

SECURITIES AND EXCHANGE BOARD OF INDIA

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

IN THE MATTER OF M/S ADITYA & CO., SUB-BROKER, SEBI REGISTRATION NO. INS 230758711 AFFILIATED TO BgSE FINANCIALS LTD., MEMBER, NATIONAL STOCK EXCHANGE

Date of hearing : May 15, 2006 and June 13, 2006

Appearances :

For Noticee : None appeared

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.

Background

1.1 M/s. Aditya and Co, (herein after referred to as 'sub-broker') a proprietary concern represented by Shri. L. S. Gururaj, having office at No. 1754, 33rd Cross, 12th Main, Banashankari II Stage, Bangalore-560 070, is a sub-broker affiliated to BgSE Financials Limited (herein after referred to as 'BgSEFL'), a member of National Stock Exchange(herein after referred to as 'NSE') with SEBI Registration No. INS230758711.

1.2 An inspection of the books of accounts of the sub-broker was carried out on June 27, 2002 and the period covered was from April 2000 to May 2002. During the inspection, several irregularities--/violations were found to have been committed by the sub-broker.

1.3 Upon considering the findings of inspection and the reply of the sub-broker dated September 13, 2002, an Enquiry Officer (hereinafter referred to as EO) was appointed under Regulation 5 of SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as Enquiry Regulations) vide Order dated December 16, 2003.

2.0 Show Cause Notice and Reply

2.1 A Show Cause Notice dated -July 13, 2004 was issued to the sub-broker under Regulation 6-(1) of the said regulations. As the sub-broker did not submit its reply, another letter dated September 22, 2004 was issued to the sub-broker directing it to reply within 7 days. However, the sub-broker failed to reply and hence the Enquiry officer proceeded with the enquiry ex-parte and submitted the report dated December 22, 2004 recommending a major penalty of suspension of certificate of registration of the sub-broker for a period of six months.

2.2 A copy of the Enquiry Report was issued to the sub-broker along with a show cause notice dated January 3, 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. -The sub-broker failed to reply to the above show cause notice.

2.3 The sub-broker was given an opportunity of personal hearing on May 15, 2006 before me. The sub-broker sought time for appearing for the personal hearing and hence the sub-broker was granted another opportunity of hearing on June 13, 2006. However, the sub-broker did not appear on the above dates.

3.0 Consideration of Issues

3.1 I have carefully considered the inspection report, enquiry Report and the show cause notice issued to the sub-broker. I have also considered the reply of the sub-broker dated September 13, 2002 which forms part of record. My findings are as under :

3.2 With respect to the allegation regarding contract notes, the EO found that the sub-broker did not have the prescribed forms of Purchase/Sale Notes. The EO further found that the sub-broker had issued contract notes of BgSE for trades that were carried out in NSE and hence found the sub-broker guilty of violating SEBI Circular No.SMD/POLICY/CIR-3/98 dated 16.01.1998. The EO further found that the sub-broker had not signed some of the contract notes which is in contravention of Bye-Law No.220 of Bangalore Stock Exchange Bye-Laws and Regulations. I note that in terms of Clause B(2) of Code of Conduct prescribed for sub-brokers under Schedule II read with Regulation 15 of SEBI (Stock Brokers and Sub-Brokers) Regulations,1992, a sub-broker is duty bound to issue to his clients, purchase or sale notes for all the transactions. -As the sub-broker has not done so, I agree with the findings of the EO and hold him guilty of violating the Circulars, Bye-laws cited supra. However, I find the above a technical violation and in the absence of any charge that the sub broker had defaulted to the clients by taking advantage of the above irregularities, I am inclined to take a lenient view.

3.3 With respect to the allegation regarding transactions with clients, the EO found that the sub-broker was matching transaction of his own clients using his trading system without routing the trades through the member with whom he was affiliated. The EO further found that some trades were in the nature of 'Financial Transactions' wherein the sub-broker bought and sold the same scrip during the same period with difference in rate, through his trading account by way of Office Matching Transactions. The EO further noted that the sub-broker had admitted that such transactions were executed to pay interest component to his clients to whom he owed money. The EO, therefore, found these transactions to be manipulative, fraudulent and deceptive in nature. -I note that the sub-broker has admitted in his reply dated September 13, 2002 that since his terminal was closed, -he routed the transactions through another member to take advantage of the fluctuations in the price. In view of this, I hold the sub-broker guilty of violating Clause D(1) of the Code of Conduct specified in Schedule II read with Regulation 15(b) of SEBI (Stock Brokers and Sub-Brokers) Regulations 1992.

