz. Jitendra Kumar and S. K. Gupta to demat account number of some other person other than the client who ordered the purchase. Emmkay submitted that the clients never informed them that they were dealing in the capacity of sub broker. In respect of shares received from the third party account. it further submitted that their primary concern was to control their risk and make pay-in obligation in the market because in case of default, stock exchanges penalized them. It further submitted that it provided delivery of shares from other source, in order to make their delivery commitment and they had no control over the sale. However, there were no instances that they issued cheques or effected delivery to any persons other than the clients. They contended that the two instances of delivery of shares in case of Shri Jitendra Kumar and S. K. Gupta were isolated cases and the quantum of shares was very small viz. 150 and 400 shares. The EO has noted that Emmkay has admitted the two instances as pointed out by the inspecting officials. I agree with the findings of the EO and find that Emmkay has violated the provisions of the aforesaid circular and provisions of Section 12 of SEBI Act, 1992.

4.1.10 Fund Based Activities

It was alleged that Emmkay was found to be involved in fund based activities. The inspecting team on scrutiny of client ledger accounts observed that the account of M/s. Clean Finance & Investment Ltd., Client Code No. C07C was being used for various fund based activities. The ledger account showed that they had received cheques from various clients and paid to various clients. The amounts for the same were transferred and received from the clients bank accounts and settlement account reflecting that they had directly transferred and received funds from the clients bank accounts for various funding activities. With regard to the above charge, Emmkay had submitted that they were not involved in any type of fund based activity and it was a temporary assistance from friends and company belonging to him to fulfill pay-in obligations. As regards Clean Finance & Investment Ltd, they submitted that it was their sister concern since one of the director Shri M K Gupta was a director in both the concerns. The funds were transferred on reciprocal basis to meet obligations. Further they had no fund based activities as no interest had been charged on such transfers. The EO has found that Emmkay's activities

are admittedly fund based which is in violation of Rule 8(1)(f) and 8(3)(f) of Securities Contracts Rules Act, 1957. I agree with the findings of the EO and find that the above instances brought out by the inspecting authorities show that a client account was used for making financing transactions which is not in conformity with the aforesaid rules of SCRR.

4.1.11 Non payment of SEBI Registration Fee

The Enquiry Officer has found that Emmkay had failed to pay the registration fee as required under the Stock Broker Regulations. I have noted the submissions made by Emmkay that a certificate duly certified by the Chartered Accountant in the required format in which their total liability towards turn over fee was stated to be Rs.2,01,510 and that they had paid Rs.1,10,000/- as per SEBI records. They had also paid a demand draft of Rs. 1,00,000/- dated March 25, 1995. I agree with the findings of EO and find that the fee liability for that relevant year of Emmkay does not arise as on date.

4.1.12 I have carefully considered the submissions made by Emmkay before the Enquiry Officer and find that Emmkay has admitted their lapses with regard to contract notes, client registration forms being incomplete, incomplete Margin Deposit Book and payment / delivery to the clients within the prescribed time. I agree with the finding of EO and find that the reply of the broker with regard to non maintenance of order book, insufficient collection of margin from the clients, dealing with unregistered sub broker and fund based activities are not satisfactory. However with regard to the charges of non segregation of client and own funds and payment of registration fee, I agree with the Enquiry Officer and drop the charges.

4.1.13 On careful perusal of the charges and findings as recorded above, I am of the view that penalty of suspension of certificate of registration of Emmkay as a stock broker for a period of fifteen days be sufficient to have a deterrent effect.

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 Enquiry Regulations, I hereby impose a minor penalty of suspension of certificate of registration of M/s. EMMKAY Share and Stock Brokers Ltd. as a stock broker, bearing SEBI registration No. INB 050987735 for a period of fifteen days .

5.2 This order shall come into force immediately on the expiry of twenty one days from this order.

PLACE: MUMBAI
DATE: 13.06.2007

T.C. NAIR
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA