

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**CORAM: DR. T.C.NAIR, WHOLE TIME MEMBER****IN THE MATTER OF JCM CAPITAL SERVICES PVT. LTD, MEMBER OF DELHI STOCK EXCHANGE, INB NO. 050963230**

Date of hearing : July 13, 2006

Appearances

For Noticees: Shri Dinesh Gupta

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 JCM Capital Services (P) Ltd., Member of Delhi Stock Exchange, SEBI Registration No. 1NB 050963230.****1.0 Background**

1.1 JCM Capital Services Pvt. Ltd. (hereinafter referred to as "the broker") is a member of the Delhi Stock Exchange Ltd. (hereinafter referred to as "the DSE") and is registered with the Securities and Exchange Board of India (hereinafter referred to as "SEBI") as broker under Section 12 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "the Act") with registration number INB 050963230.

1.2 SEBI conducted an inspection of the books of accounts, documents and other records maintained by the broker for the period from April 1, 2000 to October 31, 2002 (hereinafter referred to as inspection period), under Regulation 19 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as Broker Regulations) and the same was carried out by M/s Vipin Om & Associates, Chartered Accountants on behalf of SEBI.

1.3 Pursuant to the findings of inspection of books of accounts and documents, certain irregularities / contraventions of SEBI Regulations were observed. Adjudication and Enquiry proceedings were initiated against the broker to enquire into and adjudge the alleged contravention of 15A (c), 15B and 15F (a) of the SEBI Act, 1992 and SEBI (Stock Brokers and Sub Brokers) Regulations, 1992. The Adjudicating Officer vide its order dated January 31, 2005 imposed a penalty of Rs. 10,000 on the broker for violation of Section 15B and 15 F (a) of the SEBI Act. The broker vide its letter dated March 9, 2005 deposited the amount of penalty with SEBI.

1.4 As far as enquiry proceedings are concerned, a copy of the findings of the Inspection Report was sent to the broker for his comments on July 9, 2003 advising him to send his comments within 14 days of the receipt of the letter. As no response was received from the broker, a reminder dated October 16, 2003 was sent to it wherein the broker was advised to send its comments by October 20, 2003 and failing which, it would be construed that it had no comments to offer. It was also indicated to the broker that under such an event a view would be taken on merits. However, no reply was received from the brokers.

2.0 Enquiry Proceedings

2.1 In the matter of Enquiry Proceedings, SEBI appointed an Enquiry Officer, vide order dated August 6, 2004 under Regulation 5(1) of 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 broker.

2.2 A show cause notice dated August 3, 2004 in terms of Regulation 6(1) of the said Enquiry Regulations was issued to the broker advising it to reply to the allegations within 21 days. The said notice referred to the inspection report of SEBI in respect of the broker containing the details of violation of various provisions of law.

2.3 The broker vide its letter dated January 14, 2005 inter alia indicated that it did not have anything further to submit other than the submissions made vide its letter dated December 31, 2004. The broker's said letter dated December 31, 2004 addresses only the allegation made in the notice relating to the adjudication proceedings.

2.4 An opportunity of hearing in the matter was also given to the broker vide SEBI letter dated December 13, 2004 and the date was for December 31, 2004. The hearing which was later rescheduled vide letter dated December 30, 2004 to January 19, 2005. The broker however indicated vide its letter dated January 14, 2005 that he was not interested in coming to Mumbai office to avail the opportunity of hearing.

2.5 On completion of the enquiry, the enquiry officer submitted his report dated January 31, 2005 with a recommendation of penalty of suspension of certificate of registration of the broker for a period of one month.

3.0 Show Cause Notice and Reply

3.1 In terms of Regulation 13(2) of the Enquiry Regulations, a show cause notice dated February 11, 2005 was issued to the broker including the penalty recommended by the Enquiry Officer advising it to show cause as to why the penalty as considered appropriate should not be imposed upon him. A copy of the Enquiry Report was also forwarded to the broker with the said show cause notice. The said show cause notice was served on the broker through DSE.

3.2 The broker was asked to submit his reply to the aforesaid show cause notice within 15 days of the receipt thereof in response to which the broker submitted its reply vide letter dated March 2, 2005.

3.3 The broker was granted an opportunity of personal hearing before me on July 13, 2006. Shri Dinesh Gupta, Whole Time Director of the broker appeared in person and made oral submissions. Shri Dinesh Gupta reiterated the submission made vide letter dated March 2, 2005.

4.0 Consideration of Issues

4.1 I have carefully examined the facts and circumstances of the case,

the inspection report, enquiry report and the submissions of the broker and my findings are as under:

(a) Dealing with clients

The enquiry officer found the broker guilty of not maintaining the client data base as required by SEBI Circular no. SMD/POLICY/IECG/1/1997 dated February 11, 1997, SMD/POLICY /CIR/597 dated April 19, 1997. I find that the member has not obtained the client registration form from the clients. Further the inspection report brings out the fact that the broker client agreement has also not been entered into with most of the clients. I have noted the submission made by the broker stating that all the relevant information required to be maintained vide the aforesaid circulars were duly maintained by them in Know Your Clients and Client Registration forms. However, the client agreements were misplaced somewhere due to shortage of staff after the closure of trading on DSE, the same could not be verified by the inspection team. I find that in terms of the above circular, it would be the broker's responsibility to provide for client details as and when the need arises. Further, all the stock exchanges were advised to implement the above with immediate effect and complete the client registration before May 31, 1997. DSE also brought out Circulars no. 30/97 and 40/97 dated March 17, 1997 and May 28, 1997 respectively wherein its members were advised to maintain a database of their clients and complete client registration process in accordance with SEBI directions and I am therefore not inclined to accept the contention of the broker.