3.4 The EO found that the sub-broker is not using any unique client codes for placing orders. The EO further found that no verification of client registration forms could be undertaken as the sub-broker could not furnish any client registration or agreement forms. The EO, therefore, held the sub-broker guilty of violating SEBI Circular No.SMD/POLICY/CIR-39/2001 dated July 18, 2001. In view of the above, I am inclined to agree with the findings of the EO.

3.5 The EO found that though there was a separate client account, there were some instances of debit in the client account towards payment of electricity charges, telephone bills etc. Further, there were several instances of bouncing of cheques issued by the sub-broker to the clients and instances where banks had debited the client account for the cheque returned charges. The EO, therefore, found that the sub-broker had utilized the funds of clients and there was no clear segregation of the clients' and sub-broker's money and hence found it guilty of violating SEBI Circular No.SMD/SED/CIR/93/23321 dated November 18, 1993. I note that the sub-broker in its reply dated September 13, 2002 had assured to adhere to such segregation in future which implies that a clear segregation of funds was not being maintained. I, therefore, agree with the findings of the EO. However, there was no instance of misutilisation noted, I am inclined to take a lenient view.

3.6 The EO found that the sub-broker had entered into transactions which were in the nature of off-the-floor transactions and were not reported to BgSE Financials Ltd. and Bangalore Stock Exchange. The EO further found that the sub-broker had acted as unregistered sub-broker of M/s. Canny Securities and M/s. Money Man Securities which is in violation of Section 12 of SEBI Act, 1992 and also SEBI (Stock Brokers and Sub-Brokers) Regulations 1992 and SEBI Circular No.SMD/RCG/CIR/ (BKG)/293/95 dated March 14, 1995 and SEBI Circular No.SMD/Policy/CIR-3/98 dated January 16, 1998. I note that the sub-broker through his reply dated September 13, 2002 admitted that all the transactions done through the above brokers were done before getting sub-brokership and subsequently he has obtained sub-brokership of Bangalore Stock Exchange. -In view of this, I am inclined to take a lenient view.

3.7 The EO found that the sub-broker failed to maintain Order book as prescribed by SEBI circulars and hence found the sub-broker guilty of violating SEBI CIR NO.SMD/POLICY/IECG/1-97 dated February 11, 1997. The EO further found that the sub-broker had not submitted the information sought by SEBI vide letter No. 7(9)/2002/05/757 dated May 24, 2002 even though several opportunities were given to the sub-broker. The EO further found that the sub-broker had not provided the inspection team with all the relevant records, documents, contract note copies, books etc. of the main office and branch office due to which inspection could not be carried out. -The EO found the reply given by the sub-broker that all orders were placed through the terminal on-line, received over telephone or received when parties were present personally, unacceptable. I find that maintenance of order book helps in audit trail and also for verification as to whether the sub-broker has charged right price with reference to time of placing order. I find that maintenance of order book must be complied with and cannot be a matter of convenience of the sub-broker. Maintenance of order book helps in audit trail and receiving and confirming orders over telephone or in person, without any record, would defeat the purpose.

3.8 The EO found that the sub-broker had not taken adequate steps to resolve investor grievances and has also failed to report to SEBI the details of such grievances. It was found that BgSE had received a total of 12 complaints during the year 2000-2001 out of which the sub-broker could redress only 10 for which BgSE utilised the entire base minimum capital of the sub-broker. In the absence of any explanation in this regard by the sub-broker, I hold it guilty of violating Rule 4 (e) of the SEBI (Stock Brokers and Sub-Brokers) Rules, 1992.

3.9 The EO further recorded that the sub-broker had not provided full co-operation to the inspection team and had not furnished all the documents. I note that the sub-broker has not replied to -the show cause notices and failed to appear for personal hearing before the EO or before me. However, I note that in terms of SEBI Circular dated August 26, 2004 and March 31, 2005 on uniform documentary requirements, a sub broker henceforth is not authorized to handle clients money as also issue contract notes.

3.10 Hence, on a careful perusal of the charges and findings and the provisions of the aforementioned circulars, I am of the view that most of the violations/ irregularities are technical, procedural and minor and as such a minor penalty of suspension of Registration of the sub broker for a period of 15 days would be adequate and sufficient to have deterrent effect on the sub broker.

4.0 ORDER

4.1 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) Regulation 2002, I hereby suspend the certificate of registration of M/s. Aditya and Co, a sub-broker affiliated to BgSE having SEBI registration no. INS230758711 for a period of 15 days.

4.2 This order will come into force on the expiry of 21 days from the date of this order.

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T.C.NAIR

Place: Mumbai

Whole Time Member

Date: 18.06.2007

Securities and Exchange Board of India