

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

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

**IN THE MATTER OF A NITIN CAPITAL SERVICES LTD., MEMBER OF
DELHI STOCK EXCHANGE ASSOCIATION LTD.**

ORDER

(Under Regulation 13(4) of SEBI (Procedure For Holding Enquiry By Enquiry Officer and Imposing Penalty) Regulations, 2002 against A Nitin Capital Services Ltd. (INB 050720634)

1.0 Background

1.1 A Nitin Capital Services Ltd. (hereinafter referred to as “Nitin”) a member of the Delhi Stock Exchange Association Ltd. (hereinafter referred to as “the DSE”) and is registered with the Securities and Exchange Board of India (hereinafter referred to as “SEBI”) as a stock broker under Section 12 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “the Act”) with registration number INB 050720634.

1.2 SEBI conducted inspection of the books of accounts, documents and other records maintained by Nitin for the period from April 2000-October 2002 (hereinafter referred to as inspection period), under Regulation 19 of the SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 (hereinafter referred to as the “Stock Brokers Regulations”) and the

same was carried out by M/s Uberoi Sood and Kapoor, Chartered Accountants.

- 1.3 Certain irregularities/contraventions of SEBI Regulations were observed during the said inspection. A copy of the findings of the Inspection Report was sent to Nitin for their comments vide letter dated April 14, 2003 and October 16, 2003. However no reply was received from Nitin.

2.0 Enquiry Proceedings

- 2.1 In view of the findings of the inspection, an Enquiry Officer was appointed by SEBI vide order dated January 03, 2004 to enquire into the violations/ contraventions alleged to have committed by Nitin.
- 2.2 A show cause notice dated May 20, 2004 in terms of in terms of Regulation 6(1) of the SEBI (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 (hereinafter referred to as “Enquiry Regulations”) was issued to the Nitin advising it to reply to the allegations within 21 days. The said notice referred to the inspection report of SEBI containing the details of violation of various provisions of law. It was alleged that Nitin had violated the provisions of Rule 8(1) (f) and 3 (f) of the Securities Contract (Regulation) Rules, 1957, and Rule 3 and 4 (b) of the SEBI (Stock Brokers and Sub Brokers) Rules, 1992, Regulations 7, 17 and 18A of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (Stock Brokers Regulations) and Regulation 7 read with Code of Conduct as specified in the Schedule II of the Stock Brokers Regulations. Nitin vide its letters dated June 14, 2004 and July 08, 2004 sought time to submit the reply to the show cause notice . However, Nitin failed to submit any reply to the show cause within the time sought.

- 2.3 An opportunity of hearing was granted to Nitin before the Enquiry Officer on August 17, 2004 . However none appeared on behalf of Nitin for the hearing. A reply was submitted by Nitin vide letter dated August 11, 2004. On completion of enquiry, the Enquiry Officer submitted his report dated October 18, 2004 recommending a penalty of suspension of certificate of registration for a period of 4 months.

3.0 Show Cause Notice and Reply

- 3.1 Based upon recommendation of the Enquiry Officer, a show cause notice dated October 28, 2004 was issued to Nitin in terms of Regulation 13(2) of the Enquiry Regulations, advising them to show cause as to why the appropriate penalty including penalty as recommended by the Enquiry Officer should not be imposed upon him. A copy of the Enquiry Report was also forwarded to Nitin with the said show cause notice and the same was served on Nitin through Delhi Stock Exchange (DSE). However no reply to the show cause notice was received on behalf of Nitin.
- 3.2 An opportunity of personal hearing was granted to Nitin before me on July 14, 2006 and February 26, 2007 at regional office of SEBI, New Delhi. However no one appeared on behalf of Nitin at both times.

4.0 Consideration of Issues

- 4.1 I note that Nitin has neither replied to the show cause notice nor appeared before me for hearing. Since couple of opportunities for personal hearing has been given to Nitin and that natural justice have been complied with, I am proceeding on the basis of material on record. I

have carefully examined the inspection report, enquiry report and findings are as under :

(a) **Non maintenance of books of accounts**

The Enquiry Officer has found that Nitin did not maintain the Order book and had violated the provisions of SEBI circular nos. SMD/(B)/104/22775/93 dated October 29, 1993 and SMD/Policy/IECG/1-97 dated February 11, 1997. I have noted the submission of Nitin before the Enquiry Officer that it was not practical to maintain order book as sometimes the client gave instructions on telephone or was physically present before the terminal and even sometimes gave instructions on the information available on the terminal. Further, no complaint was ever made by any client before the DSE. I note that Nitin has admitted the fact that it did not maintain the Order Book as required under the Regulation 17 (1) of the Stock Brokers Regulations and the aforesaid SEBI circulars. I am of the view that the order book contains the details of the name of client, the date and time of the order placed by the client as well as the time of execution of the order, which is very important from the investors' perspective. Recording of time and placement of order by the client is very crucial to ensure that the broker will not take undue advantage of price variations 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 a investor protection measure. I therefore find him guilty of violating the aforesaid SEBI circulars.