(b) Non Segregation of Clients Funds

The enquiry officer found the broker guilty of not segregating the clients' funds and own funds segregated. The broker has maintained account no. 2683 as own funds account and clearing account. The broker has deposited few cheques received from the clients directly in its own account. I have noted the submissions made by the broker that the cheques received from the clients were directly deposited in its own account on few occasions only. The cheques had been deposited directly in clearing account as and when the payments were received late from the clients and to avoid the settlement defaults. The broker further submitted that the number of violations were very few and this was not practiced but done only in urgent needs to meet the pay-in obligations. There is no misutilisation of clients' funds and only procedural lapse had been made. I have noted the submissions of the broker and I am of the view that the broker has admitted the charge of non segregation of own funds and clients' funds. I note that the separation of clients account and the broker's account had been done with a view to prevent any misuse of clients' money by the broker and it is implemented as an investor protection measure. I therefore agree with the finding of the enquiry officer stating that the broker has violated the provisions of SEBI Circular no. SMD/ SED/CIR/1993/23321 dated November 18, 1993 and thereby violated the provisions of A (5) of Schedule II specified under Regulation 7 of Stock Broker Regulations. Vide the above circular SEBI had made compulsory for all brokers to keep the money of the clients in a separate accounts and their own money in a separate account. I therefore find that the broker has committed the alleged violation.

(c) Non Submission of Audit Report

The Enquiry Officer found that the broker has not submitted its audit report to the exchange for the period under review within the stipulated period in violation of the provisions of the SEBI Circular SMD/SED/0072/92 dated December 31, 1992. I have noted the submissions made by the broker that the audit reports were required to be submitted by September 30th of every year but were submitted late. The broker also submitted that they would undertake to submit the reports in time in future. I have noted the submissions of the broker and find that the broker has admitted the charge of non submission of audit report to the exchange thereby violating the provisions of the aforesaid SEBI Circular which states that the member should submit the audit report for financial year by September 30th of the next financial year. I am inclined to take a lenient view in this regard.

(d) Dealing with the broker of the other stock exchange

The enquiry officer found that the broker had been dealing on behalf of the clients with the broker of other stock exchange (M/s Star Share and Stock Broker Ltd. member, NSE) without obtaining the registration as sub-broker with SEBI. The broker replied that they had applied for the registration as a sub-broker of M/s Star Share and Stock Broker Limited on April 11, 2001. As regards, the observation of the inspection team that the transactions were being carried out since 2000-01, the broker submitted that all the transactions were being made on their own account and not on behalf of clients. All other transactions were undertaken after submission of application as sub broker. I find that the broker has admitted the charge of dealing with the broker of other stock exchange as a sub-broker without being registered as a sub-broker. I note that the broker has further stated that they would undertake to do the clients' business in future on NSE only after grant of sub-broker registration. The broker has violated the provisions of SEBI Circular no. SMD/POLICY /CIR/3/98 dated January 16, 1998 which interalia states that members of the stock exchanges executing transactions of its clients through the members of other exchanges are to be treated as sub-brokers. Further, I note that dealing as unregistered sub-broker is a violation of section 12 of SEBI Act and therefore I hold the broker guilty of violating the above directives of SEBI.

(e) Unique Client Code

The enquiry officer has found that the broker had used the unique client code in respect of trades done on NSE. In respect of DSE, it was clarified that it would be implemented on restart of trading on exchange. Though the broker had been using the unique client code on NSE, it was not doing the same at DSE. I have noted the broker's submissions that there has been no trading activity since the inspection of SEBI and further the broker has also given undertaking to use the client codes on DSE on resumption of trading. I am of the view that unique client code was introduced with the purpose of ensuring that the broker is giving a trade to the client and to know about the amount of exposure of the broker in the securities market in its own capacity. I find that the broker has violated the provisions of SEBI Circular no. SMDRP/POLICY/CIR/39/2001 dated July 18, 2001 which directs all the brokers to use unique client code.

(f) Compliance Officer

The enquiry officer found the broker guilty of violating the provisions of Regulation 18(A) of the Stock Broker Regulations as compliance officer was not appointed till the time of inspection. I note that all the regulatory compliance was being looked after by the director of the company, Shri Dinesh Gupta. The broker submitted that before making appointment of compliance officer, the trading activities at the DSE came down to nil due to which all the staff members were relieved from the company and that the director Shri Dinesh Gupta was looking after the compliance. I have considered the submissions of the broker and found that the broker had violated the provisions of Regulation 18(A) which stated that every stock broker shall appoint a compliance officer who shall be responsible for monitoring the acts, rules and regulations issued by the SEBI Board and for redressal of investor grievances.

4.2 On careful perusal of the charges and the findings as recorded above, I agree with the findings of the Enquiry Officer. Further I have noted the finding of Enquiry Officer that despite several opportunities given to JCM, both before and after the initiation of enquiry proceedings, it has not responded to the allegations related to the enquiry proceedings. These allegations form part of the of the said inspection report which was referred in the notice dated August 3, 2004. I have noted that the broker has specifically stated in his letter that dated January 14, 2005 that it does not have to submit further reply in regard to enquiry/adjudication proceedings other than its letter dated December 31, 2004 which does not address the allegations related to the enquiry proceedings.

4.3 After considering the facts and circumstances of the case, I am of the view that a minor penalty of suspension of certificate of registration of the broker for a period of seven days would be adequate and sufficient to have a deterrent effect on the 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 suspension of certificate of registration of M/s. JCM Capital Services Pvt. Ltd., member of Delhi Stock Exchange, bearing SEBI registration No. INB 050963230 for a period of seven days.

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

DATE: 15.06.2007
PLACE: MUMBAI

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