(b) **Irregularities in the issuance of Contract Notes**

The enquiry officer has found that Nitin failed to issue contract notes as per the SEBI directives. Following discrepancies were observed in the contract notes:

- i. failure to place stamp on the contract notes issued by them.
- ii. Contract notes were computer generated and were numbered on a daily basis and not on an annual basis.
- iii. Failure to maintain register of dispatch book containing records of dispatch of contract notes thereby making it difficult to ascertain the date and time when the contract notes were issued.
- iv. Duplicate contract notes were not maintained by Nitin and However no satisfactory explanation was given by it. Of the total contracts, only sixteen duplicate contract notes were found in their records for the period covered under inspection.
- v. Failure to maintain acknowledgement with respect to contract notes sent to clients either by post or fax or where contract notes were being collected by clients personally.

I note that SEBI vide its circular dated August 5, 1996 stipulated that the broker should ensure that contract notes issued bear pre printed serial numbers, affixation of stamps, maintenance of counterfoils with adequate details for contract notes dispatched. Further vide circular no. SMD/POLICY/IECG/1-97 dated February 2, 1997, brokers are required to maintain the record of time when the client has placed the order and reflect the same in the contract note along with the time of execution of the order. In this regard, I note that the Hon'ble SAT in its order dated May 30, 2003 in Appeal No. 22 of 2003 in the matter of Radar Securities

Ltd. Vs SEBI ruled that “ *the receipt of the order from the client and execution of the order by broker are not one and the same. Stamping the receipt time is important from the investor protection angle as it has a bearing on the transaction rate. Failure to do so is a matter of concern.*” I therefore hold Nitin guilty of aforesaid circular.

(c) Non redressal of investor grievances

The Enquiry Officer found that Nitin failed to redress the complaint of Indra Deva which had come before the Exchange. I note that though Nitin had offered explanation before the Enquiry Officer regarding transactions entered into with Manohar Lal & Co., it did not comment on the redressal of the grievance of Indra Deva. I find that the grievance appears to be still pending, which is in violation of Rule 4(e) of the Stock Broker Rules.

(d) Dealing as unregistered sub-broker

The Enquiry Officer found that Nitin dealt through Manohar Lal & Co. and Aman Portfolios Pvt. Ltd. in the capacity of an unregistered sub broker in violation of SEBI Circulars vide SMD/OPG/AA/1020/96 dated March 14, 1996 and SMD/POLICY/CIR/3/97 dated March 31, 1997, SMD/POLICY/CIR-39 dated January 16, 1998 and Sub-Brok/CIR/02/2001 dated January 15, 2001 and SMDRP/POLICY/CIR-49/2001 dated October 22, 2001 as also provisions of section 12 of SEBI Act, 1992 and Rule 3 of stock broker Rules prevailing at the relevant time. I note that Section 12 of the SEBI Act states that no stock broker or sub broker shall buy, sell and deal in securities unless he holds a certificate granted by SEBI under the Regulations. In absence of satisfactory

explanation by Nitin, I hold it guilty of violating the above circulars issued by SEBI.

(e) Non reporting of Off the Floor Transactions

The enquiry officer found that on several occasions Nitin had indulged in off the floor transactions by buying /selling shares from other exchanges for his clients. These transactions had not been reported to the exchange. During the period under inspection, it was found that majority of these transactions were executed at the National Stock Exchange through NSE broker, Aman Portfolio (P) Ltd. It was submitted that Nitin was dealing with Aman Portfolio (P) Ltd. as a client and not as unauthorized broker and that the transactions mentioned in the SCN were not reflecting in the sauda book due to inadvertency and not with any other motive. I am of the view that as per the SEBI Circular No.SMDRP/Policy/Cir-32/99 dated September 14, 1999, Nitin had to report off-the-floor transactions to the Exchange and it did not produce any evidence that he had reported the same. Only when the non-reporting comes to the knowledge of the Exchange, action can be initiated. Moreover, as per the above circular, *“All negotiated deals (including cross deals) shall not be permitted in the manner prescribed in circulars mentioned above and all such deals shall be executed only on the screens of the exchanges in the price and order matching mechanism of the exchanges just like any other normal trade”*. Nitin had executed off-the-floor transactions which are against the aforesaid provisions. The screen based trading was introduced so that there is greater transparency, better price discovery, reduction in transaction cost and benefits to the investors. The off the floor transactions tends to avoid transparency requirements, do not contribute to price discovery and some investors do not have benefit of the best possible price and militate

against the basic concept of stock exchanges, which are meant to bring together a large number of buyers and sellers in an open manner. It is clear from the above circular that the issue is not of reporting to Stock Exchange as such but execution of such transactions on the Stock Exchange only and not off the Stock Exchange. I am of the view that Nitin has apparently indulged in off the market transactions in violation of SEBI Circulars No. SMDRP/Policy/CIR-32/99 dated September 14, 1999.

(f) Non Maintenance of Client Registration Forms

The enquiry officer found that Nitin had failed to maintain client registration forms with respect to its clients. In total only thirty Client ID registration forms were found. Further Client ID registration forms in majority of cases were not complete. The following discrepancies were noticed in the client ID registration forms maintained by Nitin:

- (i) Details like photograph, identification papers like Pan no. etc. were not attached.
- (ii) Certain details were not provided and spaces were left blank with respect to
 - a. Details whether client deals with other brokers;
 - b. Introduced by whom;
 - c. Proof of Identity.
 - d. Agreements were not dated or were not found.

I have noted the submission of Nitin before the Enquiry Officer that the clients were known to him since 1992 and assured that extra caution will be taken in future. I am of the view that even if the clients were known to Nitin, still Nitin as a broker is obliged to comply with the directives of

SEBI. I find Nitin was negligent in maintaining client registration forms as prescribed by SEBI thereby violating SEBI circular nos. SMD/POLICY/IECG/1-97 dated February 11, 1997 and no SMD/POLICY/CIR/5-97 dated April 11, 1997. Vide the above circulars, brokers are required to maintain client details in the format suggested by SEBI. By not maintaining the database of clients, Nitin has apparently violated the provisions of the above circulars.

(g) Non Segregation of clients and own funds

The enquiry officer found that on number of occasions, Nitin failed to segregate clients and own funds. In most of the cases it was found that Nitin had not been routing money received from his clients through separately maintained client's bank account and had used clients money for own business purposes and for meeting own regular expense like paying salaries to staff. It was also stated that large sums of monies were transferred from client account no. CA. 2606 to other sister concerns from time to time. I have noted the submission of Nitin before the Enquiry Officer that "due to heavy fluctuation in the market and in order to fulfill the commitments sometimes the money was withdrawn from clients account and sometimes amounts were deposited in clients account." It was also submitted that the clients received their monies on time. I am of the view that the separation of the clients account and the broker's account had been done with the view to preventing any misuse of the clients' money by the broker and it is implemented as an investor protection measure. The contention of Nitin that the clients received their money on time is therefore not acceptable.

(h) Non appointment of Compliance Officer

The enquiry officer found that Nitin failed to appoint any compliance officer and no intimation has been sent to the exchange in this regard. I find that Nitin has failed to adhere to the provisions laid down under Regulations 18A of Stock Brokers Regulations which inter alia stipulated that every stock broker was required to appoint a compliance officer who shall be responsible for monitoring the compliance of Act, rules and regulations, notifications, guidelines, instructions etc issued by Central Government and for redressal of investor complaints. Considering the volume of business of Nitin, I am inclined to take a lenient view in this regard.

(i) Non submission of Audited Annual Accounts

The enquiry officer found that Nitin failed to submit audited annual accounts and also failed to produce books of accounts for the period 2001-2002 on October 16, 2002. In response to this, Nitin submitted to the Enquiry Officer that due to raid by IT Dept. the books of accounts could not be produced. Further It was submitted that the audited account balance sheets were filed before the stock exchange. However, the Enquiry Officer has found that Nitin had failed to offer any satisfactory explanation in this regard and has apparently violated SEBI circular no. SMD/SED/0072/92 dated December 31, 1992.

4.2 On careful perusal of the charges and the findings as recorded above, I find most of the charges established are serious. Accordingly, I am of the view that a penalty of suspension of registration for a period of one month would be adequate and sufficient to have a deterrent effect on Nitin.

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 penalty of suspension of certificate of registration for a period of one month on A. Nitin Capital Services Ltd., member, DSE, bearing SEBI Registration No.INB050720634.
- 5.2 This order shall come into force immediately on the expiry of twenty one days from the date of this order.

DATE : 19.06.2007

T.C. NAIR

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA